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CHAPTER I - 1963 Constitution

Citizenship

1. (1) Every person who, having been born in Kenya, is on 11th December 1963 a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Kenya on 12th December 1963:
Provided that a person shall not become a citizen of Kenya by virtue of this subsection if neither of his parents was born in Kenya.
- (2) Every person who, having been born outside Kenya, is on 11th December 1968 a citizen of the United Kingdom and Colonies or a British protected person shall, if his father becomes, or would but for his death have become, a citizen of Kenya by virtue of subsection (1) of this section, become a citizen of Kenya on 12th December 1963.
2. (1) Any person who, but for the proviso to subsection (1) of section 1 of this Constitution, would be a citizen of Kenya by virtue of that subsection shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Kenya:
Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by his parent or guardian. (2) Any woman who, on 11th December 1963, has been married to a person:
 - a) who becomes a citizen of Kenya by virtue of section 1 of this Constitution; or
 - b) Who, having died before 12th December 1968, would, but for his death, have become a citizen of Kenya by virtue of that section shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Kenya.
- (3) Any woman who, on 11th December 1963, has been married to a person who becomes, or would but for his death have become, entitled to be registered as a citizen of Kenya under subsection (1) or subsection (5) of this section but whose marriage has been terminated by death or dissolution before 12th December 1968 or is so terminated on or after that date but before that person exercises his right to be registered as a citizen of Kenya under either of those subsections, shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as

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a citizen of Kenya.

- (4) Any person who, on 11th December 1968, is a citizen of the United Kingdom and Colonies or of the Republic of Ireland and is on that day ordinarily and lawfully resident in Kenya (otherwise than under the authority of a pass issued under the Immigration Ordinance and conferring on him the right to remain in Kenya only temporarily) shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Kenya:
Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under this sub section, but an application may be made on his behalf by his parent or guardian.
- (5) Any person who, on 11th December 1963, is a citizen of the United Kingdom and Colonies:
- (a) having become such a citizen under the British Nationality Act 1948, by virtue of his having been naturalized in Kenya as a British subject before that Act came into force; or
- (b) having become such a citizen :by virtue of his having been natural zed or registered in Kenya under that Act
shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Kenya:
Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by his parent or guardian.
- (6) In this section "the specified date" means:
- (a) in relation to a person to whom subsection (1) of this section refers, 12th December 1965;
- (b) in relation to a woman to whom subsection (3) of this section refers, 12th December 1965 or the expiration of such period after the termination of her marriage as may be prescribed by or under an Act of Parliament (whichever is the later;
- (c) in relation to a person to whom subsection (4) of this section refers, 12th December 1965; and
- (d) in relation to a person to whom subsection (5) of this section refers,

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12th December 1965,

or such later date as may in any particular case be prescribed by or under an Act of Parliament.

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. Every person born in Kenya after 11th December 1963 shall become a citizen of Kenya at the date of his birth:

Provided that a person shall not become a citizen of Kenya by virtue of this section if at the time of his birth:

- (a) neither of his parents is a citizen of Kenya and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Kenya; or
- (b) his father is a citizen of a country with which Kenya is at war and the birth occurs in a place then under occupation by that country.

4. A person born outside Kenya after 11th December 1968 shall become a citizen of Kenya at the date of his birth if at that date his father is a citizen of Kenya. 5. Any woman who has been married to a citizen of Kenya shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Kenya.

6. (1) Any person who, being a Commonwealth citizen or a citizen of any country in Africa to which this subsection applies, has been ordinarily resident in Kenya for such period (whether commencing before, on or after 12th December 1968) and under such authority as may be prescribed by or under an Act of Parliament shall be entitled, upon making application in such manner as may be so prescribed, to be registered as a citizen of Kenya.

(2) A person shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Kenya if, at the date of his application, one of his parents is a citizen of Kenya:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under this subsection but an application may be made on his behalf by his parent or guardian.

(3) The countries in Africa to which subsection (1) of this section applies (other than the countries to which section 9 of this Constitution applies) are any countries which are for the time being declared by the Minister, by notice published in the Kenya Gazette, to be countries which permit citizens of Kenya to become citizens of those countries

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by registration.

7. Any person who:

(a) has attained the age of twenty-one years;

(b) has been ordinarily and lawfully resident in Kenya for the period of twelve months immediately preceding his application under this section;

(c) has been ordinarily and lawfully resident in Kenya for a period of, or for periods amounting in the aggregate to, not less than four years in the seven years immediately preceding the said period of twelve months;

(d) satisfies the Minister that he is of good character;

(e) satisfies the Minister that he has an adequate knowledge of the Swahili language; and

(f) satisfies the Minister that he intends, if naturalized as a citizen of Kenya, to continue to reside in Kenya,

shall be eligible, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be naturalized as a citizen of Kenya, and the Minister may grant a certificate of naturalization to any such person who so applies.

8. (1) The Minister may, by order published in the Kenya Gazette and after such procedure as may be prescribed by or under an Act of Parliament, deprive of his citizenship of Kenya any person who is a citizen by registration or naturalization if the Minister is satisfied:

(a) that that citizen has shown himself by act or speech to be disloyal or disaffected towards Kenya; or

(b) that that citizen has, during any war in which Kenya was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or

(c) that, within the period of five years commencing with the date of the registration or naturalization, a sentence of imprisonment of or exceeding twelve months has been imposed on that citizen by a court in any country or has been substituted by competent authority for some other sentence imposed on him by such a court; or

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(d) that that citizen has, since becoming a citizen of Kenya, been ordinarily resident in countries other than Kenya for a continuous period of seven years and during that period has neither: -

(i) been at any time in the service of Kenya or of an international organization of which Kenya was a member; nor

(ii) registered annually at a Kenya consulate his intention to retain his citizenship of Kenya; or

(e) that the registration or naturalization was obtained by means of fraud, false representation; or the concealment of any material fact.

(2) For the purposes of subsection (13 (c) of this section:

(a) a person shall not be regarded as having had imposed on him a sentence of imprisonment of or exceeding twelve months if he has been granted a free pardon in respect of the offence for which he was so sentenced or if his conviction for that offence has been set aside or if his sentence has been reduced to a term of imprisonment of less than twelve months or if a, sentence other than imprisonment has been substituted therefor;

(b) two or more sentences that are required to be served consecutively shall be regarded as separate sentences if none of them amounts to or exceeds twelve months; and

(c) no account shall be taken of a sentence of imprisonment imposed as an alternative, to, or in default of, the payment of a fine.

9. (1) Every person who, under this Constitution or any Act of Parliament, is a citizen of Kenya or who, under any enactment for the time being in force in any country to which this section applies, is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act 1948, or who continues to be a British subject under section 2 of that Act, shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) Save as may be otherwise provided by Parliament, the countries to which this section applies are the United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, Malaysia, the Federation of Nigeria, the Republic of Cyprus, Sierra

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Leone, Tanganyika, Jamaica, Trinidad and Tobago, Uganda, Zanzibar and the Federation of Rhodesia and Nyasaland.

10. (1) A citizen of any country to which section 9 of this Constitution applies and a citizen of any other country which the Minister may for the time being specify by notice published in the Kenya Gazette shall enjoy the same rights and privileges (being rights and privileges that, under this Constitution or any other law in force in Kenya, are enjoyed by citizens of Kenya) as a citizen of Kenya enjoys under the constitution of the country concerned or under any other law in force in that country.

(2) In any proceedings to determine whether a citizen of any country other than Kenya should enjoy any right or privilege in Kenya by virtue of subsection (1) of this section, a certificate signed by the Minister shall be prima facie evidence on the question whether a citizen of Kenya enjoys that right or privilege under the constitution of that other country or under any other law in force in that other country.

(3) Without prejudice to the provisions of subsection (1) of this section, a person to whom section 2 (4) or section 2 (5) of this Constitution refers and the wife of any such person shall, until he becomes a citizen of Kenya or until 12th December 1965 (whichever is the earlier), be regarded as a citizen of Kenya for the purposes of all the provisions of this Constitution other than this Chapter, [sections 40 (1) (a) and 95 (a) and paragraphs (a) of Part I of Schedule 5, 1 (a) of Part II of Schedule 5 and 1 (a) of Part III of Schedule 5].

11. (1) Parliament may make provision for the acquisition of citizenship of Kenya (whether by registration or by naturalization) by persons who are not eligible or who are no longer eligible to become citizens of Kenya under the provisions of this Chapter.

(2) Parliament may make provision for the renunciation by any person of his citizenship of Kenya.

12. (1) Any person who, upon the attainment of the age of twenty-one years, was a citizen of Kenya and also a citizen of some country other than Kenya shall, subject to the provisions of subsection (7) of this section, cease to be a citizen of Kenya upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who was not born in Kenya, made and registered such declaration of his intentions concerning residence as may be prescribed by or under an Act of Parliament. ;-

(2) Any person who:

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(a) has attained the age of twenty-one years before 12th. December 1968; and -

(b) becomes a citizen of Kenya on that day by virtue of the provisions of section 1 of this Constitution; and

(c) is immediately after that day also a citizen of some country other than Kenya

shall, subject to the provisions of subsection (7) of this section, cease to be a citizen of Kenya upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who is a citizen of Kenya by virtue of the provisions of section 1 (2) of this Constitution, made and registered such declaration of his intentions concerning residence as may be prescribed by or under an Act of Parliament.

(3) A citizen of Kenya shall, subject to the provisions of subsection (7) of this section, cease to be such a citizen if:

(a) having attained the age of twenty-one years, he acquires the citizenship of some country other than Kenya by voluntary act (other than marriage);or

(b) having attained the age of twenty-one years, he otherwise acquires the citizenship of some country other than Kenya and has not, by the specified date, renounced his citizenship of that other country, taken the oath of allegiance and made and registered such declaration of his intentions concerning residence as may be prescribed by or under an Act of Parliament.

(4). A person who has attained the age of twenty-one years (or is a woman who is or has been married) and who :

(a) becomes a citizen of Kenya by registration under the provisions of section 2, section 5 section 6 or section 11 of this Constitution or by naturalization under the provisions of section 7 or section 11 of this Constitution; and

(b) is immediately after he day upon which he become citizen of Kenya also a citizen of some other country

shall, subject to the provisions of subsection (7) of this section, cease to be a citizen of Kenya upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and

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made and registered such declaration of his intentions concerning residence as may be prescribed by or under an Act of Parliament.

(5) For the purposes of this section, where, under the law of a country other than Kenya, a person cannot renounce his citizenship of that other country, he need not make such renunciation but he may instead be required to make such declaration concerning that citizenship as may be prescribed by or under an Act of Parliament.

(6) In this section "the specified date" means:

(a) in relation to a person to whom subsection (1) of this section refers, the date on which he attains the age of twenty-three years;

(b) in relation to a person whom subsection (2) of this section refers, 12th December, 1965;

(c) in relation to a person to whom subsection (8) (b) of this section refers, the expiration of a period of two years commencing with the date on which he acquired the citizenship of the country other than Kenya; and

(d) in relation to a person to whom the subsection (4) of this section refers, the expiration of a period of three months after the date upon which he became a citizen of Kenya, or, in the case of a person of unsound mind, such later date as may be prescribed by or under an Act of Parliament.

(7) Provision may be made by or under an Act of Parliament for extending beyond the specified date the period in which any person may make a renunciation of citizenship, take an oath or make or register a declaration for the purposes of this section and, if such provision is made, that person shall not cease to be a citizen of Kenya upon the specified date but shall cease to be such a citizen upon the expiration of the extended period if he has not then made the renunciation, taken the oath or made or registered the declaration, as the case may be.

13. (1) In this Chapter: "British protected person" means a person who is a British protected person for the purposes of the British Nationality Act 1948; and "the Minister" means the Minister who is for the time being responsible for matters relating to citizenship of Kenya.

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the

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place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that persons birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the fathers death; and where that death occurred before 12th December 1968 and the birth occurred after 11th December 1963 the national status that the father would have had if he had died on 12th December 1963 shall be deemed to be his national status at the time of his death.

CHAPTER II- 1963 Constitution

PROTECTION OF FUNDAMENTAL RIGHTS AND

Freedoms Of The Individual

14. Whereas every person in Kenya is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin or residence or other local connexion, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association; and
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

15. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Kenya of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case:

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

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- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
 - (d) in order to prevent the commission by that person of criminal offence, or if he dies as the result of a lawful act of war.
- 16.** (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say:
- (a) in execution of the sentence or order of a court, whether established for Kenya or some other country, in respect of a criminal offence of which he has been convicted;
 - (b) in execution of the order of the Supreme Court or the Court of Appeal for Kenya or any court on which jurisdiction is conferred under section 176 of this Constitution punishing him for contempt of any such court or of another court or tribunal;
 - (c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;
 - (d) for the purpose of bringing him before a court in execution of the order of a court;
 - (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Kenya;
 - (f) in the case of a person who has not attained the age of-eighteen years, for the purpose of his education or welfare;
 - (g) for the purpose of preventing the spread of an infectious or contagious disease;
 - (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the: protection of the community;
 - (i) for the purpose of preventing the unlawful entry-of that person into Kenya, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Kenya or for the purpose of restricting that person while he is being conveyed through Kenya in the course of his extradition or removal as a convicted prisoner from one country to another; or
 - (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Kenya or prohibiting him from being within such an area, or to such extent as may

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be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Kenya in which, in consequence of any such order, his presence would otherwise be unlawful.

- (2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.
 - (3) Any person who is arrested or detained:
 - (a) for the purpose of bringing him before a court in execution of the order of a court; or
 - (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence, and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty-four hours of his arrest or from the commencement of his detention, the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.
 - (c) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion Of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.
 - (5) If any person arrested or detained as mentioned in subsection (3) (b) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.
 - (6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.
- 17.** (1) No person shall be held in slavery or servitude.
- (2) No person shall be required to perform forced labour.
 - (3) For the purposes of this section, the expression "forced labour" does not include:

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- (a) any labour required in consequence of the sentence or order of a court;

any labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
 - (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
 - d) (any labour required during any period when Kenya is at war or a declaration of emergency under section 29 of this Constitution is in force or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that, the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or
 - (e) any labour reasonably required as part of reasonable and normal communal or other civic obligations.
- 18.** (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in Kenya on 11th December 1968.
- 19.** (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say:
- (a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and
 - (b) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

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- (c) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.
- (2) Every person having an interest or right in or over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the Supreme Court for:
- (a) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled; and
 - (b) the purpose of obtaining prompt payment of that compensation:
Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the right or interest in the property) from a tribunal or authority, other than the Supreme Court, having jurisdiction under any law to determine that matter.
- (3) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court or any other tribunal or authority in relation to the jurisdiction conferred on the Supreme Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the Supreme Court or applications to the other tribunal or authority may be brought).
- (4) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any payment of that compensation, the whole of that payment (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Kenya.
- (5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (4) of this section to the extent that the law in question authorizes:
- (a) the attachment, by order of a court, of any payment or part of any payment of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or
 - (b) the imposition of reasonable restrictions on the manner in which any payment of compensation is to be remitted.

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- (6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or subsection (2) of this section:
- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property:
- (i) in satisfaction of any tax, duty, rate, cess or other impost;
 - (ii) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of Kenya;
 - (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
 - (iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;
 - (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;
 - (vi) in consequence of any law with respect to the limitation of actions; or
 - (vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out), and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or
- (c) to the extent that the law in question makes provision for the taking of possession or acquisition of:
- (i) enemy property;
 - (ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein
 - (iii) property of a person adjudged bankrupt or a body corporate in

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liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

- (7) Nothing contained in or done under the authority of any Act of Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the Act in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over property where that property, interest or right is vested in a body corporate, established by law for public purposes in which no moneys have been invested other than moneys provided by Parliament; and nothing contained in or done under the authority of any law made by a Regional Assembly shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over any property where the property, interest or right is vested in a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided by that Regional Assembly.

20. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:
- (a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilization of mineral resources, or the development or utilization of any other property in such a manner as to promote the public benefit;
 - (b) that is reasonably required for the purpose of promoting the rights or freedoms of other persons;
 - (c) that authorizes an officer or agent of the Government of Kenya, or of a Region, or of the East African Common Services Organization, or of a local government authority, or of a body corporate established by law for public purposes, to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully

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on those premises and that belongs to that Government, Region, Organization, authority or body corporate, as the case may be; or

- (d) that authorizes, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the entry upon any premises by order of a court, and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society. 21. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. (

(2) Every person who is charged with a criminal offence:

- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
- (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself before the court in person or by a legal representative of his own choice;
- (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution, and
- (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge, and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

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- (4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.
- (5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.
- (6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.
- (7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.
- (8) No person shall be convicted of a criminal offence unless that offence is defined, and the penalty therefor is prescribed, in a written law:
Provided that nothing in this subsection shall prevent a court from punishing any person for contempt notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed. (9) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.
- (10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public. (11) Nothing in subsection (10) of this section shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority:
 - (a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

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- (b) may by law be empowered or required to do in the interests of defence, public safety or public order.
- (12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of:
 - (a) subsection (2) (a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
subsection (2) (d) of this section to the extent that the law in question prohibits legal representation before an African court in proceedings for an offence against African customary law, being proceedings against any person who, under that law, is subject to that law;
subsection (2) (e) of this section to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or
subsection (5) of this section to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.
- (13) In the case of any person who is held in lawful detention, the provisions of subsection (1), paragraphs (d) and (e) of subsection (2) and subsection (8) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.
- (14) Nothing contained in subsection (2) (d) of this section shall be construed as entitling a person to legal representation at public expense. (
- (15) In this section "criminal offence" means a criminal offence under the law of Kenya.
- (16) subsection () of this section shall come into effect on 1st June 1966.
- 22.** (1) Except with his own consent, no person shall be hindered in the enjoyment of this freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice or

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observance.

