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## PREAMBLE

We, the people of Kenya –

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

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

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

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

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

**RECOGNISING** the aspirations of all Kenyans for a government based on freedom, democracy, social justice and the rule of law:

**EXERCISING** our sovereign and inalienable right to determine the form of governance of our country and having participated fully in the making of this Constitution:

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

**GOD BLESS KENYA**

## CHAPTER ONE

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

#### Sovereignty of the people

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

### **Supremacy of the Constitution**

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

### **The Laws of Kenya**

3. The laws of Kenya comprise this Constitution and each of the following laws to the extent that it is consistent with this Constitution:
  - (a) laws enacted under this Constitution;
  - (b) the Acts of Parliament in force immediately before the effective date;
  - (c) any other law that was recognized by the courts as part of the laws of Kenya immediately before the effective date;
  - (d) personal laws of the peoples of Kenya;
  - (e) the rules of law generally known as the common law or the doctrines of equity, as they relate to the practice and procedures of the courts;
  - (f) the laws of the East African Community; and
  - (g) customary international law, and international agreements, applicable to Kenya.

## **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 under international law.
- (2) Kenya comprises such districts and other units as may be prescribed by an Act of Parliament.

- (3) Each district shall be divided into such units as may be prescribed by an Act of Parliament.

### **Devolution**

6. (1) The sovereign authority of the people is exercised at –
  - (a) the national level; and
  - (b) the district level.
- (2) The Government and the district governments are distinct and inter-dependent and conduct their mutual relations on the basis of consultation and co-operation.

### **Capital**

7. The capital of Kenya is Nairobi.

### **Decentralization of State organs**

8. The State shall decentralize State organs throughout the districts in order to ensure -
  - (a) equitable access to Government services and employment; and
  - (b) effective communication between the State organs and the public.

### **Languages**

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

### **State and religion**

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

### **National symbols**

11. The national symbols of the Republic are –
  - (a) the national flag;
  - (b) the national anthem;
  - (c) the coat of arms; and
  - (d) the public seal,as set out in the First Schedule.

### **National days**

- 12.** The following are the national days of the Republic and shall be observed on the days respectively specified –
- (a) Madaraka Day, on the 1<sup>st</sup> June;
  - (b) Mashujaa Day, on the 20<sup>th</sup> October; and
  - (c) Jamhuri Day, on the 12<sup>th</sup> December.

## **CHAPTER THREE**

### **NATIONAL VALUES, PRINCIPLES AND GOALS**

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

- 13.** (1) 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 participation of the people in public affairs and the sharing and devolution of power;
  - (d) ensuring open and transparent government and accountability of State officers, public officers, State organs and public authorities;
  - (e) taking effective measures to eradicate all forms of corruption;
  - (f) ensuring access of the people to independent, impartial, competent, timely 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 in order to enhance the dignity of individuals and communities;
  - (i) ensuring full participation of women, persons with disabilities, 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) progressive implementation of the principle that at least five per cent of the members of 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 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 the country, and sectors of society;
  - (p) efficient management of national resources for the welfare of the people;
  - (q) recognition of the responsibilities of the State to future generations, by pursuing policies for the sustainable management of the environment;
  - (r) promotion of the unity of Africa; and
  - (s) co-operation and solidarity with the international community in the pursuit of international peace.
- (2) The national values, principles and goals set out in this Chapter apply to all State organs, State officers, public officers, citizens and private bodies whenever any of them –
- (a) applies or interprets this Constitution or any other law; or
  - (b) applies, makes or implements policy decisions.

## CHAPTER FOUR

### CITIZENSHIP

#### General principles of citizenship

14. Every citizen is –

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

#### Retention of existing citizenship

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

#### Acquisition of citizenship

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



**Citizenship by birth**

17. (1) Every person born in Kenya is a citizen by birth, if, either the mother or the father of that person –
- (a) was a citizen at the date of that person’s birth; or
  - (b) became a citizen on 12<sup>th</sup> December 1963.
- (2) A person born outside Kenya is a citizen by birth, if, at the date of the person’s birth, either the mother or the father of that person is –
- (a) a citizen who was born in Kenya; or
  - (b) a citizen by registration or naturalization.
- (3) If either parent of a person died before that person was born, for all purposes of this Chapter, that parent’s citizenship at the time of death applies as if that parent had survived until the birth of that person.

**Citizenship and marriage**

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

**Citizenship by naturalization**

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

**Children found in Kenya and adopted children**

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

**Dual citizenship**

21. A person who is a citizen by birth -
- (a) does not lose citizenship by reason only of acquiring the citizenship of another country; and
  - (b) may apply to regain citizenship, if the person had ceased to be a citizen as a result of acquiring the citizenship of another country.

**Deprivation of citizenship**

22. A person who is a citizen by registration or naturalization, or whose citizenship is acquired by virtue of the registration or naturalization of another person, may be deprived of citizenship, if the citizenship was acquired by means of fraud, false representation or concealment of any material fact.

**Residence**

23. (1) The following persons may enter and reside in Kenya if they comply with the conditions prescribed by an Act of Parliament governing entry and residence –
- (a) a former citizen;
  - (b) a foreign wife or widow or foreign husband or widower of a citizen; and
  - (c) a child of a citizen.
- (2) Parliament shall enact legislation governing the entry into and residence in Kenya of other categories of persons and providing for the status of permanent residents.

**Responsibilities of a citizen**

24. (1) All citizens have the responsibility to –
- (a) acquire 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) promote democracy, good governance and the rule of law;
  - (d) vote and become involved in other forms of political participation;
  - (e) strive to foster national unity and live in harmony with others;
  - (f) co-operate with law enforcement agencies for the maintenance of law and order;
  - (g) pay all due taxes;
  - (h) desist from acts of corruption;
  - (i) engage in work for the common good and to contribute to national development;
  - (j) develop their abilities to the greatest possible extent through acquisition of knowledge, continuous learning and the development of skills;
  - (k) contribute to the welfare and advancement of the community where they live;
  - (l) promote family life and welfare and act responsibly in the context of the family;
  - (m) protect and safeguard public property from waste and misuse;
  - (n) protect the environment and conserve natural resources; and
  - (o) understand and enhance the Republic's place in the international community and work to achieve the realization of African unity.
- (2) The responsibilities set out in clause (1) apply equally, where appropriate, to non-citizens.

### Legislation on citizenship

25. Parliament shall enact legislation –
- (a) prescribing procedures and conditions by which a person may become a citizen;
  - (b) providing for the voluntary renunciation of citizenship;
  - (c) prescribing procedures for the deprivation of citizenship under Article 22; and
  - (d) generally giving effect to the provisions of this Chapter.

## CHAPTER FIVE

### CULTURE

#### Principles concerning culture

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

- (f) support, promote and protect indigenous knowledge and the intellectual property rights of the people of Kenya;
- (g) through legislation, ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage;
- (h) promote, where applicable, the use of traditional farming systems, traditional foods and drinks; and
- (i) through legislation, recognize and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and use by communities of Kenya.

### **National Commission on Culture**

27. (1) There is established the National Commission on Culture.
- (2) The Commission shall be the principal organ of the State for the realization of the principles and objectives of this Chapter and shall in particular –
- (a) advise on matters of policy and practice relating to culture;
  - (b) carry out and promote research into and documentation of the cultures of Kenya, including national history and customary law; and
  - (c) promote and protect culture; and
  - (d) perform such other functions as may be prescribed by legislation and generally carry out the objectives of this Chapter.

### **Cultural day**

28. The 26<sup>th</sup> day of December shall be observed as Utamaduni Day.

## **CHAPTER SIX**

### **THE BILL OF RIGHTS**

#### **Part I – General Provisions Relating to the Bill of Rights**

#### **Fundamental rights and freedoms**

29. (1) This Bill of Rights is an integral part of Kenya’s democratic State and is the framework for social, economic and cultural policies.
- (2) The purpose of the recognition and protection of human rights is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.
- (3) The rights and freedoms set out in this Chapter –
- (a) are inherent in each individual and are not granted by the State;
  - (b) do not exclude other rights not mentioned in this Chapter, 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 Chapter.

### **Application of the Bill of Rights**

- 30.**
- (1) The Bill of Rights applies to all laws and binds all State organs and all persons.
  - (2) Every person shall enjoy the rights and freedoms in the Bill of Rights, to the greatest extent consistent with the nature of the right.
  - (3) When applying a provision of the Bill of Rights, a court –
    - (a) shall develop the law to the extent that legislation does not give effect to that right or freedom;
    - (b) shall adopt the interpretation that most favours the enforcement of a right or freedom; and
    - (c) may develop rules to limit that right or freedom in a manner consistent with Article 34.
  - (4) When interpreting the Bill of Rights, a court, tribunal, 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 the Bill of Rights.
  - (5) When interpreting or applying a particular right or freedom, if the State claims that it does not have the resources to implement the right or freedom, a State organ, court, tribunal, commission or other authority shall be guided by the principles that –
    - (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 broadest enjoyment of the right having regard to prevailing circumstances, including the vulnerability of the groups or individuals claiming the violation of their right; and
    - (c) a court, tribunal, 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 the court, tribunal, commission or other authority would have reached a different decision.

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

- 31.**
- (1) It is a fundamental duty of every State organ to observe, respect, protect, promote and fulfil the rights and freedoms in this Chapter, as appropriate, in the exercise of all their powers and functions.
  - (2) The State shall take legislative, policy and other measures to achieve the progressive realisation of the rights guaranteed under Articles 60, 61(1), 62, 63, 64, 65, 66 and 67.
  - (3) The Articles specified in clause (2) shall not be construed as imposing on the State obligations beyond the resources available to the State.

- (4) The State shall recognize the role of civil society in the promotion and protection of the rights and freedoms in the Bill of Rights.
- (5) The State shall fulfil all its international obligations in respect of human rights and for that purpose the State shall –
  - (a) report on time to international human rights bodies on the implementation of human rights treaties and other instruments;
  - (b) publish reports intended for submission by the State to international and regional bodies involved in the implementation of human rights instruments; and
  - (c) facilitate public discussions and participation of the civil society on the intended report before finalization and submission to international authorities overseeing the implementation of the relevant international and regional human rights instruments.
- (6) The comments and recommendations of international bodies relating to the international obligations of the State shall be disseminated to the public and the Government shall make a statement to Parliament on whether and how it intends to implement those recommendations.

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

- 32.**
- (1) A person referred to in clause (2) has the right to complain to the Commission on Human Rights and Administrative Justice and to institute court proceedings alleging that a right in the Bill of Rights has been denied, violated, infringed or threatened.
  - (2) For the purposes of clause (1), the persons who may complain to the Commission or institute court proceedings are –
    - (a) a person acting in that person’s own interest;
    - (b) a person acting on behalf of another person who cannot act in their own name;
    - (c) a person acting as a member of, or in the interest of, a group or class or persons;
    - (d) a person acting in the public interest; and
    - (e) an association acting in the interest of one or more of its members.
  - (3) For the purposes of clause (1), the Chief Justice shall make rules of procedure which shall satisfy the criteria that –
    - (a) the right of standing provided for in this Article is fully facilitated;
    - (b) formalities relating to the proceedings are kept to the minimum;
    - (c) the court, while observing the rules of natural justice, shall not be unreasonably restricted by technical requirements;
    - (d) no fee may be payable by an indigent person for commencing proceedings under this Article; and

- (e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.

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

- 33.**
- (1) The High Court has jurisdiction to hear applications for redress for a violation of a right 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 32, a court may grant appropriate relief, including –
    - (a) an injunction;
    - (b) a declaration of rights;
    - (c) a declaration of invalidity of any law that infringes the Bill of Rights and is not justified in terms of Article 34;
    - (d) an order of compensation against the State or any person responsible for the violation of the rights; and
    - (e) orders of judicial review.
  - (4) In proceedings against a public authority for a violation of human rights, a court may not award costs against the plaintiff, or applicant, unless the court determines that the case was frivolous, vexatious or devoid of merit.

**Limitation of rights**

- 34.**
- (1) A right or freedom set out in the Bill of Rights may be limited only –
    - (a) by a limitation or qualification expressly set out in the provision containing that right or freedom and may be otherwise limited only by a law of general application; and
    - (b) to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –
      - (i) the nature of the right;
      - (ii) the importance of the limitation;
      - (iii) the nature and extent of the limitation;
      - (iv) the need to ensure that the enjoyment of rights and freedoms by any individual does not prejudice the rights and freedoms of others;
      - (v) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose; and
      - (vi) the protection of national security, public safety, public order, public morality or public health.
  - (2) Despite clause (1), a provision in legislation -

- (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 freedom set out in the Bill of Rights so as to derogate from the core or the essential content of the right.
- (4) The State or a person seeking to justify a particular limitation, shall demonstrate to the court, tribunal, commission or other authority that the requirements of this Article have been satisfied.
- (5) The provisions of this Chapter on equality shall be qualified to the extent strictly necessary for the application of Islamic law to persons who profess the Muslim faith in relation to personal status, marriage, divorce and inheritance.

## **Part II – Fundamental Rights and Freedoms**

### **Right to life**

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

### **Equality**

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

### **Freedom from discrimination**

37. (1) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
- (2) A person shall not discriminate directly or indirectly against another person on any ground in terms of clause (1).
- (3) A person may not be compelled to indicate or define that person's ethnicity or race.
- (4) Despite clause (1), the State shall take legislative and other measures including, but not limited to, affirmative action programmes and policies designed to benefit individuals or groups who are



disadvantaged, whether or not as a result of past discrimination, but any such measure shall –

- (a) adequately provide for any benefits to be on the basis of genuine need; and
  - (b) be permissible in terms of Article 34.
- (5) Parliament shall review the affirmative action programmes and policies referred to in clause (4) after every ten years.

### **Gender**

38. (1) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social activities.
- (2) Women and men have an equal right to inherit, have access to and manage property.
- (3) Any law, culture, custom or tradition that undermines the dignity, welfare, interest or status of women or men is prohibited.
- (4) Despite clause (1), the State shall –
- (a) protect women and their rights, taking into account their unique status and natural maternal role in society; and
  - (b) provide reasonable facilities and opportunities to enhance the welfare of women to enable them realize their full potential and advancement.

### **Older members of society**

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

**Youth**

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

**Children**

- 41.** (1) Children hold a special place in society.
- (2) It is the duty of parents, the family, society and the State to nurture, protect and educate children.
- (3) All children, whether born within or outside wedlock, are equal before the law and have equal rights under this Constitution.
- (4) A child's best interests shall be of paramount importance in every matter concerning the child.
- (5) A child's mother and father, whether married to each other or not, have an equal responsibility to protect and provide for the child.
- (6) Every child has a right to –
- (a) a name and a nationality from birth and to have their birth registered;
  - (b) parental care, or to appropriate alternative care when the child is separated from its parents;
  - (c) free and compulsory basic education;
  - (d) be protected from discrimination, harmful cultural rites and practices, exploitation, neglect or abuse;
  - (e) be protected from all forms of exploitation and any work that is likely to be hazardous or adverse to the child's welfare;
  - (f) adequate nutrition, shelter, basic health care services and social services;

- (g) be free from corporal punishment or other forms of violence or cruel and inhumane treatment in schools and other institutions responsible for the care of children;
  - (h) not take part in hostilities or to be recruited into armed conflicts and to be protected from situations of armed conflict;
  - (i) not be arrested or detained except as a measure of last resort, and, when arrested or detained, to be treated in a manner that promotes the child's dignity and self-worth and that pays attention to the child's rights including, but not limited to, the right to –
    - (i) be detained only for the shortest appropriate period of time;
    - (ii) be kept separate from adults in custody;
    - (iii) be accorded legal assistance by the State; and
    - (iv) be treated in a manner and 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; and
  - (k) know of decisions affecting the child, to express an opinion and have that opinion taken into account, taking into consideration the age and maturity of the child and the nature of the decision.
- (7) Children with special needs are entitled to the special protection of the State and society.
- (8) The State shall take legislative and policy measures to implement the provisions of this Constitution and of international instruments and standards on the rights of the child.

## **Family**

- 42.**
- (1) The family is the natural and fundamental unit of society and the basis of social order.
  - (2) Every adult has the right –
    - (a) to marry a person of the opposite sex, based upon the free consent of the parties; and
    - (b) to found a family.
  - (3) A person shall not marry another person of the same sex.
  - (4) Parties to a marriage are entitled to equal rights in relation to the marriage 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**

- 43.** (1) Persons with disabilities are entitled to enjoy all the rights and freedoms set out in the Bill of Rights, and to fully participate in society.
- (2) Persons with disabilities have a right to –
- (a) respect and human dignity including the right to be treated, addressed and referred to, in official or private contexts, in a manner and in words that are not demeaning or derogatory;
  - (b) access to education 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) access to all public places, to public transport and to information and communications;
  - (d) use of sign language, Braille and other appropriate means of communication;
  - (e) participate in decision-making at all levels;
  - (f) equal rights to inherit, have access to and manage property;
  - (g) access to materials and devices to overcome constraints arising from their 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 policy measures to ensure that persons with disabilities enjoy all the rights set out in clause (2).
- (4) Legislation and policy measures provided for in clause (3) shall make special provision for women with disabilities.

**Human dignity**

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

**Freedom and security of the person**

- 45.** Every person has the right to freedom and security of the person, which includes the right 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 74;
- (c) subjected to any form of violence from either public or private sources;
- (d) tortured 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**

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

**Privacy**

- 47. Every person has the right to privacy, which includes the right not to have –
  - (a) their person or home searched;
  - (b) their property searched or 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 religion, belief and opinion**

- 48. (1) Every person has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Every person has a right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, practice, teaching or observance, including the observance of a day of worship.
- (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 by reason of that person's religious beliefs.
- (6) A person shall not compel another person –
  - (a) to take an oath that is contrary to that person's religion or belief or that involves expressing a belief that the person does not hold;

- (b) to take an oath in a manner that is contrary to that person's religion or belief or that involves expressing a belief that the person does not hold;
- (c) to receive religious instruction or to take part in or attend a religious ceremony or to observe a day of rest or other observance that relates to a religion that is not that person's religion;
- (d) to perform, observe or undergo a religious practice or rite;
- (e) to disclose that person's religious beliefs; or
- (f) to do any other act that is contrary to that person's religion or belief.

### **Freedom of expression**

- 49.** (1) Every person has the right to freedom of expression, which includes –
- (a) freedom to receive or impart information or ideas;
  - (b) freedom of artistic creativity, including dress; and
  - (c) academic freedom and freedom of scientific research.
- (2) The right referred to in clause (1) does not extend to –
- (a) propaganda for war;
  - (b) incitement to violence; or
  - (c) advocacy of hatred that –
    - (i) constitutes vilification of others or incitement to cause harm; or
    - (ii) is based on any prohibited ground of discrimination contemplated in Article 37.

### **Freedom of the media**

- 50.** (1) Freedom and independence of electronic, print and other media of all types are guaranteed.
- (2) The State shall not –
- (a) exercise control over, or interfere with, any person concerned in broadcasting, production or circulation of any publication, or in the dissemination of information by any medium; or
  - (b) harass or penalize any person for any opinion or view, or the content of any broadcast, publication or dissemination.
- (3) Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that –
- (a) are designed to ensure the necessary regulation of the airwaves and other forms of signal distribution; and
  - (b) are independent of control by Government, political interests or commercial interests.

- (4) All State media shall be independent and impartial and shall afford fair opportunities and facilities for the presentation of divergent views and dissenting opinions.
- (5) Parliament shall enact legislation that –
  - (a) makes reasonable provision for equitable allocation of airtime by State-owned and other specified categories of broadcasting media, to political parties either generally or during election campaigns;
  - (b) regulates freedom to broadcast in order to ensure fair election campaigning; and
  - (c) provides for the establishment of a body which shall be independent of government or political control and reflective of the interests of all sections of the community, and which shall set media standards and regulate and monitor compliance with those standards.
- (6) The exercise of the rights provided for in this Article carries with it special duties and responsibilities and is subject to -
  - (a) the limitations or restrictions provided for by this Constitution;
  - (b) the respect of the rights and reputation of others; and
  - (c) the maintenance of the integrity, authority and independence of the courts, judicial proceedings and the administration of justice.

#### **Access to information**

- 51.** (1) Every citizen has the right of access to –
  - (a) information held by the State; and
  - (b) any information that is held by another person and that is required for the exercise or protection of any right or freedom.
- (2) Every person has the right to demand the correction or deletion of untrue or misleading information that affects that person.
- (3) The State shall publish and publicize any important information affecting the nation.
- (4) Parliament shall enact legislation to provide for access to information.

#### **Freedom of association**

- 52.** (1) Every person has the right to freedom of association.
- (2) The right extends to the formation, operation and continued existence of organisations.
- (3) A person shall not be compelled to join any association.
- (4) The State shall take legislative and policy measures to promote and encourage civil society participation in decision-making and in the management of public affairs at the two levels of government.
- (5) Any legislation that requires civil society organisations to register or otherwise be subject to control shall provide that –

- (a) registration may be required only if there is good reason for it;
- (b) registration shall be in the hands of a body that is independent of Government or political control;
- (c) any fee chargeable shall be no more than is necessary to defray essential costs of the procedure;
- (d) where registration is required under paragraph (a), there shall be a right to registration unless there is good reason to the contrary;
- (e) any standards of conduct applied to organisations shall be formulated with input from the affected organisations; and
- (f) de-registration procedures shall provide for a fair hearing and for a right of appeal to an independent tribunal.

**Assembly, demonstration, picketing and petition**

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

**Political rights**

54. (1) Every citizen is free to make political choices, which includes the right 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) office bearers 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
  - (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**

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



### **Refugees and asylum**

- 56.** (1) A person who has sought refuge in Kenya has a right not to be returned or taken to another country if that person has a well-founded fear of persecution in that other country, or of other treatment that would justify that person's being regarded as a refugee.
- (2) Parliament shall enact legislation, in compliance with international law and practice, governing persons who seek refuge or asylum in Kenya.

