

*Kenya Gazette Supplement No. 70 (Acts No. 5)*



REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**ACTS, 1992**

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**NAIROBI, 28th AUGUST, 1992**

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**THE CONSTITUTION OF KENYA (AMENDMENT)  
ACT, 1992**

**No. 6 of 1992**

*Date of Assent: 20th August, 1992*

*Date of Commencement: 29th August, 1992*

**An Act of Parliament to amend the Constitution**

ENACTED by the Parliament of Kenya as follows:—

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|---|--------------------------------|
| <p><b>1.</b> This Act may be cited as the Constitution of Kenya (Amendment) Act, 1992.</p>  | <p>Short title.</p>            |
| <p><b>2.</b> In this Act, “Constitution” means the Constitution of Kenya.</p>   | <p>Interpretation.</p>         |
| <p><b>3.</b> Section 5 of the Constitution is amended—</p> <p>(a) in subsection (3), by deleting paragraph (f) and inserting the following new paragraph—</p> <p style="padding-left: 40px;">(f) the candidate for President who is elected as a member of the National Assembly and who receives a greater number of valid votes cast in the presidential election than any other candidate for President and who, in addition, receives a minimum of twenty-five per cent of the valid votes cast in at least five of the eight provinces shall be declared to be elected as President;</p> <p>(b) in subsection (4), by inserting the following new paragraph immediately after paragraph (c)—</p> <p style="padding-left: 40px;">(d) no candidate is duly elected in accordance with this section:</p> <p style="padding-left: 80px;">Provided that where fresh election is held pursuant to paragraph (d) of this subsection, the only candidates shall be—</p> <p style="padding-left: 40px;">(i) the candidate who scored the highest number of votes at the election; and</p> | <p>Amendment of section 5.</p> |

(ii) one among the remaining candidates who has the highest total of votes cast at the election;

(c) in subsection (5) (e), by inserting the words “and who, in addition, receives a minimum of twenty-five per cent of the valid votes cast in at least five of the eight provinces” immediately after the words “any other candidate”.

Amendment  
of section 7.

**4.** Section 7 of the Constitution is amended by deleting the full-stop appearing after the word “elected” and inserting the words “ and shall form the Government of the political party which nominated him as a candidate for President.”

Replacement  
of section 9.

**5.** The Constitution is amended by repealing section 9 and inserting the following new section—

Term of  
office of  
President.

9. (1) The President shall hold office for a term of five years beginning from the date on which he is sworn in as President.

(2) No person shall be elected to hold office as President for more than two terms.

(3) The President shall, unless his office becomes vacant by reason of his death, his resignation or his ceasing to hold office by virtue of section 10 or section 12, continue in office until the person elected as President at a subsequent presidential election assumes office.

(4) The holding of the office of the President shall be incompatible with the holding of any office of profit or of an office in any professional or labour organization and with any professional activity or any other public employment.

Replacement  
of section 13.

**6.** The Constitution is amended by repealing section 13 and inserting the following new section—

Salary and  
allowances  
of  
President.

13. (1) The President shall receive such salary, allowances and benefits as may be determined by a resolution of the National Assembly.

(2) Where the President ceases to hold office he shall be entitled to receive a pension, gratuity

and other allowances together with such other benefits and facilities, including adequate security, office, staff and travel allowances, as may be prescribed by or under an Act of Parliament.

(3) The salary and allowances payable to the President and any pension or gratuity payable to him on retirement shall be a charge upon the Consolidated Fund.

(4) The salary, allowances and privileges of the President shall not be varied to his disadvantage while he holds office.

(5) The pension and allowances payable to the President who has ceased to hold office and the facilities and other benefits available to him shall not be varied to his disadvantage during his lifetime.

**7.** Section 32 of the Constitution is amended by repealing subsection (3).

**Amendment of  
of section 32.**

**8.** The Constitution is amended by inserting the following new sections immediately after section 42—

**Insertion of  
new section 42A.**

**Conduct of  
elections.**

42A. The Electoral Commission shall be responsible for—

- (a) the registration of voters and the maintenance and revision of the register of voters;
- (b) directing and supervising the Presidential, National Assembly and local government elections; and
- (c) such other functions as may be prescribed by law.

**9.** Section 46 of the Constitution is amended—

**Amendment of  
section 46.**

(a) by deleting subsection (3) and inserting the following new subsections—

(3) The President shall, within twenty-one days after the Bill has been presented to him for assent under subsection (2), signify to the Speaker that he assents to the Bill or refuses to assent to the Bill.

(4) Where the President refuses to assent to a Bill he shall, within fourteen days of the refusal, submit a memorandum to the Speaker indicating the specific provisions of the Bill which in his opinion should be reconsidered by the National Assembly including his recommendations for amendments.

(5) The National Assembly shall reconsider a Bill referred to it by the President taking into account the comments of the President and shall either—

(a) approve the recommendations proposed by the President with or without amendments and resubmit the Bill to the President for assent; or

(b) refuse to accept the recommendations and approve the Bill in its original form by a resolution in that behalf supported by votes of not less than sixty-five per cent of all the Members of the National Assembly (excluding *ex-officio* members) in which case the President shall assent to the Bill within fourteen days of the passing of the resolution;

(b) by renumbering subsections (4) and (5) as subsections (5) and (6).

Amendment of  
section 84.

**10.** Section 84 of the Constitution is amended—

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

(5) Parliament—

(a) may confer upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that Court, more effectively, to exercise the jurisdiction conferred upon it by this section; and

(b) shall make provision—

(i) for the rendering of financial assistance to any indigent citizen of Kenya where his right under this Chapter has been

infringed or with a view to enabling him engage the services of an advocate to prosecute his claim; and

- (ii) for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

**11.** Section 123 of the Constitution is amended by inserting the following new definitions in their proper alphabetical sequence—

**Amendment of section 123.**

“district” means one of the districts into which Kenya is divided in the manner prescribed by an Act of Parliament;

“province” means one of the provinces into which Kenya is divided in the manner prescribed by an Act of Parliament.

**12.** Section 127 of the Constitution is repealed.

**Repeal of section 127.**

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