

**THE STATUTE LAW (REPEALS AND MISCELLANEOUS
AMENDMENTS) ACT, 1997
No. 10 of 1997**

Date of Assent: 7th November, 1997

Date of Commencement: 7th November, 1997

An Act of Parliament to repeal the Vagrancy Act, the Outlying Districts Act and the Special Districts (Administration) Act and to make minor amendments to the statute law

ENACTED by the Parliament of Kenya as follows:-

- | | |
|---|--------------------------------|
| 1. This Act may be cited as the Statute Law (Repeals and Miscellaneous Amendments) Act, 1997. | Short title. |
| 2. The Vagrancy Act is repealed. | Repeal of
Cap. 58. |
| 3. The Outlying Districts Act is repealed. | Repeal of
Cap. 104. |
| 4. The Special Districts (Administration) Act is repealed. | Repeal of
Cap. 105. |
| 5. The several written laws specified in the first column of the Schedule are amended in the provisions respectively specified in the second column, in the manner specified in the third column. | Amendments of
written laws. |

SCHEDULE

(s. 5)

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
The National Assembly and Presidential Elections Act (Cap.7).	Long title	Insert after the words "National Assembly" the comma and words " , the conduct of the Electoral Commission and of political parties participating in elections in Kenya".

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

s. 3 Repeal and replace it with the following new section-

Appointment of staff of Commission. 3.(1) The Commission shall appoint such officers with such designations as it may deem necessary to assist the Commission in the discharge of its functions under the Constitution and this Act, and such officers may, subject to the general or special directions of the Commission, exercise any or all of the duties and powers conferred or imposed upon the Commission by the Constitution and this Act.

(2) The terms and conditions of service of the officers appointed under this section shall be determined by the Commission in consultation with the Treasury.

Cap.84 (3) Not with standing the provisions of the Police Act, a police officer assigned duties during the conduct of an election shall be deemed to be an election official for the purposes of this Act and subject to direction and instruction of the Commission.

New Insert the following new section immediately after section 3-

Protection from personal liability. 3A. No matter or thing done by a member of the Commission or by any electoral officer shall, if the matter or thing is done in good faith for executing the powers, functions or duties

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

of the Commission under the Constitution or this Act, render such member or officer personally liable for any action, claim or demand whatsoever.

New Insert the following new section immediately after section 3A-

Code of 3B For the better discharge
conduct of the responsibilities and
and and functions of the Electoral
procedure Commission under the Consti-
of the tution and any other law,
Commission. the code of conduct for
the members and staff of
the Commission, and the
rules of procedure of the
Commission specified in the
Second and Third Schedules
respectively shall apply.

New Insert the following new section immediately after section 4 -

Proof of 4A. Any citizen who upon
identity proof that he or she has
for attained the age of majority as
registration evidenced by either anational
purposes. identity card or a Kenya
passport shall be registered as a
voter upon application to
that effect.

s.12 Delete subsection (1) and insert the following new subsection-

(1) Whenever a presidential election is to be held, the Electoral Commission shall forthwith cause notice of the holding of the election to be published in the Gazette and shall thereafter exercise the

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

powers conferred by subsection (3).

In paragraph (a) of subsection (3), delete the phrase “the day for the nomination of candidates” and insert “the days for the nomination of candidates”.

s.13 In subsection (2) -

(a) in paragraph (c) delete the words “four months” and insert the words “two months” and

(b) delete the proviso and insert the following new proviso -

“Provided that the Speaker may, after consultation with the Electoral Commission, by notice in the Gazette, extend the periods specified in paragraphs (b) and (c) to facilitate the proper organization and holding of any ensuing election, except that such extension shall not exceed two months.

s.16(2) Delete the words “for five years” and insert the phrase “during the remainder of the life of that Parliament”.

Insert the following proviso to subsection (2)-

“Provided that a person disqualified as a result of a conviction or a report for an election offence prior to the dissolution of Parliament and the ensuing elections in the year 1997 shall cease to be so

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

disqualified and shall, unless otherwise lawfully disqualified, be entitled to have the Electoral Commission enter his name in the appropriate register of electors.

- s.17. In subsection (1), delete the full-stop at the end of the subsection immediately after the words "parliamentary elections" and insert the following -

"and, subject to subsection (4), the party certifies the selection to the Electoral Commission."

Delete the full-stop at the end of subsection (3) and insert immediately after the words "Parliamentary elections", the following-

" and a political party may, at its own expense and on such terms as may be agreed between the party and the Commission, request the Electoral Commission to supervise any such party nomination of candidates".

Insert the following new subsections-

(4) Every political party shall notify the Electoral Commission of the name of the person authorised by the party to certify to the Commission that any person has been selected by the party under subsection (1) and the person so named shall deposit his or her specimen signature with the Commission in such manner as the Commission may require.

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

(5) No person who is elected or nominated as a member of the National Assembly with the support of or as a supporter of a political party (other than the party whose candidate has been elected President at an election) shall be appointed a Minister of the Government of Kenya under section 16 of the Constitution without the concurrence of the party which supported him for election or nominated him for appointment as a member of the National Assembly.

New Insert the following new sections immediately after section 17 -

Overall conduct of elections. 17A The Electoral Commission shall have the overall conduct of elections under this Act and shall give general directions and exercise supervision and control thereof and take the necessary measures to ensure that the elections are transparent, free and fair.

Participation in elections by public officers 17B (1) No public officer shall-

(a) engage in the activities of any political party or act as an agent of any such party;

(b) publicly indicate support for or opposition against any party or candidate participating in an election

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

Cap.265

under this Act or under the
Local Government Act.

(2) A public officer who contravenes any of the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both.

- s 19. Renumber the existing provision as subsection (1) and delete at the end thereof, the comma and phrase “, and shall be tried by an election court consisting of three judges”

Insert the following new subsections -

(2) A petition to determine the question whether a person has been validly nominated for election as President, or was validly elected as President, or, being a person elected President, was validly elected as a member of the National Assembly, shall be heard by a court consisting of three judges.

(3) A petition other than a petition under subsection (2) shall be heard by an election court consisting of one judge.

(4) A petition under this Act shall be heard and determined on a priority basis.

- s.20 In subsection (1)-

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

- (a) in paragraphs (a) and (b), insert the words "and served" immediately after the phrase "shall be presented" wherever it occurs.
 - (b) repeal paragraph (iii) of the proviso.
- s. 21 In subsection (2) delete the word "fifty thousand" and insert the words "two hundred and fifty thousand."
- s.23. Insert the following new subsections (4), (5) and (6) as follows-
- (4) Subject to subsection (5), an appeal shall lie to the Court of Appeal from any decision of an election court, whether the decision be interlocutory or final, within thirty days of the decision.
 - (5) An appeal from a petition under section 19(2) shall be heard by a bench of five judges of appeal.
 - (6) An appeal from a petition under this Act, shall be heard and determined on a priority basis.
- s.24 **Repeal.**
- s.30 In subsection (2), delete the phrase "and shall issue any writs, which, in pursuance of this Act, may be necessary" and insert the phrase "and shall take such action thereon, pursuant to section 18, as shall be necessary".

