

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

Comprising the recommendations agreed upon as a result of the deliberations of the Parliamentary Select Committee on the Review of the Constitution in accordance with section 32(1) (c) of the Constitution of Kenya Review Act, 2008 and presented to the Committee of Experts pursuant to section 33(1) of the Constitution of Kenya Review Act, 2008 on 29<sup>th</sup> January 2010.

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**ARRANGEMENT OF ARTICLES**

**PREAMBLE**

**CHAPTER ONE**

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

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

**CHAPTER TWO**

**THE REPUBLIC**

- 4—Declaration of the Republic
- 5—Territory
- 6—Devolution
- 7—National and official languages
- 8—State and religion
- 9—National symbols and days
- 10—National values

**CHAPTER THREE**

**CITIZENSHIP**

- 11—General principles
- 12—Retention and acquisition of citizenship
- 13—Citizenship by birth
- 14—Citizenship by registration
- 15—Dual citizenship
- 16—Deprivation of citizenship
- 17—Legislation on citizenship

**CHAPTER FOUR**

**THE BILL OF RIGHTS**

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

- 18—Rights and fundamental freedoms
- 19—Application of the Bill of Rights
- 20—Implementation of rights and fundamental freedoms
- 21—Enforcement of the Bill of Rights
- 22—Authority of the court to uphold and enforce the Bill of Rights
- 23—Limitation of rights or fundamental freedoms
- 24—Rights and freedoms that may not be limited

**Part 2—Rights and fundamental freedoms**

- 25—Right to life
- 26—Equality and freedom from discrimination
- 27—Human dignity
- 28—Freedom and security of the person
- 29—Slavery, servitude and forced labour
- 30—Privacy
- 31—Freedom of conscience, religion, belief and opinion
- 32—Freedom of expression
- 33—Freedom of the media
- 34—Freedom of association
- 35—Assembly, demonstration, picketing and petition
- 36—Political rights
- 37—Freedom of movement and residence
- 38—Protection of right to property
- 39—Labour relations
- 40—Economic and social rights
- 41—Environment
- 42—Language and culture
- 43—Consumer rights
- 44—Access to Justice
- 45—Rights of arrested persons
- 46—Fair hearing
- 47—Rights of persons held in custody
- 48—Family
- 49—Marginalized and vulnerable groups

**Part 3— State of emergency**

- 50—State of emergency

**Part 4—Equality Commission**

- 51—Equality Commission

**CHAPTER FIVE**

**LAND AND ENVIRONMENT**

**Part 1—Land**

- 52—Principles of land policy
- 53—Classification of land
- 54—Public land
- 55—Community land
- 56—Private land
- 57—Landholding by non-citizens
- 58—Regulation of land use and property
- 59—National Land Commission
- 60—Legislation on land

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**Part 2—Environment and natural resources**

- 61—Obligations in relation to the environment
- 62—Protection of the environment
- 63—Enforcement of environmental rights
- 64—Agreements relating to natural resources

**CHAPTER SIX**

**LEADERSHIP AND INTEGRITY**

- 65—Responsibilities of leadership
- 66—Oath of office
- 67—Conduct of State officers
- 68—Citizenship and leadership
- 69—Legislation on leadership

**CHAPTER SEVEN**

**REPRESENTATION OF THE PEOPLE**

**Part 1—Electoral System and Process**

- 70—General principles for the electoral system and process
- 71— Legislation on elections
- 72—Qualifications as a voter
- 73—Candidates for election to comply with code of conduct
- 74—Independent candidates
- 75—Electoral disputes

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

- 76—Independent Electoral and Boundaries Commission
- 77—Delimitation of electoral units

**Part 3—Political Parties**

- 78—Basic requirements for political parties
- 79—Cessation of membership of a political party
- 80—Commissioner of Political Parties
- 81—Regulation of political parties
- 82—Political Parties Fund
- 83—Application of the Fund
- 84—Political parties and the media

**CHAPTER EIGHT**

**THE LEGISLATURE**

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

- 85—Establishment of Parliament

- 86—Role of Parliament
- 87—Role of Senate
- 88—Role of the National Assembly

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

- 89—Membership of the Senate
- 90—Membership of the National Assembly
- 91—Qualifications and disqualifications for election as member
- 92—Promotion of representation of marginalized groups
- 93—Election of members of Parliament
- 94—Vacation of office of member of Parliament
- 95—Right of recall
- 96—Determination of questions of membership

## **Part 3—Officers of Parliament**

- 97—Speakers and Deputy Speakers of Parliament
- 98—Presiding in Parliament
- 99—Party leaders
- 100—Clerks and staff of Parliament

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

- 101—Exercise of legislative powers
- 102—Bills not concerning devolved government
- 103—Bills concerning devolved government
- 104—Money Bills
- 105—Presidential assent and referral
- 106—Coming into force of laws
- 107—Right to petition Parliament
- 108—Quorum
- 109—Official language in Parliament
- 110—Voting in Parliament
- 111—Decisions of Senate
- 112—Regulation of procedure
- 113—Power to call for evidence
- 114—Powers, privileges and immunities

## **Part 5—Miscellaneous**

- 115—Seat of Parliament
- 116—Term of Parliament
- 117—Parliamentary Service Commission

## **CHAPTER NINE**

### **THE EXECUTIVE**

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

- 118—Principles of executive authority

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

- 120—Authority of President
- 121—State functions of the President
- 122—Legislative functions of the President
- 123—Exercise of presidential powers during temporary incumbency
- 124—Decisions of the President
- 125—Election of the President
- 126—Qualifications and disqualifications for election as President
- 127—Procedure at presidential election
- 128—Questions as to validity of presidential election
- 129—Assumption of office of President
- 130—Term of office of President
- 131—Protection from legal proceedings
- 132—Removal of President on grounds of incapacity
- 133—Removal of President by impeachment
- 134—Vacancy in the office of President
- 135—Prerogative of mercy
- 136—Office of Deputy President
- 137—Vacancy in the office of Deputy President
- 138—Functions of the Deputy President
- 139—Death before assuming office
- 140—Removal of Deputy President
- 141—Remuneration and benefits of President and Deputy President

**Part 3—The Cabinet**

- 142—Cabinet
- 143—Decisions, responsibility and accountability of the Cabinet
- 144—Secretary to the Cabinet
- 145—Principal Secretaries
- 146—Appointment and dismissal of Principal Secretaries

**Part 4—Other Offices**

- 147—Attorney-General
- 148—Director of Public Prosecutions
- 149—Removal and resignation of Director of Public Prosecutions

**CHAPTER TEN**

**JUDICIARY**

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

- 150—Judicial authority
- 151—Independence of the Judiciary
- 152—Judicial offices and officers

153—System of courts

**Part 2—Superior Courts**

154—Supreme Court

155—Court of Appeal

156—High Court

157—Appointment of the Chief Justice and other judges

158—Tenure of office of the Chief Justice and other judges

159—Removal from office

**Part 3—Subordinate Courts**

160—Subordinate courts

161—Kadhis' Courts

**Part 4— Judicial Service Commission**

162—Establishment of the Judicial Service Commission

163—Functions of the Judicial Service Commission

164—Funding for the Judiciary

**CHAPTER ELEVEEN**

**DEVOLVED GOVERNMENT**

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

165—Objects of devolution

166—Principles of devolved government

**Part 2—County governments**

167—County governments

168— Support for County government

169—Members of county assembly

170—County executive committees

171—Election of county governor and deputy county governor

172—Election of mayor and deputy mayor of Nairobi

173—Functions of county executive committees

174—Urban areas and cities

175—Legislative authority of county assemblies

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

176—Powers and functions

177—Transfer of powers and functions

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

178— Boundaries of counties

**Part 5—Relationship between governments**

179—Co-operation between governments at the two levels

180—Conflict of laws

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

181—Vote of no confidence in county executive

182—Suspension of a county government

**Part 7—General**

183—Qualifications for election as member of county assembly

184—Vacation of office of member of county assembly

185—Power to summon witnesses

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

187—Gender balance and diversity

188—Government during transition

189—Publication of laws

190—Provision to be made by Act of Parliament

**CHAPTER TWELVE**

**PUBLIC FINANCE**

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

191—Principles of public finance

192—Equitable division of national funds

193—Criteria for equitable share and other financial laws

194—Consultation on financial legislation affecting counties

**Part 2—Public Funds**

195—Consolidated Fund and other public funds

196—Revenue Funds for county governments

197—Contingencies Fund

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

198—Power to raise taxes and impose charges

199—Imposition of tax

200—Borrowing by national government

201—Borrowing by counties

202—Loan guarantees by national government

203—Public debt

**Part 4—Revenue Allocation**

204—Revenue allocation

205—Transfer of equitable share

**Part 5—Budgets and spending**

206—Form, content and timing of budgets

207—National annual estimates

208—Appropriations Bills

209—Salaries and Remuneration Commission

210—Powers and functions

211—Remuneration and benefits of certain State officers

212—Procurement of public goods and services

**Part 6—Control of public money**

213—Financial control

214—Controller of Budget

215—Functions of the Controller of Budget

216—Accounts and audit of public entities

217—Auditor-General

218—Powers and functions of Auditor-General

**Part 7—Central Bank of Kenya**

219—Central Bank of Kenya

**CHAPTER THIRTEEN**

**THE PUBLIC SERVICE**

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

220—Values and principles of public service

**Part 2—The Public Service Commission**

221—The Public Service Commission

222—Powers and functions of the Public Service Commission

223—Staffing of county governments

224—Protection of public officers

**Part 3—Teachers Service Commission**

225—Teachers Service Commission

## **CHAPTER FOURTEEN**

### **NATIONAL SECURITY**

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

226—Principles and objects

227—National security organs

228—Establishment of the National Security Council

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

229—Establishment of Defence Forces and Defence Council

#### **Part 3—The National Intelligence Service**

230—Establishment of National Intelligence Service

#### **Part 4—The Kenya Internal Security Service**

231—Establishment of the Kenya Internal Security Service

232—Objects and functions

233—Inspector-General of the Kenya Internal Security Service

234—Kenya Internal Security Service Commission

#### **Part 5—Other Internal Security Services**

235—Other police services

## **CHAPTER FIFTEEN**

### **COMMISSIONS AND INDEPENDENT OFFICES**

236—Application of Chapter

237—Objects of Commissions and independent offices

238—Composition, appointment and terms of office

239—Removal from office

240—General powers

241—Incorporation

242—Legislation

## **CHAPTER SIXTEEN**

### **AMENDMENT OF THE CONSTITUTION**

243—Amendment of the Constitution

244—Amendment by parliamentary initiative

245—Amendment by popular initiative

## CHAPTER SEVENTEEN

### GENERAL PROVISIONS

246—Enforcement of the provisions of the Constitution

247—Construing the Constitution

248—Interpretation

## CHAPTER EIGHTEEN

### TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

249—Consequential legislation

250—Transitional

251—Effective date

252—Repeal

## SCHEDULES

**First Schedule** Counties

**Second Schedule** National symbols

**Third Schedule** National oaths and affirmations

**Fourth Schedule** Distribution of functions between the national government and the county governments

**Fifth Schedule** Legislation to be enacted by Parliament

**Sixth Schedule** Transitional and consequential provisions

## PREAMBLE

We, the people of Kenya—

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

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

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

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

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

**RECOGNIZING** the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law:

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

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

## **GOD BLESS KENYA**

### **CHAPTER ONE**

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

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

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

##### **Supremacy of the Constitution**

2. (1) This Constitution is the supreme law of the Republic and binds all State organs at all levels of government and all persons.
- (2) The validity or legality of this Constitution is not subject to challenge by or before any court or other State organ.

- (3) Any law which is inconsistent with this Constitution, is void to the extent of the inconsistency and any act or omission in contravention of this Constitution is invalid.

### **Defence of the Constitution**

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

## **CHAPTER TWO**

### **THE REPUBLIC**

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

4. (1) Kenya is a sovereign Republic.
- (2) The Republic of Kenya shall be a multi-party democratic state.

#### **Territory**

5. (1) Kenya consists of the territory comprised in Kenya on 12<sup>th</sup> December, 1963, and the territorial waters of Kenya, as for the time being defined by an Act of Parliament.
- (2) An Act of Parliament referred to in clause (1) shall be subject to the same enactment and amendment procedure as an amendment of this Constitution.

#### **Devolution**

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

#### **National and official languages**

7. (1) The national language of the Republic is Kiswahili.
- (2) The official languages of the Republic are Kiswahili and English.

#### **State and religion**

8. There shall be no State religion.

**National symbols and days**

- 9.** (1) The national symbols of the Republic are—
- (a) the national flag;
  - (b) the national anthem;
  - (c) the coat of arms; and
  - (d) the public seal.
- (2) The national symbols are as set out in the Second Schedule.
- (3) Parliament may prescribe and provide for national days and public holidays.

**National values**

- 10.** (1) The national values contained in this Article shall bind all State organs, State officers, public officers and all persons whenever any of them—
- (a) applies or interprets this Constitution;
  - (b) enacts, applies or interprets any law; or
  - (c) makes, or implements public policy decisions.
- (2) The national values include national unity, patriotism, integrity, equality, equity, social justice, inclusiveness, human rights, democracy, good governance and rule of law.

## CHAPTER THREE

### CITIZENSHIP

#### General principles

11. Every citizen is entitled to the rights, privileges and benefits of citizenship, subject to the limits set out in this Constitution.

#### Retention and acquisition of citizenship

12. (1) Every person who was a citizen immediately before the effective date retains the same citizenship status as from that date.

(2) Citizenship may be acquired by birth or registration.

#### Citizenship by birth

13. (1) A person is a citizen if at the date of the person's birth, whether or not the person is born in Kenya, either the mother or the father of the person is a citizen.

(2) Parliament shall by legislation provide for conditions underpin citizenship may be granted to a child found in Kenya who is or appears to be less than eight years of age, and whose nationality and parents are not known, (3) A person who is a Kenyan by birth, and who as a result of acquiring the citizenship of another country ceased to be a Kenyan citizen, is entitled, on application, to regain Kenyan citizenship.

#### Citizenship by registration

14. (1) A person who has been married to a citizen for a period of at least seven years is eligible, on application, to be registered as a citizen.

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

(3) A child who is not a citizen and who is adopted by a citizen is entitled on application, to become a citizen.

(4) Parliament shall by legislation provide for conditions upon which citizenship may be granted to individuals who are citizens of other countries.

### **Dual citizenship**

15. A citizen by birth does not lose citizenship by reason only of acquiring the citizenship of another country.

### **Deprivation of citizenship**

16. A citizen by registration or naturalisation may be deprived of citizenship if—
- (a) the person acquired citizenship by means of fraud, false representation or concealment of any material fact;
  - (b) the 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;
  - (c) within five years after registration or naturalisation, has been convicted of an offence and sentenced to imprisonment for a term of not less than three years; or
  - (d) at any time after registration or naturalisation has been convicted of treason or of an offence on conviction of which a death penalty or a term of imprisonment not less than seven years may be imposed.

### **Legislation on citizenship**

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

## **CHAPTER FOUR**

### **THE BILL OF RIGHTS**

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

### **Rights and fundamental freedoms**

18. The rights and fundamental freedoms set out in this Chapter—
- (a) belong to each individual and are not granted by the State;
  - (b) do not exclude other rights and fundamental freedoms not mentioned in this Chapter, but recognized or conferred by law, except to the extent that they are inconsistent with this Chapter; and

(c) are subject only to the limitations contemplated in this Constitution.

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

- 19.** (1) Every person shall enjoy the rights and fundamental freedoms set out in the Bill of Rights, to the greatest extent consistent with the nature of the right or fundamental freedom.
- (2) When applying a provision of the Bill of Rights a court shall adopt the interpretation that most favours the enforcement of a right or fundamental freedom.

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

- 20.** (1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in this Constitution.
- (2) The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 40.
- (3) All State organs have the responsibility to address the needs of vulnerable groups within society including women, older members of society, persons with disabilities, children, youth and members of minority and marginalized communities.

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

- 21.** (1) A person has the right to institute court proceedings, alleging that a right or fundamental freedom set out in the Bill of Rights has been denied, violated, infringed or threatened.
- (2) The persons who may institute court proceedings in accordance with clause (1) are—
- (a) a person acting in their own interest;
  - (b) a person acting on behalf of another person who cannot act in their own name;
  - (c) a person acting as a member of, or in the interest of, a group or class of persons;
  - (d) a person acting in the public interest; and
  - (e) an association acting in the interest of one or more of its members.
- (3) The Chief Justice shall make rules providing for the court proceedings mentioned in clause (1), which shall satisfy the criteria that—
- (a)
  - (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation;
  - (c) no fee may be charged for commencing proceedings under this Article;

- (d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by technical requirements; and
  - (e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.
- (4) The absence of rules contemplated in clause (3) shall not operate to deny any person the right to initiate a complaint under this Constitution and to have that complaint heard and determined by a court.

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

- 22.(1) The High Court shall have jurisdiction, in accordance with Article 156, to hear applications for redress for a violation of a right or a fundamental freedom set out in the Bill of Rights.
- (2) Parliament shall enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear applications for redress for a contravention of the Bill of Rights.
- (3) In any matter brought before it under Article 21, a court may grant appropriate relief, including—
- (a) a declaration of rights;
  - (b) an injunction;
  - (c) conservatory orders;
  - (d) a declaration of invalidity of any law that infringes the Bill of Rights and is not justified in terms of Article 23;
  - (e) an order for compensation; and
  - (f) orders of judicial review.

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

23. (1) No right or fundamental freedom set out in the Bill of Rights may be limited except—
- (a) by an Act of Parliament; and
  - (b) to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—
    - (i) the nature of the right or fundamental freedom;
    - (ii) the importance of the purpose of the limitation;
    - (iii) the nature and extent of the limitation;
    - (iv) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
    - (v) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

- (2) Despite clause (1), a provision in legislation limiting a right or fundamental freedom —
- (a) is not valid in the case of legislation enacted or amended after the effective date, unless that legislation specifically expresses the intention to limit that right or freedom and the nature and extent of the limitation;
  - (b) shall not be construed as limiting a right or freedom set out in the Bill of Rights unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation; and
  - (c) shall not limit a right or fundamental freedom set out in the Bill of Rights so as to derogate from the core or the essential content of the right.
- (3) Despite clause (1) and (2), a provision in legislation may reasonably limit the application of certain rights or fundamental freedoms in their application to persons serving in the disciplined forces.
- (4) The rights and fundamental freedoms referred to in clause (3) are the rights and freedoms referred to in-
- (a) Article 30;
  - (b) Article 34;
  - (c) Article 35;
  - (d) Article 39;
  - (e) Article 40;
  - (e) Article 45.
- (5) The State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied.
- (6) The provisions of this Chapter on equality shall be qualified to the extent strictly necessary for the application of Muslim law before the Kadhi's courts, to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.
- (7) In this Article, “disciplined forces” means-
- (a) the Kenya Defence Forces;
  - (b) the Kenya Police Service;
  - (c) the Kenya Correctional Service;
  - (d) the Kenya Wildlife Service;
  - (e) the National Youth Service.

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

- 24.** Despite any other provision in this Constitution, there shall be no limitation on the following rights and fundamental freedoms—
- (a) freedom from torture and cruel, inhuman or degrading treatment or punishment;

- (b) freedom from slavery or servitude;
- (c) the right to a fair trial; and
- (d) the right to an order of *habeas corpus*.

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

### **Right to life**

25. (1) Every person has the right to life.

(2) The life of a person begins at conception.

(3) No person shall be deprived of his life intentionally save as may be authorised by this Constitution or any other written law.

(4) Abortion is not permitted unless in the opinion of a registered medical practitioner, the life of the mother is in danger.

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

26. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social spheres.

(3) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

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

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

(6) Any measure taken under clause (5) shall adequately provide for any benefits to be on the basis of genuine need.

### **Human dignity**

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

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

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

- (a) deprived of freedom arbitrarily or without just cause;
- (b) detained without trial, except during a state of emergency in which case the detention is subject to Article 50;
- (c) subjected to any form of violence from either public or private sources;
- (d) subjected to torture, in any manner whether physical or psychological; and
- (e) subjected to corporal punishment or to be treated or punished in a cruel, inhuman or degrading manner.

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

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

### **Privacy**

**30.** Except as may be provided by an Act of Parliament, every person has the right to privacy, which includes the right not to have—

- (a) their person or home or property searched;
- (b) their possessions seized;
- (c) information relating to their family or private affairs unnecessarily required or revealed; or
- (d) the privacy of their communications infringed.

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

- 31.** (1) Every person has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Every person has the right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, observance, including observance of a day of worship, practice or teaching.

### **Freedom of expression**

- 32.** (1) Every person has the right to freedom of expression, which includes—
- (a) freedom to seek, receive or impart information or ideas;
  - (b) freedom of artistic creativity; and
  - (c) academic freedom and freedom of scientific research.
- (2) The right referred to in clause (1) does not extend to—
- (a) propaganda for war;
  - (b) incitement to violence;
  - (c) hate speech;

- (d) pornography; or
  - (e) advocacy of hatred that—
    - (i) constitutes ethnic incitement, vilification of others or incitement to cause harm; or
    - (ii) is based on any prohibited ground of discrimination contemplated in Article 26.
- (3) In the exercise of the freedom of expression, every person shall respect the rights and reputation of others.
- (4) Parliament shall, by legislation, provide for the right of access to information.

