

LAWS OF KENYA

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The Constitution of Kenya

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THE CONSTITUTION OF KENYA

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THE CONSTITUTION OF KENYA

CHAPTER I

THE REPUBLIC OF KENYA

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Declaration of
Republic.
Political
system.
9 of 1997, s. 2
Public Seal.

Constitution of
Republic of
Kenya.

The office of
President.

Election of
President.
7 of 1982, s. 3.
12 of 1991, s. 3,
6 of 1992, s. 3.

1. Kenya is a sovereign Republic.

1A. The Republic of Kenya shall be a multiparty democratic state.

2. The Public Seal of Kenya shall be such device as may be prescribed by or under an Act of Parliament.

2A. (*Repealed by 12 of 1991, s. 2.*)

3. This Constitution is the Constitution of the Republic of Kenya and shall have the force of law throughout Kenya and, subject to section 47, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

CHAPTER II

THE EXECUTIVE

PART I

The President and the Vice-President

4. There shall be a President of Kenya, who shall be the Head of State and Commander-in-Chief of the armed forces of the Republic.

5. (1) The President shall be elected in accordance with this Chapter and, subject thereto, with any Act of Parliament regulating the election of a President.

(2) A person shall be qualified to be nominated for election as President if, and shall not be so qualified unless, he—

(a) is a citizen of Kenya; and

(b) has attained the age of thirty-five years; and

(c) is registered in some constituency as a voter in elections to the National Assembly.

(3) Whenever Parliament is dissolved, an election of a President shall be held at the ensuing general election, and at that election—

- (a) each political party taking part in the general election shall nominate one candidate for President in such manner as may be prescribed by or under an Act of Parliament;
 - (b) the nomination of a candidate for President shall not be valid unless it is supported, in such manner as may be prescribed by or under an Act of Parliament, by not less than one thousand persons registered as voters in elections to the National Assembly;
 - (c) where only one candidate for President is validly nominated, and that candidate is elected as a member of the National Assembly, he shall be declared to be elected as President;
 - (d) where more than one candidate for President is validly nominated, a poll shall be taken in each constituency for the election of a President (whether or not a poll is required to be taken for an election to the National Assembly in that constituency);
 - (e) in every constituency in which a poll is required to be taken both for the election of a President and for the election of a member of the National Assembly separate polls shall be taken;
 - (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.
- (4) A fresh election of a President shall be commenced and held in the manner prescribed by subsection (5) where—
- (a) no candidate for President has been validly nominated before the expiration of the time for the delivery of nominations in a presidential election;
 - (b) a candidate for President who is validly nominated dies on or before any of the days on which the poll is taken in a presidential election;
 - (c) a candidate for President, who would but for his death have been entitled to be declared elected as President under this section, dies after the taking of

the poll has begun in the presidential election and before he has been declared elected as President;

(d) no candidate is duly elected in accordance with this section:

Provided that where a fresh election is held pursuant to paragraph (d) of this subsection, the only candidates shall be—

- (i) the candidate who scored the highest number of votes at the election; and
- (ii) one among the remaining candidates who has the highest total of votes cast at the election.

(5) In the election of a President otherwise than at a general election—

(a) every candidate for President shall be nominated by a political party in the manner prescribed by or under an Act of Parliament from amongst the elected members of the National Assembly.

(b) the nomination of a candidate for President shall not be valid unless it is supported, in such manner as may be prescribed by or under an Act of Parliament, by not less than one thousand persons registered as voters in elections to the National Assembly;

(c) where only one candidate for President is validly nominated he shall be declared to be elected as President;

(d) where more than one candidate for President is validly nominated, a poll shall be taken in each constituency for the election of a President;

(e) the candidate for President who receives a greater number of valid votes cast in the presidential election than any other candidate and who, in addition, receives a minimum of twenty-five per cent of the votes cast in at least five of the eight provinces shall be declared to be elected as President.

Vacancy in
office of
President.

6. (1) If the office of President becomes vacant by reason of the death or resignation of the President, or by reason of his ceasing to hold office by virtue of section 10 or section 12, an election of a President shall be held within the period of ninety days immediately following the occurrence of that vacancy, and shall be held in the manner prescribed by section 5 (5).

(2) While the office of President is vacant as aforesaid, the functions of that office shall be exercised—

(a) by the Vice-President; or

(b) if there is no Vice-President, or if the Vice-President considers that he is for any reason unable to discharge the functions of the office of President, by such Minister as may be appointed by the Cabinet.

(3) Where the Vice-President or any other Minister is exercising the functions of the office of President by virtue of this section or of section 11, he shall not act, except in accordance with a resolution of the Cabinet, in the exercise of the powers relating to—

(a) the preservation of public security under section 85, or under Part III of the Preservation of Public Security Act;

Cap. 37.

