

**THE CONSTITUTION OF KENYA (AMENDMENT)
(No. 2) ACT, 1964**

No. 38 of 1964

Date of Assent: 11th December 1964

Date of Commencement: 12th December 1964

An Act of Parliament to amend certain specially entrenched provisions of the Constitution consequent upon the establishment of the Republic of Kenya, and for matters incidental thereto and connected therewith

ENACTED by the Parliament of Kenya, as follows:—

PART I—PRELIMINARY

1. (1) This Act may be cited as the Constitution of Kenya (Amendment) (No. 2) Act, 1964.

Short title,
construction and
commencement.

(2) This Act shall be read and construed as one with the Kenya Independence Order in Council 1963, the Constitution of Kenya contained in the Schedule to that Order (hereinafter referred to as the Constitution), and the Constitution of Kenya (Amendment) Act, 1964 (hereinafter referred to as the Amendment Act), in so far as this Act makes amendments to that Order, the Constitution or the Amendment Act.

L.N. 718/63.

No. 28 of 1964.

(3) This Act shall come into operation on 12th December 1964.

2. Save where the context otherwise requires, expressions used in this Act have the same meaning as in the Constitution and the provisions of section 247 of the Constitution as amended by this Act shall apply for the purposes of interpreting this Act as they apply for the purposes of interpreting the Constitution.

Interpretation.

PART II—CONSTITUTIONAL AMENDMENTS

3. The provisions of the Constitution specified in the first column of the First Schedule to this Act shall be amended in the manner specified in relation thereto in the second column of that Schedule.

Amendment
of the
Constitution.

No. 38*Constitution of Kenya (Amendment) (No. 2) 1964*

Amendment
of Kenya
Independence
Order in
Council.

4. The provisions of the Kenya Independence Order in Council 1963 specified in the first column of the Second Schedule to this Act shall be amended in the manner specified in relation thereto in the second column of that Schedule.

Repeal of
section 28 of
No. 28 of 1964.

5. Section 28 of the Amendment Act is repealed.

PART III—CONSEQUENTIAL PROVISIONS

Parliament.

6. (1) Subject to the provisions of section 65 (4) of the Constitution, Parliament shall, unless sooner dissolved, stand dissolved on 7th June 1968.

L.N. 245/63.

(2) The terms of office of the Senators who were divided by lot into three classes in pursuance of section 6 of the Kenya Order in Council 1963 shall be as provided by that section; that is to say, the term of every Senator in the first class shall expire on 7th June 1965, the term of every Senator in the second class shall expire on 7th June 1967, and the term of every Senator in the third class shall expire on 7th June 1969.

(3) As soon as possible after the Senate first meets after 12th December 1964, the Speaker of the Senate shall, by lot, divide the Senators representing the North-Eastern Region into three classes; and the term of office of the Senator in the first class shall expire on 7th June 1965, the term of office of the Senator in the second class shall expire on 7th June 1967, and the term of office of the Senator in the third class shall expire on 7th June 1969.

(4) Subsections (2) and (3) of this section shall have effect notwithstanding the provisions of section 42 (3) of the Constitution.

(5) The Standing Orders of the Senate and the Standing Orders of the House of Representatives as in force immediately before 12th December 1964 shall, except as may be otherwise provided by the Senate or the House of Representatives, as the case may be, continue in force after the commencement of this Act, but all such Standing Orders shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution as amended and in force on 12th December 1964.

(6) For the purposes of section 49 (4) of the Constitution, the date on which the Electoral Commission shall be deemed last to have reviewed the number and the boundaries of the

constituencies into which Kenya is divided for the purpose of elections of Elected Members of the House of Representatives shall be 28th December 1962.

7. Section 19 of the Amendment Act shall, so far as is consistent with the provisions of this Act and of the Constitution as amended and in force on 12th December 1964, have effect for the purposes of this Act as if it were re-enacted by this Act with the omission therefrom of the proviso to subsection (5) thereof.

Existing
offices.

