

LAWS OF KENYA

THE CONSTITUTION OF KENYA



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THE CONSTITUTION OF KENYA

ARRANGEMENT OF SECTIONS

CHAPTER I - THE REPUBLIC OF KENYA

Section

- 1 – Declaration of Republic.
- 1A-Political system.
- 2 – Public Seal.
- 2A - (*Repealed*).
- 3 – Constitution of Republic of Kenya.

CHAPTER II – THE EXECUTIVE

Part 1 – The President and the Vice – President

- 4- The office of President.
- 5 – Election of President.
- 6 – Vacancy in office of President.
- 7 – Assumption of office of President.
- 8 – Oath of President.
- 9 – Term of office of President.
- 10 – Determination of questions as to validity of presidential elections, etc.
- 11 – Exercise of President’s functions during absence, illness, etc.
- 12 – Removal of President on grounds of incapacity.
- 13 – Salary and allowances of President.
- 14 – Protection of President in respect of legal proceedings during office.
- 15 – The Vice- President of Kenya.
- 15A - Prime Minister and Deputy Prime Ministers.

Part 2 – Ministers and the Cabinet

- 16 – Ministers of Government of Kenya.
- 17 – Cabinet.
- 18 – Allocation of portfolios to Ministers.
- 19 – Assistant Ministers.
- 20 – Absence of Vice-President, Ministers and Assistant Ministers from Kenya.
- 21 – Oaths to be taken by Ministers and Assistant Ministers.
- 22 – Appointing of permanent secretaries.

Part 3 – Executive Powers

- 23 – Executive authority of Government of Kenya.
- 24 – Constitution of offices.
- 25 – Tenure of office in the service of the Republic.

Section

- 26 – Attorney – General.
- 27 – Prerogative of mercy.
- 28 – Advisory Committee on Prerogative of Mercy.
- 29 – Functions of Advisory Committee on Prerogative of Mercy.

CHAPTER III – PARLIAMENT

Part 1 – Composition of Parliament

- 30 – Legislative power.
- 31 – Composition of National Assembly.
- 32 – Election of elected members.
- 33 – Nominated members.
- 34 – Qualifications for election.
- 35 – Disqualifications for election.
- 36 – Attorney-General to be member of National Assembly.
- 37 – Speaker of National Assembly.
- 38 – Deputy Speaker of National Assembly.
- 39 – Vacation of seat in National Assembly.
- 40 – Vacation of seat in National Assembly upon resignation from party.
- 41 – Electoral Commission.
- 42 – Constituencies.
- 42A – Conduct of elections.
- 43 – Qualifications and disqualifications for registration as a voter.
- 44 – Determination of questions as to membership of National Assembly.
- 45 – (*Repealed.*)

Part 1A The Parliamentary Service and the Parliamentary Service Commission.

- 45A – Parliamentary Service.
- 45B – Parliamentary Service Commission.

Part 2 – Legislation and Procedure in the National Assembly

- 46 – Exercise of legislative power of Parliament.
- 47 – Alteration of Constitution.
- 48 – Restrictions with regard to certain financial measures.
- 49 – Oaths to be taken by members of National Assembly.
- 50 – Presiding in National Assembly.
- 51 – Quorum in National Assembly.
- 52 – Powers of President in Parliament.
- 53 – Official languages.
- 54 – Voting in National Assembly.
- 55 – Unqualified persons sitting or voting.
- 56 – Regulation of procedure in National Assembly.
- 57 – Powers, privileges and immunities of National Assembly.

Part 3 – Summoning, Prorogation and Dissolution of Parliament

Section

58 – Summoning of Parliament.

59 – Prorogation and dissolution of Parliament.

CHAPTER IV – THE JUDICATURE

Part 1 – The High Court and the Court of Appeal

60 – Establishment of High Court.

61 – Appointment of judges of High Court.

62 – Tenure of office of judges of High Court.

63 – Oaths to be taken by judges of High Court.

64 – Establishment of Court of Appeal.

Part 2 – Other Courts

65 – Establishment of other courts.

66 – Kadhi's courts.

67 – References and appeals on interpretation of Constitution.

Part 3 – The Judicial Service Commission

68 – Judicial Service Commission.

69 – Appointment, etc., of judicial officers.

CHAPTER V – PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

70 – Fundamental rights and freedoms of the individual.

71 – Protection of right to life.

72 – Protection of right to personal liberty.

73 – Protection from slavery and forced labour.

74 – Protection from inhuman treatment.

75 – Protection from deprivation of property.

76 – Protection against arbitrary search or entry.

77 – Provisions to secure protection of law.

78 – Protection of freedom of conscience.

79 – Protection of freedom of expression.

80 – Protection of freedom of assembly and association.

81 – Protection of freedom of movement.

82 – Protection from discrimination on grounds of race, etc.

83 – Derogation from fundamental rights and freedoms.

84 – Enforcement of protective provisions.

85 – Preservation of public security.

86 – Interpretation and savings.

CHAPTER VI – CITIZENSHIP

Section

- 87 – Persons who become citizens on 12th December, 1963.
- 88 – Persons entitled to be registered as citizens by virtue of connexion with Kenya before 12th December, 1963.
- 89 – Persons born in Kenya after 11th December, 1963.
- 90 – Persons born outside Kenya after 11th December, 1963.
- 91 – Marriage to Kenya citizen.
- 92 – Persons eligible to be registered as Kenya citizens.
- 93 – Persons eligible to be naturalized as Kenya citizens.
- 94 – Deprivation of citizenship.
- 95 – Commonwealth citizens.
- 96 – Powers of Parliament.
- 97 – Dual citizenship.
- 98 – Interpretation.

CHAPTER VII – FINANCE

- 99 – Consolidated Fund and other funds of the Government of Kenya.
- 100 – Authorization of expenditure from Consolidated Fund by appropriation.
- 101 – Authorization of expenditure in advance of appropriation.
- 102 – Contingencies Fund.
- 103 – Public debt of Government of Kenya.
- 104 – Remuneration of certain officers.
- 105 – Controller and Auditor-General.

CHAPTER VIII – THE PUBLIC SERVICE

- 106 – Public Service Commission.
- 107 – Appointment, etc., of public officers.
- 108 – Appointment, etc., of members of Kenya Police Force
- 109 – Attorney-General.
- 110 – Controller and Auditor-General.
- 111 – Appointment of Permanent Secretaries, Ambassadors, etc.
- 112 – Pensions laws and protection of pensions rights.
- 113 – Power to withhold pensions, etc.

CHAPTER IX – TRUST LAND

- 114 – Interpretation of Chapter.
- 115 – Trust land to vest in county councils.
- 116 – Registration of individual titles to Trust land.
- 117 – Setting apart of Trust land by county councils.
- 118 – Setting apart of Trust land for purposes of Government, etc.
- 119 – Land no longer required for purposes of Government, etc.
- 120 – Escheat of rights in former Trust land.

CHAPTER X – GENERAL

Section

121 – Resignations.

122 – Re-appointments and concurrent appointments.

123 – Interpretation.

CHAPTER XI– TRANSITORY

124 – Effect of Chapter.

125 – Appeals in respect of certain decisions affecting pensions benefits.

126 – Compulsory retirement to facilitate appointment of local candidates.

127 – (*Repealed*).

THE CONSTITUTION OF KENYA

CHAPTER 1

THE REPUBLIC OF KENYA

5 of 1969, 2nd Sch.,
2 of 1974, 1 of 1975,
14 of 1975, 13 of 1977,
1 of 1979, 5 of 1979,
7 of 1982, 7 of 1984,
6 of 1985, 14 of 1986,
20 of 1987, 4 of 1988,
17 of 1990, 10 of 1991,
12 of 1991, 6 of 1992,
9 of 1997, 3 of 1999,
L.N. 6/ 2006,
3 of 2008.

1. Kenya is a sovereign Republic.

Declaration of
Republic.

1A. The Republic of Kenya shall be a multiparty democratic state.

Political system.
9 of 1997, s. 2.

2. The Public Seal of Kenya shall be such device as may be prescribed by or under an Act of Parliament.

Public Seal.

2A. (Repealed by 12 of 1991, s. 2).

3. This Constitution is the Constitution of the Republic of Kenya and shall have the force of law throughout Kenya and, subject to section 47, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void-

Constitution of
Republic of Kenya.

Provided that the provisions of this section as to consistency with this Constitution shall not apply in respect of an Act made pursuant to to section 15A(3).

3 of 2008

CHAPTER II THE EXECUTIVE

PART I THE PRESIDENT AND THE VICE-PRESIDENT

4. There shall be a President of Kenya, who shall be the Head of State and Commander-in-Chief of the armed forces of the Republic.

The office of
President.

5. (1) The President shall be elected in accordance with this Chapter and, subject thereto, with any Act of Parliament regulating the election of a President.

Election of President.
7 of 1982, s.3.
12 of 1991, s.3,
6 of 1992, s.3.

(2) A person shall be qualified to be nominated for election as President if, and shall not be so qualified unless, he -

- (a) is a citizen of Kenya; and
- (b) has attained the age of thirty-five years; and
- (c) is registered in some constituency as a voter in elections to the National Assembly.

(3) Whenever Parliament is dissolved, an election of a President shall be held at the ensuing general election, and at that election -

- (a) each political party taking part in the general election shall nominate one candidate for President in such manner as may be prescribed by or under an Act of Parliament;
- (b) the nomination of a candidate for President shall not be valid unless it is supported, in such manner as may be prescribed by or under an Act of Parliament, by not less than one thousand persons registered as voters in elections to the National Assembly;
- (c) where only one candidate for President is validly nominated, and that candidate is elected as a member of the National Assembly, he shall be declared to be elected as President;
- (d) where more than one candidate for President is validly nominated, a poll shall be taken in each constituency for the election of a President (whether or not a poll is required to be taken for an election to the National Assembly in that constituency);
- (e) in every constituency in which a poll is required to be taken both for the election of a President and for the election of a member of the National Assembly separate polls shall be taken;
- (f) the candidate for President who is elected as a member of the National Assembly and who receives a greater number of valid votes cast in the presidential election than any other candidate for President and who, in addition, receives a minimum of twenty-five per cent of the valid votes cast in at least five of the eight provinces shall be declared to be elected as President.

(4) A fresh election of a President shall be commenced and held in the manner prescribed by subsection (5) where -

- (a) no candidate for President has been validly nominated before

the expiration of the time for the delivery of nominations in a presidential election;

- (b) a candidate for President who is validly nominated dies on or before any of the days on which the poll is taken in a presidential election;
- (c) a candidate for President, who would but for his death have been entitled to be declared elected as President under this section, dies after the taking of the poll has begun in the presidential election and before he has been declared elected as President;
- (d) no candidate is duly elected in accordance with this section:

Provided that where a fresh election is held pursuant to paragraph (d) of this subsection, the only candidates shall be -

- (i) the candidate who scored the highest number of votes at the election; and
- (ii) one among the remaining candidates who has the highest total of votes cast at the election.

(5) In the election of a President otherwise than at a general election -

- (a) every candidate for President shall be nominated by a political party in the manner prescribed by or under an Act of Parliament from amongst the elected members of the National Assembly.
- (b) the nomination of a candidate for President shall not be valid unless it is supported, in such manner as may be prescribed by or under an Act of Parliament, by not less than one thousand persons registered as voters in elections to the National Assembly;
- (c) where only one candidate for President is validly nominated he shall be declared to be elected as President;
- (d) where more than one candidate for President is validly nominated, a poll shall be taken in each constituency for the election of a President;
- (e) the candidate for President who receives a greater number

of valid votes cast in the presidential election than any other candidate and who, in addition, receives a minimum of twenty-five per cent of the votes cast in at least five of the eight provinces shall be declared to be elected as President.

Vacancy in office of President.

6. (1) If the office of President becomes vacant by reason of the death or resignation of the President, or by reason of his ceasing to hold office by virtue of section 10 or section 12, an election of a President shall be held within the period of ninety days immediately following the occurrence of that vacancy, and shall be held in the manner prescribed by section 5 (5).

(2) While the office of President is vacant as aforesaid, the functions of that office shall be exercised -

(a) by the Vice-President; or

(b) if there is no Vice-President, or if the Vice-President considers that he is for any reason unable to discharge the functions of the office of President, by such Minister as may be appointed by the Cabinet.

(3) Where the Vice-President or any other Minister is exercising the functions of the office of President by virtue of this section or of section 11, he shall not act, except in accordance with a resolution of the Cabinet, in the exercise of the powers relating to -

Cap. 57.

(a) the preservation of public security under section 85, or under Part III of the Preservation of Public Security Act;

(b) the prorogation and dissolution of Parliament under subsections (1) and (3) of section 59;

(c) the appointment and removal of Ministers and Assistant Ministers under sections 16 and 19;

(d) the assignment of responsibility to a Minister under section 18; or

(e) the giving of consent to a Minister or Assistant Minister absenting himself from Kenya under section 20.

Assumption of office of President.

6 of 1992, s. 4,
9 of 1997, s. 3.

7. A person elected as President in accordance with this Constitution shall assume office as President as soon as he is declared to be elected.

8. A person assuming the office of President shall, before entering upon the office, take and subscribe the oath of allegiance and such oath for the due execution of his office as may be prescribed by or under an Act of Parliament.

Oath of
President

9. (1) The President shall hold office for a term of five years beginning from the date on which he is sworn in as President.

Term of office of
President.
6 of 1992, s. 5.

(2) No person shall be elected to hold office as President for more than two terms.

(3) The President shall, unless his office becomes vacant by reason of his death, his resignation or his ceasing to hold office by virtue of section 10 or section 12, continue in office until the person elected as President at a subsequent presidential election assumes office.

(4) The holding of the office of President shall be incompatible with the holding of any office of profit or of an office in any professional or labour organization and with any professional activity or any other public employment.

10. (1) Subject to this section, section 44 shall apply to the hearing and determination of a question whether a person has been validly elected as President, as it applies to the hearing and determination of a question whether a person has been validly elected as a member of the National Assembly.

Determination
of questions as
to validity of
presidential elections,
etc.

(2) Where a person applies to the High Court for the determination of more than one of the following questions, namely, whether the President was qualified to be nominated for election as President, or was validly elected as President, or was validly elected as a member of the National Assembly, he shall make one application only to the High Court.

(3) Where at any time the High Court determines under section 44 that the President has not been validly elected as a member of the National Assembly, or that the seat in the Assembly of the President has become vacant, the High Court shall declare the seat in the Assembly of the President to be vacant, and -

(a) an election shall be commenced forthwith and shall be held in the constituency for which the President stood for election as a member of the Assembly; and

(b) if the President is not elected as a member of the Assembly

at that election, he shall cease to hold office as President upon the expiration of the time allowed by law for the making of an application to the High Court under section 44 in respect of that election, or, where such an application is made by him or by the Attorney-General, upon the High Court determining that the person declared to be elected at that election has been validly elected:

Provided that -

- (i) if the High Court determines, in relation to an election held pursuant to paragraph (a) at which a person other than the President has been declared to be elected, that that person has not been validly elected, the High Court shall declare the seat to be vacant and a further election shall be held pursuant to paragraph (b) and this proviso shall apply accordingly;
- (ii) notwithstanding that his seat in the Assembly has been declared to be vacant, the President shall be entitled to sit as a member of the Assembly and to exercise all the powers and privileges of an elected member of the Assembly until he ceases to hold office as President.

(4) Where the High Court determines under section 44 that the President has not been validly elected as President for any reason other than that he has not been validly elected as a member of the National Assembly or that the seat in the Assembly of the President has become vacant, he shall cease to hold office as President.

Exercise of
President's functions
during absence,
illness, etc.

11. Where the President intends to be absent from Kenya, or where he considers it desirable by reason of illness or any other cause to do so, he may in writing appoint the Vice-President to exercise, subject to section 6 (3) and subject to such restrictions or exceptions as he may specify, the functions of his office.

Removal of President
on grounds of
incapacity.

12. (1) Any question whether the President, or any other person exercising or about to exercise the functions of the office of President, is unable by reason of physical or mental infirmity to exercise the functions of that office, shall be determined in accordance with this section.

(2) Where the question is whether a person has become unable by reason of physical or mental infirmity to exercise the functions of the office of President, and the Chief Justice is requested by resolution of the Cabinet conveyed to him by the Speaker of the National Assembly to cause that question to be determined, then -

- (a) the Chief Justice shall appoint a tribunal, which shall consist of not less than five persons appointed by him from among persons who are qualified as medical practitioners under the law of Kenya, and who shall include any person nominated for appointment in accordance with subsection (5); and
- (b) the tribunal shall inquire into the matter and make a report to the Chief Justice, stating the opinion of the tribunal whether or not the person in respect of whom the question arises is, by reason of physical or mental infirmity, unable to discharge the functions of the office of President; and
- (c) the Chief Justice shall certify accordingly under his hand and cause the certificate to be conveyed to the Speaker of the National Assembly:

Provided that the Chief Justice shall cause the question to be determined without a resolution of the Cabinet if he receives a certificate under the hand of the Speaker of the National Assembly to the effect that there are no Ministers present in Kenya, other than a person with respect to whom the question arises, and that the Speaker considers that it is in the interests of Kenya that the question should be determined without delay.

(3) Where the question is whether any person in respect of whom the Chief Justice has given a certificate in accordance with subsection (2) that he is unable to exercise the functions of the office of President, has ceased to be unable by reason of physical or mental infirmity to exercise those functions, and the Chief Justice is requested, by resolution of the Cabinet conveyed to him by the Speaker of the National Assembly, or by request under the hand of the person in respect of whom such certificate was given conveyed to him by the Speaker of the Assembly, to cause that question to be determined, then the Chief Justice shall appoint a tribunal in accordance with subsection (2) (a), and that tribunal shall inquire into the matter and report in accordance with paragraph (b) of that subsection, and the Chief Justice shall certify accordingly under his hand and cause the certificate to be conveyed to the Speaker of the Assembly.

(4) Where the Speaker of the National Assembly has received a certificate of the Chief Justice pursuant to this section that the President is unable to discharge the functions of his office, and within the succeeding period of three months the Speaker has not received any certificate of the Chief Justice pursuant to this section that the President has ceased to be unable to discharge the functions of his office, the President shall cease to hold office upon the expiration of the said period.

(5) Where the Speaker conveys a resolution of the Cabinet to the Chief Justice under subsection (2) or (3), he shall forthwith notify the person in respect of whom the question arises, and that person may, by writing delivered to the Speaker within two days of his being so notified, nominate for appointment as members of the tribunal to be appointed by the Chief Justice under this section not more than two persons qualified to be so appointed.

(6) A certificate of the Chief Justice under this section shall be conclusive for the purposes of this Constitution, and shall not be questioned in any court.

(7) At any time when the office of Speaker of the National Assembly is vacant or the holder of that office is unable for any reason to exercise the functions vested in him by this section, those functions may be exercised by the Deputy Speaker of the Assembly.

13. (1) The President shall receive such salary, allowance and benefits as may be determined by a resolution of the National Assembly.