### **Freedom of trade, occupation and profession**

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

### **Protection of right to property**

- 58.** (1) Subject to Articles 83 and 84, every person has a right to acquire and own property in any part of Kenya, either individually or in association with others.
- (2) Parliament shall not enact any legislation that permits the State, or any person to –
- (a) arbitrarily deprive a person of –
    - (i) property of any description; or
    - (ii) any interest in, or right over, such property; or
  - (b) limit or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds set out under Article 37(1).
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over property, unless that deprivation –
- (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Seven; or
  - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution or an Act of Parliament that –
    - (i) requires prompt payment in full, of a just compensation to the person, before the property is taken;
    - (ii) allows any person who has an interest in or right over that property a right of access to a court of law.
- (4) Provision may be made for compensation to be paid to occupants in good faith of the land so acquired who may not hold title to that land.
- (5) The right recognized and protected under this Article does not cover any property that has been unlawfully acquired.

### **Labour relations**

- 59.** (1) Every person has the right to fair labour practices.

- (2) Every worker has the right to –
  - (a) fair remuneration;
  - (b) reasonable working conditions;
  - (c) form, join or participate in the activities and programmes of a trade union; and
  - (d) go on strike.
- (3) Every employer has the right to –
  - (a) form or 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; and
  - (b) organise, form or join a federation.
- (5) Every trade union, employers’ organisation and employer has the right to engage in collective bargaining.

**Social security**

60. (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**

61. (1) Every person has the right to health, which includes the right to health care services, including reproductive health care.
- (2) No person may be refused emergency medical treatment.

**Education**

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

**Housing**

63. Every person has the right to affordable and adequate housing.

**Food**

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

**Water**

65. Every person has the right to water in adequate quantities and of reasonable quality.

**Sanitation**

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

**Environment**

67. Every person has the right to –
- (a) an environment that is safe for life and health;
  - (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; and
    - (ii) promote conservation and secure ecologically sustainable development and use of natural resources, while promoting economic and social development; and
  - (c) free information about the environment; and
  - (d) compensation for damage arising from the violation of the rights recognized under this Article.

**Language and culture**

68. (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**

69. (1) Consumers have the right to –
- (a) goods and services of reasonable quality;
  - (b) the information necessary for them to gain full benefit from goods and services;
  - (c) the protection of their health, safety, and economic interests; and
  - (d) compensation for loss or injury arising from defects in goods or services.

- (2) The principles in this Article apply to goods and services offered by State organs, public and private persons and other entities.
- (3) Parliament shall enact legislation to provide for consumer protection and for fair, honest and decent advertising.

**Fair administration**

- 70.**
- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and fair.
  - (2) Every person whose rights have been adversely affected by administrative action has the right to be given written reasons for the action.
  - (3) Parliament shall enact legislation to give effect to the rights in clause (1) and such legislation shall provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal.

**Access to courts**

- 71.**
- (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, an independent tribunal, commission or other authority.
  - (2) Any fee required to be paid by a person under clause (1) shall be reasonable and not serve to impede access to justice.

**Rights of arrested persons**

- 72.**
- (1) Every person who is arrested has the right –
    - (a) to be informed promptly in a language and in a manner 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 forty eight hours after being arrested or not later than the end of the first court day after the expiry of the forty eight hours, if the forty-eight hours expire outside ordinary court hours or on a day that is not an ordinary court day;
    - (g) at the first court appearance, to be charged or to be informed of the reason for the detention to continue, 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 imprisonment for not more than six months.

**Fair trial**

- 73.** (1) Every accused person has the right to a fair trial, which includes the right –
- (a) to be presumed innocent until the contrary is proved;
  - (b) to be informed of the charge with sufficient detail to answer it;
  - (c) to have adequate time and facilities to prepare a defence;
  - (d) to a public trial before a court established under this Constitution;
  - (e) to have the trial begin and conclude without unreasonable delay;
  - (f) to be present when being tried;
  - (g) to choose and be represented by an advocate and to be informed of this right promptly;
  - (h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result and to be informed of this right promptly;
  - (i) to remain silent and not to testify during the proceedings;
  - (j) to adduce and challenge evidence;
  - (k) not to be compelled to give self-incriminating evidence;
  - (l) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial;
  - (m) not to be convicted for an act, or omission, that at the time it was committed or omitted, was not –
    - (i) an offence defined and the penalty prescribed under a written law in Kenya; or
    - (ii) a crime under a treaty ratified by Kenya or a crime recognized 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 penalties prescribed for the offence if the prescribed penalty has been changed between the time the offence was committed and the time of sentencing; and
  - (p) of appeal to, or review by, a higher court.

- (2) Despite clause (1)(m)(i), a court may punish a person for contempt even though the act or omission constituting the contempt is not defined, and the penalty prescribed, in a written law.
- (3) For the purposes of clause (1), information to be given to a person, shall be given in language that the person understands.
- (4) Evidence obtained in a manner that violates any right in the Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.
- (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 transcript of the proceedings of the trial.
- (6) An accused person has the right to a copy of the record of proceedings within fourteen days after they are concluded, in return for a reasonable fee as prescribed by law.
- (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) Parliament shall, by legislation, make provisions to guide courts in the exercise of their jurisdiction in respect of contempt of court.

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

74. (1) A person held in custody under the law, whether sentenced or not, retains all the fundamental rights under this Constitution, except to the extent that a right is clearly incompatible with the fact of being in custody.
- (2) Parliament shall, by legislation, provide for the humane treatment of persons held in custody which shall take into account the relevant international human rights instruments.

#### **State of emergency**

75. (1) A state of emergency may be declared only in accordance with Article 144(3) and only when –
  - (a) the State is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
  - (b) the declaration is necessary to meet the circumstances for which the emergency is declared.
- (2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, is effective only –
  - (a) prospectively; and
  - (b) for no more than fourteen days from the date of the declaration, unless Parliament resolves to extend the declaration.

- (3) Parliament may extend a declaration of a state of emergency –
  - (a) by a resolution adopted –
    - (i) following a public debate in Parliament; and
    - (ii) by the majorities set out in clause (4); and
  - (b) for no more than two months at a time.
- (4) The first extension of a state of emergency shall be adopted with a supporting vote of sixty-five per cent of the members of Parliament, and any subsequent extension shall be adopted with a supporting vote of at least seventy-five per cent of the members of Parliament.
- (5) The High Court may decide on the validity of –
  - (a) a declaration of a state of emergency;
  - (b) any extension of a declaration of a state of emergency; or
  - (c) any legislation enacted or other action taken in consequence of a declaration of a state of emergency.
- (6) Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that –
  - (a) the derogation is strictly required by the emergency; and
  - (b) the legislation –
    - (i) is consistent with the Republic’s obligations under international law applicable to a state of emergency;
    - (ii) conforms to clause (7); and
    - (iii) is published in the Gazette as soon as reasonably practicable after being enacted,and does not take effect until it is so published.
- (7) An Act of Parliament that authorizes a declaration of a state of emergency, or legislation enacted or other action taken in consequence of any declaration, may not permit or authorize the indemnity of the State, or of any person, in respect of any unlawful act.

### **Part III – Human Rights Commissions**

#### **Gender Commission**

- 76.** (1) For the purposes of Article 38, there is established the Gender Commission.
- (2) The functions of the Commission are to -
- (a) promote gender equality and equity generally and to co-ordinate and facilitate gender mainstreaming in national development; and
  - (b) perform such other functions as may be prescribed by legislation and generally carry out the objectives of this Article.

- (3) Parliament shall, by legislation, make comprehensive provision for all matters necessary to give effect to this Article.

**Commission on Human Rights and Administrative Justice**

77. (1) There is established the Commission on Human Rights and Administrative Justice.
- (2) Subject to the provisions of this Constitution, the functions of the Commission are –
- (a) to promote the protection of, respect for, the development in attainment of human rights and develop a culture of human rights;
  - (b) to monitor, investigate and report on the observation of human rights in all spheres of life in the Republic;
  - (c) to take steps to secure appropriate redress where human rights have been violated;
  - (d) to receive complaints about abuse of power, unfair treatment, manifest injustice, or corrupt, unlawful, oppressive or unfair official conduct;
  - (e) in relation to human rights, to initiate on its own initiative or on the basis of complaints, investigations and research and make recommendations to improve the functioning of State organs; and
  - (f) to perform such other functions as may be prescribed by legislation and generally carry out the objectives of this Article.
- (3) Parliament shall, by legislation, make comprehensive provision for all matters necessary to give effect to this Article.

**CHAPTER SEVEN**

**LAND AND PROPERTY**

**Principles of land policy**

78. (1) Land is Kenya’s primary resource and the basis of livelihood for the people, and shall be held, used and managed in a manner which is equitable, efficient, productive and sustainable.
- (2) The State shall define and keep under review a national land policy ensuring the following principles –
- (a) equitable access to land and associated resources;
  - (b) security of land rights for all land holders, users and occupiers in good faith;
  - (c) sustainable and productive management of land resources;
  - (d) transparent and cost effective administration of land;
  - (e) sound conservation and protection of ecologically sensitive areas;



- (f) elimination of gender discrimination in laws, regulations, customs and practices related to land and property in land; and
- (g) encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution.

**Vesting and classification of land**

- 79.** (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**

- 80.** (1) Public land is –
- (a) land which at the effective date was unalienated government land as defined by an Act of Parliament;
  - (b) land lawfully held, used or occupied by the Government, district government, agencies of such governments and any other units of the district government or state corporations, except where such land is occupied under a private lease;
  - (c) all minerals as defined by any law;
  - (d) land transferred to the Republic by way of reversion or surrender;
  - (e) land in respect of which no individual or community ownership can, by any legal process, be established;
  - (f) land in respect of which no heir can, by ordinary legal process, be identified;
  - (g) government forests, other than forests to which Article 81(2)(e) applies, game reserves, and water catchment areas, national parks, animal sanctuaries, specially protected areas;
  - (h) all roads and thoroughfares specified by an Act of Parliament;
  - (i) all rivers, lakes and other areas of water as defined by an Act of Parliament;
  - (j) the territorial sea and its sea bed;
  - (k) all land between 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), (b), (d), (e) and (f) shall vest in and be held by a district government in trust for the people residents in the relevant district and shall be administered on their behalf by the National Land Commission.
- (3) Public land classified under clause (1)(c) and (g) to (m) shall vest in and be held by the Government in trust for the people of Kenya and

shall be administered on their behalf by the National Land Commission.

- (4) Public land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and terms of that disposal or use.

### **Community land**

- 81.** (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 district governments;
  - (b) land lawfully registered in the name of group representatives under the provisions of any law for the time being in force;
  - (c) land lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;
  - (d) land lawfully transferred to a specific community by any process of law;
  - (e) ancestral lands traditionally occupied by hunter-gatherer communities; and
  - (f) any other land declared to be community land by an Act of Parliament,

but shall not include public land as defined in Article 80.

- (3) Any unregistered community land shall be held in trust by district governments on behalf of the communities.
- (4) Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.
- (5) Parliament shall enact legislation to give effect to this Article.

### **Private land**

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

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

- 83.** (1) A person who is not a citizen may hold or use land on the basis of leasehold tenure only and such a lease, however granted, shall not exceed ninety-nine years.
- (2) An agreement, deed or conveyance 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) On the effective date, any interest in land greater than a ninety-nine year lease held by a person who is not a citizen shall revert to the State

and the State shall grant to the person who held such a greater interest a ninety-nine year lease.

### **Regulation of land use**

- 84.** (1) The State has the power to regulate the use of any land, interest or right in land in the interest of defence, public safety, public order, public morality, public health, land use planning or the development or utilization of property.
- (2) The State shall encourage and provide a conducive, social, economic, political and legal environment for the creation, development and management of property.
- (3) The State shall ensure –
- (a) the establishment of a housing development fund to enable the people of Kenya to gain access to more and better housing; and
  - (b) the development and review of a national housing policy with a view to increasing, regulating and maintaining the national housing stock.
- (4) Parliament shall enact legislation –
- (a) requiring the State and relevant organizations, including district governments, to encourage the use of acceptable, affordable and reasonable intermediate technologies, building materials, innovations and methods in the property sector provided their use is not harmful or injurious to persons and the environment; and
  - (b) ensuring that major investments in property benefit local communities and their economy.

### **National Land Commission**

- 85.** (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 Government and the district governments;
  - (b) formulate and recommend to the Government a national land policy;
  - (c) advise the Government and district 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 the area;
  - (d) investigate disputes of land ownership, occupation and access to public land in any area provided for by legislation;
  - (e) advise the 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 natural resource use, and make recommendations to appropriate authorities;

- (g) initiate investigations on its own or upon a complaint from any person or institution on land injustices both present and historical and ensure 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 Kenya;
  - (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.
- (3) The National Land Commission shall establish offices throughout Kenya.

**Legislation on land**

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

- (l) prescribe minimum and maximum land holding acreage in arable areas; and
  - (m) any other matter to give effect to the provisions of this Chapter.
- (2) Parliament shall determine the cut-off date with reference to which the review required in clause (1)(g) is to be conducted.

## **CHAPTER EIGHT**

### **ENVIRONMENT AND NATURAL RESOURCES**

#### **Principles and obligations on the environment**

**87.** The State shall –

- (a) respect the integrity of natural processes and ecological communities, including conservation of habitats and species;
- (b) ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources and the equitable sharing of the accruing benefits;
- (c) ensure that social and cultural values traditionally applied by the 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 a party;
- (e) ensure that planning and utilization of the environment take 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 those prone to disasters to make them habitable and productive; and
- (i) work to achieve and maintain a tree cover of a least ten per cent of the land area of Kenya.

#### **Protection of the environment**

**88.** Every person has a duty to co-operate 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) prevent or discontinue an act which is harmful to the environment;
- (d) direct the appropriate authority to take measures to prevent or discontinue an act or omission which is harmful to the environment; and

- (e) maintain a clean, safe and healthy environment.

### **Conservation of the environment**

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

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

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

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

- 91.** (1) A transaction involving the grant of a right or concession by or on behalf of any person, including the Government, to another person, for the exploitation of any natural resource of Kenya, entered into after the effective date, is subject to ratification by Parliament.
- (2) Parliament may, by legislation supported by at least two thirds of all the members, exempt any class of transactions from the provisions of clause (1).

### **National Environment Commission**

- 92.** (1) There is established the National Environment Commission.
- (2) The National Environment Commission shall be the principal organ of the State for the realization of the principles and objectives of this Chapter and shall, in particular –

- (a) ensure the protection, conservation and management of the environment;
- (b) promote just, equitable and rational sharing and utilization of the environment and natural resources;
- (c) conduct research on the environment and natural resources;
- (d) advise the Government and district governments on the policy framework for management of the environment and natural resources and the regulation of human settlements;
- (e) monitor and evaluate the implementation of the national environment policy;
- (f) facilitate public participation, discussion and input before international conventions, treaties and agreements that have consequences on the environment are ratified; and
- (f) perform such other functions as may be prescribed by legislation and generally carry out the objectives of this Chapter.

### **Environmental legislation**

**93.** Parliament shall enact legislation to -

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

- (i) ensure that the emission of harmful radiation and noise into the environment is regulated to meet the requirements for a safe and healthy environment;
- (j) minimize human-wildlife conflicts; and
- (k) provide compensation for loss of human life, injury to persons, loss and destruction of private property.

## CHAPTER NINE

### LEADERSHIP AND INTEGRITY

#### Responsibilities of leadership

- 94.** (1) Any sovereign authority of the people assigned to a State office –
- (a) is a public trust to be exercised in a manner that –
    - (i) is consistent with the purpose and objects of this Constitution;
    - (ii) demonstrates respect for the people;
    - (iii) brings honour to the nation and dignity to the office; and
    - (iv) promotes public confidence in the integrity of the office; and
  - (b) vests in that State officer the responsibility to serve the people with humility.
- (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, not influenced by ethnicity, nepotism, favouritism or other improper motives;
  - (c) selfless service based on the public interest;
  - (d) declaration of any personal interest that may conflict with public duties;
  - (e) honesty and integrity in the performance of public duties;
  - (f) transparency and accountability to the public for decisions and actions; and
  - (g) discipline and commitment in service to the people.

#### Oath or affirmation of office

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

#### Conduct of State officers

- 96.** (1) A State officer shall, at all times, behave in such 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 the position the officer holds.
- (2) A State officer shall not –
- (a) directly or indirectly use the State office or the influence of the office for personal gain or to take undue advantage of any person;
  - (b) seek or accept any property, gift or benefit of any kind as a bribe for the granting of a favour or for the performance or non-performance of an official function;
  - (c) seek or accept a personal loan or benefit in circumstances that might reasonably be considered to compromise the integrity of the State officer;
  - (d) misappropriate public funds, or misuse or unlawfully destroy public property;
  - (e) use public assets, property or facilities to solicit contributions from the public for any unofficial purpose;
  - (f) use the influence of the office to sexually or physically abuse any person, or to attempt to obtain sexual favours; or
  - (g) direct another person to –
    - (i) do anything prohibited by this Article for the benefit of the State officer; or
    - (ii) perform an unlawful act.
- (3) If a State officer is convicted of an offence relating to any of the matters referred to in this Article, that State officer shall, subject to this Constitution, cease to hold office.
- (4) A person who has been dismissed or removed from a State office in accordance with this Constitution or the law for contravention of this Chapter is disqualified from holding a public office.

### **Finances of State officers**

97. (1) A State officer shall submit a written declaration to the Ethics and Integrity Commission in the manner and form determined by the Commission or prescribed by legislation, declaring the properties, assets, and liabilities of the State officer, the State officer's spouse and unmarried children who have not attained the age of eighteen years –
- (a) immediately upon becoming a State officer;
  - (b) every year while a State officer; and
  - (c) on ceasing to be a State officer.

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

**Restriction on activities**

- 98.**
- (1) A full-time State officer shall not hold any other office of profit or emolument.
  - (2) The President, Deputy President and any appointed State officer shall not hold any office in a political party.
  - (3) A retired State officer who is receiving a pension from public funds shall not hold more than two remunerative positions as chairperson, director or employee of –
    - (a) a company owned or controlled by the State; or
    - (b) a State organ.
  - (4) A retired State officer shall not receive any remuneration from public funds other than as contemplated in clause (3).

**Ethics and Integrity Commission**

- 99.**
- (1) There is established the Ethics and Integrity Commission.
  - (2) The Ethics and Integrity Commission shall be the principal organ of the State for the realization of the principles and objectives of this Chapter and shall, in particular –
    - (a) receive and retain custody of declarations required by this Chapter;
    - (b) ensure compliance with and enforce the provisions of this Chapter;
    - (c) receive and investigate complaints of non-compliance with this Chapter and, if appropriate, refer the complaints to the relevant authorities for action;
    - (d) put in place measures for the prevention of corruption, including issuing guidelines to State organs; and
    - (e) perform such other functions as may be prescribed by legislation and generally carry out the objectives of this Chapter.
  - (3) The Commission shall not investigate any matter pending before a court or a judicial tribunal.
  - (4) The Commission shall establish and maintain a register in which the assets and liabilities of State officers are recorded.
  - (5) The Commission shall make the register of assets and liabilities of State officers available for public inspection.

**Legislation on leadership**

- 100.** Parliament shall enact legislation to –
- (a) establish procedures and mechanisms for the effective administration of this Chapter;

- (b) prescribe the penalties that may be imposed for breach of the provisions of this Chapter; and
- (c) make any other provision necessary for ensuring the promotion of the principles of leadership and integrity set out in this Chapter.

## CHAPTER TEN

### REPRESENTATION OF THE PEOPLE

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

##### General principles

**101.** The electoral system shall satisfy the following principles -

- (a) the freedom of citizens to exercise their political rights under Article 54;
- (b) gender equity in elected bodies as provided for in Article 13(1)(j);
- (c) representation of persons with disabilities as provided for in Article 13(1)(k);
- (d) fair representation of the people generally, including the workers and the youth;
- (e) fair elections which are –
  - (i) free from violence, intimidation, improper influence and corruption;
  - (ii) conducted by an independent body; and
  - (iii) administered in an impartial, neutral, transparent, accurate, efficient and accountable manner.

##### Elections

**102.** Parliament shall enact legislation to provide for –

- (a) the number and the delimitation of electoral units by the Electoral and Boundaries Commission for the election of members of Parliament;
- (b) the nomination of candidates;
- (c) the continuous registration of citizens as voters;
- (d) the conduct and supervision of elections and referenda;
- (e) the registration of, and voting by, citizens residing outside Kenya; and
- (f) such other matters, relating to elections and referenda, as Parliament may determine.

##### Registration as a voter

**103.** (1) A citizen qualifies for registration as a voter in public elections or referenda if at the date of the application for registration, that citizen

has attained the age of eighteen years and has such other qualifications as may be prescribed by legislation.

- (2) A citizen who qualifies for registration as a voter shall only be registered at one registration centre.
- (3) Administrative arrangements for the registration of voters and the conduct of elections shall not deny an eligible citizen the right to vote or stand for elections.

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

- 104.** (1) A citizen is disqualified from registration as a voter in public elections or referenda on any grounds prescribed by legislation.
- (2) The question whether a citizen is disqualified to be registered as a voter in public elections or referenda shall be determined by the High Court.

#### **Voting**

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

#### **Independent candidates**

- 106.** Subject to Article 117 and the qualifications set for district assembly elections, a person is eligible to stand as an independent candidate for election as a member of Parliament or of a district assembly, if that person –
  - (a) is a citizen;
  - (b) has not been a member of a registered political party for at least six months prior to the date of the elections for which election is sought;
  - (c) has been registered by the Electoral and Boundaries Commission as an independent candidate and complies with the code of conduct prepared by the Commission for such candidates; and

- (d) has been nominated by the following number of registered voters from the constituency in which the person intends to stand as a candidate –
  - (i) in the case of Parliament, one thousand registered voters; or
  - (ii) in the case of a district assembly, five hundred registered voters.

### **Unopposed candidates**

- 107.** If only one candidate for member of Parliament or for member of a district assembly is nominated, that candidate shall be declared elected.

