

**Harmonized Draft**  
**CONSTITUTION OF KENYA**

As reviewed by the Committee of Experts on Constitutional Review, pursuant to section 32(1)(c) of the Constitution of Kenya Review Act, 2008 and presented to the Parliamentary Select Committee on Constitutional Review on 8<sup>th</sup> January 2010.

## **ARRANGEMENT OF ARTICLES**

### **PREAMBLE**

### **CHAPTER ONE**

#### **SOVEREIGNTY OF THE PEOPLE AND SUPREMACY OF THE CONSTITUTION**

- 1—Sovereignty of the people
- 2—Supremacy of the Constitution
- 3—Defence of the Constitution

### **CHAPTER TWO**

#### **THE REPUBLIC**

- 4—Declaration of the Republic
- 5—Territory
- 6—Devolution
- 7—Capital of Kenya
- 8—Access to services
- 9—Languages and other modes of communication
- 10—State and religion
- 11—National symbols
- 12—National days

### **CHAPTER THREE**

#### **NATIONAL VALUES AND CULTURE**

##### **Part 1— National values, principles and goals**

- 13—National values, principles and goals.

##### **Part 2— Culture**

- 14—Recognition of culture and the responsibility of State in respect of culture

### **CHAPTER FOUR**

#### **CITIZENSHIP**

- 15—General principles
- 16—Retention of existing citizenship

- 17—Acquisition of citizenship
- 18—Citizenship by birth
- 19—Citizenship by registration
- 20—Dual citizenship
- 21—Deprivation of citizenship
- 22—Duties and responsibilities of a citizen
- 23—Legislation on citizenship

## CHAPTER FIVE

### THE BILL OF RIGHTS

#### Part 1—General provisions relating to the Bill of Rights

- 24—Rights and fundamental freedoms
- 25—Application of the Bill of Rights
- 26—Implementation of rights and fundamental freedoms
- 27—Enforcement of the Bill of Rights
- 28—Authority of the court to uphold and enforce the Bill of Rights
- 29—Limitation of rights or fundamental freedoms
- 30—Rights and freedoms that may not be limited

#### Part 2—Rights and fundamental freedoms

- 31—Right to life
- 32—Equality and freedom from discrimination
- 33—Human dignity
- 34—Freedom and security of the person
- 35—Slavery, servitude and forced labour
- 36—Privacy
- 37—Freedom of conscience, religion, belief and opinion
- 38—Freedom of expression
- 39—Freedom of the media
- 40—Access to information
- 41—Freedom of association
- 42—Assembly, demonstration, picketing and petition
- 43—Political rights
- 44—Freedom of movement and residence
- 45—Refugees and asylum seekers
- 46—Freedom of trade, occupation and profession
- 47—Protection of right to property
- 48—Labour relations
- 49—Social security
- 50—Health
- 51—Education
- 52—Housing
- 53—Food

- 54—Water
- 55—Environment
- 56—Language and culture
- 57—Consumer rights
- 58—Fair administrative action
- 59—Access to Justice
- 60—Rights of arrested persons
- 61—Fair hearing
- 62—Rights of persons held in custody

### **Part 3—Specific Application**

- 63—Introduction to Part
- 64—Older members of society
- 65—Youth
- 66—Children
- 67—Family
- 68—Persons with disabilities
- 69—Minorities and marginalized groups

### **Part 4— State of emergency**

- 70—State of emergency

### **Part 5—Human Rights Institutions**

- 71—People’s Protector
- 72—Kenya Human Rights and Gender Commission

## **CHAPTER SIX**

### **LAND AND ENVIRONMENT**

#### **Part 1—Land**

- 73—Principles of land policy
- 74—Vesting and classification of land
- 75—Public land
- 76—Community land
- 77—Private land
- 78—Landholding by non-citizens
- 79—Regulation of land use and property
- 80—National Land Commission
- 81—Legislation on land

**Part 2—Environment and natural resources**

- 82—Obligations in relation to the environment
- 83—Protection of the environment
- 84—Conservation of the environment
- 85—Enforcement of environmental rights
- 86—Utilization and development of natural resources
- 87—Agreements relating to natural resources
- 88—Legislation regarding the environment

**CHAPTER SEVEN**

**LEADERSHIP AND INTEGRITY**

- 89—Responsibilities of leadership
- 90—Oath of office
- 91—Conduct of State officers
- 92—Finances of State officers
- 93—Restriction on activities
- 94—Citizenship and leadership
- 95—Ethics and Anti-Corruption Commission
- 96—Legislation on leadership

**CHAPTER EIGHT**

**REPRESENTATION OF THE PEOPLE**

**Part 1—Electoral System and Process**

- 97—General principles for the electoral system and process
- 98—Legislation on elections
- 99—Registration as a voter
- 100—Candidates for election to comply with code of conduct
- 101—Independent candidates
- 102—Unopposed candidates
- 103—Voting
- 104—Electoral disputes
- 105—Representation on international bodies

**Part 2— Independent Electoral and Boundaries Commission and delimitation of electoral units**

- 106—Independent Electoral and Boundaries Commission
- 107—Delimitation of electoral units
- 108—Allocation of party list seats

**Part 3—Political Parties**

- 109—Basic requirements for political parties

- 110—Cessation of membership of a political party
- 111—Commissioner of Political Parties
- 112—Regulation of political parties
- 113—Political Parties Fund
- 114—Application of the Fund
- 115—Political parties and the media

## **CHAPTE NINE**

### **THE LEGISLATURE**

#### **Part 1—Establishment and role of Parliament**

- 116—Establishment of Parliament
- 117—Role of Parliament
- 118—Role of Senate
- 119—Role of the National Assembly

#### **Part 2—Composition and membership of Parliament**

- 120—Membership of the Senate
- 121—Membership of the National Assembly
- 122—Qualifications and disqualifications for election as member
- 123—Promotion of representation of marginalized groups
- 124—Election of members of Parliament
- 125—Vacation of office of member of Parliament
- 126—Right of recall
- 127—Determination of questions of membership

#### **Part 3—Officers of Parliament**

- 128—Speakers and Deputy Speakers of Parliament
- 129—Presiding in Parliament
- 130—Leader of the Official Opposition
- 131—Clerks and staff of Parliament

#### **Part 4—Legislation and Procedure in Parliament**

- 132—Exercise of legislative powers
- 133—Bills not concerning devolved government
- 134—Bills concerning devolved government
- 135—Money Bills
- 136—Presidential assent and referral
- 137—Coming into force of laws
- 138—Right to petition Parliament
- 139—Quorum
- 140—Official language in Parliament
- 141—Voting in Parliament

- 142—Decisions of Senate
- 143—Regulation of procedure
- 144—Power to call for evidence
- 145—Public access and participation
- 146—Powers, privileges and immunities

**Part 5—Miscellaneous**

- 147—Seat of Parliament
- 148—Term of Parliament
- 149—Parliamentary Service Commission

**CHAPTER TEN**

**THE EXECUTIVE**

**Part 1—Principles and Structure of the National Executive**

- 150—Principles of executive authority
- 151—The National Executive

**Part 2—The State President and Deputy State President**

- 152—Authority of State President
- 153—State President to be fully informed on conduct of government
- 154—State functions of the State President
- 155—Legislative functions of the State President
- 156—Exercise of presidential powers during temporary incumbency
- 157—Decisions of State President
- 158—Election of the State President
- 159—Qualifications and disqualifications for election as State President
- 160—Procedure at presidential election
- 161—Questions as to validity of presidential election
- 162—Assumption of office of State President
- 163—Term of office of State President
- 164—Protection from legal proceedings
- 165—Removal of State President on grounds of incapacity
- 166—Removal of State President by impeachment
- 167—Vacancy in the office of State President
- 168—Presidential power of mercy
- 169—Office of Deputy State President
- 170—Vacancy in the office of Deputy State President
- 171—Functions of the Deputy State President
- 172—Death before assuming office
- 173—Removal of Deputy State President
- 174—Remuneration and benefits of State President, Deputy State President and Prime Minister

**Part 3—The Prime Minister and the Cabinet**

- 175—Prime Minister
- 176—Appointment of Prime Minister
- 177—Term of office
- 178—Resignation of Prime Minister
- 179—Cabinet and Deputy Ministers
- 180—Assignment of functions
- 181—Dismissal of Cabinet Ministers and deputy Ministers
- 182—Vote of no confidence in the Prime Minister
- 183—Decisions, responsibility and accountability of the Cabinet
- 184—Secretary to the Cabinet
- 185—Principal Secretaries
- 186—Appointment and dismissal of Principal Secretaries

**Part 4—Other Offices**

- 187—Attorney-General
- 188—Director of Public Prosecutions
- 189—Public Defender
- 190—Removal and resignation

**CHAPTER ELEVEN**

**JUDICIARY**

**Part 1—Judicial Authority and Legal System**

- 191—Judicial authority
- 192—Independence of the Judiciary
- 193—Judicial offices and officers
- 194—System of courts

**Part 2—Superior Courts**

- 195—Supreme Court
- 196—Court of Appeal
- 197—Constitutional Court
- 198—High Court
- 199—Appointment of the chief justice, deputy chief justice and other judges
- 200—Tenure of office of the Chief Justice and other judges
- 201—Removal from office

**Part 3—Subordinate Courts**



202—Subordinate courts

203—Kadhis' Courts

#### **Part 4— Judicial Service Commission**

204—Establishment of the Judicial Service Commission

205—Functions of the Judicial Service Commission

206—Judiciary Fund

### **CHAPTER TWELVE**

#### **DEVOLVED GOVERNMENT**

##### **Part 1—Objects and principles of devolved government**

207—Objects of devolution

208—Principles of devolved government

##### **Part 2—County governments**

209—County governments

210— Support for County government

211—Members of county assembly

212—County executive committees

213—Election of county governor and deputy county governor

214—Election of mayor and deputy mayor of Nairobi

215—Functions of county executive committees

216—Urban areas and cities

217—Legislative authority of county assemblies

##### **Part 3— Powers and functions of devolved governments**

218—Powers and functions

219—Transfer of powers and functions

##### **Part 4—The Boundaries of the counties**

220— Boundaries of counties

##### **Part 5—Relationship between governments**

221—Co-operation between governments at the two levels

222—Conflict of laws

## **Part 6—Removal, suspension and dissolution of county governments**

223—Vote of no confidence in county executive

224—Suspension of a county government

## **Part 7—General**

225—Qualifications for election as member of county assembly

226—Vacation of office of member or county assembly

227—Power to summon witnesses

228—Public access and participation, powers, privileges and immunities

229—Gender balance and diversity

230—Government during transition

231—Publication of laws

232—Provision to be made by Act of Parliament

# **CHAPTER THIRTEEN**

## **PUBLIC FINANCE**

### **Part 1—Principles and framework of Public Finance**

233—Principles of public finance

234—Equitable division of national funds

235—Criteria for equitable share and other financial laws

236—Consultation on financial legislation affecting counties

### **Part 2—Public Funds**

237—Consolidated Fund and other public funds

238—Revenue Funds for county governments

239—Contingencies Fund

### **Part 3—Revenue-raising powers and public debt**

240—Power to raise taxes and impose charges

241—Imposition of tax

242—Borrowing by national government

243—Borrowing by counties

244—Loan guarantees by national government

245—Public debt

### **Part 4—Revenue Allocation**

246—Commission on Revenue Allocation

247—Functions of the Commission on Revenue Allocation

248—Submission and consideration of recommendations

249—Division of Revenue Bill

250—Transfer of equitable share

### **Part 5—Budgets and spending**

251—Form, content and timing of budgets

252—National annual estimates

253—Budgets of Parliament and independent institutions

254—Expenditure before annual budget is passed

255—Supplementary appropriation

256—Salaries and Remuneration Commission

257—Powers and functions

258—Remuneration and benefits of certain State officers

259—Procurement of public goods and services

### **Part 6—Control of public money**

260—Financial control

261—Controller of Budget

262—Functions of the Controller of Budget

263—Accounts and audit of public entities

264—Auditor-General

265—Powers and functions of Auditor-General

### **Part 7—Central Bank of Kenya**

266—Central Bank of Kenya

## **CHAPTER FOURTEEN**

### **THE PUBLIC SERVICE**

#### **Part 1—Values and Principles of Public Service**

267—Values and principles of public service

#### **Part 2—The Public Service Commission**

268—The Public Service Commission

269—Powers and functions of the Public Service Commission

270—Staffing of county governments

271—Protection of public officers

**Part 3—Teachers Service Commission**

272—Teachers Service Commission

**Part 3—Health Services Commission**

273—Health Services Commission

**Part 4—The Kenya Correctional Service**

274—Establishment and regulation

275—Director-General

**CHAPTER FIFTEEN**

**NATIONAL SECURITY**

**Part 1—National Security Organs**

276—Principles and objects

277—National security organs

278—Establishment of the National Security Council

279—Functions of the National Security Council

**Part 2—The Kenya Defence Forces**

280—Establishment of Defence Forces and Defence Council

281—Command

**Part 3—The National Intelligence Service**

282—Establishment of National Intelligence Service

283—Director-General of the Service

284—National Intelligence Council

**Part 4—The Kenya Police Service**

285—Establishment of the Kenya Police Service

286—Objects and functions

287—Inspector-General of the Kenya Police Service

288—Functions and independence of Inspector-General

289—Police Service Commission

**Part 5—Other Police Services**

290—Other police services

## **CHAPTER SIXTEEN**

### **COMMISSIONS AND INDEPENDENT OFFICES**

- 291—Application of Chapter
- 292—Objects of Commissions and independent offices
- 293—Composition, appointment and terms of office
- 294—Removal from office
- 295—General powers
- 296—Proceedings of commissions and independent offices
- 297—Incorporation
- 298—Funds of commissions and independent offices
- 299—Annual and other reports
- 300—Legislation

## **CHAPTER SEVENTEEN**

### **AMENDMENT OF THE CONSTITUTION**

- 301—Amendment of the Constitution
- 302—Amendment by parliamentary initiative
- 303—Amendment by popular initiative

## **CHAPTER EIGHTEEN**

### **GENERAL PROVISIONS**

- 304—Enforcement of the provisions of this Constitution
- 305—Construing the Constitution
- 306—Definitions

## **CHAPTER NINETEEN**

### **TRANSITIONAL AND CONSEQUENTIAL PROVISIONS**

- 307—Consequential legislation
- 308—Transitional
- 309—Effective date
- 310—Repeal

## **SCHEDULES**

**First Schedule**      Counties

**Second Schedule**      National symbols

<b>Third Schedule</b>	National oaths and affirmations
<b>Fourth Schedule</b>	Distribution of functions between the national government and the devolved governments
<b>Fifth Schedule</b>	Legislation to be enacted by Parliament
<b>Sixth Schedule</b>	Transitional and consequential provisions

## **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 and other diversity:

**DETERMINED** to live in peace and unity as one indivisible sovereign nation:

**RESPECTFUL** of the 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, communities and the nation:

**RECOGNIZING** the aspirations of all Kenyans for a government based on the essential values of human rights, equality, 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 to ourselves and to our future generations this Constitution.

## **GOD BLESS KENYA**

### **CHAPTER ONE**

#### **SOVEREIGNTY OF THE PEOPLE AND SUPREMACY OF THE CONSTITUTION**

##### **Sovereignty of the people**

1. (1) All sovereign power belongs to the people of Kenya and shall 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 under this Constitution is delegated to the following State organs, which shall perform their functions in accordance with this Constitution—
  - (a) Parliament and the legislative assemblies in the county governments;
  - (b) the national executive and the executive structures in the county governments; and
  - (c) the judiciary.

##### **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.
- (2) No person may claim or exercise State authority except as authorised by or under this Constitution.

- (3) The validity or legality of this Constitution is not subject to challenge by or before any court or other State organ.
- (4) Any law, including customary law, which is inconsistent with this Constitution, is void to the extent of the inconsistency and any act or omission in contravention of this Constitution is invalid.

### **Defence of the Constitution**

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

## **CHAPTER TWO**

### **THE REPUBLIC**

#### **Declaration of the Republic**

4. (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**

5. (1) Kenya consists of the territory recognized as such under international law.
- (2) Kenya comprises the counties set out in the First Schedule with the boundaries respectively set out in the Districts and Provinces Act, 1992 in place on the effective date.

#### **Devolution**

6. (1) The sovereign power of the people is exercised at—
  - (a) the national level; and
  - (b) the county level.
- (2) The governments at the two levels are distinct and inter-dependent and conduct their mutual relations on the basis of consultation and co-operation.



### **Capital of Kenya**

7. The capital of Kenya is Nairobi.

### **Access to services**

8. A national State organ shall ensure access to its services in all parts of the Republic.

### **Languages and modes of communication**

9.
  - (1) The national language of the Republic is Kiswahili.
  - (2) The official languages of the Republic are Kiswahili and English.
  - (3) The State shall respect, promote and protect the diversity of language of the people of Kenya and shall promote the development and use of indigenous languages.
  - (4) The State shall promote the development and use of Kenyan sign language, Braille and other communication formats and technologies accessible to persons with disabilities.

### **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.
  - (1) The national symbols of the Republic are—
    - (a) the national flag;
    - (b) the national anthem;
    - (c) the coat of arms; and
    - (d) the public seal.
  - (2) The national symbols are as set out in the Second Schedule.

### **National days**

12.
  - (1) The national days are—
    - (a) Madaraka Day, to be observed on 1<sup>st</sup> June;

- (b) Mashujaa Day, to be observed on 20<sup>th</sup> October; and
  - (c) Jamhuri Day, to be observed on 12<sup>th</sup> December.
- (2) A national day shall be a public holiday.
- (3) Parliament may prescribe and provide for public holidays.

## **CHAPTER THREE**

### **NATIONAL VALUES AND CULTURE**

#### **Part 1- National values, principles and goals**

##### **National values, principles and goals**

- 13.** (1) The national values, principles and goals contained in this article shall bind all State organs, State officers, public officers and all persons whenever any of them—
- (a) applies or interprets this Constitution;
  - (b) enacts, applies or interprets any law; or
  - (c) makes, or implements public policy decisions.
- (2) The national values, principles and goals include—
- (a) promotion of national unity and the commitment of all citizens to the spirit of nationhood and patriotism;
  - (b) recognition of the diversity of the people and promotion and protection of their cultures;
  - (c) promotion of the sharing and devolution of power;
  - (d) ensuring of open and transparent government and accountability of all State officers, public officers, State organs and other public authorities;
  - (e) taking of effective measures to eradicate corruption;
  - (f) ensuring of access by the people to independent, impartial, competent, efficient and affordable institutions of justice;
  - (g) recognition of the role of civil society in governance and facilitation of its role in ensuring the accountability of government;
  - (h) protection and promotion of human rights and fundamental freedoms;
  - (i) ensuring full participation of women, persons with disabilities, marginalized communities, the youth and all other citizens in the political, social and economic life of the nation;

- (j) implementation of the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender;
- (k) ensuring of progressive implementation of the principle that at least five per cent of the members of public elective or appointive bodies shall be persons with disabilities;
- (l) recognition of the special responsibilities that the State, society and parents owe to children, and upholding the family and the institution of marriage;
- (m) commitment to social justice and the realization of the rights of the people to basic needs and to a secure environment;
- (n) recognition, development and promotion of the role of science and technology;
- (o) elimination of disparities in development between the various parts of Kenya, and sectors of society;
- (p) efficient management of national resources and for the welfare of the people;
- (q) pursuit of policies for the sustainable management of the environment for the benefit of present and future generations;
- (r) promotion of African unity; and
- (s) co-operation and solidarity with the international community in the pursuit of international peace.

## **Part 2— Culture**

### **Recognition of culture and responsibility of the State in respect of culture**

- 14.** (1) This Constitution recognizes culture as the foundation of the nation and the cumulative civilization of the Kenyan people and communities and, in particular and affirms the sovereign uniqueness and distinctiveness of the Kenyan people and communities contributing to, and sharing in, the global culture.
- (2) The State shall—
- (a) promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications and libraries and other cultural heritage; and

(b) recognize the role of science and indigenous technologies in the development of the nation and promote the intellectual property rights of the people of Kenya;

(c) through legislation—

- (i) ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage;
- (ii) recognize and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by the communities of Kenya.

## CHAPTER FOUR

### CITIZENSHIP

#### General principles

15. 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

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

#### Acquisition of citizenship

17. (1) Citizenship may be acquired by birth or registration.
- (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 is entitled, on application, to be registered as a citizen.

#### Citizenship by birth

18. (1) A person is a citizen if at the date of the person's birth, whether or not the person is born in Kenya, either the mother or the father of the person is a citizen.
- (2) If either parent of a person died before that person was born, that parent's citizenship at the time of death applies, for all purposes of this Chapter, as if that parent had survived until the birth of that person.
- (3) A child found in Kenya who is or 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.

### **Citizenship by registration**

19. (1) A person who has been married to a citizen for a period of at least seven years is entitled, on application, to be registered as a citizen.
- (2) Citizenship is not lost through marriage or the dissolution of marriage.
- (3) 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.
- (4) A child who is not a citizen and who is adopted by a citizen is entitled on application, to become a citizen.
- (5) A person who as a result of acquiring the citizenship of another country ceased to be a Kenyan citizen is entitled, on application, to regain Kenyan citizenship.
- (6) Parliament shall by an Act provide for conditions upon which citizenship may be granted to individuals, other than individuals referred to in clause (2), who are citizens of other countries.

### **Dual citizenship**

20. A person who is a citizen does not lose citizenship by reason only of acquiring the citizenship of another country.

### **Deprivation of citizenship**

21. 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.

### **Duties and responsibilities of a citizen**

22. (1) All citizens have the responsibility to—
- (a) acquire a basic understanding of the provisions of this Constitution and promote its ideals and objectives;
  - (b) respect, uphold and defend this Constitution and the law;
  - (c) vote in elections and referenda;
  - (d) strive to foster national unity and live in harmony with others and co-operate with law enforcement agencies for the maintenance of law and order;
  - (e) develop their abilities through acquisition of knowledge, continuous learning and the development of skills;
  - (f) contribute to national development and the common good of the nation and to the welfare and advancement of the community where they live;

- (g) promote family life and welfare and act responsibly in the context of the family;
  - (h) pay taxes due, refrain from engaging in corruption and protect and safeguard public property from waste and misuse;
  - (i) protect the environment and conserve natural resources; and
  - (j) understand and enhance the Republic's place in the international community.
- (2) The duties and responsibilities set out in clause (1) apply equally, where appropriate, to resident non-citizens.

### **Legislation on citizenship**

#### **23. Parliament shall enact legislation—**

- (a) prescribing procedures by which a person may become a citizen;
- (b) governing the entry into and residence in Kenya and providing for the status of permanent residents;
- (c) providing for voluntary renunciation of citizenship;
- (d) prescribing procedures for deprivation of citizenship; and
- (e) generally giving effect to the provisions of this Chapter.

## CHAPTER FIVE

### THE BILL OF RIGHTS

#### Part 1—General provisions relating to the Bill of Rights

##### Rights and fundamental freedoms

24. (1) The 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 and fundamental freedoms 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 fundamental freedoms set out in this Chapter—
- (a) belong to each individual and are not granted by the State;
  - (b) do not exclude other rights and fundamental freedoms not mentioned in this Chapter, but recognized 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 Constitution.

##### Application of the Bill of Rights

25. (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 fundamental freedoms set out in the Bill of Rights, to the greatest extent consistent with the nature of the right or fundamental freedom.
- (3) When applying a provision of the Bill of Rights a court shall—
- (a) develop the law to the extent that it does not give effect to a right or fundamental freedom; and
  - (b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom.
- (4) When interpreting the Bill of Rights, a court, tribunal, the Kenya Human Rights and Gender Commission or other authority shall promote—
- (a) the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and
  - (b) the spirit, purport and objects of this Bill of Rights.



- (5) When applying any right under Articles 49 to 54, if the State claims that it does not have the resources to implement the right, a State organ, court, tribunal, the Kenya Human Rights and Gender Commission or other authority 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 or fundamental freedom having regard to prevailing circumstances, including the vulnerability of particular groups or individuals; and
  - (c) a court, tribunal, the Kenya Human Rights and Gender Commission or other authority may not interfere with a decision by a State organ concerning the allocation of available resources, solely on the basis that it would have reached a different conclusion.

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

26. (1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental 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, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Articles 49 to 54.
  - (3) All State organs and all public officers have the responsibility to understand, and equip themselves to deal with, the needs of vulnerable 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.
  - (4) The State shall enact and implement legislation to facilitate the fulfilment of its international obligations in respect of human rights and fundamental freedoms and 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 human rights bodies for a reasonable period and facilitate public discussion and debate and participation of civil society before the reports are revised and submitted.
  - (5) The national government shall disseminate to the public the General Comments and Recommendations of international human rights bodies relating to the implementation of its international obligations.

- (6) The national government shall make a statement to Parliament on whether and how it intends to implement those recommendations.
- (7) 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**

27. (1) A person referred to in clause (2) has the right to institute court proceedings, alleging that a right or fundamental freedom set out in the Bill of Rights has been denied, violated, infringed or threatened.
- (2) The persons who may institute court proceedings in accordance with clause (1) are—
  - (a) a person acting in their own interest;
  - (b) a person acting on behalf of another person who cannot act in their own name;
  - (c) a person acting as a member of, or in the interest of, a group or class of 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 the court proceedings mentioned in clause (1), which shall satisfy the criteria that—
  - (a) the rights of standing provided for in this Article are fully facilitated;
  - (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation;
  - (c) no fee may be charged for commencing proceedings under this Article;
  - (d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by technical requirements; and
  - (e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.
- (4) The absence of rules contemplated in clause (3) shall not operate to deny any person the right to initiate a complaint under this Constitution and to have that complaint heard and determined by a court.

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

- 28.(1) The High Court shall have jurisdiction, in accordance with Article 198, to hear applications for redress for a violation of a right or a fundamental freedom set out 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 27, a court may grant appropriate relief, including—
  - (a) a declaration of rights;
  - (b) an injunction;
  - (c) conservatory orders;
  - (d) a declaration of invalidity of any law that infringes the Bill of Rights and is not justified in terms of Article 29;
  - (e) an order of compensation against the State or any person responsible for the violation of a right or fundamental freedom; and
  - (f) orders of judicial review.
- (4) In proceedings against a public authority for a contravention of the Bill of Rights, a court may not award costs against the plaintiff, or applicant, unless the court determines that the case was frivolous, vexatious or without merit.

### **Limitation of rights or fundamental freedoms**

- 29.** (1) No right or fundamental freedom set out in the Bill of Rights may be limited except—
- (a) by law; 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 or fundamental freedom;
    - (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 fundamental freedoms by any individual does not prejudice the rights and fundamental 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), a provision in legislation limiting a right or fundamental freedom —
- (a) 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;

- (b) 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
  - (c) shall not limit a right or fundamental freedom set out in the Bill of Rights so as to derogate from the core or the essential content of the right.
- (3) The State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied.
- (4) The provisions of this Chapter on equality shall be qualified to the extent strictly necessary for the application of Muslim law before the Kadhi's courts, to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.