### **Freedom of the media**

- 33.** (1) Subject to Article 32, freedom and independence of electronic, print and other media of all types are guaranteed.
- (2) The State shall not—
- (a) exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or
  - (b) penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.
- (3) Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that—
- (a) are designed to ensure the necessary regulation of the airwaves and other forms of signal distribution; and
  - (b) are independent of control by government, political interests or commercial interests.
- (4) All State-owned media shall—
- (a) be free to determine independently the editorial content of their broadcasts or other communications;
  - (b) be impartial; and
  - (c) afford fair opportunity for the presentation of divergent views and dissenting opinions.
- (5) Parliament shall enact legislation that provides for the establishment of a body which shall—
- (a) be independent of government or political control;
  - (b) reflect the interests of all sections of the society; and
  - (c) set media standards and regulate and monitor compliance with those standards.

### **Freedom of association**

- 34.** (1) Every person has the right to freedom of association.
- (3) A person shall not be compelled to join an association of any kind.

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

- 35.** (1) Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.
- (2) Parliament shall, by legislation, provide for orderly enjoyment of the right provided in clause (1).

### **Political rights**

- 36.** (1) Every citizen is free to make political choices, which includes the right to—
- (a) form, or participate in forming, a political party;
  - (b) participate in the activities of, or recruit members for, a political party; and
  - (c) campaign for a political party or cause.
- (2) Every citizen has the right to free, fair and regular elections for—
- (a) any elective public body or office established under this Constitution;  
and
  - (b) any office holder of any political party of which the citizen is a member.
- (3) Every citizen shall have the right and the opportunity, without unreasonable restrictions, to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

### **Freedom of movement and residence**

- 37.** (1) Every person has the right to freedom of movement.
- (2) Every person has the right to leave Kenya.
- (3) Every citizen has the right to enter into, remain in and reside anywhere in Kenya.
- (4) Every citizen is entitled to a Kenyan passport and to any document of registration and identification issued by the State to citizens.

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

- 38.** (1) Subject to Article 57, every person has the right, either individually or in association with others, to acquire and own property—
- (a) of any description; and
  - (b) in any part of Kenya.

- (2) Parliament shall not enact a law that permits the State or any person to—
- (a) arbitrarily deprive a person of property of any description;
  - (b) arbitrarily deprive a person of any interest in, or right over, such property; or
  - (c) limit or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds set out in Article 26(1).
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless that deprivation—
- (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
  - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution or an Act of Parliament that—
    - (i) requires prompt payment in full, of a just compensation to the person, before the property is taken;
    - (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
- (4) Provision may be made for compensation to be paid to occupants in good faith of the land so acquired who may not hold title to that land.
- (5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.
- (6) The right recognized and protected under this Article does not cover any property that has been unlawfully acquired.

### **Labour relations**

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

- (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

### **Economic and social rights**

**40.** The State shall take legislative, policy and other measures, including the setting of standards to achieve the progressive realisation of the rights of every person to-

- (a) social security;
- (b) health;
- (c) education;
- (d) housing; food and
- (e) water.

### **Environment**

**41.** Every person has the right to—

- (a) a clean and healthy environment;
- (b) have the environment protected, for the benefit of present and future generations, through legislative and other measures.

### **Language and culture**

**42.** (1) Every person has the right to use the language, and to participate in the cultural life, of that person's choice.

(2) A person belonging to a cultural or linguistic community shall not be denied the right, with other members of that community to—

- (a) enjoy that person's culture and use that person's language; or
- (b) form, join and maintain cultural and linguistic associations and other organs of civil society.

(3) A person shall not compel another person to perform, observe or undergo any cultural practice or rite.

### **Consumer rights**

**43.** (1) Consumers have the right to—

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

(2) Parliament shall enact legislation to provide for consumer protection and for fair, honest and decent advertising.

- (3) This Article applies to goods and services offered by public entities and private persons.

### **Access to justice**

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

### **Rights of arrested persons**

45. (1) Upon arrest a person has the right—
- (a) to be informed promptly in language that the person understands, of—
    - (i) the reason for the arrest;
    - (ii) the right to remain silent; and
    - (iii) the consequences of not remaining silent;
  - (b) to remain silent;
  - (c) to communicate with an advocate and other persons whose assistance is necessary;
  - (d) not to be compelled to make any confession or admission that could be used in evidence against that person;
  - (e) to be held separately from persons who are serving a sentence;
  - (f) to be brought before a court as soon as reasonably possible, but not later than twenty-four hours after being arrested or not later than the end of the first court day after the expiry of the twenty-four hours, if the twenty-four hours expire outside ordinary court hours or on a day that is not an ordinary court day;
  - (g) at the first court appearance, to be charged or to be informed of the reason for the detention continuing, or to be released; and
  - (h) to be released on bond or bail pending a charge or trial on reasonable conditions unless there are compelling reasons to the contrary.
- (2) A person shall not be remanded in custody for an offence if that offence is punishable by a fine only or by imprisonment for not more than six months.

### **Fair hearing**

46. (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, where appropriate, other independent and impartial tribunal or body.
- (2) Every accused person has the right to a fair trial, which includes the right—
- (a) to be presumed innocent until the contrary is proved;
  - (b) to be informed of the charge with sufficient detail to answer it;
  - (c) to have adequate time and facilities to prepare a defence;

- (d) to a public trial before a court established under this Constitution;
  - (e) to have the trial begin and conclude without unreasonable delay;
  - (f) to be present when being tried unless the conduct of the accused makes it impossible for the trial to proceed;
  - (g) to choose, and be represented by, an advocate and to be informed of this right promptly;
  - (h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
  - (i) to remain silent, and not to testify during the proceedings;
  - (j) to have access, in advance of the trial, to the evidence the prosecution intend to rely on;
  - (k) to adduce and challenge evidence;
  - (l) not to be compelled to give self-incriminating evidence;
  - (m) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial;
  - (n) not to be convicted for an act, or omission, that at the time it was committed or omitted was not—
    - (i) an offence in Kenya; or
    - (ii) a crime under international law;
  - (o) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
  - (p) to the benefit of the least severe of the prescribed punishments, if the prescribed punishment for an offence has been changed between the time that the offence was committed and the time of sentencing; and
  - (q) if convicted of a crime, of appeal to, or review by, a higher court as prescribed by law.
- (3) Whenever this Article requires information to be given to a person, that information shall be given in language that the person understands.
- (4) Evidence obtained in a manner that violates any right or fundamental freedom set out in the Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair or would otherwise be detrimental to the administration of justice.
- (5) An accused person charged with an offence, other than an offence that the court may try by summary procedures, shall be entitled, on request, to a copy of the records of the proceedings of the trial.
- (6) An accused person has the right to a copy of the record of proceedings within a reasonable period after they are concluded, in return for a reasonable fee as prescribed by law.
- (7) A person convicted of a criminal offence and whose appeal has been dismissed by the highest court to which the person is entitled to appeal, or who did not

appeal within the time allowed for appeal, may petition the High Court for a new trial if new and compelling evidence has become available.

- (8) A court may in the interest of justice allow an intermediary to assist a complainant or an accused person to communicate with the court.
- (9) Nothing in this Article shall prevent the exclusion of the press or other members of the public from all or any proceedings for reasons of protecting witnesses or vulnerable persons, morality, public order or national security as may be necessary in a free and democratic society.
- (10) Parliament shall, by legislation, make provision for the protection and welfare of victims of offences.

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

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

### **Family**

48. (1) The family is the natural and fundamental unit of society and shall enjoy the recognition and protection of the State.

(2) Every adult has the right to marry a person of the opposite sex, based upon the free consent of the parties.

(3) Parliament shall enact legislation that recognises-

(a) marriages concluded under any tradition, or system of religious, personal or family law, and personal and family law under any tradition, or adhered to by persons professing a particular religion, to the extent that such marriages or systems are consistent with this Constitution;

(b) the rights of parties to a marriage at the time of marriage, during the marriage and at the dissolution of the marriage.

## **Marginalised and vulnerable groups**

- 49.** (1) This Article elaborates certain rights set out in this Part to ensure greater certainty as to the application of those rights and fundamental freedoms to certain groupings of people.
- (2) This Article shall not be construed as limiting or qualifying any right under this Part.
- (3) The groups of persons set out in this Article are entitled to enjoy all the rights and fundamental freedoms set out in the Bill of Rights.
- (4) The State shall take legislative and policy measures to ensure the rights of the groups of persons set out in this Article to-
- (a) participate and be fully represented in governance and in all other spheres of national life;
  - (b) pursue their personal development;
  - (c) live in dignity and respect;
  - (d) adequate opportunities in the social, political, economic and other spheres of national life;
  - (e) freedom of association to further their legitimate interests;
  - (f) protection from customs or cultural practices that undermine their dignity or quality of life; and
  - (g) protection from discrimination, exploitation or abuse.
- (5) The State shall take legislative and other measures to ensure that the groups referred to in this Article enjoy all the rights referred to in this Part and in particular-
- (a) ensure full participation of women, persons with disabilities, marginalized communities, the youth and all other citizens in the political, social and economic life of the nation;
  - (b) implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender;
  - (c) ensure the progressive implementation of the principle that at least five percent of the members of public elective or appointive bodies shall be persons with disabilities.

## **Part 3—State of emergency**

### **State of emergency**

- 50.** (1) A state of emergency may be declared only in accordance with Article 121(6) and only when—
- (a) the State is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
  - (b) the declaration is necessary to meet the circumstances for which the emergency is declared.
- (2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, is effective only—
- (a) prospectively; and

- (b) for no more than fourteen days from the date of the declaration, unless the National Assembly resolves to extend the declaration.
- (3) The National Assembly may extend a declaration of a state of emergency—
  - (a) by resolution adopted—
    - (i) following a public debate in the National Assembly; and
    - (ii) by the majorities set out in clause (4); and
  - (b) for no more than two months at a time.
- (4) The first extension of a state of emergency requires a supporting vote of at least two-thirds of all the members of the National Assembly, and any subsequent extension requires a supporting vote of at least three-quarters of all the members of the National Assembly.
- (5) The Constitutional Court may decide on the validity of—
  - (a) a declaration of a state of emergency;
  - (b) any extension of a declaration of a state of emergency; and
  - (c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.
- (6) Any legislation enacted in consequence of a declaration of a state of emergency may limit or derogate from the Bill of Rights only to the extent that—
  - (a) the limitation or derogation is strictly required by the emergency; and
  - (b) the legislation is consistent with the Republic's obligations under international law applicable to a state of emergency.
- (7) Legislation under clause (6)—
  - (a) shall be published in the *Gazette* as soon as reasonably practicable after being enacted; and
  - (b) does not take effect until it is so published.
- (8) A declaration of a state of emergency, or legislation enacted or other action taken in consequence of any declaration, may not permit or authorize the indemnification of the State, or of any person, in respect of any unlawful act.

#### **Part 4– Equality Commission**

##### **Equality Commission**

- 51.** (1) There is established the Equality Commission.
- (2) The functions of the Commission are to—
  - (a) promote respect for human rights and develop a culture of human rights in the Republic;
  - (b) promote gender equality and equity generally and to co-ordinate and facilitate gender mainstreaming in national development;
  - (c) promote the protection, and observance of human rights in public and private institutions;

- (d) monitor, investigate and report on the observance of human rights in all spheres of life in the Republic including observance by the national security organs;
  - (e) receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated;
  - (f) in relation to human rights, initiate on its own initiative or on the basis of complaints, investigations and research and make recommendations to improve the functioning of State organs;
  - (g) act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights.
- (3) A person has the right to complain to the Equality Commission, alleging that a right or fundamental freedom set out in the Bill of Rights has been denied, violated, infringed or threatened.

## CHAPTER FIVE

### LAND AND ENVIRONMENT

#### Part 1—Land

##### Principles of land policy

52. (1) Land in Kenya shall be held, used and managed in a manner which is equitable, efficient, productive and sustainable in accordance with the following principles—
- (a) equitable access to land;
  - (b) security of land rights;
  - (c) sustainable and productive management of land resources;
  - (d) transparent and cost effective administration of land;
  - (e) sound conservation and protection of ecologically sensitive areas;
  - (f) elimination of gender discrimination in laws, regulations, customs and practices related to land and property in land; and
  - (g) encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution.

##### Classification of land

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

##### Public land

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

- (g) government forests other than forests to which Article 55(2)(e) applies, game reserves, water catchments areas, national parks, animal sanctuaries, and specially protected areas;
  - (h) all roads and thoroughfares specified by an Act of Parliament;
  - (i) all rivers, lakes and other areas of water as defined by an Act of Parliament;
  - (j) the territorial sea and its sea bed;
  - (k) all land between the high and low water mark;
  - (l) any land not classified as private or community land under this Constitution; and
  - (m) any other land declared to be public land by an Act of Parliament.
- (2) Public land, classified under clause (1)(a) to (e) shall vest in and be held by the county government in trust for the people resident in the county and shall be administered on their behalf by the National Land Commission.
- (3) Public land classified under clause (1)(f) to (m) shall vest in and be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission.
- (4) Public land shall not be disposed of or otherwise used except in terms of an Act of Parliament specifying the nature and terms of that disposal or use.

### **Community land**

- 55.** (1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or community of interest.
- (2) For the purposes of clause (1) community land includes—
- (a) all land lawfully held in trust by the county governments;
  - (b) land lawfully registered in the name of group representatives under the provisions of any law;
  - (c) land lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;
  - (d) land lawfully transferred to a specific community by any process of law;
  - (e) lands traditionally occupied by hunter-gatherer communities; and
  - (f) any other land declared to be community land by an Act of Parliament,
- but shall not include public land as defined in Article 54.
- (3) Any unregistered community land shall be held in trust by county governments on behalf of the communities.
- (4) Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.

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

### **Private land**

**56.** Private land includes—

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

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

- 57.** (1) A person who is not a citizen may hold land on the basis of leasehold tenure only, and such a lease however granted, shall not exceed ninety-nine years.
- (2) An agreement, deed or conveyance of whatever nature which confers on a person who is not a citizen an interest in land greater than a ninety-nine year lease, is void.
- (3) For purposes of this Article, a company or a body corporate is a citizen only if it is fully owned by citizens.
- (4) Parliament may enact legislation to make further provision for the operation of the provisions of this Article.

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

- 58.** (1) The State has the power to regulate the use of any land, interest or right in land in the interest of defence, public safety, public order, public morality, public health, land use planning or the development or utilization of property.
- (2) Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.

### **National Land Commission**

- 59.** (1) There is established the National Land Commission.
- (2) The functions of the National Land Commission are to—
- (a) manage public land on behalf of the national and county governments;
  - (b) perform such other function in relation to land as Parliament may by legislation prescribe.

### **Legislation on land**

- 60.** (1) Parliament shall enact legislation to give full effect to the provisions of this Part.

**Part 2— Environment and natural resources**

**Obligations in relation to the environment**

**61.** (1) The State shall—

- (a) ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources and the equitable sharing of the accruing benefits;
- (b) establish systems of environmental impact assessment, environmental audit and monitoring of the environment;
- (c) eliminate processes and activities that are likely to endanger the environment; and
- (d) utilize the environment and natural resources for the benefit of the people of Kenya.

**Protection of the environment**

**62.** Every person has a duty to cooperate with State organs and other persons to respect, protect and safeguard the environment, and ensure ecologically sustainable development and use of natural resources.

**Enforcement of environmental rights**

**63.** (1) If a person alleges that a right to a clean and healthy environment recognized and protected under this Constitution has been, is being or is likely to be, contravened, in addition to any other legal remedies which are available in respect to the same matter, that person may apply to a court for redress.

(2) On an application by a person under clause (1), the court may make such orders, or give such directions as it may consider appropriate, to—

- (a) prevent, stop or discontinue any act or omission which is harmful to the environment;
- (b) compel any public officer to take measures to prevent or discontinue any act or omission which is harmful to the environment;
- (c) provide compensation for any victim of the violation of the right to a clean and healthy environment.

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

**Agreements relating to natural resources**

**64.** (1) A transaction involving the grant of a right or concession by or on behalf of any person, including the national government, to another person, for the exploitation of any natural resource of Kenya, entered into after the effective date, is subject to ratification by Parliament.

- (2) Parliament shall by legislation provide for the classes of transactions subject to ratification under clause (1).

## CHAPTER SIX

### LEADERSHIP AND INTEGRITY

#### Responsibilities of leadership

65. (1) Authority assigned to a State officer—

- (a) is a public trust to be exercised in a manner that—
  - (i) is consistent with the purposes and objects of this Constitution;
  - (ii) demonstrates respect for the people;
  - (iii) brings honour to the nation and dignity to the office; and
  - (iv) promotes public confidence in the integrity of the office; and
- (b) vests in that State public officer the responsibility to serve the people, rather than the power to rule them.

(2) The guiding principles of leadership and integrity include—

- (a) selection on the basis of integrity, competence and suitability, or election in free and fair elections;
- (b) objectivity and impartiality in decision making and in ensuring that decisions are not influenced by nepotism, favouritism or other improper motives;
- (c) selfless service based solely on the public interest, demonstrated by—
  - (i) honesty in the execution of public duties; and
  - (ii) the declaration of any personal interest that may conflict with public duties;
- (d) accountability to the public for decisions and actions; and
- (e) discipline and commitment in service to the people.

#### Oath of office

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

#### Conduct of State officers

67. (1) Public officers shall conduct themselves, whether alone or in association with others, in private or public, in such a manner as to avoid any conflict between personal interests and public or official duties, or compromising any public or official interest in favour of a personal interest.

### **Citizenship and leadership**

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

### **Legislation on leadership**

- 69.** An Act of Parliament shall—
- (a) establish procedures and mechanisms for the effective administration of this Chapter;
- (b) prescribe the penalties in addition to penalties set out in Article 67 that may be imposed for breach of the provisions of this Chapter;
- (c) make provision for the application of this Chapter to public officers; and
- (d) make any other provision necessary for ensuring the promotion of the principles of leadership and integrity set out in, and the enforcement of the provisions of, this Chapter.

## **CHAPTER SEVEN**

### **REPRESENTATION OF THE PEOPLE**

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

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

- 70.** The electoral system shall comply with the following principles—
- (a) freedom of citizens to exercise their political rights under Article 36;
- (b) not more than two-thirds of members of elective bodies shall be of either gender;
- (c) representation of persons with disabilities;
- (d) free and fair elections which are—
- (i) by secret ballot;
- (ii) free from violence, intimidation, improper influence or corruption;

- (iii) conducted by an independent body;
  - (iv) transparent; and
  - (v) administered in an impartial, neutral, efficient, accurate and accountable manner;
- (e) universal suffrage based on the aspiration for fair representation and equality of the vote.

### **Legislation on elections**

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

- (a) the delimitation by the Independent Electoral and Boundaries Commission of electoral units for election of members of the National Assembly and county assemblies;
- (b) the nomination of candidates;
- (c) the registration of citizens as voters;
- (d) the conduct of elections and referenda and the regulation and efficient supervision of elections and referenda;
- (e) the registration of, and progressive realisation of the right to vote by, citizens residing outside Kenya.

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

- (a) simple;
- (b) transparent; and
- (c) takes into account the special needs of

persons with disabilities and other persons or groups with special needs.

### **Qualifications as a voter**

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

- (a) is a citizen;
- (b) is at least eighteen years of age.

(2) A person is not qualified to be registered as voter for public election or referenda if the person is-

- (a) under a law of Kenya is declared to be of unsound mind; or
- (b) disqualified by an Act of Parliament for conviction of an election offence .

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

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

### **Independent candidates**

74. Subject to Article 91 and the qualifications set for elections to the county assemblies in Article 183, a person is eligible to stand as an independent candidate for election as a member of Parliament or a county assembly, if that person is not a member of a registered political party and has not been a member for at least three months prior to the date of the election.

### **Electoral disputes**

75. An Act of Parliament shall establish mechanisms for timely settling of electoral disputes.

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

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

76. (1) There is established the Independent Electoral and Boundaries Commission.
- (2) A person is not eligible for appointment as a member of the Independent Electoral and Boundaries Commission if the person-
- (a) has, at any time within the preceding five years, held office, or stood for election as-
    - (i) a member of Parliament or of a county assembly; or
    - (ii) a member of the governing body of a political party;
  - (b) holds or is acting in any State or public office, or in the disciplined forces.
- (3) The Commission is responsible for the conduct and supervision of elections and referenda and in particular for—
- (a) the continuous registration of citizens as voters;
  - (b) the regular revision of the voters roll;
  - (c) the delimitation of constituencies and wards;
  - (d) the regulation of the process by which parties nominate candidates for elections;
  - (f) the registration of candidates for election;
  - (g) voter education;
  - (h) the facilitation of the observation, monitoring and evaluation of elections;

(j) subject to legislation and to the approval by Parliament, the development of a code of conduct for candidates and parties contesting elections.

(4) The Commission is responsible for conducting or supervising elections to any elective body or office established by this Constitution and such other elections as may be prescribed by an Act of Parliament.

(5) The Commission shall exercise its powers and perform its functions in accordance with this Constitution and Parliament may make legislation 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..

### **Delimitation of electoral units**

**77.** (1) Kenya shall be divided into two hundred and ninety constituencies for the purposes of the election of members to the National Assembly.

(2) The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight and not more than twelve years but any review shall be completed at least twelve months before a general election.

(3) Where an election is called less than twelve months after the completion of a review by the Commission, the new boundaries shall not take effect for purposes of that election.

(4) The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota but the number of inhabitants of a constituency may be greater or lesser than the population quota in the manner specified in clause (5) in order to take account of—

- (i) geographical features and urban centres;
- (ii) community of interest, historical, economic and cultural ties; and
- (iii) means of communication.