8. The Kenya (Jurisdiction of Courts and Pending Proceedings) Regulations 1963 shall be deemed always to have had effect since 1st June 1963 and shall, except as may be otherwise provided by Parliament, continue in force after the commencement of this Act as if they had been made under a power conferred by this Act.

Residual
law

L.N. 319/63.

FIRST SCHEDULE

(s. 3)

AMENDMENTS TO THE CONSTITUTION

<i>Provision</i>	<i>Amendment</i>
Chapter I. Section 9 (3).	(a) Substitute for the word "Tanganyika" the word "Tanzania". (b) Delete the word "Zanzibar". (c) Substitute for the words "and the Federation of Rhodesia and Nyasaland" the words "Malawi, Rhodesia and Zambia".
Section 19 (7).	Delete the words "; and nothing contained in or done under the authority of any law made by a Regional Assembly shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over any property where the property, interest or right is vested in a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided by that Regional Assembly".
Chapter II. Section 25 (6).	Substitute for the words "Ordinance" and "Ordinances" wherever they appear, the words "Act" and "Acts" respectively.
Section 26 (6).	(a) Delete paragraph (b). (b) In paragraph (c) delete the words "(other than land situated in the areas to which section 198 of this Constitution applies)".
Section 29.	Substitute for the words "Governor-General" wherever they appear, the word "President".

FIRST SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
Section 30 (1).	Insert immediately after the words "Police Force" the words "or any force to which section 157 (6) of this Constitution applies."
Chapter IV.	
Section 42 (2).	Substitute for the word "provided" the word "provide".
Section 43 (3).	Substitute for the words "a Parliamentary Secretary" the words "an Assistant Minister".
Section 44.	(a) In subsection (1) substitute for the words "Parliamentary Secretaries" the words "Assistant Ministers". (b) In subsection (4) substitute for the words "a Parliamentary Secretary" the words "an Assistant Minister".
Section 51 (2).	Insert immediately after the words "House of Representatives who is not" the words "before his election as Speaker".
Section 61.	Substitute for the words "Governor-General" wherever they appear, the word "President".
Section 71.	(a) In subsection (1) delete the words "and of section 156 of this Constitution". (b) In subsection (8) substitute for the words "Governor-General" the word "President".
Chapter VI.	
Section 98.	(a) In the marginal note substitute for the word "Presidents" the word "Chairmen". (b) In the section substitute for the word "President" wherever it appears, the word "Chairman". (c) In subsection (5) substitute for the words "Vice-President" the words "Vice-Chairman".
Section 99.	(a) In the marginal note substitute for the words "Vice-Presidents" the words "Vice-Chairmen". (b) In the section substitute for the words "Vice-President" wherever they appear, the words "Vice-Chairman".
Section 103.	Substitute for the word "President" wherever it appears, the word "Chairman".
Section 105.	Delete the words "serving on the establishment of the Region" wherever they appear.
Section 107.	(a) Substitute for the word "President" wherever it appears, the word "Chairman". (b) Substitute for the words "Vice-President" the words "Vice-Chairman".

FIRST SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
Section 108.	(a) Substitute for the word "President" wherever it appears, the word "Chairman".
	(b) Substitute for the words "Vice-President" wherever they appear, the words "Vice-Chairman".
Section 110 (2).	Substitute for the words "President, the Vice-President" the words "Chairman, the Vice-Chairman".
Section 112 (3).	Substitute for the word "President" the word "Chairman".
Section 113.	(a) In subsection (3) substitute for the word "President" the words "Chairman of the Regional Assembly".
	(b) In subsection (4) substitute for the word "President" the words "Chairman of the Regional Assembly".
	(c) In subsection (5) substitute for the words "President) the Vice-President as Chairman" the words "Chairman of the Regional Assembly) the Vice-Chairman of the Regional Assembly as Chairman of the committee".
	(d) In subsection (6) substitute for the word "President" the word "Chairman".
	(e) In subsection (7) substitute for the word "President" the word "Chairman".
	(f) In subsection (8) substitute for the words "President" and "Vice-President" wherever they appear, the words "Chairman" and "Vice-Chairman", respectively.
Section 114 (2).	Substitute for the word "President" the word "Chairman".
Section 116.	Delete the words "on the establishment of" wherever they appear.
Section 117 (3).	Delete the words "on the establishment of".
Chapter VIII. Part 2.	Delete whole Part.
Part 3.	Delete whole Part.
Chapter X. Section 172.	(a) Delete subsection (1) and substitute a new subsection as follows—
	(1) The Chief Justice shall be appointed by the President.
	(b) In subsection (2) substitute for the words "Governor-General" the word "President".