(2) Where the President ceases to hold office, he shall be entitled to receive a pension, gratuity and other allowances together with such other benefits and facilities, including adequate security, office, staff and travel allowances, as may be prescribed by or under an Act of Parliament.

(3) The salary and allowances payable to the President and any pension or gratuity payable to him on retirement shall be a charge upon the Consolidated Fund.

(4) The salary, allowances and privileges of the President shall not be varied to his disadvantage while he holds office.

(5) The pension and allowances payable to the President who has ceased to hold office and the facilities and other benefits available to him shall not be varied to his disadvantage during his lifetime.

14. (1) No criminal proceedings whatsoever shall be instituted or continued against the President while he holds office, or against any person while he is exercising the functions of the office of President.

(2) No civil proceedings in which relief is claimed in respect of anything done or omitted to be done shall be instituted or continued against the President while he holds office or against any person while he is exercising the functions of the office of President.

Salary and
allowances of
President.
6 of 1992, s. 6.

Protection of
President in respect
of legal proceedings
during office

(3) Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, a period of time during which a person holds or exercises the functions of the office of President shall not be taken into account in calculating any period of time prescribed by that law which determines whether any such proceedings as are mentioned in subsection (1) or (2) may be brought against that person.

15. (1) There shall be a Vice-President of Kenya, who shall be appointed by the President.

The Vice-President of
Kenya.

(2) The President shall appoint the Vice-President from among the Ministers who are elected members of the National Assembly:

Provided that no appointment to the office of Vice-President shall be made at any time when the functions of the office of President are being exercised by any person other than the President.

(3) The Vice-President shall be the principal assistant of the President in the discharge of his functions.

(4) The Vice-President shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

(5) During his tenure of office, the Vice-President shall not hold any office of profit other than those of Vice-President, Minister and member of the National Assembly.

- (6) The office of the Vice-President shall become vacant -
- (a) if the President so directs; or
 - (b) if the holder of the office ceases to be an elected member of the National Assembly otherwise than by reason of the dissolution of Parliament; or
 - (c) upon the election of a person to the office of President.

15A.(1) There shall be a Prime Minister of the Government of Kenya.

Prime Minister
and Deputy Prime
Ministers.
A3/2008

(2) There shall be two Deputy Prime Ministers of the Government of Kenya.

(3) Parliament may, by an Act of Parliament and notwithstanding any other provision of this Constitution, provide for-

- (a) the appointment and termination of office of the Prime Minister, Deputy Prime Ministers and Ministers;
- (b) the functions and powers of the Prime Minister and Deputy Prime Ministers;

- (c) the establishment of a coalition Government;
- (d) any other matter incidental to or connected with the foregoing.

(4) Subject to the provisions of any Act made under subsection (3), the Prime Minister and the Deputy Prime Ministers shall be Ministers of the Government of Kenya.

(5) The Act made pursuant to subsection (3) immediately following the commencement of this section shall, while in force, be read as part of this Constitution.

(6) Nothing contained in or done under the authority of an Act of Parliament made pursuant to subsection (3) immediately following the commencement of this section shall be held to be inconsistent with or in contravention of any provision of this Constitution.

PART 2

Ministers and the Cabinet

Ministers of
Government of
Kenya.

9 of 1997, s. 4.

16. (1) There shall be such offices of Minister of the Government of Kenya as may be established by Parliament or, subject to any provisions made by Parliament, by the President.

(2) The President shall, subject to the provisions of any written law, appoint the Ministers from among the members of the National Assembly:

Provided that, if occasion arises for making an appointment to the office of any Minister while Parliament stands dissolved, a person who was a member of the National Assembly immediately before the dissolution may be appointed to that office.

(3) The office of a Minister shall become vacant -

- (a) if the President so directs; or
- (b) if the holder of the office ceases to be a member of the National Assembly otherwise than by reason of the dissolution of Parliament; or
- (c) in the case of a Minister who, immediately before the dissolution of Parliament, was a member of the National Assembly, if, when the Assembly first meets after that dissolution, he is not then a member thereof.

(4) Whenever a person is elected to the office of President, the offices of all Ministers then holding office shall become vacant upon the occasion of the President first making one or more appointments to the office of Minister.

Cabinet.
A3/2008

17. (1) There shall be a Cabinet consisting of the President, the Vice-President, Prime Minister, two Deputy Prime Ministers and the other Ministers.

(2) The function of the Cabinet shall be to aid and advise the President in the government of Kenya.

(3) The Cabinet shall be collectively responsible to the National Assembly for all things done by or under the authority of the President or the Vice-President or any other Minister in the execution of his office.

(4) The provisions of subsections (2) and (3) shall not apply in relation to -

- (a) the appointment and removal from office of the Vice-President, Ministers and Assistant Ministers under sections 15, 16 and 19, the assignment of responsibility to any Minister under section 18, or the giving of consent under section 20 to the Vice-President, a Minister or an Assistant Minister absenting himself from Kenya;
- (b) the dissolution of Parliament; or
- (c) the matters referred to in section 27 (which relates to the exercise of the Prerogative of Mercy).

18. Responsibility for any of the business of the government of Kenya, including the administration of any of the departments of Government, may be assigned to the Vice-President and the several Ministers as the President may, by directions in writing, determine.

Allocation of portfolios to Ministers

19. (1) The President may appoint Assistant Ministers from among the members of the National Assembly to assist the President, Vice-President and Ministers in the performance of their duties:

Assistant Ministers.

Provided that, if occasion arises for making an appointment while Parliament stands dissolved, a person who was a member of the National Assembly immediately before the dissolution may be appointed as an Assistant Minister.

(2) The office of an Assistant Minister shall become vacant -

- (a) if the President so directs; or
- (b) if the holder of the office ceases to be a member of the National Assembly otherwise than by reason of the dissolution of Parliament; or
- (c) in the case of an Assistant Minister who, immediately before the dissolution of Parliament, was a member of the National Assembly, if when the Assembly first meets after that dissolution, he is not then a member thereof; or
- (d) upon the election of a person to the office of President.

20. The Vice-President, a Minister or an Assistant Minister shall not absent himself from Kenya except with the consent of the President.

Absence of Vice-President, Ministers and Assistant Ministers from Kenya.

Oaths to be taken
by Ministers and
Assistant Ministers.

Appointment
of permanent
secretaries.

21. A Minister or an Assistant Minister shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

22. (1) The President may appoint such number of permanent secretaries as he may determine.

(2) There shall be a permanent secretary to the Office of the President.

(3) Where the Vice-President or any other Minister has been charged with responsibility for a department of Government he shall exercise general direction and control over that department and, subject to that direction and control, every department of Government shall be under the supervision of a permanent secretary.

(4) The office of a permanent secretary shall be an office in the public service.

(5) Two or more Government departments may be placed under the direct supervision of one permanent secretary and a Government department may be placed under the supervision of one or more permanent secretaries or two or more permanent secretaries.

PART 3 *Executive Powers*

Executive authority
of Government of
Kenya.

23. (1) The executive authority of the Government of Kenya shall vest in the President and, subject to this Constitution, may be exercised by him either directly or through officers subordinate to him.

(2) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President.

Constitution of
offices.

24. Subject to this Constitution and any other law, the powers of constituting and abolishing offices for the Republic of Kenya, of making appointments to any such office and terminating any such appointment, shall vest in the President.

Tenure of office in
the service of the
Republic.

25. (1) Save in so far as may be otherwise provided by this Constitution or by any other law, every person who holds office in the service of the Republic of Kenya shall hold that office during the pleasure of the President:

Provided that this subsection shall not apply in the case of a person who enters into a contract of service in writing with the Government of Kenya by which he undertakes to serve the Government for a period which does not exceed three years.

(2) In this section “office in the service of the Republic of Kenya”

means office in or membership of the public service, the armed forces of the Republic, the National Youth Service or any other force or service established for the Republic of Kenya.

26. (1) There shall be an Attorney-General whose office shall be an office in the public service. Attorney General

(2) The Attorney-General shall be the principal legal adviser to the Government of Kenya.

(3) The Attorney-General shall have power in any case in which he considers it desirable so to do -

- (a) to 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 by that person;
- (b) to take over and continue any such criminal proceedings that have been instituted or undertaken by another person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or another person or authority.

(4) The Attorney-General may require the Commissioner of Police to investigate any matter which, in the Attorney-General's opinion, relates to any offence or alleged offence or suspected offence, and the Commissioner shall comply with that requirement and shall report to the Attorney-General upon the investigation.

(5) The powers of the Attorney-General under subsections (3) and (4) may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.

(6) The powers conferred on the Attorney-General by paragraphs (b) and (c) of subsection (3) shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(7) For the purposes of this section, an appeal from a judgment in criminal proceedings before any court, or a question of law reserved

for the purpose of those proceedings to any other court, shall be deemed to be part of those proceedings:

Provided that the power conferred on the Attorney-General by subsection (3) (c) shall not be exercised in relation to an appeal by a person convicted in criminal proceedings or to a question of law reserved at the instance of such a person.

(8) In the exercise of the functions vested in him by subsections (3) and (4) of this section and by sections 44 and 55, the Attorney-General shall not be subject to the direction or control of any other person or authority.

Prerogative of mercy.
14 of 1975, s.2.

27. The President may -

- (a) grant to a person convicted of an offence a pardon, either free or subject to lawful conditions;
- (b) grant to a person a respite, either indefinite or for a specified period, of the execution of a punishment imposed on that person for an offence;
- (c) substitute a less severe form of punishment for a punishment imposed on a person for an offence;
- (d) remit the whole or part of a punishment imposed on a person for an offence or of a penalty or forfeiture otherwise due to the Republic on account of an offence; and
- (e) remove in whole or in part the non-qualification or the disqualification of a person, arising out of or in consequence of the report of an election court under the provisions of the National Assembly and Presidential Elections Act, from registration as an elector on a register of electors or from nomination for election as an elected member of the National Assembly.

Cap. 7.

Advisory Committee
on Prerogative of
Mercy

28. (1) There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of -

- (a) the Attorney-General; and
- (b) not less than three nor more than five other members appointed by the President, of whom at least one shall be a Minister and at least one shall be a person qualified to practice in Kenya as a medical practitioner.

(2) A member of the Committee appointed under subsection (1) (b) shall hold his seat thereon for such period as may be specified in the instrument by which he was appointed:

Provided that his seat shall become vacant -

- (i) in the case of a person who at the date of his appointment was a Minister, if he ceases to be a Minister; or
- (ii) in any case, if the President in writing so directs.

(3) The Committee may act notwithstanding a vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of a person not entitled to be present at or to participate in its proceedings.

(4) The Committee may regulate its own procedure.

29. (1) Where a person has been sentenced to death (otherwise than by a court-martial) for an offence, the President shall cause a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as he may require, to be considered at a meeting of the Advisory Committee on the Prerogative of Mercy; and after obtaining the advice of the Committee he shall decide in his own judgment whether to exercise any of his functions under section 27.

Functions of
Advisory Committee
on Prerogative of
Mercy.

(2) The President may consult with the Committee before deciding whether to exercise any of his functions under section 27 in a case not falling within subsection (1), but he shall not be obliged to act in accordance with the advice of the Committee.

CHAPTER III PARLIAMENT

PART 1

Composition of Parliament

30. The legislative power of the Republic shall vest in the Parliament of Kenya, which shall consist of the President and the National Assembly.

Legislative power.

31. Subject to this Constitution, the National Assembly shall consist of elected members elected in accordance with section 32, nominated members appointed in accordance with section 33 and the *ex officio* members.

Composition of
National Assembly

Election of elected
members.
6 of 1992, s. 7.

32. (1) Kenya shall be divided into constituencies in accordance with section 42, and each constituency shall elect one elected member to the National Assembly in such manner as, subject to this Constitution, may be prescribed by or under any law.

(2) Every person who is registered in a constituency as a voter in elections of elected members shall, unless he is detained in lawful custody, or is disqualified by law from voting in those elections on the ground of his having been convicted of an offence connected with elections or on the ground of his having been reported guilty of such an offence by the court trying an election petition, be entitled so to vote in that constituency in accordance with the law; and no other person may so vote.

(3) (*Repealed by 6 of 1992, s. 7*).

Nominated members.
9 of 1997, s. 5.

33. (1) Subject to this section, there shall be twelve nominated members of the National Assembly appointed by the President following a general election, to represent special interests.

(2) The persons to be appointed shall be persons who, if they had been nominated for a parliamentary election, would be qualified to be elected as members of the National Assembly.

(3) The persons to be appointed shall be nominated by the parliamentary parties according to the proportion of every parliamentary party in the National Assembly, taking into account the principle of gender equality.

(4) The proportions under subsection (3) shall be determined by the Electoral Commission after every general election and shall be signified by the chairman of the Commission to the leaders of the concerned parliamentary parties, the President and the Speaker.

(5) The names of the nominees of parliamentary parties shall be forwarded to the President through the Electoral Commission who shall ensure observance of the principle of gender equality in the nominations.

Qualifications for
election.
1 of 1979, s. 2,
7 of 1982, s. 5,
12 of 1991, s. 4.

34. Subject to section 35, a person shall be qualified to be elected as a member of the National Assembly if, and shall not be qualified unless, at the date of his nomination for election—

(a) he is a citizen of Kenya who has attained the age of twenty-one years; and

(b) he is registered in some constituency as a voter in elections

to the National Assembly; and

- (c) he is able to speak and, unless incapacitated by blindness or other physical cause, to read the Swahili and English languages well enough to take an active part in the proceedings of the National Assembly; and
- (d) he is nominated by a political party in the manner prescribed by or under an Act of Parliament.

35. (1) Subject to any order made under subsection (6), a person shall not be qualified to be elected as an elected member if, at the date of his nomination for election, he -

Disqualifications for election.
5 of 1979, s. 2.

- (a) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign state; or
- (b) is under sentence of death imposed on him by a court in Kenya, or is under sentence of imprisonment (by whatever name called) exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or
- (c) is, under any law in force in Kenya, adjudged to be of unsound mind; or
- (d) is an undischarged bankrupt, having been adjudged bankrupt under any law in force in Kenya; or
- (e) subject to such exceptions and limitations as may be prescribed by Parliament, has an interest in a class or description of contract made with the Government of Kenya as may be prescribed by Parliament; or
- (f) holds or is acting in any office in the public service (including the office of judge or member of a court of law or an office to which section 69 applies), in the armed forces of the Republic or in a local government authority.

(2) For the purpose of subsection (1) (b) -

- (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds six months, and if any one of those sentences exceeds that term they shall be regarded as one sentence; and

- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

(3) Parliament may provide that a person who, at the date of his nomination for election, holds or is acting in an office that is prescribed by Parliament and the functions of which involve responsibility for or in connexion with the conduct of an election to the National Assembly or the compilation of a register of voters for the purpose of such an election shall not be qualified to be elected as a member of the National Assembly.

(4) Parliament may provide that a person who is convicted by a court of an offence that is prescribed by Parliament and that is connected with the election of members of the National Assembly or of a local government authority, or who is reported guilty of such an offence by the court trying an election petition, shall not be qualified to be nominated for election as a member of the National Assembly for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed.

(5) Parliament may provide that a particular office shall be deemed to be or not to be an office for the purposes of subsection (1) (f).

(6) The Minister for the time being responsible for elections to the National Assembly may, by order published in the Kenya Gazette, provide that a person shall not be qualified to be elected by virtue of holding an office specified in paragraph (f) of subsection (1), or specified for the purposes of that paragraph under subsection (5), which is prescribed in the order, if he holds that office after a date prescribed in the order, which date shall not be more than six months prior to the date of nomination for preliminary elections prescribed under an Act of Parliament:

Provided that no order under this subsection shall be made to operate with retrospective effect.

Attorney-General
to be member of
National Assembly.

36. The Attorney-General shall be an *ex officio* member of the National Assembly, but he shall not be entitled to vote on any question before the Assembly.

Speaker of National
Assembly.

37. (1) There shall be a Speaker of the National Assembly, who shall be elected by the Assembly, in accordance with the standing orders, from among persons who are members of the Assembly or are qualified to be elected as such members, other than the President, the Vice-President, Ministers, Assistant Ministers and the Attorney-General.

(2) The Speaker shall vacate his office -

- (a) when the National Assembly first meets after a dissolution of Parliament; or
- (b) if circumstances arise that, if he were not Speaker, would disqualify him to be elected as such; or
- (c) if the National Assembly so resolves, by resolution supported by the votes of not less than seventy-five per cent of all its members (excluding the *ex officio* members).

(3) No business shall be transacted in the National Assembly (other than an election of the Speaker) at any time when the office of Speaker is vacant, but this subsection shall not prevent the transaction of business by a committee of the Assembly.

(4) The Speaker shall be an *ex officio* member of the National Assembly, whether or not he is elected from among the members of the Assembly.

38. (1) There shall be a Deputy Speaker of the National Assembly, who shall be elected by the Assembly, in accordance with its standing orders, from among persons who are members of the Assembly other than the President, the Vice-President, Ministers, Assistant Ministers and the Attorney-General.

Deputy Speaker of
National Assembly.

(2) The National Assembly shall elect a Deputy Speaker—

- (a) subject to section 37 (3), when it first meets after a dissolution of Parliament; and
- (b) when it first meets after the office of Deputy Speaker has become vacant otherwise than by reason of the dissolution of Parliament,

or as soon thereafter as may be convenient.

(3) The Deputy Speaker shall vacate his office -

- (a) when the National Assembly first meets after a dissolution of Parliament; or
- (b) if he is elected as President or becomes the Vice-President, or a Minister or an Assistant Minister; or
- (c) if he ceases to be a member of the National Assembly

otherwise than by reason of the dissolution of Parliament;
or

- (d) if the National Assembly so resolves, by resolution supported by the votes of not less than seventy-five per cent of all its members (excluding the *ex officio* members).

Vacation of seat in
National Assembly
7 of 1982, s. 6,
12 of 1991, s. 5

39. (1) A member of the National Assembly shall vacate his seat if-

- (a) he has ceased to be a citizen of Kenya;

- (b) (*Deleted 12 of 1991, s. 5*).

- (c) circumstance arise that, if he were not a member of the Assembly, would cause him to be disqualified by section 35 (1) or by any law made in pursuance of section 35 (3) or (4) to be elected as a member; or

- (d) without having obtained the permission of the Speaker, he has failed to attend the Assembly on eight consecutive days on which the Assembly was sitting in any session:

Provided that the President may in any case if he thinks fit direct that a member shall not vacate his seat by reason of his failure so to attend the Assembly.

(2) An elected member or a nominated member of the National Assembly shall vacate his seat as such if he is elected as Speaker.

(3) In order to permit a member of the National Assembly who has been sentenced to death or imprisonment, adjudged to be of unsound mind, adjudged bankrupt or convicted or reported guilty of an offence prescribed under section 35 (4) to appeal against the decision in accordance with the law, Parliament may provide that, subject to such conditions as it may prescribe, the decision shall not have effect for the purposes of this section until such time as it may prescribe.

