NATIONAL CONSTITUTIONAL CONFERENCE

The Draft Constitution of Kenya 2004

ADMITTED BY THE NATIONAL CONSTITUTIONAL CONFERENCE ON 15th MARCH 2004
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THE DRAFT CONSTITUTION OF KENYA 2004

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principal Secretaries

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We, the people of Kenya –
ACKNOWLEDGING
the supremacy of the Almighty God
of all creation:
HONOURING
those who heroically struggled to bring
freedom and justice to our land:
PROUD
of our ethnic, cultural and religious diversity
and determined to live in peace and unity as one indivisible
sovereign nation:
RESPECTFUL
of the natural environment that is our her-
itage, and determined to sustain it for the benefit of future
generations:
COMMITTED
to nurturing and protecting the well-being of
the individual, the family and the community:
RECOGNISING
the aspirations of all Kenyans for a gov-
ernment based on the essential values of freedom,
democracy, social justice and the rule of law:
EXERCISING
our sovereign and inalienable right
to determine the form of governance of our country
and having participated fully in the making of this Constitution:
ADOPT,
ent and give this Constitution to ourselves
and to our future generations.

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I. LESS KENYA

I. ONE

EGIYTY OF THE PEOPLE AND SUPREMACY OF CONSTITUTION

I. Right of the people

I. All sovereign authority belongs to the people of Kenya and may be exercised only in accordance with this Constitution.

I. Authority is delegated to the following State organs, which shall perform their functions in accordance with this Constitution –

I. Parliament and the legislative structures in the devolved governments;

I. the national executive and the executive structures in the devolved governments;

I. the Judiciary and other independent tribunals;

I. and

I. the constitutional Commissions and State offices.

I. of the Constitution

I. This Constitution is the supreme law of the Republic and binds all State organs at all levels of government and all persons throughout Kenya.

I. A law that is inconsistent with this Constitution is void to the extent of the inconsistency and any action or omission in contravention of this Constitution is invalid.

I. A person, or a group of persons, may bring an action in the High Court for a declaration that any law is inconsistent with, or is in contravention of, this Constitution.

I. If the High Court makes a declaration under clause (1), it may also make any order necessary to give effect to the declaration.

II. of the Constitution

II. Every person has an obligation to respect and defend this Constitution.

II. Any attempt to establish a system of government otherwise than in compliance with this Constitution is unlawful.

II. TWO

I. nation of the Republic

I. Kenya is a sovereign Republic.

I. The Republic is founded on principles of good governance through multi-party democracy, participatory governance, transparency and accountability, separation and devolution of powers, respect for human rights and fundamental freedoms and the rule of law.

I. Kenya consists of the territory recognized under international law.

I. Kenya comprises the regions, districts and sub-counties set out in the First Schedule.

I. Each district and borough shall be divided into such locations, with such boundaries, as are prescribed by an Act of Parliament.

I. The sovereign authority of the people is exercised at –

I. (a) the national level;

I. (b) the regional level;

I. (c) the district level; and

I. (d) the local level.

I. The governments at each level are distinct, inter-dependent, consultative and accountable.

I. The capital of Kenya is Nairobi.

I. All national State organs shall be decentralised to all regions.

I. ages

I. The national language of the Republic is Kiswahili.

II. Rights of the people

II. Kenya is a sovereign Republic.

II. The governments at each level are distinct, inter-dependent, consultative and accountable.

II. The official languages of the Republic are Kiswahili and English.

II. The State shall respect, promote and protect the diversity of languages of the people of Kenya and sign language.

II. The State shall promote the development and use of Braille and other appropriate modes of communication for persons with visual and other impairments.

State and religion

9. (1) State and religion shall be separate.

9. (2) There shall be no State religion.

9. (3) The State shall treat all religions equally.

National symbols

10. (1) The national symbols of the Republic, as set out in the Second Schedule, are –

10. (a) the national flag; and

10. (b) the national anthem; and

10. (c) the coat of arms; and

10. (d) the public seal.

National days

11. (1) The national days are –

11. (a) 1st June – Madaraka Day;

11. (b) 20th October – Mashujaa Day; and

11. (c) 12th December – Jamhuri Day.

CHAPTER THREE

I. National values, principles and goals

12. (1) The national values, principles and goals contained in this Chapter apply to all State organs, State officers, public officers, citizens and private bodies whenever any of them –

12. (a) applies or interprets this Constitution or any other law; or

12. (b) makes, or implements policy decisions.

12. (2) The State shall –

12. (a) promote national unity and develop the commitment of all citizens to the spirit of nationhood and patriotism;

12. (b) recognise the diversity of the people and promote and protect the cultures of its communities;

12. (c) promote the participation of the people in public affairs and facilitate the sharing and devolution of power;

12. (d) ensure access of the people to independent, impartial, competent, timely and affordable institutions of justice;

12. (g) recognise the role of civic society in governance and facilitate its role in ensuring the accountability of government;

12. (h) protect and promote human rights and fundamental freedoms and enhance the dignity of individuals and communities;

12. (i) ensure full participation of women, persons with disabilities, marginalized communities and all other citizens in the political, social and economic life of the country;

12. (j) implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender;

12. (k) progressively implement the principle that at least five per cent of the members of elective and appointive bodies shall be persons with disabilities;

12. (l) recognise the special responsibilities that the State, society and parents owe to children and uphold the family and the institution of marriage;

12. (m) be committed to social justice and the realization of the rights of the people of Kenya to basic needs and a secure environment;

12. (n) promote the development of, and recognise

and enhance the role of, science and technology;

and eliminate disparities in development between the various parts of the country and sectors of society;

recognise its responsibilities to future generations of the people of Kenya, by pursuing policies for the sustainable management of the environment; and

be a good citizen of Africa and of the world and commit itself to work for international peace and solidarity.

CHAPTER FOUR

I. General principles

13. Every citizen is –

13. (a) entitled to the rights, privileges and benefits of citizenship, subject to the limits set out in this Constitution;

13. (b) entitled to a Kenyan passport and to any document of registration and identification issued by the State to citizens; and

13. (c) subject to the duties and responsibilities of citizenship.

Retention of existing citizenship

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

Acquisition of citizenship

15. (1) Citizenship may be acquired by birth, registration, or naturalization.

15. (2) Every person who was not a citizen immediately before the effective date but would have been a citizen if this Constitution had been in force, is entitled, on application, to be registered as a citizen.

Citizenship by birth

16. (1) Every person born in Kenya is a citizen if, at the date of the person’s birth, either the mother or the father of the person is a citizen.

16. (2) A person born outside Kenya is a citizen if, at the date of the person’s birth, either the mother or the father of the person is –

16. (a) a citizen who was born in Kenya; or

16. (b) a citizen by registration or naturalization.

16. (3) If either parent of a person died before that person was born, for all purposes of this Chapter, that parent’s citizenship at the time of death applies as if that parent had survived until the birth of that person.

Citizenship and marriage

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

17. (2) Citizenship is not lost through marriage or the dissolution of marriage.

Citizenship by naturalization

18. A person who has been a lawful 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.

Adopted children and foundlings

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

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

Dual citizenship

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

20. (2) A person who as a result of acquiring the citizenship of another country ceased to be a Kenyan citizen is entitled, on application, to...
apter Five

islation on citizenship

ponsibilities of a citizen

idence

rivation of citizenship

A person may be deprived of citizenship only if the
ded from the provisions of this

Parliament shall enact legislation –

vote and become involved in other forms of

n) understand and enhance the Republic's place in

k) protect and safeguard public property from

i) promote democracy, good governance and the

l) contribute to the welfare and advancement of

j) strive to foster national unity and live in harmony

i) promote family life and act responsibly in the

h) protect and safeguard public property from

g) cooperate with law enforcement agencies for

f) find, document and other expatriated

e) support and promote the development of

(d) generally giving effect to the provisions of this

Chapter.

28. (1) This Bill of Rights is an integral part of Kenya's

26. (1) There is established the National Commission

(2) The functions of the Commission are to –

(a) advise on matters of policy and practice

(b) carry out and promote research into and

(c) protect cultural sites and historic monuments

(d) encourage and develop the positive traditions of

(e) encourage and develop the positive traditions of

(f) promote and preserve Kiswahili, all languages of

(g) establish criteria for recognition and

(h) recognize the role of science and indigenous

(i) support and promote the development of

29. (1) The Bill of Rights applies to all laws and binds

33. (a) report on time to international human rights

(b) in notifying the vulnerability of the groups or individuals

(c) carry out the objectives of this Chapter;

Cultural day

27. The sixth day of December is designated as

CHAPTER SIX

Part I – General provisions relating to the Bill of

Fundamental rights and freedoms

28. (1) This Bill of Rights is an integral part of Kenya's

(2) The purpose of the recognition and protection of

(3) The rights and freedoms set out in this Chapter –

(a) belong to each individual and are not granted by

(b) do not exclude other rights not mentioned in

(c) are subject only to the limitations

Application of the Bill of Rights

29. (1) The Bill of Rights applies to all laws and binds

(2) Every person shall enjoy the rights and

(3) When applying a provision of the Bill of Rights

(b) shall adopt the interpretation that most

(c) may develop rules of law to limit that right or

(4) When interpreting the Bill of Rights, a court,

(a) shall promote the values that underlie an

(b) shall promote the spirit, purport and objects

(5) When interpreting and applying a particular right

(a) shall promote the values that underlie an

(b) shall promote the spirit, purport and objects

Implementation of rights and freedoms

30. (1) It is a fundamental duty of every State organ to

(2) The State shall take legislative, policy and other

(3) Parliament and the Commission on Human

(4) The State shall recognise and facilitate the role of

(5) All public officials and State organs, and their

(6) The State shall fulfil all its international

(1) (a) report on time to international human rights
bodies. The comments and recommendations of international bodies relating to the international obligations of the State shall be disseminated to the public, and the Government shall make a statement to Parliament on whether and how it intends to implement those recommendations. The State shall establish the necessary machinery to give full effect to the provisions of the Bill of Rights.

**Annexure of the Bill of Rights**

A person referred to in clause (2) has the right to:

(a) make and present a complaint or application to the court, tribunal or forum that the requirements of this Article have not been satisfied;

(b) to be represented by a person who has the requisite expertise and, if practicable, by a person who, in the opinion of the court, possesses particular expertise in the field in which the action is brought;

(c) to be informed in writing of the basis on which the court, tribunal or forum has decided to decline to entertain the proceedings under this Article; and

(d) to be informed of the reasons for the decision to decline to entertain the proceedings under this Article.

**Part II – Fundamental rights and freedoms**

**Right to life**

34. (1) Every person has the right to life. (2) The life of a person begins at conception.

**Abortion**

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

**Equality**

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

**Freedom from discrimination**

37. (1) Freedom from discrimination includes race, sex, pregnancy, marital status, national or ethnic origin, colour, disability, religion, conscience, belief, culture, dress, language or birth.

**Gender**

38. (1) Women and men have an equal right to equal treatment including the right to equal opportunities in political, economic, cultural and social activities.

**Gender equality**

39. (1) The youth constitute an integral part of society and are entitled to enjoy all the rights and freedoms set out in the Bill of Rights, taking into account their unique needs.

(2) The State shall take legislative and other measures, including but not limited to affirmative action policies and programmes, to promote the welfare of the youth.

(3) The measures referred to under clause (2) shall include measures to ensure for the youth –

(a) access to quality and relevant education and training;

(b) participation in governance;

(c) access to gainful employment;

(d) adequate opportunities in the social, political, economic and other spheres of national life;

(e) freedom of association to further their legitimate interests;

(f) protection from any culture, custom, tradition or practice that could undermine their dignity or quality of life; and

(g) a life free from discrimination, exploitation or abuse.

**Children**

40. (1) Children hold a special place in society.

(2) It is the duty of parents, the family, society and the State to nurture, protect and educate children.

(3) All children, whether born within or outside wedlock, are equal before the law and have equal rights under this Constitution.

(4) A child’s best interests are of paramount importance in every matter concerning the child.

(5) A child’s mother and father, whether married to each other or not, have an equal responsibility to protect and provide for the child.

(6) Every child has a right to –

(a) a name and a nationality from birth and to have their birth registered;

(b) parental care, or to appropriate alternative care if the child is separated from its parents;

(c) free and compulsory basic education;

(d) be protected from discrimination, harmful cultural rites and practices, exploitation, neglect or abuse;

(e) be protected from all forms of exploitation and any work that is likely to be hazardous or adverse to the child’s welfare;

(f) adequate nutrition, shelter, basic health care services and social services;

(g) be free of corporal punishment or other forms of violence or cruel and inhumane treatment in schools and other institutions responsible for the care of children;

(h) not take part in hostilities or to be recruited into armed conflicts and to be protected from situations of armed conflict;

(i) not be arrested or detained except as a measure of last resort, and, when arrested or detained, to be treated in a manner that promotes the child’s dignity and self-worth and that pays attention to the child’s rights, including but not limited to the right to –

(i) be so detained only for the shortest appropriate period of time;

(ii) be kept separate from adults in custody;

(iii) be accorded legal assistance by the State; and

(iv) be treated in a manner, and to be kept in conditions, that take account of the child’s
disability, if any, gender and age;

) have a legal practitioner assigned to the child by the State at risk of and at State expense in other proceedings affecting the child, if injustice would otherwise result; and

) know of decisions affecting the child, to express an opinion and have that opinion taken into account, taking into consideration the age and maturity of the child and the nature of the decision.

) Children with special needs are entitled to the special protection of the State and society.

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

y

) The family is the natural and fundamental unit of society and the necessary basis of social order. Every adult

(a)has the right to marry a person of the opposite sex, based upon the free consent of the persons involved;

(b)has the right to found a family.

) A person shall not marry another person of the same sex.

) Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage, and at the dissolution of the marriage.

) Parliament shall enact legislation that recognises

(a)marriages concluded under any tradition, or system of religious, personal or family law; and

(b)personal and family law under any tradition, or adhered to by persons professing a particular religion, to the extent such marriages or systems are consistent with this Constitution.

- with disabilities

) Persons with disabilities are entitled to enjoy all the rights and freedoms set out in the Bill of Rights, and to be full participants in society.

) Persons with disabilities have a right to

(a)respect and human dignity including to be treated, addressed and referred to, in official or private contexts, in a manner and in words that are not demeaning or derogatory;

(b)access to education, to institutions and facilities for persons with disabilities that are as integrated into society as a whole as is compatible with the interests of those other members of society.

) The State shall take legislative and other measures to ensure that persons with disabilities enjoy all the rights referred to in clause (2).

) Legislation and policy measures provided for in clause (3) shall make special provision for women with disabilities.

nalized groups and communities

) Marginalized groups and communities are entitled to enjoy all the rights and freedoms set out in the Bill of Rights, on a basis of equality, taking into account their special circumstances and needs.

) The State shall take legislative and other measures to put in place affirmative action programmes, designed to benefit marginalized groups and communities.

) The measures referred to in clause (2) shall include measures to ensure that marginalized groups and communities –

(a)participate and are fully represented in governance and in all other spheres of national life;

(b)are accorded special opportunities in the educational and economic fields;

(c)are accorded special opportunities for access to gainful employment;

(d)are assisted to develop their cultural values, languages and practices;

(e)are assisted to have reasonable access to water, health services and transport infrastructure;

(f)have a reasonable opportunity to meet their basic needs;

(g)live a life free from discrimination, exploitation or abuse.

Human dignity

44. (1) Every person has inherent dignity and the right to have that dignity respected and protected.

(2) The inherent dignity of every person –

(a)includes the right to dispose of the remains of their dead in a dignified manner; and

(b)extends to their remains after burial.

Freedom and security of the person

45. Every person has the right to freedom and security of the person, which includes the right –

(a)not to be deprived of freedom arbitrarily or with out just cause;

(b)not to be detained without trial, except during a state of emergency in which case the detention is subject to Article 75;

(c)to be free from all forms of violence from either public or private sources;

(d)not to be tortured in any manner, whether physical or psychological; and

(e)not to be subjected to corporal punishment or to be treated or punished in a cruel, inhuman or degrading manner.