(5) The number of inhabitants of a constituency may be greater or lesser than the population quota by a margin of not more than –

- (a) forty percent for cities and sparsely populated areas; and
- (b) thirty percent for the other areas.

(6) For the purposes of this Article-

- (a) the Independent Electoral and Boundaries Commission shall ensure that a review of the constituencies shall not result in the loss of a constituency existing on the effective date;
- (b) the Independent Electoral and Boundaries Commission shall in reviewing constituency boundaries progressively work towards ensuring that the number of inhabitants in each constituency is, as nearly as possible, equal to the population quota;

(c) “population quota” means the number obtained by dividing the number of inhabitants of Kenya by the number of constituencies into which Kenya is divided under this Article.

(7) In reviewing constituency and ward boundaries the Commission shall consult all interested parties.

(8) Where necessary, the Commission shall alter the names and boundaries of constituencies.

(9) Subject to clauses (1), (2) and (3) the names and details of the boundaries of constituencies determined by the Commission shall be published in the *Gazette*, and shall come into effect on the dissolution of Parliament first following their publication.

(10) A person may apply to the High Court for review of a decision of the Commission made under this Article.

(11) An application for the review of a decision made under this Article shall be filed within thirty days of the publication of the decision in the *Gazette* and shall be heard and determined within three months of the date on which it is filed.

### **Part 3—Political Parties**

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

**78.** (1) Every political party shall—

- (a) promote the objects and principles of this Constitution and the rule of law;
- (b) promote and uphold national unity and conduct its affairs in a manner that promotes democracy and peaceful politics;
- (c) have a national character as prescribed by an Act of Parliament;
- (d) have a democratically elected governing body;
- (e) abide by the democratic principles of good governance, promote and practise democracy through regular, fair and free elections within the party, and promote discipline within the party;
- (f) conduct its affairs in a manner that promotes democracy and peaceful politics;
- (g) respect the right of others to participate in the political process, including, persons with disabilities and other minorities;
- (h) respect and promote human rights and fundamental freedoms, and gender equality and equity; and

(2) A political party shall not—

- (a) be founded on a religious, linguistic, racial, ethnic, gender or regional basis or engage in advocacy of hatred based on any of those matters;
- (b) engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person;

- (c) establish or maintain a paramilitary force, militia or similar organization;
  - (d) engage in bribery or other forms of corruption; or
  - (e) except as is provided under this Chapter or by an Act of Parliament, accept or use public resources to promote its interests or its candidates in elections.
- (3) An Act of Parliament shall provide for the registration of political parties.

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

- 79.** (1) A person may resign from a political party by notice in writing to the registered secretary-general of the political party, and—
- (a) if a member of the National Assembly, to the Speaker of the National Assembly; and
  - (b) if a member of a county assembly, to the person presiding over the affairs of that assembly.
- (2) A person may not be a member of more than one political party at the same time.
- (3) A member of Parliament or of a county assembly elected on a ticket of a political party ceases to be member of Parliament or of that assembly on resigning from the party.
- (4) For purposes of clause (3), the existence of the following circumstances only shall not amount to a member leaving the party—
- (a) the creation or dissolution of a coalition of which a member's political party forms part;
  - (b) the dissolution of a political party to which the member belongs; or
  - (c) the merger of two or more parties of which the member's party forms part.
- (5) Despite clause (3), a member of Parliament or of a county assembly does not lose that membership unless the registered secretary-general of the political party concerned has given written notice to the Speaker, and to the member, to the effect that clause (3) applies to that member and—
- (a) the member has not, within fourteen days of receiving the notice, petitioned the High Court for a declaration that clause (3) does not apply to the member; or
  - (b) the High Court has dismissed the member's petition for such a declaration.
- (6) The High Court shall decide any petition under clause (5)(b) within ninety days.
- (7) A member of Parliament or of a county assembly who is elected on the ticket of a political party shall be bound by the policies, ideology, philosophy and manifesto of the party.

- (8) A political party shall not punish a member of the party elected to Parliament or to an assembly of a county government for anything said by that member during proceedings in Parliament or assembly as the case may be.

### **Commissioner of Political Parties**

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

### **Regulation of political parties**

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

### **Political Parties Fund**

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

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## **Application of the Fund**

**83.** Parliament shall by an Act provide for-

- (a) the regulation and application of the Fund; and
- (b) for the accountability, including financial accountability of political parties generally.

## **Political parties and the media**

**84.** Parliament shall enact legislation that—

- (a) makes reasonable provision for equitable allocation of airtime, by State-owned and other specified categories of broadcasting media, to political parties either generally or during election campaigns; and
- (b) regulates freedom to broadcast in order to ensure fair election campaigning.

## **CHAPTER EIGHT**

### **THE LEGISLATURE**

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

##### **Establishment of Parliament**

**85.** There is established a Parliament of Kenya, which shall consist of the National Assembly and a Lower House with limited legislative role to be known as the Senate.

##### **Role of Parliament**

- 86.** (1) The legislative authority of the Republic at the national level is vested in, and exercised by, Parliament.
- (2) Parliament manifests the diversity of the nation, represents the will of the people and exercises their sovereignty.
  - (3) Parliament shall protect this Constitution and promote the democratic governance of the Republic.
  - (4) No person or body other than Parliament shall have the power to make law in Kenya except where Parliament assigns its legislative authority under this Constitution or by legislation.

##### **Role of Senate**

**87.** (1) The principal roles of the Senate are to –

- (a) consider and approve-

- (i) proposals for allocation of equalization funds to the counties in the national annual estimates of revenue and expenditure;
  - (ii) annual proposals for division of revenues among the counties;
  - (iii) any terms and conditions on which the national government may guarantee external loans to county governments;
  - (iv) any Bill in the National Assembly that may seek to amend, abrogate or alter the taxation and borrowing powers of a county government;
  - (v) such appointment by the Executive as may be required by written law;
  - (vi) any Bill in the National Assembly that affects or concerns county governments;
- (b) exercise oversight over funds devolved to the county governments; and
  - (c) initiate legislation on matters relating to counties for consideration by the National Assembly.

(2) For purposes of clause (1)(a)(vi), a Bill affects or concerns county governments if the implementation of the Bill affects or concerns-

- (a) the boundaries of the counties;
- (b) taxation and borrowing powers of county governments;
- (c) election of members of county governments;
- (d) allocation of equalization funds to the county governments;
- (e) division of revenues between the national and county governments.

(3) A proposal by the Senate to the National Assembly relating to the matters set out in clause (1) shall be tabled before the National Assembly and the National Assembly may only vary or reject such proposal by the votes of two-thirds of all its members.

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

**88.** The principal roles of the National Assembly is to—

- (a) enact legislation;
- (b) consider and pass amendments to this Constitution;
- (c) consider and approve treaties and international agreements;
- (d) approve appointments of all Constitutional offices as required by this Constitution or legislation;
- (e) scrutinize and maintain oversight of actions of State organs;

- (f) review the conduct in office of the President, the Deputy President and other State officers and initiate the process of removing them from office;
- (g) deliberate on and resolve issues of concern to the people;
- (h) appropriate funds for expenditure by the national government and other national State organs;
- (i) approve the sharing of revenue among the national and county governments; and
- (j) approve declarations of war and extensions of states of emergency.

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

### **Membership of the Senate**

- 89.** (1) The Senate shall consist of—
- (a) forty-seven members elected one each by the counties;
  - (b) sixteen members all of whom shall be women, elected in such manner as may be provided by legislation;
  - (c) the Speaker, who shall be an *ex officio* member.
- (2) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1)(a).

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

- 90.** (1) The National Assembly shall consist of—
- (a) two hundred and ninety members elected one each by the constituencies into which Kenya is divided;
  - (b) forty-seven women elected one each by the counties, each county comprising a single member constituency;
  - (c) twelve members nominated by Parliamentary political parties according to their proportions in the National Assembly to represent interests, including the youth, persons with disabilities, and workers.
  - (d) the Speaker, who shall be an *ex officio* member.
- (3) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1) (a).

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**Qualifications and disqualifications for election as member**

- 91.** (1) Unless disqualified under clause (2), a person is eligible for election as a member of Parliament if that person—
- (a) is a citizen;
  - (b) is registered as a voter;
  - (c) satisfies any educational, moral and ethical requirements prescribed by this Constitution or by an Act of Parliament;
  - (d) except for a candidate for election under Articles 89(1)(b) and 90(1)(c), is nominated by a political party; or
  - (e) is an independent candidate, supported-
    - (i) in the case of election to the Senate, at least two thousand registered voters in the county;
    - (ii) in the case of election to the National Assembly, by at least one thousand registered voters in the constituency;
    - (iii) in the case of election to the county assembly five hundred voters registered in the ward.
- (2) A person is disqualified from being elected a member of Parliament if that person—
- (a) holds a State office or public office, other than as a member of Parliament;
  - (b) has at any time within the preceding five years, held office as a member of the Independent Electoral and Boundaries Commission;
  - (c) is not a citizen by birth and has not been a citizen of Kenya for at least the preceding ten years;
  - (d) is a member of a county assembly;
  - (e) is of unsound mind;
  - (f) is an undischarged bankrupt;
  - (g) is serving a sentence of imprisonment of at least six months; or
  - (h) has been found in accordance with any law to have misused or abused a State office or public office or in any way to have contravened the principles of Chapter Six.
- (3) A person is not disqualified under clause (2) unless the procedures of appeal or review have been exhausted, neglected or waived.

**Promotion of representation of marginalized groups**

- 92.** Parliament shall enact legislation to promote the representation in Parliament of—
- (a) women;
  - (b) persons with disabilities;
  - (c) youth;

- (d) ethnic and other minorities; and
- (e) marginalized communities.

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

- 93.** (1) A general election of members of Parliament shall be held on the second Tuesday in December every fifth year.
- (2) Whenever a vacancy occurs in the office of a member of the Senate elected under Article 89(1)(b) or of the National Assembly referred to under Article 90(1) (c) the respective Speaker shall, within twenty-one days of the occurrence of the vacancy, give notice in writing of the vacancy to—
- (a) the Independent Electoral and Boundaries Commission; and
  - (b) the political party on whose party list the member was elected or nominated.
- (3) A vacancy referred to in clause (4) shall, subject to clause (5), be filled in such manner as legislation may prescribe within twenty-one days of the notification by the respective Speaker.
- (4) Whenever a vacancy occurs in the office of a member of the Senate elected under Article 89(1)(a), or of the National Assembly elected under Article 90(1)(a) or (b), other than that of a Speaker—
- (a) the respective Speaker shall, within twenty-one days of the occurrence of the vacancy, give notice in writing of the vacancy to the Independent Electoral and Boundaries Commission; and
  - (b) a by-election shall, subject to clause (5), be held within ninety days of the occurrence of the vacancy.
- (5) A vacancy referred to in clause (4) shall not be filled within three months before the holding of a general election.
- (6) For the purposes of elections to Parliament, Nairobi shall be deemed to comprise four counties each of which shall be a single member constituency.

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

- 94.** The office of a member of Parliament becomes vacant—
- (a) if the member dies;
  - (b) if the member is absent from eight sittings of the relevant House without permission, in writing, of the relevant Speaker during any period when the House is sitting, and is unable to offer a satisfactory explanation for the absence to the relevant committee;
  - (c) if the member is removed from office under legislation made under Article 69;
  - (d) if the member resigns;
  - (e) if, having been elected to Parliament as an independent candidate, the member joins a political party;

(f) upon expiry of the term of the relevant House.

### **Right of recall**

- 95.** (1) The electorate under Articles 89 and 90 have the right to recall their directly elected member of Parliament before the expiry of the term of the relevant House of Parliament.
- (2) Parliament shall enact legislation to provide for the grounds on which a member may be recalled and the procedure to be followed.

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

- 96.**(1) The High Court shall hear and determine any question whether—
- (a) a person has been validly elected as a member of Parliament; or
  - (b) the seat of a member has become vacant.
- (2) A question referred to in clause (1) shall be heard and determined within six months of the date of lodging the petition.
- (3) Parliament shall enact legislation to give full effect to this Article.

## **Part 3—Officers of Parliament**

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

- 97.** (1) There shall be—
- (a) a Speaker for each House of Parliament who shall be elected by that House in accordance with the Standing Orders, from among persons who are qualified to be elected as members of Parliament but are not such members; and
  - (b) a Deputy Speaker for each House of Parliament who shall be elected by that House, in accordance with the Standing Orders, from among the members of that House.
- (2) The office of Speaker or Deputy Speaker shall become vacant—
- (a) when a new House of Parliament first meets after an election;
  - (b) if the office holder becomes disqualified under Article 91(2);
  - (c) if the relevant House so resolves by resolution supported by the votes of not fewer than two-thirds of its members;
  - (d) if the office holder dies; or
  - (e) if the office holder resigns from office in a letter addressed to the relevant House.

### **Presiding in Parliament**

- 98.** At any sitting of a House of Parliament—

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

### **Party leaders**

- 99.** (1) There shall be a leader of the majority party and a leader of the minority party.
- (2) The Leader of the Majority Party shall be the person who is the leader in the National Assembly of the largest party, or coalition of parties.
- (3) The Leader of the Minority Party shall be the person who is the leader in the National Assembly of the second largest party or coalition of parties.
- (4) The Leader of the Majority Party and the Leader of the Minority Party shall enjoy an official status above that of a Minister.
- (5) The chairperson of a committee of the National Assembly shall enjoy an official status equivalent to that of a Minister.

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

- 100.** (1) There shall be a service to be known as the Parliamentary Service.
- (2) There shall be a Clerk for each House of Parliament who shall be appointed by the Parliamentary Service Commission with the approval of the relevant House.
- (3) The offices of the Clerks and offices of members of the staff of the Clerks shall be offices in the Parliamentary Service.
- (4) Subject to clause (5), either House of Parliament may by resolution of that House remove the Clerk.
- (5) The Clerk of either House of Parliament may be removed from office only on the grounds of—
- (a) inability to perform the functions of office arising from mental or physical incapacity;
  - (b) non-compliance with Chapter Six;
  - (c) bankruptcy;
  - (d) incompetence; or
  - (e) gross misconduct or misbehaviour .
- (6) A member desiring the removal of the Clerk of a House of Parliament may present a petition to the Parliamentary Service Commission in writing, setting out the alleged facts constituting the grounds for the removal of the Clerk.
- (7) The Parliamentary Service Commission shall consider the petition and, if it is satisfied that it discloses the existence of a ground under clause (5), it shall appoint a tribunal consisting of—
- (a) four members from among persons who hold or have held office as a judge of a superior court, or who are qualified to be appointed as such;

- (b) one advocate of at least fifteen years' standing nominated by the statutory body responsible for the professional regulation of advocates; and
  - (c) two other persons with experience in public affairs.
- (8) The tribunal shall inquire into the matter expeditiously and report on the facts and make recommendations to the Parliamentary Service Commission and –
- (a) if the tribunal reports that the Clerk be removed from office, the relevant House of Parliament shall, if supported by the votes of more than half of all the members of that House, ratify the decision of the tribunal and, on the ratification, the Clerk shall cease to hold office; or
  - (b) if the tribunal reports that the Clerk be not removed from office, or if the relevant House of Parliament fails to ratify a recommendation of the tribunal that the Clerk be removed, the Clerk shall be reinstated in office.
- (9) Where the Parliamentary Service Commission appoints a tribunal under clause (7), the Clerk shall stand suspended and shall be entitled to half of the remuneration of the office until removed from, or reinstated in, office.
- (10) The Clerk of a House of Parliament may resign from office by giving notice to the Speaker of that House.

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

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

- 101.**
- (1) Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the President.
  - (2) Any Bill may originate in the National Assembly.
  - (3) A Bill concerning devolved government may originate in the Senate.
  - (4) Any member or committee of Parliament may introduce a Bill but a money Bill may be introduced only by a Minister with the recommendation of Cabinet.

**Bills not concerning county governments**

- 102.** (1) The Speaker of the National Assembly shall refer a draft Bill that does not concern county governments to the Senate for review seven days before it is considered by the National Assembly.
- (2) The Senate may consider the Bill and, within seven days of receiving it, submit any recommendations on the Bill to the National Assembly.
- (3) In considering a Bill that does not concern county governments, the National Assembly or a committee of the Assembly shall consider the recommendations of the Senate.

**Bills concerning county governments**

- 103.** (1) When a Bill concerning county government has been passed by the Senate, the Speaker of the Senate shall refer it to the Speaker of the National Assembly.
- (2) If both Houses pass the Bill in the same form, the Speaker of the Senate shall within seven days refer the Bill to the President for assent.
- (3) The National Assembly may only vary or reject a Bill referred to under clause (1) by the votes of two-thirds of all its members.

**Money Bills**

- 104.** (1) A money Bill may be introduced only by the Leader of the Majority Party .
- (2) “Money Bill” means a Bill that contains provisions dealing with—
- (a) the imposition, repeal, remission, alteration or regulation of taxes;
  - (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
  - (c) the appropriation of public money, receipt, custody, investment or issue of public money;
  - (d) the raising or guaranteeing of any loan or its repayment; or
  - (e) matters incidental to any of those matters.
- (3) In clause (2), the expressions “tax”, “public money”, and “loan” do not include any tax, public money or loan raised by a county.
- (4) Despite clause (2), the Bill referred to in Article 208 is not a money bill.
- (5) If, in the opinion of the Speaker, a motion makes provision for a matter specified in clause (2), the House may proceed only on the recommendation in writing of the Leader of the Majority Party
- (6) A money bill may not deal with any matter other than those listed in clause (2).

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**Presidential assent and referral**

- 105.** (1) Within fourteen days after receipt of a Bill presented under Article 102(3), the President shall—
- (a) assent to the Bill; or
  - (b) refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.
- (2) If the President refers a Bill back for reconsideration by Parliament, Parliament may—
- (a) amend the Bill in light of the President’s reservations; or
  - (b) pass the Bill a second time without amendment.
- (3) If Parliament has amended the Bill, the Speaker shall re-submit it to the President for assent.
- (4) If a House of Parliament, after considering the President’s reservations, passes the Bill a second time, by a vote supported by at least two-thirds of all members of the House, without amending it—
- (a) the Speaker shall within seven days re-submit it to the President; and
  - (b) the President shall within seven days assent to the Bill.
- (5) If the President refuses or fails to assent to a Bill within the period prescribed in clause (1) or (4)(b), the Bill shall be taken to have been assented to upon the expiry of that period.

**Coming into force of laws**

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

**Right to petition Parliament**

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

## **Quorum**

- 108.** The quorum of Parliament shall be-
- (a) fifty members in the case of the National Assembly;
  - (b) fifteen members in the case of the Senate.

## **Official languages of Parliament**

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

## **Voting in Parliament**

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

## **Decisions of Senate**

- 111.** (1) When a Bill is, in the opinion of the Speaker of the Senate, a Bill affecting counties, it shall bear a certificate of the Speaker of the Senate that it is a Bill affecting counties.
- (2) When the Senate is to vote on any question, the Speaker shall rule on whether the question affects or does not affect the counties.
- (3) When the Senate votes on a question not affecting counties each senator has one vote.
- (4) In the Senate, except where this Constitution provides otherwise, in matters affecting the counties—
- (a) each county shall have one vote to be cast on behalf of the county by the member elected under Article 89(1) (a), who shall be the head of the county delegation or, in the absence of the head of the delegation, by another member of the delegation acting on behalf of the head of the delegation; and
  - (b) all questions shall be determined by a two-thirds majority of the delegations referred to in paragraph (b).
- (5) A member of the Cabinet or a Deputy Minister may attend and speak in the Senate, but shall not vote on any matter in the Senate.

## **Regulation of procedure**

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

- (a) may establish committees; and
- (b) shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.

(2) Parliament may establish joint committees consisting of members of both Houses and may jointly regulate the procedure of those committees.

(3) The proceedings of either House are not invalid by reason only of—

- (a) a vacancy in its membership; or
- (b) the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House.

## **Power to call for evidence**

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

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

## **Powers, privileges and immunities**

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

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

## **Part 5 – Miscellaneous**

### **Seat of Parliament**

- 115.** (1) A sitting of either House shall be held at such place within Kenya, and shall commence at such time, as the House may appoint.
- (2) Whenever a new House is elected, the President shall, by notice in the Gazette, appoint the place and date, not more than seven days after the expiry of the term of the previous House, for the first sitting of the new House.

### **Term of Parliament**

- 116.**(1) The term of each House of Parliament is five years from the date of its first sitting after an election.
- (2) At any time when Kenya is at war, Parliament may from time to time by resolution supported in each House by the votes of not less than two thirds of all the members of the House, extend the term of Parliament by not more than six months at a time.
- (3) The term of Parliament shall not be extended under clause (2)—
- (a) for a total of more than twelve months; or
  - (b) before its expiry after a general election held in terms of Article 93(1).

