

**REPORT OF THE
CONSTITUTION OF KENYA
REVIEW COMMISSION**



**VOLUME TWO
THE DRAFT BILL TO AMEND
THE CONSTITUTION**



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PREAMBLE

We, the people of Kenya –

AWARE of our ethnic, cultural and religious diversity and determined to live in peace and unity as one indivisible sovereign nation:

COMMITTED to nurturing and protecting the well-being of the individual, the family and the community within our nation:

RECOGNISING the aspirations of our women and men for a government based on the essential values of freedom, democracy, social justice and the rule of law:

EXERCISING our sovereign and inalienable right to determine the form of governance of our country and having fully participated in the constitution making process:

Do adopt, enact and give to ourselves and to our future generations this Constitution.

GOD BLESS KENYA

CHAPTER ONE

SOVEREIGNTY OF THE PEOPLE AND SUPREMACY OF THE CONSTITUTION

Sovereignty of the people

1. (1) All sovereign authority belongs to the people of Kenya and may be exercised only in accordance with the Constitution.
- (2) The people shall exercise their sovereign power either directly or through their democratically elected representatives.
- (3) The sovereign authority of the people is allocated separately among –
 - (a) the Legislature, to whom the people entrust the legislative authority of the Republic, to be exercised in accordance with Chapter Seven;
 - (b) the Executive, to whom the people entrust the executive authority of the Republic, to be exercised in accordance with Chapter Eight;
 - (c) the Judiciary and other independent and impartial tribunals, to whom the people entrust the judicial authority of the republic, to be exercised in accordance with Chapter Nine; and
 - (d) the Constitutional Commissions and Offices established by Chapter Seventeen or elsewhere in the Constitution, to which the people entrust the protection and development of the constitutional state, to be secured through the exercise by those bodies of the functions and powers assigned to them by the Constitution.
- (4) The right to exercise sovereignty shall not be delegated to any individual, group or class, and no person shall arrogate to himself or herself, or exercise any state authority which does not emanate from the Constitution.

Supremacy of the Constitution.

2. (1) Kenya is founded on the supremacy of the Constitution and the rule of law and shall be governed in accordance with the Constitution.
- (2) The Constitution is the supreme law and binds all authorities and persons throughout the Republic.
- (3) The validity, legality or procedure of enactment or promulgation of this Constitution is not subject to challenge by or before any court, organ or agency of the state.
- (4) A law which is inconsistent with the Constitution is void, to the extent of the inconsistency.
- (5) The Constitution shall be interpreted in a manner –
 - (a) that promotes the values of good governance;
 - (b) that advances human rights and fundamental freedoms and the rule of law;
 - (c) that permits the creative development of the provisions of the Constitution and of the common law of Kenya; and
 - (d) that avoids technicalities which defeat the purpose of the Constitution.
- (6) The Courts, a person or an authority interpreting the Constitution may refer to matters or materials that will assist in the purposive interpretation of the Constitution.

Enforcement of the Constitution.

3. (1) A person may bring an action in the courts on the ground that an enactment or anything contained in, or done under, an enactment is inconsistent with, or is in contravention of, the Constitution for declaration to that effect.
- (2) The courts may make an order or give appropriate effect to the declaration in clause (1).

Defence of the Constitution

4. (1) Any attempt to establish a system of government contrary to the Constitution is unlawful.
- (2) An Act that is prejudicial to the sovereignty of Kenya is unlawful.
- (3) Parliament may enact legislation to give effect to this Article.

The Laws of Kenya

5. (1) The laws of Kenya comprise -
- (a) the Constitution;
 - (b) Acts of Parliament enacted under the Constitution;
 - (c) African customary law;
 - (d) Islamic and Hindu personal law;
 - (e) the rules of law generally known as the common law, and the rules of law generally known as the doctrines of equity as they relate to the practice and procedures of the Courts of Kenya;
 - (f) the East African Community Law; and
 - (g) Customary international law and international agreements applicable to Kenya.
- (2) Parliament shall, within two years of the coming into force of the Constitution, by an Act of Parliament, make the amendments that are necessary or expedient for bringing the existing law into conformity with the Constitution.

CHAPTER TWO

THE REPUBLIC

Declaration of the Republic

6. (1) Kenya is a sovereign Republic.
- (2) The Republic of Kenya is founded on republican principles of good governance through multiparty democracy, participatory governance, transparency and accountability, separation of powers, respect for human rights fundamental freedoms, and the rule of law.

Territory

7. (1) The territory of the Republic of Kenya comprises the area described in the First Schedule;
- (2) The Republic is divided into the districts and provinces set out in the Second Schedule;
- (3) The sovereignty of the Republic of Kenya over its territory is subject only to any international obligations that the Republic of Kenya freely accepts in accordance with the Constitution;
- (4) Every citizen has the right and duty to defend the Republic against any person who threatens the political independence, territorial integrity or constitutional order of the Republic by unconstitutional means.

Capital

8. (1) The capital of Kenya is Nairobi;
- (2) Parliament shall enact legislation to provide for the status and government of Nairobi;
- (3) It is the policy of the State to decentralize the headquarters of national Government departments and national public institutions to all the provinces equitably.

Languages

9. (1) The official languages of Kenya are Kiswahili and English and all official documents shall be made available in both languages.
- (2) The national language of Kenya is Kiswahili.
- (3) The state shall respect and protect the diversity of language of the people of Kenya and shall promote the development and use of Kiswahili, indigenous languages, sign language and Braille.

State and religion

10. (1) State and religion shall be separate.
- (2) There shall be no state religion.
- (3) The state shall treat all religions equally.

National symbols

11. The national symbols of the Republic of Kenya, consisting of –
- (a) the national flag;
 - (b) the national anthem;
 - (c) the coat of arms; and
 - (d) the Public Seal of Kenya
- are as prescribed in the Third Schedule.

National oaths and affirmations

12. The national oaths and affirmations shall be as prescribed in the Fourth Schedule.

National Days

13. The following days shall be observed as National Days -

- (a) 1st June – Madaraka Day;
- (b) 12th December – Jamhuri Day;
- (c) [*the date of enactment of the Constitution*] - Katiba Day.



CHAPTER THREE

NATIONAL GOALS, VALUES AND PRINCIPLES

National goals, values and principles

14. (1) The national goals, values and principles contained in this Chapter apply to the Executive, Parliament, the Judiciary, local authorities and all other state organs and officials, citizens and private bodies whenever any of them—
- (a) applies and interprets the Constitution or any other law; and
 - (b) applies, makes and implements policy decisions.
- (2) The Republic shall promote national unity and develop the commitment of its citizens to the spirit of nationhood.
- (3) The Republic shall recognise the diversity of its people and promote the cultures of its communities.
- (4) The Republic is based on principles of democracy and shall promote the participation of the people in public affairs and facilitate the sharing and devolution of power.
- (5) The Republic shall ensure open and transparent government and the accountability of state officials and public authorities.
- (6) The Republic shall take effective measures to eradicate all forms of corruption.
- (7) The Republic shall ensure access of the people to independent, impartial and competent institutions of justice.
- (8) Political parties shall observe democratic principles in their internal organization and procedures, respect the rights of others to participate in the political process, and avoid violence and bribery.

(9) The Republic shall promote the role of civil society in governance and facilitate its role in ensuring the accountability of government.

(10) The Republic is fully committed to respect, protect and promote human rights and fundamental freedoms and enhance the dignity of individuals and communities.

(11) The Republic shall ensure the fullest participation of women, the disabled, and the marginalised communities and sectors of society in the political, social and economic life of the country.

(12) The State shall implement the principle that one-third of the members of all elective and appointive bodies shall be women.

(13) The Republic shall recognise the special responsibilities that the state, society and parents owe to our children and shall ensure their material and moral well being.

(14) The Republic shall be committed to social justice and, through appropriate policies and measures, to providing for all Kenyans the basic needs of food, shelter, clean water, sanitation, education, health, a clean environment, and security so that they live a life of dignity and comfort and can fulfil their potential.

(15) The Republic shall promote equitable development, recognize and enhance the role of science and technology, eliminate disparities in development between regions of the country and sectors of society, and manage national resources fairly and efficiently for the welfare of the people.

(16) The Republic shall recognise its responsibilities to future generations of Kenyans, by pursuing policies for the sustainable management of the environment.

(17) The Republic shall be a good citizen of Africa and of the world and commit itself to work for international peace and solidarity, equitable development and the promotion of human rights and fundamental freedoms.

(18) At least once every year, the President shall report to Parliament and the nation all the measures taken and the progress achieved in the realization of the national goals, values and principles set out in this Chapter.

Duties of a citizen

15. (1) In order to fulfil the national goals, values, and principles, all citizens have the duty to –

- (a) acquaint themselves with the provisions of the Constitution and propagate its ideals and objectives;
- (b) uphold and defend the Constitution and the law;
- (c) exercise their democratic rights by voting and being involved in other forms of political participation;
- (d) engage in work, including home-making, for the support and welfare of themselves and their families, for the common good and to contribute to national development;
- (e) develop their abilities to the greatest possible extent through acquisition of knowledge, continuous learning and the development of skills;
- (f) contribute to the welfare and advancement of the community where they live;
- (g) strive to foster national unity and live in harmony with others;
- (h) promote democracy and the rule of law;
- (i) promote family life and act responsibly in the context of the family;
- (j) protect and safeguard public property from waste and misuse;

- (k) protect the environment and conserve natural resources;
 - (l) co-operate with law enforcement agencies for the maintenance of law and order;
 - (m) desist from acts of corruption;
 - (n) understand and enhance Kenya's place in the international community.
- (2) The duties set out in clause (1) apply equally wherever appropriate to non-citizens.



CHAPTER FOUR

CITIZENSHIP

General principles concerning citizenship

16 Except where the Constitution has made provision to the contrary, all citizens of Kenya are –

- (a) equally entitled to the rights, privileges and benefits of citizenship;
- (b) equally subject to the duties and responsibilities of citizenship; and
- (c) equally entitled to a Kenyan passport and to any document of identification issued by the state to citizens.

Retention of existing citizenship

17. (1) Every person who immediately before the coming into force of the Constitution was a citizen of Kenya is a citizen of Kenya.

(2) Every person who immediately before the coming into force of the Constitution was not a citizen of Kenya but would have been a citizen of Kenya if the Constitution had been in force is entitled on application to be registered as a citizen of Kenya.

Acquisition of citizenship

18. Citizenship may be acquired by –

- (a) Birth;
- (b) Registration; and
- (c) Naturalization.

Citizenship by birth

19. (1) Every person born after the coming into force of the Constitution, is a citizen of Kenya if, at the date of the person's birth, either the mother or the father of the person is a citizen of Kenya.
- (2). A person who is a citizen of Kenya under this Article cannot be deprived of that citizenship.

Citizenship and marriage

20. (1) A person who has been married to a citizen of Kenya for a period of not less than three years is entitled, on application, to be registered as a citizen of Kenya.
- (2) Citizenship is not lost through marriage or the dissolution of marriage.

Citizenship by naturalization

21. A person who has been lawfully resident in Kenya for a continuous period of not less than seven years and who satisfies the conditions prescribed by an Act of Parliament may apply to be naturalized as a citizen of Kenya.

Children found in Kenya and adopted children

22. (1) A child found in Kenya who appears to be less than eight years of age, and whose parents are not known, is presumed to be a citizen of Kenya.
- (2) A child below the age of eighteen years who is not a citizen of Kenya and who is adopted by a citizen of Kenya is entitled on application to become a citizen of Kenya.

Dual citizenship

23. (1) Dual citizenship is permitted under the laws of Kenya.
- (2) A person who as a result of acquiring the citizenship of another country lost the citizenship of Kenya at any time before the coming into operation of the Constitution, is entitled on application to be registered as a citizen of Kenya.

(3) A person who loses citizenship of Kenya as a result of acquiring the citizenship of another country is entitled, on renunciation of the citizenship of that other country, to regain the same citizenship status which the person formerly enjoyed.

Cessation of citizenship

24. A person may be deprived of the citizenship of Kenya only if the person acquired citizenship by means of fraud, false representation, concealment of any material fact, or by other unlawful means.

Citizenship of parent dying before birth of a person.

25 (1) A reference in this Chapter to the citizenship of the parent of a person at the time of the birth of that person refers in relation to a person born after the death of the parent, to the citizenship of the parent at the time of the parent's death.

(2) For the purposes of clause (1), where the death of a parent occurred before the coming into force of the Constitution, the citizenship that the parent would have had, if the parent had died after the coming into operation of the Constitution, shall be deemed to be the parent's citizenship at the time of death.

Residence

26. (1) The following persons may enter and reside in Kenya so long as they comply with the conditions prescribed by Parliament governing entry and residence –

- (a) a former citizen;
- (b) a foreign wife or widow or foreign husband or widower of a citizen; and
- (c) a child of a citizen.

(2) Parliament shall, within one year of the coming into force of the Constitution enact legislation governing the entry into and residence in Kenya, of other categories of persons and providing for the status of permanent residents.

Powers of Parliament

27. Parliament may enact legislation -

- (a) prescribing conditions upon which a person may become a citizen in terms of the Constitution;
- (b) providing for the acquisition of citizenship of Kenya by persons who are not eligible or who are no longer eligible to become citizens under this Chapter;
- (c) relating to the making of applications for citizenship by registration or naturalization;
- (d) providing for the renunciation by a person of that person's citizenship of Kenya;
- (e) providing for the deprivation of citizenship; and
- (f) generally giving effect to the provisions of this Chapter.

Citizenship Registration Board

28. There is established the Citizenship Registration Board to deal with matters provided for under Article 27, consisting of not less than five and not more than nine members appointed by the President with the approval of Parliament from among persons of moral standing.

Constitution as an Instrument of Change

CHAPTER FIVE

THE BILL OF RIGHTS

Fundamental rights and freedoms

29. (1) The Bill of Rights is the foundation stone of Kenya's democratic state and is the framework for the adoption of social, economic and cultural policies.

(2) The purpose of the recognition and protection of human rights is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.

(3) The rights and freedoms set out in this Bill of Rights –

- (a) belong to each individual and are not granted by the state.
- (b) do not exclude other rights which are not expressly mentioned in this chapter; and
- (c) are subject only to the limitations contained in the Bill.

Duty of the state to promote rights and freedoms

30. (1) The state shall observe, respect, protect, promote and fulfill the rights and freedoms in this Bill of Rights.

(2) It is the primary duty of every state organ to give effect to clause (1) whenever that state organ –

- (a) makes policy or enacts law;
- (b) implements policy or legislation;
- (c) performs any of its functions; or
- (d) exercises any of its powers.

(3) The state shall take reasonable legislative, policy and other measures; to achieve the progressive realisation of the rights guaranteed in Articles 56, 57, 58, 59, 60, 61 and 62.

(4) Parliament and the Commission on Human Rights and Administrative Justice shall establish standards for the achievement of rights mentioned in clause (3).

(5) The state, through legislative and other instruments, shall recognise and provide for the role of civil society in the promotion and protection of the rights and freedoms in this Bill of Rights.

(6) The Republic shall fulfil all its international obligations in respect of human rights and for that purpose-

(a) the Republic shall report on time to international human rights bodies on the implementation of human rights treaties;

(b) draft reports intended for submission by the Republic to international bodies shall be published in Kenya for two months and facilities shall be provided for the public to discuss and debate them before the reports are revised and submitted;

(c) the Republic shall facilitate the submission of alternative drafts by civil society organizations to international human rights bodies; and

(d) the comments and recommendations of international bodies shall be disseminated to the public and the Government shall make a statement to Parliament on how it intends to implement those recommendations.

Limitation of rights

31. (1) A right or freedom set out in the Bill of Rights may be limited -

(a) only by a law of general application;
and

(b) only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –

(i) the nature of the right;

(ii) the importance of the purpose of the limitation;

(iii) the nature and extent of the limitation; and

(iv) the relation between the limitation and its purpose; and whether there are less restrictive means to achieve the purpose.

(2) Despite clause (1), provision in legislation –

(a) shall not be construed as limiting a right or freedom set out in the Bill of Rights unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation.

(b) shall not limit a right or freedom set out in the Bill of Rights so as to derogate from the core or the essential content of the right.

(3) The state, or another person claiming that a particular limitation is permitted in terms of this Article, is responsible to demonstrate to the court, tribunal or other

forum that the requirements of this Article have been satisfied.

(4) The provisions of this chapter on equality shall be qualified to the extent strictly necessary for the application of Islamic law to persons who profess the Muslim faith in relation to personal status, marriage, divorce and inheritance.

Right to life

32. (1) Everyone has the right to life.
- (2) The death penalty is abolished.

Equality

33. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms.

Freedom from discrimination.

34. (1) The state shall not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, sex, pregnancy, marital status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language or birth.
- (2) A person shall not unfairly discriminate directly or indirectly against another person on one or more grounds in terms of clause (1).
- (3) Despite clause (1), the state may take legislative and other measures designed to benefit individuals or groups who are disadvantaged, whether or not as a result of past discrimination, but any such measure shall –
- (a) adequately provide for benefits to be on the basis of genuine need; and
 - (b) be permissible in terms of Article 31 .

Women

- 35.** (1) Women have the right to equal treatment with men, including the right to equal opportunities in political, economic and social activities.
- (2) Women are entitled to be accorded the same dignity of the person as men.
- (3) Women and men have an equal right to inherit, have access to and control property.
- (4) Any law, culture, custom or tradition that undermines the dignity, welfare, interest or status of women is prohibited.
- (5) The state shall -
- (a) protect women and their rights, taking into account their unique status and natural maternal role in society; and
 - (b) provide reasonable facilities and opportunities to enhance the welfare of women to enable them to realise their full potential and advancement.

Older members of society

- 36.** (1) Older members of society are entitled to continue to enjoy all the rights and freedoms set out in this Bill of Rights, including a right to—
- (a) participate fully in the affairs of society;
 - (b) pursue their personal development;
 - (c) be free from all forms of discrimination, exploitation or abuse;
 - (d) live with dignity and respect; and

(f) retain their autonomy.

(2) Older members of society are entitled to the reasonable care and assistance of family and state.

(3) Older members of society have the duty to plan for their retirement, to share their knowledge and skills with others, and to remain active in society.

(4) Relevant ministries, and complaints bodies including the Commission on Human Rights and Administrative Justice, shall take special care to equip themselves to understand and deal with issues affecting the elderly.

Children

37 (1) Children hold a special place in society. It is the duty of their parents, wider family, society and the state to nurture, protect and educate them so that they can develop in a safe and stable environment in an atmosphere of happiness, love, respect and understanding and be able to fulfil their full potential in all respects: physically, intellectually, emotionally and spiritually, for the benefit of themselves and society as a whole.

(2) All children whether born within or outside wedlock, are equal before the law and have equal rights under this Constitution.

(3) A child's best interests are of paramount importance in every matter concerning the child.

(4) A child's mother and father, whether married to each other or not, have an equal duty to protect and provide for the child.

- (5) Every child has a right to –
- (a) a name and a nationality from birth and to have their birth registered;
 - (b) parental care, or to appropriate alternative care where the child is separated from its parents;
 - (c) free basic education which shall be compulsory;
 - (d) be protected from discrimination, harmful cultural rites and practices, exploitation, neglect or abuse;
 - (e) be protected from all forms of exploitation and any work that is likely to be hazardous or adverse to the child's welfare;
 - (f) adequate nutrition, shelter, basic health care services and social services;
 - (g) be free of corporal punishment or other forms of violence or cruel and inhumane treatment in schools and other institutions responsible for the care of children;
 - (h) not take part in hostilities or to be recruited into armed conflicts and to be protected from situations of armed conflict;
 - (i) not be arrested or detained except as a measure of last resort, and where a child is arrested or detained –
 - (j) be so detained only for the shortest appropriate period of time;
 - (k) be kept separate from adults in custody;

- (l) be accorded legal assistance by the state;
- (m) be treated in a manner, and to be kept in conditions that take account of the child's gender and age;
- (n) have a legal practitioner assigned to the child by the state and at state expense in proceedings affecting the child, if injustice would otherwise result; and
- (o) know of decisions affecting the child, to express an opinion and have that opinion taken into account, taking into consideration the age and maturity of the child and the nature of the decision.

(6) Children with special needs, including girls, orphans, children with disabilities, refugee children, and homeless children, are entitled to the special protection of the state and society.

(7) The state has the obligation to take steps to implement in law and administration the provisions of the Constitution and of international instruments and standards on the rights of the child.

(8) In this Article "child" means a person under the age of eighteen years.

The family

38. (1) The state shall recognise the family as the natural fundamental unit of society and as the necessary basis of social order

(2) The family is entitled to the respect and protection of the state.

(3) Every person who is at least eighteen years of age –

- (a) has the right to marry, based upon the free consent of the parties; and
- (b) has the right to found a family.

(4) Parties to a marriage are entitled to equal rights in the marriage, during the marriage, and at the dissolution of their marriage.

(5) Parliament shall enact legislation that, in a manner consistent with this Article and the other provisions of the Constitution, recognizes –

- (a) marriages concluded under any tradition, or system of religious, personal or family law; or
- (b) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.

Persons with disability

39. (1) Persons with disability are entitled to enjoy all the rights and freedoms set out in this Bill of Rights, and to participate as fully in society as they are able.

(2) The state shall, by legislation and policy measures –

- (a) recognise the right of persons with disabilities to respect and human dignity;
- (b) educate communities and society on the causes of disability and the need for respect for the dignity and rights of all;
- (c) ensure that education, institutions and facilities for disabled persons are as integrated into society as a whole as is compatible with the interests of the disabled;
- (d) ensure access to all places, to public transport and to information and communications to persons with disabilities, sufficient to overcome physical and other barriers to access;

- (e) encourage the development and use of sign language, Braille and other appropriate means of communication;
- (f) remove from official usage in any language words that are demeaning when applied to persons with disabilities, and to require the same in private use of language;
- (g) provide for the participation of disabled persons in decision-making at all levels; and
- (h) facilitate the acquisition of materials and devices to enable the disabled to overcome constraints due to the disability.

(3) Legislation and policy measures provided for in clause (2) shall, wherever appropriate make special provision for women with disability.

(4) For the purposes of this Article “disability” includes any physical, sensory, mental or other impairment, condition, or illness that –

- (a) has, or is perceived, by significant sectors of the community to have a substantial or long term adverse effect on a person’s ability to carry out normal day-to-day activities; or
- (b) forms the basis of unfair discrimination.

Human dignity

40. Everyone has inherent dignity and the right to have that dignity respected and protected.

Freedom and security of the person

41. Everyone has the right to freedom and security of the person, which includes the right –

- (a) not to be deprived of freedom arbitrarily or without just cause;
- (b) not to be detained without trial, except during a state of emergency in which case the detention is subject to the provisions of Article 71;
- (c) to be free from all forms of violence from either public or private sources;
- (d) not to be tortured in any manner, whether physical or psychological; and
- (e) not to be subjected to corporal punishment or to be treated or punished in a cruel, inhuman or degrading manner.

Slavery, servitude and forced labour

- 42.** (1) No person may be held in slavery or servitude.
- (2) No person may be required to perform forced labour.

Privacy

- 43.** Every person has the right to privacy, which includes the right not to have -
- (a) their person or home searched;
 - (b) their property searched;
 - (c) their possessions seized;
 - (d) information relating to their family or private affairs unnecessarily required or revealed; or

- (e) the privacy of their communications infringed.

Freedom of religion, belief and opinion

44 (1) Every person has the right to freedom of conscience, religion, thought, belief and opinion.

(2) Every person has a right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, observance, practice or teaching.

(3) Every religious community is entitled at its own expense to establish and run places of education and to provide religious instruction for persons of that community in the course of providing the education.

(4) Religious observances and religious instruction may be conducted at state or state-aided institutions, so long as -

- (a) they are conducted on an equitable basis so that no religion is privileged; and

- (b) attendance at such observances or religious instruction is free and voluntary.

(5) A person may not be deprived of access to any institution or employment or facility or the enjoyment of any right for reasons of that person's religious beliefs.

(6) A person may not be compelled -

- (a) to take an oath that is contrary to that person's religion or belief or that involves expressing a belief that the person does not hold; or

- (b) to take an oath in a manner that is contrary to that person's religion or belief or that involves expressing a belief that the person does not hold;

- (c) to receive religious instruction or to take part in or attend a religious ceremony or to observe a day of rest or other observance that relates to a religion that is not that person's religion;
- (d) by a public body to disclose that person's religious convictions or beliefs; or
- (e) to do any other act that is contrary to that person's religion or belief.

Freedom of expression

45. (1) Every person has the right to freedom of expression, which includes:

- (a) freedom of the press and other media;
- (b) freedom to receive or impart information or ideas;
- (c) freedom of artistic creativity; and
- (d) academic freedom and freedom of scientific research.

(2) The right referred to in clause (1) does not extend to-

- (a) propaganda for war or war-like activities;
- (b) incitement to violence;
- (c) advocacy of hatred that is based on discrimination and that constitutes vilification of others or incitement to cause harm; or
- (d) propagation of all forms of prejudice, leading, or likely to lead to armed conflict or loss of life.

Publication of opinion

46. (1) Freedom and independence of electronic and print media of all types are guaranteed.
- (2) The state shall not -
- (a) exercise control over, or interfere with, any writer, editor or publisher of a newspaper or other institution of the mass media, or
 - (b) harass or penalize any such person for any editorial opinion or view, or the content of any such publication or dissemination.
- (3) Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that -
- (a) are designed to ensure the necessary regulation of the airwaves; and
 - (b) are independent of control by government, political interests or commercial interests.
- (4) All state-owned media shall be independent and impartial and shall afford fair opportunities and facilities for the presentation of divergent views and dissenting opinions.
- (5) Parliament shall not enact any law-
- (a) requiring prior licensing of any form of publication or dissemination of information, comment or opinion; or

- (b) permitting censorship of any form of publication or dissemination of information, comment or opinion, except as contemplated in clause (6).
- (6) Parliament shall enact law that –
 - (a) provides for reasonable allocation of air time by all broadcasting media to political parties based on proven popular support either generally or during election campaigns;
 - (b) regulates freedom to broadcast in order to ensure fair election campaigning;
 - (c) provides for reasonable prior censorship of films, video, advertisements or other electronic media, or of live performances, to the extent necessary in the public interests.
- (7) A law contemplated in clause (6) shall provide for a body independent of government or political control, reasonably reflective of the interests of all affected sections of the community, to exercise any permitted powers of censorship or classification.

Access to information

47. (1) Every citizen has the right of access to-
- (a) information held by the state; and
 - (b) any information that is held by another person and that is required for the exercise or protection of any right or freedom.

(2) Every person has the right to demand the correction or deletion of untrue or misleading information which affects the person.

(3) The state has the obligation to publish and publicize any important information affecting the life of the nation.

(4) Parliament shall, within six months of the coming into force of the Constitution enact legislation to give effect to this right.

Freedom of association

48. (1) Every person has the right to freedom of association.

(2) The right applies to the formation, operation and continued existence of organisations.

(3) A person may not be compelled to join any association of any kind.

(4) The state shall, through legislation and policy measures promote and encourage direct and indirect civil society participation in decision-making and in the management of public affairs at all levels of government.

(5) Any legislation that requires civil society organisations to register or otherwise be subject to control shall adhere to the following principles-

(a) registration may be required only if there is good reason for it;

(b) registration shall be in the hands of a body that is independent of Government or political control;

(c) any fee chargeable shall be no more than is necessary to defray essential expenditure of the procedure.

(d) there shall be a right to registration, unless there is good reason to the contrary;

- (e) any standards of conduct applied to organisations shall be formulated with input from affected organisations and not imposed by Government; and
- (f) de-registration procedures shall provide for a fair hearing and for a right of appeal to an impartial and reasonably accessible tribunal.

Assembly, demonstration, picketing and petition

- 49.** Every person has the right, peaceably and unarmed without the requirement of prior permission, to assemble, to demonstrate, to picket, and to present petitions to public authorities.

Political rights

- 50.** (1) Every citizen is free to make political choices, which includes the right –

- (a) to form, or participate in forming, a political party;
- (b) to participate in the activities of, or recruit members for, a political party; and
- (c) to campaign for a political party or cause.

- (2) Every citizen has the right to free, fair and regular elections for -

- (a) any elective public body or office established in terms of the Constitution; and
- (b) office bearers of any political party of which they are a member.

- (3) Every adult citizen has the right in accordance with relevant legislation–

- (a) to be registered as a voter and to vote by secret ballot in any election referred to in clause (2); and

- (b) to stand on conditions of equality, for public office, or office within a political party of which they are a member, and if elected, to hold office.

Freedom of movement and residence

- 51.**
- (1) Every person has the right to freedom of movement.
 - (2) Every person has the right to leave the Republic.
 - (3) Every citizen has the right to enter into, remain in and reside anywhere in, the Republic.

Refugees and asylum

- 52.**
- (1) The right of asylum is recognised and shall be granted in accordance with the provisions of the Constitution.
 - (2) A person who has sought refuge in Kenya has a right not to be returned or taken to another country if that person has a well-founded fear of persecution in that other country or of other treatment which would justify that person's being regarded as a refugee.
 - (3) Within one year of the coming into force of this Constitution Parliament shall enact a law in compliance with international law and practice, governing persons who seek refuge or asylum in Kenya.

Freedom of trade, occupation and profession

- 53.**
- (1) Every citizen has the right to choose his or her trade, occupation or profession freely.
 - (2) The practice of a trade, occupation or profession may be regulated by law.

Property

- 54.** (1) Every person has a right to acquire and own property either individually or in association with others.
- (2) Parliament shall not enact a law that permits the state, or any person, to arbitrarily -
- (a) deprive a person of property of any description; or
 - (b) deprive a person of any interest in, or right over, such property.
- (3) The state may not deprive a person of property of any description, or of any interest in, or right over, property, unless that deprivation -
- (a) results from an acquisition of land or an interest in land in accordance with the provisions of Chapter Eleven; or
 - (b) is for a public purpose or in the public interest and is carried in accordance with an Act of Parliament that –
 - (i) requires prompt payment of fair and adequate compensation to the person, before the property is taken; and
 - (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
- (4) The right recognized and protected under this Article does not cover any property that has been unlawfully acquired.

Labour relations

55. (1) Everyone has the right to fair labour practices.
- (2) Every worker has the right to-
- (a) a fair remuneration;
 - (b) reasonable working conditions
 - (c) form, join, or participate in the activities and programmes of a trade union; and
 - (d) strike.
- (3) Every employer has the right to-
- (a) form and join an employers' organisation; and
 - (b) participate in the activities and programmes of an employers' organisation.
- (4) Every trade union and every employers' organisation has the right to -
- (a) determine its own administration, programmes and activities;
 - (b) organise; and
 - (c) form and join a federation.
- (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

Social security

56. Every person has the right to social security, including, if they are unable to support themselves and their dependants, appropriate social security assistance by the state.

Health

57. (1) Every person has the right to health, which includes the right to health care services, including reproductive health care.

(2) No person may be refused emergency medical treatment.

Education

58. (1) Every person has the right to a basic education, including pre-primary, primary and secondary education.

(2) The Government shall institute a programme to implement the right of every child to free and compulsory primary education.

(3) The state, through reasonable measures, shall make progressively available and accessible post-secondary education.

(4) Every person has the right to establish and maintain, at their own expense, independent educational institutions that meet standards laid down in legislation; and comply with the requirements of the Constitution.

Housing

- 59.** (1) Every person has the right to have access to adequate housing.
- (2) No person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances.
- (3) Parliament may not enact any law that permits or authorizes arbitrary eviction.

Food

- 60.** Everyone has the right to be free from hunger and to have access to food in adequate quantities and of adequate quality and cultural acceptability.

Water

- 61.** Everyone has the right to water in adequate quantities and of satisfactory quality.

Sanitation

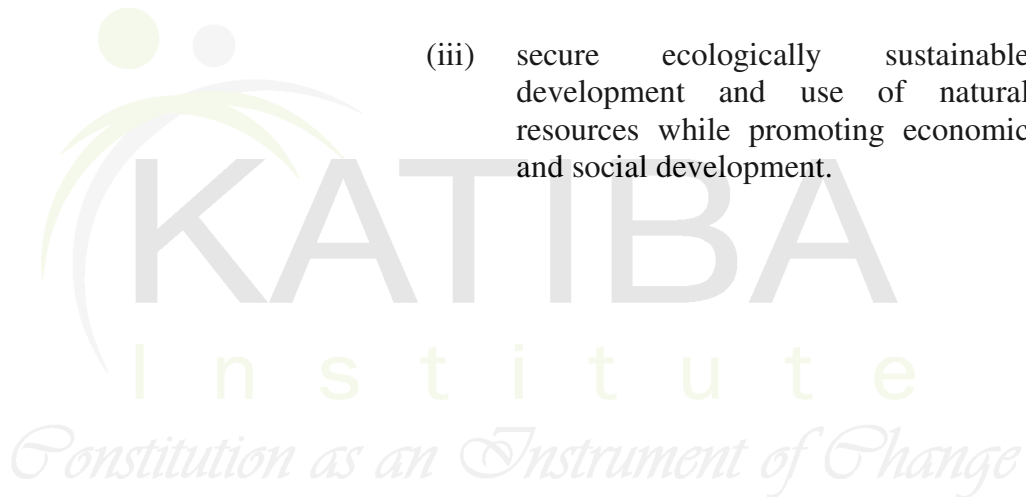
- 62.** Everyone has the right to a reasonable standard of sanitation, including the ability to dispose of the bodies of the dead with decency.

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Environment

63. Everyone has the right -

- (a) to an environment that is safe for life and health.
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting economic and social development.



(c) to free access to information about the environmental situation.

(d) to compensation for damage arising from the violation of the rights recognized under this Article.

Language and culture

63A. (1) Everyone has the right to use the language, and to participate in the cultural life, of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of this Bill of Rights.

(2) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community-

(a) to enjoy their culture, practise their religion and use their language; or

(b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

(3) No person may compel another person to perform, observe or undergo any cultural or religious practice or rite.

(4) No person may be compelled to indicate or define his or her ethnic or racial affiliation.

Consumer rights

64. (1) Consumers have the right to -

(a) goods and services of appropriate quality;

(b) the information necessary for them to gain full benefit from the goods and services;

(c) the protection of their health, safety, and economic interests; and

(d) compensation for defects that cause them loss or injury.

(2) Those who offer services shall endeavour to consult consumers and consumer organizations in connection with issues that affect them

(3) The principles of this Article apply to goods and services offered by the public and private persons and entities, whether in return for consideration or for taxes and other forms of revenue, or offered free of charge

(4) An Act of Parliament shall provide for consumer protection and for fair, honest and decent advertising.

(5) Parliament shall enact legislation to give effect to the rights in clause (1) and (2), and such legislation shall -

(a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; and

(b) promote an efficient administration.

Fair administration

65. (1) Every person has the right to administrative action that is expeditious, lawful, reasonable and procedurally fair.

(2) Every person whose rights have been adversely affected by administrative action has the right to be given written reasons for the action.

(3) Parliament shall enact legislation to give effect to the rights in clause (1) and such legislation shall -

(a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; and

(b) promote an efficient administration.

Right not to obey unlawful instructions

- 66.** (1) Every person has a right not to obey unlawful instructions.
- (2) No person is liable to punishment under any law for disobeying unlawful instructions.