Slavery, servitude and forced labour

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

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

Privacy

47. Every person has the right to privacy, which includes the right not to have:

(a)their person or home searched;

(b)their property searched;

(c)their possessions seized;

(d)information relating to their family or private affairs unnecessarily required or revealed;

(e)the privacy of their communications infringed.

Freedom of religion, belief and opinion

48. (1) Every person has the right to freedom of conscience, religion, thought, belief and opinion.

(2) Every person has the right to participate in decision-making at all levels;

(f)to express a belief that the person does not hold;

(g)to receive religious instruction or to take part in or attend a religious ceremony or to observe a day of rest or other observance that relates to a religion that is not that person's religion;

(h)to perform, observe or undergo a religious practice or rite;

(i)to disclose that person's religious convictions or beliefs; or

(j)to do any other act that is contrary to that person's religion or belief.

Freedom of expression

49. (1) Every person has the right to freedom of expression, which includes

(a)freedom to receive or impart information or ideas;

(b)freedom of artistic creativity, including dressing to; or

(c)academic freedom and freedom of scientific research.

(2) The right referred to in clause (1) does not extend to –

(a)propaganda for war;

(b)incitement to violence; or

(c)advocacy of hatred that –

(i) constitutes vilification of others or

(ii) is based on any prohibited ground of discrimination contemplated in Article 36.

Freedom of the media

50. (1) Freedom and independence of electronic, print and other media of all types are guaranteed.

(2) The State shall not –

(a)exercise control over, or interfere with, any person concerned in broadcasting, production or circulation of any publication, or in the dissemination of information by any medium; or

(b)harass or penalize any person for any opinion or view, or the content of any broadcast, publication or dissemination.

(3) Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that –

(a)are designed to ensure the necessary regulation of the airwaves and other forms of electromagnetic spectrum;

(b)are independent of control by government, political interests or commercial interests.

(4) All State-owned media shall be independent and impartial and shall afford fair opportunities and facilities for the presentation of divergent views and dissenting opinions and cause harm, or

(5) Parliament shall enact legislation that –

(a)makes reasonable provision for equitable allocation of airtime by State-owned and other specified categories of broadcasting media, to political parties either generally or during election campaigns;

(b)regulates freedom to broadcast in order to ensure fair election campaigning; and

(c)provides for the establishment of a body which shall be independent of government or political control and reflective of the interests of all sections of the community, and which shall set media standards, and regulate and monitor compliance with those standards.

Access to information

51. (1) Every citizen has the right to access to –

(a)information held by the State; and

(b)any information that is held by another person and that is required for the exercise or protection of any right or freedom.

(2) Every person has the right to demand the correction or deletion of untrue or misleading information that affects that person.

(3) The State shall publish and publicize any important information affecting the nation.

(4) Parliament shall enact legislation to provide for access to information.

Freedom of association

52. (1) Every person has the right to freedom of association.
The right extends to the formation, operation and continued existence of organisations.

A person shall not be compelled to join an association of any kind.

The State shall take legislative and policy measures to promote and encourage civil society participation in decision-making and in the management of public affairs at all levels of government.

Any legislation that requires civil society organisations to register or otherwise be subject to controls as to provide that –

(a) registration may be required only if there is good reason for it;

(b) registration shall be in the hands of a body that is independent of Government or political control;

(c) any fee chargeable shall be no more than is necessary to defray essential cost of the procedure;

(d) there shall be a right to registration, unless there is good reason to the contrary;

(e) any standards of conduct applied to organisations shall be formulated with input of the affected organisations; and

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

(b) demonstration, picketing and petition

Every person has the right, peaceably, unarmed and hou this Article on the basis of any of the grounds set out under Article 36 (1).

(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property, unless that deprivation –

(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Seven of this Constitution or an Act of Parliament that –

(i) requires prompt payment in full, of a just compensation to the person, before the property is taken;

(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.

(4) Provision may be made for compensation to be paid to occupants in good faith of the land so acquired who may not hold title to that land.

(5) The right recognized and protected under this Article does not cover any property that has been unlawfully acquired.

Labour relations

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

(2) Every worker has the right to –

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

(b) to participate in the activities and programmes of an employers' organisation.

(3) Every employer has the right to –

(a) to form, or participate in forming, a political party;

(b) to arbitrarily deprive a person of any interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Seven of this Constitution or an Act of Parliament that –

(i) requires prompt payment in full, of a just compensation to the person, before the property is taken;

(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.

(4) Provision may be made for compensation to be paid to occupants in good faith of the land so acquired who may not hold title to that land.

(5) The right recognized and protected under this Article does not cover any property that has been unlawfully acquired.

Social security

60. (1) Every person has the right to social security.

(2) The State shall provide appropriate social security to persons who are unable to support themselves or their dependants.

Health

61. (1) Every person has the right to health, which includes the right to health care services, including reproductive health care.

(2) No person may be refused emergency medical treatment.

Education

62. (1) Every person has the right to education.

(2) The State shall institute a programme to make secondary and post-secondary education progressively available and accessible.

(3) The State shall take measures to make secondary and post-secondary education progressively available and accessible.

(4) Every person has the right to establish and maintain, at that person's own expense, any educational institution that complies with the requirements of this Constitution, and meet standards laid down in legislation.

Housing

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

Food

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

Water

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

Sanitation

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

Environment

67. Every person has the right –

(a) to an environment that is safe for life and health;

(b) to have the environment protected, for the benefit of present and future generations, through legislative and other measures that –

(i) prevent pollution and ecological degradation;

and

(ii) promote conservation; and secure ecologically sustainable development and use of natural resources while promoting economic and social development; and

(c) to free information about the environment.

Language and culture

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

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

(a) to enjoy that person's culture and use that person's language;

(b) to form, and join and maintain cultural and linguistic associations and other organs of civil society.

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

Consumer rights

69. (1) Consumers have the right to –

(a) goods and services of reasonable quality;

(b) information necessary for them to gain full benefit from goods and services;

(c) protection of their health, safety, and economic interests; and

(d) compensation for loss or injury arising from defects in goods or services.

(2) The principles in this Article apply to goods and services offered by State organs, public and private persons and other entities.

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

Fair administration

70. (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) Every person whose rights have been adversely affected by administrative action has the right to be given written reasons for the action.

(3) Parliament shall enact legislation to give effect to the rights in clause (1) and such legislation shall provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal.

Right not to obey unlawful instructions

71. (1) Every person has the right not to obey unlawful instructions.

(2) A person shall not be liable to punishment under any law for disobeying unlawful instructions.

Access to courts

72. (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent tribunal or forum.

(2) Any fee required to be paid by a person in respect of proceedings under clause (1) shall be reasonable and not serve to impede access to justice.

Rights of arrested persons

73. (1) Every person who is arrested has the right –

(a) to be informed promptly in language that person understands of the reason of the arrest;

(b) to be released without delay after arrest, or to be charged and brought before a court without unnecessary delay;

(c) not to be in solitary confinement for a period exceeding 24 hours unless there is a reasonable and good reason for it;

(d) to have access to the person's legal representative and to the State, or any person –

(e) to be represented by a lawyer and by a court or, where appropriate, another independent tribunal.

(f) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person has committed the act in respect of which the person is charged or suspected; and

(g) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(h) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(i) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(j) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(k) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(l) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(m) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(n) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(o) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(p) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(q) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(r) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(s) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(t) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(u) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(v) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(w) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(x) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(y) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

(z) to have the court or, where appropriate, another independent tribunal decide in a fair public hearing whether the person is guilty of, or does not commit, the charge or other act.

...
(b) remain silent;
(c) be informed promptly in language that person understands;
(i) of the right to remain silent; and
(ii) of the consequences of not remaining silent.
(d) communicate with that person's lawyers and other persons whose assistance is necessary;
(e) not to be compelled to make any confession or admission that could be used in evidence against that person and where that person freely chooses to make a confession, it shall be made before a court or magistrate;
(f) to be held separately from persons who are serving a sentence;
(g) to be brought before a court as soon as reasonably possible, but not later than forty-eight hours after being arrested or not later than the end of the first court day after the expiry of the forty-eight hours, if the forty-eight hours expire outside ordinary court hours or on a day that is not an ordinary court day;
(h) to have a court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released;
(i) to be released on bond or bail pending a charge or trial on reasonable conditions unless there are compelling reasons to the contrary;
(j) A person shall not be remanded in custody for an offence if that offence is punishable by a fine only or imprisonment for not more than six months.
(j) to have a fair trial, (a) the State is threatened by war, invasion, disaster or other public emergency; and
(b) the declaration is necessary to meet the circumstances of such disabilities.

Rights of persons held in custody
75. (1) Every accused person has the right to a fair trial, (a) to have the trial begin and conclude without unreasonable delay;
(b) to a public trial before a court established under this Constitution;
(c) to be informed of the charge or the nature of the proceedings;
(d) to communicate with the press;
(e) to a fair hearing if that person is charged, and (ii) of the consequences of not remaining silent;
(f) to a fair hearing if that person is charged, and (ii) of the consequences of not remaining silent;
(g) to be informed of the charge or the nature of the proceedings;
(h) to counsel and to be represented by a legal practitioner of his or her own choosing;
(i) to remain silent, and not to testify during the trial;
(j) to have the assistance of an interpreter without payment if the accused person cannot understand and use the language used at the trial;
(k) not to be convicted for an act, omission, or omission, that at the time it was committed or omitted was not –
(i) an offence in Kenya; or
(ii) a crime under general principles of law recognized by the major legal systems or by international law;
(i) to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
(j) 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
(k) appeal to, or review by, a higher court.
Whenever this Article requires information to be given to a person, that information shall be given in a language that the person understands.

Principles of land policy
77. (1) Land is Kenya’s primary resource and the basis of livelihood for the people, and shall be held, used and managed in a manner which is equitable, efficient, productive and sustainable.
(2) The Government shall define and keep under review a national land policy ensuring the following principles –
(a) equitable access to land and associated resources;
(b) security of land rights for all landholders, users and occupiers in good faith;
(c) sustainable and productive management of land resources;
(d) transparent and cost-effective administration of land;
(e) sound conservation and protection of ecologically sensitive areas;
(f) the discouragement of customs and practices that discriminate against the access of women to land; and
(g) encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution.

State of emergency
76. (1) A state of emergency may be declared only in accordance with Article 153(4) and only when –
(a) the State is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
(b) the declaration is necessary to meet the circumstances for which the emergency is declared.
(2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, is effective only –
(a) prospectively; and
(b) for no more than fourteen days from the date of the declaration, unless 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 Assembly; and
(ii) by the majority set out in clause (4); and
(b) for no more than two months at a time.
(4) The first extension of a state of emergency shall be adopted with a supporting vote of sixty-five per cent of the members of the Assembly, and any subsequent extension shall be adopted with a supporting vote of at least seventy-five per cent of the members of the Assembly.
(5) The High Court may decide on the validity of –
(a) a declaration of a state of emergency;
(b) any extension of a declaration of a state of emergency; or
(c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.
(6) Any legislation enacted in consequence of a declaration of a state of emergency may derogate, in derogation of the Bill of Rights only to the extent that –
(a) the derogation is strictly required by the following principles –
(1) All land in Kenya belongs to the people of Kenya

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

Public land
79. (1) Public land is –
(a) land which at the effective date was unalienated government land as defined by an Act of Parliament;
(b) lawfully held, used or occupied by any government Ministry, department or agency of local authority, except where such land is occupied under a private lease;
(c) land transferred to the Republic by way of reversion, surrender or by virtue of the
provisions of this Constitution;
(d) land in respect of which no individual or community owns or occupies any legal interest therein;
(e) land in respect of which no heir can be identified;
(f) all minerals as defined by any law;
(g) government forests other than forests to which Article 80(2)(e) applies, and water catchment areas, national parks 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) any land between high and low water mark;
(l) any land not classified as private or community land under this Constitution; and
(m) any other land declared to be public land by an Act of Parliament.

Public land, as defined under Article 79(1)(a) to (e) shall vest in and be held by district governments in trust for the people resident in the relevant district and shall be administered on their behalf by the National Land Commission. Public land classified under Article 79(1)(f) to (m) shall vest in and be held by Government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission. Public land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and terms of that disposal or use.

unity land

Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or community of interest. For the purposes of clause (1) "community land" includes:

(a) all land lawfully held as trust land by community governments;
(b) land lawfully registered in the name of group representatives under the provisions of any law for the time being in force;
(c) land lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;
(d) cadastral lands traditionally occupied by a specific community by any process of law;
(e) ancestral lands traditionally occupied by community governments on a policy framework for the development of selected areas of Kenya, to ensure that the development of community and private land is in accordance with the development plan for the area;
(f) to investigate disputes of land ownership, occupation and access to public land in any area provided for by legislation;
(g) to advise the Government on, and assist in the execution of a comprehensive programme for registration of title in land throughout Kenya;
(h) to conduct research related to land and natural resource use, and make recommendation to appropriate authorities;
(i) to initiate investigations on its own or upon a complaint from any person or, other persons or institutions on land injustices both present and historical and ensure appropriate redress;
(j) to facilitate the participation of communities in the formulation of land policy;
(k) to encourage the application of traditionally accepted systems of dispute resolution in land conflicts;
(l) to assess tax on land and premiums on property in any area designated by law;
(m) to monitor and have oversight responsibilities over land use planning throughout the country;
(n) to keep under review all laws relating to land; and
(o) to carry out other functions according to legislation.

The National Land Commission shall establish offices throughout the country.

Liegation on land

86. (1) Parliament shall enact legislation to –
(a) revise, consolidate and rationalise existing land laws; and
(b) revise sectoral land use law in accordance with the National land policy;
(c) regulate the manner in which any land may be conveyed for non-commercial purposes; and
(d) regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and at the termination of marriage;
(e) enable the ascertainment of land held for the benefit of any community by any person or agency, and the transfer such land to communities entitled to it;
(f) protect, conserve and provide unfettered access to all public land;
(g) enable the review of all grants or dispossession of public land to establish their propriety or legality;
(h) enable the settlement of landless people including the rehabilitation of spontaneous settlements of rural and urban communities, until a solution is found;
(i) establish a land fund to enable citizens to gain access to land on an equitable basis;
(j) establish a land bank to facilitate the available ability of land for public purposes; and
(k) prescribe minimum land holding acreage in arable areas.

(2) Parliament shall determine the cut-off date with reference to which review required in clause (1) is to be conducted.

CHAPTER EIGHT

Principles and obligations on the environment

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

Protection of the environment

88. Every person has a duty to cooperate with State organs and other persons –
(a) to ensure ecologically sustainable development and use of natural resources;
(b) to respect, protect and safeguard the environment;
(c) to prevent or discontinue an act which is harmful to the environment;
(d) to ensure that appropriate authorities take measures to prevent or discontinue an act or omission which is harmful to the environment; and
(e) to maintain a clean, safe and healthy environment.

Conservation of the environment

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

C. ensure that the environmental rights and indigenous knowledge of local communities in biodiversity and their access to genetic resources.

1. A transaction involving the grant of a right or concession by or on behalf of any person, including the Government, to another person, for the exploitation of any natural resource or entered into after the effective date, is subject to ratification by both Houses of Parliament.
2. Parliament may, by legislation supported in each devolved government where the resource is located, and shall enact legislation –
   (i) to regulate sustainable exploitation, utilization, management and equitable sharing of benefits accruing from natural resources; and
   (ii) to protect the intellectual property rights and indigenous knowledge of local communities in biodiversity and their access to genetic resources.