- (4) This section shall not apply to the Attorney-General.

Vacation of seat in
National Assembly
upon resignation
from party. 12 of
1991, s. 6.

40. A member of the National Assembly who, having stood at his election as an elected member with the support of or as a supporter of a political party, or having accepted appointment as a nominated member as a supporter of a political party, either-

- (a) resigns from that party at a time when that party is a parliamentary party; or

- (b) having, after the dissolution of that party, been a member of another parliamentary party, resigns from that other party at a time when that other party is a parliamentary party,

shall vacate his seat forthwith unless in the meantime that party of which he was last a member has ceased to exist as a parliamentary party or he has resigned his seat:

Provided that this subsection shall not apply to any member who is elected as Speaker.

41. (1) There shall be an Electoral Commission, which shall consist of a chairman and not less than four and not more than twenty-one members appointed by the President.

Electoral
Commission.
17 of 1990, s. 2,
9 of 1997, s. 6.

(1A) Every member of the Commission shall be a citizen of Kenya.

(2) The Commission shall elect a vice-chairman from among its members.

(2A) The chairman and the vice-chairman of the Commission shall be persons who have held or are qualified to hold office of judge of the High Court or judge of appeal under this Constitution.

(3) A person shall not be qualified to be appointed a member of the Commission if he is a member of the National Assembly or if he holds or is acting in any office in the public service or in the armed forces of the Republic.

(4) Subject to this section, the office of a member of the Commission shall become vacant -

- (a) at the expiration of five years from the date of his appointment; or
- (b) if circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such.

(5) A member of the Commission may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehavior, and shall not be so removed except in accordance with this section.

(6) A member of the Commission shall be removed from office

by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (7) and the tribunal has recommended to the President that he ought to be removed from office for inability as aforesaid or for misbehavior.

(7) If the President considers that the question of removing a member of the Commission under this section ought to be investigated, then -

(a) the President shall appoint a tribunal, which shall consist of a chairman and four other members selected by the President from among persons -

(i) who hold or have held the office of judge of the High Court or judge of appeal; or

(ii) who are qualified to be appointed as judges of the High Court under section 61 (3); or

(iii) upon whom the President has conferred the rank of Senior Counsel under section 17 of the Advocates Act; and

(b) the tribunal shall inquire into the matter and report on the facts thereof to the President and recommend to him whether the member ought to be removed.

(8) If the question of removing a member of the Commission has been referred to a tribunal under this section, the President may suspend that member from the exercise of the functions of his office, and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that that member should not be removed.

(9) In the exercise of its functions under this Constitution the Commission shall not be subject to the direction of any other person or authority.

(10) Subject to this Constitution and without prejudice to subsection (9), Parliament may provide for the orderly and effective conduct of the operations and business of the Commission and for the powers of the Commission to appoint staff and establish committees and regulate their procedure.

(11) The Commission may, subject to its rules of procedure, act notwithstanding a vacancy in its membership or the absence of a member, and its proceedings shall not be invalidated by the presence

or participation of a person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

42. (1) Subject to this section, Kenya shall be divided into such number of constituencies having such boundaries and names as may be prescribed by order made by the Electoral Commission.

Constituencies.
14 of 1986, s.3,
10 of 1991, s. 2.

(2) Parliament may prescribe the minimum number of constituencies into which Kenya shall be divided (which shall not be less than 188) or the maximum number of constituencies (which shall exceed the minimum number by at least twenty), and until Parliament has so prescribed the minimum number of constituencies shall be 188 and the maximum shall be 210.

(3) All constituencies shall contain as nearly equal numbers of inhabitants as appears to the Commission to be reasonably practicable, but the Commission may depart from this principle to the extent that it considers expedient in order to take account of -

- (a) the density of population, and in particular the need to ensure adequate representation of urban and sparsely-populated rural areas;
- (b) population trends;
- (c) the means of communication;
- (d) geographical features;
- (e) community of interest; and
- (f) the boundaries of existing administrative areas, and, for the purposes of this subsection, the number of inhabitants of any part of Kenya shall be ascertained by reference to the latest census of the population held in pursuance of any law.

(4) At intervals of not less than eight and not more than ten years, and whenever directed by Act of Parliament, the Commission shall review the number, the boundaries and the names of the constituencies into which Kenya is divided, and may, by order, alter the number, the boundaries or the names, subject to and in accordance with this section, to the extent that it considers desirable in the light of the review.

(5) Whenever a census of the population has been held in

pursuance of any law, or whenever a variation has been made in the boundary of an existing administrative area, the Commission may carry out a review and make an alteration to the extent which it considers desirable in consequence of that census or variation.

(6) Every order made by the Commission under this section shall be published in the Kenya Gazette and shall come into effect upon the next dissolution of Parliament after it is made.

Conduct of elections.
6 of 1992, s. 8,
9 of 1997, s. 7.

42A. The Electoral Commission shall be responsible for -

- (a) the registration of voters and the maintenance and revision of the register of voters;
- (b) directing and supervising the Presidential, National Assembly and local government elections;
- (c) promoting free and fair elections;
- (d) promoting voter education throughout Kenya; and
- (e) such other functions as may be prescribed by law.

Qualifications and
disqualifications
for registration as a
voter.
2 of 1974, s. 2.

43. (1) Subject to subsection (2), a person shall be qualified to be registered as a voter in elections to the National Assembly and in elections of a President if, and shall not be qualified unless, at the date of his application to be registered, he -

- (a) is a citizen of Kenya who has attained the age of eighteen years; and
- (b) has been ordinarily resident in Kenya either -
 - (i) for a period of not less than one year immediately preceding that date; or
 - (ii) for a period of, or periods amounting in the aggregate to, not less than four years in the eight years immediately preceding that date; and
- (c) has, for a period of, or periods amounting in the aggregate to, not less than five months in the twelve months immediately preceding that date, been ordinarily resident in the constituency in which he applies to be registered, or has for such a period or periods carried on business there, or has for such a period or periods been employed there or has for such a period or periods lawfully possessed land or

residential buildings there.

(2) No person shall be qualified to be registered as a voter in elections to which this section applies -

- (a) if, under any law in force in Kenya, he is adjudged or otherwise declared to be of unsound mind; or
- (b) if he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under a law in force in Kenya; or
- (c) if he is detained in lawful custody; or
- (d) if he is disqualified therefrom by Act of Parliament on the grounds of his having been convicted of an offence connected with elections or on the grounds of his having been reported guilty of the offence by the court trying an election petition.

(3) A question whether a person is qualified to be registered as a voter in elections to which this section applies shall be determined in such manner as may be prescribed by Parliament.

(4) Where a person is qualified to be registered in more than one place as a voter in elections to which this section applies, he shall be so registered only in the first of those places in which he applies to be so registered, and Parliament may provide for the punishment of a person who, being already registered in one place as a voter in the elections or having applied to be so registered there and not having had that application finally rejected, applies to be registered in another place as a voter.

(5) Parliament may, in order to permit a person who has been adjudged or declared to be of unsound mind, adjudged or declared bankrupt or convicted of an offence referred to in subsection (2) (d) to appeal against the decision in accordance with any law, provided that, subject to such conditions as may be prescribed by Parliament, the decision shall not have effect for the purposes of subsection (2) until such time as may be so prescribed.

44. (1) The High Court shall have jurisdiction to hear and determine any question whether -

- (a) a person has been validly elected as a member of the National Assembly; or

Determination of questions as to membership of National Assembly.
7 of 1984, s.2,
9 of 1997, s. 8.

- (b) the seat in the National Assembly of a member thereof has become vacant.

(2) An application to the High Court for the determination of a question under subsection (1) (a) may be made by any person who was entitled to vote in the election to which the application relates, or by the Attorney-General.

(3) An application to the High Court for the determination of a question under subsection (1) (b) may be made -

- (a) where the Speaker has declared that the seat in the National Assembly of a member has by reason of a provision of this Constitution become vacant, by that member; or
- (b) in any other case, by a person who is registered as a voter in elections of elected members of the Assembly, or by the Attorney-General.

(4) Parliament may make provision with respect to -

- (a) the circumstances and manner in which, the time within which and the conditions upon which an application may be made to the High Court for the determination of a question under this section; and
- (b) the powers, practice and procedure of the High Court in relation to the application.

(5) *(Repealed by 9 of 1997, s. 8).*

45. *(Repealed by 3 of 1999, s. 2).*

PART 1A

The Parliamentary Service and the Parliamentary Service Commission

Parliamentary
Service.

45A. (1) There shall be a service to be known as the parliamentary service.

(2) There shall be a Clerk of the National Assembly and such other officers and staff as may be appointed for the purposes of the National Assembly in accordance with section 45B.

(3) The offices of the Clerk of the National Assembly and the officers and other staff provided for under subsection (2) shall be offices in the parliamentary service.

45B. (1) There shall be a Parliamentary Service Commission which shall consist of -

- (a) the speaker of the National Assembly who shall be the chairman;
- (b) a vice-chairman elected by the Commission from amongst the members appointed under paragraph (e) of this subsection;
- (c) the leader of Government business in the National Assembly or a member of the Assembly deputed by him;
- (d) the leader of the opposition party with the highest number of seats in the National Assembly or a member of the Assembly deputed by him;
- (e) seven members (other than the President, Ministers, Assistant Ministers and the Attorney-General) appointed by the National Assembly from amongst its members, of whom -
 - (i) four shall be nominated by the parliamentary party or parties forming the Government; and
 - (ii) three shall be nominated by the parliamentary party or parties forming the opposition.

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

- (a) upon dissolution of the Parliament during which the member was appointed to the Commission:

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

- (b) if he ceases to be a member of the National Assembly otherwise than by reason of the dissolution of Parliament;
- (c) if circumstances arise that, if he were not a member of the Assembly, would disqualify him for election as such;
- (d) if he is an appointed member, upon revocation of his appointment by the Assembly or upon his resignation; or

- (e) if he is the Speaker or the leader of Government business, or the leader of the opposition party with the highest number of seats in the National Assembly, upon ceasing to hold office as such.

(3) If the office of chairman of the Commission is vacant or the chairman is for any reason unable to exercise the functions of his office, then, until a person has been elected Speaker and has assumed the functions of chairman, or until the person holding that office has resumed those functions, as the case may be, the vice-chairman or, if the office of the vice-chairman is vacant, or the vice-chairman is for any reason unable to perform the functions of the office of chairman, such one of the other appointed members as the Commission may elect shall act as chairman; and the vice-chairman or the other member shall, subject to subsection (2), continue to act until a person has been elected to the office of Speaker and assumed the functions of chairman or, as the case may be, until the person in whose place he is acting has assumed or resumed those functions.

(4) If the office of an appointed member of the Commission is vacant or if such member is acting as chairman under subsection (3), or is for any reason unable to exercise the functions of his office, the Assembly may appoint a person who is qualified to be appointed to be a member to act in place of that member; and a person so appointed shall, subject to subsection (2), continue to act until a person has been appointed to the office in which he is acting or has assumed the functions of that office, as the case may be, until the person in whose place he is acting has resumed those functions.

(5) The Parliamentary Service Commission shall have power -

- (a) to constitute and abolish offices in the parliamentary service;
- (b) to appoint persons to hold or act in the offices of the Service (including the power to confirm appointments) and to exercise disciplinary control over persons holding or acting in those offices (including the power to remove those persons from office);
- (c) to provide such services and facilities as are necessary to ensure efficient and effective functioning of the Assembly;
- (d) to direct and supervise the administration of the services and facilities provided by, and exercise budgetary control over, the Service;

-
- (e) in such manner as may be prescribed by or under an Act of Parliament -
- (i) to cause to be prepared and laid before the National Assembly in each financial year estimates of expenditure (which shall be a charge on the Consolidated Fund) of the parliamentary service for the next following financial year;
 - (ii) to cause to be audited and a report thereon laid before the Assembly at least once every year, the accounts of the Commission (also known as the accounts of the Clerk of the National Assembly) provided that until such time as the manner of the audit and report is prescribed as aforesaid section 105 shall continue to apply *mutatis mutandis*;
- (f) without prejudice to the generality of paragraphs (c) and (d), to provide security staff to maintain proper security for members of the Assembly and for the services and facilities within the precincts of the Assembly;
- (g) to determine the terms and conditions of service of persons holding or acting in the offices of the Service;
- (h) from time to time as necessity arises, to appoint an independent body to review and make recommendations on the salaries and allowances of the members of the Assembly;
- (i) to initiate, co-ordinate and harmonize policies and strategies relating to the development of the Service;
- (j) to undertake, singly or jointly with other relevant authorities and organisations, such programmes as will promote the ideals of parliamentary democracy in Kenya.
- (k) to do such other things including review of parliamentary powers and privileges as may be necessary for the well-being of the members and staff of the National Assembly and to exercise such other functions as may be prescribed by or under an Act of Parliament.
- (6) 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.

(7) Subject to this section, the Commission may by regulations or otherwise regulate its own procedure and, with the consent of the President or the Public Service Commission, as may be appropriate, may confer powers or impose duties on any public officer or authority for the purpose of the discharge of its functions.

(8) Subject to any regulations made under subsection (7), the Commission may act notwithstanding a vacancy in its membership or absence of a member, and its proceedings shall not be invalidated by the presence or participation of a person not entitled to be present at or to participate in those proceedings.

(9) The Commission shall endeavour to reach every decision by consensus:

Provided that where on any matter consensus cannot be obtained, the decision of the Commission shall require the concurrence of a majority of all the members thereof.

(10) The Commission may, by directions in writing, delegate any of its powers under this section to any one or more of its members or to any officer in the parliamentary service.

(11) Notwithstanding anything to the contrary appearing in this section, the Commission may -

- (a) engage persons under individual contracts of service upon such terms and conditions as the Commission may determine;
- (b) commission any person, who in its opinion possesses expert knowledge or is otherwise able to assist in connection with the exercise of its functions, to make such inquiries or to conduct such research or to make such reports as may be necessary for the efficient and effective carrying out of its functions;
- (c) appoint competent persons, whether members of the Commission or not, to be a committee or committees to assist the Commission on such matters within the scope of its functions as are referred to them by the Commission.

(12) Subject to this section, provision may be made by or under an Act of Parliament for prescribing the manner of the exercise of the functions of the Commission under this section and for any matters incidental or supplementary to the exercise of those functions.

(13) For the avoidance of doubt and without prejudice to the generality of subsection (14), section 48 and section 107(1) shall not apply in relation to the parliamentary service.

(14) This Part shall have effect notwithstanding any other provision of this Constitution and, accordingly, if any such provision is inconsistent with a provision of this Part, the provision of this Part shall apply.

PART 2

Legislation and Procedure in the National Assembly

46. (1) Subject to this Constitution, the legislative power of Parliament shall be exercisable by Bills passed by the National Assembly.

Exercise of
legislative
power of Parliament.
6 of 1992, s. 9.

(2) When a Bill has been passed by the National Assembly, it shall be presented to the President for his assent.

(3) The President shall, within twenty-one days after the Bill has been presented to him for assent under subsection (2), signify to the Speaker that he assents to the Bill or refuses to assent to the Bill.

(4) Where the President refuses to assent to a Bill he shall, within fourteen days of the refusal, submit a memorandum to the Speaker indicating the specific provisions of the Bill which in his opinion should be reconsidered by the National Assembly including his recommendation for amendments.

(5) The National Assembly shall reconsider a Bill referred to it by the President taking into account the comments of the President and shall either-

(a) approve the recommendations proposed by the President with or without amendment and resubmit the Bill to the President for assent; or

(b) refuse to accept the recommendations and approve the Bill in its original form by a resolution in that behalf supported by votes of not less than sixty-five per cent of all the Members of the National Assembly (excluding *ex officio* members) in which case the President shall assent to the Bill within fourteen days of the passing of the resolution.

(6) A law made by Parliament shall not come into operation until it has been published in the Kenya Gazette, but Parliament may postpone

the coming into operation of a law and, subject to section 77, may make laws with retrospective effect.

(7) A law made by Parliament shall be styled an Act of Parliament, and the words of enactment shall be “Enacted by the Parliament of Kenya”.

Alteration of
Constitution.

47. (1) Subject to this section, Parliament may alter this Constitution.

(2) A Bill for an Act of Parliament to alter this Constitution shall not be passed by the National Assembly unless it has been supported on the second and third readings by the votes of not less than sixty-five per cent of all the members of the Assembly (excluding the *ex officio* members).

(3) If, on the taking of a vote for the purposes of subsection (2), the Bill is supported by a majority of the members of the Assembly voting but not by the number of votes required by that subsection, and the Bill is not opposed by thirty-five per cent of all the members of the Assembly or more, then, subject to such limitations and conditions as may be prescribed by the standing orders of the Assembly, a further vote may be taken.

(4) When a Bill for an Act of Parliament to alter this Constitution has been introduced into the National Assembly, no alterations shall be made in it before it is presented to the President for his assent, except alterations which are certified by the Speaker to be necessary because of the time that has elapsed since the Bill was first introduced into the Assembly.

(5) A certificate of the Speaker under subsection (4) shall be conclusive as regards proceedings in the Assembly, and shall not be questioned in any court.

(6) In this section -

- (a) references to this Constitution are references to this Constitution as from time to time amended; and
- (b) references to the alteration of this Constitution are references to the amendment, modification or reenactment, with or without amendment or modification, of any provision of this Constitution, the suspension or repeal of that provision and the making of a different provision in the place of that provision.

48. Except upon the recommendation of the President signified by a Minister, the National Assembly shall not -

Restrictions with regard to certain financial measures.

- (a) proceed upon a Bill (including an amendment to a Bill) that, in the opinion of the person presiding, makes provision for any of the following purposes -
 - (i) the imposition of taxation or the alteration of taxation otherwise than by reduction; or
 - (ii) the imposition of a charge on the Consolidated Fund or any other fund of the Government of Kenya or the alteration of any such charge otherwise than by reduction; or
 - (iii) the payment, issue or withdrawal from the Consolidated Fund or any other fund of the Government of Kenya of moneys not charged upon the fund or an increase in the amount of the payment, issue or withdrawal; or
 - (iv) the composition or remission of a debt due to the Government of Kenya; or
- (b) proceed upon a motion (including an amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

49. (1) Every member of the National Assembly shall, before taking his seat in the Assembly, take and subscribe the oath of allegiance before the Assembly, but a member may before taking and subscribing that oath take part in the election of the Speaker of the Assembly.

Oaths to be taken by members of National Assembly.

(2) A person elected as Speaker of the National Assembly who has not before his election as Speaker taken the oath as a member of the Assembly shall, before entering upon the duties of his office, take and subscribe the oath of allegiance before the Assembly.

50. There shall preside at any sitting of the National Assembly-

Presiding in National Assembly.

- (a) the Speaker; or
- (b) in the absence of the Speaker, the Deputy Speaker; or
- (c) in the absence of the Speaker and the Deputy Speaker, such member of the Assembly (not being the President, the Vice-President, a Minister or an Assistant Minister) as the

Assembly may elect for that purpose.

