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of Select Committee  
on Constitutional  
Review (Mr. Nyachae)  
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Republic of Kenya

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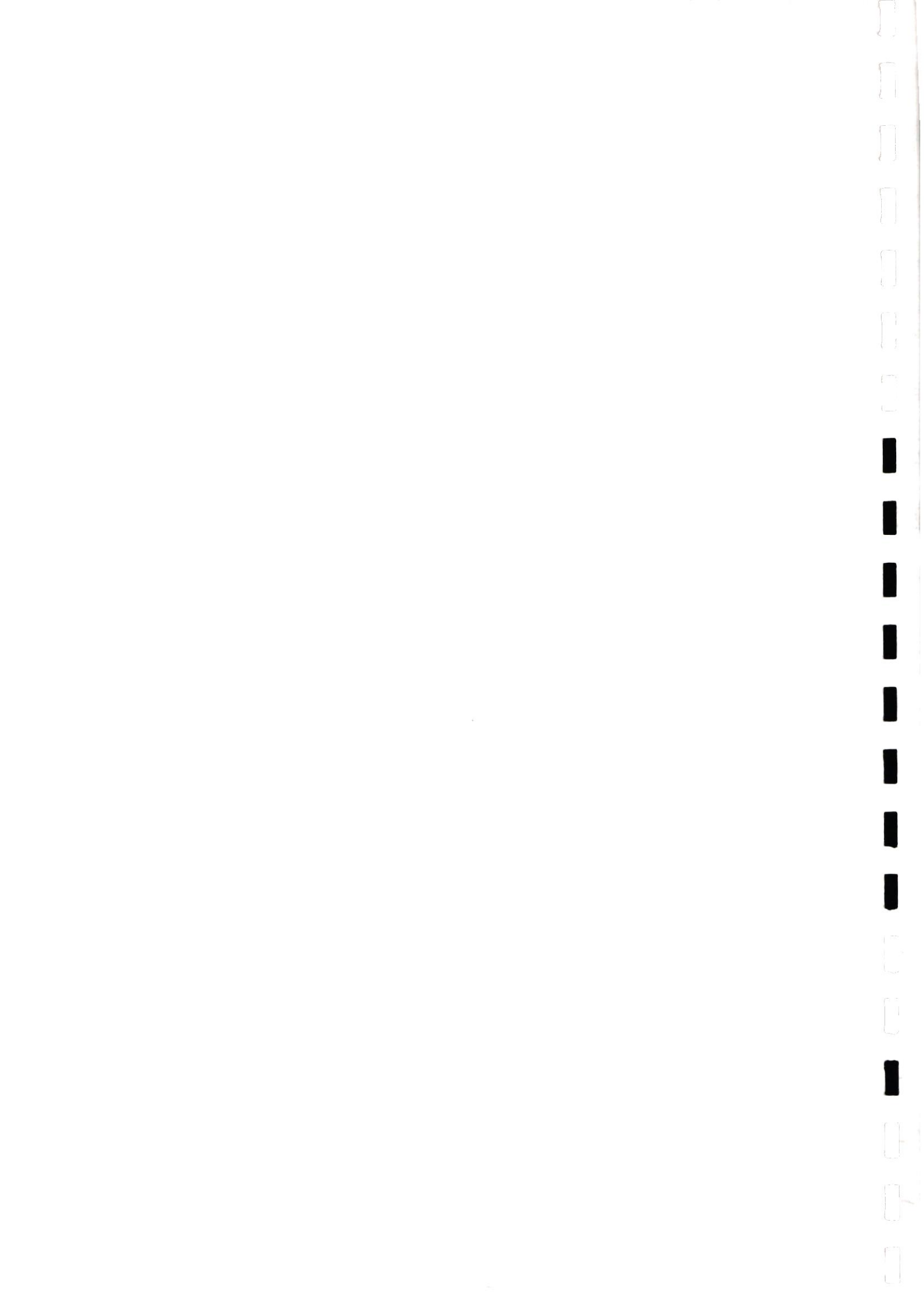
PARLIAMENTARY SELECT COMMITTEE ON  
THE REVIEW OF THE CONSTITUTION OF KENYA

THE DRAFT CONSTITUTION OF KENYA 2005

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PARLIAMENT BUILDINGS  
NAIROBI

JULY 2005





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## **PREAMBLE**

We, the people of Kenya –

**ACKNOWLEDGING** the supremacy of the Almighty God of all creation:

**HONOURING** those who heroically struggled to bring freedom and justice to our land:

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

**RESPECTFUL** of the natural environment that is our heritage, and determined to sustain it for the benefit of future generations:

**COMMITTED** to nurturing and protecting the well-being of the individual, the family and the community:

**RECOGNISING** the aspirations of all Kenyans 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 participated fully in the making of this Constitution:

**ADOPT**, enact and give this Constitution to ourselves and to our future generations.

**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 this Constitution.
- (2) The people may exercise their sovereign power either directly or through their democratically elected representatives.
- (3) Authority is delegated to the following State organs, which shall perform their functions in accordance with this Constitution –
  - (a) Parliament and the legislative structures in the district governments;
  - (b) the national executive and the executive structures in the district governments;
  - (c) the Judiciary and other independent tribunals; and
  - (d) the constitutional Commissions and State offices.

#### Supremacy of the Constitution

2. (1) This Constitution is the supreme law of the Republic and binds all State organs at all levels of government and all persons throughout Kenya.
- (2) The validity or legality of this Constitution is not subject to challenge by or before any court or State organ.
- (3) A law that is inconsistent with this Constitution is void to the extent of the inconsistency and any action or omission in contravention of this Constitution is invalid.
- (4) A person, or a group of persons, may bring an action in the High Court for a declaration that any law is inconsistent with, or is in contravention of, this Constitution.
- (5) If the High Court makes a declaration under clause (4), it may also make any order necessary to give effect to the declaration.

#### Defence of the Constitution

3. (1) Every person has an obligation to respect and defend this Constitution.
- (2) Any attempt to establish a system of government otherwise than in compliance with this Constitution is unlawful.

#### The Laws of Kenya

4. The laws of Kenya comprise this Constitution and each of the following to the extent that it is consistent with this Constitution -
  - (a) laws enacted under this Constitution;
  - (b) the Acts of Parliament in force immediately before the effective date;
  - (c) any other law that was recognized by the courts as part of the laws of Kenya immediately before the effective date;



- (d) personal laws of the peoples of Kenya;
- (e) the rules of law generally known as the common law, or the doctrines of equity; as they relate to the practice and procedures of the courts;
- (f) the East African Community Law; and
- (g) customary international law, and international agreements, applicable to Kenya.

## CHAPTER TWO

### THE REPUBLIC

#### Declaration of the Republic

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

#### Territory

6. (1) Kenya consists of the territory recognized under international law.
- (2) Kenya comprises districts and other units as may be prescribed by an Act of Parliament.
- (3) Each district shall be divided into such units as may be prescribed by an Act of Parliament.

#### Devolution

7. (1) The sovereign authority of the people is exercised at –
  - (a) the national level; and
  - (b) the district level;
- (2) The governments at both levels are distinct, inter-dependent, consultative and negotiative.

#### Capital

8. (1) The capital of Kenya shall be at such place as may be prescribed by an Act of Parliament.
- (2) All national State organs shall be decentralised to all districts equitably.

#### Languages

9. (1) The national language of the Republic is Kiswahili.
- (2) The official languages of Kenya are Kiswahili and English, and all official documents shall be made available in both languages.
- (3) The State shall respect and protect the diversity of language of the people of Kenya and shall promote the development and use of indigenous languages and sign language.
- (4) The State shall promote the development and use of Braille and other appropriate modes of communication for persons with visual and other impairments.

#### 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, as set out in the First Schedule, are –

- (a) the national flag;
- (b) the national anthem;
- (c) the coat of arms; and
- (d) the public seal.

**National days**

12. The national days are –

- (a) 1<sup>st</sup> June – Madaraka Day;
- (b) 20<sup>th</sup> October – Mashujaa Day; and
- (c) 12<sup>th</sup> December – Jamhuri Day.

## CHAPTER THREE

### NATIONAL VALUES, PRINCIPLES AND GOALS

#### National values, principles and goals

13. (1) The national values, principles and goals contained in this Chapter apply to all State organs, State officers, public officers, citizens and private bodies whenever any of them –
- (a) applies or interprets this Constitution or any other law; or
  - (b) applies, makes or implements policy decisions.
- (2) The State shall –
- (a) promote national unity and develop the commitment of all citizens to the spirit of nationhood and patriotism;
  - (b) recognise the diversity of the people and promote and protect the cultures of its communities;
  - (c) promote the participation of the people in public affairs and facilitate the sharing and devolution of power;
  - (d) ensure open and transparent government and accountability of State officers, public officers, State organs and public authorities;
  - (e) take effective measures to eradicate all forms of corruption;
  - (f) ensure access of the people to independent, impartial, competent, timely and affordable institutions of justice;
  - (g) recognise the role of civil society in governance and facilitate its role in ensuring the accountability of government;
  - (h) protect and promote human rights and fundamental freedoms and enhance the dignity of individuals and communities;
  - (i) ensure full participation of women, persons with disabilities, marginalized communities and all other citizens in the political, social and economic life of the country;
  - (j) implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender;
  - (k) progressively implement the principle that at least five per cent of the members of elective and appointive bodies shall be persons with disabilities;
  - (l) recognise the special responsibilities that the State, society and parents owe to children and uphold the family and the institution of marriage;
  - (m) be committed to social justice and the realization of the rights of the people of Kenya to basic needs and a secure environment;
  - (n) promote the development of, and recognise and enhance the role of, science and technology;

- (o) eliminate disparities in development between the various parts of the country and sectors of society;
- (p) manage national resources fairly and efficiently for the welfare of the people;
- (q) recognise its responsibilities to future generations of the people of Kenya, by pursuing policies for the sustainable management of the environment; and
- (r) be a good citizen of Africa and of the world and commit itself to work for international peace and solidarity.

## CHAPTER FOUR

### CITIZENSHIP

#### General principles

14. Every citizen is –
- (a) entitled to the rights, privileges and benefits of citizenship, subject to the limits set out in this Constitution;
  - (b) entitled to a Kenyan passport and to any document of registration and identification issued by the State to citizens; and
  - (c) subject to the responsibilities of citizenship.

#### Retention of existing citizenship

15. Every person who was a citizen immediately before the effective date retains the same citizenship status as from that date.

#### Acquisition of citizenship

16. (1) Citizenship may be acquired by birth, registration, or naturalization.
- (2) Every person who was not a citizen immediately before the effective date but would have been a citizen if this Constitution had been in force, may apply to be registered as a citizen.

#### Citizenship by birth

17. (1) Every person born in Kenya is a citizen if, at the date of the person's birth, either the mother or the father of the person is a citizen.
- (2) A person born outside Kenya is a citizen if, at the date of the person's birth, either the mother or the father of the person is –
- (a) a citizen who was born in Kenya; or
  - (b) a citizen by registration or naturalization.
- (3) If either parent of a person died before that person was born, for all purposes of this Chapter, that parent's citizenship at the time of death applies as if that parent had survived until the birth of that person.

#### Citizenship and marriage

18. (1) A person who has been married to a citizen for a period of at least seven years may apply to be registered as a citizen.
- (2) Citizenship is not lost through marriage or the dissolution of marriage.

#### Citizenship by naturalization

19. A person who has been lawfully resident in Kenya for a continuous period of at least seven years, and who satisfies the conditions prescribed by an Act of Parliament, may apply to be naturalized as a citizen.

#### Children found in Kenya and adopted children

20. (1) A child who is not a citizen and who is adopted by a citizen may apply to become a citizen.



- (2) A child found in Kenya who appears to be less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.

#### **Dual citizenship**

21. (1) A person who is a citizen by birth in terms of Article 17 -
- (a) does not lose citizenship by reason only of acquiring the citizenship of another country; and
  - (b) may apply to regain citizenship, if the person had ceased to be a citizen as a result of acquiring the citizenship of another country.
- (2) Parliament shall enact legislation providing for conditions upon which citizenship may be granted to individuals, other than individuals referred to in clause (1).

#### **Deprivation of citizenship**

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

#### **Residence**

23. (1) The following persons may enter and reside in Kenya if 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 enact legislation governing the entry into and residence in Kenya of other categories of persons and providing for the status of permanent residents.

#### **Responsibilities of a citizen**

24. (1) In order to fulfil the national values, principles and goals, all citizens have the responsibility to -
- (a) acquire basic understanding of the provisions of this Constitution and promote its ideals and objectives;
  - (b) uphold and defend this Constitution and the law;
  - (c) vote and become 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) contribute to the welfare and advancement of the nation by paying all taxes lawfully due;
  - (h) strive to foster national unity and live in harmony with others;
  - (i) promote democracy, good governance and the rule of law;
  - (j) promote family life and act responsibly in the context of the family;
  - (k) protect and safeguard public property from waste and misuse;
  - (l) protect the environment and conserve natural resources;
  - (m) co-operate with law enforcement agencies for the maintenance of law and order;
  - (n) desist from acts of corruption; and
  - (o) understand and enhance the Republic's place in the international community.
- (2) The responsibilities set out in clause (1) apply equally where appropriate to non-citizens.

**Legislation on citizenship**

**25. Parliament shall enact legislation –**

- (a) prescribing procedures by which a person may become a citizen;
- (b) providing for the voluntary renunciation of citizenship;
- (c) providing procedures for the deprivation of citizenship; and
- (d) generally giving effect to the provisions of this Chapter.

## CHAPTER FIVE

### CULTURE

#### Principles concerning culture

26. (1) This Constitution recognizes culture as the foundation of the nation, the cumulative civilization of the Kenyan people and communities, and the bedrock on which all spheres of individual and collective lives are based and in particular -
- (a) affirms the values and principles of the unwritten constitutions of all the communities of Kenya, their past traditions, present struggles and future aspirations;
  - (b) recognizes and protects the fundamental goals and values of culture and appreciates culture as the basis for nurturing national pride and identity; and
  - (c) reflects and affirms the sovereign uniqueness and distinctiveness of the Kenyan people and community contributing to, and sharing in the global culture.
- (2) The State shall -
- (a) promote understanding, tolerance and appreciation of diversity;
  - (b) respect, preserve, protect and promote the heritage of Kenya, and in particular, its cultural, historical, religious, sacred, archaeological and other significant sites and artefacts;
  - (c) promote -
    - (i) the development of all forms of education and equal opportunity for individuals to attain the highest possible standard of education, and maintain an education policy that enhances culture and cultural values, enables the people to develop strong moral, ethical and spiritual foundations; and
    - (ii) all forms of national and cultural expression through literature, the visual and performing arts, science, communication, information, mass media, publications and libraries;
  - (d) support, promote and protect scientific and intellectual research, innovation and application;
  - (e) support and promote the development of medical technology, preventive medicine and the appropriate application of modern and traditional medical practices;
  - (f) recognize the role of science and indigenous technologies and knowledge and intellectual creativity in the development of the nation;
  - (g) support, promote and protect indigenous knowledge, literature, art, oral traditions, performing arts and other cultural heritage and the intellectual property rights of the people of Kenya;



- (h) recognize and appreciate cultural, customary and religious days including philosophical beliefs celebrated by various communities;
- (i) preserve and develop the spirit of the noble traditions, principles and practices of African socialism;
- (j) recognize the significance of, and patent, cultural medicine inherited from centuries of research on flora and fauna, encourage herbal farming and promote contemporary cultural herbal research and alternative medicine;
- (k) ensure that the indigenous people receive compensation or royalties for the use of indigenous cultures and cultural heritage;
- (l) encourage the people of Kenya to rediscover and apply the value of traditional farming systems, diet and traditional drinks; and
- (m) through legislation accord recognition and protection of ownership of the origin of seed, its genetic and diverse characteristics and its product use by communities of Kenya.

**Cultural day**

27. The 26<sup>th</sup> day of December is designated as Utamaduni Day.

**CHAPTER SIX**  
**THE BILL OF RIGHTS**

**Part I – General provisions relating to the Bill of Rights**

**Fundamental rights and freedoms**

28. (1) This Bill of Rights is an integral part of Kenya's democratic State and is the framework for 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 Chapter –
- (a) belong to each individual and are not granted by the State;
  - (b) do not exclude other rights not mentioned in this Chapter, recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and
  - (c) are subject only to the limitations contemplated in this Chapter.

**Application of the Bill of Rights**

29. (1) The Bill of Rights applies to all laws and binds all State organs and all persons.
- (2) Every person shall enjoy the rights and freedoms in the Bill of Rights, to the greatest extent consistent with the nature of the right.
- (3) When applying a provision of the Bill of Rights as required by clause (1), a court –
- (a) shall develop the law to the extent that legislation does not give effect to that right or freedom;
  - (b) shall adopt the interpretation that most favours the enforcement of a right or freedom; and
  - (c) may develop rules of law to limit that right or freedom in a manner consistent with Article 33.
- (4) 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, equity and freedom; and
  - (b) shall promote the spirit, purport and objects of the Bill of Rights.
- (5) When interpreting and applying a particular right or freedom, if the State claims that it does not have the resources to implement the right or freedom, a State organ, 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; and
- (c) a court, tribunal or the Commission on Human Rights and Administrative Justice may not interfere with a decision by a *State organ concerning the allocation of available resources*, solely on the basis that the court, tribunal or forum or the Commission would have reached a different conclusion.

### **Implementation of rights and freedoms**

- 30.**
- (1) It is a fundamental duty of every State organ to observe, respect, protect, promote and fulfil the rights and freedoms in this Chapter, as appropriate, in the exercise of all their powers and functions.
  - (2) The State shall take legislative, policy and other measures to achieve the progressive realisation of the rights guaranteed under Articles 61, 62, 63, 64, 65, 66, 67 and 68
  - (3) Parliament and the Commission on Human Rights and Administrative Justice shall establish standards for the achievement of the rights mentioned in clause (2).
  - (4) The State shall recognise and facilitate the role of civil society in the promotion and protection of the rights and freedoms in the Bill of Rights.
  - (5) All public officers and State organs, and their employees have the responsibility to equip themselves to understand and deal with the needs of special groups within society including women, older members of society, persons with disabilities, children, youth and members of minority and marginalized communities and of particular ethnic, religious and cultural communities.
  - (6) The State shall fulfil all its international obligations in respect of human rights and for that purpose the State shall –
    - (a) report on time to international human rights bodies on the implementation of human rights treaties and other instruments;
    - (b) publish reports intended for submission by the State to international bodies for a reasonable period and facilitate public discussion and debate on them before the reports are revised and submitted; and
    - (c) facilitate submissions by civil society organizations to international human rights bodies.
  - (7) The comments and recommendations of international bodies relating to the international obligations of the State shall be disseminated to the public, and the Government shall make a statement to Parliament on whether and how it intends to implement those recommendations.
  - (8) The State shall establish the necessary machinery to give full effect to the provisions of the Bill of Rights.



### **Enforcement of the Bill of Rights**

31. (1) A person referred to in clause (2) has the right to complain to the Commission on Human Rights and Administrative Justice, and to *institute court proceedings, alleging that a right in the Bill of Rights has been denied, violated, infringed or threatened.*
- (2) The persons who may complain to the Commission or institute court proceedings in accordance with clause (1) are –
- (a) a person acting in that person's 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 one or more of its members.*
- (3) The Chief Justice shall make rules providing for court proceedings mentioned in clause (1), which 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 court shall, if necessary, be prepared to entertain proceedings on the basis of informal documentation;
  - (c) that the court, while observing the rules of natural justice, shall not be unreasonably restricted by technical requirements;
  - (d) that no fee may be charged for commencing proceedings under this Article; and
  - (e) that an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.

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

32. (1) The High Court has jurisdiction to hear applications for redress for a violation of a right contained in the Bill of Rights.
- (2) Parliament shall enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear applications for redress for a contravention of the Bill of Rights.
- (3) In any matter brought before it under Article 31, 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 33;
  - (c) an order of compensation against the State or any person responsible for the violation of the rights; and
  - (d) 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 devoid of merit.

### **Limitation of rights**

33. (1) A right or freedom set out in the Bill of Rights may be limited only –
- (a) by a limitation or qualification expressly set out in the provision containing that right or freedom and may be otherwise limited only by a law of general application; and
  - (b) 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;
    - (iv) the need to ensure that the enjoyment of rights and freedoms by any individual does not prejudice the rights and freedoms of others; and
    - (v) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.
- (2) Despite clause (1)(b), a provision in legislation is not valid in the case of legislation enacted or amended after the effective date, unless that legislation specifically expresses the intention to limit that right or freedom and the nature and extent of the limitation.
- (3) Despite clause (1), a 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; and
  - (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.
- (4) The State or a person seeking to justify a particular limitation, shall demonstrate to the court, tribunal or forum that the requirements of this Article have been satisfied.
- (5) 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.

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## **Part II – Fundamental rights and freedoms**

### **Right to life**

34. (1) Every person has the right to life except as may be prescribed in an Act of Parliament.
- (2) The life of a person begins at conception.
- (3) Abortion is not permitted except as may be provided for by an Act of Parliament.

### **Equality**

35. (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**

36. (1) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
- (2) A person shall not discriminate directly or indirectly against another person on any ground in terms of clause (1).
- (3) A person may not be compelled to indicate or define that person's ethnicity or race.
- (4) Despite clause (1), the State shall take legislative and other measures including but not limited to affirmative action programmes and policies designed to benefit individuals or groups who are disadvantaged, whether or not as a result of past discrimination, but any such measure taken shall –
- (a) adequately provide for any benefits to be on the basis of genuine need; and
- (b) be permissible in terms of Article 33.
- (5) Parliament shall review the affirmative action programmes and policies referred to in clause (4) after every ten years.

### **Gender**

37. (1) Women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social activities.
- (2) Women and men have an equal right to inherit, have access to and manage property.
- (3) Any law, culture, custom or tradition that undermines the dignity, welfare, interest or status of women or men is prohibited.
- (4) Despite clause (1), 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**

- 38.** (1) Older members of society are entitled to continue to enjoy all the rights and freedoms set out in the Bill of Rights.
- (2) The State shall take legislative and policy measures to ensure the rights of older persons to –
- (a) participate fully in the affairs of society;
  - (b) pursue their personal development;
  - (c) be free from all forms of discrimination and abuse;
  - (d) live in dignity and respect;
  - (e) retain their social, economic and political autonomy; and
  - (f) receive reasonable care and assistance of their family and the State.
- (3) Parliament shall enact legislation to establish a council to define and advise on policies and programmes for the care and protection of older members of society.

#### **Youth**

- 39.** (1) The youth constitute an integral part of society and are entitled to enjoy all the rights and freedoms set out in the Bill of Rights, taking into account their unique needs.
- (2) The State shall take legislative and other measures, including but not limited to affirmative action policies and programmes, to promote the welfare of the youth.
- (3) The measures referred to under clause (2) shall include measures to ensure for the youth –
- (a) access to quality and relevant education and training;
  - (b) participation in governance;
  - (c) access to gainful employment;
  - (d) adequate opportunities in the social, political, economic and other spheres of national life;
  - (e) freedom of association to further their legitimate interests;
  - (f) protection from any culture, custom, tradition or practice that could undermine their dignity or quality of life; and
  - (g) a life free from discrimination, exploitation or abuse.

#### **Children**

- 40.** (1) Children hold a special place in society.
- (2) It is the duty of parents, the family, society and the State to nurture, protect and educate children.



- (3) All children, whether born within or outside wedlock, are equal before the law and have equal rights under this Constitution.
- (4) A child's best interests shall be of paramount importance in every matter concerning the child.
- (5) A child's mother and father, whether married to each other or not, have an equal responsibility to protect and provide for the child.
- (6) 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 when the child is separated from its parents;
  - (c) free and compulsory basic education;
  - (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, when arrested or detained, to be treated in a manner that promotes the child's dignity and self-worth and that pays attention to the child's rights, including but not limited to the right to –
    - (i) be so detained only for the shortest appropriate period of time;
    - (ii) be kept separate from adults in custody;
    - (iii) be accorded legal assistance by the State; and
    - (iv) be treated in a manner, and to be kept in conditions, that take account of the child's disability, if any, gender and age;
  - (j) have a legal practitioner assigned to the child by the State and at State expense in other proceedings affecting the child, if injustice would otherwise result; and
  - (k) 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.
- (7) Children with special needs are entitled to the special protection of the State and society.





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

### **Family**

41. (1) The family is the natural and fundamental unit of society and the necessary basis of social order.
- (2) Every adult –
  - (a) has the right to marry a person of the opposite sex, based upon the free consent of the parties; and
  - (b) has the right to found a family.
- (3) A person shall not marry another person of the same sex.
- (4) Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage, and at the dissolution of the marriage.
- (5) Parliament shall enact legislation that recognises –
  - (a) marriages concluded under any tradition, or system of religious, personal or family law; and
  - (b) personal and family law under any tradition, or adhered to by persons professing a particular religion,to the extent such marriages or systems are consistent with this Constitution.

### **Persons with disabilities**

42. (1) Persons with disabilities are entitled to enjoy all the rights and freedoms set out in the Bill of Rights, and to be full participants in society.
- (2) Persons with disabilities have a right to –
  - (a) respect and human dignity including to be treated, addressed and referred to, in official or private contexts, in a manner and in words that are not demeaning or derogatory;
  - (b) access to education, to institutions and facilities for persons with disabilities that are as integrated into society as a whole as is compatible with the interests of those persons;
  - (c) access to all places, to public transport and to information and communications;
  - (d) use of sign language, Braille and other appropriate means of communication;
  - (e) participate in decision-making at all levels;
  - (f) equal rights to inherit, have access to and to manage property;
  - (g) access to materials and devices to overcome constraints arising from those disabilities; and
  - (h) treatment and opportunities in all spheres of life that are both fair and equal to those of other members of society.

- (3) The State shall take legislative and other measures to ensure that persons with disabilities enjoy all the rights referred to in clause (2).
- (4) Legislation and policy measures provided for in clause (3) shall make special provision for women with disabilities.

#### **Minorities and marginalized groups**

43. (1) Minorities and marginalized groups are entitled to enjoy all the rights and freedoms set out in the Bill of Rights, on a basis of equality, taking *into account their special circumstances and needs*.
- (2) The State shall take legislative and other measures to put in place affirmative action programmes, designed to benefit Minorities and marginalized groups.
- (3) The measures referred to in clause (2) shall include measures to ensure that Minorities and marginalized groups –
  - (a) participate and are fully represented in governance and in all other spheres of national life;
  - (b) are accorded special opportunities in the educational and economic fields;
  - (c) are accorded special opportunities for access to gainful employment;
  - (d) are assisted to develop their cultural values, languages and practices;
  - (e) are assisted to have reasonable access to water, health services and transport infrastructure;
  - (f) have a reasonable opportunity to meet their basic needs; and
  - (g) live a life free from discrimination, exploitation or abuse.