- (2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides.
 - (3) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.
 - (4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.
 - (5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required:
 - (a) in the interests of defence, public safety, public order, public morality or public health; or
 - (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion, and except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.
 - (6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.
- 23.** (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

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- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

 - (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or
 - (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or
 - (c) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.
- 24.** (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

 - (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or
 - (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or
 - (c) that imposes restrictions upon public officers, and except so far as that provision, or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.
- 25.** (1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Kenya, the right to reside in any part of Kenya, the-right to enter Kenya, the right to leave Kenya and immunity from expulsion from Kenya.
- (2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

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- (3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:
- (a) for the imposition of restrictions on the movement or residence within Kenya of any person or on any persons right to leave Kenya that are reasonably required in the interests of defence, public safety or public order;
 - (b) for the imposition of restrictions on the movement or residence within Kenya or on the right to leave Kenya of persons generally or any class of persons that are reasonably required in the interests of defence, public safety, public order, public morality, public health or the protection or control of nomadic peoples and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;
 - (c) for the imposition of restrictions, by order of a court, on the movement or residence within Kenya of any person or on any persons right to leave Kenya either in consequence of his having been found guilty of a criminal offence under the law of Kenya or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Kenya;
 - (d) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Kenya and who was not, on 11th December 1968, ordinarily and lawfully resident in Kenya;
 - (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in Kenya;
 - (f) for the imposition of restrictions upon the movement or residence within Kenya or on the right to leave Kenya of public officers;
 - (g) for the removal of a person from Kenya to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Kenya of which he has been convicted; or
 - (h) for the imposition of restrictions on the right of any person to leave Kenya that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that provision or, as the case may be, the thing done under the authority

thereof, is shown not to be reasonably justifiable in a democratic society.

- (4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (8) (a) of this section so requests at any time during the period of that restriction not earlier than three months after the order was made or three months after he last made such request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons qualified to be appointed as a judge of the Supreme Court.
 - (5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.
 - (6) Until it is otherwise provided by a law made by the Regional Assembly of a Region nothing in this section shall affect the operation in that Region of the Outlying Districts Ordinance or the Special Districts (Administration) Ordinance or any law amending or replacing either of those Ordinances:
Provided that no law amending or replacing either of those Ordinances shall impose, or authorize the imposition of, restrictions on the rights guaranteed by this section greater than the restrictions on those rights in force under that Ordinance on 81st May 1968, and no such restriction shall be imposed under either of those Ordinances, or by or under any such law as aforesaid, in or in respect of any area other than an area in or in respect of which a restriction was in force under that Ordinance on 81st May 1968.
- 26.** (1) Subject to the provisions of subsection (4), (5) and (8) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.
- (2) Subject to the provisions of subsections (6), (8) and (9) of this section, no persons shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.
 - (3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin or residence or other local connection, political opinions, colour or creed whereby persons of

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one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

- (4) Subsection (1) of this section shall not apply to any law so far as that law makes provision:
 - (a) with respect to persons who are not citizens of Kenya;
 - (b) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; or
 - (c) for the application in the case of members of a particular race or tribe of customary law with respect to any matter to the exclusion of any law with the respect to that matter which is applicable in the case of other persons; or
 - (d) whereby persons of any such description as is mentioned in sub section (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.
- (5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, tribe, place of origin or residence or other local connexion, political opinion, colour or creed) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, any office in the service of a local government authority or any office in a body corporate established by any law for public purposes.
- (6) Subsection (2) of this section shall not apply to:
 - (a) anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (4) of this section;
 - (b) the discharge by the Public Service Commission of the duty imposed on it by subsections (9) and (10) of section 188 of this Constitution; or
 - (c) the giving or withholding of consent to a transaction in agricultural land (other than land situated in the areas to which section 198 of this

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Constitution applies) by a Divisional Land Control Board or a county council (or some other local government authority specified in Schedule 10 of this Constitution) or any committee thereof under Part 8 of Chapter XII of this Constitution.

- (7) Subject to the provisions of subsection (8) of this section, no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating houses, beer halls or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.
 - (8) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 20, 22, 28, 24 and 25 of this Constitution, being such a restriction as is authorized by section 20 (2), section 22 (5), section 28 (2), section 24 (2), or paragraph (a) or paragraph (b) of section 25 (8), as the case may be.
 - (9) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.
- 27.** (1) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 16 or section 26 of this Constitution to the extent that the Act authorizes the taking during any period when Kenya is at war or when a declaration of emergency under section 29 of this Constitution is in force of measures that are reasonably justifiable for dealing with the situation that exists in Kenya during that period.
- (2) Where a person is detained by virtue of such a law as is referred to in subsection (1) of this section the following provisions shall apply, that is to say:
 - (a) he shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;
 - (b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Kenya Gazette stating that he has

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been detained and giving particulars of the provision of law under which his detention is authorized;

- (c) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons qualified to be appointed as a judge of the Supreme Court;
- (d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and
- (e) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal representative of his own choice.

- (3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(4) Nothing contained in subsection (2) (d) or subsection 2 (e) of this section shall be construed as entitling a person to legal representation at public expense.

- 28.** (1) Subject to the provisions of subsection (6) of this section if any person alleges that any of the provisions of sections 14 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

- (2) The Supreme Court shall have original jurisdiction:

- (a) to hear and determine any application made by any person in pursuance of subsection (1) of this section;
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section and may make such orders, issue such writs and give such directions as it may consider

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appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 14 to 27 (inclusive) of this Constitution.

- (3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 14 to 27 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.
- (4) Where any question is referred to the Supreme Court in pursuance of subsection (3) of this section, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under section 180 of this Constitution to the Court of Appeal for Kenya or (whether mediately or direct) to the Judicial Committee, in accordance with the decision of the Court of Appeal for Kenya or, as the case may be of the Judicial Committee.
- (5) Parliament may confer upon the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.
- (6) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the Supreme Court). 29. (1) The Governor-General may, by proclamation published in the Kenya Gazette, declare that a state of emergency exists for the purposes of this Chapter.
- (2) Subject to the provisions of subsections (3) and (4) of this section, no declaration of emergency shall be made under this section except with the prior authority of a resolution of either House of the National Assembly supported by the votes of 65 per cent of all the members of that House, and every declaration of emergency shall lapse at the expiration of seven days, commencing with the day on which it was made, unless it has in the meantime been approved by a resolution of the other House supported by the votes of 65 per cent of all the members of that House.
- (3) A declaration of emergency under this section may be made without the prior authority of a resolution of a House of the National Assembly at a time when Parliament stands prorogued or when both Houses of the National Assembly stand adjourned, but every declaration of emergency so made shall lapse at the expiration of seven days, commencing with the

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day on which it was made, unless it has in the meantime been approved by a resolution of each House of the National Assembly supported by the votes of 65 per cent of all the members of that House.

- (4) A declaration of emergency under this section may be made without the prior authority of a resolution of a House of the National Assembly at any time when Parliament stands dissolved but an declaration of emergency so made shall lapse at the expiration of seven days, commencing with the day on which it was made, unless it has in the meantime been approved by a resolution of the Senate supported by the votes of 65 per cent of all the Senators.
- (5) A declaration of emergency under this section made with the prior authority of a resolution of a House of the National Assembly in accordance with subsection (2) of this section and subsequently approved by a resolution of the other House in accordance with that subsection and a declaration of emergency approved by a resolution of each House in accordance with subsection (3) of this section may at any time be revoked by the Governor-General by notice published in the Kenya Gazette but shall otherwise remain in force so long as those resolutions remain in force and no longer.
- (6) Subject to the provisions of subsection (8) of this section, a resolution of a House of the National Assembly passed for the purposes of this section shall remain in force for two months or such shorter period as may be specified therein: Provided that any such resolution may be extended from time to time for a further period by a resolution supported by the votes of 65 per cent of all the members of the House concerned, each extension not exceeding two months from the date of the resolution effecting the extension; and any such resolution may be revoked at any time by a resolution supported by the votes of a majority of all the members of the House.
- (7) A declaration of emergency under this section approved by a resolution of the Senate in accordance with subsection (4) of this section may at any time be revoked by the Governor-General by notice published in the Kenya Gazette but shall otherwise remain in force as long as that resolution remains in force and for so long thereafter as there are in force resolutions of each House of the National Assembly passed with the support of the votes of 65 per cent of all the members of that House while that resolution of the Senate is still in force and approving that resolution of the Senate.

(8) A resolution of the Senate passed in accordance with subsection (4) of this section shall remain in force for two months or such shorter period as may be specified therein:

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Provided that:

- (a) so long as Parliament stands dissolved any such resolution may be extended from time to time for a further period by a resolution of the Senate supported by the votes of 65 per cent of all the Senators, each extension not exceeding two months from the date of the resolution effecting the extension; and
 - (b) any such resolution may at any time be revoked by a resolution supported by the votes of a majority of all the Senators.
- (9) The Governor-General may summon the Senate to meet for the purposes of this section notwithstanding that Parliament then stands dissolved but, subject to the provisions of section 48 (5) of this Constitution (which relates to the election of a Speaker of the Senate), the Senate shall not, when so summoned, transact any business other than debating and voting upon resolutions for the purposes of this section.

30. (1) In this Chapter, unless the context otherwise requires:

"contravention," in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any court having jurisdiction in Kenya other than a court established by a disciplinary law, and includes the Judicial Committee and, in sections 15 and 17 of this Constitution, a court established by a disciplinary law

"disciplinary law" means a law regulating the discipline of any disciplined force;

"disciplined force" means:

(a) a naval, military or air force;

(b) the Police Force; or

(c) a prison service;

"legal representative" means a person entitled to practise as an advocate in Kenya; and

"member," in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

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- (2) In relation to any person who is a member of a disciplined force raised under any law in force in Kenya, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 15, 17 and 18 of this Constitution.
- (3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Kenya, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

CHAPTER III- 1963 Constitution

The Governor- General

- 31.** There shall be a Governor-General and Commander-in-Chief, who shall be appointed by Her Majesty and shall hold office during Her Majesty's pleasure and who shall be Her Majesty's representative in Kenya.
- 32.** Whenever the office of Governor-General is vacant or the holder of the office is absent from Kenya or is for any reason unable to perform the functions conferred upon him by this Constitution, those functions shall be performed by such person as Her Majesty may appoint or, if there is no person in Kenya so appointed and able to perform those functions, by the Chief Justice.
- 33.** A person appointed to or assuming the functions of the office of Governor-General shall, before entering upon that office, take and subscribe the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

CHAPTER IV- 1963 Constitution -

PARLIAMENT

Part I. Composition of Parliament

- 34.** (1) There shall be a Parliament which shall consist of Her Majesty and a National Assembly.
- (2) The National Assembly shall comprise two Houses, that is to say, a Senate and a House of Representatives.
- 35.** The Senate shall consist of 41 Senators, elected in accordance with the provisions of section 36 of this Constitution.
- 36.** (1) Kenya shall be divided into 40 Districts and the Nairobi Area; and each District and the Nairobi Area shall elect one Senator in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law.
- (2) The boundaries of the Nairobi Area shall be those that are specified in Part III of Schedule 11 of this Constitution, and, subject to the provisions of section 240 of this Constitution, the Districts shall be those that are specified in Part I of that Schedule and that have the respective boundaries that are there specified.
- (3) The qualifications and disqualifications for registration as a voter in elections to the Senate shall be as set out in Part I of Schedule 5 of this Constitution.
- (4) Every person who is registered in any District or in the Nairobi Area as a voter in elections to the Senate shall, unless he is disqualified by Parliament from voting in such elections on the grounds of his having been convicted of an offence connected with elections or on the grounds of his having been reported guilty of such an offence by the court trying an election petition, be entitled so to vote in that District or, as the case may be, in the Nairobi Area in accordance with the provisions of any law in that behalf; and no other person may so vote.
- (5) The registration of voters in elections to the Senate and the conduct of such elections shall be subject to the direction and supervision of the Electoral Commission. 37. The House of Representatives shall consist of Elected Members elected in accordance with the provisions of section 38 of this Constitution and specially Elected Members elected in accordance

with the provisions of section 39 of this Constitution.

- 38.** (1) Kenya shall, in accordance with the provisions of section 49 of this Constitution, be divided into constituencies and each constituency shall elect one Elected Member of the House of Representatives in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law.
- (2) The qualifications and disqualifications for registration as a voter in elections of Elected Members to the House of Representatives shall be as set out in Part II of Schedule 5 of this Constitution.
- (3) Every person who is registered in any constituency as a voter in elections of Elected Members to the House of Representatives shall, unless he is disqualified by Parliament from voting in such elections on the grounds of his having been convicted of an offence connected with elections or on the grounds of his having been reported guilty of such an offence by the court trying an election petition, be entitled so to vote in that constituency in accordance with the provisions of any law in that behalf; and no other person may so vote.
- (4) The registration of voters in elections of Elected Members to the House of Representatives and the conduct of such elections shall be subject to the direction and supervision of the Electoral Commission.
- 39.** (1) The number of Specially Elected Members of the House of Representatives shall be the number which results from dividing the number of seats of Elected Members of that House by ten or, if that result is not a whole number, the whole number next greater than that result.
- (2) The Specially Elected Members of the House of Representatives shall be elected by the Elected Members of that House in accordance with the provisions of Schedule 6 of this Constitution.
- 40.** (1) Subject to the provisions of subsection (2) of this section and section 41 of this Constitution, a person shall be qualified to be elected as a member of either House of the National Assembly if, and shall not be so qualified unless, at the date of his nomination for election, he:
- (a) is a citizen of Kenya who has attained the age of twenty-one years; and
- (b) is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language well enough to take an active part in the proceedings of the National Assembly.
- (2) A person shall not be qualified to be elected in any District or in the

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Nairobi Area as a Senator unless, at the date of his nomination for election, he is registered in that District or, as the case may be, in the Nairobi Area as a voter in elections to the Senate; and a person shall not be qualified to be elected as a member of the House of Representatives unless, at the said date, he is registered in some constituency as a voter in elections of Elected Members to the House of Representatives.

- 41.** (1) No person shall be qualified to be elected as a member of either House of the National Assembly who, at the date of his nomination for election:
- (a) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to any foreign power or state; or
 - (b) is under sentence of death imposed on him by any court in Kenya; or
 - (c) is, under any law in force in Kenya, adjudged or otherwise declared to be of unsound mind; or
 - (d) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Kenya; or
 - (e) subject to such exceptions and limitations as may be prescribed by Parliament, has any such interest in any such government contract as may be so prescribed; or
 - (f) is a public officer; or
 - (g) holds or is acting in any office on the staff of a local government authority.
- (2) Parliament may provide that a person who, at the date of his nomination for election, holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connexion with, the conduct of any election to the Senate or the compilation of any register of voters for the purposes of such an election shall not be qualified to be elected as a Senator and may provide that a person who holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connexion with, the conduct of any election to the House of Representatives or the compilation of any register of voters for the purposes of such an election shall not be qualified to be elected as a member of the House of Representatives.
- (3) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with the election of members of either House of the National Assembly or of a Regional Assembly or of a local government authority or who is reported

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guilty of such an offence by the court trying an election petition shall not be qualified to be nominated for election as a member of either House of the National Assembly for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed.

- (4) Parliament may provide that any office shall be deemed not to be a public office for the purposes of subsection (1) (f) of this section or that any office shall, for the purposes of subsection (1) (g) of this section, be deemed not to be such an office as is referred to in the said subsection (1) (g).
 - (5) No person shall be qualified to be elected as a Senator who, at the date of his nomination for election as a Senator, is, or is nominated for election as, a member of the House of Representatives; and no person shall be qualified to be elected as a member of the House of Representatives who, at the date of his nomination for election as such a member, is, or is nominated for election as, a Senator.
 - (6) No person shall be qualified to be elected as an Elected Member of the House of Representatives who, at the date of his nomination for election as such a member, is a Specially Elected Member of that House; and no person shall be qualified to be elected as a Specially Elected Member of the House of Representatives who, at the date of his nomination for election as such a Member, is an Elected Member of that House or who has at any time since Parliament was last dissolved, stood as a candidate for election as an Elected Member of that House but was not elected.
 - (7) In subsection (1) (e) of this section "government contract" means any contract made with the Government of Kenya or with a department of that Government or with an officer of that Government contracting as such.
- 42.** (1) A member of either House of the National Assembly shall vacate his seat therein:
- (a) if he ceases to be a citizen of Kenya; or
 - (b) if any circumstances arise that, if he were not a member of that House, would cause him to be disqualified to be elected as such under section 41 (1) of this Constitution or under any law made in pursuance of section 41 (2) or section 41 (3) of this Constitution.
- (2) Parliament may, in order to permit any member of either House of the National Assembly who has been sentenced to death, adjudged or declared to be of unsound mind, adjudged or declared bankrupt or convicted or reported guilty of any offence prescribed under section 41 (83) of this Constitution to appeal against the decision in accordance with any law,

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provided that, subject to such conditions as may be prescribed by Parliament, the decision shall not have effect for the purposes of this section until such time as may be so prescribed.