### **Parliamentary Service Commission**

- 117.** (1) There is established the Parliamentary Service Commission which shall consist of—
- (a) the Speaker of the National Assembly who shall be the chairperson ;
  - (b) five members, of whom two shall be from the Senate, appointed by Parliament from among its members;
  - (c) the Minister for the time being responsible for finance;
  - (d) ; and
  - (e) one man and one woman nominated by the National Assembly and appointed by Parliament from among persons who are not members of Parliament and are experienced in public affairs.
- (2) The Commission shall elect a vice-chairperson from amongst the members appointed under clause (1)(b).
- (3) The Clerk of the National Assembly shall be the secretary to the Commission.
- (4) A member of the Commission shall vacate office—
- (a) if that person is a member of Parliament—
    - (i) upon expiry of the term of the House of which the person is a member;
    - (ii) if that person ceases to be a member of Parliament; or
    - (iii) if circumstances arise that, if that person were not a member of Parliament, would disqualify that person to be elected as such;or

- (b) if that person is a member appointed under clause (1)(e), upon expiry of five years from the date of appointment or upon revocation of that person's appointment by Parliament, whichever comes first.
- (5) Despite clause (4), upon dissolution of a House of Parliament, a member of the Commission, appointed under clause (1)(b) shall continue in office until a new member has been appointed in their place by the next House.
- (6) 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 Parliamentary Service (including the power to confirm appointments) and to exercise disciplinary control over persons holding or acting in those offices (including the power to remove those persons from office);
  - (c) to provide such services and facilities as are necessary to ensure efficient and effective functioning of Parliament;
  - (d) to direct and supervise the administration of the services and facilities provided by, and exercise budgetary control over, the Parliamentary 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 National Assembly at least once every year, the accounts of the Commission;
  - (f) despite paragraphs (c) and (d), to provide security staff to maintain proper security for members of Parliament and for the services and facilities within the precincts of Parliament;
  - (g) to determine the terms and conditions of service of persons holding or acting in the offices of the Parliamentary 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 Parliament;
  - (i) to initiate, co-ordinate and harmonize policies and strategies relating to the development of the Parliamentary 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 Parliament and to exercise such other functions as may be prescribed by or under an Act of Parliament.

## **CHAPTER NINE**

### **THE EXECUTIVE**

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

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

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

(2) Executive authority is to be exercised—

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

(b) for their well-being and benefit.

##### **The National Executive**

**119.** (1) The national executive of the Republic shall comprise the President, the Deputy President and the rest of the Cabinet.

(2) The composition of the national executive shall reflect the regional and ethnic diversity of the people of Kenya.

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

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

**120.** (1) There shall be a President of the Republic who shall be Head of State and the Head of Government.

(2) The President shall be—

(a) the Commander-in-Chief of the Kenya Defence Forces; and

(b) the chairperson of the National Security Council.

(3) The President is a symbol of national unity.

(4) The President shall—

- (a) respect, uphold and safeguard this Constitution;
- (b) safeguard the sovereignty of the Republic;
- (c) promote and enhance the unity of the nation;
- (d) promote respect for the diversity of the people and communities of Kenya; and
- (e) ensure the protection of human rights and fundamental freedoms and the rule of law.

(5) The President shall not hold any other State or public office including any elected or appointed office within a political party.

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

**121.** (1) The President shall—

- (a) address the opening of each newly elected National Assembly;
- (b) address a special sitting of Parliament once every year and may address the National Assembly at any other time;
- (c) once every year—
  - (i) report, in an address to the nation, on all the measures taken and the progress achieved in the realization of the national values, set out in Article 10; and
  - (ii) publish in the Gazette, the details of the measures and progress referred to in sub-paragraph (i).

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

- (a) the Ministers;
- (b) the Deputy Ministers; and
- (c) any other State or public officer whom this Constitution requires the President to appoint.

(3) The President may—

- (a) appoint high commissioners, ambassadors, and diplomatic and consular representatives with the approval of the National Assembly; and
- (b) receive foreign diplomatic and consular representatives; and

- (c) confer honours in the name of the people and the Republic.
- (6) With the approval of the Cabinet, the President may—
  - (a) subject to Article 50, declare a state of emergency; and
  - (b) with the approval of the National Assembly, declare war.
- (8) The President shall ensure that the international obligations of the Republic are fulfilled through the actions of the relevant Ministers.
  - (a); and
- (9) Once every year, the President shall submit a report to National Assembly on the progress made in fulfilling the international obligations of the Republic.

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

- 122.**(1) The President may propose legislation and refer it to the Cabinet with a request that the Cabinet approve its introduction into the National Assembly as a government Bill.
- (2) When presented with a Bill passed by Parliament, the President shall act in accordance with Article 105.
- (3) The President shall ensure that public participation requirements concerning the enactment of Acts have been satisfied by Parliament.

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

- 123.** (1) A person who holds the office of President or who is authorized in terms of this Constitution to exercise the powers of the President —
  - (a) during the period commencing on the date of the first vote in a presidential election, and ending when the newly elected President assumes office; or
  - (b) while the President is absent or incapacitated,may not exercise the powers of the President set out in clause (2).
- (2) The powers are—
  - (a) the nomination or appointment of the judges of the superior courts;
  - (b) acting on a complaint leading to the removal of a judge;
  - (c) the nomination or appointment of any other public officer whom this Constitution or legislation requires the President to appoint;
  - (d) the appointment or dismissal of a high commissioner, ambassador, or diplomatic or consular representative;
  - (e) the power of mercy; and
  - (f) the authority to confer honours in the name of the people and Republic.

### **Decisions of President**

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

### **Election of the President**

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

(2) An election of the President shall be held separately from the National Assembly elections—

(a) on the first Tuesday, coming three months after the National Assembly elections; or

(a) in the circumstances contemplated by Article 134.

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

**126.** (1) A person qualifies for nomination as a presidential candidate if that person—

(a) is a citizen by birth;

(b) is qualified to stand for election as a member of the National Assembly; and

(c) is nominated by a political party or is an independent candidate; and

(d) is nominated by not fewer than two thousand voters from each of a majority of the counties.

(2) A person is not qualified for nomination as a presidential candidate if that person—

(a) owes allegiance to a foreign state; or

(b) holds or is acting in any office as a State officer or is a public officer.

(3) Clause (2)(b) shall not apply to—

(a) the President; and

(b) the Deputy President;

(c) a member of Parliament.

### **Procedure at presidential election**

**127.** (1) If only one candidate for President is nominated, that candidate shall be declared elected as President.

(2) If two or more candidates for President are nominated, an election shall be held in each constituency.

(3) In a presidential election—

- (a) all persons registered as voters for the purposes of parliamentary elections are entitled to vote;
  - (b) the poll shall be taken by a secret ballot on the day specified in Article 125 at such time, in such places and in such manner as may be prescribed by or under an Act of Parliament; and
  - (c) after counting of the votes in the polling stations, the Independent Electoral and Boundaries Commission shall tally and verify the count and declare the result.
- (4) The candidate for President who receives—
- (a) more than half of all the votes cast in the election; and
  - (b) at least twenty-five per cent of the votes cast in more than half of the counties,
- shall be declared elected as President.
- (5) If no candidate is elected, a fresh election shall be held within thirty days of the previous election and in that fresh election, the only candidates shall be—
- (a) the candidate, or the candidates, who received the greatest number of votes; and
  - (b) the candidate, or the candidates, who received the second greatest number of votes.
- (6) Where more than one candidate receives the greatest number of votes, clause (5)(b) shall not apply and the only candidates in the fresh election shall be those contemplated in clause (5)(a).
- (7) The candidate who receives the greater number or the greatest number of votes, as the case may be, in the fresh election shall be declared elected as President.
- (8) A presidential election shall be cancelled and a new election held if—
- (a) no person has been nominated as a candidate before the expiry of the period set for the delivery of nominations;
  - (b) a candidate for election as President or Deputy President dies on or before any of the days on which the election is held or is to be held; or
  - (c) a candidate who would have been entitled to be declared elected as President, dies after the taking of the poll has begun but before the candidate is declared elected as President.
- (9) A new presidential election under clause (8)(b) shall be held within thirty days of the date set for the previous presidential election.
- (10) Within seven days of the presidential election, the chairperson of the Independent Electoral and Boundaries Commission shall—
- (a) declare the result of the election; and
  - (b) deliver a written notification of the result to the Chief Justice and the incumbent President.

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

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

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

- 129.** (1) The swearing in of the President-elect shall be in public before the Chief Justice.
- (2) The President-elect shall be sworn in on the first Tuesday following the twenty-eighth day after the date of the declaration of the result of the presidential election.
- (4) The President-elect assumes office by taking and subscribing—
- (a) the oath or affirmation of allegiance; and
  - (b) the oath or affirmation for the execution of the functions of office, as prescribed in the Third Schedule.
- (5) Parliament shall by legislation provide for the procedure and ceremony for the swearing-in of a President-elect.

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

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

### **Protection from legal proceedings**

- 131.** (1) Criminal proceedings shall not be instituted or continued in any court against the President or a person performing functions of that office, during their tenure of office.
- (2) Civil proceedings shall not be instituted in any court against the President or the person performing functions of that office during their tenure of office in respect of anything done or not done in the exercise of their powers under this Constitution.

- (3) Where provision is made in law limiting the time within which proceedings may be brought against a person, a period of time during which that person holds or performs the functions of the office of the President shall not be taken into account in calculating the period of time prescribed by that law.

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

- 132.** (1) A member of the National Assembly, supported by at least a quarter of all the members may, at any sitting of the Assembly move a motion for the investigation of the President's physical or mental capacity to perform the functions of office.
- (2) If it is resolved by more than half of all the members of the National Assembly that the question of the physical or mental capacity of the President to perform the functions of the office ought to be investigated, the Speaker shall within two days of the resolution inform the Chief Justice of that resolution.
- (3) Where the National Assembly resolves that the question of the physical or mental capacity of the President to perform the functions of the office be investigated, the President shall, until—
- (a) another person assumes the office of President; or
  - (b) the tribunal appointed under clause (4) or (6) reports that the President is incapable of performing the functions of the office, whichever is earlier,
- continue to perform the functions of the office
- (4) The Chief Justice shall, within seven days of receiving notice of the resolution from the Speaker, appoint a tribunal consisting of—
- (a) two judges of the Supreme Court of opposite gender, one of whom shall be the chairperson of the tribunal;
  - (b) three persons who are qualified to practise medicine under the laws of Kenya, nominated by the professional body which by law is responsible for regulating the practice of medicine;
  - (c) one advocate of the High Court nominated by the professional body which by law is responsible for regulating the practice of law; and
  - (d) one person nominated by the President.
- (5) If the President is unable to nominate the fifth person, that person shall be nominated by—
- (a) a member of the family of the President; or
  - (b) where no such member is willing or able to make the nomination, by a close relative of the President.
- (6) The tribunal shall inquire into the matter and, within fourteen days of the appointment, report to the Chief Justice and to the Speaker of the National Assembly.
- (7) The Speaker shall cause to be tabled the report of the tribunal before the National Assembly within seven days of receiving it.

- (8) The report of the tribunal shall be final and not subject to appeal and if the tribunal reports that the President is capable of performing the functions of the office, the Speaker of the National Assembly shall so announce in the National Assembly.
- (10) If the tribunal reports that the President is incapable of performing the functions of the office, Parliament shall, if supported by the votes of more than half of all the members of the National Assembly, ratify the decision of the tribunal and, on the ratification, the President shall cease to hold office.

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

- 133.** (1) A member of the National Assembly, supported by at least a third of all the members, may, at any sitting of the National Assembly, propose a motion for the impeachment of the President—
- (a) on the ground of a gross violation of a provision of this Constitution or of any other law;
  - (b) because there are serious reasons for believing that the President has committed a crime under national or international law; or
  - (c) for gross misconduct.
- (2) If at least two-thirds of all the members of the National Assembly approve a motion under clause (1), the Speaker of the National Assembly shall within seven days convene a meeting of the National Assembly to hear charges against the President.
  - (3) Upon hearing the charges under clause (2), the National Assembly may, by resolution, appoint a special committee comprising eleven of its members to investigate the matter.
  - (4) The select committee shall investigate the matter and shall, within ten days, report to the National Assembly whether it finds the particulars of the allegations against the President to have been substantiated.
  - (5) The President shall have the right to appear and be represented before the select committee during its investigations.
  - (6) If the select committee reports that the particulars of any allegation against the President have not been substantiated, further proceedings shall not be taken under this Article in respect of that allegation.
  - (7) If the select committee reports that the particulars of any allegation against the President have been substantiated, the National Assembly shall, after according the President an opportunity to be heard, vote on the impeachment charges and the President shall cease to hold office if at least two-thirds of all the members vote to uphold the impeachment charges.
  - (8) The Chief Justice shall preside over the proceedings of the National Assembly under clause (7).

**Vacancy in the office of President**

- 134.(1) The office of President shall become vacant if the holder of the office—
- (a) dies;
  - (b) resigns in writing addressed to the Speaker of the National Assembly;  
or
  - (c) is removed from office under this Constitution.
- (2) Where a vacancy occurs in the office of President, the Deputy President shall assume office as President for the remainder of the term of the President.
- (3) Where the Deputy President assumes office as President under clause (2) with more than two and a half years left before the date of the next election under Article 125, the Deputy President shall, for the purposes of Article 136(8), be deemed to have served a full term as President.
- (4) Where a vacancy occurs in the office of President and that of Deputy President or where the Deputy President is unable to act, the Speaker of the National Assembly shall act as President.
- (5) Where a vacancy occurs in the circumstances contemplated by clause (3), an election to the office of President shall be held within sixty days of a Speaker assuming the office of President.
- (6) A person who assumes the office of President under this Article shall, unless otherwise removed from office under this Constitution, hold office until a fresh election is held and the newly elected President assumes office.

**Prerogative of mercy**

135. (1) There shall be a prerogative of mercy which shall be exercised on the petition of any person by the President in accordance with the advice of the Advisory Committee referred to in clause (2).
- (2) There shall be an Advisory Committee on the Prerogative of Mercy, which shall consist of—
- (a) the Attorney-General;
  - (b) the Minister responsible for correctional services; and
  - (c) at least five other members, not being persons in public service or holding state office, as may be prescribed by an Act of Parliament.
- (3) An Act of Parliament shall provide for—
- (a) the tenure of the members of the Advisory Committee;
  - (b) the procedure of the Advisory Committee; and
  - (c) criteria that shall be applied by the Advisory Committee in formulating its advice.
- (4) In exercise of the prerogative powers conferred by clause (1), the President may—

- (a) grant to a person convicted of an offence a pardon, either free or subject to conditions;
  - (b) postpone, either for a specified period or indefinitely, the carrying out of a punishment;
  - (c) substitute a less severe form of punishment for a punishment; or
  - (d) remit the whole or part of a punishment.
- (5) The Advisory Committee may take into account the views of the victims of the offence in respect of which it is considering recommending the exercise of the power of mercy by the President.

### **Office of Deputy President**

- 136.** (1) There shall be a Deputy President of the Republic.
- (2) Each candidate in a presidential election shall nominate a person who is qualified for nomination for election as President, as a candidate for Deputy President.
- (3) For the purposes of clause (2), there shall be no separate nomination process for the Deputy President and Article 126(1)(d) shall not apply to a candidate for Deputy President.
- (4) The Independent Electoral and Boundaries Commission shall not conduct a separate election for the Deputy President but shall declare the candidate nominated by the person who is elected as the President to be elected as the Deputy President.
- (5) The swearing in of the Deputy President-elect shall be before the Chief Justice and in public.
- (5)The Deputy President-elect assumes office by taking and subscribing—
- (a) the oath or affirmation of allegiance; and
  - (b) the oath or affirmation for the execution of the functions of office, as prescribed in the Third Schedule.
- (6) The term of office of the Deputy President shall run from the date the President assumes office and shall terminate—
- (a) when the person next elected President assumes office;
  - (b) upon the Deputy President assuming the office of President; or
  - (c) on resignation, death or removal from office.
- (7) The Deputy President may, at any time, resign from office by notice in writing addressed to the President and the resignation shall take effect on the date and at the time specified in the notice, if any, or if a date is not specified, at noon on the day after the notice is delivered.
- (8) A person shall not hold office as Deputy President for more than two terms.

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

- 137.** If there is a vacancy in the office of Deputy President, the President shall within fourteen days of the vacancy nominate a person to fill the vacancy.

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

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

### **Death before assuming office**

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

### **Removal of Deputy President**

- 140.** (1) The Deputy President may be removed from office—
- (a) on the ground of physical or mental incapacity to perform the functions of office;
- (b) on impeachment—
- (i) on the ground of a gross violation of a provision of this Constitution and any other law;
- (ii) because there are serious reasons to believe that the Deputy President has committed a crime under national or international law; or
- (iii) for gross misconduct.
- (2) The provisions of Articles 132 and 133 relating to the removal of the President shall, with the necessary modifications, apply to the removal of the Deputy President.

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

- 141.** (1) The remuneration and benefits payable to the President and the Deputy Presidents shall be a charge on the Consolidated Fund.

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

### **Part 3 – The Cabinet**

#### **Cabinet**

- 142.**(1) The President shall appoint the members of the Cabinet with the approval of the National Assembly.
- (2) Subject to clause (3), the President shall not appoint a member of Parliament to the office of Minister or Deputy Minister.
  - (3) A member of Parliament who is appointed as a Minister or Deputy Minister shall, before assuming office, resign as a member of Parliament.
  - (4) Each person appointed as a Minister or Deputy Minister-
    - (a) assumes office by swearing or affirming faithfulness to the people and Republic of Kenya and obedience to the Constitution, in accordance with the Fourth Schedule before the President;
    - (b) may resign by delivering a written statement of resignation to the President.

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

- 143.** (1) A decision by the Cabinet shall be in writing.
- (2) Members of the Cabinet are accountable collectively, and individually, to the President for-
    - (a) the exercise of their powers and the performance of their functions; and
    - (b) the administration and implementation of legislation assigned to them.
  - (3) A Minister shall attend before a committee of the National Assembly, when required to do so, and answer any question concerning a matter for which the Minister is responsible.
  - (4) Members of the Cabinet shall –
    - (a) act in accordance with the Constitution; and
    - (b) provide Parliament with full and regular reports concerning matters under their control.

#### **Secretary to the Cabinet**

- 144.** (1) There is established the office of Secretary to the Cabinet.
- (2) The office of Secretary to the Cabinet shall be an office in the public service.
  - (3) The Secretary to the Cabinet—

- (a) shall be appointed by the President with the approval of the National Assembly; and
  - (b) shall be dismissed by the President.
- (4) The Secretary to the Cabinet shall—
- (a) have charge of the Cabinet office;
  - (b) be responsible, subject to the directions of the Cabinet, for arranging the business, and keeping the minutes of the Cabinet;
  - (c) convey the decisions of the Cabinet to the appropriate persons or authorities; and
  - (d) have other functions as directed by the Cabinet.
- (5) The Secretary to the Cabinet may resign from office by giving notice in writing to the President.
- (6) On the assumption to office of a new government, the person holding office as Secretary to the Cabinet shall cease to hold that office but may be re-appointed.

### **Principal Secretaries**

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

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

- 146.** A Principal Secretary—
- (a) shall be nominated by the Public Service Commission and appointed by the President with the approval of the National Assembly;
  - (b) shall be dismissed by the President; and
- may resign from office by giving notice to the President.

## **Part 4—Other offices**

### **Attorney-General**

- 147.** (1) There is established the office of Attorney-General.
- (2) The Attorney-General shall be appointed by the President with the approval of the National Assembly.
- (3) The qualifications for appointment as Attorney-General are the same as for appointment to the office of Chief Justice.
- (4) The Attorney-General shall be the principal legal adviser to the Government.

- (5) The Attorney-General shall have authority, with the leave of the court, to appear as a friend of the court in any civil proceedings to which the Government is not a party.
- (6) The Attorney-General shall promote, protect and uphold the rule of law and defend the public interest.
- (7) The powers of the Attorney-General may be exercised in person or by subordinate officers acting in accordance with general or special instructions.

### **Director of Public Prosecutions**

- 148.** (1) There is established the office of Director of Public Prosecutions.
- (2) The Director of Public Prosecutions shall be appointed by the President with the approval of the National Assembly.
  - (3) The qualifications for appointment as Director of Public Prosecutions are the same as for the appointment as a judge of the High Court.
  - (4) The Director of Public Prosecutions shall have power to direct the Inspector-General of the Kenya Internal Security Service to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with such direction.
  - (5) The Director of Public Prosecutions shall exercise State powers of prosecution and may—
    - (a) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;
    - (b) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of that person or authority; and
    - (c) subject to clause (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).
  - (6) Where discontinuance referred to in clause (5) (c) takes place after the close of the prosecution case, the defendant shall be acquitted.
  - (7) Parliament may by legislation confer powers of prosecution on authorities other than the Director of Public Prosecutions.
  - (8) The Director of Public Prosecutions may not discontinue a prosecution without the permission of the court.
  - (9) The powers of the Director of Public Prosecutions may be exercised in person or by subordinate officers acting in accordance with general or special instructions.
  - (10) The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise

of his or her powers or functions shall not be under the direction or control of any person or authority.

- (11) In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.
- (12) The Director of Public Prosecutions shall hold office for a term of eight years and shall not be eligible for re-appointment.

### **Removal and resignation of Director of Public Prosecutions**

- 149.** (1) The Director of Public Prosecutions may be removed from office only on the grounds of—
- (a) inability to perform the functions of office arising from mental or physical incapacity;
  - (b) non-compliance with Chapter Six;
  - (c) bankruptcy;
  - (d) incompetence; or
  - (e) gross misconduct or misbehaviour.
- (2) A person desiring the removal of the Director of Public Prosecutions may present a petition to the Public Service Commission which, despite Article 240(2), shall be in writing, setting out the alleged facts constituting the grounds for the removal of the office-holder in question.
- (3) The Public Service Commission shall consider the petition and, if it is satisfied that it discloses the existence of a ground under clause (1), it shall send the petition to the President.
- (4) On receipt and examination of the petition, the President shall within fourteen days suspend the Director of Public Prosecutions from office pending action by the President in accordance with clause (5) and, acting in accordance with the advice of the Public Service Commission, shall appoint a tribunal consisting of—
- (a) four members from among persons who hold or have held office as a judge of a superior court, or who are qualified to be appointed as such;
  - (b) one advocate of at least fifteen years' standing nominated by the statutory body responsible for the professional regulation of advocates; and
  - (c) two other persons with experience in public affairs.
- (5) The tribunal shall inquire into the matter expeditiously and report on the facts and make recommendations to the President, who shall act in accordance with the recommendations of the tribunal.
- (6) The Director of Public Prosecutions who is suspended from office under clause (4) shall be entitled to half of their remuneration until they removed from, or reinstated in, office.