### **Representation on international bodies**

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

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

### **Establishment and functions**

- 109.** (1) There is established the Electoral and Boundaries Commission.
- (2) The Electoral and Boundaries Commission is responsible for –
- (a) the continuous registration of voters;
  - (b) the delimitation of constituencies;
  - (c) the efficient conduct and supervision of elections and referenda;
  - (d) the promotion of free and fair elections and referenda;
  - (e) the registration and supervision of political parties;
  - (f) the management of the Political Parties Fund;
  - (g) the settlement of minor electoral disputes during an election;
  - (h) the promotion of voter education and culture of democracy;
  - (i) the facilitation of the observation, monitoring and evaluation of elections;
  - (j) the recommendation of administrative boundaries, including the fixing, reviewing and variation of boundaries of districts and other units;
  - (k) ensuring that all presidential, parliamentary and district assembly candidates satisfy eligibility and other requirements to stand for election; and
  - (l) such other functions as may be prescribed by an Act of Parliament.

### **Delimitation of constituencies**

- 110.** (1) The Electoral and Boundaries Commission shall determine the names and boundaries of the constituencies for the election of members of Parliament.
- (2) In determining the boundaries and naming of the constituencies, the Commission shall –
- (a) seek to achieve an approximate equality of constituency population, subject to the need to ensure adequate representation for urban and sparsely populated areas;
  - (b) consult all interested parties; and
  - (c) take account of the history, diversity and cohesiveness of the constituency, having regard to –
    - (i) its population density, trends and projections;
    - (ii) geographical features and urban centres;
    - (iii) community of interest and historical, economic and cultural ties;
    - (iv) means of communication; and
    - (v) the need to ensure that each constituency is wholly within one district.
- (3) The Commission shall at intervals of not more than ten years, review and where necessary, alter the names and the boundaries of constituencies.
- (4) The names and details of the boundaries of constituencies determined under clause (1) shall be published in the Gazette and shall come into effect on the expiration of the term of Parliament next following their publication.
- (5) A person may apply to the High Court for review of a decision of the Commission made under this Article.

### **Fixing of administrative boundaries**

- 111.** (1) In exercising its functions under Article 109(2)(j), the Electoral and Boundaries Commission shall have regard to the viability, sustainability and effectiveness of a district or other unit, taking into account –
- (a) its population and area;
  - (b) its historical and cultural ties;
  - (c) its economic and natural resources; and
  - (d) the objects and principles of district governments.
- (2) The Commission may make recommendations to Parliament to –
- (a) alter or vary the boundaries of a district; or
  - (b) abolish or create a new district.

- (3) Before making any recommendation under this Article, the Commission shall consult with all the relevant district authorities and all other interested parties.

### **Part III – Political Parties**

#### **Basic principles**

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

#### **Legislation on political parties**

- 113.** Parliament shall enact legislation for the management of political parties which shall provide for -
- (a) the regulation of political parties;
  - (b) the roles and functions of political parties;
  - (c) the registration and supervision of political parties in accordance with Article 109(2)(e);
  - (d) the establishment and management of a political parties fund in accordance with Article 109(2)(f);
  - (e) the accounts and audit of political parties;

- (f) the discipline of political parties;
- (g) restrictions on the use of public resources to promote the interests of political parties; and
- (h) such other matters as may be necessary for the management of political parties.

## CHAPTER ELEVEN

### THE LEGISLATURE

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

##### Establishment of Parliament

**114.** There is established a Parliament of Kenya.

##### Role of Parliament

- 115.**
- (1) The legislative authority of the Republic is vested in Parliament.
  - (2) Parliament manifests the cultural diversity of the nation, represents the will of the people and exercises their sovereignty by –
    - (a) enacting legislation;
    - (b) deliberating and resolving issues of concern to the people;
    - (c) considering and enacting amendments to this Constitution;
    - (d) approving the sharing of revenue among the two levels of government and appropriating funds for expenditure by the departments of the Government;
    - (e) ensuring equity in the distribution of national resources and opportunities among all parts and communities of Kenya;
    - (f) scrutinizing and overseeing actions of State organs;
    - (g) considering and approving treaties;
    - (h) approving appointments, when required by this Constitution or legislation;
    - (i) reviewing the conduct in office of the President, the Deputy President and other State officers and, if necessary, initiating the process for their removal from office; and
    - (j) approving declarations of states of emergency or war.
  - (3) A person or body, other than Parliament, shall not have power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation.

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

##### Membership of Parliament

- 116.** (1) Parliament shall consist of –



- (a) one member elected from each constituency as may be prescribed by law;
  - (b) one woman member elected from each special constituency created for women as may be prescribed by law;
  - (c) a number of members nominated by political parties in proportion to the votes received by each party at the election, based on lists submitted by political parties contesting the election;
  - (d) the Attorney-General, who shall be an ex officio member;
  - (e) the Speaker, who shall be an ex officio member; and
  - (f) the Ministers appointed under Article 168(5), who shall be ex officio members.
- (2) The members referred to under clause (1)(c) shall consist of -
- (a) a number of members equal to five per cent of the total membership of Parliament who shall be persons with disabilities, of whom one-third shall be women;
  - (b) a number of members equal to five per cent of the total membership of Parliament who shall be nominated by political parties to represent special interests, including the youth and workers; and
  - (c) such number of members as may be required to ensure that not more than two-thirds of all the members of Parliament are of the same gender.
- (3) A member referred to under clause (1)(c) and clause (2) shall serve as such a member for only one term.
- (4) Parliament shall enact legislation to give effect to this Article.

### **Qualifications and disqualifications of members**

- 117.** (1) Unless disqualified under clause (2), a person is eligible to be a member of Parliament if that person –
- (a) is a citizen;
  - (b) is registered as a voter;
  - (c) satisfies any educational, moral and ethical requirements prescribed by this Constitution or legislation; and
  - (d) in the case of a candidate for election as a member of Parliament –
    - (i) is nominated by a political party; or
    - (ii) being an independent candidate, is supported by at least one thousand registered voters in the constituency concerned, in the manner determined by the Electoral and Boundaries Commission.
- (2) A person is disqualified from being elected a member of Parliament if that person –

- (a) holds a State office or public office, other than as a member of Parliament;
  - (b) is of unsound mind;
  - (c) is an undischarged bankrupt;
  - (d) is serving a sentence of imprisonment of at least six months;
  - (e) has, at any time in the immediately preceding ten years, served a term of imprisonment of at least three years for the commission of an offence recognized under the law of Kenya;
  - (f) has been found, in accordance with any law, to have misused or abused a State office or public office or to have in any way contravened the principles of Chapter Nine.
- (3) A person is not disqualified under clause (2) unless all possibility of appeal or review of the sentence or decision has been exhausted.

#### **Election of members of Parliament**

- 118.** (1) An election of members of Parliament shall be held on the Tuesday immediately preceding the twenty-eight days before the expiration of the term of Parliament.
- (2) Whenever a vacancy occurs in the office of a member of Parliament –
- (a) the Speaker shall, within twenty-one days of the occurrence of the vacancy, give notice in writing of the vacancy to the Electoral and Boundaries Commission; and
  - (b) subject to clause (3), a by-election shall be held within ninety days of the occurrence of the vacancy.
- (3) A by-election shall not be held within the three months immediately preceding the holding of an election.

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

- 119.** (1) The office of a member of Parliament becomes vacant –
- (a) if the member resigns in writing addressed to the Speaker;
  - (b) if the member becomes disqualified for election under Article 117(2);
  - (c) upon expiration of the life of Parliament;
  - (d) if the member is absent from eight sittings of Parliament without permission, in writing, of the Speaker during any period when Parliament is sitting and is unable to offer satisfactory explanation for the absence to the relevant committee;
  - (e) if the member is removed from office under Article 96;
  - (f) if the member leaves the political party for which the member stood as a candidate for election to Parliament; or
  - (g) if, having been elected to Parliament as an independent candidate, the member joins a political party.

- (2) The creation or dissolution of a coalition of which a member's political party forms part, or the dissolution of a political party or a merger of more than two parties shall not amount to the member's leaving the party for the purposes of clause (1)(f).

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

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

### **Part III – Officers of Parliament**

#### **Speaker and Deputy Speaker of Parliament**

- 121.** (1) There shall be –
- (a) a Speaker of Parliament, who shall be elected by Parliament in accordance with the Standing Orders, from among persons who are qualified to be elected as members of Parliament but are not such members; and
  - (b) a Deputy Speaker of Parliament, who shall be elected by Parliament in accordance with the Standing Orders, from among the members Parliament.
- (2) The office of the Speaker or Deputy Speaker shall become vacant –
- (a) when a new Parliament first meets after an election;
  - (b) if the office holder becomes disqualified under Article 117(2);
  - (c) if Parliament so resolves by resolution supported by the votes of not less than seventy-five per cent of its members;
  - (d) if the office holder dies; or
  - (e) if the office holder resigns in writing addressed to Parliament.

#### **Presiding in Parliament**

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

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

- 123.** (1) There shall be a Leader of the Opposition, who shall be elected by the largest parliamentary party or coalition of parliamentary parties in Parliament not forming the Government.

- (2) In relation to the conduct of business in Parliament, the Leader of the Opposition shall –
  - (a) rank in precedence immediately following the President, the Deputy President, the Prime Minister and the Speaker;
  - (b) have the right of participation at all official state functions; and
  - (c) have the right of second reply, after the Prime Minister, to an address to Parliament by the President.
- (3) The Standing Orders of Parliament shall provide for the effective participation in Parliament of the Leader of the Opposition.

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

- 124.**
- (1) There shall be a Clerk of Parliament who shall be appointed by the Parliamentary Service Commission with the approval of Parliament.
  - (2) The office of the Clerk and offices of members of the staff of the Clerk shall be offices in Parliamentary service.
  - (3) Subject to clause (4), the Clerk shall retire on attaining the age of sixty-five years.
  - (4) Parliament may, by resolution supported by the votes of not less than sixty-five per cent of all the members of Parliament, remove the Clerk.

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

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

- 125.**
- (1) Parliament shall exercise its legislative power by Bills enacted by Parliament and assented to by the President.
  - (2) Any member or committee of Parliament may introduce Bills in Parliament.
  - (3) Every Bill for legislation introduced in Parliament shall be accompanied by an explanatory memorandum, outlining any -
    - (a) limitations to or derogations from the Bill of Rights, or any other constitutional implications;
    - (b) financial implications; and
    - (c) public participation during the preparation of the Bill.
  - (4) The relevant Committee shall-
    - (a) determine the nature and extent of public participation for each Bill for legislation introduced in Parliament; and
    - (b) facilitate that participation, and ensure that it is adequately carried out.
  - (5) Parliament shall equitably allocate time for the consideration of Bills.

#### **Money Bills**

- 126.**
- (1) A money Bill may be introduced only by a Minister.

- (2) In this Chapter “money Bill” means a Bill that contains provisions dealing with –
  - (a) the imposition, repeal, remission, alteration or regulation of taxes;
  - (b) the imposition of charges on the Consolidated Fund or any other fund of the Government or the variation or repeal of any of those charges;
  - (c) the appropriation, receipt, custody, investment, issue or audit of accounts of public money;
  - (d) the grant of money to any person or authority or the variation or revocation of public money;
  - (e) the raising or guaranteeing of any loan or the repayment thereof; or
  - (f) any matter 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 district government.

**Presidential assent and referral**

- 127.**
- (1) If Parliament passes a Bill, the Speaker, shall within fourteen days, present the Bill to the President for assent.
  - (2) Within fourteen days after receipt of the Bill, the President shall –
    - (a) assent to the Bill; or
    - (b) refuse to assent to the Bill.
  - (3) Where the President refuses to assent to a Bill, the President shall, within fourteen days of the refusal, submit a memorandum to the Speaker referring the Bill back for reconsideration by Parliament and indicating the specific provisions of the Bill, or the grounds on which, in the opinion of the President, the Bill should be reconsidered by Parliament including the President’s recommendations for amendments.
  - (4) If the President refers a Bill back for reconsideration by Parliament, Parliament shall reconsider the Bill and may –
    - (a) amend the Bill in light of the President’s recommendations; or
    - (b) pass the Bill a second time without amendment.
  - (5) If Parliament has amended the Bill, the Speaker shall submit it to the President for assent.
  - (6) If Parliament, after considering the President’s recommendations, passes the Bill a second time by vote supported by two-thirds of all the members of Parliament, without amendments –
    - (a) the Speaker shall, within seven days, re-submit the Bill to the President; and
    - (b) the President shall within seven days assent to the Bill.

- (7) If the President refuses or fails to assent to a Bill within the period prescribed in clause (2), the Bill shall be taken to have been assented to upon the expiration of that period.

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

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

### **Right to petition Parliament**

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

### **Quorum**

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

### **Official languages of Parliament**

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

### **Voting in Parliament**

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

### **Regulation of procedure**

133. (1) Subject to this Constitution, Parliament shall –
  - (a) regulate its own procedure and shall make Standing Orders for the orderly conduct of its proceedings;
  - (b) establish committees in such manner and for such general or special purposes as it deems fit and shall regulate the procedure of any such committee.

- (2) The proceedings of Parliament are not invalid by reason only –
  - (a) that there is a vacancy in its membership; or
  - (b) of the presence or participation of any person not entitled to be present at, or to participate in the proceedings of Parliament.

**Power to call for evidence**

**134.** In the exercise of its functions –

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

**135.** (1) Parliament shall –

- (a) conduct its business in an open manner and hold its sittings and those of its committees in public; and
  - (b) facilitate public involvement in the business of Parliament and its committees.
- (2) Despite clause (1), reasonable measures may be taken –
- (a) to regulate public access, including access of the media to Parliament and its committees; and
  - (b) to provide for the searching of any person and, where appropriate, refusal of entry to, or the removal of, any person.
- (3) Parliament may not exclude the public, or any media, from any sitting of Parliament or of any of its committees, under this Article, unless it is reasonable and justifiable to do so in an open and democratic society.

**Powers, privileges and immunities**

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

- (2) Parliament may, for the purpose of the orderly and effective discharge of its business, by an Act of Parliament, provide for its powers, privileges and immunities and those of its committees and members.

## Part V – Miscellaneous

### Registry of Enactments

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

### Seat of Parliament

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

### Life and prorogation of Parliament

- 139.** (1) The life of Parliament is five years from the date of its first sitting after an election.
- (2) At any time when the Republic is at war, Parliament may, from time to time, by a resolution supported by the votes of not less than sixty-five per cent of all the members of Parliament, extend the term of Parliament for not more than six months at a time.
- (3) Parliament shall not be extend its term under clause (2) –
- (a) by more than twelve months; or
  - (b) before its expiration after an election is held in terms of Article 118(1).



- (4) Subject to this Article, Parliament shall stand prorogued on the thirtieth day of November in every year and the next session shall commence on the first Tuesday of February in the next year.

### **Parliamentary Service Commission**

- 140.** (1) There is established Parliamentary Service Commission which shall consist of –
- (a) a chairperson and a vice-chairperson elected by the Commission from the members appointed under paragraph (b);
  - (b) seven members appointed by Parliament from among its members, of whom –
    - (i) four shall be nominated by the party or coalition of parties forming the Government and at least two shall be women; and
    - (ii) three shall be nominated by the party or coalition of parties not forming the Government, and at least one of whom shall be a woman; and
  - (c) two members of opposite gender appointed by Parliament from among persons who are not members of Parliament and are experienced in public affairs.
- (2) A member of the Commission shall vacate office –
- (a) if that person is a member of Parliament –
    - (i) upon expiration of the life of Parliament;
    - (ii) if that person ceases to be a member of Parliament; or
    - (iii) if circumstances arise that, if that person were not a member of Parliament, would disqualify that person to be elected as such; or
  - (b) if that person is an appointed member, upon revocation of that person's appointment by Parliament.
- (3) The Commission is responsible for the following functions –
- (a) providing necessary services and facilities to ensure efficient and effective functioning of Parliament;
  - (b) constituting offices in Parliamentary service, and appointing and supervising office holders;
  - (c) preparing annual estimates of expenditure (which shall be a charge on the Consolidated Fund) of Parliamentary service, and exercising budgetary control over the service;
  - (d) undertaking, singly or jointly with other relevant organizations, programmes to promote the ideals of parliamentary democracy; and
  - (e) carrying out other functions –
    - (i) necessary for the well-being of the members and staff of Parliament; or

- (ii) prescribed by or under legislation.
- (4) In the exercise of its powers or the performance of its functions under this Constitution, the Commission shall not be subject to the direction or control of any other person or authority.

## **CHAPTER TWELVE**

### **THE EXECUTIVE**

#### **Part I – Principles of the Executive**

##### **Principles of the executive**

- 141.** Executive authority shall be exercised –
- (a) for the well-being and benefit of the people and the communities of Kenya and in a manner compatible with the principle of service to the people; and
  - (b) in a manner consistent with the purposes and objects of this Constitution and the laws.

##### **Executive authority of the President**

- 142.** The executive authority of the Republic is vested in the President.

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

##### **Authority of President**

- 143.** (1) There shall be a President of the Republic.
- (2) The President shall –
- (a) be the Head of State, the Head of Government, Commander-in-Chief of the Kenya Defence Forces and the Chairperson of the National Security Council;
  - (b) be a symbol of national unity, and have the responsibility to –
    - (i) promote and enhance the unity of the nation;
    - (ii) safeguard the sovereignty of the Republic,
    - (iii) promote and respect the diversity of the people and the communities of Kenya; and
  - (c) uphold, safeguard, and respect this Constitution and ensure the protection of human rights and fundamental freedoms and the rule of law.
- (3) The powers of the President shall be exercised in accordance with this Constitution and the laws.

##### **State functions of President**

- 144.** (1) The President shall –
- (a) address the opening of each newly elected Parliament;
  - (b) address a special sitting of Parliament once each year;

- (c) have the right to address Parliament at any other time;
- (d) once every year -
  - (i) report, in an address to the nation, on all the measures taken and the progress achieved in the realization of the national goals, values and principles set out in Chapter Three; and
  - (ii) cause to be published in the Gazette, the details of the measures and progress referred to in sub-paragraph (i).
- (2) The President, shall, in accordance with this Constitution or any applicable legislation, appoint and may dismiss or remove from office -
  - (a) the Prime Minister;
  - (b) the two Deputy Prime Ministers; and
  - (c) the Ministers;
  - (d) the Deputy Ministers;
  - (e) any other State officer or public officer who the Constitution or legislation requires the President to appoint, dismiss or remove from office.
- (3) After approval of the Cabinet, the President may, –
  - (a) declare a state of emergency, subject to Article 75; or
  - (b) declare war.
- (4) The President may appoint a commission of inquiry.
- (5) Despite clause (4), a commission of inquiry appointed for the purposes of Article 204(2) shall only be appointed with the prior approval of Parliament.
- (6) The President shall lay the report of every commission of inquiry appointed under clause (4) before Parliament within twenty-one days of the receipt of the report by the President.
- (7) The President may, with the prior approval of Parliament, sign instruments of consent for the Republic to be bound by treaties in accordance with Article 115 or by international agreements.
- (8) The President shall –
  - (a) with the prior approval of Parliament, appoint high commissioners, ambassadors, and diplomatic and consular representatives; and
  - (b) receive foreign diplomatic and consular representatives;
  - (c) exercise the powers of clemency in accordance with Article 157; and
  - (d) acting in accordance with an Act of Parliament, confer honours in the name of the people and the Republic.
- (9) The President shall -

- (a) ensure that the international obligations of the Republic are fulfilled through the actions of the relevant Ministers and shall submit a progress report to Parliament annually; and
  - (b) respect the independence, impartiality and dignity of State officers, the courts, constitutional Commissions and other institutions established by law and ensure their accessibility and effectiveness, as contemplated by this Constitution.
- (10) Subject to this Constitution and any other law, the powers of constituting and abolishing offices for the Republic of Kenya, of making appointments to and terminating those appointments, shall vest in the President.
- (11) Appointments under clause (10) shall be subject to the approval of Parliament.

### **Curtailment of presidential powers**

- 145.** (1) This Article applies to a person who holds the office of President or is authorized by this Constitution to exercise the powers of the President –
- (a) during a period commencing on the date of the first vote in a presidential election, and ending when the newly elected President assumes office; or
  - (b) while the President is temporarily absent or incapacitated, as contemplated by Article 160.
- (2) During a period referred to in clause (1), a person to whom this Article applies shall not exercise any power of the President relating to -
- (a) the nomination, appointment or removal of the judges of the superior courts of record;
  - (b) the nomination, appointment or dismissal of any other public officer required by this Constitution or legislation to be appointed by the President;
  - (c) the powers of clemency; and
  - (d) the authority to confer honours in the name of the people and the Republic of Kenya.

### **Decisions by the President**

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

### **Presidential elections**

- 147.** (1) The election of the President shall be by direct adult suffrage through a secret ballot and shall be conducted in accordance with this Part and any Act of Parliament regulating presidential elections.
- (2) An election of the President shall be held –
- (a) at the same time as an election for members of Parliament under Article 118(1); or

- (b) in the circumstances contemplated in Article 161.

**Qualifications and disqualifications for election as President**

- 148.** (1) A person qualifies for nomination as a presidential candidate if that person –
- (a) is a citizen by birth;
  - (b) is qualified to stand for election as a member of Parliament; and
  - (c) is nominated –
    - (i) by a registered political party; or
    - (ii) as an independent candidate by at least ten thousand registered voters, who shall include not less than one hundred registered voters from each district.
- (2) A person is not qualified for nomination as a presidential candidate if that person –
- (a) owes allegiance to a foreign state;
  - (b) holds or is acting in any office in the public service, including the office of judge, magistrate or other judicial office, in the defence forces of the Republic, or in a district government;
  - (c) is a member of a constitutional Commission;
  - (d) is a candidate for election as a member of Parliament; or
  - (e) has been dismissed or removed or ceased to hold office under Article 96; or
  - (f) is not qualified to stand for election as a member of Parliament.

**Procedure at presidential election**

- 149.** (1) If only one candidate for President is nominated, that candidate shall be declared elected as President.
- (2) If two or more candidates for President are nominated, an election shall be held in each constituency.
- (3) In a presidential election –
- (a) all persons registered as voters for the purposes of parliamentary elections shall be entitled to vote;
  - (b) the poll shall be taken by a secret ballot on the day specified in Article 156 at such time, in such places and in such manner as may be prescribed by or under an Act of Parliament; and
  - (c) after counting of the votes in the polling stations, the Electoral and Boundaries Commission shall declare the result.
- (4) The candidate for President who receives more than fifty per cent of all the votes cast in the election and who, in addition, receives a minimum of twenty-five per cent of the votes cast in more than half of the districts shall be declared elected as the President.