Access to courts

- 67.** (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

Rights of arrested persons

- 68.** (1) Every person who is arrested for allegedly committing an offence has the right -
- (a) to remain silent;

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- (b) to be informed promptly in a language they understand -
 - (i) of the right to remain silent; and
 - (ii) of the consequences of not remaining silent;
- (c) not to be compelled to make any confession or admission that could be used in evidence against that person and where any such person freely chooses to make any confession, such confession shall be made before a Court or Magistrate;
- (d) to be held separately from persons who are serving sentence;
- (e) to be brought before a court as soon as reasonably possible, but not later than 48 hours after being arrested or -
 - (i) not later than the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day that is not an ordinary court day; or
 - (ii) if the person is arrested far from a court, as speedily as possible;

- (f) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
- (g) to be released on bond or bail pending a charge or trial on reasonable conditions unless there are compelling reasons to the contrary.

(2) No person may be remanded in custody for an offence if that offence is punishable by a fine only or imprisonment of not more than six months.

Fair trial

69 (1) Every accused person has the right to a fair trial, which includes the right -

- (a) to be presumed innocent until the contrary is proved;
- (b) to be informed of the charge with sufficient detail to answer it;
- (c) to have adequate time and facilities to prepare a defence;
- (d) to a public trial before an ordinary court or tribunal;
- (e) to have the trial begin and conclude without unreasonable delay;
- (f) to be present when being tried;
- (g) to choose, and be represented by, an advocate and to be informed of this right promptly;
- (h) to have an advocate assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (1) to remain silent, and not to testify during the proceedings;

- (j) to adduce and challenge evidence;
- (k) not to be compelled to give self-incriminating evidence;
- (l) to have without payment the assistance of an interpreter where the accused person cannot understand the language used at the trial;
- (m) not to be convicted for an act, or omission, that was not an offence at the time it was committed or omitted; but this paragraph does not prevent conviction and punishment for an act, or omission, which at the time it was committed was a crime under general principles of law recognized by the major legal systems;
- (n) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
- (p) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for an offence has been changed between the time that the offence was committed, and the time of sentencing; and
- (q) of appeal to, or review by, a higher court.

(2) Whenever this Article requires information to be given to a person, that information shall be given in a language that the person understands.

(3) Evidence obtained in a manner that violates any right in this Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

(4) An accused person charged with an offence other than an offence that the court may try by summary procedures shall be entitled, if they so require, to a transcript of the proceedings of the trial.

(5) An accused person has the right to a copy of the record of proceedings within fourteen days after they are concluded and in return for a reasonable fee if prescribed by law.

- (6) A person convicted of a criminal offence and whose appeal has been dismissed by the highest court to which they are entitled to appeal, may petition the Supreme Court for a new trial where new and compelling evidence has become available.

Rights of persons held in Custody

70. (1) Persons who are held in custody under the law, whether sentenced or not, retain all their fundamental rights under the Constitution, except to the extent that a right is clearly incompatible with the fact of being in custody.

- (2) A person held in custody has the right -

- (a) to be treated in a way that respects their human dignity, and not be subject to discrimination on the basis of any prohibited ground;
- (b) not to be exploited or abused by staff or fellow prisoners, and the state shall take adequate steps to ensure their protection;
- (c) to accommodation and facilities that satisfy the standards of decent clothing, housing, food, health, and sanitation guaranteed elsewhere in this Bill of Rights;
- (d) to reasonable health care at public expense, and to pay for their own health care by their own doctors if necessary;
- (e) to exercise, education, and to work, in return for reasonable remuneration;
- (f) to observe their religion, and not to be subjected to treatment that violates their religious practices and convictions;
- (g) to communicate with their lawyers, other persons whose assistance is necessary, religious advisers, close family, including

spouses, and are entitled to visits of reasonable frequency and duration;

- (h) to privacy, including the separation of women and men, and children and adults, to the extent compatible with the preservation of law and order and prison discipline;
- (i) to the separation of women from men and children from adults;
- (j) to be informed of the rules and decisions that affect them;
- (k) to a fair hearing in any prison disciplinary proceedings;
- (l) to fair consideration for parole or remission of sentence and for other rehabilitative measures;
- (m) to complain to the prison authorities, the Commission on Human Rights and Administrative Justice or any similar institution, and to communicate with the press; and
- (n) to vote, but Parliament may enact laws restricting the right to vote of a person sentenced to a term of imprisonment of two years or more.

(3) The state shall ensure that the prison system, so far as it relates to convicted prisoners, observes the minimum standards laid down under relevant international law and international standards.

State of emergency

- 71.** (1) A state of emergency may be declared only in accordance with Article 151 (4) and only when-
- (a) the Republic is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and

- (b) the declaration is necessary to restore peace and order.

(2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only-

- (a) prospectively; and
- (b) for no more than twenty one days from the date of the declaration, unless the Parliament resolves to extend the declaration.

(3) Parliament may extend a declaration of a state of emergency -

- (a) by resolution adopted –
 - (i) following a public debate in Parliament; and
 - (ii) by the majorities set out in clause (4); and
- (b) for no more than two months at a time.

(4) The first extension of a state of emergency shall be adopted with a supporting vote of sixty five per cent of the members of Parliament, and any subsequent extension shall be adopted with a supporting vote of at least seventy five per cent of the members of Parliament.

(5) Any competent court may decide on the validity of-

- (a) a declaration of a state of emergency;
- (b) any extension of a declaration of a state of emergency; or
- (c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.

(6) Any legislation enacted in consequence of a declaration of a state of emergency may derogate from this Bill of Rights only to the extent that -

- (a) the derogation is strictly required by the emergency; and
- (b) the legislation -
 - (i) is consistent with Kenya's obligations under international law applicable to states of emergency
 - (ii) conforms to clause (7); and
 - (iii) is published in the Gazette as soon as reasonably practicable after being enacted and does not take effect until it is so published.

(7) An Act of Parliament that authorizes a declaration of a state of emergency, or legislation enacted or other action taken in consequence of any declaration may not permit or authorize indemnifying the state, or any person, in respect of any unlawful act.

Application of the Bill of Rights

72. (1) The Bill of Rights applies to the interpretation of all law and binds Parliament, the Executive, the Judiciary, all organs and agencies of the state and all persons.

(2) A person enjoys the benefit of any right or freedom in the Bill of Rights, to the greatest extent possible, given the nature of the right, and of the person.

(3) A provision of the Bill of Rights binds a natural or a juristic person to the extent possible, given the nature of the right, and the nature of any duty imposed by that right.

(4) When applying a provision of the Bill of Rights to a natural or person, as required by clause (2) or (3), a court –

- (a) in order to give effect to a right or freedom in the Bill of Rights, shall apply, and if necessary, develop, the law to the extent that

legislation does not give effect to that right or freedom;

- (b) shall adopt the interpretation which most favours the enforcement of a right or freedom; and
- (c) may develop rules of the common law to limit that right or freedom in a manner consistent with the limitations contemplated in Article 31.

Right to ask the Commission on Human Rights and Administrative Justice or court to uphold the Bill of Rights.

73. (1) A person listed in this Article has the right to complain to the Commission on Human Rights and Administrative Justice, or to approach a court of competent jurisdiction, alleging that a right in the Bill of Rights has been denied, violated, infringed or threatened. The persons who may complain to the Commission or approach a court are -

- (a) a person acting in their own interest;
- (b) a person acting on behalf of another person who cannot act in their own name;
- (c) a person acting as a member of, or in the interest of, a group or class or persons;
- (d) a person acting in the public interest; and
- (e) an association acting in the interest of its members.

(2) If a person complains to the Commission on Human Rights and Administrative Justice, the Commission shall –

- (a) investigate the complaint; and
- (b) provide appropriate redress where human rights have been violated.

(3) The Chief Justice shall within one year of the coming into operation of this Constitution, make rules providing for court

proceedings contemplated in clause (1), and those rules shall satisfy the following criteria -

- (a) that the rights of standing provided for in this Article are fully facilitated;
- (b) that formalities for starting proceedings are kept to the minimum, in particular that the courts will, if necessary, be prepared to start proceedings on the basis of informal documentation, such as a letter or newspaper report;
- (c) that the courts, while observing the rules of natural justice, shall respond to the justice of the claim and not be unreasonably restricted by technical requirements;
- (d) that no fee may be charged for commencing proceedings under the Article; and
- (e) that organisations or individuals with particular expertise may appear before the court as ‘amicus curiae’ (friend of the court).

Authority of the court to uphold and enforce the Bill of Rights.

74. (1) The High Court has jurisdiction to hear applications for redress for a contravention of the Bill of Rights.

(2) Parliament shall enact legislation to give original jurisdiction in appropriate cases to lower courts.

(3) In any matter brought before it in terms of Article 73, a court may grant appropriate relief, including -

- (a) a declaration of rights;
- (b) a declaration of invalidity of any law that infringes the Bill of Rights and is not justified in terms of Article 31;
- (c) an order of compensation against the state or any person responsible for the violation of rights; and

(d) normal orders of judicial review

(4) In proceedings against a public authority for a violation of human rights, a Court may not award costs against the plaintiff, or applicant, unless the court determines that the case was frivolous, vexatious or totally devoid of merit.

(5) Without prejudice to the full scope of this Bill, it is the obligation of the state to pass necessary legislation and establish necessary machinery to give the fullest effect to its provisions.

Interpretation of the Bill of Rights

75. (1) When interpreting the Bill of Rights, a court, tribunal or forum –

(a) shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom;

(b) shall consider international law; and

(c) may consider foreign law;

(2) When interpreting any legislation and when developing the common law or customary law, every court, tribunal or forum shall promote the spirit, purport and objects of the Bill of Rights.

(3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognized or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

(4) When interpreting and applying a particular right or freedom in respect of the state, claims that the state does not have the resources to implement the right or freedom, every state organ, and any court, tribunal or forum, shall be guided by the following principles:

(a) It is the responsibility of the state to show that the resources are not available.

- (b) In allocating resources, the state has an obligation to give priority to ensuring the widest possible enjoyment of the right having regard to prevailing circumstances, including the vulnerability of the groups or individuals claiming the violation of their right;
- (c) A court, tribunal or a Division of the Human Rights and Administrative Justice Commission may not interfere with a decision by an organ of the state concerning the allocation of available resources, solely on the basis that the court, tribunal or forum or the Division would have reached a different conclusion.



CHAPTER SIX

REPRESENTATION OF THE PEOPLE

Part I -The Electoral System and Process

General principles

76. (1) The electoral system is based on the right of all citizens to vote and to stand for election to legislative and executive bodies.
- (2) Voting is by secret ballot.
- (3) Elections are free and fair.
- (5) Elections shall ensure the fair representation of the People.
- (6) Elections shall ensure fair representation of women, the disabled, and minorities.
- (7) Elections are conducted by an independent body free from political interference.

Elections

- 77 (1) Subject to any provisions in the Constitution, Parliament shall enact a law to provide for-

- (a) the number of constituencies for the election of members of Parliament, of the Provincial Councils, of the District Councils, Locational Councils, Village Councils and any other local authority.
- (b) nomination of candidates
- (c) the manner of voting at elections;
- (d) the continuous registration of citizens as voters;
- (e) the conduct of public elections and referenda;

- (f) the efficient supervision of public elections and referenda including voting on the basis of proportional representation; and
 - (g) the registration of, and voting by, citizens who are outside Kenya.
- (2) A political party shall ensure –
- (a) that at least one third of its candidates for direct elections are women, and
 - (b) that fifty per cent of its candidates for proportional representation at public elections are women,
 - (c) and that the remaining fifty per cent are distributed among persons with disabilities, the youth, ethnic minorities and other interest groups.

The right to vote

78. (1) A citizen who is eighteen years of age and above has the right to vote.
- (2) Administrative arrangements for the registration of voters and the conduct of elections shall not deny a citizen's right to vote and stand for elections and shall include a system of continuous registration.

Qualifications for registration

79. (1) A citizen qualifies to be registered as a voter for elections if at the date of the application for registration the citizen,
- (a) is eighteen years of age and above,
 - (b) has been ordinarily resident in the Republic
 - (i) for a period of not less than one year immediately preceding that date, or

- (ii) for a total period of, not less than four years in the eight years immediately preceding that date.
- (c) has, for a period of, or periods amounting in the aggregate to, not less than five months in twelve months immediately preceding that date –
 - (i) been ordinarily resident in the constituency in which the application for the registration is made, or
 - (ii) has been employed there, has carried on business or has lawfully possessed land or residential building in the constituency

(2) A citizen who qualifies for registration as a voter shall only be registered at one place.

Disqualification from registration

- 80.** (1) A citizen is not qualified to be registered as voter for public election or referenda who-
- (a) under a law of Kenya is declared to be of unsound mind; or
 - (b) is disqualified by an Act of Parliament for conviction of an election offence .
- (2) The question whether a citizen is disqualified to be registered as a voter for public elections or referenda shall be determined by the High Court.

Voting

- 81.** At every election the Electoral Commission shall ensure that –
- (a) the voting procedure is simple and precise;
 - (b) the ballot box is transparent; and
 - (c) the votes cast are counted, tabulated and the results announced by the presiding officer at the polling stations

Unopposed Candidates

- 82.** (1) Where only one candidate is nominated on nomination day previous to an election, the election shall nevertheless be held for the purpose of determining the number of votes obtained by each political party at the election.
- (2) After the votes have been counted the candidate is elected.

Part II - The Electoral Commission

Establishment of the Electoral Commission

- 83.** (1) There is established the Electoral Commission consisting of –
- (a) the chairperson; and
 - (b) not less than eight and not more than ten other members.
- (2) The chairperson and the other members of the Commission shall be appointed by the President with the approval of the National Assembly.
- (3) The Commission shall elect a vice-chairperson from among its members.
- (4) A citizen is qualified to be appointed the Chairperson of the Commission if the citizen has held or is qualified to hold office as a judge of a superior court of record.
- (5) A citizen is not qualified to be appointed a member of the Commission if the citizen
- (a) is a member of Parliament; or
 - (b) holds or is acting in an office in the public service or in the Defense Forces of the Republic.

(6) At the time of the initial appointment of commissioners half of the commissioners shall be appointed for a three year period.

(7) The office of a member of the Commission becomes vacant

- (a) at the expiration of a five year term from the date of appointment renewable once only; or
- (b) if the member becomes disqualified to be appointed a member of the Commission; or
- (c) if the member is removed from office on the ground of inability to perform the functions of office as member, whether arising from infirmity of body or mind or from any other causes or of misbehavior; and
- (d) if the member dies or resigns from office.

Functions of Electoral Commission

84. (1) The Electoral Commission is responsible for –

- (a) the continuous registration of voters;
- (b) the delimitation of electoral constituencies;
- (c) the conduct and supervision of elections and referenda;
- (d) the promotion of free and fair elections and referenda;
- (e) the supervision of political parties;
- (f) the management of Political Parties Fund;
- (g) the settlement of electoral disputes;
- (h) the promotion of voter education and culture of democracy; and
- (i) the facilitation of the observation, monitoring and evaluation of elections.

(2) The Electoral Commission is an independent commission that conducts its work in accordance with the Constitution.

Staff of the Electoral Commission

85. The Public Service Commission after consultation with the Electoral Commission, shall appoint officers and other employees of the Commission.

Delimitation of Constituencies

86. (1) The Electoral Commission shall by order determine the names and boundaries of the constituencies.

(2) In demarcating the boundaries of constituencies, the Electoral Commission shall-

- (a) consult with all interested parties; and
- (b) take account of population density and the need to ensure adequate representation for urban and sparsely-populated rural areas, and
 - (i) population trends;
 - (ii) means of communications;
 - (iii) geographical features;
 - (iv) community of interest;
 - (v) the boundaries of administrative areas; and
 - (vi) the latest census of the population in accordance with the law.

(3) Every ten years, after a census of the population or sooner if there is a variation in the boundary of an administrative area, the Commission may carry out a review and make the necessary alterations of the names and the boundaries of constituencies.

(4) An order made under this Article by the Commission shall be published in the *Gazette*, and shall come into effect on the dissolution of Parliament after the publication of the order.

Part III – Political Parties

The right to form a political party

- 87.** (1) In accordance with Article 50 any citizen may form a political party.
- (2) A political party is entitled to financial support from the state on the basis prescribed in an Act of Parliament.
- (3) No person may use state resources to support any political party
- (4) Parliament shall enact a law providing for the regulation of political parties.

Roles and functions of political parties

- 88.** In order to ensure democracy and the participation of people, a political party has the responsibility to -
- (a) mobilize public opinion on matters of national interest, and foster national values and outlook;
 - (b) bring together opinions and resources of people with similar views, interests or persuasion so as to generate development of the Republic;
 - (c) provide the means through which the people participate in the political and constitutional processes and exercise their civil and political rights;
 - (d) use its facilities to mediate between civil society and institutions of the state;
 - (e) use its facilities to secure representation of the people in state institutions and offer them economic, political and social choices through the electoral process, and bring public opinion to bear on the policies of the Government;

- (f) ensure that cohesion and discipline in the conduct of Government is maintained; and
- (g) hold the Government accountable to Parliament and the people.

Registration of political parties

- 89.** (1) The Electoral Commission is the registrar of political parties, and for that purpose shall keep and maintain a register of political parties.
- (2) Parliament shall by an Act of Parliament provide for the matters which the register shall contain.

Qualifications for registration

- 90.** (1) The Electoral Commission shall register a political party if that party by its constitution or Articles of association has a national character with governing body which seeks,
- (a) to promote and uphold national unity;
 - (b) to abide by democratic principles of governance, and to promote and practice democracy within the party through regular, fair and free elections within the party;
 - (c) to promote and respect human rights and gender equality and equity;
 - (d) to promote the objects and principles of the Constitution and the rule of law.
- (2) The Electoral Commission shall not register a political party if that party
- (a) is founded purely on religious, linguistic, racial, ethnic, sex, corporatist or regional basis or seeks to engage in propaganda based on any of those matters;
 - (b) does not by its constitution or Articles of association subscribe to the Code of Conduct for political parties and does not enjoin itself

and its members to observe the Code of Conduct applicable to political parties as a legally binding Code.

(3) A political party shall not-

- (a) engage in, or encourage, violence or intimidation of its members, supporters or opponents or any other persons;
- (b) establish or maintain a paramilitary militia or similar organization.

(4) A political party shall keep proper accounts, and proper books and records of account in the form approved by the Auditor-General.

(5) Within three months after the end of its financial year, a political party shall submit its accounts and books and records of account to the Auditor-General for audit.

(6) The Auditor-General shall within three months of the submission under clause (5), audit the accounts and submit the report on the audit to the political party.

(7) The political party shall within one month of the receipt of the report of the Auditor-General publish its accounts in the Gazette and in the national newspapers.

Corporate status

91. On registration, a political party becomes a body corporate.

Cancellation of registration

92. (1) The Electoral Commission shall cancel the registration of a political party if satisfied that the political party-

- (a) is in breach of a provision of Articles 90, 95 and 96 or of a provision of its own constitution or Articles of Association, or
- (b) has not complied in a material particular with a provision of Articles 90 and 95, or

- (c) obtained its registration in a fraudulent manner, or
- (d) instigated or connived in the commission of an election offence, or
- (e) has not, for each of the two previous general elections secured at least one per cent of the national vote, or
- (f) has used moneys allocated to it for purposes not allowed by Article 95.

(2) Before the Electoral Commission cancels the registration of a political party, it shall inform the political party of the intention to cancel the registration, and direct the political party within ninety days, to remedy the breach or comply with the law where possible.

(3) A member of the party aggrieved by the decision of the Electoral Commission to cancel the registration of a political party may appeal to the High Court.

Political Parties Fund

93. (1) There is established a fund to be known as the Political Parties Fund.

(2) The Fund shall be administered by the Electoral Commission

Sources of the Fund

94. (1) The sources of the Fund are-

- (a) money provided by Parliament each year equal to not more than decimal three percent of the national budget for the preceding financial year; and
- (b) contributions and donations to the Fund from any other source.

(2) The moneys in the Fund not immediately required for payment to political parties shall be invested in such securities as may be approved by Treasury.

Purposes of the Fund

95. (1) Moneys allocated to a registered political party from the Fund shall be used only-

- (a) to cover the election expenses of the political party and the broadcasting of the policies of the political party;
- (b) for the organization by the political party of civic education in democracy and the electoral processes; and
- (c) not more than ten percent for the administrative expenses of the party.

(2) Moneys allocated by the Electoral Commission to a political party shall not be used for-

- (a) paying directly or indirectly remuneration, fees, rewards, or any other benefit to a member or supporter of the party; and
- (b) any other purpose incompatible with the promotion of a multi-party democracy.

(3) Fifty per cent of the moneys allocated by Parliament shall be distributed equally among political parties each of which obtained not less than five per cent of the total votes cast at the previous parliamentary elections, and the remaining fifty per cent shall be paid proportionately by reference to the number of votes secured by each of the political parties and the number of women candidates elected in each party.

Other sources of funds for political parties

96. (1) The sources of other funds for a political party are-

- (a) subscriptions and contributions from the members and supporters; and
- (b) donations to the party by the members and supporters.

(2) Parliament shall specify the maximum donation that an individual or a corporation can make to a political party.

(3) A political party shall within three months after the end of its financial year publish the sources of its funds stating

- (a) the amount of moneys received from the Electoral Commission,
- (b) the amount of moneys received from its members and supporters, and
- (c) the donations given to the party, the source of the donation and the amounts of the donations.

(4) The accounts of a political party shall be audited by the Auditor-General annually and the accounts so audited and the auditor's report shall be forwarded to Parliament and the Electoral Commission.

(5) A person who is not a citizen may not make a donation to a political party.

Supervision of political parties

97. (1) The Electoral Commission shall supervise the conduct of the elections to offices and committees of a political party.

(2) A political party shall, within seven months after the end of its financial year, submit to the Electoral Commission an annual report on its activities including the auditor's report on its accounts.

(3) The annual report of a political party may be inspected during normal office hours by any person.

(4) The Electoral Commission shall, by order, prescribe the maximum amounts of moneys that a political party may spend on each of its candidate for election to a public office, and the amounts of money that an independent candidate may spend on an election to a public office.

Party discipline

- 98.** (1) The constitution or the Articles of association of a political party shall contain provisions that ensure internal discipline consistent with the principles of democracy, justice and the rule of law.
- (2) A political party shall not punish a Member of Parliament of the party for anything said in Parliament by the member in exercise of the privileges of freedom of speech in Parliament.
- (3) A political party shall conduct its affairs in a manner that promotes democracy and peaceful politics.
- (4) A Member of Parliament or local council who resigns from the political party that sponsored the member's election loses the seat.

Restrictions on use of public resources

- 99** Except as provided for in this Chapter a person, whether or not a member of a political party, shall not use public resources to promote the interests of a political party.

Restriction on holding of office in political parties

- 100** The President and public officials of and above the rank of Deputy Secretary shall not hold office in a political party.

CHAPTER SEVEN

THE LEGISLATURE

Part 1 – Parliament

Establishment of Parliament

101. There shall be a Parliament of Kenya which shall consist of the National Council and the National Assembly.

Role of Parliament

- 102.** (1) Parliament represents the cultural diversity of the people, symbolizes the unity of the nation, and determines the policy of the Republic.
- (2) In order to ensure that the state functions according to the will of the people, Parliament has authority to exercise the sovereignty of the people by –
- (a) enacting legislation, and consulting on the promulgation of regulations;
 - (b) providing a national forum for the deliberation on, and resolution of, issues of concern to the people;
 - (c) approving the expenditures of the state and appropriating funds as required to meet those expenditures;
 - (d) considering and passing amendments to the Constitution, as provided for in Chapter Eighteen;
 - (e) scrutinizing and overseeing actions of the National Government;
 - (f) considering and approving international treaties;
 - (g) confirming the President's choice of persons to serve in the Cabinet;

- (h) advising on, and consenting to, appointments to be made by the President as required by the Constitution or legislation;
- (i) reviewing the conduct in office of the President, Vice-President, Prime Minister and other members of the Cabinet, judicial officers, and other public officers, and if necessary, removing them from office, as provided for in the Constitution; and
- (j) approving declarations of emergency and war.

(3) Except as provided in this Constitution, a person or body other than Parliament shall not have power to make provision having the force of law in Kenya except under authority conferred by an Act of Parliament.

(4) Parliament shall protect this Constitution and promote the democratic governance of the Republic.

Approval of appointments by Parliament

- 103.** (1) If the Constitution or an Act of Parliament provides for an appointment to be made with the approval of Parliament, that appointment shall not be made until it has been –

- (a) reviewed by the relevant committee of Parliament, and
- (b) approved by the relevant House of Parliament.

(2) If the Constitution or an Act of Parliament provides for an appointment to be made with the approval of a particular committee of Parliament, that appointment shall not be made until it has been reviewed by that Committee, and the Committee has reported the approval to Parliament.

(3) Appointments in respect of the following institutions shall be referred to the National Council for approval before they are made-

- (a) Judicial Service Commission;
- (b) Ethics and Integrity Commission;
- (c) National Land Commission;
- (d) National Environmental Management Commission
- (e) Teachers Service Commission
- (f) Salaries and Remuneration Commission;
- (g) Constitution Commission;
- (h) Commission on Human Rights and Administrative Justice;
- (i) Attorney-General;
- (j) Director of Public Prosecutions;
- (k) Public Defender;
- (l) Police Commissioner;
- (m) Judges and Chief Kadhi

(4) Appointments in respect of the following offices shall be referred to the National Assembly for approval before they are made -

- (a) Prime Minister;
- (b) Deputy Prime Minister;
- (c) Minister;
- (d) Deputy Minister;
- (e) Permanent Secretary;
- (f) Ambassador and High Commissioner;
- (g) Electoral Commission;
- (h) Auditor-General;
- (i) Controller of Budget;
- (j) Director of Central Bureau of Statistics; and

- (k) Governor of Central Bank of Kenya.

Approval of expenditure by Parliament

- 104** (1) Subject to the Constitution Parliament shall control the revenue and expenditures of the state by –
- (a) scrutinizing, amending and approving in general an annual budget for the Government; and
 - (b) appropriating, by Act of Parliament, the necessary funds to defray the expenditures approved in the budget.
- (2) An organ of state shall not expend public funds unless- –
- (a) Parliament has appropriated the necessary funds for that purpose; or
 - (b) the Constitution provides for that expenditure as a direct charge on the Consolidated Fund.

Part II – Composition and Membership of Parliament

Structure of Parliament

- 105** There shall be two Houses of Parliament –

- (a) an upper house, called the National Council; and
- (b) a lower house, called the National Assembly.

Members of the National Council

- 106.** (1) Elections for the National Council shall be held-
- (a) for seventy members, on the basis of single member constituencies; and
 - (b) thirty seats, for women candidates, on multi-member constituencies representing provinces and Nairobi.

(2) For the purposes of elections under clause (1) (a) the constituencies shall be based on Districts (including Nairobi).

(3) For the purpose of elections under clause (1) (b), the seats will be distributed as follows-

(a) four women representing each province; and

(b) two women representing Nairobi

(4) In the elections under clause (3), every voter may vote for only one candidate, and the candidates, in the case of provincial seats, who are among the four top, and in the case of Nairobi seats, the top two candidates, shall be elected.

Members of the National Assembly

107. (1) Elections to the National Assembly shall be based on the Mixed Member Proportional System in which two hundred and ten members shall be elected on the basis of single member constituencies and ninety members shall be elected on the basis of list of candidates submitted by political parties contesting the elections.

(2) The constituency members shall be elected on the basis of plurality of votes.

(3) The distribution of seats on the party list shall be made in such a way as to achieve the highest degree of proportionality, among the parties.

(4) Before a general election is held, each political party contesting the election for constituency based members of the Assembly shall prepare and submit to the Electoral Commission a list of persons nominated by that party for election by proportional representation.

(5) Each list shall –

(a) rank the nominees in order of priority of nomination;

(b) alternate between women and men in the priority of the nominees;

- (c) take into account the need for representation of the disabled, youth and minorities; and
 - (d) reflect the national character.
- (6) All the votes cast in the Republic in a general election for constituency members of the National Assembly shall be totalled according to party affiliation.
- (7) Parliament shall provide the method of allocation of seats on the basis of the party lists for the purposes of clause (3) of this Article.

Qualifications and disqualifications of members

108. (1) Unless disqualified under clause (2), a person is eligible to be a member of Parliament if that person –

- (a) is a citizen of Kenya;
- (b) has attained the age of thirty-five years in the case of the National Council;
- (c) has attained the age of twenty-one years in the case of the National Assembly;
- (d) is qualified to vote in an election for Parliament;
- (e) has attained at least form four standard of education with a pass, and is proficient in Kiswahili and English, but persons who can only express themselves in sign language are qualified; and
- (f) satisfies any moral and ethical requirements prescribed by the Constitution or an Act of Parliament.

(2) A person is disqualified from being a member of Parliament if that person –

- (a) holds an elective or appointive office in the Republic, other than as a Member of Parliament;

- (b) is of unsound mind;
- (c) is an undischarged bankrupt;
- (d) is serving a sentence of imprisonment for the commission of a crime;
- (e) has, at any time in the immediately preceding ten years, been under a sentence of imprisonment for the commission of a crime, if that sentence was originally for a period of three years or more; or
- (f) has been removed from a public office on grounds of gross misconduct.

(3) A person who is disqualified in terms of clause (2)(a) may be a candidate for election as a member of Parliament, but if elected, may not assume office as a member of Parliament until the person has –

- (a) resigned from that office; or
- (b) been granted leave of absence from office

(4) A person is not disqualified under clause (2)(d) or (e) unless all possibility of appeal from the sentence of imprisonment has been exhausted.

Representation of women

- 109.** (1) Subject to clause (2), at least one-third of the members of each House shall be women.
- (2) Within three years of coming into force of this Constitution, Parliament shall enact a law to implement the requirements of Clause (1).

Election of members of Parliament

- 110.** (1) Subject to Part V of this Chapter -
- (a) an election of members of the National Council shall be held at least forty-five days

before the expiration of the term of the Council.

- (b) an election of members of the National Assembly shall be held at least forty-five days before the expiration of the term of the Assembly.

(2) Whenever a vacancy arises in Parliament, in respect of a constituency, the Speaker of the respective House shall notify the Electoral Commission in writing within ten days after the vacancy has occurred; and a by-election shall be held within ninety days after the vacancy has occurred.

(3) A by-election shall not be held within three months of the holding of a general election of Parliament.

(4) Every person elected to Parliament shall take and subscribe to the oath or affirmation of allegiance and the oath or affirmation of Member of Parliament specified in the Fourth Schedule to this Constitution.

(5) Except for the purpose of taking the oaths referred to in clause (4) of this Article, a person shall not sit or vote in Parliament before taking and subscribing the oaths.

Tenure of office of members of Parliament

111. (1) The office of member of Parliament becomes vacant –

- (a) if the member resigns the office in writing addressed to the respective Speaker;
- (b) if circumstances arise that if the member were not member of parliament would cause that person to be disqualified for election as a member of Parliament;
- (c) subject to the Constitution, upon dissolution of Parliament;
- (d) if the member is absent from eight sittings of the House concerned without permission, in writing, of the respective Speaker during any period when the House is continuously

meeting, and is unable to offer satisfactory explanation to the Committee on Parliamentary Business for the absence;

- (e) if the member is found guilty, by the appropriate tribunal, of violation of the Leadership Code of Conduct, and the punishment imposed is or includes the vacation of the office of a member of Parliament;
- (f) if recalled by the electorate in the member's constituency in accordance with the Constitution;
- (g) if the member leaves the political party for which the member stood as a candidate for election to Parliament to join another party or to remain in Parliament as an independent member;
- (h) if, having been elected to Parliament as an independent candidate, the member joins a political party;

(2) Membership of a coalition government of which the member's original political party forms part, shall not affect the status of any member of Parliament.

Recall of a member of Parliament

112. (1) Subject to this Article, the electorate of any constituency has the right to recall their member of Parliament before the expiry of the term of Parliament.

(2) A member referred to in clause (1) may be recalled from that office on any of the following grounds -

- (a) physical or mental incapacity rendering that member incapable of performing the functions of the office; or
- (b) misconduct likely to bring hatred, ridicule, contempt or disrepute to the office; or

- (c) persistent desertion of the electorate without reasonable cause.

(3) The recall of a member of Parliament shall be initiated by a petition in writing, setting out the grounds relied on, and signed by at least thirty per cent of the registered voters of the constituency, and shall be delivered to the appropriate Speaker.

(4) On receipt of the petition, the Speaker shall, within seven days, require the Electoral Commission to conduct a public inquiry into the matters alleged in the petition, and the Electoral Commission shall expeditiously conduct the necessary inquiry and report its findings to the Speaker.

(5) The Speaker shall -

- (a) declare the seat vacant, if the Electoral Commission reports that it is satisfied, from the inquiry, of the validity of the allegations made in the petition; or
- (b) declare immediately that the petition was unjustified, if the Commission reports that it is not satisfied of the validity of the petition.

(6) Parliament shall enact a law prescribing the procedure to be followed for the recall of a member of Parliament.

Part III – Presiding Officers and other Functionaries

Speaker and Deputy Speaker of the National Council.

113. (1) There shall be –

- (a) a Speaker of the National Council who shall be elected by the Council, in accordance with the standing orders, from among persons who are members of the Council or are qualified to be elected as such members;
- (b) a Deputy Speaker who shall be elected by the Council, in accordance with the standing orders, from among persons who are members of Council.

(2) If a member of the Council is elected Speaker, he or she shall resign from membership of the Council and a by-election shall be held to fill the vacancy.

(3) The office of Speaker or the Deputy Speaker becomes vacant -

- (a) when a new Council first meets after a general election to that Council;
- (b) if circumstances arise that would disqualify that person to be elected as such;
- (c) if that person becomes President, a Vice President, a Prime Minister, a Deputy Prime Minister, a Minister or Deputy Minister;
- (d) if the Council so resolves by resolution supported by the votes of not less than sixty-five per cent of all its members;
- (e) if that person dies;
- (f) if that person resigns from office in a letter addressed to the Council.

Presiding in the National Council

114. (1) There shall preside at any sitting of the National Council -

- (a) the Speaker;
- (b) in the absence of the Speaker, the Deputy Speaker;
- (c) in the absence of the Speaker and the Deputy Speaker such other member of the Council as the Council may elect for that purpose.

Clerk of the National Council

- 115.** (1) There shall be a Clerk of the National Council who shall be appointed by the Parliamentary Service Commission with the approval of the Council.
- (2) The office of the Clerk and offices of members of his staff shall be offices in the parliamentary service, independent of the public service.
- (3) Subject to clause (4) the Clerk shall retire at the age of sixty-five years.
- (4) The office of the Clerk becomes vacant if the National Council so resolves by resolution supported by the votes of a majority of all the members of the Council.

The Speaker and Deputy Speaker of the National Assembly

- 116.** (1) There shall be –
- (a) a Speaker of the National Assembly who shall be elected by the Assembly in accordance with the standing orders, from among persons who are members of the Assembly or are qualified to be elected as such members;
 - (b) a Deputy Speaker who shall be elected by the Assembly in accordance with the standing orders, from among persons who are members of the Assembly
- (2) If a member of the Assembly is elected Speaker, he or she shall resign from the Assembly and a by-election shall be held to fill the vacancy.
- (3) The office of Speaker or the Deputy Speaker shall become vacant -
- (a) when a new National Assembly first meets after the general election to that Assembly;
 - (b) if circumstances arise that would disqualify that person to be elected as such;

- (c) if that person becomes President, a Vice President, a Prime Minister, a Deputy Prime Minister, a Minister or Deputy Minister;
- (d) if the Assembly so resolves by resolution supported by the votes of not less than sixty-five per cent of all its members;
- (e) if that person dies;
- (f) if that person resigns from office by writing under that person's hand addressed to National Assembly.

(4) The National Assembly shall not transact any business (other than an election of the Speaker or the Deputy Speaker) at any time when the office of Speaker or Deputy Speaker is vacant, but this clause shall not prevent the transaction of business by a Committee of the Assembly.