- (7) A tribunal appointed under clause (4)(b) shall elect a chairperson from among its members.
- (8) Tribunals appointed under clause (4)(a) and (b) shall in all other respects be responsible for the regulation of their proceedings.
- (9) The Director of Public Prosecutions may resign from office by giving notice to the President.

## **CHAPTER TEN**

### **JUDICIARY**

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

##### **Judicial authority**

**150.** (1) Judicial authority vests in the courts and tribunals established in accordance with this Constitution, and shall be exercised by the courts and tribunals in conformity with this Constitution and the law.

- (2) In exercising judicial authority the courts and tribunals shall be guided by the following principles—
  - (a) justice shall be done to all irrespective of status;
  - (b) justice shall not be delayed;
  - (c) alternative forms of dispute resolution including reconciliation, mediation and arbitration and traditional dispute resolution mechanisms shall be promoted;
  - (d) justice shall be administered without undue regard to technicalities;  
and
  - (e) the purpose and principles of this Constitution shall be protected and promoted.

##### **Independence of the Judiciary**

- 151.** (1) In the exercise of judicial authority, the Judiciary shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority.
- (2) The office of a judge of a superior court shall not be abolished while there is a substantive holder of the office.
  - (3) The remuneration and benefits payable to, or in respect of, members of the Judiciary, shall be a charge on the Consolidated Fund.

- (4) The remuneration and benefits payable to, or in respect of judges shall not be varied to their disadvantage.
- (5) A member of the Judiciary is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a judicial function.

### **Judicial offices and officers**

- 152.** (1) The Judiciary consists of the judges of the superior courts, magistrates, other judicial officers and staff.
- (2) There is established the office of Chief Justice who shall be the Head of the Judiciary.
- (3) There is established the office of the Chief Registrar of the Judiciary who is the chief administrator and accounting officer of the Judiciary.
- (4) The Judicial Service Commission may establish such other offices of registrar as may be necessary.

### **System of courts**

- 153.** (1) The superior courts are the Supreme Court, the Court of Appeal, and the High Court.
- (2) Parliament may by legislation establish other courts with such jurisdiction, functions and status as Parliament may determine.
- (3) The subordinate courts are the courts established under Article 160 or by Parliament in terms of that Article.

## **Part 2—Superior Courts**

### **Supreme Court**

- 154.** (1) There is established the Supreme Court which consists of—
- (a) the Chief Justice, who shall be the president of the court; and
  - (b) a vice-president of the court who shall be the most senior ranking judge from among the judges referred to in paragraph (c);
  - (c) six other judges.
- (2) The Supreme Court shall be properly constituted for the purposes of its proceedings if it is composed of five judges.
- (4) The Supreme Court shall have—

- (a) exclusive original jurisdiction to hear and determine disputes arising from the process of the impeachment of the President;
  - (b) a presidential election petition; and
  - (c) subject to clause (5) and (6), appellate jurisdiction to hear and determine appeals from—
    - (i) the Court of Appeal; and
    - (ii) any other court or tribunal as prescribed by an Act of Parliament.
- (5) Appeals shall lie from the Court of Appeal to the Supreme Court—
- (a) as of right in any case involving the interpretation or application of this Constitution; and
  - (b) in any other case in which the Court of Appeal or the Supreme Court certifies that a matter of general public importance is involved.
- (6) The Supreme Court shall not be bound by its previous decisions if it considers it is in the interests of justice and the development of the law for it not to be so bound.
- (7) All other courts shall be bound by the decisions of the Supreme Court.
- (8) The Supreme Court shall make rules for the exercise of its jurisdiction.
- (9) An Act of Parliament may make further provision for the operation of the Supreme Court.

### **Court of Appeal**

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

### **High Court**

- 156.** (1) There is established the High Court which—

- (a) consists of such number of judges as may be prescribed by an Act of Parliament; and
- (b) shall be organized and administered as may be prescribed by an Act of Parliament.
- (2) There shall be the Principal Judge of the High Court who shall be the most senior ranking judge of the Court.
- (3) Subject to clause (4), the High Court has—
  - (a) unlimited original jurisdiction in criminal and civil matters;
  - (b) jurisdiction to hear any question as to the interpretation of this Constitution;
  - (c) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
  - (d) jurisdiction to hear an appeal from a decision of a subordinate court or a tribunal appointed under this Constitution to consider the removal of a person from office; and
  - (e) any other jurisdiction, original or appellate, conferred on it by or under an Act of Parliament.
- (4) The High Court shall not have jurisdiction in respect of matters reserved for the exclusive jurisdiction of the Supreme Court under this Constitution.
- (5) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority, exercising a judicial or quasi-judicial function, but not over a superior court.
- (6) For the purposes of clause (5), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority as is mentioned in clause (5) and may make any orders and give any directions it considers appropriate to ensure the fair administration of justice.

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

- 157.** (1) The President shall, acting on the recommendation of the Judicial Service Commission and the approval of the National Assembly, appoint the Chief Justice and the judges of the Supreme Court, the Court of Appeal and the High Court.
- (2) Where a vacancy arises in the office of Chief Justice or a judge, the Judicial Service Commission shall, through a competitive process, recommend to the President the names of twice as many persons as the vacancy or vacancies, for nomination and appointment to the office.
- (3) The President shall, within thirty days of the receipt of the names of the persons recommended under clause (2), nominate and submit to the National Assembly for approval the persons to be appointed to the office.

- (4) The National Assembly shall consider the list of persons proposed for appointment under clause (3) and may approve or refuse to approve any person for appointment to the office.
- (5) The President shall appoint the person or persons approved under clause (4) to the vacant office.
- (6) The judges of the superior courts shall be appointed from among persons who—
- (a) hold a law degree from a recognized university or are advocates of the High Court of Kenya or possess equivalent qualification in a common law jurisdiction;
  - (b) possess the required experience gained in Kenya or in another Commonwealth common law jurisdiction and referred to in clauses (3),(4), (5) and (6); and
  - (c) have a high moral character, integrity and impartiality.
- (7) The Chief Justice and judges of the Supreme Court shall be appointed from among persons who have—
- (a) at least fifteen years experience as judge of the Court of Appeal or the High Court; or
  - (b) at least fifteen years experience as distinguished academic, judicial officer, legal practitioner or such experience in other relevant legal fields; or
  - (c) held the qualifications specified in paragraphs (a) and (b) for a period amounting, in the aggregate, to fifteen years;
- (8) The judges of the Court of Appeal shall be appointed from among persons who have—
- (a) ten years experience as judge of the High Court; or
  - (b) ten years experience as distinguished academic or legal practitioner or such experience in other relevant legal fields; or
  - (c) held the qualifications specified in paragraphs (a) and (b) for a period amounting, in the aggregate, to ten years.
- (9) The judges of the High Court shall be appointed from persons who have—
- (a) at least ten years experience as professionally qualified magistrate;
  - (b) at least ten years experience as distinguished academic or legal practitioner or such experience in other relevant legal field; or
  - (c) held the qualifications specified in paragraphs (a) and (b) for a period amounting, in the aggregate, to ten years.

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

- 158.** (1) A judge shall retire from office on attaining the age of seventy years but may opt to retire at the age of sixty –five years.
- (2) The Chief Justice shall hold office for a maximum of ten years or until attaining the age of seventy years, whichever occurs first.
- (3) Despite Article 154(1)(c), where the Chief Justice’s term of office expires before the Chief Justice attains the age of seventy years, the Chief Justice may continue in office as a judge of the Supreme Court even though there may already be the maximum permitted number of Supreme Court judges holding office.
- (4) The Chief Justice and any other judge may resign from office by giving notice to the President.

### **Removal from office**

- 159.** (1) A judge of a superior court may be removed from office only on the grounds of—
- (a) inability to perform the functions of office arising from mental or physical incapacity;
  - (b) a breach of a code of conduct prescribed for judges of the superior courts by an Act of Parliament;
  - (c) bankruptcy;
  - (d) incompetence; or
  - (e) gross misconduct or misbehaviour.
- (2) The removal of a judge may be initiated by the Judicial Service Commission acting on its own motion or on the petition of any person to the Judicial Service Commission.
- (3) Despite Article 240(2)(b), the petition by a person to the Judicial Service Commission under clause (2), shall be in writing, setting out the alleged facts constituting the grounds for the judges removal.
- (4) The Judicial Service Commission shall consider the petition and, if it is satisfied, after hearing the affected judge, that the petition discloses a ground under clause (1), send the petition to the President.
- (5) Within fourteen days after receiving the petition, the President shall suspend the judge from office, and, acting on the recommendation of the Judicial Service Commission—
- (a) in the case of the Chief Justice, appoint a tribunal consisting of—
    - (i) the Speaker of the National Assembly as chairperson;
    - (ii) three superior court judges;
    - (iii) one advocate of fifteen years standing; and

- (iv) two other persons with experience in public affairs; and
- (b) in the case of a judge other than the Chief Justice, appoint a tribunal consisting of—
  - (i) a chairperson and three other members from among persons who hold or have held office as a judge of a superior court, or who are qualified to be appointed as such, but in either case have not been, within the preceding three years, members of the Judicial Service Commission;
  - (ii) one advocate of fifteen years standing; and
  - (iii) two other persons with experience in public affairs.
- (6) The tribunal shall inquire into the matter expeditiously and report on the facts and make recommendations to the President, who shall act in accordance with the recommendations of the tribunal.
- (7) The remuneration and benefits payable to a judge who is suspended from office under clause (5) shall be adjusted to one half until such time as the judge is removed from, or reinstated in, office.
- (9) A judge who is aggrieved by a decision of the tribunal under this Article may appeal against the decision to the Court of Appeal or in the case of a Court of Appeal judge, to the Supreme Court.
- (10) Parliament shall make legislation to govern the procedure of a tribunal appointed under this Article.

### **Part 3—Subordinate courts**

#### **Subordinate courts**

- 160.** (1) The subordinate courts are—
- (a) the Magistrates courts;
  - (b) the Kadhis' courts;
  - (c) the Courts Martial; and
  - (d) any other court or local tribunal as may be established by an Act of Parliament.
- (2) Parliament shall by legislation confer jurisdiction, powers and functions on the courts established under clause (1).

#### **Kadhis' Courts**

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

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- (2) A person shall not be qualified to be appointed to hold or act in the office of Kadhi unless the person—
- (a) professes the Muslim religion; and
  - (b) possesses such knowledge of the Muslim law applicable to any sects of Muslims as qualifies that person, in the opinion of the Judicial Service Commission, to hold a Kadhi's court.
- (3) Without prejudice to Article 160, there shall be such subordinate courts held by Kadhis as Parliament may establish and each Kadhi's court shall, subject to this Constitution, have such jurisdiction and powers as may be conferred on it by law.
- (4) The Chief Kadhi and the other Kadhis, or the Chief Kadhi and such of the other Kadhis (not being fewer than three in number) as may be prescribed by or under an Act of Parliament, shall each be empowered to hold a Kadhi's court having jurisdiction within Kenya.
- (5) The jurisdiction of a Kadhi's court shall be limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's courts.

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

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

- 162.** (1) There is established the Judicial Service Commission consisting of—
- (a) the Chief Justice, who shall be the chairperson of the Commission;
  - (b) two judicial officers, of whom one shall be a judge and the other a magistrate, nominated respectively by judges and magistrates;
  - (c) the Attorney-General;
  - (d) the chairperson of the Public Service Commission;
  - (e) two advocates, one a woman and one a man, each of whom has at least fifteen years' experience, nominated one each by the statutory body responsible for the professional regulation of advocates and academic institutions for the teaching of law;
  - (f) two persons, not being lawyers, one a woman and one a man, appointed by the President to represent the public.
- (2) The Chief Registrar of the Judiciary shall be the Secretary to the Commission.
- (3) Members of the Commission, apart from the Attorney-General, shall hold office, provided that they remain qualified, for a term of five years and shall be eligible to be nominated for a further and final term of five years.

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## Functions of the Judicial Service Commission

**163.** (1) The Judicial Service Commission shall promote and facilitate the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice and shall—

- (a) recommend to the President persons for appointment as judges;
- (b) review and make recommendations on the conditions of service of—
  - (i) judges, magistrates and other judicial officers, other than their remuneration;
  - (ii) the staff of the judiciary; and
- (c) appoint, receive complaints against, investigate and remove from office or otherwise discipline registrars, magistrates, other judicial officers and other staff of the judiciary, in such manner as may be specified by an Act of Parliament;
- (d) perform such other function as Parliament may by legislation prescribe.

(2) In the performance of its functions, the Commission shall be guided by the following—

- (a) competitiveness and transparent processes of appointment of judicial officers and other staff of the judiciary;
- (b) promotion of gender equality.

### Funding for the Judiciary

**164.** The Judicial Service Commission shall have power, in such manner as may be prescribed by legislation, to –

- (a) cause to be prepared and laid before the National Assembly in each financial year estimates of expenditure of the Judiciary for the next following financial year, which upon approval by the National Assembly, shall be a charge on the Consolidated Fund;
- (b) cause the accounts of the Judiciary to be audited and a report of such audited accounts laid before the National Assembly at least once every year.

## CHAPTER ELEVEN

### DEVOLVED GOVERNMENT

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

##### Objects of devolution

**165.** The objects of the devolution of government are to—

- (a) promote democratic and accountable exercise of power;
- (b) foster national unity while recognizing diversity;
- (c) enhance the participation of the people in making decisions affecting them;
- (d) recognize the right of communities to manage their own local affairs and to further their development;
- (e) protect and promote the interests and rights of minorities and marginalized groups;
- (f) promote social and economic development and the provision of proximate, easily-accessed services throughout Kenya;
- (g) ensure equitable sharing of national and local resources throughout Kenya.

### **Principles of devolved government**

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

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

## **Part 2—County governments**

### **County governments**

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

### **Support for county government**

**168.** (1) Parliament shall by legislation make provision for ensuring that county governments

—

- (a) are given adequate support to enable them to carry out their functions; and
- (b) have in place systems of financial management that comply with the regulations made by the national government.

(2) Parliament shall also by legislation make provision for intervention by the national government where a county government—

- (a) is unable or unwilling to carry out its functions; or
- (b) has failed to operate satisfactorily a system of financial management that complies with the regulations.

(3) The legislation may, in particular, authorize the national government—

- (a) to take appropriate steps to ensure that the county government's functions are carried out and that it operates a system of financial management that complies with prescribed requirements; and
- (b) where necessary, to assume responsibility for the relevant functions.

(4) The legislation shall –

- (a) require notice to be given to a county government of any measures that the national government intends to take;
- (b) require the national government to take only measures that are necessary;
- (c) require the national government, where it intervenes, to take measures that will assist the county government to resume full responsibility; and
- (d) provide for a process by which Senate may bring the intervention to an end.

### **Members of county assembly**

**169.** (1) A county assembly consists of—

- (a) members elected one each by the wards in accordance with the law;
- (b) such number of special seat members, in proportion to the votes received by each political party under paragraph (a), as to ensure that no more than two-thirds of the membership of the assembly are of the same gender; and
- (c) such number of members of marginalized groups, including persons with disabilities and the youth, in proportion to the votes received by each political party under paragraph(a), as are prescribed by Act of Parliament.

- (2) The filling of special seats under clause (1)(b) shall be determined after declaration of elected members from each ward.
- (3) A county assembly is elected for a term of five years.

### **County executive committees**

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

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

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

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

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

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

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

173. (1) A county executive committee shall—
  - (a) implement laws of the county assembly;
  - (b) implement, within the county, national legislation to the extent that the legislation so requires; and
  - (c) co-ordinate the functions of the county administration and its departments.
- (2) Without in any way limiting any power of the assembly, a county executive committee may prepare and initiate proposed laws for enactment by the assembly.
- (3) The county executive committee has such other powers and functions as may be conferred on it by this Constitution or by national legislation.
- (4) The county executive committee shall provide the county assembly with full and regular reports concerning the matters under the control of the county.

#### **Urban areas and cities**

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

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

- 175.** (1) The legislative authority of a county is vested in its county assembly.
- (2) A county assembly may make any laws that are reasonably necessary for, or incidental to, the effective exercise and performance of the powers and functions assigned to it.
- (3) A county assembly, while having due regard to the principle of the separation of powers, has power to maintain oversight over the county executive committee and any other executive organs established by laws passed by the assembly.
- (4) A county assembly may receive and approve plans and policies for—
- (a) the management and exploitation of the county's resources; and
  - (b) development and the management of its infrastructure and institutions.

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

##### **Powers and functions**

- 176.** (1) Except as otherwise provided by this Constitution, the powers and functions of the national government and the county governments are as set out in the Fourth Schedule.

- (2) A function that is conferred on more than one level of government is a function within the concurrent jurisdiction of each of those levels of government.
- (3) A function not assigned by this Constitution or by legislation to a county is a function of the national government.
- (4) Despite clause (1), and subject to this Constitution-
  - (a) the national government shall be responsible for general policy and regulation in respect of the matters set out in the Fourth Schedule;
  - (b) Parliament is not precluded from legislating for the Republic on any matter.

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

- 177.** (1) A power or function of government at one level may be transferred to a government at another level by agreement between the two governments if—
- (a) the power or function would be more effectively exercised or performed by the receiving government; and
  - (b) the transfer of the power or function is compatible with the legislation under which it is to be exercised or performed.
- (2) Where a power or function is transferred from a government at one level to a government at another level—
- (a) arrangements shall be put in place to ensure that the resources necessary for the exercise or performance of the power or function are accordingly transferred; and
  - (b) the constitutional responsibility for the exercise or performance of the power or function shall be retained by the government to which it is assigned by the Fourth Schedule.

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

### **Boundaries of counties**

- 178.** (1) Subject to this Constitution, the number and boundaries of a county may be altered so as to take into account—
- (a) the population density and demographic trends;
  - (b) physical and human infrastructure;
  - (c) historical and cultural ties;
  - (d) the cost of administration;
  - (e) the views of the communities affected;
  - (f) the objects of devolution of government; and

(g) geographical features.

- (2) The boundaries of a county may be altered by a resolution of at least two-thirds of each House of Parliament passed pursuant to a recommendation of an independent commission set up for that purpose by Parliament.

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

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

- 179.** (1) Government at either level shall—
- (a) exercise and perform its powers and functions in a manner that respects the functional and institutional integrity of the other level of government and respects the constitutional status and institutions of governments at the other levels;
  - (b) assist, support and consult and, as appropriate, implement the laws of the other level of government; and
  - (c) liaise with other governments at other levels for the purpose of exchanging information, co-ordinating policies and administration and enhancing capacity.
- (2) Government at different levels and different governments at the same level shall, to the extent necessary in any particular circumstances, co-operate in the exercise of powers and performance of functions and, for that purpose, may set up joint committees and joint authorities.
- (3) In any dispute between governments, the governments concerned shall make every reasonable effort to settle the dispute by means of procedures provided by an Act of Parliament.
- (4) An Act of Parliament shall provide procedures for settling such inter-governmental disputes by alternative dispute resolution mechanisms including negotiation, mediation or arbitration.

### **Conflict of laws**

- 180.** (1) This Article applies to conflicts between legislation in relation to matters falling within the concurrent jurisdiction of the two levels of government.
- (2) National legislation prevails over county legislation if –
- (a) the national legislation applies uniformly throughout Kenya and any of the conditions specified in clause (3) is satisfied; or
  - (b) the national legislation is aimed at preventing unreasonable action by a county that—

- (i) is prejudicial to the economic health or security interests of another county or of Kenya as a whole; or
  - (ii) impedes the implementation of national economic policy.
- (3) The conditions mentioned in clause (2)(a) are—
  - (a) the national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the counties individually;
  - (b) the national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing—
    - (i) norms and standards;
    - (ii) frameworks; or
    - (iii) national policies;
  - (c) the national legislation is necessary for—
    - (i) the maintenance of national security;
    - (ii) the maintenance of economic unity;
    - (iii) the protection of the common market in respect of the mobility of goods, services, capital and labour;
    - (iv) the promotion of economic activities across county boundaries;
    - (v) the promotion of equal opportunity or equal access to government services; or
    - (vi) the protection of the environment.
- (4) County legislation prevails over national legislation if the requirements of clause (2) are not satisfied.
- (5) A decision by a court that a provision of legislation of one level of government prevails over a provision of legislation of another level of government does not invalidate that other provision, but that other provision becomes inoperative to the extent of the inconsistency.
- (6) When considering an apparent conflict between legislation of different levels of government, a court shall prefer a reasonable interpretation of the legislation that avoids a conflict to an alternative interpretation that results in conflict.
- (7) A court before which an apparent conflict between legislation of different levels of government arises shall decide the issue unless –
  - (a) because of the importance or complexity of the matter, the court, on its own motion, refers the matter to the Constitutional Court; or
  - (b) any party to the proceedings requests that the matter be so referred.

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

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**Vote of no confidence in county executive**

- 181.** (1) A member of a county assembly supported by at least a third of all the members may, at any time during a sitting of the assembly, propose a motion of no confidence in the county executive.
- (2) If the assembly, by a resolution supported by the votes of more than half of all the members, passes a motion, the county governor, the deputy county governor and all the other members of the county executive shall cease to hold office and a fresh election of a county governor and deputy county governor shall be held.