- (3) A Senator shall vacate his seat at the expiration of six years beginning with the date of the return of the first writ to be returned at the general election of Senators at which he was elected, and his term of office shall not be affected by the dissolution of Parliament:
Provided that:
 - (a) a Senator who was elected to replace a Senator who has died or ceased to be a Senator before the expiration of his term of office shall vacate his seat at the expiration of the remainder of that term; and
 - (b) a Senator who was elected to fill a vacancy that was left unfilled at a general election shall vacate his seat on the date on which he would have vacated it if he had been elected at that general election.
- 43.** (1) There shall be a Speaker of the Senate who shall be elected by the Senate from among the persons who are Senators or are qualified to be elected as such.
- (2) A person shall not be elected as Speaker unless he is supported by the votes of two thirds of all the Senators, and if no candidate is supported by the votes of two thirds of all the Senators, a further ballot shall be held:
Provided that, if in the second ballot no candidate is supported by the votes of two thirds of all the Senators, the candidate who in that ballot receives the highest number of votes and the candidate who in that ballot receives the next highest number of votes shall alone stand for election in the third ballot and the candidate who receives the higher number of votes in the third ballot shall be elected.
 - (3) A Minister or a Parliamentary Secretary shall not be qualified to be elected as Speaker.
 - (4) The Speaker shall vacate his office:
 - (a) if, having been elected from among the Senators, he ceases to be a Senator; or
 - (b) in the case of a Speaker who has been elected from among persons who were not Senators, at the expiration of six years from the date of his election as Speaker; or
 - (c) if any circumstances arise that, if he were not Speaker, would disqualify him to be elected as such; or

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- (d) if he is removed from office by resolution of the Senate supported by the votes of three quarters of all the Senators.
- (5) No business shall be transacted in the Senate (other than the election of a Speaker) at any time when the office of Speaker is vacant, but this subsection shall not affect the transaction of business by any committee of the Senate.
- 44.** (1) There shall be a Deputy Speaker of the Senate who shall be elected by the Senate from among persons who are Senators other than Ministers and Parliamentary Secretaries.
- (2) A person shall not be elected as Deputy Speaker unless he is supported by the votes of two thirds of all the Senators, and if no candidate is supported by the votes of two thirds of all the Senators, a further ballot shall be held: Provided that, if in the second ballot no candidate is supported by the votes of two thirds of all the Senators, the candidate who in that ballot receives the highest number of votes and the candidate who in that ballot receives the next highest number of votes shall alone stand for election in the third ballot and the candidate who receives the higher number of votes in the third ballot shall be elected.
- (3) The Senate shall elect a Deputy Speaker when it first meets after the office of Deputy Speaker becomes vacant, or as soon thereafter as may be convenient.
- (4) The Deputy Speaker shall vacate his office:
 - (a) if he ceases to be a Senator; or
 - (b) if he becomes a Minister or a Parliamentary; or
 - (c) if he is removed from office by resolution of the Senate supported by the votes of three quarters of all the Senators.
- 45.** (1) There shall be a Speaker of the House of Representatives who shall be elected by that House from among persons who are Elected Members thereof or who are qualified to be elected as such.
- (2) A person shall not be elected as Speaker unless he is supported by the votes of two thirds of all the Members of the House of Representatives, and if no candidate is supported by the votes of two thirds of all the members of the House, a further ballot shall be held: Provided that, if in the second ballot no candidate is supported by the votes of two thirds of all the members of the House, the candidate who in that ballot receives the highest number of votes and the candidate who in that ballot receives the

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next highest number of votes shall alone stand for election in the third ballot and the candidate who receives the higher number of votes in the third ballot shall be elected.

- (3) A Minister or a Parliamentary Secretary shall not be qualified to be elected as Speaker.
 - (4) The Speaker shall vacate his office:
 - (a) if, having been elected from among the members of the House of Representatives, he ceases to be a member of that House otherwise than by reason of a dissolution of Parliament; or
 - (b) if any circumstances arise that, if he were not Speaker, would disqualify him to be elected as such; or
 - (c) when the House of Representatives first meets after a dissolution of Parliament; or
 - (d) if he is removed from office by resolution of the House of Representatives supported by the votes of three quarters of all the members thereof.
 - (5) No business shall be transacted in the House of Representatives (other than the election of a Speaker or the holding of a general election of the Specially Elected Members) at any time when the office of Speaker is vacant, but this subsection shall not affect the transaction of business by any committee of the House of Representatives.
- 46.** (1) There shall be a Deputy Speaker of the House of Representatives who shall be elected by that House from among persons who are Elected Members thereof other than Ministers or Parliamentary Secretaries.
- (2) A person shall not be elected as Deputy Speaker unless he is supported by the votes of two thirds of all the members of the House of Representatives, and if no candidate is supported by the votes of two thirds of all the members of the House, a further ballot shall be held:
Provided that, if in the second ballot no candidate is supported by the votes of two thirds of all the members of the House, the candidate who in that ballot receives the highest number of votes and the candidate who in that ballot receives the next highest number of votes shall alone stand for election in the third ballot and the candidate who receives the higher number of votes in the third ballot shall be elected.
 - (3) The House of Representatives shall elect a Deputy Speaker:

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- (a) subject to the provisions of section 45 (5) of this Constitution, when it first meets after a dissolution of Parliament; and
 - (b) when it first meets after the office of Deputy Speaker has become vacant otherwise than by reason of the dissolution of Parliament, or as soon thereafter as may be convenient.
- (4) The Deputy Speaker shall vacate his office:
- (a) when the House of Representatives first meets after a dissolution of Parliament; or
 - (b) if he ceases to be a member of the House of Representatives otherwise than by reason of the dissolution of Parliament; or
 - (c) if he becomes a Minister or a Parliamentary Secretary; or
 - (d) if he is removed from office by resolution of the House of Representatives supported by the votes of three quarters of all the members thereof.
- 47.** (1) There shall be a Clerk to the Senate and a Clerk to the House of Representatives.
- (2) The offices of the Clerks to the two Houses and of the members of their staffs shall be offices in the public service.
- 48.** (1) There shall be an Electoral Commission which shall consist of:
- (a) the Speaker of the Senate, as Chairman;
 - (b) the Speaker of the House of Representatives, as Vice-Chairman;
 - (c) a member appointed by the Governor-General, acting in accordance with the advice of the Prime Minister;
 - (d) a member representing each Region who shall be appointed by the Governor-General, acting in accordance with the advice of the President of the Regional Assembly of that Region.
- (2) A person shall not be qualified to be appointed as a member of the Commission if he is a Minister, a Parliamentary Secretary, a member of either House of the National Assembly, a member of a Regional Assembly or a member of a committee of a Regional Assembly or if he is a public officer.
- (3) Subject to the provisions of this section, the office of an appointed

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member of the Commission shall become vacant:

- (a) at the expiration of five years from the date of his appointment; or
 - (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such.
- (4) An appointed member of the Commission may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and may not be so removed except in accordance with the provisions of this section.
- (5) An appointed member of the Commission shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (6) of this section and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.
- (6) If the Chairman or Vice-Chairman of the Commission represents to the Governor-General that the question of removing an appointed member of the Commission under this section ought to be investigated, then:
- (a) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
 - (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the appointed member ought to be removed under this section.
- (7) If the question of removing an appointed member of the Commission has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Chairman of the Commission, may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that that member should not be removed.
- (8) In the exercise of its functions under this Constitution the Commission shall not be subject to the direction or control of any other person or authority.

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- (9) The Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister in the case of a public officer serving on the establishment of the Government of Kenya or in the case of any authority of that Government and with the consent of the President of the Regional Assembly in the case of a public officer serving on the establishment of a Region or in the case of any authority of a Region, may confer powers or impose duties on such an officer or authority for the purpose of the discharge of its functions.
- (10) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be-present at or to participate in those proceedings: Provided that any decision of the Commission shall require the concurrence of a majority of all the members thereof.
- 49.** (1) For the purpose of elections of Elected Members of the House of Representatives, Kenya shall, in accordance with the provisions of this section, be divided into such number of constituencies (not being more than 130 or less than 110) having such boundaries as may be prescribed by order made by the Electoral Commission.
- (2) Subject to the provisions of section 241 of this Constitution no constituency shall form part of more than one Region or of both the Nairobi Area and a Region. (3) All constituencies shall contain as nearly equal numbers of inhabitants as appears to the Commission to be reasonably practicable, but the Commission may depart from this principle to such extent as it considers expedient in order to take account of:
- (a) the density of population, and in particular the need to ensure adequate representation of urban and sparsely populated rural areas;
 - (b) the means of communication;
 - (c) geographical features;
 - (d) community of interest; and
 - (e) the boundaries of existing administrative areas.
- (4) The Commission shall, at intervals of not less than eight nor more than ten years, review the number and the boundaries of the constituencies into which Kenya is divided and may, by order, alter the number or the boundaries in accordance with the provisions of this section to such extent

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as it considers desirable in the light of the review:

Provided that whenever a census of the population has been held in pursuance of any law the Commission may carry out such a review and make such an alternation to the extent which it considers desirable in consequence of that census.

- (5) Every order made by the Commission under this section shall be published in the Kenya Gazette and shall come into effect upon the next dissolution of Parliament after it was made.
 - (6) For the purposes of this section the number of inhabitants of any part of Kenya shall be ascertained by reference to the latest census of the population held in pursuance of any law.
- 50.** (1) The Supreme Court shall have jurisdiction to hear and determine any question whether:
- (a) any person has been validly elected as a member of either House of the National Assembly; or
 - (b) the seat in either House of the National Assembly of a member thereof has become vacant.
- (2) An application to the Supreme Court for the determination of any question under subsection (1) (a) of this section may be made by any person who was entitled to vote in the election to which the application relates or by the Attorney-General.
- (3) An application to the Supreme Court for the determination of any question under subsection (1) (b) of this section may be made:
- (a) in the case of a question relating to the seat of a Senator, by any Senator or by any person who is registered as a voter in election to the Senate; or
 - (b) in the case of a question relating to the seat of a member of the House of Representatives, by any Elected Member of that House or by any person who is registered as a voter in elections of Elected Members of that House; or
 - (c) in either case, by the Attorney-General.
- 4) Parliament may make provision with respect to:
- (a) the circumstances and manner in which and the conditions upon which any application may be made to the Supreme Court for the determination of any question under this section; and

- (b) the powers, practice and procedure of the Supreme Court in relation to any such application.
- (5) The determination by the Supreme Court of any question under this section shall not be subject to appeal.

Part II. Procedure in National Assembly

- 51.** (1) Every member of either House of the National Assembly shall, before taking his seat in that House, take and subscribe the oath of allegiance before the House, but a member may before taking and subscribing that oath take part in the election of the Speaker of the House.
- (2) Any person elected as Speaker of the Senate who is not, a Senator and any person elected as Speaker of the House of Representatives who is not a member of that House shall, before entering upon the duties of his office, take and subscribe the oath of allegiance before the Senate or the House of Representatives, as the case may be. 52. There shall preside at any sitting of the Senate:
 - (a) the Speaker of the Senate; or
 - (b) in the absence of the Speaker, the Deputy Speaker; or
 - (c) in the absence of the Speaker and the Deputy Speaker, such Senator as the Senate may elect for that purpose.
- 53.** There shall preside at any sitting of the House of Representatives:
 - (a) the Speaker of the House of Representatives; or
 - (b) in the absence of the Speaker, the Deputy Speaker; or
 - (c) in the absence of the Speaker and the Deputy Speaker, such member of the House as the House may elect for that purpose.
- 54.** (1) If objection is taken by any Senator who is present that there are present in the Senate (besides the person presiding) fewer than ten Senators and, after such interval as may be prescribed in the rules of procedure of the Senate, the person presiding ascertains that there are still fewer than ten Senators present, he shall thereupon adjourn the Senate.
- (2) If objection is taken by any member of the House of Representatives who is present that there are present in that House (besides the person presiding) fewer than twenty members of that House and, after such interval as may be prescribed in the rules of procedure of the House, the

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person presiding ascertains that there are still fewer than twenty members of the House present, he shall thereupon adjourn the House.

- 55.** The business of the National Assembly shall be conducted in English.
- 56.** (1) Save as otherwise provided in this Constitution, any question proposed for decision in either House of the National Assembly shall be determined by a majority of the votes of the members present and voting.
- (2) The person presiding in either House of the National Assembly shall, if he is a member thereof, have an original vote but he shall have no casting vote, and whenever there is an equality of votes on any question, the motion before the House shall be deemed to have been withdrawn.
- (3) The rules of procedure of either House of the National Assembly may make provision under which a member who votes upon a question in which he has a direct pecuniary interest shall be deemed not to have voted.
- 57.** (1) A Minister who is a member of the House of Representatives shall be entitled to attend all meetings of the Senate and to take part in the proceedings thereof but he shall not be regarded as a member of, or be entitled to vote on any question before, the Senate, and a Minister who is a Senator shall be entitled to attend all meetings of the House of Representatives and to take part in all proceedings thereof but he shall not be regarded as a member of, or be entitled to vote on any question before, the House of Representatives.
- (2) The Attorney General shall, notwithstanding any provision of this Constitution relating to qualifications and disqualifications for membership of the House of Representatives and the tenure of office of members of that House, be an ex officio member of that House but he shall not be entitled to vote on any question before that House.
- (3) The Attorney General shall be entitled to attend all meetings of the Senate and to take part in all proceedings thereof but he shall not be regarded as a member of, or be entitled to vote on any question before, the Senate.
- 58.** Any person who sits or votes in either House of the National Assembly knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to a penalty not exceeding 500 shillings, or such other sum as may be prescribed by Parliament, for each day on which he so sits and votes in that House, which penalty shall be recoverable by action in the Supreme Court at the suit of the Attorney General.
- 59.** (1) The power of Parliament to make laws shall be exercisable by Bills passed by both Houses of the National Assembly (or, in the cases mentioned in

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section 61 of this Constitution, by the House of Representatives) and assented to by Her Majesty or by the Governor-General on behalf of Her Majesty.

- (2) A Bill other than a money Bill may originate in either House of the National Assembly but a money Bill may originate only in the House of Representatives.
 - (3) When a Bill has been passed by that House of the National Assembly in which it originated it shall be sent to the other House; and shall be presented to the Governor-General for his assent:
 - (a) when it has been passed by that other House and agreement has been reached between the two Houses on any amendments made in it; or
 - (b) when it is required to be so presented under section 61 of this Constitution.
 - (4) When a Bill is presented to the Governor-General for assent, he shall signify that he assents or that he withholds assent.
 - (5) When a Bill that has been duly passed is assented to in accordance with the provisions of this Constitution it shall become law and the Governor-General shall thereupon cause it to be published in the Kenya Gazette as a law.
 - (6) No law made by Parliament shall come into operation until it has been published in the Kenya Gazette but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.
 - (7) All laws made by Parliament shall be styled "Acts of Parliament" and the words of enactment shall be "Enacted by the Parliament of Kenya."
- 60.** (1) The Senate shall not:
- (a) proceed upon any Bill, other than a Bill sent from the House of Representatives, that, in the opinion of the person presiding, makes provision for any of the following purposes:
 - i. for the imposition, repeal or alteration of taxation;
 - ii. for the imposition of any charge upon the Consolidated Fund or any other fund of the Government of Kenya;
 - iii. for the payment, issue or withdrawal from the Consolidated Fund or any other fund of the Government of Kenya of any moneys not charged

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thereon or any alteration in the amount of such a payment, issue or withdrawal; or

iv. for the composition or remission of any debt due to the Government of Kenya;

(b) proceed upon any amendment to any Bill that, in the opinion of the person presiding, makes provision for any of those purposes; or

(c) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

(2) Except on the recommendation of the Governor-General signified by a Minister, the House of Representatives shall not:

(a) proceed upon any Bill (including any amendment to a Bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:

i. for the imposition of taxation or the alteration of taxation otherwise than by reduction;

ii. for the imposition of any charge upon the Consolidated Fund or any other funds of the Government of Kenya or the alteration of any such charge otherwise than by reduction;

iii. for the payment, issue or withdrawal from the Consolidated Fund or any other fund of the Government of Kenya of any moneys not charged thereon or any increase in the amount of such a payment, issue or withdrawal; or

iv. for the composition or remission of any debt due to the Government of Kenya; or

(b) proceed upon any motion (including any amendment to motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

61. (1) When a Bill that is passed by the House of Representatives is certified by the Speaker of that House under subsection (2) of this section as a money Bill and, having been sent to the Senate at least one month before the end of the session, is not passed by the Senate without amendment within one month after it is so sent, the Bill shall, unless the House of Representatives otherwise resolves and subject to the provisions of subsections. (8) and (4) of this section, be presented to the Governor-General for assent.