(5) The Speaker shall be an ex officio member of the Assembly.

(6) The Deputy Speaker shall be the Chairman of all Committees of the whole House.

Presiding in the National Assembly.

117. (1) There shall preside at any sitting of the National Assembly -

- (a) the Speaker;
- (b) in the absence of the Speaker, the Deputy Speaker;
- (c) in the absence of the Speaker and the Deputy Speaker such other member of the Assembly as the Assembly may elect for that purpose.

Clerk of the National Assembly

118. (1) There shall be a Clerk of the National Assembly who shall be appointed by the Parliamentary Service Commission with the approval of the Assembly

(2) The office of the Clerk and offices of members of his staff shall be offices in the parliamentary service, independent of the public service.

(3) Subject to clause (4) the Clerk shall retire at the age of sixty-five years.

(4) The office of the Clerk becomes vacant if the National Assembly so resolves by resolution supported by the votes of a majority of all the members of the Assembly.

Transaction of business of Parliament

119. (1) A House of Parliament shall not transact any business (other than an election of the Speaker or the Deputy Speaker) at any time when the office of Speaker or Deputy Speaker is vacant, but this clause shall not prevent the transaction of business by a Committee of the House.

(2) The Speaker of each House of Parliament shall be an ex officio member of the House.

(3) The Deputy Speaker of each House of Parliament shall be the Chairperson of all Committees of the whole House.

Leader of Minority Party

120. (1) The parliamentary parties not forming the Government shall elect as Leader of the Minority Party in Parliament, the person who is the leader of the largest party, or coalition of parties, in Parliament.

(2) The Leader of the Minority Party shall have -

- (a) official status immediately following the President and the Prime Minister;
- (b) the right of participation at all official state functions; and
- (c) the right of second reply, after the Prime Minister, to an address to Parliament by the President.

(3) The standing orders of Parliament shall provide adequately for the effective participation in Parliament of the Leader of the Minority Party .

Emoluments of Members of Parliament

121. (1) A member of Parliament shall be paid such salary, allowance and benefits as may be determined by the Salaries and Remuneration Commission.

(2) A member of Parliament shall not hold any office of profit or engage in an activity likely to compromise the member's office.

Determination of questions of membership

122. (1) The High Court shall have power to hear and determine any question whether –

(a) any person has been validly elected or nominated as a member of Parliament or the seat of any member has become vacant;

(b) any person has been validly elected as Speaker or Deputy Speaker or, having been so elected, has vacated the office of Speaker or Deputy Speaker.

(2) An appeal from the determination of the High Court under this Article shall lie to the Court of Appeal.

Part IV - Legislation and Procedure in Parliament

Exercise of legislative powers

123 (1) Parliament shall exercise its legislative power by Bills passed by Parliament and assented to by the President.

(2) A Bill may originate in either House but a money Bill may originate only in the National Assembly.

(3) When a Bill has been passed by the House in which it originated, it shall be sent to the other House.

(4) When it has been passed by the other House and an agreement has been reached between the two Houses on any amendments made in it, it shall be presented to the President for assent by the Speaker of the House in which the Bill originated.

(5) In this Article, “money Bill” means a Bill that contains only provisions dealing with-

(a) the imposition, repeal, remission, alteration or regulation of taxes;

(b) the imposition of charges on the Consolidated Funds or any other Fund of the Government of Kenya or the variation or repeal of any such charges;

(c) the grant of money to any person or authority or the variation or revocation of such grant;

(d) the appropriation, receipt, custody, investment, issue or audit of accounts of public money;

(e) the raising or guaranteeing of any loan or the repayment thereof; or

(f) subordinate matters incidental to any of those matters.

(6) In clause (5), the expressions tax, public money, and loan do not include any taxes, money or loans raised by local authorities.

Presidential assent and reference.

124. (1) When Parliament has passed a Bill, the Speaker of the National Council shall within seven days forward it to the President for assent.

(2) Within seven days after receipt of the Bill, the President -

(a) may submit the Bill to the Supreme Court for an advisory opinion on the constitutionality of

the Bill and the Supreme Court shall within fourteen days deliver such opinion; or

- (b) refer the Bill back to the Speaker for reconsideration by Parliament, noting any reservations that the President has concerning the Bill; or
- (c) assent to the Bill.

Advisory opinion on constitutionality and reconsideration

125. (1) If a Bill is referred to the Supreme Court for an advisory opinion concerning its constitutionality, the President may not assent to the Bill until the court has delivered an opinion, ruling that the Bill is constitutional.

(2) If the Supreme Court delivers an opinion that the Bill is in any respect not constitutional -

- (a) Parliament may reconsider the Bill and amend it; and
- (b) if Parliament amends the Bill, the Speaker of the National Council or the National Assembly shall submit it afresh to the President, for assent.

(3) If the Supreme Court delivers an opinion that the Bill is constitutional in all respects, the President shall assent to the Bill.

Other reservations and reconsideration

126. (1) If the President refers a Bill back for reconsideration by Parliament, Parliament may either –

- (a) amend the Bill in light of the President's reservation; or
- (b) pass the Bill a second time.

(2) If Parliament has amended the Bill, the appropriate Speaker shall submit it afresh to the President for assent.

(3) If Parliament, after considering the President's reservations, passes the Bill a second time, without amending it –

(a) the appropriate Speaker shall within seven days re-submit it to the President; and

(b) the President shall within seven days assent to the Bill.

Consideration by the other House

127. (1) When legislation has been passed by one House of Parliament, the Speaker of that House shall refer it to the Speaker of the other House for introduction, consideration and passage.

(2) If both Houses of Parliament do not pass the Bill in the same form –

(a) the Speakers of the National Council and the National Assembly shall appoint a committee comprising equal numbers of members of the Council and the Assembly to review the different versions and attempt to develop a compromise version; and

(b) if the committee is -

(i) unable to agree on a compromise Bill, either House, by a two-thirds majority vote, may affirm its original version of the Bill; or

(ii) able to agree on a compromise Bill, each House shall approve or reject the proposed compromise Bill by a vote supported by a majority of its members.

(3) A compromise Bill contemplated in clause (2)(b)(ii)

–

- (a) shall be referred to the President for assent if it is approved by both the National Council and the National Assembly; or
- (b) shall fail if it is not approved by both the National Council and the National Assembly.

Coming into force of laws

128. (1) A Bill passed by Parliament and assented to by the President shall become law and shall be published in the Gazette as an Act of Parliament.

(2) Unless otherwise specified in an Act of Parliament, the Act shall come into force on the fourteenth day after it is published in the Gazette.

(3) No Act which confers a benefit on Members of Parliament shall come into force until after the dissolution of the House which passed the Act.

Right to petition Parliament

129 The right of every person to petition Parliament to enact, amend or repeal any legislation is reserved.

Introduction of Bills in Parliament

130. (1) Every Bill introduced in Parliament shall be accompanied by an explanatory memorandum, in a form to be determined by the Speaker, on advice of the Committee on Good Governance and Public Participation established under Article 140..

(2) An explanatory memorandum shall include –

- (a) any public participation during the preparation of the Bill; and
- (b) any further public participation that is recommended before the Bill is enacted.

(3) The Committee on Good Governance and Public Participation shall -

- (a) determine the nature and extent of public participation for each Bill introduced in Parliament; and
- (b) facilitate that participation, and ensure that it is adequately carried out.

Registry and custody of law

131. (1) Parliament shall enact legislation establishing -

- (a) a public registry of Kenyan laws, which shall be maintained in Kiswahili, English, and Braille, under the custody of the Speaker of the National Assembly; and
- (b) additional procedures concerning the coming into operation, and publication, of Kenyan laws.

(2) The copy of each Act of Parliament signed by the President, and each regulation made in terms of an Act of Parliament, shall be deposited for safekeeping in the Registry of Kenyan laws.

(3) A certified copy of a Kenyan law deposited at the registry is conclusive evidence of the provisions of that law.

(4) The Government shall ensure, as far as practicable, that Kenyan laws are available and accessible in all public libraries.

Restrictions with regard to certain financial measures.

132. Except with the consent of the Government, signified by a Minister, Parliament shall not -

- (a) proceed upon a Bill (including an amendment to a Bill) that, in the opinion of the person presiding, makes provision for any of the following purposes-

- (i) the imposition of taxes or the alteration of taxes otherwise than by a reduction in or an increase of allocations, so long as the ceiling of the total allocation for the financial year is not altered;
 - (ii) the imposition of a charge on the Consolidated Fund or any other fund of the Government of Kenya or the alteration of any such charge otherwise than by reduction; or
 - (iii) the payment, issue or withdrawal from the Consolidated Fund or any other fund of the Government of Kenya of moneys not charged upon the fund or an increase in the amount of the payment, issue or withdrawal; or
 - (iv) the composition or remission of a debt due to the Government of Kenya; or
- (b) proceed upon a motion (including an amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

Quorum

- 133.** The quorum of either House shall be thirty per cent of all members of that House.

Official languages

- 134.** The official languages of Parliament shall be Kiswahili, English and sign language.

Voting in Parliament

- 135.** (1) Except as otherwise provided in this Constitution, any question proposed for decision in Parliament shall be determined by a majority of the votes of the members present and voting in either House.
- (2) On a question proposed for decision in either House, the person presiding in the House shall -

- (a) if that person is the Speaker, have a casting vote but not an original vote; or
 - (b) if that person is not the Speaker, have both an original vote and a casting vote.
- (3) The standing orders of Parliament shall make provision under which a member who votes upon a question in which he or she has a direct pecuniary interest shall be deemed not to have voted.

Regulation of procedure in Parliament

136.

- (1) Each House may-
- (a) regulate its own procedure and may in particular make rules for the orderly conduct of its proceedings.
 - (b) establish committees in such manner and for such general or special purposes as it deems fit and may regulate the procedure of any such committee.
- (2) Both Houses of Parliament may establish joint committees consisting of members of both Houses and may jointly regulate the procedure of any such committee.
- (3) Any reference in this Constitution to a member of a committee of a House of Parliament shall, unless the context otherwise requires, be construed as including a reference to a member of such a joint committee.
- (4) The proceedings of a House are not invalid by reason only –
- (a) that there is a vacancy in its membership; or
 - (b) of the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House.

Contents of Standing Orders

- 137.** (1) The Standing Orders of both Houses shall include the provisions that -
- (a) the Committee on Parliamentary Business shall determine the order of business in the House;
 - (b) a member has the right to move a private member's Bill;
 - (c) the member moving the private member's bill shall be afforded reasonable assistance by the department or Ministry of Government whose area of operation is affected by the Bill; and
 - (d) the office of the Attorney-General shall afford the member moving the private member's Bill professional assistance in the drafting of the Bill.
 - (e) the voting procedures in each House shall permit a member to explain the reasons for his or her vote on a motion

Introduction and types of Bills.

- 138.** (1) Any member, or committee, of Parliament may introduce legislation in Parliament.
- (2) A Bill for an Act of Parliament shall be introduced as -

- (a) a Bill to amend the Constitution in which case-
 - (i) it shall be submitted and proceeded with in accordance with Chapter Eighteen;
 - (ii) it may not address any other matter, apart from consequential amendments to legislation;
- (b) a Government Bill, which shall have been approved by Cabinet for introduction to Parliament; or
- (c) a Committee Bill, which shall have been approved by a Committee of Parliament for introduction to Parliament;
- (d) a Private Member's Bill, which shall have been proposed by any member and approved by the Committee on Good Governance and Public Participation for introduction to Parliament; or
- (e) a Private Bill, which shall have been sponsored by some particular person, association or corporate body.

Allocation of time for Bills

- 139.** The Committee on Parliamentary Business of each House shall equitably allocate time for consideration of the Bills referred to in Article 138.

Committees of Parliament

- 140.** (1) Each House shall appoint standing committees and other committees necessary for the efficient discharge of its functions.

(2) Each House shall establish and maintain the following Standing Committees -

- (a) Committee on Justice and Constitutional Affairs;
- (b) Committee on Good Governance and Public Participation;
- (c) Committee on Planning and Budget;
- (d) Committee on Security and Defense;
- (e) Committee on Social and Economic Affairs;
- (f) Committee on Parliamentary Business.
- (g) Committee on Foreign Affairs;
- (h) Public Accounts Committee; and
- (i) Public Investments Committee.

(3) The functions of standing committees shall include the following -

- (a) to discuss and make recommendations on all Bills laid before Parliament;
- (b) to initiate any Bill within their respective mandate;
- (c) to assess and evaluate activities of Government and other bodies;
- (d) to carry out relevant research in their respective fields; and
- (e) to report to the appropriate House on their functions.

(4) In the exercise of their functions under this Article, committees of either House-

- (a) may -
 - (i) call any Minister or any person holding public office, and private individuals to submit memoranda or appear before them to give evidence; and
 - (ii) co-opt any member of Parliament or employ qualified persons to assist them in the discharge of their functions; and
- (b) shall have the powers of the High Court in-
 - (i) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
 - (ii) compelling the production of documents; and
 - (iii) issuing a commission or request to examine witnesses abroad.

Part V – Seat and Calendar of Parliament

Seat of Parliament

141. (1) Subject to clause (2), the seat of Parliament shall be Nairobi.

(2) Each session of either House shall be held at such place within Kenya and shall commence at such time as the House may appoint.

(3) The sittings of either House in a session, of Parliament shall be held at such time and on such days as may be determined by the Committee on Parliamentary Business of the respective House, and approved by the appropriate House.

(4) Either House may by consensus adjourn to a specified day other than the next normal sitting day:

(5) Where consensus is not obtained either House may adjourn by a resolution supported by the votes of a majority

of all the members of the respective House and not opposed by the votes of more than thirty per cent of all the members of the House.

(6) Whenever either House stands adjourned in a session, or stands prorogued, as the case may be, the respective Speaker shall, at the request in writing of not less than thirty per cent of all the members of the House convene a meeting of the House on the day appointed and for the purpose specified in the request.

(7) Whenever a new House is elected, the President shall, by notice in the Gazette, appoint the place and a date, not more than seven days after the expiry of the term of the previous House, for the first sitting of the new House.

Dissolution and prorogation

142. (1) The term of the National Council is four years.

(2) Unless sooner dissolved, the National Assembly shall continue for a term of five years.

(3) At any time when Kenya is at war, both Houses may from time to time by resolution supported by the votes of not less than sixty-five per cent of all the members of each House, extend their respective terms for not more than six months at a time.

(4) The life of each House of Parliament shall not be extended under clause (3) by more than twelve months.

(5) Subject to this Article, both Houses of Parliament shall stand prorogued on 30th November in every year and the next session shall commence on the first Tuesday of February in the next year.

No confidence motion

143. (1) If the National Assembly passes a resolution that it has no confidence in the Government, the Prime Minister shall resign.

(2) When the Prime Minister resigns, the President shall nominate as Prime Minister a member of the National

Assembly who in his or her view enjoys the support of a majority of members of the Assembly.

(3) If the National Assembly fails to approve the appointment of a Prime Minister within twenty-one days of the date the vacancy arises, the President shall dissolve the National Assembly.

Part VI – Miscellaneous

Freedom of speech and debate

144. There shall be freedom of speech and debate in Parliament and that freedom shall not be impeached or questioned in any court or tribunal.

Powers, privileges and immunities

145. Parliament may, for the purpose of the orderly and effective discharge of the business of Parliament provide for the powers, privileges and immunities of Parliament and its committees and members.

Public Access and Participation

146. (1) Parliament shall -

- (a) conduct its business in an open manner, and hold its sittings and those of its committees, in public; and
- (b) facilitate public involvement in the legislative and other procedures of Parliament and its committees.

(2) Parliament may not exclude the public, or any public or private media, from a sitting of a committee, unless –

- (a) the appropriate Speaker, on the advice of the Committee on Good Governance and Public Participation has determined that there are reasonable and justifiable reasons for doing so; and
- (b) in explanation, the Committee on Good Governance and Public Participation has

published a written summary of the agenda of those proceedings.

(3) The Committee on Good Governance and Public Participation-

- (a) shall undertake appropriate steps to encourage and facilitate the presentation of petitions to Parliament from interested or aggrieved members of the public; and
- (b) shall establish a fair, transparent and equitable basis for persons or groups of persons to be certified as having a continuing right of standing before specific committees of Parliament; and
- (c) shall certify persons who qualify in terms of paragraph (b).

Parliamentary Service Commission

147. (1) There is established a Parliamentary Service Commission which shall consist of-

- (a) a chairperson and a vice-chairperson elected by the Commission from amongst the members appointed under paragraph (i) of this clause;
- (b) the Prime Minister or a member of the National Assembly nominated by him or her;
- (c) the Leader of the Majority Party in the National Assembly or a member of the National Assembly nominated by that Leader;
- (d) the Speaker of the National Council;
- (e) the Speaker of the National Assembly;
- (f) the Leader of the Majority Party in the National Council;

- (g) the Leader of the Minority Party in the National Council;
- (h) seven members (other than the Deputy Prime Minister) appointed by Parliament from among its members of whom-
 - (i) four shall be nominated equally from both Houses by the parliamentary party or coalition of parliamentary parties forming the Government of which at least two shall be women; and
 - (ii) three shall be nominated by the parliamentary party or coalition of parliamentary parties not forming the Government, one of whom shall be from the National Council and at least one shall be a woman.

(2) A member of the Commission, shall vacate office-

- (a) Upon dissolution of the House during which the member was appointed to the Commission:

provided that upon dissolution of Parliament, appointed members of the Commission shall continue in office until new members are appointed in their place by the Parliament;

- (b) if he or she ceases to be a member of Parliament otherwise than by reason of the dissolution of either House;

- (c) if circumstances arise that, if he or she were not a member of Parliament, would disqualify him to be elected as such;
- (d) if he or she is an appointed member, upon revocation of his or her appointment by the appropriate House or upon his or her resignation; or
- (e) if he or she is an ex officio member of the Commission upon ceasing to hold the relevant office.

(3) The Parliamentary Service Commission shall have power -

- (a) to constitute and abolish offices in the parliamentary service;
- (b) to appoint persons to hold or act in the offices of the service (including the power to confirm appointments) and to exercise disciplinary control over persons holding or acting in those offices (including the power to remove those persons from office);
- (c) to provide such services and facilities as are necessary to ensure efficient and effective functioning of Parliament;
- (c) to direct and supervise the administration of the services and facilities provided by, and exercise budgetary control over, the service;
- (d) to maintain proper security for members of Parliament and for the services and facilities within the precincts of Parliament;
- (e) to determine the terms and conditions of service of persons holding or acting in the offices of the service;
- (f) to cause to be prepared and laid before Parliament in each financial year estimates of expenditure (which shall be a charge on the

Consolidated Fund) of the parliamentary service for the next following financial year;

- (g) to initiate, co-ordinate and harmonize policies and strategies relating to the development of the service;
- (h) to undertake, singly or jointly with other relevant authorities and organizations, such programmes as will promote the ideals of parliamentary democracy in Kenya;
- (i) to do such other things as may be necessary for the well-being of the members and staff of Parliament and to exercise such other functions as may be prescribed by or under an Act of Parliament.



CHAPTER EIGHT

THE EXECUTIVE

Part 1 – Principles and Structure of the National Executive

Principles of executive authority.

- 148.** (1) The powers of the Executive are to be exercised for the well-being and benefit of the people and the Republic of Kenya.
- (2) Executive authority assigned to an office bearer by or in terms of this Constitution –
- (a) vests in that office bearer the power to serve the people, rather than the power to rule; and
 - (b) shall be exercised in a manner consistent with the purpose and objects of the Constitution.

Structure of the National Executive

- 149.** The National Executive of the Republic of Kenya comprises the President, the Vice President, and the Cabinet appointed under Article 151.

Part II – The President and Vice-President

Authority of President

- 150.** (1) The President –
- (a) is the Head of State, Commander-in-Chief of the Defence Forces, the Chairperson of the National Security Council and the Chairperson of the Defence Council;
 - (b) is a symbol of the unity of the nation, and has responsibility to promote and enhance the unity of the nation, safeguard the sovereignty of the Republic, promote and respect the diversity of the people, and protect their human rights and fundamental freedoms; and

- (c) shall uphold, safeguard, and respect the Constitution and the rule of law.
- (2) The powers of the President shall be exercised in accordance with the Constitution and the laws.
- (3) The President shall not hold any other public office including any elected or appointed office within a political party.

State functions of President

151. 1) The President –

- (a) shall address the opening of each newly elected Parliament in accordance with Article 141;
- (b) shall address a special sitting of Parliament once each year, as provided for in Article 14;
- (c) may address Parliament at any other time; and
- (d) may dissolve Parliament only in the circumstances contemplated in Article 142

(2) The President shall appoint and may in accordance with this Constitution dismiss–

- (a) the Cabinet consisting of –
 - (i) a Prime Minister who shall be the leader of the political party that enjoys the majority support in parliament subject to the approval of Parliament as provided for in Article 171;
 - (ii) two Deputy Prime Ministers nominated by the Prime Minister as provided for in Article 175;
 - (iii) not more than fifteen Ministers. nominated by the Prime Minister as provided for in Article 175.

- (b) not more than fifteen Deputy Ministers nominated by the Prime Minister.
- (c) Judicial Officers.
- (d) any other public officer who the Constitution requires the President to appoint, subject to the applicable provisions of the Constitution or legislation.

(3) With the prior consent of the Cabinet, the President may-

- (a) appoint Commissions of Inquiry; or
- (b) sign instruments of consent by Kenya to be bound by international agreements.

(4) After consultation with the Cabinet and the National Defense Council, the President may –

- (a) declare a state of emergency, subject to Article 71;
- (b) declare war,

(5) The President may –

- (a) appoint persons to represent the Republic as high commissioners, ambassadors, or diplomatic or consular representatives with the approval of the National Assembly; and may dismiss them;
- (b) receive foreign diplomatic and consular representatives;
- (c) seek an advisory opinion from the Supreme Court of Kenya on any matter concerning the interpretation, protection or enforcement of the Constitution;
- (d) pardon or reprieve offenders and remit fines, penalties or forfeitures, in accordance with Article 211 and

- (e) in consultation with the Prime Minister, confer honours in the name of the people and Republic of Kenya.
- (6) The President shall ensure that-
 - (a) the international obligations of the Republic are fulfilled and submit a progress report to Parliament annually; and
 - (b) the courts and Constitutional Commissions and officers are able to secure their independence, impartiality, dignity, accessibility and effectiveness, as contemplated in this Constitution.

Legislative functions of President

152. (1) The President may initiate a proposed legislation, and -

- (a) refer it to the Cabinet with a request that the Cabinet approve submission of that proposed legislation to Parliament as a Government Bill; or
- (b) refer it to a committee of Parliament, with a request that the committee introduce the Bill as a Committee Bill.

(2) When presented with a Bill enacted by Parliament, the President shall do one of the following:

- (a) refer the Bill back to parliament for re-consideration in accordance with Article 126;
- (b) refer the Bill to the Supreme Court of Kenya for an opinion on the constitutionality of the Bill in accordance with Articles 124 and 125;; or
- (c) assent to and sign the Bill.

(3) The President, with prior approval of the Cabinet and of the relevant committee of Parliament, shall assent to and sign any regulation authorized in terms of an Act of Parliament.

- (4) The President shall ensure that –
 - (a) public participation requirements concerning the enactment of legislation and regulations have been satisfied; and
 - (b) the Cabinet assigns responsibility for the implementation and administration of every Act of Parliament to a particular minister.

Decisions of President

- 153.** A decision by the President under the authority of the Constitution or any law shall be in writing and shall bear the signature of the President.

Curtailment of Presidential powers

- 154.** (1) This Article applies to a person who holds the office of President, or who is authorized in terms of the Constitution, to exercise the powers of the President –

- (a) during a period commencing on the date of the first vote in a Presidential election, and ending when the newly elected President assumes office; or
- (b) while the President is temporarily absent or incapacitated, as contemplated in Article 167;

- (2) During a period referred to in clause (1), a person to whom this Article applies may not exercise any power of the President referred to or contemplated in the following Articles;

- (a) Articles 151 and 194 relating to the nomination or appointment of judicial officers.
- (b) Article 197 relating to a complaint leading to the removal of a judicial officer; and
- (c) Articles 151 relating to the nomination or appointment of any other public officer who the Constitution or legislation requires the President to appoint;

- (d) Article 151 relating to the appointment or dismissal of persons to represent the Republic of Kenya as high commissioners, ambassadors, or diplomatic or consular representatives;
- (e) Article 211 relating to the authority to grant a pardon, reprieve offenders, or remit fines, penalties or forfeitures;
- (f) Article 151 relating to the authority to confer honours in the name of the people and Republic of Kenya.

Right to vote and timing of presidential elections.

155. (1) The election of the President shall be direct by adult suffrage through a secret ballot and shall be conducted in accordance with this Part and with any Act of Parliament regulating Presidential elections.

(2) An election of the President shall be held –

- (a) on the second Tuesday in August, and thereafter, on the second Tuesday in August every fifth year; or
- (b) in the circumstances contemplated by Article 164.

Qualifications for election as President

156. (1) A person is qualified for nomination as a presidential candidate if the person –

- (a) is a citizen of Kenya by birth;
- (b) has attained the age of thirty-five years but is below the age of seventy years;
- (c) is of high moral integrity and impeccable character;
- (d) holds a degree from a recognized university; and

- (e) is nominated by a registered political party; or
 - (f) is nominated as an independent candidate by at least one thousand registered voters who shall include not less than one hundred registered voters from each province.
- (2) A person is not qualified for nomination as a presidential candidate if the person –
- (a) is under an oath of allegiance to a foreign state;
 - (b) holds or is acting in any office in the public service (including the office of judge, magistrate or other judicial office, or an office to which Article 108 applies), in the defense forces of the Republic, or in a local government authority;
 - (c) is a member of any constitutional Commission or other constitutional institution;
 - (d) is a member of Parliament;
 - (e) is a candidate for election as a member of Parliament;
 - (f) has ever been removed from office on grounds of any violation of the Constitution or for gross misconduct; or
 - (g) is disqualified from holding the office of President under this Article..

Procedure at presidential election

- 157.** (1) If only one candidate for President is nominated, that candidate is elected as President.
- (2) If more than one candidate for President is nominated, a poll shall be taken in each constituency for the election of a President.

(3) In a presidential election—

- (a) all persons registered as voters for the purposes of parliamentary elections shall be entitled to vote;
- (b) the poll shall be taken by a secret ballot on the day specified in Article 155 at such time, in such places and in such manner as may be prescribed by or under an Act of Parliament; and
- (c) after counting of the votes in the polling stations, the Electoral Commission shall declare the result.

(4) The candidate for President who receives more than fifty percent of all the votes cast in the election and who, in addition, receives a minimum of twenty percent of the votes cast in more than half of the provinces shall be elected as the President.

(5) If no candidate is elected, a fresh election shall be held within three weeks of the previous poll and in that election, the only candidates shall be the candidate who scored the largest number of votes and the candidate who secured the second largest number of votes. The candidate who receives the largest number of votes is elected as President

(6) Where in a presidential election –

- (a) no candidate has been nominated before the expiry of the time set for the delivery of nominations; or
- (b) a candidate dies on or before any of the days on which the poll is taken; or
- (c) a candidate who would, but for their death, have been entitled to be declared elected as President, dies after the taking of the poll has begun but before the candidate is declared elected as President;

an election shall be held within thirty days of the time for the previous presidential election.

(7) The chairperson of the Electoral Commission shall deliver a written declaration of the results of a presidential election to the incumbent President and to the Chief Justice within seven days of the election.

Questions as to validity of presidential election

158. The Supreme Court shall determine any question arising as to whether any provision of the Constitution or other law relating to presidential elections has been complied with; or whether any person has been elected as President under Article 188.

Assumption of office of President

159. The person elected as President assumes office by taking and subscribing to the oath or affirmation of allegiance and the oath or affirmation for the due execution of the functions of the office prescribed in the Fourth Schedule, before the Chief Justice or a judge of the Supreme Court on the date when the term of office of the incumbent President ends.

Term of office of President

160. (1) The President shall hold office for a term not exceeding five years, beginning from the date of assumption of office.

(2) A person shall not hold office as the President for more than two terms of five years each.

Protection of President in respect of legal proceedings during office

161. (1) Subject to clause (2) of this Article, no criminal proceedings may be instituted or continued in any court against the President or a person performing the functions of that office, during their tenure of office.

(2) No civil proceedings may be instituted in any court against the President or the person performing the functions

of that office in respect of anything done or not done in the exercise of their powers under the Constitution during their tenure of office unless such proceedings are wholly of a private nature; and –

- (a) at least thirty days' notice of the proceedings has been served on the President or the person performing the functions of the office; and
 - (b) the nature of the proceedings, the cause of action, the name and the address of the claimant and the relief sought are specified in the notice.
- (3) Parliament shall enact a law to provide for the operation of clause (2).
- (4) Where provision is made by law limiting the time within which proceedings may be brought against a person, a period of time during which the person holds or exercises the functions of the office of the President shall not be taken into account in calculating any period of time prescribed by that law.

Removal of President on grounds of incapacity.

- 162.** (1) If it is resolved by one-half of all the members of the National Assembly that the question of the physical or mental capacity of the President to discharge the functions of the office ought to be investigated and they so inform the Chief Justice, the Chief Justice shall within seven days of the resolution, appoint a tribunal consisting of five persons qualified as medical practitioners under the laws of Kenya to investigate the matter.
- (2) The tribunal shall inquire into the matter and report to the Chief Justice.
- (3) If the Chief Justice does not appoint a tribunal within the period specified in clause (1), the National Assembly may, by a resolution supported by two-thirds of all its members, authorize the Speaker of the National Assembly to appoint a tribunal.
- (4) If the tribunal reports that the President is incapable of discharging the functions of the office, the Chief Justice or the Speaker of the National Assembly shall certify in

writing accordingly and table the certificate together with the report of the tribunal before the National Assembly.

(5) The National Assembly may, on a motion supported by the votes of two thirds of its members-

- (a) ratify the decision of the tribunal, and thereupon the President shall cease to hold office; or
- (b) reject the decision of the tribunal and cause a further inquiry into the matter and shall thereafter decide on such question by a two-thirds majority vote, which decision shall be final.

(6) Where the National Assembly resolves that the question of the physical or mental capacity of the President to discharge the functions of the office be investigated, the President shall, until another person assumes the office of President or the tribunal appointed under clause (1) reports that the President is not incapable of discharging the functions of his office, whichever is earlier, cease to perform the functions of the office.

(7) A motion for the purposes of clause (1) may be proposed at any meeting of the National Assembly.

Impeachment and removal of President.

163. (1) If two thirds of the members of the National Assembly approve a motion for the impeachment of the President for violation of the Constitution or gross misconduct, the Speaker of the National Council shall convene a meeting of the National Council to hear charges against the President.

(2) The Speaker of the National Council shall –

- (a) if the National Council is then sitting or has been summoned to meet, bring the motion to the notice of the National Council for its consideration within seven days; or
- (b) if the National Council is not then sitting, summon it to meet within twenty-one days of the notice to consider the motion.

(3) If a motion is passed under clause (2), the Speaker shall constitute a special committee comprising-

- (a) the Chief Justice, who shall be the chairperson; and
- (b) thirteen members appointed by the National Council in accordance with the Standing Orders of the Council, taking into account the proportional representation of the political parties represented in that House, to investigate the matter.

(4) The special committee shall investigate the matter and shall, within ten days, report to the National Council whether it finds the particulars of the allegations against the President to have been substantiated.

(5) The President shall have the right to appear and be represented before the special committee during its investigations.

(6) If the special committee reports that the particulars of any allegation against the President have not been substantiated, no further proceedings shall be taken under this Article in respect of that allegation.

(7) If the special committee reports that the particulars of any allegation against the President have been substantiated, the National Council shall vote on impeachment charges and the President shall be removed if two-thirds of the members vote to uphold the impeachment charges.

Vacancy in the office of President.

- 164.** (1) If there is a vacancy in the office of the President by reason of the President's death, resignation or ceasing to hold office by virtue of Articles 162 and 163, the Vice-President shall assume the functions of the office except that if the residual term of the President exceeds two and a half years, it shall be deemed to be a full presidential term for the purposes of Article 160.

(2) If there is a vacancy in the office of the President and that of the Vice President, the Speaker of the National Assembly and, if there is no Speaker of the National Assembly, the Speaker of the National Council shall assume the functions of the office of the President and the Electoral Commission shall conduct an election for President and Vice-president within thirty days of the vacancy in the office of the Vice-President.

Office of Vice-President

165. (1) There shall be a Vice-President of Kenya.

(2) Each candidate in a presidential election shall nominate a person, duly qualified for election as the President, as a candidate for Vice-President.

(3) The Electoral Commission shall not conduct a separate election for the Vice-President but shall declare the candidate nominated by the person who is elected as the President to be elected as the Vice-President.

(4) A person declared elected as the Vice-President shall assume the office by taking and subscribing to the oath of allegiance and the oath for the due execution of the functions of the office prescribed in the Fourth Schedule, before the Chief Justice or a Judge of the Supreme Court designated by the Chief Justice.

(5) The term of office of the Vice-President shall run from the date the President assumes office and shall terminate –

- (a) when the next President assumes office; or
- (b) upon the Vice-President assuming the office of President; or on resignation, death or removal from office.

(6) The Vice-President may, at any time, resign from office by notice in writing addressed to the President and such resignation shall take effect on the date and at the time specified in the notice, if any, or if no date is specified, at noon on the day after the notice is delivered.

(7) The provisions of Articles 162 and 163 as to the removal from office and impeachment of the President shall, with the necessary alterations, apply to the office of the Vice-President.

(8) The Vice-President shall not serve for more than two terms of five years each.

Vacancy in the office of Vice-President.

166. (1) If there is a vacancy in the office of the Vice-President, the President shall nominate a candidate qualified in terms of Article 165 for the Vice-President.

(2) A nomination under clause (1) shall be in writing and shall be submitted to the Speaker of Parliament within fourteen days of the vacancy.

(3) Parliament may, by a resolution supported by the votes of two-thirds of its members, approve the person nominated under this Article as the Vice-President.

(4) A person approved as the Vice-President under clause (3) shall assume office not later than fourteen days of the approval, in the manner specified in Article 165(4).

(5) The term of office of a Vice-President approved under this Article shall run from the date the Vice-President assumes office and shall terminate in the manner specified in Article 119 (5).

Functions of the Vice-President

167. (1) The Vice-President shall be the principal assistant of the President in the execution of his or her functions.

(2) The Vice-President shall perform the functions conferred by the Constitution and such other functions as the President may, from time to time, assign.

(3) While in office, the Vice-President shall not, directly or indirectly, hold any other public office, including any office in a political party, or any other paid office in the employment of any person.

(4) The Vice President shall act on behalf of the President when the President is incapacitated or absent from the

Republic.

Death before assuming office

- 168.** (1) If a person elected as President dies before assuming office, the person declared elected as the Vice-President shall assume the office of President.
- (2) Upon assuming the office of the President under clause (1), the office of the Vice-President shall fall vacant.
- (3) If a person declared elected as the Vice-President dies before assuming office, the office of the Vice-President shall be deemed vacant upon the assumption of office by the person declared elected as the President.
- (4) If both the persons declared elected as the President and the Vice-President die before assuming office, the Speaker of the National Assembly shall act as President and the Electoral Commission shall conduct a fresh election within thirty days of the second such death.