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

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

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

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

151. The President-elect –
  - (a) shall assume office –
    - (i) on the first Tuesday following the twenty one days after the date of the announcement of the results of the presidential election by the Electoral and Boundaries Commission; or

- (ii) within seven days of the determination by the Supreme Court of the election petition filed under Article 150; and
- (b) assumes office by taking and subscribing –
  - (i) the oath or affirmation of allegiance; and
  - (ii) the oath or affirmation for the execution of the functions of office,as prescribed in the Second Schedule, before the Chief Justice or a Judge of the Supreme Court, on the date when the term of office of the incumbent President expires.

**Term of office of President**

- 152.** (1) The President shall hold office for a term not exceeding five years beginning from the date of assumption of office.
- (2) A person shall not hold office as President for more than two terms.
- (3) A person who becomes President by the operation of Article 156 and continuously serves as President for at least two and a half years shall be deemed to have served for a full term.

**Protection from legal proceedings**

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

**Removal of President on grounds of incapacity**

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

- (a) four shall be nominated by the Medical Practitioners and Dentists Board, and
  - (b) one shall be nominated by the President or a member of the family or a close relative of the President,
- to inquire into the matter.
- (3) Where Parliament resolves that the question of the physical or mental capacity of the President to perform the functions of the office ought to be investigated, the President shall, until another person assumes the office of President or the tribunal appointed under clause (2) reports that the President is incapable of performing the functions of the office, whichever is earlier, continue to perform the functions of the office.
  - (4) If the Chief Justice does not appoint a tribunal within the period specified in clause (2), the Speaker shall appoint a tribunal within seven days of the expiry of that period.
  - (5) The tribunal shall inquire into the matter and report –
    - (a) to the Chief Justice within fourteen days of the appointment and send a copy of the report to the Speaker, or
    - (b) to the Speaker within fourteen days of the appointment of the tribunal by the Speaker.
  - (6) The Chief Justice or the Speaker, as the case may be, shall certify in writing accordingly and transmit the certificate together with the report of the tribunal to Parliament.
  - (7) Where the tribunal reports that the President is capable of performing the functions of the office, the Speaker shall so announce in Parliament.
  - (8) If the tribunal reports that the President is incapable of performing the functions of the office, Parliament shall, supported by the votes of more than fifty per cent of all the members, ratify the decision of the tribunal and on the ratification, the President shall cease to hold office.

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

- 155.** (1) A member of Parliament may, at any time, submit to the Speaker a notice in writing, signed by the member stating that the member intends to propose a motion for the impeachment of the President on the grounds of –
- (a) a serious violation of the Constitution or the law; or
  - (b) serious misconduct prejudicial to the interests of the Republic or which has brought the Office of President into disrepute,
- and setting out the particulars of the grounds.
- (2) The Speaker shall, if Parliament –
- (a) is sitting or has been summoned to meet, bring the motion to the notice of Parliament for its consideration within seven days of the notice; or



- (b) is not sitting, summon it to meet within twenty-one days of the notice to consider the motion.
- (3) If a motion under clause (2) is passed by more than fifty per cent of all the members of Parliament, Parliament shall, in accordance with its Standing Orders, appoint a special committee comprising thirteen of its members to investigate the matter.
- (4) The special committee shall investigate the matter and shall, within ten days of its appointment, report to Parliament whether it finds the particulars of the allegations against the President to have been substantiated.
- (5) The President shall have the right to appear and be represented before the special committee during its investigations.
- (6) If the special committee reports that the particulars of any allegation against the President have not been substantiated, further proceedings shall not be taken under this Article in respect of that allegation.
- (7) If the special committee reports that the particulars of any allegation against the President have been substantiated, Parliament shall vote on impeachment charges and the President shall cease to hold office if seventy-five per cent of all the members vote to uphold the impeachment charges.

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

- 156.** (1) The office of the President shall become vacant if the holder of the office –
- (a) dies;
  - (b) resigns in writing addressed to the Speaker; or
  - (c) is removed from office under this Constitution.
- (2) Where a vacancy occurs in the office of the President, the Deputy President shall assume office as the President.
- (3) Where a vacancy occurs in the office of the President and that of the Deputy President, the Speaker shall assume the functions of the office of the President.
- (4) In the case of a vacancy as described in clause (3), the Electoral and Boundaries Commission shall conduct a presidential election within sixty days of the vacancy in the office of the Deputy President.

#### **Presidential powers of clemency**

- 157.** (1) There shall be a power of clemency which shall be exercised on the petition of any person, by the President, in accordance with the advice of the Committee referred to in clause (3), which power of clemency shall not be delegated to any other person.
- (2) Parliament shall enact legislation establishing the criteria to be applied by the Advisory Committee referred to in clause (3) in formulating its advice referred to in clause (1).

- (3) For the purposes of the exercise of the power of clemency under clause (1), there shall be an Advisory Committee on the Presidential Power of Clemency, which shall consist of –
  - (a) the Attorney-General;
  - (b) the Minister responsible for the Kenya Correctional Services;
  - (c) a medical practitioner nominated by the Medical Practitioners and Dentists Board;
  - (d) the head of the probation service;
  - (e) a person nominated by the Commission on Human Rights and Administrative Justice;
  - (f) three persons, each of whom shall be nominated by each of the religious organisations representative of the Christian, Muslim and Hindu faiths; and
  - (g) one advocate of at least fifteen years' standing nominated by the Law Society of Kenya.
- (4) Members of the Advisory Committee appointed under clause (3)(c), (e), (f) and (g) shall remain members of the Advisory Committee, provided that they remain qualified, for a period of one year and shall be eligible for re-appointment for two further terms of one year each.
- (5) The Advisory Committee may act despite a vacancy in its membership.
- (6) The Advisory Committee may regulate its own procedure.
- (7) In exercise of the powers conferred by clause (1) the President may –
  - (a) grant to a person convicted of an offence a pardon, either free or subject to lawful conditions;
  - (b) postpone, either for a specified period or indefinitely, the carrying out of a punishment imposed on a person;
  - (c) substitute a less severe form of punishment for a punishment imposed on a person for an offence; or
  - (d) remit the whole or part of a punishment imposed on a person for an offence.
- (8) The Advisory Committee may take into account the views of the victims of the offence in respect of which it is considering recommending the exercise of the power of clemency by the President.

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

- 158.**
- (1) There shall be a Deputy President of the Republic.
  - (2) Each candidate in a presidential election shall nominate a person, duly qualified for election as the President, as a candidate for Deputy President.
  - (3) The Electoral and Boundaries Commission shall not conduct a separate election for the Deputy President but shall declare the candidate nominated by the person who is elected as the President to be elected as the Deputy President.

- (4) If the person elected as Deputy President is a member of Parliament, the Electoral and Boundaries Commission shall declare the seat of that member vacant and shall hold an election in that constituency to fill the vacancy within thirty days of the vacancy arising.
- (5) A person declared elected as the Deputy President shall take and subscribe the oath or affirmation of allegiance and the oath or affirmation for the due execution of the functions of the office, as prescribed in the Second Schedule, before the Chief Justice or a Judge of the Supreme Court.
- (6) The term of office of the Deputy President shall run from the date the President assumes office and shall terminate –
  - (a) when the next President assumes office;
  - (b) upon the Deputy President assuming the office of President; or
  - (c) on resignation, death or removal from office.
- (7) The Deputy President may, at any time, resign in writing addressed to the President and the resignation shall take effect on the date and at the time, if any, specified in the letter or if a date is not specified, at noon on the day after the letter is delivered.
- (8) The provisions of Articles 154 and 155 as to the removal from office and impeachment of the President shall, with the necessary modifications, apply to the office of the Deputy President.
- (9) The Deputy President shall not serve for more than two terms.
- (10) A person who becomes Deputy President by operation of Article 159 and has continuously served as Deputy President for at least two and a half years during the term of a President shall be deemed to have served a full term.

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

- 159.** (1) The office of Deputy President shall become vacant -
- (a) if the holder of the office dies or resigns from office;
  - (b) if the holder of the office is removed from office under this Constitution;
  - (c) if the holder of the office assumes office as President under Article 156; or
  - (d) when the next person elected or appointed as Deputy President takes office.
- (2) If there is a vacancy in the office of the Deputy President, the President shall nominate a candidate qualified in terms of Article 158 to be the Deputy President.
- (3) A nomination under clause (2) shall be in writing and shall be submitted to the Speaker within fourteen days of the vacancy.
- (4) Parliament may, by a resolution supported by the votes of two-thirds of all the members of Parliament, approve the nomination under this Article of a person as the Deputy President.

- (5) If Parliament does not approve a nomination under clause (4), the President shall make another nomination in terms of clause (2).
- (6) If Parliament does not approve the nomination under clause (5), the President shall appoint a person to be the Deputy President.
- (7) A person whose nomination is approved under clause (4) or who is appointed as Deputy President under clause (6) shall assume office in the manner specified in Article 158(5).
- (8) The term of office of a Deputy President appointed under this Article shall run from the date the Deputy President assumes office and shall terminate in the manner specified in Article 158(6).

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

- 160.** (1) The Deputy President shall be the principal assistant of the President in the execution of the President's functions.
- (2) The Deputy President shall perform the functions conferred by this Constitution and such other functions as the President may assign.
- (3) When the President is temporarily incapacitated or absent from the Republic, the Deputy President shall act as the President.

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

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

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

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

### Part III – The Cabinet

#### Appointment and functions of Prime Minister

- 163.** (1) There shall be a Prime Minister of the Republic, who shall be appointed by the President in accordance with the provisions of this Part.
- (2) The Prime Minister shall be accountable to the President and shall, under the general direction of the President –
- (a) be the Leader of Government business in Parliament;
  - (b) perform or cause to be performed such other duties as the President may direct; and
  - (c) perform such other functions as are conferred by this Constitution and any other functions as the President may assign.
- (3) In the absence of the Prime Minister, one of the Deputy Prime Ministers designated by the President shall perform the functions of the Prime Minister.

#### Procedure for appointment of Prime Minister

- 164.** (1) Within seven days following the summoning of Parliament after an election, or whenever necessary to fill a vacancy in the office of Prime Minister, other than on the occasion of a vote of no confidence, the President shall propose a member of Parliament for appointment as Prime Minister.
- (2) On receiving a proposal from the President under clause (1), the Speaker shall summon Parliament and introduce the proposal from the President.
- (3) Within seven days of the Speaker receiving a proposal from the President, the Speaker shall call a vote in Parliament to confirm the appointment of the person proposed by the President.
- (4) A vote contemplated in clause (3) passes if it is supported by more than fifty per cent of all the members of Parliament.
- (5) If Parliament fails to confirm the appointment of the person proposed by the President, the President shall propose another member of Parliament for appointment as Prime Minister.
- (6) Where neither of the persons contemplated in clause (1) and (5) has been approved by Parliament for appointment as Prime Minister, the President shall appoint a member of Parliament as Prime Minister.

#### Term of office of Prime Minister

- 165.** The term of office of the Prime Minister shall continue until –
- (a) the Prime Minister dies, resigns or is dismissed from office; or
  - (b) the next person appointed Prime Minister following an election assumes office.

### **Resignation of Prime Minister**

- 166.** (1) The Prime Minister may resign from office, in writing, addressed to the President.
- (2) The resignation of the Prime Minister shall take effect –
- (a) on the date and at the time specified in the notice, if any; or
  - (b) at noon on the day after it is delivered, in any other case.

### **Vacancy in the office of Prime Minister and Ministers**

- 167.** The office of the Prime Minister, Deputy Prime Minister, Minister or Deputy Minister shall become vacant -
- (a) if the President so directs;
  - (b) if the holder of the office dies or resigns from office; or
  - (c) when the next person appointed to that office assumes office.

### **The Cabinet**

- 168.** (1) There shall be a cabinet consisting of -
- (a) the President;
  - (b) the Deputy President;
  - (c) the Prime Minister;
  - (d) the two Deputy Prime Ministers;
  - (e) the Ministers;
  - (f) the Attorney-General; and
  - (g) the Government Chief Whip.
- (2) The Attorney-General and the Government Chief Whip shall be ex-officio members of the Cabinet.
- (3) There shall be such number of Ministers as may be determined by Parliament or in the absence of any provisions made by Parliament, as may be determined by the President.
- (4) The President shall appoint the two Deputy Prime Ministers, the Ministers and the Deputy Ministers.
- (5) The President may appoint not more than twenty per cent of the Ministers from persons who are not members of Parliament but who are qualified for election as such members.
- (6) A person appointed as a Deputy Prime Minister, Minister or Deputy Minister –
- (a) may resign in writing, addressed to the President; and
  - (b) shall continue in office until –
    - (i) that person dies, resigns or is dismissed from office; or
    - (ii) the next person appointed to that office, following an election for Parliament, assumes office.
- (7) A resignation referred to in clause (3) shall take effect –

- (a) on the date and at the time, if any, specified in the letter; or
- (b) at noon on the day after it is delivered, in any other case.

**Secretary to the Cabinet**

- 169.**
- (1) There shall be a Secretary to the Cabinet.
  - (2) The Secretary to the Cabinet shall be appointed by the President with the approval of Parliament.
  - (3) The office of the Secretary to the Cabinet shall be a public office.
  - (4) The Secretary to the Cabinet shall –
    - (a) have charge of the Cabinet office;
    - (b) be responsible, subject to the directions of the Cabinet, for arranging the business and keeping the minutes of, the Cabinet;
    - (c) convey the decisions of the Cabinet to the appropriate persons or authorities; and
    - (d) have any other functions as directed by the Cabinet.
  - (5) The Secretary to the Cabinet –
    - (a) may be removed from office by the President; or
    - (b) may resign from office in writing, addressed to the President, and the resignation shall take effect on the receipt of the letter by the President.
  - (6) On the assumption to office of a new government, the person holding office as Secretary to the Cabinet shall cease to hold that office.

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

- 170.**
- (1) The Cabinet shall meet at least once a month.
  - (2) The quorum at a meeting of the Cabinet shall be one half of all the members of the Cabinet.
  - (3) A decision by the Cabinet shall be in writing.
  - (4) A decision of the Cabinet shall not be valid, and shall not be implemented, unless it is signed by the President.
  - (5) Members of the Cabinet shall collectively and individually, be accountable to Parliament for -
    - (a) the exercise of their powers and the performance of their functions; and
    - (b) the administration and implementation of legislation assigned to them.
  - (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) Members of the Cabinet shall provide Parliament with full and regular reports concerning matters under their control.

### **Assignment of functions**

#### **171. The President –**

- (a) shall assign and may transfer responsibility for the implementation and administration of any Act of Parliament to –
  - (i) the Deputy President;
  - (ii) the Prime Minister;
  - (iii) a Deputy Prime Minister;
  - (iv) a Minister; or
  - (v) a Deputy Minister; and
- (b) may assign to the Deputy President, the Prime Minister, a Deputy Prime Minister, a Minister or a Deputy Minister any power or function where the office holder is absent from office or temporarily unable to exercise that power or perform the function.

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

#### **Principal Secretaries**

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

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

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

#### **Attorney-General**

- 174.** (1) There is established the office of the Attorney-General, which shall be an office in the public service.
- (2) The Attorney-General shall be appointed by the President with the approval of Parliament.
- (3) The qualifications for appointment as Attorney-General shall be the same as for appointment to the office of Chief Justice.
- (4) The Attorney-General shall be the principal legal adviser to the Government.
- (5) The Attorney-General shall be responsible for –



- (a) drawing, perusing and recommending approval (or otherwise) of such agreements, contracts, treaties, conventions and other instruments by whatever name called, to which the State is a party or in respect of which the State has an interest, as specified in legislation;
  - (b) representing the Government in court or in any other legal proceedings to which the Government is a party, other than criminal proceedings; and
  - (c) drafting legislation for the Government.
- (6) The Attorney-General shall have authority, with the leave of the court, to appear as a friend of the court in any civil proceedings to which the Government is not a party.
- (7) The Attorney-General shall promote, protect and uphold the rule of law and defend the public interest.
- (8) The powers of the Attorney-General may be exercised in person or by subordinate officers acting in accordance with the general or special instructions of the Attorney-General.
- (9) In the exercise of the powers and performance of functions of the office, the Attorney-General shall not be under the direction or control of any person or authority.
- (10) The Attorney-General shall hold office for a term of five years and shall be eligible for re-appointment for one further term of five years.

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

- 175.** (1) There is established the office of the Director of Public Prosecutions which shall be an office in the public service.
- (2) The Director of Public Prosecutions shall be appointed by the President on the recommendation of the Public Service Commission with the approval of Parliament.
- (3) The qualifications for appointment as Director of Public Prosecutions shall be 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 (6), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over under paragraph (b).
- (6) Where a discontinuance referred to in clause (5)(c) takes place after the accused person has completed the delivery of the person's defence, the accused person shall be acquitted.
- (7) Parliament may, by legislation, confer powers of prosecution on authorities other than the Director of Public Prosecutions.
- (8) 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.
- (9) The Director of Public Prosecutions shall not –
  - (a) require the consent of any person or authority for the commencement of criminal proceedings; and
  - (b) in the exercise of the powers and performance of the functions of the office, be under the direction or control of any person or authority.
- (10) 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 legal process.
- (11) The Director of Public Prosecutions shall hold office for a term of ten years and shall not be eligible for re-appointment.

### **Public Defender**

- 176.**
- (1) There is established the office of the Public Defender, which shall be an office in the public service.
  - (2) The Public Defender shall be appointed by the President on the recommendation of the Public Service Commission and with the approval of Parliament.
  - (3) The qualifications for appointment as Public Defender shall be the same as for 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 of the Public Defender.

- (7) In the exercise of the powers and performance of the functions of the office, the Public Defender shall not be under the direction or control of any person or authority.
- (8) The Public Defender shall hold office for a term of ten years and shall not be eligible for re-appointment.

**Removal from office**

- 177.** (1) The Attorney-General, the Director of Public Prosecutions or the Public Defender may be removed from office only on the grounds of –
- (a) inability to perform the functions of office arising from infirmity of body or mind;
  - (b) non-compliance with the principles set out in Chapter Nine;
  - (c) bankruptcy;
  - (d) incompetence; or
  - (e) misconduct or misbehaviour, whether in the performance of the functions of the office 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 275(2)(b), shall be in writing, setting out the alleged facts constituting the grounds for the removal of the officer in question.
- (3) The Public Service Commission shall consider the petition and, if the Commission is satisfied that the petition discloses the existence of a ground under clause (1), send it to the President.
- (4) On receipt and examination of the petition, the President shall, within fourteen days, suspend the office in question from office and shall –
- (a) in the case of the Attorney-General, appoint a tribunal consisting of –
    - (i) the Speaker as chairperson;
    - (ii) three judges who hold or have held office as chief justice or as judge of the highest court in a Commonwealth common law jurisdiction; and
    - (iii) three other persons with experience in public affairs; and
  - (b) in the case of the Director of Public Prosecutions or the Public Defender, appoint a tribunal consisting of –
    - (i) four members from among persons who hold or have held office as a judge of a superior court of record, or who are qualified to be appointed as such;
    - (ii) one advocate of at least fifteen years' standing nominated by the Law Society of Kenya; and
    - (iii) two other persons with experience in public affairs.

- (5) The tribunal shall inquire into the matter and report on the facts and make recommendations to the President, who shall act in accordance with the recommendations of the tribunal.
- (6) An Attorney-General, Director of Public Prosecutions or Public Defender who is suspended from office under clause (4) shall be entitled to the remuneration and benefits of the office until such time as the office holder is removed from office.
- (7) A tribunal appointed under clause (4)(b) shall elect a chairperson from among its members and tribunals appointed under clause (4)(a) and (b) and may, subject to this Constitution, regulate its own procedure.

## CHAPTER THIRTEEN

### JUDICIARY

#### Principles of judicial power

- 178.**
- (1) Judicial power is derived from the people and shall be exercised by the courts and other tribunals, in their name and in conformity with their values, norms and aspirations and with this Constitution and the laws, for the common good of the people.
  - (2) Judicial power vests exclusively in the courts and tribunals established in accordance with this Constitution.
  - (3) In applying the law, the courts and tribunals shall be guided by the principle that –
    - (a) justice shall be done to all, irrespective of their status;
    - (b) justice shall not be delayed;
    - (c) adequate compensation shall be awarded to victims of wrongs;
    - (d) reconciliation, mediation and arbitration between parties and the use of traditional courts, where appropriate, shall be promoted;
    - (e) justice shall be administered without undue regard to technicalities; and
    - (f) the purpose and principles of this Constitution shall be protected and promoted.
  - (4) In the performance of their functions, the courts, tribunals and all persons participating in the administration of justice shall –
    - (a) strive to deliver justice to the highest standards;
    - (b) comply with the principles set out in Chapter Nine; and
    - (c) continue to educate themselves in current legal developments.
  - (5) The State shall provide adequate resources and opportunities to members of the Judiciary to enable them to deliver justice to the highest standards.

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

- 179.** (1) The Judiciary consists of the judges of the superior courts of record and other judicial officers.
- (2) The superior courts of record are the Supreme Court, the Court of Appeal and the High Court.
- (3) The subordinate courts are –
- (a) the Magistrates' Courts, and religious courts including Kadhi's courts;
  - (b) the Courts Martial and any other courts subordinate to the High Court established by legislation;
  - (c) traditional courts; and
  - (d) any local tribunals that may be established by legislation.
- (4) Parliament shall, by legislation, establish a court with jurisdiction to hear and determine disputes relating to employment that may arise among employers and employees.
- (5) There is established the office of the Chief Registrar of the Judiciary and such other offices of Registrars as may be created by the Judicial Service Commission.
- (6) The Chief Registrar of the Judiciary shall be the chief administrator and accounting officer of the Judiciary.