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- (2) When a Bill that in the opinion of the Speaker of the House of Representatives is a money Bill is sent to the Senate from the House of Representatives it shall bear a certificate of the Speaker of the House of Representatives that it is a money Bill.
- (3) If, within twenty-one days after a Bill that has been certified under subsection (2) of this section as a money Bill has been sent to the Senate, the Senate resolves that the question whether or not it is a money Bill should be referred to the Supreme Court, the Speaker of the Senate shall forthwith cause that question to be so referred and the Supreme Court shall, with all due speed, consider and determine that question.
- (4) When the question whether or not a Bill is a money Bill has been referred to the Supreme Court under subsection (3) of this section, the Bill shall not be presented to the Governor-General for assent in accordance with the provisions of subsection (1) of this section until the Supreme Court determines that it is a money Bill: Provided that if the Supreme Court has not within one month after the passage of the resolution that the reference should be made, sent to the Speaker of the Senate and the Speaker of the House of Representatives its determination on that reference, it shall not proceed further with its consideration of the reference and the Bill shall, unless the House of Representatives otherwise resolves, be presented to the Governor-General for assent.
- (5) Notwithstanding anything contained in the rules of procedure of the Senate, if ten Senators so request by writing under their hands addressed to the Speaker of the Senate within ten days after a Bill has been sent to the Senate, a meeting of the Senate shall, not later than seventeen days after the Bill was so sent, take place for the purpose of debating and voting upon any resolution for the purposes of subsection (3) of this section.
- (6) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to any reference to the Supreme Court under this section (including the parties to any such reference and the persons who may appear before the Supreme Court in its consideration of that reference) and, subject to any such rules, any such reference shall be conducted as the Chief Justice may direct.
- (7) Any determination of the Supreme Court on a reference made to it under this section shall not be subject to appeal.
- (8) When:
 - (a) a Bill that is passed by the House of Representatives is not certified by the speaker of that House under subsection (2) of this section as a money Bill

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and, having been sent to the Senate at least one month before the end of the session, is not passed by the Senate before the end of the session or is passed by the Senate with amendments to which the House of Representatives does not before the end of the session agree; and

- (b) in the following session (whether of the same Parliament or not) but not earlier than twelve months after it was first passed by the House of Representatives the same Bill, with no other alterations than those mentioned in subsection (10) of this section, is passed again by the House of Representatives and sent to the Senate at least one month before the end of the session and is not passed by the Senate before the end of the session or is passed by the Senate with amendments to which the House of Representatives does not before the end of the session agree, the Bill shall, unless the House of Representatives otherwise resolves, be presented to the Governor-General for assent with such amendments, if any, as may have been agreed to by both Houses.
- (9) The House of Representatives may, on the passage of a Bill for the purposes of subsection (8) (b) of this section, suggest any amendments without inserting the amendments in the Bill and any such suggested amendments shall be considered by the Senate and, if agreed to by the Senate, shall be treated as amendments agreed to by both Houses; but the exercise of this power by the House of Representatives shall not affect the operation of this section if the Bill is not passed by the Senate or is passed by the Senate with amendments to which the House Representatives does not agree.
- (10) The alterations referred to in subsection (8) of this section are alterations certified by the Speaker of the House of Representatives to be necessary owing to the time that has elapsed since the Bill was passed in the earlier session or to represent amendments made in that session by the Senate.
- (11) when a bill is presented to the Governor-General in pursuance of this section it shall bear a certificate by the Speaker of the House of Representatives that this section has been complied with and, subject to the provisions of subsections (3) and (4) of this section, a certificate given by the Speaker of the House of Representatives under this section shall be conclusive for all purposes and shall not be questioned in any court.
- (12) Any function that, under this section, falls to be exercised by the Speaker of the Senate may, if he is absent or is for any other reason unable to exercise the functions of his office, be exercised by the Deputy Speaker of the Senate; and any function that, under this section, falls to be exercised by the Speaker of the House of Representatives may, if he is absent or is for any other reason unable to exercise the functions of his office, be exercised by the Deputy Speaker of the House of Representatives.

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- 62.** (1) Subject to the provisions of this Constitution, each House of the National Assembly may regulate its own procedure and may in particular make rules for the orderly conduct of its proceedings.
- (2) Without prejudice to the generality of subsection (1) of this section, each House of the National Assembly may establish committees in such manner and for such general or special purposes as it thinks fit and may regulate the procedure of any such committee.
- (3) Without prejudice to the generality of subsection (1) of this section, the two Houses of the National Assembly may, in such manner and for such general or special purposes as they think fit, establish joint committees consisting of members of both Houses and may jointly regulate the procedure of any such committee; and any reference in this Constitution to a member of a committee of a House of the National Assembly shall, unless the context otherwise requires, be construed as including a reference to a member of such a joint committee.
- (4) Each House of the National Assembly may act notwithstanding any vacancy in its membership (including any vacancy not filled when the House first meets after any general election) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings.
- (5) Without prejudice to the power conferred by subsection (1) of this section, Parliament may, for the purpose of the orderly and effective discharge of the business of the two Houses of the National Assembly, make provision for the powers, privileges and immunities of those Houses and the committees and the members thereof (including any person who is Speaker of either House, having been elected from among persons who were not members thereof).
- 63.** In this Part of this Chapter "money Bill" means a Bill that contains only provisions dealing with:
- (a) the imposition, repeal, remission, alteration or regulation of taxation;
 - (b) the imposition of charges on the Consolidated Fund or any other fund of the Government of Kenya or the variation or repeal of any such charges;
 - (c) the grant of money to any person or authority or the variation or revocation of any such grant;
 - (d) the appropriation, receipt, custody, investment, issue or audit of accounts of public money;

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- (e) the raising or guarantee of any loan or the repayment thereof; or
- (f) subordinate matters incidental to any of those matters: Provided that the expressions "taxation," "public money" and "loan" do not include any taxation, money or loan raised by local government authorities or other local bodies or by any Region.

Part 3. Summoning, Prorogation and Dissolution

- 64.** (1) Each session of Parliament shall be held at such place within Kenya and shall begin at such time (not being later than twelve month from the end of the preceding session if Parliament has been prorogued or three months from the end of that session if Parliament has been dissolved) as the Governor-General shall appoint.
- (2) Subject to the provisions of subsection (1) of this section, the sittings of each House of the National Assembly shall be held at such time and place at that House may, by its rules of procedure or otherwise, determine: Provided that the first sitting of each House of the National Assembly after Parliament has at any time been prorogued or dissolved shall begin at the same time as the first sitting of the other House.
- 65.** (1) The Governor-General may at any time prorogue Parliament.
- (2) The Governor-General, acting in accordance with the advice of the Prime Minister, may at any time dissolve Parliament:
Provided that:
- (a) if the House of Representatives passes a resolution that it has no confidence in the Government of Kenya and the Prime Minister does not within three days either resign from his office or advise a dissolution, the Governor-General may dissolve Parliament:
 - (b) if the Prime Minister at any time advises a dissolution and the Governor-General considers that the government of Kenya can be carried on without a dissolution and that a dissolution would not be in the interests of Kenya, he may refuse to dissolve Parliament; and
 - (c) if the office of Prime Minister is vacant and the Governor-General considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the House of Representatives, he shall dissolve Parliament.
- (3) Parliament, unless sooner dissolved, shall continue for five years from the date when the two Houses of the National Assembly first meet after any dissolution and shall then stand dissolved.

- (4) At any time when Kenya is at war Parliament may from time to time extend the period of five years specified in subsection (8) of this section for not more than twelve months at a time:
Provided that the life of Parliament shall not be extended under this subsection for more than five years.

Part 4. Legislative powers

- 66.** (1) Subject to the provisions of this Constitution, Parliament shall have power to make laws for the peace, order and good government of Kenya or of any part thereof.
- (2) Parliament shall not have power to make laws for any part of Kenya other than the Nairobi Area with respect to any matter specified in Part I of Schedule 1 of this Constitution.
- (3) The provisions of subsection (2) of this section shall be without prejudice to the provisions of:
- (a) section 67 of this Constitution (which relates to grants of public money);
 - (b) section 68 of this Constitution (which relates to the implementing of international obligations);
 - (c) section 69 of this Constitution (which relates to emergencies); and
 - (d) section 70 of this Constitution (which relates to legislation for the purpose of securing compliance with this Constitution).
- (4) If any law made by a Regional Assembly is inconsistent with any law validly made by Parliament, the law made by Parliament shall prevail and the law made by the Regional Assembly shall, to the extent of the inconsistency, be void.
- 67.** Parliament may make provision for grants and loans from and the imposition of charges upon the Consolidated Fund or any other fund of the Government of Kenya or for the imposition of charges upon the revenues and assets of the Government of Kenya for any purpose, notwithstanding that it relates to a matter specified in Part I of Schedule of this Constitution.
- 68.** (1) Subject to the provisions of subsection (2) of this section, Parliament may, for the purpose of implementing any treaty, convention or agreement between the Government of Kenya and some country other than Kenya or any arrangement with or decision of any international organization of which the Government of Kenya is a member, make laws for Kenya or

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any part thereof with respect to any matter specified in Part I of Schedule of this Constitution.

- (2) A Bill for an Act of Parliament under this section shall not be introduced into the National Assembly unless a draft of that Bill has, not less than 21 days before such introduction, been transmitted by the Prime Minister to the President of the Regional Assembly of every Region concerned and unless the Bill, when introduced, is in the terms of that draft or in such amended form as may have been agreed to by notice in writing under the hand of the President of the Regional Assembly of every Region concerned.
- 69.** (1) Parliament may at any time make such laws for Kenya or any part thereof with respect to any matter specified in Part I of Schedule 1 of this Constitution as may appear to Parliament to be necessary or expedient for the purpose of maintaining or securing peace, order and good government, during any period of emergency.
- (2) Any law made in pursuance of this section shall have effect only during a period of emergency: Provided that the termination of a period of emergency shall not affect the operation of such a law during that period, the validity of any action taken thereunder during that period, any penalty or punishment incurred in respect of any contravention thereof (or of any instrument made thereunder) or failure to comply therewith (or with any such instrument) during that period or any proceeding or remedy in respect of any such penalty or punishment.
- (3) In this section "period of emergency" means any period:
- (a) when Kenya is at war; or
- (b) when there is in force a proclamation (in this section referred to as a "proclamation of emergency") made by the Governor-General and published in the Kenya Gazette declaring that a state of emergency exists for the purposes of this section.
- (4) Subject to the provisions of subsections (5) and (6) of this section, no proclamation of emergency shall be made except with the prior authority of a resolution of either House of the National Assembly supported by the votes of 65 per cent of all the members of that House, and every proclamation of emergency shall lapse at the expiration of seven days, commencing with the day on which it was made, unless it has in the meantime been approved by a resolution of the other House supported by the votes of 66 per cent of all the members of that House.
- (5) A proclamation of emergency may be made without the prior authority of

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a resolution of a House of the National Assembly at a time when Parliament stands prorogued or when both Houses of the National Assembly stand adjourned, but every proclamation of emergency so made shall lapse at the expiration of seven days, commencing with the day on which it was made, unless it has in the meantime been approved by a resolution of each House of the National Assembly supported by the votes of 65 per cent of all the members of that House.

- (6) A proclamation of emergency may be made without the prior authority of a resolution of a House of the National Assembly at any time when Parliament stands dissolved but any proclamation of emergency so made shall lapse at the expiration of seven days, commencing with the day on which it was made, unless it has in the meantime been approved by a resolution of the Senate supported by the vote of 65 per Cent of all the Senators.
- (7) A proclamation of emergency made with the prior authority of a resolution of a House of the National Assembly in accordance with subsection (4) of this section and subsequently approved by a resolution of the other House in accordance with that subsection and a proclamation of emergency approved by a resolution of each House in accordance with subsection (5) of this section may at any time be revoked by the Governor-General by notice published in the Kenya Gazette but shall otherwise remain in force so long as those resolutions remain in force and no longer.
- (8) subject to the provisions of subsection (10) of this section, a resolution of a House of the National Assembly passed for the purposes of this section shall remain in force for two months or such shorter period as may be specified therein:
Provided that any such resolution may be extended from time to time for a further period by a resolution supported by the votes of 65 per cent of all the members of the House concerned, each extension not exceeding two months from the date of the resolution effecting the extension; and any such resolution may be revoked at any time by a resolution supported by the votes of a majority of all the members of the House.
- (9) A proclamation of emergency approved by a resolution of the Senate in accordance with subsection (6) of this section may at any time be revoked by the Governor-General by notice published in the Kenya Gazette but shall otherwise remain in force as long as that resolution remains in force and for so long thereafter as there are in force resolutions of each House of the National Assembly passed with the support of the votes of 65 per cent of all the members of that House while that resolution of the Senate is still in force and approving that resolution of the Senate.
- (10) A resolution of the Senate passed in accordance with subsection (6) of this

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section shall remain in force for two months or such shorter period as may be specified therein:

Provided that:

- (a) so long as Parliament stands dissolved any such resolution may be extended from time to time for a further period by a resolution of the Senate supported by the votes of 65 per cent of all the Senators, each extension not exceeding two months from the date of the resolution effecting the extension; and
- (b) any such resolution may at any time be revoked by a resolution supported by the votes of a majority of all the Senators.

- (11) The Governor-General may summon the Senate to meet for the purposes of this section notwithstanding that Parliament then stands dissolved but, subject to the provisions of section 48 (5) of this Constitution (which relates to the election of a Speaker of the Senate), the Senate shall not, when so summoned, transact any business other than debating and voting upon resolutions for the purposes of this section.

70. (1) During any period during which there is in force a resolution of each House of the National Assembly supported by the votes of 65 per cent of all the members, of that House declaring that the executive authority of a Region is being exercised in contravention of section 106 (2) of this Constitution, Parliament may make laws for that Region or any part thereof with respect to any matter specified in Part I of Schedule 1 of this Constitution to such extent as may appear to Parliament to be necessary for Securing compliance with the provisions of the said section 106 (2).

- (2) A resolution of a House of the National Assembly passed for the purposes of this section shall remain in force for two months or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time for a further period by a resolution supported by the votes of 65 per cent of all the members of the House concerned, each extension not exceeding two months from the date of the resolution effecting the extension; and any such resolution may be revoked at any time by a resolution supported by the votes of a majority of all the members of that House.

- (3) When any resolution passed for the purposes of this section ceases to be in force, any law made in pursuance of this section shall cease to have effect: Provided that the termination of any such period shall not affect the operation of such a law during that period, the validity of any action taken thereunder during that period, any penalty or punishment incurred in respect of any contravention thereof (or of any instrument made thereunder) or failure to comply therewith (or with any such instrument) during that period or any proceeding or remedy in respect of any such

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penalty or punishment.

- 71.** (1) Subject to the provisions of this section and of section 156 of this Constitution, Parliament may alter any of the provisions of this Constitution or (in so far as it forms part of the law of Kenya) any of the provisions of the Kenya Independence Act 1968.
- (2) Subject to the provisions of subsection (3) of this section, a bill for an Act of Parliament under this section shall not be passed by either House of the National Assembly unless it has been supported on the second and third readings by the votes of three quarters of all the members of that House.
- (3) If a bill for an Act of Parliament under this section fails to obtain the support of three quarters of all the members of either House of the National Assembly on the second reading or the third reading in that House, the bill shall be withdrawn but the same bill (with no other alterations than those mentioned in subsection (9) of this section) may, if subsequently introduced in either House of the National Assembly, be passed by each House in accordance with the provision of section 56 of this Constitution:
Provided that the same bill shall not be passed in accordance with the provisions of section 56 of this Constitution unless, before it has been introduced in the National Assembly, the proposals for altering this Constitution that are contained therein have, in accordance with the provisions of any law in that behalf, been submitted to a referendum in which all persons who are registered as voters in elections to the Senate or to the House of Representatives shall be entitled to vote and unless those proposals have been supported by two thirds of all the votes validly cast at that referendum.
- (4) A bill shall not be passed by either House of the National Assembly by virtue of the proviso to subsection (3) of this section unless, before the second reading of the bill in that House, the Speaker of that House has certified that the proposals for altering this Constitution that are contained therein are the proposals that were submitted to and were approved by a referendum in accordance with that proviso.
- (5) The conduct of any referendum for the purposes of subsection (3) of this section shall be subject to the direction and supervision of the Electoral Commission.
- (6) Notwithstanding anything contained in subsection (2) or sub section () of this section, a bill for an Act of Parliament under this section, so far as it makes an alteration to any specially entrenched provision of this Constitution or of the Kenya Independence Act 1968, shall not be passed by the House of Representatives unless it has been supported on the

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second and third readings by the votes of three quarters of all the members of that House and shall not be passed by the Senate unless it has been supported on the second and third readings by the votes of nine tenths of all the Senators.

- (7) The provisions specified in column of Schedule 4 of this Constitution are, to the extent indicated in column 2 of that Schedule, the specially entrenched provisions of this Constitution and of the Kenya Independence Act 1968.
- (8) When a bill for an Act of Parliament under this section has been introduced in either House of the National Assembly, no alterations (other than those mentioned in subsection (9) of this section) shall be made therein before it is presented to the Governor-General for his assent.
- (9) The alterations referred to in subsections (8) and (8) of this section are alterations certified by the Speaker of each House of the National Assembly to be necessary owing to the time that has elapsed since the bill was first introduced in the National Assembly.
- (10) A certificate of the Speaker of either House of the National Assembly under subsection (4) or subsection (9) of this section shall, as regards proceedings in that House, be conclusive for all purposes and shall not be questioned in any court.
- (11) In this section:
 - (a) references to any of the provisions of this Constitution or of the Kenya Independence Act 1963 include references to any law that amends or replaces that provision; and
 - (b) references to the alteration of any of the provisions of this Constitution or of the Kenya Independence Act 1968 include references to the amendment, modification or re-enactment, with or without amendment or modification, of that provision, the suspension or repeal of that provision and the making of different provision in lieu of that provision.