Salaries and allowances of President and Vice-President

- 169.** (1) The President and the Vice-President shall receive such salary, allowances and benefits as may be prescribed by the Salaries and Remuneration Commission.
- (2) A person who has held the office of President or Vice-President shall receive such pension, gratuity and other retirement benefits as may be determined by the Salaries and Remuneration Commission.
- (3) The salary and allowances payable to the President or Vice-President, including any pension or gratuity payable on retirement, shall be charged on the Consolidated Fund.
- (4) The salary, allowances and privileges of the President or Vice-President shall not be varied to their disadvantage while in office.
- (5) The pension, gratuity and other retirement benefits payable to the President or Vice-President on retirement and the facilities available to them shall not be varied to their disadvantage during their lifetime.

Part III – The Prime Minister and Cabinet

Prime Minister

- 170.** (1) The Prime Minister is the leader of the Cabinet and presides at meetings of the Cabinet.
- (2) The Prime Minister and the other members of the Cabinet exercise executive authority within the Republic by -
- (a) developing and implementing national budgets and policy;
 - (b) preparing and initiating government legislation for introduction in Parliament;
 - (c) implementing and administering Acts of Parliament;
 - (d) co-ordinating the functions of ministries and departments; and
 - (e) performing any other executive function provided for by the Constitution or an Act of Parliament, except those functions assigned to the President.

Appointment of Prime Minister.

- 171.** (1) Within seven days following the summoning of the National Assembly, or whenever necessary to fill a vacancy in the office of Prime Minister, the President shall propose to the Speaker of the National Assembly the appointment as Prime Minister of -
- (a) the leader of the majority political party, or coalition of parties, represented in the National Assembly; or
 - (b) the leader of the minority political party, or coalition of parties represented in the National Assembly, if the leader of the majority party or coalition has been unable to command or retain the confidence of the National Assembly; or
 - (c) if neither person contemplated in paragraph (a) or (b) has been able to command or retain the confidence of National Assembly, then any other member of the National Assembly who, in the President's opinion, may be able to command or retain the confidence of the National Assembly.

- (2) Upon receiving a proposal from the President in terms of this Article, the Speaker shall summon the National Assembly and introduce the proposal from the President.
- (3) Within seven days of the Speaker receiving a proposal from the President, the Speaker shall call a vote in the National Assembly to confirm the appointment of the person proposed by the President.
- (4) A vote contemplated in clause (3) passes if it is supported by at least fifty percent of the members of the National Assembly.
- (5) If the National Assembly fails to confirm the appointment of a person proposed by the President, the President shall propose another person within one week after the vote in the National Assembly.
- (6) If, within thirty days of the President first proposing a person to be appointed Prime Minister, no person has been confirmed by the National Assembly the President shall –
 - (a) dissolve Parliament; and
 - (b) require the Electoral Commission to conduct a fresh general election for Parliament.

Term of office

- 172.** (1) A person whose appointment as Prime Minister has been confirmed by the National Assembly assumes the office of Prime Minister by swearing or affirming faithfulness to the people and Republic of Kenya, and obedience to the Constitution, in accordance with the Fourth Schedule, before the Speaker and Members of Parliament.
- (2) The term of office of the Prime Minister continues until –
- (a) the Prime Minister dies, resigns or is dismissed from offices; or
 - (b) until the next person appointed Prime Minister following a general election assumes office.

Resignation of Prime Minister.

- 173.** (1) The Prime Minister may resign from office by delivering a written statement of resignation to the

President.

- (2) The resignation of the Prime Minister takes effect -
 - (a) on the date and at the time specified in the resignation, if any; or
 - (b) at noon on the day after it is delivered, in any other case.

Dismissal of Prime Minister.

- 174. (1) If Parliament, by a vote supported by a vote of more than fifty per cent of its members, passes a motion of no confidence in the Prime Minister, the President shall dismiss the Prime Minister, and the other members of the Cabinet.
- (2) The President may not dismiss the Prime Minister in any circumstances other than those contemplated in clause (1).

Cabinet

- 175. (1) The President shall appoint the remaining members of the Cabinet in accordance with recommendations of the Prime Minister and with the approval of the majority of the members of the National Assembly.
- (2) If the National Assembly, by a vote supported by a vote of more than fifty percent of its members, passes a motion of no confidence in a member of the Cabinet other than the Prime Minister, the President shall remove that member.
- (3) The President shall not appoint -
 - (a) a Member of Parliament to the office of Minister or Deputy Minister; or
 - (b) a person other than a Member of Parliament to the office of Deputy Prime Minister.
- (4) Each person appointed as a Deputy Prime Minister, Minister or Deputy Minister-
 - (a) assumes office by swearing or affirming faithfulness to the people and Republic of Kenya and obedience to the

Constitution, in accordance with the Fourth Schedule before the Speaker and Members of Parliament;

- (b) may resign by delivering a written statement of resignation to the Prime Minister and the President; and
- (c) continues in office until –
 - (i) the person dies, resigns or is dismissed from office; or
 - (ii) until the next person appointed to that office, following a general election for Parliament, assumes office.

Decisions, responsibility and accountability of cabinet

176. (1) A decision by the Cabinet shall be in writing.

(2) Members of the Cabinet are accountable collectively, and individually, to Parliament for-

- (a) the exercise of their powers and the performance of their functions; and
- (b) the administration and implementation of legislation assigned to them.

(3) Deputy Prime Ministers, Ministers and Deputy Ministers are individually accountable to the Prime Minister for the exercise of the powers and the performance of the functions assigned to each of them respectively,

(4) A Minister shall attend before Parliament, or a committee of Parliament, when required to do so, and answer any question concerning a matter assigned to that Minister.

(5) Members of the Cabinet shall –

- (a) act in accordance with the Constitution; and
- (b) provide Parliament with full and regular reports concerning matters under their control.

Assignment of functions

- 177.** (1) The Prime Minister shall keep the President fully informed concerning the general conduct of the Government and shall furnish the President with any information that the President may request with respect to any matter relating to the Government.
- (2) The Prime Minister, by Order of Cabinet, shall assign responsibility for the implementation and administration of any Act of Parliament to-
- (a) a Deputy Prime Minister; or
 - (b) to a Minister and Deputy Minister, jointly.
- (3) The Prime Minister, by order of Cabinet, may permanently transfer responsibility for the implementation and administration of any Act of Parliament from one member of Cabinet to another.
- (4) The Prime Minister may assign to a Cabinet member any power or function of another Cabinet member who is absent from office or temporarily unable to exercise that power or perform that function.

Conduct of members of the Cabinet

- 178.** (1) A member of Cabinet shall -
- (a) avoid any situation involving a risk of conflict between the member's private interests and official responsibilities;
 - (b) not act in a way that is inconsistent with the member's official responsibilities;
 - (c) not use the member's office, the authority of that office or any information entrusted to the member, to enrich the member or improperly benefit another person.
- (2) Each member of Cabinet shall comply with the Leadership Code, set out in the Fifth Schedule.
- (3) The members of the cabinet may not hold any other employment, or any other public office, during their respective terms of office.

Salaries and Allowances of the Prime Minister, the Deputy Prime Ministers, Ministers and Deputy Ministers

179. The Prime Minister, Deputy Prime Ministers, Ministers and Deputy Ministers shall receive such salaries, allowances and benefits as may be determined by the Salaries and Remuneration Commission.

Absence of Vice-President, Prime Minister, Deputy Prime Ministers, Ministers and Deputy Ministers from the Republic

180. (1) The Vice-President, the Prime Minister or, a Deputy Prime Minister, shall not be absent from the Republic except with the leave of the President.

(2) A Minister or a Deputy Minister shall not be absent from Kenya except with the leave of the Prime Minister.

Permanent Secretaries

181. (1) Whenever the Prime Minister, a Deputy Prime Minister or any other Minister is charged with the responsibility of a Government Ministry, they shall exercise general direction and control over that Ministry.

(2) There is established the office of Permanent Secretary which is an office in the public service.

(3) Each Government Ministry shall be under the supervision of a Permanent Secretary.

(4) One Permanent Secretary shall be assigned by the Prime Minister to be the Secretary to the Cabinet.

Oath or Affirmation of Ministers and Permanent Secretaries

182. A Minister or a Permanent Secretary shall not enter upon the duties of the office before taking and subscribing to the oath or affirmation of allegiance and the oath or affirmation for the due execution of the office prescribed in the Fourth Schedule.

Offices of the Republic

183. (1) Except where there is a contrary provision on this Constitution or in any other law, the power to constitute offices for the Republic and the power to abolish any such offices shall vest in the Public Service Commission.

(2) Except where there is a contrary provision in this Constitution or in any other law, the power to appoint persons to hold or to act in the offices constituted for the Republic of Kenya, to confirm appointments, to exercise disciplinary control over persons holding or acting in such offices and to remove such person from office, shall, vest in the Public Service Commission



CHAPTER NINE

JUDICIAL AND LEGAL SYSTEM

Part I—The Judicial System

Judicial power

184. (1) Judicial power is derived from the people and shall be exercised by the courts -

- (a) in the name of the people;
- (b) in conformity with the Constitution and the laws; and
- (c) in conformity with the values, norms and aspirations of the people.

(2) Judicial power shall vest exclusively in the courts and tribunals established under this Constitution.

(3) In applying the law to cases of a civil or criminal nature, the courts shall be guided by the following principles:

- (a) justice shall be done to all, irrespective of social or economic status;
- (b) justice shall not be delayed;
- (c) adequate compensation shall be awarded to victims of wrongs;
- (d) reconciliation, mediation and arbitration between parties shall be promoted;
- (e) justice shall be administered without undue regard to technicalities;
- (f) the protection and promotion of the principles and purpose of the Constitution.

(4) In the performance of their functions the courts, their officers and persons participating in the administration of justice -

- (a) shall strive to deliver the highest standard of service to the public;
 - (b) are bound by the Leadership and Integrity Code of Conduct; and
 - (c) shall continue to educate themselves in current development in the laws of Kenya and comparative law.
- (5) The state shall provide reasonable resources and opportunities shall be made available for members of the Judiciary to enable them to deliver the highest standards of service to the public.

Hierarchy of Courts

- 185.** (1) The Judiciary consists of the courts, judges, magistrates and other judicial officers of superior courts of record, and subordinate courts.
- (2) The superior courts of record are the Supreme Court, the Court of Appeal, and the High Court.
- (3) The subordinate courts are -
- (a) the Magistrates' courts and the Kadhis' courts,
 - (b) any other courts established by an Act of Parliament subordinate to the High Court, and
 - (c) any traditional or local tribunals with limited jurisdiction in issues of local significance, that may be established by an Act of Parliament.

Independence of the Judiciary

- 186.** (1) In the exercise of judicial power, the Judiciary is subject only to the Constitution and is not subject to the control or direction of any other person or authority.
- (2) The administrative expenses of the Judiciary, including the salaries, allowances, gratuities and pensions

payable to, or in respect of, persons serving in the Judiciary are a charge on the Consolidated Fund.

(3) No judicial officer shall be liable in an action or suit in respect of anything done in the performance of a judicial function.

(4) The salaries, allowances, gratuities and pensions payable to, or in respect of persons serving in, the Judiciary, shall not be varied to their disadvantage.

(5) Court fees shall be reasonable and shall not be such as to discourage the use of the court system.

(6) The Salaries and Remuneration Commission shall ensure that the emoluments and terms of conditions of service encourage and enhance the integrity and independence of the Judiciary.

The Supreme Court

187 The Supreme Court consists of-

- (a) the Chief Justice, who is the head of the Judiciary, and
- (b) not more than six judges.

General Jurisdiction of the Supreme Court

188. (1) The Supreme Court has-

(a) original jurisdiction -

- (i) with respect to advisory opinions requested by the President;
- (ii) in respect of presidential election petitions;
- (iii) in issues relating to impeachment of the President;

- (iv) in respect of any challenge to the constitutionality of any Act of Parliament; and
 - (v) in respect of any dispute between the districts or between a district and the national government.
- (b) appellate jurisdiction as conferred by an Act of Parliament.

(2) Where a question relating to original jurisdiction of the Supreme Court arises in any other court, that court shall stay the proceedings and refer the question to the Supreme Court for determination; and the court from which the question arose shall act in accordance with the decision of the Supreme Court.

(3) The Supreme Court may depart from its previous decisions in the interests of justice.

(4) All other courts are bound by the decisions of the Supreme Court.

Supervisory Jurisdiction of the Supreme Court

189. (1) The Supreme Court has supervisory jurisdiction over all Courts and over any person, body or authority which exercises an adjudicating function.

(2) For the purposes of clause (1), the Supreme Court may call for the record of any proceedings before any court or tribunal and make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring the fair administration of justice.

The Court of Appeal

190. (1) The Court of Appeal consists of -

- (a) the President of the Court, and
- (b) not less than ten judges.

(2) The Court of Appeal is constituted by three judges.

- (3) The Court of Appeal is bound by the decisions of the Supreme Court and by its own previous decisions.
- (4) The High Court and the subordinate courts are bound by the decisions of the Court of Appeal.
- (5) The President of the Court of Appeal may, in consultation with the Chief Justice, create Divisions of the Courts of Appeal -
 - (a) consisting of the number of judges assigned to them by the Chief Justice, and
 - (b) sitting at the places determined by the President of the Court of Appeal in consultation with the Chief Justice

Jurisdiction of the Court of Appeal

- 191.** (1) The Court of Appeal is an appellate Court with jurisdiction in -
- (a) appeals from a decree, judgement or an order of the High Court, and
 - (b) any other appellate jurisdiction conferred on it by any other law.
- (2) An appeal to the Court of Appeal lies as of right from a judgement, decree or order of the High Court.

The High Court

- 192.** (1) The High Court consists of -
- (a) the Principal Judge of the Court; and
 - (b) such number of judges, not being less than fifty, as may be prescribed by an Act of Parliament.
- (2) The Principal Judge may, in consultation with the Chief Justice, create Divisions of the High Court and specify their jurisdiction.

- (3) The High Court shall sit in such places as the Principal Judge may appoint.

Jurisdiction of the High Court

193. The High Court has unlimited original jurisdiction in -

- (a) criminal and civil cases, and
- (b) any other jurisdiction, appellate or original, conferred on it by or under an Act of Parliament.

Appointment of Judges

194. (1) When there is a vacancy in the office of the Chief Justice, the most senior judge of the Supreme Court by reference to the date of appointment, shall be appointed the Chief Justice.

(2) When there is a vacancy in the office of the President of the Court of Appeal, the most senior judge of the Court of Appeal by reference to the date of appointment, shall be the President of the Court of Appeal.

(3) When there is a vacancy in the office of the Principal Judge of the high Court, the most senior judge of the High Court, by reference to the date of appointment, shall be the Principal Judge.

(4) The other judges of the superior courts of record and the Chief Kadhi shall be appointed by the President acting in accordance with the advice of the Judicial Service Commission and with the approval of the National Council.

Qualifications for Appointment of judges

195. (1) The Chief Justice and Judges of the Supreme Court shall be appointed from persons who possess the following qualifications -

- (a) fifteen years experience –
 - (i) as a Judge of the Court of Appeal or the High Court; or

- (ii) in practice as an advocate; or
- (iii) full-time law teacher in a recognised university;
- (b) intellectual ability as demonstrated by academic qualifications and legal practice; and
- (c) high moral character and integrity.

(2) The Judges of the Court of Appeal shall be appointed from persons who possess the following qualifications -

- (a) ten years experience –
 - (i) as a Judge of the Court of Appeal or the High Court; or
 - (ii) in practice as an advocate; or
 - (iii) full-time law teacher in a recognised university;
- (b) intellectual ability as demonstrated by academic qualifications and legal practice; and
- (c) high moral character and integrity.

(3) Judges of the High Court shall be appointed from persons who possess the following qualifications -

- (a) ten years experience –
 - (i) as a magistrate; or
 - (ii) in practice as an advocate; or
 - (iii) full-time law teacher in a recognised university; and

- (b) intellectual ability as demonstrated by academic qualifications and legal practice.
 - (c) high moral character and integrity.
- (4) The office of a judge of the superior courts of record shall not be abolished while there is a substantive holder of the office.

Tenure of office of judges

- 196.** (1) A judge and other judicial officers of the subordinate courts shall retire from office, on attaining the age of sixty-five years, but may retire at sixty.
- (2) On attaining the retirement age, a Judge of the superior courts of record may continue in office for a period not exceeding six months in order to enable the Judge to deliver a judgement, or perform any other function in relation to proceedings that were commenced before the Judge prior to attaining the age of retirement.

Removal from office

- 197.** (1) A Judge of the superior courts of record may be removed from office in accordance with this Article and on the grounds of -
- (a) inability to perform the functions of office arising from infirmity of body or mind, or from a sufficient cause; or
 - (b) a breach of the Code of Conduct; or
 - (c) incompetence and misconduct.
- (2) An individual, institution, a society, or group of persons desiring the removal of a judge of a superior court of record may present a petition to the Judicial Service Commission.
- (3) The Judicial Service Commission shall consider the petition and, if it is satisfied that it discloses the existence of a ground under clause (1), it shall send the petition to the President of the Republic.

(4) On receipt and examination of the petition, the President may, acting in accordance with the advice of the Judicial Service Commission -

- (a) suspend the judge from office; and
- (b) in the case of a judge who is not the Chief Justice, appoint a tribunal consisting of –
 - (i) the Chairperson;
 - (ii) four other members from among persons who hold or have held office as a judge of a superior court of record; or who are qualified to be appointed as judges of the superior courts of record; and
 - (iii) three other persons with experience in public affairs, at least one of whom shall be a woman.
- (c) In the case of the Chief Justice, appoint a tribunal consisting of-
 - (i) the Speaker of the National Council as Chairperson;
 - (ii) two Judges from the member states of the East African Community; and
 - (iii) three persons with experience in public affairs, at least one of whom shall be a woman.

(5) The tribunal shall inquire into the matter and report on the facts and make recommendations to the President of the Republic, who shall act in accordance with the recommendations of the tribunal.

Subordinate courts

- 198.** (1) Parliament may, by an Act of Parliament, establish courts subordinate to the High Court that shall have, subject to the Constitution, the jurisdiction and functions conferred on them by the Act or any other law.

(2) No judicial officer in the office of magistrate or Kadhi may be removed from office, except after determination by the Judicial Service Commission on such grounds as may be prescribed by an Act of Parliament.

The Kadhis' courts

199 (1) There are established Kadhis' Courts, the office of Chief Kadhi, office of Senior Kadhi and the office of Kadhi.

(2) There shall be a number, being not less than thirty, of other Kadhis as may be prescribed by the Act of Parliament.

(3) A Kadhi is empowered to hold a Kadhis' court called a District Kadhis' Court, having jurisdiction within a district or districts as may be prescribed by, or under, an Act of Parliament.

Jurisdiction of Kadhis' courts

200. (1) The Jurisdiction of a Kadhis' court extends to

(a) the determination of questions of Muslim Law relating to personal status, marriage, divorce, including matters arising after divorce, and inheritance and succession in proceedings in which all the parties profess Islam;

(b) the determination of civil and commercial disputes between parties who are Muslims, in the manner of a small claims court as by law established, but without prejudice to the rights of parties to go to other courts or tribunals with similar jurisdiction;

(c) the settlement of disputes over or arising out of the administration of wakf properties.

(2) Subject to the Constitution, an appeal lies, as of right, from a judgement, decree or order of the District Kadhis' Court to the Provincial Kadhis' Court, presided

over by a Senior Kadhi, in any matter or cause determined by the lower court.

(3) An appeal lies, as of right, from a judgement, decree or order of the Provincial Kadhis' Court to the Kadhis' Court of Appeal, presided over by the Chief Kadhi and two senior Kadhis.

(4) An appeal from the Kadhis' Court of Appeal lies to the Supreme Court only on a point of Islamic Law or on an issue affecting the interpretation of the Constitution or any other constitutional issue.

(5) For the purposes of hearing and determining an appeal within its jurisdiction, the Provincial Kadhis' Court and the Kadhis' Court of Appeal have all the powers, authority and jurisdiction in the court from which the appeal is brought.

(6) The Chief Kadhi shall, in consultation with the Chief Justice and the Law Society of Kenya, make rules of Court for the practice and procedure to be followed by the Kadhis' Courts.

Appointment of Kadhis

201. (1) Kadhis shall be appointed by the Judicial Service Commission.

(2) In the appointment of the Kadhis, the Judicial Service Commission shall take into account the qualifications of the Kadhi in Muslim personal law applicable to the different sects of Islam.

(3) The Chief Kadhi shall have the same status, privileges and immunities as a High Court judge; the senior Kadhi as a Chief Magistrate and the District Kadhi as a District Magistrate in a magistrate court.

(4) The Chief Kadhi and the other Kadhis shall be full-time judicial officers.

Qualifications for appointment of Kadhis

202. (1) A person is qualified to be appointed as a Chief Kadhi if that person –

- (a) is a Muslim of not less than thirty-five years of age;
- (b) is an advocate of the High Court of Kenya of at least ten years experience as a legal practitioner and has attended, and obtained a recognized qualification in Muslim personal law, applicable to any sect or sects of Islam, from a recognized University; and
- (c) has obtained a degree in Islamic law from a recognized University, and has not less than ten years experience in the practice of Islamic Law, or has held the office of a Kadhi for a similar period.

(2) The qualification for appointment as a Kadhi or Senior Kadhi is the same as the qualification for the appointment of the Chief Kadhi except that the requisite number of years of experience shall be five years.

The Rules Committee

203 (1) There shall be a Rules Committee with authority to make rules of procedure applicable to the various courts set up under this Constitution.

(2) The Rules Committee shall consist of –

- (a) the Chief Justice;
- (b) the President of the Court of Appeal;
- (c) the Principal Judge of the High Court;
- (d) the Chief Kadhi;
- (e) the Registrars of the Supreme Court, the Court of Appeal and the High Court; and
- (f) two representatives of the Law Society of Kenya

- (3) The Rules Committee shall have authority to determine the fees payable in respect of any matter or suit filed before any court.

The Judicial Service Commission

204. (1) To ensure and enhance the independence and judicial accountability of the judiciary and the efficient and effective administration of justice, there is hereby established the Judicial Service Commission consisting of-

- (a) a full-time chairperson who is qualified to be appointed a Judge of the Supreme Court, appointed by the President of the Republic and approved by the National Council;
- (b) a Muslim woman to represent the Muslim community, nominated by the National Muslim Organization;
- (c) the Attorney-General ;
- (d) one Supreme Court Judge elected by Judges of the Supreme Court;
- (e) one Court of Appeal Judge elected by the Judges of the Court of Appeal;
- (f) one High Court Judge elected by the Judges of the High Court;
- (g) the Chief Kadhi;
- (h) two magistrates, one of whom shall be a woman, elected by the magistrates;
- (i) two advocates of fifteen years standing, one whom shall be a woman, nominated by the Law Society of Kenya;
- (j) two law teachers, one of whom shall be a woman, elected by the faculties of law of public universities;
- (k) a member nominated by the Council of Legal Education;

- (l) the chairperson of the Public Service Commission or a nominee of the chairperson; and
 - (m) three lay members, one of whom is a woman, to be nominated by the Non-Governmental Organization, established under the NGOs Co-ordination Act or any other similar legislation in force at the time.
- (2) Members of the Commission shall hold office for a term of five years and are eligible for re-appointment for a further and final term of five years.

Functions of the Judicial Service Commission

205. (1) The functions of the Judicial Service Commission are -

- (a) to recommend to the President of the Republic persons for appointment as judges;
- (b) to review and make recommendations on the terms of service of Judges, magistrates and other judicial officers, other than salaries and remuneration;
- (c) to appoint, discipline and remove registrars, magistrates and other judicial officers, including paralegal staff in accordance with the law prescribed by Parliament;
- (d) to review and investigate complaints against judges in accordance with the Constitution;
- (e) to prepare and implement programmes for the education and training of judges, magistrates and paralegal staff;
- (f) to advise the Government on improving the efficiency of the administration of justice, and access to justice- including legal aid;
- (g) to encourage gender equity in the administration of justice; and

(h) any other function prescribed by the Constitution or by an Act of Parliament.

(2) In performing its functions the Commission is subject only to the Constitution and the law.

(3) The Commission may regulate its own procedures.

Appointment and removal of certain judicial officers

206. (1) The Judicial Service Commission is responsible for the appointment of -

(a) judicial officers; and

(b) the Registrars of the Courts, the Chief court administrator and other officers and employees of the Judiciary,

(2) A judicial officer shall retire on attaining the age of sixty-five years, but may retire on attaining the age of sixty years.

(3) A judicial officer may be removed from office by the Judicial Service Commission on the ground of-

(a) inability to perform the functions of office, arising from infirmity of mind or body or from any other sufficient cause;

(b) incompetence;

(c) a breach of the Code of Conduct applicable to judicial officers; or

(d) any other misconduct.

(4) For the purposes of this Article, “judicial officer” means a person who holds, or is acting, in the office of -

(a) magistrate or Kadhi; and

(b) registrar or deputy registrar and any other office connected with the Judiciary, as

specified in regulations made by the Judicial Service commission.

Salaries and retirement benefits

- 207** (1) The salaries, allowances, gratuities and the pension payable to the judges and other staff of the Judiciary are charged on the Consolidated Fund.
- (2) The salaries, allowances, privileges and other conditions of service of the judges and of superior courts of record shall not be varied to the disadvantage of the judges.

Part II—Legal System

Attorney-General

- 208.** (1) The office of the Attorney General is established as a constitutional office.
- (2) The Attorney General shall be appointed by the President on the recommendation of the Judicial Service Commission and with the approval of the National Council.
- (3) The qualifications for appointment as Attorney General are the same as for appointment to the High Court.
- (4) The Attorney General is the principal legal adviser to the National Government.
- (5) It is the special responsibility of the Attorney General to promote and uphold the rule of law.

Director of Public Prosecutions

- 209.** (1) The office of the Director of Public Prosecutor is established as a constitutional office.
- (2) The Director of Public Prosecutions shall be appointed by the President on the recommendation of the Public Service Commission and with the approval of the National Council.
- (3) The qualifications for appointment as Director of Public Prosecutions are the same as for appointment to the High Court.

(4) The Director of Public Prosecutions shall exercise state powers of prosecution. In the exercise of that power he shall not be subject to the control of any other person or authority.

(5) The Director of Public Prosecutions shall have power to direct the police to investigate any information or allegations of criminal conduct.

(6) Parliament may confer powers of prosecution on other authorities.

(7) The Director of Public Prosecutions may not withdraw a prosecution without the permission of the court.

(8) The Director of Public Prosecutions does not require the consent of any person or authority for the commencement of prosecution proceedings.

(9) (i) In exercising his or her powers under this Article, the Director of Public Prosecutions shall have, to the public interest, the interest of the administration of justice and the need to prevent abuse of the legal process.

(ii) The Director of Public Prosecution shall have authority to appear as a friend of the court, in any criminal prosecution commenced before any court or tribunal.

Public Defender

210. (1) There is established the office of the Public Defender as a constitutional office.

(2) The Public Defender shall be appointed by the President on the recommendation of the Judicial Service Commission and with the approval of the National Council.

(3) The qualifications for appointment as Public Defender are the same as for appointment to the High Court.

- (4) The Public Defender shall provide legal advice and representation to persons who are unable to afford legal services.
- (5) The Public Defender shall disseminate information on access to the law and legal institutions.
- (6) Parliament shall enact a law making provision for -
 - (a) the effective management of the public defender's office;
 - (b) the categories of persons who qualify for legal aid;
 - (c) the categories of cases that qualify for legal aid; and
 - (d) other limitations in accessing legal aid

Prerogative of mercy

- 211.** (1) The prerogative of mercy shall be exercised by the President in accordance with the advice of the Committee on the Prerogative of Mercy.
- (2) The Committee on the Prerogative of Mercy shall consist of the Attorney General as chairman and six prominent Kenyans appointed by the President.
- (3) A member of Parliament or a member of the District Council, or a judge or judicial officer is not qualified for appointment to the Committee on the Prerogative of Mercy.
- (4) The President may, on the advice of the Committee on the Prerogative of Mercy -
- (a) grant to any person convicted of an offence, a pardon either free or subject to lawful conditions;
 - (b) postpone, either for a specified period or indefinitely, the carrying out of punishment imposed on a person; and

- (c) substitute a less severe form of punishment for a punishment imposed on a person for an offence.

(5) When appropriate, the President shall consult the victims of the offence in respect of which he or she intends to exercise the prerogative of mercy.

Part III-Legal Profession

The profession of law

212. (1) The privilege of practising law is a public trust. It is a fundamental duty of every legal practitioner to-

- (a) uphold the Constitution;
- (b) observe, respect, protect and promote the rights and freedoms set out in the Bill of Rights;
- (c) conduct the practice of law with integrity, and to be scrupulously honest in all dealings with clients, other legal practitioners, the courts, and any public office or officer;
- (d) advocate fearlessly before the court or any tribunals on behalf of, and in the interests of, the client;
- (e) assist the court in the development of the law by presenting well-reasoned, innovative and challenging arguments, such as will advance the objects and purpose of the Constitution and the rule of law; and
- (f) subject to the confidentiality of a client's business and communications, draw the attention of the appropriate authority, to any actual or apprehended violation of the Constitution or any law.

CHAPTER TEN

DEVOLUTION OF POWERS

Part I—Principles and Objectives of Devolution

General principles

213. (1) The principles and objects of devolution are to-

- (a) give powers of self-governance to the people at all levels and enhance the participation of people and communities in the exercise of the powers of the state;
- (b) strengthen national unity by recognising diversity in ways that promote the sense among all citizens that they belong to Kenya and share in its government;
- (c) ensure democratic and accountable exercise of power;
- (d) increase checks and balances and the separation of powers;
- (e) promote social and economic development throughout Kenya;
- (f) ensure equitable sharing of national and local resources throughout Kenya, with special provisions for marginalised areas;
- (g) facilitate the decentralisation of central government powers and the location of central government institutions and departments away from the capital territory to ensure equitable distribution of resources in all the provinces;
- (h) provide essential services to the people effectively and economically;

- (i) protect and promote the interests and rights of minorities and disadvantaged groups; and
 - (j) facilitate co-operation between National and Devolved Authorities.
- (2) The devolved authorities are entitled to an equitable share of revenue raised nationally to enable them to provide basic services and discharge their other responsibilities.
- (3) Devolved governments are entitled to the benefit of local resources in order to ensure that these benefit the local community.
- (4) The National and Devolved Governments shall ensure the participation of communities in decisions relating to the exploitation of natural resources in their areas and the preservation of the environment.
- (5) The National and Devolved Governments shall ensure the participation of communities in policing and the maintenance of law and order.

Part II--The Organisation of Devolution

Principles of devolved government

- 214.** (1) Subject to the Constitution
- (a) the structure of devolved authorities is based on democratic principles and the separation of powers;
 - (b) legislative or policy making or supervisory councils and executive authorities are elected;
 - (c) executive authorities are accountable to elected councils;
 - (d) members of councils and the executive can be recalled by registered voters; and
 - (e) at least one third of members of councils are women.

- (2) Legislation to implement this Chapter shall observe these principles.

Levels of Government

215. Powers are devolved to the following levels:

- (a) village,
- (b) location,
- (c) district, and
- (d) province.

Village Government

- 216.** (1) The village decides whether the Village Council is constituted by village elders or through elections.
- (2) The Village Council shall contain no less than six members and no more than ten members.
- (3) The village decides on the system of village government, including the role of the Village Council.

Locational Government

- 217.** (1) The Location Council consists of two representatives, one of whom shall be a women, elected by each Village Council from among its members.
- (2) The Location Administrator is the executive authority of the Location.
- (3) The Location Administrator shall be elected by the registered voters of the Location.

District Government

- 218.** (1) The legislative authority of the District is vested in the District Council.
- (2) The District Council consists of members directly elected by the registered voters of the District. The District Council shall consist of not less than twenty or more than thirty members .

(3) The District Administrator is the executive authority of the District.

(4) The District Administrator is elected directly by the registered voters of the District.

(5) The District Administrator, with the approval of the District Council, appoints chief officers from persons who are not members of the District Council.

(6) The District Administrator can be dismissed by the vote of an absolute majority of members of the District Council that is supported in a referendum by a majority of those voting in the referendum.

Provincial Government

219. (1) The legislative authority of the Province is vested in the Provincial Council.

(2) The Provincial Council consists of two representatives, one of whom shall be a woman, chosen by each District Council from among its members.

(3) The Provincial Executive Committee consists of District Administrators.

(4) The Provincial Administrator is the executive authority of the Province.

(5) The Provincial Administrator is appointed by the Provincial Council on the nomination of the Provincial Executive Committee from among its members.

Part III - Powers of Devolved Governments and Intergovernmental Relations

Powers of District Government

220. (1) District Government is the principal level of devolution of powers.

(2) The powers of the District Government are contained in List II of the Seventh Schedule .

Functions of Provincial Government

221. The principal functions of the Provincial Council are to –

- (a) enhance the capacity of the District Councils and to promote co-operation between the District Councils;
- (b) assist Districts to develop their capacity to discharge their functions;
- (c) formulate plans and policies for the exploitation of the provincial resources and development of provincial infrastructure; and
- (d) manage provincial institutions.

Urban Government

- 222.** (1) Nairobi has the status of the capital territory and shall be managed in accordance with an Act of Parliament.
- (2) A city or municipality has the status of a district.
- (3) Towns and urban centres have the status of a location.

Staffing of Devolved Authorities

- 223.** (1) For the avoidance of doubt, the system of provincial administration existing at the time of the coming into force of the Constitution is abolished.
- (2) District Governments may employ their own staff.
- (3) The National Government, in consultation with Devolved Authorities, may deploy its public officers in the Provinces and Districts to carry out its policies.

Financial arrangements

- 224.** (1) The National Government is responsible, in accordance with Act of Parliament, for the collection of the major sources of revenue.
- (2) Districts may impose taxes or levies under the authority of an Act of Parliament.

- (3) The national revenue shall be shared equitably between the National and Devolved Governments.

Commission on Local Government Finance

- 225.** (1) A Commission on Local Government Finance shall be appointed every four years. It shall consist of six members, three of whom are appointed by the National Council and three appointed by the National Government.
- (2) The Commission shall advise the National Government and the devolved governments on the distribution of grants to the devolved councils.
- (3) Grants include-
- (a) unconditional grants, based on the criteria of population and geography and any other relevant factors;
 - (b) conditional grants, based on the criteria approved by Parliament; and
 - (c) equalization grants paid to marginalized districts.
- (4) The Provincial Secretariat is funded by the National Government.
- (5) The Auditor-General shall audit the accounts of the devolved governments.

Share of national resources

- 226.** (1) Districts shall be entitled to a substantial share of the national revenue from local resources and for the allocation of a fixed percentage to the communities in whose areas the resources are generated.
- (2) The revenue from national resources shall be shared equitably between the Districts and the National Government.
- (3) The manner of distribution of revenue shall be set out in an Act of Parliament.

Intergovernmental relations

227. (1) The powers of the National Government are contained in List I, the powers of Districts are contained in List II, and the concurrent powers are contained in List III in the Seventh Schedule.

(2) A ministry of the National Government shall maintain liaison with the District and the Provincial Governments.

(3) Public servants who are posted to provinces and districts shall liaise with the Provincial and District Governments for the purpose of exchange of information and co-ordination of policies and administration.

(4) The public servants referred to in clause (2) shall be posted after consultation with the Provincial and District Governments.

(5) A District Government may be suspended in an emergency or in case of war or for gross inefficiency or corrupt practices or failure to comply with the Code of Conduct applicable to District Government.

(6) Except in the case of an emergency or war, a District Council shall not be suspended unless an independent commission of inquiry has investigated the allegations against it and the President is satisfied that the allegations are justified.

(7) During a suspension under clause (5) arrangements shall be made for the performance of the functions of the District Government as specified in an Act of Parliament, and the authority charged with the responsibility of implementing the arrangements shall liaise with the relevant Provincial Council.