### **Rights and freedoms that may not be limited**

30. Despite any other provision in this Constitution, there shall be no limitation on the following rights and fundamental freedoms—
- (a) freedom from torture and cruel, inhuman or degrading treatment or punishment;
  - (b) freedom from slavery or servitude;
  - (c) the right to a fair trial; and
  - (d) the right to an order of *habeas corpus*.

## **Part 2 –Rights and fundamental freedoms**

### **Right to life**

31. (1) Every person has the right to life.
- (2) A person shall not be arbitrarily deprived of life.

### **Equality and freedom from discrimination**

32. (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.
- (3) Women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social activities.
- (4) 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.

(5) A person shall not discriminate directly or indirectly against another person on any of those grounds.

(6) Despite clause (4), the State shall take legislative and other measures, including but not limited to affirmative action programmes and policies, designed to redress any disadvantage suffered by individuals or groups as a result of past discrimination.

(7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.

### **Human dignity**

**33.** Every person has inherent dignity and the right to have that dignity respected and protected.

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

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

- (a) deprived of freedom arbitrarily or without just cause;
- (b) detained without trial, except during a state of emergency in which case the detention is subject to Article 70;
- (c) subjected to any form of violence from either public or private sources;
- (d) subjected to torture, in any manner whether physical or psychological;  
and
- (e) subjected to corporal punishment or to be treated or punished in a cruel, inhuman or degrading manner.

### **Slavery, servitude and forced labour**

**35.** (1) A person shall not be held in slavery or servitude.

(2) A person shall not be required to perform forced labour.

### **Privacy**

**36.** Every person has the right to privacy, which includes the right not to have—

- (a) their person or home or property searched;
- (b) their possessions seized;

- (c) information relating to their family or private affairs unnecessarily required or revealed; or
- (d) the privacy of their communications infringed.

### **Freedom of conscience, religion, belief and opinion**

- 37.** (1) Every person has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Every person has the 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 be compelled to act or engage in any act that is contrary to that person's belief or religion.

### **Freedom of expression**

- 38.** (1) Every person has the right to freedom of expression, which includes—
- (a) freedom to seek, receive or impart information or ideas;
  - (b) freedom of artistic creativity; 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;
  - (c) hate speech; or
  - (d) advocacy of hatred that—
    - (i) constitutes ethnic incitement, vilification of others or incitement to cause harm; or
    - (ii) is based on any prohibited ground of discrimination contemplated in Article 32.

- (3) In the exercise of the freedom of expression, every person shall respect the rights and reputation of others.

### **Freedom of the media**

- 39.** (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 engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or
  - (b) penalise 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—
- (a) be free to determine independently the editorial content of their broadcasts or other communications;
  - (b) be impartial; and
  - (c) afford fair opportunity for the presentation of divergent views and dissenting opinions.
- (5) Parliament shall enact legislation that provides for the establishment of a body which shall—
- (a) be independent of government or political control;
  - (b) reflect the interests of all sections of the society; and
  - (c) set media standards and regulate and monitor compliance with those standards.

### **Access to information**

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

- (2) Every person has the right to the correction or deletion of untrue or misleading information that affects that person.
- (3) The State shall publish and publicize all important information affecting the nation.

### **Freedom of association**

- 41.** (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 measures and adopt policies that promote civil society participation in decision-making and in the management of public affairs at all levels of government.
  - (5) Any legislation that requires registration of civil society organizations shall provide that—
    - (a) registration may not be withheld unreasonably;
    - (b) registration shall be in the hands of a body that is independent of government or any other form of political control;
    - (c) any fee chargeable shall be no more than is necessary to defray the cost of the procedure;
    - (d) there shall be a right to have a fair hearing before a registration is cancelled;
    - (e) an appeal is to lie to an independent tribunal against a decision to cancel a registration.
  - (6) Any legislation that applies standards of conduct to civil society organizations shall be formulated with input from affected organizations.

### **Assembly, demonstration, picketing and petition**

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

### **Political rights**

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



- (a) form, or participate in forming, a political party;
- (b) participate in the activities of, or recruit members for, a political party;  
and
- (c) 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) any office holder of any political party of which the citizen is a member.

(3) Every adult citizen has the right to—

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

**44.** (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 seekers**

**45.** (1) The right to seek and obtain asylum is recognized and shall be granted in accordance with international law and practice on refugees.

(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**

**46.** (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**

**47.** (1) Subject to Article 78, every person has the right, either individually or in association with others, to acquire and own property—

- (a) of any description; and
  - (b) in any part of Kenya.
- (2) Parliament shall not enact a law that permits the State or any person to—
- (a) arbitrarily deprive a person of property of any description;
  - (b) arbitrarily deprive a person of any interest in, or right over, such property; or
  - (c) limit or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds set out in Article 32(1).
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, 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 Six; 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 State shall support, promote and protect the intellectual property rights of the people of Kenya.
- (6) The right recognized and protected under this Article does not cover any property that has been unlawfully acquired.

### **Labour relations**

- 48.** (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.

### **Social security**

- 49.** (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**

- 50.** (1) Every person has the right to the enjoyment of the highest attainable standard of health, which includes the right to health care services including reproductive health care.
- (2) A person shall not be refused emergency medical treatment.

### **Education**

- 51.** (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 further 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**

- 52.** Every person has the right to accessible and adequate housing and to reasonable standards of sanitation.

### **Food**

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

### **Water**

54. Every person has the right to clean and safe water in adequate quantities.

### **Environment**

55. Every person has the right to—
- (a) a clean and healthy environment;
  - (b) have the environment protected, for the benefit of present and future generations, through legislative and other measures that—
    - (i) prevent pollution and ecological degradation;
    - (ii) promote conservation; and
    - (iii) secure ecologically sustainable development and use of natural resources; and
  - (c) access information about the environment.

### **Language and culture**

56. (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 to—
- (a) enjoy that person's culture and use that person's language; or
  - (b) 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**

57. (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) Parliament shall enact legislation to provide for consumer protection and for fair, honest and decent advertising.
- (3) This Article applies to goods and services offered by public entities and private persons.

### **Fair administrative action**

- 58.** (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) Every person whose right or fundamental freedom has been or is likely to be adversely affected by administrative action has the right to be given written reasons for the action.
- (3) Parliament shall enact legislation to give effect to the rights in clause (1) and such legislation shall—
- (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; and
  - (b) promote efficient administration.

### **Access to justice**

- 59.** The State shall ensure access to justice for all persons and where any fee is required, it shall be reasonable and shall not impede access to justice.

### **Rights of arrested persons**

- 60.** (1) Upon arrest a person has the right—
- (a) to be informed promptly in language that the person understands, of—
    - (i) the reason for the arrest;
    - (ii) the right to remain silent; and
    - (iii) the consequences of not remaining silent;
  - (b) to remain silent;
  - (c) to communicate with an advocate and other persons whose assistance is necessary;
  - (d) not to be compelled to make any confession or admission that could be used in evidence against that person;
  - (e) to be held separately from persons who are serving a sentence;

- (f) to be brought before a court as soon as reasonably possible, but not later than twenty-four hours after being arrested or not later than the end of the first court day after the expiry of the twenty-four hours, if the twenty-four hours expire outside ordinary court hours or on a day that is not an ordinary court day;
  - (g) at the first court appearance, to be charged or to be informed of the reason for the detention continuing, or to be released; and
  - (h) 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 by imprisonment for not more than six months.

### **Fair hearing**

- 61** (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, where appropriate, other independent and impartial tribunal or body.
- (2) 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 unless the conduct of the accused makes it impossible for the trial to proceed;
  - (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 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) if convicted of a crime, of appeal to, or review by, a higher court.
- (3) Whenever this Article requires information to be given to a person, that information shall be given in language that the person understands.
- (4) Evidence obtained in a manner that violates any right or fundamental freedom set out in the Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair or would otherwise be detrimental to the administration of justice.
- (5) 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 copy of the records of the proceedings of the trial.
- (6) An accused person has the right to a copy of the record of proceedings within a reasonable period after they are concluded, in return for a reasonable fee as prescribed by law.
- (7) 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.
- (8) A court may in the interest of justice allow an intermediary to assist a complainant or an accused person to communicate with the court.
- (8) Nothing in this Article shall prevent the exclusion of the press or other members of the public from all or any proceedings for reasons of protecting witnesses or vulnerable persons, morality, public order or national security as may be necessary in a free and democratic society.

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

- 62.** (1) A person held in custody under the law, whether sentenced or not, retains all the rights and fundamental freedoms under this Constitution, except to the extent that a right or a fundamental freedom is clearly incompatible with the fact of being in custody.

- (2) A person held in custody shall be entitled to an order of *habeas corpus*.
- (3) Parliament shall, by legislation, provide for the humane treatment of persons held in custody which shall take into account the relevant international human rights instruments.

### **Part 3—Specific Application of Rights**

#### **Introduction to Part**

63. (1) This Part elaborates certain rights set out in Part 2 to ensure greater certainty as to the application of those rights and fundamental freedoms to certain groupings of people.
- (2) This Part shall not be construed as limiting or qualifying any right under Part 2.

#### **Older members of society**

64. (1) Older members of society are entitled to enjoy all the rights and fundamental freedoms set out in the Bill of Rights.
- (2) The State shall take legislative and policy measures to ensure the rights of older members of society 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 from their families and the State.
- (3) Parliament shall enact legislation to establish a body to define and advise on policies and programmes for the care and protection of older members of society.

#### **Youth**

65. (1) 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 in clause (2) shall include measures to ensure for the youth –
  - (a) access to education and training;
  - (b) 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 customs or cultural practices that undermine their dignity or quality of life; and
  - (g) protection from discrimination, exploitation or abuse.

## **Children**

- 66.** (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, each has 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 appropriate alternative care when 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) not to be subjected to violence or treated or punished in a cruel, inhuman or degrading manner in schools and other institutions responsible for the care of children;
  - (h) not take part in hostilities or be recruited into armed conflicts and 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 pays attention to the child's rights including, but not limited to, the right to—
    - (i) be detained only for the shortest appropriate period;
    - (ii) be kept separate from adults in custody;
    - (iii) be accorded legal assistance by the State; and
    - (iv) be treated in a manner, and be kept in conditions, that take account of the child's disability, if any, gender and age;
  - (j) have an advocate assigned to the child by the State and at State expense in proceedings affecting the child, other than those contemplated in paragraph (i) if injustice would otherwise result;
  - (k) know of decisions affecting the child, 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 shall take legislative and other measures to implement the provisions of this Constitution and of international instruments and standards on the rights of the child.

## **Family**

- 67.(1) The family is the natural and fundamental unit of society and the necessary basis of social order.
- (2) Every adult has the right to marry a person of the opposite sex, based upon the free consent of the parties.
  - (3) Every adult has the right to found a family.
  - (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 recognizes—
    - (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 that such marriages or systems are consistent with this Constitution.

### **Persons with disabilities**

68. (1) Persons with disabilities are entitled to enjoy all the rights and fundamental 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) have access to education and 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) have reasonable access to all places accessible to the public, to public transport and to information and communications;

(d) use of Kenya sign language, Braille and other appropriate means of communication;

(e) participate in decision-making at all levels;

(f) have equal rights to inherit, access, and manage property;

(g) have 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, including special provisions for women, to ensure that persons with disabilities enjoy all the rights referred to in clause (2).

### **Minorities and marginalized groups**

69. (1) Minorities and marginalized groups are entitled to enjoy all the rights and fundamental freedoms set out in the Bill of Rights, on a basis of equality, taking into account their identity, way of life, 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 and access to gainful employment.
- (c) are assisted to develop their cultural values, languages and practices;
- (d) are assisted to have reasonable access to water, health services and transport infrastructure;
- (e) have a reasonable opportunity to meet their basic needs; and
- (f) live lives free from discrimination, exploitation or abuse.

#### **Part 4—State of emergency**

##### **State of emergency**

- 70.** (1) A state of emergency may be declared only in accordance with Article 154(6) 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 the National Assembly resolves to extend the declaration.
- (3) The National Assembly may extend a declaration of a state of emergency—
- (a) by resolution adopted—
    - (i) following a public debate in the National Assembly; 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 requires a supporting vote of at least two-thirds of all the members of the National Assembly, and any subsequent extension requires a supporting vote of at least three-quarters of all the members of the National Assembly.
- (5) The Constitutional 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; and
  - (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 limit or derogate from the Bill of Rights only to the extent that—
- (a) the limitation or derogation is strictly required by the emergency; and
  - (b) the legislation is consistent with the Republic's obligations under international law applicable to a state of emergency.
- (7) Legislation under clause (6)—
- (a) shall be published in the *Gazette* as soon as reasonably practicable after being enacted; and
  - (b) does not take effect until it is so published.
- (8) 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.

## **Part 5– Human Rights Institutions**

### **People's Protector**

71. (1) There is established the office of the People's Protector.
- (2) The functions of the People's Protector are—
- (a) investigate any conduct in state affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice;
  - (b) investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive unfair or unresponsive official conduct;
  - (c) report on complaints investigated under paragraphs (a) and (b) and take remedial action; and
  - (d) perform such other functions as may be prescribed by legislation.
- (3) The People's Protector shall not investigate any court decision.

## **Kenya Human Rights and Gender Commission**

72. (1) There is established the Kenya Human Rights and Gender Commission.

(2) The functions of the Commission are to—

- (a) promote respect for human rights and develop a culture of human rights in the Republic;
- (b) promote gender equality and equity generally and to co-ordinate and facilitate gender mainstreaming in national development;
- (c) promote the protection, and observance of human rights in public and private institutions;
- (d) monitor, investigate and report on the observance of human rights in all spheres of life in the Republic including observance by the national security organs;
- (e) receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated;
- (f) in relation to human rights, initiate on its own initiative or on the basis of complaints, investigations and research and make recommendations to improve the functioning of State organs;
- (g) act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights.

(3) A person has the right to complain to the Kenya Human Rights and Gender Commission, alleging that a right or fundamental freedom set out in the Bill of Rights has been denied, violated, infringed or threatened.

## CHAPTER SIX

### LAND AND ENVIRONMENT

#### Part 1—Land

##### Principles of land policy

73. (1) Land in Kenya shall be held, used and managed in a manner which is equitable, efficient, productive and sustainable in accordance with the following principles—

- (a) equitable access to land;
- (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.

(2) These principles shall be implemented through a national land policy developed and reviewed regularly by the national government and through legislation.

##### Vesting and classification of land

74. (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

75. (1) Public land is—

- (a) land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date;
- (b) land lawfully held, used or occupied by any State organ, except where such land is occupied under a private lease;

- (c) land transferred to the State by way of reversion or surrender;
  - (d) land in respect of which no individual or community ownership can by any legal process be established;
  - (e) land in respect of which no heir can by ordinary legal process be identified;
  - (f) all minerals and mineral oils as defined by law;
  - (g) government forests other than forests to which Article 76(2) (e) applies, game reserves, water catchments areas, national parks, animal sanctuaries, and 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 the 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 (e) shall vest in and be held by the county government in trust for the people resident in the county and shall be administered on their behalf by the National Land Commission.
- (3) Public land classified under clause (1)(f) to (m) shall vest in and be held by the national 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 an Act of Parliament specifying the nature and terms of that disposal or use.

### **Community land**

- 76.** (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 the county 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 and 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 75.
- (3) Any unregistered community land shall be held in trust by county 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.
  - (5) Parliament shall enact legislation to give effect to this Article.

### **Private land**

77. Private land includes—

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

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

78. (1) A person who is not a citizen may hold 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 of 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) For purposes of this Article, a company or a body corporate is a citizen only if it is fully owned by citizens.
  - (4) Parliament may enact legislation to make further provision for the operation of the provisions of this Article.

### **Regulation of land use and property**

79. (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 and political environment, and legal framework for the creation, development and management of property.
- (3) Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.

### **National Land Commission**

**80.** (1) There is established the National Land Commission.

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

- (a) manage public land on behalf of the national and county governments;
- (b) recommend to the national government a national land policy;
- (c) advise the national government and county governments on a policy framework for the development of selected areas of Kenya, to ensure that the development of community and private land is in accordance with the development plan for those areas;
- (d) investigate disputes about land ownership, occupation and access to public land in any area as provided for by legislation;
- (e) advise the national government on, and assist in the execution of, a comprehensive programme for the registration of title in land throughout Kenya;
- (f) conduct research related to land and the use of natural resources and make recommendations to appropriate authorities;
- (g) initiate investigations, on its own or on a complaint, into present or historical land injustices and recommend appropriate redress;
- (h) facilitate the participation of communities in the formulation of land policy;
- (i) encourage the application of traditionally accepted systems of dispute resolution in land conflicts;
- (j) assess tax on land and premiums on property in any area designated by law;
- (k) monitor and have oversight responsibilities over land use planning throughout the country;
- (l) consolidate and from time to time review all laws relating to land; and

- (m) initiate revision of all sectoral land use laws in accordance with the national land policy.

### **Legislation on land**

**81.** (1) Parliament shall enact legislation to—

- (a) revise, consolidate and rationalise existing land laws;
- (b) revise sectoral land use laws in accordance with the principles in Article 73(1);
- (c) prescribe minimum and maximum land holding acreages with respect to private land;
- (d) regulate the manner in which any land may be converted from one category to another;
- (e) regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and at the termination of marriage;
- (f) 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;
- (g) protect, conserve and provide access to all public land;
- (h) enable the review of all grants or dispositions of public land to establish their propriety or legality;
- (i) provide for the settlement of the landless and squatters including the rehabilitation of spontaneous settlements in urban and rural areas;
- (j) establish a land fund to enable citizens to own or use land on an equitable basis;
- (k) protect the dependants of deceased persons holding interests in any land including the interests of spouses in actual occupation of land;
- (l) establish a land bank to facilitate the availability of land for public purposes; and
- (m) provide for any other matter necessary to give effect to the provisions of this Chapter.

(2) Parliament shall determine the date by which the review required in clause 1(h) is to be completed.

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**Part 2— Environment and natural resources**

**Obligations in relation to the environment**

**82.** (1) The State shall—

- (a) respect the integrity of natural processes and ecological communities and promote the conservation of habitats and species;
- (b) ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources and the equitable sharing of the accruing benefits;
- (c) ensure that social and cultural values traditionally applied by communities of Kenya for the sustainable management of the environment and natural resources are observed;
- (d) domesticate international and bilateral agreements and treaties relating to the protection of the environment to which Kenya is party;
- (e) ensure that planning and utilization of the environment takes account of disadvantaged areas and their inhabitants;
- (f) promote energy saving and the use of renewable energy sources;
- (g) prevent pollution and ecological degradation;
- (h) allocate adequate resources to reclaim and rehabilitate degraded areas and areas prone to disasters to make them habitable and productive;
- (i) work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya;
- (j) protect and enhance the intellectual property in, and indigenous knowledge of, biodiversity and genetic resources of the communities; and
- (k) encourage public participation in the management, protection and conservation of the environment.

(2) Every person has a duty to cooperate with the State organs and other persons to protect and conserve the environment.

**Protection of the environment**

**83.** Every person has a duty to cooperate with State organs and other persons to—

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

### **Conservation of the environment**

**84.** In the utilization and management of the environment the State shall—

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

### **Enforcement of environmental rights**

**85.** (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 a 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;
- (c) provide compensation for any victim of the violation of the right to a clean and healthy environment.

(3) For purposes of this Article, it shall not be necessary that an applicant demonstrates loss or injury to their person.

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

**86.** The State shall ensure the protection, management, promotion and sustainable development of natural resources and shall—

- (a) undertake research to ensure their enhancement;
- (b) eliminate unfair trade practices in their processing, distribution and marketing;
- (c) regulate their exportation and importation;
- (d) regulate their origin, quality, methods of harvesting and processing;

- (e) eliminate processes and activities that are likely to endanger or curtail their existence; and
- (f) utilize them for the benefit of all the people of Kenya.

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

- 87.** (1) A transaction involving the grant of a right or concession by or on behalf of any person, including the national 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 shall by legislation provide for the classes of transactions subject to ratification under clause (1).
  - (3) Parliament may, by legislation supported in each House by at least two thirds of all the members, exempt any transaction from the provisions of clause (1).

### **Legislation regarding the environment**

- 88.** Parliament shall enact legislation to—
- (a) establish a national environment commission and set out its functions; and
  - (b) give full effect to the provisions of this Chapter.

## **CHAPTER SEVEN**

### **LEADERSHIP AND INTEGRITY**

#### **Responsibilities of leadership**

- 89.** (1) Authority assigned to a State officer—
- (a) is a public trust to be exercised in a manner that—
    - (i) is consistent with the purposes 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.

### **Oath of office**

- 90.** 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 Third Schedule, or by or under an Act of Parliament.

### **Conduct of State officers**

- 91.** (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 person who contravenes this Chapter shall, in accordance with the applicable disciplinary procedure, be dismissed or removed from office and is disqualified from holding any other State office.

### **Finances of State officers**

- 92.** (1) A State officer shall submit a written declaration to the Ethics and Anti-Corruption Commission in the manner and form determined by the Commission, declaring the assets and liabilities of the State officer—
- (a) immediately upon becoming a State officer; and

- (b) at least once a year, while in office; and
  - (c) on ceasing to hold office.
- (2) A person shall upon ceasing to be a State officer submit a written declaration to the Ethics and Anti-Corruption Commission in the manner and form determined by the Commission, declaring the assets and liabilities of that person.
- (3) A declaration under this Article shall include a declaration of any assets that the officer may own jointly or in common with a spouse or any other person and any liability that the officer may be subject to in common or jointly with a spouse or any other person.
- (4) A State officer shall not—
- (a) maintain a bank account outside Kenya except in accordance with an Act of Parliament; or
  - (b) seek or accept a personal loan or benefit in circumstances that compromise the integrity of the State officer.
- (5) A gift or donation to a State officer on a public or official occasion is a gift or donation to the Republic and shall be delivered to the State unless exempted by or under an Act of Parliament.

### **Restriction on activities**

- 93.** (1) A full-time State officer shall not participate in any other gainful employment.
- (2) The State President, Deputy State President and any appointed State officer shall not hold office in a political party.
- (3) Clause (2) does not apply to the Prime Minister, the Deputy Prime Minister, a Minister or a Deputy Minister.
- (4) A retired State officer who is receiving a pension from public funds shall not accept more than two concurrent remunerative positions as chairperson, director or employee of—
- (a) a company owned or controlled by the State; or
  - (b) a State organ.
- (5) A retired State officer shall not receive remuneration from public funds other than as contemplated in clause (4).

### **Citizenship and leadership**

- 94.** (1) No person shall be eligible for election to a State office or to be appointed to a State office if that person is not a citizen of Kenya.



- (2) No State officer or a member of the defence forces may hold dual citizenship.
- (3) No person shall be eligible for election or appointment to a State office or to serve in the defence forces if the person holds dual citizenship.
- (4) Clauses (1) and (2) do not apply to judges, members of commissions, principal secretaries and the members of county assemblies.

### **Ethics and Anti-Corruption Commission**

- 95.**
- (1) There is established the Ethics and Anti-Corruption Commission.
  - (2) The functions of the Commission are to—
    - (a) investigate any matter that, in the Commission's opinion, raises suspicion that conduct constituting corruption or economic crime, as provided for in an Act of Parliament, has occurred or is about to occur;
    - (b) receive and retain custody of declarations required by this Chapter;
    - (c) ensure compliance with and enforce the provisions of this Chapter;
    - (d) receive and investigate complaints about non-compliance with this Chapter and, if appropriate, to refer a complaint to the relevant authorities for action;
    - (e) institute and conduct civil proceedings for purposes of recovery, protection, confiscation and forfeiture of unlawfully acquired public property or unexplained assets;
    - (f) put in place measures aimed at the prevention of corruption, including issuing guidelines to State organs; and
    - (g) take measures for the promotion of ethics and integrity in the public and private sector.
  - (3) Parliament shall provide for the structure of the Commission.
  - (4) The Commission shall not investigate any matter pending before a court or a judicial tribunal.
  - (5) The Commission shall establish and maintain a register in which the assets and liabilities of State officers are recorded and shall make the register available for public inspection.

### **Legislation on leadership**

- 96.** An Act of Parliament shall—

- (a) establish procedures and mechanisms for the effective administration of this Chapter;
- (b) prescribe the penalties in addition to penalties set out in Article 91 that may be imposed for breach of the provisions of this Chapter;
- (c) make provision for the application of this Chapter to public officers; and
- (d) make any other provision necessary for ensuring the promotion of the principles of leadership and integrity set out in, and the enforcement of the provisions of, this Chapter.

## **CHAPTER EIGHT**

### **REPRESENTATION OF THE PEOPLE**

#### **Part 1 –Electoral system and process**

##### **General principles for the electoral system and process**

- 97.** The electoral system shall comply with the following principles—
- (a) freedom of citizens to exercise their political rights under Article 43;
  - (b) gender equity in elected bodies as provided for in Article 13(2)(j);
  - (c) representation of persons with disabilities as provided for in Article 13(2)(k);
  - (d) representation of the people, including workers, marginalized communities and the youth;
  - (e) fair elections which are—
    - (i) by secret ballot;
    - (ii) free from violence, intimidation, improper influence or corruption;
    - (iii) conducted by an independent body;
    - (iv) transparent; and
    - (v) administered in an impartial, neutral, efficient, accurate and accountable manner.

##### **Legislation on elections**

- 98.** (1) Parliament shall enact legislation to provide for—

- (a) the delimitation by the Independent Electoral and Boundaries Commission of electoral units for election of members of the National Assembly and county assemblies;
- (b) the nomination of candidates;
- (c) the continuous registration of citizens as voters in all parts of the country including the period between cessation of registration of voters and the next elections;
- (d) the conduct of elections and referenda and the regulation and efficient supervision of elections and referenda including the nomination of candidates for elections;
- (e) the registration of, and voting by, citizens residing outside Kenya.

(2) Legislation made in respect of clause (1)(d) shall in particular ensure that voting at every election is—

- (a) simple;
- (b) transparent; and
- (c) takes into account the special needs of—
  - (i) persons with disabilities; and
  - (ii) prisoners and hospitalized persons.

### **Registration as a voter**

**99.** (1) A person qualifies for registration as a voter at elections or referenda if the person —

- (a) is a citizen;
- (b) is at least eighteen years of age; ; and
- (c) has such other qualifications as are required by legislation.

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

(3) Administrative arrangements for the registration of voters and the conduct of elections shall be designed to facilitate, and shall not deny, an eligible citizen the right to vote or stand for election.

### **Candidates for election to comply with code of conduct**

**100.** In every election all candidates and all political parties shall comply with the code of conduct prescribed by the Independent Electoral and Boundaries Commission.

### **Independent candidates**

- 101.** Subject to Article 122 and the qualifications set for elections to the county assemblies in Article 225, a person is eligible to stand as an independent candidate for election as a member of Parliament or a county assembly, if that person is not a member of a registered political party and has not been a member for at least six months prior to the date of the election.