1. There is established the National Environment Commission.
2. The functions of the National Environment Commission are –
   (a) advise the Government and devolved governments on the policy framework for management of the environment and natural resources and to regulation of human settlements;
   (b) promote just, equitable and rational sharing and utilization of the environment and natural resources;
   (c) produce biennial reports on the state of the environment and make them available to the public;
   (d) ensure the protection, conservation and management of the environment;
   (e) monitor and evaluate the implementation of the national environment policy;
   (f) to conduct research on environment and natural resources; and
   (g) examine and regulate resource use patterns and practices.

CHAPTER NINE

Responsibilities of leadership

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

Assumption of office

95. 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 an Act of Parliament.

Conduct of State officers

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

Finances of State officers

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

Restriction on activities

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

Ethics and Integrity Commission

99. (1) There is established the Ethics and Integrity Commission, consisting of seven members.
   (2) The functions of the Commission are –
      (a) to receive and retain custody of declarations required by this Chapter;
      (b) to ensure compliance with and enforce the provisions of this Chapter;
      (c) to receive and investigate complaints about non-compliance with this Chapter and, if appropriate, refer the complaint to the relevant authorities for action;
      (d) to put in place measures aimed at the prevention of corruption, including issuing guidelines to State organs;
      (e) in relation to appointments to offices established by or under this Constitution, to –
         (i) ensure the consistent application of provisions of this Constitution concerning qualifications for appointment; and
         (ii) encourage citizens to themselves available or to propose other individuals for...
appointment;
(ii) compile and maintain a register of citizens who are willing to be appointed to such offices, including citizens who have distinguished themselves in education, the arts, a profession, business or public service;
(iii) endeavour to ensure that nominees put forward for appointment reflect the national diversity; and
(iv) recommend persons whether from the register referred to in sub-paragraph (ii) or not, to the President or other appointing authorities for appointments to such offices, if so required by this Constitution or legislation; and
(v) to perform any other functions conferred on the Commission by Parliament.

The Commission shall not investigate any matter pending before a court or a judicial tribunal.

The Commission shall establish and maintain a register in which the assets and liabilities of State officers are recorded.

The Commission shall make the register of assets and liabilities of State officers available for public inspection.

The Electoral and Boundaries Commission

Part II  – The Electoral and Boundaries Commission

Establishment and functions

108. (1) There is established the Electoral and Boundaries Commission.

(2) The Electoral and Boundaries Commission is responsible for –
(a) the continuous registration of voters;
(b) the delimitation of constituencies;
(c) the efficient conduct and supervision of elections and referenda;
(d) the promotion of free and fair elections and referenda;
(e) the supervision of political parties;
(f) the management of the Political Parties Fund;
(g) the settlement of minor electoral disputes during an election;
(h) the promotion of voter education and culture of democracy;
(i) the facilitation of the observation, monitoring and evaluation of elections;
(j) the recommendation of administrative boundaries, including the fixing, re-division and evaluation of boundaries of regions, districts and locations; and
(k) the clearing of all presidential, parliamentary and devolved government candidates in consultation with the Ethics and Integrity Commission.

Delimitation of constituencies

109. (1) The Electoral and Boundaries Commission shall determine the names and boundaries of the constituencies for the election of members of the National Assembly.

(2) In determining the boundaries and naming of the constituencies, the Commission shall –
(a) seek to achieve an approximate equality of constituency population, subject to the need to ensure adequate representation for urban and sparsely populated areas;
(b) consult all interested parties; and
(c) take account of the history, diversity and cohesiveness of the constituency, having regard to –
(i) its population density and population trends and projections;
(ii) geographical features and urban centres;
(iii) community of interest and historical, economic and cultural ties;
(iv) means of communications; and
(v) the need to ensure that National Assembly constituencies are wholly within districts.

(3) The Commission shall at intervals of not more than ten years review and where necessary alter names and the boundaries of constituencies.

(4) The names and details of the boundaries of constituencies determined under clause (1) shall be published in the Gazette, and shall come into effect on the dissolution of Parliament following their publication.

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

Fixing of administrative boundaries

110. (1) In exercising its functions under Article 108(2)(j), the Electoral and Boundaries Commission shall have regard to the viability, sustainability and effectiveness of a region, district or location, taking into account –
(a) its population and area; 
(b) its historical and cultural ties; 
(c) its economic and natural resources; and
(d) the objects and principles of devolution of government.

(2) Parliament, acting in accordance with the recommendations of the Commission may, amend this Constitution –
(a) to alter or vary the boundaries of a region, district or location; or
(b) to abolish or create a new region, district or location.

(3) Before making any recommendation under Article 108(2)(j), the Commission shall consult with all the relevant regional, district and locational authorities.

Part III  – Political Parties

Basic principles

111. (1) A political party shall –
(a) have a national character; and
(b) have a democratically elected governing
The money in the Fund not immediately required

Political parties may form a coalition and until

The sources of the Fund are –

(b) for the organization of civic education in

corporate.

functions.

(a) for the organization of civic education in
democracy and the electoral processes; and

and Boundaries Commission.

parliament at the end of any financial year; and

against a member of the party for anything done

Restriction on use of public resources

30. Except as is provided under this Chapter or an Act of

CHAPTER ELEVEN

Part I – Establishment and Role of Parliament

Establishment

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

Exercise of sovereignty

121. (1) The legislative authority of the Republic at the
national level is vested in Parliament.

(a) enacting legislation;

(b) submitting the ombudsman, or by any other

(2) Parliament manifests the cultural diversity of the
nation and represents the will of the people by –

(c) considering and passing amendments to this
Constitution or legislation;

(d) approving the sharing of revenue among the
four levels of government and appropriating
funds for expenditure by the departments of
the Government;

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

(f) scrutinizing and overseeing actions of State
organizers;

g) considering and approving treaties;

(h) approving appointments, when required by this
Constitution or legislation;

(2) Elections under clause (1)(c) shall be by

(1) A political party may receive subscriptions,
donations, and contributions from the members
and supporters of the party.

(3) On registration a political party becomes a body
corporate.

(2) Parliament shall specify –

(a) one member elected from each district by the
Electoral and Boundaries Commission and to
Parliament.

(b) one woman elected from each district, each
branch of the party and at the offices of Electoral
and Boundaries Commission.

(c) one woman elected from each region, to
represent the will of the people by –

(a) enacting legislation;

(b) deliberating and resolving issues of concern
to the people;

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

(d) approving the sharing of revenue among the
four levels of government and appropriating
funds for expenditure by the departments of
the Government;

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

(f) scrutinizing and overseeing actions of State
organizers;

g) considering and approving treaties;

(h) approving appointments, when required by this
Constitution or legislation;

(3) A person or body other than Parliament shall not
have power to make provision having the force
of law in Kenya except under authority conferred
by this Constitution or by legislation.

Part II – Composition and Membership of Parliament

Membership of the Senate

122. (1) The Senate shall consist of –

(a) one member elected from each district by the
district council of that district acting as an
electoral college, to represent the region of
which the district forms part;

(b) two women elected from each region, to
represent the region, by an electoral college
consisting of all the elected members of
district councils within the region;

(c) ten members to represent marginalized
groups and communities; and

(d) the Speaker.

(2) Elections under clause (1)(c) shall be by
electoral colleges of the respective marginalized
groups and communities as provided for by
legislation.

(3) A member referred to under clause (1)(c) shall be
eligible for re-election as such a member for
only one further term.

Membership of the National Assembly

123. (1) The National Assembly shall consist of –

(a) one member elected from each constituency
as may be provided by law;

(b) one woman elected from each district, each
of which shall comprise a single-member
constituency;

(c) fourteen members elected by marginalized
groups and communities; and

(d) the Speaker.

(2) Elections under clause (1)(c) shall be by
electoral colleges of the respective marginalized
groups and communities as provided for by
legislation.

(3) A member referred to in clause (1)(c) shall be

cations and disqualifications of members

Unless disqualified under clause (2), a person is eligible to be a member of Parliament if that person—
(a) is a citizen by birth;
(b) is registered as a voter;
(c) satisfies any educational, moral and ethical requirements prescribed by this Constitution or legislation; and
(d) in the case of a candidate for election to the National Assembly—
(i) is nominated by a political party; or
(ii) is an independent candidate, is supported by at least five hundred registered voters in the constituency concerned in the manner determined by the Electoral and Boundaries Commission.

A person is disqualified from being elected a member of Parliament—
(a) holds a State office or public office, other than as a member of Parliament;
(b) is an undischarged bankrupt; or
(c) has been serving a sentence of imprisonment of at least six months;

(2) At any time in the immediately preceding ten years, served a term of imprisonment for the commission of an offence in Kenya, if sentence was for a period of at least three years;
(3) has been removed from a State office or public office on grounds of gross misconduct; or
(4) has been found in accordance with any law to have misused or abused a State office or public office in any way to have contravened the principles of Article 97.

A person is not disqualified under clause (2) unless all possibility of appeal or review of the sentence or decision has been exhausted.

n of members of Parliament

An election of members of either House of Parliament shall be held within the immediately preceding the twenty-eight days before the expiration of the term of that House. Whenever a vacancy occurs in the office of a member of the National Assembly or a member of the Senate referred to in Clause 120(1)(c) –
(a) the relevant Speaker shall, within twenty-one days of the occurrence of the vacancy, give notice in writing of the vacancy to the Electoral and Boundaries Commission; and
(b) subject to clause (4), by-election shall be held within ninety days of the occurrence of the vacancy.

Wherever a vacancy occurs in the office of a member referred to in Article 122(1)(a) or (b) –
(a) the Speaker shall, within twenty-one days of the occurrence of the vacancy, give notice in writing of the vacancy to—
(i) the district council by which the member was elected; or
(ii) the regional assembly for the relevant region; and
(b) that council or assembly shall nominate a replacement member within a further period of twenty-one days.

A by-election shall not be held within three months before the holding of an election.

n of office of member of Parliament

The office of member of Parliament becomes vacant—
(a) if the member resigns in writing addressed to the Speaker;
(b) if that person becomes disqualified for election under Article 124(2);
(c) on the expiration of the life of Parliament;
(d) if the member is absent from the relevant House on any eight sitting days during a session without permission in writing of the relevant Speaker, and is unable to offer a satisfactory explanation for the absence to the relevant committee;
(e) if the member is removed from office under legislation made under Article 100;
(f) if the member leaves the political party for which the member stood as a candidate for election to the National Assembly or leaves a coalition of parties to which that member belongs;
(g) if, having been elected to Parliament as an independent candidate, the member joins a political party.

(2) A member of the National Assembly, a regional legislative assembly or a district or locational council who is expelled from a party shall not lose that member’s seat in the relevant assembly or council.

(3) The creation or dissolution of a coalition of which a member’s political party forms part or the dissolution of a political party or a merger of more than two parties shall not amount to the member ceasing to be a member of Parliament, in accordance with the Standing Orders.

Determination of questions of membership

127(1) The High Court shall heard and determine any question whether—
(a) any person has been validly elected or nominated as a member of Parliament; or
(b) the seat of any member has become vacant.

(2) A question referred to in clause (1) shall be heard and determined within six months of the date of lodging the petition.

Part III – Officers of Parliament

Speakers and Deputy Speakers of Parliament

128(1) There shall be—
(a) a Speaker for each House of Parliament who shall be elected by that House in accordance with the Standing Orders, from among the members of that House;
(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 the Deputy Speaker shall be vacated—
(a) if the Speaker dies; or
(b) if the Deputy Speaker dies.

(3) Any member, or committee, of Parliament may examine any matter concerning the Speaker or the Deputy Speaker, under the Standing Orders, in the House.

Presiding in Parliament

129. At any sitting of a House of Parliament —
(a) the Speaker presides; or
(b) in the absence of the Speaker, the Deputy Speaker presides; or
(c) in the absence of the Speaker and the Deputy Speaker, such other member of the relevant House as the House may elect for that purpose presides.

Leader of the Opposition

130(1) The largest parliamentary party or coalition of parliamentary parties in the National Assembly not forming the Government shall elect from among their members, the Leader of the Opposition.

(2) In relation to the conduct of the business in the National Assembly, the Leader of the Opposition shall —
(a) in precedence immediately following the President, the Deputy President, the Prime Minister and the Speaker; and
(b) have the right of second reply, after the Prime Minister, to an address to the Assembly by the President.

(3) The Standing Orders of the National Assembly shall provide for the effective participation in the Assembly of the Leader of the Opposition.

Clerk and staff of Parliament

131(1) There shall be a Clerk for each House of Parliament who shall be appointed by the Parliamentary Service Commission with the approval of the relevant House.

(2) The office of Clerk and offices of members of the staff of the Clerk shall be offices in the parliamentary service.

(3) Subject to clause (4), a Clerk shall retire on attaining the age of sixty-five years.

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

Part IV – Legislation and Procedure in Parliament

Exercise of legislative powers

132. Parliament shall exercise its legislative power by Bills passed by Parliament and assented to by the President.

(2) Any member, or committee, of Parliament may introduce Bills in Parliament.

(3) A Bill may originate in either House but a money Bill may originate only in the National Assembly.

(4) A Bill for an Act of Parliament that would confer a pecuniary benefit specifically on members of Parliament or the Cabinet may not be introduced in Parliament unless it has been approved by the Salaries and Remuneration Commission.

(5) Every Bill for legislation introduced in Parliament must be accompanied by an explanatory memorandum outlining—
(a) any Bill of Rights limitations or derogations, or any other constitutional implications;
(b) any public participation during the preparation of the Bill; and
(c) any further public participation that is recommended before the Bill is enacted.

(6) The relevant Committee shall—
(a) determine the nature and extent of public participation for each Bill for legislation introduced in Parliament; and
(b) facilitate that participation, and ensure that it is adequately carried out.

(7) Parliament shall equitably allocate time for consideration of Bills.

Money Bills

133. Any money Bill may be introduced only by a Minister.

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

(3) In clause (2), the expressions “tax”, “public money”, and “loan” do not include any tax, public money or loan raised by devolved governments.

Consideration by the other House

134. (1) When a Bill has been passed by one House of Parliament, the Speaker of that House shall refer it to the Speaker of the other House for introduction, consideration and passage.

(2) If both Houses pass a Bill in the same form, the Speaker of the House in which the Bill originated shall within seven days refer the Bill to the Prime Minister, the Prime Minister and the Speaker; and
(b) have the right of second reply, after the Prime Minister, to an address to the Assembly by the President.

(3) The Standing Orders of the National Assembly shall provide for the effective participation in the Assembly of the Leader of the Opposition.
President for assent.

1) If one House passes a Bill and the other House rejects it, the Bill is defeated unless it is a money Bill.

2) When a Bill that in the opinion of the Speaker of the National Assembly is a money Bill, in terms of Article 133 (2), is referred to the Senate from the Assembly it shall bear a certificate of the Speaker of the Assembly that it is a money Bill.

3) Where a Bill that is referred to the Senate in accordance with clause (4) is not passed by the Senate within fourteen days after it is so referred, the Bill shall be presented to the President for assent.

4) If the President –

(a) fails either to assent to a Bill or refer it back to Parliament within the period specified in clause (1) and come into force on the fourteenth day after its publication in the Gazette; or

(b) fails to assent to a Bill within the period specified in clause (4), the Bill shall be taken to have been assented to on the expiration of the period prescribed in clause (1) and come into force on the fourteenth day after its publication in the Gazette.

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

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

Quorum

138. The quorum of either House shall be thirty per cent of all members of that House.

Official language in Parliament

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

Voting in Parliament

140.(1) Except as otherwise provided in this Constitution, any question proposed for decision in Parliament shall be determined by a majority of the members present and voting in each House.

(2) When the Senate votes on a question not 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) The vote on any question upon which the members have a direct pecuniary interest shall not be counted.

Decisions of Senate

141.(1) In the Senate, except where this Constitution provides otherwise –

(a) each region, and the marginalized groups and communities, shall have one vote, to be cast on behalf of the region or marginalized group or community by the head of its 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) each question shall be determined by a two-thirds majority of those delegations.

(2) When the Senate votes on a question not affecting regions and districts, clause (1)(a) does not apply, but instead –

(a) each Senator has one vote;

(b) at least one-third of the Senators must be present and voting on the question; and

(c) the question is decided by a majority of the members present and voting.