(8) A suspension under this Article shall not extend beyond a period of ninety days, during which period new elections for the Council shall, in appropriate circumstances, be held.

Prohibition against holding elective office at national and devolved levels

- 228.** A person shall not hold a public or an elective office at the same time in both the National Government and a Devolved Government.

Co-operation between District Councils

- 229.** (1) District Councils may co-operate in the performance of their functions and for that purpose may set up joint committees or joint authorities.
- (2) The arrangements for co-operation and the arrangements for the termination of the arrangements shall be agreed upon by a resolution of the District Council supported by votes of a majority of all the members of each relevant Council.

Legislative provisions for devolution

- 230.** (1) To give effect to the principles and objectives of devolution and other provisions of this Chapter, detailed provisions for the structure, powers and functions of Devolved Authorities and their relationship with the National Government shall be contained in an Act of Parliament.
- (2) That Act of Parliament shall be enacted or amended only by the votes of an absolute majority of the members of each house of Parliament.
- (3) The Act-
- (a) shall provide for the division of legislative and executive powers between the National, Provincial, District, Location and Village Governments;
 - (b) may provide that the power to make laws on a matter is with one government and the power to implement it with another government or governments;
 - (c) shall provide for a list of concurrent powers on which it may specify matters on which the laws of Parliament shall prevail over the laws of a District Council and matters on which the laws of a District Council shall

prevail over the laws of Parliament, in case of conflict;

- (d) may provide for delegation of functions of one level of government to another and shall specify the conditions for the transfer and recall of the powers;
- (e) may specify that legislation passed by Parliament should contains provisions for its adaptation to local circumstances by a District or a Province;
- (f) shall provide for the settlement of disputes between different levels of government and between governments at the same level of government;
- (g) shall specify that in the resolution of inter-governmental disputes attempts shall first be made at mediation and negotiations for a settlement;
- (h) shall establish the mechanism and criteria for the allocation of funds to Provinces, Districts, Locations and Villages;
- (i) shall ensure that one-third of the composition of the Province, District, Location and Village councils shall be women;
- (j) shall require appropriate constitutional commissions and constitutional office holders to establish offices in every District over a specified period;
- (k) may provide for constitutional commissions and constitutional office holders to recommend to the President that an inquiry be held to determine whether there are grounds for the suspension of a devolved government on the basis that the devolved government has failed to discharge its functions fairly, honestly or efficiently in accordance with the Constitution or the Act;

- (l) may provide for a phased transfer of powers, functions and resources to devolved government bodies on the basis of satisfying clearly prescribed criteria showing appropriate capacity to discharge the functions and powers;
- (m) may specify that the costs of salaries of Councillors and Administrators shall be met from revenues raised directly by the devolved government;
- (n) may require Devolved Governments to have rules and mechanisms for the protection of minorities and the promotion of their rights and interests;
- (o) may specify special measures for the development of marginalised areas; and
- (p) shall specify the maximum and minimum size of membership of councils and executives of devolved governments.

Interpretation

231. In this Chapter –

‘devolved governments’ and ‘devolved authorities’ mean the legislative and executive authorities at all levels of devolution mentioned in Articles 215, 216, 217, 218 and 219;

‘village’ means the area of a sub-location;. and

‘councils’ means the village, location, district and provincial councils.

CHAPTER ELEVEN

LAND AND PROPERTY

Land policy framework

232. (1) Land, being Kenya's primary resource and the basis of livelihood for the people shall be held, used and managed in a manner which is equitable, efficient, productive and sustainable.

(2) The State shall define and keep constantly under review a national land policy directed at ensuring among others, the following -

(a) equitable access to land and associated resources;

(b) security of land rights for all land holders, users and occupiers in good faith;

(c) sustainable and productive management of land resources;

(d) transparent and cost effective administration of land;

(e) sound conservation and protection of ecologically sensitive areas; and

(f) socially acceptable management and resolution of land disputes.

Ownership of land

233. (1) All land in Kenya belongs to the people of Kenya collectively as communities and as individuals.

(2) Subject to this Constitution no person other than a citizen of Kenya shall have the right to acquire any interest or right in land in Kenya.

(3) Non-citizens of Kenya may hold or use land on the basis of leasehold tenure only and such leases however granted shall not exceed ninety-nine years.

Classification of land

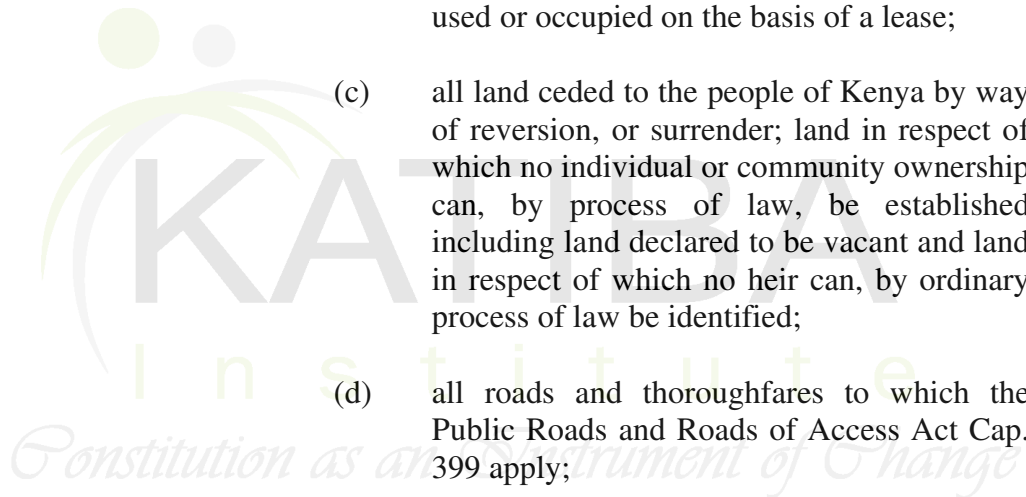
234. (1) All land in Kenya is designated as public, community or private land.

(2) The following description of land is public land –

- (a) land which at the commencement of this Constitution was held as unalienated Government land in terms of the Governments Lands Act, Cap 301.
- (b) land held, used or occupied by any Ministry, Department or agency of the Government or local authority, except where such land is used or occupied on the basis of a lease;
- (c) all land ceded to the people of Kenya by way of reversion, or surrender; land in respect of which no individual or community ownership can, by process of law, be established including land declared to be vacant and land in respect of which no heir can, by ordinary process of law be identified;
- (d) all roads and thoroughfares to which the Public Roads and Roads of Access Act Cap. 399 apply;
- (e) all rivers, lakes and water bodies as defined in the Rivers and Lakes Act, (Cap 409) or in any other law; and
- (f) the territorial sea and sea-bed.

(3) The following description of land is community land-

- (a) all land currently held as trust land under the Trust Lands Act Cap. 288;
- (b) all land registered in the name of group representatives in terms of the provisions of



the Land (Group Representatives) Act Cap. 287;

- (c) all land held, managed or used by specific communities as community forests, water sources, grazing areas or shrines and identified by them as such whether or not such land is, but for this provision, classified as public land; and
- (d) any land hereinafter ceded to a specific community by way of any process of alienation, transmission or conversion.

(4) The following description of land is private land -

- (a) any land held under freehold tenure and registered under the Registration of Titles Act Cap. 281 and the Land Titles Act Cap. 282;
- (b) land held as absolute property under the Registered Land Act, Cap. 300, not being land to which the Land (Group Representatives) Act, Cap 287 applies;
- (c) land the subject of a leasehold grant whether or not the lease is in respect of public or community land and so long only as the lease remains in force; and
- (e) any land acquired by mechanisms under any law which confers upon any person exclusive ownership or occupation of land.

Tenure of land

- 235.** (1) (a) Public land is the collective property of present and future generations and shall vest in and be held by the National Land Commission in trust for the people; and
- (b) Public land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and terms of that trust.

(2) (a) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture, or community of interest.

(b) Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.

(3) Private land shall vest in and be held by individuals or other jural persons in terms of legislation specifying the nature and extent of rights in respect to private land.

(4) Within two years of the coming into force of this Constitution, Parliament shall -

(a) enact law for -

(i) the revision, consolidation, and rationalization of existing land laws;

(ii) the revision of all sectoral land use laws in accordance with the national land policy;

(iii) the manner in which any land may be converted from one category to another;

(iv) the protection of dependants of deceased persons holding interests in any land including the interests of spouses in actual occupation of land;

(v) the recognition and protection of matrimonial property and in particular the matrimonial home during and at the termination of marriage;

(vi) the establishment of an efficient and cost-effective land administration system including the management and expeditious settlement of land disputes;

- (vii) the resettlement of landless people including spontaneous settlement communities in urban areas;
- (viii) the establishment of a land fund to enable Kenyans gain access to land on an equitable basis; and
- (ix) the ascertainment and adjudication of any land held for the benefit of any community by any person or agency, and the transfer of such land to communities entitled to it.

(b) Establish mechanisms for -

- (i) the review of all grants or dispositions of government or other public land to establish their propriety and legality and to determine whether or not such grants or dispositions should be revoked;
- (ii) the review and assessment of all claims to unjust expropriation of land in the Coast, North Eastern, and Rift Valley provinces or elsewhere whether arising from historical or other causes in order to establish their validity and how best they can be justly, peacefully and equitably resolved; and
- (iii) Parliament shall determine the cut-off date with reference to which the review is required in paragraph (ii) is to be conducted

Protection of property in land

- 236.** (1) Subject to this Constitution, property rights in land lawfully acquired shall be protected and may be freely alienated without discrimination on the basis of gender or any other cause.

(2) The State has the power to take possession of or acquire any right or interest in land where the following conditions are satisfied –

- (a) the acquisition and or taking is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of property so as to promote the public benefit;
- (b) the necessity therefore is such as to afford reasonable justification for the causing of hardship that may result to any person having an interest in or right over the property; and
- (c) provision is made by a law applicable to that acquisition or taking of possession for the prompt payment of full compensation prior to occupation of such land.

(3) The state has the power to regulate the use of any land, interest or right in land in the interest of defence, public safety, public order, public morality, public health, land use planning or the development or utilization of property so as to provide the mutual benefit as long as such regulation does not amount to an acquisition of or taking of possession in terms of clause (2).

Establishment of National Land Commission

237. (1) There is established a National Land Commission consisting of a chairperson, a deputy chairperson and eight other members nominated and appointed in accordance with the provisions of Chapter Seventeen of this Constitution.

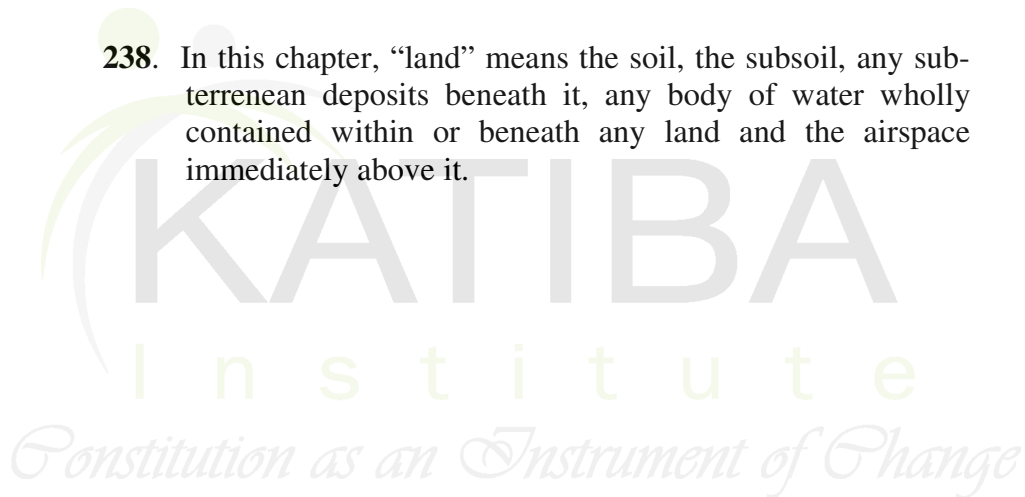
(2) The functions of the National Land Commission are to –

- (a) hold title to public land in trust for use by the people of Kenya;
- (b) administer public land on behalf of the government and local authorities,

- (c) define and keep constantly under review the national land policy;
 - (d) consolidate and from time to time review all laws relating to land;
 - (e) exercise residual land administration function on behalf of local authorities; and
 - (f) perform such other functions as may be entrusted to it by law
- (3) Parliament shall enact a law to define the organization and powers of the Commission.

Interpretation

- 238.** In this chapter, “land” means the soil, the subsoil, any sub-terrenean deposits beneath it, any body of water wholly contained within or beneath any land and the airspace immediately above it.



CHAPTER TWELVE

ENVIRONMENT AND NATURAL RESOURCES

Environmental Protection

239. (1) Every person in Kenya has a duty to safeguard and enhance the environment.

(2) All State officials exercising a power or performing a function involving the administration, protection or exploitation of land or natural resources, shall have regard to the following principles of sustainable development -

(a) Public participation shall be encouraged and facilitated in the development and execution of policies, plans and processes for the management of the environment.

(b) The cultural and social principles for the management of the environment or natural resources traditionally applied by any community within Kenya shall be applied, in so far as -

(i) they are relevant; and

(ii) not repugnant to justice and morality, or inconsistent with other constitutional principles.

(3) All State officials exercising power or performing a function involving the administration, protection or exploitation of land or resources shall be guided by the need to –

(a) protect the wildlife, genetic resources and biological diversity of Kenya;

(b) protect forests and encourage and carry out re-afforestation;

(c) practise, encourage and, where practicable, require waste, minimization and recycling;

(d) practise, encourage and where practicable require water conservation, and specifically to protect water catchment areas, water bodies and groundwater conservation areas;

(e) practise, encourage and, where practicable require the use and development of energy efficient technology and the use of renewable energy sources;

(f) protect the environment, giving priority to prevention of environmental damage and degradation, but also providing for restoration in case of existing or unavoidable damage, and for compensation;

(g) establish and ensure the effective functioning of a system of environmental impact assessment that –

(i) applies to any project or combination of projects, including government projects, likely to have a significant impact on the environment or natural resources;

(ii) is open and gives adequate opportunity for public comment; and

(iii) is scrutinised by a body which is independent of the project proponent and the views of which shall be taken

into consideration when deciding whether to grant approval for the project;

- (h) to establish systems of environmental audit and monitoring; and
- (i) to ensure that environmental standards enforced in Kenya reflect the best of developing standards internationally.

National Environment Management Commission

240. (1) There is established the National Environment Management Commission.

(2) The Commission shall-

- (a) exercise general supervision and coordination over all matters relating to the environment and shall be the principal instrument of the Government in the implementation of all policies relating to the environment;
- (b) promote the integration of environmental considerations into development policies, plans, programmes and projects with a view to ensuring the proper management and rational utilization of environmental resources on a sustainable basis;
- (c) examine land use patterns to determine their impact on the quality and quantity of natural resources; and
- (d) advise the Government on legislative and other measures for the management of the environment or the implementation of relevant international conventions, treaties and agreements in the field of the environment.

Enforcement of environmental rights

241. (1) If a person alleges that the right to a clean and healthy environment recognized and protected under this chapter has been, is being or is likely to be contravened in relation to that person, then, in addition to any other legal remedies which are available in respect to the same matter, that person may apply to the High Court for redress.

(2) On an application by a person under clause (1), the High Court may make such orders, or give such directions as it may consider appropriate, to –

(a) prevent, stop or discontinue any act or omission which is harmful to the environment;

(b) compel any public officer to take measures to prevent or discontinue any act or omission which is harmful to the environment; and

(c) provide compensation for any victim of pollution and the cost of beneficial uses lost as a result of an act of pollution and other losses that are connected with or incidental to the foregoing.

(3) A person bringing an action under this Article has the capacity to bring the action in court even if the person cannot show that the defendant's act or omission has caused or is likely to cause that person any personal loss or injury.

Environmental legislation.

242. Parliament shall enact legislation to give effect to the provisions of this chapter.

CHAPTER THIRTEEN

PUBLIC FINANCE AND REVENUE MANAGEMENT

Principles and objects of public finance and revenue management

- 243.** The primary object of the public finance and revenue management system of the Republic of Kenya is to -
- (a) ensure efficient and effective generation of revenue for the purposes of promoting and safeguarding the well-being of the people of Kenya;
 - (b) enhance the participation of people, communities and civil society organizations in public finance management;
 - (c) ensure equitable sharing of national and local resources throughout the Republic, taking into account the special provisions for marginalized areas
 - (d) ensure the equitable division of revenue raised nationally among national, provincial and district and local levels of government;
 - (e) ensure that in allocation and distribution of national revenue adequate consultation is conducted, and recommendations from various levels of government and sectors are considered; and
 - (f) ensure that the budgets and budgetary processes promote transparency, accountability and the effective financial management of the economy, debt and public sector

Imposition of tax

- 244.** (1) Subject to the provisions of the Constitution, no tax shall be imposed except under the authority of an Act of Parliament.
- (2) No person or authority may waive or vary any tax imposed by law except as expressly provided by an Act of Parliament.

(3) Any person or authority who waives or varies a tax and shall submit to Parliament within three months of such waiver and variation a report setting out –

- (a) the person or persons in whose favour the waiver or variation has been granted;
- (b) the amounts so waived or varied; and
- (c) the reasons upon which a waiver or variation has been granted.

The Consolidated Fund

245. (1) All revenues or other moneys raised or received for the purpose of or on behalf of, or in trust for, the Government shall be paid into and form a Consolidated Fund.

(2) The revenues or other moneys referred to in clause (1) of this Article shall not include revenues or other moneys –

- (a) that are payable by or under an Act of Parliament, into some other public fund established for a specific purpose; or
- (b) that may, under an Act of Parliament, be retained by the department of Government that received them for the purpose of defraying the expenses of that department.

Withdrawals from the Consolidated Fund.

246. (1) No moneys shall be withdrawn from the Consolidated Fund except -

- (a) to meet expenditure charged on the Fund by the Constitution or by an Act of Parliament; or
- (b) where the issue of those moneys has been authorized by an Appropriation Act, a Supplementary Appropriation Act or as provided under clause (4) of this Article.

(2) No moneys shall be withdrawn from any public fund other

than the Consolidated Fund, unless the issue of those moneys has been authorised by law.

(3) No moneys shall be withdrawn from the Consolidated Fund unless the withdrawal has been approved by the Controller of Budget in the manner prescribed by Parliament.

(4) If the Controller of Budget is satisfied that the Appropriation Act in respect of any financial year will not come into operation by the beginning of that financial year, the Controller of Budget may, subject to this Article, authorize the issue of moneys from the Consolidated Fund (not exceeding twenty percent of the budget of the previous year) for the purpose of meeting expenditure necessary to carry on the services of the Government in respect of the period expiring four months from the beginning of the financial year, or on the coming into force of the Appropriation Act, whichever is earlier.

Contingency Fund

246A Parliament shall make a provision for the establishment of a Contingency Fund and shall make laws to regulate the operations of that Fund

Financial year estimates

246B. (1) The Prime Minister shall prepare and lay before Parliament in each financial year, but in any case not later than two months before the commencement of the financial year, estimates of the revenues and expenditure of Government for the next financial year.

(2) The Prime Minister shall prepare a detailed fiscal and monetary strategic plan for economic and social development for a period of three years which shall be laid before Parliament together with the estimates.

(3) Parliament shall consider the strategic plan together with the estimates and may propose improvements or alterations thereto which shall be incorporated into the plan within thirty days.

(4) Subject to the Constitution, the head of any self-

accounting department, commission or organization set up under the Constitution, shall submit to the Prime Minister, at least two months before the end of each financial year, estimates of administrative and development expenditure and estimates of revenues of the respective department, commission or organization for the following year.

(5) The estimates prepared under clause (4) of this article shall be laid before Parliament by the Prime Minister under clause (1) of this article without revision but with any recommendations that the Government may have on them.

(6) At any time before Parliament considers the estimates of revenues and expenditure laid before it by or on the authority of the Prime Minister, an appropriate committee of Parliament shall discuss and review the estimates and make appropriate recommendations to Parliament.

(7) The committee of Parliament referred to in clause 6 shall in discussing and reviewing the estimates, seek representation from the public and the Economic and Social Commission and such recommendations shall be taken into account when the committee makes its recommendations to Parliament.

(8) Whenever, in the estimates prepared under clause (1), provision is made for an item or vote (other than the Contingency Fund) not relating to a specific item of expenditure, any moneys voted by Parliament in respect of that item or vote shall be under the control or supervision of Committee on Planning and Budgeting.

(9) The Prime Minister shall prepare and submit before Parliament –

- (a) fiscal and monetary programmes and plans for economic and social development covering periods exceeding one year; and
- (b) estimates of revenue and expenditure covering periods exceeding one year.

(10) Parliament may make laws to give effect to the provisions of this Article.

Charge on the Consolidated Fund

- 247** Parliament shall, in an Act of Parliament, prescribe the offices in respect of which the salaries and allowances are charged on the Consolidated Fund by the Constitution.

Appropriation Bill

- 248.** (1) The heads of expenditure contained in the estimates, other than expenditure charged on the Consolidated Fund by the Constitution or any Act of Parliament, shall be included in a Bill to be known as an Appropriation Bill which shall be introduced into Parliament to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure, and the appropriation of those sums for the purposes specified in the Bill.

- (2) If in respect of any financial year it is found –

- (a) that the amount appropriated for any purpose under the Appropriation Act is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or
- (b) that any moneys have been expended for any purpose or for a purpose for which no amount has been appropriated by that Act, a supplementary estimate showing the sums required or spent shall be laid down before Parliament and in the case of excess expenditure, within four months after the first drawing on the money is made:

provided that the sums required or spent in a supplementary estimate shall not in total exceed ten percent of the sums appropriated by Parliament for the respective purposes during that financial year.

- (3) Where, in respect of any financial year, a supplementary estimate or supplementary estimates have been approved by Parliament in accordance with clause (2) of this Article, a Supplementary Appropriation Bill shall be introduced into Parliament in the financial year next following that financial year to which the estimates relate, providing for the appropriation of the sums so approved for the purposes specified in those estimates.

- (4) The provisions of Article 242 (5) shall apply to

estimates prepared under clause (2) of this Article.

Power of Government to borrow

249. (1) Subject to the Constitution, the Government may borrow from any source.

(2) The Government shall not borrow, guarantee, or raise a loan on behalf of itself or any other public institution, authority or person, except as authorized by or under an Act of Parliament.

(3) An Act of Parliament made under clause (2) of this Article shall provide –

(a) that the terms and conditions of the loan shall be laid before Parliament and shall not come into force unless they have been approved by a resolution of Parliament; and

(b) that any moneys received in respect of that loan shall be paid into the Consolidated Fund, and form part of that Fund or into some other public fund which is existing or is created for the purpose of the loan.

(4) The Prime Minister shall, at such times as Parliament may determine, present to Parliament such information concerning any loan as is necessary to show –

(a) the extent of the total indebtedness by way of principal and accumulated interest;

(b) the provision made for servicing or repayment of the loan; and

(c) the utilization and performance of the loan.

(5) For the purposes of this Article, the expression “loan” includes any money lent or given to the Government on condition of return or repayment and any other form of borrowing or lending in respect of which –

(a) moneys from the Consolidated Fund or any other public fund may be used for payment or repayment; or

(b) moneys from any fund may be used for payment or

repayment.

Public Debt

- 250.** (1) The Public Debt of Kenya shall be charged on the Consolidated Fund and other public funds of Kenya.
- (2) For the purposes of this Article, the Public Debt includes the interest on that debt, sinking fund payments in respect of that debt and the costs, charges and expenses incidental to the management of that debt.

Central Bank of Kenya.

- 251.** (1) There is established the Central Bank of Kenya.
- (2) The Central Bank of Kenya shall be the only authority to issue the currency of Kenya.
- (3) The authority of the Central Bank of Kenya shall vest in a Board which shall consist of a Governor, a Deputy Governor and not more than five other members.
- (4) The Governor, the deputy Governor and all other members of the Board shall –
- (a) be appointed by the President with the approval of the National Assembly; and
 - (b) hold office for a term of five years but shall be eligible for re-appointment for one further term only.
- (5) A person shall not be qualified for appointment as the Governor unless such person has knowledge and experience in matter relating to economics, finance or accounting.
- (6) The Governor, the Deputy Governor or any other member of the Board may, subject to the Constitution, be removed from office by the President only for –
- (a) inability to perform the functions of his or her office arising from infirmity of body or mind;
 - (b) misbehaviour or misconduct; or

- (c) incompetence.

(7) The procedure for removal the Governor, the Deputy Governor or any other member of the Board under this Article shall comply with the requirements for the removal of holders of constitutional offices set out in Article 284 of this Constitution.

Functions of the Central Bank

252. (1) The Central Bank of Kenya shall -

- (a) promote and maintain the stability of the value of the currency of Kenya;
- (b) issue notes and coins;
- (c) act as banker and financial advisor of the Government;
- (d) conduct the monetary policy of the Government in a manner consistent with the relevant provisions of the law;
- (e) regulate the currency system in the interest of the balanced and sustainable economic growth of Kenya;
- (f) encourage and promote economic development, and the efficient utilization of the resources of Kenya through effective and efficient operation of a banking and credit system; and
- (g) do all such other things not inconsistent with this Article, as may be prescribed by law.

(2) In performing its functions, the Central Bank of Kenya shall and conform to the Constitution shall not be subject to the direction or control of any person or authority.

The Controller of Budget

253. (1) There shall be a Controller of Budget who shall be appointed by the President with the approval of the National Assembly and whose office shall be a constitutional office.

(2) A person shall not be appointed Controller of Budget unless

that person –

- (a) is a fully qualified accountant and finance expert of not less than fifteen years' standing; and
- (b) is a person of high moral character and proven integrity.

(3) The Controller of Budget shall oversee the implementation of the budget as approved by Parliament by:

- (a) ensuring that the money is spent as Parliament intended;
- (b) providing accounts of actual as opposed to budgeted expenditure;
- (c) providing technical advice to parliamentary finance committees;
- (d) working closely with the Treasury, departments and Ministries.

(4) The Controller of Budget shall submit annual reports to Parliament.

(5) Parliament shall, within three months after the submission of the report in clause (4) of this Article, debate and consider the report and take appropriate action.

(6) In performing his or her functions, the Controller of Budget shall not be under the direction or control of any person or authority

The Auditor-General

254. (1) There shall be an Auditor-General who shall be appointed by the President with the approval of the National Assembly and whose office shall be a constitutional office.

(2) A person shall not be appointed Auditor-General unless that person –

- (a) is a qualified accountant of not less than fifteen years' standing; and

(b) is a person of high moral character and proven integrity.

(3) The Auditor-General shall

- (a) audit the accounts of the Government and State corporations;
- (b) satisfy himself or herself that all moneys that have been appropriated by Parliament and disbursed have been applied to the purpose to which they were so appropriated and that the expenditure conforms to the authority that governs it; and
- (c) at least once every year audit and report on -
 - (i) the public accounts of Government of Kenya;
 - (ii) the accounts of all officers and authorities of that Government;
 - (iii) the accounts of all courts in Kenya;
 - (iv) the accounts of every commission established by this Constitution;
 - (v) the accounts of the Clerk of the National Assembly and the National Council; and
 - (vi) the accounts of political parties funded from public funds.

(4) Parliament shall, within three months after the submission of the report referred to in clause (3) (c) of this Article, debate and consider the report and take appropriate action.

(5) In performing his or her functions, the Auditor-General shall not be under the direction or control of any person or authority.

(6) The President may, acting in accordance with the advice of Cabinet, require the Auditor-General to audit the accounts of any body or organisation referred to in clause (2) (c) of this Article.

Removal from office

255. Subject to the Constitution, the Controller of Budget and Auditor-General may be removed from office by the President only for –

- (a) inability to perform the functions of his or her office arising from infirmity of body or mind;
- (b) misconduct; or
- (c) incompetence.

Accounts and audit

256. (1) The accounts of the offices of the Controller of Budget and Auditor-General shall be audited and reported on by an auditor appointed by National Assembly.

(2) The Permanent Secretary in charge of a Ministry or an accounting officer in charge of a department or a public body shall be accountable to Parliament for funds in that Ministry or department or public body.

(3) Any person holding a political office who directs or concurs in the use of public funds contrary to existing instructions shall be accountable for any loss arising from that use and shall be required to make good the loss even if he or she has ceased to hold that office.

(4) Parliament shall monitor all expenditure of public funds.

Economic and Social Council

257. (1) There is established an Economic and Social Council which shall consist of twenty-one persons of appointed by the President acting on the advice of the Prime Minister.

(2) Persons appointed to the Council shall:

- (b) be highly qualified and experienced in economic and social development matters; and
- (c) have no partisan affiliation once appointed to the Council.

- (3) The functions of the Council shall include -
- (a) to advise the Government and Parliament on matters of economic and social concern to the people of Kenya;
 - (b) to consider and report to Parliament on all bills and budgetary proposals introduced in Parliament;
 - (c) to monitor progress towards achievement of the rights of Kenyans affecting their living standards, particularly, the living standards of the poor and the disadvantaged.
- (4) The Council shall advise the Government on the formulation, implementation, monitoring and evaluation of strategic economic and social policies for optimizing -
- (a) the collection and expenditure of Government revenue;
 - (b) the acquisition and servicing of the Government's domestic and external borrowing;
 - (c) the acquisition and disposal of Government assets, property and institutions and for the privatization and commercialization of Government services;
 - (d) generation of additional revenue for the exchequer, local authorities and other levels of Government;
 - (e) the promotion of domestic and foreign investment with a view to enhancing the revenue base of the nation;
 - (f) the attainment of equity in the generation and expenditure of revenue, including measures to ensure affirmative action in respect of disadvantaged groups in society and areas of the country;
 - (g) the promotion of industrial development;
 - (h) the provision of social security and welfare;
 - (i) ways and means of monetising domestic services

and other labour in the informal sector of the economy;

- (j) the development of viable linkages between taxation and delivery of services;
- (k) the performance of institutions charged with financial responsibilities; and
- (l) any other related matters.

(5) In performing its functions, the Economic and Social Commission may-

- (a) conduct research as may be required to establish economic and social standards and benchmarks;
- (b) liaise with any constitutional institution on matters of common concern;
- (c) publish its report and recommendations; and
- (d) establish its own rules and procedures.

(6) The Council shall report regularly to the President, Prime Minister and Parliament.

(7) Subject to this Article, Parliament may make legislation -

- (a) prescribing and regulating the functions of the Commission; and
- (b) prescribing the form, content and manner of submitting the reports required under clause (5).

CHAPTER FOURTEEN

THE PUBLIC SERVICE

Part I – Public Administration

Values and principles in administration generally

258. The guiding values and principles of public administration include –

- (a) maintenance and promotion of a high standard of professional ethics;
- (b) promotion of efficient, effective and economic use of resources;
- (c) impartial, fair and equitable provision of services;
- (d) encouragement of people to participate in the process of policy making;
- (e) prompt and timely response to people's needs;
- (f) accountability for administrative acts of omission and commission;
- (g) transparency fostered by providing the public with timely, accessible and accurate information;
- (h) merit as the basis of appointments and promotions;
- (i) adequate and equal opportunities for training and advancement of men and women equally, and the members of all ethnic groups; and
- (j) reflection of ethnic composition of the population in the composition of the public service at all levels.

The Public Service Commission.

- 259.** (1) There is established a Public Service Commission within the public administration.
- (2) The Commission shall consist of a Chairperson, a Deputy Chairperson and seven other members appointed by the President with the approval of the National Council.
- (3) A member of the Commission shall hold office for a term of five years and is eligible for reappointment for one further term.

Powers and functions.

- 260.** (1) The powers and functions of the Commission are –
- (a) to promote the values and principles set out in Article 14 throughout the public service;
 - (b) to investigate, monitor and evaluate the organization and administration, and the personnel practices, of the public service;
 - (c) to propose measures to ensure efficient and effective performance;
 - (d) to give directions so as to ensure that procedures relating to personnel, recruitment, transfers, promotions and dismissals comply with the values and principles set out in Articles 14 and 258;
 - (e) to report on the activities and the performance of its functions, and to evaluate that the extent to which the values and principles set out in Articles 14 and 258 are complied with;
 - (f) to monitor and investigate adherence to applicable procedures in the public service;
 - (g) to appoint, promote and exercise disciplinary control over persons holding office in the

public service of Kenya as provided in Article 261 of the Constitution;

- (h) to review the terms and conditions of service, code of regulations, training and qualifications of public officers and matters connected with personnel management and development of the public service and make recommendations on them to Government; and
- (i) to perform such other functions as may be prescribed by the Constitution or any other law.

(2) Parliament may enact legislation for the better functioning of the Commission.

Establishment of offices

261. (1) Except where there is a contrary provision in this Constitution, the power to constitute offices for the Republic and the power to abolish any such offices shall vest in the Commission,

(2) Except where there is a contrary provision in this Constitution, the power to appoint persons to hold or to act in offices constituted for the Republic of Kenya, to confirm appointments, to exercise disciplinary control over persons holding or acting in such offices and to remove such person from office, shall vest in the Commission.

Appointment of public officers

262. (1) Subject to the provisions of this Constitution, the Public Service Commission shall appoint persons to hold or act in any office in the public service of Kenya of the rank below that of Permanent Secretary, including confirmation of appointments, the exercise of disciplinary control over such persons and their removal from office.

(2) Except with the consent of the President, no person shall be appointed under this Article to act in any office on the personal staff of the President.

Protection of public officers.

263. A public officer shall not be –

- (a) victimized or discriminated against for having performed his or her duties in accordance with the Constitution; or
- (b) dismissed or removed from office or demoted in rank or otherwise punished without due process of the law.

Part II - Kenya Police Service

Principles and objects

264. (1) The primary object of the Kenya Police Service is to work with and for the people to ensure –

- (a) a peaceful and safe environment;
- (b) the protection of rights and freedoms;
- (c) the security of the people;
- (d) the prevention and detection of crime;
- (e) the support of victims of crime and disorder;
and
- (f) the protection of property.

(2) In furtherance of these objects the Service will-

- (a) strive for the highest standards of professionalism;
- (b) work to eliminate and avoid corruption of all sorts;
- (c) avoid bias or discrimination with regard to political groups or other sections of society;
- (d) observe human rights standards;

- (e) train staff to the highest possible standards of competence, integrity and respect for human rights and dignity;
- (f) recognize the duty of accountability to society and democratic institutions;
- (g) build up relationships with the broader society;
- (h) train its members, including members of any paramilitary, armed or riot police units, to the highest possible standards of competence, minimal use of force, integrity and respect for human rights and fundamental freedoms and dignity, and to recognize the duty of accountability to society; and

Establishment of the Kenya Police Service

265. (1) There is established a service to be known as the Kenya Police Service.

(2) Subject to this Constitution, the Police Service shall be organized and administered in such a manner and shall have such functions as Parliament may prescribe.

(3) The Police Service shall be professional and disciplined.

(4) The Police Service shall remain a national police force, and the division of its functions shall be organized to take into account the structure of devolution.

(5) The Police Service shall work closely with communities to ensure security and safety for all citizens through community policing.

Appointment of the Commissioner of the Kenya Police Service

266. (1) There shall be a Commissioner of Kenya Police Service.

(2) The Commissioner shall be appointed by the President with the approval of Parliament for one term of ten years.