Quorum in National
Assembly.

51. If any member of the National Assembly who is present takes objection that less than thirty members of the Assembly (besides the person presiding) are present in the Assembly and, after such interval as may be prescribed in the standing orders of the Assembly, the person presiding ascertains that there are still less than thirty members of the Assembly present, the person presiding shall thereupon adjourn the Assembly.

Powers of President
in Parliament.

52. The President shall be entitled -

- (a) in the exercise of his functions as Head of State, to address the National Assembly at any time he thinks fit to do so; and
- (b) in the exercise of his functions as Head of the Government and as a member of the National Assembly, to attend all meetings of the Assembly and to take part in all proceedings thereof, and to vote on any question before the Assembly.

Official
languages. 1 of 1975,
s. 3, 1 of 1979, s. 3.

53. (1) Subject to this section, the official languages of the National Assembly shall be Swahili and English and the business of the National Assembly may be conducted in either or both languages.

(2) Every Bill (including the memorandum accompanying a Bill), every Act of Parliament whenever enacted, all other actual or proposed legislation under the authority of an Act of Parliament, all financial resolutions and documents relating thereto, and every actual or proposed amendment of any of the foregoing, shall be written in English.

(3) In all proceedings of the National Assembly which involve the discussion of any of the following matters, that is to say, a Bill (including the memorandum accompanying a Bill), an Act of Parliament, other legislation whether actual or proposed, a financial resolution or document relating thereto, or an actual or proposed amendment thereof, the wording of the matter shall, as occasion requires, be quoted in English.

Voting in
National Assembly.

54. (1) Except as otherwise provided in this Constitution, any question proposed for decision in the National Assembly shall be determined by a majority of the votes of the members present and voting.

(2) On a question proposed for decision in the National Assembly, the person presiding in the Assembly shall -

(a) if he is the Speaker, have a casting vote but not an original vote; or

(b) if he is not the Speaker, have both an original vote and a casting vote.

(3) The standing orders of the National Assembly may make provision under which a member who votes upon a question in which he has a direct pecuniary interest shall be deemed not to have voted.

55. A person who sits or votes in the National Assembly knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to a penalty not exceeding five hundred shillings, or such other sum as may be prescribed by Parliament, for each day on which he so sits or votes, and that penalty shall be recoverable by action in the High Court at the suit of the Attorney-General.

Unqualified persons sitting or voting.

56. (1) Subject to this Constitution, the National Assembly may-

Regulation of Procedure in National Assembly.

(a) make standing orders regulating the procedure of the Assembly (including in particular orders for the orderly conduct of proceedings);

(b) subject to standing orders made under paragraph (a), establish committees in such manner and for such general or special purposes as it thinks fit, and regulate the procedure of any committee so established.

(2) Subject to this Constitution, the National Assembly may act notwithstanding a vacancy in its membership (including a vacancy not filled when the Assembly first meets after a general election), and the presence or participation of a person not entitled to be present at or to participate in the proceedings of the Assembly shall not invalidate those proceedings.

57. Without prejudice to the powers conferred by section 56, Parliament may, for the purpose of the orderly and effective discharge of the business of the National Assembly, provide for the powers, privileges and immunities of the Assembly and its committees and members.

Powers, privileges and immunities of National Assembly.

PART 3

Summoning Prorogation and Dissolution of Parliament

58. (1) Subject to this section, each session of Parliament shall be held at such place within Kenya and shall commence at such time as the President may appoint.

Summoning of Parliament.

(2) There shall be a session of Parliament at least once in every year, so that a period of twelve months shall not intervene between the last sitting of the National Assembly in one session and the first sitting thereof in the next session.

(3) Whenever Parliament is dissolved, a general election of members of the National Assembly shall be held, and the first session of the new Parliament shall commence within three months after that dissolution.

(4) Subject to this section, the sittings of the National Assembly in a session of Parliament shall be held at such time and on such days as may be determined in accordance with the standing orders of the Assembly.

Prorogation and
dissolution of
Parliament.

59. (1) The President may at any time prorogue Parliament.

(2) The President may at any time dissolve Parliament.

(3) If the National Assembly passes a resolution which is supported by the votes of a majority of all the members of the Assembly (excluding the *ex officio* members), and of which not less than seven days' notice has been given in accordance with the standing orders of the Assembly, declaring that it has no confidence in the Government of Kenya, and the President does not within three days of the passing of that resolution either resign from his office or dissolve Parliament, Parliament shall stand dissolved on the fourth day following the day on which that resolution was passed.

(4) Parliament, unless sooner dissolved, shall continue for five years from the date when the National Assembly first meets after dissolution and shall then stand dissolved.

(5) At any time when Kenya is at war, Parliament may from time to time provide for the extension of the period of five years specified in subsection (4) for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection by more than five years.

CHAPTER IV THE JUDICATURE

PART 1

The High Court and the Court of Appeal

Establishment of
High Court.

60. (1) There shall be a High Court, which shall be a superior court

of record, and which shall have unlimited original jurisdiction in civil and criminal matters and such other jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) The judges of the High Court shall be the Chief Justice and such number, not being less than eleven, of other judges (hereinafter referred to as puisne judges) as may be prescribed by Parliament.

(3) The High Court shall be duly constituted notwithstanding a vacancy in the office of a judge of that Court.

(4) The office of a puisne judge shall not be abolished while there is a substantive holder thereof.

(5) The High Court shall sit at such places as the Chief Justice may appoint.

61. (1) The Chief Justice shall be appointed by the President.

Appointment of
judges of High Court.
4 of 1988, s.2,
17 of 1990, s. 3.

(2) The puisne judges shall be appointed by the President acting in accordance with the advice of the Judicial Service Commission.

(3) A person shall not be qualified to be appointed a judge of the High Court unless -

(a) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or a court having jurisdiction in appeals from such a court; or

(b) he is an advocate of the High Court of Kenya of not less than seven years standing; or

(c) he holds, and has held for a period of, or for periods amounting in the aggregate to, not less than seven years, one or other of the qualifications specified in paragraphs (a), (b), (c) and (d) of section 12 (1) of the Advocates Act as in force on 12th December, 1963.

Cap. 16 (1986).

(4) If the office of Chief Justice is vacant, or if the Chief Justice is for any reason unable to discharge the functions of his office, the President may appoint a puisne judge to act as Chief Justice, and a puisne judge so appointed shall exercise the functions of that office until a person is appointed to and assumes the functions of that office, or until the Chief Justice resumes those functions, as the case may be, or until his appointment is sooner revoked by the President.

(5) If the office of a puisne judge is vacant or if a puisne judge is appointed to act as Chief Justice or is for any reason unable to discharge the functions of his office, or if the Chief Justice advises the President that the state of business in the High Court so requires, the President, acting in accordance with the advice of the Judicial Service Commission, may appoint a person who is qualified to be appointed a judge of the High Court to act as a puisne judge; and a person may act as a puisne judge notwithstanding that he has attained the age prescribed for the purposes of section 62 (1).

(6) A person appointed under subsection (5) to act as a puisne judge shall, subject to subsections (4) and (7) of section 62, continue to act for the period of his appointment or, if no period is specified, until his appointment is revoked by the President, acting in accordance with the advice of the Judicial Service Commission, and may continue to act thereafter for so long as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that have already been commenced before him.

Tenure of office of
judges of High Court.
4 of 1988, s. 3, 17 of
1990, s. 4.

62. (1) Subject to this section, a judge of the High Court shall vacate his office when he attains such age as may be prescribed by Parliament.

(2) Notwithstanding that he has attained the age prescribed for the purposes of subsection (1), a judge of the High Court may continue in office for so long after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(3) A judge of the High Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be removed except in accordance with this section.

(4) A judge of the High Court shall be removed from office by the President if the question of his removal has been referred to a tribunal appointed under subsection (5) and the tribunal has recommended to the President that the judge ought to be removed from office for inability as aforesaid or for misbehaviour.

(5) If the Chief Justice represents to the President that the question of removing a puisne judge under this section ought to be investigated, then -

- (a) the President shall appoint a tribunal which shall consist of a chairman and four other members selected by the President

from among persons -

- (i) who hold or have held the office of judge of the High Court or judge of appeal; or
- (ii) who are qualified to be appointed as judges of the High Court under section 61 (3); or
- (iii) upon whom the President has conferred the rank of Senior Counsel under section 17 of the Advocates Act; and

Cap. 16.

- (b) the tribunal shall inquire into the matter and report on the facts thereof to the President and recommend to the President whether that judge ought to be removed under this section.

(6) Where the question of removing a judge from office has been referred to a tribunal under this section, the President, acting in accordance with the advice of the Chief Justice, may suspend the judge from exercising the functions of his office and any such suspension may at any time be revoked by the President, acting in accordance with the advice of Chief Justice, and shall in any case cease to have effect if the tribunal recommend to the President that the judge ought not to be removed from office.

(7) Where the question arises as whether the Chief Justice has become unable by reason of physical or mental infirmity to exercise the functions of his office or that his conduct ought to be investigated, then the President shall appoint a tribunal consisting of five members appointed by him in the manner provided under subsection (8).

(8) The tribunal appointed under subsection (7) shall consist of the following members -

- (a) a person who holds or has held the office of Speaker of the National Assembly who shall be the chairman;
- (b) two persons who hold or have held office as judges of appeal;
- (c) one person upon whom the rank of Senior Counsel has been conferred by the President under section 17 of the Advocates Act; and
- (d) the chairman of the Public Service Commission.

Cap. 16.

(9) When the question of removing the Chief Justice has been

referred to a tribunal under this section he shall not exercise any of the functions of his office pending the decision of the tribunal; but he will resume those functions if the tribunal recommends to the President that the Chief Justice ought not be removed from office.

Oaths to be taken by judges of High Court.

63. A judge of the High Court shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

Establishment of Court of Appeal. 13 of 1977, s. 2, 7 of 1984, s. 3.

64. (1) There shall be a Court of Appeal which shall be a superior court of record, and which shall have such jurisdiction and powers in relation to appeals from the High Court as may be conferred on it by law.

(2) The judges of the Court of Appeal shall be the Chief Justice and such number, not being less than two, of other judges (herein referred to as judges of appeal) as may be prescribed by Parliament.

(3) The foregoing provisions of this Part shall apply in respect of the judges of appeal as they apply to puisne judges.

(4) Where a puisne judge has been appointed as a judge of appeal he may continue to exercise the functions of a puisne judge to enable him to complete proceedings in the High Court that were commenced before him prior to his being so appointed.

PART 2 *Other Courts*

Establishment of other courts.

65. (1) Parliament may establish courts subordinate to the High Court and courts-martial, and a court so established shall, subject to this Constitution, have such jurisdiction and powers as may be conferred on it by any law.

(2) The High Court shall have jurisdiction to supervise any civil or criminal proceedings before a subordinate court or court-martial, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by those courts.

(3) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by subsection (2).

Kadhis' courts.

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

Act of Parliament.

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

(a) he professes the Muslim religion; and

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

(3) Without prejudice to section 65 (1), there shall be such subordinate courts held by Kadhis as Parliament may establish and each Kadhi's court shall, subject to this Constitution, have such jurisdiction and powers as may be conferred on it by any law.

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

Provided that no part of the former Protectorate shall be outside the jurisdiction of some Kadhi's court.

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

67. (1) Where a question as to the interpretation of this Constitution arises in proceedings in a subordinate court and the court is of the opinion that the question involves a substantial question of law, the court may, and shall if a party to the proceedings so requests, refer the question to the High Court.

References and appeals on interpretation of Constitution.

(2) Where a question is referred to the High Court in pursuance of subsection (1), the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision.

(3) When the High Court is determining a matter in connexion with a reference to it under subsection (1) (other than an interlocutory matter) it shall be composed of an uneven number of judges, not being less than three.

(4) Where a subordinate court or a court-martial has given a final decision in civil or criminal proceedings on a question as to the interpretation of this Constitution, and the question has not already been referred to the High Court under subsection (1) of this section or under section 84 (3), an appeal shall lie against that decision as of right to the High Court, either -

(a) direct; or

(b) if -

(i) an appeal lies as of right from the decision to another subordinate court or court-martial; or

(ii) an appeal lies from the decision to another subordinate court or court-martial with the leave of the court that gave the decision or of some other court, and that leave has not been withheld,

by way of that other subordinate court or court-martial.

PART 3

The Judicial Service Commission

Judicial Service
Commission.

68. (1) There shall be a Judicial Service Commission which shall consist of -

(a) the Chief Justice as chairman;

(b) the Attorney-General;

(c) two persons who are for the time being designated by the President from among the puisne judges of the High Court and the judges of the Court of Appeal; and

(d) the chairman of the Public Service Commission.

(2) In the exercise of its functions under this Constitution, the Commission shall not be subject to the direction or control of any other person or authority.

(3) Subject to this Chapter, the Commission may make regulations regulating its own procedure and, with the consent of the President, may confer powers or impose duties on any public officer or authority for the purpose of the discharge of its functions.

(4) Subject to any regulations made under subsection (3), the Commission may act notwithstanding a vacancy in its membership or the absence of a member, and its proceedings shall not be invalidated by the presence or participation of a person not entitled to be present at or to participate in those proceedings:

Provided that a decision of the Commission shall require the concurrence of a majority of all the members thereof.

69. (1) The power to appoint persons to hold or act in an office to which this section applies (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in those offices and the power to remove those persons from office shall vest in the Judicial Service Commission.

Appointment, etc., of
judicial officers.
4 of 1988, s. 4.

(2) The Judicial Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) to any one or more of its members or to any judge of the High Court or to any person holding or acting in an office to which this section applies:

Provided that a power that relates to an office the holder of which is required to possess legal qualifications may not be delegated under this subsection except to one or more members of the Commission.

(3) The offices to which this section applies are -

- (a) the office of Registrar or Deputy Registrar of the High Court;
- (b) the office of the Chief Magistrate, the Principal Magistrate, the Senior Resident Magistrate, Resident Magistrate or District Magistrate;
- (c) the office of any other person empowered to hold or be a member of a subordinate court exercising criminal jurisdiction;
- (d) the office of Chief Kadhi and Kadhi; and
- (e) such other offices of member of any court or connected with any court as may be prescribed by Parliament.

CHAPTER V

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights
and freedoms of the
individual.

70. Whereas every person in Kenya is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin or residence or other local connexion, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely -

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association; and
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of right
to life.

71. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Kenya of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in those cases hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such an extent as is reasonably justifiable in the circumstances of the case -

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny;

or

(d) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

72. (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases -

Protection of right to personal liberty.
20 of 1987.
4 of 1988, s.5.

(a) in execution of the sentence or order of a court, whether established for Kenya or some other country, in respect of a criminal offence of which he has been convicted;

(b) in execution of the order of the High Court or the Court of Appeal punishing him for contempt of that court or of another court or tribunal;

(c) in execution of the order of a court made to secure the fulfilment of an obligation imposed on him by law;

(d) for the purpose of bringing him before a court in execution of the order of a court;

(e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Kenya;

(f) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(g) for the purpose of preventing the spread of an infectious or contagious disease;

(h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(i) for the purpose of preventing the unlawful entry of that person into Kenya, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Kenya or for the purpose of restricting that person while he is being conveyed through Kenya in the course of his extradition or removal as a convicted prisoner from one country to another; or

- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Kenya or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during a visit that he is permitted to make to a part of Kenya in which, in consequence of the order, his presence would otherwise be unlawful.

(2) A person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) A person who is arrested or detained -

- (a) for the purpose of bringing him before a court in execution of the order of a court; or
- (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty-four hours of his arrest or from the commencement of his detention, or within fourteen days of his arrest or detention where he is arrested or detained upon reasonable suspicion of his having committed or about to commit an offence punishable by death, the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.

(4) Where a person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connexion with those proceedings or that offence save upon the order of a court.

(5) If a person arrested or detained as mentioned in subsection (3) (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall, unless he is charged with an offence punishable by death, be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) A person who is unlawfully arrested or detained by another person shall be entitled to compensation therefor from that other person.

73. (1) No person shall be held in slavery or servitude.

Protection from slavery and forced labour.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section “forced labour” does not include -

- (a) labour required in consequence of the sentence or order of a court;
- (b) labour required of a person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
- (c) labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of an armed force, labour that that person is required by law to perform in place of such service;
- (d) labour required during a period when Kenya is at war or an order under section 85 is in force or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of the labour is reasonably justifiable, in the circumstances of a situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or
- (e) labour reasonably required as part of reasonable and normal communal or other civic obligations.

74. (1) No person shall be subject to torture or to inhuman or degrading punishment or other treatment.

Protection from inhuman treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in Kenya on 11th December, 1963.

Protection from
deprivation
of property.
13 of 1977, s. 3.

75. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied -

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

(2) Every person having an interest or right in or over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for -

- (a) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled; and
- (b) the purpose of obtaining prompt payment of that compensation:

Provided that if Parliament so provides in relation to a matter referred to in paragraph (a) the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the right or interest in the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

(3) The Chief Justice may make rules with respect to the practice and procedure of the High Court or any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection (2) or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the High Court or applications to the other tribunal or authority may be brought).

(4) and (5) (*Deleted by 13 of 1977, s. 3.*)

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or (2) -

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of property -

(i) in satisfaction of any tax, duty, rate, cess or other impost;

(ii) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of Kenya;

(iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

(vi) in consequence of any law with respect to the limitation of actions; or

(vii) for so long only as may be necessary for the purposes of an examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to the development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(b) to the extent that the law in question makes provision for the taking of possession or acquisition of -

(i) enemy property;

- (ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
- (iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
- (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(7) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the Act in question makes provision for the compulsory taking possession of property or the compulsory acquisition of any interest in or right over property where that property, interest or right is vested in a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided by Parliament.

Protection against
arbitrary search or
entry.

76. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilization of mineral resources, or the development or utilization of any other property in such a manner as to promote the public benefit;
- (b) that is reasonably required for the purpose of promoting the rights or freedoms of other persons;
- (c) that authorizes an officer or agent of the Government of Kenya, or of a local government authority, or of a body corporate established by law for public purposes, to enter on

the premises of a person in order to inspect those premises or anything thereon for the purpose of a tax, rate or due or in order to carry out work connected with property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or

- (d) that authorizes, for the purpose of enforcing the judgment or order of a court in civil proceedings, the entry upon premises by order of a court,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

77. (1) If a person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

Provisions to secure protection of law.