#### **Human dignity**

44. (1) Every person has inherent dignity and the right to have that dignity respected and protected.
- (2) The inherent dignity of every person –
  - (a) *includes the right to dispose of the remains of deceased persons in a dignified manner; and*
  - (b) extends to their remains after burial.

#### **Freedom and security of the person**

45. Every person 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 Article 74;
  - (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

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- (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**

- 46. (1) A person shall not be held in slavery or servitude.
- (2) A person shall not be required to perform forced labour.

**Privacy**

- 47. 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**

- 48. (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, including observance of a day of worship, practice or teaching.
- (3) Every religious community is entitled to establish and run places of education at its own expense 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, if –
  - (a) they are conducted on an equitable basis; and
  - (b) attendance at such observances or religious instruction is voluntary.
- (5) A person may not be denied access to any institution, employment or facility or the enjoyment of any right, for reasons of that person's religious beliefs.
- (6) A person shall not compel another person –
  - (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;
  - (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) to perform, observe or undergo a religious practice or rite;
- (e) to disclose that person's religious convictions or beliefs; or
- (f) to do any other act that is contrary to that person's religion or belief.

**Freedom of expression**

49. (1) Every person has the right to freedom of expression, which includes –
- (a) freedom to receive or impart information or ideas;
  - (b) freedom of artistic creativity, including dress; and
  - (c) academic freedom and freedom of scientific research.
- (2) The right referred to in clause (1) does not extend to –
- (a) propaganda for war;
  - (b) incitement to violence; or
  - (c) advocacy of hatred that –
    - (i) constitutes vilification of others or incitement to cause harm, or
    - (ii) is based on any prohibited ground of discrimination contemplated in Article 36.

**Freedom of the media**

50. (1) Freedom and independence of electronic, print and other media of all types are guaranteed.
- (2) The State shall not –
- (a) exercise control over, or interfere with, any person concerned in broadcasting, production or circulation of any publication, or in the dissemination of information by any medium; or
  - (b) harass or penalize any person for any opinion or view, or the content of any broadcast, 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 other forms of signal distribution; 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 enact legislation that –
- (a) makes reasonable provision for equitable allocation of airtime by State-owned and other specified categories of broadcasting media, to political parties either generally or during election campaigns;





- (b) regulates freedom to broadcast in order to ensure fair election campaigning; and
  - (c) provides for the establishment of a body which shall be independent of government or political control and reflective of the interests of all sections of the community, and which shall set media standards, and regulate and monitor compliance with those standards.
- (6) Parliament may enact legislation and such legislation shall not be held to be inconsistent with or in contravention of this Article to the extent that the legislation in question makes provision -
- (a) that is reasonably required in a democratic state in the interest of defence, public security public safety, public order, public morality, or public health; or
  - (b) that is reasonably required in a democratic state for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence and maintaining the authority and independence of the courts.

#### **Access to information**

51. (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 that affects that person.
- (3) The State shall publish and publicize any important information affecting the nation.
- (4) Parliament shall enact legislation to provide for access to information and such legislation may restrict access to information that could compromise defence public security public safety, public order, public morality, or public health.

#### **Freedom of association**

52. (1) Every person has the right to freedom of association.
- (2) The right extends to the formation, operation and continued existence of organisations.
- (3) A person shall not be compelled to join an association of any kind.
- (4) The State shall take legislative and policy measures to promote and encourage 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 provide that -
- (a) registration may be required only if there is good reason for it;

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- (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 cost 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 the affected organisations; and
- (f) de-registration procedures shall provide for a fair hearing and for a right of appeal to an independent tribunal.

**Assembly, demonstration, picketing and petition**

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

**Political rights**

54. (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 under this Constitution; and
  - (b) office bearers of any political party of which the citizen is a member.
- (3) Every adult citizen has the right –
- (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 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**

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

**Refugees and asylum**

56. (1) 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 that would justify that person's being regarded as a refugee.





- (2) Parliament shall enact legislation in compliance with international law and practice, governing persons who seek refuge or asylum in Kenya.

**Freedom of trade, occupation and profession**

57. (1) Every person has the right to choose a trade, occupation or profession.
- (2) The practice of a trade, occupation or profession may be regulated by legislation.

**Protection of right to property**

58. (1) Subject to Article 82, every person has a right to acquire and own property in any part of Kenya, either individually or in association with others.
- (2) Parliament shall not enact a law that permits the State, or any person –
  - (a) to arbitrarily deprive a person of property of any description;
  - (b) to arbitrarily deprive a person of any interest in, or right over, such property; or
  - (c) to limit or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds set out under Article 36(1).
- (3) The State shall 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 or a conversion of an interest in land, or title to land, in accordance with Chapter Seven; or
  - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution or an Act of Parliament that –
    - (i) requires prompt payment in full, of a just compensation to the person, before the property is taken;
    - (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
- (4) Provision may be made for compensation to be paid to occupants in good faith of the land so acquired who may not hold title to that land.
- (5) The right recognized and protected under this Article does not cover any property that has been unlawfully acquired.

**Labour relations**

59. (1) Every person has the right to fair labour practices.
- (2) Every worker has the right to –
  - (a) fair remuneration;
  - (b) reasonable working conditions;
  - (c) form, join or participate in the activities and programmes of a trade union; and
  - (d) go on 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.

**General provisions on interpretation of social and economic rights**

60. (1) The rights referred in Articles 61, 62, 63, 64, 65, 66, 67 and 68 shall be construed subject to Article 30(2) and this Article.
- (2) The Articles specified in clause (1) shall not be construed as imposing on the State obligations beyond the resources available to the State.

**Social security**

61. (1) Every person has the right to social security.
- (2) The State shall provide appropriate social security to persons who are unable to support themselves or their dependants.

**Health**

62. (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**

63. (1) Every person has the right to education.
- (2) The State shall institute a programme to implement the right of every child to free and compulsory pre-primary and primary education and in so doing shall pay particular attention to children with special needs.
- (3) The State shall take measures to make secondary and post-secondary education progressively available and accessible.
- (4) Every person has the right to establish and maintain, at that person's own expense, independent educational institutions that comply with the requirements of this Constitution, and meet standards laid down in legislation.

**Housing**

64. Every person has the right to accessible and adequate housing.

**Food**

65. Every person has the right to be free from hunger and to adequate food of acceptable quality.



## **Water**

66. Every person has the right to water in adequate quantities and of satisfactory quality.

## **Sanitation**

67. Every person has the right to a reasonable standard of sanitation.

## **Environment**

68. Every person 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 legislative and other measures that –
    - (i) prevent pollution and ecological degradation; and
    - (ii) promote conservation; and secure ecologically sustainable development and use of natural resources while promoting economic and social development; and
  - (c) to free information about the environment; and
  - (d) to compensation for damage arising from the violation of the rights recognised under this Article.

## **Language and culture**

69. (1) Every person has the right to use the language, and to participate in the cultural life, of that person's choice.
- (2) A person belonging to a cultural or linguistic community shall not be denied the right, with other members of that community –
- (a) to enjoy that person's culture and use that person's language; or
  - (b) to form, join and maintain cultural and linguistic associations and other organs of civil society.
- (3) A person shall not compel another person to perform, observe or undergo any cultural practice or rite.

## **Consumer rights**

70. (1) Consumers have the right to –
- (a) goods and services of reasonable quality;
  - (b) the information necessary for them to gain full benefit from goods and services;
  - (c) the protection of their health, safety, and economic interests; and
  - (d) compensation for loss or injury arising from defects in goods or services.
- (2) The principles in this Article apply to goods and services offered by State organs, public and private persons and other entities.
- (3) Parliament shall enact legislation to provide for consumer protection and for fair, honest and decent advertising.





### **Fair administration**

71. (1) Every person has the right to administrative action that is expeditious, efficient, 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 provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal.

### **Access to courts**

72. (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 tribunal or forum.
- (2) Any fee required to be paid by a person under clause (1) shall be reasonable and not serve to impede access to justice.

### **Rights of arrested persons**

73. (1) Every person who is arrested has the right –
- (a) to be informed promptly in language that person understands of the reason of the arrest;
  - (b) to remain silent;
  - (c) to be informed promptly in language that person understands –
    - (i) of the right to remain silent; and
    - (ii) of the consequences of not remaining silent;
  - (d) to communicate with that person's lawyers and other persons whose assistance is necessary;
  - (e) not to be compelled to make any confession or admission that could be used in evidence against that person and where that person freely chooses to make a confession, it shall be made before a court or magistrate;
  - (f) to be held separately from persons who are serving a sentence;
  - (g) to be brought before a court as soon as reasonably possible, but not later than forty eight hours after being arrested or not later than the end of the first court day after the expiry of the forty eight hours, if the forty eight hours expire outside ordinary court hours or on a day that is not an ordinary court day;
  - (h) 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
  - (i) to be released on bond or bail pending a charge or trial on reasonable conditions unless there are compelling reasons to the contrary.

- (2) A person shall not be remanded in custody for an offence if that offence is punishable by a fine only or imprisonment for not more than six months.

**Fair trial**

74. (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 a court established under this Constitution;
  - (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;
  - (i) 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 the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial;
  - (m) not to be convicted for an act, or omission, that at the time it was committed or omitted was not –
    - (i) an offence in Kenya; or
    - (ii) a crime under general principles of law recognised by the major legal systems or by international law;
  - (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;
  - (o) 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
  - (p) 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 language that the person understands.
- (3) Evidence obtained in a manner that violates any right in the 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, on request, 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, in return for a reasonable fee as prescribed by law.
- (6) A person convicted of a criminal offence and whose appeal has been dismissed by the highest court to which the person is entitled to appeal, or who did not appeal within the time allowed for appeal, may petition the High Court for a new trial if new and compelling evidence has become available.
- (7) A person shall not be convicted of a criminal offence unless that offence is defined and the penalty is prescribed in a written law.
- (8) Despite clause (7), a court may punish a person for contempt even though the act or omission constituting the contempt is not defined in a written law and the penalty is not so prescribed.
- (9) Parliament shall by legislation make provisions to guide courts in the exercise of their jurisdiction in respect of contempt.

#### **Rights of persons held in custody**

75. (1) A person held in custody under the law, whether sentenced or not, retains all the fundamental rights under this Constitution, except to the extent that a right is clearly incompatible with the fact of being in custody.
- (2) Parliament shall by legislation provide for the humane treatment of persons held in custody.
- (3) The State shall ensure that the Kenya Correctional Service, so far as it relates to convicted prisoners, observes the minimum standards laid down under relevant international law and international standards.

#### **State of emergency**

76. (1) A state of emergency may be declared only in accordance with Article 150(4) and only when –
  - (a) the State is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
  - (b) the declaration is necessary to meet the circumstances for which the emergency is declared.
- (2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, is effective only –
  - (a) prospectively; and
  - (b) for no more than fourteen days from the date of the declaration, unless 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) The High 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 the 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 the Republic's obligations under international law applicable to a state 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 the indemnification of the State, or of any person, in respect of any unlawful act.

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**CHAPTER SEVEN**  
**LAND AND PROPERTY**

**Principles of land policy**

77. (1) Land is Kenya's primary resource and the basis of livelihood for the people, and shall be held, used and managed in a manner which is equitable, efficient, productive and sustainable.
- (2) The State shall define and keep under review a national land policy ensuring the following principles –
- (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;
  - (f) elimination of gender discrimination in laws, regulations, customs and practices related to land and property in land; and
  - (g) encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution.

**Vesting and classification of land**

78. (1) All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.
- (2) All land in Kenya is designated as public, community or private.

**Public land**

79. (1) Public land is –
- (a) land which at the effective date was unalienated government land as defined by an Act of Parliament;
  - (b) land lawfully held, used or occupied by any government Ministry, department or agency of local authority, except where such land is occupied under a private lease;
  - (c) all minerals as defined by any law;
  - (d) land transferred to the Republic by way of reversion or surrender;
  - (e) land in respect of which no individual or community ownership can by any legal process be established;
  - (f) land in respect of which no heir can by ordinary legal process be identified;

- (g) government forests other than forests to which Article 80(2)(e) applies, game reserves, and water catchment areas, national parks, animal sanctuaries, specially protected areas;
  - (h) all roads and thoroughfares specified by an Act of Parliament;
  - (i) all rivers, lakes and other areas of water as defined by an Act of Parliament;
  - (j) the territorial sea and its sea bed;
  - (k) all land between high and low water mark;
  - (l) any land not classified as private or community land under this Constitution; and
  - (m) any other land declared to be public land by an Act of Parliament.
- (2) Public land, classified under clause (1)(a) to (f) shall vest in and be held by District Government in trust for the people resident in the relevant district and shall be administered on their behalf by the National Land Commission.
  - (3) Public land classified under clause (1)(g) to (m) shall vest in and be held by Government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission.
  - (4) Public land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and terms of that disposal or use.

#### **Community land**

- 80. (1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture, or community of interest.
- (2) For the purposes of clause (1) "community land" includes –
  - (a) all land lawfully held as trust land by devolved governments;
  - (b) land lawfully registered in the name of group representatives under the provisions of any law for the time being in force;
  - (c) land lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;
  - (d) land lawfully transferred to a specific community by any process of law;
  - (e) ancestral lands traditionally occupied by hunter-gatherer communities; and
  - (f) any other land declared to be community land by an Act of Parliament,
 but shall not include public land as defined in Article 79.
- (3) Any unregistered community land shall be held in trust by District Governments on behalf of the communities.
- (4) 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.

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- (5) Parliament shall enact legislation to give effect to this Article.

#### **Private land**

81. Private land includes –

- (a) any registered land held by any person under a freehold tenure;
- (b) land held by any person under leasehold tenure; and
- (c) any other land that may be declared private land under an Act of Parliament.

#### **Property rights of spouses**

82. A surviving spouse shall not be deprived of a reasonable provision out of the estate of a deceased spouse whether or not the spouse died having made a will.

#### **Landholding by non-citizens**

83. (1) A person who is not a citizen may hold or use land on the basis of leasehold tenure only, and such a lease however granted, shall not exceed ninety-nine years.
- (2) An agreement, deed or conveyance or whatever nature which confers on a person who is not a citizen an interest in land greater than a ninety-nine year lease, is void.
- (3) On the effective date, any interest in land greater than a ninety-nine year lease held by a person who is not a citizen shall revert to the State and the State shall grant to a person who held such a greater interest, a ninety-nine year lease.
- (4) Parliament shall enact legislation to bring into effect the provisions of clause (3).

#### **Regulation of land use**

84. (1) 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.
- (2) The State shall encourage and provide a conducive, social, economic, political and legal atmosphere for the creation, development and management of property.
- (3) The State shall ensure –
- (a) the establishment of a housing development fund to enable the people of Kenya to gain access to more and better housing; and
  - (b) the development and review of a national housing policy with a view to increasing, regulating and maintaining the national housing stock.
- (4) Parliament shall enact legislation –
- (a) requiring the State and relevant organizations including devolved governments to encourage the use of acceptable, affordable and reasonable intermediate technologies, building materials, innovations and methods in the property sector

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provided their use is not harmful and injurious to persons and the environment; and

- (b) ensuring that major investments in property benefit local communities and their economy.

#### **Legislation on land**

85. (1) Parliament shall enact legislation to –

- (a) revise, consolidate and rationalise existing land laws;
  - (b) revise sectoral land use law in accordance with the national land policy;
  - (c) regulate the manner in which any land may be converted from one category to another;
  - (d) regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and at the termination of marriage;
  - (e) enable the ascertainment of land held for the benefit of any community by any person or agency, and the transfer of such land to communities entitled to it;
  - (f) protect, conserve and provide unfettered access to all public land;
  - (g) enable the review of all grants or dispositions of public land to establish their propriety or legality;
  - (h) settle the landless and squatters including the rehabilitation of spontaneous settlements in urban and rural areas;
  - (i) establish a land fund to enable citizens to gain access to land on an equitable basis;
  - (j) protect the dependants of deceased persons holding interests in any land including the interests of spouses in actual occupation of land;
  - (k) establish a land bank to facilitate the availability of land for public purposes; and
  - (l) prescribe minimum and maximum land holding acreage in arable areas.
- (2) Parliament shall determine the cut-off date with reference to which the review required in clause 1(g) is to be conducted.



## CHAPTER EIGHT

### ENVIRONMENT AND NATURAL RESOURCES

#### Principles and obligations on the environment

86. The State shall –

- (a) respect the integrity of natural processes and ecological communities, including conservation of habitats and species;
- (b) ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources;
- (c) ensure equitable sharing of benefits accruing from exploitation, utilization and management of the environment and natural resources under paragraph (b);
- (d) ensure that social and cultural values traditionally applied by Kenyan communities for the sustainable management of the environment and natural resources are observed;
- (e) domesticate international and bilateral agreements and treaties relating to the protection of the environment;
- (f) ensure that planning and utilization of the environment takes account of disadvantaged areas and their inhabitants;
- (g) promote energy saving and the use of renewable energy sources;
- (h) prevent pollution and ecological degradation;
- (i) allocate adequate resources to reclaim and rehabilitate degraded areas and those prone to disasters to make them habitable and productive; and
- (a) work to achieve and maintain a tree cover of a least ten per cent of the land area of Kenya.

#### Protection of the environment

87. Every person has a duty to cooperate with State organs and other persons –

- (a) to ensure ecologically sustainable development and use of natural resources;
- (b) to respect, protect and safeguard the environment;
- (c) to prevent or discontinue an act which is harmful to the environment;
- (d) to direct the appropriate authority to take measures to prevent or discontinue an act or omission which is harmful to the environment; and
- (e) to maintain a clean, safe and healthy environment.

#### Conservation of the environment

88. In the utilization and management of the environment the State shall –

- (a) protect genetic resources and biological diversity;



- (b) discourage waste and encourage recycling;
- (c) establish systems of environmental impact assessment, environmental audit and monitoring of the environment;
- (d) encourage public participation;
- (e) protect and enhance the intellectual property in, and indigenous knowledge of, in biodiversity and genetic resources of the communities; and
- (f) ensure that the environmental standards enforced in the Republic are the accepted international standards.

#### **Enforcement of environmental rights**

89. (1) If a person alleges that a right to a clean and healthy environment recognized and protected under this Constitution has been, is being or is likely to be, contravened, in addition to any other legal remedies which are available in respect to the same matter, that person may apply to the court for redress.
- (2) On an application by a person under clause (1), the 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.
- (3) A person may make an application under this Article even if he or she cannot show that the defendant's act or omission has caused or is likely to cause him or her any personal loss or injury.

#### **Utilization and development of natural resources**

90. The State shall ensure the protection, management, promotion and sustainable development of natural resources and shall –
- (a) ensure an increase in output and profits;
  - (b) undertake strategic research to ensure their enhancement;
  - (c) eliminate unfair trade practices in their production, processing, distribution and marketing;
  - (d) regulate their exportation and importation;
  - (e) regulate their origin, quality, methods of production, harvesting and processing;
  - (f) eliminate processes and activities that are likely to endanger or curtail their existence; and
  - (g) utilize them for the benefit of all the people of Kenya.

#### **Agreements relating to natural resources**

91. (1) A transaction involving the grant of a right or concession by or on behalf of any person, including the Government, to another person, for

the exploitation of any natural resource of Kenya, entered into after the effective date, is subject to ratification by Parliament.

- (2) Parliament may, by legislation supported by at least two thirds of all the members, exempt any class of transactions from the provisions of clause (1).

### **Environmental legislation**

92. Parliament shall enact legislation -

- (a) to ensure that all natural resources are sustainably developed for the benefit of Kenya as a whole and for the benefit of inhabitants of the region where these resources occur;
- (b) to provide for the utilization and management of a natural resource by the devolved government where the resource is located; and
- (c) to regulate sustainable exploitation, utilization, management and equitable sharing of benefits accruing from natural resources;
- (d) to protect the intellectual property rights and indigenous knowledge of local communities in biodiversity and access to genetic resources;
- (e) for the conservation of forests, wildlife parks, reserves and sanctuaries, beaches and water catchment areas, and promote eco-tourism;
- (f) to stop further excision of conservation areas unless such excision is consistent with principles that enhance sustainable management and provide benefits to the community;
- (g) to ensure that land use and environmental policies are put in place to protect agricultural and range lands against environmental degradation;
- (h) to enforce the "polluter-pays" principle and ensure that the disposal and storage of environmentally undesirable substances including hazardous waste and munitions take into account the requirements for a clean, safe and healthy environment;
- (i) to ensure that emission of harmful radiation and noise into the environment shall be regulated to meet the requirements for safe and healthy environment;
- (j) to minimize human-wildlife conflicts; and
- (k) to provide compensation for loss of human life, injury to persons, loss and destruction of private property.

## CHAPTER NINE

### LEADERSHIP AND INTEGRITY

#### Responsibilities of leadership

93. (1) Any sovereign authority of the people assigned to a State office –
- (a) is a public trust to be exercised in a manner that –
    - (i) is consistent with the purpose and objects of this Constitution;
    - (ii) demonstrates respect for the people;
    - (iii) brings honour to the nation and dignity to the office; and
    - (iv) promotes public confidence in the integrity of the office; and
  - (b) vests in that State officer the responsibility to serve the people, rather than the power to rule them.
- (2) The guiding principles of leadership and integrity include –
- (a) selection on the basis of integrity, competence and suitability, or election in free and fair elections;
  - (b) objectivity and impartiality in decision making and in ensuring that decisions are not influenced by nepotism, favouritism or other improper motives;
  - (c) selfless service based solely on the public interest, demonstrated by –
    - (i) honesty in the execution of public duties; and
    - (ii) the declaration of any personal interest that may conflict with public duties;
  - (d) accountability to the public for decisions and actions; and
  - (e) discipline and commitment in service to the people.

#### Assumption of office

94. Before assuming office, or performing any functions of office, each person elected or appointed to a State office shall take and subscribe the oath or affirmation of office in the manner and form prescribed by the Second Schedule, or by an Act of Parliament.

#### Conduct of State officers

95. (1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in such a manner as to avoid –
- (a) any conflict between personal interests and public or official duties;
  - (b) compromising any public or official interest in favour of a personal interest; or



- (c) demeaning the office or position the officer holds.
- (2) A State officer shall not –
  - (a) directly or indirectly use State office for personal gain;
  - (b) seek or accept any property, gift or benefit of any kind as an inducement or bribe for the granting of a favour or for the performance or non-performance of an official function;
  - (c) misappropriate public funds, or misuse or unlawfully destroy public property;
  - (d) use public assets, property or facilities to solicit contributions from the public for any non-official purpose;
  - (e) use the influence of their office to sexually or physically abuse any person, or to attempt to obtain sexual favours or other undue advantage from any person; or
  - (f) direct another person to –
    - (i) do anything prohibited by this Article for the benefit of the State officer; or
    - (ii) perform an unlawful act.
- (3) If a State officer is convicted of an offence relating to any of the matters referred in this Article that State officer shall cease to hold office.
- (4) A person who has been dismissed or removed from a State office for contravention of this Chapter is disqualified from holding any other State office.

#### **Finances of State officers**

96. (1) A State officer shall submit a written declaration to the Ethics and Integrity Commission in the manner and form determined by the Commission, declaring the properties, assets, and liabilities of the State officer, the State officer's spouse and the State officer's unmarried children who have not attained the age of eighteen years –
- (a) immediately upon becoming a State officer;
  - (b) every year while a State officer; and
  - (c) on ceasing to be a State officer.
- (2) It is a contravention of this Chapter for a State officer to –
- (a) fail to make a declaration required by this Article; or
  - (b) knowingly make a false statement in a declaration filed under this Article.
- (3) A State officer shall not –
- (a) maintain a bank account in a country outside Kenya except in accordance with an Act of Parliament; or
  - (b) seek or accept a personal loan or benefit in circumstances that might reasonably be considered to compromise the integrity of the State officer.





- (4) A gift or donation to a State officer on a public or official occasion is a gift to the Republic, and shall be delivered to the State to the extent required by, and in accordance with, an Act of Parliament.

**Restriction on activities**

97. (1) A full-time State officer shall not participate in any other remunerative activity.
- (2) The President, Deputy President and any appointed State officer may not hold office in a political party.
- (3) After retiring, a former State officer who is receiving a pension from public funds shall not accept more than two remunerative positions as chairperson, director or employee of –
- (a) a company owned or controlled by the State; or
  - (b) a State organ.
- (4) A retired State officer shall not receive any other remuneration from public funds in addition to a pension and the remuneration of two remunerative positions, as contemplated in clause (3).

**Legislation on leadership**

98. Parliament shall enact legislation to –
- (a) establish procedures and mechanisms for the effective administration of this Chapter;
  - (b) prescribe the penalties that may be imposed for breach of the provisions of this Chapter; and
  - (c) make any other provision necessary for ensuring the promotion of the principles of leadership and integrity set out in this Chapter.

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## CHAPTER TEN

### REPRESENTATION OF THE PEOPLE

#### Part I – The Electoral System and Process

##### General principles

99. (1) The electoral system is based on the right of all eligible citizens to vote and to stand for election to legislative and executive bodies.
- (2) Voting in an election shall be by secret ballot and shall be free and fair.
- (3) Elections shall ensure fair representation of women and men, persons with disabilities, workers, older members of society, youth and other marginalized communities.
- (4) Elections shall be conducted by an independent body, free from political or any other form of interference.

##### Elections

100. (1) Parliament shall enact legislation which shall include –
- (a) the number and delimitation of electoral units for election of members of Parliament by the Electoral and Boundaries Commission;
  - (b) the nomination of candidates;
  - (c) the manner of voting at elections;
  - (d) the continuous registration of citizens as voters;
  - (e) the conduct of elections and referenda;
  - (f) the efficient supervision of elections and referenda; and
  - (g) the registration of, and voting by, citizens residing outside Kenya.
- (3) In the interest of affirmative action, in addition to the requirements of Articles 13(2)(j) and 123, five per cent of the seats in Parliament and the district assemblies shall be reserved for persons with disabilities, the youth and workers, of whom at least one third shall be women.