CHAPTER V - 1963 Constitution

Executive Powers

- 72.** (1) The executive authority of the Government of Kenya shall be vested in Her Majesty and, subject to the provisions of this Constitution, may be exercised on behalf of Her Majesty by the Governor-General, either directly or by officers subordinate to him.
- (2) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the Governor-General.
- (3) The executive authority of the Government of Kenya shall, to the exclusion of the executive authority of any Region but subject to the provisions of this section and of section 74 of this Constitution, extend to the maintenance and execution of this Constitution and to all matters not specified in Schedule 1 of this Constitution.
- (4) The executive authority of the Government of Kenya shall extend to the giving of such directions to a Regional Assembly as may appear to the Government of Kenya to be necessary or expedient:
- (a) in order to ensure that the executive authority of the Region is exercised in accordance with the provisions of section 106 (2) of this Constitution; or
 - (b) for the performance of any function in relation to any matter to which the executive authority of the Government of Kenya extends, being a function which falls to be performed within the Region.
- (5) In any case where the Minister concerned is reasonably satisfied that prompt action must be taken in a Region in order to avert a serious threat to the public welfare caused by an outbreak or an imminent outbreak of disease or some other calamity, any directions that may be given to the Regional Assembly of a Region under subsection (4) of this section may be given direct to the appropriate officer or authorities of the Region (including, without prejudice to the generality of that expression, local government authorities) and those officers and authorities shall forthwith comply with those directions or cause them to be complied with:
Provided that any direction given under this subsection shall forthwith be communicated to the Regional Assembly of the Region.
- (6) During any period of emergency (which expression shall in this subsection have the meaning assigned to it in section 69 of this Constitution) the executive authority of the Government of Kenya shall also extend in all respects to all matters specified in Schedule of this Constitution and provision may be made by or under an Act of Parliament that all or any part of the executive authority vested in the Government of Kenya by this subsection

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shall be so vested to the exclusion of the executive authority of all or any of the Regions.

- (7) At any time when Parliament has power to make laws for a Region in pursuance of section 70 of this Constitution, the executive authority of the Government of Kenya shall also extend in all respects as regards that Region to all matters specified in Schedule of this Constitution and provision may be made by or under any such law that all or any part of the executive authority vested in the Government of Kenya by this subsection shall be so vested to the exclusion of the executive authority of the Region.

73 (1) If either Governor-General considers that any directions that have been given to the Regional Assembly of any Region by the Government of Kenya under section 72 (4) of this Constitution have not been or are not being complied with, he may, by notice published in the Kenya Gazette, so declare and he may then appoint a Special Commissioner in respect of that Region for the purposes of this section.

(2) A Special Commissioner may:

- (a) take over and carry out (either directly or through others) any function or service in respect of which the direction of the Government of Kenya were given,
- (b) himself give to any officer or authority of the Region (including, without prejudice to the generality of that expression, a local government authority) any directions that he considers necessary or expedient for the carrying out of that function or service; and
- (c) make use of such officers or authorities of the Government of Kenya as he considers necessary or expedient for the carrying out of his duties.

(8) The powers vested in a Special Commissioner by subsection (2) of this section shall cease to be exercisable at the expiration of six months commencing with the day on which the declaration referred to in subsection (1) of this section was published in the Kenya Gazette:
Provided that the period of six months may be extended from time to time for a further period by a resolution of the Senate, each extension not exceeding six months from the date of the resolution effecting the extension; and any such resolution may be revoked at any time by another such resolution.

74. (1) The Governor-General, with the consent of the Regional Assembly of any Region, may entrust to that Regional Assembly or to any officer or authority of the Region (including, without prejudice to the generality of that expression, a local government authority) functions in relation to any matter to which the executive authority of the Government of Kenya extends, being

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functions which fall to be performed within the Region:

Provided that the consent of the Regional Assembly shall not be required during any period of emergency (which expression shall in this section have the meaning assigned to it in section 69 of this Constitution) or during any period during which there is in force with respect to the Region such a resolution of each House of the National Assembly as is referred to in section 70 of this Constitution.

- (2) An entrustment made by the Governor-General under subsection () of this section or a consent given by a Regional Assembly under that subsection to such an entrustment may:
 - (a) be general or specific;
 - (b) be made or given for an indefinite period or for a specified period;
 - (c) be subject to such-conditions or restrictions as may be specified in the instrument by which it is made or given (including any condition or restriction as to the officer or authority, or class of officer or authority, to whom the functions are to be entrusted); and
 - (d) notwithstanding that it was expressed to be made or given for an indefinite period or a specified period, be revoked at any time.
- (3) Parliament may confer powers or impose duties in respect of the exercise of the executive authority of the Government of Kenya within any Region (or may authorize the conferment of such powers or the imposition of such duties) on the Regional Assembly of the Region or on any officer or authority of the Region (including, without prejudice to the generality of that expression, a local government authority):

Provided that, save during any period of emergency or during any period during which there is in force with respect to that Region such a resolution of each House of the National Assembly as is referred to in section 70 of this Constitution no conferment of powers or imposition of duties made by or under an Act of Parliament in pursuance of this subsection shall have effect in relation to the Region except with the consent of the Regional Assembly.
- (4) A law, or an instrument made under a law, conferring powers or imposing duties and made in pursuance of subsection (3) of this section or a consent given by a Regional Assembly under that subsection to such a conferment or imposition may:
 - (a) be general or specific;
 - (b) be made or given for an indefinite period or for a specified period;

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- (c) be subject to such conditions or restrictions as may be specified in the law or instrument by which the powers are conferred or the duties imposed or by which the consent is given (including any condition or restriction as to the officer or authority, or class of officer or authority,
 - (d) notwithstanding that the conferment or imposition was expressed to be made or the consent was expressed to be given for an indefinite period or a specified period, be revoked at any time.
- (5) Any entrustment made under subsection (1) of this section or any consent given under any of the provisions of this section shall be signified in writing under the hand of the Governor-General (or any officer or authority authorized by him in that behalf) or, as the case may be, of the President of the Regional Assembly (or any officer or authority authorized by him in that behalf) and shall be published in the Kenya Gazette.
- 75.** (1) There shall be a Prime Minister who shall be appointed by the Governor-General.
- (2) There shall be, in addition to the office of Prime Minister, such other offices of Minister of the Government of Kenya as may be established by Parliament or, subject to any provision made by Parliament, by the Governor-General, acting in accordance with the advice of the Prime Minister.
- (3) The Governor-General shall appoint as Prime Minister a member of the House of Representatives who appears to him likely to command the support of a majority of the members of that House and shall, acting in accordance with the advice of the Prime Minister, appoint the other Ministers from among the members of the two Houses of the National Assembly:
Provided that if occasion arises for making an appointment to the office of Prime Minister or any other Minister while Parliament stands dissolved, a person who was a member of the House of Representatives immediately before the dissolution may be appointed to the office of Prime Minister or any other Minister.
- (4) The Governor-General may remove the Prime Minister from office:
- (a) if a resolution of no confidence in the Government of Kenya is passed by the House of Representatives and the Prime Minister does not within three days either resign from his office or advise a dissolution of Parliament; or
 - (b) if, any time between the holding of a general election of the Elected Members of the House of Representatives and the date on which that House first meets thereafter, the Governor-General considers that, in consequence of changes in the membership of the House of Representatives resulting from that election, the Prime Minister will not be able to command the support of a majority of

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the members of that House.

- (5) The office of any Minister shall become vacant:
 - (a) if the holder of the office ceases to be a member of either House of the National Assembly otherwise than by reason of the dissolution of Parliament; or
 - (b) in the case of a Minister who, immediately before the dissolution of Parliament, was a member of the House of Representatives, if, when that House first meets after that dissolution, he is not then a member thereof
 - (6) The office of a Minister other than the Prime Minister shall become vacant:
 - (a) if the Governor-General, acting in accordance with the advice of the Prime Minister, so directs; or
 - (b) if the Prime Minister resigns from office within three days after the passage by the House of Representatives of a resolution of no confidence in the Government of Kenya or is removed from office under subsection (4) of this section; or
 - (c) on the appointment of any person to the office of Prime Minister.
- 76.** (1) There shall be a Cabinet of Ministers, consisting of the Prime Minister and the other Ministers.
- (2) The function of the Cabinet shall be to advise the Governor-General in the government of Kenya, and the cabinet shall be collectively responsible to the two Houses of the National Assembly for any advice given to the Governor-General by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.
 - (3) The provisions of subsection (2) of this section shall not apply in relation to:
 - (a) the appointment and removal from office of Ministers and Parliamentary Secretaries, the assignment of responsibility to any Minister under section 77 of this Constitution, the authorization of another Minister under section 78 of this Constitution to exercise the functions of the Prime Minister during the latter's absence or illness or the giving of consent under section 82 of this Constitution to a Ministers absenting himself from Kenya; or
 - (b) the dissolution of Parliament; or
 - (c) the matters referred to in section 88 of this Constitution (which relates to the exercise of the Prerogative of Mercy).

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- 77.** The Governor-General, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for any business of the government of Kenya, including the administration of any department of Government.
- 78.** (1) Whenever the Prime Minister is absent from Kenya or is by reason of illness unable to exercise the functions conferred on him by this Constitution, the Governor-General may authorize some other Minister to exercise those functions (other than the functions conferred by this section) and that Minister may exercise those functions until his authority is revoked by the Governor-General.
- (2) The powers of the Governor-General under this section shall be exercised by him in accordance with the advice of the Prime Minister:
Provided that if the Governor-General considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness he may exercise those powers without that advice.
- 79.** (1) In the exercise of his functions the Governor-General shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution or any other law to act in accordance with the advice of any person or authority other than the Cabinet:
Provided that the Governor-General shall act in accordance with his own deliberate judgment in the performance of the following functions:
- (a) in the exercise of the powers relating to the dissolution of Parliament conferred upon him by the proviso to section 65 (2) of this Constitution;
 - (b) in the exercise of the power to appoint the Prime Minister conferred upon him by section 75 (8) of this Constitution;
 - (c) in the exercise of the power to remove the Prime Minister from office conferred upon him by section 75 (4) of this Constitution;
 - (d) in the exercise of the powers conferred on him by section 78 of this Constitution (which relates to the performance of the functions of the Prime Minister during absence or illness) in the circumstances described in the proviso to subsection (2) of that section; and
 - (e) subject to the provisions of section 187 (2) of this Constitution, in exercising his power thereunder to prescribe the offices that are to constitute the offices on his personal staff and in signifying his concurrence, for the purposes of section 188 (11) of this Constitution, in appointments to or to act in those offices.

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- (2) Where the Governor-General is required by this Constitution to act in accordance with the advice of any person or authority, the question whether he has received, or acted in accordance with, such advice in any case shall not be inquired into in any court.
- 80.** The Prime Minister shall keep the Governor-General fully informed concerning the general conduct of the government of Kenya and shall furnish him with such information as he may require with respect to any particular matter relating to the government of Kenya.
- 81.** (1) The Governor-General, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among the members of the two Houses of the National Assembly to assist Ministers in the performance of their duties:
Provided that, if occasion arises for making an appointment while Parliament stands dissolved, a person who was a member of the House of Representatives immediately before the dissolution may be appointed as a Parliamentary Secretary.
- (2) The office of a Parliamentary Secretary shall become vacant:
- (a) if the Governor-General, acting in accordance with the advice of the Prime Minister, so directs;
 - (b) if the Prime Minister resigns from office within three days after the passage by the House of Representatives of a resolution of no confidence in the Government of Kenya or is removed from office under section 75 (4) of this Constitution;
 - (c) upon the appointment of a person to the office of Prime Minister;
 - (d) if the holder of the office ceases to be a member of either House of the National Assembly otherwise than by reason of a dissolution of Parliament; or
 - (e) in the case of a Parliamentary Secretary who, immediately before the dissolution of Parliament, was a member of the House of Representatives, if, when that House first meets after that dissolution, he is not then a member thereof.
- 82.** A Minister (other than the Prime Minister) or a Parliamentary Secretary shall not absent himself from Kenya except with the prior consent of the Governor-General, acting in accordance with the advice of the Prime Minister.
- 83.** A Minister or a Parliamentary Secretary shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath

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for the due execution of his office as may be prescribed by Parliament.

- 84.** Where any Minister has been charged with responsibility for any department of Government, he shall exercise general direction and control over that department and, subject to such direction and control, every department of Government shall be under the supervision of a permanent secretary whose office shall be an office in the public service:

Provided that two or more Government departments may be placed under the supervision of one permanent secretary and one Government department may be placed under the supervision of two or more permanent secretaries.

- 85.** (1) There shall be a Secretary to the Cabinet whose office shall be an office in the public service.

- (2) The Secretary to the Cabinet, who shall have charge of the Cabinet Office, shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority and shall have such other functions as the Prime Minister may direct.

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

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

- (4) The Powers of the Attorney General under subsection (3) of this section may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.

- (5) The powers conferred on the Attorney General by paragraphs (b) and (c) of

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subsection (3) of this section 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.

- (6) For the purposes of this section, any appeal from any judgment in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court (including the Judicial Committee) shall be deemed to be part of those proceedings:

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

- (7) In the exercise of the functions vested in him by subsection (3) of this section and by sections 50, 58 and 167 of this Constitution, the Attorney General shall not be subject to the direction or control of any other person or authority.

- 87.** Subject to the provisions of this Constitution and of any other law, the Governor-General may constitute offices for Kenya, make appointments to any such office and terminate any such appointment:

Provided that the foregoing provisions of this section shall not apply in relation to offices for the government of a Region.

- 88.** (1) The Governor-General may, in Her Majesty's name and on Her Majesty's behalf:

- (a) grant to any person convicted of any offence a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for any offence; and
- (d) remit the whole or part of any punishment imposed on any person for any offence or of any penalty or forfeiture otherwise due to the Crown on account of any offence.

(e) (2) Subject to the provisions of subsection (3) of this section, the powers of the Governor-General under subsection (1) of this section shall be exercised by him acting in accordance with the advice of the Minister for the

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time being responsible for justice.

- 89.** (1) There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of:
- (a) the Minister for the time being responsible for justice, who shall be Chairman;
 - (b) the Attorney General; and
 - (c) not less than three nor more than five other members appointed by the Governor-General, by instrument in writing under his hand, of whom at least two shall be Ministers and at least one shall be a person qualified to practise in Kenya as a medical practitioner.
- (2) A member of the Committee appointed under subsection (1) (c) of this section shall hold his seat thereon for such period as may be specified in the instrument by which he was appointed:
Provided that his seat shall become vacant:
- (a) in the case of a person who, at the date of his appointment was a Minister, if he ceases to be a Minister; or
 - (b) in any case, if the Governor-General, by instrument in writing under his hand, so directs.
- (3) The Committee may act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.
- (4) The Committee may regulate its own procedure.
- (5) In the exercise of his functions under this section, the Governor-General shall act in accordance with the advice of the Prime Minister.
- 90.** (1) Where any person has been sentenced to death (otherwise than by a court-martial) for any offence, the Minister for the time being responsible for justice shall cause a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as he may require, to be considered at a meeting of the Advisory Committee on the Prerogative of Mercy; and after obtaining the advice of the Committee he shall decide in his own judgment whether to advise the Governor-General to exercise any of his functions under section 88 of this Constitution.
- (2) The Minister for the time being responsible for justice may consult with the Committee before deciding whether to advise the Governor-General to exercise any of his functions under the said section 88 in any case not falling within subsection (1) of this section, but the Minister shall not be obliged to

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act in accordance with the advice of the Committee.

CHAPTER VI - 1963 Constitution

REGIONS

Part 1. Establishment of Regions

- 91.** Kenya shall be divided into the Nairobi Area and the following Regions whose respective boundaries shall, subject to the provisions of section 289 of this Constitution, be those specified in Part II of Schedule 11 of this Constitution:
- (a) the Coast Region;
 - (b) the Eastern Region;
 - (c) the Central Region;
 - (d) the Rift Valley Region;
 - (e) the Nyanza Region;
 - (f) the Western Region; and
 - (g) the North-Eastern Region.

Part 2. Composition of Regional Assemblies

- 92.** There shall be for each Region a Regional Assembly consisting of Elected Members and Specially Elected Members.
- 93.** (1) Subject to the provisions of section 242 of this Constitution, each Regional Assembly shall contain such number of Elected Members as may for the time being be prescribed by a law made by it in pursuance of section 104 of this Constitution.
- (2) For the purpose of electing Members to the Regional Assembly and subject as aforesaid, each District within a Region shall be divided into constituencies whose respective boundaries shall be those for the time being specified by a law made by the Regional Assembly in pursuance of section 104 of this Constitution.
- (3) Each constituency shall elect one Elected Member to the Regional Assembly in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law made by the Regional Assembly.