### **Unopposed candidates**

- 102.** Where only one candidate has been validly nominated by the end of the nomination period before an election, that candidate shall be declared elected.

### **Voting**

- 103.** At every election, the Independent Electoral and Boundaries Commission shall ensure that—
- (a) in any method of voting used, the system is simple, accurate, verifiable, secure, accountable and transparent;
  - (b) the votes cast are counted, tabulated and the results announced promptly by the presiding officer at the polling station;
  - (c) the results from the polling stations are openly and accurately collated and promptly announced by the returning officer; and
  - (d) appropriate structures and mechanisms to eliminate all forms of electoral malpractice are put in place, including the safe keeping of election materials.

### **Electoral disputes**

- 104.** (1) An Act of Parliament shall establish mechanisms for settling electoral disputes.
- (2) Petitions, concerning an election, other than a presidential election, shall be filed within twenty-eight days after the declaration of the election results by the Independent Electoral and Boundaries Commission.
- (3) Service of a petition may be direct or by advertisement in a newspaper with national circulation.

## **Representation on international bodies**

- 105.** Subject to the relevant treaties, Parliament shall enact legislation governing the election and nomination of representatives of the Republic to international legislative bodies.

## **Part 2—Independent Electoral and Boundaries Commission and delimitation of electoral units**

### **Independent Electoral and Boundaries Commission**

- 106.** (1) There is established the Independent Electoral and Boundaries Commission.
- (2) A person is not eligible for appointment as a member of the Independent Electoral and Boundaries Commission if the person has, at any time within the preceding ten years, held office, or stood for election as—
- (a) a member of Parliament or of a county assembly; or
  - (b) a member of the governing body of a political party.
- (3) The Commission is responsible for the conduct and supervision of elections and referenda and in particular for—
- (a) the continuous registration of citizens as voters;
  - (b) the regular revision of the voters roll;
  - (c) the delimitation of constituencies and wards;
  - (d) the regulation of the process by which parties nominate candidates for elections;
  - (e) the settlement of electoral disputes including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results;
  - (f) the registration of candidates for election;
  - (g) voter education;
  - (h) the facilitation of the observation, monitoring and evaluation of elections;
  - (i) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;
  - (j) the development of a code of conduct for candidates and parties contesting elections; and
  - (k) monitoring compliance with the requirements contemplated under Article 98(1)(b) relating to nomination of candidates by parties.

- (4) The Commission is responsible for conducting or supervising elections to any elective body or office established by this Constitution and such other elections as may be prescribed by an Act of Parliament.
- (5) The Commission shall exercise its powers and perform its functions in accordance with this Constitution and national legislation.

### **Delimitation of electoral units**

- 107.** (1) The Independent Electoral and Boundaries Commission shall review the number, names and boundaries of constituencies and wards at intervals of not less than eight and not more than twelve years but any review shall be completed at least eighteen months before a general election.
- (2) Where an election is called within eighteen months of the completion of a review by the Commission, the new boundaries shall not take effect for purposes of that election.
  - (3) In determining the boundaries and naming of the constituencies and wards, 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; and
    - (b) take account of the history, diversity and cohesiveness of the constituency, having regard to—
      - (i) its population density, trends and projections;
      - (ii) geographical features and urban centres;
      - (iii) community of interest and historical, economic and cultural ties; and
      - (iv) means of communication.
  - (4) In reviewing constituency and ward boundaries the Commission shall consult all interested parties.
  - (5) Where necessary, the Commission shall alter the number, names and boundaries of constituencies and wards.
  - (6) Subject to clauses (1) and (2), the names and details of the boundaries of constituencies determined by the Commission shall be published in the *Gazette*, and shall come into effect on the dissolution of Parliament first following their publication.
  - (7) A person may apply to the Constitutional Court for review of a decision of the Commission made under this Article.
  - (8) An application for the review of a decision made under this Article shall be filed within thirty days of the publication of the decision in the *Gazette* and

shall be heard and determined within three months of the date on which it is filed.

### **Allocation of party list seats**

- 108.** (1) Elections for the seats in Parliament provided for under Articles 120 (1) (b) and 121(1) (c) shall be on the basis of proportional representation by use of party lists
- (2) The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that—
- (a) each political party participating in a general election nominates and submits a list all the persons who would stand elected if the party were to be entitled to all the seats provided for under clause (1), within such time as legislation may provide;
  - (b) each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed; and
  - (c) each party list reflects the regional and ethnic diversity of the people of Kenya.
- (3) The seats referred to in clause (1) shall be allocated to political parties in proportion to the total number of votes cast in favour of the candidates of the political party at the general election.

## **Part 3—Political Parties**

### **Basic requirements for political parties**

- 109.** (1) Every political party shall—
- (a) promote the objects and principles of this Constitution and the rule of law;
  - (b) promote and uphold national unity and conduct its affairs in a manner that promotes democracy and peaceful politics;
  - (c) have a national character as prescribed by an Act of Parliament;
  - (d) have a democratically elected governing body;
  - (e) abide by the democratic principles of good governance, promote and practise democracy through regular, fair and free elections within the party, and promote discipline within the party;
  - (f) conduct its affairs in a manner that promotes democracy and peaceful politics;

- (g) respect the right of others to participate in the political process, including, persons with disabilities and other minorities;
  - (h) respect and promote human rights and fundamental freedoms, and gender equality and equity; and
- (2) A political party shall not—
- (a) be founded on a religious, linguistic, racial, ethnic, gender or regional basis or engage in advocacy of hatred based on any of those matters;
  - (b) engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person;
  - (c) establish or maintain a paramilitary force, militia or similar organization;
  - (d) engage in bribery or other forms of corruption; or
  - (e) except as is provided under this Chapter or by an Act of Parliament, accept or use public resources to promote its interests or its candidates in elections.
- (3) An Act of Parliament shall provide for the registration of political parties.

### **Cessation of membership of a political party**

- 110.** (1) A person may resign from a political party by notice in writing to the registered secretary-general of the political party, and—
- (a) if a member of the National Assembly, to the Speaker of the National Assembly; and
  - (b) if a member of a county assembly, to the person presiding over the affairs of that assembly.
- (2) A person may not be a member of more than one political party at the same time.
- (3) A member of Parliament or of a county assembly elected on a ticket of a political party ceases to be member of Parliament or of that assembly on—
- (a) resigning from the party; or
  - (b) being expelled from the party for indiscipline after a fair hearing.
- (4) For purposes of clause (3), the existence of the following circumstances only shall not amount to a member leaving the party—
- (a) the creation or dissolution of a coalition of which a member's political party forms part;
  - (b) the dissolution of a political party to which the member belongs; or



- (c) the merger of two or more parties of which the member's party forms part.
- (5) Despite clause (3), a member of Parliament or of a county assembly does not lose that membership unless the registered secretary-general of the political party concerned has given written notice to the Speaker, and to the member, to the effect that clause (3) applies to that member and—
  - (a) the member has not, within fourteen days of receiving the notice, petitioned the High Court for a declaration that clause (3) does not apply to the member; or
  - (b) the High Court has dismissed the member's petition for such a declaration.
- (6) The High Court shall decide any petition under clause (5)(b) within ninety days.
- (7) A member of Parliament or of a county assembly who is elected on the ticket of a political party shall be bound by the policies, ideology, philosophy and manifesto of the party.
- (8) A political party shall not punish a member of the party elected to Parliament or to an assembly of a county government for anything said by that member during proceedings in Parliament or assembly as the case may be.

### **Commissioner of Political Parties**

- 111.** (1) There is established the office of Commissioner of Political Parties.
- (2) The Commissioner is responsible for—
  - (a) the registration of political parties and their office holders;
  - (b) the management of the Political Parties Fund;
  - (c) the preparation and publication annually of a report on the audited financial statements of every registered political party.

### **Regulation of political parties**

- 112.** (1) An Act of Parliament shall provide for—
  - (a) the registration, regulation and deregistration of political parties and other related matters; and
  - (b) the resolution of disputes between members of a political party, between parties including parties forming part of a coalition, and between a party and the Commissioner of Political Parties.
- (2) On registration a political party becomes a body corporate.

### **Political Parties Fund**

- 113.** (1) There is established a Political Parties Fund.
- (2) The Fund shall be administered by the Commissioner of Political Parties.
- (3) The sources of the Fund are—
- (a) money provided by Parliament equal to not more than zero point three per cent of the national budget for the preceding financial year; and
  - (b) contributions to the Fund from any other lawful source.
- (4) A party shall not be eligible for financial support from the Fund if more than two thirds of its registered national office holders are of the same gender.
- (5) Parliament shall by an Act -
- (a) regulate the Fund including, despite clause (3), the sources from which the Fund may receive contributions;
  - (b) regulate the application of the Fund and require that, in the allocation of funds to political parties, account is taken of the number of women and members of marginalised groups elected through the party; and
  - (c) provide for the accountability, including financial accountability, of political parties that receive funds.

### **Application of the Fund**

- 114.** Parliament shall by an Act provide for-
- (a) the regulation and application of the Fund; and
  - (b) for the accountability, including financial accountability of political parties generally.

### **Political parties and the media**

- 115.** 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; and
  - (b) regulates freedom to broadcast in order to ensure fair election campaigning.

## CHAPTER NINE

### THE LEGISLATURE

#### Part 1—Establishment and role of Parliament

##### Establishment of Parliament

**116.** There is established a Parliament of Kenya, which shall consist of the Senate and the National Assembly.

##### Role of Parliament

**117.** (1) The legislative authority of the Republic at the national level is vested in, and exercised by, Parliament.

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

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

(4) No person or body other than Parliament shall have the power to make law in Kenya except where Parliament assigns its legislative authority under this Constitution or by legislation.

##### Role of Senate

**118** The principal roles of the Senate are to –

(a) provide an institution through which the interests of the devolved governments are represented in the enactment of legislation concerning counties and to protect the interests of the county governments;

(b) provide an institution for special representation of women, persons with disabilities, minorities, and youth;

(c) ensure equity in the distribution of national resources and opportunities among all parts and communities of Kenya;

(d) act as a house of review over matters specified in this Constitution;

(e) approve appointments, when required by this Constitution or legislation; and

- (f) determine the removal from office of the State President, or the Deputy State President, by impeachment.

### **Role of the National Assembly**

**119** The principal roles of the National Assembly is to—

- (a) enact legislation;
- (b) consider and pass amendments to this Constitution;
- (c) consider and approve treaties and international agreements;
- (d) approve appointments, when required by this Constitution or legislation;
- (e) scrutinize and maintain oversight of actions of State organs;
- (f) review the conduct in office of the State President, the Deputy State President and other State officers and initiate the process of removing them from office;
- (g) deliberate on and resolve issues of concern to the people;
- (h) appropriate funds for expenditure by the national government and other national State organs;
- (i) approve the sharing of revenue among the national and county governments; and
- (j) approve declarations of war and extensions of states of emergency.

## **Part 2—Composition and membership of Parliament**

### **Membership of the Senate**

**120.** (1) The Senate shall consist of—

- (a) members elected one each by the counties;
- (b) members elected on the basis of proportional representation in accordance with Article 108 to represent-
  - (i) women,
  - (ii) persons with disabilities, and
  - (iii) the youth;
- (c) the Speaker, who shall be an *ex officio* member.

- (2) The members elected under clause (1) (b) shall comprise such number of persons as shall be required to result in the following proportions in the total membership of the Senate-
  - (a) at least one third being women;
  - (b) at least five percent being persons with disabilities; and
  - (c) at least five percent being the youth.
- (3) Upon election, all the senators who are registered as voters in a particular county shall collectively constitute a single delegation for the purposes of Article 142(4)(a).
- (4) Not more than two thirds of the members representing the groups referred to in clause (1) (b) (ii) and (iii) shall be of the same gender.
- (5) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1)(a).

### **Membership of the National Assembly**

**121.** (1) The National Assembly shall consist of—

- (a) members elected one each by the constituencies as may be provided by legislation;
  - (b) women elected one each by the counties, each county comprising a single member constituency;
  - (c) members elected on the basis of proportional representation in accordance with Article 108 to represent-
    - (i) women,
    - (ii) persons with disabilities, and
    - (iii) marginalized communities, marginalized groups, the youth and workers
  - (d) the Speaker, who shall be an *ex officio* member.
- (2) The members elected under clause (1) (c) shall comprise such number of persons as shall be required to result in the following proportions in the total membership of the National Assembly-
- (a) at least one third being women;
  - (b) at least five percent being persons with disabilities; and
  - (c) at least five percent being persons falling in the category of marginalized communities, marginalized groups, the youth or workers.

- (3) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1) (a).
- (4) Not more than two thirds of the members referred to in clause (1) (b) (ii) and (iii) shall be of the same gender.

### **Qualifications and disqualifications for election as member**

- 122.** (1) Unless disqualified under clause (2), a person is eligible for election as 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 by an Act of Parliament;
  - (d) except for a candidate for election under Articles 120 (1)(b) and 121 (1)(c), is nominated by a political party; or
  - (e) is an independent candidate, supported-
    - (i) in the case of election to the Senate, at least two thousand registered voters in the county;
    - (ii) in the case of election to the National Assembly, by at least one thousand registered voters in the constituency;
    - (iii) in the case of election to the county assembly five hundred voters registered in the ward.
- (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 a member of a county assembly;
  - (c) is of unsound mind;
  - (d) is an undischarged bankrupt;
  - (e) is serving a sentence of imprisonment of at least six months; 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 Chapter Seven.
- (3) A person is not disqualified under clause (2) unless the procedures of appeal or review have been exhausted, neglected or waived.

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**Promotion of representation of marginalized groups**

- 123.** Parliament shall enact legislation to promote the representation in Parliament of—
- (a) women;
  - (b) persons with disabilities;
  - (c) youth;
  - (d) ethnic and other minorities; and
  - (e) marginalized communities.

**Election of members of Parliament**

- 124.** (1) Subject to Article 176(8), a general election of members of Parliament shall be held on the Tuesday immediately preceding the twenty-eight days before the expiry of the term of Parliament.
- (2) Whenever a vacancy occurs in the office of a member of the Senate elected under Article 120(1) (b) or of the National Assembly elected under Article 121 (1) (c) the respective Speaker shall, within twenty-one days of the occurrence of the vacancy, give notice in writing of the vacancy to—
- (a) the Independent Electoral and Boundaries Commission; and
  - (b) the political party on whose party list the member was elected.
- (3) A vacancy referred to in clause (4) shall, subject to clause (7), be filled in such manner as legislation may prescribe within twenty-one days of the notification by the respective Speaker.
- (4) Whenever a vacancy occurs in the office of a member of the Senate elected under Article 120 (1) (a), or of the National Assembly elected under Article 121 (1) (a) or (b), other than that of a Speaker—
- (a) the respective Speaker shall, within twenty-one days of the occurrence of the vacancy, give notice in writing of the vacancy to the Independent Electoral and Boundaries Commission; and
  - (b) a by-election shall, subject to clause (5), be held within ninety days of the occurrence of the vacancy.
- (5) A vacancy referred to in clause (4) shall not be filled within three months before the holding of a general election.
- (6) For the purposes of elections to Parliament, Nairobi shall be deemed to comprise four counties each of which shall be a single member constituency.

### **Vacation of office of member of Parliament**

- 125.** The office of a member of Parliament becomes vacant—
- (a) if the member dies;
  - (b) if the member is absent from eight sittings of the relevant House without permission, in writing, of the relevant Speaker during any period when the House is sitting, and is unable to offer a satisfactory explanation for the absence to the relevant committee;
  - (c) if the member is removed from office under legislation made under Article 96;
  - (d) if the member resigns or is expelled from a political party in terms of Article 110;
  - (e) if, having been elected to Parliament as an independent candidate, the member joins a political party;
  - (f) upon expiry of the term of the relevant House.

### **Right of recall**

- 126.** (1) The electorate under Articles 120 and 121 have the right to recall their directly elected member of Parliament before the expiry of the term of the relevant House of Parliament.
- (2) Parliament shall enact legislation to provide for the grounds on which a member may be recalled and the procedure to be followed.

### **Determination of questions of membership**

- 127.**(1) The High Court shall hear and determine any question whether—
- (a) a person has been validly elected as a member of Parliament; or
  - (b) the seat of a 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 3—Offices of Parliament**

### **Speakers and Deputy Speakers of Parliament**

- 128.** (1) There shall be—
- (a) a Speaker for each House of Parliament who shall be elected by that House 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 for each House of Parliament who shall be elected by that House, in accordance with the Standing Orders, from among the members of that House.

(2) The office of Speaker or Deputy Speaker shall become vacant—

- (a) when a new House of Parliament first meets after an election;
- (b) if the office holder becomes disqualified under Article 122(2);
- (c) if the relevant House so resolves by resolution supported by the votes of not fewer than two-thirds of its members;
- (d) if the office holder dies; or
- (e) if the office holder resigns from office in a letter addressed to the relevant House.

### **Presiding in Parliament**

**129.** At any sitting of a House of Parliament—

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

### **Leader of the Official Opposition**

**130.** (1) There shall be a leader of the Official Opposition.

- (2) Members of the National Assembly from the largest parliamentary party or coalition of parliamentary parties with the highest number of seats in the Assembly, not forming the Government, shall elect from among themselves the Leader of the Official Opposition.
- (3) In relation to the conduct of business in the National Assembly, the Leader of the Official Opposition shall—
  - (a) rank in precedence immediately following the State President, the Prime Minister and the Speaker; and
  - (b) have the right of second reply, after the Prime Minister, to an address to the National Assembly by the State President.
- (4) The Standing Orders of the National Assembly shall provide for the effective participation in the National Assembly of the Leader of the Official Opposition.

- (5) The Leader of the Official Opposition shall have the right of participation at all official State functions.

### **Clerks and staff of Parliament**

- 131.** (1) There shall be a Clerk for each House of Parliament who shall be appointed by the Parliamentary Service Commission with the approval of the relevant House.
- (2) The offices of the Clerks and offices of members of the staff of the Clerks shall be offices in the Parliamentary service.

## **Part 4—Legislation and Procedure in Parliament**

### **Exercise of legislative powers**

- 132.** (1) Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the State President.
- (2) Any Bill may originate in the National Assembly.
- (3) A Bill concerning devolved government may originate in the Senate but a money Bill may originate only in the National Assembly.
- (4) Any member or committee of Parliament may introduce a Bill but a money Bill may be introduced only by a Minister with the recommendation of Cabinet.

### **Bills not concerning devolved government**

- 133.** (1) The Speaker of the National Assembly shall refer a draft Bill that does not concern devolved government to the Senate for review seven days before it is considered by the National Assembly.
- (2) The Senate may consider the Bill and, within seven days of receiving it, submit any recommendations on the Bill to the National Assembly.
- (3) The National Assembly or a committee of the Assembly shall consider the recommendations of the Senate and the Assembly may either resolve to submit the Bill without changes to the State President for assent or pass a revised version of the Bill and submit that version to the State President for assent.

### **Bills concerning devolved government**

- 134.** (1) When a Bill concerning devolved government has been passed by one House of Parliament, the Speaker of that House shall refer it to the Speaker of the other House

- (2) If both Houses pass the Bill in the same form, the Speaker of the House in which the Bill originated shall within seven days refer the Bill to the State President for assent.
- (3) If one House passes the Bill and the other passes it in an amended form, and if the Bill is not passed as amended, the Speakers of both Houses shall appoint a mediation committee consisting of equal numbers of members of each House to attempt to develop a version of the Bill that both Houses will pass.
- (4) If the mediation committee agrees on a version of the Bill, each House shall vote to approve or reject that version of the Bill.
- (5) If both Houses approve the version of the Bill proposed by the mediation committee, the Speaker of the National Assembly shall within seven days refer the Bill to the State President for assent.
- (6) If the mediation committee fails to agree on a version of the Bill within thirty days, or if a version proposed by the committee is rejected by either House, the Bill is defeated.
- (7) This Article does not apply to money Bills.

### **Money Bills**

- 135.** (1) A money Bill may be introduced only by a Minister on the recommendation of the Cabinet.
- (2) “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 a public fund or the variation or repeal of any of those charges;
  - (c) the appropriation of public money, receipt, custody, investment or issue of public money;
  - (d) the raising or guaranteeing of any loan or its repayment; or
  - (e) 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 a county.
- (4) Despite clause (2), the Bill referred to in Article 249 is not a money bill.
- (5) If, in the opinion of the Speaker, a motion makes provision for a matter specified in clause (2), the House may proceed only on the recommendation of the Cabinet signified by a Minister.

- (6) A money bill may not deal with any matter other than those listed in clause (2).

### **Presidential assent and referral**

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

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

- 137.** (1) An Act passed by Parliament and assented to by the State 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 stipulates the date on which it will come into force.
- (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**

- 138.** (1) Every person has a right to petition Parliament to enact, amend or repeal any legislation.
- (2) Parliament shall make provision for the procedure for the exercise of this right.

### **Quorum**

- 139.** The quorum of each House shall be one quarter of all members of that House.

### **Official languages of Parliament**

- 140.** (1) The official languages of Parliament shall be Kiswahili, English and sign language and the business of Parliament may be conducted in English, Kiswahili and sign language.
- (2) In case of a conflict between different language versions of an enactment, the version signed by the State President shall prevail.

### **Voting in Parliament**

- 141.** (1) Except as otherwise provided in this Constitution, any question proposed for decision in Parliament shall be determined by a majority of the members in each House, present and voting.
- (2) On a question proposed for decision in either House—
- (a) the Speaker shall have no vote; and
  - (b) in the case of a tie, the question shall be lost.
- (3) A member shall not vote on any question on which the member has a pecuniary interest.

### **Decisions of Senate**

- 142.** (1) When a Bill is, in the opinion of the Speaker of the Senate, a Bill affecting counties, it shall bear a certificate of the Speaker of the Senate that it is a Bill affecting counties.
- (2) When the Senate is to vote on any question, the Speaker shall rule on whether the question affects or does not affect the counties.

- (3) When the Senate votes on a question not affecting counties each senator has one vote.
- (4) In the Senate, except where this Constitution provides otherwise, in matters affecting the counties—
  - (a) each county shall have one vote to be cast on behalf of the county by the member elected under Article 120 (a), who shall be the head of the county delegation or, in the absence of the head of the delegation, by another member of the delegation acting on behalf of the head of the delegation; and
  - (b) all questions shall be determined by a two-thirds majority of those delegations.
- (5) National legislation which is enacted in accordance with the procedure established for the passing of Bills affecting counties, shall provide for a uniform procedure in terms of which the delegations in the Senate shall consult for the purposes of clause (4)(a).
- (6) A member of the Cabinet or a Deputy Minister may attend and speak in the Senate, but shall not vote on any matter in the Senate.

### **Regulation of procedure**

**143.** (1) Each House of Parliament—

- (a) may establish committees; and
  - (b) shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.
- (2) Parliament may establish joint committees consisting of members of both Houses and may jointly regulate the procedure of those committees.
  - (3) The proceedings of either House are not invalid by reason only of—
    - (a) a vacancy in its membership; or
    - (b) the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House.

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

**144.** In the exercise of its functions—

- (a) either House and any of its committees, may call any person holding public office or any private individual to submit memoranda or appear before it to give evidence;

- (b) a committee of either House may co-opt any member of Parliament or employ any person to assist it in the discharge of its functions; and
- (c) either House and any of its committees 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**

**145.** (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 participation and involvement in the legislative and other business of Parliament and its committees.
- (2) Parliament may not exclude the public, or any media, from any sitting unless in exceptional circumstances the relevant Speaker has determined that there are justifiable reasons for doing so.

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

**146.**(1) There shall be freedom of speech and debate in Parliament.

- (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 5 – Miscellaneous**

### **Seat of Parliament**

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

expiry of the term of the previous House, for the first sitting of the new House.

### **Term of Parliament**

**148.**(1) The term of each House of Parliament is five years from the date of its first sitting after an election unless, in the case of the National Assembly, it is earlier dissolved under Article 176(8).

(2) At any time when Kenya is at war, Parliament may from time to time by resolution supported in each House by the votes of not less than two thirds of all the members of the House, extend the term of Parliament by not more than six months at a time.

(3) The term of Parliament shall not be extended under clause (2)—

(a) for a total of more than twelve months; or

(b) before its expiry after a general election held in terms of Article 124(1).

### **Parliamentary Service Commission**

**149.** (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 equally from both Houses by the party or coalition of parties forming the national government, of which at least two shall be women; and

(ii) three shall be nominated by the parties not forming the national government, at least one of whom shall be nominated from each House and at least one of whom shall be a woman; and

(c) one man and one woman appointed by Parliament from among persons who are not members of Parliament and are experienced in public affairs.

(2) The Commission shall appoint its secretary.

(3) A member of the Commission shall vacate office—

(a) if that person is a member of Parliament—

(i) upon expiry of the term of the House of which the person is a member;



- (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.
- (4) Despite clause (3), upon dissolution of a House of Parliament, a member of the Commission, appointed under clause (1)(b) shall continue in office until a new member has been appointed in their place by the next House.
- (5) The Commission is responsible for—
- (a) providing services and facilities to ensure the efficient and effective functioning of Parliament;
  - (b) constituting offices in the parliamentary service, and appointing and supervising office holders;
  - (c) preparing annual estimates of expenditure of the 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.

## **CHAPTER TEN**

### **THE EXECUTIVE**

#### **Part 1—Principles and Structure of the National Executive**

##### **Principles of executive authority**

**150.** (1) Executive authority derives from the people of Kenya and shall be exercised in accordance with this Constitution.

(2) Executive authority is to be exercised—

- (a) in a manner compatible with the principle of service to the people of Kenya; and

(b) for their well-being and benefit.

### **The National Executive**

- 151.** (1) The national executive of the Republic shall comprise the State President, the Deputy State President, the Prime Minister and the rest of the Cabinet.
- (2) The composition of the national executive shall reflect the regional and ethnic diversity of the people of Kenya.

## **Part 2—The State President and Deputy State President**

### **Authority of the State President**

- 152.** (1) There shall be a State President of the Republic who shall be Head of State.
- (2) The State President shall be—
- (a) the Commander-in-Chief of the Kenya Defence Forces; and
  - (b) the chairperson of the National Security Council.
- (3) The State President is a symbol of national unity.
- (4) The State President shall—
- (a) respect, uphold and safeguard this Constitution;
  - (b) safeguard the sovereignty of the Republic;
  - (c) promote and enhance the unity of the nation;
  - (d) promote respect for the diversity of the people and communities of Kenya; and
  - (e) ensure the protection of human rights and fundamental freedoms and the rule of law.
- (5) The State President shall not hold any other State or public office.

### **State President to be fully informed on conduct of government**

- 153.** The Prime Minister shall keep the State President fully and regularly informed concerning the general conduct of government and shall furnish the State President with any information that the State President may request with respect to any matter relating to government.