(b) the prorogation and dissolution of Parliament under subsections (1) and (3) of section 59;

(c) the appointment and removal of Ministers and Assistant Ministers under sections 16 and 19;

(d) the assignment of responsibility to a Minister under section 18; or

(e) the giving of consent to a Minister or Assistant Minister absenting himself from Kenya under section 20.

7. A person elected as President in accordance with this Constitution shall assume office as President as soon as he is declared to be elected.

Assumption of office of President.
6 of 1992, s. 4,
9 of 1997, s. 3.

8. A person assuming the office of President shall, before entering upon the office, take and subscribe the oath of allegiance and such oath for the due execution of his office as may be prescribed by or under an Act of Parliament.

Oath 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.

Term of office of President.
6 of 1992, s. 5.

(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 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.

Determination
of questions as
to validity of
presidential
elections, etc.

10. (1) Subject to this section, section 44 shall apply to the hearing and determination of a question whether a person has been validly elected as President, as it applies to the hearing and determination of a question whether a person has been validly elected as a member of the National Assembly

(2) Where a person applies to the High Court for the determination of more than one of the following questions, namely, whether the President was qualified to be nominated for election as President, or was validly elected as President, or was validly elected as a member of the National Assembly, he shall make one application only to the High Court.

(3) Where at any time the High Court determines under section 44 that the President has not been validly elected as a member of the National Assembly, or that the seat in the Assembly of the President has become vacant, the High Court shall declare the seat in the Assembly of the President to be vacant, and—

(a) an election shall be commenced forthwith and shall be held in the constituency for which the President stood for election as a member of the Assembly; and

(b) if the President is not elected as a member of the Assembly at that election, he shall cease to hold office as President upon the expiration of the time allowed by law for the making of an application to the High Court under section 44 in respect of that election, or, where such an application is made by him or by the Attorney-General, upon the High Court determining that the person declared to be elected at that election has been validly elected:

Provided that—

(i) if the High Court determines, in relation to an election held pursuant to paragraph (a) at which a person other than the President has been declared to be elected, that that person has not been validly elected, the High Court shall declare the seat to be vacant and a further election shall be held pursuant to paragraph (b) and this proviso shall apply accordingly;

(ii) notwithstanding that his seat in the Assembly has been declared to be vacant, the President shall be entitled to sit as a member of the Assembly and to exercise all the powers and privileges of an elected member of the Assembly until he ceases to hold office as President.

(4) Where the High Court determines under section 44 that the President has not been validly elected as President for any reason other than that he has not been validly elected as a member of the National Assembly or that the seat in the Assembly of the President has become vacant, he shall cease to hold office as President.

11. Where the President intends to be absent from Kenya, or where he considers it desirable by reason of illness or any other cause to do so, he may in writing appoint the Vice-President to exercise, subject to section 6 (3) and subject to such restrictions or exceptions as he may specify, the functions of his office.

Exercise of
President's
functions
during absence,
illness, etc.

12. (1) Any question whether, the President, or any other person exercising or about to exercise the functions of the office of President, is unable by reason of physical or mental infirmity to exercise the functions of that office, shall be determined in accordance with this section.

Removal of
President on
grounds of
incapacity.

(2) Where the question is whether a person has become unable by reason of physical or mental infirmity to exercise the functions of the office of President, and the Chief Justice is requested by resolution of the Cabinet conveyed to him by the Speaker of the National Assembly to cause that question to be determined, then—

(a) the Chief Justice shall appoint a tribunal, which shall consist of not less than five persons appointed by him from among persons who are qualified as medical practitioners under the law of Kenya, and who shall include any person nominated for appointment in accordance with subsection (5); and

(b) the tribunal shall inquire into the matter and make a report to the Chief Justice, stating the opinion of the tribunal whether or not the person in respect of whom the question arises is, by reason of physical or mental infirmity, unable to discharge the functions of the office of President: and

(c) the Chief Justice shall certify accordingly under his hand and cause the certificate to be conveyed to the Speaker of the National Assembly:

Provided that the Chief Justice shall cause the question to be determined without a resolution of the Cabinet if he receives a certificate under the hand of the Speaker of the National Assembly to the effect that there are no Ministers present in Kenya, other than a person with respect to whom the question arises, and that the Speaker considers that it is in the interests of Kenya that the question should be determined without delay.