Power to call for evidence

142.In the exercise of its functions –

(a) either House or any of its committee may call any Minister or any person holding public office and private individuals to submit memoranda or appear before it to give evidence;

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

(c) either House or any of its committee shall have the powers of the High Court in –

(i) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;

(ii) compelling the production of documents; and

(iii) issuing a commission or request to examine witnesses abroad.

Public access and participation

143.(1) Parliament shall –

(a) conduct its business in an open manner, and hold its sittings and those of its committees, in public; and

(b) facilitate public involvement in the legislative and other business of Parliament and its committees.

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

Powers, privileges and immunities

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

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

Part V – Miscellaneous

Registry of Enactments

145.(1) Parliament shall establish –

(a) a public Registry of Enactments, which shall be maintained in Kiswahili and English, under the custody of the Speaker of the National Assembly;

(b) additional procedures concerning the coming into force, publication and dissemination of enactments.

(2) A copy of each enactment shall be deposited for safekeeping in the Registry of Enactments.

(3) A copy of an enactment deposited at the Registry which is certified to be correct by the Registrar, is conclusive evidence of the provisions of that enactment.

(4) In case of a conflict between different language versions of an enactment, the version signed by the President or on behalf of the assembly or council of a devolved government shall prevail.

(5) The Government shall ensure that enactments –

(a) are available or accessible in public libraries; or

(b) are available in Braille and other appropriate media for persons with visual or other impairments.
of the term of the previous House, for the first sitting
and prorogation of Parliament

3) The Commission is responsible for the following
functions –

(a) providing necessary services and facilities to
electoral units and the communities of Kenya;
(b) constituting offices in the parliamentary
service, including the office of judge,
and
(c) preparing annual estimates of expenditure
which shall be a charge on the Consolidated
Fund of the parliamentary service, and
exercising budgetary control over the service;
(d) undertaking, singly or jointly with other
relevant organizations, programmes to
promote the ideals of parliamentary
democracy; and
(e) carrying out other functions –
(i) necessary for the well-being of the
members and staff of Parliament; or
(ii) prescribed by or under legislation.

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Principles of executive authority.

150. (1) The powers of the Executive are to be exercised
for the well-being and benefit of the people
the communities of Kenya.

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

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

Structure of the National Executive

151. The executive authority of the Republic at the
national level of government is vested in the
President, the Deputy President, the Prime Minister,
and Ministers, all of whom, in the performance of
their respective functions, shall work in harmony
for the good of Kenya and the progress of the people
of Kenya.

Part II – The President and Deputy President

Authority of President

152. (1) There shall be a President of the Republic.
(2) The President –
(a) is the Head of State, Commander-in-Chief of
the Kenya Defence Forces, and the
Chairperson of the National Security Council;
(b) is a symbol of national unity, and has
responsibility to promote and enhance the
unity of the nation, safeguard the sovereignty
of the Republic, promote and respect the
diversity of the people, and the communities
of Kenya; and
(c) shall uphold, safeguard, and respect this
Constitution and ensure the protection of
human rights and fundamental freedoms and
the rule of law.

(3) The powers of the President shall be exercised
in accordance with this Constitution and the
laws.

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

State functions of President

153. (1) The President –
(a) shall address the opening of each newly
elected Parliament;
(b) shall liaise with the Prime Minister and once
every year in an address to the nation, in a
special sitting of Parliament, report on all the
measures taken and the progress achieved
the realization of the national values,
principles and goals set out in Chapter Three;
and
(c) may address Parliament at any other time;
and
(2) The President shall appoint and may dismiss –
(a) the Prime Minister;
(b) the two Deputy Prime Ministers;
(c) Ministers and Deputy Ministers;
(d) judges of the superior courts of record; and
(e) any other public officer whom this
Constitution requires the President to
appoint.
(3) With the prior approval of the National Assembly,
the President may sign instruments of consent
by the Republic to be bound by treaties.

(4) Having been consulted by the Cabinet, the
President may, in accordance with the advice of
the Cabinet and subject to Article 76 –
(a) declare a state of emergency; or
(b) declare war.

(5) The President may –
(a) on the advice of the Cabinet –
(i) appoint high commissioners, ambassadors, and
diplomatic and consular representatives with
the approval of the Assembly; and
(ii) receive foreign diplomatic and consular
representatives;
(b) exercise the powers of mercy in accordance
with Article 166; and

(c) acting in accordance with the advice of the
Ethics and Integrity Commission, confer hon
ours in the name of the people and the
Republic.

(6) The President shall liaise with the Prime Minister
to ensure that –
(a) the international obligations of the Republic
are fulfilled through the actions of the
relevant Ministers and shall submit a
progress report to Parliament annually; and
(b) the courts, constitutional Commissions and
State officers are able to secure their
independence, impartiality, dignity,
accessibility and effectiveness, as
contemplated in this Constitution.

Legislative functions of President

154. (1) When presented with a Bill passed by
Parliament, the President shall act in accord-
dance with Article 135.

(2) The President shall ensure that public
participation requirements concerning the
enactment of legislation and regulations have
been satisfied by Parliament.

Decisions of President

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

Right to vote and timing of presidential elections.

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

(2) An election of the President shall be held –
(a) on the second Tuesday in August every fifth
year; or
(b) in the circumstances contemplated by Article
165.

Qualifications and disqualifications for election as President

157. (1) A person qualifies for nomination as a
presidential candidate if that person –
(a) is qualified to stand for election as a member
of the National Assembly; and
(b) is nominated –
(i) by a registered political party; or
(ii) as an independent candidate by at
least one thousand registered voters
who shall include not less than one
hundred registered voters from each
region;
(b) holds or is acting in any office in the public
service, including the office of judge,
magistrate or other judicial office, in the
defence forces of the Republic, or in any
level of devolved government;
(c) is a member of a constitutional Commission;
(d) is a member of Parliament;
(e) is a candidate for election as a member of
Parliament; or
(f) has ever been removed from any office on
grounds of any violation of this Constitution
or for gross misconduct.

Procedure at presidential election

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

(2) If no presidential candidate for President are
nominated, an election shall be held in each
electoral unit.

(3) In a presidential election –
(a) 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 156 at such time,
in such places and in such manner as may
be prescribed by or under an Act of
Parliament; and
count against the President or the person per forming the functions of that office during their tenure of office, or any of anything done or not done in the exercise of their powers under this Constitution.

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

Removal of President on grounds of incapacity

163.(1) A member of the National Assembly may, at any sitting of the Assembly, propose a motion for the removal from office of the President on the ground of the physical or mental capacity of the President to perform the functions of office.

(2) If it is resolved by one half of all the members of the 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 seven days of the resolution, convene a meeting of a medical board of five persons registered as medical practitioners under the laws of the Republic –

(a) four of whom shall be nominated by the Medical Practitioners and Dentists Board; and

(b) the other one shall be nominated by the President or a close relative or a member of the family of the President; and the President shall submit to examination by the medical board.

(3) Where the Assembly resolves that the question of the physical or mental capacity of the President to perform the functions of the office be investigated, the Speaker shall, within another period of five days, notify the medical board of the date for the purposes of the investigation.

(4) The Speaker of the Assembly, or a majority of the members of the Assembly, may, at any time during the investigation, request the participation of the National Assembly in the investigation.

(5) The special committee shall investigate the matter and shall, within ten days, report to the Senate whether it finds any of the allegations against the President to have been substantiated.

(6) The President shall have the right to appear and be represented before the special committee during its investigations.

(7) The special committee reports that the particulars of any allegation against the President have not been substantiated, further proceedings shall not be taken under this Article in respect of that allegation.

(8) If the special committee reports that the particulars of any allegation against the President have been substantiated, the President shall be removed from office by a majority of two thirds of the members of the Senate voting, and the President shall cease to hold office if two thirds of the members of the Senators vote to uphold the impeachment charges.

Vacancy in the office of President

165.(1) Where a vacancy occurs in the office of the President by reason of the President’s death, resignation or ceasing to hold office by virtue of Article 163 or 164, the Deputy President shall assume office as the President.

(2) Where a vacancy occurs in the office of the President and that of the Deputy President, the Speaker of the National Assembly shall assume the functions of the office of the President.

(3) Where the Speaker of the Assembly cannot for any reason assume the office of the President under clause (2), the Speaker of the Senate shall assume those functions.

(4) In the case of a vacancy as described in clauses (1) and (2), the Electoral and Boundaries Commission shall conduct a presidential election within sixty days of the vacancy in the office of the President.

Presidential powers of mercy

166.(1) There shall be a power of mercy which may be exercised on the petition of any person by the President in accordance with the advice of the Committee referred to in clause (3), which power of clemency shall not be delegated to any other person.

(2) Parliament shall enact legislation establishing criteria that shall be applied by the Advisory Committee referred to in clause (3) in formulating its advice referred to in clause (1).

(3) Before exercising the Presidential Power of Mercy, which shall consist of –

(a) the Attorney-General; and
(b) the Minister responsible for the Criminal Justice Sector;

(4) Members of the Advisory Committee appointed under clause (3), (c), (d), (e), (f), and (g) shall remain members of the Advisory Committee, provided that they remain qualified, for a period of one year and may retain their membership for two further terms of one year.

(5) The Advisory Committee may act despite there being a vacancy in its membership.

(6) The Advisory Committee may regulate its own procedure.

(7) In the exercise of the powers conferred by clause (1) the President may –

(a) grant to a person convicted of an offence a pardon, either free or subject to lawful conditions;

(b) postpone, either for a specified period or indefinitely, the carrying out of a punishment imposed on a person;
(c) substitute a less severe form of punishment for a punishment imposed on a person for an offence.

(d) remit the whole or part of a punishment imposed on a person for an offence.

The Advisory Committee may take into account the views of the victims of the offence in respect of which it is considering recommending the exercise of the power of clemency by the President.

of Deputy President

There shall be a Deputy President of the Republic.

Each candidate in a presidential election shall nominate a person, duly qualified for election as the President, as a candidate for Deputy President.

The Electoral and Boundaries Commission shall not conduct a separate election for the Deputy President but shall declare the candidate nominated by the person who is elected as the President to be elected as the Deputy President. A person declared elected as the Deputy President shall take and subscribe the oath or affirmation of allegiance and the oath or affirmation for the due execution of the functions of a person so sworn or affirmed, death or removal from office.

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 no date is specified, at noon on the day after the notice is delivered.

The provisions of Articles 163 and 164 as to the removal from office and impeachment of the Deputy President shall, with the necessary alterations, apply to the office of the Deputy President.

The Deputy President shall not serve for more than two terms.

A person who has continuously served as Deputy President for at least two and a half years during the term of a President shall be deemed to have served a full term.

(2) The Deputy President shall perform the functions conferred by this Constitution and any other functions as the President may assign.

(3) When the President is temporarily incapacitated or absent from the Republic, the Deputy President shall act as the President.

(4) The Deputy President shall not hold any other State or public office or any elective or appointive office within a political party.

Death before assuming office

170.(1) If a person elected as President dies before assuming office, the person declared elected as the Deputy President shall assume the office of President and the office of the Deputy President shall become vacant.

(2) If a person declared elected as the Deputy President dies before assuming office, the office of the Deputy President shall be declared vacant on the assumption of office by the person declared elected as the President.

(3) If both the persons declared elected as the President and the Deputy President die before assuming office, the Speaker of the National Assembly shall act as President and the Election and Boundary Commission shall conduct a fresh election within sixty days of the second death.

Remuneration and benefits of President and Deputy President

171.(1) The remuneration and benefits payable to the President or Deputy President shall be a charge on the Consolidated Fund.

(2) The remuneration and benefits and privileges of the President or Deputy President shall not be varied to their disadvantage while in office or on retirement.

(3) The retirement benefits payable to a former President or Deputy President and the facilities available to them shall not be varied to their disadvantage during their lifetime.

Part III – The Prime Minister and Cabinet

Prime Minister

172.(1) There shall be a Prime Minister of the Republic, who shall be the Head of Government.

(2) The Prime Minister shall coordinate the work of the ministries and the preparation of legislation, and is responsible to Parliament.

(3) The Prime Minister shall preside at meetings of the Cabinet.

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

(5) The Deputy Prime Minister when performing the functions of the Prime Minister under clause (4) shall not exercise a power of the Prime Minister in relation to –

(a) nomination or recommendation for appointment to a public office; or

(b) the allocation of functions to or the transfer of functions from a Deputy Prime Minister, Minister or Deputy Minister.

Appointment of Prime Minister

173.(1) Within seven days following the summoning of the National Assembly after an election, or whenever necessary to fill a vacancy in the office of Prime Minister, other than on the occasion of a vote of no confidence, the President shall appoint as Prime Minister –

(a) the member of the Assembly who is the leader of the largest political party, or

(b) coalition of parties, represented in the Assembly; or

(2) Within the leader of the largest party or coalition of parties has been unable to command the confidence of the Assembly, the member of the Assembly who is the leader of the second largest political party, or coalition of parties represented in the Assembly.

(2) Where neither of the persons contemplated in clause (1)(a) or (b) has been able to command or retain the confidence of the Assembly, the President shall propose to the Assembly the name of a member who, in the President's opinion, may be able to command the confidence of the Assembly.

(3) On receiving a proposal from the President under clause (2), the Speaker shall summon the Assembly and introduce the proposal from the President.

(4) Within seven days of the Speaker receiving a proposal from the President, the Speaker shall call a vote in the Assembly to confirm the appointment of the person proposed by the President.

(5) A vote contemplated in clause (4) passes if it is supported by at least fifty per cent of the members of the Assembly.

(6) If the Assembly fails to confirm the appointment of the person proposed by the President, the Assembly shall by a vote supported by a majority of members present and voting nominate a member of the Assembly for appointment as the Prime Minister.

(7) If, within sixty days of the President first proposing a person to be appointed Prime Minister, no person has been confirmed, the Assembly shall stand dissolved and the Electoral and Boundaries Commission shall conduct a fresh general election for the Assembly.

Term of office

174.(1) A person whose appointment as Prime Minister has been confirmed by the National Assembly shall assume the office by taking and subscribing the oath or affirmation for the due performance of the functions of the office prescribed in the Third Schedule, before the Chief Justice of the Supreme Court.

(2) The term of office of the Prime Minister continues until –

(a) the Prime Minister dies, resigns or is dismissed from office; or

(b) the next person appointed Prime Minister following an election assumes office.

Resignation of Prime Minister

175.(1) The Prime Minister may resign from office by delivering a written notice of resignation to the President.

(2) The resignation of the Prime Minister takes effect –

(a) on the date and at the time specified in the notice, if any; or

(b) on the day after it is delivered, in any other case.

Dismissal of Prime Minister

176.(1) The President may propose to the National Assembly the dismissal of a Prime Minister.

(2) The proposal of the President under clause (1) passes if it is supported by the votes of not less than fifty per cent of all the members of the Assembly and the Prime Minister ceases to hold office.

(3) A member of the Assembly supported by not less than a third of the members may, at any time during a sitting of the Assembly, propose a motion of no confidence in the Prime Minister.

(4) If the Assembly, by resolution supported by the votes of at least fifty per cent of its members, passes the motion of no confidence in the Prime Minister, the Prime Minister ceases to hold office.

(5) The President shall not dismiss the Prime Minister, the two Deputy Prime Ministers, the Ministers and the Deputy Ministers in any circumstances, other than those contemplated in this Article.

Ministers and Deputy Ministers

177.(1) The President shall appoint members of the Cabinet and Deputy Ministers nominated by the Prime Minister from among the members of the Assembly, and subject to the approval of the Senate.

(2) A person appointed as a Deputy Prime Minister, Minister or Deputy Minister –

(a) assumes office by taking and subscribing the oath or affirmation for the due execution of the functions of the office prescribed in the Third Schedule, before the Speaker and members of Parliament;
...
may be made only by a sitting of the Court in which all of the judges of the Supreme Court participate.