(2) Every person who is charged with a criminal offence -

- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
- (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence with which he is charged;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself before the court in person or by a legal representative of his own choice;
- (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and
- (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his

absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for a criminal offence, the accused person or a person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of an act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial of that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) No person shall be convicted of a criminal offence unless that offence is defined, and the penalty therefor is prescribed, in a written law:

Provided that nothing in this subsection shall prevent a court from punishing a person for contempt notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

(9) A court or other adjudicating authority prescribed by law for the determination of the existence or extent of a civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by a person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(10) Except with the agreement of all the parties thereto, all

proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in subsection (10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority -

- (a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or
- (b) may by law be empowered or required to do in the interests of defence, public safety or public order.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of -

- (a) subsection (2) (a) to the extent that the law in question imposes upon a person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2) (e) to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or
- (c) subsection (5) to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding a trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that a court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, subsection (1), paragraphs (d) and (e) of subsection (2) and subsection (3) shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in lawful detention.

(14) Nothing contained in subsection (2) (d) shall be construed as entitling a person to legal representation at public expense.

(15) In this section “criminal offence” means a criminal offence under the law of Kenya.

Protection of freedom
of conscience.

78. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section that freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage a place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at a place of education which it wholly maintains or in the course of any education which it otherwise provides.

(3) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending a place of education shall be required to receive religious instruction or to take part in or attend a religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(4) No person shall be compelled to take an oath which is contrary to his religion or belief or to take an oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required -

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise a religion without the unsolicited intervention of members of another religion,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be

reasonably justifiable in a democratic society.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

79. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

Protection of freedom of expression.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
- (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or
- (c) that imposes restrictions upon public officers or upon persons in the service of a local government authority, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

80. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

Protection of freedom of assembly and association.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) that is reasonably required in the interests of defence, public

safety, public order, public morality or public health;

- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
- (c) that imposes restrictions upon public officers, members of a disciplined force, or persons in the service of a local government authority; or
- (d) for the registration of trade unions and associations of trade unions in a register established by or under any law, and for imposing reasonable conditions relating to the requirements for entry on such a register (including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration, or of members necessary to constitute an association of trade unions qualified for registration, and conditions whereby registration may be refused on the grounds that another trade union already registered or association of trade unions already registered, as the case may be, is sufficiently representative of the whole or of a substantial proportion of the interests in respect of which registration of a trade union or association of trade unions is sought),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom
of movement.

81. (1) No citizen of Kenya shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Kenya, the right to reside in any part of Kenya, the right to enter Kenya, the right to leave Kenya and immunity from expulsion from Kenya.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) for the imposition of restrictions on the movement or residence within Kenya of any person or on any person's right to leave Kenya that are reasonably required in the interests of defence, public safety or public order;
- (b) for the imposition of restrictions on the movement or

residence within Kenya or on the right to leave Kenya of persons generally or any class of persons that are reasonably required in the interests of defence, public safety, public order, public morality, public health or the protection or control of nomadic peoples and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

- (c) for the imposition of restrictions, by order of a court, on the movement or residence within Kenya of any person or on any person's right to leave Kenya either in consequence of his having been found guilty of a criminal offence under the law of Kenya or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Kenya;
- (d) for the imposition of restrictions on the acquisition or use by any person of land or other property in Kenya;
- (e) for the imposition of restrictions upon the movement or residence within Kenya or on the right to leave Kenya of public officers or of members of a disciplined force;
- (f) for the removal of a person from Kenya to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Kenya of which he has been convicted; or
- (g) for the imposition of restrictions on the right of any person to leave Kenya that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.

(4) If a person whose freedom of movement has been restricted by virtue of a provision referred to in subsection (3) (a) so requests at any time during the period of that restriction not earlier than three months after the order was made or three months after he last made the request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the President from among persons qualified to be appointed as a judge of the High Court.

(5) On a review by a tribunal in pursuance of subsection (4) of the case of a person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

(6) Until it is otherwise provided by Act of Parliament nothing in this section shall affect the operation of the Outlying Districts Act* or the Special Districts (Administration) Act* or any law amending or replacing either of those Acts:

Cap. 104.
Cap. 105.

Provided that no law amending or replacing either of those Acts shall impose, or authorize the imposition of, restrictions on the rights guaranteed by this section greater than the restrictions on those rights in force under that Act on 31st May, 1963, and no such restriction shall be imposed under either of those Acts, or by or under any such law, in or in respect of any area other than an area in or in respect of which a restriction was in force under that Act on 31st May, 1963.

82. (1) Subject to subsections (4), (5) and (8), no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to subsections (6), (8) and (9), no person shall be treated in a discriminatory manner by a person acting by virtue of any written law or in the performance of the functions of a public office or a public authority.

(3) In this section the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin or residence or other local connexion, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) shall not apply to any law so far as that law makes provision -

(a) with respect to persons who are not citizens of Kenya;

(b) with respect to adoption, marriage, divorce, burial,
devolution of property on death or other matters of personal

* The Outlying Districts Act (Cap. 104) and the Special Districts (Administration) Act (Cap. 105) were repealed by 10 of 1997.

Protection from
discrimination on the
grounds of race, etc.
9 of 1997, s. 9,

law;

(c) for the application in the case of members of a particular race or tribe of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or

(d) whereby persons of a description mentioned in subsection (3) may be subjected to a disability or restriction or may be accorded a privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, tribe, place of origin or residence or other local connexion, political opinion, colour or creed) to be required of a person who is appointed to an office in the public service, in a disciplined force, in the service of a local government authority or in a body corporate established by any law for public purposes.

(6) Subsection (2) shall not apply to -

(a) anything which is expressly or by necessary implication authorized to be done by a provision of law referred to in subsection (4); or

(b) the giving or withholding of consent to a transaction in agricultural land by any body or authority established by or under any law for the purpose of controlling transactions in agricultural land.

(7) Subject to subsection (8), no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating houses, beer halls or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

(8) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of a description mentioned in subsection (3) may be subjected to a restriction on the rights and freedoms guaranteed by sections 76, 78, 79, 80 and 81, being a restriction authorized by section 76 (2), 78 (5),

79 (2), 80 (2), or paragraph (a) or (b) of section 81 (3).

(9) Nothing in subsection (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in a court that is vested in a person by or under this Constitution or any other law.

Derogation from
fundamental rights
and freedoms.

Cap. 57.

83. (1) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 72, 76, 79, 80, 81 or 82 when Kenya is at war, and nothing contained in or done under the authority of any provision of Part III of the Preservation of Public Security Act shall be held to be inconsistent with or in contravention of those sections of this Constitution when and in so far as the provision is in operation by virtue of an order made under section 85.

(2) Where a person is detained by virtue of a law referred to in subsection (1) the following provisions shall apply -

- (a) he shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;
- (b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Kenya Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorized;
- (c) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the President from among persons qualified to be appointed as a judge of the High Court;
- (d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and
- (e) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(3) On a review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(4) Nothing contained in subsection (2) (d) or (e) shall be construed as entitling a person to legal representation at public expense.

84. (1) Subject to subsection (6), if a person alleges that any of the provisions of sections 70 to 83 (inclusive) has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if another person alleges a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

Enforcement of protective provisions. 6 of 1992, s. 10, 9 of 1997, s. 10.

(2) The High Court shall have original jurisdiction -

- (a) to hear and determine an application made by a person in pursuance of subsection (1);
- (b) to determine any question arising in the case of a person which is referred to it in pursuance of subsection (3), and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 70 to 83 (inclusive).

(3) If in proceedings in a subordinate court a question arises as to the contravention of any of the provisions of sections 70 to 83 (inclusive), the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous and vexatious.

(4) Where a question is referred to the High Court in pursuance of subsection (3), the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision.

(5) Parliament -

- (a) may confer upon the High Court such powers in addition to those conferred by this section as may appear to be necessary

or desirable for the purpose of enabling that Court, more effectively, to exercise the jurisdiction conferred upon it by this section; and

(b) shall make provision -

- (i) for the rendering of financial assistance to any indigent citizen of Kenya where his right under this Chapter has been infringed or with a view to enabling him engage the services of an advocate to prosecute his claim; and
- (ii) for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

(6) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the High Court).

(7) A person aggrieved by the determination of the High Court under this section may appeal to the Court of Appeal as of right.

85. (1) Subject to this section, the President may at any time, by order published in the Kenya Gazette, bring into operation, generally or in any part of Kenya, Part III of the Preservation of Public Security Act or any of the provisions of that Part of that Act.

(2) An order made under this section shall cease to have effect on the expiration of the period of twenty-eight days commencing with the day on which the order is made, unless before the expiration of that period it has been approved by a resolution of the National Assembly; but in reckoning any period of twenty-eight days for the purposes of this subsection no account shall be taken of any time during which Parliament is dissolved.

(3) An order made under this section may at any time be revoked by the President by an order published in the Kenya Gazette.

(4) An order made under this section and approved by a resolution of the National Assembly in accordance with subsection (2) may at any time be revoked by a resolution of the Assembly supported by a majority of all the members of the Assembly (excluding the *ex officio* members).

(5) Whenever the election of the President results in a change in

Preservation of
public security.

Cap. 57.

the holder of that office an order made under this section and in force immediately before the day on which the President assumes office shall cease to have effect on the expiration of seven days commencing with that day.

(6) The expiry or revocation of an order made under this section shall be without prejudice to the validity of anything previously done under the order or to the making of a new order.

86. (1) In this Chapter, except where the context otherwise requires -

Interpretation and
savings.

“contravention”, in relation to a requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court having jurisdiction in Kenya other than a court established by a disciplinary law, but includes, in sections 71 and 73, a court established by a disciplinary law;

“disciplinary law” means a law regulating the discipline of a disciplined force;

“disciplined force” means -

- (a) any of the armed forces;
- (b) a police force;
- (c) a prison service; or
- (d) the National Youth Service;

“legal representative” means a person entitled to practise as an advocate in Kenya; and

“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In relation to a person who is a member of a disciplined force raised under any law in force in Kenya, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 71, 73 and 74.

(3) In relation to a person who is a member of a disciplined force

raised otherwise than as aforesaid and lawfully present in Kenya, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

CHAPTER VI CITIZENSHIP

Persons who become
citizens on 12th
December, 1963.

87*. (1) Every person who, having been born in Kenya, is on 11th December, 1963 a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Kenya on 12th December, 1963:

Provided that a person shall not become a citizen of Kenya by virtue of this subsection if neither of his parents was born in Kenya.

(2) Every person who, having been born outside Kenya, is on 11th December, 1963 a citizen of the United Kingdom and Colonies or a British protected person shall, if his father becomes, or would but for his death have become, a citizen of Kenya by virtue of subsection (1), become a citizen of Kenya on 12th December, 1963.

Persons entitled
to be registered as
citizens by virtue
of connexion with
Kenya before 12th
December, 1963.

88*. (1) A person who, but for the proviso to section 87 (1), would be a citizen of Kenya by virtue of that subsection shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Kenya:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by his parent or guardian.

(2) A woman who, on 11th December, 1963, has been married to a person -

(a) who becomes a citizen of Kenya by virtue of section 87;
or

(b) who, having died before 12th December, 1963, would, but for his death, have become a citizen of Kenya by virtue of that section,

*Sections 87 and 88, although spent in their effect, are retained for the sake of clarification. The same applies to section 97(2) and section 98(6)(b)

shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Kenya.

(3) A woman who, on 11th December, 1963, has been married to a person who becomes, or would but for his death have become, entitled to be registered as a citizen of Kenya under subsection (1) or (5), but whose marriage has been terminated by death or dissolution before 12th December, 1963, or is so terminated on or after that date but before that person exercises his right to be registered as a citizen of Kenya under either of those subsections, shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Kenya.

(4) A person who, on 11th December, 1963, is a citizen of the United Kingdom and Colonies or of the Republic of Ireland and is on that day ordinarily and lawfully resident in Kenya (otherwise than under the authority of a pass issued under the Immigration Act as then in force and conferring on him the right to remain in Kenya only temporarily) shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Kenya:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by his parent or guardian.

(5) A person who, on 11th December, 1963, is a citizen of the United Kingdom and Colonies -

- (a) having become such a citizen under the British Nationality Act, 1948 by virtue of his having been naturalized in Kenya as a British subject before that Act came into force; or
- (b) having become such a citizen by virtue of his having been naturalized or registered in Kenya under that Act,

shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Kenya:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by his parent or guardian.

(6) In this section “the specified date” means -

- (a) in relation to a person to whom subsection (1), (4) or (5) refers, 12th December, 1965; and
- (b) in relation to a woman to whom subsection (3) refers, 12th December, 1965 or the expiration of such period after the termination of her marriage as may be prescribed by or under an Act of Parliament (whichever is the later),

or such later date as may in any particular case be prescribed by or under an Act of Parliament.

Persons born in Kenya after 11th December, 1963, 6 of 1985, s. 2.

89. Every person born in Kenya after 11th December, 1963 shall become a citizen of Kenya if at the date of his birth one of his parents is a citizen of Kenya; except that a person shall not become a citizen of Kenya by virtue of this section if at the date of his birth -

- (a) his father possesses immunity from suit and legal process as is accorded to the envoy of a foreign state accredited to Kenya; or
- (b) his father is a citizen of a country with which Kenya is at war and the birth occurs in a place then under occupation by that country.

Persons born outside Kenya after 11th December, 1963.

90. A person born outside Kenya after 11th December, 1963 shall become a citizen of Kenya at the date of his birth if at that date his father is a citizen of Kenya.

Marriage to a Kenya citizen.

91. A woman who has been married to a citizen of Kenya shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Kenya.

Persons eligible to be registered as Kenya citizens.

92. (1) A person who, being a Commonwealth citizen or a citizen of a country in Africa to which this subsection applies, has been ordinarily resident in Kenya for such period (whether commencing before, on or after 12th December, 1963) and under such authority as may be prescribed by or under an Act of Parliament shall be eligible, upon making application in such manner as may be so prescribed, to be registered as a citizen of Kenya, and the Minister may cause any such person who so applies to be so registered.

(2) A person shall be eligible, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be

registered as a citizen of Kenya if, at the date of his application, one of his parents is a citizen of Kenya, and the Minister may cause any such person who so applies to be so registered:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by his parent or guardian.

(3) The countries in Africa to which subsection (1) of this section applies (other than the countries to which section 95 applies) are countries which are for the time being declared by the Minister, by notice published in the Kenya Gazette, to be countries which permit citizens of Kenya to become citizens of those countries by registration.

93. A person who -

Persons eligible to be naturalized as Kenya citizens.

- (a) has attained the age of twenty-one years;
- (b) has been ordinarily and lawfully resident in Kenya for the period of twelve months immediately preceding his application under this section;
- (c) has been ordinarily and lawfully resident in Kenya for a period of, or for periods amounting in the aggregate to, not less than four years in the seven years immediately preceding the said period of twelve months;
- (d) satisfies the Minister that he is of good character;
- (e) satisfies the Minister that he has an adequate knowledge of the Swahili language; and
- (f) satisfies the Minister that he intends, if naturalized as a citizen of Kenya, to continue to reside in Kenya,

shall be eligible, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be naturalized as a citizen of Kenya, and the Minister may grant a certificate of naturalization to any such person who so applies.

94. (1) The Minister may, by order published in the Kenya Gazette and after such procedure as may be prescribed by or under an Act of Parliament, deprive of his citizenship of Kenya any person who is a citizen by registration or naturalization if the Minister is satisfied -

Deprivation of citizenship.

- (a) that that citizen has shown himself by act or speech to be disloyal or disaffected towards Kenya; or
- (b) that that citizen has, during any war in which Kenya was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or
- (c) that, within the period of five years commencing with the date of the registration or naturalization, a sentence of imprisonment of or exceeding twelve months has been imposed on that citizen by a court in any country or has been substituted by competent authority for some other sentence imposed on him by such a court; or
- (d) that that citizen has, since becoming a citizen of Kenya, been ordinarily resident in countries other than Kenya for a continuous period of seven years and during that period has neither -
 - (i) been at any time in the service of Kenya or of an international organization of which Kenya was a member; nor
 - (ii) registered annually at a Kenya consulate his intention to retain his citizenship of Kenya; or
- (e) that the registration or naturalization was obtained by means of fraud, false representation or the concealment of any material fact.

(2) For the purposes of subsection (1) (c) -

- (a) a person shall not be regarded as having had imposed on him a sentence of imprisonment of or exceeding twelve months if he has been granted a free pardon in respect of the offence for which he was so sentenced or if his conviction for that offence has been set aside or if his sentence has been reduced to a term of imprisonment of less than twelve months or if a sentence other than imprisonment has been substituted therefor;
- (b) two or more sentences that are required to be served consecutively shall be regarded as separate sentences if none of them amounts to or exceeds twelve months; and

- (c) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of, the payment of a fine.

95. (1) Every person who, under this Constitution or an Act of Parliament, is a citizen of Kenya or who, under any law for the time being in force in a country to which this section applies, is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

Commonwealth citizens.

(2) Every person who was a British subject without citizenship under the British Nationality Act, 1948, or who continued to be a British subject under section 2 of that Act, shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) Save as may be otherwise provided by Parliament, the countries to which this section applies are the United Kingdom and Colonies, Canada, Australia, New Zealand, India, Sri Lanka, Ghana, Malaysia, Nigeria, Cyprus, Sierra Leone, Tanzania, Jamaica, Trinidad and Tobago, Uganda, Malawi, Malta, Zambia, The Gambia, Singapore, Guyana, Botswana, Lesotho, Barbados, Swaziland, Mauritius, Zimbabwe, and any other country that may be prescribed by Parliament.

96. (1) Parliament may provide for the acquisition of citizenship of Kenya (whether by registration or by naturalization) by persons who are not eligible or who are no longer eligible to become citizens of Kenya under this Chapter.

Powers of Parliament.

(2) Parliament may provide for the renunciation by a person of his citizenship of Kenya.

97. (1) A person who, upon the attainment of the age of twenty-one years, is a citizen of Kenya and also a citizen of some country other than Kenya shall, subject to subsection (7), cease to be a citizen of Kenya upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who was born outside Kenya, made and registered such declaration of his intentions concerning residence as may be prescribed by or under an Act of Parliament.

Dual citizenship.

(2)* A person who -

- (a) has attained the age of twenty-one years before 12th December, 1963; and

*See note at foot of page 70.

(b) becomes a citizen of Kenya on that day by virtue of section 87; and

(c) is immediately after that day also a citizen of some country other than Kenya,

shall subject to subsection (7), cease to be a citizen of Kenya upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who is a citizen of Kenya by virtue of section 87 (2), made and registered such declaration of his intentions concerning residence as may be prescribed by or under an Act of Parliament.

(3) A citizen of Kenya shall, subject to subsection (7), cease to be such a citizen if -

(a) having attained the age of twenty-one years, he acquires the citizenship of some country other than Kenya by voluntary act (other than marriage); or

(b) having attained the age of twenty-one years, he otherwise acquires the citizenship of some country other than Kenya and has not, by the specified date, renounced his citizenship of that other country, taken the oath of allegiance and made and registered such declaration of his intentions concerning residence as may be prescribed by or under an Act of Parliament.