##### Registration as a voter

101. (1) A citizen qualifies for registration as a voter for public elections or referenda if at the date of the application for registration that citizen is at least eighteen years of age and has such other qualifications as are provided by legislation.
- (2) A citizen who qualifies for registration as a voter shall only be registered at one registration centre.
- (3) Administrative arrangements for the registration of voters and the conduct of elections shall not deny an eligible citizen's right to vote or stand for elections.



### **Disqualification from registration as a voter**

102. (1) A citizen is disqualified from registration as a voter for public election or referenda on any grounds prescribed by legislation.
- (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**

103. At every election, the Electoral and Boundaries Commission shall ensure that –
- (a) the voting procedure is simple;
  - (b) where a ballot box is used, it is transparent;
  - (c) the votes cast are counted, tabulated and the results announced promptly by the presiding officer at the polling station;
  - (d) the results from the polling stations are openly and accurately collated and promptly announced by the returning officer;
  - (e) special arrangements are made to accord members of the Kenya Defence Forces, the Kenya Police and Administration Police, staff of Kenya's diplomatic missions, citizens outside Kenya, prisoners, election officials and patients in hospitals the opportunity to vote; and
  - (f) appropriate structures and mechanisms to eliminate all forms of electoral malpractice are put in place, including the safe keeping of all election materials.

### **Independent candidates**

104. Subject to Article 123 and the qualifications set for the district governments, a person is eligible to stand as an independent candidate for election as a member of Parliament or of a legislature of district, if that person –
- (a) is a citizen by birth;
  - (b) has not been a member of a registered political party for at least six months prior to the date of the elections for which election is sought;
  - (c) has been registered by the Electoral and Boundaries Commission as an independent candidate and complies with the code of conduct prepared by the Commission for such candidates; and
  - (d) has been nominated by the following number of registered voters from the constituency in which the person intends to stand as a candidate –
    - (i) in the case of Parliament, five hundred registered voters; and
    - (ii) in the case of a District, one thousand registered voters.



### **Unopposed candidates**

105. Where only one candidate has been nominated by the end of the nomination day previous to an election, that candidate shall be declared elected.

### **Representation on international bodies**

106. Subject to the relevant treaties or agreements, Parliament shall enact legislation governing the election and nomination of representatives of the Republic to international legislative bodies.

## **Part II – The Electoral and Boundaries Commission**

### **Establishment and functions**

107. (1) There is established the Electoral and Boundaries Commission.
- (2) The Electoral and Boundaries Commission is responsible for –
- (a) the continuous registration of voters;
  - (b) the delimitation of constituencies;
  - (c) the efficient 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 the Political Parties Fund;
  - (g) the settlement of minor electoral disputes during an election;
  - (h) the promotion of voter education and culture of democracy;
  - (i) the facilitation of the observation, monitoring and evaluation of elections;
  - (j) the recommendation of administrative boundaries, including the fixing, reviewing and variation of boundaries of districts and locations; and
  - (k) the clearing of all presidential, parliamentary and devolved government candidates in consultation with the Ethics and Integrity Commission.

### **Delimitation of constituencies**

108. (1) The Electoral and Boundaries Commission shall determine the names and boundaries of the constituencies for the election of members of Parliament.
- (2) In determining the boundaries and naming of the constituencies, the Commission shall –
- (a) seek to achieve an approximate equality of constituency population, subject to the need to ensure adequate representation for urban and sparsely populated areas;
  - (b) consult all interested parties; and
  - (c) take account of the history, diversity and cohesiveness of the constituency, having regard to –

- (i) its population density and population trends and projections;
  - (ii) geographical features and urban centres;
  - (iii) *community of interest and historical, economic and cultural ties;*
  - (iv) means of communications; and
  - (v) the need to ensure that parliamentary constituencies are wholly within districts;
- (3) The Commission shall at intervals of not more than ten years review and where necessary alter names and the boundaries of constituencies.
- (4) The names and details of the boundaries of constituencies determined under clause (1) shall be published in the Gazette, and shall come into effect on the dissolution of Parliament following their publication.
- (5) A person may apply to the High Court for review of a decision of the Commission made under this Article.

### **Fixing of administrative boundaries**

109. (1) In exercising its functions under Article 107(2)(j), the Electoral and Boundaries Commission shall have regard to the viability, sustainability and effectiveness of a district, district or location, taking into account –
- (a) its population and area;
  - (b) its historical and cultural ties;
  - (c) its economic and natural resources; and
  - (d) the objects and principles of devolution of government.
- (2) Parliament, acting in accordance with the recommendations of the Commission may, amend this Constitution –
- (a) to alter or vary the boundaries of a district, district or location; or
  - (b) to abolish or create a new district, district or location.
  - (c) Before making any recommendation under Article 107(2)(j), the Commission shall consult with all the relevant district, district and locational authorities.

### **Part III – Political Parties**

#### **Basic principles**

110. (1) A political party shall –
- (a) have a national character;
  - (b) have a democratically elected governing body;
  - (c) promote and uphold national unity;



- (d) abide by the democratic principles of good governance, and promote and practise democracy through regular, fair and free elections within the party;
  - (e) respect the right of others to participate in the political process, including persons with disabilities, workers and other minorities;
  - (f) promote and respect human rights and gender equality and equity;
  - (g) promote the objects and principles of this Constitution and the rule of law; and
  - (h) subscribe to and observe the code of conduct for political parties.
- (2) A political party shall not –
- (a) be founded on a religious, linguistic, racial, ethnic, gender, regional basis or seek to engage in propaganda based on any of those matters;
  - (b) engage in or encourage violence or intimidation of its members, supporters, opponents or any other person;
  - (c) establish or maintain a paramilitary force, militia or similar organization; or
  - (d) engage in bribery or other forms of corruption.

#### **Roles and functions of political parties**

111. In order to ensure democracy and the participation of the people, a registered political party shall -

- (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 as well as exercise their civil and political rights;
- (d) use its facilities to ensure representation of the people in elective offices and offer them economic, political and social alternatives through the electoral process and bring public opinion have a bearing on the policies of the Government; and
- (e) hold Government accountable to Parliament and the people.

#### **Regulation**

112. (1) Parliament shall enact legislation –

- (a) to establish the office of the Registrar of Political Parties, whose functions shall be to register political parties and any other functions as may be prescribed;
- (b) providing for the functioning of the office of the Registrar; and





- (c) providing for the registration and deregistration of political parties and other related matters.
- (2) A political party is entitled after registration to financial support from the State through the Political Parties Fund in accordance with Article 114.
- (3) On registration a political party becomes a body corporate.
- (4) Political parties may form coalitions, which shall be regulated by an Act of Parliament.

#### **Political Parties Fund**

113. (1) There is established a Political Parties Fund.
- (2) The Fund shall be administered by the Electoral and Boundaries Commission.
  - (3) The sources of the Fund are –
    - (a) money provided each year by Parliament equal to not more than zero point three per cent of the national budget for the preceding financial year; and
    - (b) contributions and donations to the Fund from any other source.
  - (4) The money in the Fund not immediately required for payment to political parties shall be invested in securities as may be approved by the Treasury.

#### **Purposes of the Fund**

114. (1) The purpose of the Political Parties Fund is to provide financial support to registered political parties in the discharge of their roles and functions.
- (2) Money allocated to a registered political party from the Fund shall be used –
    - (a) to cover the election expenses of the political party and the dissemination of its policies;
    - (b) for the organization of civic education in democracy and the electoral processes; and
    - (c) for the administrative expenses of the party, which expenditure may not exceed ten per cent of money allocated; and
    - (d) for the discharge of any of its roles or functions.
  - (3) Money allocated 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; or
    - (b) any other purpose incompatible with the promotion of a multi-party democracy.
  - (4) Thirty per cent of the money allocated by Parliament to the Fund shall be distributed equally among the registered political parties annually on a date to be prescribed by an Act of Parliament.

- (5) Parliament shall, by legislation prescribe the method of distribution of the balance of the money allocated to the Political Parties Fund by reference to the number of votes secured by each political party in the previous Parliament elections and the number of women candidates and marginalized groups elected through the party at that election.
- (6) Parliament shall enact legislation to provide for the determination, for the purposes of clause (5), of the number of votes deemed to have been secured by a candidate who has been declared elected under Article 105.
- (7) A political party that has not secured at least one seat in Parliament or a devolved government for each of the two previous elections shall not be entitled to any money from the Fund.

#### **Other sources of funds**

115. (1) A political party may receive subscriptions, donations, and contributions from the members and supporters of the party.
- (2) Parliament shall specify -
  - (a) sources from which political parties shall not receive subscriptions, donations or contributions; and
  - (b) the maximum donation that an individual or an institution or body can make to a political party.

#### **Accounts and audit**

116. (1) A registered political party shall keep proper books and records of account in a form approved by the Auditor-General.
- (2) Within three months after the end of the State financial year, a political party shall submit its books and records of account to the Auditor-General for audit.
- (3) The Auditor-General shall, within three months of the submission of the accounts under clause (2), audit the accounts and submit the report on the audit to the political party.
- (4) Within one month after the receipt of the audited accounts and the Auditor-General's report the political party shall -
  - (a) publish the accounts and the report in the Gazette and in at least one newspaper circulating nationally; and
  - (b) submit the accounts and report to the Electoral and Boundaries Commission and to Parliament.

#### **Supervision**

117. (1) The Electoral and Boundaries Commission shall supervise the general conduct of political parties.
- (2) A political party shall, within three months after the end of the State financial year, publish the sources of its funds, clearly stating amounts received from each source.
- (3) A political party shall, within seven months after the end of the Government financial year, submit to the Electoral and Boundaries



Commission an annual report of its activities, which shall include the information referred to in clause (2).

- (4) The annual report of a political party shall be deposited by the party, and may be inspected by any person during normal office hours, at any branch of the party and at the offices of Electoral and Boundaries Commission.
- (5) The Electoral and Boundaries Commission shall prescribe the maximum amount of money that may be spent by or on behalf of a candidate in respect of any election.

#### **Party discipline**

118. (1) A political party shall conduct its affairs in a manner that promotes democracy, peaceful politics and internal discipline.
- (2) A member of Parliament or of a district assembly who resigns from a political party that sponsored the member's election shall lose the seat in Parliament or the devolved level of government.
- (3) Clause (2) shall not apply to a member of a political party, which forms a coalition with another party under a new name or otherwise.
- (4) A member of Parliament or of a district assembly who is expelled from a party for indiscipline after a fair hearing shall lose the seat in Parliament, or in the relevant Assembly or Council.
- (5) A person sponsored by a political party for election to a public office shall be bound by the policies, ideology, philosophy and the manifesto of the party.
- (6) A political party shall not punish a member of Parliament of the party for anything said in Parliament by that member in the exercise of the privilege of freedom of speech in Parliament.

#### **Restriction on use of public resources**

119. Except as is provided under this Chapter or an Act of Parliament, a person shall not use public resources to promote the interests of a political party.



## CHAPTER ELEVEN

### THE LEGISLATURE

#### Part I – Establishment and role of Parliament

##### Establishment

120. There is established a Parliament of Kenya.

##### Exercise of sovereignty

121. (1) The legislative authority of the Republic at the national level is vested in Parliament.
- (2) Parliament manifests the cultural diversity of the nation, represents the will of the people and exercises their sovereignty by –
- (a) enacting legislation;
  - (b) deliberating and resolving issues of concern to the people;
  - (c) considering and passing amendments to this Constitution;
  - (d) approving the sharing of revenue among the two levels of government and appropriating funds for expenditure by the departments of the Government;
  - (e) ensuring equity in the distribution of national resources and opportunities among all parts and communities of Kenya;
  - (f) scrutinizing and overseeing actions of State organs;
  - (g) considering and approving treaties;
  - (h) approving appointments, when required by this Constitution or legislation;
  - (i) reviewing the conduct in office of the President, the Deputy President and other State officers and, if necessary, initiating the process to remove them from office; and
  - (j) approving declarations of states of emergency or war.
- (3) 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 this Constitution or by legislation.

#### Part II – Composition and membership of Parliament

##### Membership of Parliament

122. (1) Parliament shall consist of –
- (a) one member elected from each constituency as may be provided by law;
  - (b) such number of members as may be required to ensure that not more than two-thirds of all the members of Parliament are of the same gender;



- (c) a number equal to five per cent of the total membership of Parliament who shall be nominated by political parties in proportion to the number of votes received at the last election, to represent special party interests;
  - (d) the Attorney-General, who shall be an ex officio member; and
  - (e) the Speaker, who shall be an ex officio member.
- (2) A member referred to under clause (1)(c) shall serve as such a member for only one term.
- (3) Parliament shall enact legislation to give effect to this Article.

**Qualifications and disqualifications of members**

123. (1) Unless disqualified under clause (2), a person is eligible to be a member of Parliament if that person –
- (a) is a citizen;
  - (b) is registered as a voter;
  - (c) satisfies any educational, moral and ethical requirements prescribed by this Constitution or legislation;
  - (d) in the case of a candidate for election to Parliament –
    - (i) is nominated by a political party; or
    - (ii) being an independent candidate, is supported by at least five hundred registered voters in the constituency concerned in the manner determined by the Electoral and Boundaries Commission.
- (2) A person is disqualified from being elected a member of Parliament if that person –
- (a) holds a State office or public office, other than as a member of Parliament;
  - (b) is of unsound mind;
  - (c) is an undischarged bankrupt;
  - (d) is serving a sentence of imprisonment of at least six months;
  - (e) has, at any time in the immediately preceding ten years, served a term of imprisonment for the commission of an offence in Kenya, if that sentence was for a period of at least three years; or
  - (f) has been found in accordance with any law to have misused or abused a State office or public office or in any way to have contravened the principles of Article 96.
- (3) A person is not disqualified under clause (2) unless all possibility of appeal or review of the sentence or decision has been exhausted.

**Election of members of Parliament**

124. (1) An election of members of Parliament shall be held on the Tuesday immediately preceding the twenty-eight days before the expiration of the term of Parliament.

- (2) Whenever a vacancy occurs in the office of a member of Parliament -
  - (a) the Speaker shall, within twenty-one days of the occurrence of the vacancy, give notice in writing of the vacancy to the *Electoral and Boundaries Commission*; and
  - (b) subject to clause (4), a by-election shall be held within ninety days of the occurrence of the vacancy.
- (3) A by-election shall not be held within three months before the holding of an election.

**Vacation of office of member of Parliament**

125. (1) The office of member of Parliament becomes vacant -
- (a) if the member resigns in writing addressed to the Speaker;
  - (b) if that person becomes disqualified for election under Article 123(2);
  - (c) upon expiration of the life of Parliament;
  - (d) if the member is absent from eight sittings of the Parliament without permission, in writing, of the Speaker during any period when Parliament is sitting, and is unable to offer satisfactory explanation for the absence to the relevant committee;
  - (e) if the member is removed from office under legislation made under Article 98;
  - (f) if the member leaves the political party for which the member stood as a candidate for election to Parliament; or
  - (g) if, having been elected to Parliament as an independent candidate, the member joins a political party.
- (2) The creation or dissolution of a coalition of which a member's political party forms part or the dissolution of a political party or a merger of more than two parties shall not amount to the member's leaving the party for the purposes of clause (1)(f).

**Determination of questions of membership**

126. (1) The High Court shall hear and determine any question whether -
- (a) any person has been validly elected or nominated as a member of Parliament; or
  - (b) the seat of any member has become vacant.
- (2) A question referred to in clause (1) shall be heard and determined within six months of the date of lodging the petition.

**Part II – Officers of Parliament**

**Speaker and Deputy Speaker-of Parliament**

127. (1) There shall be -
- (a) a Speaker of Parliament who shall be elected by Parliament in accordance with the Standing Orders, from among persons who

are qualified to be elected as members of Parliament but are not such members; and

- (b) a Deputy Speaker of Parliament who shall be elected by Parliament, in accordance with the Standing Orders, from among the members of Parliament.
- (2) The office of Speaker or the Deputy Speaker shall become vacant –
- (a) when a new Parliament first meets after an election;
  - (b) if the office holder becomes disqualified under Article 123(2);
  - (c) if Parliament so resolves by resolution supported by the votes of not less than sixty-five per cent of its members;
  - (d) if the office holder dies; or
  - (e) if the office holder resigns from office in a letter addressed to Parliament.

### **Presiding in Parliament**

128. At any sitting of Parliament –

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

### **Leader of the Opposition**

129. (1) The largest parliamentary party or coalition of parliamentary parties in Parliament not forming the Government shall elect from among their members of Parliament, the Leader of the Opposition.
- (2) In relation to the conduct of the business in Parliament, the Leader of the Opposition shall –
- (a) rank in precedence immediately following the President, the Deputy President, the Prime Minister and the Speaker;
  - (b) the right of participation at all official state functions; and
  - (c) have 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 for the effective participation in Parliament of the Leader of the Opposition.

### **Clerk and staff of Parliament**

130. (1) There shall be a Clerk of Parliament who shall be appointed by Parliamentary Service Commission with the approval of Parliament.
- (2) The office of Clerk and offices of members of the staff of the Clerk shall be offices in Parliamentary service.
- (3) Subject to clause (4), a Clerk shall retire on attaining the age of sixty-five years.



- (4) Parliament may by resolution supported by the votes of not less than sixty-five per cent of all the members of Parliament remove the Clerk.

#### **Part IV – Legislation and Procedure in Parliament**

##### **Exercise of legislative powers**

131. (1) Parliament shall exercise its legislative power by Bills passed by Parliament and assented to by the President.
- (2) Any member, or committee, of Parliament may introduce a Bill in Parliament.
- (4) Every Bill for legislation introduced in Parliament shall be accompanied by an explanatory memorandum, outlining -
- (a) any Bill of Rights limitations or derogations, or any other constitutional implications;
  - (b) any public participation during the preparation of the Bill; and
  - (c) any further public participation that is recommended before the Bill is enacted.
- (5) The relevant Committee shall-
- (a) determine the nature and extent of public participation for each Bill for legislation introduced in Parliament; and
  - (b) facilitate that participation, and ensure that it is adequately carried out.
- (6) Parliament shall equitably allocate time for consideration of Bills.

##### **Money Bills**

132. (1) A money Bill may be introduced only by a Minister.
- (2) In this Chapter “money Bill” means a Bill that contains provisions dealing with –
- (a) the imposition, repeal, remission, alteration or regulation of taxes;
  - (b) the imposition of charges on the Consolidated Fund or any other fund of the Government or the variation or repeal of any of those charges;
  - (c) the appropriation, receipt, custody, investment, issue or audit of accounts of public money;
  - (d) the grant of money to any person or authority or the variation or revocation 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.
- (3) In clause (2), the expressions “tax”, “public money”, and “loan” do not include any tax, public money or loan raised by devolved governments.

### **Presidential assent and referral**

133. (1) *Within fourteen days after receipt of the Bill, the President shall –*
- (a) assent to the Bill; or
  - (b) refer the Bill back to the Speaker for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.
- (2) If the President refers a Bill back for reconsideration by Parliament, Parliament may –
- (a) amend the Bill in light of the President's reservations; or
  - (b) pass the Bill a second time without amendment.
- (3) If Parliament has amended the Bill, the Speaker shall submit it afresh to the President for assent.
- (4) If Parliament, after considering the President's reservations, passes the Bill a second time, by vote supported by two-thirds of all members of Parliament, without amending it –
- (a) the Speaker shall within seven days re-submit it to the President; and
  - (b) the President shall within seven days assent to the Bill.
- (5) If the President refuses or fails to assent to a Bill within the period prescribed in clause (1), the Bill shall be taken to have been assented to upon the expiration of that period.

### **Coming into force of laws**

134. (1) A Bill passed by Parliament and assented to by the President –
- (a) shall be published in the Gazette within seven days of the assent; and
  - (b) comes into force on the fourteenth day after its publication in the Gazette unless the Act otherwise provides.
- (2) An Act which confers a direct pecuniary interest on members of Parliament shall not come into force until after the dissolution of the Parliament that passed the Act.
- (3) Clause (2) does not apply to an interest which members of Parliament have as members of the public.

### **Right to petition Parliament**

135. Every person has a right to petition Parliament to enact, amend or repeal any legislation.

### **Quorum**

136. The quorum of Parliament shall be thirty per cent of all members of Parliament.

### **Official language in Parliament**

137. The official languages of Parliament shall be Kiswahili, English and sign language.





### **Voting in Parliament**

138. (1) Except as otherwise provided in this Constitution, any question proposed for decision in Parliament shall be determined by a majority of the members present and voting in Parliament.
- (2) On a question proposed for decision in Parliament –
- (a) the Speaker shall have no vote; and
  - (b) in the case of a tie, the question shall be lost.
- (3) The vote of a member who votes upon a question in which the member has a direct pecuniary interest shall not be counted.

### **Regulation of procedure**

139. (1) Parliament shall –
- (a) regulate its own procedure and shall make Standing Orders 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 shall regulate the procedure of any such committee.
- (2) The proceedings of Parliament 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 Parliament.

### **Power to call for evidence**

140. In the exercise of its functions –
- (a) Parliament or any of its committee may call any Minister or any person holding public office and private individuals to submit memoranda or appear before it to give evidence;
  - (b) a committee of Parliament may co-opt any member of Parliament or employ qualified persons to assist it in the discharge of its functions; and
  - (c) Parliament or any of its committee 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.

### **Public access and participation**

141. (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 business of Parliament and its committees.

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- (2) Parliament may not exclude the public, or any public or private media, from any sitting unless in exceptional circumstances, the Speaker has determined that there are justifiable reasons for doing so.

#### **Powers, privileges and immunities**

142. (1) There shall be freedom of speech and debate in Parliament and that freedom shall not be impeached or questioned in any court or tribunal.
- (2) 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.

#### **Part V – Miscellaneous**

##### **Approval of appointments by Parliament**

143. 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 Parliament.

##### **Registry of Enactments**

144. (1) Parliament shall establish -
- (a) a public Registry of Enactments, which shall be maintained in Kiswahili and English, in both visual and Braille form, under the custody of the Speaker; and
  - (b) additional procedures concerning the coming into force, publication and dissemination of legislation.
- (2) A copy of each enactment shall be deposited for safekeeping in the Registry of Enactments.
- (3) A copy of an enactment deposited at the Registry which is certified to be correct by the Registrar, is conclusive evidence of the provisions of that enactment.
- (4) In case of a conflict between different language versions of an enactment, the version signed by the President or on behalf of a district assembly or a district council shall prevail.
- (5) The Government shall ensure that enactments -
- (a) are available or accessible in all public libraries; and
  - (b) are available in Braille and other appropriate media for persons with visual or other impairments.

##### **Seat of Parliament**

145. (1) Subject to clause (2), the seat of Parliament shall be Nairobi.
- (2) A sitting of Parliament shall be held at such place within Kenya, and shall commence at such time, as Parliament may appoint.
- (3) Whenever a new Parliament is elected, the President shall, by notice in the Gazette, appoint the place and a date, not more than seven days





after the expiration of the term of the previous Parliament, for the first sitting of the new Parliament.

### **Life and prorogation of Parliament**

146. (1) The life of Parliament is five years from the date of its first sitting after an election.
- (2) At any time when the Republic is at war, Parliament may from time to time by resolution supported by the votes of not less than sixty-five per cent of all the members of Parliament, extend the term of Parliament for not more than six months at a time.
- (3) The life of Parliament shall not be extended under clause (2) –
- (a) by more than twelve months; or
- (b) before its expiration after an election is held in terms of Article 124(1).
- (4) Subject to this Article, Parliament shall stand prorogued on the thirtieth day of November in every year and the next session shall commence on the first Tuesday of February in the next year.

### **Parliamentary Service Commission**

147. (1) There is established the Parliamentary Service Commission which shall consist of –
- (a) a chairperson and a vice-chairperson elected by the Commission from the members appointed under paragraph (b);
- (b) seven members appointed by Parliament from among its members of whom –
- (i) four shall be nominated by the party or coalition of parties forming the Government and at least two of whom shall be women; and
- (ii) three shall be nominated by the party or coalition of parties not forming the Government and at least one of whom shall be a woman; and
- (c) two members of opposite gender appointed by Parliament from among persons who are not members of Parliament and are experienced in public affairs.
- (2) A member of the Commission shall vacate office –
- (a) if that person is a member of Parliament –
- (i) upon expiration of the life of Parliament;
- (ii) if that person ceases to be a member of Parliament; or
- (iii) if circumstances arise that, if that person were not a member of Parliament, would disqualify that person to be elected as such; or
- (b) if that person is an appointed member, upon revocation of that person's appointment by Parliament.
- (3) The Commission is responsible for the following functions –

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- (a) providing necessary services and facilities to ensure efficient and effective functioning of Parliament;
  - (b) constituting offices in Parliamentary service, and appointing and supervising office holders;
  - (c) preparing annual estimates of expenditure (which shall be a charge on the Consolidated Fund) of Parliamentary service, and exercising budgetary control over the service;
  - (d) undertaking, singly or jointly with other relevant organizations, programmes to promote the ideals of parliamentary democracy; and
  - (e) carrying out other functions –
    - (i) necessary for the well-being of the members and staff of Parliament; or
    - (ii) prescribed by or under legislation.
- (4) In the exercise of its powers or the performance of its functions under this Constitution, the Commission shall not be subject to the direction or control of any other person or authority.



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## CHAPTER TWELVE

### THE EXECUTIVE

#### Part I – 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 communities of Kenya.
- (2) An office bearer who is assigned an executive authority by or under this Constitution –
- (a) shall serve the people, and shall not act in a manner incompatible with the principle of service to the people; and
  - (b) shall exercise that authority in a manner consistent with the purpose and objects of this Constitution and the laws.