(3) Where the question is whether any person in respect of whom the Chief Justice has given a certificate in accordance with subsection (2) that he is unable to exercise the functions of the office of President, has ceased to be unable by reason of physical or mental infirmity to exercise those functions, and the Chief Justice is requested, by resolution of the Cabinet conveyed to him by the Speaker of the National Assembly, or by request under the hand of the person in respect of whom such certificate was given conveyed to him by the Speaker of the Assembly, to cause that question to be determined, then the Chief Justice shall appoint a tribunal in accordance with subsection (2) (a), and that tribunal shall inquire into the matter and report in accordance with paragraph (b) of that subsection, and the Chief Justice shall certify accordingly under his hand and cause the certificate to be conveyed to the Speaker of the Assembly.

(4) Where the Speaker of the National Assembly has received a certificate of the Chief Justice pursuant to this section that the President is unable to discharge the functions of his office, and within the succeeding period of three months the Speaker has not received any certificate of the Chief Justice pursuant to this section that the President has ceased to be unable to discharge the functions of his office, the President shall cease to hold office upon the expiration of the said period.

(5) Where the Speaker conveys a resolution of the Cabinet to the Chief Justice under subsection (2) or (3), he shall forthwith notify the person in respect of whom the question arises, and that person may, by writing delivered to the Speaker within two days of his being so notified, nominate for appointment as members of the tribunal to be appointed by the Chief Justice under this section not more than two persons qualified to be so appointed.

(6) A certificate of the Chief Justice under this section shall be conclusive for the purposes of this Constitution, and shall not be questioned in any court.

(7) At any time when the office of Speaker of the National Assembly is vacant or the holder of that office is unable for any reason to exercise the functions vested in him by this section, those functions may be exercised by the Deputy Speaker of the Assembly.

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

Salary and allowances of President.
6 of 1992, s. 6.

(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.

14. (1) No criminal proceedings whatsoever shall be instituted or continued against the President while he holds office, or against any person while he is exercising the functions of the office of President.

Protection of President in respect of legal proceedings during office.

(2) No civil proceedings in which relief is claimed in respect of anything done or omitted to be done shall be instituted or continued against the President while he holds office or against any person while he is exercising the functions of the office of President.

(3) Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, a period of time during which a person holds or exercises the functions of the office of President shall not be taken into account in calculating any period of time prescribed by that law which determines whether any such proceedings as are mentioned in subsection (1) or (2) may be brought against that person.

The Vice-President of Kenya.

15. (1) There shall be a Vice-President of Kenya, who shall be appointed by the President.

(2) The President shall appoint the Vice-President from among the Ministers who are elected members of the National Assembly:

Provided that no appointment to the office of Vice-President shall be made at any time when the functions of the office of President are being exercised by any person other than the President.

(3) The Vice-President shall be the principal assistant of the President in the discharge of his functions.

(4) The Vice-President shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

(5) During his tenure of office, the Vice-President shall not hold any office of profit other than those of Vice-President, Minister and member of the National Assembly.

- (6) The office of the Vice-President shall become vacant—
- (a) if the President so directs; or
 - (b) if the holder of the office ceases to be an elected member of the National Assembly otherwise than by reason of the dissolution of Parliament; or
 - (c) upon the election of a person to the office of President

PART 2

Ministers and the Cabinet

Ministers of Government of Kenya.

16. (1) There shall be such offices of Minister of the Government of Kenya as may be established by Parliament or, subject to any provisions made by Parliament, by the President.

9 of 1997, s. 4.

(2) The President shall, subject to the provisions of any written law, appoint the Ministers from among the members of the National Assembly:

Provided that, if occasion arises for making an appointment to the office of any Minister while Parliament stands dissolved, a person who was a member of the National Assembly immediately before the dissolution may be appointed to that office.

- (3) The office of a Minister shall become vacant—
- (a) if the President so directs; or
 - (b) if the holder of the office ceases to be a member of the National Assembly otherwise than by reason of the dissolution of Parliament; or

(c) in the case of a Minister who, immediately before the dissolution of Parliament, was a member of the National Assembly, if, when the Assembly first meets after that dissolution, he is not then a member thereof.

(4) Whenever a person is elected to the office of President, the offices of all Ministers then holding office shall become vacant upon the occasion of the President first making one or more appointments to the office of Minister.

17. (1) There shall be a Cabinet consisting of the President, the Vice-President and the other Ministers.

Cabinet.

(2) The function of the Cabinet shall be to aid and advise the President in the government of Kenya.

(3) The Cabinet shall be collectively responsible to the National Assembly for all things done by or under the authority of the President or the Vice-President or any other Minister in the execution of his office.

(4) The provisions of subsections (2) and (3) shall not apply in relation to—

- (a) the appointment and removal from office of the Vice-President, Ministers and Assistant Ministers under sections 15, 16 and 19, the assignment of responsibility to any Minister under section 18, or the giving of consent under section 20 to the Vice-President, a Minister or an Assistant Minister absenting himself from Kenya;
- (b) the dissolution of Parliament; or
- (c) the matters referred to in section 27 (which relates to the exercise of the Prerogative of Mercy).