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

s. 31 In subsection (3), delete “every registration officer” and insert “the Electoral Commission”.

s. 33 Repeal and replace with the following new section-

33. (1) There shall be defrayed out of moneys provided by Parliament any expenses properly incurred by the Electoral Commission in the performance of its duties under or by virtue of this Act.

(2) There shall be an accounting officer of the Commission appointed under the Exchequer and Audit Act.

s. 34 In subsection (1) delete the words “The Minister may” and insert the words “The Electoral Commission may”.

New Insert the following new section immediately after subsection (2) of section 34-

Electoral Code of Conduct. 34A (1) The Electoral Code of Conduct set out in the Fourth Schedule shall be subscribed to in such manner as the Electoral Commission may, subject to paragraph 6 of that schedule, from time to time determine, and shall be subscribed to and observed by every political party and every person that participates in any election under the Constitution and this Act.

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

(2) No political party shall be eligible to nominate candidate under that section shall be eligible to contest any election unless such party and the candidate have, under subsection (1), subscribed to the Electoral Code of Conduct

(3) Every officer of a political party which, and every person nominated as a candidate who, attempts to participate in or participates in any election without subscribing to the Electoral Code of Conduct shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three years or both.

(4) For the avoidance of doubt, the trial of an offence under this section shall be without prejudice to any proceedings in or consequent upon a petition.

(5) Subject to the provisions of the Criminal Procedure Code, the Electoral Commission may designate any of its officers to conduct any prosecution for an offence under this section and the Electoral Code of Conduct, and such officer shall for that purpose have all the powers conferred upon a public prosecutor by the Criminal Procedure Code.

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10**SCHEDULE Renumber as "FIRST SCHEDULE"**

New Insert the following Schedules
immediately after the First Schedule-

SECOND SCHEDULE (s.3B)**CODE OF CONDUCT FOR MEMBERS AND
STAFF OF THE ELECTORAL COMMISSION***Impartiality and Independence of Members*

1. (1) Every member of the Commission shall serve impartially and independently and perform the functions of a member in good faith and without fear, favour or prejudice, and without influence from -
- (a) the Government; or
 - (b) any public officer; or
 - (c) any political party; or
 - (d) any candidate participating in an election; or
 - (e) any other person or authority.

(2) Every member of the Electoral Commission shall take or make and subscribe to an oath or affirmation in the following form-

**OATH OF OFFICE/SOLEMN
AFFIRMATION OF A MEMBER OF THE
ELECTORAL COMMISSION**

I,
being appointed a member of the Electoral
Commission of Kenya, do solemnly

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

swear/do solemnly and sincerely declare and affirm that I will faithfully, fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice and to the end that in the exercise of the functions and powers of such member, I shall not be influenced by any political party, religious society or other organization.

(So help me God.)

.....
Member

.....
Chief Justice

2. (1) No member of the Commission shall, during tenure of office, be eligible for appointment or nomination to any political office.

(2) No member of the Commission may-

(a) whether directly or indirectly, in any manner support or oppose any party or candidate participating in an election, or any of the issues in contention between parties or candidates;

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

(b) by his or her membership, association, statement, conduct or in any other manner place in jeopardy the perceived independence of the member, or in any other manner harm the credibility, impartiality, independence or integrity of the Commission;

(c) make private use of or profit from any confidential information gained as a result of being a member of the Commission;

(d) divulge any information to any third party save in the course of any official duty.

Disclosure of Conflicting Interests

3. If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Commission and is present at a meeting of the Commission at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.
4. This Code shall apply with necessary modifications to the staff of the Commission.
5. Any breach of the Code by a member or officer of the Commission shall be treated as misbehaviour for a member and gross misconduct for an officer.

THIRD SCHEDULE (s.3B)

PROCEEDINGS OF THE ELECTORAL
COMMISSION

1. The Commission shall meet as often as may be necessary for the despatch of its business but there shall be at least four meetings of the Commission in any financial year.
2. A meeting of the Commission shall be held on such date and at such time as the Commission shall decide.
3. The chairman shall, on the application of at least seven members, convene a special meeting of the Commission.
4. Unless the majority of the total membership of the Commission otherwise agree, at least fourteen days' written notice of every meeting of the Commission shall be given to every member of the Commission.
5. The quorum for the conduct of business at a meeting of the Commission shall be the majority of all the members of the Commission.
6. The chairman shall preside at every meeting of the Commission at which he is present and in the absence of the chairman at a meeting, the vice-chairman shall preside and in the absence of both the chairman and the vice-chairman the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.
7. Unless a unanimous decision is reached, a decision on any matter before the

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

Commission shall be by concurrence of a majority of all the members.

8. Subject to paragraph 5, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.
9. (1) The Commission shall designate one of its officers to be the secretary to the Commission.

(2) The Commission shall, subject to subparagraph (3), establish a committee for liaison with political parties and may establish committees of its members for any other purpose including a general purposes committee.

(3) The committee for liaison with political parties shall be known as the Parties Liaison Committee and shall be established whenever an election is to be held, either at a general election or at any other time and shall consist of the designated members of the Commission and the representatives of every political party with one or more candidates validly nominated for the election; and the Commission shall consult with the committee on all matters relating to the election.
10. Unless otherwise provided by or under any law, all instruments made by and decisions of the Commission shall be signified under the hand of the chairman and the secretary.
11. The Commission shall cause minutes of all proceedings of meetings of the Commission to be entered in books for that purpose.
12. Except as provided by this Schedule, the Commission may regulate its own proceedings.

FOURTH SCHEDULE (s.34)

ELECTORAL CODE OF CONDUCT

1. (1) Subject to paragraph 6, this code shall be subscribed to by -
 - (a) every political party participating in the election of a President, a member of the National Assembly, and a member of a local authority; and
 - (b) every candidate nominated, as a condition of the candidate's respective rights to be so nominated.

- (2) This code shall, in so far as it is applicable, bind the Government and every political party, its leader and every office-bearer, member, supporter and every candidate nominated under the electoral laws for any election.

2. In this code unless the context otherwise requires-
 - “electoral area” means a constituency under this Act or an electoral area under the Local Government Act and defined in the Local Government Election Rules.

 - “electoral court” means the High Court under this Act or, as the case may be, the Resident Magistrate's Court under the Local Government Act.

 - “electoral laws” means the Constitution, the National Assembly and Presidential Elections Act and the Local Government Act and subsidiary legislation thereunder as they relate to the presidential,

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

parliamentary and local government elections.