3) The judges of the High Court shall be appointed –

(a) at least ten years experience in Kenya or in another Commonwealth common law jurisdiction –
(ii) as a professionally qualified magistrate;

(b) intellectual ability as demonstrated by academic qualifications in law;

(i) in practice as an advocate; or

(ii) high moral character and integrity.

The following qualifications –

(a) at least ten years experience in Kenya or in another Commonwealth common law jurisdiction –

(i) as a Judge of the High Court or a court of corresponding standing; or

(ii) in practice as an advocate; or

(b) intellectual ability as demonstrated by academic qualifications and eminence in legal practice; and

(c) high moral character and integrity.

The judges of the High Court shall be appointed from persons who possess the following qualifications –

(a) at least ten years experience in Kenya or in another Commonwealth common law jurisdiction –

(i) as a professionally qualified magistrate;

(ii) in practice as an advocate; or

(b) intellectual ability as demonstrated by academic qualifications in law; and

(c) high moral character and integrity.

Subordinate courts

197.1 Parliament may, by an Act of Parliament –

(a) establish courts martial and other courts subordinate to the High Court; and

(b) confer on them jurisdiction and functions.

(2) A magistrate or Kadhi shall not be removed from office, except after determination by the Judicial Service Commission on grounds as prescribed by an Act of Parliament.

Kadhis’ Court

198.1 There is established the Kadhis’ Court.

(2) The Kadhis’ Court shall –

(a) consist of the Chief Kadhi and such number of other kadhis, all of whom profess the Islamic faith; and

(b) be organized and administered, as may be prescribed by an Act of Parliament.

Jurisdiction of the Kadhis’ Court

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

Judicial Service Commission

200.1 There is established the Judicial Service Commission consisting of –

(a) one Supreme Court Judge elected by the judges of the Supreme Court;

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

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

(d) the Attorney-General;

(e) the Chief Kadhi;

(f) two advocates each of at least fifteen years’ standing nominated by the Law Society of Kenya; and

(g) one person nominated by the Public Service Commission.

(2) The Chief Registrar of the Judiciary shall be the Secretary to the Commission.

(3) Members of the Commission, apart from those appointed under clause (1)(d), (e) and (g), shall hold office, provided that they remain qualified, for a term of five years and shall be eligible for re-appointment for a further term of five years.

Functions of the Judicial Service Commission

201.1 The functions of the Judicial Service Commission shall be –

(a) to ensure and enhance the independence and judicial accountability of the judiciary and the efficient, effective and transparent administration of justice;

(b) to recommend to the President persons for appointment as judges;

(c) to review and make recommendations on the conditions of service of judges, magistrates and other judicial officers, other than their salaries and remuneration;

(d) to advise the President on the membership of the tribunal referred to in Article 196(4);

(e) to appoint, discipline and remove registrars, magistrates and other judicial officers, including paralegal staff, in such manner as may be specified by an Act of Parliament;

(f) to review and establish tribunals to investigate complaints against judges;

(g) to prepare and implement programmes for the continuing education and training of judges, magistrates and other judicial officers, and paralegal staff;

(h) to advise the Government on improving the efficiency of the administration of justice, and on access to justice, including legal aid.

(2) In this Article ‘judge’ means a judge of a superior court of record.

Attorney-General

202.1 There is established the office of the Attorney-General, which shall be an office in the public service.

(2) The Attorney-General shall be appointed by the President on the recommendation of the Public
Service Commission and with the approval of the National Assembly.

3) The qualifications for appointment as Attorney-General are the same as for appointment as the Director of Public Prosecutions and shall not discontinue a prosecution without the permission of the court.

4) The Director of Public Prosecutions may be exercised in person or by subordinate officers acting in accordance with the advice of the Public Service Commission and with the approval (or otherwise) of such agreements, contracts, treaties and conventions.

i) The powers of the Attorney-General shall be responsible for –
(a) the effective, efficient and transparent management and administration of the Public Defender’s office;
(b) the criteria for the granting of legal aid; and
(c) publishing information as to the availability of legal aid.

j) The Public Defender shall hold office for a term of ten years and shall not be eligible for re-appointment.

l) The Attorney-General shall not be under the direction or control of any person or authority in the exercise of any of his or her functions.

m) The Director of Public Prosecutions shall be appointed by the President on the recommendation of the Public Service Commission and with the approval of the Attorney-General.

n) The Director of Public Prosecutions shall be appointed by the Attorney-General for a term of ten years and shall not be eligible for re-appointment.

o) The powers of the Attorney-General may be exercised in person or by subordinate officers acting in accordance with general or special instructions.

p) The Attorney-General shall hold office for a term of ten years and shall not be eligible for re-appointment.

q) The Attorney-General shall proceed to investigate any information or allegations of criminal conduct.

r) The Director of Public Prosecutions shall, as appropriate, implement the laws of the state.

s) The Public Defender shall provide legal advice and representation to persons who are unable to afford legal services.

1) The Director of Public Prosecutions or Public Defender who is suspended from office under clause (4) shall not have the consent of any person or authority such; such;

2) The Public Defender shall provide legal advice and representation to persons who are unable to afford legal services.

3) The qualifications for appointment as Public Defender shall be in writing, setting out the criteria for the appointment.

4) On receipt and examination of the petition the President shall within 14 days suspend the office holder in question.

5) The Public Defender shall hold office for a term of ten years and shall not be eligible for re-appointment.

6) The Attorney-General shall promote, protect and uphold the rule of law and defend the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.

7) The Attorney-General shall not be under the direction or control of any person or authority in the exercise of any of his or her functions.

8) The powers of the Attorney-General may be exercised in person or by subordinate officers acting in accordance with general or special instructions.

9) The Attorney-General shall hold office for a term of ten years and shall not be eligible for re-appointment.

10) The Attorney-General shall not be under the direction or control of any person or authority in the exercise of any of his or her functions.

Part I – Structure and Principles of Devolved Government

Objects of devolution of government

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

2) All persons and bodies exercising and performing powers and functions in accordance with this Chapter shall take account of the objects set out in this Article.

Principles of devolved government

207.1) The district is the principal unit of devolution.

2) The principal role of a regional government is to co-ordinate the implementation, within the districts forming the region, of programmes and projects that extend across two or more districts of the region.

3) The principal role of the Senate is to provide an institution through which the devolved levels of government share and participate in the formulation and enactment of national legislation.

4) Parliament is responsible for the enactment of framework legislation applicable to the devolved levels of government.
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 regions or districts 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; and
(c) the national legislation is necessary for –
(i) the maintenance of national security;
(ii) the maintenance of national security;
(iii) the protection of the common markets in respect of the mobility of goods, services capital and labour;
(iv) the promotion of economic activities across regional or district boundaries;
(v) the promotion of equal opportunity or equal access to government services; and
(vi) the protection of the environment.

Regional or district legislation prevails over district legislation if a decision by a court that a provision of a regional law that avoids a conflict to any extent necessary in any particular circumstances, co-operate in the performance of their powers and functions of their powers and functions of their powers and functions.

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voters who meet the requirements relating to residence within the district prescribed by Act of Parliament.

2) The district governor and deputy district governor each hold office for a term of five years, and each of them is eligible, if otherwise qualified, for re-election for one further term.

I. powers of the High Court in –
(i) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
(ii) compelling the production of documents; and
(iii) issuing a commission or request to examine witnesses abroad.

Public access and participation, and powers, privileges and immunities

228. Articles 144 and 145 apply to the regional legislative assemblies and the district and locational councils in the same manner as they apply to the national legislature.

Leadership and integrity

229. Members of an assembly, council or committee constituted under this Chapter shall act in accordance with the principles set out in Chapter Nine.

Provision to be made by Act of Parliament

230. (1) Parliament shall by legislation make comprehensive provision for all matters necessitating the giving effect to this Chapter, including, in particular, provision for –
(a) the phased transfer, over a period of not more than five years from the effective date, from the Government to the devolved governments of the powers and functions assigned to them under Article 209;
(b) the governance of Nairobi, as the national capital, and of other urban areas;
(c) the delegation of powers by one level of government to another, including the delegation from the Government to regional and district governments of legislative powers with respect to matters specified in the following paragraphs of this Article as the subject-matter of an Act of Parliament, and the conditions for the transfer and recall of the powers delegated;
(d) the manner of election or appointment of persons to, and their removal from, offices in devolved governments, including the qualifications of voters and candidates;
(e) the procedure of assemblies, councils and executive committees, including the chairing and frequency of meetings, quorums and voting; and
(f) the suspension of assemblies, councils and executive committees.

(2) An Act passed for the purposes of clause (1) shall make provisions for the matters provided for in Part VI that is at least as appropriate as the principles of devolution; and (b) comprehensive in content, as the provisions of that Part.

Part VI – Interim Provisions

Qualification for election or appointment to devolved government bodies

231. Until relevant provision is made by Act of Parliament for the purposes of Article 230, a person is eligible to be a member of an assembly, council or executive committee established by this Chapter if that person –
(a) is qualified for membership of the National Assembly;
(b) has been resident in the region, district or location concerned at any time during the period of twelve months immediately before the date of the election or appointment.

Procedures and internal organization of devolved government bodies

232. (1) Until relevant provision is made by Act of Parliament for the purposes of Article 230, each assembly, council or executive committee established by this Chapter may, by resolution, regulate its own procedure and internal organization.

(2) The power conferred by sub-section (1) includes the power to make provision with respect to –
(a) the appointment or election, and removal, of the persons as chairpersons and deputy chair persons;
(b) the convening, frequency and chairing of meetings; and
(c) quorums and voting at meetings.

Election of mayor and deputy mayor of Nairobi

233. Until relevant provision is made by Act of Parliament for the purposes of Article 215 –
(a) the manner of voting under that Article shall be the same as at a by-election for the National Assembly; and
(b) the residential requirement for the purposes of that Article is that a person has been resident in the region throughout the period of twelve months immediately before the date of the election.

Election of district councillors

234. Until relevant provision is made by Act of Parliament for the purposes of Article 219(1) –
(a) the wards of each district are the wards existing immediately before the effective date;
(b) the number of members representing marginalized groups and communities shall be the number that is as nearly as practicable equal to twenty per cent of the number of members referred to in Article 219(1)(a); and
(c) the manner of conducting the election of members of a locational council shall as determined in the circumstances by the Electoral and Boundaries Commission.

Election of locational councils and locational administrators

235. (1) Until relevant provision is made by Act of Parliament for the purposes of Article 224(2), the manner of conducting the election of members of a locational council so as to ensure that an equal number of men and women are elected shall be as determined in the circumstances by the Electoral and Boundaries Commission.

(2) Until relevant provision is made by district legislation for the purposes of Article 225(1), the manner of conducting the election of members of a locational council shall be as determined in the circumstances by the Electoral and Boundaries Commission.

Chapter Fifteen

Part I – Public Finance and Revenue Management

Principles and objects of public finance and revenue management

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

Part II – Taxation Powers and Revenue Sharing.

Imposition of tax

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

The taxation and other revenue-raising powers of the Government and devolved governments are set out in the Fifth Schedule. The taxation and other revenue-raising powers of a devolved government shall not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across regional, district or locational boundaries or the national mobility of goods, services, capital or labour.

When two or more governments have taxation or other revenue-raising powers and functions with regard to the same subject-matter, an appropriate division of those powers and functions shall be made by Act of Parliament. Recommendations have been tabled in Parliament.

ed governments' shares of national funds
The Government shall promote financial equalization among all levels of government. Each devolved government –
(a) is entitled to an equitable share of revenue raised nationally; and
(b) may receive equalization grants or other allocations of revenue shares; and
(c) the needs and interests of the Government;
(d) the desirability of stable and predictable allocations of revenue shares; and
(e) emergencies or other temporary needs.

Part III – Funds for Holding Public Money

Consolidated Fund

241.(1) There is established a fund to be known as the Consolidated Fund.

(2) Subject to clause (3), all money raised or received for the purposes of, on behalf of, or in trust for, the Government shall be paid into the Consolidated Fund.

(3) The money referred to in clause (2) does not include any money –
(a) that is payable under an Act of Parliament into some other public fund of the Government established for a specific purpose; or
(b) that may, under an Act of Parliament, be retained by the State organ, at national or devolved level, that received it for the purpose of defraying the expenses of that State organ.

Withdrawals from Consolidated Fund
242.(1) Money shall not be withdrawn from the Consolidated Fund except –
(a) to meet expenditure charged on the Fund by this Constitution or an Act of Parliament; or
(b) when the issue of that money has been authorized by an Appropriation Act or a Supplementary Appropriation Act.

(2) Money shall not be withdrawn from any public fund of the Government other than the Consolidated Fund, unless the issue of that money has been authorised by an Act of Parliament.

(3) Money shall not be withdrawn from the Consolidated Fund or any other public fund of the Government unless the Controller of Budget has approved the withdrawal.

Revenue Fund for devolved governments
243.(1) There shall be established a Revenue Fund for each devolved government, into which shall be paid all money by the devolved government, except money reasonably excluded by an Act of Parliament.

(2) Money may be withdrawn from the Revenue Fund of a devolved government only –
(a) by an appropriation by legislation of the devolved government; or
(b) a direct charge against the Revenue Fund that is provided for by an Act of Parliament or by legislation of the devolved government.

Contingency Fund

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

Part IV – Borrowing

Borrowing by Government
245. (1) The Government may borrow from any source.

(2) The Government shall not, on behalf of itself or any other public institution, authority or person, borrow money, guarantee a loan or receive a grant, unless the terms and conditions of the transaction have been laid before, and approved by a resolution of, each House of Parliament.

(3) All money received as a result of a transaction referred to in clause (2) shall be paid into, and form part of, the Consolidated Fund or some other public fund that is existing or is created for the purpose of that transaction.

(4) Within seven days after either House of Parliament, by resolution or request, the Minister responsible for finance shall present to both Houses of Parliament all information concerning a loan that is necessary to show –
(a) the extent of the total indebtedness by way of principal and accumulated interest; 
(b) the provision made for servicing or repayment of the loan; 
(c) the use made of the proceeds of the loan; and
(d) the progress made in the repayment of the loan.

For the purposes of this Article, "loan" includes any money lent or given to the Government on condition of return or repayment and any other form of borrowing or lending in respect of which money from the Consolidated Fund or any other public fund may be used, or is required to be used, for payment or repayment.

Borrowing by devolved governments

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

(2) An Act of Parliament referred to in clause (1) may be enacted only after all relevant recommendations of the Commission on Revenue Allocation have been considered.

(3) A devolved government shall not borrow without first obtaining approval from its assembly or council.

Public debt

247.(1) The public debt of the Republic shall be charged on the Consolidated Fund and other public funds of the Republic.

(2) For the purposes of this Article, the public debt includes the interest on that debt, sinking fund payments in respect of that debt, the costs, charges and expenses incidental to the management of that debt and outstanding guarantees by the State.

(3) The aggregate amounts borrowed in any financial year by both the Government and all devolved governments shall not be such as to increase the accumulated public debt to an amount greater than fifty per cent of the overall gross domestic product of the Republic in the immediately preceding financial year.

Loan guarantees by governments

248.(1) An Act of Parliament shall provide terms and conditions under which each level of government may guarantee a loan.

(2) An Act of Parliament referred to in clause (1) may be enacted only after all recommendations of the Commission on Revenue Allocations have been considered.

(3) Within two months after the end of each financial year, each government, shall each publish a report on the guarantees that it gave during that year.

Part V – Budgets

Principles

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

National annual estimates

250.(1) On a date not later than two months before the end of each financial year the Minister responsible for finance shall lay before the National Assembly –
(a) estimates of the revenues and expenditure of Government for the following financial year; and
(b) a detailed fiscal and strategic plan for economic and social development for a period of three years.

(2) The Minister responsible for finance shall include in the annual estimates a special budgetary provision for the development of marginalized areas and communities.