##### Executive authority of the Republic

149. The executive authority of the Republic is vested in the President.

#### Part II – The President and Deputy President

##### Authority of President

150. (1) There shall be a President of the Republic.
- (2) The President –
- (a) is the Head of State, the Head of Government, Commander-in-Chief of the Kenya Defence Forces, and the Chairperson of the National Security Council;
  - (b) is a symbol of national unity, and has responsibility to –
    - (i) promote and enhance the unity of the nation;
    - (ii) safeguard the sovereignty of the Republic,
    - (iii) promote and respect the diversity of the people and the communities of Kenya; and
  - (c) shall uphold, safeguard, and respect this Constitution and ensure the protection of human rights and fundamental freedoms and the rule of law.
- (3) The powers of the President shall be exercised in accordance with this Constitution and the law.
- (4) The President shall not hold any other public office or 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;
  - (b) shall address a special sitting of Parliament once each year;
  - (c) may address Parliament at any other time;

- (d) shall, once every year -
  - (i) report, in an address to the nation, on all the measures taken and the progress achieved in the realization of the national goals, values and principles set out in Chapter Three; and
  - (ii) cause to be published in the Gazette the details of the measures and progress referred to in sub-paragraph (i).
- (2) The President, in accordance with this Constitution, shall appoint and may -
  - (a) dismiss -
    - (i) the Prime Minister, the two Deputy Prime Ministers, Ministers or Deputy Ministers; and
    - (ii) any other public officer who the Constitution requires the President to appoint, subject to the applicable provisions of the Constitution or legislation; or
  - (b) remove the judges of the Superior Courts of record.
- (3) After approval of the Cabinet, the President may, in accordance with the advice of the Cabinet and subject to Article 76 -
  - (a) declare a state of emergency; or
  - (b) declare war.
- (4) With the prior consent of Parliament, the President may -
  - (a) appoint Commissions of Inquiry all of whose members must be approved by Parliament;
  - (b) sign instruments of consent by Kenya to be bound by international agreements in accordance with Article 121; and
  - (c) sign instruments of consent by the Republic to be bound by treaties.
- (5) The report of a Commission of Inquiry appointed by the President shall be laid before Parliament within twenty-one days of the receipt of the report by the President.
- (6) The President may -
  - (a) appoint high commissioners, ambassadors, and diplomatic and consular representatives with the approval of Parliament; and
  - (b) receive foreign diplomatic and consular representatives;
  - (c) exercise the powers of mercy in accordance with Article 164; and
  - (d) confer honours in the name of the people and the Republic in accordance with an Act of Parliament.
- (7) The President shall -
  - (a) ensure that the international obligations of the Republic are fulfilled through the actions of the relevant Ministers and shall submit a progress report to Parliament annually; and

- (b) respect the independence, impartiality and dignity of State officers, the courts, constitutional Commissions and other institutions established by law, and ensure their accessibility and effectiveness, as contemplated in this Constitution.
- (8) Subject to this Constitution and any other law, the powers of constituting and abolishing offices for the Republic of Kenya, of making appointments to any such office and terminating any such appointment, shall vest in the President.
- (9) The powers of the President under clause (8) shall be subject to the approval of Parliament.

**Curtailment of presidential powers**

152. (1) This Article applies to a person who holds the office of President, or who is authorized in terms of this 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 166.
- (2) During a period referred to in clause (1), a person to whom this Article applies may not exercise any power of the President -
- (a) relating to the nomination or appointment of the judges of the Superior Courts of record;
  - (b) relating to a complaint leading to the removal of a judicial officer;
  - (c) relating to the nomination or appointment of any other public officer who this Constitution or legislation requires the President to appoint;
  - (d) relating to the appointment or dismissal of persons to represent the Republic of Kenya as high commissioners, ambassadors, or diplomatic or consular representatives;
  - (e) relating to the powers of clemency; and
  - (f) relating to the authority to confer honours in the name of the people and Republic of Kenya.

**Decisions of President**

153. A decision by the President under the authority of this Constitution or of any other legislation shall be in writing and shall bear the seal and signature of the President.

**Right to vote and timing of presidential elections.**

154. (1) The election of the President shall be by direct 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) at the same time as an election for members of Parliament under Article 124(1); or
- (b) in the circumstances contemplated by Article 163.

**Qualifications and disqualifications for election as President**

155. (1) A person qualifies for nomination as a presidential candidate if that person –
- (a) is a citizen by birth;
  - (b) is qualified to stand for election as a member of Parliament; and
  - (c) is nominated –
    - (i) by a registered political party; or
    - (ii) as an independent candidate by at least one thousand registered voters who shall include not less than one hundred registered voters from each district.
- (2) A person is not qualified for nomination as a presidential candidate if that person –
- (a) owes 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, in the defence forces of the Republic, or in any level of devolved government;
  - (c) is a member of a constitutional Commission; or
  - (d) has been found in accordance with any law to have misused or abused a State office or public office or in any way to have contravened the principles of Article 10.

**Procedure at presidential election**

156. (1) If only one candidate for President is nominated, that candidate shall be declared elected as President.
- (2) If two or more candidates for President are nominated, an election shall be held in each constituency.
- (3) In a presidential election –
- (a) all persons registered as voters for the purposes of parliamentary elections are 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 and Boundaries Commission shall declare the result.
- (4) The candidate for President who receives more than fifty per cent of all the votes cast in the election and who, in addition, receives a minimum of twenty-five per cent of the votes cast in more than half of the districts shall be declared elected as the President.

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- (5) If a candidate is not elected a fresh election shall be held within three weeks of the previous election and in that fresh election, the only candidates shall be –
- (a) the candidate who received the greatest number of votes; and
  - (b) the candidate who received the second greatest number of votes,
- and the candidate who receives the greater number of votes shall be declared elected as President.
- (6) A presidential election shall be cancelled and a new election held if –
- (a) a candidate has not been nominated before the expiry of the period set for the delivery of nominations;
  - (b) a candidate dies on or before any of the days on which the election is held or is to be held; or
  - (c) a candidate who would, but for the candidate's death, have been entitled to be declared elected as President, dies after the taking of the election has begun but before the candidate is declared elected as President.
- (7) A new election shall be held under clause (6) within sixty days of the date set for the previous presidential election.
- (8) The chairperson of the Electoral and Boundaries 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.
- (9) If the person elected as President is also elected as member of Parliament, the Electoral and Boundaries Commission shall declare the seat of that person as member of Parliament vacant and shall hold an election in that constituency to fill the vacancy within thirty days of the vacancy arising.

#### **Questions as to validity of presidential election**

157. (1) A person may file a petition in the Supreme Court to challenge the election of the President-elect.
- (2) The petition shall be filed within seven days after the date of the announcement of the results of the presidential election by the Electoral and Boundaries Commission.
- (3) The Supreme Court shall, within seven days of the filing, determine the petition.

#### **Assumption of office of President**

158. The President-elect –

- (a) shall be sworn in –
  - (i) on the first Tuesday following the twenty one days after the date of the announcement of the results of the presidential election by the Electoral and Boundaries Commission; or





- (ii) within seven days of the determination by the Supreme Court of the election petition filed under Article 157; and
- (b) assumes office by taking and subscribing –
  - (i) the oath or affirmation of allegiance; and
  - (ii) the oath or affirmation for the execution of the functions of office,

as prescribed in the Second Schedule, before the Chief Justice or a Judge of the Supreme Court on the date when the term of office of the incumbent President expires.

#### **Term of office of President**

159. (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.
- (3) A person who becomes President by operation of Article 163 and continuously serves as President for at least two and a half years is deemed to have served a full term.

#### **Protection from legal proceedings**

160. (1) Criminal proceedings shall not 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) Civil proceedings shall not be instituted in any court against the President or the person performing the functions of that office during their tenure of office in respect of anything done or not done in the exercise of their powers under this Constitution.
- (3) Where provision is made by law limiting the time within which proceedings may be brought against a person, a period of time during which that person holds or performs the functions of the office of the President shall not be taken into account in calculating the period of time prescribed by that law.
- (4) For the avoidance of doubt, subject to this Article, the President is subject to the Constitution and the law.

#### **Removal of President on grounds of incapacity**

161. (1) A member of Parliament may, at any sitting of Parliament move a motion for the removal from office of the President on the ground of the physical or mental capacity of the President to perform the functions of office.
- (2) If it is resolved by one half of all the members of Parliament that the question of the physical or mental capacity of the President to perform the functions of the office ought to be investigated, the Speaker shall inform the Chief Justice who shall, within seven days of the resolution, appoint a tribunal of five persons qualified as medical practitioners under the laws of Kenya,





- (a) four of whom shall be nominated by the Medical Practitioners and Dentists Board, and
  - (b) the other one nominated by the President or a close relative or a member of the family of the President.
- (3) Where Parliament resolves that the question of the physical or mental capacity of the President to perform 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 incapable of performing the functions of the office, whichever is earlier, continue to perform the functions of the office.
- (4) If the Chief Justice does not appoint a tribunal within the period specified in clause (1), the Speaker shall appoint a tribunal within seven days.
- (5) The tribunal shall inquire into the matter and report -
- (a) to the Chief Justice within fourteen days of the appointment and send a copy direct to the Speaker, or
  - (b) to the Speaker within fourteen days of the appointment of the tribunal by the Speaker.
- (6) The Chief Justice or the Speaker shall certify in writing accordingly and take the certificate together with the report of the tribunal before Parliament.
- (7) Where the tribunal reports that the President is capable of performing the functions of the office, the Speaker shall so announce in Parliament.
- (8) If the tribunal reports that the President is incapable of performing the functions of the office, Parliament shall, supported by the votes of one-half of all the members ratify the decision of the tribunal, and on the ratification, the President shall cease to hold office.

#### **Impeachment and removal of President**

162. (1) A member of Parliament may, at any time, submit to the Speaker a notice in writing, signed by the member stating that the member intends to propose a motion for the impeachment of the President on the grounds that the President -
- (a) has violated a provision of this Constitution; or
  - (b) is guilty of conduct that is prejudicial to the interests of the Republic or has brought the Office of President into disrepute, and setting out the particulars of such grounds.
- (2) The Speaker shall -
- (a) if Parliament is then sitting or has been summoned to meet, bring the motion to the notice of Parliament for its consideration within seven days; or
  - (b) if Parliament 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), Parliament shall appoint thirteen of its members as a special committee in accordance with the Standing Orders of Parliament to investigate the matter.
- (4) *The special committee shall investigate the matter and shall, within ten days, report to Parliament 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, further proceedings shall not 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, Parliament shall vote on impeachment charges and the President shall cease to hold office if two-thirds of the members vote to uphold the impeachment charges.

#### **Vacancy in the office of President**

163. (1) Where a vacancy occurs in the office of the President by reason of the President's death, resignation or ceasing to hold office by virtue of Article 161 or 162, the Deputy President shall assume office as the President.
- (2) Where a vacancy occurs in the office of the President and that of the Deputy President, the Speaker shall assume the functions of the office of the President.
- (3) In the case of a vacancy as described in clauses (1) and (2), the Electoral and Boundaries Commission shall conduct a presidential election within sixty days of the vacancy in the office of the Deputy President.

#### **Presidential powers of mercy**

164. (1) There shall be a power of mercy which shall be exercised on the petition of any person by the President in accordance with the advice of the Committee referred to in clause (3), which power of clemency shall not be delegated to any other person.
- (2) Parliament shall enact legislation establishing criteria that shall be applied by the Advisory Committee referred to in clause (3) in formulating its advice referred to in clause (1).
- (3) There shall be an Advisory Committee on the Presidential Power of Mercy, which shall consist of –
- (a) the Attorney-General;
  - (b) the Minister responsible for the Kenya Correctional Services;
  - (c) a medical practitioner nominated by the Medical Practitioners and Dentists Board;
  - (d) the head of the probation service;
  - (e) a person nominated by the Commission on Human Rights and Administrative Justice;





- (f) three persons, each of whom shall be nominated by each of the religious organisations representative of the Christian, Muslim and Hindu faiths; and
  - (g) one advocate of at least fifteen years' standing nominated by the Law Society of Kenya.
- (4) Members of the Advisory Committee appointed under clause (3)(c), (e), (f) and (g) shall remain members of the Advisory Committee, provided that they remain qualified, for a period of one year and may retain their membership for two further terms of one year.
  - (5) The Advisory Committee may act despite there being a vacancy in its membership.
  - (6) The Advisory Committee may regulate its own procedure.
  - (7) In exercise of the powers conferred by clause (1) the President may –
    - (a) grant to a 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 a punishment imposed on a person;
    - (c) substitute a less severe form of punishment for a punishment imposed on a person for an offence; or
    - (d) remit the whole or part of a punishment imposed on a person for an offence.
  - (8) The Advisory Committee may take into account the views of the victims of the offence in respect of which it is considering recommending the exercise of the power of clemency by the President.

#### **Office of Deputy President**

165. (1) There shall be a Deputy President of the Republic.
- (2) Each candidate in a presidential election shall nominate a person, duly qualified for election as the President, as a candidate for Deputy President.
  - (3) The Electoral and Boundaries Commission shall not conduct a separate election for the Deputy President but shall declare the candidate nominated by the person who is elected as the President to be elected as the Deputy President.
  - (4) If the person elected as Deputy President is also elected as member of Parliament, the Electoral and Boundaries Commission shall declare the seat of that person as member of Parliament vacant and shall hold an election in that constituency to fill the vacancy within thirty days of the vacancy arising.
  - (5) A person declared elected as the Deputy President shall take and subscribe the oath or affirmation of allegiance and the oath or affirmation for the due execution of the functions of the office, as prescribed in the Second Schedule, before the Chief Justice or a Judge of the Supreme Court.



- (6) The term of office of the Deputy President shall run from the date the President assumes office and shall terminate –
  - (a) when the next President assumes office;
  - (b) upon the Deputy President assuming the office of President; or
  - (c) on resignation, death or removal from office.
- (7) The Deputy President may, at any time, resign from office by notice in writing addressed to the President and the resignation shall take effect on the date and at the time specified in the notice, if any, or if a date is not specified, at noon on the day after the notice is delivered.
- (8) The provisions of Articles 161 and 162 as to the removal from office and impeachment of the President shall, with the necessary alterations, apply to the office of the Deputy President.
- (9) The Deputy President shall not serve for more than two terms.
- (10) A person who becomes Deputy President by operation of Article 166 and has continuously served as Deputy President for at least two and a half years during the term of a President shall be deemed to have served a full term.

#### **Vacancy in the office of Deputy President**

**166. (1)** The office of Deputy President shall become vacant -

- (a) if the holder of the office dies or resigns from office;
  - (b) if the holder of the office is removed from office under this Constitution;
  - (c) if the holder of the office assumes office under Article 163; or
  - (a) when the next person elected or appointed as Deputy President takes office.
- (1) If there is a vacancy in the office of the Deputy President, the President shall nominate a candidate qualified in terms of Article 165 to be the Deputy President.
  - (2) A nomination under clause (1) shall be in writing and shall be submitted to the Speaker within fourteen days of the vacancy.
  - (3) Parliament may, by a resolution supported by the votes of two-thirds of the members of Parliament approve the person nominated under this Article as the Deputy President.
  - (4) If Parliament does not approve the nomination under clause (3), the President shall make another nomination in terms of clause (1).
  - (5) If Parliament does not approve the nomination under clause (4), the President shall appoint a person to be the Deputy President.
  - (6) A person approved or appointed as Deputy President under clause (3), (4) or (5), shall assume office in the manner specified in Article 165(4).
  - (7) The term of office of a Deputy President appointed under this Article shall run from the date the Deputy President assumes office and shall terminate in the manner specified in Article 165(5).



### **Functions of the Deputy President**

166. (1) The Deputy President shall be the principal assistant of the President in the execution of the President's functions.
- (2) The Deputy President shall perform the functions conferred by this Constitution and any other functions as the President may assign.
- (3) When the President is temporarily incapacitated or absent from the Republic, the Deputy President shall act as the President.
- (4) The Deputy President shall not hold any other State or public office or any elective or appointive office within a political party.

### **Death before assuming office**

168. (1) If a person elected as President dies before assuming office, the person declared elected as the Deputy President shall assume the office of President and the office of the Deputy President shall become vacant.
- (2) If a person declared elected as the Deputy President dies before assuming office, the office of the Deputy President shall be declared vacant on the assumption of office by the person declared elected as the President.
- (3) *If both the persons declared elected as the President and the Deputy President die before assuming office, the Speaker shall act as President and the Electoral and Boundaries Commission shall conduct a fresh election within sixty days of the second death.*

### **Remuneration and benefits of President and Deputy President**

169. (1) The remuneration and benefits payable to the President or Deputy President shall be a charge on the Consolidated Fund.
- (2) The remuneration and benefits and privileges of the President or Deputy President shall not be varied to their disadvantage while in office or on retirement.
- (3) The retirement benefits payable to a former President or Deputy President and the facilities available to them shall not be varied to their disadvantage during their lifetime.

## **Part III – Cabinet**

### **Prime Minister**

170. (1) There shall be a Prime Minister of the Republic, who shall be appointed by the President in accordance with the provisions of this Part.
- (2) The Prime Minister shall, under the general direction of the President –
- (a) be the Leader of Government business in Parliament; and
- (b) perform such other functions as may be provided under this Constitution or as the President may direct.
- (3) In the exercise of his authority under this Constitution, the Prime Minister shall perform or cause to be performed any matter or matters which the President directs to be done and shall be accountable to the President.





- (4) In the absence of the Prime Minister, one of the Deputy Prime Ministers designated by the President shall perform the functions of the Prime Minister.

#### **Appointment of Prime Minister**

171. (1) Within seven days following the summoning of Parliament after an election, or whenever necessary to fill a vacancy in the office of Prime Minister, other than on the occasion of a vote of no confidence, the President shall appoint as Prime Minister, a member of Parliament.
- (2) On receiving a proposal from the President under clause (1), the Speaker shall summon Parliament 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 Parliament 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 per cent of the members of Parliament.
- (5) If Parliament fails to confirm the appointment of the person proposed by the President, the President shall propose another person
- (6) Where neither of the persons contemplated in clause (1) and (5) has been approved by Parliament for appointment as Prime Minister, the President shall appoint a member of Parliament as Prime Minister.

#### **Term of office**

172. (1) A person whose appointment as Prime Minister has been confirmed by Parliament shall assume the office by taking and subscribing the oath or affirmation for the due performance of the functions of the office prescribed in the Second Schedule, before the Speakers 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 office; or
- (b) the next person appointed Prime Minister following an election assumes office.

#### **Resignation of Prime Minister**

173. (1) The Prime Minister may resign from office by delivering a written notice 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 notice, if any; or
- (b) at noon on the day after it is delivered, in any other case.

#### **Dismissal of Prime Minister and Ministers**

174. The office of the Prime Minister, Deputy Prime Minister, Minister or Deputy Minister shall become vacant –
- (a) if the President so directs;
- (b) if the holder of the office dies or resigns from office; or



- (c) when the next person appointed to that office hold assumes office.

### **The Cabinet**

175. (1) There shall be a cabinet consisting of -
- (a) the President;
  - (b) the Deputy President;
  - (c) the Prime Minister;
  - (d) two Deputy Prime Ministers;
  - (e) Ministers;
  - (f) the Attorney-General; and
  - (g) the Government Chief Whip.
- (2) The Attorney-General and the Government Chief Whip shall be ex-officio members of the Cabinet.
- (3) There shall be such offices of member of the Cabinet as shall be established by Parliament, or subject to any provisions made by Parliament, by the President.
- (4) The President shall appoint the Deputy Prime Ministers, Ministers and Deputy Ministers.
- (5) The President may appoint not more than twenty per cent of the Ministers from persons who are not members of Parliament but who are qualified for election as such members and persons so appointed shall become ex-officio members of Parliament.
- (6) A person appointed as a Deputy Prime Minister, Minister or Deputy Minister -
- (a) assumes office by taking and subscribing the oath or affirmation for the due execution of the functions of the office prescribed in the Second Schedule, before the Speaker and members of Parliament;
  - (b) may resign by delivering a written notice of resignation to the President; and
  - (c) continues in office until -
    - (i) that person dies, resigns or is dismissed from office; or
    - (ii) the next person appointed to that office, following an election for Parliament assumes office.
- (7) A resignation referred to in clause (3) takes effect -
- (a) on the date and at the time specified in the notice, if any; or
  - (b) at noon on the day after it is delivered, in any other case.

### **Secretary to the Cabinet**

176. (1) There shall be a Secretary to the Cabinet.
- (2) The Secretary to the Cabinet shall be appointed by the President.



- (3) The office of the Secretary to the Cabinet shall be a public office.
- (4) The Secretary to the Cabinet shall –
  - (a) have charge of the Cabinet office;
  - (b) be responsible, subject to the directions of the Cabinet, for arranging the business, and keeping the minutes of the Cabinet;
  - (c) convey the decisions of the Cabinet to the appropriate persons or authorities; and
  - (d) have any other functions as directed by the Cabinet.
- (5) The Secretary to the Cabinet –
  - (a) may be dismissed by the President; or
  - (b) may resign from office by notice in writing to the President, and the notice takes effect on the receipt of the letter of resignation by the President.
- (6) On the assumption to office of a new government, the person holding office as Secretary to the Cabinet shall cease to hold that office.

#### **Decisions, responsibility and accountability of the Cabinet**

177. (1) The Cabinet shall meet at least once a month.
- (2) The quorum at a meeting of the Cabinet shall be one half of all the members of the Cabinet.
  - (3) A decision by the Cabinet shall be in writing.
  - (4) A decision of the Cabinet is not valid, and shall not be implemented, unless it is signed by the President.
  - (6) 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.
  - (7) A Minister shall attend before Parliament, or a committee of Parliament, when required to do so, and shall answer any question concerning a matter assigned to that Minister.
  - (8) Members of the Cabinet shall provide Parliament with full and regular reports concerning matters under their control.

#### **Assignment of functions**

178. The President –
- (a) shall assign and may transfer responsibility for the implementation and administration of any Act of Parliament to –
    - (i) the Deputy President;
    - (ii) the Prime Minister;
    - (iii) a Deputy Prime Minister;



- (iv) a Minister; or
  - (v) a Deputy Minister; and
- (b) may assign to the Deputy President, the Prime Minister, a Deputy Prime Minister, a Minister or a Deputy Minister any power or function where the office holder is absent from office or temporarily unable to exercise that power or perform that function.

#### **Part IV – Other State Officers**

##### **Principal Secretaries**

179. (1) There is established the office of Principal Secretary which is an office in the public service.
- (2) Each Government ministry shall be under the supervision of a Principal Secretary.

##### **Appointment and dismissal of Principal Secretaries**

180. (1) A Principal Secretary shall be appointed by the President with the approval of Parliament.
- (2) A Principal Secretary –
- (a) may be dismissed by the President; or
  - (b) may resign from office by notice in writing to the President, and the resignation takes effect on receipt of the letter of resignation by the President.

##### **Attorney-General**

181. (1) There is established the office of the Attorney-General, which shall be an office in the public service.
- (2) The Attorney-General shall be appointed by the President with the approval of Parliament.
- (3) The qualifications for appointment as Attorney-General are the same as for appointment to the office of Chief Justice.
- (4) The Attorney-General shall be the principal legal adviser to the Government.
- (5) The Attorney-General shall be responsible for –
- (a) drawing, perusing and recommending approval (or otherwise) of such agreements, contracts, treaties, conventions and documents by whatever name called, to which the State is a party or in respect of which the State has an interest, as specified in legislation;
  - (b) representing the Government in court or any other legal proceedings to which the Government is a party, other than criminal proceedings; and
  - (c) drafting legislation, including subsidiary legislation, for the Government.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

- (6) The Attorney-General shall have authority, with the leave of the court, to appear as a friend of the court in any civil proceedings to which the Government is not a party.
- (7) The Attorney-General shall promote, protect and uphold the rule of law and defend the public interest.
- (8) The powers of the Attorney-General may be exercised in person or by subordinate officers acting in accordance with general or special instructions.
- (9) The Attorney-General shall not be under the direction or control of any person or authority in the exercise of any of his or her functions.
- (10) The Attorney-General shall hold office for a term of five years and shall be eligible for re-appointment for a further term of five years.

#### **Director of Public Prosecutions**

- 182.**
- (1) There is established the office of the Director of Public Prosecutions which shall be an office in the public service.
  - (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 Parliament.
  - (3) The qualifications for appointment as Director of Public Prosecutions are the same as for the appointment as a judge of the High Court.
  - (4) The Director of Public Prosecutions shall have power to direct the Inspector-General of the Kenya Police Service to investigate any information or allegations of criminal conduct.
  - (5) The Director of Public Prosecutions shall exercise State powers of prosecution and may –
    - (a) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;
    - (b) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of that person or authority; and
    - (c) subject to clause (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).
  - (6) Where a discontinuance referred to in clause (5)(c) takes place after the defendant has completed the delivery of his or her defence, the defendant shall be acquitted.
  - (7) Parliament may by legislation confer powers of prosecution on authorities other than the Director of Public Prosecutions.
  - (8) The Director of Public Prosecutions may not discontinue a prosecution without the permission of the court.



- (9) The powers of the Director of Public Prosecutions may be exercised in person or by subordinate officers acting in accordance with general or special instructions.
- (10) The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings *and in the exercise of his or her powers or functions and shall not be under the direction or control of any person or authority.*
- (11) In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.
- (12) The Director of Public Prosecutions shall hold office for a term of ten years and shall not be eligible for re-appointment.

### **Public Defender**

- 183.** (1) There is established the office of the Public Defender, which shall be an office in the public service.
- (2) The Public Defender shall be appointed by the President on the recommendation of the Public Service Commission and with the approval of Parliament.
- (3) The qualifications for appointment as Public Defender are the same as for the appointment as a judge of the High Court.
- (4) Subject to clause (5) the Public Defender shall provide legal advice and representation to persons who are unable to afford legal services.
- (5) Parliament shall by an Act of Parliament make provision for –
- (a) the effective, efficient and transparent management and administration of the Public Defender's office;
  - (b) the criteria for the granting of legal aid; and
  - (c) publishing information as to the availability of legal aid.
- (6) The powers of the Public Defender may be exercised in person or by subordinate officers acting in accordance with general or special instructions.
- (7) The Public Defender shall hold office for a term of ten years and shall not be eligible for re-appointment.

### **Removal from office**

- 184.** (1) The Attorney-General, the Director of Public Prosecutions or the Public Defender may be removed from office only on the grounds of –
- (a) inability to perform the functions of office arising from infirmity of body or mind;
  - (b) non-compliance with the principles set out in Chapter Nine;
  - (c) bankruptcy;
  - (d) incompetence; or
  - (e) misconduct or misbehaviour whether in the performance of the office-holder's duties or otherwise.