FIRST SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
	(c) In subsection (3) substitute for the word "Ordinance" wherever it appears, the word "Act".
	(d) In subsection (4) substitute for the words "Governor-General, acting in accordance with the advice of the Prime Minister" the word "President".
	(e) In subsection (5) substitute for the words "Governor-General" wherever they appear, the word "President".
	(f) In subsection (6) substitute for the words "Governor-General" the word "President".
Section 173.	(a) In subsection (4) substitute for the words "Governor-General" wherever they appear, the word "President".
	(b) In subsection (5)—
	(i) substitute for the words "Prime Minister or the President of any Regional Assembly or, in the case of a puisne judge, the Chief Justice represents to the Governor-General that the question of removing a" the words "President considers that the question of removing the Chief Justice under this section ought to be investigated, or if the Chief Justice represents to the President that the question of removing a puisne";
	(ii) in paragraphs (a), (b) and (c) substitute for the words "Governor-General" wherever they appear, the word "President".
	(c) In subsection (7)—
	(i) substitute for the words "Governor-General" wherever they appear, the word "President";
	(ii) substitute for the words "the advice of the Prime Minister" the words "his own deliberate judgement".
Section 184.	(a) In subsection (1) substitute for the words "Governor-General" wherever they appear, the word "President".
	(b) In subsection (3)—
	(i) substitute for the words "Prime Minister in the case of a public officer serving on the establishment of the Government of Kenya or in the case of any authority of that Government and with the consent of the President of the Regional Assembly in the case of a public officer serving on the establishment of a Region or in the case of any authority of a Region" the word "President";
	(ii) substitute for the words "such an" the words "any public".

FIRST SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
Chapter XI. Section 189 (3).	In paragraph (b) substitute for the word "Ordinance" wherever it appears, the word "Act".
Section 195.	Substitute for the words "Ordinance" and "Ordinances" wherever they appear, the words "Act" and "Acts", respectively.
Section 196.	(a) In subsection (3) insert immediately after the words "Auditor-General or" the words "Chief Commissioner of Police or who has held the office of". (b) In subsection (7) substitute for the word "Ordinances" the word "Acts".
Chapter XII. Section 202 (1).	Substitute for the word "Ordinance" the word "Act".
Section 208.	(a) In subsection (1)— (i) delete the words "section 205 of this Constitution and of"; (ii) in paragraph (a) substitute for the words "Order of Her Majesty in Council" the word "law"; (iii) in paragraph (b) substitute for the word "Ordinance" the word "Act"; (iv) immediately after paragraph (d) insert a proviso as follows— Provided that Trust land shall not include any estates, interests or rights in or over land situated in the Nairobi area that on 31st May 1963 were registered in the name of the Trust Land Board under the former Land Registration (Special Areas) Ordinance (now the Land Adjudication Act).
Cap. 283.	(b) In subsection (3)— (i) insert immediately before the words "Land Registration" the word "former"; (ii) insert immediately after the word "Ordinance" the words "(now the Land Adjudication Act)".
Section 209.	(a) In subsection (1) in paragraph (d) thereof delete the words "(other than common minerals)". (b) In subsection (3)— (i) delete the proviso; (ii) substitute for the word "President" the word "Chairman"; (iii) substitute for the words "Prime Minister" wherever they appear, the word "President"; (iv) substitute for the words "Governor-General on behalf of Her Majesty in right of the Government" the words "Government of the Republic".