## State functions of the State President

154. (1) The State President shall—

- (a) address the opening of each newly elected House of Parliament;
- (b) address a special sitting of Parliament once every year;
- (c) 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 values, principles and goals set out in Chapter Three; and
  - (ii) publish in the Gazette, the details of the measures and progress referred to in sub-paragraph (i).

(2) The State President, in accordance with this Constitution and the law, shall appoint and dismiss—

- (a) the Cabinet, including the Prime Minister, the Deputy Prime Minister and the Ministers;
- (b) the Deputy Ministers;
- (c) the judges of the superior courts; and
- (d) any other State or public officer whom this Constitution requires the State President to appoint.

(3) The State President may—

- (a) appoint high commissioners, ambassadors, and diplomatic and consular representatives with the approval of the National Assembly; and
- (b) receive foreign diplomatic and consular representatives; and
- (c) confer honours in the name of the people and the Republic.

(4) With the approval of Parliament, the State President may sign instruments of ratification indicating consent of the Republic to be bound by treaties and international agreements.

(5) The State President shall represent the Republic in international meetings of Heads of State.

(6) With the approval of the Cabinet, the State President may—

- (a) subject to Article 70, declare a state of emergency;
- (b) declare war.

(7) The State President—

- (a) may appoint commissions of inquiry; and
  - (b) shall cause the report of any commission of inquiry so appointed to be laid before Parliament within twenty-one days of the receipt of the report by the State President.
- (8) The State President shall liaise with the Prime Minister to ensure that—
- (a) the international obligations of the Republic are fulfilled through the actions of the relevant Ministers; and
  - (b) the courts, Commissions and independent offices and State officers are able to secure their independence, impartiality, dignity, accessibility and effectiveness as contemplated in this Constitution.
- (9) Once every year, the State President shall submit a report to Parliament on the progress made in fulfilling the international obligations of the Republic.

### **Legislative functions of the State President**

- 155.**(1) The State President may propose legislation and refer it to the Cabinet with a request that the Cabinet approve its introduction into the National Assembly as a government Bill.
- (2) When presented with a Bill passed by Parliament, the State President shall act in accordance with Article 136.
- (3) The State President shall ensure that public participation requirements concerning the enactment of Acts have been satisfied by Parliament.

### **Exercise of presidential powers during temporary incumbency**

- 156.** (1 ) A person who holds the office of State President or who is authorized in terms of this Constitution to exercise the powers of the State President —
- (a) during the period commencing on the date of the first vote in a presidential election, and ending when the newly elected State President assumes office; or
  - (b) while the State President is absent or incapacitated,
- may not exercise the powers of the State President set out in clause (2).
- (2) The powers are—
- (a) the nomination or appointment of the judges of the superior courts;
  - (b) acting on a complaint leading to the removal of a judge;

- (c) the nomination or appointment of any other public officer whom this Constitution or legislation requires the State President to appoint;
- (d) the appointment or dismissal of a high commissioner, ambassador, or diplomatic or consular representative;
- (e) the power of mercy; and
- (f) the authority to confer honours in the name of the people and Republic.

### **Decisions of State President**

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

### **Election of the State President**

**158.** (1) The election of the State President shall be by direct adult suffrage through a secret ballot and shall be conducted in accordance with this Constitution and any Act of Parliament regulating presidential elections.

(2) An election of the State President shall be held—

- (a) at the same time as an election for members of Parliament; or
- (b) in the circumstances contemplated by Article 168.

### **Qualifications and disqualifications for election as State President**

**159.** (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 the National Assembly; and
- (c) is nominated by not fewer than ten thousand voters from each of a majority of the counties.

(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 as a State officer or is a public officer; or
- (c) is a member of Parliament

(3) Clause (2)(b) shall not apply to—

- (a) the State President; and
- (b) the Deputy State President.

### **Procedure at presidential election**

- 160.** (1) If only one candidate for State President is nominated, that candidate shall be declared elected as State President.
- (2) If two or more candidates for State 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 158 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 Independent Electoral and Boundaries Commission shall tally and verify the count and declare the result.
- (4) The candidate for State President who receives—
- (a) more than half of all the votes cast in the election; and
  - (b) at least twenty per cent of the votes cast in at least sixty per cent of the counties,
- shall be declared elected as State President.
- (5) If no candidate is elected, a fresh election shall be held within thirty days of the previous election and in that fresh election, the only candidates shall be—
- (a) the candidate, or the candidates, who received the greatest number of votes; and
  - (b) the candidate, or the candidates, who received the second greatest number of votes.
- (6) Where more than one candidate receives the greatest number of votes, clause (5)(b) shall not apply and the only candidates in the fresh election shall be those contemplated in clause (5)(a).
- (7) The candidate who receives the greater number or the greatest number of votes, as the case may be, in the fresh election shall be declared elected as State President.
- (8) A presidential election shall be cancelled and a new election held if—
- (a) no person has been nominated as a candidate 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 have been entitled to be declared elected as State President, dies after the taking of the poll has begun but before the candidate is declared elected as State President.
- (9) A new presidential election under clause (5) shall be held within sixty days of the date set for the previous presidential election.
- (10) Within seven days of the presidential election, the chairperson of the Independent Electoral and Boundaries Commission shall—
- (a) declare the result of the election; and
  - (b) deliver a written notification of the result to the Chief Justice and the incumbent State President.

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

- 161.** (1) A person may file a petition in the Supreme Court to challenge the election of the State President-elect.
- (2) The petition shall be filed within seven days after the date of the declaration of the results of the presidential election.
- (3) The Supreme Court shall, within fourteen days of the filing, hear and determine the petition and its decision shall be final.
- (4) If the Supreme Court determines the election of the State President-elect to be invalid a fresh election shall be held within sixty days of the determination.

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

- 162.** (1) The swearing in of the State President-elect shall be in public before the Chief Justice, or, in the absence of the Chief Justice, the Deputy Chief Justice.
- (2) The State President-elect shall be sworn in on the first Tuesday following the fourteenth day after the date of the declaration of the result of the presidential election unless the result is challenged under Article 161.
- (3) If the result of a presidential election is challenged under Article 161 but the Supreme Court upholds the result of the election, the State President-elect shall be sworn in on the first Tuesday following the seventh day after the Court's determination.

- (4) The State President-elect assumes office by taking and subscribing—
- (a) the oath or affirmation of allegiance; and
  - (b) the oath or affirmation for the execution of the functions of office,
- as prescribed in the Third Schedule.

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

- 163.** (1) The State President shall hold office for a term not exceeding five years beginning with the date of assumption of office.
- (2) For the purposes of clause (1), the period that the State President serves as State President after an election of a new State President and before the swearing in of the new State President is not part of the term of the outgoing State President.
- (3) A person shall not hold office as State President for more than an aggregate of ten years.

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

- 164.** (1) Criminal proceedings shall not be instituted or continued in any court against the State President or a person performing functions of that office, during their tenure of office.
- (2) Civil proceedings shall not be instituted in any court against the State President or the person performing 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 in 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 State President shall not be taken into account in calculating the period of time prescribed by that law.
- (4) The immunity of the State President under this Article shall not extend to a crime for which the State President may be prosecuted under any treaty to which Kenya is party and which prohibits such immunity.

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

- 165.** (1) A member of the National Assembly, supported by at least a quarter of all the members may, at any sitting of the Assembly move a motion for the investigation of the State President's physical or mental capacity to perform the functions of office.



- (2) If it is resolved by more than half of all the members of the National Assembly that the question of the physical or mental capacity of the State President to perform the functions of the office ought to be investigated, the Speaker shall within two days of the resolution inform the Chief Justice of that resolution.
- (3) Where the National Assembly resolves that the question of the physical or mental capacity of the State President to perform the functions of the office be investigated, the State President shall, until—
  - (a) another person assumes the office of State President; or
  - (b) the tribunal appointed under clause (4) or (6) reports that the State President is incapable of performing the functions of the office, whichever is earlier,continue to perform the functions of the office
- (4) The Chief Justice shall, within seven days of receiving notice of the resolution from the Speaker, appoint a tribunal of five persons of whom—
  - (a) three shall be persons qualified to practise medicine under the laws of Kenya;
  - (b) one shall be an advocate of the High Court; and
  - (c) one shall be a person nominated by the State President.
- (5) If the State President is unable to nominate the fifth person, that person shall be nominated by—
  - (i) a member of the family of the State President; or
  - (ii) where no such member is willing or able to make the nomination, by a close relative of the State President.
- (6) If the Chief Justice does not appoint a tribunal within the period specified in clause (3), the Speaker of the National Assembly shall appoint the tribunal within seven days.
- (7) The tribunal shall inquire into the matter and, within fourteen days of the appointment, report—
  - (a) to the Chief Justice and to the Speaker of the National Assembly if it was appointed by the Chief Justice; and
  - (b) to the Speaker of the National Assembly if it was appointed by the Speaker.
- (8) The Speaker shall table the report of the tribunal before the National Assembly within seven days of receiving it.
- (9) The report of the tribunal shall be final and not subject to appeal and if the tribunal reports that the State President is capable of performing the functions of the office, the Speaker of the National Assembly shall so announce in the National Assembly.

- (10) If the tribunal reports that the State President is incapable of performing the functions of the office, Parliament shall, if supported by the votes of more than half of all the members of the National Assembly, ratify the decision of the tribunal and, on the ratification, the State President shall cease to hold office.

### **Removal of State President by impeachment**

- 166.** (1) A member of the National Assembly, supported by at least a third of all the members, may, at any sitting of the National Assembly, propose a motion for the impeachment of the State President—
- (a) on the ground of a serious violation of a provision of this Constitution or of any other law;
  - (b) because there are serious reasons for believing that the State President has committed a crime under national or international law; or
  - (c) for gross misconduct.
- (2) If at least two-thirds of all the members of the National Assembly approve a motion under clause (1), the Speaker of the Senate shall within seven days convene a meeting of the Senate to hear charges against the State President.
  - (3) Upon hearing the charges under clause (2), the Senate may, by resolution, appoint a special committee comprising eleven of its members to investigate the matter.
  - (4) The special committee shall investigate the matter and shall, within ten days, report to the Senate whether it finds the particulars of the allegations against the State President to have been substantiated.
  - (5) The State 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 State 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 State President have been substantiated, the Senate shall, after according the State President an opportunity to be heard, vote on the impeachment charges and the State President shall cease to hold office if at least two-thirds of all the members vote to uphold the impeachment charges.

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**Vacancy in the office of State President**

- 167.**(1) The office of State President shall become vacant if the holder of the office—
- (a) dies;
  - (b) resigns in writing addressed to the Speaker of the National Assembly; or
  - (c) is removed from office under this Constitution.
- (2) Where a vacancy occurs in the office of State President, the Deputy State President shall assume office as State President and—
- (a) where the vacancy has occurred with less than two and a half years left before the date of the next presidential election under Article 158, the Deputy State President shall assume office as State President for the remainder of the term of the State President;
  - (b) where the vacancy has occurred with more than two and a half years left before the date of the next election under Article 158, a fresh election for the office of State President shall be held within sixty days of the office of State President falling vacant.
- (3) Where a vacancy occurs in the office of State President and that of Deputy State President or where the Deputy State President is unable to act, the Speaker of the National Assembly shall act as State President or, if for any reason the Speaker of the National Assembly is unable to act, the Speaker of the Senate shall act as State President.
- (4) Where a vacancy occurs in the circumstances contemplated by clause (3), an election to the office of State President shall be held within sixty days of a Speaker assuming the office of State President.
- (5) A person who assumes the office of State President under this Article shall, unless otherwise removed from office under this Constitution, act in that office until a fresh election is held and the newly elected State President assumes office.

**Presidential power of mercy**

- 168.** (1) There shall be a power of mercy which shall be exercised on the petition of any person by the State President in accordance with the advice of the Advisory Committee referred to in clause (2).
- (2) 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 correctional services; and

- (c) at least five other members, not being persons in public service or holding state office, as may be prescribed by an Act of Parliament.
- (3) An Act of Parliament shall provide for—
  - (a) the tenure of the members of the Advisory Committee;
  - (b) the procedure of the Advisory Committee; and
  - (c) criteria that shall be applied by the Advisory Committee in formulating its advice.
- (4) In exercise of the powers conferred by clause (1), the State President may—
  - (a) grant to a person convicted of an offence a pardon, either free or subject to conditions;
  - (b) postpone, either for a specified period or indefinitely, the carrying out of a punishment;
  - (c) substitute a less severe form of punishment for a punishment; or
  - (d) remit the whole or part of a punishment.
- (5) 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 mercy by the State President.

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

- 169.** (1) There shall be a Deputy State President of the Republic.
- (2) Each candidate in a presidential election shall nominate a person, duly qualified for election as State President, as a candidate for Deputy State President.
  - (3) The Independent Electoral and Boundaries Commission shall not conduct a separate election for the Deputy State President but shall declare the candidate nominated by the person who is elected as the State President to be elected as the Deputy State President.
  - (4) The swearing in of the Deputy State President-elect shall be before the Chief Justice or in the absence of the Chief Justice, the Deputy Chief Justice and in public.
  - (5) The Deputy State President-elect assumes office by taking and subscribing—
    - (a) the oath or affirmation of allegiance; and

- (b) the oath or affirmation for the execution of the functions of office,  
as prescribed in the Third Schedule.
- (6) The term of office of the Deputy State President shall run from the date the State President assumes office and shall terminate—
- (a) when the person next elected State President assumes office;
  - (b) upon the Deputy State President assuming the office of State President; or
  - (c) on resignation, death or removal from office.
- (7) The Deputy State President may, at any time, resign from office by notice in writing addressed to the State 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) A person shall not hold office as Deputy State President for more than an aggregate of ten years.

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

- 170.** (1) If there is a vacancy in the office of Deputy State President, the State President shall within fourteen days of the vacancy nominate a person for approval by the National Assembly to fill the vacancy.
- (2) The National Assembly shall vote on the nomination within sixty days.

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

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

#### **Death before assuming office**

- 172.** (1) If a State President-elect dies before assuming office, the Deputy State President-elect shall act as State President and an election to the office of State President shall be held within sixty days of the death of the State President.

- (2) If the Deputy State President-elect dies before assuming office, the office of the Deputy State President shall be declared vacant on the assumption of office by the person declared elected as the State President.
- (3) If both the persons declared elected as the State President and the Deputy State President die before assuming office, the Speaker of the National Assembly shall act as State President and a fresh presidential election shall be conducted within sixty days of the second death.

### **Removal of Deputy State President**

- 173.** (1) The Deputy State President may be removed from office—
- (a) on the ground of physical or mental incapacity to perform the functions of office;
  - (b) on impeachment—
    - (i) on the ground of a serious violation of a provision of this Constitution and any other law;
    - (ii) because there are serious reasons to believe that the Deputy State President has committed a crime under national or international law; or
    - (iii) for gross misconduct.
- (2) The provisions of Articles 165 and 166 relating to the removal of the State President shall, with the necessary alterations, apply to the removal of the Deputy State President.

### **Remuneration and benefits of State President, Deputy State President and Prime Minister**

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

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**Part 3—The Prime Minister and the Cabinet**

**Prime Minister**

- 175.** (1) There shall be a Prime Minister of the Republic, who shall be the Head of Government.
- (2) The Prime Minister –
- (a) shall direct and co-ordinate the work of the Ministries; and
  - (b) shall direct the preparation of legislation; and
  - (c) is responsible to Parliament.
- (3) The Prime Minister shall preside at meetings of the Cabinet.
- (4) In the absence of the Prime Minister, the Deputy Prime Minister shall perform the functions of the Prime Minister.
- (5) The Deputy Prime Minister, when performing the functions of the Prime Minister under clause (4) shall not exercise a power of the Prime Minister in relation to—
- (a) nomination or recommendation for appointment to a public office; or
  - (b) the allocation of functions to or the transfer of functions from the Deputy Prime Minister, a Minister or a Deputy Minister.

**Appointment of Prime Minister**

- 176.** (1) Within seven days following the summoning of the National Assembly after a general 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 State President shall appoint as Prime Minister—
- (a) the member of the National Assembly who is the leader of the political party or coalition of parties, with the highest number of seats in the Assembly; or
  - (b) if the leader of the party or coalition of parties with the highest number of seats in the Assembly has been unable to command the confidence of the National Assembly, the member of the National Assembly who is the leader of the political party or coalition of parties with the second highest number of seats in the Assembly.
- (2) Each party participating in a general election of the National Assembly shall designate a person as the leader of that party for purposes of clause (1).
- (3) Where neither of the persons contemplated in clause (1)(a) or (b) has been able to command or retain the confidence of the National Assembly, the

State President shall propose to the National Assembly the name of a member who, in the State President's opinion, may be able to command the confidence of the National Assembly.

- (4) On receiving a proposal from the State President under clause (3), the Speaker shall summon the National Assembly and introduce the proposal from the State President.
- (5) Within seven days of the Speaker receiving a proposal from the State President, the Speaker shall call a vote in the National Assembly to confirm the appointment of the person proposed by the State President.
- (6) A vote contemplated in clause (5) passes if it is supported by more than half of all the members of the National Assembly.
- (7) If the National Assembly fails to confirm the appointment of the person proposed by the State President, the National Assembly shall by a vote supported by a majority of members present and voting nominate a member of the National Assembly for appointment as the Prime Minister.
- (8) If, within sixty days of the State President first appointing a person to be Prime Minister, no person has been confirmed or nominated for appointment, the National Assembly shall stand dissolved and the Independent Electoral and Boundaries Commission shall conduct a fresh general election for the National Assembly.

### **Term of office**

- 177.** (1) A person whose appointment as Prime Minister has been confirmed, or who has been nominated for appointment, by the National Assembly shall assume the office by taking and subscribing the oath or affirmation for the due execution of the functions of the office prescribed in the Third 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.
- (3) A person shall not serve as Prime Minister for an aggregate of more than ten years.

### **Resignation of Prime Minister**

- 178.** (1) The Prime Minister may resign from office by delivering a written notice of resignation to the State President.
- (2) The resignation of the Prime Minister takes effect—
- (a) at noon on the day after it is delivered;



- (b) if the notice specifies a date on which resignation takes effect, at noon on that date.

## **Cabinet and Deputy Ministers**

- 179.** (1) The Cabinet shall consist of—
- (a) the Prime Minister;
  - (b) the Deputy Prime Minister;
  - (c) not fewer than fifteen and not more than twenty other Ministers; and
  - (d) the Attorney-General, who shall be an *ex-officio* member.
- (2) The Prime Minister shall present to the State President for appointment—
- (a) a Deputy Prime Minister from among the elected members of the National Assembly;
  - (b) subject to clause (3), not fewer than fifteen and not more than twenty Ministers;
  - (c) not fewer than fifteen and not more than twenty Deputy Ministers from among elected members of the National Assembly.
- (3) The Prime Minister may, in presenting Ministers for appointment under clause (2)(b), include the names of not more than ten persons who are not members of the National Assembly but who are qualified for election to the National Assembly.
- (4) A member of the Senate is not eligible for appointment to any office under clause (2).
- (5) The persons presented under clause (3) shall be persons—
- (a) who possess such skills or qualifications as are relevant to the Ministry to which they are proposed to be appointed; and
  - (b) who must not have stood unsuccessfully for election to the National Assembly or to a county assembly at an election immediately preceding the presentation.
- (6) In presenting persons for appointment under this Article the Prime Minister shall ensure that the composition of the Cabinet reflects the diversity of the people of Kenya.

- (7) Persons appointed under clause (2) may attend and speak in Parliament but may not vote or be entitled to any remuneration or other benefit on account of such attendance.
- (8) A person appointed as 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 Third Schedule before the Speakers and members of Parliament;
  - (b) may resign by delivering a written notice of resignation to the State President through the Prime Minister; 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 a general election for the National Assembly assumes office.
- (9) The resignation referred to in clause (8) 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 to the State President, in any other case.
- (10) Whenever the Prime Minister, a Deputy Prime Minister or any other Minister is charged with the responsibility of a Ministry, they shall exercise general direction and control over that Ministry.

### **Assignment of functions**

- 180.** (1) To the extent not inconsistent with any Act of Parliament, the Prime Minister shall assign responsibility for the implementation and administration of any Act of Parliament to—
- (a) the Deputy Prime Minister;
  - (b) a Cabinet Minister; or
  - (c) a Deputy Minister.
- (2) The Prime Minister may assign to the Deputy Prime Minister, a Minister or a Deputy Minister any power or function of another Cabinet Minister or Deputy Minister who is absent from office or temporarily unable to exercise that power or perform that function, but the Prime Minister shall not assign a power or function of the State President or Deputy State President.
- (3) A decision of the Prime Minister under clauses (2) and (3) shall be published in the Gazette.

- (4) The Prime Minister may invite any person to a Cabinet meeting if in the opinion of the Prime Minister a matter has arisen or is likely to arise at the meeting that requires the attendance and participation of that person.
- (5) A person invited to a Cabinet meeting under clause (5) shall be bound by the procedure and practice of the Cabinet but shall not be entitled to vote on any matter at the meeting.

### **Dismissal of Cabinet Ministers and Deputy Ministers**

- 181.** (1) The State President shall, on the recommendation of the Prime Minister, dismiss the Deputy Prime Minister, a Minister or a Deputy Minister.
- (2) If the National Assembly, by a resolution supported by the votes of more than half of all the members, passes a motion of no confidence in a member of the Cabinet (other than the Prime Minister) or in a Deputy Minister, and the member does not resign within three days of the passage of the motion, the State President shall dismiss that member or Deputy Minister.

### **Vote of no confidence in the Prime Minister**

- 182.** (1) A member of the National Assembly supported by at least a third of all the members may, propose a motion of no confidence in the Prime Minister.
- (2) If the National Assembly, by a resolution supported by the votes of more than half of all the members, passes a motion of no confidence in the Prime Minister, the Prime Minister shall submit to the Speaker of the National Assembly notice of the Prime Minister's resignation and that of the Deputy Prime Minister, the Cabinet Ministers and the Deputy Ministers.
- (3) If the Prime Minister does not submit the notice required by clause (2), within seven days of the passing of the resolution, the State President shall dismiss the Prime Minister, the Deputy Prime Minister, the Cabinet Ministers and the Deputy Ministers, and the relevant provisions of Article 176 shall apply regarding the appointment of a new Prime Minister.
- (4) The State President shall not dismiss the Prime Minister, the Deputy Prime Minister, a Cabinet Minister or a Deputy Minister in any circumstances, other than those contemplated in this Article and Article 181.
- (5) Despite a notice of resignation under clause (2) or dismissal of the Prime Minister, the deputy Prime Minister, the Ministers and the Deputy Minister under clause (3), the Prime Minister, the Deputy Prime Minister, the Ministers or the deputy ministers shall continue in office until a new Prime Minister assumes office.

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

- 183.** (1) The Cabinet shall meet at least once a month.
- (2) The quorum at a meeting of the Cabinet shall be half of all the members of the Cabinet.
- (3) A decision by the Cabinet shall be in writing and shall be communicated to the State President promptly.
- (4) A decision of the Cabinet is not valid, and shall not be implemented, unless it is signed by the Prime Minister.
- (5) Members of the Cabinet are accountable individually and collectively to Parliament for—
- (a) the exercise of their powers and the performance of their functions; and
  - (b) the implementation and administration of legislation assigned to them.
- (6) 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.
- (7) Each member of the Cabinet shall provide Parliament with full and regular reports concerning matters under their control.

**Secretary to the Cabinet**

- 184.** (1) There is established the office of Secretary to the Cabinet.
- (2) The office of Secretary to the Cabinet shall be an office in the public service.
- (3) The Secretary to the Cabinet—
- (a) shall be appointed by the State President acting on the recommendation of the Prime Minister; and
  - (b) shall be dismissed by the State President acting on the recommendation of the Prime Minister.
- (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 other functions as directed by the Cabinet.

- (5) The Secretary to the Cabinet may resign from office by giving notice in writing to the State President through the Prime Minister, and the notice takes effect on its receipt by the State 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 but may be re-appointed.

### **Principal Secretaries**

- 185.** (1) There is established the office of Principal Secretary which is an office in the public service.
- (2) Each Ministry shall be under the administration of a Principal Secretary.

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

**186.** A Principal Secretary—

- (a) shall be nominated by the Public Service Commission and appointed by the State President;
- (b) shall be dismissed by the State President acting on the recommendation of the Prime Minister; and
- (c) may resign from office by giving notice to the State President through the Prime Minister.

## **Part 4—Other offices**

### **Attorney-General**

- 187.** (1) There is established the office of Attorney-General.
- (2) The Attorney-General shall be appointed by the State President with the approval of the National Assembly.
  - (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 national government and 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 are specified in legislation;

- (b) representing the national government in court or any other legal proceedings to which the national government is a party, other than criminal proceedings; and
  - (c) drafting legislation, including subsidiary legislation, for the national government;
  - (d) performing such other functions as Parliament may by an Act give to the office.
- (5) 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 national government is not a party.
- (6) The Attorney-General shall promote, protect and uphold the rule of law and defend the public interest.
- (7) The powers of the Attorney-General may be exercised in person or by subordinate officers acting in accordance with general or special instructions.
- (8) The Attorney-General shall not be under the direction or control of any person or authority in the exercise of the functions of office.
- (9) The Attorney-General shall hold office for a term of eight years and shall not be eligible for re-appointment.

### **Director of Public Prosecutions**

- 188.** (1) There is established the office of Director of Public Prosecutions.
- (2) The Director of Public Prosecutions shall be appointed by the State President with the approval of the National Assembly.
  - (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 allegation 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), discontinued 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 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 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 eight years and shall not be eligible for re-appointment.

### **Public Defender**

- 189.** (1) There is established the office of Public Defender.
- (2) The Public Defender shall be appointed by the State President with the approval of the National Assembly.
  - (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 legislation 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 eight years and shall not be eligible for re-appointment.

### **Removal and resignation**

- 190.** (1) The Attorney-General, the Director of Public Prosecutions and the Public Defender may be removed from office only on the grounds of—
- (a) inability to perform the functions of office arising from mental or physical incapacity;
  - (b) non-compliance with Chapter Seven;
  - (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 295(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 State President.
- (4) On receipt and examination of the petition, the State President shall within fourteen days suspend the office holder in question from office pending action by the State President in accordance with clause (5) and, acting in accordance with the advice of the Public Service Commission, shall—
- (a) in the case of the Attorney-General, appoint a tribunal consisting of—
    - (i) the Speaker of the Senate 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, or who are qualified to be appointed as such;
  - (ii) one advocate of at least fifteen years' standing nominated by the statutory body responsible for the professional regulation of advocates; 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 State 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 be entitled to half of their remuneration until they removed from, or reinstated in, office.
  - (7) A tribunal appointed under clause (4)(b) shall elect a chairperson from among its members.
  - (8) Tribunals appointed under clause (4)(a) and (b) shall in all other respects be responsible for the regulation of their proceedings.
  - (9) The Attorney-General, Director of Public Prosecutions or Public Defender may resign from office by giving notice to the State President.