- (2) A person desiring the removal of the Attorney-General, the Director of Public Prosecutions or the Public Defender may present a petition to the Public Service Commission which, despite Article 270(2)(b) shall be in writing, setting out the alleged facts constituting the grounds for the removal of the office-holder in question.
- (3) The Public 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 Parliament.
- (4) Parliament shall consider the petition and if it is satisfied that it discloses a ground under clause (1), it shall send the petition to the President.
- (5) On receipt and examination of the petition the President shall within fourteen days suspend the office holder in question from office and shall –
  - (a) in the case of the Attorney-General, appoint a tribunal consisting of –
    - (i) the Speaker as chairperson;
    - (ii) three judges from states which have a common law jurisdiction; and
    - (iii) three other persons with experience in public affairs; and
  - (b) in the case of the Director of Public Prosecutions or the Public Defender, appoint a tribunal consisting of –
    - (i) four 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 such;
    - (ii) one advocate of at least fifteen years' standing nominated by the Law Society of Kenya; and
    - (iii) two other persons with experience in public affairs.
- (5) The tribunal shall inquire into the matter and report on the facts and make recommendations to the President, who shall act in accordance with the recommendations of the tribunal.
- (6) An Attorney-General, Director of Public Prosecutions or Public Defender who is suspended from office under clause (4) shall retain the office holder's remuneration and benefits of office until such time as the office holder is removed from office.
- (7) A tribunal appointed under clause (4)(b) shall elect a chairperson from among its members and tribunals appointed under clause (4)(a) and (b) shall in all other respects be responsible for the regulation of their proceedings.





## CHAPTER THIRTEEN

### JUDICIARY

#### **Principles and structure of judicial power**

185. (1) Judicial power is derived from the people and shall be exercised by the courts and other tribunals, in their name and in conformity with their values, norms and aspirations and with this Constitution and the laws, for the common good of the people.
- (2) Judicial power vests exclusively in the courts and tribunals established in accordance with this Constitution.
- (3) In applying the law the courts and tribunals shall be guided by the following principles –
- (a) justice shall be done to all, irrespective of their status;
  - (b) justice shall not be delayed;
  - (c) adequate compensation shall be awarded to victims of wrongs;
  - (d) reconciliation, mediation and arbitration between parties and the use of traditional courts, where appropriate, shall be promoted;
  - (e) justice shall be administered without undue regard to technicalities; and
  - (f) the purpose and principles of this Constitution shall be protected and promoted.
- (4) In the performance of their functions the courts and all persons participating in the administration of justice –
- (a) shall strive to deliver the highest standard of service to the public;
  - (b) shall comply with the principles set out in Chapter Nine; and
  - (c) shall continue to educate themselves in current legal developments.
- (5) The State shall provide reasonable resources and opportunities to members of the Judiciary to enable them to deliver the highest standards of service to the public.

#### **Hierarchy and administration of the courts**

186. (1) The Judiciary consists of the judges of the superior courts of record, magistrates and other judicial officers of the 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, Kadhis' Courts and other religious courts as may be established by legislation;
  - (b) the Courts Martial and any other courts subordinate to the High Court established by an Act of Parliament;

- (c) traditional courts; and
  - (d) any local tribunals that may be established by an Act of Parliament.
- (4) Parliament shall establish by legislation –
- (a) a court with jurisdiction to hear and determine disputes relating to employment that may arise among employers and employees; and
  - (b) a court, or a division of the High Court, with jurisdiction to hear and determine disputes relating to the environment and the occupation and use of, and the title to, land.
- (5) There is established the office of the Chief Registrar of the Judiciary and such other offices of Registrars as may be created by the Judicial Service Commission.
- (6) The Chief Registrar of the Judiciary shall be the chief administrator and accounting officer of the Judiciary.

### **Independence of the Judiciary**

187. (1) In the exercise of judicial power, the Judiciary shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any other person or authority.
- (2) The office of a judge of a superior court of record shall not be abolished while there is a substantive holder of the office.
- (3) The administrative expenses of the Judiciary, including the remuneration and benefits payable to, or in respect of, members of the Judiciary, shall be a charge on the Consolidated Fund.
- (4) A member of the Judiciary is not liable in an action or suit in respect of anything done in good faith in the lawful performance of a judicial function.
- (5) The remuneration and benefits payable to, or in respect of members of the Judiciary shall not be varied to their disadvantage.

### **Supreme Court**

188. (1) There is established a Supreme Court which shall consist of –
- (a) the Chief Justice, who shall be the president of the court;
  - (b) the Deputy Chief Justice, who shall be the vice-president of the court; and
  - (c) not less than five and not more than seven other judges.
- (2) The Supreme Court shall be properly constituted for the purposes of its proceedings if it is composed of five judges.
- (3) The Supreme Court shall sit in Nairobi.
- (4) There is established the office of the Chief Justice who shall be the head of the Judiciary.
- (5) Subject to Article 197(1), the Chief Justice shall serve for a period of ten years or until he or she attains the age of seventy years, whichever is earlier.

- (6) If the Chief Justice has not attained the age of seventy years at the expiry of the period of ten years referred to in clause (2) he or she may –
  - (a) retire, if he or she has attained the age of sixty years;
  - (b) continue in office as a judge of the Supreme Court, notwithstanding that there may already be the maximum permitted number of supreme court judges holding office; or
  - (c) resign from the bench.
- (7) There is established the office of the Deputy Chief Justice who shall be the principal assistant to the Chief Justice.

### **Jurisdiction of the Supreme Court**

189. (1) The Supreme Court shall have –
- (a) exclusive original jurisdiction –
    - (i) in respect of presidential election petitions; and
    - (ii) in disputes arising from the process of the impeachment of the President; and
  - (b) appellate jurisdiction to hear appeals from the Court of Appeal or from any other court or tribunal as prescribed by an Act of Parliament.
- (2) Appeals shall lie from the Court of Appeal to the Supreme Court -
- (a) as of right in any case involving the interpretation or application of this Constitution;
  - (b) in any other case in which the Court of Appeal or the Supreme Court certifies that a matter of general public importance is involved.
- (3) The Supreme Court shall not be bound by its previous decisions if it is in the interests of justice and of the development of the law and jurisprudence not to be so bound.
- (4) Despite the provisions of Article 188(2) a decision made in accordance with clause (3) may be made only by a sitting of the Court in which all of the judges of the Supreme Court participate.
- (5) All other courts shall be bound by the decisions of the Supreme Court.

### **Court of Appeal**

190. There is established a Court of Appeal which shall –
- (a) consist of the President of the Court of Appeal and such number of judges; and
  - (b) be organized and administered, as may be prescribed by an Act of Parliament.

### **Jurisdiction of the Court of Appeal**

191. The Court of Appeal has jurisdiction to hear appeals from the High Court and any other court or tribunal prescribed by an Act of Parliament.



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## **High Court**

192. There is established a High Court which shall –

- (a) consist of the Principal Judge and such number of judges; and
- (b) be organized and administered,  
as may be prescribed by an Act of Parliament.

## **Jurisdiction of the High Court**

193. Subject to the provisions of Article 189(1)(a), the High Court shall have unlimited original jurisdiction in –

- (a) criminal and civil cases;
- (b) all matters relating to the interpretation and enforcement of the provisions of this Constitution; and
- (c) any other jurisdiction, appellate or original, conferred on it by or under an Act of Parliament.

## **Supervisory jurisdiction of the High Court**

194. (1) The High Court shall have supervisory jurisdiction over the subordinate courts and over any person, body or authority which exercises a judicial or quasi-judicial function, but not over a superior court of record.

- (2) For the purposes of clause (1), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority as is mentioned in clause (1) and may make any orders and give any directions it considers appropriate to ensure the fair administration of justice.

## **Appointment of judges**

195. Any vacancy in the offices of the Chief Justice, the Deputy Chief Justice and the judges of the superior courts of record shall be filled by a person appointed by the President on the recommendation of the Judicial Service Commission, which recommendation shall have been approved by Parliament.

## **Qualifications for appointment of judges**

196. (1) The Chief Justice and the judges of the Supreme Court shall be appointed from persons who possess the following qualifications –

- (a) at least fifteen years experience in Kenya or in another Commonwealth common law jurisdiction –
    - (i) as a Judge of the Court of Appeal or the High Court; or
    - (ii) in practice as an advocate;
  - (b) intellectual ability as demonstrated by academic qualifications and eminence in 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) at least ten years experience in Kenya or in another Commonwealth common law jurisdiction –

- (i) as a Judge of the Court of Appeal or the High Court; or
  - (ii) in practice as an advocate;
  - (b) intellectual ability as demonstrated by academic qualifications and eminence in legal practice; and
  - (c) high moral character and integrity.
- (3) The judges of the High Court shall be appointed from persons who possess the following qualifications –
- (a) at least ten years experience in Kenya or in another Commonwealth common law jurisdiction –
    - (i) as a professionally qualified magistrate; or
    - (ii) in practice as an advocate;
  - (b) intellectual ability as demonstrated by academic qualifications and eminence in legal practice; and
  - (c) high moral character and integrity.

#### **Tenure of office of judges**

197. (1) A judge shall retire from office on attaining the age of seventy years.
- (2) On attaining retirement age, if there are proceedings that were commenced before a judge of a superior court of record prior to attaining the age of retirement, he or she shall continue in office for a period of six months in order only to enable him or her to deliver a judgment, or to perform any other function in relation to those proceedings.

#### **Removal from office**

198. (1) A judge of a superior court of record may be removed from office on the grounds of –
- (a) inability to perform the functions of office arising from infirmity of body or mind;
  - (b) a breach of a code of conduct prescribed for judges of the superior courts of record by an Act of Parliament;
  - (c) bankruptcy;
  - (d) incompetence; or
  - (e) misconduct or misbehaviour whether in the performance of the judge's duties or otherwise.
- (2) A person desiring the removal of a judge of a superior court of record may present a petition to the Judicial Service Commission, which, despite Article 272(2)(b), shall be in writing, setting out the alleged facts constituting the grounds for the judge's removal.
- (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.
- (4) Within fourteen days after receiving the petition, the President shall suspend the judge from office pending action by the President in

accordance with clause (5), and shall, acting in accordance with the advice of the Judicial Service Commission –

- (a) in the case of the Chief Justice, appoint a tribunal consisting of –
    - (i) the Speaker as chairperson;
    - (ii) three judges from states which have a common law jurisdiction; and
    - (iii) three other persons with experience in public affairs; and
  - (b) in the case of a judge other than a the Chief Justice, appoint a tribunal consisting of –
    - (i) four 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 such, but in either case have not been, within the preceding three years, members of the Judicial Service Commission; and
    - (ii) three other persons with experience in public affairs.
- (5) The tribunal shall inquire into the matter and report on the facts and make recommendations to the President, who shall act in accordance with the recommendations of the tribunal.
- (6) A judge who is suspended from office under clause (4) shall retain one half of his or her remuneration and benefits until such time as he or she is removed from office.
- (7) A tribunal appointed under clause (4)(b), shall elect a chairperson from among its members, and tribunals appointed under clause (4)(a) and (b) shall in all other respects be responsible for the regulation of their proceedings.

#### **Subordinate courts**

199. (1) Parliament may, by an Act of Parliament –
- (a) establish courts martial and other courts subordinate to the High Court; and
  - (b) confer on them jurisdiction and functions.
- (2) A magistrate or Kadhi shall not be removed from office, except after determination by the Judicial Service Commission on grounds as prescribed by an Act of Parliament.

#### **Kadhis' Court**

200. (1) There is established the Kadhis' Court.
- (2) The Kadhis' Court shall –
- (a) consist of the Chief Kadhi and such number of other kadhis, all of whom profess the Islamic faith; and
  - (b) be organized and administered, as may be prescribed by an Act of Parliament.





### **Jurisdiction of the Kadhis' Court**

201. The Kadhis' Court shall be a subordinate court with jurisdiction to determine questions of Islamic law relating to personal status, marriage, divorce and matters consequential to divorce, inheritance and succession in proceedings in which the parties profess the Islamic faith.

### **Judicial Service Commission**

202. (1) There is established the Judicial Service Commission consisting of –
- (a) the Chief Justice who shall be the chairperson of the Commission;
  - (b) one Supreme Court Judge elected by the judges of the Supreme Court;
  - (c) one Court of Appeal judge elected by the judges of the Court of Appeal;
  - (d) one High Court judge elected by the judges of the High Court;
  - (e) the Attorney-General;
  - (f) two advocates each of at least fifteen years' standing nominated by the Law Society of Kenya; and
  - (g) one person nominated by the Public Service Commission.
- (2) The Chief Registrar of the Judiciary shall be the Secretary to the Commission.
- (3) Members of the Commission, apart from those appointed under clause (1)(d), (e) and (f), shall hold office, provided that they remain qualified, for a term of five years and shall be eligible for re-appointment for a further term of five years.

### **Functions of the Judicial Service Commission**

203. (1) The functions of the Judicial Service Commission shall be –
- (a) to ensure and enhance the independence and judicial accountability of the judiciary and the efficient, effective and transparent administration of justice;
  - (b) to recommend to the President persons for appointment as judges;
  - (c) to review and make recommendations on the conditions of service of judges, magistrates and other judicial officers, other than their salaries and remuneration;
  - (d) to advise the President on the membership of the tribunal referred to in Article 273(4);
  - (e) to appoint, discipline and remove registrars, magistrates and other judicial officers, including paralegal staff, in such manner as may be specified by an Act of Parliament;
  - (f) to review and establish tribunals to investigate complaints against judges;

- (g) to prepare and implement programmes for the continuing education and training of judges, magistrates and other judicial officers, and paralegal staff; and
  - (i) to advise the Government on improving the efficiency of the administration of justice, and on access to justice, including legal aid.
- (2) Despite clause 1(e), the Commission shall appoint Kadhis in consultation with the Chief Kadhi.
  - (3) In this Article "judge" means a judge of a superior court of record.





**CHAPTER FOURTEEN**  
**DEVOLVED GOVERNMENT**

**Part I – Structure and principles of devolved government**

**Objects of devolution of government**

204. (1) The objects of devolution of government are –
- (a) to ensure the democratic and accountable exercise of sovereign power;
  - (b) to foster national unity by recognising diversity;
  - (c) to give powers of self-governance to the people and enhance the participation of people in the exercise of the powers of the state;
  - (d) to recognize the right of local communities to manage their own local affairs, and to form networks and associations to assist in that management and to further their development;
  - (e) to protect and promote the interests and rights of minorities and marginalized groups;
  - (f) to promote social and economic development and the provision of proximate, easily-accessed services throughout Kenya;
  - (g) to ensure equitable sharing of national and local resources throughout Kenya, with special provisions for less developed areas; and
  - (h) to facilitate the decentralisation of State organs and functions from the capital territory.
- (2) All persons and bodies exercising and performing powers and functions in accordance with this Chapter shall take account of the objects set out in this Article.

**Principles of devolved government**

205. (1) The district is the unit of devolution.
- (2) Parliament is responsible for the enactment of framework legislation applicable to the devolved levels of government.

**Co-operation and linkage between Governments at the two levels**

206. (1) Government at each level shall –
- (a) exercise and perform its powers and functions in a manner that does not encroach on the geographical, functional or institutional integrity of government at the other level and shall respect the constitutional status, institutions and rights of government at that other level;
  - (b) assist, support, and consult with the other levels and shall, as appropriate, implement the laws of that level; and

- (c) maintain liaison with government at the other level for the purpose of exchange of information, co-ordination of policies and administration and enhancement of capacity.
- (2) Government at the national level and the Governments at the district level shall, to the extent necessary in any particular circumstances, co-operate in the performance of functions and, for that purpose, may set up joint committees and joint authorities.
- (3) Governments involved in an inter-governmental dispute shall make every reasonable effort to settle the dispute by means of procedures provided by Act of Parliament for that purpose, and shall exhaust all other remedies before they approach a court to resolve the dispute.
- (4) For the purposes of clause (3), an Act of Parliament shall provide procedures for the settlement of inter-government disputes by negotiation, mediation or arbitration.
- (5) Parliament shall by legislation provide for measures and mechanisms to ensure linkage between the National Government and the District Governments.

#### **Assignment of functions**

207. (1) Except as otherwise provided by this Constitution or by legislation, the functions and powers of the two levels of government are as set out in the Fourth Schedule.
- (2) Every District Government shall decentralize the provision of services and other functions of government by providing, for their devolution to the extent that it is efficient and practicable to do so as may be provided for by legislation.
- (3) When powers and functions are assigned by the national level of government to the district level of government, arrangements shall be put in place to ensure that the funds necessary for the exercise and performance of those powers and functions are transferred accordingly.
- (4) A function that is assigned to both levels of government is a function within the concurrent jurisdiction of each of the levels of government.
- (5) Associations, federations and networks of local communities or villages, within the framework of their statutory powers and functions, have the right of self-management as set by national legislation.

#### **Conflict of laws**

208. (1) This Article applies to conflicts between legislation in relation to matters falling within the concurrent jurisdiction of the two levels of government.
- (2) In every case referred to under clause (1), national legislation prevails over district legislation.

#### **Management of urban districts and urban areas within districts**

209. (1) National legislation shall provide for the governance and management of urban districts and urban areas within districts.
- (2) That legislation shall -



- (a) establish criteria for distinguishing between -
    - (i) urban districts and areas within those districts; and
    - (ii) rural districts and areas within those districts;
  - (b) establish criteria and procedures by which transition from a rural district into an urban district is recognized;
  - (c) establish criteria for classifying an area within a district as an urban area;
  - (d) establish the principles of governance and management of urban districts and urban areas within those districts which take into account the special requirements of the national capital and other major centres;
  - (e) provide for participation, by the citizens of urban areas, in governance functions of the district within which it lies.
- (3) That legislation may —
- (a) provide for the identification of different categories of urban areas within a district; and
  - (b) make other provision for the better governance of urban areas and urban districts.

#### **Suspension of a District Government**

210. (1) A District Government may be suspended -
- (a) in an emergency arising out of internal conflict or war; or
  - (b) for gross inefficiency or corrupt practices, or for failure to comply with a code of conduct prescribed by an Act of Parliament in respect of the District Government.
- (2) A District Government shall not be suspended under clause (1)(b) unless a Commission of inquiry appointed in accordance with Article 151(4) has investigated the allegations against it and has recommended to the President that the District Government be suspended.
- (3) If the Commission of inquiry under clause (2) recommends that the District Government be suspended, the President shall suspend that District Government.
- (3) During a suspension under this Article, arrangements shall be made for the performance of the functions of the District Government in accordance with an Act of Parliament.
- (4) A suspension under this Article shall not extend beyond a period of ninety days, during which period new elections for the relevant district assembly shall be held.

#### **Prohibition against holding elective office at national and district levels**

211. Except as otherwise provided by this Constitution, a person shall not hold a public or elective office at the same time in both the National Government and a District Government.





## **Part II - National Forum for District Governments and other fora**

### **Establishment and Functions of National Forum for District Governments and other fora**

212. (1) There is established a national forum to be known as the National Forum for District Governments.
- (2) The functions of the Forum shall be –
- (a) to consult on and co-ordinate inter-district matters;
  - (b) to consult with and advise the National Government on matters relating to the affairs of district governments; and
  - (c) to carry out such other functions as may be prescribed by or under any law.
- (3) Despite clause (1), district governments shall, to the extent necessary in any particular circumstances, co-operate in the performance of functions and, for that purpose, may set up a forum.
- (4) An Act of Parliament shall provide for the procedure for the conduct of business and other matters relating to the Forum.

## **Part II – Districts**

### **District Governments**

213. There is established for each district a District Government, consisting of a district assembly and a district council.

### **Legislative authority of district assemblies**

214. (1) The legislative authority of a district is vested in its district assembly.
- (2) A district assembly may pass any laws that are reasonably necessary for, or incidental to, the effective exercise of the powers, and the performance of the functions, that are assigned to the district.
- (3) A district assembly has power to maintain oversight over the district council and any other executive organs established by laws of the district assembly.
- (4) A district assembly may recommend to the Parliament the enactment of legislation concerning any matter outside the authority of that district assembly that is within the legislative competence of the Parliament.
- (5) A district assembly may formulate plans and policies for the management and exploitation of the district's resources and development and management of the district's infrastructure and institutions.

### **Election of members of district assembly**

215. (1) A district assembly consists of –
- (a) one member elected for each of such number of wards, with such boundaries, as are prescribed by Act of Parliament, passed after taking account of the recommendations of the Electoral and Boundaries Commission;

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- (b) such number of special seat members, all of whom are women, as are required to ensure that at least one-third membership of the district assembly comprises women, elected after members have been declared elected under paragraph (a); and
  - (c) a number equal to five per cent of the total membership of the district assembly who shall be nominated by political parties in proportion to the number of votes received at the last election, to represent special party interests.
- (2) Nothing in this Article prevents a woman who stood unsuccessfully for election under paragraph (a) of clause (1) from contesting a special seat under paragraph (b) of that clause.
  - (3) A district assembly is elected for a term of five years.

#### **District council**

216. (1) The executive authority of a district is exercised by a district executive council, consisting of –
- (a) a district chairperson and a deputy district chairperson; and
  - (b) subject to clause (2), such other members as are appointed from among the members of the district assembly by the district chairperson with the approval of the district assembly.
- (2) The number of members appointed under clause (1)(b) shall not exceed either –
- (a) one-third of the number of members of the district assembly; or
  - (b) ten persons.
- (3) During the illness or absence of the district chairperson, the deputy district chairperson has all the functions, powers and responsibilities of the district chairperson.

#### **Election of district chairperson and deputy district chairperson**

217. The district chairperson and deputy district chairperson shall each be elected in such manner as may be prescribed by an Act of Parliament.

#### **Functions of district council**

218. (1) A district council shall –
- (a) implement laws of the district assembly;
  - (b) implement, within the district, national legislation, to the extent that that legislation so requires;
  - (c) coordinate the functions of the district administration and its departments; and
  - (d) coordinate the functions of communities within the district.
- (2) Without limiting any power of the district assembly, a district council may prepare and initiate proposed laws for enactment by the district assembly.
- (3) The district council has such other powers and functions as may be conferred on it by this Constitution or by national legislation.



- (4) Members of a district council are accountable collectively and individually to the district assembly for the exercise of their powers and the performance of their functions.
- (5) A district council shall –
  - (a) act in accordance with this Constitution; and
  - (b) provide the district assembly with full and regular reports concerning matters under the control of the district executive council.

### **Part III – General**

#### **Terms of office**

219. Subject to specific provision made in this Chapter, a person holds an elective office for a term of five years and is eligible, if otherwise qualified, for re-election.

#### **Balance of gender and diversity**

220. (1) An Act of Parliament shall be enacted to ensure that community and cultural diversity in a district is reflected in legislative and executive bodies exercising power in the district.
- (2) Without limiting the generality of clause (1), that legislation shall prescribe means to protect minorities within districts.

#### **Government during transition**

221. While any election is being held to constitute the district assembly or the district council under this Chapter, the district assembly or the district council as last constituted remains competent to function until reconstituted after the election.

#### **Leadership and integrity**

222. Members of the district assembly or the district council constituted under this Chapter shall act in accordance with the principles set out in Chapter Nine.

#### **Publication of laws**

223. (1) A law or subordinate instrument made by a district assembly or a district council does not take effect unless published in the Gazette.
- (2) National and district laws may prescribe other requirements in relation to the publication of the laws of District Government.

#### **Provision to be made by Act of Parliament**

224. Parliament shall by legislation make comprehensive provision for all matters necessary to give effect to this Chapter including, in particular, provision to give effect to the principles and objects of devolution in Article 204.





## CHAPTER FIFTEEN

### PUBLIC FINANCE

#### Part I – Public Finance and Revenue Management

##### Principles and objects of public finance and revenue management

225. The primary object of the public finance management system of the Republic is to ensure –

- (a) efficient and effective generation of revenue;
- (b) adherence to the principles of transparency and accountability and observance of law, including appropriate controls and oversight over borrowing and expenditure;
- (c) equitable raising of revenue, and the sharing of national and local resources and revenue throughout the Republic, taking into account the special needs of marginalized communities;
- (d) the application of the principles of universality, of equality of tax treatment and of taxation according to economic capacity;
- (e) that imposition of tax shall take into account the burden of direct taxes on the district governments and the people;
- (f) that the benefits and burdens of public borrowing and spending are shared equitably between present and future generations;
- (g) that the budgets and budgetary processes promote transparency, accountability and the effective financial management of the economy, debt and public sector, and
- (h) that public accounts are audited and reported on regularly.

#### Part II – Taxation powers and revenue sharing.

##### Imposition of tax

226. (1) No person or authority may –
- (a) impose a tax, fee or charge on behalf of either the Government or a devolved level of government, except under the authority of legislation; or
  - (b) waive or vary any tax, fee or charge imposed by law except as expressly provided by legislation.
- (2) Legislation that provides for any waiver of any tax, charge or fee shall provide that a record of such waivers and the reason for them is kept and reported to the Auditor-General.

##### Taxation

227. (1) The taxation and other revenue-raising powers of the Government and devolved governments are set out in the Fifth Schedule.
- (2) The taxation and other revenue-raising powers of a district government shall not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across

district, district or locational boundaries or the national mobility of goods, services, capital or labour.

- (3) When two or more governments have taxation or other revenue-raising powers and functions with regard to the same subject-matter, an appropriate division of those powers and functions shall be made by Act of Parliament.
- (4) Nothing in this Article precludes the sharing of revenue raised under this Article between governments that have taxation or other revenue-raising powers and functions with regard to the same subject-matter.
- (5) An Act of Parliament referred to in clause (3) may be enacted only after the Commission on Revenue Allocation, the Minister responsible for district government and the Controller of Budget have been consulted, and their recommendations have been tabled in Parliament.

#### **Devolved governments' shares of national funds**

228. (1) The Government shall promote financial equalization between the levels of government.
- (2) Each district government –
- (a) is entitled to an equitable share of revenue raised nationally; and
  - (b) may receive equalization grants or other allocations from Government revenue, either conditionally or unconditionally.
- (3) Additional revenue raised by a district government may not be deducted from its share of revenue raised nationally, or from other allocations made to it out of Government revenue.
- (4) There is no obligation on the Government to compensate a district government that does not raise revenue commensurate with its fiscal capacity and tax base.
- (5) A district government's share of revenue raised nationally shall be transferred to that government promptly and without deduction, except when the transfer has been stopped under Article 244(2) or where deductions are made to offset obligations due to the National Government and default in such obligations would be detrimental to the national interests.

#### **Legislation**

229. (1) Subject to Article 227(1), an Act of Parliament shall regulate the taxation and other revenue raising powers of district governments and the sharing of revenue and making of grants to district governments.
- (2) An Act of Parliament referred to in clause (1), may be enacted only after the Commission on Revenue Allocation, the Minister responsible for the district governments and the Controller of Budget have been consulted, and their recommendations have been tabled in Parliament.
- (3) An Act of Parliament referred to in clause (1), shall take into account –
- (a) the national interest;



- (b) any provision that must be made in respect of the national debt and other national obligations;
- (c) the needs and interests of the Government;
- (d) the need to ensure that the district governments are able to perform the functions allocated to them;
- (e) the fiscal capacity and efficiency of the district governments;
- (f) developmental and other needs of district governments;
- (g) economic disparities within and among the district governments, including the needs of marginalized areas;
- (h) obligations of the district governments in terms of national legislation;
- (i) the desirability of stable and predictable allocations of revenue shares; and
- (j) emergencies or other temporary needs.