3. The object of this code is to promote conditions conducive to the conduct of free and fair elections and a climate of tolerance, in which political activity may take place without fear of coercion, intimidation or reprisals.
4. All registered political parties and other persons bound by this code shall endeavour to promote the object of the code to enable free political campaigning and open public debate to take place in all parts of Kenya during any election period.
5. Registered political parties and candidates do, by subscribing to this code, further commit themselves -
 - (a) to give wide publicity to this Code;
 - (b) to promote voter education campaigns which may be conducted in concert with the Electoral Commission;
 - (c) to condemn, avoid and take steps to prevent violence and intimidation;
 - (d) to instruct their candidates, office bearers, members and supporters of their obligations under this Code; and
 - (e) generally, to affirm the rights of all participants in an election -
 - (i) to express divergent political opinions;
 - (ii) to debate and contest the policies and programmes of other parties;

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

- (iii) to canvass freely for membership and support from voters;
 - (iv) subject to the Public Order Act, to hold public meetings;
 - (v) to distribute non-offensive electoral literature and campaign materials;
 - (vi) to publish and distribute non-offensive notices and advertisements;
 - (vii) to erect non-offensive banners, placards and posters;
 - (viii) to promote free electoral campaigns by all lawful means; and
 - (ix) to co-operate with the Electoral Commission and the relevant Government and other authorities in the investigation of issues and allegations arising during the election period.
6. All those bound by this code shall, throughout any election period, have the duty -
- (a) to publicly and repeatedly condemn violence and intimidation, and to avoid the use of language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of advantage or for any other reason;

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

- (b) to refrain from any action involving violence or intimidation;
- (c) to ensure that no arms or weapons of any kind are carried or displayed at political meetings or in the course of any march, demonstration or other event of a political nature;
- (d) to refrain from publishing or repeating false, defamatory or inflammatory allegations concerning any person or party connected with the election;
- (e) subject to the Public Order Act, to co-operate and liaise in good faith with other parties to avoid, in so far as possible, arrangements involving public meetings, demonstrations, rallies or marches taking place at the same time and venue as similar political events organised by other parties;
- (f) to do nothing to impede the right of any party, through its candidates, canvassers and representatives, to have reasonable access to voters for the purposes of conducting voter education, fund raising, canvassing membership and soliciting support;
- (g) to avoid plagiarising the symbols, colours or acronyms of other parties; and to discourage and prevent the removal, disfigurement or destruction of political campaign materials of any party;
- (h) to refrain from offering any inducement or reward to any person in consideration of such person either joining or not joining any party; attending or not attending any

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

political event; voting or not voting (either at all, or in any particular manner); or accepting, refusing or withdrawing such person's nomination as a candidate in the election;

(i) to refrain from any attempt to abuse a position of power, privilege or influence, including parental, patriarchal or traditional authority, for political purposes, including any offer of reward or threat of penalty;

(j) to avoid any discrimination based on age, race, tribe, place of origin or residence or other local connexion, political opinions, colour, creed or sex in connection with the election and political activity;

(k) in relation to the Electoral Commission-

(i) to acknowledge the Commission's authority in the conduct of the election;

(ii) to ensure the attendance and participation of representatives at meetings of any parties' liaison committee and other forums convened by or on behalf of the Electoral Commission;

(iii) to implement the orders and directions of the Electoral Commission;

1997 *Statute Law (Repeals and Miscellaneous Amendments) No. 10*

- (iv) to facilitate the Commission's right of access through official observers and other representatives to all public political meetings or other electoral activities;
 - (v) to co-operate in the official investigation of issues and allegations arising during any election period;
 - (vi) to take all reasonable steps to ensure the safety of observers and officers of the Electoral Commission from exposure to insult, hazard or threat in the course of their official duties; and
 - (vii) to establish and maintain effective lines of communication with the Electoral Commission;
- (l) to reassure voters with regard to the secrecy and integrity of the ballot, and furthermore, to reaffirm the provisions of section 25 of this Act to the effect that no one should know how any other person has voted;
- (m) to take reasonable steps to discipline and restrain their party office-bearers, employees, candidates, members and supporters who-

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

- (i) infringe this Code;
 - (ii) engage in activities of commission or omission which amount to offences under the electoral laws or otherwise fail to observe this Code;
 - (iii) contravene or fail to comply with any provision of the electoral laws;
- (n) without prejudice to the right to present a petition to an election court, to accept the final outcome of the election and the Commission's declaration and certification of the results thereof.
7. The registered political parties shall execute this Code of Conduct through the hand of their respective authorised leaders to signify their acceptance to be bound by the provisions of this code and as their committal to strive to ensure that their members and supporters abide by the code at all stages of the elections for President, the National Assembly and local authorities.
8. Where, in the opinion of the Commission, any political party participating in any election or the leader or any office-bearer, member or supporter of such political party or any candidate at any election, in any way infringes any provision of this Code, the Commission may-
- (a) in the case of any political party and, subject to subparagraph (b), also in the case of the leader or any office bearer, member or supporter of such political party or candidate, impose upon that party one or more of the

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

following penalties or sanctions of which any or all may be suspended on specific conditions:

- (i) a formal warning;
- (ii) a fine determined by the Commission;
- (iii) notwithstanding the provisions of any other law, an order prohibiting such political party, whether permanently or for a specified period, from utilising any public media time, through the television or radio broad-casting services of such media as have been or may be allocated to the political party for electoral purposes;
- (iv) an order prohibiting the political party-
 - (aa) from holding particular public meetings, demonstrations or marches, or any kind of such meetings, demonstrations or marches;
 - (bb) from entering any specified electoral area for purposes of canvassing for membership, or for any other electoral purpose;
 - (cc) from erecting placards or banners, or from publishing and distributing campaign literature;
 - (dd) from publishing or distributing campaign

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

literature and electoral advertising;

or limiting the rights of the political party to do so, and such prohibition or limitation shall be notified to the relevant regulating officers under the Public Order Act in the affected places or electoral areas for purposes of that Act.

- (b) in the case of the leader or candidate or any office-bearer, member or supporter of such political party impose any one or more of the penalties or sanctions referred to in sub-paragraph (a) (i) or (ii) of this paragraph.

9. Without prejudice to the provisions of paragraph 8, the Commission may either of its own motion or in consequence of any report made to it, institute proceedings in the High Court in its unlimited original civil jurisdiction as may be appropriate in the case of any alleged infringement of the Code by a political party or by the leader or any office-bearer, member or supporter of the political party or any candidate and where such Court finds the infringement of the provisions of this Code-

- (a) in the case of a political party, any act or omission involving violence or intimidation or a gross or systematic violation of the rights of any political party, candidate or voter, such Court may in addition to or in substitution for any other penalty or sanction specified in sub-paragraph (a) of paragraph 8 make an order cancelling the right of such party to participate in the election concerned; or

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

- (b) in the case of the leader or any office bearer, member or supporter of such political party or of any candidate, that any act or omission involving violence or intimidation or gross or systematic violation of the rights of any political party candidate or voter, such Court may in addition to or in substitution any other penalty or sanction specified in paragraph 8(a) (i) and (ii) make an order disqualifying, in the case of a person who is a candidate, such person from being a candidate or deleting the name of such candidate from the list or lists of candidates concerned.
10. There shall be no appeal from an order of the Commission imposing a penalty or sanction under paragraph 8 (a) but a party aggrieved by the decision of the Commission shall have direct access to the High Court under Order 53 of the Civil Procedure Rules.
11. In making its decision regarding appropriate penalties or sanctions, the Commission or, as the case may be, the High Court shall have regard to any other legal consequences that may result from civil or criminal proceedings instituted by reason of the same occurrence.
12. The High Court shall ensure that any proceedings initiated under paragraph 9 are dealt with in priority to all other matters brought before it, and that the decision of that Court is given before the date of the election concerned.
13. The procedure of the High Court in cases falling within the provisions of this Code shall, without prejudice to paragraph 10, be in accordance with such Rules of Procedure as shall from time to time be promulgated

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

by the Chief Justice in consultation with the Commission.