(4) A person who has attained the age of twenty-one years (or is a woman who is or has been married) and who -

(a) becomes a citizen of Kenya by registration under section 88, 91, 92 or 96 or by naturalization under section 93 or 96; and

(b) is immediately after the day upon which he becomes a citizen of Kenya, also a citizen of some other country,

shall, subject to subsection (7), cease to be a citizen of Kenya upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and made and registered such declaration of his intentions concerning residence as may be prescribed by or under an Act of Parliament.

(5) For the purposes of this section, where, under the law of a country other than Kenya, a person cannot renounce his citizenship of that other country, he need not make the renunciation but he may instead be required to make such declaration concerning that citizenship as may

be prescribed by or under an Act of Parliament.

(6) In this section “the specified date” means –

- (a) in relation to a person to whom subsection (1) refers, the date on which he attains the age of twenty-three years;
- (b)* in relation to a person to whom subsection (2) refers, 12th December, 1965;
- (c) in relation to a person to whom subsection (3)(b) refers, the expiration of a period of two years commencing with the date on which he acquired the citizenship of the country other than Kenya; and
- (d) in relation to a person to whom subsection (4) refers, the expiration of a period of three months after the date upon which he became a citizen of Kenya,

or, in the case of a person of unsound mind, such later date as may be prescribed by or under an Act of Parliament.

(7) Provision may be made by or under an Act of Parliament for extending beyond the specified date the period in which a person may make a renunciation of citizenship, take an oath or make or register a declaration for the purposes of this section, and, if provision is so made, that person shall not cease to be a citizen of Kenya upon the specified date but shall cease to be a citizen upon the expiration of the extended period if he has not then made the renunciation, taken the oath or made or registered the declaration, as the case may be.

98. (1) In this Chapter -

Interpretation

“the British Nationality Act, 1948” means the Act of that title enacted by the Parliament of the United Kingdom;

“British protected person” means a person who is a British protected person for the purposes of the British Nationality Act, 1948; and

“the Minister” means the Minister who is for the time being responsible for matters relating to citizenship of Kenya.

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft

*See note at foot of page 70.

of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) A reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 12th December, 1963 and the birth occurred after 11th December, 1963 the national status that the father would have had if he had died on 12th December, 1963 shall be deemed to be his national status at the time of his death.

CHAPTER VII

FINANCE

Consolidated Fund
and other funds of
the Government of
Kenya.

99. (1) Subject to subsection (2), all revenues or other moneys raised or received for the purposes of the Government of Kenya shall be paid into and form a Consolidated Fund from which no moneys shall be withdrawn except as may be authorized by this Constitution or by an Act of Parliament (including an Appropriation Act) or by a vote on account passed by the National Assembly under section 101.

(2) Provision may be made by or under an Act of Parliament for any revenues or other moneys received for the purposes of the Government of Kenya to be paid into some public fund (other than the Consolidated Fund) established for a specific purpose, or to be retained by the authority that received them for the purpose of defraying the expenses of that authority, but no moneys shall be withdrawn from any such public fund unless the issue of those moneys has been authorized by or under a law.

(3) Where any moneys are charged by this Constitution or any Act of Parliament upon the Consolidated Fund or any other public fund of the Government of Kenya, they shall be paid out of that fund by the Government of Kenya to the person or authority to whom payment is due.

(4) Parliament may prescribe the manner in which withdrawals may be made from the Consolidated Fund or any other fund of the Government of Kenya.

Authorization of
expenditure from
Consolidated Fund
by appropriation.

100. (1) The Minister for the time being responsible for finance shall cause to be prepared and laid before the National Assembly in each financial year estimates of the revenues and expenditure of the Government of Kenya for the next following financial year.

(2) When the estimates of expenditure (other than expenditure charged upon the Consolidated Fund by this Constitution or by any Act of Parliament) have been approved by the National Assembly, a Bill, to be known as an Appropriation Bill, shall be introduced into the Assembly, providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several services required, to the purposes specified therein.

(3) If in respect of any financial year it is found -

- (a) that the amount appropriated by the Appropriation Act to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that Act; or
- (b) that any moneys have been expended for a purpose in excess of the amount appropriated to that purpose by the Appropriation Act or for a purpose to which no amount has been appropriated by that Act,

a supplementary estimate or, as the case may be, a statement of excess showing the sums required or spent shall be laid before the National Assembly and, when the supplementary estimate or statement of excess has been approved by the Assembly, a supplementary Appropriation Bill shall be introduced into the Assembly, providing for the issue of those sums from the Consolidated Fund and appropriating them to the purposes specified therein.

101. If the Appropriation Act for a financial year has not come into operation, or is not likely to come into operation, by the beginning of that financial year, the National Assembly may, by a vote on account, authorize the withdrawal from the Consolidated Fund of moneys (not exceeding in total one-half of the sums included in the estimates of expenditure for that year that have been laid before the Assembly) for the purpose of meeting expenditure necessary to carry on the services of the Government of Kenya during that year until such time as the Appropriation Act comes into operation, 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 Act.

Authorization of expenditure in advance of appropriation.

102. (1) Parliament may make provision for the establishment of a Contingencies Fund and for authorizing the Minister for the time being responsible for finance, if he is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

Contingencies Fund.

(2) Where an advance is made from the Contingencies Fund, a supplementary estimate shall be presented and a supplementary Appropriation Bill shall be introduced as soon as possible for the purpose of replacing the amount so advanced.

Public debt of
Government of
Kenya.

103. (1) All debt charges for which the Government of Kenya is liable shall be a charge on the Consolidated Fund.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortization of debt, and all expenditure in connexion with the raising of loans on the security of the Consolidated Fund and the service and redemption of debt created thereby.

Remuneration of
certain officers.
13 of 1977, s. 4.

104. (1) There shall be paid to the holders of the offices to which this section applies such salary and such allowances as may be prescribed by or under an Act of Parliament.

(2) The salaries and any allowances payable to the holders of the offices to which this section applies shall be charged upon the Consolidated Fund.

(3) The salary payable to the holder of an office to which this section applies and his other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his service in that office) shall not be altered to his disadvantage after his appointment.

(4) When a person's salary or other terms of service depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3), be deemed to be more advantageous to him than any others for which he might have opted.

(5) This section applies to the offices of judge of the High Court, judge of the Court of Appeal, member of the Public Service Commission, member of the Electoral Commission, Attorney-General and Controller and Auditor-General.

(6) Nothing in this section shall be construed as prejudicing the provisions of section 112 (which protects certain pensions rights).

Controller and
Auditor-General.

105. (1) There shall be a Controller and Auditor-General whose office shall be an office in the public service.

(2) It shall be the duty of the Controller and Auditor-General -

(a) to satisfy himself that any proposed withdrawal from the

Consolidated Fund is authorized by law, and, if so satisfied, to approve the withdrawal;

(b) to satisfy himself that all moneys that have been appropriated by Parliament and disbursed have been applied to the purposes to which they were so appropriated and that the expenditure conforms to the authority that governs it; and

(c) at least once in every year to audit and report on the public accounts of the Government of Kenya, the accounts of all officers and authorities of that Government, the accounts of all courts in Kenya (other than courts no part of the expenses of which are defrayed directly out of moneys provided by Parliament), the accounts of every Commission established by this Constitution and the accounts of the Clerk of the National Assembly.

(3) The Controller and Auditor-General and any officer authorized by him shall have access to all books, records, returns, reports and other documents which in his opinion relate to any of the accounts referred to in subsection (2).

(4) The Controller and Auditor-General shall submit every report made by him in pursuance of subsection (2) to the Minister for the time being responsible for finance who shall, not later than seven days after the National Assembly first meets after he has received the report, lay it before the Assembly.

(5) In the exercise of his functions under subsections (2), (3) and (4), the Controller and Auditor-General shall not be subject to the direction or control of any other person or authority.

CHAPTER VIII THE PUBLIC SERVICE

106. (1) There shall be a Public Service Commission which shall consist of a chairman, a deputy chairman and fifteen other members. Public Service Commission.
7 of 1984, s. 4,
4 of 1988, s. 6,
17 of 1990, s. 5.

(2) The members of the Commission shall be appointed by the President.

(3) Subject to subsection (4), a person shall not be qualified to be appointed as a member of the Commission if -

(a) he is, or has at any time been, a member of the National Assembly, or he has at any time been a member of either House of the National Assembly formerly established for

Kenya, a member of a Provincial Council or a Regional Assembly formerly established for Kenya or a member (other than an *ex officio*, an appointed or a nominated member) of any Legislative Council established for Kenya at any time before 12th December, 1963; or

(b) he is, or has at any time been, nominated as a candidate for election as a member of the National Assembly, or of a former House of the National Assembly, or of a former Provincial Council, Regional Assembly or Legislative Council; or

(c) he is, or has at any time been, the holder of an office in any political organization that sponsors or otherwise supports, or has at any time sponsored or otherwise supported, a candidate for election as a member of the National Assembly or of any such former House of the National Assembly, former Provincial Council, Regional Assembly or Legislative Council.

(4) The disqualifications referred to in subsection (3) shall cease to be disqualifications in respect of a person when Parliament has been dissolved on two occasions after that person ceased to be such a member, candidate or holder of office.

(5) Subject to subsection (7), the office of a member of the Commission shall become vacant -

(a) at the expiration of three years from the date of his appointment; or

(b) if he accepts any office the holding of which, if he were not a member of the Commission, would make him ineligible for appointment to the office of member of the Commission.

(6) The President may remove a member of the Commission from office only for failure to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with this section.

(7) A member of the Commission shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (8) and the tribunal has recommended to the President that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(8) If the President considers that the question of removing a

member of the Commission under this section ought to be investigated, then -

- (a) the President shall appoint a tribunal which shall consist of a chairman and four other members selected by the President from among persons -
 - (i) who hold or have held office as judge of the High Court or judge of appeal; or
 - (ii) who are qualified to be appointed as judges of the High Court under section 61 (3); or
 - (iii) upon whom the rank of Senior Counsel has been conferred by the President under section 17 of the Advocates Act; and
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the President and recommend to him whether the member ought to be removed under this section.

Cap. 16.

(9) If the question of removing a member of the Commission has been referred to a tribunal under this section, the President may suspend that member from the exercise of the functions of his office and the suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that the member should not be removed.

(10) If the office of chairman of the Commission is vacant or the chairman is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, the deputy chairman or, if the office of deputy chairman is vacant or the deputy chairman is for any reason unable to perform the functions of the office of chairman, such one of the other members as the President may appoint shall act as chairman; and the deputy chairman or the other member shall, subject to subsections (5), (7) and (9), continue to act until a person has been appointed to the office of chairman and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has assumed or resumed those functions.

(11) If the office of a member of the Commission other than the chairman is vacant or if such a member is acting as chairman under subsection (10) or is for any other reason unable to exercise the functions of his office, the President may appoint a person who is qualified to be appointed to be a member to act in place of that member; and a person

so appointed shall, subject to subsection (5), (7) and (9), continue to act until a person has been appointed to the office in which he is acting and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions.

(12) Subject to this Chapter, the Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.

(13) Subject to this Chapter, the Commission may by regulation or otherwise regulate its own procedure and, with the consent of the President, may confer powers or impose duties on any public officer or authority for the purpose of the discharge of its functions.

(14) The Commission may, subject to its rules of procedure, act notwithstanding a vacancy in its membership or the absence of a member and its proceedings shall not be invalidated by the presence or participation of a person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all the members thereof.

Appointment, etc., of
public officers.
7 of 1982, s.8,
7 of 1984, s.5.

107. (1) Subject to this Constitution, the power to appoint persons to hold or act in offices in the public service and in the service of local authorities (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in those offices and the power to remove those persons from office shall vest in the Public Service Commission:

Provided that the Commission may, with the approval of the President and subject to such conditions as it thinks fit, by directions in writing, delegate any of its powers under this section to any one or more of its members or to any officer in the public service or, in the case of appointments to the service of local authorities, to particular local authorities.

(2) Subject to this section and section 106 (12), provision may be made by or under an Act of Parliament for prescribing the manner of the exercise of the functions of the Public Service Commission under this section and for any matters incidental or supplementary to the exercise of those functions.

(3) No person shall be appointed under this section to or to act in an office on the personal staff of the President except with the concurrence of the President.

(4) Subsection (1) shall not apply in relation to any of the following offices in the public service -

- (a) the office of the judge of the High Court or the Court of Appeal;
- (b) the office of Attorney-General;
- (c) the office of Controller and Auditor-General;
- (d) so far as relates to appointments thereto or to act therein, the office of Permanent Secretary, Secretary to the Cabinet, Director of Personnel or Commissioner of Police;
- (e) the office of Ambassador, High Commissioner or other principal representative of Kenya in another country.
- (f) an office to which section 69 (which relates to offices within the jurisdiction of the Judicial Service Commission) applies; or
- (g) an office in the Kenya Police Force to which section 108 (2) (b) applies.

108. (1) The power to appoint a person to hold or act in the office of Commissioner of Police shall vest in the President.

Appointment, etc., of members of Kenya Police Force.

(2) The power to appoint persons to hold or act in offices in the Kenya Police Force (except the office of Commissioner of Police), including the power to confirm appointments, the power to exercise disciplinary control over persons holding or acting in those offices and the power to remove those persons from office shall vest -

- (a) in the case of offices of or above the rank of Assistant Inspector, or such rank other than the rank of Assistant Inspector as may be specified for the purposes of this section by or under an Act of Parliament, in the Public Service Commission;
- (b) in the case of offices below the rank of Assistant Inspector, or such other rank as may be specified as aforesaid, in the Commissioner of Police:

Provided that -

- (i) the Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its

powers under this section to any one or more members of the Commission or to the Commissioner;

- (ii) the Commissioner may, by directions given in such manner as he thinks fit and subject to such conditions as he thinks fit, delegate any of his powers under this section to any member of the Kenya Police Force.

Attorney-General.
14 of 1986, s.4,
17 of 1990, s.6.

109. (1) The Attorney-General shall be appointed by the President.

(2) If the office of Attorney-General is vacant or if the Attorney-General is for any reason unable to exercise the functions of his office, the President may appoint a person to act as Attorney-General, and a person so appointed shall, subject to subsections (4), (6) and (8), continue to act until a person has been appointed to the office of Attorney-General and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions.

Cap. 16 (1986).

(3) A person shall not be qualified to be appointed to hold or to act in the office of Attorney-General unless he holds and has held for a total period of not less than five years one or other of the qualifications specified in paragraphs (a), (b), (c) and (d) of section 12 (1) of the Advocates Act as in force on 12th December, 1963.

(4) Subject to subsection (6), the Attorney-General shall vacate his office when he attains such age as may be prescribed by Parliament.

(5) The Attorney-General may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be removed except in accordance with this section.

(6) The Attorney-General shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (7) and the tribunal has recommended to the President that he ought to be removed for inability as aforesaid or for misbehaviour.

(7) If the President considers that the question of removing the Attorney-General under this section ought to be investigated, then -

- (a) the President shall appoint a tribunal which shall consist of a chairman and four other members selected by the President from among persons -

- (i) who hold or have held office as judge of the High Court or judge of appeal; or
- (ii) who are qualified to be appointed as judges of the High Court under section 61 (13); or
- (iii) upon whom the rank of Senior Counsel has been conferred by the President under section 17 of the Advocates Act; and

Cap. 16.

- (b) the tribunal shall inquire into the matter and report on the facts thereof to the President and recommend to him whether the Attorney-General ought to be removed under this section.

(8) If the question of removing the Attorney-General has been referred to a tribunal under this section, the President may suspend the Attorney-General from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that the Attorney-General should not be removed.

110. (1) The Controller and Auditor-General shall be appointed by the President.

Controller and Auditor-General.
14 of 1986, s. 5,
17 of 1990, s. 6.

(2) If the office of Controller and Auditor-General is vacant or if the Controller and Auditor-General is for any reason unable to exercise the functions of his office, the President may appoint a person to act as Controller and Auditor-General, and a person so appointed shall, subject to subsections (3), (5) and (7) continue to act until a person has been appointed to the office of Controller and Auditor-General and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions.

(3) Subject to subsection (5), the Controller and Auditor-General shall vacate his office when he attains such age as may be prescribed by Parliament.

(4) A person holding the office of Controller and Auditor-General may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with this section.

(5) The Controller and Auditor-General shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (6) and the tribunal has

recommended to the President that he ought to be removed for inability as aforesaid or for misbehaviour.

(6) If the President considers that the question of removing the Controller and Auditor-General under this section ought to be investigated, then -

(a) the President shall appoint a tribunal which shall consist of a chairman and four other members selected by the President from among persons -

(i) who hold or have held office as judges of the High Court or judges of appeal; or

(ii) who are qualified to be appointed as judges of the High Court under section 61 (3); or

(iii) upon whom the rank of Senior Counsel has been conferred by the President under section 17 of the Advocates Act; and

(b) the tribunal shall inquire into the matter and report on the facts thereof to the President and recommend to him whether the Controller and Auditor-General ought to be removed under this section.

(7) If the question of removing the Controller and Auditor-General has been referred to a tribunal under this section, the President may suspend the Controller and Auditor-General from the exercise of the functions of his office and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that the Controller and Auditor-General should not be removed.

111. (1) The power to appoint a person to hold or act in the office of Permanent Secretary, Secretary to the Cabinet or Director of Personnel shall vest in the President.

(2) The power to appoint a person to hold or act in the office of Ambassador, High Commissioner or other principal representative of Kenya in another country, and to remove from office a person holding or acting in any such office, shall vest in the President:

Provided that before exercising a power conferred by this subsection in relation to a person who holds an office in the public service, other than an office to which this subsection applies, the

Cap. 16.

Appointment
of Permanent
Secretaries,
Ambassadors, etc.
7 of 1982, s. 8,
14 of 1986, s. 6.

President shall consult the Public Service Commission.

112. (1) The law to be applied with respect to pensions benefits that were granted to a person before 12th December, 1963 shall be 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.

Pensions laws
and protection of
pensions rights.

(2) The law to be applied with respect to pensions benefits (not being benefits to which subsection (1) applies) shall -

- (a) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before 12th December, 1963, be the law that was in force on 11th December, 1963; and
- (b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after 11th December, 1963, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in this case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits shall (except to the extent to which, in the case of benefits under the Provident Fund Act, the Widows' and Orphans' Pensions Act, the Asian Widows' and Orphans' Pensions Act and the Asian Officers' Family Pensions Act or under any law amending or replacing any of those Acts, they are a charge on a fund established by any of those Acts or by any such law and have been duly paid out of that fund to the person or authority to whom payment is due) be charged upon the Consolidated Fund.

Cap. 191,
Cap. 192.
Cap. 193.
Cap. 194.

(5) All sums that, under any of the Acts referred to in subsection (4) or under any law amending or replacing any of those Acts, are to be paid by the Government of Kenya into a fund established by any of those Acts or by any such law or are otherwise to be paid by the Government of Kenya for the purposes of any of those Acts or any such law shall be charged upon the Consolidated Fund.