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

accounts and audit of public institutions
254.(1) The Principle Secretary in charge of a ministry and the accounting officer in charge of a department or a public body are each accountable to the National Assembly for funds appropriated to the department, State organ, commission or public institution. (2) The accounts of all governments and state organs shall be audited by the Auditor-General. (3) The accounts of the offices of the Controller of Budget and the Auditor-General shall be audited and reported on by the National Assembly, to be known as the Controller of Budget. (4) If, while, the holder of a public office, including a political office, a person directs or approves the use of public funds contrary to law, regulations or instructions, that person is liable for any loss arising from that use and is obliged to make good the loss, and, in either case, the person is removed from the holder of that office or not. (5) An Act of Parliament shall provide for the keeping of records, control of accounts of the devolved governments, and prescribe other measures for securing efficient and transparent fiscal management.

TREASURY CONTROL
255.(1) An Act of Parliament shall establish an organ of the national government, to be known as the Treasury, and prescribe measures to ensure both transparent and prudent control in each level of government. (2) The Treasury, with the concurrence of the Minister responsible for finance, may stop the transfer of funds to a State organ or any other public institution only for a serious material breach, or persistent material breaches, of the measures established in terms of clause (1). (3) A decision to stop the transfer of funds taken in terms of clause (2) may not stop the transfer of more than fifty per cent of funds due to any unit of devolved government. (4) A decision to stop the transfer of funds taken in terms of clause (2) – (a) shall not stop the transfer of funds for more than sixty days; and (b) may be enforced immediately, but will lapse retrospectively unless, within thirty days after the date of the decision, the National Assembly approves it by resolution passed by both Houses. (5) The National Assembly may renew a decision to stop the transfer of funds for no more than sixty days at a time. (6) Before the National Assembly may approve or renew a decision to stop the transfer of funds – (a) the Controller of Budget shall make a report to the National Assembly; and (b) the affected State organ or public institution shall be given an opportunity to answer the allegations against it, and to state its case, before the relevant parliamentary committee.

controller of budget
256.(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 appointed Controller of Budget, a person shall be – (a) professionally qualified accountant of not less than ten years’ standing who has extensive experience in the management of public finance; and (b) a person of integrity and moral probity. (3) The Controller of Budget holds office, subject to the conditions set out in Article 290(5)(b), (c), and (d) for a term of five years and is eligible, if qualified, for re-appointment for one further term. (4) The Controller of Budget shall oversee the implementation of the budgets as approved by the different levels of government by – (a) ensuring that money is spent in accordance with appropriations or, in the case of money drawn from the Contingency Fund, in accordance with the Act of Parliament referred to in Article 244; (b) ensuring the office of actual, as opposed to budgeted, expenditure; (c) providing technical advice to parliamentary finance committees; and (d) working closely with the Treasury, departments and Ministries. (5) Within two months after the end of each financial year, the Controller of Budget shall submit to each House of Parliament a report on the operations of the office of Controller of Budget during that financial year. (6) Within three months after the submission of a report under clause (5), Parliament shall debate and consider the report and take appropriate action. (7) In performing the functions of office, the Controller of Budget shall not be under the direction or control of any person or authority. (8) The grounds and procedure for the removal of the Controller of Budget, as set out in Article 294. (9) The remuneration and benefits of the Controller of Budget shall be charged on the Consolidated Fund.

Auditor-General
257.(1) There shall be an Auditor-General who shall be appointed by the President with the approval of the National Assembly. (2) To be appointed Auditor-General, a person shall be – (a) professionally qualified accountant of not less than ten years’ standing who has extensive audit and public finance experience; and (b) a person of integrity and moral probity. (3) The Auditor-General holds office, subject to the conditions set out in Article 244; (a) for a term of five years and is eligible, if qualified, for re-appointment for one further term. (4) The Auditor-General shall – (a) audit the accounts of the Government and devolved levels of government and of state corporations; and (b) confirm that all money that has been appropriated by Parliament, or raised by any level of government, and disbursed has been applied to the purpose to which it was appropriated, that the expenditure conforms to the authority that governs it and that the use of the money was economical, efficient and effective; and (c) within six months after the end of each financial year, audit and report, in respect of that financial year, on – (i) the public accounts of the national and devolved levels of government; (ii) the accounts of all funds and authorities of the Government and devolved levels of government; and (iii) the accounts of all courts.
(iv) the accounts of every Commission established by this Constitution;
(v) the accounts of the Assembly and the Senate;
(vi) the accounts of political parties funded from public funds;
(vii) the accounts of any other organization funded from public funds; and
(viii) the accounts of any other public entity.

I Within three months after the submission of the report referred to in clause (4)(c), Parliament shall debate and consider the report and take appropriate action.

I An Act of Parliament shall provide for the keeping of records and auditing of accounts of the devolved governments, and prescribe other measures for securing efficient and transparent fiscal management.

I In performing the functions of the office, the Auditor-General shall not be under the direction or control of any person or authority.

I The grounds and procedure for the removal of the Auditor-General, are as those for members of constitutional Commissions as set out in Article 290.

I The remuneration and benefits of the Auditor-General shall be charged on the Consolidated Fund.

II – Institutions

1) There is established the National Revenue Authority.

2) The Commission shall consist of the following persons appointed by Parliament:
(a) a chairperson;
(b) four persons, consisting one nominee of each regional assembly;
c) three persons to represent distinct groups of the society, nominated and approved in accordance with an Act of Parliament; and
d) two persons nominated by the National Assembly.

3) The principal function of the Commission is to determine the basis for the sharing of revenue from national resources and to ensure that –
(a) the sharing is equitable as between the Government and the various levels of devolved government;
(b) the sharing is equitable as between the various levels of devolved government at any particular level; and
c) wherever necessary, conditional or unconditional grants are made.

4) The Commission shall –
(a) report to all levels of government its recommendations concerning the apportionment of national revenues to the four levels of devolved government;
(b) frequently review such recommendations to ensure they conform with changing circumstances; and
(c) mediate in and determine disputes relating to financial arrangements between the Government and devolved governments.

5) In its recommendations, the Commission shall –
(a) aim at defining and enhancing the revenue source of governments at all levels with the object of encouraging fiscal responsibility and moving the devolved governments over time towards self-sufficiency;
(b) make proposals for affirmative action for local business persons or for classes of persons, and social groups, previously disadvantaged and marginalized by discrimination; and
(c) make proposals for the exclusion of contractors who default on their tax.

6) In its recommendations concerning the distribution of national revenues, the Commission shall take into account –
(a) the national interest;
(b) any provision that must be made in respect of the national debt and other national obligations;
(c) the needs and interests of the Government, determined by objective criteria;
(b) the need to ensure that the regions and districts are able to provide basic services and perform functions allocated to them;
(e) the fiscal capacity and efficiency of the regions and districts;
(f) developmental and other needs of regions and districts;
(g) economic disparities within and among the regions and the need for financial equalisation;
(h) the need for affirmative action in respect of arid and semi-arid areas and other marginalized areas;
(i) the need for economic optimisation of each region and district;
(j) obligations of the regions and districts in terms of the Act of Parliament;
(k) the desirability of stable and predictable allocations of revenue shares; and
(l) the need for flexibility in responding to emergencies or other temporary needs, and other factors based on similar objective criteria.

7) The recommendations of the Commission may be modified by the Government supported by a report of the Speaker of the National Assembly.

8) An Act of Parliament shall provide for procedures and the operations of the Commission and prescribe a framework within which the policy referred to in clause (4) may be implemented.

9) The Commission has such other functions as are conferred upon it by an Act of Parliament.

10) In discharging its functions, the Commission shall have regard to such principles, criteria, formulae, conditions and frameworks for ensuring equitable sharing and allocation of national revenue and resources as are prescribed by an Act of Parliament.

11) Not later than 31 st January in each year, the Commission shall prepare a report, in accordance with the requirements prescribed by an Act of Parliament, setting out its recommendations concerning the distribution of national revenues to the several levels of government and submit the report to Parliament for approval.

12) Recommendations of the Commission, as modified under clause (7), are binding on all governments, and shall be reflected in their respective legislative policies and in their taxation and other legislative policies.

Central Bank of Kenya

260. (1) There is established the Central Bank of Kenya.

(2) The Central Bank of Kenya is the only authority to issue the currency of Kenya.

(3) The authority of the Central Bank of Kenya vests in a Board, consisting of a Governor, a Deputy Governor and not more than five other members.

(4) The members of the Board shall –
(a) be appointed by the President with the approval of the National Assembly; and
(b) hold office, subject to Article 290(5)(b),(c) and (d), for a term of five years and are eligible, if otherwise qualified, for reappointment for one further term.

(5) To be appointed Governor, a person shall have extensive knowledge and experience in matters relating to economics, finance or accounting and be a person of integrity and moral probity.

(6) The Governor of the Central Bank is the chairperson of the Board.

(7) The grounds and procedure for the removal of a member of the Board are as set out in Article 294.

Functions of Central Bank

261. (1) The Central Bank of Kenya shall –
(a) promote and maintain the stability of the value of the currency of the Republic;
(b) issue notes and coins;
(c) act as banker and financial advisor of the Government;
(d) conduct the monetary policy of the Government in a manner consistent with the relevant provisions of the law in the interest of the balanced and sustainable economic growth of the Republic;
(e) encourage and promote economic development and the efficient utilization of the resources of the Republic, through effective and efficient operation of a banking and credit system; and
(f) perform all such other functions, not inconsistent with this Article, as may be prescribed by law.

(2) In performing its functions, the Central Bank of Kenya shall conform to this Constitution and shall not be subject to the direction or control of any person or authority, but shall maintain regular consultation with the Minister responsible for finance.

(3) As from the effective date, notes and coins issued by the Central Bank of Kenya may bear only the portrait of the first President of the Republic of Kenya or other images, not including portraits, that depict or symbolize Kenya or an aspect of Kenya.

Economic and Social Council

262. (1) There is established the Economic and Social Council consisting of nine persons appointed on the basis of merit but taking into account the diversity of the people of Kenya, by the President acting on the advice of the Prime Minister, with the approval of the National Assembly.

(2) Persons appointed to the Council shall –
(a) be qualified and experienced in economic and social development matters; and
(b) have no partisan affiliation once appointed to the Council.

(3) The functions of the Council are –
(a) to advise the Government and Parliament on matters of economic and social concern to the people of the Republic;
(b) to advise the Government on the formulation, implementation, monitoring and evaluation of strategic economic and social policies;
(c) to consider and report to Parliament on the economic and social implications of all bills and budgetary proposals introduced in Parliament;
(d) to monitor progress in the improvement of the living standards of the people of Kenya, particularly those of the poor and the disadvantaged; and
(e) such other functions as are conferred on it by an Act of Parliament.

(4) Subject to this Article, Parliament shall enact legislation –
(a) regulating the manner in which the Council carries out its functions; and
(b) prescribing the form, content and manner of submitting the reports of the Council.

CHAPTER SIXTEEN

Part I – Public Service

Values and principles of public service

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

1. There is established the Public Service Commission.

2. There is a secretary to the Commission who shall be the Chief Executive and shall be appointed by the President on the recommendation of the Public Service Commission and with the approval of the National Assembly.

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

Public Service Commission

1. There is established the Public Service Commission.

2. The powers and functions of the Commission are –

(a) to register trained teachers; and

(b) to assign teachers employed by the Commission for service in any public hospital and other institutions;

(c) to regulate the appointment, promotion, transfer and dismissal of members of the public service with a framework of uniform norms and standards prescribed by Act of Parliament.

3. The Commission shall keep under review the standards of education, training and fitness to practice in the teaching profession.

4. There is established the Teachers Service Commission.

5. The functions of the Teachers Service Commission are –

(a) to register trained teachers; and

(b) to assign teachers employed by the Commission for service in any public school and other institutions;

(c) to ensure that procedures relating to recruitment, transfers, promotions and disciplinary measures of personnel comply with the values and principles set out in Articles 35 and 36 of the Constitution.

6. The Commission shall keep under review the standards of education, training and fitness to practice in the teaching profession.

7. The Health Services Commission shall consist of the chairperson and nine other members, five of whom shall be health professionals.

8. The functions of the Health Services Commission are –

(a) to register trained health workers;

(b) to assign health workers employed by the Commission for service in any public hospital and other institutions;

(c) to regulate the appointment, promotion, transfer and dismissal of members of the public service with a framework of uniform norms and standards prescribed by Act of Parliament.

9. The Commission shall keep under review the standards of education, training and fitness to practice in the teaching profession.

10. There is established the Teachers Service Commission.

11. The functions of the Teachers Service Commission are –

(a) to register trained teachers; and

(b) to assign teachers employed by the Commission for service in any public school and other institutions;

(c) to ensure that procedures relating to recruitment, transfers, promotions and disciplinary measures of personnel comply with the values and principles set out in Articles 35 and 36 of the Constitution.

12. There is established the Health Services Commission.

13. The functions of the Health Services Commission are –

(a) to register trained health workers;

(b) to assign health workers employed by the Commission for service in any public hospital and other institutions;

(c) to regulate the appointment, promotion, transfer and dismissal of members of the public service with a framework of uniform norms and standards prescribed by Act of Parliament.

14. The Commission shall keep under review the standards of education, training and fitness to practice in the teaching profession.
Part II — The Kenya Defence Forces

Establishment

276. (1) There is established the Kenya Defence Forces consisting of—
(a) the Kenya Army;
(b) the Kenya Air Force; and
(c) the Kenya Navy.

(2) A person shall not raise a military or a paramilitary organization except as provided for under this Constitution.

(3) There is established a Defence Council consisting of—
(a) the Minister responsible for defence who shall be the chairperson;
(b) the Deputy Minister responsible for defence who shall be the vice-chairperson;
(c) the Chief of the Kenya Defence Forces;
(d) the Kenya Army Commander;
(e) the Air Force Commander;
(f) the Navy Commander; and
(g) the Permanent Secretary in the Ministry responsible for defence.

(4) The Defence Council shall appoint its Secretary.

(5) The Defence Council shall—
(a) make all regulations necessary for giving effect to this Part;
(b) determine the number of members of the Defence Forces;
(c) determine the conditions of service of members of the Defence Forces;
(d) prescribe the organizational system of the Defence Forces; and
(e) determine any other matter that this Constitution requires the Defence Council to determine.

(6) The President shall, with the approval of the National Assembly, appoint the Inspector-General of the Kenya Defence Forces to hold office for a term of five years, and shall be eligible for re-appointment for a further and final term of five years.

(7) The Inspector-General may be removed from office by the President for—
(a) inability to perform the functions of office arising from infirmity of body or mind;
(b) misconduct;
(c) incompetence; or
(d) any other just cause.

(8) The Inspector-General shall in exercise of his or her functions—
(a) perform the duties of office arising from infirmity of body or mind;
(b) exercise operational command over the Kenya Defence Forces and perform such other duties as Parliament may by legislation prescribe.

Part III — The National Intelligence Service

Establishment

278. (1) There is established the National Intelligence Service consisting of—
(a) the National Intelligence Council;
(b) the Kenya Intelligence Services Board; and
(c) the National Intelligence Council.

(2) There is established the Kenya Intelligence Services Board consisting of—
(a) the Director-General of the National Intelligence Service;
(b) the Minister responsible for foreign affairs;
(c) the Attorney-General;
(d) the Director-General of the National Intelligence Service;
(e) the Minister responsible for security intelligence and counter-intelligence; and
(f) any other person appointed by Parliament.

(3) The Director-General of the National Intelligence Service shall hold office for a term of five years, and shall be eligible for re-appointment for a further and final term of five years.

(4) The Director-General may be removed from office by the President for—
(a) inability to perform the functions of office arising from infirmity of body or mind;
(b) misconduct;
(c) incompetence; or
(d) any other just cause.

(5) The Director-General shall—
(a) make all regulations necessary for giving effect to this Part;
(b) determine the number of members of the National Intelligence Service; and
(c) prescribe the organizational system of the National Intelligence Service.