- | | | |
|---------------------------------------|----------|--|
| The Judicature Act (Cap.8 | S.7 | In subsection (1), delete the words “be thirty” and insert “not exceed fifty”.

In subsection (2), delete the words “be eight” and insert “not exceed eleven”. |
| The Kadhis’ Courts Act (Cap.11). | s.3 | Delete the words “and not more than twelve”. |
| The Law Society of Kenya Act (Cap.18) | s.13 (1) | Delete the word “nine” and insert the word “ten”. |
| | s.13 (2) | Delete the word “nine” and insert the word “ten”. |
| | | Delete the proviso and insert the following new proviso-

Provided that at least one of the members so elected shall be a member of the Society who ordinarily practices in Mombasa and at least two of the members shall be members who do not ordinarily practice in Nairobi or Mombasa. |
| The Civil Procedure Act (Cap. 21) | s.81 | In subsection (1) delete the words “a judge” and insert the words “two judges”.

In subsection (1A), delete the words “as one of the judges so referred to”. |
| The Public Order Act (Cap. 56). | s.2 | Insert the following new definition in its proper alphabetical sequence-

“excluded meeting” means- |

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

- (a) any meeting convened and held exclusively for the lawful purposes of any public body; or
- (b) any meeting of the members of any registered organization, whether corporate or unincorporate, convened in accordance with the constitution of the organization and held exclusively for the lawful purposes of that organization;
- (c) any meeting of the members of any trade union convened and held exclusively for the lawful purposes of that trade union;
- (d) any meeting convened and held exclusively for social, cultural, charitable, educational, commercial or industrial purposes;
- (e) any meeting of the organs of a political party, convened in accordance with the constitution of the party and held exclusively to discuss the affairs of the party;
- (f) impromptu “meet-the-people” tours by Members of Parliament and councillors.

Delete the definition of “meeting” and insert the following new definition-

“meeting” means any gathering of persons (not being an excluded meeting convened and held for any purpose including any political purpose;

Delete the definition of “public meeting” and insert the following new definition -

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

“public meeting” means any meeting, not being an excluded meeting, held or to be held in a public place;

Insert the following new definition in proper alphabetical sequence -

“regulating officer” means the officer in-charge of the police station in the area in which a proposed public meeting is proposed to be held, or in the case of a public procession, the police officer in-charge of the police station in the area in which the procession is proposed to start and to end;

s.4 (1)(a) Repeal.

s.5 Repeal and replace with the following new section-

Regulation of public meetings and processions. 5. (1) No person shall hold a public meeting or a public procession except in accordance with the provisions of this section.

(2) Any person intending to convene a public meeting or a public procession shall notify the regulating officer of such intent at least three days but not more than fourteen days before the proposed date of the public meeting or procession.

(3) A notice under subsection(2) shall be in the prescribed form and shall specify-

(a) the full names and physical address of the

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

organizer of the proposed public meeting or public procession;

(b) the proposed date of the meeting or procession and the time thereof which shall be between six o'clock in the morning and six o'clock in the afternoon.

(c) the proposed site of the public meeting or the proposed route in the case of a public procession.

(4) Where, upon receipt of a notice under subsection (2), it is not possible to hold the proposed public meeting or public procession for the reason that notice of another public meeting or procession on the date, at the time and at the venue proposed has already been received by the regulating officer, the regulating officer shall forthwith notify the organizer.

(5) The notification by the regulating officer under subsection (4) shall be in writing and shall be delivered to the organizer at the physical address specified pursuant to the provisions of subsection (3).

(6) Where the regulating officer notifies the organizer of a public meeting or public

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 199

procession in accordance with subsection (3) that it is not possible to hold the proposed meeting or procession, such public meeting or procession shall not be held on the date, at the time and venue proposed, but may, subject to this section, be held on such future date as the organizer may subsequently notify.

(7) The organizer of every public meeting or public procession or his authorized agent shall be present throughout the meeting or procession and shall assist the police in the maintenance of peace and order at the meeting or procession.

(8) The regulating officer or any police officer of or above the rank of inspector may stop or prevent the holding of -

(a) any public meeting or public procession held contrary to the provisions of sub-sections (2) or (6);

(b) any public gathering or other meeting or procession which, having regard to the rights and interests of the persons participating in such gathering, meeting or procession, there is clear, present or imminent danger of a

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

breach of the peace or public order,

and may, for any of the purposes aforesaid, give or issue such orders, including orders for the dispersal of the meeting, procession or gathering as are reasonable in the circumstances, having regard to the rights and freedoms of the persons in respect of whom such orders are issued and the rights and freedoms of others.

(9) Any person who neglects or refuses to obey an order given or issued under subsection (7) shall be guilty of an offence.

(10) Any public meeting or public procession held contrary to the provisions of subsection (1) and (5) shall be deemed to be an unlawful assembly.

(11) Any person who takes part in a public meeting or public procession deemed to be an unlawful assembly under subsection (10), or who holds, convenes or organizes or is concerned in the holding, convening or organizing of such meeting or procession shall be guilty of the offence of taking part in an unlawful assembly under Chapter IX of the Penal Code and liable to imprisonment for one year.

Cap.63

(12) The organizer of an excluded meeting may require

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

the regulating officer that the police be present at such meeting to ensure the maintenance of peace and order.

(13) A request under subsection (12) shall be in writing and shall be delivered to the regulating officer at least three days before the proposed date of the meeting.

(14) The regulating officer shall keep a public register of all notices received under subsection (2).

(15) Any person may, during working hours, inspect the register kept under subsection (14).

s.10 Repeal

The Preservation of Public Security Act (Cap. 57)

s.4(2) Delete paragraph (a).

Insert the following proviso at the end of paragraph (b) -

“Provided that no person shall be restricted on account of his political beliefs or activities.”

The Penal Code (Cap. 63)

s.52 In subsection (1) -

delete the words “If it appears to the Minister” and insert “Where the Minister, on reasonable grounds, considers”;

delete the words “the administration of justice or the maintenance of the

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

authority and impartiality of the judiciary so to do” and insert “and to be reasonably justifiable in a democratic society”;

delete the words “and subject to such exceptions and conditions, if any, as may be specified in the order”;

delete the words “or in the case of a periodical publication, any or all past or future issues thereof, or any or all past or future publications of any person specified in the order”.