FIRST SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
	(c) Delete subsection (4).
	(d) In subsection (5)—
	(i) delete the words “subsection (3) or subsection (4) of”;
	(ii) in paragraph (a) delete the words “, in the case of a setting apart under subsection (3) of this section, or a law made by the Regional Assembly of the Region, in the case of a setting apart under subsection (4) of this section,”;
	(iii) in paragraph (c) delete the words “, in the case of a setting apart under subsection (3) of this section, or the Region, in the case of a setting apart under subsection (4) of this section,”.
	(e) In subsection (6)—
	(i) substitute for the expression “subsections (3) and (4)” the expression “subsection (3)”;
	(ii) delete the words “or, as the case may be, by the Region under a law made by the Regional Assembly”.
	(f) Delete subsection (7).
Section 210 (4).	(a) Substitute for the words “Prime Minister” wherever they appear, the word “President”.
	(b) Delete the words “or the President of a Regional Assembly”.
	(c) Delete the words “subsection (3) or, as the case may be, subsection (4) of”.
	(d) Delete the words “or, as the case may be, subsection (4)”.
	(e) Delete the words “or the President of the Regional Assembly”.
	(f) Delete the words “a Region,”.
	(g) Delete the words “or, as the case may be, by the Region under a law made by the Regional Assembly”.
Section 211 (2).	Substitute for the word “Ordinance” wherever it appears, the word “Act”.
Section 215 (1).	(a) In the definition of “land transaction” delete the word “and”.
	(b) Immediately after the definition of “land transaction” insert a new definition as follows—
	“the former Scheduled Areas” means the areas which on 1st January 1956 were Scheduled Areas for the purposes of the former Agriculture Ordinance 1955 (now the Agriculture Act); and”.
Section 218.	(a) In subsection (1) substitute for the word “Ordinance” wherever it appears, the word “Act”.

FIRST SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
	(b) In subsection (5)—
	(i) delete the words “by Part I of this Chapter in the Central Land Board or”;
	(ii) delete the words “, a Region”.
Section 219 (1).	Substitute for the words “areas to which section 198 of this Constitution applies” the words “former Scheduled Areas”.
Section 220.	(a) In subsections (1) and (4) substitute for the words “areas to which section 198 of this Constitution applies” the words “former Scheduled Areas”.
	(b) In subsection (5)—
	(i) substitute for the word “President” the word “Chairman”;
	(ii) substitute for the words “Prime Minister” the word “President”.
	(c) In subsections (5) and (8) substitute for the word “Ordinance” wherever it appears, the word “Act”.
Chapter XIV. Section 239.	Delete whole section and substitute a new section as follows—
Alteration of Regional boundaries.	239. (1) Subject to the provisions of this Chapter, the boundary between any two Regions may be altered by Act of Parliament.
	(2) A Bill providing for any alteration of the boundary between two Regions shall not be proceeded upon by either House of the National Assembly unless the question of an alteration to that boundary has been referred to a Commissioner appointed under subsection (3) of this section, and the Commissioner has recommended to the President that the alteration provided for in the Bill ought to be made, and the report and recommendation of the Commissioner has been laid on the table of each House of the National Assembly.
	(3) If the President considers that the question of making any alteration to the boundary between two Regions ought to be investigated, then—
	(a) the President shall appoint a Commissioner who shall be selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and

FIRST SCHEDULE—(Contd.)

Provision

Amendment

(h) the Commissioner shall inquire into the matter, and hold such public inquiries in the area or areas likely to be affected by the boundary alteration under investigation as he considers necessary, and shall report on the facts of the matter to the President and recommend to him what alteration (if any) ought to be made to the boundary under investigation.

(4) A Bill providing for any alteration of the boundary between two Regions shall include such provision as may seem to Parliament to be necessary or expedient for the local government of the area or areas affected by the alteration of the boundary.

(5) Subject to the provisions of this section, Parliament may make provision for the procedure in public inquiries held in pursuance of this section and for the powers and duties of Commissioners in connexion with such inquiries.

Section 240.

(a) In subsection (1)—

(i) substitute for the words "agreement made" the words "Act passed";

(ii) substitute for the figure "239" the figure "239 (1)";

(iii) substitute for the words "the agreement" the words "such Act";

(iv) delete the words "in such manner as may seem to the Presidents of the two Regional Assemblies to be expedient in consequence of the alteration of the boundary between the two Regions".