### **Independence of the Judiciary**

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

### **Chief Justice**

- 181.** (1) There is established the office of the Chief Justice who shall be the head of the Judiciary.
- (2) Subject to Article 192(1), the Chief Justice shall serve for a period of ten years or until the Chief Justice attains the age of seventy years, whichever is earlier.

- (3) If the Chief Justice has not attained the age of seventy years at the expiry of the period of ten years referred to in clause (2), the Chief Justice may –
  - (a) retire, if the Chief Justice has attained the age of sixty years;
  - (b) continue in office as a judge of the Supreme Court, notwithstanding that there may already be the maximum permitted number of supreme court judges holding office; or
  - (c) resign from the judiciary.

### **Deputy Chief Justice**

182. There is established the office of the Deputy Chief Justice who shall be the principal assistant to the Chief Justice.

### **Supreme Court**

183. (1) There is established a Supreme Court which shall consist of –
  - (a) the Chief Justice, who shall be the president of the court;
  - (b) the Deputy Chief Justice, who shall be the vice-president of the court; and
  - (c) not less than five and not more than seven other judges.
- (2) The Supreme Court shall be properly constituted for the purposes of its proceedings if it is composed of five judges.
- (3) The Supreme Court shall sit in Nairobi.

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

184. (1) The Supreme Court shall have –
  - (a) exclusive original jurisdiction –
    - (i) in respect of presidential election petitions; and
    - (ii) in disputes arising from the process of the impeachment of the President; and
  - (b) appellate jurisdiction to hear appeals from the Court of Appeal or from any other court or tribunal as prescribed by an Act of Parliament.
- (2) Appeals shall lie from the Court of Appeal to the Supreme Court -
  - (a) as of right in any case involving the interpretation or application of this Constitution;
  - (b) in any other case in which the Court of Appeal or the Supreme Court certifies that a matter of general public importance is involved.
- (3) The Supreme Court shall not be bound by its previous decisions if it is in the interests of justice and of the development of the law and jurisprudence not to be so bound.
- (4) Despite the provisions of Article 183(2) a decision made in accordance with clause (3) may be made only by a sitting of the Court in which all of the judges of the Supreme Court participate.

- (5) All other courts shall be bound by the decisions of the Supreme Court.

### **Court of Appeal**

- 185.** The Court of Appeal shall consist of the president of the Court of Appeal and such number of judges and be organized and administered in such manner as may be prescribed by an Act of Parliament.

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

- 186.** The Court of Appeal has jurisdiction to hear appeals from the High Court and any other court or tribunal as may be prescribed by an Act of Parliament.

### **High Court**

- 187.** The High Court shall consist of the Principal Judge and such number of judges and be organized and administered in such manner as may be prescribed by an Act of Parliament.

### **Jurisdiction of the High Court**

- 188.** (1) Subject to the provisions of Article 184(1)(a), the High Court shall have unlimited original jurisdiction in –
- (a) criminal and civil cases;
  - (b) all matters relating to the interpretation and enforcement of the provisions of this Constitution; and
  - (c) any other jurisdiction, appellate or original, conferred on it by or under an Act of Parliament.
- (2) For purposes of the exercise of the jurisdiction of the High Court under clause (1), the Chief Justice may establish divisions of the High Court, with jurisdiction to hear and determine specific matters including, disputes relating to the environment and the occupation and use of, and the title to, land.

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

- 189.** (1) The High Court shall have supervisory jurisdiction over the subordinate courts and over any person, body or authority which exercises a judicial or quasi-judicial function, but not over a superior court of record.
- (2) For the purposes of clause (1), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority as is mentioned in clause (1) and may make any orders and give any directions it considers appropriate to ensure the fair administration of justice.

### **Appointment of judges**

- 190.** Any vacancy in the offices of the Chief Justice, the Deputy Chief Justice and the judges of the superior courts of record shall be filled by a person appointed by the President on the recommendation of the Judicial Service Commission with the approval of Parliament.

### Qualifications for appointment of judges

- 191.** (1) The Chief Justice and judges of the Supreme Court shall be appointed from persons who –
- (a) have been qualified as advocates in Kenya or in any other Commonwealth common law jurisdiction for at least fifteen years, and who -
    - (i) are serving or have served as Judges of the Court of Appeal or the High Court; or
    - (ii) are advocates in private practice or employed in the public service; and
  - (b) have intellectual ability as demonstrated by academic qualifications and eminence in legal practice or public service; and
  - (c) have high moral character, and integrity.
- (2) The judges of the Court of Appeal shall be appointed from persons who have –
- (a) at least twelve years experience in Kenya or in any other Commonwealth common law jurisdiction –
    - (i) as judges of the Court of Appeal or the High Court; or
    - (ii) as advocates in private practice or employed in the public service;
  - (b) intellectual ability as demonstrated by academic qualifications and eminence in legal practice or public service; and
  - (c) high moral character and integrity.
- (3) The judges of the High Court shall be appointed from persons who have –
- (a) at least ten years experience in Kenya or in any other Commonwealth common law jurisdiction –
    - (i) as professionally qualified magistrates; or
    - (ii) as advocates in private practice or employed in the public service;
  - (b) intellectual ability as demonstrated by academic qualifications and eminence in legal practice or public service; and
  - (c) high moral character and integrity.

### Tenure of office of judges

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



**Removal from office**

- 193.** (1) A judge of a superior court of record may be removed from office on the grounds of –
- (a) inability to perform the functions of office arising from infirmity of body or mind;
  - (b) a breach of a code of conduct prescribed for judges of the superior courts of record by an Act of Parliament;
  - (c) bankruptcy;
  - (d) incompetence;
  - (e) misconduct or misbehaviour, whether in the performance of the functions of the office or otherwise; or
  - (f) non-compliance with the principles of Chapter Nine.
- (2) A person desiring the removal of a judge of a superior court of record may present a petition to the Judicial Service Commission, which, despite Article 275(2)(b), shall be in writing, setting out the alleged facts constituting the grounds for the removal.
- (3) The Judicial Service Commission shall consider the petition and, if it is satisfied that it discloses the existence of a ground under clause (1), send it to the President.
- (4) Within fourteen days after receiving the petition, the President shall suspend the judge from office pending action under clause (5), and shall, acting in accordance with the advice of the Judicial Service Commission –
- (a) in the case of the Chief Justice, appoint a tribunal consisting of –
    - (i) the Speaker as chairperson;
    - (ii) three judges who hold or have held office as chief justice or as judge of the highest court in a Commonwealth common law jurisdiction; and
    - (iii) three 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 of record, or who are qualified to be appointed as such, but in either case, have not been, within the preceding three years, members of the Judicial Service Commission; and
    - (ii) three other persons with experience in public affairs.
- (5) The tribunal shall inquire into the matter and report on the facts and make recommendations to the President, who shall act in accordance with the recommendations of the tribunal.

- (6) A judge who is suspended from office under clause (4) shall retain the remuneration and benefits of that office until such time as the judge is removed from office.
- (7) A tribunal appointed under clause (4)(b) shall elect a chairperson from among its members, and tribunals appointed under clause (4)(a) and (b) may, subject to this Constitution, regulate its own procedure.

#### **Subordinate courts**

**194.** Parliament shall, by an Act of Parliament –

- (a) establish courts martial and other courts subordinate to the High Court; and
- (b) confer on them jurisdiction and functions.

#### **Religious courts**

- 195.** (1) There are established Christian courts, Kadhi's courts and Hindu courts.
- (2) Parliament may, by legislation, establish other religious courts.
- (3) Christian courts, Kadhi's courts, Hindu courts and other religious courts shall respectively -
- (a) consist of Chief presiding officers, Chief Kadhi and such number of other presiding officers or Kadhis, all of whom profess the respective religious faith; and
  - (b) be organized and administered,
- as may be prescribed by the respective Act of Parliament.
- (4) Christian courts, Kadhi's courts, Hindu courts and other religious courts shall have jurisdiction to determine questions of their religious laws relating to personal status, marriage, divorce and matters consequential to divorce, inheritance and succession in proceedings in which all the parties profess the respective faith, as may be prescribed by an Act of Parliament.

#### **Judicial Service Commission**

- 196.** (1) There is established the Judicial Service Commission which shall consist of –
- (a) the Chief Justice who shall be the chairperson;
  - (b) one Supreme Court judge elected by the judges of the Supreme Court;
  - (c) one Court of Appeal judge elected by the judges of the Court of Appeal;
  - (d) one High Court judge elected by the judges of the High Court;
  - (e) the Attorney-General;
  - (f) two advocates, of at least fifteen years' standing, nominated by the Law Society of Kenya; and
  - (g) one person nominated by the Public Service Commission.

- (2) The Chief Registrar of the Judiciary shall be the secretary to the Commission.
- (3) A member of the Commission, other than a member appointed under clause (1)(a), and (e), shall hold office for a term of five years, and shall be eligible for re-appointment for one further term of five years.

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

- 197.** (1) The functions of the Judicial Service Commission shall be to –
- (a) ensure and enhance the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice;
  - (b) recommend to the President persons for appointment as judges;
  - (c) review and make recommendations on the terms and conditions of service of judges, magistrates and other judicial officers, other than their salaries and remuneration;
  - (d) advise the President on the persons to be appointed to the tribunal referred to in Article 193(4);
  - (e) appoint, discipline and remove judicial officers and paralegal staff, in such manner as may be specified by an Act of Parliament;
  - (f) prepare and implement programmes for continuing education and training of judges, judicial officers, and paralegal staff; and
  - (g) advise the Government on improving the efficiency of the administration of justice.
- (2) In appointing presiding officers of religious courts, the Commission shall consult the head of the respective religious court.

### **CHAPTER FOURTEEN**

#### **DEVOLVED GOVERNMENT**

##### **Part I – Structure, Objects and Principles of Devolution**

#### **Objects and principles of devolution**

- 198.** (1) The objects and principles of devolution are to –
- (a) ensure the democratic and accountable exercise of sovereign power;
  - (b) foster national unity by recognising diversity;
  - (c) give powers of self-governance to the people and enhance the participation of people in the exercise of the powers of the state;
  - (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 further their development;

- (e) promote social and economic development and the provision of proximate, easily-accessed services throughout Kenya;
  - (f) ensure equitable sharing of national and local resources throughout Kenya, with special provisions for less developed areas; and
  - (g) facilitate the decentralisation of State organs and functions.
- (2) All persons and bodies exercising and performing powers and functions in accordance with this Chapter shall take account of the objects and principles set out in this Article.

### **Unit of devolution**

**199.** The district is the unit of devolution.

### **Co-operation and linkage between the Government and the district governments**

- 200.** (1) The Government and the district governments shall –
- (a) exercise their powers and perform their functions in a manner that respects institutional integrity and rights and responsibilities of the two levels of government;
  - (b) assist, support, and consult with each other and shall, as appropriate, implement the laws enacted at each level; and
  - (c) liaise with each other for the purpose of exchange of information, co-ordination of policies and administration and enhancement of capacity.
- (2) The Government and the district governments, shall, co-operate in the performance of functions and may, for that purpose, set up joint committees and joint authorities.
- (3) A dispute between the Government and a district government or between district governments, shall be settled by means of procedures provided by an Act of Parliament.
- (4) For the purposes of clause (3), an Act of Parliament shall provide procedures for the settlement of inter-government disputes by negotiation, mediation or arbitration.

### **Assignment of functions**

- 201.** (1) Except as otherwise provided by this Constitution or by legislation, the functions and powers of the two levels of government shall be as set out in the Third Schedule.
- (2) Every district government shall decentralize the provision of services and other functions of government by providing for their devolution to the extent that it is efficient and practicable to do so.
- (3) When powers and functions are assigned by the Government to a district government, arrangements shall be put in place to ensure that the funds necessary for the exercise of the power and the performance of those functions are transferred accordingly.
- (4) A function assigned to both the Government and a district government shall be a function within the concurrent jurisdiction of both levels of

government and where there is a conflict, the national function shall prevail.

**Conflict of laws**

- 202.** Where there is a conflict between legislation in relation to matters falling within the concurrent jurisdiction of the two levels of government, national legislation shall prevail over district legislation.

**Management of urban areas within districts**

- 203.** (1) Parliament shall by legislation provide for the governance and management of urban areas within districts.
- (2) Legislation under clause (1) shall —
- (a) establish criteria for distinguishing between -
    - (i) urban areas within districts; and
    - (ii) rural areas within districts;
  - (b) establish the criteria and procedures for the change of status from a rural area within a district into an urban area within a district;
  - (c) establish criteria for classifying an area within a district as an urban area;
  - (d) establish the principles of governance and management of urban areas within districts which take into account the special requirements of the national capital and other major centres;
  - (e) provide for the participation, by the citizens of an urban area, in governance functions of the district within which the urban area lies.
- (3) That legislation may —
- (a) provide for the identification of different categories of urban areas within a district; and
  - (b) make other provision for the better governance of urban areas within districts.

**Suspension of a district government**

- 204.** (1) A district government may be suspended -
- (a) in an emergency arising out of internal conflict or war; or
  - (b) for gross inefficiency or corrupt practices, or for failure to comply with a code of conduct prescribed by an Act of Parliament in respect of district governments.
- (2) A district government shall not be suspended under clause (1)(b) unless a commission of inquiry appointed in accordance with Article 144(5) has investigated the allegations against it and has recommended to the President that the district government be suspended.
- (3) If the commission of inquiry under clause (2) recommends that the district government be suspended, the President shall suspend that district government.

- (4) During a suspension under this Article, arrangements shall be made for the performance of the functions of the district government in accordance with an Act of Parliament.
- (5) A suspension under this Article shall not extend beyond a period of ninety days, during which new elections for the relevant district assembly shall be held.

### **Prohibition against holding elective office in Government and district government**

- 205.** Except as otherwise provided by this Constitution, a person shall not hold a public or elective office at the same time in both the Government and a district government.

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

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

- 206.** (1) There is established a national forum to be known as the National Forum for District governments at which every district government shall be represented.
- (2) The functions of the Forum shall be to –
- (a) consult on and co-ordinate inter-district matters;
  - (b) consult with and advise the Government on matters relating to the affairs of district governments;
  - (c) nominate the representatives of district governments to the Commission on Revenue Allocation under Article 240(2)(b); and
  - (d) carry out such other functions as may be prescribed by or under any law.
- (3) Despite clause (1), district governments shall, to the extent necessary in any particular circumstances, co-operate in the performance of their functions and, for that purpose, may set up a forum.
- (4) An Act of Parliament shall provide for the membership and procedure for the conduct of business and other matters relating to the National Forum for District Governments.

## **Part III – District Government**

### **District governments**

- 207.** There is established for each district a district government, consisting of a district assembly and a district council.

### **Legislative authority of district assembly**

- 208.** (1) The legislative authority of a district is vested in its district assembly.
- (2) A district assembly may pass any laws that are reasonably necessary for, or incidental to, the effective exercise of the powers or the performance of the functions assigned to the district.

- (3) A district assembly shall have power to maintain oversight over the district council and any other executive organs established by the laws of the district assembly.
- (4) A district assembly may recommend to Parliament the enactment of legislation concerning any matter outside the authority of that district assembly that is within the legislative competence of Parliament.

**Election of members of district assembly**

- 209.** (1) A district assembly consists of –
- (a) one member elected for each of such number of wards, with such boundaries, as are prescribed by an Act of Parliament, passed after taking account of the recommendations of the Electoral and Boundaries Commission;
  - (b) such number of special seat members, all of whom are women, as are required to ensure that at least one-third membership of the district assembly comprises women, elected after members have been declared elected under paragraph (a); and
  - (c) a number of members equal to five per cent of the elected members of the district assembly who shall be nominated by political parties in proportion to the number of votes received by the political parties at the last election of members of the district assembly, to represent special interests.
- (2) Nothing in this Article prevents a woman who stood unsuccessfully for election under paragraph (a) of clause (1) from contesting a special seat under paragraph (b) of that clause.
- (3) A district assembly is elected for a term of five years.

**District council**

- 210.** (1) The executive authority of a district is exercised by a district council, consisting of –
- (a) a district chairperson and a deputy district chairperson who shall be elected in such manner as may be prescribed by an Act of Parliament; and
  - (b) subject to clause (2), such other members as are appointed from among the members of the district assembly by the district chairperson with the approval of the district assembly.
- (2) The number of members appointed under clause (1)(b) shall not exceed either –
- (a) one-third of the number of members of the district assembly; or
  - (b) ten persons.
- (3) During the illness or absence of the district chairperson, the deputy district chairperson shall perform the functions, of the district chairperson.

### **Functions of district council**

- 211.** (1) A district council shall –
- (a) implement laws of the district assembly;
  - (b) implement, within the district, national legislation, to the extent that that legislation so requires;
  - (c) co-ordinate the functions of the district administration and its departments; and
  - (d) co-ordinate the functions of units within the district.
- (2) A district council may prepare and initiate proposed laws for enactment by the assembly.
- (3) A district council may formulate plans and policies for the management and exploitation of the district’s resources and development and management of the district’s infrastructure and institutions and table the such plans and policies before the district assembly for approval.
- (4) The district council has such other powers and functions as may be conferred on it by this Constitution or by national or district legislation.
- (5) Members of a district council are accountable collectively and individually to the district assembly for the exercise of their powers and the performance of their functions.
- (6) A district council shall –
- (a) act in accordance with this Constitution; and
  - (b) provide the district assembly with full and regular reports concerning matters under the control of the district council.

## **Part IV – General**

### **Terms of office**

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

### **Community and cultural diversity**

- 213.** Parliament shall by legislation ensure that community and cultural diversity in a district is reflected in legislative and executive bodies exercising power in the district.

### **District government during transition**

- 214.** The district assembly and the district council in office before an election shall continue in office until the newly elected district assembly and district council take office.

### **Leadership and integrity**

- 215.** Members of the district assembly and of the district council shall act in accordance with the principles set out in Chapter Nine.



**Publication of laws**

- 216.** A law or other instrument made by a district assembly or a district council does not take effect unless published in the manner prescribed by Parliament.

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

- 217.** Parliament shall by legislation make comprehensive provision for all matters necessary to give effect to this Chapter including -
- (a) provision to give effect to the principles and objects of devolution in Article 198;
  - (b) the legal framework applicable to district governments;
  - (c) legislation to provide for measures and mechanisms to ensure linkages between the Government and the district governments; and
  - (d) legislation to provide for decentralization of the services of district governments.

**CHAPTER FIFTEEN**

**PUBLIC FINANCE**

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

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

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

**Part II – Taxation Powers and Revenue Sharing**

**Imposition of tax**

- 219.** (1) No person or authority shall –

- (a) impose a tax, fee or charge on behalf of either the Government or a district government, except under the authority of legislation; or
  - (b) waive or vary any tax, fee or charge imposed by law except as expressly provided by law.
- (2) Legislation that provides for any waiver of any tax, charge or fee shall provide that a record of the waivers and the reason for them is kept and reported to the Auditor-General.

### **Taxation powers**

- 220.** (1) The taxation and other revenue-raising powers of the Government and district governments shall be as set out in the Fourth Schedule.
- (2) The taxation and other revenue-raising powers of a district government shall not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across district boundaries or the national mobility of goods, services, capital or labour.
- (3) When the Government and a district government or two or more district governments have taxation or other revenue-raising powers and functions with regard to the same subject-matter, an appropriate division of those powers and functions shall be made by an Act of Parliament.
- (4) Nothing in this Article precludes the sharing of revenue raised under this Article between the Government and a district government or between two or more district governments that have taxation or other revenue-raising powers and functions with regard to the same subject-matter.

### **Sharing of national funds**

- 221.** Subject to the criteria in Article 240 –
- (a) the Government shall promote fair sharing of financial resources between the Government and the district governments;
  - (b) each district government –
    - (i) is entitled to an equitable share of revenue raised nationally; and
    - (ii) may receive equalization grants or other allocations from Government revenue, either conditionally or unconditionally;
  - (c) additional revenue raised by a district government shall not be deducted from its share of revenue raised nationally, or from other allocations made to it out of Government revenue;
  - (d) there shall be no obligation on the Government to compensate a district government that does not raise revenue commensurate with its fiscal capacity and tax base; and

- (e) a district government's share of revenue raised nationally shall be transferred to that government promptly and without deduction, except where the transfer has been stopped under Article 236(2) or deductions are made to offset obligations due to the Government by the district government.

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

#### **Consolidated Fund**

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

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

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

#### **Revenue Fund for district governments**

- 224.** (1) There shall be established a Revenue Fund for each district government, into which all money raised or received for the purposes or on behalf of, or in trust for the district government, other than money excluded by an Act of Parliament, shall be paid.
- (2) Money may be withdrawn from the Revenue Fund of a district government only –
- (a) where authorized by appropriation, legislation of the district government; or
  - (b) as a direct charge against the Revenue Fund that is provided for by an Act of Parliament or by legislation of the district government.

### **Contingency Fund**

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

### **Part IV - Borrowing**

#### **Borrowing by Government**

226. (1) The Government may borrow from any source.
- (2) The Government shall not, on behalf of itself or any other public institution, authority or person, borrow money, guarantee a loan or receive a grant, unless the terms and conditions of the transaction have been laid before, and approved by, a resolution of Parliament.
- (3) All money received as a result of a transaction referred to in clause (2) shall be paid into, and form part of, the Consolidated Fund or some other public fund that is existing or is created for the purpose of that transaction.
- (4) Within seven days after Parliament, by resolution, so requests, the Minister responsible for finance shall present to Parliament all information concerning a loan that is necessary to show –
- (a) the extent of the total indebtedness by way of principal and accumulated interest;
  - (b) the provision made for servicing or repayment of the loan;
  - (c) the use made of the proceeds of the loan; and
  - (d) the progress made in the repayment of the loan.
- (5) For the purposes of this Article, “loan” includes any money lent or given to the Government on condition of return or repayment and any other form of borrowing or lending in respect of which money from the Consolidated Fund or any other public fund may be used, or is required to be used, for payment or repayment.

#### **Borrowing by district governments**

227. (1) A district government may raise loans for development or recurrent expenditure in accordance with conditions determined by an Act of Parliament.
- (2) An Act of Parliament referred to in clause (1) may be enacted only after any recommendations of the Commission on Revenue Allocation have been considered.
- (3) A district government shall not borrow without first obtaining approval from its assembly.