## CHAPTER ELEVEN

### JUDICIARY

#### Part 1—Judicial authority and legal system

#### Judicial authority

- 191.** (1) Judicial authority—
- (a) is derived from the people;
  - (b) vests in the courts and tribunals established in accordance with this Constitution; and
  - (c) shall be exercised by the courts and other tribunals—
    - (i) in the people's name and for their common good; and
    - (ii) in conformity with this Constitution and the law.
- (2) In exercising judicial authority the courts and tribunals shall be guided by the following principles—
- (a) justice shall be done to all irrespective of status;

- (b) justice shall not be delayed;
  - (c) alternative forms of dispute resolution including reconciliation, mediation and arbitration and traditional dispute resolution mechanisms shall be promoted;
  - (d) justice shall be administered without undue regard to technicalities; and
  - (e) the purpose and principles of this Constitution shall be protected and promoted.
- (3) Traditional dispute resolution mechanisms shall not be used in a way that—
- (a) contravenes the Bill of Rights;
  - (b) is repugnant to justice and morality or result in outcomes that are repugnant to justice and morality; or
  - (c) is inconsistent with this Constitution or any written law.
- (4) The State shall provide the resources and opportunities to members of the Judiciary to enable them to deliver the highest standards of service to the public.

### **Independence of the Judiciary**

- 192.**
- (1) In the exercise of judicial authority, the Judiciary shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority.
  - (2) The office of a judge of a superior court shall not be abolished while there is a substantive holder of the office.
  - (3) The remuneration and benefits payable to, or in respect of, members of the Judiciary, shall be a charge on the Consolidated Fund.
  - (4) The remuneration and benefits payable to, or in respect of judges shall not be varied to their disadvantage.
  - (5) A member of the Judiciary is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a judicial function.

### **Judicial offices and officers**

- 193.**
- (1) The Judiciary consists of the judges of the superior courts, the judicial officers and other staff.

- (2) There are established the offices of Chief Justice who shall be the Head of the Judiciary.
- (3) There is established the office of Deputy Chief Justice who shall be the Deputy Head of the Judiciary.
- (4) The Chief Justice shall in consultation with the Judicial Service Commission-
  - (a) prepare and implement programmes for the continuing education and training of judges, magistrates, other judicial officers and other staff of the judiciary;
  - (b) advise the national government on improving the efficiency of the administration of justice.
- (5) There is established the office of the Chief Registrar of the Judiciary who is the chief administrator and accounting officer of the Judiciary.
- (6) The Judicial Service Commission may establish such other offices of registrar as may be necessary.

### **System of courts**

- 194.** (1) The superior courts are the Supreme Court, the Court of Appeal, the Constitutional Court and the High Court.
- (2) In the hierarchy of courts the Court of Appeal and the Constitutional Court shall be of equal rank.
  - (3) Parliament shall establish by legislation courts with the status of the High Court to hear and determine disputes relating to—
    - (a) employment; and
    - (b) the environment and the use and occupation of, and the title to, land.
  - (4) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).
  - (5) The subordinate courts are the courts established under Article 202 or by Parliament in terms of that Article.

## **Part 2—Superior Courts**

### **Supreme Court**

**195.** (1) There is established the Supreme Court which consists of—

- (a) the Chief Justice, who shall be the president of the court;
  - (b) the Deputy Chief Justice, who shall—
    - (i) deputise for the Chief Justice; and
    - (ii) be the vice-president of the court; and
  - (c) not fewer 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) The Supreme Court shall have—
- (a) exclusive original jurisdiction to hear and determine disputes arising from the process of the impeachment of the State President;
  - (b) a presidential election petition; and
  - (c) subject to clause (5) and (6), appellate jurisdiction to hear and determine appeals from—
    - (i) the Court of Appeal and the Constitutional Court; and
    - (ii) any other court or tribunal as prescribed by an Act of Parliament.
- (5) 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; and
  - (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.
- (6) The Supreme Court shall not be bound by its previous decisions if it considers it is in the interests of justice and the development of the law for it not to be so bound.
- (7) All other courts shall be bound by the decisions of the Supreme Court.
- (8) An Act of Parliament may make further provision for the operation of the Supreme Court.

## **Court of Appeal**

- 196.** (1) There is established a Court of Appeal, which—
- (a) shall consist of such number of judges, not being fewer than twelve, as may be prescribed by an Act of Parliament; and
  - (b) shall be organized and administered as may be prescribed by an Act of Parliament.
- (2) There shall be a president of the Court of Appeal who shall be elected by the judges of the Court of Appeal from among themselves.
- (3) The Court of Appeal has jurisdiction to hear appeals from—
- (a) the High Court; and
  - (b) such other court or tribunal as may be prescribed by an Act of Parliament.

### **Constitutional Court**

- 197.** (1) There is established the Constitutional Court which shall—
- (a) consist of no fewer than five judges; and
  - (b) be organized and administered as may be prescribed by an Act of Parliament.
- (2) There shall be the principal judge of the Constitutional Court who shall be elected by the judges of the Constitutional Court from among themselves.
- (3) The Constitutional Court has the jurisdiction to hear any question as to the interpretation of this Constitution including the determination of—
- (a) the question whether an Act of Parliament or any other law is inconsistent with or in contravention of a provision of this Constitution;
  - (b) the question whether anything said to be done under the authority of this Constitution or any law is inconsistent with or in contravention of a provision of this Constitution;
  - (c) any matter relating to constitutional powers of State organs in relation to county governments and any matter relating to the constitutional relationship between the levels of government; and
  - (d) a question relating to conflict of laws under Article 222.

- (4) The Constitutional Court may give an advisory opinion at the request of the national government, any State organ or any county government with respect to any matter referred to in paragraph (3)(c).
- (5) An organisation or individual with particular expertise may, with the leave of the Constitutional Court, appear as a friend of the court.
- (6) If, in the determination of a question under clause (1), the Constitutional Court considers that there is a need for redress in addition to the determination of the constitutional question, it may—
  - (a) grant an order of redress; or
  - (b) refer the matter to an appropriate court or body to investigate and determine the appropriate redress.
- (7) The Constitutional Court shall make rules for the exercise of its jurisdiction.

## **High Court**

- 198.** (1) There is established the High Court which—
- (a) consists of such number of judges as may be prescribed by an Act of Parliament; and
  - (b) shall be organized and administered as may be prescribed by an Act of Parliament.
- (2) There shall be the Principal Judge of the High Court who shall be elected by the judges of the High Court from among themselves.
- (3) Subject to clause (4), the High Court has—
- (a) unlimited original jurisdiction in criminal and civil matters;
  - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
  - (c) an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office; and
  - (d) any other jurisdiction, original or appellate, conferred on it by or under an Act of Parliament.
- (4) The High Court shall not have jurisdiction in respect of matters—
- (a) reserved for the exclusive jurisdiction of the Supreme Court or the Constitutional Court under this Constitution;

- (b) over which the Constitutional Court has assumed jurisdiction in terms of its rules; or
  - (c) falling within the jurisdiction of the courts contemplated in Article 194(2).
- (5) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority, exercising a judicial or quasi-judicial function, but not over a superior court.
- (6) For the purposes of clause (5), 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 (5) and may make any orders and give any directions it considers appropriate to ensure the fair administration of justice.

### **Appointment of Chief Justice, Deputy Chief Justice and other judges**

- 199.** (1) The State President, acting on the recommendation of the Judicial Service Commission shall appoint judges.
- (2) The State President shall appoint the Chief Justice and the Deputy Chief Justice on the approval of the National Assembly.
- (3) The judges of the superior courts shall be appointed from among persons who—
- (a) hold a law degree from a recognized university or are advocates of the High Court of Kenya or possess equivalent qualification in a common law jurisdiction;
  - (b) possess the required experience gained in Kenya or in another Commonwealth common law jurisdiction and referred to in clauses (3),(4), (5) and (6); and
  - (c) have a high moral character, integrity and impartiality.
- (4) The Chief Justice and judges of the Supreme Court shall be appointed from among persons who have—
- (a) at least fifteen years experience as judge of the Court of Appeal, the Constitutional Court or the High Court; or
  - (b) at least fifteen years experience as distinguished academic, judicial officer, legal practitioner or such experience in other relevant legal fields; or
  - (c) held the qualifications specified in paragraphs (a) and (b) for a period amounting, in the aggregate, to fifteen years;

- (5) The judges of the Court of Appeal shall be appointed from among persons who have—
- (a) ten years experience as judge of the High Court; or
  - (b) ten years experience as distinguished academic or legal practitioner or such experience in other relevant legal fields; or
  - (c) held the qualifications specified in paragraphs (a) and (b) for a period amounting, in the aggregate, to ten years.
- (6) The judges of the Constitutional Court shall be appointed from persons who have—
- (a) at least ten years experience as judge of the Court of Appeal or a judge of the High Court; or
  - (b) at least ten years experience as distinguished academic or legal practitioner or such experience in other relevant legal fields; or
  - (c) held the qualifications specified in paragraphs (a) and (b) for a period amounting, in the aggregate, to ten years.
- (7) The judges of the High Court shall be appointed from persons who have—
- (a) at least ten years experience as professionally qualified magistrate;
  - (b) at least ten years experience as distinguished academic or legal practitioner or such experience in other relevant legal field; or
  - (c) held the qualifications specified in paragraphs (a) and (b) for a period amounting, in the aggregate, to ten years.
- (8) A judge of the Constitutional Court shall, in addition, be a person—
- (a) versed in constitutional law and constitutionalism; and
  - (b) with proven commitment to human rights values and practices.

### **Tenure of office of the Chief Justice and other judges**

- 200.** (1) A judge shall retire from office on attaining the age of seventy years but may opt to retire at the age of sixty –five years.
- (2) The Chief Justice shall hold office for a maximum of ten years or until attaining the age of seventy years, whichever occurs first.



- (3) Despite Article 195(1)(c), where the Chief Justice's term of office expires before the Chief Justice attains the age of seventy years, the Chief Justice may continue in office as a judge of the Supreme Court even though there may already be the maximum permitted number of Supreme Court judges holding office.
- (4) The Chief Justice and any other judge may resign from office by giving notice to the State President.
- (5) If there are proceedings that were commenced before a judge of a superior court prior to attaining the age of retirement, the judge continues in office for a period of up to six months but only for the purpose of delivering a judgment, or performing any other function in relation to those proceedings.

### **Removal from office**

- 201.** (1) A judge of a superior court may be removed from office only on the grounds of—
- (a) inability to perform the functions of office arising from mental or physical incapacity;
  - (b) a breach of a code of conduct prescribed for judges of the superior courts 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) The removal of a judge may be initiated by the Judicial Service Commission acting on its own motion or on the petition of any person.
  - (3) Despite Article 295(2)(b), the petition by a person under clause (2), shall be in writing, setting out the alleged facts constituting the grounds for the judges removal.
  - (4) The Judicial Service Commission shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), send the petition to the State President.
  - (5) Within fourteen days after receiving the petition, the State President shall suspend the judge from office, and, acting on the recommendation of the Judicial Service Commission—
    - (a) in the case of the Chief Justice, appoint a tribunal consisting of—

- (i) the Speaker of the Senate as chairperson;
  - (ii) three superior court judges from common-law jurisdictions;
  - (iii) one advocate of fifteen years standing; and
  - (iv) two other persons with experience in public affairs; and
- (b) in the case of a judge other than 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, 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;
  - (ii) one advocate of fifteen years standing; and
  - (iii) two other persons with experience in public affairs.
- (6) The tribunal shall inquire into the matter and report on the facts and make recommendations to the State President, who shall act in accordance with the recommendations of the tribunal.
- (7) The remuneration and benefits payable to a judge who is suspended from office under clause (5) shall be adjusted to one half until such time as the judge is removed from, or reinstated in, office.
- (8) A tribunal appointed under clause (5)(b), shall elect a chairperson from among its members.
- (9) A tribunal appointed under clause (5) shall be responsible for the regulation of its proceedings.
- (10) A judge who is aggrieved by a decision of the tribunal under this Article may appeal against the decision to the Constitutional Court or in the case of a Constitutional Court judge, to the Court of Appeal.

### **Part 3—Subordinate courts**

#### **Subordinate courts**

- 202.** (1) The subordinate courts are—
- (a) the Magistrates courts;
  - (b) the Kadhis' courts;
  - (c) the Courts Martial; and

(d) any other court or local tribunal as may be established by an Act of Parliament.

(2) Parliament shall by legislation confer jurisdiction, powers and functions on the courts established under clause (1).

### **Kadhis' Courts**

**203.** (1) There shall be a Chief Kadhi and such number, not being fewer than three, of other Kadhis as may be prescribed by or under an Act of Parliament.

(2) A person shall not be qualified to be appointed to hold or act in the office of Kadhi unless the person—

(a) professes the Muslim religion; and

(b) possesses such knowledge of the Muslim law applicable to any sects of Muslims as qualifies that person, in the opinion of the Judicial Service Commission, to hold a Kadhi's court.

(3) Without prejudice to Article 202, there shall be such subordinate courts held by Kadhis as Parliament may establish and each Kadhi's court shall, subject to this Constitution, have such jurisdiction and powers as may be conferred on it by law.

(4) The Chief Kadhi and the other Kadhis, or the Chief Kadhi and such of the other Kadhis (not being fewer than three in number) as may be prescribed by or under an Act of Parliament, shall each be empowered to hold a Kadhi's court having jurisdiction within Kenya.

(6) The jurisdiction of a Kadhi's court shall be limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's courts.

## **Part 4—Judicial Service Commission**

### **Establishment of the Judicial Service Commission**

**204.** (1) There is established the Judicial Service Commission consisting of—

(a) one Supreme Court judge elected by the judges of the Supreme Court, who shall be the chairperson of the Commission;

(b) one Court of Appeal judge elected by the judges of the Court of Appeal;

(c) one High Court judge elected by the judges of the High Court;

- (d) the Attorney-General;
  - (e) two advocates, one a woman and one a man, each of whom has at least fifteen years' experience, nominated by the statutory body responsible for the professional regulation of advocates;
  - (f) one person nominated by the Public Service Commission;
  - (g) a magistrate nominated by the Judiciary; and
  - (h) one person, not being a lawyer, appointed by the State President to represent the public.
- (2) The Chief Registrar of the Judiciary shall be the Secretary to the Commission.
- (3) Members of the Commission, apart from the Attorney-General, shall hold office, provided that they remain qualified, for a term of five years and shall be eligible to be nominated for a further and final term of five years.

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

- 205.** (1) The Judicial Service Commission shall ensure and enhance the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice and shall—
- (a) recommend to the State President persons for appointment as judges;
  - (b) review and make recommendations on the conditions of service of—
    - (i) judges, magistrates and other judicial officers, other than their remuneration;
    - (ii) the staff of the judiciary; and
  - (c) appoint, receive complaints against, investigate and remove from office or otherwise discipline registrars, magistrates, other judicial officers and other staff of the judiciary, in such manner as may be specified by an Act of Parliament.
- (2) In the performance of its functions, the Commission shall be guided by the following—
- (a) competitiveness and transparent processes of appointment of judicial officers and other staff of the judiciary;
  - (b) promotion of gender equality.

## **Judiciary Fund**

- 206.** (1) There is established a fund to be known as the Judiciary Fund which shall be administered by the Chief Registrar of the Judiciary.
- (2) The Fund shall be used for administrative expenses of the Judiciary and such other purposes as may be necessary for the discharge of the functions of the Judiciary.
- (3) Legislation shall provide for the regulation of the Fund.

## **CHAPTER TWELVE**

### **DEVOLVED GOVERNMENT**

#### **Part 1—Objects and principles of devolved government**

##### **Objects of devolution**

- 207.** The objects of the devolution of government are to—
- (a) ensure the democratic and accountable exercise of sovereign power;
  - (b) foster national unity by recognizing diversity;
  - (c) give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
  - (d) 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) protect and promote the interests and rights of minorities and marginalized groups;
  - (f) promote social and economic development and the provision of proximate, easily-accessed services throughout Kenya;
  - (g) ensure equitable sharing of national and local resources throughout Kenya;

- (h) facilitate the decentralization of State organs, their functions or services from the capital of Kenya; and
- (i) enhance checks and balances and the separation of powers.

### **Principles of devolved government**

**208.** County governments established by this Constitution reflect the following principles—

- (a) county governments shall be based on democratic principles and the separation of powers;
- (b) county governments shall have reliable sources of revenue and autonomy to govern and deliver services effectively; and
- (c) no more than two thirds of the members of representative bodies in each county government shall be of the same gender.

## **Part 2—County governments**

### **County governments**

- 209.** (1) There shall be a county government for each county, consisting of a county assembly and a county executive.
- (2) Every county government shall decentralize its functions and the provision of its services to the extent that it is efficient and practicable to do so.
- (3) Despite the provisions of this Chapter, the counties in the Nairobi City shall not perform any other function, nor exercise any power, of a county government except as is provided in an Act of Parliament.

### **Support for county government**

- 210.** (1) Parliament shall by legislation make provision for ensuring that county governments –
- (a) are given adequate support to enable them to carry out their functions; and
  - (b) have in place systems of financial management that comply with the regulations made by the national government.

- (2) Parliament shall also by legislation make provision for intervention by the national government where a county government—
- (a) is unable or unwilling to carry out its functions; or
  - (b) has failed to operate satisfactorily a system of financial management that complies with the regulations.
- (3) The legislation may, in particular, authorize the national government—
- (a) to take appropriate steps to ensure that the county government's functions are carried out and that it operates a system of financial management that complies with prescribed requirements; and
  - (b) where necessary, to assume responsibility for the relevant functions.
- (4) The legislation shall –
- (a) require notice to be given to a county government of any measures that the national government intends to take;
  - (b) require the national government to take only measures that are necessary;
  - (c) require the national government, where it intervenes, to take measures that will assist the county government to resume full responsibility; and
  - (d) provide for a process by which Senate may bring the intervention to an end.

### **Members of county assembly**

- 211.** (1) A county assembly consists of—
- (a) members elected one each by the wards in accordance with the law;
  - (b) such number of special seat members, in proportion to the votes received by each political party under paragraph (a), as to ensure that no more than two-thirds of the membership of the assembly are of the same gender; and
  - (c) such number of members of marginalized groups, including persons with disabilities and the youth, in proportion to the votes received by each political party under paragraph(a), as are prescribed by Act of Parliament.
- (2) The filling of special seats under clause (1)(b) shall be determined after declaration of elected members from each ward.
- (3) A county assembly is elected for a term of five years.

### **County executive committees**

- 212.** (1) The executive authority of the county is exercised by a county executive committee, consisting of—
- (a) the county governor and the deputy county governor; and
  - (b) subject to clause (2), such other members as are appointed by the county governor from among the members of the county assembly, with the approval of the assembly.
- (2) The number of members appointed under clause (1)(b) shall not exceed—
- (a) a third of the number of members of the county assembly, if the assembly has no more than thirty members; or
  - (b) ten, if the assembly has more than thirty members.
- (3) The county governor and the deputy county governor shall be the chief executive and deputy chief executive respectively of the county.
- (4) In the case of Nairobi, the mayor and the deputy mayor shall be the chief executive and the deputy chief executive respectively.
- (5) During the absence of the county governor, the deputy county governor has all the powers, functions and responsibilities of the county governor.
- (6) Members of a county executive committee are accountable collectively and individually to the county assembly for the exercise and performance of their powers and functions.

### **Election of county governor and deputy county governor**

- 213.** (1) The county governor and deputy county governor shall each be elected by the county assembly from among the members of the assembly.
- (2) The candidate at an election under clause (1) who receives more than half of all the votes cast in the election shall be declared elected.
  - (3) If no candidate is elected, a second ballot shall be held and in that ballot, the only candidates shall be—
    - (a) the candidate, or the candidates, who received the greatest number of votes; and



- (b) the candidate, or the candidates, who received the second greatest number of votes.
- (4) Where more than one candidate receives the greatest number of votes, clause (3)(b) shall not apply and the only candidates in the fresh ballot shall be those contemplated in clause (3)(a).
- (5) The candidate who receives the greater number or the greatest number of votes, as the case may be, in the fresh ballot shall be declared elected.
- (6) A county governor and a deputy county governor each hold office for a term of five years but each of them is eligible, if otherwise qualified, for re-election for one further and final term.
- (7) For the purposes of clause (6), a person who has continuously served as county governor or deputy county governor for at least two and half years shall be deemed to have served a full term.

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

- 214.** (1) The mayor and the deputy mayor of Nairobi shall each be elected by more than half of the votes cast by voters who meet the requirements relating to residence within the Nairobi City as prescribed by an Act of Parliament.
- (2) The election of the mayor and deputy mayor shall be by universal suffrage.
- (3) Subject to clause (1), an Act of Parliament shall prescribe the manner of election of the mayor and deputy mayor.

#### **Functions of county executive committees**

- 215.** (1) A county executive committee shall—
- (a) implement laws of the county assembly;
- (b) implement, within the county, national legislation to the extent that the legislation so requires; and
- (c) co-ordinate the functions of the county administration and its departments.
- (2) Without in any way limiting any power of the assembly, a county executive committee may prepare and initiate proposed laws for enactment by the assembly.

- (3) The county executive committee has such other powers and functions as may be conferred on it by this Constitution or by national legislation.
- (4) The county executive committee shall provide the county assembly with full and regular reports concerning the matters under the control of the county.

### **Urban areas and cities**

- 216.** (1) National legislation shall provide for the governance and management of urban areas and cities.
- (2) Legislation made under clause (1)—
- (a) shall—
    - (i) establish criteria for classifying areas as urban areas and cities;
    - (ii) establish the principles of governance and management of urban areas and cities
    - (iii) provide for participation in the governance of urban areas and cities by residents; and
    - (iv) make provision for the direct election of mayors, deputy mayors and for the election of other members of the executive committees of cities and other urban areas; and
  - (b) may—
    - (i) provide for the identification of different categories of urban areas; and
    - (ii) make provision for the governance of urban areas.

### **Legislative authority of county assemblies**

- 217.** (1) The legislative authority of a county is vested in its county assembly.
- (2) A county assembly may make any laws that are reasonably necessary for, or incidental to, the effective exercise and performance of the powers and functions assigned to it.
- (3) A county assembly, while having due regard to the principle of the separation of powers, has power to maintain oversight over the county

executive committee and any other executive organs established by laws passed by the assembly.

- (4) A county assembly may receive and approve plans and policies for—
  - (a) the management and exploitation of the county’s resources; and
  - (b) development and the management of its infrastructure and institutions.

### **Part 3—Powers and functions of county governments**

#### **Powers and functions**

- 218.** (1) Except as otherwise provided by this Constitution, the powers and functions of the national government and the county governments are as set out in the Fourth Schedule.
- (2) A function that is conferred on more than one level of government is a function within the concurrent jurisdiction of each of those levels of government.
- (3) A function not assigned by this Constitution or by legislation to a county is a function of the national government.
- (4) Despite clause (1), and subject to this Constitution, Parliament is not precluded from legislating for the Republic on any matter.

#### **Transfer of powers and functions**

- 219.** (1) A power or function of government at one level may be transferred to a government at another level by agreement between the two governments if—
  - (a) the power or function would be more effectively exercised or performed by the receiving government; and
  - (b) the transfer of the power or function is compatible with the legislation under which it is to be exercised or performed.
- (2) Where a power or function is transferred from a government at one level to a government at another level—

- (a) arrangements shall be put in place to ensure that the resources necessary for the exercise or performance of the power or function are accordingly transferred; and
- (b) the constitutional responsibility for the exercise or performance of the power or function shall be retained by the government to which it is assigned by the Fourth Schedule.

#### **Part 4—The boundaries of the counties**

##### **Boundaries of counties**

- 220.** (1) Subject to this Constitution, the number and boundaries of a county may be altered so as to take into account—
- (a) the population density and demographic trends;
  - (b) physical and human infrastructure;
  - (c) historical and cultural ties;
  - (d) the cost of administration;
  - (e) the views of the communities affected;
  - (f) the objects of devolution of government; and
  - (g) geographical features.
- (2) The boundaries of a county may be altered by a resolution of at least two-thirds of each House of Parliament passed pursuant to a recommendation of an independent commission set up for that purpose by Parliament.

#### **Part 5—Relationship between governments**

##### **Co-operation between governments at the two levels**

- 221.** (1) Government at either level shall—
- (a) exercise and perform its powers and functions in a manner that respects the functional and institutional integrity of the other level of government and respects the constitutional status and institutions of governments at the other levels;
  - (b) assist, support and consult and, as appropriate, implement the laws of the other level of government; and

- (c) liaise with other governments at other levels for the purpose of exchanging information, co-ordinating policies and administration and enhancing capacity.
- (2) Government at different levels and different governments at the same level shall, to the extent necessary in any particular circumstances, cooperate in the exercise of powers and performance of functions and, for that purpose, may set up joint committees and joint authorities.
- (3) In any dispute between governments, the governments concerned shall make every reasonable effort to settle the dispute by means of procedures provided by an Act of Parliament.
- (4) An Act of Parliament shall provide procedures for settling such inter-governmental disputes by alternative dispute resolution mechanisms including negotiation, mediation or arbitration.

### **Conflict of laws**

- 222.** (1) This Article applies to conflicts between legislation in relation to matters falling within the concurrent jurisdiction of the two levels of government.
- (2) National legislation prevails over county legislation if –
- (a) the national legislation applies uniformly throughout Kenya and any of the conditions specified in clause (3) is satisfied; or
  - (b) the national legislation is aimed at preventing unreasonable action by a county that—
    - (i) is prejudicial to the economic health or security interests of another county or of Kenya as a whole; or
    - (ii) impedes the implementation of national economic policy.
- (3) The conditions mentioned in clause (2)(a) are—
- (a) the national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the counties individually;
  - (b) the national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing—
    - (i) norms and standards;
    - (ii) frameworks; or
    - (iii) national policies;

- (c) the national legislation is necessary for—
  - (i) the maintenance of national security;
  - (ii) the maintenance of economic unity;
  - (iii) the protection of the common market in respect of the mobility of goods, services, capital and labour;
  - (iv) the promotion of economic activities across county boundaries;
  - (v) the promotion of equal opportunity or equal access to government services; or
  - (vi) the protection of the environment.
- (4) County legislation prevails over national legislation if the requirements of clause (2) are not satisfied.
- (5) A decision by a court that a provision of legislation of one level of government prevails over a provision of legislation of another level of government does not invalidate that other provision, but that other provision becomes inoperative to the extent of the inconsistency.
- (6) When considering an apparent conflict between legislation of different levels of government, a court shall prefer a reasonable interpretation of the legislation that avoids a conflict to an alternative interpretation that results in conflict.
- (7) A court before which an apparent conflict between legislation of different levels of government arises shall decide the issue unless –
  - (a) because of the importance or complexity of the matter, the court, on its own motion, refers the matter to the Constitutional Court; or
  - (b) any party to the proceedings requests that the matter be so referred.