In subsection (2) -

delete the words “If it appears to the Minister to be reasonably required” and insert “Where the Minister, on reasonable grounds, considers that it is necessary”;

delete the words “public safety”;

insert the words “so to do” immediately after the words “public health”;

delete the words “and subject to such exceptions and conditions, if any, as may be specified in the order”;

delete the words “or in the case of a periodical publication, declare any or all past or future issues thereof to be prohibited publications, and may declare to be prohibited publications any or all past or future publications of any person specified in the order, not being a person who ordinarily carries on for profit or reward the trade or business of a publisher and whose principal activities consist of the carrying on of that trade or business”.

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

Insert the following new subsections immediately after subsection (2) -

(3) There is established a Board to be known as the Prohibited Publications Review Board (hereinafter referred to as "the Board") which shall comprise -

- (a) the Attorney-General or his representative, who shall be the chairman;
- (b) the Commissioner of Police or his representative;
- (c) the Director of Medical Services or his representative;
- (d) two persons from the religious community, to be appointed by the Minister; and
- (e) two other persons of integrity, good character and good standing to be appointed by the Minister.

(4) The members of the Board appointed under paragraphs (d) and (e) of subsection (3) shall hold office for terms of three years each, but shall be eligible for reappointment:

Provided that such members shall not hold office for more than two terms.

(5) The purposes for which the Board is established shall be -

- (a) to review all publications prohibited under this section as at the commencement of this subsection and advise the Minister as to whether such prohibition should be lifted; and

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

(b) to advise the Minister generally on the exercise of his powers under this section.

(6) The Minister shall, as soon as reasonably practicable after the commencement of this subsection, cause a copy of each of the publications referred to in paragraph (a) of subsection (5) to be considered by the Board pursuant to the provisions of that paragraph.

(7) The Minister shall, within twenty-one days of the prohibition of any publication under this section, cause a copy thereof to be forwarded to the Board for consideration and appropriate advice.

(8) The Minister shall be obliged to act in accordance with any advice given by the Board under this section.

(9) The quorum for the conduct of a meeting of the Board shall be four members.

(10) Subject to subsection (9), the Board may regulate its own procedure.

(11) There shall be a secretary of the Board and such other staff as may be necessary for the proper functioning of the Board.

(12) The secretary and other staff of the Board shall be public officers appointed by the Minister for that purpose.

(13) The expenses of the Board shall be defrayed out of moneys provided by Parliament for that purpose.

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

s.56. Repeal.

s.57. Repeal.

s.58. Repeal.

The Prevention of Corruption Act (Cap.65)

s.2 Insert the following new definitions in proper alphabetical sequence-

“Authority” means the Kenya Anti-Corruption Authority established under section 11B;

“Director” and “Assistant Director” mean a Director and an Assistant Director of the Authority appointed under section 11B;

Repeal the definition of the word “Squad”.

s.10 In subsection (1), delete the expression “the Attorney-General” wherever it occurs and insert “the Director”.

Insert immediately after the words “Assistant Superintendent” the words “or any other officer of the Authority”.

s.11A Delete the expression “the Attorney-General” wherever it occurs and insert “the Director”.

s. 11B Repeal subsections (1) and (2) and insert the following new subsections-

The Kenya Anti-Corruption Authority. 11B. (1) There is established an Authority to be known as “the Kenya Anti-Corruption Authority” (hereinafter referred to as “the Authority”) which shall be a body corporate with perpetual succession and a common seal, with power, in its corporate name, to -

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

- (a) sue and be sued;
- (b) take, purchase or otherwise acquire, hold, charge or dispose of both movable and immovable property;
- (c) borrow or lend money;
- (d) enter into contracts; and
- (e) do or perform all such things or acts necessary for the proper performance of its functions under this Act which may be lawfully done by a body corporate.

(2) The Authority shall consist of a Director who shall be the chief executive and such number of Assistant Directors, not exceeding three, all of whom shall be appointed by the President on the recommendations of the Advisory Board appointed under subsection (7).

Insert the following new subsections immediately after subsection (2)-

(2A) The Director and Assistant Directors shall hold office for terms of four years each but shall be eligible for reappointment:

Provided that no Director or Assistant Director shall hold office for more than two terms.

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

(2B) The Director and Assistant Directors shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(2C) A Director or an Assistant Director may resign his office by writing under his hand addressed to the President which resignation shall take effect one month from the date of receipt of the letter of resignation by the President.

(2D) If a Director or an Assistant Director resigns or otherwise vacates office before the expiry of his term of office, the President shall appoint another person in his place.

(2E) Where a Director or an Assistant Director is unable to perform the functions of his office due to any temporary incapacity which is likely to be prolonged, the President may appoint a substitute for that Director or Assistant Director until such time as the President determines that his incapacity has ceased.

(2F) No person shall be appointed as a Director or an Assistant Director who is -

(a) a member of the National Assembly;
or

(b) a salaried employee of any public body (except on a secondment basis).

(2G) The President shall terminate the appointment of a Director or Assistant director who -

(a) becomes subject to any of the disqualifications specified in subsection (2F);

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

- (b) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;
- (c) is convicted of an offence involving dishonesty or fraud or moral turpitude;
- (d) is adjudged or is otherwise declared to be of unsound mind;
- (e) is absent without the leave of the Authority from three consecutive meetings of the Authority;
- (f) becomes for any reason, incapable or incompetent of properly performing the functions of his office:

Provided that the appointment of a Director or Assistant Director shall not be terminated under this paragraph until the question of his removal from office has been referred to a tribunal under subsection (2H), and the tribunal has recommended to the President that the Director or Assistant Director ought to be removed from office on grounds of incapability or incompetence as aforesaid.

(2H) Where the President intends to remove a Director or Assistant Director from office under paragraph (f) of subsection (2G), then-

- (a) the President shall appoint a tribunal which shall consist of a chairman and two other members selected by the President from among persons-
 - (i) who hold or have held office as Judges of the High Court or the Court of Appeal;

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

(ii) who are qualified to be appointed as Judges of the High Court or the Court of Appeal; and

(b) the tribunal shall inquire into the matter and report on the facts to the President and recommend to him whether the Director or Assistant Director ought to be removed from office.

(2) Where the question of removing the Director or an Assistant Director has been referred to the tribunal under this section, the President may suspend the Director or Assistant Director 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 Director or Assistant Director should not be removed.

In subsection (3)-

(a) delete the word "Squad" and insert the word "Authority";

(b) replace the comma at the end of paragraph (c) with a semi-colon and insert the following new paragraphs-

(d) to inquire and investigate the extent of liability of any public officer in the loss of any public funds and to institute civil proceedings against the officer and any other person involved in the transaction which resulted in the loss for the recovery of such loss;

(e) to investigate any conduct of a public officer which is

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

connected with or conducive to corrupt practices and to make suitable recommendations thereon;

(f) to undertake such further or other investigations as may be directed by the Attorney-General;

(g) to enlist members of the public in fighting corruption by the use of education and outreach programmes.