### **Part III – Funds for holding Public Money**

#### **Consolidated Fund**

- 230.** (1) There is established a fund to be known as the Consolidated Fund.
- (2) Subject to clause (3), all money raised or received for the purposes of, on behalf of, or in trust for, the Government shall be paid into the Consolidated Fund.
- (3) The money referred to in clause (2) does not include any money –
- (a) that is payable under an Act of Parliament into some other public fund of the Government established for a specific purpose; or
  - (b) that may, under an Act of Parliament, be retained by the State organ, at national or district level, that received it for the purpose of defraying the expenses of that State organ.

#### **Withdrawals from Consolidated Fund**

- 231.** (1) Money shall not be withdrawn from the Consolidated Fund except –
- (a) to meet expenditure charged on the Fund by this Constitution or an Act of Parliament; or
  - (b) when the issue of that money has been authorized by an Appropriation Act or a Supplementary Appropriation Act.
- (2) Money shall not be withdrawn from any public fund of the Government other than the Consolidated Fund, unless the issue of that money has been authorised by an Act of Parliament.
- (3) Money shall not be withdrawn from the Consolidated Fund or any other public fund of the Government unless the Controller of Budget has approved the withdrawal in accordance with Article 245(4).



### **Revenue Fund for devolved governments**

232. (1) There shall be established a Revenue Fund for each district government, into which shall be paid all money received by the district government, except money reasonably excluded by an Act of Parliament.
- (2) Money may be withdrawn from the Revenue Fund of a district government only –
- (a) by an appropriation by legislation of the district government; or
  - (b) as a direct charge against the Revenue Fund that is provided for by an Act of Parliament or by legislation of the district government.

### **Contingency Fund**

233. There is established a fund, to be known as the Contingency Fund, the operation of which shall be in accordance with an Act of Parliament.

## **Part IV - Borrowing**

### **Borrowing by National Government**

234. (1) The Government may borrow from any source.
- (2) The Government shall not, on behalf of itself or any other public institution, authority or person, borrow money, guarantee a loan or receive a grant, unless the terms and conditions of the transaction have been laid before, and approved by a resolution of Parliament.
- (3) All money received as a result of a transaction referred to in clause (2) shall be paid into, and form part of, the Consolidated Fund or some other public fund that is existing or is created for the purpose of that transaction.
- (4) Within seven days after Parliament, by resolution, so requests, the Minister responsible for finance shall present to Parliament all information concerning a loan that 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;
  - (c) the use made of the proceeds of the loan; and
  - (d) the progress made in the repayment of the loan.
- (5) For the purposes of this Article, "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 money from the Consolidated Fund or any other public fund may be used, or is required to be used, for payment or repayment.

### **Borrowing by District Governments**

235. (1) A district government may raise loans for development or recurrent expenditure in accordance with conditions determined by an Act of Parliament.

- (2) An Act of Parliament referred to in clause (1) may be enacted only after all relevant recommendations of the Commission on Revenue Allocation have been considered.
- (3) A district government shall not borrow without first obtaining approval from its assembly or council.

#### **Public debt**

236. (1) Subject to clause (2), the public debt of the Republic is a charge on the Consolidated Fund.
- (2) Parliament may enact legislation providing for the charging all or part of the public debt of the Republic to other public funds.
- (3) For the purposes of this Article, the public debt includes the interest on that debt, sinking fund payments in respect of that debt, the costs, charges and expenses incidental to the management of that debt and outstanding guarantees by the State.
- (4) The aggregate amounts borrowed in any financial year by both the Government and all district governments shall not be such as to increase the accumulated public debt to an amount greater than such amount as may be specified in legislation.

#### **Loan guarantees by Governments**

237. (1) An Act of Parliament shall provide terms and conditions under which each level of government may guarantee a loan.
- (2) An Act of Parliament referred to in clause (1) may be enacted only after any recommendations of the Commission on Revenue Allocations have been considered.
- (3) Within two months after the end of each financial year, each government, shall each publish a report on the guarantees that it gave during that year.

### **Part V – Budgets**

#### **Principles**

238. Budgets of the Government and district governments shall contain –
- (a) estimates of revenue and expenditure, differentiating between recurrent and development expenditure;
  - (b) proposals for financing any anticipated deficit for the period to which they apply; and
  - (c) all proposals regarding borrowing and other forms of public liability that will increase public debt during the ensuing year.

#### **National annual estimates**

239. (1) On a date not later than two months before the end of each financial year the Minister responsible for finance shall lay before Parliament –
- (a) estimates of the revenues and expenditure of Government for the following financial year; and



- (b) a detailed fiscal, monetary and development strategic plan for a period of at least three years (or such longer period as is provided for by Act of Parliament) prepared by the Minister responsible for finance in collaboration with the Minister responsible for planning and national development.
- (2) The Minister responsible for finance shall include in the annual estimates a special budgetary provision for the development of marginalized areas and communities.
- (3) At least three months before the end of each financial year, the head of each self-accounting department, State organ, commission or organization established under this Constitution shall submit estimates of revenues and expenditures for the following year to the Minister responsible for finance.
- (4) The estimates prepared under clause (2) shall be laid before Parliament by the Minister responsible for finance without revision but with any recommendations that the Commission on Revenue Allocation may have on them.
- (5) At any time before Parliament considers the estimates of revenue and expenditure laid before it by or on the authority of the Minister responsible for finance, an appropriate committee of Parliament shall discuss and review the estimates and make appropriate recommendations to Parliament.
- (6) The committee referred to in clause (4) shall, in discussing and reviewing the estimates, seek representations from the public and the Economic and Social Council, and those recommendations shall be taken into account when the committee makes its recommendations to Parliament.

#### **Division and appropriation of revenue Bills**

240. (1) In each financial year, the Minister responsible for finance shall introduce in Parliament a division of revenue Bill based on the recommendations of the Commission on Revenue Allocation dividing revenue raised by the Government among the two levels of government.
- (2) On the basis of the division of revenue Bill passed by Parliament under clause (1), each level of government shall prepare and pass its own budget and appropriation Bills.
- (3) When the estimates of Government expenditure, other than expenditure charged on the Consolidated Fund by this Constitution or an Act of Parliament, have been approved by Parliament, they 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 for the appropriation of those sums for the purposes specified in the Bill.
- (4) If, in respect of any financial year –
- (a) 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) money has been expended out of the Contingency Account 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 before Parliament and, in the case of excess expenditure, within four months after the first drawing on the money is made.

- (5) The sums sought in a supplementary estimate for purposes for which money already appropriated was insufficient shall not in total exceed ten per cent of the sums previously appropriated by Parliament for those purposes during that financial year without approval by Parliament.
- (6) Where, in respect of any financial year, a supplementary estimate has, or supplementary estimates have, been approved by Parliament in accordance with clause (2), a Supplementary Appropriation Bill shall be introduced into Parliament in the financial year next following the financial year to which the estimates relate, providing for the appropriation of the sums so approved for the purposes specified in those estimates.
- (7) Article 239(5) applies to estimates prepared under clause (4).
- (8) If the Appropriation Bill for a financial year has not been assented to, or is not likely to be assented to, by the beginning of that financial year, Parliament may, by a vote on account, authorize the withdrawal from the Consolidated Fund of money (not exceeding in total one-half of the sums included in the estimates of expenditure for that year that have been laid before Parliament) for the purpose of meeting expenditure necessary to carry on the services of the national government during that year until such time as the Appropriation Bill is assented to, but any moneys so withdrawn shall be included, under separate votes for the several services in respect of which they were withdrawn, in the Appropriation Bill.

#### **Annual budget of District Governments**

241. An Act of Parliament shall prescribe -

- (a) the structure of the plans and budgets of all district governments;
- (b) the contents of the plans and budgets of all district governments, including the sources of revenue and the way in which the proposed expenditure will comply with the national plan and financial estimates;
- (c) when the district governments plans and budgets shall be tabled; and
- (d) the form and manner of consultation between the national and the district governments in the process of preparation of plans and budgets.



## Part VI – Financial Management

### Procurement of public goods and services

242. (1) When a State organ or any other public institution at any level of government contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.
- (2) An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal may be implemented, providing for all or any of the following –
- (a) categories of preference in the allocation of contracts;
  - (b) the protection or advancement of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination;
  - (c) sanctions against contractors that have not performed according to professionally regulated procedures, contractual agreements or legislation; and
  - (d) sanctions against persons who have defaulted on their tax obligations, or have been guilty of corrupt practices or serious violations of fair employment laws and practices.

### Accounts and audit of public institutions

243. (1) The Principal Secretary in charge of a ministry and the accounting officer in charge of a department or a public body are each accountable to Parliament for funds in that ministry, department or public body.
- (2) The accounts of all governments and state organs shall be audited by the Auditor-General.
- (3) The accounts of the offices of the Controller of Budget and the Auditor-General shall be audited and reported on by a professionally qualified accountant appointed by Parliament
- (4) If, while, the holder of a public office, including a political office, a person directs or approves the use of public funds contrary to law, regulations or instructions, that person is liable for any loss arising from that use and is obliged to make good the loss, whether that person remains the holder of that office or not.
- (5) An Act of Parliament shall provide for the keeping of records and auditing of accounts of the devolved governments, and prescribe other measures for securing efficient and transparent fiscal management

### Treasury control

244. (1) An Act of Parliament shall establish an organ of the National Government, to be known as the Treasury, and prescribe measures to ensure both transparency and expenditure control in each level of government.
- (2) The Treasury, with the concurrence of the Minister responsible for finance, may stop the transfer of funds to a State organ or any other

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- public institution only for a serious material breach, or persistent material breaches, of the measures established in terms of clause (1).
- (3) A decision to stop the transfer of funds taken in terms of clause (2) may not stop the transfer of more than fifty per cent of funds due to any district government.
  - (4) A decision to stop the transfer of funds taken in terms of clause (2) –
    - (a) shall not stop the transfer of funds for more than sixty days; and
    - (b) may be enforced immediately, but will lapse retrospectively unless, within thirty days after the date of the decision, Parliament approves it by resolution passed by Parliament.
  - (5) Parliament may renew a decision to stop the transfer of funds for no more than sixty days at a time.
  - (6) Before Parliament may approve or renew a decision to stop the transfer of funds –
    - (a) the Controller of Budget shall make a report to Parliament; and
    - (b) the affected district government, State organ or public institution shall be given an opportunity to answer the allegations against it, and to state its case, before the relevant parliamentary committee.

#### **Controller of Budget**

245. (1) There shall be a Controller of Budget who shall be appointed by the President with the approval of Parliament.
- (2) To be appointed Controller of Budget, a person shall be –
  - (a) a professionally qualified accountant, economist or a financial management specialist of not less than ten years' standing; and
  - (b) a person of integrity and moral probity.
- (3) The Controller of Budget holds office, subject to Article 269(5)(b), and (c) for a term of five years and is eligible, if qualified, for re-appointment for one further term.
- (4) The Controller of Budget shall oversee the implementation of the budgets as approved by the two levels of government by –
  - (a) ensuring that money is spent in accordance with appropriations or, in the case of money drawn from the Contingency Fund, in accordance with the Act of Parliament referred to in Article 233;
  - (b) providing accounts of actual, as opposed to budgeted, expenditure;
  - (c) providing technical advice to parliamentary finance committees; and
  - (d) working closely with the Treasury, departments and Ministries.
- (5) Within two months after the end of each financial year, the Controller of Budget shall submit to Parliament a report on the operations of the office of Controller of Budget during that financial year.

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- (6) Within three months after the submission of a report under clause (5), Parliament shall debate and consider the report and take appropriate action.
- (7) In performing the functions of office, the Controller of Budget shall not be under the direction or control of any person or authority.
- (8) The grounds and procedure for the removal of the Controller of Budget, are as set out in Article 273.
- (9) The remuneration and benefits of the Controller of Budget shall be charged on the Consolidated Fund.

#### **Auditor-General**

246. (1) There shall be an Auditor-General who shall be appointed by the President with the approval of Parliament.
- (2) To be appointed Auditor-General, a person shall be –
- (a) a professionally qualified accountant of not less than ten years' standing who has extensive audit and public finance experience; and
  - (b) a person of integrity and moral probity.
- (3) The Auditor-General holds office, subject to Article 269(5)(b) and (c) for a term of five years and is eligible, if qualified, for re-appointment for one further term.
- (4) The Auditor-General shall –
- (a) audit the accounts of the Government and district governments and of state corporations;
  - (b) confirm that all money that has been appropriated by Parliament, or raised by either level of government, and disbursed has been applied to the purpose to which it was appropriated, that the expenditure conforms to the authority that governs it and that the use of the money was economical, efficient, effective and prudent, and value for money was realized; and
  - (c) within six months after the end of each financial year, audit and report, in respect of that financial year, on –
    - (i) the public accounts of the national and district governments;
    - (ii) the accounts of all funds and authorities of the Government and district governments;
    - (iii) the accounts of all courts;
    - (iv) the accounts of every Commission established by this Constitution;
    - (v) the accounts of Parliament;
    - (vi) the accounts of political parties funded from public funds;

- (vii) the accounts of any other organization funded from public funds; and
  - (viii) the public debt.
- (5) Within three months after the submission of the report referred to in clause (4)(c), Parliament shall debate and consider the report and take appropriate action.
  - (6) An Act of Parliament shall provide for the keeping of records and auditing of accounts of the district governments, and prescribe other measures for securing efficient and transparent fiscal management.
  - (7) In performing the functions of the office, the Auditor-General shall not be under the direction or control of any person or authority.
  - (8) The grounds and procedure for the removal of the Auditor-General, are as set out in Article 275.
  - (9) The remuneration and benefits of the Auditor-General shall be charged on the Consolidated Fund.

### **Part VII – Institutions**

#### **National Revenue Authority**

247. (1) There is established the National Revenue Authority.
- (2) The Authority is responsible for the collection of revenue due to the Government except as determined by an Act of Parliament.
- (3) The composition, functions and operations of the Authority are as prescribed by an Act of Parliament.

#### **Commission on Revenue Allocation**

248. (1) There is established the Commission on Revenue Allocation.
- (2) The Commission shall consist of the following persons appointed by the President –
  - (a) a chairperson;
  - (b) one nominee of each district assembly;
  - (c) two persons nominated by Parliament;
  - (d) the Principal Secretary in the Ministry responsible for finance; and
  - (e) the Controller of Budget.
- (3) The principal function of the Commission is to determine the basis for the sharing of revenue from national resources and to ensure that –
  - (a) the sharing is equitable as between the Government and the district governments;
  - (b) the sharing is equitable as between the district governments; and
  - (c) where necessary, conditional or unconditional grants are made.
- (4) The Commission shall –



- (a) report to both levels of government its recommendations concerning the apportionment of national revenues to the two levels of district governments;
  - (b) frequently review such recommendations to ensure they conform with changing circumstances; and
  - (c) mediate in and determine disputes relating to financial arrangements between the Government and district governments.
- (5) In its recommendations, the Commission shall –
- (a) aim at defining and enhancing the revenue sources of governments at all levels with the object of encouraging fiscal responsibility and moving the district governments over time toward financial self-sufficiency;
  - (b) make proposals for affirmative action for local business persons or for classes of persons, and social groups, previously disadvantaged and marginalized by discrimination; and
  - (c) make proposals for the exclusion of contractors who default on their tax.
- (6) In its recommendations concerning the distribution of national revenues, the Commission shall take into account –
- (a) the national interest;
  - (b) any provision that must be made in respect of the national debt and other national obligations;
  - (c) the needs and interests of the Government, determined by objective criteria;
  - (d) the need to ensure that the districts are able to provide basic services and perform functions allocated to them;
  - (e) the fiscal capacity and efficiency of the districts;
  - (f) developmental and other needs of districts;
  - (g) economic disparities within and among the districts need for financial equalisation;
  - (h) the need for affirmative action in respect of arid and semi-arid areas and other marginalized areas;
  - (i) the need for economic optimisation of each district;
  - (j) obligations of the district; in terms of national legislation;
  - (k) the desirability of stable and predictable allocations of revenue shares; and
  - (l) the need for flexibility in responding to emergencies or other temporary needs, and other factors based on similar objective criteria.
- (7) The recommendations of the Commission may be modified by the Government supported by Parliament.



- (8) An Act of Parliament shall provide for procedures and the operations of the Commission and prescribe a framework within which the policy referred to in clause (4) may be implemented.
- (9) The Commission has such other functions as are conferred upon it by an Act of Parliament.
- (10) In discharging its functions, the Commission shall have regard to such principles, criteria, formulae, conditions and frameworks for ensuring equitable sharing and allocation of national revenue and resources as are prescribed by an Act of Parliament.
- (11) Not later than 31<sup>st</sup> January in each year, the Commission shall prepare a report, in accordance with requirements prescribed by an Act of Parliament, setting out its recommendations concerning the distribution of national revenues to both levels of government and submit the report to Parliament for approval.
- (12) Recommendations of the Commission, as modified under clause (7), are binding on all governments, and shall be reflected in their respective budgets and in their taxation and other legislative policies.

### **Central Bank of Kenya**

249. (1) There is established the Central Bank of Kenya.
- (2) The Central Bank of Kenya is the only authority to issue the currency of Kenya.
  - (3) The authority of the Central Bank of Kenya vests in a Board, consisting of a Governor, a Deputy Governor and not more than five other members.
  - (4) The members of the Board shall –
    - (a) be appointed by the President with the approval of Parliament; and
    - (b) hold office, subject to Article 269(5)(b),(c) and (d), for a term of five years and are eligible, if otherwise qualified, for re-appointment for one further term.
  - (5) To be appointed Governor, a person shall have extensive knowledge and experience in matters relating to economics, finance or accounting and be a person of integrity and moral probity.
  - (6) The Governor of the Central Bank is the chairperson of the Board.
  - (7) The grounds and procedure for the removal of a member of the Board are as set out in Article 273.

### **Functions of Central Bank**

2501. (1) The Central Bank of Kenya shall –
- (a) promote and maintain the stability of the value of the currency of the Republic;
  - (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 in the interest of the balanced and sustainable economic growth of the Republic;
  - (e) encourage and promote economic development and the efficient utilization of the resources of the Republic, through effective and efficient operation of a banking and credit system; and
  - (f) perform all such other functions, not inconsistent with this Article, as may be prescribed by law.
- (2) In performing its functions, the Central Bank of Kenya shall conform to this Constitution and shall not be subject to the direction or control of any person or authority.
  - (3) Notes and coins issued by the Central Bank of Kenya may bear only the portrait of the first President of Kenya or other images that depict or symbolize Kenya or an aspect of Kenya.

### **Economic and Social Council**

251. (1) There is established the Economic and Social Council consisting of nine persons appointed, on the basis of merit but taking into account the diversity of the people of Kenya, by the President, with the approval of Parliament.
- (2) Persons appointed to the Council shall –
- (a) be qualified and experienced in economic and social development matters; and
  - (b) have no partisan affiliation once appointed to the Council.
- (3) The functions of the Council are –
- (a) to advise the Government and Parliament on matters of economic and social concern to the people of the Republic;
  - (b) to advise the Government on the formulation, implementation, monitoring and evaluation of strategic economic and social policies;
  - (c) to consider and report to Parliament on the economic and social implications of all bills and budgetary proposals introduced in Parliament;
  - (d) to monitor progress in the improvement of the living standards of the people of Kenya, particularly those of the poor and the disadvantaged; and
  - (e) such other functions as are conferred on it by an Act of Parliament.
- (4) Subject to this Article, Parliament shall enact legislation –
- (a) regulating the manner in which the Council carries out its functions; and
  - (b) prescribing the form, content and manner of submitting the reports of the Council.

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**CHAPTER SIXTEEN**  
**THE PUBLIC SERVICE**  
**Part I – Public Service**

**Values and principles of public service**

252. (1) The guiding values and principles of public service include –
- (a) maintenance and promotion of a high standard of professional ethics;
  - (b) promotion of efficient, effective and economic use of resources;
  - (c) effective, impartial, fair and equitable provision of services;
  - (d) encouragement of people to participate in the process of policy making;
  - (e) prompt, efficient and timely response to people's needs;
  - (f) commitment to the implementation of public policy and programmes;
  - (g) accountability for administrative acts of omission and commission;
  - (h) transparency fostered by providing the public with timely, accessible and accurate information;
  - (i) subject to paragraph (k), merit as the basis of appointments and promotions;
  - (j) adequate and equal opportunities for appointments, training and advancement of men and women and the members of all ethnic groups; and
  - (k) representation of the Kenya's diverse communities, persons with disabilities and Minorities and marginalized groups in the composition of the public service at all levels.
- (2) The principles of public service above apply to –
- (a) public service in each level of government;
  - (b) public service in all State organs; and
  - (c) public service in all public enterprises.

**The Public Service Commission**

253. (1) There is established the Public Service Commission.
- (2) The President shall appoint members of the Public Service Commission.
- (3) There shall be a secretary to the Commission who shall be the Chief Executive and shall be appointed by the President on the recommendation of the Public Service Commission and with the approval of Parliament.



- (4) The Secretary of the Commission shall hold office for a term of five years and is eligible for re-appointment for only one further term of five years.

### **Powers and Functions**

254. (1) The powers and functions of the Commission are –
- (a) except where there is a contrary provision in this Constitution, to constitute and abolish offices;
  - (b) except where there is a contrary provision in this Constitution, to appoint persons to hold or act in offices established under paragraph (a), to confirm appointments and to exercise disciplinary control over and remove persons holding or acting in those offices;
  - (c) to appoint persons to hold or act in the public service, to confirm appointments, to exercise disciplinary control over such persons and to remove them from office;
  - (d) to promote the values and principles set out in Article 13 throughout the public service;
  - (e) to investigate, monitor and evaluate the organization, administration and personnel practices of the public service;
  - (f) to ensure efficient and effective performance of the public service;
  - (g) to ensure that procedures relating to recruitment, transfers, promotions and disciplinary measures of personnel comply with the values and principles set out in Articles 13 and 252;
  - (h) to review the terms and conditions of service, code of regulations and qualifications of public officers and to develop human resources in the public service and make recommendations on them to Government;
  - (i) to report on the activities and the performance of its functions in accordance with Article 271 and to evaluate the extent to which the values and principles set out in Articles 12 and 259 are complied with;
  - (j) to hear and determine appeals in respect of matters relating to public service from the district governments; and
  - (k) to perform such other functions as may be prescribed by this Constitution or an Act of Parliament.
- (2) The Commission may, subject to conditions specified by it, in writing, delegate any of its powers and functions under this Article to any one or more of its members, or to any officer, body or authority in the public service.
- (3) Clause (1) shall not apply to any of the following offices in the public service –
- (a) the State offices;

- (b) the office of Ambassador, High Commissioner or other principal representative of the Republic in another country;
  - (c) an office to which Article 147, 202(1) and 276 refers;
  - (d) an office in a district government; and
  - (e) except in relation to appeals referred to in clause (1)(g), any office in the service of a district government.
- (4) A person shall not be appointed under clause (1) to act in any office on the personal staff of the President or a retired President, except with the consent of the President or retired President.
- (5) Parliament shall enact legislation for the better functioning of the Commission.

#### **Staffing of district governments**

255. A District Government is responsible for the recruitment, appointment, promotion, transfer and dismissal of members of its public services within a framework of uniform norms and standards prescribed by an Act of Parliament.

#### **Protection of public officers**

256. A public officer shall not be –

- (a) victimized or discriminated against for having performed the functions of office in accordance with this Constitution or any other law; or
- (b) dismissed or removed from office or demoted in rank or otherwise punished without due process of the law.

## CHAPTER SEVENTEEN

### NATIONAL SECURITY

#### Part I – National Security Organs

##### Principles and objects

257. (1) National Security is the protection of the territory of Kenya, its people, their property, freedoms, and other national interests against internal and external threats.
- (2) The national security of Kenya shall be promoted and guaranteed in accordance with the following principles –
- (a) national security is subject to the authority of this 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;
  - (c) national security organs shall respect the diverse culture of the communities within Kenya in discharging their duties; and
  - (d) recruitment by the national security organs shall reflect the diversity of the Kenyan people in equitable proportions.

##### National security organs

258. (1) The national security organs are –
- (a) the Kenya Defence Forces;
  - (b) the National Intelligence Service; and
  - (c) the Kenya Police Service.
- (2) The primary object of the national security organs and security system is to safeguard the well-being of the people of Kenya and their property, and the sovereignty, peace, national unity and territorial integrity of the Republic.
- (3) In the performance of their functions, the national security organs and every member of the national security organs 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 under this Constitution.
- (4) A person shall not establish an organization concerned with national security except as provided for by this Constitution or by an Act of Parliament.
- (5) The National security organs shall be subordinate to civil authority.
- (6) Parliament shall enact legislation to provide for the functions, organisation and administration of the national security organs.



### **Establishment of the National Security Council**

- 259.** (1) There is established a National Security Council consisting of –
- (a) the President;
  - (b) the Deputy President;
  - (c) the Prime Minister;
  - (d) the Minister responsible for defence;
  - (e) the Minister responsible for foreign affairs;
  - (f) the Minister responsible for internal security;
  - (g) the Attorney-General;
  - (h) the Chief of Kenya Defence Forces;
  - (i) the Director-General of the National Intelligence Service;
  - (j) the Inspector-General of the Kenya Police Service; and
  - (k) the Commandant-General of the Administration Police Service.
- (2) The President shall preside at the meetings of the Council, and, in the absence of the President, the Deputy President, and in the absence of the Deputy President, the Prime Minister shall preside.
- (3) The National Security Council shall elect or appoint its secretary.

### **Functions of the National Security Council**

- 260.** (1) The National Security Council shall –
- (a) integrate the domestic, foreign and military policies relating to national security in order to enable the national security organs to co-operate effectively;
  - (b) assess and appraise the objectives, commitments and risks to the Republic in relation to actual and potential national security capabilities; and
  - (c) initiate and consider policies on matters of common interest to the national security organs and exercise supervisory control over the national security organs.
- (2) The National Security Council shall report annually to Parliament on the state of the security of the Republic.
- (3) The National Security Council may with the approval of Parliament –
- (a) deploy national forces outside Kenya for –
    - (i) United Nations and other peace support operations; or
    - (ii) other support operations; or
  - (b) approve the deployment of foreign forces in Kenya.