(6) The Director-General shall appoint his or her Secretary.

(7) The Director-General shall—
(a) exercise operational command over the National Intelligence Service and perform any other duties as Parliament may by legislation prescribe.

(8) The Director-General shall—
(a) make all regulations necessary for giving effect to this Part;
(b) determine the number of members of the National Intelligence Service; and
(c) prescribe the organizational system of the National Intelligence Service.

(9) The Director-General shall—
(a) exercise operational command over the National Intelligence Service and perform any other duties as Parliament may by legislation prescribe.

Part IV — The Kenya Police Service

Establishment

280. (1) There is established the Kenya Police Service.

(2) The Kenya Police Service is a national police service, and the division of its functions shall be organized to take into account the structure of devolution.

Objects and functions

281. (1) The Kenya Police Service shall—
(a) preserve peace and protect life, limb and property, and the sovereignty, peace, national unity and territorial integrity of the Republic.
(b) protect the well-being of the people of Kenya and their property, and the sovereignty, peace, national unity and territorial integrity of the Republic.
(c) observe the principles specified in Article 273(3); and
(d) observe human rights standards; and
(e) train staff to the highest possible standards of competence and integrity and to respect human rights and dignity; and
(f) abide by the principles of transparency and accountability; and
(g) foster and promote relationships with the broader society; and
(h) co-ordinate, supervise and control all private and quasi-government security organizations to ensure safety and security in Kenya.

(2) The Kenya Police Service shall—
(a) act in a partisan manner;
(b) observe the principles specified in Article 273(3); and
(c) observe the principles specified in Article 273(3); and
(d) observe human rights standards; and
(e) train staff to the highest possible standards of competence and integrity and to respect human rights and dignity; and
(f) abide by the principles of transparency and accountability; and
(g) foster and promote relationships with the broader society; and
(h) co-ordinate, supervise and control all private and quasi-government security organizations to ensure safety and security in Kenya.

Inspector-General

282. (1) The President shall, with the approval of the National Assembly, appoint the Inspector-General of the Kenya Police Service.

(2) The Inspector-General shall—
(a) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(b) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(c) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(d) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(e) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(f) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(g) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(h) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(i) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(j) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(k) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(l) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(m) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(n) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(o) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(p) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
(q) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
r) perform the duties of the Inspector-General of the Kenya Police Service, and any other duties that Parliament by legislation prescribes.
Application of Chapter 287. This Chapter applies to all constitutional Commissions except when the specific provision is made to the contrary elsewhere in this Constitution.

Objects and independence of Commissions 288. (1) The objectives of constitutional Commissions are to—

(a) protect the sovereignty of the people;

(b) ensure the observance by all State organs of democratic principles and values; and

(c) ensure the maintenance of constitutionality, by insuring essential democratic functions from improper influence, manipulation or interference.

(2) Constitutional Commissions –

(a) are subject only to this Constitution and the law;

(b) are independent and not subject to direction or control by any person or authority; and

(c) shall be impartial and perform their functions without favour or prejudice.

(3) Where appropriate, a constitutional Commission shall –

(a) establish branches at all levels of devolved government; and

(b) offer its services to the public free of charge. Incorporation 289. A constitutional Commission is a body corporate and—

(a) has perpetual succession and a common seal; and

(b) is capable of suing and being sued in its corporate name.

Composition of Commissions 290. (1) A constitutional Commission shall consist of at least three and not more than ten members.

(2) Unless otherwise specified in this Constitution, members of a constitutional Commission shall—

(a) be appointed in a manner prescribed by an Act of Parliament, taking into consideration the principles of affirmative action; and

(b) be full time or part time.

(3) A member of a constitutional Commission shall—

(a) unless the member is ex-officio—

(i) hold office for term of five years, and be eligible for re-appointment for only one further term; and

(ii) retire from office on attaining age sixty-five;

(b) be able to conduct investigations on its own initiative or upon a complaint made by a member of the public; and

(c) be paid the powers of the High Court to—

(i) issue summons;

(ii) compel the attendance of witnesses to give evidence or produce documents for the purposes of its investigations; and

(iii) hold a person in contempt of the Commission and commit that person to the High Court.

(4) A constitutional Commission may, in addition to the functions conferred by this Constitution, perform such other functions as Parliament by legislation prescribes.

Proceedings of Commissions 293. (1) The proceedings of a constitutional Commission are valid even when there is a vacancy in its membership.

(2) A constitutional Commission shall regulate its own procedure so as to promote the efficient administration of its business and the expeditious disposal of cases.

Removal from office 294. (1) A member of a constitutional Commission may be removed from office only for—

(a) inability to perform the functions of the office arising from infirmity of body or mind; or

(b) misconduct;

(c) bankruptcy; or

(d) incompetence.

(2) A person desiring the removal of a member of a constitutional Commission on any ground set out in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting those grounds.

(3) The Assembly shall consider the petition and if it is satisfied that it discloses a ground under clause (1), it shall send the petition to the President.

(4) On receiving a petition under clause (3), the President shall—

(a) suspend the member pending the outcome of the complaint; and

(b) appoint a tribunal in accordance with clause (5).

(5) The tribunal shall be appointed by the President and shall consist of—

(a) the chairperson, who holds or has held office in the Republic as a judge of the superior courts of record; and

(b) at least two persons who are qualified to be appointed as High Court Judges; and

(c) one other member who is qualified to consider the facts in relation to the particular grounds for removal.

(6) The tribunal shall investigate the matter, and report on the facts and make a recommendation to the President, who shall act in accordance with the recommendation within thirty days.

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

Funds of Commissions 295. (1) The funds of a constitutional Commission shall—

(a) be paid the powers of the High Court to—

(i) issue summons;

(ii) compel the attendance of witnesses to give evidence or produce documents for the purposes of its investigations; and

(iii) hold a person in contempt of the Commission and commit that person to the High Court.

(c) has the powers necessary for conciliation, mediation and negotiation; and

(d) to the extent permitted by legislation, may award compensation or impose a fine.

(2) A complaint to a constitutional Commission may be lodged by any person entitled to lodge a complaint under Articles 31(1) and (2) –

(a) in writing setting out the grounds of the complaint and the facts in support of those grounds; or

(b) orally, in which case it shall be reduced into writing and signed by an official of the Commission.

(3) A constitutional Commission may, in addition to the functions conferred by this Constitution, perform such other functions as Parliament by legislation prescribes.
payable to, or in respect of, persons serving with the Commission are charge on the Consolidated Fund.

Within three months after the end of the financial year, a constitutional Commission shall submit its books and records of account to the Auditor-General for audit.

Within three months after submission of the books and records of account, the Auditor-General shall submit the report on the accounts to the President and Parliament.

I and other reports

Within seven months after the end of the financial year, a constitutional Commission shall submit a report to the President and to Parliament.

The report shall contain –
(a) a statement on its performance in meeting its objectives;
(b) a statement on its activities for the year and its projection on its future activities; and
(c) the report of the Auditor-General.

At any time, either House of Parliament may require the constitutional Commission to submit a report on a particular issue.

The President shall respond to the report of the constitutional Commission in writing to Parliament, which shall debate the report together with the response of the President.

A report of a constitutional Commission under this Article may be admitted as evidence in a court.

Institutional Commissions

Addition to the other constitutional Commissions established in this Constitution, the following institutional Commissions are established –

(a) the Commission on Human Rights and Administrative Justice;
(b) the Gender Commission;
(c) the Salaries and Remuneration Commission;
(d) the Commission on the Implementation of Constitution.

mission on Human Rights and Administrative Justice

(a) The Commission on Human Rights and Administrative Justice consists of –
(a) a chairperson;
(b) the Human Rights Commissioner;
(c) the People’s Protector, who shall have special responsibility for the right to fair administrative procedures;
(d) the Deputy Human Rights Commissioner, who shall have special responsibility for the rights of ethnic and religious minorities and marginalized groups and communities; and
(e) and other members.

Of the six commissioners referred to in clause (1) the
(a) one shall have professional knowledge and experience and special responsibility for matters relating to disability;
(b) one shall be a person with disability who has knowledge and experience and special responsibility for matters relating to disability; and
(c) shall have knowledge and experience and special responsibility for matters of the rights of the aged.

Subject to any express provision in respect of other Commissions, the functions of the Commission are
(a) to promote respect for human rights and develop a culture of human rights;
(b) to promote the protection, development and attainment of human rights in public and private institutions;
(c) to promote high standards of human rights in the Republic;
(d) to investigate and report on the observation of human rights in all spheres of life in the Republic;
(e) to investigate any act or omission in public administration that is alleged to be prejudicial or improper;
(f) to investigate human rights abuses within the national security organs and in their relationships with the public;
(g) to take steps to secure appropriate redress where human rights have been violated;
(h) to ensure that State organs are responsive to the needs of the people, and provide prompt remedy in cases of failure;
(i) to receive complaints about abuse of power, unfair treatment, manifest injustice, or corrupt, unlawful, oppressive or unfair official conduct;
(j) in relation to human rights, to initiate on its own initiative or on the basis of complaints, investigations and research and make recommendations to improve the functioning of State organs;
(k) to improve the standards of competence, honesty, integrity and transparency in the public service; and
(l) to propose reforms to practices of State organs that are unfair or inconsistent with this Constitution; and
(m) to recommend to the Government measures to ensure compliance with obligations under international treaties and conventions on human rights.

Commission on the Implementation of the Constitution

299.(1) The Commission on the Implementation of the Constitution consists of –
(a) a chairperson;
(b) nine other members.

(2) The function of the Commission is –
(a) to monitor, facilitate and oversee the development of legislation and administrative procedures as required fully to implement this Constitution;
(b) to report twice a year to the President and Parliament on –
(i) the progress of the timely implementation of this Constitution; and
(ii) any impediments to the timely implementation of this Constitution; and
(c) to work with the chairperson of each constitutional Commission to ensure that the letter and the spirit of this Constitution is respected.

(3) The Commission shall stand dissolved at the full implementation of this Constitution as determined by Parliament.

Gender Commission

300.(1) The Gender Commission consists of –
(a) a chairperson; and
(b) and other members.

(2) The functions of the Commission are –
(a) to formulate programmes that promote gender equality;
(b) to promote equality and equity, to coordinate and facilitate mainstreaming in national development, and to advise the Government and the devolved governments on those matters;
(c) to advise Government on appropriate allocation of resources to ensure gender mainstreaming;
(d) to investigate and seek to resolve any gender-related complaints;
(e) to participate in the formulation of national development policies, and supervise the implementation of national policy on gender and development;
(f) to plan, supervise and coordinate programmes to create public awareness and support for gender issues, and liaise with the ministries, departments and other agencies of the Government on gender issues;
(g) to advise in its establishment and strengthening of institutional mechanisms that promote gender equity in all spheres of life and in particular, in education, employment and access to natural resources;
(h) to monitor and evaluate policies, practices and adherence to domestic and international law with a view to ensuring compliance by organs of state, enterprises and institutions, with the requirements of the gender provisions of this Constitution; and
(i) to evaluate Acts of Parliament, any system of personal and family law; customary laws and other laws with a view to ensuring compliance with the gender provisions in this Constitution.

Salaries and Remuneration Commission

301.(1) The Salaries and Remuneration Commission consists of –
(a) a chairperson;
(b) one person representing the Attorney-General and appointed by the Attorney-General;
(c) one person designated by the Treasury, from the Treasury;
(d) one person designated by the Public Service Commission;
(e) one person representing professional bodies;
(f) one person from an umbrella body representing employers;
(g) one person from an umbrella body representing the informal sector; and
(i) one person representing farmers.

(2) The functions of the Salaries and Remuneration Commission are –
(a) to set and review the remuneration and benefits of all State officers, public officers and members of all constitutional Commissions; and
(b) to harmonise the remuneration and benefits of all State officers, public officers and members of all constitutional Commissions, including officers of devolved governments and employees of parastatals.

CHAPTER NINETEEN

Amendment of the Constitution

302.(1) A proposed amendment to this Constitution in respect of –
(a) the supremacy of the Constitution;
(b) the territory of Kenya; the sovereignty of the people;
(d) the principles and values of the Republic;
(e) the Bill of Rights;
(f) the term of office of the President;
(g) the independence of the Judiciary and constitutional Commissions; the functions of Parliament; the values and principles of devolution; or
(i) the provisions of this Chapter, shall be enacted in accordance with Article 303 or 304, and approved by a simple majority of the people in a referendum held for that purpose.

(2) An amendment to this Constitution not contemplated in clause (1) shall be enacted either –
(a) by Parliament, in accordance with Article 303; or
(b) by the people and Parliament, in accordance with Article 304.

Amendment by Parliament

303.(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; and
(e) 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 a two-thirds majority of the
(3) If a popular initiative is in the form of a general
proposition, it shall be submitted to the
president, the chairperson of the
Electoral and Boundaries Commission,
and the Speaker of the House of
Parliament, for consideration within
a period of not more than thirty days.
The President shall, after consulting
the Chair of the National Assembly,
the Speaker of the Senate, and the
Chair of the Independent Electoral
and Boundaries Commission, determine
whether the initiative meets the
requirements of this Article, and if
so, issue a certificate that the initiative
is supported by at least one million
registered voters.

(4) (a) A popular initiative may be
submitted by a person lawfully
discharging the functions of
an office under this Constitution,
if, in a particular circumstance,
the initiative is intended to be used
for recording that matter;
(b) if the initiative is intended to
be used for recording that matter,
the initiative shall formulate it into a
draft Bill;
(c) the draft Bill shall be submitted to
the Electoral and Boundaries Commission;
(d) the Electoral and Boundaries Commission
shall verify that the initiative is supported
by at least one million registered voters;
(e) the Electoral and Boundaries Commission
shall submit the draft Bill to the
President, who shall convene a referendum
under clause (9) to determine whether the
initiative is supported by at least one
million registered voters.

(5) If the Electoral and Boundaries Commission
is satisfied that the initiative meets the
requirements of this Article, the Commission
shall submit the draft Bill to each
district council for consideration within
a period of not more than thirty days.
The Chair of the National Assembly,
the Speaker of the Senate, and the
Chair of the Independent Electoral
and Boundaries Commission, shall
conclude the referendum within a period
of not more than thirty days.

(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 last event
occurs shall be excluded, and the day
by which the first event may occur shall be
included;
(b) as months, the period ends at the
beginning of the month in which the
second event occurred, if that
month has a corresponding date.

(7) If any period ends on a date determined by
that person, the period shall be
computed as
(i) the last day of that month,
in any other case;

(8) If any period begins before the effective date,
the period shall be
computed as
(i) the first subsequent day that is not a
public holiday;

(9) If any period extends to a period
before the effective date, the period shall be
computed as
(i) the last day of that month,
in any other case;

(10) If a simple majority of citizens voting in a
referendum under clause (9) support the Bill,
it shall be deemed to have been duly passed
by Parliament and shall be presented to the
President for assent, and the provisions of
Article 303(5) shall not apply.