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- (4) The qualifications and disqualifications for registration as a voter in election of Elected Members to a Regional Assembly shall be as set out in Part III of Schedule 5 of this Constitution.
 - (5) Every person who is registered in any constituency as a voter in elections of Elected Members to the Regional Assembly shall, unless he is disqualified by any law made by the Regional Assembly from voting in such elections on the grounds of his having been convicted of an offence connected with elections or on the grounds of his having been reported guilty of such an offence, by the court trying an election petition, be entitled so to vote in that constituency in accordance with the provisions of any law in that behalf by the Regional Assembly; and no other person may so vote.
 - (6) The registration of voters in elections of Elected Members to Regional Assemblies and the conduct of such elections shall be subject to the direction and supervision of the Electoral Commission.
- 94.**
- (1) The number of Specially Elected Members of a Regional Assembly shall be the number which results from dividing the number of seats of Elected Members of that Regional Assembly by eight or, in that result is not a whole number, the whole number next greater than that result.
 - (2) The Specially Elected Members of a Regional Assembly shall be elected by the Elected Members of that Regional Assembly in accordance with the provisions of Schedule 7 of this Constitution.
- 95.**
- Subject to the provisions of section 96 of this Constitution, a person shall be qualified to be elected as a member of a Regional Assembly if, and shall not be so qualified unless, at the date of his nomination for election, he:
- (a) is a citizen of Kenya who has attained the age of twenty-one years; and
 - (b) is registered in that Region as a voter in elections to the Regional Assembly.
- 96.**
- (1) No person shall be qualified to be elected as a member of a Regional Assembly who, at the date of his nomination for election:
 - (a) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to any foreign power or state; or
 - (b) is under sentence of death imposed on him by any court in Kenya; or
 - (c) is, under any law in force in Kenya, adjudged or otherwise declared to be of unsound mind; or

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- (d) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Kenya; or
 - (e) subject to such exceptions and limitations as may be prescribed by a law made by that Regional Assembly, has any interest in any such government contract as may be so prescribed; or
 - (f) is a public officer; or
 - (g) holds or is acting in any office on the staff of a local government authority.
- (2) A law made by a Regional Assembly may provide that a person who, at the date of his nomination for election, holds or is acting in any office that is specified in that law and the functions of which involve responsibility for, or in connexion with, the conduct of any election to that Regional Assembly or the compilation of any register of voters for the purposes of such an election shall not be qualified to be elected as a member of that Regional Assembly.
- (3) A law made by a Regional Assembly may provide that a person who is convicted by any court of any offence that is prescribed by that law and that is connected with the election members of either House of the National Assembly or of a Regional Assembly or of a local government authority or who is reported guilty of such an offence by the court trying an election petition shall not be qualified to be nominated for election as a member of the Regional Assembly for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed.
- (4) A law made by a Regional Assembly may provide that any office shall be deemed not to be a public office for the purposes of subsection (1) (f) of this section or that any office shall, for the purposes of subsection (1) (g) of this section, be deemed not to be such an office as is referred to in the said subsection (1) (g).
- (5) No person shall be qualified to be elected as an Elected Member of a Regional Assembly who, at the date of his nomination for election as such a Member, is a Specially Elected Member of that Regional Assembly; and no person shall be qualified to be elected as a Specially Elected Member of a Regional Assembly who, at the date of his nomination for election as such a Member, is an Elected Member of that Regional Assembly or who has, at any time since that Regional Assembly was last dissolved, stood as a candidate for election as an Elected Member of that Regional Assembly but was not elected.

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- (6) In subsection (1) (e) of this section "government contract" means any contract made with the Regional Assembly or with a department of government of the Region or with an officer of the Region contracting as such.
- 97.** (1) A member of a Regional Assembly shall vacate his seat therein:
- (a) if he ceases to be a citizen of Kenya, or
 - (b) if any circumstances arise that, if he were not a member of the Regional Assembly, would cause him to be disqualified to be elected as such under section 96 (1) of this Constitution or under an law made in pursuance of section 96 (2) or section 96 (B) of this Constitution.
- (2) A law made by a Regional Assembly may, in order to permit any member of the Regional Assembly who has been sentenced to death adjudged or declared to be of unsound mind, adjudged or declare bankrupt or convicted or reported guilty of any offence prescribed uncle section 96 (8) of this Constitution to appeal against the decision in accordance with any law, provide that, subject to such conditions a ma y be prescribed by a law made by the Regional Assembly, the decision shall not have effect for the purposes of this section until such time as may be prescribed.
- 98.** (1) There shall be a President of each Regional Assembly who shall be elected, in accordance with the provisions of this section, by the Regional Assembly from among the persons who are Elected Members thereof or are qualified to be elected as such.
- (2) A person shall not be elected as President unless he is supporter by the votes of two thirds of all the members of the Regional Assembly and if no candidate is supported by the votes of two thirds of all the members of the Regional Assembly, a further ballot shall be held:
- Provided that, if in the second ballot no candid ate is supported by the votes of two thirds of all the members of the Regional Assembly the candidate who in that ballot receives the highest number of vote, and the candidate who in that ballot receives the next highest number of votes shall alone stand fr election in the third ballot and the candidate who receives the higher number of votes in the third ballot shall be elected.
- (3 The President shall vacate his office:
- (a) when the Regional Assembly first meets after it has been dissolved,
 - (b) if, having been elected from among the members of the Regional] Assembly, he ceases to be a member thereof otherwise than by reason of its

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dissolution;

- (c) if any circumstances arise that, if he were not President, would cause him to be disqualified to be elected as such; or
 - (d) if he is removed from office by resolution of the Regional Assembly supported by the votes of three quarters of all the members thereof.
- (4) No business shall be transacted in a Regional Assembly (other than the election of a President or the holding of a general election of the Specially Elected Members) at any time when the office of President is vacant, but this subsection shall not affect the transaction of business by any committee of the Regional Assembly.
- (5) At any time when the office of President is vacant or when the holder of that office is unable by reason of absence or illness to exercise the functions of his office any function that, under this Constitution, falls to be exercised by the President may be exercised by the Vic, President.

99. (1) There shall be a Vice-President of each Regional Assembly who shall be elected by the Regional Assembly from among the Elected Members thereof.

- (2) A person shall not be elected as Vice-President unless he is supported by the votes of two thirds of all the members of the Regional Assembly, and if no candidate is supported by the votes of two thirds of all the members of the Regional Assembly, a further ballot shall be held:
Provided that, if in the second ballot no candidate is supported by the votes of two thirds of all the members of the Regional Assembly, the candidate who in that ballot receives the highest number of votes and the candidate who in that ballot receives the next highest number of votes shall alone stand for election in the third ballot and the candidate who receives the higher number of votes in the third ballot shall be elected.

(3) The Vice-President shall vacate his office:

- (c) if he ceases to be a member of the Regional Assembly otherwise than by reason of its dissolution; or
- (d) if he is removed from office by resolution of the Regional Assembly supported by the votes of three quarters of all the members thereof.

(4) Subject to the provisions of section 98 (4) of this Constitution, the first business of a Regional Assembly when it meets after the office of Vice-President has become vacant shall be the election of a Vice- President, but this subsection shall not affect the transaction of business by any

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committee of the Regional Assembly

- (5) At any time when the office of Vice-President is vacant or when the holder of that office is unable by reason of absence or illness to exercise the functions of his office any function that, under this Constitution, falls to be exercised by the Vice-President (including any function that he is authorized to exercise by section 98 (5) of this Constitution) may be exercised by such member of the Finance and Establishments committee of the Regional Assembly as that committee may determine.

100. (1) There shall be a Clerk to each Regional Assembly.

- (2) The office of the Clerk to a Regional Assembly and the offices of the members of his staff shall be offices in the public service.

101. (1) The Supreme Court shall have jurisdiction to hear and determine any question whether:

- (a) any person has been validly elected as a member of a Regional Assembly; or
- (b) the seat in a Regional Assembly of a member thereof has become vacant.
- (2) An application to the Supreme Court for the determination of any question under subsection (1) (a) of this section may be made by any person who was entitled to vote in the election to which the application relates or by the Clerk to the Regional Assembly.
- (3) An application to the Supreme Court for the determination of any question under subsection (1) (b) of this section may be made by any Elected Member of the Regional Assembly or by any person who is registered as a voter in elections of Elected Members of the Regional Assembly or by the Clerk to the Regional Assembly.
- (4) A law made by a Regional Assembly may make provision with respect to:
- (a) the circumstances and manner in which and the conditions upon which any application may be made to the Supreme Court for the determination of any question under this section relating to that Regional Assembly; and
- (b) the powers, practice and procedure of the Supreme Court in relation to any such application.
- (5) The determination by the Supreme Court of any question under this section shall not be subject to appeal.

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- (6) in the exercise of the functions vested in him by this section, the Clerk to the Regional Assembly shall not be subject to the direction or control of any other person or authority.

Part 3. Legislative powers of Regional Assemblies

102. Subject to the provisions of the Constitution, a Regional Assembly; shall have power to make laws for the peace, order and good government of the Region or of any part thereof with respect to any matter specified in Part I or Part II of Schedule 1 of this Constitution.

103. (1) The power of a Regional Assembly to make laws shall be exercisable by bills passed by that Regional Assembly and certified by the President as having been so passed.

(2) When a bill is passed by a Regional Assembly it shall, as soon as practicable, be presented to the President who shall thereupon certify, by writing under his hand, that it has been so passed. ;

(3) When a bill is certified by the President in accordance with the provisions of this section, it shall become law and the President shall thereupon transmit it for publication in the Kenya Gazette.

(4) No law made by a Regional Assembly shall come into operation until it has been published in the Kenya Gazette: Provided that:

(a) If Such a aw s not published in the Kenya Gazette within nine days of its receipt by the publisher of the Kenya Gazette (or, if the President of the Regional Assembly certifies, when he transmits it for publication, that the coming into operation of the law is matter of urgency, within two days of such receipt), it may be published in any other way prescribed by the President of the :Region-al Assembly and shall then come into operation when it is so published unless a later date is prescribed therein;

(b) a Regional Assembly may postpone the coming into operation of any such law; and

(c) a Regional Assembly may make laws with retrospective effect.

(5) All laws made by a Regional Assembly shall be styled "Enactments" and the words of enactment thereof shall be "Enacted by the Regional Assembly of the . . . Region."

104. A law made by a Regional Assembly may prescribe the number of Elected Members of that Regional Assembly and may specify the boundaries of the constituencies into which the Districts within the Region are divided in accordance with section 9B (2) of this Constitution:

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Provided that, subject to the provisions of section 242 of this Constitution:

- (a) a bill for a law in pursuance of this section shall not be passed by a Regional Assembly unless on the final reading of that bill in the Regional Assembly it was supported by the votes of three quarters of all the members thereof;
- (b) the number of members of a Regional Assembly and the number of constituencies into which each District is divided shall always be such that all Districts within the Region return the same number of members to the Regional Assembly; and
- (c) every law made in pursuance of this section shall come into effect upon the next dissolution of the Regional Assembly after it was made.

Part 4. Executive authority of Regions

- 105.** (1) The executive authority of a Region shall be vested in the Finance and Establishments committee of the Regional Assembly and may be exercised by that committee either directly or through public officers serving on the establishment of the Region.
- (2) The executive authority of a Region may, subject so such conditions as the Finance and Establishments committee may prescribe, be exercised on behalf of that committee by any other committee of the Regional Assembly that is designated for that purpose by the Finance and Establishments committee, and any committee that is so designated may, subject as aforesaid, exercise that authority either directly or through public officers serving on the establishment of the Region.
- (3) Nothing in this section shall prevent a law made by a Regional Assembly from conferring functions on persons or authorities other than the Finance and Establishments committee.
- 106.** (1) Subject to the provisions of Chapter V of this Constitution the executive authority of a Region shall, to the exclusion of the executive authority of the Government of Kenya, extend to the matters specified in Schedule 1 of this Constitution.
- (2) The executive authority of a Region shall be so exercised as:
 - (a) not to impede or prejudice the exercise of the executive authority of the Government of Kenya; and
 - (b) to ensure compliance with any provision made by or under an Act of Parliament applying to that Region.

Part 5. Procedure of Regional Assemblies

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- 107.** (1) Every member of a Regional Assembly shall, before taking his seat therein, take and subscribe the oath of allegiance before the Regional Assembly, but a member may take part in the election of the President and the Vice-President before taking and subscribing that oath.
- (2) Any person elected as President who is not a member of the Regional Assembly shall, before entering upon the duties of his office, take and subscribe the oath of allegiance before the Regional Assembly,
- 108.** There shall preside at any sitting of a Regional Assembly:
- (a) the President; or
- (b) in the absence of the President, the Vice-President; or
- (c) in the absence of the President and the Vice-President., such member of the Regional Assembly as the Regional Assembly may elect for that purpose.
- 109.** If objection is taken by any member of a Regional Assembly who is present that there are present in that Regional Assembly (besides the person presiding) fewer than one quarter of all the members of the Regional Assembly and, after such interval as may be prescribed in the rules of procedure of the Regional Assembly, the person presiding ascertains that the number of members present is still less than one quarter of all the members of the Regional Assembly, he shall thereupon adjourn the Regional Assembly.
- 110.** (1) Save as otherwise provided in this Constitution, any question proposed for decision in a Regional Assembly shall be determined by a majority of the votes of the members present and voting.
- (2) The President, the Vice-President and any other person presiding in the Regional Assembly shall, if he is a member thereof, have an original vote but he shall have no casting vote, and whenever there is an equality of votes upon any question, the motion before the Regional Assembly shall be deemed to have been withdrawn.
- (3) The rules of procedure of a Regional Assembly may make provision under which a member who votes upon a question in which he has a direct pecuniary interest shall be deemed not to have voted.
- 111.** (1) Any person who sits or votes in a Regional Assembly knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to a penalty not exceeding 500 shillings, or such other sum as may be prescribed by a law made by the Regional Assembly, for each day on

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which he so sits and votes, which penalty shall be recoverable by action in the Supreme Court at the suit of the Clerk to the Regional Assembly.

- (2) In the exercise of the functions vested in him by subsection (1) of this section, the Clerk to a Regional Assembly shall not be subject to the direction or control of any other person or authority.
- 112.**
- (1) Subject to the provisions of this Chapter, a Regional Assembly may regulate its own procedure and may in particular make rules for the orderly conduct of its proceedings.
 - (2) A Regional Assembly may act notwithstanding any vacancy in its membership (including any vacancy not filled when the Regional Assembly first meets after any general election) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the Regional Assembly shall not invalidate those proceedings.
 - (3) Without prejudice to the power conferred by subsection (1) of this section, a law made by a Regional Assembly may, for the purpose of the orderly and effective discharge of the business of the Regional Assembly, make provision for the powers, privileges and immunities of the Regional Assembly and the committees and the members thereof (including any person who is President of the Regional Assembly, having been elected from among persons who were not members thereof):
Provided that no such powers, privileges or immunities shall exceed those of the House of Representatives or, as the case may be, of the committees or of the members thereof.
- 113.**
- (1) Without prejudice to the generality of section 112 (1) of this Constitution, a Regional Assembly may establish committees for such general or special purposes as it thinks fit.
 - (2) Every Regional Assembly shall establish a committee to deal with Finance and Establishments (including staff matters) and shall establish one or more other committees (as it from time to time thinks fit) to deal with the following matters, that is to say:
 - (a) commerce and industry;
 - (b) education;
 - (c) land, agriculture and forests;
 - (d) local government and administration;

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- (e) public safety and public order; and
 - (f) works and communications.
- (3) Every committee of a Regional Assembly shall consist of the person holding the office of President together with other persons chosen from among the members of the Regional Assembly.
- (4) Every committee of a Regional Assembly other than the Finance and Establishments committee shall comprise (in addition to the President) a Chairman and such number of ordinary members, not exceeding five, as the Regional Assembly may determine.
- (5) The Finance and Establishments committee shall comprise (in addition to the President) the Vice-President as Chairman and the person holding the office of Chairman of each of the other committees that are for the time being established by the Regional Assembly.
- (6) The members (other than the President of the Regional Assembly) of each committee of a Regional Assembly except the Finance and Establishments committee shall be elected by the Regional Assembly in accordance with the provisions of Schedule 8 of this Constitution and the Chairman of each such committee shall then be selected by the Regional Assembly from among the persons so elected as members of that committee.
- (7) No member of a Regional Assembly (other than the President) shall be elected to be a member of more than two committees at any one time.
- (8) The tenure of office of a member of a committee of a Regional Assembly shall not be affected by the dissolution of the Regional Assembly but his office shall become vacant:
- (a) if he ceases to be a member of the Regional Assembly otherwise than by reason of its dissolution; or
 - (b) if, when the Regional Assembly first meets after it has been dissolved, he is not then a member thereof; or
 - (c) when the Regional Assembly first meets after any general election of its Specially Elected Members; or
 - (d) in the case of the President or the Vice-President of the Regional Assembly, when he ceases to be President or Vice-President, as the case may be; or
 - (e) when the Regional Assembly resolves to abolish the committee or to

reconstitute it.

(9) Subject to the provisions of this Chapter and to any provision made in that behalf by a Regional Assembly, each committee of a Regional Assembly may regulate its own procedure.

(10) A committee of the Regional Assembly may act notwithstanding any vacancy in its membership (including any vacancy not filled when it is first constituted or reconstituted at any time) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the committee shall not invalidate those proceedings.