### **Part II – The Kenya Defence Forces**

#### **Establishment**

- 261.** (1) There is established the Kenya Defence Forces consisting of –



- (a) the Kenya Army;
  - (b) the Kenya Air Force; and
  - (c) the Kenya Navy.
- (2) A person shall not raise a military or a paramilitary organization except as provided for under this Constitution.
- (3) There is established a Defence Council consisting of –
- (a) the Minister responsible for defence who shall be the chairperson;
  - (b) the or ~~Minister of State~~ *Deputy Minister* responsible for defence who shall be the vice-chairperson;
  - (c) the Chief of the Kenya Defence Forces;
  - (d) the Army Commander;
  - (e) the Air Force Commander;
  - (f) the Navy Commander; and
  - (g) the Principal Secretary in the Ministry responsible for defence.
- (4) The Defence Council shall appoint its Secretary.
- (5) The Defence Council shall be responsible for the overall policy, control, and supervision of the Kenya Defence Forces and such other functions as Parliament by legislation prescribes.

#### **Command**

262. (1) The President shall, in consultation with the Defence Council, appoint the Chief of the Kenya Defence Forces, the Army Commander, the Air Force Commander, and the Navy Commander.
- (2) Subject to the powers of command of the President as the Commander-in-Chief, the Chief of Defence Forces and service commanders shall exercise command over the Kenya Defence Forces and perform such other duties as Parliament may by legislation prescribe.

#### **Part III – The National Intelligence Service**

#### **Establishment**

263. (1) There is established the National Intelligence Service.
- (2) The President shall, with the approval of Parliament, appoint the Director-General of the National Intelligence Service.
- (3) The Director-General of the National Intelligence Service shall hold office for a term of five years, and shall be eligible for re-appointment for a further and final term of five years.
- (4) The Director-General may be removed from office by the President for –
- (a) inability to perform the functions of office arising from infirmity of body or mind;
  - (b) misconduct;

- (c) incompetence; or
  - (d) any other just cause.
- (5) The Director-General shall not be removed from office except on the recommendation of a tribunal appointed by the President comprising –
- (a) a High Court Judge, who shall be the chairperson;
  - (b) the chairperson of the Public Service Commission; and
  - (c) one other person of integrity who has served the public with distinction.
- (6) The Director-General shall exercise command over the National Intelligence Service and perform such other duties as Parliament by legislation prescribe.
- (7) The National Intelligence Service shall be responsible for security intelligence and counter intelligence to enhance national security, defend the constitution, the interests of the state and the well being of the people of Kenya, and shall exercise such other functions as Parliament by legislation prescribes.
- (8) In exercising its functions, the National Intelligence Service shall respect human rights, fundamental freedoms and the rule of law.
- (9) No intelligence service, other than the National Intelligence Service, an intelligence division of the Kenya Defence Forces or the Kenya Police Service, shall be established except by legislation.

**National Intelligence Council.**

264. (1) There is established a National Intelligence Council consisting of –
- (a) the Minister responsible for national and intelligence, who shall be the chairperson;
  - (b) the Minister responsible for foreign affairs;
  - (c) the Minister responsible for finance;
  - (d) the Attorney-General; and
  - (e) the person heading the Public Service.
- (2) The Director-General of the National Intelligence Service shall be the secretary to the National Intelligence Council.
- (3) The functions of the National Intelligence Council shall be –
- (a) to advise the National Intelligence Service on all matters pertaining to –
    - (i) national security and intelligence policies;
    - (ii) the administration of the service; and
    - (iii) the expenditure of the service; and
  - (b) to perform such other functions as are conferred on the Council by legislation.

## **Part IV – The Kenya Police Service**

### **Establishment**

265. (1) There is established the Kenya Police Service.
- (2) The Kenya Police Service is a national police service, and the division of its functions shall be organized to take into account the structure of devolution.
- (3) Parliament shall enact legislation to give effect to this Article.





## CHAPTER EIGHTEEN

### CONSTITUTIONAL COMMISSIONS

#### **Application of Chapter**

266. This Chapter applies to all constitutional Commissions except where specific provision is made to the contrary elsewhere in this Constitution.

#### **Objects and independence of Commissions**

267. (1) The objectives of constitutional Commissions are to –
- (a) protect the sovereignty of the people;
  - (b) secure the observance by all State organs of democratic principles and values; and
  - (c) ensure the maintenance of constitutionality, by insulating essential democratic functions from improper influence, manipulation or interference.
- (2) Constitutional Commissions –
- (a) are subject only to this Constitution and the law;
  - (b) are independent and not subject to direction or control by any person or authority; and
  - (c) shall be impartial and perform their functions without fear, favour or prejudice.
- (3) Where appropriate, a constitutional Commission shall –
- (a) establish branches in all districts; and
  - (b) offer its services to the public free of charge.

#### **Incorporation**

268. A constitutional Commission is a body corporate and –
- (a) has perpetual succession and a common seal; and
  - (b) is capable of suing and being sued in its corporate name.

#### **Composition of Commissions**

269. (1) A constitutional Commission shall consist of at least three and not more than ten members.
- (2) Unless otherwise specified in this Constitution, members of a constitutional Commission shall be –
- (a) identified and recommended in a manner prescribed by an Act of Parliament, taking into consideration the principles of affirmative action;
  - (b) appointed by the President; and
  - (c) approved by Parliament.
- (3) To be appointed to a constitutional Commission, a person shall –
- (a) have the specific qualifications required for that commission set out in this Constitution; and

- (b) have appropriate qualifications and experience.
- (4) A member of a constitutional Commission may be full time or part time.
- (5) A member of a constitutional Commission shall –
  - (a) unless the member is ex officio –
    - (i) hold office for a term of five years, and be eligible for re-appointment for only one further term; and
    - (ii) retire from office on attaining age sixty-five;
  - (b) unless an ex officio or part-time member, not hold any other office of profit or emolument or any other employment whether public or private, directly or indirectly; and
  - (c) comply with the principles set out in Chapter Nine.
- (6) A member of a constitutional Commission is not liable to an action or suit for a matter or anything done in good faith in the performance of a function of office as a member.
- (7) Members of a constitutional Commission shall elect a chairperson from amongst themselves –
  - (a) at the first sitting of the Commission; and
  - (b) whenever it is necessary to fill a vacancy in that office.

#### **Staff of Commissions**

270. A constitutional Commission shall recruit such staff as it may require for the discharge of its functions.

#### **General functions of Commissions**

271. (1) A constitutional Commission shall educate the public on its role, purpose and functions, and –
- (a) may conduct investigations on its own initiative or upon a complaint made by a member of the public;
  - (b) has the powers of the High Court to –
    - (i) issue summonses;
    - (ii) compel the attendance of witnesses to give evidence or produce documents for the purposes of its investigations; and
    - (iii) hold a person in contempt of the Commission and commit that person to the High Court;
  - (c) has the powers necessary for conciliation, mediation and negotiation; and
  - (d) to the extent permitted by legislation, may award compensation or impose a fine.
- (2) A complaint to a constitutional Commission may be lodged by any person entitled to lodge a complaint under Articles 31(1) and (2) –

- (a) in writing setting out the grounds of the complaint and the facts in support of those grounds; or
  - (b) orally, in which case it shall be reduced into writing and signed by an official of the Commission.
- (3) A constitutional Commission may, in addition to the functions conferred by this Constitution, perform such other functions as Parliament by legislation prescribes.

#### **Proceedings of Commissions**

272. (1) The proceedings of a Commission are valid even when there is a vacancy in its membership.
- (2) A constitutional Commission shall regulate its own procedure so far as is not provided for by legislation.

#### **Removal from office**

273. (1) A member of a constitutional Commission may be removed from office only for –
- (a) inability to perform the functions of the office arising from infirmity of body or mind;
  - (b) misconduct;
  - (c) bankruptcy; or
  - (d) incompetence.
- (2) A person desiring the removal of a member of a constitutional Commission on any ground set out in clause (1) may present a petition to Parliament setting out the alleged facts constituting those grounds.
- (3) Parliament shall consider the petition and if it is satisfied that it discloses a ground under clause (1), it shall send the petition to the President.
- (4) On receiving a petition under clause (3), the President shall –
- (a) suspend the member pending the outcome of the complaint; and
  - (b) appoint a tribunal in accordance with clause (5).
- (5) The tribunal shall be appointed by the President and shall consist of –
- (a) the chairperson, who holds or has held office in the Republic as a judge of the superior courts of record;
  - (b) at least two persons who are qualified to be appointed as High Court Judges; and
  - (c) one other member who is qualified to consider the facts in relation to the particular grounds for removal.
- (6) The tribunal shall investigate the matter, and report on the facts and make a recommendation to the President, who shall act in accordance with the recommendation within thirty days.

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- (7) While a member is suspended under this Article, the member is entitled to continue to receive the remuneration and benefits of that office.

#### **Funds of Commissions**

274. (1) The funds of a constitutional Commission include –
- (a) money voted by Parliament for the purposes of the Commission; and
  - (b) any other money received by the Commission in the performance of its functions.
- (2) The administrative expenses of a constitutional Commission including remuneration and benefits payable to, or in respect of, persons serving with the Commission are a charge on the Consolidated Fund.
- (3) 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.
- (4) Within three months after submission of the books and records of account, the Auditor-General shall submit the report on the accounts to the President and Parliament.

#### **Annual and other reports**

275. (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) At any time, Parliament may request a constitutional Commission to submit to it a report on a particular issue.
- (4) The President shall respond to the report of the constitutional Commission in writing to Parliament, which shall debate the report together with the response of the President.
- (5) A report of a constitutional Commission under this Article may be admitted as evidence in a court.

#### **Additional Commissions**

276. (1) In addition to the Commissions established in this Constitution, the following Commissions shall be established by legislation –
- (a) the Commission on Human Rights and Administrative Justice;
  - (b) the Gender Commission;
  - (c) the Salaries and Remuneration Commission; and
  - (d) the National Land Commission
  - (e) the National Commission on Culture;

- (f) the Ethics and Integrity Commission;
  - (g) the Teachers Service Commission;
  - (h) *the Kenya Anti-corruption Commission;*
  - (i) the National Environment Commission;
  - (j) the Salaries and Remuneration Commission;
  - (k) the Health Service Commission;
  - (l) the Police Service Commission.
- (2) Parliament may by legislation establish any other Commission as it may consider necessary.



## CHAPTER NINETEEN

### AMENDMENT OF THE CONSTITUTION

#### Amendment of the Constitution

277. (1) A proposed amendment to this Constitution in respect of –
- (a) the supremacy of the Constitution;
  - (b) the territory of Kenya;
  - (c) the sovereignty of the people;
  - (d) the principles and values of the Republic;
  - (e) the Bill of Rights;
  - (f) the term of office of the President;
  - (g) the independence of the Judiciary and constitutional Commissions;
  - (h) the functions of Parliament;
  - (i) the values and principles of devolution; or
  - (j) the provisions of this Chapter,
- shall be enacted in accordance with Article 278 or 279, and approved by a simple majority of the people in a referendum held for that purpose.
- (2) An amendment to this Constitution not contemplated in clause (1) shall be enacted either –
- (a) by Parliament, in accordance with Article 278; or
  - (b) by the people and Parliament, in accordance with Article 279.

#### Amendment by Parliament

278. (1) A Bill to amend this Constitution –
- (a) may not address any other matter apart from consequential amendments to legislation arising from the Bill;
  - (b) shall not be called for second reading, until at least ninety days after the date of first reading of the Bill in Parliament; and
  - (c) shall have been enacted by Parliament when Parliament has passed the Bill, in both its second and third readings, by not less than a two-thirds majority of the total membership of Parliament.
- (2) Parliament shall publicize any Bill to amend this Constitution, and facilitate public discussion on that Bill.
- (3) When Parliament has enacted a Bill to amend this Constitution, the Speaker of Parliament shall submit to the President –
- (a) a certificate that the Bill has been enacted by Parliament in accordance with this Article; and
  - (b) the Bill, for assent and publication.





- (4) Subject to clause (6), within thirty days after a Bill to amend this Constitution is enacted by Parliament, the President shall assent to the Bill and cause it to be published.
- (5) Article 101 applies to a Bill to amend this Constitution under clauses (1), (2), (3) and (4).
- (6) If a Bill to amend this Constitution proposes an amendment contemplated in Article 277(1), the President shall –
  - (a) before assenting to the Bill, request the Electoral and Boundaries Commission to conduct a national referendum for approval of the Bill; and
  - (b) within thirty days after the chairperson of the Electoral and Boundaries Commission has certified to the President that the Bill has been approved by a simple majority of the citizens voting in a referendum, assent to the Bill and cause it to be published.

#### **Amendment by the people**

279. (1) An amendment to this Constitution may be proposed by a popular initiative signed by at least one million registered voters.
- (2) A popular initiative for an amendment to this Constitution may be in the form of a general suggestion or a formulated draft Bill.
- (3) If a popular initiative is in the form of a general suggestion, the promoters of that popular initiative shall formulate it into a draft Bill.
- (4) The promoters of a popular initiative shall forward the draft Bill and the supporting signatures to the Electoral and Boundaries Commission, which shall verify that the initiative is supported by one million registered voters.
- (5) If the Electoral and Boundaries Commission is satisfied that the initiative meets the requirements of this Article, the Commission shall submit the draft Bill to each district assembly for consideration within a period of not more than three months after the date it was submitted by the Electoral and Boundaries Commission.
- (6) When a district assembly has approved a draft Bill, the chairperson of that district shall submit a copy of the draft Bill to the Speakers of Parliament, with a certificate that the district assembly has approved it.
- (7) When a draft Bill has been approved by a majority of the district assemblies, it shall forthwith be introduced in Parliament, and Parliament shall proceed with the Bill in accordance with Article 278.
- (8) If Parliament approves the Bill, it shall be submitted to the President for assent in accordance with Articles 279(4) and (5).
- (9) If Parliament fails to pass the Bill, the Bill shall be submitted to the people in a referendum.
- (10) If a simple majority of citizens voting in a referendum under clause (9) support the Bill, it shall be deemed to have been duly passed by Parliament and shall be presented to the President for assent, and the provisions of Article 279(5) shall not apply.

## CHAPTER TWENTY

### GENERAL PROVISIONS

#### Enforcement of the Constitution

280. The provisions of Article 31 and 32 shall apply with necessary modifications to the enforcement of other provisions of this Constitution.

#### Construing the Constitution

281. (1) This Constitution shall be interpreted in a manner that –
- (a) promotes its purposes, values and principles;
  - (b) advances human rights and fundamental freedoms and the rule of law;
  - (c) permits the development of the law; and
  - (d) contributes to good governance.
- (2) If there is a conflict between different language versions of this Constitution, the English language version shall prevail.
- (3) The Interpretation and General Provisions Act, Chapter 2, Laws of Kenya, in force immediately before the effective date does not apply to this Constitution.
- (4) Unless the context otherwise requires, a power conferred or a duty imposed on Parliament by this Constitution to establish, provide for or prescribe any matter or thing shall be exercised or discharged by an Act of Parliament.
- (5) Every provision of this Constitution shall be construed according to the doctrine of interpretation that the law is always speaking, and therefore, among other things –
- (a) a power granted or duty imposed by this Constitution may be exercised or performed as occasion requires, by the person holding the office to which the power is granted or the duty is assigned;
  - (b) any reference in this Constitution or any other law to a person holding an office under this Constitution includes a reference to the person lawfully discharging the functions of that office at any particular time;
  - (c) a reference in this Constitution or any other law to an office, State organ or locality named in this Constitution shall be read with any formal alteration necessary to make it applicable in the circumstances; and
  - (d) a reference in this Constitution to an office, body or organization is a reference to that office, body or organization, or if the office, body or organization has ceased to exist, to its successor or to the equivalent office, body or organization.
- (6) In this Constitution, unless the context otherwise requires –
- (a) if a word or expression is defined in this Constitution, any grammatical variation or cognate expression of that word or



- expression bears a corresponding meaning, read with the changes required by the context; and
- (b) the word “including” means “including, but not limited to”, and the word “includes” means “includes, but is not limited to”;
- (7) **When calculating time between two events for any purpose under this Constitution, if that time is expressed –**
- (a) as days, the day on which the first event occurs shall be excluded, and the day by which the last event may occur shall be included;
- (b) as months, the time period ends at the beginning of the day in the relevant month –
- (i) that has the same number as the date on which the period began, if that month has a corresponding date; or
- (ii) that is the last day of that month, in any other case; or
- (c) as years, the time period ends at the beginning of the date of the relevant year that corresponds to the date on which the period began.
- (8) If a period of time set out in this Constitution for any purpose is six days or less, Sundays and public holidays shall not count when computing the time.
- (9) If, in a particular circumstance, a period of time set out in this Constitution for any purpose ends on a Sunday or a public holiday, the period extends to the first subsequent day that is not a Sunday or public holiday.
- (10) If no specific time is set out for performing a required act, that act shall be done without unreasonable delay, and as often as occasion arises.
- (11) If any person or State organ has authority under this Constitution to extend a time period set out in this Constitution, unless a contrary intention is expressly set out in the provision establishing that authority, it may be exercised either before or after the expiry of the period.

## **Definitions**

**282.** In this Constitution, unless the context otherwise requires –

“adult” means an individual who has attained the age of eighteen years;

“affirmative action” includes any measure designed to overcome or ameliorate an inequity or the systemic denial or infringement of a right or freedom;

“amend” includes alter, repeal, revoke, rescind, cancel, replace, add to or vary, in whole or in part;

“child” means an individual who has not attained the age of eighteen years;

“citizen” means a citizen of Kenya;

“civil society” means the collectivity of all socially organized entities, each of which is bound by a voluntary set of shared rules, and is autonomous from the State;



“Consolidated Fund” means the fund established by Article 230;

“constitutional Commission” means a commission established as such by this Constitution;

“disability” includes any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual’s ability to carry out ordinary day-to-day activities;

“district” includes borough;

“document” includes any publication, or any matter written, expressed, or inscribed upon any substance by means of letters, figures or marks, or by more than one of those means, that is intended to be used or may be used for the purpose of recording that matter;

“effective date” means the date that this Constitution comes into force;

“enactment” means legislation or subsidiary legislation;

“financial year” when used with respect to –

- (a) the state, means the period of twelve months ending on the thirtieth day of June or on such other day as Parliament may prescribe; or
- (b) any person, means the period of twelve months ending on a date determined by that person;

“Gazette” means the Kenya Gazette published by authority of the Government, or a supplement to the Kenya Gazette;

“Government” means the National Government;

“judicial officer” means a person who holds, or is acting, in the office of registrar, deputy registrar, magistrate or Kadhi;

“Kenya” means the territory of the Republic;

“land” includes –

- (a) the surface of the earth and the subsurface rock;
- (b) any body of water wholly contained upon or beneath the surface;
- (c) marine waters in the territorial sea and exclusive economic zone;
- (d) natural resources wholly contained upon or beneath the surface; and
- (e) the air space above the surface;

“legislation” means an Act of Parliament, or a law made by an authority subordinate to Parliament including district assembly;

“marginalized community” means –

- (a) a community which, by reason of its relatively small population or otherwise, has been unable to fully develop its internal structures or resources sufficient to participate in the integrated social and economic life of Kenya as a whole;

- (b) a traditional community which, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;
- (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or
- (d) pastoral persons and communities, whether they are –
  - (i) nomadic; or
  - (ii) a settled community which, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of the Republic as a whole;

“marginalized group” means a group who, as a result of laws or practices before or after the effective date, were or are disadvantaged by discrimination on one or more prohibited grounds set out in Article 36.

“natural resources” means the physical non-human factors and components, whether renewable or non-renewable, including -

- (a) sunlight,
- (b) surface and ground waters;
- (c) forests, bio-diversity and genetic resources, and
- (d) rocks, minerals, fossils, fuels and other sources of energy;

“older member of society” means a person of or above the age of sixty years;

“person” includes a company, association or body of persons corporate or unincorporate;

“political party” means an association of individuals organised for the purposes contemplated in Article 111;

“power” includes a privilege, authority or discretion;

“property” includes any vested or contingent right or interest in, or arising from, any –

- (a) land, or permanent fixtures on, or improvements to, land;
- (b) goods or personal property;
- (c) intellectual property; or
- (d) money, choses in action or negotiable instruments;

“public officer” means any person holding or acting in an office in the Government or public service, the emoluments for which are payable directly from the Consolidated Fund or directly out of money provided by Parliament;

“public service” means the collectivity of all individuals, other than State officers, performing a function within a State organ;

“remuneration and benefits” includes salaries, allowances and rights forming an individual’s remuneration for office, including any pension, gratuity or other benefit payable on retirement;

“Republic” means the Republic of Kenya;

“State”, when used as a noun, means the collectivity of offices, organs and other entities comprising the government of the Republic under this Constitution;

“State office” means any of the following offices –

- (a) President;
- (b) Deputy President;
- (c) member of the Cabinet;
- (d) or Minister of State *Deputy Minister*;
- (e) member of Parliament;
- (f) member of the Judiciary;
- (g) member of a constitutional Commission;
- (h) member of district assembly or district council;
- (i) Attorney-General;
- (j) Director of Public Prosecutions;
- (b) Public Defender;
- (l) Auditor-General;
- (m) Controller of Budget;
- (n) Principal Secretary;
- (o) Secretary to the Cabinet;
- (p) Chief of the Kenya Defence Forces; and
- (q) commander of a service of the Kenya Defence Forces.

“State officer” means a person holding a State office established by this Constitution, or established and designated as such by legislation and includes a public officer;

“State organ” means a Commission, office, agency or other body established under this Constitution and having a function within the Republic;

“subsidiary legislation” means a rule, regulation, by-law, proclamation or other similar law made under the authority of legislation;

“Treasury” means the State organ referred to in Article 244(1);

“writing” includes printing, photography, lithography, typewriting, any other means of representing or reproducing words in a visible form, and Braille; and

“youth” means the collectivity of all individuals in the Republic each of whom –

- (a) has attained the age of eighteen years; and
- (b) has not attained the age of thirty-five years.



## CHAPTER TWENTY-ONE

### TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

#### Consequential Legislation

283. (1) Where in this Constitution Parliament is required to enact legislation to govern a particular matter, Parliament shall enact that legislation within the period specified in the Sixth Schedule, commencing on the effective date.
- (2) Where in this Constitution Parliament is required to enact legislation to govern a particular matter within a specified time, but fails to do so, any person may petition the High Court for a declaration on the matter.
- (3) The High Court in determining a petition under clause (2) may –
- (a) make a declaratory order on the matter; and
  - (b) transmit an order directing Parliament and the Attorney-General to take steps to ensure that the legislation required to be enacted under clause (1), is enacted, within the period specified in the order, and to report the progress to the Chief Justice.

#### Transitional

284. The transitional and consequential provisions set out in the Seventh Schedule shall take effect on the effective date.

#### Effective Date

285. This Constitution shall come into force upon its promulgation by the President, and shall be published in the Gazette.

#### Repeal

286. The Constitution in force immediately before the effective date shall stand repealed on the effective date.

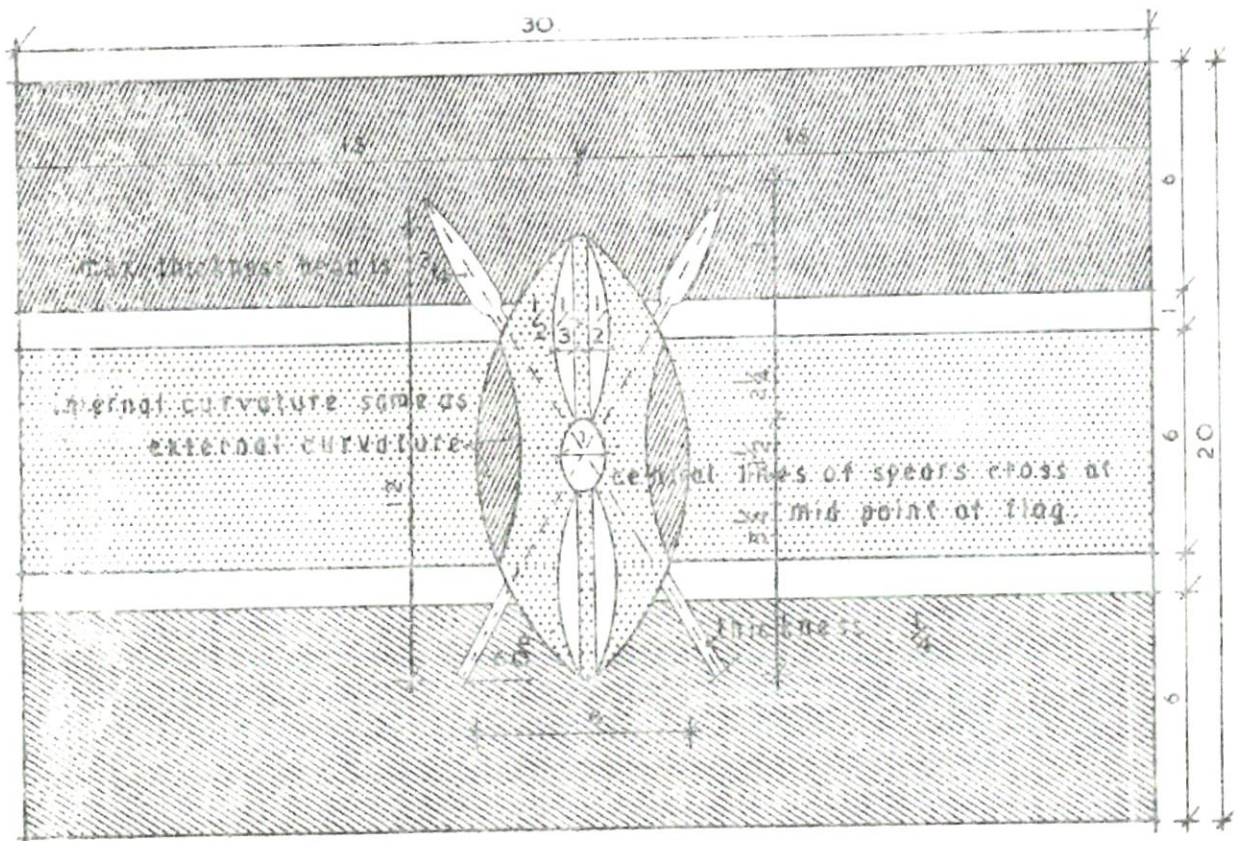


# FIRST SCHEDULE

(Article 11)

## NATIONAL SYMBOLS

### (a) The National Flag



*Note:* All dimensions given do not necessarily represent any particular measurement and are merely proportional.