(6) A person who is entitled to the payment of pensions benefits and who is ordinarily resident outside Kenya may, within a reasonable time after he has received that payment, remit the whole of it (free from

any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Kenya:

Provided that nothing in this subsection shall be construed as preventing -

- (i) the attachment, by order of a court, of a payment or part of a payment to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party to the extent to which that attachment is permitted by the law with respect to pensions benefits that applies in the case of that person; or
- (ii) the imposition of reasonable restrictions as to the manner in which a payment is to be remitted.

(7) In this section “pensions benefits” means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of those persons in respect of that service.

(8) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which those benefits may be granted or in which the grant of those benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

(9) For the purposes of this section -

- (a) an office in any naval, military or air force established by or under any law made by a legislature in Kenya;
- (b) to the extent to which pensions benefits in respect of service in such an office are payable under any of the Acts referred to in subsection (4) or under any law amending or replacing any of those Acts, an office in the service of the East Africa High Commission, the East African Common Services Organization or the East African Community; and
- (c) an office in the service of any of the following bodies (which are bodies that are no longer in existence but in respect of former service in which pensions are payable out of Kenya funds) -

- (i) the Combined Posts and Telegraphs Department of Kenya and Uganda;
- (ii) the Amalgamated Posts and Telegraphs Department of Kenya, Uganda and Tanganyika;
- (iii) the Customs Department (Kenya and Uganda);
- (iv) the Kenya and Uganda Joint Imports Control Organization;
- (v) the Joint Income Tax Department;
- (vi) the Kenya Royal Naval Volunteer Reserve;
- (vii) the Northern Brigade, King's African Rifles;
- (viii) the Zanzibar Branch Audit Office;
- (ix) the following departments of the Conference of East African Governors -

- (a) the Secretariat;
- (b) the British East Africa Meteorological Service;
- (c) the Statistical Section;
- (d) the East African Production and Supply Council;
- (e) the East African War Supplies Board;
- (f) the East African Directorate of Civil Aviation; and
- (g) the Directorate of Training,

shall be regarded as an office in the public service.

113. (1) Where under any law a person or authority has a discretion- Power to withhold pensions, etc.

- (a) to decide whether or not any pensions benefits shall be granted; or
- (b) to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the Public Service Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to a person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the Public Service Commission concurs in his being granted benefits of a smaller amount.

(3) The Public Service Commission shall not concur under subsection (1) or subsection (2) in any action taken on the ground that a person who holds or has held the office of judge of the High Court, judge of any Court of Appeal exercising jurisdiction in Kenya, Attorney-General or Controller and Auditor-General has been guilty of misbehaviour in that office unless he has been removed from that office by reason of his misbehaviour.

(4) Before the Public Service Commission concurs under subsection (1) or subsection (2) in any action taken on the ground that a person who holds or has held any office to which, at the time of the action, section 69 applies has been guilty of misbehaviour in that office, the Public Service Commission shall consult the Judicial Service Commission.

(5) In this section “pensions benefits” means any pensions, compensation, gratuities or other similar allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of those persons in respect of that service.

(6) For the purposes of this section an office shall be regarded as an office in the public service that is by virtue of section 112 (9) regarded as an office in the public service for the purposes of that section.

CHAPTER IX TRUST LAND

Interpretation of
Chapter.

114. (1) Subject to this Chapter, the following descriptions of land are Trust land -

- (a) land which is in the Special Areas (meaning the areas of land the boundaries of which were specified in the First Schedule to the Trust Land Act as in force on 31st May, 1963), and which was on 31st May, 1963 vested in the Trust Land Board by virtue of any law or registered in the name of the

Cap. 288.

Trust Land Board;

- (b) the areas of land that were known before 1st June, 1963 as Special Reserves, Temporary Special Reserves, Special Leasehold Areas and Special Settlement Areas and the boundaries of which were described respectively in the Fourth, Fifth, Sixth and Seventh Schedules to the Crown Lands Ordinance as in force on 31st May, 1963, the areas of land that were on 31st May, 1963 communal reserves by virtue of a declaration under section 58 of that Ordinance, the areas of land referred to in section 59 of that Ordinance as in force on 31st May, 1963 and the areas of land in respect of which a permit to occupy was in force on 31st May, 1963 under section 62 of that Ordinance; and

Cap. 280.

- (c) land situated outside the Nairobi Area (as it was on 12th December, 1964) the freehold title to which is registered in the name of a county council or the freehold title to which is vested in a county council by virtue of an escheat:

Provided that Trust land does not include any estates, interests or rights in or over land situated in the Nairobi Area (as it was on 12th December, 1964) that on 31st May, 1963 were registered in the name of the Trust Land Board under the former Land Registration (Special Areas) Ordinance.

(2) In this Chapter, references to a county council shall, in relation to land within the areas of jurisdiction of the Taveta Area Council, the Pokot Area Council, the Mosop Area Council, the Tinderet Area Council, the Elgeyo Area Council, the Marakwet Area Council, the Baringo Area Council, the Olenguruone Local Council, the Mukogodo Area Council, the Elgon Local Council, and the Kuria Local Council, be construed as references to those councils respectively.

115. (1) All Trust land shall vest in the county council within whose area of jurisdiction it is situated:

Trust land to vest in county councils.

Provided that there shall not vest in any county council by virtue of this subsection -

- (i) any body of water that immediately before 12th December, 1964 was vested in any person or authority in right of the Government of Kenya; or
- (ii) any mineral oils.

(2) Each county council shall hold the Trust land vested in it for

the benefit of the persons ordinarily resident on that land and shall give effect to such rights, interests or other benefits in respect of the land as may, under the African customary law for the time being in force and applicable thereto, be vested in any tribe, group, family or individual:

Provided that no right, interest or other benefit under African customary law shall have effect for the purposes of this subsection so far as it is repugnant to any written law.

(3) Notwithstanding subsection (2), provision may be made by or under an Act of Parliament enabling a person to be granted a right or interest to prospect for minerals or mineral oils on any area of Trust land, or to extract minerals or mineral oils from any such area, and the county council in which the land is vested shall give effect to that right or interest accordingly:

Provided that the total period during which minerals or mineral oils may be prospected for on, or extracted from, any particular area of land by virtue of any grant or grants while the land is not set apart shall not exceed two years.

(4) Subject to this Chapter, provision may be made by or under an Act of Parliament with respect to the administration of Trust land by a county council.

Registration of
individual titles to
Trust land.

116. (1) A county council may, in such manner and subject to such conditions as may be prescribed by or under an Act of Parliament, request that any law to which this subsection applies shall apply to an area of Trust land vested in that county council, and when the title to any parcel of land within that area is registered under any such law otherwise than in the name of the county council it shall cease to be Trust land.

(2) The laws to which subsection (1) applies are -

Cap. 283,
Cap. 284.

- (a) the Land Consolidation Act and the Land Adjudication Act; and
- (b) any other law permitting the registration of individual titles to estates, interests or rights in or over land that, immediately before registration, is Trust land (except so far as the law permits the registration of estates, interests or rights vested in persons or authorities for whose use and occupation the land has been set apart under this Chapter).

Setting apart of Trust
land by County
councils.

117. (1) Subject to this section, an Act of Parliament may empower a county council to set apart an area of Trust land vested in

that county council for use and occupation -

- (a) by a public body or authority for public purposes; or
- (b) for the purpose of the prospecting for or the extraction of minerals or mineral oils; or
- (c) by any person or persons for a purpose which in the opinion of that county council is likely to benefit the persons ordinarily resident in that area or any other area of Trust land vested in that county council, either by reason of the use to which the area so set apart is to be put or by reason of the revenue to be derived from rent in respect thereof,

and the Act of Parliament may prescribe the manner in which and the conditions subject to which such setting apart shall be effected.

(2) Where a county council has set apart an area of land in pursuance of this section, any rights, interests or other benefits in respect of that land that were previously vested in a tribe, group, family or individual under African customary law shall be extinguished.

(3) Where a county council has set apart an area of land in pursuance of this section, it may, subject to any law, make grants or dispositions of any estate, interest or right in or over that land or any part of it to any person or authority for whose use and occupation it was set apart.

(4) No setting apart in pursuance of this section shall have effect unless provision is made by the law under which the setting apart takes place for the prompt payment of full compensation to any resident of the land set apart who -

- (a) under the African customary law for the time being in force and applicable to the land, has a right to occupy any part of the land; or
- (b) is, otherwise than in common with all other residents of the land, in some other way prejudicially affected by the setting apart.

(5) No right, interest or other benefit under African customary law shall have effect for the purposes of subsection (4) so far as it is repugnant to any written law.

118. (1) Where the President is satisfied that the use and occupation of an area of Trust land is required for any of the purposes

Setting apart of Trust land for purposes of Government, etc.

specified in subsection (2), he may, after consultation with the county council in which the land is vested, give written notice to that county council that the land is required to be set apart for use and occupation for those purposes; and the land shall then be set apart accordingly and there shall be vested in the Government of Kenya or in such other person or authority referred to in subsection (2) as may be specified in the written notice, such estates, interests or rights in or over that land or any part of it as may be specified in the written notice.

(2) The purposes for which Trust land may be set apart under this section are -

- (a) the purposes of the Government of Kenya;
- (b) the purposes of a body corporate established for public purposes by an Act of Parliament;
- (c) the purposes of a company registered under the law relating to companies in which shares are held by or on behalf of the Government of Kenya;
- (d) the purpose of the prospecting for or the extraction of minerals or mineral oils.

(3) This section shall apply to land that has already been set apart in pursuance of section 117 as it applies to other land, and in that case a setting apart under this section shall extinguish any estate, interest or right in or over the land or any part thereof that may be vested in any person or authority in consequence of the setting apart under that section, but section 75 shall apply in relation to the setting apart under this section as if it were a compulsory acquisition by the Government of Kenya under an Act of Parliament of the estate, interest or right so extinguished.

(4) Where land is set apart under this section -

- (a) any rights, interests or other benefits in respect of that land that were previously vested in any tribe, group, family or individual under African customary law shall be extinguished; and
- (b) the Government of Kenya shall make prompt payment of full compensation for the setting apart to such persons as under section 117 (4) are entitled to compensation when land is set apart in pursuance of that section.

(5) Subject to this section, Parliament may prescribe the manner

in which and the conditions subject to which a setting apart under this section shall be effected.

119. Where the President is satisfied that any land that has been set apart under section 118 is no longer required for any of the purposes specified in that section, the President shall in writing so notify the county council in whose area of jurisdiction the land is situated, and thereupon the setting apart shall cease to have effect and any estate, interest or right vested in any person or authority in consequence of the setting apart shall be extinguished and (without prejudice to the subsequent making of a further setting apart under any provision of this Chapter) the land shall again be held by the county council in accordance with section 115:

Land no longer required for purposes of Government, etc.

Provided that, where an estate, interest or right that is vested in a person or authority other than the Government of Kenya is extinguished in pursuance of this section, section 75 (except paragraphs (a) and (b) of subsection (1) thereof) shall apply to that extinguishment as if it were a compulsory acquisition by the Government of Kenya under an Act of Parliament of the estate, interest or right so extinguished.

120. (1) Where a person in whom there is vested an estate, interest or right in or over land to which this section applies dies intestate and without heirs, that estate, interest or right shall escheat to the county council in whose area of jurisdiction the land is situated.

Escheat of rights in former Trust land.

(2) Where a company in which there is vested any estate, interest or right in or over land and to which this section applies is dissolved, then, except so far as provision is made by the law relating to companies for the vesting of that estate, interest or right in some other person or authority, it shall escheat as if it were vested in a person who dies intestate and without heirs.

(3) The land to which this section applies is the land, other than land that is situated in the Nairobi Area (as it was on 12th December, 1964), that is specified in paragraphs (a), (b) and (c) of section 114 (1).

CHAPTER X GENERAL

121. (1) A person who is appointed, elected or otherwise selected to an office established by or under this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed, elected or otherwise selected:

Resignations.

Provided that -

- (i) the resignation of a person from the office of President shall be addressed to the National Assembly;
- (ii) the resignation of a person from the office of Speaker or Deputy Speaker of the National Assembly shall be addressed to the Assembly;
- (iii) the resignation of a person from the office of member of the National Assembly or from the office of chairman or member of a committee of the National Assembly shall be addressed to the Speaker of the Assembly.

(2) The resignation of a person from an office as aforesaid shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or a person authorized by that person or authority to receive it.

Reappointments
and concurrent
appointments

122. (1) Where a person has vacated an office established by or under this Constitution, he may, if qualified, again be appointed, elected or otherwise selected to hold that office in accordance with this Constitution.

(2) Where this Constitution vests in a person or authority the power to make an appointment to an office (other than the office of Vice-President or Minister), a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

Interpretation.
7 of 1982, s. 9,
7 of 1984, s. 6,
12 of 1991, s. 7,
6 of 1992, s. 11.

123. (1) In this Constitution, unless the context otherwise requires-

“the Commonwealth” means Kenya, a country to which section 95 applies and a dependency of any such country;

“district” means one of the districts into which Kenya is divided in the manner prescribed by an Act of Parliament;

“the East African Community” means the East African Community established by Article I of the Treaty for East African Co-operation signed on 6th June, 1967, and includes the corporations specified in Article 71 of that Treaty and the East African Development

Bank established by Article 21 of that Treaty;

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

“Kenya” means the territory comprised in Kenya on 12th December, 1963 and the territorial waters of Kenya as for the time being defined by an Act of Parliament;

“local authority” means a municipal, county, town or urban council, or a council for any other area, established by or under an Act of Parliament;

“oath” includes affirmation;

“the oath of allegiance” means an oath of allegiance as may be prescribed by Parliament;

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

“political party” means a political party which is duly registered under any law which requires political parties to be registered, and which has complied with the requirements of any law as to the constitution or rules of political parties nominating candidates for the National Assembly;

“province” means one of the provinces into which Kenya is divided in the manner prescribed by an Act of Parliament;

“public officer” means a person holding or acting in an office in the public service;

“the public service” includes the public service at any time before 12th December, 1963;

“session” means the period beginning when the National Assembly first sits after 11th December, 1963 or after Parliament is prorogued or dissolved at any time and ending when Parliament is prorogued or is dissolved without having been prorogued;

“sitting” means, in relation to the National Assembly, a period during which the Assembly is sitting without adjournment and includes any period during which it is in committee;

“subordinate court” means a court of law in Kenya other than -

- (a) the High Court;
- (b) a court having jurisdiction to hear appeals from the High Court; or
- (c) a court-martial;

“writing” includes printing and any other mode of reproducing words in a visible form.

(2) Except where the context otherwise requires, any powers conferred upon Parliament by this Constitution to establish, provide for or prescribe any matter or thing shall be exercisable by Act of Parliament.

(3) For the purposes of this Constitution, a person shall not be regarded as holding an office by reason only of the fact that he is in receipt of a pension or other similar allowance.

(4) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including, to the extent of his authority, a reference to any person for the time being authorized to exercise the functions of that office.

(5) Where this Constitution confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion arises.

(6) Subject to this Constitution, any provision in this Constitution that vests in a person or authority the power to remove a public officer from his office shall be without prejudice to the power of a person or authority to abolish an office or to any law providing for the compulsory retirement of public officers generally or any class of public officers on attaining an age specified therein.

(7) Where this Constitution vests in a person or authority the power to appoint a person to act in or to exercise the functions of an office if the holder thereof is himself unable to exercise those functions, no such appointment shall be called in question on the grounds that the holder of the office was not unable to exercise those functions.

(8) No provision of this Constitution that a person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court from exercising jurisdiction in relation to any question whether that person or authority has exercised those

functions in accordance with this Constitution or any other law.

(9) In this Constitution, unless the context otherwise requires -

- (a) words importing the masculine gender shall include females;
- (b) words in the singular shall include the plural, and words in the plural shall include the singular.

(10) Where an order, regulation or rule, or any amendment or revocation thereof, made under a power conferred by this Constitution comes into operation on a particular day, it shall come into operation at the beginning of that day.

(11) Where a power is conferred by this Constitution to make an order, regulation or rule or pass a resolution or give a direction or make a declaration or designation, the power shall be construed as including the power, exercisable in the same manner and subject to the same conditions, if any, to amend or revoke the order, regulation, rule, resolution, direction, declaration or designation.

(12) A reference in this Constitution to a law made before 12th December, 1963 shall, unless the context otherwise requires, be construed as a reference to that law as it had effect on 11th December, 1963.

(13) A reference in this Constitution to a law that amends or replaces another law shall be construed as including a reference to a law that modifies, re-enacts, with or without amendment or modification, or makes different provision in place of that other law.

CHAPTER XI TRANSITORY

124. This Chapter shall have effect notwithstanding the foregoing provisions of this Constitution, and accordingly, if any such provision is inconsistent with a provision of this Chapter, the provision of this Chapter shall prevail.

Effect of Chapter.

125. (1) This section shall have effect for the purpose of enabling an officer to whom this section applies or his personal representatives to appeal against any of the following decisions -

Appeals in respect of certain decisions affecting pensions benefits.

- (a) a decision of the Public Service Commission to give such concurrence as is required by section 113 (1) or (2) in relation to the refusal, withholding, reduction in amount or

suspending of any pensions benefits in respect of such an officer's service as a public officer;

- (b) a decision, whether of a Commission established by this Constitution or some other person or authority, to remove such an officer from office if the consequence of the removal is that any pensions benefits cannot be granted in respect of the officer's service as a public officer; or
- (c) a decision, whether of a Commission established by this Constitution or some other person or authority, to take some other disciplinary action in relation to such an officer if the consequence of the action is, or in the opinion of the Commission or other person or authority taking the decision might be, to reduce the amount of any pensions benefits that may be granted in respect of the officer's service as a public officer.

(2) In the following provisions of this section, references to the Commission shall be construed -

- (a) in relation to a decision referred to in subsection (1) (a), as references to the Public Service Commission;
- (b) in relation to a decision referred to in subsection (1) (b) or (c), being a decision taken by a Commission established by this Constitution, as references to that Commission; and
- (c) in relation to a decision referred to in subsection (1) (b) or (c), being a decision taken by some other person or authority, as references to that person or authority.

(3) The Commission shall cause to be delivered to the officer concerned, or to his personal representatives, a written notice of a decision referred to in subsection (1), stating the time, not being less than fourteen days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the Commission for the case to be referred to an Appeals Board.

(4) If application is duly made within the time stated in the notice, the Commission shall notify the President in writing of that application and thereupon the President shall appoint an Appeals Board consisting of-

- (a) one member, who shall not be a member of the Commission, selected by the President;

- (b) one member selected by an association representative of public officers or by a professional body, nominated in either case by the applicant; and
- (c) one member selected by the two other members jointly (or, in default of agreement between those members, by the Judicial Service Commission) who shall be the chairman of the Board.

(5) The Appeals Board shall inquire into the facts of the case, and for that purpose -

- (a) shall hear the applicant if he so requests in writing and shall consider any representations that he wishes to make in writing;
- (b) may hear any other person who, in the opinion of the Board, is able to give the Board information on the case; and
- (c) shall have access to and shall consider all documents that were available to the Commission and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the Commission.