Part 6. Miscellaneous

114 (1) Every Regional Assembly shall meet at least once in every quarter of a calendar year.

(2) The President of a Regional Assembly may summon a meeting of the Regional Assembly at any time.

(3) Subject to the provisions of subsections (1) and (2) of this section, the meetings of Regional Assembly shall be held at such time and at such place within the Region as the Regional Assembly may, by its rules of procedure or otherwise, determine.

115. Each Regional Assembly shall stand dissolved at the expiration of five years beginning with the date upon which the immediately preceding Regional Assembly stood dissolved.

116. (1) There shall be a Civil Secretary for each Region whose office shall be an office in the public service.

(2) The Civil Secretary, who shall carry out the duties of secretary and executive officer to the Finance and Establishments committee, shall be responsible, in accordance with such instructions as may be given to him by that committee, for arranging the business for, and keeping the minutes of, that committee and shall be responsible for conveying the decisions of the Regional Assembly and of that committee to the appropriate person or authority; and he shall also have such other functions as the Finance and Establishments committee may from time to time direct.

(3) The Civil Secretary shall be in charge of the organization and administration of the public officers serving on the establishment of the Region and shall be responsible therefor to the Finance and Establishments committee.

(4) The Civil Secretary shall allocate a public officer serving on the

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establishment of the Region to carry out the duties of secretary and executive officer to each committee that is empowered under section 105 (2) of this Constitution to exercise the executive authority of the Region on behalf of the Finance and Establishments committee, and every officer so allocated to a committee shall be responsible, in accordance with such instructions as may be given to him by the committee and, subject thereto, by the Civil Secretary, for arranging the business for, and keeping the minutes of, the committee and shall be responsible for conveying the decisions of the committee to the appropriate person or authority.

- 117.** (1) The Civil Secretary of a Region shall be entitled to attend all meetings of the Regional Assembly of that Region and of any committee of that Regional Assembly and to take part in all proceedings thereof but he shall not be regarded as a member of, or be entitled to vote on any question before, the Regional Assembly or any such committee.
- (2) Each officer who is allocated under section 116 (4) of this Constitution to carry out the duties of secretary and executive officer to a Committee of the Regional Assembly shall be entitled to attend all meetings of that committee and to take part in all proceedings thereof but he shall not be regarded as a member of the committee or be entitled to vote on any question before it.
- (3) Without prejudice to any law made in pursuance of section 112 (8) of this Constitution, the Regional Assembly of a Region or any committee thereof may summon any public officer serving on the establishment of the Region to attend before it for the purpose of assisting it in its deliberations on any matter but any officer so attending shall not be regarded as a member of, or be entitled to vote on any question before, the Regional Assembly or that committee.

CHAPTER VII - 1963 Constitution

Special Provisions Relating To Legislative And Executive Powers Of The Centre And The Regions

- 118.** (1) The provisions of Schedule 2 of this Constitution shall, subject to the provisions of this Chapter, have effect in relation to the respective legislative powers of Parliament and a Regional Assembly and in relation to the respective executive authorities of the Government of Kenya and a Region.
- (2) The provisions of this Chapter and of Schedule 2 of this Constitution shall have effect notwithstanding the provisions of sections 66 (1), 66 (2), 78 (8), 102 and 106 (1) of this Constitution.
- (3) Where any provisions of this Chapter or of the said Schedule 2 vests in a Regional Assembly the power to make laws with respect to any matter to the exclusion of the power of Parliament so to do, section 67, 68, 69 and 70 of this Constitution shall have effect as if that matter were a matter specified in Part I of Schedule 1 of this Constitution; and where any provision of this Chapter or of the said Schedule 2 provides that the executive authority of a Region shall extend to any matter to the exclusion of the executive authority of the Government of Kenya, subsections (4), (6) and (7) of section 72 of this Constitution shall have effect as if that matter were specified in Schedule of this Constitution.
- (4) Where any provision of this Chapter or of the said Schedule 2 provides that the executive authority of the Government of Kenya shall extend to any matter to the exclusion of the executive authority of any Region, that provision shall be subject to the provision `;t sections 72 and 74 of this Constitution.
- 119.** (1) Notwithstanding that any matter is specified in Schedule 1 of this Constitution or is, by virtue of any provision of this Chapter or of Schedule 2 of this Constitution, a matter to which the executive authority of a Region extends to the exclusion of the executive authority of the Government of Kenya, the executive authority of the Government of Kenya shall extend to the organization and provision of services for the purpose of coordinating the activities of the Regions, and advising the Regions, with respect to that matter and Parliament may establish or provide for the establishment of bodies for that purpose.
- (2) Where, under subsection (1) of this section, provision is made by or under an Act of Parliament for the establishment of a co-ordinating or advisory body, that body shall contain at least one member representing

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each Region who shall be appointed by the President of the Regional Assembly, the number of members who are to be so appointed to represent the Regions being the same in the case of all Regions.

- 120.** (1) Any power conferred by any of the provisions of this Constitution upon Parliament or, as the case may be, upon a Regional Assembly to make laws with respect to any matter shall include power to make laws with respect to any other matters that are incidental or supplementary to that matter.
- (2) Where under any of the provisions of this Constitution the executive authority of the Government of Kenya or, as the case may be, of a Region extends to any matter, that authority shall also extend to any other matters that are incidental or supplementary to that matter.
- (3) Where any provision of the Constitution confers any function on the Government of Kenya or on any officer or authority of that Government or on any court, Parliament may make laws with respect to any matters that are incidental or supplementary to the discharge of that function and the executive authority of the Government of Kenya shall extend to those matters.
- (4) Where any provision of this Constitution confers any function on the Regional Assembly of any Region or on any officer or authority of that Region (including, without prejudice to the generality of that expression, a local government authority), that Regional Assembly may make laws with respect to any matters that are incidental or supplementary to the discharge of that injunction and the executive authority of the Region shall extend to those matters.
- (5) In this section references to incidental and supplementary matters shall, without prejudice to their generality, be construed as including references to:
- (a) offences;
 - (b) the jurisdiction, powers, practice and procedure of courts of law;
 - (c) the compulsory acquisition of property; and
 - (d) the establishment and regulation of tribunals of inquiry.
- (6) Any provision of this Constitution that vests in a Region exclusive executive authority with respect to any matter with respect to which Parliament has power to make laws shall be without prejudice to the authority of the Government of Kenya to decide whether or not to

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introduce legislation with respect to that matter into the National Assembly and to determine the content of any legislation with respect to that matter that it decides so to introduce.

- (7) Where Parliament is empowered by any provision of Schedule 2 of this Constitution to make any declarations by law, that declaration may be made by resolutions passed by both Houses of the National Assembly instead of by Act of Parliament.
- (8) The inclusion of any matter in Schedule 1 or the inclusion of a provision with respect to any matter in Schedule 2 of this Constitution shall not be construed as conferring on the Regional Assembly of any Region the power to make laws with respect to conditions of employment or as extending the executive authority of the Region to conditions of employment.

CHAPTER VIII - 1963 Constitution

FINANCE

Part 1. Financial procedure of Government of Kenya:

- 121.** All revenues or other moneys raised or received for the purposes of the Government of Kenya (not being revenues or other moneys raised or received by a Region or revenues or other moneys that are payable, by or under an Act of Parliament, into some other fund established for any specific purpose or that may-; by or under any Act of Parliament, be retained by the authority that received them for the purpose of defraying the expenses of that authority): shall be paid into and form a Consolidated Fund.
- 122.** (1) No monies shall be withdrawn from the Consolidated Fund except:
- (a) to meet expenditure that is charged upon the Fund by this Constitution or by any Act of Parliament; or
 - (b) where the issue of those monies has been authorized by an Appropriation Act or by a vote: on account passed by the House of Representatives under section 124 of this Constitution, and no monies shall be withdrawn from the Consolidated Fund unless such withdrawal has been approved by the Controller and Auditor General.
- (2) Where any monies are charged by this Constitution or by Act of Parliament upon the Consolidated fund or any other public fund of the Government of Kenya, they shall be paid out of that fund by the Government of Kenya to the person or authority to whom payment is due.
- (3) No monies shall be withdrawn from any public fund of the Government of Kenya other than the Consolidated Fund unless the issue of those moneys has been authorized by or under any law.
- (4) Parliament may prescribe the manner in which withdrawals may be made from the Consolidated Fund or any other fund of the Government of Kenya.
- 123.** (1) The Minister for the time being responsible for finance shall cause to be prepared and laid before the House of Representatives in each financial year estimates of the revenues and expenditure of the

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Government of Kenya for the next following financial year.

- (2) When the estimates of expenditure (other than expenditure charged upon the Consolidated Fund by this constitution or by any Act of Parliament) have been approved by the House of Representatives, a bill, to be known as an Appropriation bill, shall be introduced into that House, providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several services required, to the purposes specified therein.
- (3) If in respect of any financial year it is found:
 - (a) that the amount appropriated by the Appropriation Act to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that Act; or
 - (b) that any monies have been expended for any purpose in excess of the amount appropriated to that purpose by the Appropriation Act or for a purpose to which no amount has been appropriated by that Act, a supplementary estimate or, as the case may be, a statement of excess showing the sums required or spent shall be laid before the House of Representatives and, when the supplementary estimate or statement of excess has been approved by the House, a supplementary Appropriation bill shall be introduced into that House, providing for the issue of such sums from the Consolidated Fund and appropriating them to the purposes specified therein.

124. If the Appropriation Act for any financial year has not come into operation, or is not likely to come into operation, by the beginning of that financial year, the House of Representatives may, by a vote on account, authorize the withdrawal from the Consolidated Fund of monies (not exceeding in total one-half of the sums included in the estimates of expenditure for that year that have been laid before the House) for the purpose of meeting expenditure necessary to carry on the services of the Government of Kenya during that year until such time as the Appropriation Act comes into operation, but any monies so withdrawn shall be included, under separate votes for the several services in respect of which they were withdrawn, in the Appropriation Act.

125. (1) Parliament may make provision for the establishment of a Contingencies Fund and for authorizing the Minister for the time being responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

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- (2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be presented and a supplementary Appropriation bill shall be introduced as soon as possible for the purpose of replacing the amount so advanced.
- 126.** (1) There shall be paid to the holders of the offices to which this section applies such salary and such allowances as may be prescribed by or under an Act of Parliament.
- (2) The salaries and any allowances payable to the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.
- (3) The salary payable to the holder of any office to which this section applies and his other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his service in that office) shall not be altered to his disadvantage after his appointment.
- (4) When a person's salary or other- terms of service depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous to him than any others for which he might have opted.
- (5) This section applies to the offices of Governor-General, Justice of Appeal, judge of the Supreme Court, member of the Public Service Commission, appointed member of the Police Service Commission appointed member of the Electoral Commission, Attorney General, Controller and Auditor-General and Inspector General of Police.
- (6) Nothing in this section shall be construed as prejudicing the provisions of section 195 of this Constitution (which protects pension rights in respect of service as a public officer).
- 127.** (1) All debt charges for which the Government of Kenya, is liable shall be a charge on the Consolidated Fund.
- (2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortization of debt, and all expenditure in connection with the raising of loans or the security of the Consolidated Fund and the service and redemption of debt created thereby.
- 128.** (1) There shall be a Controller and Auditor-General whose office shall be an office in the public service.

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- (2) It shall be the duty of the Controller and Auditor-General:
 - (a) to satisfy himself that any proposed withdrawal from the Consolidated Fund is authorised by, or as provided by, section 122 of this Constitution and, if so satisfied, to approve such withdrawal;
 - (b) to satisfy himself that all monies that have been appropriated by Parliament and disbursed have been applied to the purposes to which they were so appropriated and that the expenditure conforms to the authority that governs it; and
 - (c) at least once in every year to audit and report on the public accounts of the Government of Kenya, the accounts of all officers and authorities of that Government, the accounts of all courts in Kenya (other than courts no part of the expenses of which are defrayed directly out of moneys provided by Parliament), the accounts of the Central Land Board, the accounts of every Commission established by this Constitution and the accounts of the Clerk to each House of the National Assembly.
- (3) The Controller and Auditor-General and any officer authorized by him shall have access to all books, records, returns, reports and other documents which in his opinion relate to any of the accounts referred to in subsection (2) of this section.
- (4) The Controller and Auditor-General shall submit every report made by him in pursuance of subsection (2) of this section to the Minister for the time being responsible for finance who shall, not later than seven days after each House of the National Assembly first meets after he has received the report, lay it before that House.
- (5) A copy of any report made by the Controller and Auditor-General in pursuance of subsection (2) of this section and relating to the accounts of any court, the Central Land Board or any Commission established by this Constitution shall also be submitted by the Controller and Auditor-General to the Finance and Establishments committee of each Regional Assembly which shall, not later than seven days after the Regional Assembly first meets after the committee has received the report, lay it before the Regional Assembly.
- (6) The Controller and Auditor-General shall exercise such other functions in relation to the accounts of the Government of Kenya or the accounts of other authorities or bodies established by law for public purposes (not being authorities or bodies established by a law made by a Regional Assembly) as may be prescribed by or under an Act of Parliament.

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- (7) In the exercise of his functions under subsections (2), (3), (4) and (5) of this section, the Controller and Auditor-General shall not be subject to the direction or control of any other person or authority.

Part 2. Financial procedure of Regional Assemblies

- 129.** There shall be a Regional Fund of each Region and all revenues or other monies raised or received by the Region for the purposes of government (not being revenues or other monies that, by virtue of section 181 of this Constitution or by or under any law made by the Regional Assembly, are payable into some other fund established for a specific purpose of that may, by or under such a law, be retained by the authority that received them for the purpose of defraying the expenses of that authority) shall be paid into the Regional Fund.
- 130.** (1) No monies shall be withdrawn from the Regional Fund of a Region except:
- (a) to meet expenditure that is charged upon the Regional Fund by any law made by the Regional Assembly; or
 - (b) where the issue of those monies has been authorized by an Appropriation Enactment made by the Regional Assembly or by law made in pursuance of section 188 of this Constitution and no monies shall be withdrawn from the Regional Fund of a Region unless such withdrawal has been approved by the Controller and Auditor-General or such other auditor as may be approved in that behalf by the Controller and Auditor-General.
- (2) Where any monies are charged by any law made by the Regional Assembly of any Region upon the Regional Fund of the Region or, subject to the provisions of section 181 of this Constitution, on any other public fund of the Region, they shall be paid out of that fund by the Region to the person or authority to whom payment is due.
- (3) No monies shall be withdrawn from any public fund of a Region other than the Regional Fund unless the issue of those monies has been authorized by or under any law.
- (4) A law made by a Regional Assembly may prescribe the manner in which withdrawals shall be made from the Regional Fund or, subject to the provisions of section 181 of this Constitution, any other public fund of the Region.
- 131.** (1) Where any monies (other than the sums payable to a Region under Part of this Chapter) are received by that Region from the Government

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of Kenya, whether by way of grant or loan and whether in aid of recurrent expenditure or otherwise, those moneys shall be paid into a fund or funds separate from the Regional Fund and established for that purpose by a law made by the Regional Assembly.

- (2) No monies shall be withdrawn from any fund established for the purpose referred to in subsection (1) of this section save under the authority of, in the manner provided by and for expenditure on the purposes specified in the Appropriation Act under which they were paid to the Region.
- 132.**
- (1) The Finance and Establishments committee shall cause to be prepared and laid before the Regional Assembly in each financial year estimates of the revenues and expenditure of the Region for the next following financial year.
 - (2) When the estimates of expenditure (other than expenditure charged upon the Regional Fund by any law made by the Regional Assembly) have been approved by the Regional Assembly, a bill to be known as an Appropriation bill, shall be introduced into the Regional Assembly, providing for the issue from the Regional Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several services required, to the purposes specified therein.
 - (3) If in respect of any financial year it is found:
 - (a) that the amount appropriated by the Appropriation Enactment to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that Enactment; or
 - (b) that any moneys have been expended for any purpose in excess of the amount appropriated to that purpose by the Appropriation Enactment or for a purpose to which no amount has been appropriated by that Enactment, a supplementary estimate or, as the case may be, a statement of excess showing the sums required or spent shall be laid before the Regional Assembly and, when the supplementary estimate or the statement of excess has been approved, a supplementary Appropriation bill shall be introduced into the Regional Assembly, providing for the issue of such sums from the Regional Fund and appropriating them to the purposes specified therein.
 - (4) The Finance and Establishments committee shall, in preparing estimates of revenues and expenditure for the purposes of this section and before they are laid before the Regional Assembly, consult with

the Minister for the time being responsible for finance.

- (5) Without prejudice to the provisions of subsection (4) of this section; where any estimates of the revenues of a Region prepared for the purposes of this section include an estimate of monies (other than the sums payable to the Region under Part 8 of this Chapter) to be received from the Government of Kenya, whether by way of grant or loan and whether in aid of recurrent expenditure or otherwise, those estimates and any estimates of the expenditure (or statements of excess expenditure) of the Region for the same financial year shall not be laid before the Regional Assembly save with the concurrence of the Minister for the time being responsible for finance; and any Appropriation bill providing for the issue from the Regional Fund of the sums necessary; to meet any expenditure included in those estimates of expenditure (or statements of excess expenditure) shall not, save with the concurrence of the Minister for the time being responsible for finance be introduced into the Regional Assembly or certified by the President of the Regional Assembly under section 108 of this Constitution a, having been passed by the Regional Assembly.
- (6) The concurrence of the Minister for the time being responsible for finance given for the purposes of subsection (5) of this section shall be given in writing under his hand addressed to the President of the Regional Assembly and shall be published in the Kenya Gazette.