#### **Description:**

Three major strips of equal width coloured from top to bottom black, red and green and separated by narrow white strips, with a symmetrical shield and white spears superimposed centrally.

**(b) The National Anthem**

1

Ee Mungu nguvu yetu  
Ilete baraka kwetu.

Haki iwe ngao na mlinzi  
Natukae na undugu

Amani na uhuru  
Raha tupate na ustawi

2

Amkeni ndugu zetu  
Tufanye sote bidii

Nasi tujitoe kwa nguvu  
Nchi yetu ya Kenya,

Tunayoipenda  
Tuwe tayari kuilinda.

3

Natujenge taifa letu  
Ee, ndio wajibu wetu

Kenya istahili heshima  
Tuungane mikono

Pamoja kazini  
Kila siku tuwe na shukrani.

1

O God of all creation  
Bless this our land and nation.

Justice be our shield and defender  
May we dwell in unity

Peace and liberty  
Plenty be found within our borders.

2

Let one and all arise  
With hearts both strong and true.

Service be our earnest endeavour,  
And our Homeland of Kenya

Heritage of splendour,  
Firm may we stand to defend.

3

Let all with one accord  
In common bond united,

Build this our nation together  
And the glory of Kenya

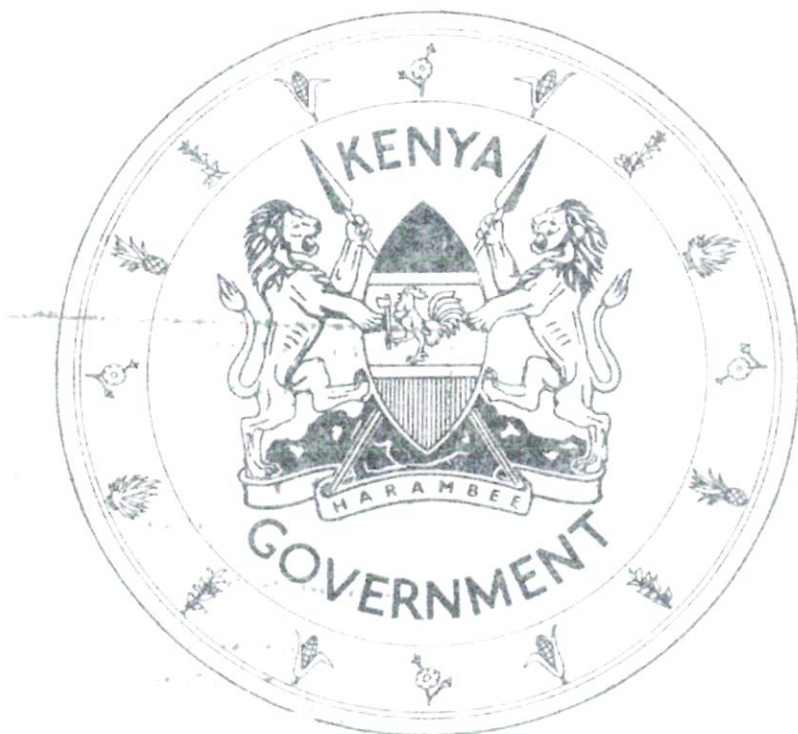
The fruit of our labour  
Fill every heart with thanksgiving



(c) The Coat of Arms



(b) The Public Seal





## SECOND SCHEDULE

(Article 94)

### NATIONAL OATHS AND AFFIRMATIONS

#### **OATH OR SOLEMN AFFIRMATION OF ALLEGIANCE OF THE PRESIDENT/ACTING PRESIDENT AND THE DEPUTY 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; and 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 I will 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.)

#### **OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR THE DEPUTY 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 Deputy President of the Republic of Kenya; that I will diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I will at all times, when so required, faithfully and truly give my counsel and advice to the President of the Republic of Kenya; that I will 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 FOR 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 counsellor to the President; 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 DEPUTY PRIME MINISTER/MINISTER/MINISTER OF STATE DEPUTY MINISTER**

I, ....., being appointed a Deputy Prime Minister/Minister/ or ~~Minister of State Deputy 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 Deputy Prime Minister/Minister/ or ~~Minister of State Deputy Minister~~; that I undertake to hold my office as Deputy Prime Minister/Minister/ or ~~Minister of State Deputy Minister~~ with honour and dignity; that I will be a true and faithful counsellor to the President for the good management of the public affairs of the Republic of Kenya; 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 Deputy Prime Minister/Minister/ or ~~Minister of State Deputy 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 PRINCIPAL SECRETARY**

I ....., being called upon to exercise the functions of a Principal 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 Principal 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 judicial system of Kenya and promoting fairness, independence, competence and integrity within it. (So help me God.)



### **OATH /AFFIRMATION OF MEMBER OF PARLIAMENT (PARLIAMENT)**

I....., having been elected a member of Parliament 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**

I....., having been elected as Speaker/deputy Speaker 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; 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).

## THIRD SCHEDULE

(Article 207(1))

### DISTRIBUTION OF FUNCTIONS BETWEEN THE NATIONAL GOVERNMENT AND THE DISTRICT GOVERNMENT

#### Part I – National Government

1. Foreign affairs, foreign policy and international trade.
2. In consultation with the regions and districts, the use of international waters and water resources.
3. Immigration and citizenship.
4. The relationship between religion and state.
5. Language policy and the promotion of official and local languages.
6. National defence and the use of the national defence services.
7. National security, including –
  - (a) the setting of standards of recruitment, training of police and use of police services;
  - (b) criminal law; and
  - (c) correctional services.
8. Courts.
9. National economic policy and planning.
10. Monetary policy, currency, banking (including central banking), the incorporation and regulation of banking, insurance and financial corporations.
11. National statistics and data on population, the economy and society generally.
12. Intellectual property rights.
13. Labour standards.
14. Consumer protection, including standards for social security and professional pension plans.
15. Education policy, standards, curricula, examinations and the granting of university charters.
16. National universities, tertiary educational institutions and other institutions of research and higher learning and support for regional and district universities and other institutions of research and higher learning.
17. Promotion of sports and sports education.
18. Transport and communications, including, in particular –
  - (a) road traffic;
  - (b) the construction and operation of national trunk roads;
  - (c) standards for the construction and maintenance of other roads by regions and districts;



- (d) railways;
  - (e) pipelines;
  - (f) marine navigation;
  - (g) civil aviation;
  - (h) space travel;
  - (i) postal services;
  - (j) telecommunications; and
  - (k) radio and television broadcasting.
19. National public works.
  20. Housing policy.
  21. General principles of land planning and the co-ordination of planning by the regions and districts.
  22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular –
    - (a) fishing, hunting and gathering;
    - (b) protection of animals and wildlife;
    - (c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and
    - (d) energy policy.
  23. National referral health facilities.
  24. Disaster management.
  25. Ancient and historical monuments of national importance.
  26. National elections.
  27. Health policies.
  28. Agricultural policies.
  29. Energy policies.

## **Part II – District Governments**

1. Except where this Constitution and legislation provide otherwise the powers and functions of the district government in all its functional areas shall be –
  - (a) the formulation of district policies;
  - (b) the setting of district standards;
  - (c) district planning;
  - (d) the monitoring and evaluation of implementation;
  - (e) the actual production, management and delivery of district services;
  - (f) actual development, operation and maintenance of district infrastructure and services;

- (g) the facilitation and harmonization of operations within the district; and
  - (h) capacity building and technical assistance to the districts.
2. Agriculture, including –
    - (a) crop and animal husbandry;
    - (b) livestock sale yards;
    - (c) district abattoirs;
    - (d) plant and animal disease control; and
    - (e) fisheries.
  3. District health services, including, in particular –
    - (a) district health facilities and pharmacies;
    - (b) ambulance services;
    - (c) promotion of primary health care;
    - (d) licensing and control of undertakings that sell food to the public;
    - (e) veterinary services (excluding regulation of the profession);
    - (f) cemeteries, funeral parlours and crematoria; and
    - (g) refuse removal, refuse dumps and solid waste disposal.
  4. Control of air pollution, noise pollution, other public nuisances and outdoor advertising.
  5. Cultural activities, public entertainment and public amenities, including –
    - (a) casinos and other forms of gambling;
    - (b) racing;
    - (c) liquor licensing;
    - (d) cinemas;
    - (e) video shows and hiring;
    - (f) libraries;
    - (g) museums;
    - (h) sports and cultural activities and facilities; and
    - (i) district parks, beaches and recreation facilities.
  6. District transport, including –
    - (a) district roads;
    - (b) street lighting;
    - (c) traffic and parking;
    - (d) public road transport; and
    - (e) ferries and harbours, excluding the regulation of international and national shipping and matters related thereto.
  7. Animal control and welfare, including –
    - (a) licensing of dogs; and

- (b) facilities for the accommodation, care and burial of animals.
8. Trade development and regulation, including –
    - (a) markets;
    - (b) trade licences (excluding regulation of professions);
    - (c) fair trading practices;
    - (d) local tourism; and
    - (e) cooperative societies.
  9. District planning and development, including –
    - (a) statistics;
    - (b) land survey and mapping;
    - (c) boundaries and fencing;
    - (d) housing; and
    - (e) electricity and gas reticulation and energy regulation.
  10. Education at pre-primary, primary and secondary levels, special education, village polytechnics, homecraft centres and childcare facilities.
  11. Implementation of national government policies on natural resources and environmental conservation, including –
    - (a) soil and water conservation; and
    - (b) forestry.
  12. District public works and services, including –
    - (a) storm water management systems in built-up areas; and
    - (b) water and sanitation services.
  13. Police and fire-fighting services and disaster management.
  14. Control of drugs and pornography.
  15. In consultation with the local communities, ensuring and co-ordinating the participation of communities in governance at the local level and assisting communities to develop the administrative capacity for the effective exercise of the powers and functions and participation in governance at the local level.
  16. In consultation with local communities, promotion of the self-determination and development of communities in the location, by –
    - (a) initiating, planning, implementing and co-ordinating local community projects, activities and services;
    - (b) applying, and co-ordinating the application of, funds available from any source for the purposes of such projects, activities and services;
    - (c) implementing, within the locality, projects planned at the district or national levels of government;
    - (d) implementing, within the locality, laws of the nation or district; and
    - (e) generally fostering the integrated and participatory self-management of local affairs by local communities.



## FOURTH SCHEDULE

(Article 227)

### TAXATION POWERS

#### Part I – Taxation Powers of the National Government

The national legislature may raise, by way of taxes, duties, levies, fees and charges –

- (a) income tax;
- (b) value added tax;
- (c) corporation tax;
- (d) customs duties and other duties on import and export goods;
- (e) excise tax;
- (f) general sales tax;
- (g) national stamp duties;
- (h) taxes from the national lottery and schemes of a similar nature;
- (i) taxes on transport by road, air, rail and water;
- (j) rents from houses and other property owned by the national level of government;
- (k) fees for licences issued by the national level of government;
- (l) court fees, fines and forfeitures;
- (m) exchange receipts;
- (n) motor vehicle registration fees and driving licence fees;
- (o) fees for government goods and services; and
- (p) any other taxes authorised by national legislation.

#### Part II – Taxation Powers of Districts

A district assembly may raise, by way of taxes, duties, surcharges, fees, levies and charges –

- (a) flat rate surcharges on the tax bases of any tax, levy or duty that is imposed by national legislation other than the tax bases of corporate income tax, value added tax and customs and excise;
- (b) land use fees;
- (c) agricultural tax;
- (d) charges for the use of properties owned by the District Government;
- (e) rates on property and surcharges for services provided by or on behalf of the district;
- (f) licensing fees, including liquor licensing fees, market fees, hawking fees;



- (g) business permit fees;
- (h) entertainment tax;
- (i) district roads maintenance charges;
- (j) district hotels and restaurants tax;
- (k) natural resource royalties tax;
- (l) gate fees for game parks and reserves;
- (m) transport tax;
- (n) parking fees;
- (o) such other taxes, duties, surcharges, fees, levies and charges as the district is authorized from time to time by national legislation to impose; and
- (p) any other taxes, duties, surcharges, fees, levies and charges that are not exclusively assigned to the national level of government.

**FIFTH SCHEDULE**

*(Article 283(1))*

**LEGISLATION TO BE ENACTED BY PARLIAMENT**

<b>CHAPTER AND TITLE OF ARTICLE</b>	<b>ARTICLE</b>	<b>TIME SPECIFICATION</b>
<b>CHAPTER ONE</b>		
<b>SOVEREIGNTY OF THE PEOPLE AND SUPREMACY OF THE CONSTITUTION</b>		
The Laws of Kenya	4	Two years
<b>CHAPTER FOUR</b>		
<b>CITIZENSHIP</b>		
Citizenship by naturalization	19	Two years
Dual citizenship	21(2)	Two years
Residence	23	Two years
Legislation on citizenship	25	Two years
<b>CHAPTER SIX</b>		
<b>BILL OF RIGHTS</b>		
Implementation of rights and freedoms	30(2) and (3)	Three years
Authority of the Court to uphold and enforce the Bill of Rights	32(2)	Three years
Freedom from discrimination	36(4)	Three years
Older members of society	38(2) and (3)	Two years
Youth	39(2)	Three years
Children	40(8)	One year
Family	41(5)	Three years
Persons with disabilities	42(3)	Three years
Minorities and marginalized groups	43(2)	Three years
Freedom of the media	50(5)	One year
Access to information	51(4)	Six months
Freedom of association	52(4)	One year
Refugees and asylum	56(2)	One year
Education	62(4)	Three years
Consumer rights	69(3)	Three years
Fair administration	70(3)	Three years
<b>CHAPTER SEVEN</b>		
<b>LAND AND PROPERTY</b>		
Community land	80(5)	Two years
Landholding by non-citizens	83(4)	Six months
Legislation on land	85	Two years
<b>CHAPTER EIGHT</b>		
<b>ENVIRONMENT AND NATURAL RESOURCES</b>		
Utilization and development of natural resources	90(2)	Two years

<b>CHAPTER AND TITLE OF ARTICLE</b>	<b>ARTICLE</b>	<b>TIME SPECIFICATION</b>
Environmental Legislation	92	Two years
<b>CHAPTER NINE</b>		
<b>LEADERSHIP AND INTEGRITY</b>		
Assumption of office	94	One year
Legislation on leadership	98	One year
<b>CHAPTER TEN</b>		
<b>REPRESENTATION OF THE PEOPLE</b>		
Elections	100(1)	Two years
Regulation of Political Parties	112	One year
Purposes of the Fund	114(5)	One year
<b>CHAPTER ELEVEN</b>		
<b>THE LEGISLATURE</b>		
Membership of Parliament	122	One year
Powers, privileges and immunities	142	One year
Registry of Enactments	144	One year
<b>CHAPTER TWELVE</b>		
<b>THE EXECUTIVE</b>		
Procedure at presidential election	156(3)(b)	One year
Presidential powers of mercy	164(2)	One year
Public Defender	183(5)	Two years
<b>CHAPTER THIRTEEN</b>		
<b>JUDICIARY</b>		
Hierarchy and administration of the courts	186(4)	Six months
Jurisdiction of the Supreme Court	189(1)(b)	One year
The Court of Appeal	190	Two years
Jurisdiction of the Court of Appeal	191	Two years
The High Court	192	Two years
Jurisdiction of the High Court	193	Two years
Subordinate Courts	199(2)	Two years
The Kadhi's court	200(2)	Three years
Functions of the Judicial Service Commission	203(1)(e)	Two years
<b>CHAPTER FOURTEEN</b>		
<b>DEVOLVED GOVERNMENT</b>		
Co-operation and linkage between government at the two levels	206(3) and (4)	One year
Management of urban districts and urban areas	209(1)	One year
Suspension of district government	210(3)	One year
Election of members of district legislative assembly	215(1)(c)	One year
Election of district chairperson and deputy district chairperson	217(1)	One year
Balance of gender and diversity	220	One year



<b>CHAPTER AND TITLE OF ARTICLE</b>	<b>ARTICLE</b>	<b>TIME SPECIFICATION</b>
Provision to be made by Act of Parliament	224	One year
Legislation	229	One year
<b>CHAPTER FIFTEEN</b>		
<b>PUBLIC FINANCE</b>		
Contingency Fund	233	One year
Borrowing by district governments	235	One year
Loan guarantees by governments	237	One year
Annual budgets of devolved governments	241	One year
Procurement of public goods and services	242(2)	One year
Accounts and audit of public institutions	243(5)	One year
Treasury control	244(1)	One year
Auditor-General	246(6)	One year
National Revenue Authority	247(3)	One year
Commission on Revenue Allocation	248	One year
Economic and Social Council	251	One year
<b>CHAPTER SIXTEEN</b>		
<b>PUBLIC SERVICE</b>		
Powers and functions	254(5)	One year
Staffing of district governments	255	One year
<b>CHAPTER SEVENTEEN</b>		
<b>NATIONAL SECURITY</b>		
National security organs	260(6)	One year



## SIXTH SCHEDULE

(Article 284)

### TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

#### Part I - General

##### Rights, duties and obligations of the State

1. All rights and obligations, however arising, of the Government or the Republic and subsisting immediately before the effective date shall continue as rights and obligations of the Government or the Republic under this Constitution.

##### Existing laws

2. All laws in force immediately before the effective date shall continue to be in force and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.

##### National Assembly

3. The National Assembly existing immediately before the effective date shall continue as Parliament for the purposes of this Constitution for its unexpired term and shall within six months of the effective date revise Standing Orders in accordance with this Constitution.

##### Districts

4. Until legislation is enacted under Article 5, the districts for the purposes of this Constitution shall be the districts existing immediately before the effective date.

##### By-elections

5. A by-election held after the effective date shall be held in accordance with this Constitution.

##### Local Authorities

6. (1) All local authorities established under the Local Government Act (Cap. 265) existing immediately before the effective date shall continue to exist until implementation of the new structure under Chapter Fourteen as prescribed by an Act of Parliament.  
(2) Parliament shall enact the legislation referred to in sub-section (1) within one year of the effective date.  
(3) All councillors of the local authorities specified under sub-section (1), shall continue to be councillors after the effective date until elections are called in accordance with the legislation referred to in sub-section (1).  
(5) Pending the enactment of legislation under Article 5(3), locations existing immediately before the effective date constitute the locations mentioned in that clause, with boundaries as then in force.

### **Political parties**

7. (1) A political party in existence immediately before the effective date, shall, within twelve months of the enactment of legislation providing for the registration of political parties, comply with the requirements for registration as a political party.
- (2) If on the expiry of the period of twelve months, a political party has not complied with the requirements of sub-section (1), the political party shall forthwith cease to exist as a political party 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.

### **The Executive**

8. (1) The persons occupying the offices of President and Vice-President immediately before the effective date shall continue to serve as President and Deputy President, respectively, in accordance with this Constitution and as elected members of Parliament until the first elections held under this Constitution.
- (2) A person holding a post in the Cabinet immediately before the effective date shall continue to hold that position under this Constitution.

### **Provincial Administration**

9. (1) Upon the holding of the elections referred to in section 5 and after the coming into effect of the Act specified in Article 206(5), the system of administration comprising Assistant Chiefs, Chiefs, District Officers, District Commissioners and Provincial Commissioners commonly known as the Provincial Administration shall stand dissolved and all public officers serving under that system of administration shall report to the Public Service Commission for re-deployment.
- (2) On the effective date, all assets held by the National Government and situated in the provinces, districts, divisions and locations, shall become public property.
- (3) Until such time as district District Governments are constituted all the assets held by local authorities immediately before the effective date 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.

### **Existing offices**

10. (1) A person who immediately before the effective date, held or was acting in an office established by the Constitution in force before the effective date, shall continue to hold or act in that office as if appointed to such office under this Constitution, subject to the conclusion of the process referred to in sub-section (4).
- (2) A person who immediately before the effective date held or was acting in a public office established by any written law, so far as is consistent with this Constitution, shall continue to hold or act in that office as if appointed to that position under this Constitution.



- (3) The provisions of this section 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 begin on the effective date and in accordance with the provisions of this Constitution.
- (5) Where a person has vacated an office that the person held before the effective date and that office is retained or established by or under this Constitution, the person may, if qualified, again be appointed, elected, or otherwise selected to hold that office in accordance with the provisions of this Constitution.
- (6) A person referred to in sub-sections (1), (2) and (5) 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 Chapter Nine.

#### **Succession of institutions, offices, assets and liabilities**

11. (1) If a provision of this Constitution has altered the name of an office or institution existing immediately before the effective date the office or institution as known by the new name shall be the legal successor of the first named office or institution.
- (2) All liabilities, property and other assets that immediately before the effective date were incurred or vested in the Government or the Republic, as the case may be, shall continue to be so incurred or vested after the effective date.
- (3) For the purposes of this section, the Kenya Revenue Authority in existence immediately before the effective date is continued in existence as the National Revenue Authority referred to in Article 256.

#### **Pensions, gratuities and other benefits**

12. The law applicable to pensions, gratuities or personal emoluments in respect of holders of constitutional offices shall be either the law that was in force at the date on which those benefits were granted, or any law in force at a later date that is not less favourable to that person.

#### **Judicial Proceedings and pending matters**

13. (1) Unless otherwise provided under this Constitution, all judicial proceedings pending before any court or any proceedings before a tribunal shall continue to be heard and shall be determined by the same or a corresponding court or tribunal established under this Constitution.
- (2) Unless otherwise provided under this Constitution, any matter or proceeding that, immediately before the effective date, is pending before an existing constitutional Commission, office or authority shall be continued before the same or a corresponding commission, office or authority established under this Constitution.

#### **Corporal punishment**

14. Every sentence of corporal punishment passed before the effective date is remitted and shall not be carried out.

### **Establishment of Commissions**

15. (1) The Ethics and Integrity Commission and the Commission on the Implementation of the Constitution, shall be constituted within ninety days of the effective date.
- (2) Within nine months after the establishment of the Ethics and Integrity Commission and the Commission on the Implementation of the Constitution the following Commissions shall be appointed in the following order of priority –
- (a) the Commission on Revenue Allocation;
  - (b) the Parliamentary Service Commission;
  - (c) the Judicial Service Commission;
  - (d) the Police Service Commission;
  - (e) the Public Service Commission;
  - (f) the Commission on Human Rights and Administrative Justice;
  - (g) the Gender Commission;
  - (h) the Kenya Anti-corruption Commission;
  - (i) the Electoral and Boundaries Commission;
  - (j) the Salaries and Remuneration Commission;
  - (k) the National Land Commission;
  - (l) the Teachers Service Commission;
  - (m) the National Environment Commission;
  - (n) the Health Services Commission; and
  - (o) the National Commission on Culture;

### **Appointment of judges of Supreme Court**

16. The process of appointment of the judges of the Supreme Court shall commence and be finalized within ninety days of the appointment of the Judicial Service Commission.

### **Past human rights abuses**

17. Parliament shall, within six months after the effective date, enact a law to empower the Commission on Human Rights and Administrative Justice to –
- (a) investigate all forms of human rights abuses by any person or group of persons before the effective date;
  - (b) investigate the causes of civil strife, including massacres, ethnic clashes and political assassinations, and identify those responsible; and
  - (c) make appropriate recommendations regarding –
    - (i) the prosecution of those responsible;
    - (ii) the award of compensation to victims;
    - (iii) reconciliation; and



(iv) reparation.

#### **Ownership of land**

18. (1) On the effective date any interest in land larger than a ninety-nine year lease, by whoever granted, held by a non-citizen shall be converted to a 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 Lands Commission on behalf of the communities.
- (3) Where on the effective date, any person not being a citizen of Kenya, had a freehold interest in any land in Kenya, that interest or right shall revert back to the Republic of Kenya to hold on behalf of the people of Kenya, and the State shall grant to that person a lesser right or interest at a peppercorn rent not exceeding a ninety-nine year lease.

#### **Civic education**

19. From the effective date, the Government shall, through its relevant organs, conduct and facilitate civic education on this Constitution to the people of Kenya, in the national languages and in their local languages.

#### **Amendment of Chapter Fifteen**

20. The procedure for the amendment of this Constitution prescribed in Article 284(1), shall apply to Chapter Fifteen for five years from the effective date.

#### **Currency**

21. Nothing in Article 250(3) affects the validity of coins and notes issued before the effective date.

#### **Provision to be made by Act of Parliament**

22. Parliament shall make provision for -
- (a) the phased transfer, over a period of not more than five years from the effective date, from the National Government to the district governments of the powers and functions assigned to them under Article 207;
- (b) the delegation of powers by one level of government to another, including the delegation from the National Government to District Governments of legislative powers with respect to matters specified in the following paragraphs of this Article as the subject-matter of an Act of Parliament, and the conditions for the transfer and recall of the powers delegated;

### **Part II – Interim Provisions on Devolution**

#### **Qualification for election or appointment to District Government bodies**

23. Until relevant provision is made by Act of Parliament, a person is eligible to be a member of a district assembly, or a district executive council established by this Chapter if that person -
- (a) is qualified for election as a member of Parliament;
- (b) has been resident in the period of twelve months immediately before the date of the election or appointment.

### **Procedures and internal organization of District Government bodies**

24. (1) Until relevant provision is made by Act of Parliament, each district legislative assembly or district executive established by this Chapter may, by resolution, regulate its own procedure and internal organization.
- (2) The power conferred by sub-section (1) includes the power to make provision with respect to –
- (a) the appointment or election, and removal, of persons as speakers and deputy speakers;
  - (b) the convening, frequency and chairing of meetings; and
  - (c) quorums and voting at meetings.

### **Election of mayor and deputy mayor of Nairobi and other cities**

25. Until relevant provision is made by Act of Parliament, in respect of the election of mayor or deputy mayor of Nairobi or any other city –
- (a) the manner of voting shall be the same as at a by-election for Parliament; and
  - (b) the residential requirement for the purposes of such elections shall be that a person has been resident in the region for the period of twelve months immediately before the date of the election.

### **Election of members of district assembly**

26. Until relevant provision is made by Act of Parliament for the purposes of Article 215(1) –
- (a) the wards of each district are the wards existing immediately before the effective date;
  - (b) the number of members representing marginalized groups shall be the number that is as nearly as practicable equal to twenty per cent the number of members referred to in Article 215(1)(a); and
  - (c) the manner of conducting the election of members of a district legislative council shall be as determined in the circumstances by the Electoral and Boundaries Commission.