**Suspension of a county government**

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

**Part 7—General**

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

- 183.** (1) Unless disqualified under clause (2), a person is eligible for election as a member of a county assembly if that person—
- (a) is a citizen;
  - (b) is registered as a voter;
  - (c) satisfies any educational, moral and ethical requirements prescribed by this Constitution or by an Act of Parliament; and

- (d) is nominated by a political party or in the case of a county election, is an independent candidate, supported by at least five hundred registered voters in the ward concerned in the manner determined by the Independent Electoral and Boundaries Commission.
- (2) A person is disqualified from being elected a member of a county assembly if that person—
  - (a) holds a State office or public office, other than that of member of the county assembly to which election is sought;
  - (b) is of unsound mind;
  - (c) is an undischarged bankrupt;
  - (d) is serving a sentence of imprisonment of at least six months; or
  - (e) has been found in accordance with any law to have misused or abused a State office or public office or in any way to have contravened the principles of Chapter Six.
- (3) A person is not disqualified under clause (2) unless all possibility of appeal or review of the sentence or decision has been exhausted.

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

**184.** The office of a member of a county assembly becomes vacant—

- (a) if the member dies;
- (b) if the member resigns in writing addressed to the person presiding over proceedings of the assembly;
- (c) if that person becomes disqualified for election on grounds set out under Article 183(2);
- (d) upon the expiry of the term of the assembly to which the member belongs;
- (e) if the member is absent from eight sittings of the assembly without permission, in writing, of the person presiding over the proceedings of that assembly when it is sitting, and is unable to offer satisfactory explanation for the absence;
- (f) if the member is removed from office under legislation made under Article 69;
- (g) if the member resigns; or
- (h) if, having been elected to the assembly as an independent candidate, the member joins a political party.

#### **Power to summon witnesses**

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

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

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

- 186.** Article 114 applies to county assemblies in the same manner as it applies to Parliament.

### **Gender balance and diversity**

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

### **Government during transition**

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

### **Publication of laws**

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

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

- 190.** (1) Parliament shall by legislation make provision for all matters necessary or convenient to give effect to this Chapter
- (2) In particular, provision may be made with respect to—
- (a) the governance of Nairobi as the capital, other cities and urban areas;
  - (b) the transfer of powers and functions by one level of government to another, including the transfer from the national government to county governments of legislative powers;

- (c) the manner of election or appointment of persons to, and their removal from, offices in county governments, including the qualifications of voters and candidates;
- (d) the procedure of assemblies and executive committees including the chairing and frequency of meetings, quorums and voting; and
- (e) the suspension of assemblies and executive committees.

## **CHAPTER TWELVE**

### **PUBLIC FINANCE**

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

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

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

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

##### **Equitable division of national funds**

- 192.** (1) Revenue raised nationally shall be divided equitably among the national and county governments.
- (2) All governments are entitled to an equitable share of revenue raised by the national government.

- (3) County governments may be given additional allocations from the national government's share of the revenue, either conditionally or unconditionally.

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

- 193.** The following criteria shall be taken into account in determining the equitable shares referred to in Article 203 and in all legislation concerning county government enacted in terms of this Chapter—
- (a) the national interest;
  - (b) any provision that must be made in respect of the public debt and other national obligations;
  - (c) the needs of the national government, determined by objective criteria;
  - (d) the need to ensure that county governments are able to perform the functions allocated to them;
  - (e) the fiscal capacity and efficiency of county governments;
  - (f) developmental and other needs of counties;
  - (g) economic disparities within and among counties and the need to remedy them;
  - (h) the need for affirmative action in respect of disadvantaged areas and groups;
  - (i) the need for economic optimisation of each county and to provide incentives for each county to optimise its capacity to raise revenue;
  - (j) the desirability of stable and predictable allocations of revenue; and
  - (k) the need for flexibility in responding to emergencies and other temporary needs, based on similar objective criteria.

#### **Consultation on financial legislation affecting counties**

- 194.** (1) When a Bill that includes provisions dealing with the division of revenue or any other financial matter concerning county governments is published, the Senate shall consider those provisions and make recommendations to the National Assembly.
- (2) Any recommendations made by the Senate shall be laid before the National Assembly and the National Assembly shall consider them in accordance with the procedure provided for in Article 103.

### **Part 2—Public Funds**

#### **Consolidated Fund and other public funds**

- 195.** (1) There is established the Consolidated Fund into which shall be paid all money raised or received by or on behalf of or in trust for the national government except money that—

- (a) is excluded from the Fund by an Act of Parliament and payable into some other public fund established for a specific purpose; or
  - (b) may, under an Act of Parliament, be retained by the State organ that received it for the purpose of defraying the expenses of that State organ.
- (2) Money may be withdrawn from the Consolidated Fund only—
- (a) in terms of an appropriation by Act of Parliament;
  - (b) in terms of Article 214; or
  - (c) as a charge against the Fund that is provided for by this Constitution or an Act of Parliament.
- (3) Money shall not be withdrawn from any national public fund other than the Consolidated Fund, unless the issue of that money has been authorised in terms of an Act of Parliament.
- (4) Money shall not be withdrawn from the Consolidated Fund unless the Controller of Budget has approved the withdrawal.
- (5) In every financial year, an amount of money not less than fifteen per centum of all revenue collected by the national government shall be set aside for use by the county governments.
- (6) The amount referred to in clause (5) shall be calculated on the basis of the last audited accounts approved by the National Assembly.
- (7) There is established an Equalisation fund into which shall be paid one half percentum of all the revenue collected by the Government, calculated on the basis of the last audited accounts approved by the National Assembly.
- (8) The Government shall, apply the Equalisation Fund to provide the basic services including water, roads, health facilities, electricity and other necessary services, in marginalised areas so as to bring them to as nearly equal a state to the rest of the country as possible.
- (9) Parliament shall enact legislation to give full effect to this Article.

#### **Revenue Funds for county governments**

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

- (b) provide for the establishment of other funds by counties and the management of the funds.

### **Contingencies Fund**

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

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

### **Power to raise taxes and impose charges**

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

### **Imposition of tax**

- 199. (1) No tax or licensing fee may be imposed, waived or varied except as provided by legislation.
- (2) If legislation permits the waiver of any tax or licensing fee—
  - (a) a public record of each waiver shall be maintained with the reason for the waiver; and

- (b) each waiver with the reason for it shall be reported to the Auditor-General.
- (3) No law may exclude or authorise the exclusion of a State officer from payment of tax by reason of—
  - (a) the office held by that State officer; or
  - (b) the nature of the work of the State officer.

#### **Borrowing by national government**

- 200.** Parliament may by legislation—
- (a) prescribe the terms on which the national government may borrow; and
  - (b) impose reporting requirements.

#### **Borrowing by counties**

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

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

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

#### **Public debt**

- 203.** (1) The public debt is a charge on the Consolidated Fund but provision may be made by Act of Parliament for charging all or part of the public debt to other public funds.
- (2) For the purposes of this Article, the public debt means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government.

### **Part 4—Revenue Allocation**

**Revenue allocation**

- 204.** (1) Not later than four months before the end of each financial year, the Senate shall consider and recommend to the National Assembly the basis for the sharing of revenue raised by the national government so as to ensure that—
- (a) the sharing is equitable between the national and county levels of government in accordance with Article 193;
  - (b) the sharing is equitable among counties; and
  - (c) where necessary, conditional or unconditional grants are made to counties from the national government’s share of the revenue.
- (2) The Senate shall make recommendations on other matters concerning the financing of, and financial management by, county governments as required by this Constitution and national legislation.(3) In its recommendations the Senate shall—
- (a) take into account the criteria set out in Article 193; and
  - (b) aim at defining and enhancing the revenue sources of the national and county governments with the object of encouraging fiscal responsibility.
- (4)The recommendations of the Senate shall be laid before the National Assembly and the National Assembly shall consider them in accordance with the procedure provided for in Article 103.
- (5) Upon approval, the recommendations of the Senate concerning the sharing of revenue among governments, are binding on all governments, and shall be reflected in their respective budgets.

**Transfer of equitable share**

- 205.** A county’s share of revenue raised by the national government shall be transferred to that county without undue delay and without deduction, except when the transfer has been stopped under Article 213.

**Part 5—Budgets and spending**

**Form, content and timing of budgets**

- 206.** (1) Budgets of the national and county governments shall contain—
- (a) estimates of revenue and expenditure, differentiating between recurrent and development expenditure;
  - (b) proposals for financing any anticipated deficit for the period to which they apply; and
  - (c) proposals regarding borrowing and other forms of public liability that will increase public debt during the following year.

(2) National legislation shall prescribe—

- (a) the structure of the development plans and budgets of counties;
- (b) when the plans and budgets of the counties shall be tabled in the county assemblies; and
- (c) the form and manner of consultation between the national government and county governments in the process of preparing plans and budgets.

### **National annual estimates**

**207.** Not later than two months before the end of each financial year the Minister responsible for finance there shall be laid before the National Assembly estimates of the revenue and expenditure of the national government for the following financial year .

### **Appropriations Bill**

**208.** (1) In each financial year, there shall be introduced in Parliament a division of revenue Bill which shall divide revenue raised by the national government between the national and county governments in accordance with this Constitution.

(2) On the basis of the division of revenue Bill passed by Parliament under clause (1), each county government shall prepare and pass its own budget and appropriation Bills.

(3) When the estimates of national government expenditure, other than expenditure charged on the Consolidated Fund by this Constitution or an Act of Parliament, have been approved by the National Assembly, they shall be included in a Bill, to be known as an Appropriation Bill, which shall be introduced into the National Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and for the appropriation of those sums for the purposes specified in the Bill.

(4) If, in respect of any financial year—

- (a) the amount appropriated for any purpose under the Appropriation Act is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or
- (b) money has been expended out of the Contingencies Fund for purpose for which no amount has been appropriated by that Act, a supplementary estimate showing the sums required or spent shall be laid before the National Assembly and, in the case of excess expenditure, within four months after the first drawing on the money is made.

(5) The sums sought in a supplementary estimate for purposes for which money already appropriated was insufficient shall not in total exceed ten per cent of the sums previously appropriated by the National Assembly for those purposes during that financial year but Parliament may, in special circumstances, approve a higher percentage.

(6) Where, in respect of any financial year, a supplementary estimate has, or supplementary estimates have, been approved by the National Assembly in accordance with clause (2), a Supplementary Appropriation Bill shall be introduced into the National Assembly in the financial year next following the financial year to which the estimates relate, providing for the appropriation of the sums so approved for the purposes specified in those estimates.

(7) Article 207 applies to estimates prepared under clause (4).

(8) If the Appropriation Act for a financial year has not been assented to, or is not likely to be assented to, by the beginning of that financial year, Parliament may, by a vote on account, authorize the withdrawal of money from the Consolidated Fund.

(9) Money withdrawn under clause (8) shall—

- (a) not exceed in total one-half of the sums included in the estimates of expenditure for that year that have been laid before Parliament;
- (b) be for the purpose of meeting expenditure necessary to carry on the services of the national government during that year until such time as the Appropriation Act is assented to; and
- (c) be included, under separate votes for the several services in respect of which they were withdrawn, in the Appropriation Act

### **Salaries and Remuneration Commission**

**209.** (1) The Salaries and Remuneration Commission consists of the following persons appointed by the President—

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

### **Powers and functions**

**210.** (1) The powers and functions of the Salaries and Remuneration Commission are to —

- (a) set and review regularly the remuneration and benefits of all State officers; and

- (b) advise the national and county governments on the remuneration and benefits of all other public officers.

(2) In fulfilling its functions, the Commission shall take the following principles into account—

- (a) the need to ensure that the total public wage bill is fiscally sustainable;
- (b) the need to ensure that the public services are able to attract and retain the skills required to execute their functions;
- (c) the need to recognize productivity and performance; and
- (d) transparency and fairness.

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

- 211.** (1) The remuneration and benefits payable to Commissioners of the independent commissions and the holders of the independent offices shall be a charge on the Consolidated Fund.
- (2) The remuneration, benefits and privileges of the State officers referred to in clause (1) shall not be varied to their disadvantage while in office.

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

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

**Part 6—Control of public money**

**Financial control**

- 213.** (1) The Minister responsible for finance shall make regulations to ensure both expenditure control and transparency in all governments and establish mechanisms to ensure their implementation.
- (2) The Minister may stop the transfer of funds to a State organ or any other public entity but only for a serious material breach or persistent material breaches of the measures established in terms of clause (1).
- (3) A decision to stop the transfer of funds taken under clause (2) may not stop the transfer of more than fifty per cent of funds due to a county government.
- (4) A decision to stop the transfer of funds taken under clause (2)—
- (a) shall not stop the transfer of funds for more than sixty days; and
  - (b) may be enforced immediately, but will lapse retrospectively unless, within thirty days after the date of the decision, Parliament approves it by resolution passed by both Houses.
- (5) Parliament may renew a decision to stop the transfer of funds but for no more than sixty days at a time.
- (6) Parliament may not approve or renew a decision to stop the transfer of funds unless—
- (a) the Controller of Budget has presented a report on the matter to Parliament; and
  - (b) the affected government, State organ or public institution has been given an opportunity to answer the allegations against it, and to state its case, before the relevant parliamentary committee.
- (5) An Act of Parliament shall provide for the establishment and functions of the national Treasury

**Controller of Budget**

- 214.** (1) There shall be a Controller of Budget who shall be appointed by the President with the approval of the National Assembly.
- (2) To be qualified to be the Controller, a person shall have at least ten years' experience in the management of public finance.
- (3) The Controller holds office, subject to Article 239, for a term of eight years and shall not be eligible for re-appointment.

**Functions of Controller of Budget**

**215.**

The Controller of Budget shall-

- (a) approve withdrawals from the Consolidated Fund or revenue funds for devolved governments upon being satisfied that any such withdrawal is authorised by law;
- (b) provide accounts of the actual withdrawals from the revenue funds for the county governments against appropriations;
- (c) to provide technical advice to Parliament, government ministries and departments.

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

**216.** (1) An Act of Parliament shall provide for—

- (a) the keeping of financial records and the auditing of accounts of all governments and other public entities, and prescribe other measures for securing efficient and transparent fiscal management; and
  - (b) the designation of an accounting officer in every public entity at the national and county level of government.
- (2) The accounting officer of a national public entity is accountable to the National Assembly for funds in that institution and its financial management and the accounting officer for a county institution is accountable to the county assembly for the funds of that institution and its financial management.
- (3) Subject to clause (4), the accounts of all governments and state organs shall be audited by the Auditor-General.
- (4) The accounts of the office of the Auditor-General shall be audited and reported on in accordance with the relevant legislation.
- (5) If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, that person is liable for any loss arising from that use and shall make good the loss, whether that person remains the holder of the office or not.

### **Auditor-General**

- 217.** (1) There shall be an Auditor-General who shall be appointed by the President with the approval of the National Assembly.
- (2) To be qualified to be the Auditor-General, a person shall have at least eight years' experience in the management of public finance.
- (3) The Auditor-General holds office, subject to Article 239, for a term of eight years and shall not be eligible for re-appointment.

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

- 218.** (1) The Auditor-General shall within six months after the end of each financial year, audit and report, in respect of that financial year, on—
- (a) the accounts of the national and county governments;

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

## **Part 7—Central Bank of Kenya**

### **Central Bank of Kenya**

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

## CHAPTER THIRTEEN

### THE PUBLIC SERVICE

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

##### Values and principles of public service

**220.** (1) The values and principles of public service include—

- (a) high standards of professional ethics;
- (b) efficient, effective and economic use of resources;
- (c) responsive, prompt, effective, impartial and equitable provision of services;
- (d) involvement of the people in the process of policy making;
- (e) accountability for administrative acts;
- (f) transparency and provision to the public of timely, accurate information;
- (g) subject to paragraph (h), fair competition and merit as the basis of appointments and promotions;
- (h) representation of Kenya's diverse communities and affording them adequate and equal opportunities for appointments, training and advancement of men and women, the members of all ethnic groups, persons with disabilities in the public service at all levels.

(2) The values and principles of public service apply to public service in—

- (a) every level of government;
- (b) all State organs; and
- (c) state corporations.

(3) Parliament shall enact legislation to give full effect to this Article.

#### Part 2— The Public Service Commission

##### The Public Service Commission

**221.** (1) There is established the Public Service Commission.

(2) The Public Service Commission shall consist of a chairperson and eight other members appointed by the President with the approval of the National Assembly.

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

- (a) is, or has at any time been, a member of the National Assembly, or of the assembly of a county government;
  - (b) is, or has at any time been, nominated as a candidate for election as a member of the National Assembly, or of the assembly of a county government;
  - (c) 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 county assembly.
- (4) The disqualifications referred to in clause (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 clause (7), the office of a member of the Commission shall become vacant –
- (a) at the expiration of five years from the date of the person’s appointment; or
  - (b) if the person accepts any office the holding of which, if the person were not a member of the Commission, would make the person 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 Article.
- (7) A member of the Commission shall be removed from office by the President if the question of the member’s removal from office has been referred to a tribunal appointed under clause (8) and the tribunal has recommended to the President that the member ought to be removed from office for inability or for misbehaviour.
- (8) If the President considers that the question of removing a member of the Commission under this Article ought to be investigated, then-
- (a) the President shall, on the approval of the National Assembly, appoint a tribunal which shall consist of a chairperson and four other members selected from among persons -
    - (i) who hold or have held office as judge of a superior court; or
    - (ii) who are qualified to be appointed as judges of the superior courts.
  - (b) the tribunal shall inquire into the matter and report on the facts to the President and recommend to the President whether the member ought to be removed under this Article.
- (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 the 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.
- (12) Subject to this Part, 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 Part, 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) There shall be a secretary to the Commission who shall be the Chief executive of the Commission.

- (15) The Secretary to the Commission shall—
- (a) be appointed by the President on the recommendation of the Public Service Commission and with the approval of the National Assembly; and
  - (b) hold office for a term of five years and be eligible for re-appointment for one further and final term of five years.

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

- 222.** (1) The powers and functions of the Commission are—
- (a) except where there is a contrary provision in this Constitution or any other law, to appoint persons to hold or act in offices in the public service, to confirm appointments and to exercise disciplinary control over and remove persons holding or acting in those offices;
  - (b) to promote the values and principles set out in Articles 10 and 220 throughout the public service;
  - (c) to investigate, monitor and evaluate the organization, administration and personnel practices of the public service;
  - (d) to ensure efficient and effective performance of the public service;
  - (e) to review the conditions of service, code of regulations and qualifications of public officers and to develop human resources in the public service and make recommendations on them to the national government;
  - (f) to evaluate and report to the President and Parliament on the extent to which the values and principles set out in Articles 10 and 220 are complied with;
  - (g) to hear and determine appeals in respect of matters relating to public service from the county governments
- (2) The Commission may, subject to conditions specified in writing, delegate any of its powers and functions under this Article to any one or more of its members, or to any officer, body or authority in the public service.
- (3) Clause (1) shall not apply to any of the following offices in the public service—
- (a) the State offices;
  - (b) the office of Ambassador, High Commissioner or other principal representative of the Republic in another country;
  - (c) an office to which any of Articles 117, 162(1), 225 or 234 refers;
  - (d) an office in a county government; and
  - (e) except in relation to appeals referred to in clause (1)(g), any office in the service of a county government.
- (4) A person shall not be appointed under clause (1) to act in any office on the personal staff of the President or a retired President, except with the consent of the President or retired President.

### **Staffing of county governments**

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

### **Protection of public officers**

**224.** A public officer shall not be—

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

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

### **Teachers Service Commission**

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

(2) The functions of the Commission shall be—

- (a) to register trained teachers; and
- (b) despite Article 223 to—
  - (i) recruit and employ registered teachers;
  - (ii) assign teachers employed by the Commission for service in any public school and other institutions;
  - (iii) promote and transfer teachers;
  - (iv) exercise disciplinary control over teachers;
  - (v) terminate the employment of teachers.

The Commission shall keep under review the standards of education and training of persons entering the teaching service and the supply of teachers and shall advise the national government on matters relating to the teaching profession.

**CHAPTER FOURTEEN**

**NATIONAL SECURITY**

**Part 1—National Security Organs**

**Principles and objects**

- 226.** (1) National security is the protection of Kenya's territorial integrity and sovereignty, its people, their rights and freedoms, their property, peace, stability, prosperity, and other national interests against internal and external threats.
- (2) The national security of Kenya shall be promoted and guaranteed in accordance with the following principles—
- (a) national security is subject to the authority of this Constitution and Parliament;
  - (b) national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms;
  - (c) recruitment by the national security organs shall reflect the diversity of the Kenyan people in equitable proportions.

**National security organs**

- 227.** (1) The national security organs are—
- (a) the Kenya Defence Forces;
  - (b) the National Intelligence Service; and
  - (c) the Kenya Internal Security Service.
- (2) The primary object of the national security organs and security system is to safeguard the well-being of the people of Kenya and their property and rights and freedoms, and the sovereignty, peace, national unity and territorial integrity of Kenya.
- (3) In the performance of their functions, the national security organs and every member of the national security organs shall not—
- (a) act in a partisan manner;
  - (b) further any interest of a political party or cause; or
  - (c) prejudice a political interest or political cause that is legitimate under this Constitution.
- (4) A person shall not establish an organization concerned with national security or a military or paramilitary organization except as provided for by this Constitution or by an Act of Parliament.
- (5) The national security organs shall be subordinate to civilian authority.
- (6) Parliament shall enact legislation to provide for the functions, organisation and administration of the national security organs.