## **Part 6—Removal, suspension and dissolution of county governments**

### **Vote of no confidence in county executive**

- 223. (1) A member of a county assembly supported by at least a third of all the members may, at any time during a sitting of the assembly, propose a motion of no confidence in the county executive.
- (2) If the assembly, by a resolution supported by the votes of more than half of all the members, passes a motion, the county governor, the deputy county governor and all the other members of the county

executive shall cease to hold office and a fresh election of a county governor and deputy county governor shall be held.

### **Suspension of a county government**

- 224.** (1) A county government may be suspended—
- (a) in an emergency arising out of internal conflict or war; or
  - (b) if other exceptional circumstances warrant such a step.
- (2) A county government shall not be suspended under clause (1)(b) unless an independent commission of inquiry has investigated the allegations against it, the State President is satisfied that the allegations are justified and the Senate has authorised the suspension.
- (3) During a suspension under this Article, arrangements shall be made for the performance of the functions of the county government in accordance with an Act of Parliament.
- (4) The Senate may at any time terminate the suspension<sup>1</sup>.
- (5) A suspension under this Article shall not extend beyond a period of ninety days.
- (6) On the expiry of the period provided for under clause (5), elections for the relevant county government shall be held.

## **Part 7—General**

### **Qualifications for election as member of county assembly**

- 225.** (1) Unless disqualified under clause (2), a person is eligible for election as a member of a county assembly 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 by an Act of Parliament; and
  - (d) is nominated by a political party or in the case of a county election, is an independent candidate, supported by at least five hundred registered voters in the ward concerned in the manner determined by the Independent Electoral and Boundaries Commission.
- (2) A person is disqualified from being elected a member of a county assembly if that person—
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- (a) holds a State office or public office, other than that of member of the county assembly to which election is sought;
  - (b) is of unsound mind;
  - (c) is an undischarged bankrupt;
  - (d) is serving a sentence of imprisonment of at least six months; or
  - (e) 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 Chapter Seven.
- (3) A person is not disqualified under clause (2) unless all possibility of appeal or review of the sentence or decision has been exhausted.

### **Vacation of office of member of county assembly**

- 226.** The office of a member of a county assembly becomes vacant—
- (a) if the member dies;
  - (b) if the member resigns in writing addressed to the person presiding over proceedings of the assembly;
  - (c) if that person becomes disqualified for election on grounds set out under Article 225(2);
  - (d) upon the expiry of the term of the assembly to which the member belongs;
  - (e) if the member is absent from eight sittings of the assembly without permission, in writing, of the person presiding over the proceedings of that assembly when it is sitting, and is unable to offer satisfactory explanation for the absence;
  - (f) if the member is removed from office under legislation made under Article 96;
  - (g) if the member resigns or is expelled from a political party in terms of Article 110; or
  - (h) if, having been elected to the assembly as an independent candidate, the member joins a political party.

### **Power to summon witnesses**

- 227.** (1) A county assembly has power to summon any person to appear before it or any of its committees for the purpose of giving evidence or providing information.
- (2) For the purposes of clause (1), an assembly has the powers of the High Court in—



- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
- (b) compelling the production of documents; and
- (c) issuing a commission or request to examine witnesses abroad.

### **Public access and participation, powers, privileges and immunities**

- 228.** Articles 145 and 146 apply to county assemblies in the same manner as they apply to Parliament.

### **Gender balance and diversity**

- 229.** (1) Not more than two-thirds of the members of any assembly constituted under this Chapter are to be of the same gender.
- (2) Parliament shall by legislation ensure that community and cultural diversity in a county is reflected in legislative and executive bodies of the county.
- (3) Without limiting the generality of clause (2), that legislation shall prescribe means to protect minorities within counties.

### **Government during transition**

- 230.** While an election is being held to constitute an assembly under this Chapter, the executive committee as last constituted remains competent to discharge administrative functions until reconstituted after the election.

### **Publication of laws**

- 231.** (1) A law or subordinate instrument made by an assembly or executive committee does not take effect unless published in the Gazette.
- (2) National and county laws may prescribe additional requirements in relation to the publication of law of county governments.

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

- 232.** (1) Parliament shall by legislation make provision for all matters necessary or convenient to give effect to this Chapter
- (2) In particular, provision may be made with respect to—

- (a) the governance of Nairobi as the capital, other cities and urban areas;
- (b) the transfer of powers and functions by one level of government to another, including the transfer from the national government to county governments of legislative powers;
- (c) the manner of election or appointment of persons to, and their removal from, offices in county governments, including the qualifications of voters and candidates;
- (d) the procedure of assemblies and executive committees including the chairing and frequency of meetings, quorums and voting; and
- (e) the suspension of assemblies and executive committees.

## **CHAPTER THIRTEEN**

### **PUBLIC FINANCE**

#### **Part I—Principles and framework of public finance**

##### **Principles of public finance**

**233.** The following principles shall guide all aspects of public finance in the Republic—

- (a) there shall be openness and accountability, including public participation in financial matters;
- (b) the public finance system shall promote an equitable society and—
  - (i) the burden of taxation shall be shared fairly;
  - (ii) revenue shall be shared equitably among governments;
  - (iii) expenditure shall promote the equitable development of the country and shall make special provision for marginalized groups and areas; and
  - (iv) the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations; and
- (c) public money shall be used in a prudent and responsible way.

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**Equitable division of national funds**

- 234.** (1) Revenue raised nationally shall be divided equitably among the national and county governments.
- (2) All governments are entitled to an equitable share of revenue raised by the national government.
- (3) County governments may be given additional allocations from the national government's share of the revenue, either conditionally or unconditionally.

**Criteria for equitable share and other financial laws**

- 235.** The following criteria shall be taken into account in determining the equitable shares referred to in Art 245 and in all legislation concerning devolved government enacted in terms of this Chapter—
- (a) the national interest;
  - (b) any provision that must be made in respect of the public debt and other national obligations;
  - (c) the needs of the national government, determined by objective criteria;
  - (d) the need to ensure that county governments are able to perform the functions allocated to them;
  - (e) the fiscal capacity and efficiency of county governments;
  - (f) developmental and other needs of counties;
  - (g) economic disparities within and among counties and the need to remedy them;
  - (h) the need for affirmative action in respect of disadvantaged areas and groups;
  - (i) the need for economic optimisation of each county and to provide incentives for each county to optimise its capacity to raise revenue;
  - (j) the desirability of stable and predictable allocations of revenue; and
  - (k) the need for flexibility in responding to emergencies and other temporary needs, based on similar objective criteria.

**Consultation on financial legislation affecting counties**

- 236.** (1) When a Bill that includes provisions dealing with the division of revenue or any other financial matter concerning county governments is published, the Commission on Revenue Allocation shall consider those provisions and make recommendations to Parliament.
- (2) Any recommendations made by the Commission shall be laid before Parliament and each House shall consider them before passing the Bill.

## Part 2—Public Funds

### Consolidated Fund and other public funds

- 237.** (1) There is established the Consolidated Fund into which shall be paid all money raised or received by or on behalf of or in trust for the national government except money that—
- (a) is reasonably excluded from the Fund by an Act of Parliament and payable into some other public fund established for a specific purpose; or
  - (b) may, under an Act of Parliament, be retained by the State organ that received it for the purpose of defraying the expenses of that State organ.
- (2) Money may be withdrawn from the Consolidated Fund only—
- (a) in terms of an appropriation by Act of Parliament;
  - (b) in terms of Articles 264; or
  - (c) as a charge against the Fund that is provided for by this Constitution or an Act of Parliament.
- (3) Money shall not be withdrawn from any national public fund other than the Consolidated Fund, unless the issue of that money has been authorised in terms of an Act of Parliament.
- (4) Money shall not be withdrawn from the Consolidated Fund unless the Controller of Budget has approved the withdrawal.

### Revenue Funds for county governments

- 238.** (1) There shall be established a Revenue Fund for each county government, into which shall be paid all money raised or received by the county government, except money reasonably excluded by an Act of Parliament.
- (2) Money may be withdrawn from the Revenue Fund of a county government only—
- (a) in terms of an appropriation by legislation of the county; or
  - (b) as a charge against the Revenue Fund that is provided for by an Act of Parliament or by legislation of the county.
- (3) Money shall not be withdrawn from a Revenue Fund unless the Controller of Budget has approved the withdrawal.
- (4) An Act of Parliament may—

- (a) make further provision for the withdrawal of funds from a Revenue Fund; and
- (b) provide for the establishment of other funds by counties and the management of the funds.

**Contingencies Fund**

- 239.** (1) There is established the Contingencies Fund, the operation of which shall be in accordance with an Act of Parliament.
- (2) An Act of Parliament shall provide for advances from the Contingencies Fund in cases where the Minister responsible for finance is satisfied that there is an urgent and unforeseen need for expenditure for which there is no other authority.

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**Part 3—Revenue-raising powers and the public debt**

**Power to raise taxes and impose charges**

- 240.** (1) Only the national government may impose—
- (a) income tax;
  - (b) value-added tax;
  - (c) customs duties and other duties on import and export goods; and
  - (d) excise tax.
- (2) An Act of Parliament may authorise the national government to impose any other tax or duty, except a tax mentioned in clause (3)(a), (b) and (c).
- (3) A county may impose—
- (a) property rates and taxes;
  - (b) entertainment taxes; and
  - (c) any other tax that it is authorised to impose by Act of Parliament.
- (4) The national and county governments may impose charges for services.
- (5) The taxation and other revenue-raising powers of a county shall not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.

**Imposition of tax**

- 241.** (1) No tax or licensing fee may be imposed, waived or varied except as provided by legislation.
- (2) If legislation permits the waiver of any tax or licensing fee—
- (a) a public record of each waiver shall be maintained with the reason for the waiver; and
  - (b) each waiver with the reason for it shall be reported to the Auditor-General.
- (3) No law may exclude or authorise the exclusion of a State officer from payment of tax by reason of—
- (a) the office held by that State officer; or
  - (b) the nature of the work of the State officer.

### **Borrowing by national government**

- 242.** (1) Parliament may by legislation—
- (a) prescribe the terms on which the national government may borrow; and
  - (b) impose reporting requirements.
- (2) All money received as a loan shall be paid into a public fund.
- (3) Within seven days after either House of Parliament, by resolution, so requests, the Minister responsible for finance shall present to both Houses of 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 use made of the proceeds of the loan;
  - (c) the provision made for servicing or repayment of the loan; and
  - (d) the progress made in the repayment of the loan.
- (4) For the purposes of this Article, “loan” includes any money lent or given to the national government on condition of return or repayment and any other form of borrowing or lending in respect of which money from a public fund may be used, or is required to be used, for payment or repayment.

### **Borrowing by counties**

- 243.** A county may raise loans only—
- (a) if the national government guarantees the loan; and
  - (b) with the approval of the county’s assembly.

### **Loan guarantees by national government**

- 244.** (1) An Act of Parliament shall prescribe terms and conditions under which the national government may guarantee loans.
- (2) Within two months after the end of each financial year, the national government shall publish a report on the guarantees that it gave during that year.

### **Public debt**

- 245.** (1) The public debt is a charge on the Consolidated Fund but provision may be made by Act of Parliament for charging all or part of the public debt to other public funds.

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- (2) For the purposes of this Article, the public debt means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government.

#### **Part 4—Revenue Allocation**

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

- 246.** (1) There is established the Commission on Revenue Allocation.
- (2) The Commission shall consist of the following persons appointed by the State President—
- (a) a chairperson;
  - (b) five persons, nominated by the Senate;
  - (c) two persons nominated by the National Assembly; and
  - (d) the Principal Secretary in the Ministry responsible for finance.
- (3) The persons nominated under clause (2)(b) and (c) shall not be members of Parliament.
- (4) To be qualified to be a member of the Commission under clause (2)(a), (b) or (c), a person shall have extensive professional experience in financial and economic matters.

##### **Functions of the Commission on Revenue Allocation**

- 247.** (1) The principal function of the Commission on Revenue Allocation is to determine the basis for the sharing of revenue raised by the national government.
- (2) In determining the basis for the sharing of revenue, the Commission shall seek to ensure that—
- (a) the sharing is equitable between the national and county levels of government;
  - (b) the sharing is equitable among counties; and
  - (c) where necessary, conditional or unconditional grants are made to counties from the national government's share of the revenue.
- (3) The Commission shall make recommendations on other matters concerning the financing of, and financial management by, county governments as required by this Constitution and national legislation.
- (4) In its recommendations the Commission shall—
- (a) take into account the criteria set out in Article 235; and



- (b) aim at defining and enhancing the revenue sources of the national and county governments with the object of encouraging fiscal responsibility.
- (5) The Commission shall determine, publish and regularly review a policy in which it sets out—
  - (a) criteria by which to identify the marginalized areas which shall be considered in the division of the revenue raised nationally and the financial plans and budgets of all governments; and
  - (b) the way in which the division of revenue shall respond to the needs of marginalized communities, groups and areas.
- (6) The Commission shall—
  - (a) report its recommendations to every government; and
  - (b) regularly review its recommendations.
- (6) The Commission has such other functions as are conferred upon it by an Act of Parliament.

#### **Submission and consideration of recommendations**

- 248. (1) Not later than four months before the end of each financial year, the Commission on Revenue Allocation shall submit to Parliament for approval a report setting out its recommendations concerning the sharing of national revenue for the following financial year.
- (2) Parliament may modify any recommendations of the Commission on the initiative of a Minister and with the supporting vote of a majority of the members of each House, provided that the criteria set out in Article 235 are respected.
- (3) Recommendations of the Commission concerning the sharing of revenue among governments, subject to any modifications under clause (2), are binding on all governments, and shall be reflected in their respective budgets.

#### **Division of Revenue Bill**

- 249. (1) Not later than three months before the end of each financial year, the Minister responsible for finance shall introduce in Parliament a division of revenue Bill for the following financial year.
- (2) The division of revenue Bill shall be based on the recommendations of the Commission on Revenue Allocation and shall—

- (a) divide revenue raised by the national government between the two levels of government; and
  - (b) divide the share allocated to the county level among the counties.
- (3) On the basis of the division of revenue Bill and estimates of other revenue that it will raise, each government shall prepare and pass its own budget and appropriation Bill.

### **Transfer of equitable share**

- 250.** A county's share of revenue raised by the national government shall be transferred to that county promptly and without deduction, except when the transfer has been stopped under Article 260.

## **Part 5—Budgets and spending**

### **Form, content and timing of budgets**

- 251.** (1) Budgets of the national and county 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) proposals regarding borrowing and other forms of public liability that will increase public debt during the following year.
- (2) National legislation shall prescribe—
- (a) the structure of the development plans and budgets of counties;
  - (b) when the plans and budgets of the counties shall be tabled in the county assemblies; and
  - (c) the form and manner of consultation between the national government and county governments in the process of preparing plans and budgets.

### **National annual estimates**

- 252.** (1) Not later than two months before the end of each financial year the Minister responsible for finance shall lay before the National Assembly—
- (a) estimates of the revenue and expenditure of the national government for the following financial year; and
  - (b) a detailed national 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 special budgetary provision for the development of marginalized areas, communities and groups.
- (3) Before the National Assembly considers the estimates of revenue and expenditure, a committee of the Assembly shall discuss and review the estimates and make recommendations to the Assembly.
- (4) The committee shall, in discussing and reviewing the estimates, seek representations from the public and those recommendations shall be taken into account when the committee makes its recommendations to the National Assembly.

### **Budgets of Parliament and independent institutions**

- 253.** (1) Adequate funds shall be allocated to enable Parliament, the judiciary and each of the Commissions and independent offices properly to discharge their functions and the estimates of each shall be an independent vote.
- (2) Funds allocated to these institutions shall be transferred promptly when due and without deduction.

### **Expenditure before annual budget is passed**

- 254.** If the Appropriation Act for a financial year has not been assented to, or is not likely to be assented to, before the start of that financial year, the National Assembly may authorize the withdrawal from the Consolidated Fund of money for the purpose of meeting expenditure necessary to carry on the services of the national government until such time as the Appropriation Act is assented to but –
- (a) the sum authorised by the National Assembly shall not exceed in total half of the sums included in the estimates of expenditure for that year that have been laid before Parliament; and
  - (b) any money so withdrawn shall be included in the Appropriation Act.

### **Supplementary appropriation**

- 255.** (1) In the circumstances set out in clause (2), the national government may spend money that has not been appropriated but –
- (a) in a financial year it may not spend more than ten per cent of the sum appropriated by Parliament for that financial year unless, in

special circumstances, Parliament has approved a higher percentage;

- (b) the approval of Parliament for any spending under this Article shall be sought within two months after the first drawing of the money or, if Parliament—
    - (i) does not sit during; or
    - (ii) sits but adjourns before the expiry of, that period, within two weeks after it next sits; and
  - (c) within six months of the date of the first drawing of the money an appropriation bill shall be introduced for the appropriation of the money spent.
- (2) The circumstances are that—
- (a) the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or
  - (b) money has been drawn from the Contingencies Fund.

#### **Salaries and Remuneration Commission**

- 256.** (1) The Salaries and Remuneration Commission consists of the following persons appointed by the State President—
- (a) a chairperson;
  - (b) persons designated one each by the following bodies from among persons who are not members or employees of those bodies—
    - (i) the Parliamentary Service Commission;
    - (ii) the Public Service Commission;
    - (iii) the Judicial Service Commission;
    - (iv) the Teachers Service Commission;
    - (v) the Police Service Commission;
    - (vi) the Defence Council and
    - (vii) the Senate, representing counties;
  - (c) persons designated one each by—
    - (i) the umbrella body representing trade unions;
    - (ii) the umbrella body representing employers; and
    - (iii) a joint forum of professional bodies as provided by legislation;
  - (d) persons designated one each by—
    - (i) the Minister responsible for finance; and
    - (ii) the Attorney General; and
  - (e) a person designated by the Public Service Commission who has experience in the management of human resources in the public service.

- (2) The Commissioners referred to in clause (1) (d) and (e) shall have no vote.
- (3) The Commission shall not meet for more than three sessions a year.

### **Powers and functions**

- 257.** (1) The powers and functions of the Salaries and Remuneration Commission are to —
- (a) to set and review regularly the remuneration and benefits of all State officers; and
  - (b) to advise the national and county governments on the remuneration and benefits of all other public officers.
- (2) In fulfilling its functions, the Commission shall take the following principles into account—
- (a) the need to ensure that the total public wage bill is fiscally sustainable;
  - (b) the need to ensure that the public services are able to attract and retain the skills required to execute their functions;
  - (c) the need to recognize productivity and performance; and
  - (d) transparency and fairness.

### **Remuneration and benefits of certain state officers**

- 258.** (1) The remuneration and benefits payable to the State President, the Deputy State President, the Prime Minister, members of the judiciary, Commissioners on the independent commissions and the holders of the independent offices shall be a charge on the Consolidated Fund.
- (2) The remuneration, benefits and privileges of the State officers referred to in clause (1) shall not be varied to their disadvantage while in office.
  - (3) The retirement benefits payable to a former State President, a former Deputy State President, a former Prime Minister and judges shall not be varied to their disadvantage during their lifetime.

### **Procurement of public goods and services**

- 259.** (1) When a State organ or any other public institution 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 shall be implemented and may provide 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.

## **Part 6—Control of public money**

### **Financial control**

- 260.** (1) The Minister responsible for finance shall make regulations to ensure both expenditure control and transparency in all governments and establish mechanisms to ensure their implementation.
- (2) The Minister may stop the transfer of funds to a State organ or any other public entity but 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 under clause (2) may not stop the transfer of more than fifty per cent of funds due to a county government.
- (4) A decision to stop the transfer of funds taken under 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 both Houses.
- (5) Parliament may renew a decision to stop the transfer of funds but for no more than sixty days at a time.
- (6) Parliament may not approve or renew a decision to stop the transfer of funds unless—
- (a) the Controller of Budget has presented a report on the matter to Parliament; and

- (b) the affected government, State organ or public institution has been given an opportunity to answer the allegations against it, and to state its case, before the relevant parliamentary committee.

### **Controller of Budget**

- 261.** (1) There shall be a Controller of Budget who shall be appointed by the State President with the approval of the National Assembly.
- (2) To be qualified to be the Controller, a person shall have at least ten years' experience in the management of public finance.
  - (3) The Controller holds office, subject to Article 294, for a term of eight years and shall not be eligible for re-appointment.

### **Functions of Controller of Budget**

- 262.** (1) The Controller of Budget shall oversee the implementation of the budgets of the national and county governments.
- (2) The Controller shall not approve any withdrawal from the Consolidated Fund or the Revenue Fund of a county unless satisfied that the withdrawal is authorised by law.
  - (3) Every three months, the Controller shall submit to each House of Parliament a report on the implementation of the budgets of the national and county governments.

### **Accounts and audit of public entities**

- 263.** (1) An Act of Parliament shall provide for—
- (a) the keeping of financial records and the auditing of accounts of all governments and other public entities, and prescribe other measures for securing efficient and transparent fiscal management; and
  - (b) the designation of an accounting officer in every public entity at the national and county level of government.
- (2) The accounting officer of a national public entity is accountable to the National Assembly for funds in that institution and its financial management and the accounting officer for a county institution is accountable to the county assembly for the funds of that institution and its financial management.
- (3) Subject to clause (4), the accounts of all governments and state organs shall be audited by the Auditor-General.

- (4) The accounts of the office of the Auditor-General shall be audited and reported on by a professionally qualified accountant appointed by the National Assembly.
- (5) If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, that person is liable for any loss arising from that use and shall make good the loss, whether that person remains the holder of the office or not.

### **Auditor-General**

- 264.** (1) There shall be an Auditor-General who shall be appointed by the State President with the approval of the National Assembly.
- (2) To be qualified to be the Auditor-General, a person shall have at least eight years' experience in the management of public finance.
  - (3) The Auditor-General holds office, subject to 294, for a term of eight years and shall not be eligible for re-appointment.

### **Powers and functions of Auditor-General**

- 265.** (1) The Auditor-General shall within six months after the end of each financial year, audit and report, in respect of that financial year, on—
- (a) the accounts of the national and county governments;
  - (b) the accounts of all funds and authorities of the national and county governments;
  - (c) the accounts of all courts;
  - (d) the accounts of every Commission and independent office established by this Constitution;
  - (e) the accounts of the National Assembly, the Senate and the county assemblies;
  - (f) the accounts of political parties funded from public funds;
  - (g) the public debt; and
  - (h) the accounts of any other entity that legislation requires the Auditor-General to audit.
- (2) The Auditor-General may audit and report on the accounts of any entity that is funded from public funds.
  - (3) An audit report shall confirm whether or not public money has been applied lawfully and in an effective way.
  - (4) Audit reports shall be submitted to Parliament or the relevant county assembly.



- (5) Within three months after the receiving an audit report, Parliament or the county assembly shall debate and consider the report and take appropriate action.

## **Part 7—Central Bank of Kenya**

### **Central Bank of Kenya**

- 266.** (1) There is established the Central Bank of Kenya.
- (2) The Central Bank of Kenya shall be responsible for formulating monetary policy, promoting price stability, issuing currency and performing other functions conferred on it by an Act of Parliament.
- (3) The Central Bank of Kenya shall not be under the direction or control of any person or authority in the exercise of its powers or in the performance of its functions.
- (4) Notes and coins issued by the Central Bank of Kenya may bear images that depict or symbolize Kenya or an aspect of Kenya but may not bear the portrait of any individual.
- (5) An Act of Parliament shall provide for the composition, powers, functions and operations of the Central Bank of Kenya.

## **CHAPTER FOURTEEN**

### **THE PUBLIC SERVICE**

#### **Part 1—Values and Principles of Public Service**

##### **Values and principles of public service**

- 267.** (1) The values and principles of public service include—
- (a) high standards of professional ethics;
- (b) efficient, effective and economic use of resources;
- (c) responsive, prompt, effective, impartial and equitable provision of services;
- (d) involvement of the people in the process of policy making;
- (e) accountability for administrative acts;
- (f) transparency and provision to the public of timely, accurate information;

- (g) subject to paragraph (j), merit as the basis of appointments and promotions;
  - (h) representation of Kenya's diverse communities and affording them adequate and equal opportunities for appointments, training and advancement of men and women, the members of all ethnic groups, persons with disabilities in the public service at all levels.
- (2) The values and principles of public service apply to public service in—
- (a) every level of government;
  - (b) all State organs; and
  - (c) state corporations.
- (3) Parliament shall by legislation provide for a code of conduct for public officers.

## **Part 2— The Public Service Commission**

### **The Public Service Commission**

- 268.** (1) There is established the Public Service Commission.
- (2) There shall be a secretary to the Commission who shall be the Chief executive of the Commission.
- (3) The Secretary to the Commission shall—
- (a) be appointed by the State President on the recommendation of the Public Service Commission and with the approval of the National Assembly; and
  - (b) hold office for a term of five years and be eligible for re-appointment for one further and final term of five years.

### **Powers and Functions of the Public Service Commission**

- 269.** (1) The powers and functions of the Commission are—
- (a) except where there is a contrary provision in this Constitution or any other law, to constitute and abolish offices in the public service;
  - (b) except where there is a contrary provision in this Constitution or any other law, to appoint persons to hold or act in offices in the public service, to confirm appointments and to exercise disciplinary control over and remove persons holding or acting in those offices;

- (c) to promote the values and principles set out in Article 13 and 267 throughout the public service;
  - (d) to investigate, monitor and evaluate the organization, administration and personnel practices of the public service;
  - (e) to ensure efficient and effective performance of the public service;
  - (f) to review the 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 the national government;
  - (g) to evaluate and report to the State President and Parliament on the extent to which the values and principles set out in Articles 13 and 267 are complied with;
  - (h) to hear and determine appeals in respect of matters relating to public service from the county governments
- (2) The Commission may, subject to conditions specified 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 any of Articles 149, 204(1), 272 or 289 refers;
  - (d) an office in a county government; and
  - (e) except in relation to appeals referred to in clause (1)(g), any office in the service of a county government.
- (4) A person shall not be appointed under clause (1) to act in any office on the personal staff of the State President or a retired State President, except with the consent of the State President or retired State President.

### **Staffing of county governments**

**270.** A county 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**

**271.** 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.

## **Part 3—Teachers Service Commission**

### **Teachers Service Commission**

**272.** (1) There is established the Teachers Service Commission.

(2) The functions of the Commission shall be—

- (a) to register trained teachers; and
  - (b) despite Article 270 to—
    - (i) recruit and employ registered teachers;
    - (ii) assign teachers employed by the Commission for service in any public school and other institutions;
    - (iii) promote and transfer teachers;
    - (iv) exercise disciplinary control over teachers;
    - (v) terminate the employment of teachers.
- (2) The Commission shall keep under review the standards of education and training of persons entering the teaching service and the supply of teachers and shall advise the national government on matters relating to the teaching profession.