In subsection (4), delete the word "Squad" wherever it occurs and replace it with the word "Authority".

Repeal subsection (6) and insert the following new subsections-

(6) The Authority may appoint such officers or servants or hire the services of such consultants, experts or independent investigators as may be necessary for the proper discharge of its functions under this Act or any other written law, upon such terms and conditions of service as the Authority may determine.

(7) The funds of the Authority shall comprise-

(a) moneys provided by Parliament for that purpose;

(b) such moneys or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

- (c) all moneys from any other source provided for or donated or lent to the authority.

(8) There shall be paid out of the funds of the Authority, such sums of money as are required to defray the expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.

(9) The Authority shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Authority.

Cap.412

(10) The provisions of Part VII of the Exchequer and Audit Act shall apply to the Authority.

(11) There is established an Advisory Board which shall comprise seven members appointed by the President, all of whom shall be persons knowledgeable or experienced in law, monetary and financial matters, accountancy and fraud investigation.

(12) The purpose for which the Advisory Board is established shall be-

(a) to recommend to the President persons for appointment as Directors or Assistant Directors pursuant to the provisions of subsection (2);

(b) to advise the Authority generally on the exercise of its powers and the performance of its functions under this Act.

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

(13) The President may make regulations-

- (a) setting out the procedure for appointing the members of the Advisory Board established by subsection (7) and prescribing the terms and conditions of service of such members;
- (b) generally for the better carrying out of the provisions of this section.

The Election Offences Act
(Cap. 66)

New

Insert the following new section immediately after section 3-

Offences relating to voter registers and electors' cards.

3A. Any person who-

- (a) without due authority makes, prepares or prints a document or paper resembling or purporting to be a register of voters; or
- (b) without due authority makes, prepares or prints a document or paper resembling or purporting to be an elector's card; or
- (c) not being a person authorized to be in possession of any elector's card bearing the name of another person or which has not been written in the name of any person, has such elector's card in his possession; or

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

(d) without due authority supplies any elector's card to any person; or

(e) without due authority destroys, damages, defaces or makes any alteration on an elector's card; or

(f) sells or offers to sell any elector's card to any person or purchases or offers to purchase any elector's card from any person; or

(g) aids, abets, counsels or procures the commission of or attempts to commit any of the offences referred to in paragraphs (a) to (f),

shall be guilty of an offence and liable, in the case of an offence under paragraphs (a) to (f), to imprisonment for a term not exceeding five years, and in the case of an offence under paragraph (g), to imprisonment for a term not exceeding four years.

s.8 Repeal.

s.15 Repeal.

The Police Act
(Cap.84)

New Insert the following section immediately after section 14-

Control and
conduct of
Force in
executing

14A(1) The Force shall perform its functions under the overall direction, supervision and control of the

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

functions. Commissioner of Police, and shall be impartial and objective in all matters and in particular in all political matters and shall not accord different treatment to different persons on the basis of their political opinions.

(2) No police officer shall subject any person to torture or to any other cruel, inhuman or degrading treatment.

(3) Any police officer who contravenes the provisions of this section shall be guilty of a felony.

The Administration Police Act (Cap.85)

s.10 Repeal subsection (4).
s.12 Repeal subsection (3).

The Public Collections Act (Cap.106)

s.2(1) Delete the definitions of "licence" and "licensing authority".

Insert the following new definition in proper alphabetical sequence -

"regulating officer" means -

(a) the chief in charge of the location in which the collection is intended to be promoted; or

(b) in the case of a collection to be intended promoted -

(i) in two or more locations of the

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

same division, the District Officer of the division;

(ii) in two or more divisions of the same district, the District Commissioner of the district;

(iii) in two or more districts of the same province, the Provincial Commissioner of the province; or

(iv) in two or more provinces or throughout the country, the Permanent Secretary of the Ministry responsible for provincial administration.

s.3 Repeal.

s.4 Repeal and replace with the following new section -

Notification of public collections. 4.(1) Subject to the provisions of this Act, no person shall promote any collection except in accordance with the provisions of this section.

(2) A person intending to promote a collection shall give notice of such intent to the regulating officer at least three days before commencing such promotion.

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

(3) A notice under subsection (2) shall be in writing and shall specify -

- (a) the full names and address of the promoter of the proposed collection;
- (b) the purpose of the collection;
- (c) the area, place or occasion in, at or on which the collection is intended to be made; and
- (d) such additional information as may be necessary.

(4) Where upon receipt of a notice under subsection (3), the regulating officer -

- (a) establishes that the promoter has been convicted of an offence involving fraud or dishonesty;
- (b) has reasonable cause to believe that the collection is in aid of, or that the promoter or any of the collectors are members

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

of an unlawful society,
or that the purpose of
the collection is un-
lawful or fictitious;
or

- (c) establishes that the promoter is an undischarged bankrupt or has entered a scheme of arrangement with his creditors, the regulating officer shall, without delay, serve upon the promoter a notice of objection to the proposed collection specifying the reasons therefor.

(5) A notice under subsection (4) shall be in writing and shall be served upon the promoter at the address specified pursuant to the provisions of subsection (3).

(6) Where the regulating officer objects to a proposed collection under subsection (4), such collection shall not be promoted.

(7) A person who promotes collection contrary to the provisions of this section shall be guilty of an offence.

s.13 In subsection (2) -

delete the word "licensed" appearing in paragraph (a);

delete the word "licensees" appearing in paragraph (f) and insert the words "promoters and collectors"

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

The Societies Act (Cap.108) s.4 Insert the following new subsection immediately after subsection (1) -

(2) The Registrar shall consider every application for registration of a society or for exemption from registration and shall communicate his decision thereon to the society within one hundred and twenty days of receipt of the application.

Re-number subsections (2) and (3) as subsections (3) and (4) respectively.

s.5 Delete the words “fourteen years” and “fifty thousand” and insert the words “three years” and “ten thousand” respectively.

s.6 Delete the words “seven years” and “fifty thousand” and insert the words “one year” and “five thousand” respectively.

s.11 Delete the words “it appears to him” appearing in paragraph (a) of subsection (2) and insert “he has reasonable cause to believe”;

Delete the words “in the opinion of the Registrar” appearing in subparagraphs (ii) and (iii) of paragraph (f) of subsection (2).

s.12 Delete the words “in his opinion” wherever they occur and insert “where he has reasonable cause to believe”;

In paragraph (f) of subsection (1), delete the words “the Registrar’s consent” and insert “duly notifying the Registrar in the prescribed form”

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

Delete the words “may, in his discretion” appearing after paragraph (j) of subsection (1) and insert the word “shall”.

s.15 Repeal and insert the following new section-

Appeal from order of refusal, cancellation or Suspension.	15(1) Any society aggrieved by the Registrar’s refusal to register it, or by the cancellation or suspension of its registration under section 12 may -
--	--

(a) in the case of a political party, appeal to the High Court within thirty days of such refusal, cancellation or suspension; or

(b) in the case of any other society, appeal to the Minister within thirty days of such refusal, cancellation or suspension and the Minister shall consider, determine and communicate his decision on the appeal within ninety days of the appeal.