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

**228.** (1) There is established a National Security Council.

(2) The National Security Council shall exercise supervisory control over national security organs and perform such other functions as Parliament may by legislation prescribe.

(3) The President shall preside at the meetings of the Council, and, in the absence of the President, the Deputy President. President shall preside.

(4) The Council shall appoint its secretary.

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

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

**229.** (1) There is established the Kenya Defence Forces consisting of—

- (a) the Kenya Army;
- (b) the Kenya Air Force; and
- (c) the Kenya Navy

(2) The Kenya Defence Forces shall be responsible for the defence and protection of the Republic, its territorial integrity and its people in accordance with this Constitution.

(3) There is established a Defence Council.

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

(6) Parliament shall enact legislation to give full effect to this Article.

## **Part 3—The National Intelligence Service**

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

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

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

## **Part 4—The Kenya Internal Security Service**

### **Establishment of the Kenya Internal Security Service**

**231.** (1) There is established the Kenya Internal Security Service consisting of-

- (a) the Kenya Police Service; and

(b) the Administration Police Service

(2) The Kenya Police Service and the Administration Police Service shall each be headed by a Commandant appointed by the President with the approval of the National Assembly.

(3) The Kenya Internal Security Service is a national service and shall function throughout Kenya.

(4) Parliament shall enact legislation to give full effect to this Article.

**Objects and functions of the Kenya Internal Security Service**

**232.** (1) The Kenya Internal Security Service shall—

- (a) strive for the highest standards of professionalism and discipline among its members; and
- (b) prevent corruption and promote and abide by the principle of transparency and accountability;
- (c) observe human rights standards;
- (d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and
- (e) foster and promote relationships with the broader society.

**Inspector-General of the Kenya Internal Security Service**

**233.** (1) There is established the office of the Inspector General of the Kenya Internal Security Service who shall be appointed by the President with the approval of the National Assembly

(2) The Inspector-General shall exercise command over the Kenya Internal Security Service and perform any other duties that Parliament may by legislation prescribe.

(3) Parliament shall by legislation give full effect to the provision of this Article.

**Kenya Internal Security Service Commission**

**234.** (1) There is established the Kenya Internal Security Service Commission.

(2) The Kenya Internal Security Service Commission shall consist of—

- (a) a person who is qualified to be appointed as a High Court Judge appointed by the President;
- (b) two retired senior police officers appointed by the President;
- (c) three persons of integrity who have served the public with distinction appointed by the President; and
- (d) the Inspector-General of the Kenya Internal Security Service;
- (e) the Kenya Police Commandant; and
- (f) the Administration Police Commandant.

- (3) The Kenya Internal Security Service Commission shall recruit and appoint persons to hold or act in offices in the services, to confirm appointments, to determine promotions and, observing due process, exercise disciplinary control over and remove persons holding or acting in those offices, and perform such other functions in relation to the Kenya Internal Security Service as Parliament may by legislation provide.
- (4) Parliament shall by legislation give full effect to the provision of this Article.

## **Part 5—Other Internal Security Services**

### **Other internal security services**

**235.** Parliament may by legislation establish such other internal security services under the supervision of the Kenya Internal Security Service and the command of the Inspector-General of the Kenya Internal Security Service as it may consider necessary.

## **CHAPTER FIFTEEN**

### **COMMISSIONS AND INDEPENDENT OFFICES**

#### **Application of Chapter**

**236.** (1) This Chapter applies to all the Commissions mentioned in clause (2) and the office of the Auditor-General except where specific provision is made to the contrary elsewhere in this Constitution.

(2) The Commissions are—

- (a) the Equality Commission;
- (b) the Independent Electoral and Boundaries Commission;
- (c) the Judicial Service Commission;
- (d) the Kenya Internal Security Service Commission;
- (e) the National Land Commission;
- (f) the Parliamentary Service Commission;
- (g) the Public Service Commission; and
- (h) the Salaries and Remuneration Commission.
- (i) the Teachers Service Commission; and

#### **Objects of Commissions and independent offices**

**237.** (1) The objectives of the Commissions and the independent office are to—

- (a) protect the sovereignty of the people;

- (b) secure the observance by all State organs of democratic values and principles; and
- (c) promote constitutionalism.

(2) The Commissions and the holders of independent offices—

- (a) are subject only to this Constitution and the law; and
- (b) are independent and not subject to direction or control by any person or authority.

### **Composition, appointment and terms of office**

**238.** (1) Each Commission shall consist of at least three and not more than nine members.

(2) Unless otherwise specified in this Constitution, the holder of an independent office, the chairperson and each member of a Commission shall be—

- (a) identified and recommended for appointment in a manner prescribed by an Act of Parliament;
- (b) approved by the National Assembly; and
- (c) appointed by the President.

(3) To be appointed, a person shall have the specific qualifications required by this Constitution or by an Act of Parliament.

(4) Appointments to Commissions and independent offices shall take into account the national values set out in Article 10.

(5) A member of a Commission may be part time.

(6) The holder of an independent office or a member of a Commission shall—

- (a) unless ex-officio, hold office for a term of five years and shall not be eligible for re-appointment; and
- (b) unless ex-officio or part-time, not hold any other office or employment for profit whether public or private; and
- (c) comply with the principles set out in Chapter Six.

(7) The holder of an independent office or a member of a Commission is not liable to an action or suit for anything done in good faith in the performance of a function of office.

(8) Members of a Commission shall elect a vice-chairperson from among themselves—

- (a) at the first sitting of the Commission; and
- (b) whenever it is necessary to fill a vacancy.

(9) The vice-chairperson elected under clause (8) shall not be of the same gender as the chairperson.

- (10) Unless otherwise specified in this Constitution, there shall be a Secretary to each Commission who shall be the chief executive officer of the Commission.

### **Removal from office**

- 239.** (1) The holder of an independent office or a member of a Commission, unless ex-officio, may be removed from office only for—
- (a) inability to perform their functions arising from mental or physical incapacity;
  - (b) gross misconduct or misbehaviour whether in the performance of the office-holder's or the member's functions;
  - (c) bankruptcy;
  - (d) incompetence; or
  - (e) contravention of Chapter Six.
- (2) A person desiring the removal of a person on any ground set out in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.
- (3) The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), shall send the petition to the President.
- (4) On receiving a petition under clause (3), the President—
- (a) may suspend the person concerned pending the outcome of the complaint; and
  - (b) shall appoint a tribunal in accordance with clause (5).
- (5) The tribunal shall consist of—
- (a) a person who holds, or has held office in the Republic as a judge of a superior court, who shall be the chairperson;
  - (b) at least two persons who are qualified to be appointed as High Court judges; and
  - (c) one other member who is qualified to consider the facts in relation to the particular ground for removal.
- (6) The tribunal shall investigate the matter expeditiously, and report on the facts and make a recommendation to the President, who shall act in accordance with the recommendation within thirty days.
- (7) A person suspended under this Article is entitled to continue to receive one-half of the remuneration and benefits of the office while suspended.

## General powers

240. (1) A Commission and the holder of an independent office—
- (a) may conduct investigations on their own initiative or upon a complaint made by a member of the public;
  - (b) has the powers necessary for conciliation, mediation and negotiation;
  - (c) shall recruit their own staff.
- (2) A complaint to a Commission or the holder of an independent office may be filed by any person entitled to institute court proceedings under Article 21(1) and (2).
- (3) A Commission or the holder of an independent office may, in addition to the functions conferred by this Constitution, perform such other functions as Parliament may, by legislation, prescribe.

## Incorporation

241. A Commission and an independent office is a body corporate and—
- (c) has perpetual succession and a common seal; and
  - (d) is capable of suing and being sued in its corporate name.

## Legislation

242. Parliament may by legislation provide for the functioning of the Commissions and independent offices.

## CHAPTER SIXTEEN

### AMENDMENT OF THE CONSTITUTION

#### Amendment of the Constitution

243. (1) A proposed amendment to this Constitution in respect of—
- (a) the supremacy of the Constitution;
  - (b) the territory of Kenya;
  - (c) the sovereignty of the people;
  - (d) the national values set out in Article 10;
  - (e) the Bill of Rights;
  - (f) the term of office of the President;

- (g) the independence of the Judiciary, Commissions and independent offices;
- (h) the functions of Parliament;
- (i) the objects and principles and the structure of devolution; or
- (j) the provisions of this Chapter,

shall be enacted in accordance with Article 244 or 245, and approved by a simple majority of the citizens voting in a referendum held for that purpose.

- (2) The referendum result is not valid for the purposes of the approval of a proposed amendment referred to in clause (1) unless at least twenty per cent of the registered voters in each of a majority of the counties have voted.
- (3) An amendment to this Constitution not contemplated in clause (1) shall be enacted either—
  - (a) by Parliament, in accordance with Article 244; or
  - (b) by the people and Parliament, in accordance with Article 245.

#### **Amendment by parliamentary initiative**

- 244.** (1) A Bill to amend this Constitution—
- (a) may be introduced in either House of Parliament;
  - (b) may not address any other matter apart from consequential amendments to legislation arising from the Bill;
  - (c) shall not be called for second reading in either House, until at least ninety days after the date of first reading of the Bill in that House; and
  - (d) shall have been enacted by Parliament when each House of Parliament has passed the Bill, in both its second and third readings, by not less than two-thirds of all the members of that House.
- (2) Parliament shall publicize any Bill to amend this Constitution, and facilitate public discussion on that Bill.
  - (3) When Parliament has enacted a Bill to amend this Constitution, the Speakers of the two Houses of Parliament shall jointly submit to the President—
    - (a) the Bill, for assent and publication; and
    - (b) a certificate that the Bill has been enacted by Parliament in accordance with this Article.
  - (4) Within thirty days after the Bill is enacted by Parliament, the President shall assent to the Bill and cause it to be published, subject to clause (5).
  - (5) If a Bill to amend this Constitution proposes an amendment contemplated in Article 243(1), the President shall—
    - (a) before assenting to the Bill, request the Independent Electoral and Boundaries Commission to conduct, within ninety days, a national referendum for approval of the Bill; and

- (b) within thirty days after the chairperson of the Independent Electoral and Boundaries Commission has certified to the President that the Bill has been approved by a simple majority of the citizens voting in a referendum, assent to the Bill and cause it to be published.

### **Amendment by popular initiative**

- 245.** (1) An amendment to this Constitution may be proposed by a popular initiative signed by at least one million registered voters.
- (2) A popular initiative for an amendment to this Constitution may be in the form of a general suggestion or a formulated draft Bill.
  - (3) If a popular initiative is in the form of a general suggestion, the promoters of that popular initiative shall formulate it into a draft Bill.
  - (4) The promoters of a popular initiative shall forward the draft Bill and the supporting signatures to the Independent Electoral and Boundaries Commission, which shall verify that the initiative is supported by at least one million registered voters.
  - (5) If the Independent Electoral and Boundaries Commission is satisfied that the initiative meets the requirements of this Article, the Commission shall submit the draft Bill to each county assembly for consideration within a period of not more than three months after the date on which it was submitted by the Commission.
  - (6) When a county assembly has approved a draft Bill, the governor of that county shall submit a copy of the draft Bill jointly to the Speakers of the two Houses of Parliament, with a certificate that the county assembly has approved it.
  - (7) When a draft Bill has been approved by a majority of the county assemblies, it shall forthwith be introduced in Parliament, where it shall be deemed to have been approved if passed by a majority of the members of each house.
  - (8) If Parliament approves the Bill, it shall be submitted to the President for assent in accordance with Articles 245(4) and (5).
  - (9) If either House of Parliament fails to pass the Bill, the Bill shall be submitted to the people in a referendum.
  - (10) The referendum result is not valid for the purposes of the approval of a proposed amendment referred to in clause (1) unless—
    - (a) at least twenty percent of the registered voters in each of a majority of the counties have voted; and
    - (b) a majority of the voters in more than half of the counties have voted in support; and
    - (c) a majority of the votes cast are in support of the proposed amendment.

## **CHAPTER SEVENTEEN**

### **GENERAL PROVISIONS**

## Enforcement of the provisions of the Constitution

246. (1) A person referred to in clause (2) has the right to institute proceedings in the appropriate court, alleging that any provision of this Constitution has been violated or threatened with violation.
- (2) The persons who may institute court proceedings in accordance with clause (1) are—
- (a) a person acting in their own interest;
  - (b) a person acting on behalf of another person who cannot act in their own name;
  - (c) a person acting as a member of, or in the interest of, a group or class of persons;
  - (d) a person acting in the public interest; and
  - (e) an association acting in the interest of one or more of its members.

## Construing the Constitution

247. (1) This Constitution shall be interpreted in a manner that—
- (a) promotes its purposes, values and principles;
  - (b) advances human rights and fundamental freedoms and the rule of law;
  - (c) permits the development of the law; and
  - (d) contributes to good governance.
- (2) If there is a conflict between different language versions of this Constitution, the English language version shall prevail.
- (3) Unless there is provision to the contrary, a power conferred or a duty imposed on Parliament by this Constitution to establish, provide for or prescribe any matter or thing shall be exercised or discharged by an Act of Parliament.
- (4) Every provision of this Constitution shall be construed according to the doctrine of interpretation that the law is always speaking, and therefore, among other things—
- (a) a power granted or duty imposed by this Constitution may be exercised or performed as occasion requires, by the person holding the office to which the power is granted or the duty is assigned;
  - (b) any reference in this Constitution or any other law to a person holding an office under this Constitution includes a reference to the person lawfully discharging the functions of that office at any particular time;
  - (c) a reference in this Constitution or any other law to an office, State organ or locality named in this Constitution shall be read with any formal alteration necessary to make it applicable in the circumstances; and

- (d) a reference in this Constitution to an office, body or organization is a reference to that office, body or organization, or if the office, body or organization has ceased to exist, to its successor or to the equivalent office, body or organization.
- (5) In this Constitution, unless the context otherwise requires—
- (a) if a word or expression is defined in this Constitution, any grammatical variation or cognate expression of that word or expression bears a corresponding meaning, read with the changes required by the context; and
  - (b) the word “including” means “including, but not limited to”, and the word “includes” means “includes, but is not limited to”;
- (6) When calculating time between two events for any purpose under this Constitution, if that time is expressed—
- (a) as days, the day on which the first event occurs shall be excluded, and the day by which the last event may occur shall be included;
  - (b) as months, the time period ends at the beginning of the day in the relevant month—
    - (i) that has the same number as the date on which the period began, if that month has a corresponding date; or
    - (ii) that is the last day of that month, in any other case; or
  - (c) as years, the time period ends at the beginning of the date of the relevant year that corresponds to the date on which the period began.
- (7) If a period of time set out in this Constitution for any purpose is six days or less, Sundays and public holidays shall not count when computing the time.
- (8) If, in any case, a period of time set out in this Constitution for any purpose ends on a Sunday or a public holiday, the period extends to the first subsequent day that is not a Sunday or public holiday.
- (9) If no specific time is set out for performing a required act, that act shall be done without unreasonable delay, and as often as occasion arises.
- (10) If any person or State organ has authority under this Constitution to extend a time period set out in this Constitution, unless a contrary intention is expressly set out in the provision establishing that authority, it may be exercised either before or after the expiry of the period.
- (11) Except where there is provision to the contrary in this Constitution, where a person has vacated an office established by or under this Constitution, the person may, if qualified, again be appointed, elected or otherwise selected to hold that office in accordance with this Constitution.
- (12) Where the power or duty of a person under this Constitution is exercisable only upon the advice, recommendation, or is subject to the approval or consent of , or upon consultation with, another person, then the power shall, unless a contrary intention appears, be exercisable only upon that advice, recommendation or subject to that approval or consent or after that consultation.

## Interpretation

248. In this Constitution, unless the context otherwise requires—

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

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

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

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

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

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

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

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

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

“judicial officer” means a person who holds, or is acting, in the office of registrar, deputy registrar, magistrate, Kadhi or the presiding officer of a court established under Article 160(1)(d);

“Kenya” means the territory of the Republic;

“land” includes—

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

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

“marginalized community” means—

- (a) a community which, by reason of its relatively small population or for any other reason has been unable to fully participate in the integrated social and economic life of Kenya as a whole;

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

“marginalized group” means a group who, as a result of laws or practices before or after the effective date, were or are disadvantaged by discrimination on one or more prohibited grounds set out in Article 26;

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

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

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

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

“political party” means an association of individuals organised for the purposes contemplated in Article 78;

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

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

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

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

“Republic” means the Republic of Kenya;

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

“State office” means any of the following offices—

- (a) President;
- (b) Deputy President;
- (c) member of the Cabinet;
- (d) Deputy Minister;
- (e) member of Parliament;
- (f) member of the Judiciary;
- (g) member of a constitutional Commission
- (h) holder of an independent office;
- (i) member of an assembly or executive committee of a county government;
- (j) Attorney-General;
- (k) Director of Public Prosecutions;
- (l) Public Defender;
- (m) Secretary to the Cabinet;
- (n) Principal Secretary;
- (o) Chief of the Kenya Defence Forces; and
- (p) commander of a service of the Kenya Defence Forces
- (q) Director-General of the National Intelligence Service; and
- (r) Inspector-General of the Kenya Police Service.
- (s) Director-General of the Correctional Service;

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

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

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

“youth” means an the collectivity of all individuals who in the Republic each of whom—

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

## CHAPTER EIGHTEEN

### TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

#### Consequential legislation

- 249.** (1) Where in this Constitution Parliament is required to enact legislation to govern a particular matter, Parliament shall enact that legislation within the period specified in the Fifth Schedule, commencing on the effective date.
- (2) Despite clause (1), Parliament may, by resolution supported by the votes of at least two-thirds of all the members of Parliament, extend the period prescribed in respect of any particular matter under clause (1), by such time not exceeding one year, as Parliament may determine.
- (3) The power of Parliament contemplated under clause (2), may be exercised—
- (a) only once in respect of any particular matter; and
  - (b) only in exceptional circumstances to be certified by the Speaker of the National Assembly.
- (4) For the purposes of clauses (1), the Attorney-General in consultation with the Select Committee on the Implementation of the Constitution shall prepare the relevant Bills for tabling before Parliament, as soon as reasonably practicable, to enable Parliament to enact the legislation within the period specified.
- (5) Where in this Constitution Parliament is required to enact legislation to govern a particular matter within a specified time, but fails to do so, any person may petition the Speaker of the National Assembly on the matter.
- (6) The Speaker shall bring a petition under clause (5) to the attention of the National Assembly within fourteen days of receipt and shall direct the relevant committee of the National Assembly to cause the relevant Bill to be published and tabled before the National Assembly.

#### Transitional

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

#### Effective Date

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

**Repeal**

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

## FIRST SCHEDULE

*Article 5(2)*

### COUNTIES

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

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

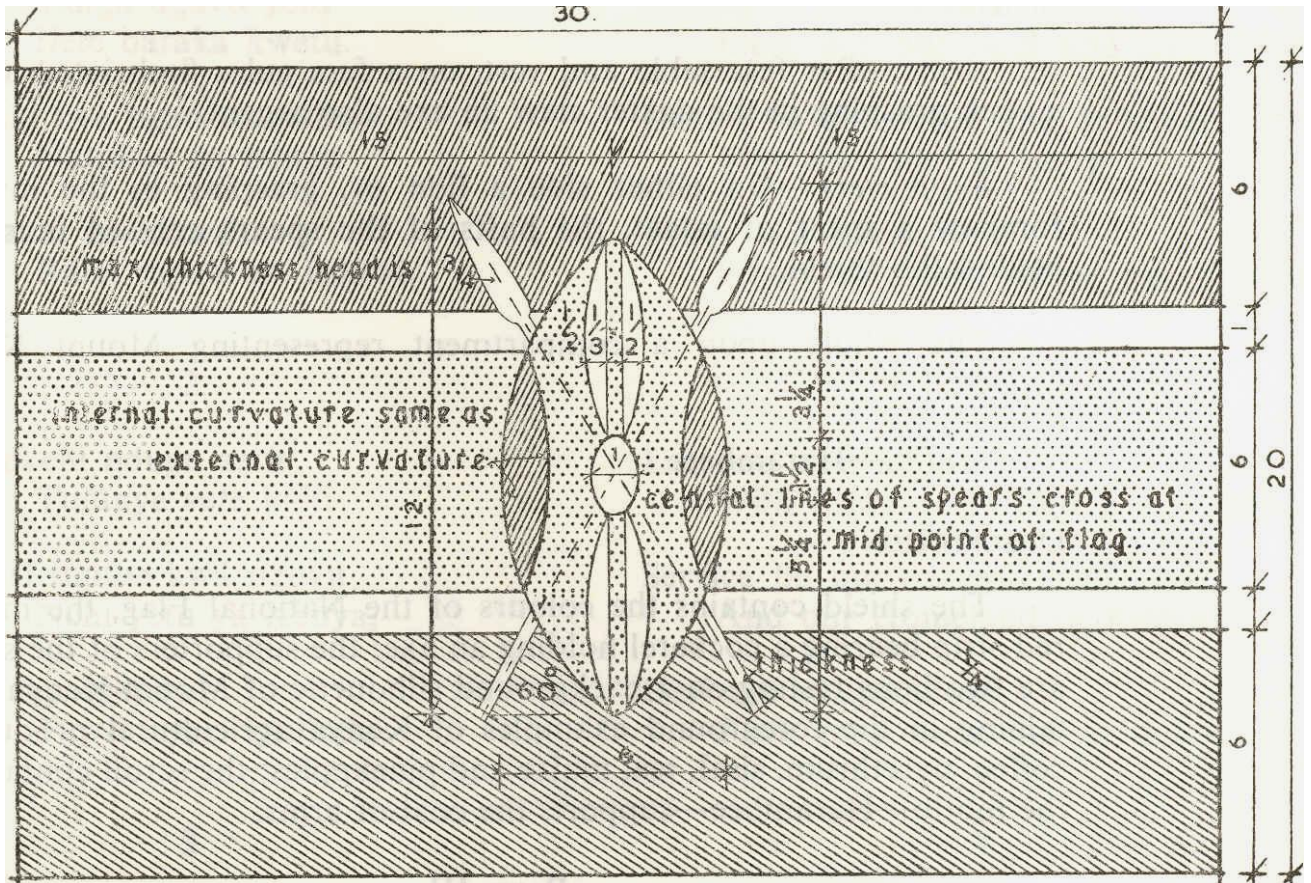
41. Siaya
42. Kisumu
43. Homa Bay
44. Migori
45. Kisii
46. Nyamira
47. Nairobi City

**SECOND SCHEDULE**

(Article 9)

**NATIONAL SYMBOLS**

**(a) The National Flag**



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

**Description:**

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

**(b) The National Anthem**

**1**  
Ee Mungu nguvu yetu  
Ilete baraka kwetu.  
  
Haki iwe ngao na mlinzi  
Natukae na undugu  
  
Amani na uhuru  
Raha tupate na ustawi

**2**  
Amkeni ndugu zetu  
Tufanye sote bidii  
  
Nasi tujitoe kwa nguvu  
Nchi yetu ya Kenya,  
  
Tunayoipenda  
Tuwe tayari kuilinda.