Definitions
307. In this Constitution, unless the context otherwise
requires—
(a) “adult” means an individual who has attained
the age of eighteen years;
(b) “affirmative action” includes any measure
designed to overcome or ameliorate an inequality or
the systemic denial or infringement of a right or
freedom;
(c) “amend” includes alter, repeal, revoke, rescind,
cancel, replace, add to or vary, in whole or in part;
(d) “child” means an individual who has not attained
the age of eighteen years;
(e) “citizen” means a citizen of Kenya;
(f) “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;
(g) “Consolidated Fund” means the fund established
by Article 241;
(h) “constitutional Commission” means a commission
established as such by this Constitution;
(i) “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
term effect on an individual’s ability to carry out
ordinary day-to-day activities;
(j) “district” includes borough;
(k) “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;
(l) “effective date” means the date that this Constitution
comes into force;
(m) “enactment” means legislation or subsidiary legislation;
(n) “financial year” when used with respect to—
(a) the state, means the period of twelve months
ending on the thirtieth day of June or on such
other day as Parliament may prescribe;
(b) any person, means the period of twelve months
ending on a date determined by that person;
(o) “Gazette” means the Kenya Gazette published by
authority of the Government, or a supplement to
the Kenya Gazette;
(p) “Government” means the National Government;
(q) “individual” means a natural person;
(r) “judicial officer” means a person who holds, or is
acting, in the office of registrar, deputy registrar, magis-
trate or Kadi;
(s) “Kenya” means the territory of the Republic;
(t) “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 the exclusive
economic zone;
(d) natural resources wholly contained upon
or beneath the surface; and
(e) the air space above the surface;
(f) “legislation” means an Act of Parliament, or a law made
by an authority subordinate to Parliament including an
assembly or a council at a devolved level of government;
nalized group or community” means – a group who, as a result of laws or practices before or after the effective date, were or are advantaged by unfair discrimination on one more prohibited grounds set out in Article 36; a community which, by reason of its relatively small population or otherwise, has been unable to fully develop its internal structures or resources sufficient to participate in the integrated social and economic life of Kenya as a whole; or 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; or an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or 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; “Prime Minister” means (a) the Prime Minister of the Cabinet; (b) Deputy Prime Minister; (c) Secretary to the Cabinet; (d) Controller of Budget; (e) Principal Secretary; (f) Attorney-General; (g) Auditor-General; (h) Director of Public Prosecutions; (i) Public Defender; (j) Director of Public Prosecutions; (k) Public Defender; (l) Attorney-General to the Attorney-General; (m) Attorney-General to the Attorney-General; (n) Attorney-General to the Attorney-General; (o) Attorney-General to the Attorney-General; (p) Attorney-General to the Attorney-General; (q) Attorney-General to the Attorney-General; “State officer” means a person holding a State office established by this Constitution, or established and designated under such legislation; “State organ” means a Commission, office, agency or other body established under this Constitution and having a function within the Republic; “subsidiary legislation” means a rule, regulation, by-law, proclamation or other similar law made under the authority of legislation; “Treasuries” means the State organ referred to in Article 255(1); “writing” includes printing, photography, lithography, typewriting, any other means of representing or reproducing words in a visible form, and Braille; and “youth” means the collective of all individuals in the Republic each of whom – (a) has attained the age of eighteen years; and (b) has not attained the age of thirty-five years.

CHAPTER TWENTY-ONE

Consequential legislation 308. (1) Where in this Constitution Parliament is required to enact legislation to govern a particular matter, Parliament shall enact that legislation within the period specified in the Sixth Schedule, commencing on the effective date. (2) Where in this Constitution Parliament is required to enact legislation to govern a particular matter within a specified time, but fails to do so, any person may petition the High Court for a declaration on the matter. (3) The High Court in determining a petition under clause (2) may – (a) make a declaratory order on the matter; and (b) issue an order directing the Speaker and the Attorney-General to take steps to ensure that the legislation required to be enacted under clause (1), is enacted, within the period specified in the order, and to report the progress to the Chief Justice.

Transitional 309. The transitional and consequential provisions set out in the Seventh Schedule shall take effect on the effective date.

Effective date 310. This Constitution shall come into force on the date of assent by the President. Repeal 311. The Constitution in force immediately before the effective date shall stand repealed on the effective date.

FIRST SCHEDULE (Article 5(2))

REGIONS, DISTRICTS AND BOROUGHS

Region 1, consisting of the following districts – Kinale, Mombasa, Taita-Taveta, Kilifi, Lamu, Tana River, Malindi

Region 2, consisting of the following districts – Makueni, Machakos

Region 3, consisting of the following districts – Meru Central, Meru South, Tharaka

Region 4, consisting of the following districts – Mbeere, Embu, Kirinyaga

Region 5, consisting of the following districts – Isiolo, Marsabit, Moyale

Region 6, consisting of the following districts – Garissa, Ijara, Mandera, Wajir

Region 7, consisting of the following districts – Kajiado, Narok, Trans Mara, Kuria

Region 8, consisting of the following districts – Kisi Central, Gucha, Nyamira

Region 9, consisting of the following districts – Teso, Bungoma, Busia, Kakamega, Vihiga, Butere/Mumias

Region 10, consisting of the following districts – Turkana, West Pokot, Marakwet, Trans Nzoia, Mt Elgon, Keiyo, Uasin Gishu, Nandi North, Nandi South

Region 11, consisting of the following districts – Kericho, Bureti, Bomet, Baringo, Koibatek, Nakuru, Samburu, Laikipia

Region 12, consisting of the following districts – Kisumu, Bondo, Nyando, Siaya, Suba, Rachuonyo
13. Consisting of the following districts –

1. Nairobi
2. Mombasa
3. Nakuru
4. Eldoret
5. Nyeri
6. Thika
7. Limuru
8. Kajiado
9. Meru
10. Nakuru

**ON SCHEDULE**

The National Flag

Kila siku tuwe na shukrani. Fill every heart with thanksgiving.

**National Anthem**

O God of all creation

The fruit of our labour

The coat of arms

The national anthem

The national flag

The fruit of our labour

The coat of arms

The national anthem

The national flag

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

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

OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR A 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 Republic of Kenya; that I undertake to hold my office 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 A PRINCIPAL SECRETARY

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


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

/AFFIRMATION OF MEMBER OF PARLIAMENT
/NATIONAL ASSEMBLY/SENATE/

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

FOR SPEAKER/DEPUTY SPEAKER OF THE
NATIONAL ASSEMBLY/SENATE

………………, having been elected as Speaker/deputy speaker of the National Assembly/Senate or (in the name of the Almighty God) (solemnly affirm) that I will bear true faith and allegiance to the and the Republic of Kenya; that I will faithfully and conscientiously discharge my duties as speaker/deputy speaker of the National Assembly/Senate; that I will obey, respect, uphold, preserve, protect and defend the Constitution of Kenya and the laws and conventions of conflict without fear or favour, affection or ill will (So help me God).

TH SCHEDULE s 209(1)

IBUTION OF FUNCTIONS BETWEEN THE NATIONAL GOVERNMENT AND THE DEVOLVED GOVERNMENTS

– National Government
regulate; foreign policy and international trade, consultation with the regions and districts, the use international waters and water resources, migration and citizenship, relationship between religion and state, rague policy and the promotion of official and cultural heritage, national defence and the use of the national defence forces, security, including – the setting of standards of recruitment, training of police and use of police services; iattribution of land; and iecorrectional services.
ntional economic policy and planning, netary policy, currency, banking (including central nking), the incorporation and regulation of nurance companies, insurance and financial corporations, ntional statistics and data on population, the econo gy and society generally, effective property rights, build standards.
sumer protection, including standards for social ury and professional pension plans, locution policy, standards, curricula, examinations d the granting of university charters, ents of national universities, and regional institutions of research and higher learning, motion of sports and sports education, anspost and communications, including, in specific – road traffic; the construction and operation of national trunk roads; standards for the construction and maintenance of other roads by regions and districts; railways; pipelines; marine navigation; civil aviation; space travel; postal services; telecommunications; and radio and television broadcasting.
20. Housing policy.
21. General principles of land planning and the coordination of planning by the regions and districts.
22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular – the fishing, hunting and gathering; protection of animals and wildlife; water protection, securing sufficient residual water; hydraulics engineering and the safety of dams; and energy policy.
23. National referral facilities.
24. Disaster management.
25. Ancient and historical monuments of national importance.

Part II – Regional Governments
Except where this Constitution and legislation provide otherwise the powers and functions of the regional level of government in its functional areas shall, in consultation with the districts in the region, be –
(a) the co-ordination and supervision of the districts in the course of their implementation of the national and regional policies and standards;
(b) the formulation of regional policies;
(c) the setting of regional standards;
(d) regional planning;
(e) the monitoring and evaluation of implementation;
(f) the actual production, management and delivery of regional services;
(g) actual development, operation and maintenance of regional infrastructure and services;
(h) the facilitation and harmonization of operations within the region; and
(i) capacity building and technical assistance to the districts.

Part III – District Governments
1. Agriculture, including –
(a) crop and animal husbandry;
(b) livestock sale yards;
(c) district abattoirs;
(d) plant and animal disease control; and
(e) fisheries.
2. District health services, including, in particular –
(a) district health facilities and pharmacies;
(b) ambulance services;
(c) promotion of primary health care;
(d) licensing and control of undertakings that sell food to the public;
(e) veterinary services (excluding regulation of the profession);
(f) cemeteries, funeral parlours and crematoria; and
(g) refuse removal, refuse dumps and solid waste disposal.
3. Control of air pollution, noise pollution, other public nuisances and outdoor advertising.
4. Cultural activities, public entertainment and public amenities, including –
(a) casinos and other forms of gambling;
(b) racing;
(c) liquor licensing;
(d) cinemas;
(e) video shows and hiring;
(f) libraries;
(g) museums;
(h) sports and cultural activities and facilities; and
(i) district parks, beaches and recreation facilities.
5. District transport, including –
(a) district roads;
(b) street lighting;
(c) parking;
(d) public road transport;
(e) ferries and harbours, excluding the regulation of international; and
(f) 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. District planning and development, including –
(a) statistics;
(b) land survey and mapping;
(c) boundaries and fencing;
(d) housing, and
(e) electricity and gas reticulation and energy regulation.
9. Education at pre-primary, primary and secondary levels, special education, village polytechnics, homesteads and community education.
10. Implementation of national government policies on natural resources and environmental conservation, including –
(a) water and water conservation; and
(b) forestry.
11. District public works and services, including –
(a) water management systems in built-up areas; and
(b) water and sanitation services.
12. Police and firefighting services and disaster management.
13. Control of drugs and pornography.
14. In co-ordination with the locational governments, 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.

Part IV – Locational Governments
In consultation with district government, promotion of the self-determination and development of communities in the locality, by –
(a) initiating, planning, implementing and co-ordinating local community projects, activities and services; and
(b) applying, and co-ordinating the application of, funds available from any source for the purposes of such projects, activities and services; and
(c) implementing, within the locality, projects planned at the district, regional or national levels of government; and
(d) implementing, within the locality, laws of the nation, region or district; and
(e) generally fostering the integrated and participatory self-management of local affairs by local communities.

FIFTH SCHEDULE (Article 238)

TAXATION POWERS

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

#### TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

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

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

**Existing laws**

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

**National Assembly**

3. (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) The Assembly shall within three months of the effective date revise Standing Orders in accordance with this Constitution.

**Senate**

4. (1) The first elections of the Senate shall take place at the first elections held under this Constitution.

   (2) Until the Senate has been elected under this Constitution, the functions of the Senate shall be exercised by the National Assembly.

**By-elections**

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

**Local Authorities**

6. (1) All local authorities established under the Local Government Act (Cap. 265) existing immediately before the effective date shall continue to exist until implementation of the new structure under Chapter Fourteen as prescribed by an Act of Parliament.

   (2) Parliament shall enact the legislation referred to in sub-section (1) within two years of the effective date.

   (3) All councils of the local authorities specified under sub-section (1), shall continue to be councils after the effective date until elections are called in accordance with the legislation referred to in sub-section (1).

   (4) As at the effective date, the boundaries of a district specified in the First Schedule the name of which corresponds to the name of a district existing immediately before that date are the boundaries of the first mentioned district.

   (5) Pending the enactment of legislation under Article 5(3), locations existing immediately before the effective date shall continue to exist for their unexpired term.

**Political parties**

7. (1) A political party in existence immediately before the effective date, shall, within twelve months of the enactment of legislation providing for the registration of political parties, comply with the requirements for registration as a political party.

   (2) If on the expiry of the period of twelve months, a political party has not complied with the requirements of sub-section (1), the political party shall forthwith cease to exist as a political party and any person holding an elective position on the basis of the sponsorship of that party shall continue to hold such position but shall be deemed to be an independent member.

**The Executive**

8. (1) The persons occupying the offices of President and Vice-President immediately before the effective date shall continue to serve as President and Deputy President, respectively, in accordance with this Constitution until the first elections held under this Constitution.

   (2) A Prime Minister shall not be appointed under...
Part of this Constitution until after the first elections held under this Constitution.

1. Upon the holding of the elections referred to in section 6 the system of administration comprising Assistant Chiefs, Chiefs, District Officers, District Commissioners and Provincial Commissioners commonly known as the Provincial Administration shall stand dissolved and all public officers serving under that system of administration shall report to the Public Service Commission for re-deployment.

2. On the effective date, all assets held by the National Government and situated in the provinces, districts, divisions and locations, shall become public property.

3. Until such time as district and regional governments are constituted all the assets held by local authorities immediately before the effective date shall not be transferred or otherwise disposed of without the written authority of the National Government and any transfer without such authority shall be void.

4. The process of appointment of persons to fill any office or institution existing immediately before the effective date was in force on 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.

5. Where a person has vacated an office that was in force on 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.

6. Upon consideration of a complaint under this Constitution, the Ethics and Integrity Commission, file with the Commission the documents and evidence so required.

7. The process of appointment of persons to fill any office or institution existing immediately before the effective date was in force on 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.

8. A person who immediately before the effective date held or was acting in a public office established by or under the Constitution in force before the effective date, shall continue to hold or act in that office if as appointed to such office under this Constitution, and if required to do so under Chapter Nine, that person shall within thirty days from the date of the appointment of the Ethics and Integrity Commission, file with the Commission the documents and evidence so required.

9. The provisions of this section shall not affect the powers conferred on any person or authority under the Constitution to abolish offices or remove persons from those offices.

10. The process of appointment of persons to fill any office or institution existing immediately before the effective date was in force on 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.

11. Where a person has vacated an office that was in force on 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.

12. The process of appointment of the judges of the Supreme Court shall receive and consider all formal complaints pending on the effective date before the Police, the Advocates Complaints Commission, the Disciplinary Committee of the Law Society of Kenya or the Attorney-General, against Judges of the superior courts of record, the Kadhis and magistrates of the subordinate courts.

13. Whenever a complaint is filed with the Ethics and Integrity Commission under sub-section (7) and evidence so required.

14. Where, after the receipt of the documents and evidence specified in sub-section (6), the Ethics and Integrity Commission is not satisfied with the information supplied by that person, it shall notify the Judicial Service Commission of that finding.

15. On receipt of the notification referred to in sub-section (7), the Judicial Service Commission, shall in writing, inform a person referred to in sub-section (5) of the finding of the Ethics and Integrity Commission under sub-section (7) and the person shall from the date of the letter, be deemed to have vacated office without loss of any accumulated benefits.

16. A judge of a superior court of record, a Kadhi or a magistrate is not entitled to the benefits of office unless the person had completed the performance of the functions of office and has accounted for the funds and property of the Judiciary for which that person is responsible.

17. A judge of a superior court of record, a Kadhi or a magistrate is not entitled to the benefits of office unless the person had completed the performance of the functions of office and has accounted for the funds and property of the Judiciary for which that person is responsible.

18. In the event of the death of a person referred to in sub-section (10), the Ethics and Integrity Commission under sub-section (7) and the person shall from the date of the letter, be deemed to have vacated office without loss of any accumulated benefits.

19. A judge of a superior court of record, a Kadhi or a magistrate is not entitled to the benefits of office unless the person had completed the performance of the functions of office and has accounted for the funds and property of the Judiciary for which that person is responsible.

20. A person who vacates office under sub-section (8) is not eligible to hold any public office.

21. The vacancies created by the operation of this section shall be filled in the manner provided for under this Constitution.

22. Unless otherwise provided under this Constitution, all judicial proceedings pending before any court or any proceedings before a tribunal shall continue to be heard and shall be determined by the same or a corresponding court or tribunal established under this Constitution.

23. Unless otherwise provided under this Constitution, any matter or proceeding that, immediately before the effective date, is pending before an existing constitutional Commission, office or authority shall be continued before the same or a corresponding commission, office or authority established under this Constitution.

24. The process of appointment of the judges of the Supreme Court shall commence and be finalized within ninety days of the effective date.

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