#### **Public debt**

228. (1) Subject to clause (2), the public debt of the Republic shall be a charge on the Consolidated Fund.
- (2) Parliament may enact legislation providing for the charging of all or part of the public debt of the Republic to other public funds.

- (3) For the purposes of this Article, the public debt includes the interest on that debt, sinking fund payments in respect of that debt, the costs, charges and expenses incidental to the management of that debt and outstanding guarantees by the State.
- (4) The aggregate amounts borrowed in any financial year by both the Government and all district governments shall not exceed such percentage of the gross domestic product as may be specified in an Act of Parliament.

**Loan guarantees by governments**

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

**Part V – Budgets****Principles**

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

**National annual estimates**

- 231.** (1) On a date not later than two months before the end of each financial year the Minister responsible for finance shall lay before Parliament –
- (a) estimates of the revenues and expenditure of Government for the following financial year; and
  - (b) a detailed fiscal, monetary and development strategic plan for a period of at least three years (or such longer period as is provided for by Act of Parliament) prepared by the Minister responsible for finance in collaboration with the Minister responsible for planning and national development.
- (2) The Minister responsible for finance shall include in the annual estimates a special budgetary provision for the development of marginalized areas and communities.
- (3) At least three months before the end of each financial year, the head of each self-accounting department, State organ, commission or organization established under this Constitution shall submit its

estimates of revenue and expenditure for the following year to the Minister responsible for finance.

- (4) The estimates prepared under clause (3) shall be laid before Parliament by the Minister responsible for finance without revision but with any recommendations that the Commission on Revenue Allocation may have on them.
- (5) At any time before Parliament considers the estimates of revenue and expenditure laid before it by or on the authority of the Minister responsible for finance, an appropriate committee of Parliament shall discuss and review the estimates and make appropriate recommendations to Parliament.
- (6) The committee referred to in clause (5) shall, in discussing and reviewing the estimates, seek representations from the public and the Economic and Social Council, and those recommendations shall be taken into account when the committee makes its recommendations to Parliament.

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

- 232.** (1) In each financial year, the Minister responsible for finance shall introduce in Parliament a division of revenue Bill based on the recommendations of the Commission on Revenue Allocation dividing revenue raised by the Government among the two levels of government.
- (2) On the basis of the division of revenue Bill passed by Parliament under clause (1), each level of government shall prepare and pass its own budget and Appropriation Bills.
- (3) When the estimates of Government expenditure, other than expenditure charged on the Consolidated Fund by this Constitution or an Act of Parliament, have been approved by Parliament, they shall be included in a Bill, to be known as an Appropriation Bill, which shall be introduced into Parliament to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and for the appropriation of those sums for the purposes specified in the Bill.
- (4) If, in respect of any financial year –
- (a) the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure in respect of a purpose for which no amount has been appropriated by that Act; or
  - (b) money has been expended out of the Contingency Account for a purpose for which no amount has been appropriated by that Act,

a supplementary estimate showing the sums required or spent shall be laid before Parliament and, in the case of excess expenditure, within four months after the first drawing on the money is made.

- (5) The sums sought in a supplementary estimate for purposes for which money already appropriated was insufficient shall not in total exceed ten per cent of the sums previously appropriated by Parliament for those purposes during that financial year; but Parliament may, in special circumstances, approve a higher percentage.
- (6) Where, in respect of any financial year, a supplementary estimate has, or supplementary estimates have, been approved by Parliament in accordance with clause (2), a Supplementary Appropriation Bill shall be introduced into Parliament in the financial year next following the financial year to which the estimates relate, providing for the appropriation of the sums so approved for the purposes specified in those estimates.
- (7) Article 231(5) applies to estimates prepared under clause (4).
- (8) If the Appropriation Bill for a financial year has not been assented to, or is not likely to be assented to by the beginning of that financial year, Parliament may, by a vote on account, authorize the withdrawal from the Consolidated Fund of money (not exceeding in total one-half of the sums included in the estimates of expenditure for that year that have been laid before Parliament) for the purpose of meeting expenditure necessary to carry on the services of the Government during that year until such time as the Appropriation Bill is assented to, but any moneys so withdrawn shall be included, under separate votes for the several services in respect of which they were withdrawn, in the Appropriation Bill.

#### **Annual budget of district governments**

**233.** Parliament shall, by legislation, prescribe —

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

### **Part VI – Financial Management**

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

- 234.** (1) When a State organ or any other public institution at any level of government procures goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

- (2) An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal may be implemented and shall 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.

#### **Accounts and audit of public institutions**

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

#### **Treasury control**

236. (1) An Act of Parliament shall establish an organ of the Government, to be known as the Treasury, and prescribe measures to ensure both transparency and expenditure control in each level of government.
- (2) The Treasury, with the concurrence of the Minister responsible for finance, may stop the transfer of funds to a district government, a State organ or any other public institution only for a material breach, of the measures established in terms of clause (1).
- (3) A decision to stop the transfer of funds taken in terms of clause (2) may not stop the transfer of more than fifty per cent of funds due to any district government.
- (4) A decision to stop the transfer of funds taken in terms of clause (2) –
  - (a) shall not stop the transfer of funds for more than sixty days; and



- (b) may be enforced immediately, but will lapse retrospectively unless, within thirty days after the date of the decision, Parliament approves it by resolution.
- (5) Parliament may renew a decision to stop the transfer of funds under clause (2), for no more than sixty days at a time.
- (6) Before Parliament approves or renews a decision under clause (5) –
  - (a) the Controller of Budget shall make a report to Parliament; and
  - (b) the affected district government, State organ or public institution shall be informed of the material breach and be given an opportunity to be heard in response, before the relevant parliamentary committee.

**Controller of Budget**

- 237.**
- (1) There shall be a Controller of Budget who shall be appointed by the President with the approval of Parliament.
  - (2) To be appointed Controller of Budget, a person shall be –
    - (a) a professionally qualified accountant of not less than ten years' standing, with knowledge of economics or financial management; and
    - (b) a person of high moral character and integrity.
  - (3) The Controller of Budget shall hold office for a term of five years and shall be eligible, if qualified, for re-appointment for one further term.
  - (4) The Controller of Budget shall oversee the implementation of the budgets as approved by the Government and the district governments by –
    - (a) ensuring that money is spent in accordance with appropriations or, in the case of money drawn from the Contingency Fund, in accordance with the Act of Parliament referred to in Article 225;
    - (b) providing accounts of actual, as opposed to budgeted, expenditure;
    - (c) providing technical advice to parliamentary finance committees; and
    - (d) working closely with the Treasury, departments and Ministries.
  - (5) Within two months after the end of each financial year, the Controller of Budget shall submit to Parliament a report on the operations of the office of Controller of Budget during that financial year.
  - (6) Within three months after the submission of a report under clause (5), Parliament shall debate and consider the report and take appropriate action.
  - (7) In performing the functions of office, the Controller of Budget shall not be under the direction or control of any person or authority.

- (8) The grounds and procedure for the removal of a member of a constitutional Commission set out in Article 277 shall, with the necessary modifications, apply to the Controller of Budget.
- (9) The remuneration and benefits of the Controller of Budget shall be charged on the Consolidated Fund.

**Auditor-General**

- 238.**
- (1) There shall be an Auditor-General who shall be appointed by the President with the approval of Parliament.
  - (2) To be appointed Auditor-General, a person shall be –
    - (a) a professionally qualified accountant of not less than ten years' standing who has extensive audit and public finance experience; and
    - (b) a person of high moral character and integrity.
  - (3) The Auditor-General shall hold office for a term of five years and shall be eligible for re-appointment for one further term.
  - (4) The Auditor-General shall –
    - (a) audit the accounts of the Government and district governments and of state corporations;
    - (b) confirm that all money that has been appropriated by Parliament, or raised by either level of government, and disbursed has been applied to the purpose for which it was appropriated, that the expenditure conforms to the authority that governs it and that the use of the money was economical, efficient, effective and prudent; and
    - (c) within six months after the end of each financial year, audit and report, in respect of that financial year, on the –
      - (i) public accounts of the Government and district governments;
      - (ii) accounts of all funds and authorities of the Government and district governments;
      - (iii) accounts of all courts;
      - (iv) accounts of every Commission established by this Constitution;
      - (v) accounts of Parliament;
      - (vi) accounts of political parties funded from public funds;
      - (vii) accounts of any other organization funded from public funds; and
      - (viii) public debt.
  - (5) Within three months after the submission of the report referred to in clause (4)(c), Parliament shall debate and consider the report and take appropriate action.

- (6) Parliament shall, by legislation, provide for the keeping of records and auditing of accounts of the district governments and prescribe other measures for securing efficient and transparent fiscal management.
- (7) In performing the functions of the office, the Auditor-General shall not be under the direction or control of any person or authority.
- (8) The grounds and procedure for the removal of a member of a constitutional Commission set out in Article 277 shall, with the necessary modifications, apply to the Auditor-General.
- (9) The remuneration and benefits of the Auditor-General shall be charged on the Consolidated Fund.

## **Part VII – Institutions**

### **National Revenue Authority**

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

### **Commission on Revenue Allocation**

- 240.** (1) There is established the Commission on Revenue Allocation.
- (2) The Commission shall consist of the following persons appointed by the President –
    - (a) a chairperson;
    - (b) sixteen representatives of district governments nominated by the National Forum for District Governments;
    - (c) two persons nominated by Parliament;
    - (d) the Principal Secretary in the Ministry responsible for finance; and
    - (e) the Controller of Budget.
  - (3) The principal function of the Commission shall be to determine the basis for the sharing of revenue from national resources and to ensure that the sharing is equitable as between –
    - (a) the Government and district governments;
    - (b) the district governments; and
    - (c) where necessary, conditional or unconditional grants are made.
  - (4) The Commission shall –
    - (a) inform the Government and the district governments of its recommendations concerning the apportionment of national revenues to the two levels of government;
    - (b) regularly review such recommendations to ensure they conform with changing circumstances; and

- (c) mediate in and determine disputes relating to financial arrangements between the Government and district governments.
- (5) In its recommendations, the Commission shall –
- (a) aim at defining and enhancing the revenue sources of the two levels of government with the object of encouraging fiscal responsibility and moving the district governments over time towards financial self-sufficiency; and
  - (b) make proposals for affirmative action.
- (6) In its recommendations concerning the distribution of national revenue, the Commission shall take into account –
- (a) the national interest;
  - (b) any provision that must be made in respect of the national debt and other national obligations;
  - (c) the needs and interests of the Government, determined in accordance with objective criteria;
  - (d) the need to ensure that the districts are able to provide basic services and perform functions allocated to them;
  - (e) the fiscal capacity and efficiency of the districts;
  - (f) developmental and other needs of districts;
  - (g) economic disparities within and among the districts and the need for financial equalization;
  - (h) the need for affirmative action;
  - (i) the need for economic optimisation of each district;
  - (j) obligations of the district under national legislation;
  - (k) the desirability of stable and predictable allocations of revenue shares; and
  - (l) the need for flexibility in responding to emergencies or other temporary needs, and other factors based on similar objective criteria.
- (7) The recommendations of the Commission may be modified by the Government with the approval of Parliament.
- (8) Parliament shall, by legislation, provide for the procedures and operations of the Commission and prescribe a framework within which the policy referred to in clause (3) may be implemented.
- (9) The Commission shall have such other functions as are conferred on it by legislation.
- (10) In discharging its functions, the Commission shall have regard to such principles, criteria, formulae, conditions and frameworks for ensuring equitable sharing and allocation of national revenue and resources as are prescribed by an Act of Parliament.

- (11) Not later than the 31<sup>st</sup> January in each year, the Commission shall prepare a report, in accordance with requirements prescribed by an Act of Parliament, setting out its recommendations concerning the distribution of national revenues to both levels of government and submit the report to Parliament for approval.
- (12) Recommendations of the Commission, as modified under clause (7), are binding on all governments, and shall be reflected in their respective budgets and in their taxation and other legislative policies.

**Central Bank of Kenya**

- 241.** (1) There is established the Central Bank of Kenya.
- (2) The Central Bank of Kenya shall be the only authority to issue the currency of Kenya.
  - (3) The authority of the Central Bank of Kenya shall vest in a Board, consisting of a Governor, a Deputy Governor and not more than five other members.
  - (4) The members of the Board shall –
    - (a) be appointed by the President with the approval of Parliament; and
    - (b) hold office, subject to Article 273(5) for a term of five years and are eligible, if otherwise qualified, for re-appointment for one further term.
  - (5) To be appointed Governor, a person shall have extensive knowledge and experience in matters relating to economics, finance or accounting and be a person of high moral character and integrity.
  - (6) The Governor of the Central Bank shall be the chairperson of the Board.
  - (7) The Principal Secretary to the Treasury shall be an ex-officio member of the Board.
  - (8) The grounds and procedure for the removal of a member of a constitutional Commission set out in Article 277 shall, with the necessary modifications, apply to a member of the Board.

**Functions of Central Bank**

- 242.** (1) The Central Bank of Kenya shall –
- (a) promote and maintain the stability of the value of the currency of the Republic;
  - (b) issue notes and coins;
  - (c) act as banker and financial advisor to the Government;
  - (d) conduct the monetary policy of the Government in a manner consistent with the relevant provisions of the law in the interest of the balanced and sustainable economic growth of the Republic;

- (e) encourage and promote economic development and the efficient utilization of the resources of the Republic, through effective and efficient operation of a banking and credit system; and
  - (f) perform such other functions, not inconsistent with this Article, as may be prescribed by law.
- (2) 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.
- (3) Notes and coins issued by the Central Bank of Kenya may bear only the portrait of the first President of Kenya or other images that depict or symbolize Kenya or an aspect of Kenya.

### **Economic and Social Council**

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

### **Taxation legislation**

- 244.** (1) Subject to Article 220, Parliament shall enact legislation to regulate the taxation and other revenue raising powers of district governments, the sharing of revenue and the making of grants to district governments.
- (2) The legislation referred to in clause (1), may be enacted only after the Commission on Revenue Allocation and the Minister responsible for matters relating to districts have been consulted, and their recommendations have been tabled in Parliament.
- (3) The legislation referred to in clause (1), shall take into account -
- (a) the national interest;
  - (b) any provision that must be made in respect of the national debt and other national obligations;
  - (c) the needs and interests of the Government;
  - (d) the need to ensure that the district governments are able to perform the functions allocated to them;
  - (e) the fiscal capacity and efficiency of the district governments;
  - (f) developmental and other needs of district governments;
  - (g) economic disparities within and among the district governments, including the needs of marginalized areas;
  - (h) obligations of the district governments in terms of national legislation;
  - (i) the desirability of stable and predictable allocations of revenue shares; and
  - (j) emergencies or other temporary needs.

## **CHAPTER SIXTEEN**

### **THE PUBLIC SERVICE**

#### **Part I – Public Service**

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

- 245.** (1) The guiding values and principles of public service include –
- (a) maintenance and promotion of high standards of professional ethics;
  - (b) promotion of efficient, effective and economic use of resources;
  - (c) effective, impartial, fair and equitable provision of services;
  - (d) encouragement of people to participate in the process of policy making;
  - (e) prompt, efficient and timely response to people’s needs;
  - (f) commitment to the implementation of public policy and programmes;

- (g) accountability for administrative acts of omission and commission;
  - (h) transparency fostered by providing the public with timely, accessible and accurate information;
  - (i) subject to paragraph (k), merit as the basis of appointments and promotions;
  - (j) adequate and equal opportunities for appointments, training and advancement of men and women and the members of all ethnic groups; and
  - (k) representation of the Kenya's diverse communities, persons with disabilities and minorities and marginalized groups in the composition of the public service at all levels.
- (2) The principles of public service referred to in clause (1), apply to public service in –
- (a) the two levels of government;
  - (b) all State organs; and
  - (c) all public enterprises.

**Public Service Commission**

- 246.** (1) There is established the Public Service Commission.
- (2) There shall be a secretary to the Commission who shall be the chief executive and shall be appointed by the President on the recommendation of the Public Service Commission with the approval of Parliament.
- (3) The secretary of the Commission shall hold office for a term of five years and is eligible for re-appointment for only one further term of five years.

**Powers and functions**

- 247.** (1) The powers and functions of the Commission are –
- (a) except where there is a contrary provision in this Constitution, to constitute and abolish offices;
  - (b) except where there is a contrary provision in this Constitution, to appoint persons to hold or act in offices established under this Constitution or any other law, to appoint persons to hold or act in offices in the public service, to confirm appointments, to exercise disciplinary control over such persons and to remove them from office;
  - (c) to investigate, monitor and evaluate the organization, administration and personnel practices of the public service;
  - (d) to ensure efficient and effective performance of the public service;



- (e) to ensure that procedures relating to recruitment, transfers, promotions and disciplinary measures of personnel comply with the values and principles set out in Articles 13 and 245;
  - (f) to review the terms and conditions of service, code of regulations and qualifications of public officers and to develop human resources in the public service and make recommendations on them to the Government;
  - (g) to report on the activities and the performance of its functions in accordance with Article 279 and to evaluate the extent to which the values and principles set out in Articles 13 and 245 are complied with;
  - (h) to hear and determine appeals in respect of matters relating to public service from the district governments; and
  - (i) to perform such other functions as may be prescribed by this Constitution or an Act of Parliament.
- (2) The Commission may, subject to conditions specified by it, in writing, delegate any of its powers and functions under this Article to any one or more of its members, or to any officer, body or authority in the public service.
- (3) Clause (1) shall not apply to any of the following offices in the public service –
- (a) the State offices;
  - (b) the office of a high commissioner, ambassador, or diplomatic or consular representative or other principal representative of the Republic in another country;
  - (c) the office of a commissioner of a constitutional Commission;
  - (d) an office in a district government; and
  - (e) except in relation to appeals referred to in clause (1)(h), any office in the service of a district government.
- (4) A person shall not be appointed under clause (1) to act in any office on the personal staff of the President or a retired President, except with the consent of the President or retired President.
- (5) Parliament shall enact legislation for the better functioning of the Commission.

**Staffing of district governments**

- 248.** A district government is responsible for the recruitment, appointment, promotion, transfer and dismissal of members of its public services within a framework of uniform norms and standards prescribed by an Act of Parliament.

**Protection of public officers**

- 249.** 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 law.

**Teachers Service Commission**

- 250.** (1) There is established the Teachers Service Commission.
- (2) The functions of the Teachers Service Commission shall be –
- (a) to register trained teachers; and
  - (b) subject to Article 248 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; and
    - (vi) perform any other functions conferred on the Commission by an Act of Parliament.
- (3) 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 Government on matters relating to the teaching profession.

**Health Services Commission**

- 251.** (1) There is established the Health Services Commission.
- (2) The functions of the Health Services Commission are –
- (a) to register trained health workers;
  - (b) subject to Article 248 to –
    - (i) recruit and employ registered health workers;
    - (ii) assign health workers employed by the Commission for service in any public hospital and other institutions; and
    - (iii) promote and transfer any such health workers;
  - (c) ensure human resource development and, professional standards and ethics for the health service;
  - (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;
  - (g) to oversee health care financing; and

- (h) to perform any other functions conferred on the Commission by an Act of Parliament.

### **Salaries and Remuneration Commission**

- 252.** (1) There is established the Salaries and Remuneration Commission.
- (2) The functions of the Salaries and Remuneration Commission are –
- (a) to set and review the remuneration and benefits of all State officers, public officers and members of all constitutional Commissions;
  - (b) to harmonise the remuneration and benefits of all State officers and public officers, including officers of district governments and employees of parastatals; and
  - (c) perform such other functions as are conferred on it under this Constitution or as may be prescribed by legislation.

## **Part II – The Kenya Correctional Service**

### **Establishment of Kenya Correctional Service**

- 253.** (1) There is established the Kenya Correctional Service.
- (2) The objects of the Kenya Correctional Service are to ensure –
- (a) the safe custody of the country’s prison population and the provision of humane living conditions in prisons;
  - (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 as useful members of the society.
- (3) 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
  - (c) generally regulating the Kenya Correctional Service.

### **Director-General**

- 254.** (1) There is established the office of Director-General of the Kenya Correctional Service.
- (2) The Director-General shall be appointed by the President, on the advice of the Public Service Commission with the approval of Parliament.
- (3) The Director-General shall hold office for a term of five years and shall be eligible for re-appointment for one further term of five years.
- (4) The Director-General –
- (a) may be removed from office by the President; or

- (b) may resign from office in writing, addressed to the President, and the resignation takes effect on receipt of the letter by the President.

## **CHAPTER SEVENTEEN**

### **NATIONAL SECURITY**

#### **Part I – National Security Organs**

##### **Principles and objects**

- 255.** (1) National security is the protection of the territory of Kenya, its people, their property, freedoms, and other national interests against internal and external threats.
- (2) The national security of Kenya shall be promoted and guaranteed in accordance with the following principles –
- (a) national security is subject to the authority of this Constitution and Parliament;
  - (b) national security shall be pursued in compliance with the law, including international law, and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms;
  - (c) national security organs shall respect the diverse cultures of the communities of 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**

- 256.** (1) The national security organs are –
- (a) the Kenya Defence Forces;
  - (b) the National Intelligence Service;
  - (c) the Kenya Police Service; and
  - (d) the Administration Police Service.
- (2) The primary object of the national security organs and security system is to safeguard the well-being of the people of Kenya and their property, and the sovereignty, peace, national unity and territorial integrity of the Republic.
- (3) In the performance of their functions, the national security organs and every member of the national security organs shall not –
- (a) act in a partisan manner;
  - (b) further any interest of a political party or cause; or
  - (c) prejudice a political interest or political cause that is legitimate under this Constitution.

- (4) A person shall not establish an organization concerned with national security or 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 civil authority.
- (6) Parliament shall enact legislation to provide for the functions, organisation and administration of the national security organs.