(2) A society aggrieved by the decision of the Minister under subsection (1)(b) may appeal to the High Court within thirty days of the decision.

(3) Notwithstanding the provisions of subsection (1) of section 4, where a society other than a society specified in paragraphs (i), (ii) or (iii) of the

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

proviso to section 4(1), lodges an appeal under subsection (1) of this section, such society shall not, pending the decision on the appeal, be an unlawful society.

s.18 Insert a new subsection as follows-

(3) A society aggrieved by the cancellation of its registration under subsection (2) may appeal to the High Court within thirty days of such cancellation.

The Public Holidays Act (Cap.110)

s.4 Insert a new subsection as follows -

(4) The day in any year during which a general election is held following the dissolution of Parliament shall be a public holiday.

The Traditional Liquor Act (Cap.122)

s.30(1) Delete the words "Any administrative officer".

s.7 Repeal.

The Chiefs' Authority Act (Cap.128)

Short title. Delete the word "Authority".

s.3 Repeal.

s.8 In subsection (2), delete the words "unless he is released from arrest within twelve hours of his arrest, be taken before a court with jurisdiction in the matter" and insert -

"without delay, be taken to the nearest police station".

s.9 Repeal.

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

s.10 Delete paragraph (a) and insert the following new paragraph-

(a) prohibiting or restricting the consumption or possession of intoxicating liquor by, and the supply of such liquor to, young persons;

Repeal paragraphs (j), (k) and (m).

Repeal paragraph (p) and replace it with the following new paragraph-

(p) for any other purpose authorized by this Act.

s.11 Repeal paragraphs (a), (b), (e), (g) and (l).

Repeal paragraph (m) and replace it with the following new paragraph-

(m) for any of the purposes authorized by this Act.

s.12 Delete the word "male" and insert the word "person".

s.15 In paragraph (a), delete the words "forty five" and insert the words "fifty".

Delete paragraph (e) and insert the following new paragraph -

(e) any person certified unfit for such work on health grounds by a medical practitioner or a medical officer.

s.17 Repeal subsections (1) and (2) and delete the number "(3)" in subsection (3).

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

s.18 Repeal and replace with the following new section -

Penalty for disobeying order 18. Any person who, without lawful excuse, disobeys or fails to comply with any lawful order issued or given by a chief or assistant chief under this Act shall be guilty of an offence and liable to a fine not exceeding five hundred shillings and in default of payment, to extra mural penal employment for a period not exceeding fourteen days.

s.19 Repeal.

s.20 Repeal and replace with the following new section -

Conduct of chiefs. 20.(1) No chief shall -

(a) engage in the activities of any political party or act as an agent of any such party; or

(b) in the performance of his functions or the exercise of his powers under this Act -

(i) subject any person to torture or to any other cruel, inhuman or degrading treatment;

(ii) enter or search any private premises with a warrant duly

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

issued by a
magistrate; or

(iii) demand or solicit
any donations or
collections in a
manner likely to
suggest that such
donations or collec-
tions are a pre-
condition for any
services; or

(c) maintain a cell or other
place of confinement of
persons.

(2) Without prejudice to the
provisions of subsection (1),
the Minister may, in rules,
prescribe a code of conduct
to govern the conduct of chiefs
in the exercise of their powers
and the performance of their
functions under this Act.

(3) A chief who contravenes
any of the provisions of
this section or the provisions of
any code of conduct
prescribed under subsection
(2) shall, without prejudice
to any other penalty prescribed
by law, be guilty of an
offence and liable to a fine
not exceeding ten thousand
shillings, or to imprisonment
for a term not exceeding one
month, or to both.

Part III Repeal.

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

The Kenya Broadcasting
Corporation Act
(Cap. 221)

8(1) Insert the following new paragraph
immediately after paragraph (i) -

(j) keep a fair balance in all respects in the allocation of broadcasting hours as between different political viewpoints;

(k) in consultation with the Electoral Commission, during the campaign period preceding any presidential, parliamentary or local government election, allocate free air time to registered political parties participating in the election to expound their policies.

New Insert the following new subsection
immediately after subsection (1) -

(1A) In subsection (1)(j), the expression "campaign period" means the period between the initiation of an election under the provisions of the relevant law pertaining to the election and the eve of the polling day.

The Films and
Stage Plays Act
(Cap.222)

Part IV Repeal.

s.25 Repeal and replace it with the following
new section -

Cinema
licensing. 25. Any person who uses or causes or permits to be used, any premises for the public exhibition of any film shall, unless a cinema licence has been issued in respect of the premises by the licensing

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

authority under this Act and is in force, be guilty of an offence.

s.26 Delete the words “and theatre” wherever they occur.

s.27 Delete the words “and theatre”.

s.29 Delete the words “a stage plays licensing authority”.

s.31 In subsection (1), delete the words “or performance of a stage play” and “or performance” wherever they occur.

In subsection (3), delete the words “or performance” wherever they occur.

In subsection (4), delete the words “or performance” and “or the stage play licence” wherever they occur.

The Local Government Act (Cap. 265)

s.5 Repeal paragraph (j) of subsection (1).

s.9 Repeal paragraph (g) of subsection (1).

New Insert a new section 10 immediately after section 9 as follows -

Electoral areas. 10(1) The Electoral Commission may, by order in the Gazette divide any municipality, county, township or county division into electoral areas having such boundaries and names as may be prescribed by the order.

(2) The principles and matters set out in subsections (3) and (5) of section 42 of the Constitution

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

relating to the division of Kenya into constituencies shall, *mutatis mutandis*, guide the Electoral Commission in the exercise of its powers and the performance of its functions under this section.

s.12 In subsection (2), insert immediately after the words "The Minister" the words "in consultation with the Electoral Commission".

s.26 Renumber the existing provision as subsection (1) and insert a new subsection as follows -

(2) The criteria and principles for appointment of nominated members of the National Assembly under section 33 of the Constitution shall *mutatis mutandis* apply to the nomination of councillors under this section.

s.28 In subsection (2), insert immediately after the words "The Minister", the words "in consultation with the Electoral Commission".

Insert the following new subsection immediately after subsection (2) -

(2A) The criteria and principles for appointment of nominated members of the National Assembly under section 33 of the Constitution shall *mutatis mutandis* apply to the nomination of councillors under this section.

s.41 In subsection (2), insert immediately after the words "The Minister" the words "in consultation with the Electoral Commission".

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

- s.46 Insert a new subsection (2A) as follows immediately after subsection (2) -

(2A) The criteria and principles for appointment of nominated members of the National Assembly under section 33 of the Constitution shall *mutatis mutandis* apply to the nomination of councillors under this section.

- s.53 Delete the word "Minister" wherever it occurs and insert the words "Electoral Commission".

In subsection (1), delete the expression "in consultation with the Minister".

In subsection (6), delete the word "regulation" and insert "section".