## **Part 4--- Health Services Commission**

### **Health Services Commission**

**273.** (1) There is established the Health Services Commission.

(2) The functions of the Health Services Commission are –

- (a) to register trained health workers;
  - (i) to recruit and employ registered health workers;
  - (ii) to assign health workers employed by the Commission for service in any public hospital and other institutions; and
  - (iii) to promote and transfer any such health workers;

- (c) ensure planned health, human resources development, professional standards and ethics;
- (d) to ensure registration of all health sector professionals;
- (e) to conduct medical audit and research;
- (f) to ensure viable technical management including procurement of services and supplies; and
- (g) to oversee health care financing.

## **Part 5—The Kenya Correctional Service**

### **Establishment and regulation**

- 274.** (1) There is established in the public service, the Kenya Correctional Service.
- (2) The objects of the Kenya Correctional Service are to ensure—
- (a) the custody of the country’s prison population;
  - (b) the supervision of offenders within the community who are serving non-custodial sentences or who are on probation; and
  - (c) the rehabilitation of offenders in order to facilitate their return to useful lives within society.
- (3) The Kenya Correctional Service shall be structured and regulated so as to—
- (a) achieve the highest standards of professionalism and discipline among its members in the performance of their duties;
  - (b) promote accountability and prevent corruption;
  - (d) observe human rights standards in the exercise of its powers and the performance of its functions;
  - (e) the provision of humane living conditions in prisons in accordance with this Constitution and the law;
  - (f) train its members to the highest possible standards of competence and on minimal use of force and to have integrity and respect for human rights and fundamental freedoms and human dignity.
- (4) Parliament shall enact legislation—
- (a) establishing adequate mechanisms for the accountability and governance of the Kenya Correctional Service;
  - (b) providing for the organization, administration and functioning of the Kenya Correctional Service; and

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(c) generally regulating the Kenya Correctional Service.

### **Director-General**

- 275.** (1) There is established the office of Director-General of the Kenya Correctional Service.
- (2) The Director-General shall be appointed by the State President, on the advice of the Public Service Commission and after approval by the National Assembly.
- (3) The Director-General shall hold office for a term of five years and shall be eligible for re-appointment for one further and final term of five years.
- (4) Article 293(3) relating to qualifications of Commissioners shall apply to the Director-General.

## **CHAPTER FIFTEEN**

### **NATIONAL SECURITY**

#### **Part 1—National Security Organs**

#### **Principles and objects**

- 276.** (1) National security is the protection of the territory of Kenya, its people, their property, rights and 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**

- 277.** (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 rights and freedoms, and the sovereignty, peace, national unity and territorial integrity of Kenya.
- (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;
  - (c) prejudice a political interest or political cause that is legitimate under this Constitution; or
  - (d) obey a manifestly illegal order.
- (4) A person shall not establish an organization concerned with national security or a military or paramilitary organization except as provided for by this Constitution or by an Act of Parliament.
- (5) The national security organs shall be subordinate to civilian 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.**

- 278.** (1) There is established a National Security Council consisting of—
- (a) the State President;
  - (b) the Deputy State 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; and
  - (j) the Inspector-General of the Kenya Police Service.
- (2) The State President shall preside at the meetings of the Council, and, in the absence of the State President, the Deputy State President, and in the

absence of the Deputy State President, the Prime Minister shall preside.

(3) The Council shall appoint its secretary.

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

**279.** (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 and function 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 Kenya.

(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; and
- (b) approve the deployment of foreign forces in Kenya.

## **Part 2—The Kenya Defence Forces**

### **Establishment of Defence Forces and Defence Council**

**280.** (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) There is established a Defence Council consisting of—

- (a) the Minister responsible for defence who shall be the chairperson;
- (b) the Deputy Minister responsible for defence who shall be the vice-chairperson;
- (c) the Chief of the Kenya Defence Forces;



(d) the three commanders of the defence forces; and

(e) the Principal Secretary in the Ministry responsible for defence.

(3) The Defence Council shall appoint its Secretary.

(4) The Defence Council shall be responsible for the overall policy, control, and supervision of the Kenya Defence Forces and such other functions as Parliament may by legislation prescribe.

### **Command**

**281.** (1) The State President shall, after consulting the Defence Council, appoint the Chief of the Kenya Defence Forces, the Army Commander, the Air Force Commander, and the Navy Commander.

(2) The composition of the command of the Kenya Defence Forces shall reflect the regional and ethnic diversity of the people of Kenya.

(3) Subject to the powers of command of the State 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 3—The National Intelligence Service**

### **Establishment of National Intelligence Service**

**282.** (1) There is established the National Intelligence Service.

(2) The National Intelligence Service shall be responsible for security intelligence and counter intelligence to enhance national security, and defend this Constitution, the interests of the State and the well-being of the people of Kenya, and shall exercise such other functions as Parliament may by legislation prescribe.

(3) No intelligence service other than the National Intelligence Service or an intelligence division of the Kenya Police Service shall be established except by legislation.

### **Director-General of the Service**

**283.** (1) There is established the office of Director-General of the National Intelligence Service.

(2) The State President shall, acting on the recommendation of Cabinet and with the approval of the National Assembly, appoint the Director-General of the National Intelligence Service.

(3) The Director-General of the National Intelligence Service shall hold office for one term of eight years and shall not be eligible for re-appointment.

- (4) The Director-General may be removed from office by the State President for—
- (a) inability to perform the functions of office arising from mental or physical incapacity;
  - (b) non-compliance with Chapter Seven;
  - (c) bankruptcy
  - (d) misconduct or misbehaviour whether in the performance of the office-holder's duties or otherwise;
  - (e) incompetence; or
  - (f) any other just cause.
- (5) The Director-General shall not be removed from office except on the recommendation of a tribunal appointed by the State President and consisting of—
- (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 State President, acting on the recommendation of the Cabinet, may suspend a Director-General who is being investigated by a tribunal under clause (5).
- (7) The State President acting on the recommendation of the Cabinet shall appoint an acting Director-General when the Director-General is suspended under clause (6).
- (8) The Director-General shall exercise command over the National Intelligence Service and perform such other functions as Parliament may by legislation prescribe.

### **National Intelligence Council.**

- 284.** (1) There is established the National Intelligence Council consisting of—
- (a) the Minister responsible for matters relating to national intelligence, who shall be the chairperson;
  - (b) the Minister responsible for foreign affairs;
  - (c) the Minister responsible for finance; and
  - (d) the Attorney-General.
- (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 to—

- (a) 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) perform such other functions as are conferred on the Council by legislation.

## **Part 4—The Kenya Police Service**

### **Establishment of the Kenya Police Service**

- 285.** (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 county structure of government in Kenya.
- (3) Parliament shall enact legislation to give full effect to this Article.

### **Objects and functions**

- 286.** (1) The Kenya Police Service shall—
- (a) strive for the highest standards of professionalism and discipline among its members; and
  - (b) prevent corruption and promote and abide by the principle of transparency and accountability;
  - (c) observe human rights standards;
  - (d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and
  - (e) foster and promote relationships with the broader society.
- (2) The Kenya Police Service shall work closely with communities to ensure—
- (a) the maintenance of law and order;
  - (b) the protection of human rights and fundamental freedoms;
  - (c) the prevention and detection of crime;
  - (d) the support of victims of crime and other forms of disorder;
  - (e) the protection of life and property;

- (f) the investigation of offences; and
- (g) the enforcement of the laws with which it is charged.

### **Inspector-General of the Kenya Police Service**

- 287.** (1) There is established the office of the Inspector General of the Kenya Police Service.
- (2) The State President shall, acting on the recommendation of the Cabinet and with the approval of the National Assembly, appoint the Inspector-General.
  - (3) The Inspector-General shall hold office for one term of eight years and shall not be eligible for re-appointment.
  - (4) The Inspector-General may be removed from office by the State President only for—
    - (a) inability to perform the functions of office arising from mental or physical incapacity;
    - (b) misconduct or misbehaviour whether in the performance of the office-holder's duties or otherwise;
    - (c) incompetence;
    - (d) bankruptcy; or
    - (e) contravention of the principles of Chapter Seven;
    - (f) any other just cause.
  - (5) The Inspector-General shall not be removed from office except on the recommendation of a tribunal appointed by the State President and consisting of—
    - (a) a High Court judge, who shall be the chairperson;
    - (b) the chairperson of the Police Service Commission; and
    - (c) one other person of integrity who has served the public with distinction.
  - (6) Despite clause (5), the State President, acting on the recommendation of the Cabinet, may suspend an Inspector-General who is being investigated by a tribunal appointed under clause (5).
  - (7) The State President acting on the recommendation of the Cabinet, may appoint an acting Inspector-General where the Inspector-General is suspended under clause (6).

### **Functions and independence of Inspector-General**

- 288.** (1) The Inspector-General shall exercise command over the Kenya Police Service and perform any other duties that Parliament may by legislation prescribe.
- (2) The Inspector-General shall carry out the functions and duties of the office independently.
- (3) The Minister responsible for internal security may lawfully give a direction to the Inspector-General with respect to any matter of policy for the Kenya Police Service; but no person may give a direction to the Inspector-General with respect to—
- (a) the investigation of any particular offence or offences;
  - (b) the enforcement of the law against any particular person or persons; or
  - (c) the employment, assignment, promotion, suspension or dismissal of any member of the Kenya Police Service.
- (4) Any direction given to the Inspector-General by the Minister responsible for internal security under clause (3) shall be in writing and shall be tabled in the National Assembly within thirty days.
- (5) Despite clause (3), the Director of Public Prosecutions may direct the Inspector-General of the Kenya Police Service to investigate any information or allegation of criminal conduct.

### **Police Service Commission**

- 289.** (1) There is established the Police Service Commission.
- (2) The Police Service Commission shall consist of—
- (a) a person who is qualified to be appointed as a High Court Judge appointed by the State President;
  - (b) two retired senior police officers appointed by the State President;
  - (c) three persons of integrity who have served the public with distinction appointed by the State President; and
  - (d) the Inspector-General of the Kenya Police Service.
- (3) The State President shall appoint a chairperson from among the members appointed under clause (2)(a), (b) and (c).
- (4) The Police Service Commission shall appoint its secretary.

- (5) The functions of the Police Service Commission are, in relation to the Police Service and any service established under Article 290, to—
- (a) recruit and appoint persons to hold or act in offices in the services, to confirm appointments, to determine promotions and to exercise disciplinary control over and remove persons holding or acting in those offices;
  - (b) keep under review all matters relating to the standards or qualifications required of members of the Service;
  - (c) keep under review all matters relating conditions of service of members of the Service; and
  - (d) exercise disciplinary control, including hearing and disposal of appeals, by persons in the services.
- (6) The Police Service Commission may, by directions in writing and subject to such conditions as prescribed in an Act of Parliament, delegate powers conferred on it by this Constitution or an Act of Parliament to any public officer or public body.

### **Part 5—Other Police Services**

#### **Other police services**

- 290.** (1) Parliament may establish such other police services as it may consider necessary.
- (2) The provisions of Article 286(1) apply to a police service established under this Article.

## **CHAPTER SIXTEEN**

### **COMMISSIONS AND INDEPENDENT OFFICES**

#### **Application of Chapter**

- 291.** (1) This Chapter applies to all the Commissions mentioned in clause (2) and the independent offices mentioned in clause (3) except where specific provision is made to the contrary elsewhere in this Constitution.
- (2) The Commissions are—
- (a) the Commission on Revenue Allocation;
  - (b) the Ethics and Anti-Corruption Commission;
  - (c) the Kenya Human Rights and Gender Commission;

- (d) the Independent Electoral and Boundaries Commission;
  - (e) the Judicial Service Commission;
  - (f) the National Land Commission;
  - (g) the Public Service Commission;
  - (h) the Police Service Commission;
  - (i) the Salaries and Remuneration Commission;
  - (j) the Teachers Service Commission; and
  - (k) the Health Services Commission;
- (3) The independent offices are—
- (a) the Auditor-General;
  - (b) the Commissioner of Political Parties; and
  - (c) the Controller of Budget; and
  - (d) the People’s Protector.

**Objects of Commissions and independent offices**

- 292.** (1) The objectives of the Commissions and the independent offices are to—
- (a) protect the sovereignty of the people;
  - (b) secure the observance by all State organs of democratic values and principles; and
  - (c) promote constitutionalism.
- (2) The Commissions and the holders of independent offices—
- (a) are subject only to this Constitution and the law; and
  - (b) are independent and not subject to direction or control by any person or authority; and

**Composition, appointment and terms of office**

- 293.** (1) Each Commission shall consist of at least three and not more than nine members.
- (2) Unless otherwise specified in this Constitution, the holder of an independent office and each member of a Commission shall be—
- (a) identified and recommended for appointment in a manner prescribed by an Act of Parliament;
  - (b) approved by the Senate; and

- (c) appointed by the State President.
- (3) To be appointed, a person shall have the specific qualifications required by this Constitution or by an Act of Parliament.
- (4) Appointments to Commissions and independent offices shall take into account the principles in Article 13(2)(i)-(k).
- (5) A member of a Commission may be part time.
- (6) The holder of an independent office or a member of a Commission shall—
  - (a) unless ex-officio, hold office for a term of six years; and
  - (b) unless ex-officio or part-time, not hold any other office or employment for profit whether public or private; and
  - (c) comply with the principles set out in Chapter Seven.
- (7) The holder of an independent office or a member of a Commission is not liable to an action or suit for anything done in good faith in the performance of a function of office.
- (8) Members of a Commission shall elect a chairperson and a vice-chairperson from among themselves—
  - (a) at the first sitting of the Commission; and
  - (b) whenever it is necessary to fill a vacancy.

### **Removal from office**

- 294.** (1) The holder of an independent office or a member of a Commission, unless ex-officio, may be removed from office only for—
- (a) inability to perform their functions arising from mental or physical incapacity;
  - (b) misconduct or misbehaviour whether in the performance of the office-holder's or the member's functions or otherwise;
  - (c) bankruptcy;
  - (d) incompetence; or
  - (e) contravention of Chapter Seven.
- (2) A person desiring the removal of a person on any ground set out in clause (1) may present a petition to the Senate setting out the alleged facts constituting that ground.



- (3) The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), shall send the petition to the State President.
- (4) On receiving a petition under clause (3), the State President—
  - (a) may suspend the person concerned pending the outcome of the complaint; and
  - (b) shall appoint a tribunal in accordance with clause (5).
- (5) The tribunal shall consist of—
  - (a) a person who holds, or has held office in the Republic as a judge of a superior court, who shall be the chairperson;
  - (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 ground for removal.
- (6) The tribunal shall investigate the matter, and report on the facts and make a recommendation to the State President, who shall act in accordance with the recommendation within thirty days.
- (7) A person suspended under this Article is entitled to continue to receive the remuneration and benefits of the office while suspended.

### **General powers**

- 295.** (1) A Commission and the holder of an independent office—
- (a) may conduct investigations on their 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) commit a person to the High Court for contempt;
  - (c) has the powers necessary for conciliation, mediation and negotiation;
  - (d) to the extent permitted by legislation, may award compensation or impose a fine; and
  - (e) shall recruit their own staff.

- (2) A complaint to a Commission or the holder of an independent office may be filed by any person entitled to file a complaint under Articles 31(1) and (2).
- (3) A Commission or the holder of an independent office may, in addition to the functions conferred by this Constitution, perform such other functions as Parliament may, by legislation, prescribe.

### **Proceedings of Commissions and independent offices**

- 296.** (1) A Commission may, subject to this Constitution or an Act of Parliament, regulate its procedure.
- (2) The proceedings of a Commission shall not be invalid by reason only of a vacancy in its membership.

### **Incorporation**

- 297.** A Commission and an independent office 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.

### **Funds of Commissions**

- 298.** (1) The funds of a Commission and an independent office include—
- (a) money voted by Parliament for their purposes; and
  - (b) any other money received in the performance of their functions.
- (2) Parliament shall allocate adequate funds to enable each Commission and independent office to discharge its functions and the budget of each Commission and independent office shall be a separate vote.

### **Annual and other reports**

- 299.** (1) Within seven months after the end of the financial year, each Commission and each holder of an independent office shall submit a report to the State President and to Parliament.
- (2) Each report shall contain—
- (a) a statement on their performance in meeting their objectives;
  - (b) a statement on their activities for the year and their projection on their future activities; and
  - (c) the report of the Auditor-General.

- (3) The State President, the Senate or the National Assembly may, at any time, require a Commission or holder of an independent office to submit a report on a particular issue.
- (4) The State President shall comment in writing to Parliament on a report submitted to the State President under clause (1) and on any report requested by the State President under clause (3), and Parliament shall debate the report together with the comments of the State President.
- (5) Every report shall be published and publicized.

### **Legislation**

- 300.** Parliament may by legislation provide for the functioning of the Commissions and independent offices.

## **CHAPTER SEVENTEEN**

### **AMENDMENT OF THE CONSTITUTION**

#### **Amendment of the Constitution**

- 301.** (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 national values, principles and goals set out in Article 13(2);
  - (e) the Bill of Rights;
  - (f) the term of office of the State President;
  - (g) the independence of the Judiciary, Commissions and independent offices;
  - (h) the functions of Parliament;
  - (i) the objects and principles and the structure of devolution; or
  - (j) the provisions of this Chapter,
- shall be enacted in accordance with Article 302 or 303, and approved by a simple majority of the citizens voting in a referendum held for that purpose.
- (2) The referendum result is not valid for the purposes of the approval of a proposed amendment referred to in clause (1) unless at least twenty per

cent of the registered voters in each of a majority of the counties have voted.

- (3) An amendment to this Constitution not contemplated in clause (1) shall be enacted either—
  - (a) by Parliament, in accordance with Article 302; or
  - (b) by the people and Parliament, in accordance with Article 303.

### **Amendment by parliamentary initiative**

- 302.** (1) A Bill to amend this Constitution—
- (a) may be introduced in either House of Parliament;
  - (b) may not address any other matter apart from consequential amendments to legislation arising from the Bill;
  - (c) shall not be called for second reading in either House, until at least ninety days after the date of first reading of the Bill in that House; and
  - (d) shall have been enacted by Parliament when each House of Parliament has passed the Bill, in both its second and third readings, by not less than two-thirds of all the members of that House.
- (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 Speakers of the two Houses of Parliament shall jointly submit to the State President—
    - (a) the Bill, for assent and publication; and
    - (b) a certificate that the Bill has been enacted by Parliament in accordance with this Article.
  - (4) Within thirty days after the Bill is enacted by Parliament, the State President shall assent to the Bill and cause it to be published, subject to clause (5).
  - (5) If a Bill to amend this Constitution proposes an amendment contemplated in Article 301(1), the State President shall—
    - (a) before assenting to the Bill, request the Independent Electoral and Boundaries Commission to conduct, within ninety days, a national referendum for approval of the Bill; and
    - (b) within thirty days after the chairperson of the Independent Electoral and Boundaries Commission has certified to the State 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 popular initiative**

- 303.** (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 Independent Electoral and Boundaries Commission, which shall verify that the initiative is supported by at least one million registered voters.
- (5) If the Independent Electoral and Boundaries Commission is satisfied that the initiative meets the requirements of this Article, the Commission shall submit the draft Bill to each county assembly for consideration within a period of not more than three months after the date on which it was submitted by the Commission.
- (6) When a county assembly has approved a draft Bill, the governor of that county shall submit a copy of the draft Bill jointly to the Speakers of the two Houses of Parliament, with a certificate that the county assembly has approved it.
- (7) When a draft Bill has been approved by a majority of the county assemblies, it shall forthwith be introduced in Parliament, where it shall be deemed to have been approved if passed by a majority of the members of each house.
- (8) If Parliament approves the Bill, it shall be submitted to the State President for assent in accordance with Articles 303(4) and (5).
- (9) If either House of Parliament fails to pass the Bill, the Bill shall be submitted to the people in a referendum.
- (10) The referendum result is not valid for the purposes of the approval of a proposed amendment referred to in clause (1) unless—
- (a) at least twenty percent of the registered voters in each of a majority of the counties have voted; and
  - (b) a majority of the voters in more than half of the counties have voted in support; and
  - (c) a majority of the votes cast are in support of the proposed amendment.

## CHAPTER EIGHTEEN

### GENERAL PROVISIONS

#### Enforcement of the provisions of this Constitution

**304.** (1) A person referred to in clause (2) has the right to institute proceedings in the appropriate court, alleging that any provision of this Constitution has been violated or threatened with violation.

(2) The persons who may institute court proceedings in accordance with clause (1) are—

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

#### Construing the Constitution

**305.** (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) Unless there is provision to the contrary, 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.

(4) 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.
- (5) 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”;
- (6) 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.
- (7) 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.
- (8) If, in any case, 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.

- (9) 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.
- (10) 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.
- (11) Except where there is provision to the contrary in this Constitution, where a person has vacated an office 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 this Constitution.
- (12) Where the power or duty of a person under this Constitution is exercisable only upon the advice, recommendation, or is subject to the approval or consent of , or upon consultation with, another person, then the power shall, unless a contrary intention appears, be exercisable only upon that advice, recommendation or subject to that approval or consent or after that consultation.

## **Definitions**

**306.** 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 fundamental freedom;

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

“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;

“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;

“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 and includes electronic files;

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

“financial year” means the period of twelve months ending on the thirtieth day of June or on such other day as Parliament may prescribe;



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

“judicial officer” means a person who holds, or is acting, in the office of registrar, deputy registrar, magistrate, Kadhi or the presiding officer of a court established under Article 202(1)(d);

“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 an assembly of a county government;

“marginalized community” means—

- (a) a community which, by reason of its relatively small population or for any other reason has been unable to fully 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 32;

“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 109;

“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 national government or a county 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;

“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) State President;
- (b) Deputy State President;
- (c) member of the Cabinet;
- (d) Deputy Minister;
- (e) member of Parliament;
- (f) member of the Judiciary;
- (g) member of a constitutional Commission
- (h) holder of an independent office;

- (i) member of an assembly or executive committee of a county government;
- (j) Attorney-General;
- (k) Director of Public Prosecutions;
- (l) Public Defender;
- (m) Secretary to the Cabinet;
- (n) Principal Secretary;
- (o) Chief of the Kenya Defence Forces; and
- (p) commander of a service of the Kenya Defence Forces
- (q) Director-General of the National Intelligence Service; and
- (r) Inspector-General of the Kenya Police Service.
- (s) Director-General of the Correctional Service;

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

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

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

“youth” means an the collectivity of all individuals who 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 NINETEEN

### TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

#### Consequential Legislation

- 307.** (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 Fifth Schedule, commencing on the effective date.
- (2) Despite clause (1), Parliament may, by resolution supported by the votes of at least two-thirds of all the members of Parliament, extend the period prescribed in respect of any particular matter under clause (1), by such time not exceeding one year, as Parliament may determine.
- (3) The power of Parliament contemplated under clause (2), may be exercised—
- (a) only once; and
  - (b) only in exceptional circumstances to be certified by the Speaker of the National Assembly.
- (4) For the purposes of clauses (1), the Attorney-General in consultation with the Commission on the Implementation of the Constitution shall prepare and table the relevant Bills before Parliament, as soon as reasonably practicable, to enable Parliament to enact the legislation within the period specified.
- (5) 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 Constitutional Court for a declaration on the matter.
- (6) The Constitutional Court in determining a petition under clause (4) 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.
- (7) If Parliament fails to enact legislation in accordance with clauses (1) and (2), the Chief Justice shall advise the State President to dissolve Parliament and the State President shall dissolve Parliament.

- (8) Where Parliament has been dissolved under clause (6), the new Parliament shall enact the legislation required to be enacted under clause (1) within the periods specified in the Fifth Schedule beginning with the date of commencement of the term of the new Parliament.
- (9) Where the new Parliament fails to enact legislation in accordance with clause (7), the provisions of clauses (1) to (7) shall apply.

**Transitional**

- 308.** The transitional and consequential provisions set out in the Sixth Schedule shall take effect on the effective date.

**Effective Date**

- 309.** This Constitution shall come into force upon its promulgation by the President.

**Repeal**

- 310.** The Constitution in force immediately before the effective date shall stand repealed on the effective date.

## FIRST SCHEDULE

(Article 5(2))

### COUNTIES

**The counties into which Kenya is divided are—**

1. Mombasa
2. Kwale
3. Kilifi
4. Tana River
5. Lamu
6. Taita/Taveta
7. Garissa
8. Wajir
9. Mandera
10. Marsabit
11. Isiolo
12. Meru .
13. Tharaka-Nithi
14. Embu
15. Kitui
16. Machakos
17. Makueni
18. Nyandarua
19. Nyeri
20. Kirinyaga
21. Murang'a
22. Kiambu
23. Turkana
24. West Pokot
25. Samburu
26. Trans Nzoia
27. Uasin Gishu
28. Elgeyo/Marakwet
29. Nandi
30. Baringo
31. Laikipia
32. Nakuru
33. Narok
34. Kajiado
35. Kericho

36. Bomet
37. Kakamega
38. Vihiga
39. Bungoma
40. Busia
41. Siaya
42. Kisumu
43. Homa Bay
44. Migori
45. Kisii
46. Nyamira
47. Nairobi City





**(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,

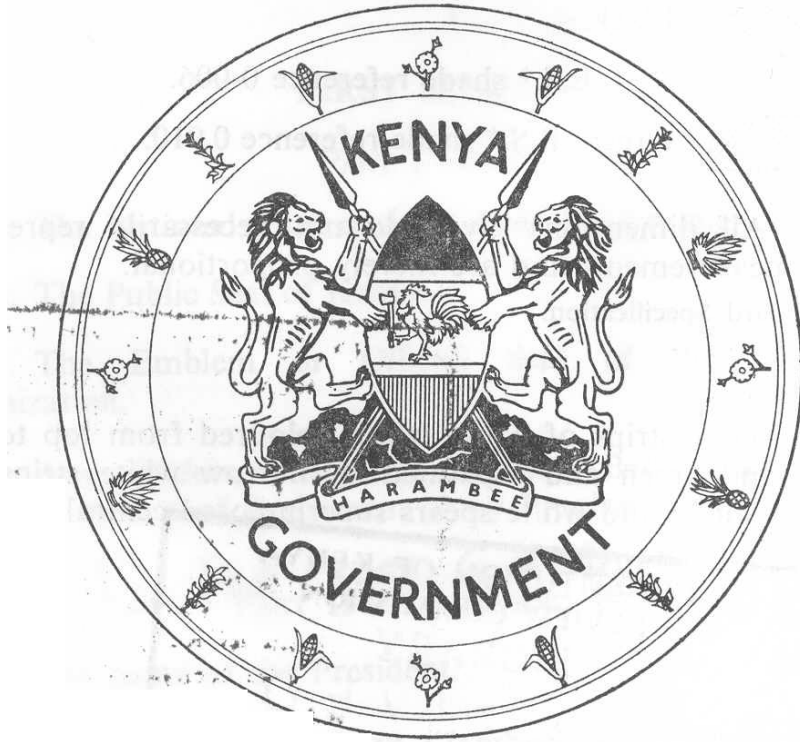
Build this our nation together  
And the glory of Kenya

The fruit of our labour  
Fill every heart with thanksgiving

(c) **The Coat of Arms**



(d) **The Public Seal**



**THIRD SCHEDULE**

*(Article 90)*

**NATIONAL OATHS AND AFFIRMATIONS**

**OATH OR SOLEMN AFFIRMATION OF ALLEGIANCE OF THE STATE PRESIDENT/ACTING STATE PRESIDENT AND THE DEPUTY STATE PRESIDENT**

I, ..... , in full realization of the high calling I assume as State President/Acting State 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 STATE PRESIDENT/ACTING STATE PRESIDENT**

I, ..... , swear/solemnly affirm that I will truly and diligently serve the people and the Republic of Kenya in the office of the State President/ Acting State President of the Republic of Kenya; that I will diligently discharge my duties and perform my functions in the Office of State President/Acting State 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 STATE 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 State 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 State 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**

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 of the Republic of Kenya with honour and dignity; that I will be a true and faithful counsellor; 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 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 DEPUTY PRIME MINISTER/A MINISTER/DEPUTY MINISTER**

I, ....., being appointed a Minister of Kenya, do swear/solemnly affirm that I will at all times be faithful to the Republic of Kenya; that I will obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will well and truly serve the people and the Republic of Kenya in the Office of a Minister/ Deputy Minister; that I undertake to hold my office as Deputy Prime Minister/Minister/ Deputy Minister with honour and dignity; that I will be a true and faithful counsellor to the Prime Minister 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/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 SECRETARY TO THE CABINET/ A PRINCIPAL SECRETARY**

I, ....., being called upon to exercise the functions of Secretary to the Cabinet /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 Secretary to the Cabinet /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, JUDGES OF THE COURT OF APPEAL, JUDGES OF THE CONSTITUTIONAL COURT 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 Constitutional Court 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, 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 (SENATE/ NATIONAL ASSEMBLY)**

I,....., having been elected a member of the Senate /National Assembly do swear (in the name of the Almighty God) (solemnly affirm) that I will bear true faith and allegiance to the People and the Republic of Kenya; that I will obey, respect, uphold, preserve, protect and defend the Constitution of the Republic of Kenya; and that I will faithfully and conscientiously discharge the duties of a member of Parliament. (So help me God).