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

- 257.** (1) There is established the National Security Council consisting of the –
- (a) President;
  - (b) Deputy President;
  - (c) Prime Minister;
  - (d) Minister responsible for defence;
  - (e) Minister responsible for foreign affairs;
  - (f) Minister responsible for internal security; and
  - (g) Attorney-General.
- (2) The President shall preside at the meetings of the Council, and, in the absence of the President, the Deputy President, and in the absence of the Deputy President, the Prime Minister shall preside.
- (3) The President may invite any person to attend a meeting of the Council.
- (4) There shall be a secretary to the National Security Council who shall be appointed by the President.

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

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

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

### **Establishment of Kenya Defence Forces**

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

### **Command of Kenya Defence Forces**

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

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

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

- 261.** (1) There is established the National Intelligence Service.
- (2) The President shall, with the approval of Parliament, appoint the Director-General of the National Intelligence Service.
- (3) The Director-General of the National Intelligence Service shall hold office for a term of five years, and shall be eligible for re-appointment for one further term of five years.
- (4) The Director-General –

- (a) may be removed from office by the President; or
  - (b) may resign from office in writing addressed to the President, and the resignation shall take effect on receipt of the letter by the President.
- (5) The Director-General shall exercise command over the National Intelligence Service and perform such other duties as Parliament may by legislation prescribe.
- (6) The National Intelligence Service shall be responsible for security intelligence and counter intelligence to enhance national security, defend the Constitution, the interests of the State and the well being of the people of Kenya, and shall exercise such other functions as Parliament may, by legislation, prescribe.
- (7) In exercising its functions, the National Intelligence Service shall observe and respect human rights, fundamental freedoms and the rule of law.
- (8) No intelligence service (other than the National Intelligence Service, an intelligence division of the Kenya Defence Forces or the Kenya Police Service) shall be established except by legislation.

#### **National Intelligence Council**

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

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

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

- 263.** (1) There is established the Kenya Police Service.

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

**Objects and functions**

- 264.** (1) The Kenya Police Service shall –
- (a) strive for the highest standards of professionalism, integrity and discipline;
  - (b) work to eliminate corruption;
  - (c) observe the principles specified in Article 256(3);
  - (d) respect and observe human rights standards, fundamental freedoms and the rule of law;
  - (e) abide by the principles of transparency and accountability;
  - (f) foster and promote amicable relationships with the public; and
  - (g) co-ordinate, supervise and control all private and quasi-government security organizations to ensure safety and security in Kenya.
- (2) The Kenya Police Service shall work closely with communities to ensure –
- (a) the maintenance of law and order;
  - (b) the prevention and detection of crime;
  - (c) the security of the people;
  - (d) the protection of life and property;
  - (e) the protection of rights and freedoms;
  - (f) a peaceful and safe environment; and
  - (g) the support of victims of crime and disorder.

**Inspector-General of Kenya Police Service**

- 265.** (1) The President shall appoint the Inspector-General of the Kenya Police Service.
- (2) The Inspector-General shall hold office for one term of five years.
- (3) The Inspector-General shall exercise command over the Kenya Police Service and perform any other duties that Parliament by legislation prescribes.
- (4) The Inspector-General –
- (a) may be removed by the President; or
  - (b) may resign from office in writing, addressed to the President, and the resignation shall take effect on receipt of the letter by the President.



### **Police Service Commission**

- 266.** (1) There is established the Police Service Commission.
- (2) The Police Service Commission shall consist of –
- (a) one person who is qualified to be appointed as a judge of the High Court;
  - (b) two retired senior police officers, one from each of the Services;
  - (c) three persons of integrity who have served the public with distinction;
  - (d) the Inspector-General of the Kenya Police Service; and
  - (e) the Commandant-General of the Administration Police Service.
- (3) The President shall appoint a chairperson from among the members appointed under clause (2).
- (4) The Police Service Commission shall appoint its secretary.
- (5) The functions of the Police Service Commission shall be to –
- (a) recruit and appoint persons to hold or act in an office, and to determine promotions in the Services;
  - (b) keep under review all matters relating to the standards or qualifications required of members of the Services;
  - (c) keep under review all matters relating to salaries, allowances and other terms and conditions of service;
  - (d) exercise disciplinary control, including hearing and disposal of appeals by persons in the Services; and
  - (e) exercise such other functions as are provided for by this Constitution or an Act of Parliament.
- (6) In this Article “Services” means the Kenya Police Service and the Administration Police Service.

### **Part V – The Administration Police Service**

#### **Establishment of Administration Police Service**

- 267.** (1) There is established the Administration Police Service.
- (2) The Administration Police Service shall be a separate service from the Kenya Police Service.
- (3) The Administration Police Service shall be organized to take into account the structure of devolution.
- (4) The Administration Police Service shall be a service under the Police Service Commission.

#### **Functions of Administration of Police Service**

- 268.** (1) The Administration Police Service shall work with the people to –
- (a) preserve and maintain public peace; and

- (b) prevent commission of offences.
- (2) The Administration Police –
  - (a) may arrest offenders and do all such things as are necessary for the preservation of the public peace and protection of human rights and freedoms; and
  - (b) shall observe the principles specified in Articles 256(3) and 264(1).

#### **Commandant-General of Administration of Police Service**

- 269.** (1) The President shall, with the approval of Parliament, appoint the Commandant-General of the Administration Police Service.
- (2) The Commandant-General of the Administration Police Service shall hold office for one term of five years.
- (3) The Commandant-General of the Administration Police shall exercise command over the Administration Police Service and perform such other duties as Parliament may by legislation prescribe.
- (4) The Commandant-General –
  - (a) may be removed from office by the President; or
  - (b) may resign from office in writing, addressed to the President, and the resignation takes effect on receipt of the letter by the President.

### **CHAPTER EIGHTEEN**

#### **CONSTITUTIONAL COMMISSIONS**

##### **Application of Chapter**

- 270.** This Chapter applies to all constitutional Commissions except where specific provision is made to the contrary in this Constitution.

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

- 271.** (1) The objectives of constitutional Commissions are to –
  - (a) protect the sovereignty of the people;
  - (b) secure the observance by all State organs of democratic principles and values; and
  - (c) ensure the maintenance of constitutionality, by insulating essential democratic functions from improper influence, manipulation or interference.
- (2) Constitutional Commissions –
  - (a) are subject only to this Constitution and the law;
  - (b) are independent and not subject to direction or control by any person or authority; and
  - (c) shall be impartial and perform their functions without fear, favour or prejudice.

- (3) Where appropriate, a constitutional Commission shall –
  - (a) be decentralized throughout the districts; and
  - (b) offer its services to the public free of charge.

### **Incorporation of Commissions**

272. A constitutional Commission is a body corporate.

### **Composition of Commissions**

273. (1) A constitutional Commission shall consist of at least three and not more than nine members including the chairperson.
- (2) Unless otherwise specified in this Constitution, members of a constitutional Commission shall be –
- (a) identified and recommended in a manner prescribed by an Act of Parliament, taking into consideration the principles of affirmative action;
  - (b) appointed by the President; and
  - (c) approved by Parliament.
- (3) To be appointed to a constitutional Commission, a person shall –
- (a) have the specific qualifications required for that commission set out in this Constitution or an Act of Parliament; and
  - (b) have appropriate qualifications and experience.
- (4) A member of a constitutional Commission may be appointed to serve on a full-time or a part-time basis.
- (5) A member of a constitutional Commission shall –
- (a) unless the member is ex officio –
    - (i) hold office for a term of five years, and be eligible for re-appointment for one further term of five years; and
    - (ii) retire from office on attaining the age of sixty-five years;
  - (b) unless the member is an ex officio or part-time member, not hold any other office of profit or emolument or any other employment whether public or private, directly or indirectly; and
  - (c) comply with the principles set out in Chapter Nine.
- (6) A member of a constitutional Commission is not liable in an action or suit in respect of anything done in good faith in the lawful performance of a judicial function.
- (7) Members of a constitutional Commission shall elect a chairperson from amongst themselves –
- (a) at the first sitting of the Commission; and
  - (b) whenever it is necessary to fill a vacancy in that office.

### **Staff of Commissions**

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

### **General functions of Commissions**

275. (1) A constitutional Commission shall educate the public on its role, purpose and functions, and –
- (a) may conduct investigations on its own initiative or upon a complaint made by a member of the public;
  - (b) has the powers of the High Court to –
    - (i) issue summonses; and
    - (ii) compel the attendance of witnesses to give evidence or produce documents for the purposes of its investigations.
  - (c) may institute in the High Court contempt proceedings;
  - (d) has the powers necessary for conciliation, mediation and negotiation; and
  - (e) to the extent permitted by legislation, may award compensation or impose a fine.
- (2) A complaint to a constitutional Commission may be lodged by any person entitled to lodge a complaint under Articles 32(1) and (2) –
- (a) in writing setting out the grounds of the complaint and the facts in support of those grounds; or
  - (b) orally, in which case it shall be reduced into writing and signed by an official of the Commission.
- (3) A constitutional Commission may, in addition to the functions conferred by this Constitution, perform such other functions as Parliament may, by legislation, prescribe.

### **Proceedings of Commissions**

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

### **Removal from office**

277. (1) A member of a constitutional Commission may be removed from office only for –
- (a) inability to perform the functions of the office arising from infirmity of body or mind;
  - (b) misconduct or misbehaviour, whether in the performance of the functions of the office or otherwise;
  - (c) misuse or abuse of office, or contravention of the principles of Chapter Nine;

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

**Funds of Commissions**

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

**Annual and other reports**

- 279.** (1) Within seven months after the end of the financial year, a constitutional Commission shall submit a report to the President and to Parliament.
- (2) The report shall contain –
- (a) a statement on its performance in meeting its objectives;
  - (b) a statement on its activities for the year and its projection on its future activities; and
  - (c) the report of the Auditor-General.
- (3) At any time, Parliament may request a constitutional Commission to submit to it a report on a particular issue.
- (4) The President shall respond to the report of the constitutional Commission in writing to Parliament, which shall debate the report together with the response of the President.
- (5) A report of a constitutional Commission under this Article may be admitted as evidence in court.

**Other Commissions**

- 280.** Parliament may by legislation establish any other commission as it may consider necessary.

**CHAPTER NINETEEN**

**AMENDMENT OF THE CONSTITUTION**

**Amendment of the Constitution**

- 281.** (1) A proposed amendment to this Constitution in respect of –
- (a) the supremacy of the Constitution;
  - (b) the territory of Kenya;
  - (c) the sovereignty of the people;
  - (d) the principles and values of the Republic;
  - (e) the Bill of Rights;
  - (f) the term of office of the President;
  - (g) the independence of the Judiciary and constitutional Commissions;
  - (h) the functions of Parliament;
  - (i) devolution; or
  - (j) the provisions of this Chapter,
- shall be enacted in accordance with Article 282 or 283, and approved by a simple majority of the people in a referendum held for that purpose.

- (2) An amendment to this Constitution not contemplated in clause (1) shall be enacted either –
  - (a) by Parliament, in accordance with Article 282; or
  - (b) by the people and Parliament, in accordance with Article 283.

**Amendment by Parliament**

- 282.** (1) A Bill to amend this Constitution –
- (a) may not address any other matter apart from consequential amendments to legislation arising from the Bill;
  - (b) shall not be called for second reading in Parliament, until at least ninety days after the date of first reading of the Bill in Parliament; and
  - (c) shall have been enacted by Parliament when Parliament has passed the Bill, in both its second and third readings, by not less than a two-thirds majority of the total membership of Parliament.
- (2) Parliament shall publicize any Bill to amend this Constitution, and facilitate public discussion on that Bill.
- (3) When Parliament has enacted a Bill to amend this Constitution, the Speaker shall submit to the President –
- (a) a certificate that the Bill has been enacted by Parliament in accordance with this Article; and
  - (b) the Bill, for assent and publication.
- (4) Subject to clause (5), within thirty days after a Bill is enacted by Parliament, the President shall assent to the Bill and cause it to be published.
- (5) If a Bill to amend this Constitution proposes an amendment contemplated in Article 281(1), the President shall –
- (a) before assenting to the Bill, request the Electoral and Boundaries Commission to conduct a national referendum for approval of the Bill; and
  - (b) within thirty days after the chairperson of the Electoral and Boundaries Commission has certified to the President that the Bill has been approved by a simple majority of the citizens voting in a referendum, assent to the Bill and cause it to be published.

**Amendment through referendum**

- 283.** (1) An amendment to this Constitution may be proposed by a popular initiative supported by the signatures of 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 draft Bill.

- (3) If a popular initiative is in the form of a general suggestion, the promoters of that popular initiative shall formulate it into a draft Bill.
- (4) The promoters of a popular initiative shall forward the draft Bill and the supporting signatures to the Electoral and Boundaries Commission, which shall verify that the initiative is supported by one million registered voters.
- (5) If the Electoral and Boundaries Commission is satisfied that the initiative meets the requirements of this Article, the Commission shall submit the draft Bill to each district assembly for consideration within a period of not more than three months after the date it was submitted by the Electoral and Boundaries Commission.
- (6) When a district assembly has approved a draft Bill, the district chairperson shall submit a copy of the draft Bill to the Speaker, with a certificate that the district assembly has approved it.
- (7) When a draft Bill has been approved by a majority of the district assemblies, it shall forthwith be introduced in Parliament, and Parliament shall proceed with the Bill in accordance with Article 282.
- (8) If Parliament approves the Bill, it shall be submitted to the President for assent in accordance with Articles 282(4) and (5).
- (9) If Parliament fails to pass the Bill, the Bill shall be submitted to the people in a referendum.
- (10) If a simple majority of citizens voting in a referendum under clause (9) support the Bill, it shall be deemed to have been duly passed by Parliament and shall be presented to the President for assent.

## **CHAPTER TWENTY**

### **GENERAL PROVISIONS**

#### **Enforcement of the Constitution**

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

#### **Construing the Constitution**

- 285.** (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 the context otherwise requires, a power conferred or a duty imposed on Parliament by this Constitution to establish, provide for or



- prescribe any matter or thing shall be exercised or discharged by an Act of Parliament.
- (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 a particular circumstance, a period of time set out in this Constitution for any purpose ends on a Sunday or a public holiday, the period extends to the first subsequent day that is not a Sunday or public holiday.
- (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) A provision of this Constitution that a person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall not be construed as precluding a court from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.

## **Definitions**

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

- “adult” means an individual who has attained the age of eighteen years;
- “affirmative action” includes any measure designed to overcome or ameliorate an inequity or the systemic denial or infringement of a right or freedom;
- “amend” includes alter, repeal, revoke, rescind, cancel, replace, add to or vary, in whole or in part;
- “child” means an individual who has not attained the age of eighteen years;
- “civil society” means the collectivity of all socially organized entities, each of which is bound by a voluntary set of shared rules, and is autonomous from the State;
- “Consolidated Fund” means the fund established by Article 222;
- “constitutional Commission” means a commission established as such by this Constitution;
- “disability” includes any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual’s ability to carry out ordinary day-to-day activities;
- “district” means one of the districts into which Kenya is divided in the manner prescribed by an Act of Parliament;
- “document” includes any publication, or any matter written, expressed, or inscribed upon any substance by means of letters, figures or marks, or by more than one of those means, that is intended to be used or may be used for the purpose of recording that matter;
- “effective date” means the date that this Constitution comes into force;
- “enactment” means legislation or subsidiary legislation;

“equalization grant” means a grant given by the Government to district governments for making special provisions for the less developed districts and is based on the degree to which a district government or other unit is lagging behind the national average standard for a particular service;

“financial year” means the period of twelve months ending on 30<sup>th</sup> June or on such other day as Parliament may prescribe;

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

“Government” means the National Government;

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

“Kenya” means the territory of the Republic;

“legislation” means an Act of Parliament or a law made by a district assembly and includes any rule, regulation, by-law, proclamation or other instruments made under the authority of that Act or law;

“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 112;

“power” includes a privilege, authority or discretion;

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

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

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

“Republic” means the Republic of Kenya;

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

“State office” means an office established by this Constitution.

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

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

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

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

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

## CHAPTER TWENTY-ONE

### SAVINGS, TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

#### Consequential Legislation

- 287.** (1) Where 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.
- (4) For the purposes of clauses (1) and (2), 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 Parliament has not enacted legislation within the specified time under clauses (1) or (2), the Bill as tabled under clause (4), shall be deemed to have been enacted on the day immediately after the last day of the period specified in the Fifth Schedule or of the extended period under clause (2).
- (6) Clause (4) does not affect the exercise of any right under clause (1), or under Articles 125 or 129.

#### Transitional

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

#### Effective Date

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

#### Repeal

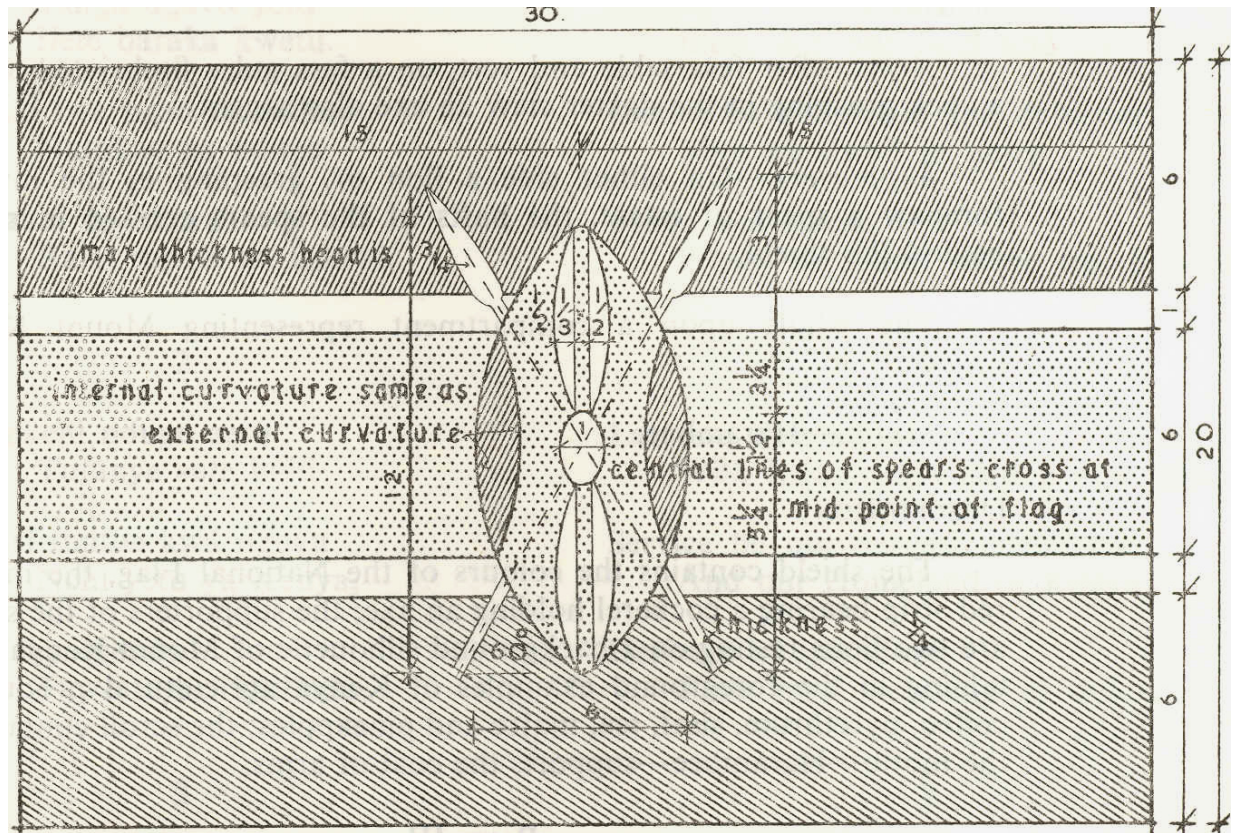
- 290.** The Constitution in force immediately before the effective date shall stand repealed on the effective date.

**FIRST SCHEDULE**

(Article 11)

**NATIONAL SYMBOLS**

**(a) The National Flag**



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

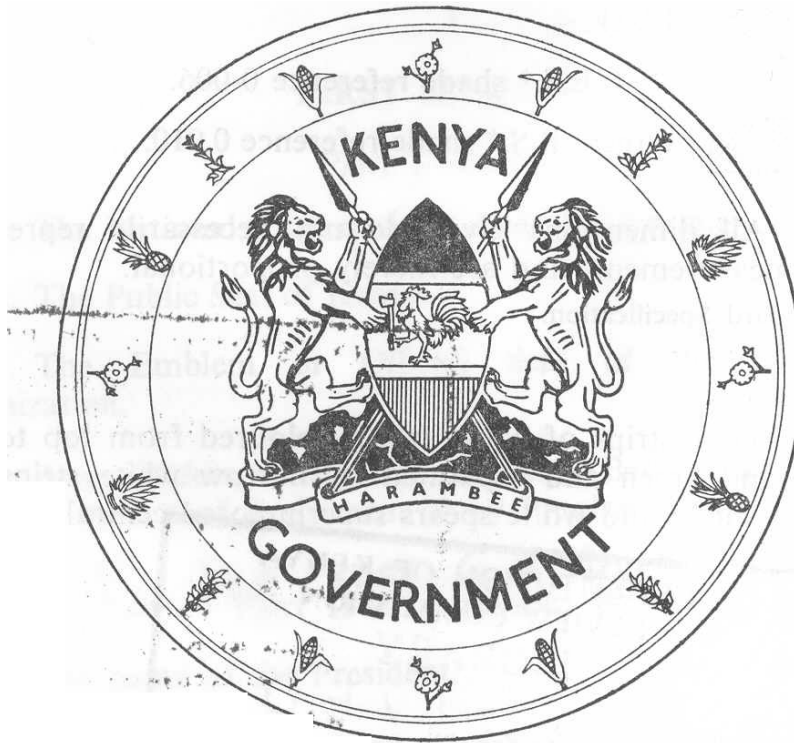
**Description:**

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

**(b) The National Anthem**

<b>1</b>	<b>1</b>
Ee Mungu nguvu yetu Ilete baraka kwetu	O God of all creation Bless this our land and nation
Haki iwe ngao na mlinzi Natukae na undugu	Justice be our shield and defender May we dwell in unity
Amani na uhuru Raha tupate na ustawi	Peace and liberty Plenty be found within our borders
<b>2</b>	<b>2</b>
Amkeni ndugu zetu Tufanye sote bidii	Let one and all arise With hearts both strong and true
Nasi tujitoe kwa nguvu Nchi yetu ya Kenya	Service be our earnest endeavour And our Homeland of Kenya
Tunayoipenda Tuwe tayari kuilinda	Heritage of splendour Firm may we stand to defend
<b>3</b>	<b>3</b>
Natujenge taifa letu Ee, ndio wajibu wetu	Let all with one accord In common bond united
Kenya istahili heshima Tuungane mikono	Build this our nation together And the glory of Kenya
Pamoja kazini Kila siku tuwe na shukrani.	The fruit of our labour Fill every heart with thanksgiving.