- (3) No person may be appointed as Commissioner unless that person -
 - (a) has a degree from a recognized university; and
 - (b) has served in the police service for at least ten years.
- (4) The Kenya Police Service shall be under the command of the Commissioner who shall be assisted by two deputy Commissioners.
- (5) The Commissioner shall be subject to, and act in accordance with the Constitution and laws of Kenya; except that on matters of policy, the President acting on the advice of the prime Minister, may give direction to the Commissioner.
- (6) The Commissioner of Police may be removed from office by the President for good cause, with approval of Parliament.

Part III- Kenya Correctional Services

Principles and objects

267. (1). The primary object of the Kenya Correctional Service is to rehabilitate persons convicted of crime, and facilitate the return of those persons to useful lives in the community
- (2) To protect the well being of Kenya, the Kenya Correctional Service shall be structured and regulated so as to -
- (a) achieve the highest standards of professionalism among its members and by its members in the exercise of their respective powers;
 - (b) eliminate and avoid corruption of any kind among its members;

- (c) observe human rights standards in the exercise of its powers; and
- (d) train its members to the highest possible standards of competence, minimal use of force, integrity and the respect for human rights and fundamental freedoms and dignity, and to recognize the duty of accountability to society;

Establishment of the Kenya Correctional Services

- 268.** (1) There is established a service to be known as the Kenya Correctional Services.
- (2) Subject to this Constitution, the Kenya Correctional services shall be organized and administered in such a manner and shall have such functions as Parliament may by law prescribe.
- (3) The Kenya Correctional Services shall be professional and disciplined.

Appointment of Director of the Kenya Correctional Services

- 269.** (1) The President, on the advice of the Prime Minister and after approval by Parliament, shall appoint the Director of the Kenya Correctional Services
- (2) Parliament shall enact legislation -
- (a) establishing adequate mechanisms for accountability and governance of the Kenya Correctional Services.
 - (b) providing for the organization, administration and function of the Kenya Correctional Services; and
 - (c) regulating generally the Kenya Correctional Services

Part IV – Interpretation

Interpretation

270. In this Chapter, unless the context otherwise requires –

“public officer” means any person holding or acting in an office in the public service;

“public service” means service in any civil capacity of the government, including the police and prison services, the emoluments for which are payable directly from the Consolidated Fund or directly out of moneys provided by Parliament.



CHAPTER FIFTEEN

THE DEFENCE FORCES AND NATIONAL SECURITY

Principles and Objects of Defence and National Security

- 271.** (1). The primary object of the Defence Forces and security system of the Republic of Kenya is to safeguard the well-being of the people of Kenya, the peace, national unity and integrity of the Republic.
- (2) The defence and national security of the Republic of Kenya shall be promoted and guaranteed in accordance with the following principles -
- (a) National security is subject to the authority of the Constitution and Parliament;
 - (b) National security shall be pursued in compliance with the law, including international law, and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms; and
 - (c) The Defence Forces shall endeavour to learn from, and make use of, the experience and traditions of the diverse communities within Kenya, and their leaders, in making and maintaining peace;
- (3) The Defence Forces shall act and train and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements that are binding on Kenya
- (4) In the performance of their functions, the Defence Forces and every member of the Defence Forces shall not -
- (a) act in a partisan manner;
 - (b) further any interest of a political party or cause; or
 - (c) prejudice a political interest or political cause that is legitimate in terms of the Constitution.

Establishment of the National Security Council.

272. (1) There is established a National Security Council consisting of –

- (a) The President;
- (b) The Vice President;
- (c) The Prime Minister;
- (d) The Minister in Charge of Defence;
- (e) The Chief of General Staff;
- (f) Army Commander;
- (g) Navy Commander;
- (h) Air Force Commander;
- (i) The Commissioner of Police;
- (j) The Director of Kenya Correctional services;
- (k) Director of National Security Intelligence Service;
- (l) The Chairperson of the relevant Parliamentary Committee; and
- (m) The Attorney General.

(2) The President shall preside at the meetings of the Council, and, in the absence of the President, the Vice-President, and in the absence of the Vice President, the Prime Minister shall preside.

(3) The Council shall make rules of procedure to guide the conduct of its meetings.

(4) The Council shall elect or appoint its secretary from among its members.

Functions of the National Security Council

273. (1) the National Security Council has the responsibility-

- (a) to ensure the integration of the domestic, foreign and military polices relating to the national security in order to enable the military services, departments and agencies to co-operate effectively in matters relating to national security;
- (b) to assess and appraise the objectives commitments and risks of the Republic in

relation to actual and potential military power in the interests of national security; and

- (c) to consider policies on matters of common interests to the departments and agencies of environment concerned with national security, and to exercise supervisory control over these departments.

(2) The Prime Minister shall keep the President informed on the state of the security of the Republic and of the deliberations of the Council.

(3) Where a state of emergency is declared by the President, the Council shall be the authority responsible, subject to the Constitution, for taking and implementing the measures that are reasonably justifiable for dealing with the situation that had arisen.

(4) An agency, establishment or any other organization concerned with national security that not be established except by or under an Act of Parliament.

Defence Forces

274. (1) No one may raise a defence force or military or a Paramilitary organization except by or under the authority of an Act of Parliament.

(2) There is established a Defence Forces Council consisting of –

- (a) The President;
- (b) The Vice President;
- (c) The Prime Minister;
- (d) The Minister in Charge of Defence;
- (e) The Chief of General Staff;
- (f) Army Commander;
- (g) Navy Commander; and
- (h) Air Force Commander.

Commanding officers.

275. (1) The Chief of General Staff of the Defence Forces shall be appointed by the President in consultation with the National Security Council.

(2) The Chief of General Staff of the Defence Forces, subject to this Article, is responsible for the operational use and the general administration of the Defence Forces.

(3) The President, acting in accordance with the recommendations of Defence Forces Council shall appoint-

(a) the Army Commander who is responsible to the Council and for the administration of the Army;

(b) the Naval Commander who is responsible to the Council and for the administration of the Navy; and

(c) the Air Force Commander who is responsible for the Council and administration of the Air Force.

(4) Each of the officers referred to in Clause (4) is subject to the general direction of the Defence Forces Council.

(5) The President, acting in accordance with the recommendation of the Defence Forces Council –

(a) shall grant commissions to officers of the Defence Forces; and

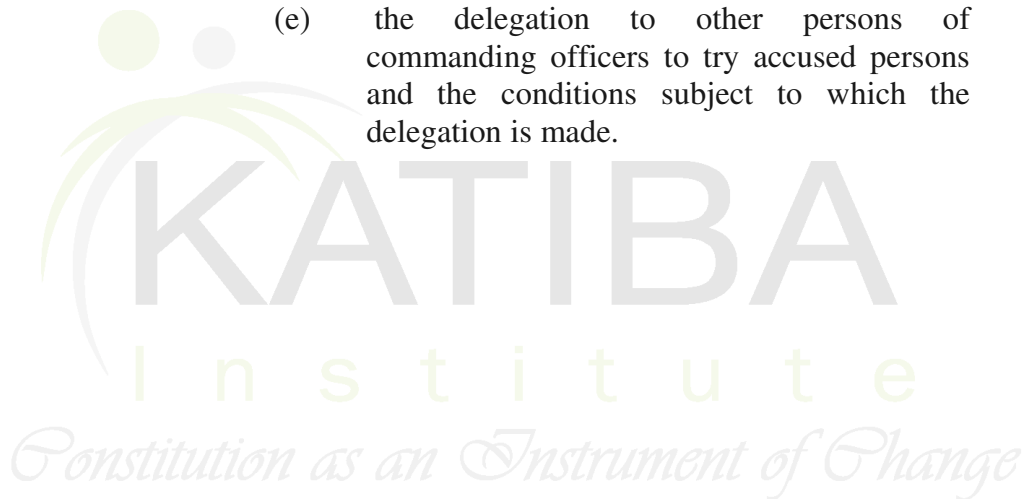
(b) shall appoint persons to office or to act in an office in the Defence Forces;

(6) Subject to the Constitution, the Defence Forces Council may make regulations for the effective and efficient administration of the Defence Forces.

(7) The Regulations shall include matters relating to:

(a) the control and administration of the Navy, the Army and the Air Force;

- (b) the ranks of officers and of the men and women of each Defence Forces, the member of each rank and the use of he weapons by the officers, men and women;
- (c) the conditions of service, including conditions of service relating to the enrolment and to the pay, pensions, gratuities and other allowances of the officers, men and women of the Defence Forces;
- (d) the authority and process of command of the officers men and women of the Defence Forces; and
- (e) the delegation to other persons of commanding officers to try accused persons and the conditions subject to which the delegation is made.



CHAPTER SIXTEEN

LEADERSHIP AND INTEGRITY

Application of Chapter

- 276. (1)** This Chapter applies to -
- (a) the President;
 - (b) the Prime Minister, the Deputy Prime Ministers, the Ministers and the Deputy Ministers;
 - (c) all members of the Parliament;
 - (d) all members of local councils;
 - (e) all constitutional office-holders within the meaning of Article 293; and
 - (f) all other public officers.

Responsibilities of office

- 277. (1)** A person to whom this Chapter applies has a duty to conduct himself or herself in such a way, both in public or official life and in private life, and in his or her association with other persons, as not to-
- (a) place himself or herself in a position in which they have or could have a conflict of interests or might be compromised when discharging their public or official duties; or
 - (b) demean his or her office or position; or
 - (c) allow his or her public or official integrity, or personal integrity, to be called into question; or
 - (d) endanger or diminish respect for and confidence in the integrity of the Government of Kenya.

(2) In particular, a person to whom this Chapter applies shall not use his or her office for personal gain, or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether they are carrying out or have carried out the duty imposed by clause (2).

(3) It is a further duty of a person to whom this Chapter applies
—

(a) to ensure, as far as is within his or her lawful power, that those persons for whom they are responsible, including spouse, children, nominees, trustees and agents, do not conduct themselves in a way that might be expected to give rise to doubt in the public mind as to their complying with their duties under this section; and

(b) if necessary, to publicly disassociate themselves from any activity or enterprise of any of their associates, or of a person referred to in paragraph (a), that might be expected to give rise to such a doubt.

(4) The Commission on Ethics and Integrity may, subject to this Chapter and to any legislation which may be enacted for the purposes of the better implementation of this Chapter, give directions, either generally or in a particular case, to ensure the attainment of the objects of this Article.

(5) This chapter applies to a person who-

(a) is convicted of an offence in respect of their office or position or in relation to the performance of their functions or duties; or

(b) fails to comply with a direction under clause (4) or otherwise fails to carry out the obligations imposed by clauses (1), (3) and (4),

(6) The Leadership and Integrity Code of Conduct set out in the Fifth Schedule shall apply to all persons to whom this Chapter applies.

(7) In this Chapter, ‘public officer’ has the meaning prescribed in Article 270.

CHAPTER SEVENTEEN

CONSTITUTIONAL COMMISSIONS AND CONSTITUTIONAL OFFICES

Principles applicable to all commissions

278. The principles provided for in this Chapter apply to all constitutional commissions.

Objects and independence of commissions

279. (1) The objectives of constitutional commissions established by this Constitution are to:

- (a) protect the sovereignty of the people,
- (b) secure the observance by all organs of government of democratic principles and values, and
- (c) ensure the maintenance of constitutionality.

(2) In the performance of their functions, constitutional commissions are subject-

- (a) only to the Constitution and not to the direction or control of any other person or authority, and
- (b) shall be impartial and perform their functions without fear or favour or prejudice.

(3) A Constitutional Commission shall where appropriate, establish branches at the provincial and district level, and offer their services free of charge

Incorporation

280. (1) A Constitutional Commission is a body corporate and shall-

- (a) have perpetual succession and a common seal
- (b) in its corporate name be capable of suing and being sued; and
- (c) subject to this Constitution be capable of performing such other functions as a body corporate may perform.

Composition of Commissions

281. (1) A Constitutional Commission shall consist of not less than three and not more than ten members at least one-third of whom shall be women.

(2) The chairperson and the other members of a Constitutional Commission shall be appointed by the President with the approval of Parliament

(3) A member of a constitutional commission-

- (a) holds office for a term of five years, and is eligible for re-appointment for only one further term;
- (b) retires from office on attaining the age of sixty-five years;
- (c) shall not hold any other office of profit or emolument or any other employment whether public or private, directly or indirectly; and
- (d) shall comply with the Leadership and Integrity Code of Conduct.

(4) A member of a constitutional commission is not liable to an action or a suit for a matter or anything done in good faith in the performance of a function of office as a member

General functions of Commissions

- 282.** (1) A Constitutional Commission shall seek to educate the public on its role, purpose and functions and
- (a) may conduct investigations, on its own initiative or on complaint made by a member of the public;
 - (b) has the powers of the High Court to issue summons, compel attendance to give evidence or produce documents for the purposes of its investigations;
 - (c) has the powers necessary for conciliation, mediation and negotiation with the aim of reaching an amicable settlement;
 - (d) may award compensation; and
 - (e) may commit a person, or an organization to the High Court for contempt.
- (2) Complaints may be lodged directly by an aggrieved individual, or a member of the individual's family or by an interested person or an organization.
- (3) Where a complaint is made orally to a Constitutional Commission, it shall be reduced to writing by an official of the Constitutional Commission.

Proceedings of Commissions

- 283.** The proceedings of a Constitutional Commission are valid although there is a vacancy in its membership.

Removal from office

- 284.** (1) Where the President considers that a member of a constitutional commission should be removed from office, the President shall appoint a tribunal to investigate the matter, and report on the facts to the President with the recommendations whether or not the member should be removed.

(2) The tribunal shall consist of the chairperson and four other members appointed by the President from among persons,

- (a) who hold or have held office as judge of the superior courts of record, or
- (b) who are qualified to be appointed as High Court judges, or
- (c) who are advocates of not less than fifteen years standing.

(3) Where reference is made to a tribunal for the removal from office of a member, the President may suspend that member from the performance of the functions of office as a member.

(4) The President may revoke a suspension under clause (3), but shall remove the member from office where the tribunal recommends removal.

Funds of the Commissions

285. (1) The funds of a Constitutional Commission include -

- (a) moneys voted by Parliament for the purposes of the commission; and
- (b) any other moneys received by the commission in the performance of its functions.

(2) A Constitutional Commission shall submit its estimates of revenue and expenditure to the relevant Parliamentary Committee for approval by Parliament.

(3) The administrative expenses of a Constitutional Commission including salaries, allowances and pensions payable to, or in respect of, persons serving with the commission are a charge on the Consolidated Fund.

(4) Within three months after the end of the financial year, a constitutional commission shall submit its books and records of account to the Auditor-General for audit

(5) The Auditor-general shall within three months after submission of the books and records of account, submit the report on the account to the President, the constitutional commission and to relevant Parliamentary Committees.

Annual and other reports

286. (1) Within seven months after the end of the financial year a Constitutional Commission shall submit a report to the President and to Parliament

(2) The report shall contain-

(a) a statement on its performance in meeting its objectives;

(b) a statement on its activities for the year and its projection on its future activities; and

(c) the report of the Auditor-General.

(3) Parliament may, at any time, request a Constitutional Commission to send to it a report on a particular issue.

(4) The President shall respond to the report of a Constitutional Commission in writing to Parliament which shall debate the report together with the response of the President.

Special Constitutional Commissions

287. In addition to such other Commissions as are established elsewhere in this Constitution, the following special commissions are established.

(a) The Commission on Human Rights and Administrative Justice

(b) The Ethics and Integrity Commission

(c) The Salaries and Remuneration Commission

(d) The Teachers Service Commission

(e) The Constitution Commission

The Commission on Human Rights and Administrative Justice

288. (1) The Commission on Human Rights and Administrative Justice shall consist of-

- (a) the Chairperson;
- (b) the Human Rights Commissioner;
- (c) the People's Protector;
- (d) the Gender Commissioner; and
- (e) any such other commissioners not exceeding six in number as may be appointed in accordance with this Constitution.

(2) Of the six commissioners referred to in clause (1)-

- (a) one shall have knowledge and experience in matters relating to children and shall ensure that the provisions of Article 37 of the Bill of Rights are adhered to;
- (b) one shall be a person with disability who has knowledge and experience in matters relating to disability and shall ensure that the provisions of Article 39 the Bill of Rights are adhered to; and
- (c) one shall have knowledge and experience in matters relating to basic needs.

(3) The functions of the Commission on Human Rights and Administrative Justice are:

- (a) in relation to the jurisdiction of the Human Rights Commissioner-
 - (i) to promote respect for human rights and develop a culture of human rights;
 - (ii) to promote respect for gender equality and equity including the

protection and development of gender equality and equity;

(iii) to promote the protection, development and attainment of human rights in public and private institutions;

(iv) to monitor and access the observation of human rights in all spheres of life in the Republic;

(v) to promote high standards of human rights in the Republic;

(vi) investigate and to report on the observation of human rights;

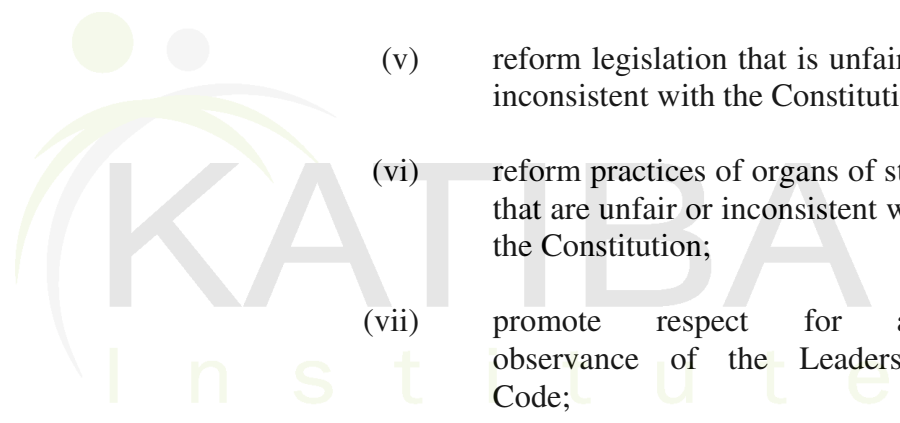
(vii) take steps to secure appropriate redress where human rights have been violated;

(viii) to investigate any conduct in state affairs or in the public administration in any sphere of government that is alleged or suspected to be improper or that could result in any impropriety or prejudice; and

(ix) investigate human rights within the disciplined forces including their relationships with the public.

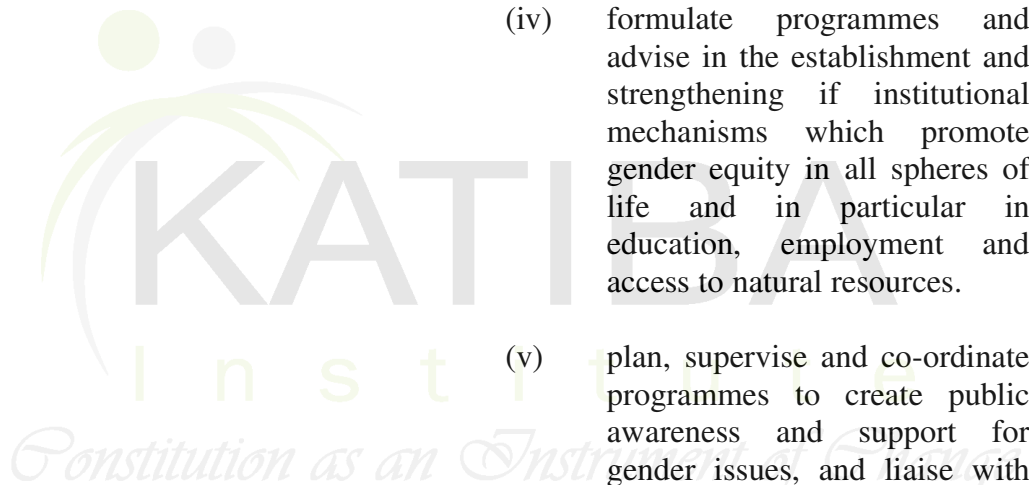
(b) in relation to the jurisdiction of the People's Protector to-

(i) ensure that government departments, local government authorities, publicly owned business, bodies created under statute, public office holders and all other organs of the State, responsive to the needs of the people and provide prompt remedy in cases of failure;

- 
- The logo for KATIIBA Institute features a stylized green and grey figure with arms raised, positioned above the text 'KATIIBA' in large, bold, grey letters. Below this, the word 'Institute' is written in a smaller, green, sans-serif font. At the bottom of the logo, the phrase 'Constitution as an Instrument of Change' is written in a light green, italicized script.
- (ii) receive complaints about abuse of power, unfair treatment, manifest injustice, or corrupt unlawful oppressive or unfair official conduct;
 - (iii) initiate investigations, conduct research and make recommendations to improve the functioning of government bodies;
 - (iv) improve the standards of competence, honesty, integrity and transparency in the public services;
 - (v) reform legislation that is unfair or inconsistent with the Constitution;
 - (vi) reform practices of organs of state that are unfair or inconsistent with the Constitution;
 - (vii) promote respect for and observance of the Leadership Code;
 - (viii) investigate and report on any conduct in state affairs, or in the public administration, that is alleged or suspected to be improper or to result in any impropriety or prejudice; and
 - (ix) recommend appropriate remedial action.
- (c) in relation to the jurisdiction of the Gender Commissioner to-
- (i) promote gender equality and equity, co-ordinate and facilitate mainstreaming in national development and to

advise the Government on any of those matters,

- (ii) promote, respect for gender equality and equity and investigate and seek to resolve any gender related complaints,
- (iii) participate in the formulation of national development policies and exercise general supervision over the implementation of national policy on gender and development,
- (iv) formulate programmes and advise in the establishment and strengthening of institutional mechanisms which promote gender equity in all spheres of life and in particular in education, employment and access to natural resources.
- (v) plan, supervise and co-ordinate programmes to create public awareness and support for gender issues, and liaise with the ministries, departments and other agencies of the Environment on gender issues,
- (vi) advise Government on appropriate allocation of resources to ensure gender mainstreaming, monitor and evaluate policies, practices and adherence to domestic and international law with a view to ensuring compliance with the requirements of the gender provisions of the Constitution, by organs of state at all levels, statutory bodies, public bodies, enterprises and institutions, and



- (viii) evaluate Acts of Parliament, any system of personal and family law, customary laws and other laws with a view to ensuring compliance with the gender provision in the Constitution, and
 - (ix) act as the Government's chief agent in ensuring compliance with obligation under international treaties and conventions on human rights.
- (d) in relation to the jurisdiction of any other Commissioner, to perform such functions as may be assigned to them by the Commission.

The Ethics and Integrity Commission

- 289.** (1) The Ethics and Integrity Commission shall consist of -
- (a) the Chairperson; and
 - (b) six other members all of whom shall be persons of integrity and high moral character.
- (2) The functions of the Ethics and Integrity Commission are to-
- (a) receive declarations in accordance with the Leadership Code;
 - (b) retain custody of the declarations and make them available for inspection by any citizen on the terms and conditions prescribed by Parliament;
 - (c) ensure compliance with and where appropriate, enforce the Leadership Code of law relating to the Leadership Code;
 - (d) receive complaints about non-compliance with or breach of the Leadership Code or a

law in relation to the Leadership Code, to investigate the complaint and where appropriate refer the complaints to the relevant authorities for action where it is called for;

- (e) investigate whether persons who have availed themselves for appointment as public officers or who avail themselves or are prepared to stand for public elections for public offices are free of corruption and therefore fit and proper persons for those offices;
- (f) disqualify on investigation as in paragraph (e) those who are found not suitable for public office in terms of the Code or in terms of the law;
- (g) appoint, promote, dismiss, manage and exercise disciplinary control over the staff in accordance with an Act of Parliament enacted for that purpose;
- (h) perform any other functions conferred on it by Parliament, or an Act of Parliament;
- (i) put in place measures aimed at the prevention of corruption;
- (j) investigate instances of corruption;
- (k) exercise the practices and procedures of public bodies and shall ensure that they are not conducive to corruption;
- (l) advise the heads of public bodies on the changes necessary to eliminate the likelihood of corruption; and
- (m) educate the public on the dangers of corruption.

(3) A declaration of wealth under this Article is required-

- (a) in the case of a person then in office, within three months of the commencement of the Leadership and Integrity Code; or
- (b) in any other case within three months of the assumption of office by any person; and
- (c) thereafter on annual basis.

(4) The Commission shall not investigate any matter-

- (a) pending before a court of competent jurisdiction or a judicial tribunal;
- (b) relating to the legislative power of Parliament;
- (c) the prosecution of which lies in the discretion of the Director of Public Prosecutions; or
- (d) relating to the granting of honours or a pardon.

Salaries and Remuneration Commission

290. (1) The Salaries and Remuneration Commission shall consist of:

- (a) the Chairperson;
- (b) one representative from the Attorney General's office;
- (c) one representative from the Public Service Commission;
- (d) one nominee representing professional bodies;

- (e) one nominee from an umbrella body representing employees;
- (f) one nominee from an umbrella body representing trade unions; and
- (g) one representative from Treasury.

(2) The functions of the Salaries and Remuneration Commission are to set the salaries, allowances, pensions and other benefits of all constitutional office holders and members of all constitutional commissions including-

- (a) the President, Vice-president, the Prime Minister, the Deputy Prime Ministers, the Ministers and Deputy Ministers;
- (b) members of Parliament;
- (c) the Attorney-General, Judges, the Director of Public Prosecutions, the Auditor-General and the members of constitutional commissions;
- (d) other public officers including employees of parastatals.

(3) The Commission is the custodian of the Leadership and Integrity Code of Conduct and of the register of the assets and liabilities of public officers.

Teachers Service Commission

291. (1) The Teachers Service Commission shall consist of:

- (a) the Chairperson; and
- (b) six other members.

(2) The functions of the Teachers Service Commission are-

- (a) in consultation with the Public Service Commission, to recruit and employ registered teachers;

- (b) to assign teachers employed by the commission for service in any public school;
- (c) to promote and transfer any such teacher;
- (d) to terminate the employment of any such teacher; and
- (e) to do anything which is incidental or conducive to the exercise of its powers under paragraphs (a) to (d).

(3) The commission shall keep under review the standards of education, training and fitness to teach appropriate to persons entering the teachers service and the supply of teachers and to tender advice to the Government on matters relating to the teaching profession.

Constitution Commission

292. (1) The Constitution Commission shall consist of-

- (a) the Chairperson; and
- (b) four other members.

(2) The functions of the Constitution Commission are to-

- (a) ensure the implementation of the provisions of the Constitution which require new legislation and administrative action for full implementation;
- (b) to report twice a year to Parliament on the progress on implementation of the Constitution;

- (c) to outline the special difficulties that obstruct the timely implementation of the Constitution; and
- (d) to work closely with the chairpersons of the constitutional commissions and office holders to ensure that the letter and the spirit of the particular provisions of the Constitution are respected.

(4) The Commission-

- (a) may recommend measures on legislative and administrative matters to ensure and sustain the values of the Constitution;
- (b) shall report on any proposed amendments to the Constitution before or after the introduction of the Bill for amendment and to achieve that, the Commission may hold public hearings to receive the views of the people; and
- (c) shall hold consultations with the President aimed at safeguarding the Constitution.

Constitutional offices

293. (1) The following Constitutional Offices are established elsewhere in the Constitution-

- (a) Attorney- General
- (b) Auditor-General
- (c) Controller of the Budget
- (d) Director of Central Bureau of Statistics
- (e) Director of the Kenya Correctional services
- (f) Director of the Kenya Police Service
- (g) Director of Public Prosecutions
- (h) Governor of Central Bank
- (i) Public Defender

(2) The principles applicable to all commissions in terms of this Chapter apply with the necessary modification and adaptations to the holders of constitutional offices.

CHAPTER EIGHTEEN

AMENDMENT OF THE CONSTITUTION

Constitutional Amendment

294. (1) Subject to the provisions of this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this Article.

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in its second and third reading in each House by not less than two thirds majority of the total membership of that House it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

(3) An amendment that seeks to make any change in-

- (a) the territory of Kenya as set out in Article 7 (1) and described in the First Schedule of the Constitution;
- (b) the sovereignty of the people
- (c) the principles and values of the Republic as set out in Article 6 (2) of the Constitution;
- (d) the Bill of Rights;
- (e) the structure, values and principles of devolution as set out in Chapter ten of the Constitution ;
- (f) citizenship; and
- (g) the provisions of this Article,

shall also require ratification by the people in a referendum before the Bill making provision for such amendment is presented to the President for assent.

Amendment by Parliament.

295. (1) A Bill for an Act to amend any provisions of the Constitution, other than the Articles referred to in Article 294 (3), shall not be taken as passed unless it is supported by the votes of two-thirds majority, at the second and third reading.

(2) The committee on Good Governance and Public Participation shall publicize and facilitate discussion on the Bill.

Certificate of compliance

296. (1) The second and third readings referred to in Article 295 shall be separated by ninety days.

(2) A Bill for the amendment of the Constitution which has been passed in accordance with this Chapter, shall be assented to by the President only if –

- (a) it is accompanied by a certificate of the Speaker that the provision of this Chapter have been complied with in relation to it; and
- (b) in the case of a Bill to amend the provisions to which Article 294 (3) apply, it is accompanied by a certificate of the Electoral Commission that the amendment has been approved at a referendum or, as the case may be, ratified by local authorities in accordance with this Chapter.

(3) Where, in the case of a Bill to which clause (2) of this Article applies, the President –

- (a) refuses to assent to the Bill; or
- (b) fails to assent to the Bill within thirty days after the Bill is submitted,

the President shall be taken to have assented to the Bill and the Speaker shall cause a copy of the Bill to be laid before Parliament and the Bill shall, notwithstanding Article 294 (2) become law without the assent of the President.



CHAPTER NINETEEN

INTERPRETATION

Interpretation

297. (1). In this Constitution unless the context otherwise requires -

“civil society” means any socially organized entity bound by a legal set of shared rules that is voluntary self generating, self-supporting and autonomous from the state;

“financial year” means the period of twelve months ending on 30th June or on such other day as Parliament may prescribe;

“person” includes a body of persons corporate or unincorporated.

“political party” means a political party which is duly registered under any law which requires political parties to be registered, and which has complied with the requirements of any law as to the constitution or rules of political parties;

“public officer” means a person holding or acting in an office in the public service.

“sitting” means, in relation to a House of Parliament, a period during which the House is sitting without adjournment and includes any period during which it is in committee;

“subordinate court” means a court of law in Kenya other than-

- (a) the High Court
- (b) the Court of Appeal
- (c) the Supreme Court

(d) a court-martial.

“writing” includes printing and any other mode of reproducing words in a visible form.

(2) Except where the context otherwise requires, any powers conferred upon Parliament by this Constitution to establish, provide for or prescribe any matter or thing shall be exercisable by Act of Parliament.

(3) For the purposes of this Constitution, a person shall not be regarded as holding an office by reason only of the fact that the person is in receipt of a pension or other similar allowance.

(4) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating that person's office shall be construed as including, to the extent of the person's authority, a reference to any person for the time being authorized to exercise the functions of that office.

(5) Where the Constitution confers power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion arises.

(6) No provision of this Constitution that a person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.

(7) In this Constitution, unless the context otherwise requires, words in the singular shall include the plural, and words in the plural shall include the singular.

(8) Where an order, regulation or rule, or any amendment or revocation thereof, made under a power conferred by this Constitution comes into force on a particular day, it shall come into force at the beginning of that day.

- (9) Where a power is conferred by this Constitution to make an order, regulation or rule or pass a resolution or give a direction or make a declaration or designation, the power shall be construed as including the power, exercisable in the same manner and subject to the same conditions, if any, to amend or revoke the order, regulation, rule, resolution, direction, declaration or designation.
- (10) A reference in this Constitution to a law that amends or replaces another law shall be construed as including a reference to a law that modifies, re-enacts, with or without amendment or modification, or makes different provision in place of that other law.



CHAPTER TWENTY

TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

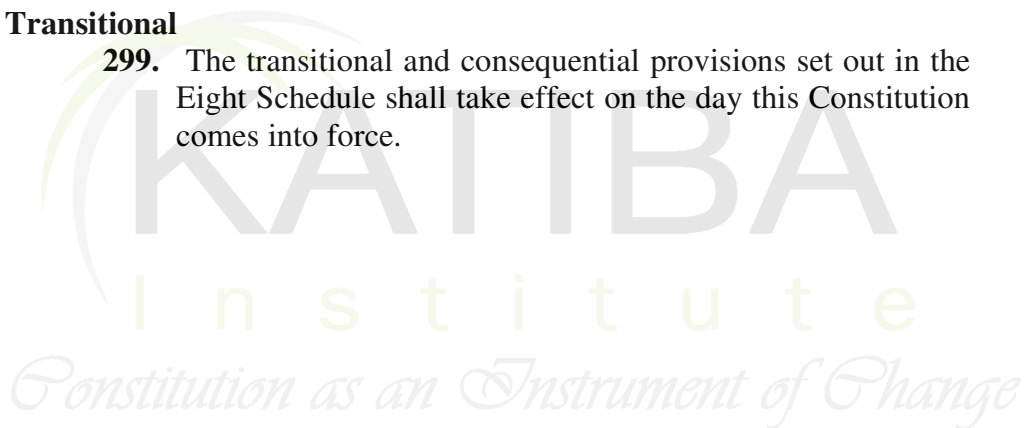
Action by Parliament

298. (1) Subject to clause 2, within the time specified in the Third Column of the Sixth Schedule, Parliament shall enact legislation to provide for the matters set out in the First Column of that Schedule.

(2) Where in this Constitution Parliament is required to enact legislation to govern a particular matter and no time is specified within which the legislation shall be enacted, Parliament shall enact that legislation within three years from the date of its first sitting.

Transitional

299. The transitional and consequential provisions set out in the Eight Schedule shall take effect on the day this Constitution comes into force.



SCHEDULES

FIRST SCHEDULE

TERRITORY OF THE REPUBLIC OF KENYA

KENYA-UGANDA INTERNATIONAL BOUNDARY

Commences in the waters of Lake Victoria on the parallel 1-degree South Latitude, at a point due South of the westernmost point of Pyramid Island;

thence the boundary follows a straight line due north to that point; thence to the most westerly point of Ilemba Island;

thence by a straight line, still northerly, to the most westerly point of Kiringiti Island; thence by a straight line, still northerly, to the most westerly point of Mageta Island;

Thence by a straight line north-westerly to the Southerly point of Sumba Island;

Thence by the southwestern and western shores of that island to its most northerly point;

thence by a straight line north-easterly to the centre of the mouth of Sio River;

thence up-stream by the centre line of that river (Sio) to its confluence with the Sango River;

thence up-stream by the centre line of the Sango River to its source, marked by Boundary Pillar X covered by a cairn of stones;

thence by a straight line on a true bearing of 40-56-08 for a distance of 153.2 metres to a stone;

thence by a straight line on a true bearing of 40-58-00 for a distance of 284.6 metres to the boundary Pillar Y near the main Kisumu-Busia (K)-Busia (UG) Road;

Thence by a series of straight lines each terminating at a boundary pillar on the following true bearing to the minute and for the following approximate distances successively to the Boundary Pillar 9: --

From	To	Bearing o ' "	Distance (metres)
BPY	BP1	58-27	720.5
BP1	BP2	51-44	141.1
BP2	BP3	44-09	460.9
BP3	BP4	51-25	176.8
BP4	BP5	41-09	306.9
BP5	BP6	49-06	297.2
BP6	BP7	67-43	292.3
BP7	BP8	54-07	373.7
BP8	BP9	70-09	167.6

Thence by the last line on a true bearing of 70-09-26 extending for a distance of 16.5 metres to Alupe River;

Thence down stream by the centre line of that river (Alupe) to its confluence with the Okame (Kami) River;

Thence by the centre of the course of the latter (Okame) River to its intersection with the eastern boundary of Majanji-Busia-Tororo Road, such boundary being 30.48 metres distant from and parallel to the centre line of the said road;

Thence by that eastern boundary northerly to its intersection with the River Malawa (or Malaba);

Thence by the centre of the course of that river (also known as the Lwakhakha or Lwagaga River) up-stream to its source (at a latitude of approximately 01-06-23 N.)