(6) When the Appeals Board has completed its consideration of the case, then -

- (a) if the decision that is the subject of the reference to the Board is a decision referred to in subsection (1) (a), the Board shall advise the Commission whether the decision should be affirmed, reversed or modified and the Commission shall act in accordance with that advice; and
- (b) if the decision that is the subject of the reference to the Board is a decision referred to in subsection (1) (b) or (c), the Board shall not have power to advise the Commission to affirm, reverse or modify the decision but -
 - (i) where the officer has been removed from office the Board may direct that there shall be granted all or any part of the pensions benefits that, under any law, might have been granted in respect of his service as a public officer if he had retired voluntarily at the date of his removal and may direct that any law with respect to pensions benefits shall in any other respect have effect as if he had so retired; and

- (ii) where some other disciplinary action has been taken in relation to the officer the Board may direct that there shall be adopted with respect to the calculation of any pensions benefits that, under any law, may be granted in respect of his service as a public officer such measures as the Board may specify in order to off-set all or any part of the reduction in the amount of the benefits that, in the opinion of the Board, would or might otherwise be a consequence of the disciplinary action,

and any direction given by the Board under this paragraph shall be complied with notwithstanding the provisions of any other law.

(7) In this section the expression “pensions benefits” has the meaning assigned to it in section 113.

(8) This section applies to an officer who holds a pensionable office in the public service and-

- (a) is designated under the Overseas Service Aid Scheme; or
- (b) is a member of Her Majesty’s Overseas Civil Service or Her Majesty’s Overseas Judiciary; or
- (c) whose conditions of service include an entitlement to free passages from East Africa for the purpose of leave of absence, other than sabbatical leave, upon the completion of a tour of duty.

Compulsory
retirement to
facilitate appointment
of local candidates

126. (1) If the President so requests, the authorities having power to make appointments in any branch of the public service shall consider and report to the President whether there are more candidates belonging to Kenya (hereinafter referred to as “local candidates”) who are suitably qualified for appointment to, or promotion in, that branch than there are vacancies in that branch that could appropriately be filled by the local candidates; if those authorities report to the President that such is the case, the authority having power to remove from office persons holding office in that branch (in this subsection and in subsection (2) referred to as “the nominating authority”) shall, if so requested by the President, select officers to whom this section applies who are serving in that branch and whose retirement would, in the opinion of the nominating authority, cause vacancies that could appropriately be filled by such suitably qualified local candidates as are available and fit for appointment and inform the President of the number of officers so selected; if the President specifies a number of officers to be called upon to vacate their appointments (not exceeding the number of officers

so selected), the nominating authority shall nominate that number of officers from among the officers so selected and the provisions of subsections (2), (3), and (4) shall apply in the case of any officer so nominated.

(2) The nominating authority shall report the name of the officer to the chairman of the Public Service Commission who in turn shall circulate that name to the authority having power to make appointments in any branch of the public service in which the officer is eligible for appointment; and each such authority shall then consider whether there is any vacancy to which it is willing to appoint the officer.

(3) If an authority indicates to the chairman of the Public Service Commission that it is willing to appoint the officer to fill a vacancy the officer shall be so informed and that appointment shall be made, but without prejudice to the right of the officer to retire voluntarily from the public service in the manner provided by any law:

Provided that where more than one authority is willing to appoint the officer to fill a vacancy, the Public Service Commission shall decide which vacancy he shall be appointed to fill.

(4) If no authority is willing to appoint the officer to fill a vacancy, the chairman of the Public Service Commission, shall by notice in writing so inform him and require him to retire from the public service, and he shall retire accordingly.

(5) A notice given under subsection (4) requiring an officer to retire from the public service shall-

- (a) in the case of an officer who, when he receives the notice, is on leave of absence upon the completion of a tour of duty, specify the date on which he shall so retire which shall be not earlier than the expiration of six months from the date when he receives the notice or, if his leave of absence would otherwise expire later, when it would otherwise expire; and
- (b) in the case of any other officer, specify the period, which shall be not less than six months from the date when he receives the notice, at the expiration of which he shall proceed upon leave of absence pending retirement:

Provided that the officer may agree to the notice specifying an earlier date or, as the case may be, a shorter period.

(6) In determining the date or the period to be specified in

pursuance of subsection (5) in a notice given to an officer, the chairman of the Public Service Commission shall act in accordance with the advice of the authority that nominated that officer under subsection (1).

(7) This section applies to an officer who holds a pensionable office in the public service and -

- (a) is designated under the Overseas Service Aid Scheme; or
- (b) is a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary; or
- (c) whose conditions of service include an entitlement to free passages from East Africa for the purpose of leave of absence, other than sabbatical leave, upon the completion of a tour of duty; or
- (d) is an overseas officer who, after 11th December, 1963, is appointed to any office in the public service (otherwise than on promotion or transfer from another such office) and who is notified at the time of his appointment that this section will apply to him.

(8) In this section "overseas officer" means an officer in the public service who is, either individually or as a member of a class, declared by the appropriate Commission to be an overseas officer, and "the appropriate Commission" means -

- (a) in relation to an officer who can be removed from his office by the Judicial Service Commission, that Commission; and
- (b) in any other case, the Public Service Commission.

SUBSIDIARY LEGISLATION

Orders under section 35 (6)

These are of temporary duration and are not reproduced here.

Rules under section 75 (3)

These apply to the Land Acquisition Act (Cap. 295) and are included in that Chapter.

Orders under section 85 (1)

THE CONSTITUTION (PUBLIC SECURITY) ORDER

1. This Order may be cited as the Constitution (Public Security) Order.

2. The following provisions of Part III of the Preservation of Public Security Act are brought into operation generally, namely subsection (1) of section 4 so far as it relates to the matters specified in paragraph (b) of subsection (2) of that section.

L.N. 222/1978,
Cap. 57.
10 of 1997.

THE CONSTITUTION OF KENYA

IN EXERCISE of the powers conferred by section 65(3) and section 84(6) of the Constitution of Kenya, the Chief Justice makes the following Rules:-

**THE CONSTITUTION OF KENYA (SUPERVISORY
JURISDICTION AND PROTECTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS OF
THE INDIVIDUAL) HIGH COURT PRACTICE AND
PROCEDURE RULES, 2006.**

Citation.

1. These Rules may be cited as the Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) High Court Practice and Procedure Rules, 2006.

PART I - SUPERVISORY JURISDICTION

Originating notice of
motion.

2. Unless a matter is specifically provided for under section 67 or section 84 of the Constitution or any other law, a party who wishes to invoke the jurisdiction of the High Court under section 65 of the Constitution, shall do so by way of Originating Notice of Motion (hereinafter referred to as “the Motion”)

Form of Motion.

3. The Motion shall be as set out in **Form A** in the Schedule to these Rules.

Content of Motion.

4. The Motion shall state the concise grounds for the application, and shall be supported by the applicant’s affidavit.

Motion to be placed
before judge.

5. Upon the filing of the Motion, the Registrar shall place the motion before a judge for directions within seven days from the date of filing.

Court may move on
its own motion.

6. The High Court may in exercise of the powers conferred by Section 65(2) of the Constitution move on its own motion.

PART II: INTERPRETATIVE JURISDICTION

Reference to the
High Court by
subordinate court on
its own

7. Where a question as to the interpretation of the Constitution arises in proceedings in a subordinate court and the court is of the opinion that the question involves a substantial question of law, the

court may refer the question to the High Court in **Form B** set out in the Schedule to these rules. **LN No 6 of 2006** motion.

8. Where a party to proceedings in a subordinate court alleges that there is a question as to the interpretation of the Constitution and the court is of the opinion that it involves a substantial question of law, the party shall informally request the presiding officer of that court to refer the question to the High Court and the court shall do so in **Form C** in the Schedule to these rules. Reference to the High Court by subordinate court upon request by parties.

9. The court shall in either case state concisely the issues and its opinion in **Form B** and **Form C** and shall within fourteen days refer the question to the High Court. Subordinate court to state issues and its opinion.

10. Upon receipt of the reference, the Registrar shall within seven days place the matter before the Chief Justice to constitute a bench in accordance with the provisions of section 67(3) of the Constitution, unless there is an interlocutory matter in the reference, in which case the Registrar shall place the matter before a judge for determination. Registrar to place reference before Chief Justice or judge.

PART III - ENFORCEMENT JURISDICTION

11. Where contravention of any fundamental rights and freedoms of an individual under sections 70 to 83 (inclusive) of the Constitution is alleged or is apprehended an application shall be made directly to the High Court. Contravention of fundamental rights and freedoms.

12. An application under rule 11 shall be made by way of a petition as set out in **Form D** in the Schedule to these Rules. Form of petition.

13. The petition under rule 12 shall be supported by an affidavit. Petition to be supported by affidavit.

14. If a party wishes to rely on any document, the document shall be annexed to the supporting affidavit. Documents to be annexed to affidavit.

15. The petition shall, in a criminal case, be served on the Attorney-General and in a civil case, on the respondent, within seven days of filing. Petition to be served.

16. The Attorney-General or the respondent, as the case may be, shall within fourteen days of service of the petition, respond by way of a replying affidavit and if any document is relied upon, it shall be annexed to the replying affidavit. Replying affidavit.

17. A petitioner who wishes to file a further affidavit shall do so within seven days of service of the replying affidavit. Further affidavit.

LN No 6 of 2006

- Fixing Petition for hearing by the court. 18. (1) Within seven days from the date of service of the response or further affidavit, whichever is the later, the Registrar shall place the matter before a judge for fixing a hearing date or directions.
- Written submissions. (2) The Judge may in giving directions require that parties file and serve written submissions.
- Fixing Petition for hearing by petitioner. 19. Where the Attorney-General or the respondent, as the case may be, fails to respond within the time stipulated in rule 16, the petitioner may set down the matter for hearing and determination.
- Conservatory or interim Orders. 20. Notwithstanding anything contained in these Rules, a judge before whom a petition under rule 12 is presented may hear and determine an application for conservatory or interim orders.
- Application to be by chamber summons. 21. An application under rule 20 shall be by chamber summons supported by an affidavit and may be heard *ex parte*.
- Setting aside. 22. A person affected by an order under rule 20 may apply to set aside such order.
- Constitutional issues in a matter before the High Court 23. Where a constitutional issue arises in a matter before the High Court, the court seized of the matter may treat such issue as a preliminary point and shall hear and determine the same.
- Reference to the High Court by subordinate court on its own motion 24. Where in proceedings in a subordinate court a question arises as to the contravention of any of the provisions of sections 70 to 83 (inclusive) of the Constitution, and the presiding officer is of the opinion that the question raised is not frivolous or vexatious, he may refer the question to the High Court in **Form E** set out in the Schedule to these Rules.
- Informal application to the presiding officer. 25. Where a party to proceedings in a subordinate court alleges contravention of his fundamental rights or freedoms under sections 70 to 83 (inclusive) of the Constitution in relation to himself, he shall apply informally to the presiding officer during the pendency of the proceedings that a reference be made to the High Court to determine the question of the alleged violation.
- Court to frame question. 26. If the presiding officer is satisfied that there is merit in the allegation made under rule 24, and that it has not been made frivolously or vexatiously, he shall grant the application whereupon the court shall frame the question to be determined by the High Court in **Form F** set out in the Schedule to these Rules.

27. As soon as is practicable, and in any case not later than twenty one days from the date of framing the question, the subordinate court shall refer the matter to the High Court. LN No 6 of 2006
Subordinate court to refer matter to High Court.
28. The Registrar shall within seven days of receipt of the reference under rule 25 place the matter before a judge to fix a hearing date or give further directions. Registrar to place matter before judge.
29. The High Court may on an application by a party order that all further proceedings before the subordinate court shall be stayed pending the hearing and determination of the reference. Stay of proceedings.
30. At the hearing of a reference only the questions framed in **Form F** shall be raised. Question for determination.
31. Where a party intends to rely on any reported or unreported case, or to quote from any book, he shall lodge with the court, and serve copies of the reported or unreported case or the quotation, as the case may be, two days before the hearing. Authorities for the hearing
32. The hearing of all applications and references to the High Court shall be given priority over all other cases and shall be heard and determined expeditiously. Applications and references to be given priority.
33. The High Court may upon an informal application immediately following the delivery of judgment or ruling grant a stay for fourteen days pending appeal. Stay pending appeal.
34. An appeal from the decision of the High Court to the Court of Appeal under section 84(7) of the Constitution shall be governed by the Court of Appeal Rules. Court of Appeal Rules to apply.
35. The Constitution of Kenya (Protection of Fundamental Rights and Freedoms of the Individual) Practice and Procedure Rules, 2001 are revoked. Revocation of L.N. 133 of 2001.
36. (1) Any matter currently pending in court under Legal Notice No. 133 of 2001 shall be continued under these rules. Transitional Provisions.
(2) Any party affected by the operation of Legal Notice No. 133 of 2001 shall be at liberty to apply to the High Court.

Made on the 16th February, 2006.

J.E.Gicheru.
Chief Justice

LN No 6 of 2006
(r.3.)

SCHEDULE

Form A

IN THE HIGH COURT OF KENYA AT
CONSTITUTIONAL APPLICATION NO. OF

IN THE MATTER OF AN APPLICATION UNDER SECTION 65

BETWEEN

A.B. (*insert names of parties*) APPLICANT
AND
C.D. (*insert names of parties*)RESPONDENT

ORIGINATING NOTICE OF MOTION

TAKE NOTICE that on the day of 20.....at
O'clock

in the forenoon or so soon thereafter as can be heard, the above
applicant/counsel for the applicant will move the Court for an
Order that

State the concise grounds.....

The application is supported by the annexed affidavit of
.....
sworn on theday of20.....

The address for service of the applicant is.....

DATED thisday of20.....

SIGNEDApplicant/Advocate for
applicant

DRAWN AND FILED BY:

TO BE SERVED UPON:
Form B

LN No 6 of 2006

IN THE HIGH COURT OF KENYA AT
 CONSTITUTIONAL REFERENCE NO. OF

(r. 7)

IN THE MATTER OF SECTION 67

IN THE MATTER OF CRIMINAL/CIVIL CASE NO OF.....
 ATCOURT

BETWEEN

A.B. (*insert names of parties*) APPLICANT

AND

C.D. (*insert names of parties*)RESPONDENT

To: The High Court of Kenya;

Question(s) for Interpretation of the Constitution by the High Court
 pursuant to Section 67 of the Constitution.

1. On theday of20.... a question(s) as to the interpretation of the Constitution arose.
2. (*briefly set out the opinion of the subordinate court on the point of law raised*)
3. (*briefly set out the facts necessary to enable the High Court to properly decide the point of law raised*)
4. The question(s) for the decision of the High Court is(*state the question(s)*).

DATED thisday of20.....

Magistrate/Presiding Officer

LN No 6 of 2006
(r. 8)

Form C

IN THE HIGH COURT OF KENYA AT
CONSTITUTIONAL REFERENCE NO. OF

IN THE MATTER OF SECTION 67

IN THE MATTER OF CRIMINAL/CIVIL CASE NO OF.....
ATCOURT

BETWEEN

A.B. (*insert names of parties*) APPLICANT
AND
C.D. (*insert names of parties*)RESPONDENT

To: The High Court of Kenya;

Question(s) for Interpretation of the Constitution by the High Court pursuant to Section 67(1) of the Constitution.

1. On theday of20.... a question(s) as to the interpretation of the Constitution arose.
2. The parties contend as follows (*set out, in consecutive paragraphs the specific issues contended by each of the parties referring where necessary to Acts or decided cases.*)
3. (*briefly set out the opinion of the subordinate court on the point of law raised*)
4. (*briefly set out the facts necessary to enable the High Court to properly decide the point(s) of law raised*)
5. The question(s) for the decision of the High Court is (*state the question(s).*)

DATED thisday of20.....

Magistrate/Presiding Officer

Form D

IN THE HIGH COURT OF KENYA AT
 PETITION NO. OF20....

IN THE MATTER OF SECTION 84(1)

IN THE MATTER OF ALLEGED CONTRAVENTION OF
 FUNDAMENTAL RIGHTS AND FREEDOMS UNDER
 SECTION (*insert section*)

BETWEEN

A.B. (*insert names of parties*) PETITIONER

AND

C.D. (*insert names of parties*)RESPONDENT

TO:

The High Court of Kenya

The humble petition of A.B (*insert names of petitioner*) of
 in the Republic of Kenya is as follows-
 (*the allegations upon which the petitioner(s)*
rely must be concisely set out, in consecutively numbered
paragraphs)

Your Petitioner(s) therefore humbly pray(s) that
 (*set out exact Order(s) sought*)

Or that such other Order(s) as this Honourable Court shall deem
 just.

DATED at thisday of20....

Signed Petitioner/Advocate for the Petitioner

DRAWN & FILED BY:

TO BE SERVED UPON:

LN No 6 of 2006
(r. 24)

Form E

IN THE HIGH COURT OF KENYA AT
CONSTITUTIONAL REFERENCE NO. OF

IN THE MATTER OF SECTION 84(3)

IN THE MATTER OF ALLEGED CONTRAVENTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER
SECTION (*insert section*)
IN THE MATTER OF CRIMINAL/ CIVIL CASE NO. OF
AT COURT

BETWEEN

A.B. (*insert names of parties*) APPLICANT

AND

C.D. (*insert names of parties*)RESPONDENT

To The High Court of Kenya;

Question(s) for determination on the alleged contravention
of Section(s) of the Constitution of Kenya.

1. On theday of20.... a question(s) arose as to the
contravention of section(s)of the Constitution.
2. (*briefly set out the opinion of the subordinate court on the
question raised*)
3. (*briefly set out the facts necessary to enable the High Court to properly
decide the question(s) raised.*)
4. The question(s) for determination by the High Court is(*state
the question(s).*)

DATED thisday of20.....

Magistrate/ Presiding Officer

Form F

IN THE HIGH COURT OF KENYA AT
CONSTITUTIONAL REFERENCE NO. OF

IN THE MATTER OF SECTION 84(3)

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER
SECTION (*insert section*)IN THE MATTER OF CRIMINAL/CIVIL CASE NO OF.....
ATCOURT

BETWEEN

A.B. (*insert names of parties*) APPLICANT

AND

C.D. (*insert names of parties*)RESPONDENT

To: The High Court of Kenya;

Question(s) for determination of the alleged contravention of
Section(s) of the Constitution of Kenya.

1. On theday of20.... a question(s) arose as to the contravention of section(s) of the Constitution.
2. The parties contend as follows (*set out, in consecutive paragraphs the specific issues contended by each of the parties referring where necessary to Acts or decided cases.*)
3. (*briefly set out the opinion of the subordinate court on the question raised*)
4. (*briefly set out the facts necessary to enable the High Court to properly decide the question(s) raised*).
5. The question(s) for determination of the High Court is(*state the question(s)*).

DATED thisday of20.....

Magistrate/Presiding Officer