**(c) The Coat of Arms**

**(b) The Public Seal****SECOND SCHEDULE***(Article 95)***NATIONAL OATHS AND AFFIRMATIONS****OATH OR SOLEMN AFFIRMATION OF ALLEGIANCE OF THE PRESIDENT/ACTING PRESIDENT AND THE DEPUTY PRESIDENT**

I, ..... , in full realization of the high calling I assume as President/Acting President/Deputy President/ of the Republic of Kenya, do swear/solemnly affirm that I will be faithful and bear true allegiance to the Republic of Kenya; that I will obey, preserve, protect and defend the Constitution of Kenya, as by law established, and all other laws of the Republic; and that I will protect and uphold the sovereignty, integrity and dignity of the people of Kenya. (In the case of an oath: So help me God.)

**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR THE PRESIDENT/ACTING PRESIDENT**

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

President/Acting President of the Republic of Kenya; and I will do justice to all in accordance with the Constitution, as by law established, and the laws of Kenya, without fear, favour, affection or ill-will. (In the case of an oath: So help me God.)

**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR THE DEPUTY PRESIDENT**

I ..... , swear/solemnly affirm that I will truly and diligently serve the people and the Republic of Kenya in the office of the Deputy President of the Republic of Kenya; that I will diligently discharge my duties and perform my functions in the office of Deputy President, to the best of my judgment; that I will at all times, when so required, faithfully and truly give my counsel and advice to the President of the Republic of Kenya; that I will do justice to all without fear, favour, affection or ill-will; and that I will not directly or indirectly reveal such matters as shall come to my knowledge in the discharge of my duties and committed to my secrecy except as may be required for the due discharge of my duties as Deputy President. (In the case of an oath: So help me God.)

**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR THE PRIME MINISTER/ACTING PRIME MINISTER**

I,..... , swear/solemnly affirm that I will be faithful to the Republic of Kenya; that I will obey and uphold the Constitution of Kenya and all other laws of the Republic of Kenya; that I will at all times truly serve the people and Republic of Kenya; that I undertake to hold my office as Prime Minister/Acting Prime Minister of the Republic of Kenya with honour and dignity; that I will be a true and faithful counsellor to the President; that I will not divulge directly or indirectly such matters as shall come to my knowledge in the discharge of my duties and committed to my secrecy, except as may be required for the due discharge of my duties as Prime Minister/Acting Prime Minister; and that I will perform the functions of my office conscientiously and to the best of my ability. (In the case of an oath: So help me God.)

**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR A DEPUTY PRIME MINISTER/ MINISTER/ DEPUTY MINISTER**

I, ..... , being appointed a Deputy Prime Minister/Minister/ Deputy Minister of the Republic of Kenya, do swear/solemnly affirm that I will at all times be faithful to the Republic of Kenya; that I will obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will well and truly serve the people and the Republic of Kenya in the Office of a Deputy Prime Minister/Minister/ 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 President for the good management of the public affairs of the Republic of Kenya; that I will not divulge directly or indirectly such matters as shall come to my knowledge in the discharge of my duties and committed to my secrecy except as may be required for the due discharge of my duties as Deputy Prime Minister/Minister/ Deputy Minister; and that I will perform the functions of my office conscientiously and to the best of my ability. (In the case of an oath: So help me God.).



**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR A PRINCIPAL SECRETARY**

I ....., being called upon to exercise the functions of a Principal Secretary, do swear/solemnly affirm that, except with the authority of the President, I will not directly or indirectly reveal the nature or contents of any business, proceedings or document of the Cabinet committed to my secrecy, except as may be required for the due discharge of my duties as such Principal Secretary. (In the case of an oath: So help me God.)

**OATHS FOR THE CHIEF JUSTICE/DEPUTY CHIEF JUSTICE/JUDGES OF THE SUPREME COURT, THE JUDGES OF THE COURT OF APPEAL AND JUDGES OF THE HIGH COURT**

I ....., the Chief Justice /President of the Supreme Court/Judge of the Supreme Court/Judge of the Court of Appeal/Judge of the High Court, do swear/solemnly affirm to diligently serve the people and the Republic of Kenya and to impartially do justice in accordance with the Constitution as by law established, and the laws and customs of the Republic, without any fear, favour, bias, affection, ill-will, prejudice or any political, religious or other influence. In the exercise of the judicial functions entrusted to me, I will at all times, and to the best of my knowledge and ability, protect, defend, administer and defend the Constitution with a view to upholding the dignity and the respect for the Judiciary and the judicial system of Kenya and promoting fairness, independence, competence and integrity within it. (In the case of an oath: So help me God.)

**OATH /AFFIRMATION OF MEMBER OF PARLIAMENT**

I....., having been elected a member of Parliament do swear/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. (In the case of an oath: So help me God).

**OATH FOR SPEAKER/DEPUTY SPEAKER**

I....., having been elected as Speaker/Deputy Speaker do swear/solemnly affirm that I will bear true faith and allegiance to the people and the Republic of Kenya; that I will faithfully and conscientiously discharge my duties as Speaker/Deputy Speaker; that I will obey, respect, uphold, preserve, protect and defend the Constitution of the Republic of Kenya; and that I will do justice to all persons in accordance with the Constitution of Kenya and the laws and conventions of Parliament without fear or favour, affection or ill will (In the case of an oath: So help me God).

**THIRD SCHEDULE**

*(Article 201(1))*

**DISTRIBUTION OF FUNCTIONS BETWEEN THE GOVERNMENT AND THE DISTRICT GOVERNMENTS**

**Part I – Government**

1. Foreign affairs, foreign policy and international trade.
2. In consultation with the districts, the use of international waters and water resources.
3. Immigration and citizenship.
4. The relationship between religion and state.
5. Language policy and the promotion of official and local languages.
6. National defence and the use of the national defence services.
7. National security, including –
  - (a) the setting of standards of recruitment, training of police and use of police services;
  - (b) criminal law; and
  - (c) correctional services.
8. Courts.
9. National economic policy and planning.
10. Monetary policy, currency, banking (including central banking), the incorporation and regulation of banking, insurance and financial services.
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. Social security and pension policy.
16. Education policy, standards, curricula, examinations and the granting of university charters.
17. Universities, tertiary educational institutions and other institutions of research and higher learning and national secondary schools and special education institutions.
18. Promotion of sports and sports education.
19. Transport and communications, including –
  - (a) road traffic;
  - (b) the construction and operation of national trunk roads;

- (c) standards for the construction and maintenance of other roads by districts;
  - (d) railways;
  - (e) pipelines;
  - (f) marine navigation;
  - (g) harbours and ferries;
  - (h) air travel and civil aviation;
  - (i) space;
  - (j) postal services;
  - (k) telecommunications; and
  - (l) radio and television broadcasting.
20. National public works.
  21. Housing policy.
  22. General principles of land planning and the co-ordination of planning by the districts.
  23. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including –
    - (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) control of air pollution, noise pollution, other public nuisances and outdoor advertising.
  24. National referral health facilities.
  25. Disaster management.
  26. Ancient and historical monuments of national importance.
  27. 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 districts.
  33. Public investment.
  34. National betting and lottery.
  35. Tourism policy and development.
  36. Any other function not assigned by this Constitution or by legislation.

**Part II – District Governments**

1. Except where this Constitution or legislation otherwise provides the powers and functions of the district government in all its functional areas shall, be –
  - (a) the formulation of district policies;
  - (b) the setting of district standards;
  - (c) district planning;
  - (d) the monitoring and evaluation of implementation;
  - (e) the production, management and delivery of district services;
  - (f) the development, operation and maintenance of district infrastructure and services;
  - (g) the facilitation and harmonization of operations within the district; and
  - (h) capacity building.
2. Agriculture, including –
  - (a) crop and animal husbandry;
  - (b) livestock sale yards;
  - (c) district abattoirs;
  - (d) plant and animal disease control; and
  - (e) fisheries.
3. District health services, including –
  - (a) district health facilities and pharmacies;
  - (b) ambulance services;
  - (c) promotion of primary health care;
  - (d) licensing and control of undertakings that sell food to the public;
  - (e) veterinary services (excluding regulation of the profession);
  - (f) cemeteries, funeral parlours and crematoria; and
  - (g) refuse removal, refuse dumps and solid waste disposal.
4. Control of air and noise pollution, other public nuisances and outdoor advertising.
5. Cultural activities, public entertainment and public amenities, including –
  - (a) casinos and other forms of gambling;
  - (b) racing;
  - (c) liquor licensing;
  - (d) cinemas;
  - (e) video shows and hiring;
  - (f) libraries;
  - (g) museums;

- 
- (h) sports and cultural activities and facilities; and
  - (i) district parks, beaches and recreation facilities.
6. District transport, including –
    - (a) district roads;
    - (b) street lighting;
    - (c) traffic and parking;
    - (d) public road transport; and
    - (e) ferries and harbours, excluding the regulation of international and national shipping and matters related thereto.
  7. Animal control and welfare, including –
    - (a) licensing of dogs; and
    - (b) facilities for the accommodation, care and burial of animals.
  8. Trade development and regulation, including –
    - (a) markets;
    - (b) trade licences (excluding regulation of professions);
    - (c) fair survey and mapping;
    - (d) boundaries and fencing;
    - (e) housing trading practices;
    - (f) local tourism; and
    - (g) co-operative societies.
  9. District planning and development, including –
    - (a) statistics; and
    - (b) land.
  10. Education at pre-primary, primary and secondary levels, special education, village polytechnics, homecraft centres and childcare facilities.
  11. Implementation of national government policies on natural resources and environmental conservation, including –
    - (a) soil and water conservation; and
    - (b) forestry.
  12. District public works and services, including –
    - (a) storm water management systems in built-up areas; and
    - (b) water and sanitation services.
  13. Police and firefighting services and disaster management.
  14. Control of drugs and pornography.
  15. Ensuring and co-ordinating the participation of communities and locations in governance at the local level and assisting communities and locations to

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develop the administrative capacity for the effective exercise of the powers and functions and participation in governance at the local level.

**FOURTH SCHEDULE***(Article 220)***TAXATION POWERS****Part I – Taxation Powers of the Government**

The Government may raise revenue, by way of taxes, duties, levies, fees and charges including –

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

**Part II – Taxation Powers of District Governments**

A district government may raise revenue, by way of taxes, duties, user charges, surcharges, fees, levies and charges including –

- (a) flat rate surcharges on the tax bases of any tax, levy or duty that is imposed by national legislation other than the tax bases of corporate income tax, value added tax and customs and excise;
- (b) land use fees;
- (c) agricultural tax;
- (d) charges for the use of properties owned by the district government;

- (e) rates on property and surcharges for services provided by or on behalf of the district;
- (f) licensing fees, including liquor licensing fees, market fees, hawking fees;
- (g) business permit fees;
- (h) entertainment tax;
- (i) district roads maintenance charges;
- (j) district hotels and restaurants tax;
- (k) gate fees for game parks and reserves;
- (l) transport tax;
- (m) parking fees;
- (n) such other taxes, duties, surcharges, fees, levies and charges as the district is authorized from time to time by national legislation to impose; and
- (o) any other taxes, duties, surcharges, fees, levies and charges that are not exclusively assigned to the Government.

## FIFTH SCHEDULE

*(Article 287(1))*

### LEGISLATION TO BE ENACTED BY PARLIAMENT

CHAPTER AND TITLE OF ARTICLE	ARTICLE	TIME SPECIFICATION
<b>CHAPTER FOUR</b>		
<b>CITIZENSHIP</b>		
Citizenship by naturalization	19	Two years
Dual citizenship	21	Two years
Residence	23(2)	Two years
Legislation on citizenship	25	Two years
<b>CHAPTER SIX</b>		
<b>BILL OF RIGHTS</b>		
Implementation of rights and freedoms	31	Three years
Authority of the Court to uphold and enforce the Bill of Rights	33(2)	Three years
Older members of society	39(3)	Two years
Children	41(8)	One year
Family	42(5)	Three years
Persons with disabilities	43(3)	Three years
Freedom of the media	50(5)	One year
Access to information	51(4)	Six months



<b>CHAPTER AND TITLE OF ARTICLE</b>	<b>ARTICLE</b>	<b>TIME SPECIFICATION</b>
Freedom of association	52(4)	One year
Refugees and asylum	56(2)	One year
Consumer rights	69(3)	Three years
Fair administration	70(3)	Three years
Fair trial	73(8)	Three years
Rights of persons held in custody	74(2)	Three years
Gender Commission	76(3)	Three years
Commission on Human Rights and Administrative Justice	77(3)	Three years
<b>CHAPTER SEVEN</b>		
<b>LAND AND PROPERTY</b>		
Community land	81(5)	Two years
Regulation of land use	84(4)	Six months
Legislation on land	86	Two years
<b>CHAPTER EIGHT</b>		
<b>ENVIRONMENT AND NATURAL RESOURCES</b>		
Environmental Legislation	93	Two years
<b>CHAPTER NINE</b>		
<b>LEADERSHIP AND INTEGRITY</b>		
Legislation on leadership	100	One year
<b>CHAPTER TEN</b>		
<b>REPRESENTATION OF THE PEOPLE</b>		
Elections	102(1)	One year
Representation on international bodies	108	One year
Regulation of Political Parties	113	One year
<b>CHAPTER ELEVEN</b>		
<b>THE LEGISLATURE</b>		
Membership of Parliament	116(3)	One year
Registry of Enactments	137	One year
<b>CHAPTER TWELVE</b>		
<b>THE EXECUTIVE</b>		
Presidential powers of clemency	157(2)	One year
Public Defender	176(5)	Two years
<b>CHAPTER THIRTEEN</b>		
<b>JUDICIARY</b>		
Hierarchy and administration of the courts	179	One year
<b>CHAPTER FOURTEEN</b>		
<b>DEVOLVED GOVERNMENT</b>		
Co-operation and linkage between Government and district governments	200(3)	One year

<b>CHAPTER AND TITLE OF ARTICLE</b>	<b>ARTICLE</b>	<b>TIME SPECIFICATION</b>
Management of urban areas within districts	203(1)	One year
Suspension of a district government	204(3)	One year
Establishment and functions of National Forum for District Governments and other Fora	206(4)	One year
Election of members of district assembly	209(1)	One year
Provision to be made by Act of Parliament	217	One year
<b>CHAPTER FIFTEEN</b>		
<b>PUBLIC FINANCE</b>		
Taxation	220	One year
Contingency Fund	225	One year
Borrowing by district governments	227	One year
Loan guarantees by governments	229	One year
Annual budgets of district governments	233	One year
Procurement of public goods and services	234(2)	One year
Accounts and audit of public institutions	235(5)	One year
Treasury control	236(1)	One year
Auditor-General	238(6)	One year
National Revenue Authority	239(3)	One year
Commission on Revenue Allocation	240(8)	One year
Economic and Social Council	243(4)	One year
Taxation legislation	244(1)	One year
<b>CHAPTER SIXTEEN</b>		
<b>PUBLIC SERVICE</b>		
Powers and functions	247(5)	Two years
Staffing of district governments	248	Two years
Establishment of Kenya Correctional Service	253(3)	Two years
<b>CHAPTER SEVENTEEN</b>		
<b>NATIONAL SECURITY</b>		
National security organs	256(6)	One year
Establishment of Kenya Police Service	263(3)	One year

## SIXTH SCHEDULE

(Article 288)

### SAVINGS, TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

#### Part I - General

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

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

##### Existing laws

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

##### National Assembly

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

##### By-elections

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

##### Political parties

5. (1) A political party in existence immediately before the effective date, shall, within twelve months of the enactment of legislation providing for the registration of political parties, comply with the requirements for registration as a political party.  
(2) If on the expiry of the period of twelve months, a political party has not complied with the requirements of sub-section (1), the political party shall forthwith cease to exist as a political party and any person holding an elective position on the basis of the sponsorship of that party shall continue to hold such position but shall be deemed to be an independent member.

##### The Executive

6. (1) The persons occupying the offices of President and Vice-President immediately before the effective date shall continue to serve as President and Deputy President, respectively, in accordance with this Constitution and as elected members of Parliament until the first elections held under this Constitution.  
(2) The provisions of Articles 163, 164, 168(1)(c), (d) and (g), 168(2), (3), (4) and (5) shall come into effect after the first election under this Constitution.

- (3) A person holding a post in the Cabinet immediately before the effective date shall continue to hold that position under this Constitution.

**Existing offices**

7. (1) A person who immediately before the effective date, held or was acting in an office established by the Constitution in force immediately before the effective date, shall continue to hold or act in that office as if appointed to such office under this Constitution.
- (2) A person who immediately before the effective date held or was acting in a public office established by any written law shall, so far as is consistent with this Constitution, continue to hold or act in that office as if appointed to that position under this Constitution.
- (3) The provisions of this section shall not affect the powers conferred on any person or authority under this Constitution to abolish offices or remove persons from those offices.
- (4) The process of appointment of persons to fill vacancies arising in consequence of the coming into force of this Constitution shall begin on the effective date and in accordance with the provisions of this Constitution.
- (5) Where a person has vacated an office that the person held before the effective date and that office is retained or established by or under this Constitution, the person may, if qualified, be appointed, elected, or otherwise selected to hold that office again in accordance with the provisions of this Constitution.
- (6) A person referred to in sub-sections (1), (2) and (5) shall within thirty days from the date of the appointment of the Ethics and Integrity Commission, file with the Commission the documents and evidence required under Chapter Nine.

**Oath of allegiance to this Constitution**

8. 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 Constitution in force before the effective date, 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**

9. (1) If a provision of this Constitution has altered the name of an office or institution existing immediately before the effective date the office or institution as known by the new name shall be the legal successor of the first named office or institution.
- (2) All liabilities, property and other assets that immediately before the effective date were incurred or vested in the Government or the Republic, as the case may be, shall continue to be so incurred or vested after the effective date.

- (3) For the purposes of this section, the Kenya Revenue Authority in existence immediately before the effective date shall continue in existence as the National Revenue Authority referred to in Article 239.

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

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

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

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

#### **Corporal punishment**

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

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

13. (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 functions of the Commission shall be to –
  - (a) monitor, facilitate and oversee the development of legislation and administrative procedures as required fully to implement this Constitution;
  - (b) report twice a year to the President and Parliament on –
    - (i) the progress of the timely implementation of this Constitution; and
    - (ii) any impediments to the timely implementation of this Constitution; and
  - (c) work with the chairperson of each constitutional Commission to ensure that the letter and the spirit of this Constitution is respected.
- (3) The Commission shall stand dissolved on a date to be determined by Parliament not being earlier than five years from the effective date.

### **Appointment of Commissions**

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

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

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

### **Past human rights abuses**

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

- (iv) reparation.

**Community land**

17. Until communities are identified and their title is registered, community land shall be held by the National Lands Commission on behalf of the communities.

**Civic education**

18. From the effective date, the Government shall, through its relevant organs, begin the process of conducting and facilitating civic education on this Constitution to the people of Kenya, in the official languages and in their local languages.

**Amendment of Chapter Fifteen**

19. The procedure for the amendment of this Constitution prescribed in Article 281(1), shall apply to Chapter Fifteen for five years from the effective date.

**Currency**

20. Nothing in Article 242(3) affects the validity of coins and notes issued before the effective date.

**Part II –Devolution**

**Districts**

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

**Local Authorities**

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

**Provincial Administration**

23. (1) After the coming into effect of the Act specified in Article 217 and within six months of the holding of the elections referred to in section 22, the system of administration comprising Assistant Chiefs, Chiefs, District Officers, District Commissioners and Provincial Commissioners commonly known as the Provincial Administration

shall stand dissolved and the Government shall re-deploy all public officers serving under that system.

- (2) On the effective date, all assets held by the Government and situated in the provinces, districts, divisions and locations, shall become public property.
- (3) Until such time as district governments are constituted all the assets held by local authorities immediately before the effective date shall not be transferred or otherwise disposed of without the written authority of the Government and any transfer without such authority shall be void.

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

24. Parliament shall, by legislation, make provision for -
- (a) the phased transfer, over a period of not more than five years from the effective date, from the Government to the district governments of the powers and functions assigned to them under Article 201; and
  - (b) the delegation of powers by one level of government to another, including the delegation from the Government to district governments of legislative powers and the conditions for the transfer and recall of the powers delegated.

#### **Qualification for election or appointment to district government bodies**

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

#### **Procedures and internal organization of district government bodies**

26. (1) Until relevant provision is made by an Act of Parliament for the purposes of Article 218, each district assembly, or district council established by Chapter Fourteen, may, by resolution, regulate its own procedure and internal organization.
- (2) The power conferred by sub-section (1) includes the power to make provision with respect to –
- (a) the appointment or election, and removal, of persons as speakers and deputy speakers;
  - (b) the convening, frequency and chairing of meetings; and
  - (c) quorums and voting at meetings.

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

27. Until relevant provision is made by an Act of Parliament, in respect of the election of mayor or deputy mayor of Nairobi or any other city –



- (a) the manner of voting shall be the same as at an election for Parliament; and
- (b) the residential requirement for the purposes of such elections shall be that a person has been resident in the region for the period of twelve months immediately before the date of the election.

**Election of members of district assembly**

- 28.** Until relevant provision is made by an Act of Parliament for the purposes of Article 209(1) –
- (a) the wards of each district are the wards existing immediately before the effective date; and
  - (b) the manner of conducting the election of members of a district assembly shall be as determined in the circumstances by the Electoral and Boundaries Commission.