Thence easterly by a straight line for a distance of approximately 5364.5 metres to the second highest summit (Lower Elgon) of Mount Elgon at an altitude of approximately 4310 metres above sea level;

Thence northerly by a straight line for a distance of approximately 5334 metres to the vicinity of Hot Springs where the Suam (Turkwel) River emerges from the crater of Mount Elgon;

Thence continuing by the centre of the course of that river down-stream to its confluence with the River Bukwa (Kibukwa);

Thence northwesterly following a line of Cairns approximately in a straight line and at first following a small natural depression to the source of the Kanyerus River (marked by a large tree);

Thence following the foot of the eastern portion (Moriting) of Mount Riwa northerly to it's northeastern extremity;

Thence following a straight line north-westerly to the western extremity of Kassauna Hill;

Thence by the foot of the northwestern slopes of that hill northeasterly to the confluence of the streams Maron and Maragat;

Thence by the centre of the course of the latter stream to its source;

Then by a straight line to the summit of the hill Murogogi;

Thence along the highest points of the rocky ridge (forming a continuation of Mount Riwa and known collectively by the Karamojans as Kogipie) known severally as Karenyang, Muruebu, Kogipie (Karamojong) or Sarat (Suk), and Sagat (Karamajong) or Kogipie (Suk) or Sagat Hill;

Thence in a generally northerly direction by straight lines to Korkurao Hill, to the hillock known as Kokas, to the small hillock known as Lokwamor, across the Kunyao River to Nong'alitaba Hill across the Kanyangareng River to the hill known as Kauluk, to the hillock Morumeri, to the hillock known as Sumaremar) and thence to the westernmost of the small hillocks known as Lewi Lewi;

Thence continuing by a straight line, still northerly, to the foot of the western spur of the hill known as Aoruma, and by the foot of that spur to a beacon;

Thence northwesterly by a straight line to a beacon at the highest point of the ridge known as Kariemakaris;

Thence northerly by a straight line to the hillock called Lokuka;

Thence by a straight line to the top of the pass known as Karamuroi (Suk) or Karithakol (Karamajong);

Thence down the centre of that pass to the base of the Turkana escarpment;

Thence [from the Turkana Escarpment] in a straight line to the pillar UK.1 on the Right Bank of the river Kanauton;

Thence by straight lines each terminating at a pillar on the following true bearings and for the following approximate distances successively to a pillar UK.180: -

From	To	Bearing ° ' "	Distance metres	From	To	Bearing ° ' "	Distance metres
UK1	UK2	266-07	643.7	UK5	UK6	272-56	2240.9
UK2	UK3	338-00	3168.4	UK6	UK7	345-40	3657.6
UK3	UK4	347-20	1366.1	UK7	UK8	349-05	4398.0
UK4	UK5	340-24	544.1	UK8	UK9	324-31	697.7
UK9	UK10	255-11	1537.4	UK68	UK69	345-27	4248.6
UK10	UK11	186-50	1866.3	UK70	UK71	309-00	1719.4
UK11	UK12	259-21	1154.6	UK71	UK72	350-05	788.5
UK12	UK13	308-23	2280.5	UK72	UK73	001-55	4116.6
UK13	UK14	325-56	2772.8	UK73	UK74	69-27	962.6
UK14	UK15	337-19	1974.5	UK74	UK75	32-11	2050.1
UK15	UK16	316-59	5275.2	UK75	UK76	351-43	1930.6
UK16	UK17	342-32	1412.4	UK76	UK77	327-08	2258.6
UK17	UK18	341-49	1830.6	UK77	UK78	315-44	2335.4
UK22	UK23	353-19	2103.1	UK78	UK78A	346-43	1066.2
UK23	UK24	344-56	3378.7	UK78A	UK78B	74-05	200.6
UK24	UK25	342-28	2006.2	UK78B	UK79	125-56	794.6
UK25	UK26	339-02	346.6	UK79	UK80	84-01	2981.2
UK26	UK27	339-02	463.9	UK80	UK81	54-33	1403.9
UK27	UK28	320-39	958.0	UK81	UK82	43-42	1948.0
UK28	UK29	254-05	1290.5	UK82	UK83	34-56	1011.9
UK29	UK30	336-57	2254.3	UK83	UK84	005-17	2867.6
UK30	UK31	334-27	1321.6	UK84	UK85	005-17	2726.7
UK31	UK32	299-28	619.4	UK85	UK86	005-18	1133.2
UK32	UK33	289-05	587.3	UK86	UK87	353-59	3572.3
UK33	UK34	286-38	639.2	UK87	UK88	010-53	2979.1
UK34	UK35	293-29	1117.1	UK88	UK89	009-05	3538.7
UK35	UK36	337-06	991.2	UK89	UK90	310-36	1218.6
UK36	UK37	300-25	861.4	UK90	UK91	289-54	4258.4
UK37	UK38	212-32	1907.4	UK91	UK92	28-52	1765.4
UK38	UK39	278-58	835.5	UK92	UK93	346-14	1431.0
UK39	UK40	267-07	1859.0	UK93	UK94	318-59	761.1
UK40	UK41	285-33	1773.6	UK94	UK95	317-48	3001.4
UK41	UK42	340-39	4563.5	UK95	UK96	299-12	929.6
UK42	UK43	299-36	939.4	UK96	UK97	271-40	1773.9
UK43	UK44	292-40	4033.1	UK97	UK98	257-44	2046.1
UK44	UK45	350-00	6420.0	UK98	UK99	252-50	1379.2
UK45	UK46	355-32	2161.3	UK99	UK100	223-44	1070.8
UK46	UK47	322-05	1202.1	UK100	UK101	199-19	4094.7
UK47	UK48	336-20	1270.7	UK101	UK102	270-43	301.4
UK48	UK49	357-35	3395.8	UK102	UK103	026-19	410.9
UK49	UK50	001-55	1870.3	UK103	UK104	010-48	1063.8
UK50	UK51	005-03	1066.8	UK104	UK105	007-04	1517.6
UK51	UK52	351-33	2313.1	UK105	UK106	309-06	1645.6

UK52	UK53	311-09	2101.9
UK53	UK54	331-38	3061.4
UK54	UK55	297-32	1236.0
UK55	UK56	287-46	2870.6
UK56	UK57	246-06	2045.2
UK57	UK58	337-07	1559.1
UK58	UK59	327-13	1304.8
UK59	UK60	302-27	86.6
UK60	UK61	304-01	1530.7
UK61	UK62	278-07	1163.7
UK62	UK63	328-52	1100.0
UK63	UK64	358-53	1927.6
UK64	UK65	352-44	2997.1
UK65	UK66	359-35	1554.8
From	To	Bearing ° ' "	Distance metres

UK120	UK121	248-27	1239.6
UK121	UK122	249-56	1910.5
UK122	UK123	261-33	406.9
UK123	UK124	252-43	1405.4
UK124	UK125	311-49	1059.5
UK125	UK126	077-52	579.1
UK126	UK127	068-20	1752.9
UK127	UK128	069-32	674.5
UK128	UK129	344-54	1013.5
UK129	UK130	013-16	375.8
UK130	UK131	287-02	1594.4
UK131	UK132	275-51	573.6
UK132	UK133	253-20	883.9
UK133	UK134	321-01	578.5
UK134	UK135	251-53	657.5
UK135	UK136	356-51	818.4
UK136	UK137	082-40	497.1
UK137	UK138	064-58	717.8
UK138	UK139	033-23	1480.4
UK139	UK140	040-56	1471.0
UK140	UK141	089-35	3817.9
UK141	UK142	096-03	1285.0
UK142	UK143	000-05	2129.9
UK143	UK144	349-22	375.8
UK144	UK145	342-13	3324.5
UK145	UK146	273-11	1182.6
UK146	UK147	268-38	905.0
UK147	UK148	264-15	2410.1
UK148	UK149	232-46	422.8

UK106	UK107	305-22	1962.3
UK107	UK108	315-26	2500.9
UK108	UK109	336-21	2063.2
UK109	UK110	325-27	2593.5
UK110	UK111	259-55	668.7
UK111	UK112	246-16	590.4
UK112	UK113	259-44	276.5
UK113	UK114	209-30	821.1
UK114	UK115	253-00	233.5
UK115	UK116	357-54	592.8
UK116	UK117	354-30	346.6
UK117	UK118	300-39	180.1
UK118	UK119	288-26	461.5
UK119	UK120	248-08	815.6
From	To	Bearing ° ' "	Distance metres

UK172	UK173	013-47	1201.5
UK173	UK174	000-05	1619.4
UK174	UK175	333-08	2882.5
UK175	UK176	296-35	2072.3
UK176	UK177	333-39	3380.5
UK177	UK178	037-00	3028.2
UK178	UK179	331-51	4472.6
UK179	UK180	312-41	1354.5

Thence on approximate bearing and distance of 307 degrees and 6553 metres respectively, to the Kenya-Uganda-Sudan International boundary Tri-junction.

UK149	UK150	234-05	404.2
UK150	UK151	199-35	655.6
UK151	UK152	266-30	2048.0
UK152	UK153	278-30	2394.8
UK153	UK154	259-24	171.3
UK154	UK155	259-18	2020.2
UK155	UK156	242-15	2008.6
UK156	UK157	285-28	423.7
UK157	UK158	321-19	68.3
UK158	UK159	005-09	242.9
UK159	UK160	006-44	2426.2
UK160	UK161	064-37	1602.0
UK161	UK162	064-44	1307.6
UK162	UK163	045-39	596.8
UK163	UK164	028-42	184.7
UK164	UK165	015-43	3671.3
UK165	UK166	013-32	2568.2
UK166	UK167	004-26	563.0
UK167	UK168	298-30	3769.8
UK168	UK169	316-07	3926.4
UK169	UK170	288-18	2218.9
UK170	UK171	355-13	1991.3
UK171	UK172	072-36	3455.8

KENYA –SUDAN INTERNATIONAL BOUNDARY

Commencing at the Kenya-Uganda Sudan Tri-junction (approximately 4°15'N, 33° 59' E) Map Reference Series Y732 (D.O.S 426) Sheet No. ¼ (Zulia 1:50,000)

Thence, on a bearing 44° 45' at an approximate distance of 72km, to the northern most point of the northern-most crest of long spur running north-west from Jabel Mogila known as Kilima Cha Habash also known as Makinnen Chebosh (Chorua) approximately 4°41'N, 34° 28'E;

Thence, along the 1950 Sudanese Defence Force patrol line (Yellow line) on a Northeasterly direction for an approximate distance of 104km to a point 4.5km to the North of Moruthi Hill.

Thence, on the North-north easterly direction for approximate distance of 20km to the Kenya-Sudan Ethiopia Tri-junction (approximately 5° 25'N 35°15'E), this is at a distance of approximately 10km on a South-south westerly direction from Mt. Naita (Solka).

KENYA – ETHIOPIA INTERNATIONAL BOUNDARY

The boundary starts from Kenya-Ethiopia-Sudan Tri-junction point (5° 25' N, 35° 15'E);

Thence along the thalweg of River Kibish (Sacchi);

Thence to the mouth or marshes at the mouth of this river to the West shores of the peninsula east of Sanderson Gulf to the Boundary Pillar No.

D23 situated 200meters to the south of the southeastern end of rocky ridge called Okolon;

Thence by series straight lines each terminating at a pillar on the following true bearing and distances successively;

Pillar No.	Bearing to the next Pillar ° ' "	Distance to the next Pillar metres	Pillar No.	Bearing to the next Pillar ° ' "	Distance to the next Pillar metres
D23	193 46	545	C46	91 05	2295
D22	193 46	396	C45	91 05	1261
D21	193 46	402	C44	9 05	1152
D20	193 46	481	C43	91 04	2043
D19	193 46	464	C42	91 06	1838
D18	193 46	385	C41	91 06	2987
D17	193 46	430	C40	91 06	1195
D16	193 46	355	C39	91 03	2796
D15	193 46	401	C38	91 06	1938
D14	193 46	666	C37	91 06	2184
D13	193 46	491	C36	01 05	1267
D12	105 00	214	C35	91 05	3411
N5	105 00	865	C34	83 44	5331
N4	105 00	1664	C33	82 49	2151
N3	180 00	1371	C32	92 15	2235
N2	233 12	3126	C31	125 02	2155
N1	233 12	9	C30	92 42	6646
D3	130 34	324	C29	87 22	2910
D2	130 34	233	C28	87 21	1678
D1			C27	87 22	6869
LAKE			C26	87 22	4388
POINT	130 34		C25	16 09	3452

in
LAKE
TURKANA

C54	91 05	861
C53	91 05	2446
C52	91 05	745
C51	67 27	1827
C50	111 21	3746
C49	91 04	949
C48	91 04	3081
C47	91 03	2833

Pillar	Bearing to the next Pillar ° ' "	Distance to the next Pillar metres
No.		

C12	281 17	544
C11	251 27	972
C10	297 13	741
C9	312 05	1106
C8	223 03	389
C7	215 06	319
C6	197 45	1169
C5	308 57	631
C4	300 32	320
C3	259 57	446
C2	346 45	227
C1	330 33	805
B128	301 50	123
B127	16 59	395
B126	352 42	1252
B125	315 44	320
B124	349 04	122
B123	341 54	358
B122	315 08	696
B121	258 37	741
B120	271 53	400
B119	296 24	882
B118	294 31	1146
B117	324 41	305
B116	276 53	655
B115	309 16	2724
B114	337 25	158
B113	309 00	232

C24	103 16	5657
C23	112 59	440
C22	137 07	419
C21	172 03	1625
C20	89 30	772
C19	103 10	501
C18	97 37	100
C17	157 50	67
C16	142 56	308
C15	136 24	1390
C14	129 03	622
C13	319 24	104

Pillar	Bearing to the next Pillar ° ' "	Distance to the next Pillar metres
No.		

B88	304 03	746
B87	308 47	244
B86	319 59	3477
B85	303 38	4582
B84	303 37	3502
B83	303 43	322
B82	295 56	496
B81	348 29	5359
B80	304 19	2318
B79	304 12	4333
B78	304 14	3802
B77	304 13	5241
B76	301 48	5249
B75	304 01	3040
B74	302 28	5304
B73	302 28	1305
B72	307 56	3955
B71	299 14	5134
B70	299 14	213
B69	299 13	314
B68	264 20	265
B67	267 11	157
B66	287 03	123
B65	254 30	103
B64	259 21	389
B63	328 41	408
B62	271 33	182
B61	291 38	660

B112	312 30	2064
B111	308 09	426
B110	286 57	536
B109	253 20	2624
B108	302 56	6786
B107	302 56	2286
B106	302 56	4704
B105	302 56	3489
B104	302 56	1332
B103	302 56	1642
B102	302 56	6035
B101	302 56	5144
B100	302 56	1749
B99	302 56	1345
B98	302 56	340
B97	304 26	367
B96	267 44	81
B95	309 05	277
B94	300 55	247
B93	322 15	3654
B92	304 05	5013
B91	304 06	7379
B90	304 03	170
B89	304 05	565

Pillar No.	Bearing to the next Pillar ° ' "	Distance to the next Pillar metres
B36	234 36	289
B35	294 58	4084
B34	308 02	2971
B33	308 02	1223
B32	311 41	85
B31	352 57	2059
B30	318 00	452
B29	312 03	389
B28	235 22	172
B27	218 24	335
B26	237 33	1116
B25	260 37	192
B24	281 43	4185
B23	257 16	5732
B15	273 44	2837
B14	273 44	4886

B60	347 55	468
B59	332 47	422
B58	334 17	239
B57	270 30	51
B56	310 14	673
B55	347 59	239
B54	297 06	177
B53	348 57	347
B52	326 38	486
B51	312 15	517
B50	334 04	538
B49	297 48	525
B48	347 27	524
B47	296 31	451
B46	321 45	469
B45	272 41	349
B44	356 03	234
B43	313 47	137
B42	2 30	124
B41	306 08	798
B40	315 24	194
B39	6 13	212
B38	291 21	357
B37	291 23	148

Pillar No.	Bearing to the next Pillar ° ' "	Distance to the next Pillar metres
A329	317 51	193
A328	245 12	287
A327	297 05	57
A326	295 30	105
A325	308 23	109
A324	292 30	235
A323	289 30	282
A322	315 41	63
A321	347 50	134
A320	242 46	300
A319	242 48	2609
A318	269 22	98
A317	243 26	313
A316	205 14	187
A315	256 01	226
A314	210 56	119

B13	273 44	6095
B12	273 44	5508
B11	273 44	4006
B10	273 44	3842
B9	249 58	2830
B8	249 58	1059
B7	262 11	95
B6	226 16	88
B5	221 19	533
B4	247 52	282
B3	240 15	142
B2	187 40	111
B1	152 03	615
A355	174 35	210
A354	232 32	132
A353	169 58	456
A352	180 45	624
A351	121 35	374
A350	177 42	246
A349	131 52	389
A348	230 57	127
A347	219 34	205
A346	285 52	237
A345	265 55	1723
A344	264 30	271
A340	326 58	640
A339	352 01	365
A338	332 19	806
A337	335 17	373
A336	328 44	368
A335	5 16	270
A334	29 04	611
A333	320 24	550
A332	272 05	365
A331	315 36	160
A330	328 42	174

	Bearing	Distance
Pillar	to the	to the
	next	next
No.	Pillar	Pillar
	o ,	

metres

A277	324 28	359
A276	356 19	153
A275	343 07	666
A274	340 37	459

A313	254 16	224
A312	253 26	23
A311	249 29	57
A310	213 41	141
A309	274 18	303
A308	00 10	133
A307	21 30	708
A306	321 42	234
A305	299 33	347
A304	248 21	54
A303	190 34	1822
A302	282 53	2700
A301	282 52	401
A300	304 19	890
A299	201 38	111
A298	194 05	129
A297	257 03	190
A296	254 17	271
A295	234 07	106
A294	153 26	541
A293	216 36	259
A292	158 50	354
A291	162 04	130
A290	163 57	245
A289	194 36	331
A288	151 49	221
A287	157 34	1113
A286	247 37	492
A285	283 38	439
A284	321 35	134
A283	8 21	282
A282	348 07	905
A281	330 15	2679
A280	325 48	856
A279	325 47	76
A278	309 24	142

	Bearing	Distance
Pillar	to the	to the
	next	next
No.	Pillar	Pillar
	o ,	

metres

A230	thalweg	265
A229	181 30	519
A228	254 05	128
A227	279 52	31

A273	287 39	182	A226	301 19	176
A272	309 49	5841	A225	286 35	280
A271	286 38	3510	A224	270 34	236
A270	286 34	4537	A223	254 14	34
A269	286 20	24	A222	274 55	164
A268	285 13	936	A221	248 04	84
A267	281 15	2373	A220	226 41	81
A266	290 36	2628	A219	197 11	265
A265	287 01	1731	A218	198 09	82
A264	291 22	2611	A217	253 09	80
A263	266 30	3320	A216	324 08	81
A262	266 28	121	A215	309 34	62
A261	234 00	297	A214	263 58	81
A260	173 27	252	A213	307 19	60
A259	161 29	266	A212	267 05	44
A258	187 27	176	A211	258 05	100
A257	196 29	550	A210	259 52	124
A256	229 21	207	A209	310 08	73
A255	255 36	204	A208	272 53	64
A254	189 36	333	A207	311 16	561
A253	257 35	485	A206	320 26	75
A252	307 34	263	A205	258 52	183
A251	244 20	297	A204	258 58	44
A250	354 08	405	A203K	257 36	50
A249	795 50	138	A203E	245 59	
A248	313 49	191	A202K	thalweg	
A247	3 57	207	A202E	thalweg	
A246	313 48	718	A201K	thalweg	
A245	286 37	368	A201E	thalweg	...
A244	286 36	243	A200K	thalweg	...
A243	217 58	954	A200E	thalweg	...
A242	298 21	108	A199K	thalweg	...
A241	208 22	267	A199E	thalweg	...
A240	232 00	53	A198K	thalweg	...
A239	162 07	95	A198E	thalweg	...
A238	228 00	232	A197K	thalweg	...
A237	190 04	24	A197E	thalweg	...
A236	221 49	251	A196K	thalweg	...
A235E	153 04		A196E	thalweg	...
A235K	229 07	27	A195K	thalweg	...
A234K	153 04		A195E	thalweg	...
A234E	thalweg		A194	thalweg	176
A233E	thalweg		A193	258 04	
A233K	thalweg		A192K	thalweg	
A232K	thalweg		A192E	thalweg	
A232E	thalweg		A191	thalweg	1084

A231K	thalweg		A190	313 15	1298
A231E	thalweg		A189	313 40	2923
	Bearing	Distance		Bearing	Distance
Pillar	to the	to the	Pillar	to the	to the
	next	next		next	next
No.	Pillar	Pillar	No.	Pillar	Pillar
	° ' "			° ' "	
		metres			metres
A188	294 16	284	A136	329 18	192
A187	294 04	704	A135	332 29	72
A186	257 35	254	A134	354 45	98
A185	296 15	191	A133	283 45	462
A184	293 03	126	A132	264 52	284
A183	266 38	174	A131	323 23	134
A182	243 35	370	A130	287 07	277
A181	268 27	160	A129	277 03	314
A180	320 03	481	A128	236 50	265
A179	275 08	367	A127	244 33	363
A178	29 37	368	A126	238 24	321
A177	10 20	186	A125	245 18	312
A176	13 59	65	A124	255 30	610
A175	298 05	179	A123	251 43	256
A174	317 15	198	A122	251 57	173
A173	265 01	276	A121	301 46	40
A172	282 58	2019	A120	247 48	198
A171	299 10	214	A119	252 03	103
A170	292 31	86	A118A	282 55	425
A169	251 38	488	A118	291 43	299
A168	291 39	571	A117	320 17	161
A167	256 57	92	A116	295 53	846
A166	255 52	730	G15	249 43	425
A165	345 51	465	G14	209 24	299
A164	4 56	95	G13	218 04	161
A163	343 42	242	G12	258 44	846
A162	331 45	219	G11	221 04	880
A161	358 53	75	G10	201 16	32
A160	338 38	210	G9	201 18	380
A159	18 21	190	G8	200 44	781
A158	352 09	186	G7	255 10	410
A157	308 28	165	G6	255 09	47
A156	289 18	195	G5	298 45	484
A155	260 26	90	G4	319 46	262
A154	284 35	223	G3	357 15	874
A153	263 32	215	G2	349 27	348
A152	285 11	1652	G1	17 04	261
A151	263 17	166	A110	13 57	380

A150	245 44	369
A149	293 42	155
A148	207 39	101
A147	255 09	228
A146	265 24	418
A145	263 14	368
A144	291 15	259
A143	347 37	172
A142	274 41	401
A141	278 52	1366
A140	278 33	286
A139	276 36	516
A138	246 36	233
A137	279 21	78

Pillar No.	Bearing to the next Pillar	Distance to the next Pillar
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metres		
A95	217 40	71
A94	216 22	146
A93	305 54	60
A92	253 27	113
A91	327 59	59
A90	328 42	251
A89	270 00	666
A88	245 10	186
A87	238 01	550
A86	227 10	361
A85	254 44	74
A84	186 16	104
A83	250 19	280
A82	350 05	420
A81	351 19	167
A80	355 53	152
A79	306 54	412
A78	245 33	255
A77	253 50	91
A76	222 12	492
A75	340 34	36
A74	252 32	504
A73	277 38	138
A72	198 31	26
A71	158 23	41
A70	157 54	99

A109	247 44	
A108	280 25	
A107	274 51	1257
A106	232 58	143
A105	266 57	60
A104	266 59	403
A103	270 57	75
A102	276 43	2553
A101	292 15	348
A100	279 55	1266
A99	286 31	2586
A98	299 07	89
A97	230 20	294
A96	192 45	74

Pillar No.	Bearing to the next Pillar	Distance to the next Pillar
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metres		
A43	77 50	188
A42	97 27	308
A41	105 00	115
A40	89 59	85
A39	03 39	253
A38	45 10	28
A37	80 00	233
A36	81 46	300
A35	00 44	153
A34	57 17	210
A33	36 23	108
A32	72 45	235
A31	86 34	180
A30	155 21	113
A29	142 36	244
A28	97 52	40
A27	158 58	170
A26	106 23	45
Q30	163 25	688
Q29	163 25	1041
Q28	163 25	911
Q27	163 25	1101
Q26	163 25	1301
Q25	163 25	261
Q24	163 25	941
Q23	163 25	15

A69	158 20	23	Q22	118 04	1085
A68	225 44	244	Q21	118 04	696
A67	225 28	208	Q20	118 04	41
A66	243 20	78	Q19	118 04	610
A65	279 30	440	Q18	56 03	478
A64	297 37	417	Q17	84 38	574
A63	292 19	105	Q16	10 31	1102
A62	292 42	67	Q15	87 07	243
A61	293 59	467	Q14	21 34	631
A60	275 46	151	Q13	21 34	409
A59	188 30	569	Q12	21 34	707
A58	283 34	71	Q11	21 34	145
A57	303 14	499	Q10	21 34	1268
A56	197 01	538	Q9	21 34	363
A55	287 50	63	Q8	21 34	284
A54	259 27	159	Q7	201 34	722
A53	21 41	124	Q6	21 34	355
A52	29 58	250	Q5	21 34	746
A51	97 40	65	Q4	21 34	704
A50	132 31	160	Q3	21 34	1454
A49	143 02	103	Q2	21 34	2377
A48	153 10	96	Q1	21 34	1325
A47	109 39	56	105	58 11	1055
A46	85 57	137	104	58 10	94
A45	33 23	94	103	58 12	4793
A44	12 32	175	102	44 18	2929

Pillar No.	Bearing to the next Pillar	Distance to the next Pillar	Pillar No.	Bearing to the next Pillar	Distance to the next Pillar
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		metres			metres
101	44 21	2400	49	68 03	937
100	44 20	4637	48	68 03	1377
99	44 20	3792	47	68 03	1926
98	44 18	3349	46	68 03	460
97	44 18	2842	45	68 03	2019
96	44 22	382	44	68 03	1332
95	136 58	1430	43	68 03	1922
94	36 52	4273	42	68 03	555
93	21 51	3594	41	68 03	881
92	24 51	3474	40	68 03	1046
91	24 51	1587	39	68 03	2018
90	24 44	2286	38	68 03	2017
89	24 51	1463	37	68 03	776
88	24 53	4392	36	58 03	1222

87	24 50	3240	35	58 03	214
86	24 51	2571	34	68 03	467
85	62 25	4600	33	68 03	217
84	62 24	4601	32	68 03	665
83	72 25	1290	31	68 03	567
82	62 29	4069	30	68 03	473
81	62 21	2983	29	68 03	746
80	62 45	5273	28	68 03	224
79	62 45	5849	27	68 03	1519
78	62 45	2471	26	68 03	2010
77	62 43	1646	25	68 03	224
76	62 45	822	24	68 06	306
75	56 41	1067	23	84 29	251
74	37 12	974	22	36 45	528
73	62 43	285	21	20 06	359
72	62 43	1363	20	57 23	780
71	62 43	1608	19	62 55	436
70	25 36	730	18	12 29	637
69	70 07	1260	17	87 54	901
68	116 20	1828	16	80 37	1334
67	68 03	3697	15	45 02	562
66	68 03	1108	14	82 57	144
65	68 03	2071	13	49 14	116
64	68 03	2919	12	25 28	279
63	68 03	1858	11	75 16	660
62	68 03	2122	10	37 26	613
61	68 03	1536	9	32 00	1240
60	68 03	2373	6	90 59	91
59	68 03	826	5	91 16	...
58	68 03	1322	4	thalweg	106
57	68 03	893	3	91 37	134
56	106 34	1237	2	71 14	274
55	41 33	1164	1	84 16	
54	68 03	2103 Thence from Boundary Pillar No.1 the boundary follows			
53	68 03	1039 the thalweg of River Dawa/Daua downstream upto the			
52	68 03	857 Lowest point on the thalweg of this River opposite			
51	68 03	1927 Boundary Pillar No. 1 of the boundary between Kenya-			
50	38 03	2276 Somalia,			

Situated on the right bank of the river about 650 metres northwest of the Police Post on the Mandera-Dolo Gedo road of the Malka-Rie area.

KENYA-SOMALIA INTERNATIONAL BOUNDARY

Commencing at a point on the lowest course of the River (Daua) and rising on a straight line for 450 meters to Boundary Pillar No. 1 ($3^{\circ} 58' 57''$ North, $41^{\circ} 54' 36''.43$ East of Greenwich);

Thence South-westerly in a straight line through Boundary Pillars No.2 ($3^{\circ} 57' 10.97$ N, $41^{\circ} 53' 27''.71$ E), BP No. 3($3^{\circ} 49' 23.68$ N, $41^{\circ} 38' 55''.25$ E), BP no. 4($3^{\circ} 36' 05.33$ N, $41^{\circ} 38' 37''.50$ E), BP No. 5 ($3^{\circ} 26' 05''.92$ N), $41^{\circ} 31' 38''.76$ E) of approximately 111.6km to Boundary Pillar No.6 ($3^{\circ} 09' 24''.37$ N, $41^{\circ} 19' 59''.58$ E);

Thence Southwesterly in a straight line through Boundary Pillars No. 7 ($03^{\circ} 00' 44''.80$ N, $41^{\circ} 11' 15''.67$ E) of approximately 52.7km to Boundary Pillar No. 8 ($02^{\circ} 49' 19''.20$ N, $40^{\circ} 59' 44''.34$ E);

Thence due South in a straight line through Boundary Pillars No. 9 ($02^{\circ} 47' 35.06$ N, $40^{\circ} 59' 44''.34$ E), No. 10 ($02^{\circ} 31' 15''.07$ N), ($40^{\circ} 59' 44''.34$ E), No. 11 ($02^{\circ} 14' 55''.09$ N, $40^{\circ} 59' 44''.34$ E), No. 12($01^{\circ} 56' 40''.78$ N), $40^{\circ} 59' 44''.34$ E), No. 13($01^{\circ} 42' 27''.16$ N, $40^{\circ} 59' 44.34''$ E), No. 14($01^{\circ} 26' 26''.85$ N, $40^{\circ} 59' 44''.34$ E), No. 15($01^{\circ} 10' 02''.74$ N, $40^{\circ} 59' 44''.34$ E), No. 16($00^{\circ} 59' 49''.90$ N, $40^{\circ} 59' 44''.34$ E), No. 17($00^{\circ} 43' 25''.56$ N, $40^{\circ} 59' 44''.34$ E), No. 18($00^{\circ} 30' 23.94$ N, $40^{\circ} 59' 44''.34$ E), No. 19($00^{\circ} 24' 26''.84$ N, $40^{\circ} 59' 44''.34$ E), No. 20($00^{\circ} 00' 4''.73$ S, $40^{\circ} 59' 44''.34$ E), No. 21($00^{\circ} 09' 33''.90$ S), No. 21($00^{\circ} 09' 33''.90$ S, $40^{\circ} 59' 44''.34$ E), No. 22($00^{\circ} 34' 35''.09$ S, $40^{\circ} 59' 44''.34$ E) for approximately 409.8km to Boundary Pillar No. 23 ($00^{\circ} 50' 0.00''$ N, $40^{\circ} 59' 44''.34$ E);

Thence leaving primary beacon No. 23 in a South-easterly direction in a straight line through boundary Pillars No. 24($01^{\circ} 03' 03''.21$ S, $41^{\circ} 09' 21$ S, $41^{\circ} 09' 22''.37$ E); No. 25($01^{\circ} 12' 19''.96$ S, $41^{\circ} 16' 13.27$ E); No. 26($01^{\circ} 28' 55''.61$ S, $41^{\circ} 28' 33''.09$ E), No. 27 ($01^{\circ} 33' 11''.01$ S, $41^{\circ} 31' 42''.94$ E), for approximately 105.0km to Boundary Pillar No. 28 ($01^{\circ} 36' 05''.03$ S, $41^{\circ} 33' 52''.18$ E).

Thence Leaving Primary Beacon No. 28 in a due south direction for approximately 7km to Primary Beacon No. 29(1° 39' 51''.95S), 41 °35' 52''.18E) at Diua Damasciaca Island in the Indian Ocean

TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE BOUNDARIES

From Pillar No.3a, at the Indian Ocean Shore at Jassini village, the boundary runs in a northeasterly direction to a point at the end of Ngobwe Creek;

Thence it follows the eastern bank of Ngobwe Creek to the eastern mouth of Ngobwe Ndogo;

Thence to the northern bank of Jimbo Creek in an easterly direction to a point which intersects the straight line from Lake Jipe at Ras Jimbo; Thence the boundary stretches into the Indian Ocean in a southeasterly direction following the median line upto a point named A (Map reference SK74 South Sheet)

Thence, following a circular curve of radius 650 metres, which turns in an anti-clockwise direction whose center is at a point D; to a point B;

Thence through the Pemba Channel following the median line to the point C;

Thence turns eastwards for 80 metres to intersect the territorial sea boundary of 12 nautical miles from the baseline;

Thence the exclusive economical Zone boundary continues in an easterly direction on the Indian Ocean for approximately 200 nautical miles from the baseline upon which the breadth of the territorial sea is measured.

Thence from the Tri-junction of the Territorial sea and the exclusive economic Zone boundary in a generally northeasterly direction and at a distance of 12 nautical miles from the baseline (Map Reference Series SK 74 South and North Sheets Edition 6-SK) to a point East of BP29 on the Kenya-Somalia International boundary.

KENYA-TANZANIA INTERNATIONAL BOUNDARY

Commences from the Indian Ocean along the northern bank of the Jimbo Creeck, making the foreshore in the Kenyan sphere, as far as the eastern mouth of the Ngobwe Ndogo;

Thence southwesterly on a straight line to BP3a at Jassini Village;

Thence by series of straight lines each terminating at a Pillar on the following bearings and distances successively to Boundary Pillar YASSINI;

Pillar No.	Bearing to the next Pillar	Distance to the next Pillar
	0 °	metres
BP3A	251 27	797.2
BP3	300 40	72.9
BP4	02 42	73.8
GS2	17 30	54.7
GS1	346 46	54.9
M261	342 16	249.9
M263	04 30	76.2
M264	346 56	399.1
M265	311 51	316.3

Thence from Boundary Pillar YASSINI on a bearing of 304°51'39" for a distance of 190 through series of Boundary Pillars in a straight line to Boundary Pillar TK67 South of Lake Jipe;

Thence through the centre line of Lake Jipe and the thalweg of River Ruvu/Pangani to the confluence of River Losoyai/Kileo;

Thence through the thalweg of the later river; thence to a point 350 metres that is intersected to the river by a straight line through Boundary Pillars TK66 and TK66/1;

Thence 350 metres upstream to Boundary Pillar No.66/1;thence by series of straight lines on the following bearings and distances successively TO boundary Pillar TK59;

Pillar No.	Bearing to the next Pillar	Distance to the next Pillar
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	0 ‘	metres
TK66/1	359 55	2099.5
TK66NEW	41 55	5637.9
TK65	45 30	6998.3
TK62	82 31	1846.3
TK61	37 57	771.5
TK60	01 34	3082.2

Thence from Boundary Pillar TK59 on a north-easterly direction across Lake Chala to Boundary Pillar 58 for an approximate distance of 3.3 km to Boundary Pillar 57;

Thence in a northeasterly direction to Boundary Pillar 56 at Leto Village through series of Boundary Pillars 57/9,57/8,57/7,57/6,57/5,57/5,57/4,57/3,57/2,57/1, 57 new, 56/11,56/10,56/9,56/8,56/7,56/6,56/5,56/4,56/3,56/2,56/1 respectively;

Thence on a bearing of 299°20’ and a distance of 457.6 km approximately through 55/8,55/7, 55/6, 55/5, 55/4, 55/3, 55/2, 55/1,55 new, 54/4,54/3,54/2,54/1,54new...etc...BP5new, BP4, and BP4new successively to Boundary Pillar MWISHONI at the shores of Lake Victoria;

Thence continuous on the same bearing fro 1.6 km to a point (1-01-09S, 34-04-44E) on the Lake waters north of Kibecheri Island in Tanzania;

Thence southwesterly to a point (01-02-38S, 34-02-40E) Southwest of Kiteguna Point of Muhoru Bay in Kenya;

Thence south northwesterly to a point (01-01-54S, 34-01-47E) Southwest of Kiteguna Point of Muhoru Bay in Kenya;

Thence northerly to a point (01-00-00S, 34-01-00E) Southwest of Mahanga Island in Kenya;

Thence to a point of commencement on the Kenya-Tanzania-Uganda Tri-Junction, in Lake Victoria.