- s.53A Delete the word "Minister" wherever it occurs and insert the words "Electoral Commission".

- s.53B Delete the word "Minister" wherever it occurs and insert the words "Electoral Commission".

- s. 53C Delete the words "by the Minister" wherever they occur and insert the words "by the Electoral Commission".

- s.55A Repeal the section and insert-

Additional 55A. A person who is disqualifi- convicted of an election ation for offence or who is reported candidates. guilty of an election offence by the court trying an election petition shall not be qualified to be nominated as a candidate for re-election as a member of any local authority during the remainder of the life of the relevant local

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

authority following the conviction or, as the case may be, following the report of the court:

Provided that a person disqualified as a result of a conviction or report for an election offence, other than under the provisions of this section, prior to the general elections held in the year 1997 shall cease to be so disqualified and shall, unless otherwise lawfully disqualified, be entitled to have the Electoral Commission enter his name in the appropriate register of electors.

New Insert the following new section immediately after section 57 -

<p>Election to coincide with parliamentary and Presidential election.</p>	<p>58(1) Whenever there is a general election under the National Assembly and Presidential Elections Act, there shall simultaneously be held an election of all councillors required to be elected under this Act and for that purpose the Minister shall, forthwith upon the dissolution of parliament, dissolve all local authorities.</p>
---	--

<p>Cap.7</p>	<p>(2) The provisions of the National Assembly and Presidential Elections Act relating to the powers, responsibilities and duties of the Electoral Commission shall apply <i>mutatis mutandis</i> to the</p>
--------------	--

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

conduct of elections under this Act and section 42A of the Constitution.

- s.61 In subsection (1), delete the words “a Resident Magistrate” and insert the words “a Resident Magistrate’s court within or nearest to the area of the local authority”.

Delete “Resident Magistrate” appearing in subsections (2) and (4) and insert “Resident Magistrate’s court” wherever it occurs.

- s.65 In subsection (3), delete the word “Minister” and insert the words “Electoral Commission”.

- s.66 Delete subsection (4) and insert the following new subsection -

(4) The Chief Justice may make rules regulating appeals under this section, and for matters incidental thereto and connected therewith.

- s.72 In subsection (1), delete the expression “As soon as possible after the coming into operation of this Act, the Minister shall make rules” and insert, “The Electoral Commission shall make rules”.

In subsection (1), repeal paragraph (h).

Insert the following new subsection immediately after subsection (2)

(3) For the avoidance of doubt and notwithstanding section 31(c) of the Interpretation and General Provisions Act, the rules made by the Minister under this section shall, unless earlier revoked and replaced, continue in

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

force and shall be deemed to have been made by the Electoral Commission.

New Insert the following section immediately after section 72 -

Electoral Code of Conduct and application of Cap.7. 72A Section 34A and the Fourth Schedule to the National Assembly and Presidential Elections Act relating to the Electoral Code of Conduct shall apply to local government elections.

Fifth Schedule Delete the word "Minister" wherever it occurs and insert "Electoral Commission".

The Forests Act (Cap.385). s.10 Delete and insert the following new section-

Compounding offences. 10. A forest officer or a game warden empowered in that behalf by the Minister by notice in the Gazette may, with the consent of the Chief Conservator, if he is satisfied that a person has committed an offence under this Act, accept from that person a sum of money by way of compensation for the offence, together with the forest produce, if any, in respect of which the offence has been committed.

(2) The compensation under subsection (1) shall be of a sum not less than five times but not exceeding ten times the value of the forest produce or of the estimated damage, as the case may be, or where the value

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

cannot be estimated, one thousand shillings for each offence.

(3) Compensation shall only be accepted in cases where the person reasonably suspected of having committed an offence has expressed his consent to the offence being dealt with under this section.

(4) In any proceedings brought against a person for an offence under this Act, it shall be a good defence if that person proves to the satisfaction of the court that he has compounded the offence under this section.

- s.14 (1) Delete the words “ not exceeding three thousand shillings and insert “not exceeding ten thousand shillings”.

Insert the following proviso at the end of the subsection:

Provided that-

- (i) a person convicted of an offence under subsection (1) or (2) of section 9 shall be liable to a fine not exceeding twenty thousand shillings, or to a term of imprisonment not exceeding one year, or to both; and
- (ii) in the case of an offence under section 8, the fine shall not be less than ten times the value of the forest produce in respect of which the offence is committed or of the estimated damage caused and where the Chief Conservator of Forests cannot

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

determine the value of such produce or damage, such person shall be liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

- s.14 (2) In the third line, delete the word "may" and insert the word "shall".

Insert the following new paragraph immediately after paragraph (b)-

- (c) the forest produce removed and any tools or implements used in the commission of the offence be forfeited to the Chief Conservator of Forests.

The Banking Act (Cap.488).

- s.2 Insert the following new definition in proper alphabetical order-

"financial year" means the financial year prescribed in section 20A.

- s.4 Delete and insert the following new section -

Application for licence. 4. (1) Every institution intending to transact banking business, financial business or the business of a mortgage finance company in Kenya shall, before commencing such business, apply in writing to the Minister through the Central Bank for a licence.

(2) The Central Bank shall examine every application made under subsection (1) and shall forward the application together with its recommendations thereon to the Minister.

No. 10. Statute Law (Repeals and Miscellaneous Amendments) 1997

(3) In addition to any other recommendations under subsection (2), the Central Bank shall, where it is satisfied as to the professional and moral suitability of persons proposed to manage or control the institution, certify that such persons are fit and proper persons to manage or control the institution.

(4) For the purposes of this section, the criteria for assessing the professional or moral suitability of persons proposed to manage or control an institution shall be as prescribed in the First Schedule.

(5) In considering an application for a licence, the Minister may require to be satisfied as to-

- (a) the financial condition and history of the institution;
- (b) the character of its management;
- (c) the professional and moral suitability of the persons proposed to manage or control the institution;
- (d) the adequacy of its capital structure and earning prospects;
- (e) the convenience and needs of the area to be served; and

1997 Statute Law (Repeals and Miscellaneous Amendments) No. 10

(f) the public interest which will be served by the granting of the licence.

(6) The Minister may, by notice in the Gazette, amend the First Schedule.

s.5 Insert the following new subsection immediately after subsection (2)-

(2A) An institution which fails to commence business in Kenya within twelve months of the grant of a licence under this section shall, if it still proposes to transact business in Kenya, make fresh application under section 4.

The National Council for Law Reporting Act, 1994 (No.11 of 1994).

s.6

Delete and insert the following new section-

Remuneration of Council members. 6. The Council shall pay to members such remuneration, fees or allowances for as it expenses may determine.

The Council of Legal Education Act. 1995 (No.12 of 1995)

s.3 (1)

In paragraph (a), insert immediately after the words "Chief Justice" the words "or a judge appointed by the Chief Justice".

New

Insert the following new section immediately after section 5-

Remuneration of Council members. 5. The Council shall pay to members such remuneration, fees or allowances for expenses as it may determine.