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**THE CONSTITUTION OF KENYA (AMENDMENT)
ACT, 1990**

No. 17 of 1990

Date of Assent: 21st December, 1990

Date Commencement: 31st December, 1990

An Act of Parliament to amend the Constitution

ENACTED by the Parliament of Kenya as follows:—

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 1990.

Short title.

2. Section 41 of the Constitution is amended by repealing subsection (7) and inserting the following—

Amendment of section 41.

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

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

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

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

(iii) upon whom the President has conferred the rank of Senior Counsel under section 17 of the Advocates Act, 1989; and

No. 18 of 1989.

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

3. Section 61 (6) of the Constitution is amended by inserting “,subject to subsection (4) and (7) of section 62,” immediately after the word “shall”.

Amendment of section 61.

Amendment
of section 62.

4. Section 62 of the Constitution is amended by inserting the following new subsections immediately after subsection (3).

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

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

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

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

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

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

(iii) upon whom the President has conferred the rank of Senior Counsel under section 17 of the Advocates Act, 1989; and

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

(6) Where the question of removing a judge from office has been referred to a tribunal under

this section, the President, acting in accordance with the advice of the Chief Justice, may suspend the judge from exercising the functions of his office and any such suspension may at any time be revoked by the President, acting in accordance with the advice of Chief Justice, and shall in any case cease to have effect if the tribunal recommends to the President that the judge ought not to be removed from office.

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

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

(a) a person who hold or has held the office of Speaker of the National Assembly who shall be the chairman;

(b) two persons who hold or have held office as judges of appeal;

(c) one person upon whom the rank of Senior Counsel has been conferred by the President under section 17 of the Advocates Act, 1989; and

(d) the chairman of the Public Service Commission.

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

5. Section 106 of the Constitution is amended—

(a) by repealing subsection (5) and inserting the following new section—

No. 18 of 1989.

Amendment
section 106.

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

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

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

(b) by inserting the following new subsections—

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

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

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

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

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

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

(iii) upon whom the rank of Senior Counsel has been conferred by the President under section 17 of the Advocates Act, 1989; and

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

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

(c) in subsection (10), by inserting the expression", subject to subsection (5), (7) and (9)" immediately after the words "other member shall".

6. Section 109 of the Constitution is amended—

(a) in subsection (2), by deleting "subsection (4)" and inserting "subsections (4), (6) and (8)";

(b) by deleting subsection (4) and inserting the following—

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

(c) by inserting the following new subsections immediately after subsection (4)—

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

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

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

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

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

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

(iii) upon whom the rank of Senior Counsel has been conferred by the President under section 17 of the Advocates Act, 1989; and

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

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

6. Section 110 of the Constitution is amended—

(a) in subsection (2), by deleting “subsection (3)” and inserting “subsections (3), (5) and (7)”;

(b) by deleting subsection (3) and inserting the following—

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

No. 18 of 1989.

Amendment
of section 110.

(c) by inserting the following new subsections immediately after subsection (3) —

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

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

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

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

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

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

(iii) upon whom the rank of Senior Counsel has been conferred by the President under section 17 of the Advocates Act, 1989; and

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

(7) If the question of removing Controller and Auditor-General has been referred to a tribunal under this section, the President may suspend the Controller and Auditor-General from the exercise of the

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functions of his office and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that the Controller and Auditor-General should not be removed.