**3**  
Natujenge taifa letu  
Ee, ndio wajibu wetu  
  
Kenya istahili heshima  
Tuungane mikono  
  
Pamoja kazini  
Kila siku tuwe na shukrani.

**1**  
O God of all creation  
Bless this our land and nation.  
  
Justice be our shield and defender  
May we dwell in unity  
  
Peace and liberty  
Plenty be found within our borders.

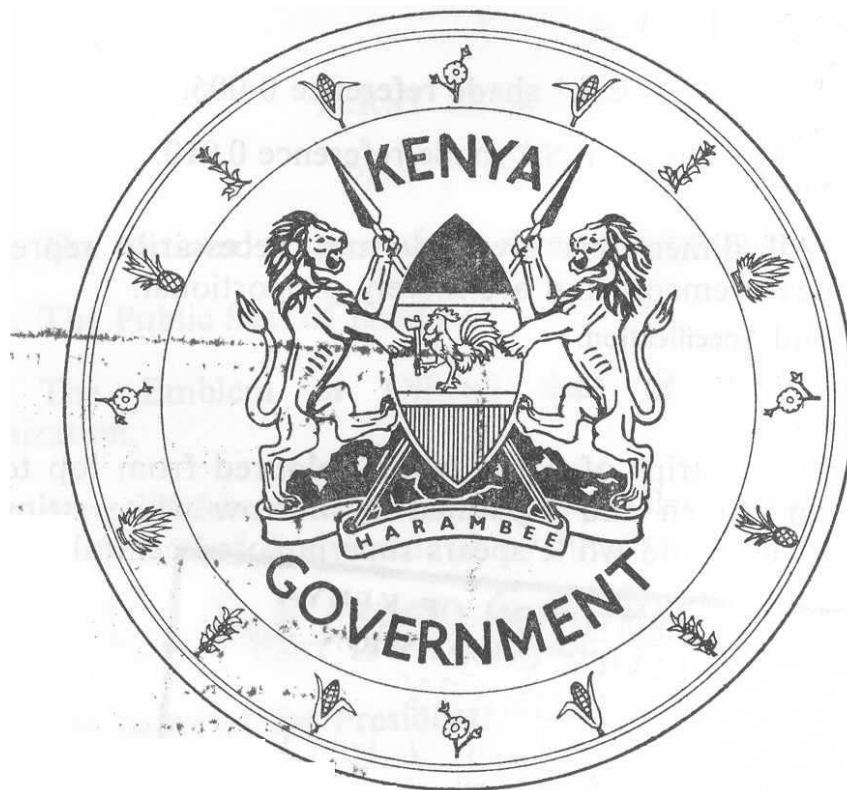
**2**  
Let one and all arise  
With hearts both strong and true.  
  
Service be our earnest endeavour,  
And our Homeland of Kenya  
  
Heritage of splendour,  
Firm may we stand to defend.

**3**  
Let all with one accord  
In common bond united,  
  
Build this our nation together  
And the glory of Kenya  
  
The fruit of our labour  
Fill every heart with thanksgiving

(c) The Coat of Arms



(d) The Public Seal



**THIRD SCHEDULE**

*(Article 66)*

**NATIONAL OATHS AND AFFIRMATIONS**

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

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

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

I, ..... , swear/solemnly affirm that I will truly and diligently serve the people and the Republic of Kenya in the office of the President/ Acting President of the Republic of Kenya; that I will diligently discharge my duties and perform my functions in the Office of President/Acting President of the Republic of Kenya; and I will do justice to all in accordance with the Constitution, as by law established, and the laws of Kenya, without fear, favour, affection or ill-will. (In the case of an oath: So help me God.)

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

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

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

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

President for the good management of the public affairs of the Republic of Kenya; that I will not divulge directly or indirectly such matters as shall come to my knowledge in the discharge of my duties and committed to my secrecy except as may be required for the due discharge of my duties as Minister/Deputy Minister; and that I will perform the functions of my office conscientiously and to the best of my ability. (In the case of an oath: So help me God.).

**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR SECRETARY TO THE CABINET/ A PRINCIPAL SECRETARY**

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

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

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

**OATH /AFFIRMATION OF MEMBER OF PARLIAMENT (SENATE/ NATIONAL ASSEMBLY)**

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

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

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

## FOURTH SCHEDULE

(Article 176(1))

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

#### Part 1 – National Government

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

- (e) pipelines;
  - (f) marine navigation;
  - (g) civil aviation;
  - (h) space travel;
  - (i) postal services;
  - (j) telecommunications; and
  - (k) radio and television broadcasting.
- 19. National public works.
  - 20. Housing policy.
  - 21. General principles of land planning and the co-ordination of planning by the counties.
  - 22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular—
    - (a) fishing, hunting and gathering;
    - (b) protection of animals and wildlife;
    - (c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and
    - (d) energy policy.
  - 23. National referral health facilities.
  - 24. Disaster management.
  - 25. Ancient and historical monuments of national importance.
  - 26. National elections.
  - 28. Health policy.
  - 29. Agricultural policy.
  - 30. Veterinary policy.
  - 31. Energy policy including electricity and gas reticulation and energy regulation.
  - 32. Capacity building and technical assistance to the counties.
  - 33. Public investment.
  - 34. National betting and lottery.
  - 35. Tourism policy and development.

## **Part 2—County Governments**

The powers and functions of the county are—

- 1. Agriculture, including—
  - (a) crop and animal husbandry;
  - (b) livestock sale yards;

- (c) county abattoirs;
  - (d) plant and animal disease control; and
  - (e) fisheries.
2. County health services, including, in particular—
- (a) county health facilities and pharmacies;
  - (b) ambulance services;
  - (c) promotion of primary health care;
  - (d) licensing and control of undertakings that sell food to the public;
  - (e) veterinary services (excluding regulation of the profession);
  - (f) cemeteries, funeral parlours and crematoria; and
  - (g) refuse removal, refuse dumps and solid waste disposal.
3. Control of air pollution, noise pollution, other public nuisances and outdoor advertising.
4. Cultural activities, public entertainment and public amenities, including—
- (a) betting, casinos and other forms of gambling;
  - (b) racing;
  - (c) liquor licensing;
  - (d) cinemas;
  - (e) video shows and hiring;
  - (f) libraries;
  - (g) museums;
  - (h) sports and cultural activities and facilities; and
  - (i) county parks, beaches and recreation facilities.
5. County transport, including—
- (a) county roads;
  - (b) street lighting;
  - (c) traffic and parking;
  - (d) public road transport; and
  - (e) ferries and harbours, excluding the regulation of international and national shipping and matters related thereto.
6. Animal control and welfare, including—
- (a) licensing of dogs; and
  - (b) facilities for the accommodation, care and burial of animals.
7. Trade development and regulation, including—
- (a) markets;
  - (b) trade licences (excluding regulation of professions);

- (c) fair trading practices;
  - (d) local tourism; and
  - (e) cooperative societies.
8. County planning and development, including—
- (a) statistics;
  - (b) land survey and mapping;
  - (c) boundaries and fencing;
  - (d) housing; and
  - (e) electricity and gas reticulation and energy regulation.
9. Education at pre-primary, education, village polytechnics, homecraft centres and childcare facilities.
10. Implementation of specific national government policies on natural resources and environmental conservation, including—
- (a) soil and water conservation; and
  - (b) forestry.
11. County public works and services, including—
- (a) storm water management systems in built-up areas; and
  - (b) water and sanitation services.
12. Fire fighting services and disaster management.
13. Control of drugs and pornography.
14. Ensuring and co-ordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the powers and functions and participation in governance at the local level.

**FIFTH SCHEDULE**

(Article 249(1))

**LEGISLATION TO BE ENACTED BY PARLIAMENT**

<b>CHAPTER AND TITLE OF ARTICLE</b>	<b>TIME SPECIFICATION</b>
Responsibility of the State in respect of culture	Five years
<b>CHAPTER THREE: CITIZENSHIP</b>	
Citizenship by registration	One year
Legislation on citizenship	One year
Freedom from discrimination	Three years
Family	Five years
Persons with disabilities	Three years
Minorities and marginalized groups	Three years
Freedom of the media	One year
Freedom of association	One year
Consumer rights	Three years
Legislation required by Chapter Five	Four years
Oath of office	Six months
Legislation on leadership	One year
Recall	Three years
Legislation on Elections	Twelve months
Independent Electoral and Boundaries Commission	Twelve months
Regulation of Political Parties, Commissioner of Political Parties and Fund	One year,
Membership of the Senate and National Assembly	Twelve months
Procedure at presidential election	Twelve months
Prerogative of mercy	Two years
Court of Appeal and High Court	Two years
All legislation required for establishment and operation of county government excluding Art 231 law.	Twelve months
Relationship between governments at different levels	Three years
Consolidated Fund	Two years

<b>CHAPTER AND TITLE OF ARTICLE</b>	<b>TIME SPECIFICATION</b>
Revenue Fund for county governments	Two years
Contingencies Fund	Three years
Public debt	Three years
Budgets of county governments	Two years
Procurement of public goods and services	Four years
Accounts and audit of public institutions	Four years
Powers and functions of Commission	Five years
Staffing of county governments	Two years
Establishment of the Kenya Internal Security Service	Three years
Kenya Internal Service Commission	
<ul style="list-style-type: none"> <li>• Equality Commission</li> </ul>	Six months
<ul style="list-style-type: none"> <li>• Independent Electoral and Boundaries Commission</li> </ul>	Twelve months
<ul style="list-style-type: none"> <li>• National Land Commission</li> </ul>	Four years
<ul style="list-style-type: none"> <li>• Public Service Commission</li> </ul>	Four years
<ul style="list-style-type: none"> <li>• Salaries and Remuneration Commission</li> </ul>	Four years
<ul style="list-style-type: none"> <li>• Teachers Service Commission</li> </ul>	Four years

## **SIXTH SCHEDULE**

*(Article 250)*

### **TRANSITIONAL AND CONSEQUENTIAL PROVISIONS**

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

##### **Interpretation**

1. In this Schedule, unless the context indicates otherwise –

“Boundaries Commission means Interim Independent Boundaries Commission;

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

“Electoral Commission” means Interim Independent Electoral Commission;

“former Constitution” means the Constitution in force before this Constitution took effect;  
and

“Select Committee” means the Select Committee on the Implementation of the Constitution.

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

2. Except where this Constitution expressly provides to the contrary, all rights and obligations, however arising, of the Government or the Republic and subsisting immediately before the effective date shall continue as rights and obligations of the national government or the Republic under this Constitution.

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

3. The following provisions of this Constitution are suspended until the final announcement of all the results of the first elections for the National Assembly under this Constitution-
- (a) Chapter Eight, except that the provisions of the Chapter relating to the election of the National Assembly and the Senate shall apply to the first general elections under this Constitution.
  - (b) Articles 118 to 146 of Chapter Nine; and
  - (c) Chapter Seven except that the provisions of the Chapter shall apply to the first general elections under this Constitution.

##### **Existing laws**

4. (1) All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.

(2) Until Parliament passes the Act anticipated in Articles 14 and 17, section 93 of the former Constitution continues to apply.

### **Select Committee on the Implementation of the Constitution**

5. (1) Parliament shall within one month from the effective date establish a select committee to be known as the Select Committee on the Implementation of the Constitution.
- (2) The functions of the Select Committee shall be to—
- (a) monitor, facilitate and oversee the development of legislation and administrative procedures required to implement this Constitution;
  - (b) where necessary, initiate legislation required to implement this Constitution;
  - (c) report twice a year to **the President** and Parliament on—
    - (i) the progress of the implementation of this Constitution; and
    - (ii) any impediments to its implementation; and
  - (d) work with each constitutional Commission to ensure that the letter and the spirit of this Constitution is respected.

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

6. Until the Chief Justice makes the rules contemplated by Article 21, the Rules for the enforcement of the fundamental rights and freedoms under section 84(6) of the former Constitution shall continue in force with the alterations, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with Article 21.

### **Land**

7. (1) Article 54(2) and (3) is suspended until the National Land Commission is established.
- (2) Until communities are identified and their titles are registered, community land shall be held by the National Land Commission on their behalf.

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

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

## **National Assembly**

9. (1) The National Assembly existing immediately before the effective date shall continue as the National Assembly for the purposes of this Constitution for its unexpired term.
- (2) Sections 30 to 40, 43 to 46 and 48 to 58 of the former Constitution shall continue to operate until the first election for the National Assembly held under this Constitution but the provisions of this Constitution concerning the system of elections, eligibility for election and the electoral process shall apply to that election.

## **Elections and by-elections**

11. (1) The first elections for the President, the National Assembly and the Senate under this Constitution shall be held at the same but in a staggered manner, within sixty days after the dissolution of the National Assembly at the end of its term.

(2) Elections for the first county assemblies and mayors shall be at the same time as the first general elections.

## **The Executive**

12. (1) The provisions of the former Constitution concerning the executive remain in force until the final announcement of all the results of the first elections for the National Assembly under this Constitution.

- (3) The persons occupying the offices of President and Prime Minister immediately before the effective date shall continue to serve as President and Prime Minister respectively, in accordance with the former Constitution and the National Accord and Reconciliation Act until the first general elections held under this Constitution unless they vacate office in terms of the former Constitution and the Accord.
- (4) The persons occupying the offices of Vice-President and Deputy Prime Minister or holding a position in the Cabinet or as an Assistant Minister immediately before the effective date shall continue to serve in accordance with the former Constitution until the first general elections held under this Constitution unless they vacate or are removed from office in accordance with the former Constitution and the National Accord and Reconciliation Act.
- (5) A person who before the effective date has held office for more than one term as President is not eligible from the effective date to stand for election as President.

## **Part 2 – Devolved government**

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

- 13.** (1) The provisions of this Constitution relating to devolved government, including Article 178, shall come into effect on the date of the first elections for county assemblies held under this Constitution.
- (2) Despite subsection (1) –
- (a) elections for county assemblies and mayors shall be held in accordance with Articles 169, 172 and 174 of this Constitution; and
  - (b) the laws relating to devolved government, required by this Schedule and Chapters Eleven and Twelve of this Constitution, shall be enacted within the period stipulated in the Fifth Schedule.
- (3) The Commissions shall be given at least thirty days to consider legislation under subsection (3).

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

**14.** (1) Parliament shall, by legislation, make provision for the phased transfer, over a period of not more than three years from the date of the first election of county assemblies, from the national government to county governments of the functions assigned to them under Article 176.

- (2) The legislation referred to in subsection (1) shall –
- (a) set out the way in which the national government shall –
    - (i) facilitate the devolution of power;
    - (ii) assist county governments in building their capacity to govern effectively and provide the services for which they are responsible; and
    - (iii) support county governments;
  - (b) establish criteria that must be met before particular functions are devolved to county governments to ensure that those governments are not given functions which they cannot perform;
  - (c) permit the asymmetrical devolution of powers to ensure that functions are devolved promptly to counties that have the capacity to perform them but that no county is given functions it cannot perform; and
  - (d) provide mechanisms that ensure that the Select Committee on the Implementation of the Constitution can perform properly its role in monitoring the implementation of the system of devolved government.

### **Provincial Administration**

16. The national government shall retain, and shall, within five years from the effective date, restructure the system of administration commonly known as the provincial administration to accord with and respect the system of devolved government established under this Constitution.

### **Local Authorities**

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

## **Part 3 – The Judiciary**

### **The Judicial Service Commission**

18. (1) The Judicial Service Commission shall be appointed within ninety days after the effective date and the Commission shall be deemed to be properly constituted under this Constitution despite the fact that there may be a vacancy in its membership because any of the bodies nominating or electing members have not done so.
- (2) Despite clause (1) the Judicial Service Commission may not perform its functions unless five members have been appointed.
- (3) Until the Public Service Commission contemplated in Article 221 is established, a person nominated by the Public Service Commission established under section 106 of the former Constitution shall serve on the Judicial Service Commission but, when the new Public Service Commission is established, that person shall cease to be a member of the Judicial Service Commission and new Public Service Commission shall nominate a person to serve on the Judicial Service Commission.

### **Establishment of the Supreme Court**

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

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

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

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

### **Constitutional Commissions**

**25.**

- (2) The Salaries and Remuneration Commission shall be constituted within nine months of the effective date.
- (3) Until the legislation anticipated in Article 242 is in force, the persons appointed as members or as chairperson of the Salaries and Remuneration Commission shall be persons –
  - (a) nominated by the President with the agreement of the Prime Minister;  
and
  - (b) approved by the National Assembly.

### **The Equality Commission**

- 26.** (1) The commissioners of the Kenya National Commission on Human Rights appointed under the Kenya National Commission on Human Rights Act (Cap. 9) and the commissioners of the National Commission on Gender and Development, appointed under the National Commission on Gender and Development Act (Cap. 13) other than the Permanent Secretaries and the Attorney-General or a representative of the Attorney-General, shall become members of the Equality Commission for their unexpired term but each shall retain the terms of service as at the effective date.
- (2) The chairperson of the Kenya National Commission on Human Rights shall be the chairperson of the Equality Commission for the unexpired term of that chairperson.

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

- 27.** (1) The Boundaries Commission established under the former Constitution shall continue to function as constituted under that Constitution and in terms of sections 41B and 41C but –
- (a) it shall not determine the boundaries of the counties established under this Constitution;

- (b) it shall determine the boundaries using the criteria set out in this Constitution; and
  - (c) members of the Commission shall be subject to Chapter Six of this Constitution.
- (2) The requirement in Article 77(1) that a review of constituency and ward boundaries shall be completed at least twelve months before a general election does not apply to the review of boundaries preceding the first elections under this Constitution.

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

- 28.** (1) The Electoral Commission established under section 41 of the former Constitution shall continue in office in terms of the former Constitution for its unexpired term or until the Independent Electoral and Boundaries Commission established under this Constitution is established, whichever comes first.
- (3) When members of the Independent Electoral and Boundaries Commission are selected, regard shall be had to the need for continuity and the retention of experience.

**Existing offices**

- 30.** (1) Unless this Schedule provides otherwise, a person who immediately before the effective date, held or was acting in an office established by the former Constitution shall on the effective date continue to hold or act in that office under this Constitution for the unexpired period, if any, of the term of that person.
- (2) A person who immediately before the effective date held or was acting in a public office established by law, so far as is consistent with this Constitution, shall continue to hold or act in that office as if appointed to that position under this Constitution.
- (3) The provisions of this section shall not affect the powers conferred on any person or authority under this Constitution to abolish offices or remove persons from those offices.
- (4) Where a person has vacated an office that the person held before the effective date and that office is retained or established by or under this Constitution, the person may, if qualified, again be appointed, elected, or otherwise selected to hold that office in accordance with the provisions of this Constitution.
- (5) The functions of the Director of Public Prosecutions shall be performed by the Attorney-General until a Director of Public Prosecutions is appointed under this Constitution.
- (7) The functions of the Controller of Budget shall be performed by the Auditor-General until a Controller of Budget is appointed under this Constitution.
- (8) Despite subsection (1), and unless removed earlier under this Constitution, the Attorney-General and the Auditor-General shall continue in office for a period of no more than

six months after the effective date and new persons shall be appointed to those offices under this Constitution.

### **New appointments**

- 31.** (1) The process of appointment of persons to fill vacancies arising in consequence of the coming into force of this Constitution shall begin on the effective date and be finalised within one year.
- (2) Unless this Schedule prescribes otherwise, when this Constitution requires an appointment to be made by the President with the approval of the National Assembly, until after the first elections under this Constitution, the President shall appoint a person after consultation with the Prime Minister and with the approval of the National Assembly.

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

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

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

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

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

**34.** The law applicable to pensions in respect of holders of constitutional offices under the former Constitution shall be either the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

## **Part 5 - Miscellaneous**

### **Appointments in Kenya Internal Security Service**

- 35.** Until the Kenya Internal Security Service Commission referred to in Article 234 is established section 108(2) of the former Constitution applies to appointments, discipline and the removal of persons from office in the Kenya Internal Security Service.

**Currency**

**38.** Nothing in Article 219(3) affects the validity of coins and notes issued before the effective date.