18. Responsibility for any of the business of the government of Kenya, including the administration of any of the departments of Government, may be assigned to the Vice-President and the several Ministers as the President may, by directions in writing, determine.

Allocation of portfolios to Ministers.

19. (1) The President may appoint Assistant Ministers from among the members of the National Assembly to assist the President, Vice-President and Ministers in the performance of their duties:

Assistant Ministers.

Provided that, if occasion arises for making an appointment while Parliament stands dissolved, a person who was a member of the National Assembly immediately before the dissolution may be appointed as an Assistant Minister.

(2) The office of an Assistant Minister shall become vacant—

- (a) if the President so directs; or
- (b) if the holder of the office ceases to be a member of the National Assembly otherwise than by reason of the dissolution of Parliament; or
- (c) in the case of an Assistant Minister who, immediately before the dissolution of Parliament, was a member of the National Assembly, if when the Assembly first meets after that dissolution, he is not then a member thereof; or
- (d) upon the election of a person to the office of President.

20. The Vice-President, a Minister or an Assistant Minister shall not absent himself from Kenya except with the consent of the President.

Absence of Vice-President, Ministers and Assistant Ministers from Kenya.

Oaths to be taken by Ministers and Assistant Ministers.

21. A Minister or an Assistant Minister shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

22. (1) The President may appoint such number of permanent secretaries as he may determine.

Appointment of permanent secretaries.

(2) There shall be a permanent secretary to the Office of the President.

(3) Where the Vice-President or any other Minister has been charged with responsibility for a department of Government he shall exercise general direction and control over that department and, subject to that direction and control, every department of Government shall be under the supervision of a permanent secretary.

(4) The office of a permanent secretary shall be an office in the public service.

(5) Two or more Government departments may be placed under the direct supervision of one permanent secretary and a Government department may be placed under the supervision of one or more permanent secretaries or two or more permanent secretaries.

PART 3

Executive Powers

Executive authority of Government of Kenya.

23. (1) The executive authority of the Government of Kenya shall vest in the President and, subject to this Constitution, may be exercised by him either directly or through

officers subordinate to him.

(2) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President.

24. Subject to this Constitution and any other law, the powers of constituting and abolishing offices for the Republic of Kenya, of making appointments to any such office and terminating any such appointment, shall vest in the President.

Constitution
of offices.

25. (1) Save in so far as may be otherwise provided by this Constitution or by any other law, every person who holds office in the service of the Republic of Kenya shall hold that office during the pleasure of the President:

Tenure of
office in the
service of the
Republic.

Provided that this subsection shall not apply in the case of a person who enters into a contract of service in writing with the Government of Kenya by which he undertakes to serve the Government for a period which does not exceed three years.

(2) In this section "office in the service of the Republic of Kenya" means office in or membership of the public service, the armed forces of the Republic, the National Youth Service or any other force or service established for the Republic of Kenya.

26. (1) There shall be an Attorney-General whose office shall be an office in the public service.

Attorney
General

(2) The Attorney-General shall be the principal legal adviser to the Government of Kenya.

(3) The Attorney-General shall have power in any case in which he considers it desirable so to do—

(a) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;

(b) to take over and continue any such criminal proceedings that have been instituted or undertaken by another person or authority; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or another person or authority.

(4) The Attorney-General may require the Commissioner of Police to investigate any matter which, in the Attorney-General's opinion, relates to any offence or alleged offence or

suspected offence, and the Commissioner shall comply with that requirement and shall report to the Attorney-General upon the investigation.

(5) The powers of the Attorney-General under subsections (3) and (4) may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.

(6) The powers conferred on the Attorney-General by paragraphs (b) and (c) of subsection (3) shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(7) For the purposes of this section, an appeal from a judgment in criminal proceedings before any court, or a question of law reserved for the purpose of those proceedings to any other court, shall be deemed to be part of those proceedings:

Provided that the power conferred on the Attorney-General by subsection (3) (c) shall not be exercised in relation to an appeal by a person convicted in criminal proceedings or to a question of law reserved at the instance of such a person.

(8) In the exercise of the functions vested in him by subsections (3) and (4) of this section and by sections 44 and 55, the Attorney-General shall not be subject to the direction or control of any other person or authority.

Prerogative
of mercy.
14 of 1975, s. 2.

27. The President may—

- (a) grant to a person convicted of an offence a pardon, either free or subject to lawful conditions;
- (b) grant to a person a respite, either indefinite or for a specified period, of the execution of a punishment imposed on that person for an offence;
- (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 or of a penalty or forfeiture otherwise due to the Republic on account of an offence; and
- (e) remove in whole or in part the non-qualification or the disqualification of a person, arising out of or