SECOND SCHEDULE
Provinces And Districts

Provinces

1. Nairobi
2. Central
3. Eastern
4. North Eastern
5. Coast
6. Western
7. Nyanza
8. Rift Valley



Districts

NAIROBI PROVINCE

Nairobi

RIFT VALLEY PROVINCE

1. Baringo
2. Keiyo
3. Uasin Gishu
4. Nandi
5. Marakwet
6. Trans Nzoia
7. Turkana
8. Samburu
9. West Pokot
10. Buret
11. Kericho
12. Laikipia
13. Nakuru
14. Koibatek
15. Bomet
16. Transmara
17. Narok
18. Kajiado

NORTH EASTERN PROVINCE

1. Garissa
2. Ijara
3. Wajir
4. Mandera

COAST PROVINCE

1. Mombasa
2. Kwale
3. Kilifi
4. Malindi
5. Tana River
6. Lamu
7. Taita

EASTERN PROVINCE

1. Moyale
2. Marsabit

3. Isiolo
4. Meru North
5. Meru Central
6. Tharaka
7. Meru South
8. Embu
9. Mbeere
10. Mwingi
11. Kitui
12. Machakos
13. Makueni

CENTRAL PROVINCE

1. Nyandarua
2. Nyeri
3. Kirinyaga
4. Maragua
5. Muranga
6. Thika
7. Kiambu

WESTERN PROVINCE

1. Malava-Lugari
2. Kakamega
3. Butere/Mumias
4. Vihiga
5. Mt. Elgon
6. Bungoma
7. Teso
8. Busia

NYANZA PROVINCE

1. Siaya
2. Rachuonyo
3. Kisumu
4. Homa-Bay
5. Migori
6. Suba
7. Kuria
8. Kisii
9. Nyamira
10. Bondo
11. Nyando
12. Gucha

THIRD SCHEDULE

National Symbols

(j) The National Flag

(b) The National Anthem

(c) The Coat of Arms

(d) The Public Seal of Kenya



FOURTH SCHEDULE

NATIONAL OATHS AND AFFIRMATIONS

OATH OR SOLEMN AFFIRMATION OF ALLEGIANCE OF THE PRESIDENT/ACTING PRESIDENT AND THE VICE PRESIDENT

I, in full realization of the high calling I assume as President/Acting President of the Republic of Kenya, do swear/solemnly affirm that I will be faithful and bear true allegiance to the Republic of Kenya; that I will obey, preserve, protect and defend the Constitution of Kenya, as by law established and all other laws of the Republic; that I will protect and uphold the sovereignty, integrity and dignity of the people of Kenya. (In the case of an oath: So help me God.)

OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR THE PRESIDENT/ACTING PRESIDENT

I, swear/solemnly affirm that I will truly and diligently serve the people and the Republic of Kenya in the office of the President/ Acting President of the Republic of Kenya that I will diligently discharge my duties and perform my functions in the Office of President/Acting President of the Republic of Kenya and do justice to all in accordance with the Constitution as by law established and the laws of Kenya, without fear, favour, affection or ill-will. (In the case of an oath: So help me God.)

Constitution as an Instrument of Change

OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR THE VICE PRESIDENT

I do swear/solemnly affirm that I will always-

truly and diligently serve the people and the Republic of Kenya in the office of the Vice President of the Republic of Kenya; diligently discharge my duties and perform my functions in the said office, to the best of my judgment; at all times when so required faithfully and truly give my counsel and advice to the President of the Republic of Kenya; do justice to all without fear, favour, affection or ill-will and that I will not directly or indirectly reveal such matters as shall come to my knowledge in the discharge of my duties and committed to my secrecy. (In the case of an oath: So help me God.)

**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF
OFFICE OF THE PRIME MINISTER/ACTING PRIME
MINISTER**

I,.....swear/solemnly affirm that I will be faithful to the Republic of Kenya; that I will obey and uphold the Constitution of Kenya and all other laws of the Republic of Kenya; that I will at all times well and truly serve the people and Republic of Kenya; that I undertake to hold my office as Prime Minister/Acting Prime Minister of the Republic of Kenya with honour and dignity; that I will be a true and faithful counselor; that I will not divulge directly or indirectly such matters as shall come to my knowledge in the discharge of my duties and committed to my secrecy, except as may be required for the due discharge of my duties as Prime Minister/Acting Prime Minister; and that I will perform the functions of my office conscientiously and to the best of my ability. (In the case of an oath: So help me God.)

**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF
OFFICE FOR A MINISTER/DEPUTY MINISTER**

I, being appointed a Minister of Kenya, do swear/solemnly affirm that I will at all times be faithful to the Republic of Kenya, that I will obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will well and truly serve the people and the Republic of Kenya in the Office of a Minister/ Deputy Minister; that I undertake to hold my office as Minister/ Deputy Minister with honour and dignity; to be a true and faithful counselor to the Prime Minister for the good management of the public affairs of the Republic of Kenya; not to divulge directly or indirectly such matters as shall come to my knowledge in the discharge of my duties and committed to my secrecy except as may be required for the due discharge of my duties as Minister/Deputy Minister; and to perform the functions of my office conscientiously and to the best of my ability. (In the case of an oath: So help me God.).

**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF
OFFICE FOR A PERMANENT SECRETARY**

I being called upon to exercise the functions of a Permanent Secretary, do swear/solemnly affirm that, except with the authority of the Prime Minister, I will not directly or indirectly reveal the nature or contents of any business, proceedings or document of the Cabinet committed to my secrecy, except as may be required for the due

discharge of my duties as such Permanent Secretary. (In the case of an oath: So help me God.)

OATHS FOR THE CHIEF JUSTICE /PRESIDENT OF THE SUPREME COURT, JUDGES OF THE SUPREME COURT, THE JUDGES OF THE COURT OF APPEAL AND JUDGES OF THE HIGH COURT.

I (The Chief Justice /President of the Supreme Court, a Judge Of The Supreme Court, a Judge Of The Court Of Appeal, a Judge Of The High Court) do (swear in the name of the Almighty God)/(solemnly affirm) to diligently serve the people and the Republic of Kenya and to impartially do Justice in accordance with the Constitution as by law established and the Laws and customs of the Republic without any fear, favour, bias, affection, ill-will, prejudice or any political, religious or other influence. In the exercise of the judicial functions entrusted to me, I will at all times, and to the best of my knowledge and ability, protect, defend, administer and defend the Constitution with a view to upholding the dignity and the respect for the judiciary and the justice system of Kenya and promoting fairness, Independence, Competence and Integrity within it. (So help me God.)

OATH OF A CONSTITUTIONAL OFFICER/ CONSTITUTIONAL COMMISSIONER

I..... being appointed a Commissioner in the..... Commission do solemnly swear that I will diligently, truly and impartially perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice and to the end that in the exercise of the functions and powers as such Commissioner I shall not be influenced by any political party, religious society or other organization or person which may have nominated me for the appointment. So help me God.

OATHS FOR THE PROVINCIAL/DISTRICT ADMINISTRATOR.

I..... do swear(solemnly affirm) that as a duly elected (Provincial)/(District) Administrator, I will faithfully and conscientiously perform the duties entrusted upon me and serve the people and the Republic of Kenya, without fear, favour, bias, affection, or ill-will and that I will uphold the Sovereignty, integrity and dignity of

the people of Kenya and at all times I will preserve, protect and defend the Constitution of the Republic of Kenya.
(So help me God.)

**OATH /AFFIRMATION OF MEMBER OF PARLIAMENT
(NATIONAL ASSEMBLY/ NATIONAL COUNCIL)**

I-----having been elected a member of National Assembly/National Council do swear (in the name of the Almighty God) (solemnly affirm) that I will bear true faith and allegiance to the People and the Republic of Kenya; that I will obey, respect, uphold, preserve, protect and defend the Constitution of the Republic of Kenya; and that I will faithfully and conscientiously discharge the duties of a member of Parliament. (So help me God).

**OATH FOR SPEAKER/DEPUTY SPEAKER OF THE
NATIONAL ASSEMBLY /NATIONAL COUNCIL**

I-----having been elected as Speaker/deputy speaker of the National Assembly/National Council do swear (in the name of the Almighty God) (solemnly affirm) that I will bear true faith and allegiance to the people and the Republic of Kenya; that I will faithfully and conscientiously discharge my duties as speaker/deputy speaker of the National Assembly/National Council; that I will obey, respect, uphold, preserve, protect and defend the Constitution of the Republic of Kenya; and that I will do right to all manner of persons in accordance with the Constitution of Kenya and the laws and conventions of Parliament without fear or favour, affection or ill will (So help me God).

FIFTH SCHEDULE

LEADERSHIP AND INTEGRITY CODE OF CONDUCT

1. A public officer shall not be in a position where the personal interest of the public officer conflicts with the duties and responsibilities of office, or compromise the honesty, impartiality and integrity of the office and the officer.
2. A public officer shall not
 - (a) receive or be paid the emoluments of a public office at the same time that the public officer receives or is paid the emoluments of any other public office; or
 - (b) except where the public officer is not employed on a full a time basis, engage or participate in the management or running of a private business, profession or trade, but a public officer is not prevented from holding shares in a private business or engaging in farming.
3. The President, Vice-President, the Prime Minister and the other Ministers of the Government, Permanent Secretaries, Chief Executive Officers and Senior managers of parastatals, Government and senior officials of the Central Bank, members of Parliament and any other public officers, and any other persons as prescribed by Parliament shall not maintain or operate a bank account in a country outside Kenya.
4. A person elected to the Parliament shall before taking office, declare the asset and liabilities of that person and subsequently take and subscribe before the Speaker of the relevant House the Oath of Allegiance and Oath of Membership according to the Constitution, but a member may before taking the oaths take part in the election of the Speaker and Deputy Speaker of the House.
5. The Speaker and Deputy of Parliament shall declare their assets and liabilities in the manner prescribed by the Constitution and subsequently take and subscribe the Oath of Allegiance and the Oath of Membership before the clerk of Parliament.
6. A person who is elected to the Office of President or Vice-President shall not begin to perform the functions of office unless that person has made the declaration of assets and liabilities as prescribed in the

Constitution and has taken and subscribed the Oath of Allegiance and the Oath of Office before the Chief Justice or the person for the time being appointed to exercise the functions of that office.

7. The Ethics and Integrity Commission shall establish and maintain a register in which the assets and liabilities of public officers are recorded and it is an offence if a public officer fails to make the declaration of assets and liabilities so that they not recorded in the register.

8. The following are serious offences which are in conflict with the Leadership and Integrity Code:

- (a) conviction in a court of law and sentence to a term of imprisonment without the option of a fine for a serious offence;
- (b) misappropriation of the funds of the public office or destruction of properties of the public office;
- (c) engaging in a corrupt practice or seeking or accepting a bribe for performing or not performing a duty or a task;
- (d) engaging in sexual or physical abuse of any person or abuse of office to obtain sexual or any other undue advantage from members of staff or any other person;
- (e) abuse of elected or employed office of the state to obtain a direct or an indirect undue advantage or enrichment;
- (f) deliberately disrupting meetings and interfering with the orderly function of a public institution or office.

9. A public officer shall not, after retirement from public service and whilst still receiving pension from public funds, accept more than two remunerative positions as chairperson , director or employee of -

- (a) a company owned or controlled by the Government;
- (b) any public authority.

10. (1) A retired public officer shall not receive any other remuneration from public funds in addition to the pension and the emoluments of two remunerative positions.

(2) A person who has held office as the President, Vice President, Prime Minister, Chief Justice and any other office specified

by Parliament is prohibited from service or employment in foreign companies or foreign enterprises.

(11) (1) A public officer shall not ask for or accept property or benefits of any kind as a personal benefit or for any other person on account of anything done or omitted to be done by the public officer in the performance of a function as public officer.

(2) The receipt by a public officer of any gifts or benefits from commercial firms, business enterprises or persons who have contracts with the Government is a conduct which is in breach of the Leadership and Integrity Code.

(3) A gift or donation to a public officer on a public or ceremonial occasion is a gift to the appropriate institution represented by the public officer, and accordingly the mere acceptance or receipt of the gift or donation is not a contravention of the Code so long as the public officer hands over the gift to the appropriate institution as soon as possible..

(13) (1). The President or Vice-President, the Prime Minister or Ministers of the Government and their deputies, chief executive officers or any other person specified by Parliament and senior managers of parastatals, Permanent Secretaries, Head of a university or polytechnic or other parastatal organization or any other person specified by Parliament shall not accept –

- (a) a loan, except from the Government or its agencies, a bank, building society, mortgage institution or any other financial institution recognized by law; and
- (b) any benefit of whatever nature from any company, contractor, or businessman or the nominee or agent of that person.

(2) The head of a public corporation, a university, any other parastatal organization may, subject to the rules and regulations of that body, accept a loan for the purpose of the institution.

14. A person shall not offer a public officer any property, gift or benefit of any kind as an inducement or bribe for the granting of a favour or the performance of a function or non-performance in favour of that person.

15. A public officer shall not do or direct to be done, in abuse of office, an arbitrary act prejudicial to the rights of any other person knowing that the act is unlawful or contrary to Government policy.

16. A public officer shall not be a member or belong to or take part in any society or organization the membership of which is incompatible with the functions or dignity to the office of the public officer.

17 (1). A public officer shall within four months after the coming into operation of this Code of Conduct or immediately after taking office, and

(a) at the end of every four years, or

(b) at the end of the public officer's term of office,

submit to the Ethics and Integrity Commission a written declaration of the properties, assets, and liabilities of the public officer their spouse and those of unmarried children under the age of eighteen years.

(2) A statement in the declaration that is found to be false by any authority or person authorized in that behalf to verify it is deemed to be a breach of this Code.

(3) Any property or asset acquired by a public officer after the declaration required under this Code and which is not fairly attributed to income, gift, or loan approved by this Code shall be deemed to have been acquired in breach of this Code unless the contrary is proved.

(4) An allegation that a public officer has committed a breach of, or has not complied with, this Code shall be made to the Ethics and Integrity Commission.

(5) A public officer who engages in an act prohibited by this Code through a nominee, trustee, or other agent shall be deemed to have committed a breach of this Code.

18. (1) In its application to public officers Parliament may exempt a cadre of public officers from a provision of this Code where it appears that their position in the public service does not demand its application.

(2) A public officer shall not be in a position where the personal interest of the public officer conflicts with the duties and responsibilities of office, or compromise the honesty, impartiality and integrity of the office and the officer.

(19) A public officer may not abuse office to solicit contributions from the public.



SIXTH SCHEDULE

ACTIONS TO BE TAKEN BY PARLIAMENT

<i>First Column</i>	<i>Second Column</i>	<i>Third Column</i>
Legislation to govern/provide for/regulate/prescribe	Article	Time limit within which action shall be taken.
Right of access to information	47(4)	Six months
Entry and residence into Kenya of persons other than those set out in Article 26(1) and the status of permanent residents	26(2)	One year
Refugees and asylum seekers	52(3)	One year
Bring the Law of Kenya into conformity with the Constitution	5(2)	Two years
Land tenure	235(4)	Two years
One-third Rule of representation for women in each House of Parliament	109(2)	Three years
Defence of the Constitution	4	No time limit
Status and government of Nairobi	8(2)	No time limit
Citizenship by naturalization	21	No time limit
Conditions for entry and residence in Kenya	26(1)	No time limit
Various issues regarding citizenship	27	No time limit
Realization of the rights to social security, health, education, housing, food, water and sanitation and standards for their achievement	30(3)	No time limit
Role of civil society in the promotion and protection of the rights and freedoms in the Bill of Rights	30(4)	No time limit
Disadvantaged individuals or groups	34(3)	No time limit
The rights of the child as set out in international instruments and standards	37(8)	No time limit
Recognition of marriage	38(5)	No time limit
Persons with disability	39(2)	No time limit
Allocation of air time to political parties, regulation of freedom to broadcast and censorship matters	46(6)	No time limit
Consumer protection and fair advertising	64(4)	
Consumer rights and consultation of	64(5)	No time limit

consumers and consumer organizations		
Rights to fair administrative action	65(3)	No time limit
Restricting prisoners' right to vote	70(2)(m)	No time limit
Original jurisdiction for lower courts to uphold and enforce the Bill of Rights	74(2)	No time limit
Electoral and referendum processes	77(1)	No time limit
Political Parties	87(4)	No time limit
Matters to be contained in the Register of Political Parties	89(2)	No time limit
Method of determination of Proportional Representation seats	107(7)	No time limit
Procedure for the recall of a Member of Parliament	112(6)	No time limit
Establishment of a Public Registry and custody of the Laws of Kenya and additional procedures for the coming into force of operation and publication of the Kenyan laws.	131(1)	No time limit
Powers, privileges and immunities of Parliament, its committees and members	145	No time limit
Appellate jurisdiction of the Supreme Court	188(1)(b)	No time limit
Jurisdiction of the High Court	193(b)	No time limit
Establishment of subordinate courts, their jurisdiction and functions	198(1)	No time limit
Grounds for removal from office of Magistrate or Kadhi	206	No time limit
Management of the Public Defender's Office and legal aid	210(6)	No time limit
Management of Nairobi	222(1)	No time limit
Collection of revenue by the National Government	224(1)	No time limit
Taxes and levies by District Governments	224(2)	No time limit
Criteria for conditional grants to the Devolved Councils	225(3)(ii)	No time limit
Distribution of revenue to the Districts	226(3)	No time limit
Functions of the District Government	227(7)	No time limit
Structure, powers and functions of Devolved Authorities and their relationship with the National Government	230(1)	No time limit
Cut-off date for review and assessment of claims to unjust expropriation of land	235(4)(b)(ii)	
Organization and powers of National	237(3)	No time limit

Land Commission		
Environment and natural resources	242	No time limit
Salaries and allowances to be charged on the Consolidated Fund	247	No time limit
Governments power to borrow or lend	249	No time limit
Functions of the Economic and Social Commission and its reporting systems	257	No time limit
Discharge of duties by the Public Service Commission	260	No time limit
The Kenya Correctional Services	271(2)	No time limit
Effecting objectives of leadership and integrity provisions	277	No time limit
Terms and conditions for availing declarations made in accordance with the Leadership Code, by the Ethics and Integrity Commission	289	No time limit
Staff of the Ethics and Integrity Commission	289	No time limit
Functions of the Ethics and integrity Commission	289	No time limit



Constitution as an Instrument of Change

SEVENTH SCHEDULE

POWERS OF NATIONAL AND DISTRICT GOVERNMENTS

List I

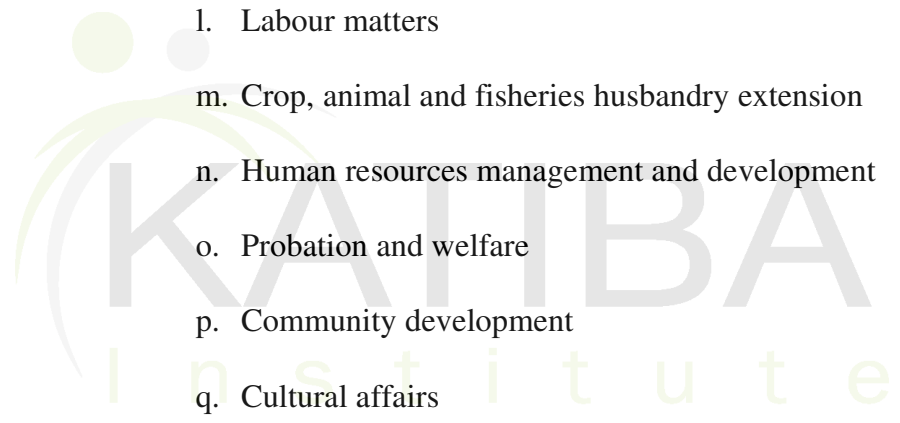
National Government List

1. National defence and security
2. International relations
3. International trade
4. Telecommunication
5. National resources
6. National elections
7. Formulation of National Policy
8. Development Planning
9. Currency
10. Courts
11. Prisons
12. Citizenship
13. Immigration
14. National Public Service
15. Control and management of disasters and epidemics
16. National survey and mapping
17. Statistics

18. Central Bank
Banking including incorporation, regulation of banking, insurance and financial corporations
19. Patents, inventions, designs, trademarks, copyrights
20. Standard weights and measures
21. Administration and management of research and institutions of national importance
22. Ancient and historical monuments of national importance

List II
District Government List

1. Implementation of development plans
2. Local Taxes
 - a. Education services
 - i. Nursery
 - ii. Primary and
 - iii. Secondary education
 - b. Medical and health services – health centers, dispensaries, clinics, promotion of primary health care
 - c. Water services – provision and maintenance of water supplies in liaison with the Ministry responsible
 - d. Road services – construction, rehabilitation and maintenance
 - e. Markets and trading centres
2. Provision of other services and activities as follows:
 - a. District planning
 - b. District statistical services
 - c. District project identification

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- The logo for KAMIBA Institute is a large, faint watermark in the background. It features a stylized green figure with arms raised, forming a 'K' shape. To the right of the figure, the word 'KAMIBA' is written in large, bold, grey capital letters. Below 'KAMIBA', the word 'Institute' is written in a smaller, green, sans-serif font. At the bottom of the logo, the phrase 'Constitution as an Instrument of Change' is written in a cursive, grey font.
- d. Agricultural services
 - e. Land administration
 - f. Land surveying
 - g. Physical planning
 - h. Trade development services
 - i. Trade licenses
 - j. Co-operative development
 - k. Social rehabilitation
 - l. Labour matters
 - m. Crop, animal and fisheries husbandry extension
 - n. Human resources management and development
 - o. Probation and welfare
 - p. Community development
 - q. Cultural affairs
 - r. District information services
3. Regulate, control, manage, administer, promote and licence any of the services, which the District is empowered or required to do
 4. Establish, maintain, control, manage, administer and prescribe fees or charges to be levied in respect of services provided
 5. Aid and support the establishment and maintenance of schools, clinics, etc and provide assistance to the youth, women, and persons with disabilities
 6. Identification, administration and management of resources within the district
 7. Safety and security
 8. Manage matters relating to:

- a. District police services
 - b. District civil servants -Appointment, recruitment and disciplinary measures
9. Provide and manage:-
- a. Markets and trading centers
 - b. Recreational (public parks) and sporting facilities
 - c. Social welfare programmes
 - d. Public vehicle parking
 - e. Lighting in streets and other public places
 - f. Fire brigade and ambulance services
 - g. Cemeteries and mortuaries
 - h. Refuse disposal
10. Enforcement of:-
- a. Standards and maintenance of buildings
 - b. Maintenance of water supplies, rivers and dams
 - c. Proper methods of waste disposal
11. Supervision and encouragement of local trade
12. Rights over property belonging to the District
13. District survey and mapping
14. District statistics
15. Assist Central government in the preservation of the environment, protection of forests, and wetlands
16. Upon delegation by the Central government, identification and preservation of ancient and historical sites

List III

Concurrent List

1. Revenue

- a. Taxes levied and by Central government and assigned to Districts
- b. Duties levied by Central government but collected and appropriated by District government
- c. Taxes levied and collected by the District government but distributed between the District and Central government

2. Maintenance of public security and order

3. Provision and maintenance of public services and amenities

4. Natural resources – utilization and revenue generated

5. Preservation of environment, forests, wetlands etc

6. Vital statistics (deaths and births)

7. Ports other than those declared by law to be major/national ports

8. Trade and commerce

EIGHTH SCHEDULE

TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

Rights, duties and obligations of the Republic

1. All rights and all duties or obligations, however arising, of the Government of the Republic of Kenya and subsisting immediately before the commencement of this Constitution shall be rights, duties and obligations of the Government of the Republic of Kenya under the Constitution.

Existing Laws

2. All laws in force immediately before the entry into force of this Constitution, shall continue to be in force subject to such modifications as are necessary to bring them into conformity with this Constitution.

Elections

3. (1) In the event that the first elections subsequent to the 1997 elections are held after the coming into force of this Constitution, such elections shall be held within sixty days of the coming into force of this Constitution.

(2) Until the Electoral Commission contemplated by this Constitution is established, the first elections under this Constitution shall be conducted by the Electoral Commission in existence immediately before the entry into force of this Constitution.

(3) Except as provided in clause (1), the Electoral Commission in existence immediately before the entry into force of this Constitution shall be dissolved on the ninetieth day following the conclusion of the first elections under this Constitution.

(4) A person, who before the entry into force of this Constitution has held office for two or more terms as President, is not eligible to-

- (a) stand for election or serve as President; Vice-President or Prime Minister; or

(b) be elected to serve as Deputy Prime Minister, Minister, Deputy Minister or member of Parliament.

(5) Subject to clause (4), any person who would otherwise have been qualified to stand for election but for the provisions of this Constitution, is eligible to stand as a candidate in the first elections held under this Constitution.

(6) The National Assembly and the National Council shall convene within twenty-one days of the conclusion of the first elections under this Constitution.

Political Parties

4. (1) A political party in existence immediately before the coming into force of this Constitution, shall, within twelve months of the date of the appointment of the members of the Electoral Commission under this Constitution, comply with the requirements of registration as a political party.

(2) Where upon the expiry of the period of twelve months, a political party has not complied with the requirements of clause (1), the political party shall forthwith cease to exist and any person holding an elective position on the basis of the sponsorship of that party shall continue to hold such position but shall be deemed to be an independent member.

Devolution

5. (1) Upon entry into force of this Constitution all assets held by the National Government by virtue of the Constitution then in force situated in the provinces, districts, divisions and locations, shall become public property.

(2) Until such time as District Councils and Provincial Councils are constituted-

(a) the functions of those Councils shall be performed by the National Government.

(b) all the assets held by local authorities immediately before the entry into force of this Constitution shall become public property and shall be held by the National

Government on behalf of the appropriate Councils pending their establishment.

(3) Property and assets referred to in clauses (1) and (2) shall not be transferred or otherwise disposed of without the written authority of the National Government and any transfer without such authority shall be void and the property or assets in question shall revert to the relevant authority.

The Executive

6. Within sixty days after the appointment of the Ethics and Integrity Commission, the President, Vice-President, Prime Minister, Deputy Prime Ministers, Ministers, Deputy Minister and members of Parliament shall be required to comply with the provisions of the Leadership and Integrity Code.

Provincial Administration

7. (1) On the coming into force of this Constitution the system of administration comprising Sub-Chiefs, Chiefs, District Officers, District Commissioners and Provincial Commissioners commonly known as the Provincial Administration shall stand dissolved.

(2) All public officers serving under the Provincial Administration shall report to the Public Service Commission for re-deployment.

Existing offices

8. (1) A person who immediately before the coming into force of this Constitution holds or is acting in an office established by the Constitution then in force, shall continue to hold or act in an interim capacity until an appointment or reappointment is made under this Constitution.

(2) A person who immediately before the coming into force of this Constitution holds or is acting in a public office established by any written law, shall, so far as is consistent with this Constitution, be deemed to have been appointed to that position on the date of entry into force of this Constitution.

(3) The provisions of this Article shall not affect the powers conferred on any person or authority under this Constitution to abolish offices or remove persons from those offices.

(4) The process of appointment of persons to fill vacancies arising in consequence of the coming into force of this Constitution shall not begin until after the elections of the President, the National Assembly and the National Council are held and a new Government is constituted.

(5) Subject to Article 10(11), where a person has vacated an office which the person held before the coming into effect of this Constitution and that office is retained or established by or under the Constitution then the person may, if qualified, again be appointed, elected, or otherwise selected to hold that office in accordance with the provisions of this Constitution.

Pensions, gratuities and other benefits

9. The law applicable to pension, gratuities or other personal emoluments in respect of holders of constitutional offices shall be the law that was in force at the date on which those benefits were granted, so long as such law is not inconsistent with the provisions of this Constitution.

The Judiciary

10. (1) Subject to the provisions of this section, a judge of the High Court, or a Judge of the Court of Appeal or any judicial officer who held office immediately before the entry into force of this Constitution shall continue to hold office as if appointed to such office under this Constitution

(2) The Judges of the superior Courts of record, the Kadhis and magistrates of the subordinate courts, may retire on attaining the age of sixty and shall retire on attaining the age of sixty-five years.

(3) A Judge who, on the coming into force of the Constitution has attained the age of fifty-five years may retire and is entitled on retirement to –

(a) the benefits that person would have been entitled to at the date of the retirement, and

- (b) be deemed to have served for an additional period of five years, for the purposes of the computation of that person's pension.
- (4) The option provided for in clause (3) shall be exercised within thirty days of the coming into force of this Constitution.
- (5) The Interim Judicial Service Commission shall receive and consider all formal complaints then pending before the Anti-Corruption Police Unit, the Advocates Complaints Commission, the Disciplinary Committee of the Law Society of Kenya, or the Attorney General, against a person referred to in clause (2).
- (6) Where, upon consideration of a complaint under clause (5), the interim Judicial Service Commission finds that the complaint has or may have merit, the Commission shall require the person concerned to proceed on paid leave pending the final determination of the complaint through the mechanisms established by this Constitution.
- (7) Where a Judge fails to exercise the option provided for under clause (3) and is not affected by the operation of clauses (5) and (6), that person shall within thirty days from the date of the appointment of the Ethics and Integrity Commission, file with the Commission the documents and evidence required under the Leadership and Integrity Code of Conduct.
- (8) Where, after the receipt of the documents and evidence specified in clause (7) the Ethics and Integrity Commission is not satisfied with the information supplied by that person, it shall notify the Judicial Service Commission of that finding.
- (9) The Judicial Service Commission shall in writing inform a person referred to in clause (1) of the finding of the Ethics and Integrity Commission under clause (7) and the person shall, from the date of the letter, be deemed to have vacated office without loss of accumulated benefits.
- (10) A person referred to in clause (2) is not entitled to the benefits of office unless that person has completed the performance of the functions of office and has accounted for the funds and property of the Judiciary for which that person is responsible.
- (11) A Judge who vacates office under clause (9) is not eligible for appointment to a public office.

(12) The vacancies created by the operation of this Article shall be filled in the manner provided for under this Constitution.

The Kadhis Courts

11(1) Article 10(3) and (4) shall apply, with necessary modification, to the Chief Kadhi.

(2) Article 10(1) applies to any person holding the office of Kadhi as it applies to holders of other judicial offices.

(3) The Kadhis Courts in operation on the coming into force of the Constitution and that were established under the Kadhis Courts Act, shall be deemed to be the District Kadhis Court and shall exercise the powers and jurisdiction granted to District Kadhis Courts under the Constitution.

Judicial Proceedings And Pending Matters

12.(1) Unless otherwise provided under this Constitution, all judicial proceedings pending before any court shall continue to be heard and shall be determined by the same or a corresponding court established under this Constitution.

(2) Unless otherwise provided under this Constitution, any matter or proceeding that, immediately before the entry into force of this Constitution, is pending before an existing constitutional Commission, office or authority shall be continued before the same or corresponding Commission, office or authority established under this Constitution.

Death Penalty And Other Outlawed Penalties

13.(1) Every sentence of death passed by any court before the entry into force of this Constitution and which is no longer the subject of an appeal shall, on the coming into force of this Constitution be commuted to a sentence of life imprisonment.

- (2) The commutation of sentence under clause (1) does not affect the exercise of any power of clemency or other reprieve or remission provided for by law.
- (3) Every sentence of corporal punishment passed before the coming into force of this Constitution is remitted and shall not be carried out.

Constitutional Commissions

14(1) The Ethics and Integrity Commission shall be constituted within thirty days of the first sitting of the National Assembly elected under this Constitution.

(2) Within thirty days of the constitution of the Ethics and Integrity Commission the following commissions shall be appointed in the following order of priority:

- (a) the Constitution Commission;
- (b) the Judicial Service Commission;
- (c) the Public Service Commission;
- (d) the Commission on Human Rights and Administrative Justice;
- (e) the Electoral Commission;
- (f) the Salaries and Remuneration Commission;
- (g) the National Land Commission;
- (h) the Teachers Service Commission; and
- (i) the National Environmental Management Commission

Establishment of Interim Judicial Service Commission

15.(1) There shall be an Interim Judicial Service Commission consisting of the following-

- (c) the chairperson elected by members of the Commission;
- (d) the Attorney-General;
- (e) two advocates of fifteen years of practice, one of whom must be a woman, nominated by the Law Society of Kenya;
- (f) two law teachers, one of whom must be a woman, nominated jointly by the faculties of law of public universities;
- (g) a member nominated by the Council of Legal Education,

- (h) the chairperson of the Public Service Commission or a nominee of the chairperson,
- (i) a Muslim woman to represent the Muslim community nominated by national muslim organizations; and
- (j) three members with experience in public affairs, one of whom is a woman, nominated by the national organization of Non-Governmental Organisations.

(2) Upon entry into force of this Constitution, the Attorney General shall invite the organizations listed under clause (1) to nominate representatives to the Interim Judicial Service Commission.

(3) The Attorney General, shall on receipt of the names referred to in clause (1) summon the first meeting at which the members of the Interim Judicial Service Commission shall elect the chairperson.

(4) Until such time as the Judicial Service Commission is properly constituted, the Interim Judicial Service Commission shall exercise all powers of the Commission under this Constitution.

(5) For the avoidance of doubt, the Interim Judicial Service Commission shall be deemed to be properly constituted notwithstanding any vacancy in its membership.

(6) The process of appointment of the Judges of the Supreme Court shall commence and be finalized within forty-five days of the appointment of the Interim Judicial Service Commission.

(7) The Interim Judicial Service Commission shall stand dissolved upon the appointment of all members of the Commission in accordance with this Constitution.

Past Human Rights Abuses

16. The Commission on Human Rights and Administrative Justice shall, within six months of the coming into force of this Constitution, on the petition of any person or on its own motion-

- (a) investigate all forms of human rights abuses by any person or group, before the coming into operation of this Constitution;
- (b) investigate the causes of civil strife, including massacres, ethnic clashes and identify those responsible;
- (c) make appropriate recommendations regarding:
 - (i) the prosecution of those responsible;
 - (ii) the award of compensation to victims;
 - (iii) reconciliation; and
 - (iv) reparation.
- (d) Present to Parliament a comprehensive report on (c) above within 24 months of the coming into force of the Constitution.

Ownership Of Land

- 17**
- (1) Upon entry into force of this Constitution any interest in land larger than a ninety-nine year lease by whoever granted held by a non-citizen, shall be converted to ninety-nine year lease unless otherwise revoked..
 - (2) Until communities are identified and their title is registered, community land shall be held by the National Land Commission on behalf of the communities.