(b) In subsection (2) delete the words "under section 239 (4) of this Constitution".

(c) Delete subsection (3).

Section 241.

(a) In subsection (1) delete the words "by virtue of an agreement".

(b) In subsection (2) substitute for the words "under section 239 (4)" the words "in pursuance of section 239".

Section 242.

(a) In subsection (1)—

(i) delete the words "under section 239 (2) of this Constitution";

(ii) substitute for the words "the alteration of the Regional boundary that is approved by that law, include" the words "any alteration to the boundaries of the Region that is made in pursuance of section 239 of this Constitution, make".

FIRST SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
	<p>(b) In subsection (2)—</p> <p>(i) delete the words “that is approved by that law”;</p> <p>(ii) substitute for the words “under section 239 (5)” the words “in pursuance of section 239”.</p> <p>(c) In subsections (3), (4) and (6) substitute for the words “under section 239 (4)” the words “in pursuance of section 239”.</p>
Chapter XV. Section 244 (1).	<p>(a) In paragraph (b) substitute for the words “President or Vice-President” the words “Chairman or Vice-Chairman”.</p> <p>(b) In paragraphs (c) and (d) substitute for the word “President” the word “Chairman”.</p>
Section 247.	<p>(a) In subsection (1)—</p> <p>(i) in the definition of “African court” substitute for the word “Ordinance” wherever it appears, the word “Act”;</p> <p>(ii) delete the definition of “common mineral”.</p> <p>(b) Insert immediately after subsection (1) a new subsection as follows—</p> <p>(1A) Any reference in this Constitution to all the members of a House of the National Assembly, which is made in connexion with any requirement of this Constitution that any Bill, or any resolution or other determination of that House, or any election by that House, shall be supported by the votes of a simple or any special majority of that House, shall be construed as a reference to all the members of that House who are entitled to vote on any question before that House.</p> <p>(c) In subsection (2) (a) delete the words “or a Regional Assembly”.</p> <p>(d) In subsection (3) (a)—</p> <p>(i) insert immediately after the words “office of” the words “the President”;</p> <p>(ii) substitute for the words “Prime Minister” the words “Vice-President”;</p> <p>(iii) substitute for the words “a Parliamentary Secretary” the words “an Assistant Minister”;</p> <p>(iv) substitute for the words “President or Vice-President” the words “Chairman or Vice-Chairman”.</p> <p>(e) Delete paragraph (b) of subsection (3) and substitute a new paragraph as follows—</p> <p>“(b) references to the office of a member of any Commission established under this Constitution, a member of the Advisory Committee on the Prerogative of Mercy, a member of a Divisional Land Control Board, a member of the Appeals</p>

FIRST SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
	Tribunal appointed under section 220 of this Constitution, a member of a local government authority or a Commissioner appointed under section 239 of this Constitution; or".
	(f) In subsection (3) (c) substitute for the words "provided by a law made by the legislature (whether Parliament or a Regional Assembly) having power to make laws with respect to that office" the words "otherwise provided by Parliament".
	(g) In subsection (4) delete the expression "160 (3) (d), 160 (4),".
	(h) In subsection (8) substitute for the words "Inspector-General" the words "Chief Commissioner".
Schedule 3.	Delete whole Schedule.
Schedule 7.	Substitute for the word "President" wherever it appears, the word "Chairman".
Schedule 8.	Substitute for the word "President" wherever it appears, the word "Chairman".

SECOND SCHEDULE

(s. 4)

AMENDMENTS TO KENYA INDEPENDENCE ORDER IN COUNCIL 1963

<i>Provision</i>	<i>Amendment</i>
Section 6.	Delete whole section.
Section 7.	Delete subsections (3), (4), (5) and (8).
Section 9.	Delete whole section.
Section 18.	Delete whole section.
Section 19.	(a) Substitute for the words "Governor-General" wherever they appear in the section, the word "President". (b) Delete subsection (2).
Section 20.	In the proviso— (i) substitute for the expression "sections 3, 6" the expression "section 3"; (ii) delete the figure "18".