**OATH FOR SPEAKER/DEPUTY SPEAKER OF THE SENATE/NATIONAL ASSEMBLY**

I,....., having been elected as Speaker/Deputy Speaker of the Senate/ National Assembly do swear (in the name of the Almighty God) (solemnly affirm) that I will bear true faith and allegiance to the people and the Republic of Kenya; that I will faithfully and conscientiously discharge my duties as Speaker/Deputy Speaker of the Senate/National Assembly; 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).

## **FOURTH SCHEDULE**

*(Article 218(1))*

### **DISTRIBUTION OF FUNCTIONS BETWEEN THE NATIONAL GOVERNMENT AND THE COUNTY GOVERNMENTS**

#### **Part 1 – National Government**

1. Foreign affairs, foreign policy and international trade.
2. In consultation with the counties, 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. Universities, tertiary educational institutions and other institutions of research and higher learning and primary schools, special education, secondary schools and special education institutions.
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 counties;
  - (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 counties.
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.
28. Health policy.
29. Agricultural policy.
30. Veterinary policy.
31. Energy policy including electricity and gas reticulation and energy regulation.
32. Capacity building and technical assistance to the counties.
33. Public investment.
34. National betting and lottery.



35. Tourism policy and development.

## Part 2—County Governments

The powers and functions of the county are—

1. Agriculture, including—
  - (a) crop and animal husbandry;
  - (b) livestock sale yards;
  - (c) county abattoirs;
  - (d) plant and animal disease control; and
  - (e) fisheries.
2. County health services, including, in particular—
  - (a) county 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.
3. Control of air pollution, noise pollution, other public nuisances and outdoor advertising.
4. 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) county parks, beaches and recreation facilities.
5. County transport, including—
  - (a) county 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.
6. Animal control and welfare, including—
- (a) licensing of dogs; and
  - (b) facilities for the accommodation, care and burial of animals.
7. 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.
8. County 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.
9. Education at pre-primary, education, village polytechnics, homecraft centres and childcare facilities.
10. Implementation of national government policies on natural resources and environmental conservation, including—
- (a) soil and water conservation; and
  - (b) forestry.
11. County public works and services, including—
- (a) storm water management systems in built-up areas; and
  - (b) water and sanitation services.
12. Fire fighting services and disaster management.
13. Control of drugs and pornography.

14. Ensuring and co-ordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the powers and functions and participation in governance at the local level.

**FIFTH SCHEDULE**

(Article 306(1))

**LEGISLATION TO BE ENACTED BY PARLIAMENT**

<b>CHAPTER AND TITLE OF ARTICLE</b>	<b>TIME SPECIFICATION</b>
Responsibility of the State in respect of culture	Five years
<b>CHAPTER FOUR: CITIZENSHIP</b>	
Citizenship by registration	Five years
Legislation on citizenship	Five years
Freedom from discrimination	Three years
Older members of society	Five years
Youth	Three years
Children	Three years
Family	Five years
Persons with disabilities	Three years
Minorities and marginalized groups	Three years
Freedom of the media	One year
Freedom of association	One year
Consumer rights	Three years
Fair administrative action	Three years
Legislation required by Chapter 6	Four years
Oath of office	Six months
Legislation on leadership	One year
Recall	Three years
Legislation on Elections	Eighteen months
Independent Electoral and Boundaries Commission	Eighteen months
Regulation of Political Parties, Commissioner of Political Parties and Fund	One year,
Membership of the Senate and National Assembly	Eighteen months
Procedure at presidential election	Eighteen months
Presidential powers of mercy	Two years
Public Defender	Two years

<b>CHAPTER AND TITLE OF ARTICLE</b>	<b>TIME SPECIFICATION</b>
Court of Appeal and High Court	Two years
Constitutional Court	Nine months
All legislation required for establishment and operation of devolved government excluding Art 231 law.	Two years
Co-operation between governments at different levels	Five years
Consolidated Fund	Two years
Revenue Fund for devolved governments	Two years
Contingencies Fund	Three years
Public debt	Three years
Budgets of devolved governments	Two years
Procurement of public goods and services	Four years
Accounts and audit of public institutions	Four years
Powers and functions of Commission	Five years
Staffing of devolved governments	Two years
Establishment of Kenya Correctional Service	Four years
Establishment of the Kenya Police Service	Three years
Police Service Commission	
<ul style="list-style-type: none"> <li>• Commission on Revenue Allocation</li> </ul>	Two years
<ul style="list-style-type: none"> <li>• Ethics and Anti-Corruption Commission</li> </ul>	One year
<ul style="list-style-type: none"> <li>• Kenya Human Rights and Gender Commission</li> </ul>	Six months
<ul style="list-style-type: none"> <li>• Independent Electoral and Boundaries Commission</li> </ul>	Three years
<ul style="list-style-type: none"> <li>• National Land Commission</li> </ul>	Four years
<ul style="list-style-type: none"> <li>• Public Service Commission</li> </ul>	Four years
<ul style="list-style-type: none"> <li>• Salaries and Remuneration Commission</li> </ul>	Four years
<ul style="list-style-type: none"> <li>• Teachers Service Commission</li> </ul>	Four years

## **SIXTH SCHEDULE**

*(Article 308)*

### **TRANSITIONAL AND CONSEQUENTIAL PROVISIONS**

#### **Part 1 - General**

##### **Definitions**

1. In this Schedule, unless the context indicates otherwise –  
‘effective date’ means the date on which this Constitution comes into force;  
‘CIC’ means the Commission on the Implementation of the Constitution;  
‘IIBC’ means Interim Independent Boundaries Commission;  
‘IIEC’ means Interim Independent Electoral Commission; and  
‘old Constitution’ means the Constitution in force before this Constitution took effect.

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

2. 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 national government or the Republic under this Constitution.

### **Suspension of provisions of this Constitution**

3. The following provisions of this Constitution are suspended until the final announcement of all the results of the first elections for the National Assembly under this Constitution-
  - (a) Chapter Nine, except that the provisions of the Chapter relating to the election of the National Assembly and the Senate shall apply to the first general elections under this Constitution.
  - (b) Articles 150 to 186 of Chapter Ten; and
  - (c) Chapter Eight except that the provisions of the Chapter shall apply to the first general elections under this Constitution.

### **Existing laws**

4. (1) All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.
  - (2) Pursuant to subsection (1), after the first general elections under this Constitution, functions that legislation requires to be performed by the President shall be performed by the Prime Minister or Cabinet as the context requires unless that function conforms with the functions of the State President under this Constitution
  - (3) Until Parliament passes the Act anticipated in Articles 19 and 23, section 93 of the old Constitution continues to apply.

### **Commission on the Implementation of the Constitution**

5. (1) There is established the Commission on the Implementation of the Constitution which shall consist of—
  - (a) a chairperson; and
  - (b) eight other members.
- (2) The members of the CIC shall include persons with experience in public administration, human rights and government.
- (3) After the Commission on Revenue Allocation is established, the CIC shall notify that Commission of all meetings of the CIC and a member of the

Commission on Revenue Allocation shall be permitted to attend and participate in all meetings of the CIC but shall not vote in the meetings.

- (4) The functions of the CIC are to—
  - (a) monitor, facilitate and oversee the development of legislation and administrative procedures required to implement this Constitution;
  - (b) where necessary, initiate legislation required to implement this Constitution;
  - (c) report twice a year to the President and Parliament on—
    - (i) the progress of the implementation of this Constitution; and
    - (ii) any impediments to its implementation; and
  - (d) work with each constitutional Commission to ensure that the letter and the spirit of this Constitution is respected.
- (5) In monitoring and facilitating the implementation of the system of devolved government, the CIC shall perform the specific functions set out in this Schedule.
- (6) The CIC shall stand dissolved at the full implementation of this Constitution as determined by Parliament.
- (7) The provisions of Chapter Sixteen shall apply to the CIC.

### **Rules for the enforcement of the Bill of Rights**

6. Until the Chief Justice makes the rules contemplated by Article 31, the Rules for the enforcement of the fundamental rights and freedoms under section 84(6) of the old Constitution shall continue in force with the alterations, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with Article 31.

### **Land**

7. (1) Article 75(2) and (3) is suspended until the National Land Commission is established.
- (2) Until communities are identified and their titles are registered, community land shall be held by the National Land Commission on their behalf.

### **Ownership of land by non-citizens**



8. (1) On the effective date any freehold interest in land in Kenya held by a person who is not a citizen shall revert back to the Republic of Kenya to be held on behalf of the people of Kenya, and the State shall grant to that person a ninety-nine year lease at a peppercorn rent
- (2) On the effective date, any other interest in land in Kenya larger than a ninety-nine year lease held by a person who is not a citizen shall be converted to a ninety-nine year lease.

### **National Assembly**

9. (1) The National Assembly existing immediately before the effective date shall continue as the National Assembly for the purposes of this Constitution for its unexpired term unless it is dissolved earlier.
- (2) Sections 30 to 40, 43 to 46 and 48 to 58 of the old Constitution shall continue to operate until the first election for the National Assembly held under this Constitution but the provisions of this Constitution concerning the system of elections, eligibility for election and the electoral process shall apply to that election.
- (3) Until the expiry of its term, Parliament may be prorogued or dissolved by the President only with the agreement of the Prime Minister.

### **Senate**

10. (1) Until the first Senate has been elected under this Constitution, the functions of the Senate shall be exercised by the National Assembly.
- (2) Until the Senate has been elected under this Constitution, where any power or function is required to be exercised or performed by both Houses, acting jointly or one after the other, that power or function shall be exercised or performed by the National Assembly.
- (3) Any function or power of the Senate shall, if performed or exercised by the National Assembly before the date contemplated in subsection (1), be deemed to have been duly exercised or performed by the Senate.

### **Elections and by-elections**

11. (1) The first elections for the State President, the National Assembly and the Senate under this Constitution shall be held within 60 days after the dissolution of the National Assembly at the end of its term unless the coalition is dissolved earlier in

which case elections shall be held within 90 days after the dissolution of the coalition.

(2) Elections for the first county assemblies and mayors shall be at the same time as the first general elections unless the coalition is dissolved earlier in which case elections for county assemblies shall be on a day determined by the IIEC with the agreement of the CIC.

## **The Executive**

- 12.** (1) The National Accord and Reconciliation Act and the provisions of the old Constitution concerning the executive remain in force until the final announcement of all the results of the first elections for the National Assembly under this Constitution.
- (2) The provisions of the old Constitution that remain in force under subsection (1) are Articles 4 to 29 but any appointment or dismissal to be made by the President under the old Constitution must be made by the President with the agreement of the Prime Minister.
- (3) The persons occupying the offices of President and Prime Minister immediately before the effective date shall continue to serve as President and Prime Minister respectively, in accordance with the old Constitution and the National Accord and Reconciliation Act until the first general elections held under this Constitution unless they vacate office in terms of the old Constitution and the Accord.
- (4) The persons occupying the offices of Vice-President and Deputy Prime Minister or holding a position in the Cabinet or as an Assistant Minister immediately before the effective date shall continue to serve in accordance with the old Constitution until the first general elections held under this Constitution unless they vacate or are removed from office in accordance with the old Constitution and the National Accord and Reconciliation Act.
- (5) A person who before the effective date has held office for one term or more as President is not eligible from the effective date to stand for election as State President.

## **Part 2 – Devolved government**

### **Operation of provisions relating to devolved government**

13. (1) The provisions of this Constitution relating to devolved government, including Article 220, shall come into effect on the date of the first elections for county assemblies held under this Constitution.
- (2) Despite subsection (1) –
- (a) elections for county assemblies and mayors shall be held in accordance with Articles 211, 214 and 216 of this Constitution; and
  - (b) the laws relating to devolved government, required by this Schedule and Chapters 12 and 13 of this Constitution, shall be enacted within the period stipulated in the Fifth Schedule.
- (3) The laws contemplated in subsection (2)(b) may be enacted only after the CIC and, if it has been established, the Commission on Revenue Allocation, have been consulted and any recommendations of the Commissions have been considered by Parliament.
- (4) The Commissions shall be given at least 30 days to consider legislation under subsection (3).
- (5) Subsections (3) and (4) lapse when the CIC is dissolved.

#### **Provision for devolution of functions to be made by Act of Parliament**

14. (1) Parliament shall, by legislation, make provision for the phased transfer, over a period of not more than five years from the date of the first election of county assemblies, from the national government to county governments of the functions assigned to them under Article 218.
- (2) The legislation referred to in subsection (1) shall –
- (a) set out the way in which the national government shall –
    - (i) facilitate the devolution of power;
    - (ii) assist county governments in building their capacity to govern effectively and provide the services for which they are responsible; and
    - (iii) support county governments;
  - (b) establish criteria that must be met before particular functions are devolved to county governments to ensure that those governments are not given functions which they cannot perform;

- (c) permit the asymmetrical devolution of powers to ensure that functions are devolved promptly to counties that have the capacity to perform them but that no county is given functions it cannot perform; and
- (d) provide mechanisms that ensure that the Commission on the Implementation of the Constitution can perform properly its role in monitoring the implementation of the system of devolved government.

### **Monitoring of transfer of functions to devolved governments**

- 15.** (1) No function shall be transferred to a devolved government unless the CIC has approved the transfer, taking into account the criteria set out in the legislation contemplated in section 13.
- (2) The CIC may challenge in the appropriate court a decision by the national government to withhold a function from a county which has the capacity to perform that function or to transfer a function to a county which does not have adequate capacity to perform the function.

### **Provincial Administration**

- 16.** (1) Upon the holding of the first elections for county assemblies the system of administration commonly known as the Provincial Administration shall be phased out and the national government shall restructure its administrative arrangements to accord with and respect the system of devolved government established under this Constitution.
- (2) The process of phasing out the Provincial Administration shall be completed within five years of the election of county assemblies.
- (3) Public officers serving in the Provincial Administration may be redeployed in accordance with administrative arrangements made under subsection (1).
- (4) Despite subsection (3), the chiefs, the assistant chiefs and village elders may continue as such under the county governments as may be determined by each county government.
- (5) On the effective date, all assets held by the national government and situated in the provinces, districts, divisions and locations, shall remain public property.

## **Local Authorities**

17. All local authorities established under the Local Government Act (Cap. 265) existing immediately before the effective date shall continue to exist subject to any law that might be enacted after the effective date.

## **Part 3 – The Judiciary**

### **The Judicial Service Commission**

18. (1) The Judicial Service Commission shall be appointed within thirty days after the effective date and the Commission shall be deemed to be properly constituted under this Constitution despite the fact that there may be a vacancy in its membership because despite the fact that there may be one or more vacancies in its membership because any of the bodies nominating or electing members have not done so.
- (2) Despite clause (1) the Judicial Service Commission may not perform its functions unless five members have been appointed.
- (3) Until the Public Service Commission contemplated in Article 268 is established, a person nominated by the Public Service Commission established under section 106 of the old Constitution shall serve on the Judicial Service Commission but, when the new Public Service Commission is established, that person shall cease to be a member of the Judicial Service Commission and new Public Service Commission shall nominate a person to serve on the Judicial Service Commission.

### **Establishment of the Supreme and Constitutional Courts**

19. (1) The establishment of, and appointment of judges to, the Supreme Court and the Constitutional Court shall be finalized within one year after the effective date.
- (2) Until the Constitutional Court is established the High Court shall have jurisdiction over matters assigned to the Constitutional Court.

### **Judicial proceedings and pending matters**

20. Unless otherwise provided under this Constitution, all judicial proceedings pending before any court shall continue to be heard and shall be determined by the same court or a corresponding court established under this Constitution or as directed by the Chief Justice or the Registrar of the High Court.

### **Judges**

21. (1) Within thirty days after the effective date, the President and the Prime Minister, acting in accordance with the spirit and principles of the National Accord, shall

establish the Judges Review Commission which shall, in accordance with this section, be responsible for vetting judges in office immediately before the effective date.

(2) The Judges Review Commission shall consist of—

- (a) two non-citizen serving or retired judges each of whom has served in a Commonwealth country as a judge of a court of appeal or as a Chief Justice, and of whom one shall be appointed as the chairperson;
- (b) two retired judges of the High Court of Kenya or Court of Appeal who shall be citizens of Kenya; and
- (c) an advocate with at least fifteen years experience as a distinguished academic, a judicial officer, or a legal practitioner or experience in any other relevant legal field, nominated by the Law Society of Kenya.

(3) A judge who held office immediately before the effective date may, within sixty days after the effective date, choose to retire from office.

(4) A judge who chooses to leave office under subsection (3) shall be entitled to full retirement benefits if that judge has served for fifteen years but if the period served by the judge is shorter than fifteen years, the judge shall be entitled to benefits commensurate with the length of service on the bench.

(5) The Judges Review Commission may consider, in respect of a judge—

- (a) any pending or concluded criminal case;
- (b) any recommendations for prosecution by the Attorney-General, the Kenya Anti-Corruption Commission or other appropriate authority;
- (c) the suitability for appointment as a judge on the basis of the criteria in this Constitution;
- (d) competence and diligence; and
- (e) any other relevant matter.

(6) In the performance of its functions under this section, the Judges Review Commission shall respect and shall be guided by international principles and standards on judicial independence.

(7) In considering the case of any particular judge, the Judges Review Commission shall take note of any formal complaints pending against the judge on the effective date before the any of the following—

- (a) the Kenya Anti-Corruption Commission;
  - (b) the Advocates Complaints Commission or Advocates Disciplinary Committee;
  - (c) the Public Complaints Standing Committee;
  - (d) the Judicial Service Commission; and
  - (e) the Office of the Attorney-General.
- (8) The Judges Review Commission shall consider cases in the following order of priority—
- (a) judges of the Court of Appeal in the order of seniority;
  - (b) ten judges of the High Court at a time, in order of seniority.
- (9) Where, upon a preliminary consideration of the case of any particular judge, the Judges Review Commission is of the view that there are serious reasons to suspect that the judge is or may be unsuitable to serve as a judge, the Commission shall require the judge concerned to proceed on leave with full pay pending the final determination of the case of that judge.
- (10) Where upon final determination of a complaint or matter the Judges Review Commission concludes that a person is unsuitable to hold office as a judge, the Commission shall, in writing, inform such judge of the finding and the judge shall from the date of the letter, be deemed to have been removed from office.
- (11) At any point in the vetting process, if the Judges Review Commission considers that a judge is fit to hold office, it shall so declare with respect to that judge and the judge shall continue in office as if appointed under this Constitution.
- (12) Unless its term is extended by resolution of the National Assembly, the Judges Review Commission shall stand dissolved on the expiry of one year from the effective date.
- (13) The vacancies created by the operation of this section as well as those arising from the provisions of Chapter Eleven shall be filled after the new Judicial Service Commission has been appointed and in the manner provided for under this Constitution.
- (14) Despite Article 200, the retirement age for judges in office immediately before the effective date who continue to serve under this Constitution is 74 years.

## **Chief Justice**

- 22.** (1) The Chief Justice in office immediately before the effective date shall, within sixty days of the effective date, vacate office and may choose either—
- (a) to retire from the judiciary; or
  - (b) subject to the process of vetting under this section, to continue to serve on the Court of Appeal.
- (2) A new Chief Justice shall be appointed by the President before the Chief Justice in office immediately before the effective date vacates office.
- (3) The President, the Prime Minister and the Judicial Service Commission must agree to the person who the President appoints as Chief Justice.
- (4) Subsection (3) also applies if there are further vacancies in the office of Chief Justice before the first general elections under this Constitution.

### **Vetting of judicial officers**

- 23.** The Judicial Service Commission shall carry out a vetting process with respect to all judicial officers.

## **Part 4 – Constitutional Commissions and other offices**

### **Constitutional Commissions**

- 25.** (1) The CIC shall be constituted within ninety days after the effective date.
- (2) The Commission on Revenue Allocation and the Salaries and Remuneration Commission shall be constituted within nine months after the CIC is constituted.
- (3) Until the Acts anticipated in Article 300 (2) are in force, the persons appointed as members of the CIC and as chairpersons of the Commission on Revenue Allocation and the Salaries and Remuneration Commission shall be persons –
- (a) nominated by the President with the agreement of the Prime Minister; and
  - (b) approved by the National Assembly.

### **The Kenya Human Rights and Gender Commission**

- 26.** (1) The commissioners of the Kenya National Commission on Human Rights appointed under the Kenya National Commission on Human Rights Act (Cap 9)



and the commissioners of the National Commission on Gender and Development, appointed under the National Commission on Gender and Development Act (Cap 13) other than the Permanent Secretaries and the Attorney-General or a representative of the Attorney-General, shall become members of the Kenya Human Rights and Gender Commission for their unexpired term but each shall retain the terms of service as at the effective date.

- (2) The chairperson of the Kenya National Commission on Human Rights shall be the chairperson of the Kenya Human Rights and Gender Commission for the unexpired term of that chairperson.

### **The Interim Independent Boundaries Commission**

- 27.** (1) The IIBC established under the old Constitution shall continue to function as constituted under that Constitution and in terms of Articles 41B and 41C but –
- (a) it shall not determine the boundaries of the counties established under this Constitution;
  - (b) it shall determine the boundaries of using the criteria set out in this Constitution; and
  - (c) members of the Commission shall be subject to Chapter Seven of this Constitution and shall file the documents required by the Anti-Corruption Commission as stipulated in section 11(2) of this Schedule.
- (2) The requirement in Article 107(1) that a review of constituency and ward boundaries shall be completed at least eighteen months before a general election does not apply to the review of boundaries preceding the first elections under this Constitution.

### **The Interim Independent Electoral Commission and Independent Electoral and Boundaries Commission**

- 28.** (1) The IIEC established under section 41 of the old Constitution shall stand dissolved six months after the first elections held in terms of this Constitution unless the period is extended by resolution of the National Assembly.
- (2) The Independent Electoral and Boundaries Commission referred to in Article 106 of this Constitution shall be appointed within six months after the first general elections held under this Constitution.

- (3) When members of the Independent Electoral and Boundaries Commission are selected, regard shall be had to the need for continuity and the retention of experience.

### **The Ethics and Anti-Corruption Commission**

29. (1) Until the Act regulating the Ethics and Anti-Corruption Commission comes into force, the Kenya Anti-Corruption Commission shall perform the functions of the Ethics and Anti-Corruption Commission.
- (2) The Board, Director and Deputy Directors of the Kenya Anti-Corruption Commission in office under the Kenya Anti-Corruption and Economic Crimes Act shall continue in office for their unexpired terms or until legislation regulating the Ethics and Anti-Corruption Commission comes into force, whichever is earlier.
- (3) Every State officer who held office before the effective date and continues in office after the effective date shall file the documents and evidence required in terms of Chapter Seven with the Kenya Anti-Corruption Commission within thirty days after the effective date.

### **Existing offices**

30. (1) Unless this Schedule provides otherwise, a person who immediately before the effective date, held or was acting in an office established by the old Constitution shall on the effective date continue to hold or act in that office under this Constitution for the unexpired period, if any, of the term of that person.
- (2) A person who immediately before the effective date held or was acting in a public office established by 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) 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.
- (5) The functions of the Director of Public Prosecutions shall be performed by the Attorney-General until a Director of Public Prosecutions is appointed under this Constitution.

- (7) The functions of the Controller of Budget shall be performed by the Auditor-General until a Controller of Budget is appointed under this Constitution.
- (8) Despite subsection (1), and unless removed earlier under this Constitution, the Attorney-General and the Auditor-General shall continue in office for a period of no more than twelve months after the effective date and new persons shall be appointed to those offices under this Constitution.

### **New appointments**

31. (1) 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 be finalised within one year.
- (2) Unless this Schedule prescribes otherwise, when this Constitution requires an appointment to be made by the State President with the approval of the National Assembly or Senate, until after the first elections under this Constitution, the President shall appoint a person nominated by the Prime Minister with the concurrence of the President and approved by the National Assembly.

### **Oath of allegiance to this Constitution**

32. On the effective date, the President and any State officer or other person who had, before the effective date, taken and subscribed an oath or affirmation of office under the old Constitution, or who is required to take and prescribe an oath or affirmation of office under this Constitution, shall take and subscribe the appropriate oath or affirmation under this Constitution.

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

33. An office or institution established under this Constitution is the legal successor of the corresponding office or institution, established by or under the old Constitution or by an Act of Parliament in force before the effective date, whether known by the same or a new name.

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

34. The law applicable to pensions in respect of holders of constitutional offices under the old Constitution 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.

## **Part 5 - Miscellaneous**

### **Appointments in Police Service**

**35.** Until the Police Service Commission referred to in Article 289 is established section 108(2) of the old Constitution applies to appointments, discipline and the removal of persons from office in the Kenya Police Service.

### **Past human rights abuses**

**36.** Parliament may, within six months of the effective date, by legislation, empower the Kenya Human Rights and Gender Commission or any other body established by Parliament 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.

### **Civic education**

**37.** From the effective date, the national 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.

### **Currency**

**38.** Nothing in Article 266(3) affects the validity of coins and notes issued before the effective date.

