The Constitution of Kenya (Amendment) Act, 1990... 479
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.

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

   (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
   (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.”
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

5. Section 106 of the Constitution is amended—

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

No. 17
Amendment of section 62.

1990 The Constitution of Kenya (Amendment) Act No. 17
No. 18 of 1989.

No. 17


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. 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—

5. 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

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

5. The Attorney-General may be removed from office only for disability 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 President 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 disability 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 vacate his office when he attains such age as may be prescribed by Parliament.

(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.
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.