133. A law made by a Regional Assembly may make provision under which, if it appears to the Finance and Establishments committee of that Regional Assembly that the Appropriation Enactment in respect of any financial year will not come into operation by the beginning of that financial year, the committee may authorize the withdrawal of moneys from the Regional Fund for the purpose of meeting expenditure necessary to carry on the services of the Region in respect of the period expiring at the end of four months from the beginning of that financial year or on the coming into operation of the Appropriation Enactment, whichever is the earlier.

134. (1) A law made by a Regional Assembly may make provision for the establishment of a Regional Contingencies Fund and for authorizing the Finance and Establishments committee of that Regional Assembly, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from the Fund to meet that need.

- (2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be presented and an Appropriation bill shall be introduced as soon as possible for the purpose of replacing the

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amount so advanced.

- 135.** (1) All debt charges for which a Region is liable shall be a charge on the Regional Fund. (2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortization of debt, and all expenditure in connexion with the raising of loans on the security of the Regional Fund and the service and redemption of debt created thereby.
- 136.** 1) (It shall be the duty of the Controller and Auditor-General or such other auditor as may be approved in that behalf by the Controller and Auditor-General to satisfy himself that any proposed withdrawal from the Regional Fund of a Region is authorized by, or as provided by, section 130 of this Constitution and, if so satisfied, to approve, such withdrawal.
- (2) The public accounts of each Region and of all officers and authorities of the Region (other than local government authorities), the accounts of all courts within the Region the expenses of which are directly defrayed (either wholly or in part) out of monies provided by the Regional Assembly but no part of the expenses of which are directly defrayed out of monies provided by Parliament and the accounts of the Clerk to the Regional Assembly shall, at least once in every financial year, be audited and reported on by the Controller and Auditor-General or by such other auditor as may be approved in that behalf by the Controller and Auditor-General, and for that purpose the auditor and any person authorized by him in that behalf shall have access to all books, records, returns, reports and other documents which in his opinion relate to those accounts.
- (3) The auditor shall submit his report to the Finance and Establishments committee of the Regional Assembly which shall, not later than seven days after the Regional Assembly first meets after the Committee receives the report, lay it before the Regional Assembly.
- (4) A law made by a Regional Assembly may include provision conferring other functions on the Controller and Auditor-General in relation to the accounts of the Region or of any authority or body established for public purposes by a law made by the Regional Assembly:
- Provided that no such provision shall have effect except with the consent of the Governor-General.
- (5) In the exercise of his functions under subsections (1), (2) and (3) of this section, the Controller and Auditor-General shall not be subject to the direction or control of any other person or authority, and any other

auditor approved by the Controller and Auditor-General for the purposes of subsection (1) or subsection (2) of this section shall, in the exercise of his functions under either of those subsections or under subsection (3) of this section, be subject to the direction and control only of the Controller and Auditor-General.

Part 3. Financial relations between Centre and Regions

- 137.** (1) Where by or under any Act of Parliament a tax or duty is levied in respect of the importation into Kenya of motor spirit or diesel oil, or of any particular class, variety or description of motor spirit or diesel oil, or an excise tax or duty is levied in Kenya on motor spirit or diesel oil, or on any particular class, variety or description of motor spirit or diesel oil, or a tax or duty is levied on the sale, purchase or consumption in Kenya of motor spirit or diesel oil, or of any particular class, variety or description of motor spirit or diesel oil, there shall be paid by the Government of Kenya to the Regions in respect of each financial year a sum equal to the proceeds of that tax or duty for that financial year.
- (2) Where under subsection (1) of this section any sum is payable by the Government of Kenya to the Regions in respect of any financial year, payment of that sum shall be made in such manner that:
- (a) an amount equal to the proceeds of the tax or duty (other than the proceeds attributable to the quantities of motor spirit or diesel oil or any particular class, variety or description of motor spirit or diesel oil distributed for consumption in the Nairobi Area) is divided among the Regions in shares proportionate to the respective amounts of motor spirit or diesel oil, or of motor spirit or diesel oil of the particular class, variety or description, as the case may be, that have been distributed for consumption in the several Regions in that financial year; and
 - (b) an amount equal to the proceeds of the tax or duty attributable to the quantities of motor spirit or diesel oil or of the particular class, variety or description of motor spirit or diesel oil distributed for consumption in the Nairobi Area in that financial year is paid in the following proportions to the following Regions, that is to say:
 - i. one fifth to the Eastern Region;
 - ii. two fifths to the Central Region;
 - iii. one tenth to the Rift Valley Region; and
 - iv. of the remaining three tenths, 98 per cent to the Coast Region and the rest to the North-Eastern Region.

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- (3) For the purposes of this section the proceeds for a financial year of a tax or duty on motor spirit or diesel oil, or any particular class, variety or description of motor spirit or diesel oil, shall be the amount remaining from the receipts of that tax or duty that are collected in that financial year after any drawbacks, refunds or other repayments relating to those receipts have been made or allowed for and the administrative expenses relating to the collection of those receipts have been deducted or allowed for.
- 138.** (1) Where by or under any Act of Parliament a tax or duty is levied in respect of the importation into Kenya of any commodity other than motor spirit or diesel oil, or an excise tax or duty is levied in Kenya on any commodity other than motor spirit or diesel oil, or a tax or duty is levied on the sale, purchase or consumption in Kenya of any commodity other than motor spirit or diesel oil or agricultural produce produced in Kenya, there shall be paid by the Government of Kenya to the Regions in respect of each financial year a sum equal to thirty-two per cent of the proceeds of that duty for that financial year.
- (2) Where under subsection (1) of this section any sum is payable by the Government of Kenya to the Regions in respect of any financial year, payment of that sum shall be made in such manner that the sum is divided among the Regions in shares proportionate to the respective numbers of the inhabitants of each Region.
- (3) For the purposes of this section the proceeds for a financial year of a tax or duty shall be the amount remaining from the receipts of that tax or duty that are collected in that financial year after any drawbacks, refunds or other repayments relating to those receipts have been made or allowed for and the administrative expenses relating to those receipts have been deducted or allowed for.
- (4) For the purposes of this section the number of the inhabitants of a Region shall be ascertained by reference to the latest census of the population of Kenya held in pursuance of any law.
- 139.** Where by or under any Act of Parliament a tax or duty or fee is levied in respect of the licensing of motor vehicles or the drivers of motor vehicles:
- (a) the rates of the tax, duty or fee shall be uniform throughout Kenya;
- (b) a licence in respect of a vehicle shall be issued only in the Region in which the vehicle is usually kept or, if the vehicle is usually kept in the Nairobi Area, only in that Area, and a licence in respect of a driver

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shall be issued only in the Region in which the driver usually resides or, if he usually resides in the Nairobi Area, only in that Area, and a licence so issued in respect of a vehicle or of a driver shall be valid throughout Kenya;

- (c) licences shall be issued in a Region by such persons or authorities as may be prescribed by or under a law made by the Regional Assembly of that Region; and
- (d) the proceeds of any tax, duty or fee relating to a licence issued in a Region shall be revenues of the Region.

- 140.** (1) Where by or under any Act of Parliament any royalty is levied in respect of the extraction in Kenya of minerals (other than soda) or mineral oil or any particular class, variety or description of minerals (other than soda) or mineral oil and the proceeds of that royalty for any financial year exceed ₧100,000, there shall be paid by the Government of Kenya to the several Regions in respect of that financial year a sum equal to two-thirds of the excess. (2) Where under subsection (1) of this section any sum is payable by the Government of Kenya to the Regions in respect of any financial year, payment of that sum shall be made in such manner that: (a) an amount equal to one sixth of the amount of the excess of the proceeds of the royalty over ₧100,000 is divided equally among the Regions in which the minerals or mineral oils to which the royalty relates were extracted; and (b) an amount equal to one half of the amount of the excess of the proceeds of the royalty over ₧100,000 is divided equally among all the Regions
- (3) Where by or under any Act of Parliament any royalty is levied in respect of the extraction of soda from the Lake Magadi soda deposit, there shall be paid by the Government of Kenya to the Rift Valley Region in respect of each financial year a sum equal to the proceeds of that royalty for that, financial year.
 - (4) For the purposes of subsections (1), (2) and (3) of this section the proceeds for a financial year of a royalty shall be the amount remaining from the receipts of that royalty after any refunds or repayments relating to those receipts have been allowed for and the administrative expenses relating to the collection of those receipts have been deducted or allowed for.
 - (5) Where by or under any Act of Parliament a royalty is imposed in respect of forest produce, then:
 - (a) if it is imposed in respect of produce extracted from a Central Forest, it shall be levied and collected by the Government of Kenya and the

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proceeds shall be revenues of that Government;

- (b) subject to the provisions of paragraph (c) of this subsection, if it is imposed in respect of produce extracted from a Regional Forest, it shall be levied and collected by the Region in which the Regional Forest is situated and the proceeds shall be revenues of that Region; and
- (c) if it is imposed in respect of produce extracted from an area that is for the time being dedicated under paragraph 22 (4) of Schedule 2 of this Constitution, it shall be levied and collected by the Government of Kenya but the proceeds after the deduction of the cost of the management and operation of the forest within that area and after the deduction of the administrative expenses relating to the collection of the royalty shall be revenues of the Region within which the area is situated.

141. The Government of Kenya shall pay to each Region in respect of each financial year a sum equal to half the expenditure incurred by that Region for that financial year in respect of the Regional Contingent of the Police Force for that Region:
Provided that if the National Security Council considers that the amount of the expenditure so incurred by any Region in respect of any financial year is unreasonable the Government of Kenya shall pay to that Region in respect of that financial year a sum equal to half of so much of that expenditure as the National Security Council determines to be reasonable but in any event not less than half of the expenditure upon the salaries and allowances of members of the Regional Contingent.

- 142.** (1) The Regional Assembly of a Region may make laws with respect to:
- (a) taxes on or relating to the incomes of persons resident within the area of jurisdiction of each municipal council and each county council in the Region;
 - (b) rates on land or buildings within the area of jurisdiction of a county council and each municipal council in the Region;
 - (c) poll taxes on persons resident within the area of jurisdiction of any township authority, urban council, area council or local council in the Region;
 - (d) taxes in respect of entertainments (including exhibitions, performances, amusements, games and sports) in the Region to which persons are admitted for payment; and

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- (e) royalties in respect of common minerals extracted in the Region.
- (2) The powers conferred upon the Regional Assembly of a Region by subsection (1) (a) of this section shall not extend to the taxation of bodies corporate, partnerships or persons under the age of eighteen years.
- (3) A person who receives an income by way of wages or salary by virtue of his employment shall be deemed for the purposes of subsection (1) (a) of this section, but subject to the provisions of section 148 (3) of this Constitution, to have a residence in the place where he is employed.
- (4) For the purposes of this section the income of the wife of any person shall be regarded as the income of that person and not as her own income.
- (5) The aggregate amount of the tax imposed in respect of any calendar year on or relating to the income of any person by a law made by a Regional Assembly, or by laws made by the several Regional Assemblies, under subsection (1) (a) of this-section shall not exceed 600 shillings (or such greater amount as may from time to time be prescribed by or under an Act of Parliament).
- (6) A law made by the Regional Assembly of a Region under sub- section (1) (b) of this section may impose in respect of any calendar year a contribution in lieu of rates on any land or building in the Region that is vested in the Governor-General on behalf of Her Majesty in right of the Government of Kenya, in the East African Common Services Organization or any officer or authority of that Organization or in any body corporate established for public purposes by an Act of Parliament:
Provided that the contribution payable in respect of any land or building shall not exceed such amount as would be payable by way of rates on that land or building if it were not vested as aforesaid.
- (7) Parliament may make provision for the valuation of land and buildings in any Region for the purposes of any rate imposed by any law made under subsection (1) (b) of this section: Provided that the valuation of land and buildings in the Region for those purposes in accordance with the provisions of an Act of Parliament under this subsection shall be carried out by such persons or authorities as may be prescribed by or under a law made by the Regional Assembly of that Region.
- 8) (The poll tax imposed in respect of any calendar year upon any person

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by a law made by the Regional Assembly of a Region under subsection (1) (c) of this section shall not exceed 100 shillings or such greater amount as may from time to time be prescribed by or under an Act of Parliament.

- (9) Parliament may make provision for the exemption of entertainments of a national character from any tax imposed by any law made under subsection (1) (d) of this section.
- (10) The power to make laws with respect to any matter conferred upon the Regional Assembly of a Region by this section (other than; the power conferred by subsection (1) (a) of this section) shall be to the exclusion of the power of Parliament to make laws with respect to that matter.
- (11) The power conferred upon the Regional Assembly of a Region by subsection (1) (a) of this section shall be without prejudice to the power of Parliament to make provision for the taxation of incomes (including incomes subject to taxation imposed by a law made under subsection (1) (a) of this section) but that power of Parliament shall not be exercised in such manner as to prevent the exercise by the Regional Assembly of its power under subsection (1) (a) of this section.
- (12) References in this section to a person's income include references to any financial benefits of a recurrent nature which he receives.

- 143.** (1) Where a tax, rate or contribution in lieu of rates is imposed by or under any law made by the Regional Assembly of a Region under subsection (1) (a), subsection (1) (b) or subsection (6) of section 142 of this Constitution it shall be levied by and collected by or on behalf of the respective municipal councils and county councils in the Region; where a poll tax is imposed by or under law made by the Regional Assembly of a Region under subsection (1) (c) of that section on persons within the area of jurisdiction of any township authority, urban council, area council or local council in the Region that is specified in that law, it shall be levied by and collected by or on behalf of that authority or council; and where a tax or royalty is imposed by or under any law made by the Regional Assembly of a Region under subsection (1) (d) or subsection (1) (e) of that section it shall be levied and collected by such local government authority (being a local government authority within whose area of jurisdiction the entertainment concerned is held or, as the case may be, the mineral concerned is extracted) as may be specified by or under any law of the Regional Assembly:
Provided that nothing in this subsection shall be construed as precluding the Regional Assembly from making provision for:

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- (a) regulating the scale upon which the tax, rate, contribution, in lieu of rates or royalty is levied by any council;
 - (b) determining the principles upon which the tax, rate, contribution in lieu of rates or royalty is assessed; or
 - (c) prescribing the manner in which the tax, rate, contribution in lieu of rates or royalty is collected by the local government authority that levies it or by some other person or authority in the Region acting on behalf of that local government authority.
- (2) Subject to the provisions of subsections (B), (4) and (6) of this section and of section 145 of this Constitution, the proceeds of any tax, rate, contribution in lieu of rates or royalty imposed by any law made under subsection (1) or subsection (6) of section 142 of this Constitution that are collected by or on behalf of a local government authority in a Region shall be the revenues of that authority.
- (3) Where a tax has been levied on and collected from any person by virtue of the provisions of section 142 (3) of this Constitution, the proceeds of that tax shall be remitted by the municipal council or county council that levied it to the municipal council or county council (whether within the same or a different Region) within whose area of jurisdiction that person has his actual residence.
- (4) Where a person has (or a person and his wife between them have) more than one residence and those residences are within the area of jurisdiction of more than one municipal council or county council (whether within the same Region or different Regions), the proceeds of any tax for which he is liable under section 142 (1) (a) of this Constitution shall be shared equally by the municipal councils and county councils concerned.
- (5) Provision may be made by or under an Act of Parliament to give effect to section 142 (5) of this Constitution and to subsections (3) and (4) of this section.
- (6) For the purposes of this section the proceeds of a tax shall be the amount remaining after any refunds or repayments have been allowed for and the administrative expenses relating to the collection of the tax have been deducted or allowed for.
- 144.** (1) Where, by or under an Act of Parliament, a tax is imposed on or relating to the income of persons resident in the Nairobi Area (not being a tax imposed under the Act of the East Africa High Commission entitled the East African Income Tax (Management) Act 1958, or any

law amending or replacing that Act) or a rate or contribution in lieu of rates is imposed on land or buildings within the Nairobi Area, that tax, rate or contribution shall be levied and collected by or on behalf of the City Council of Nairobi; where, by or under an Act of Parliament, a poll tax is levied on persons resident within any part of the Nairobi Area, that tax shall be levied and collected by such local government authority (other than the City Council of Nairobi) as may be specified by or under an Act of Parliament; and where, by or under an Act of Parliament, a tax is imposed in respect of entertainments (including exhibitions, performances, amusements, games and sports) in the Nairobi Area, to which persons are admitted for payment or a royalty is imposed in respect of common minerals extracted in the Nairobi Area, that tax or royalty shall be levied and collected by such local government authority (being a local government authority within whose area of jurisdiction the entertainment concerned is held or, as the case may be, the mineral concerned is extracted) as may be specified by or under an Act of Parliament:

Provided that nothing in this subsection shall be construed as precluding Parliament from making provisions for:

- (a) regulating the sale upon which the tax, rate, contribution in lieu of rates or royalty is levied;
 - (b) determining the principles upon which the tax, rate, contribution in lieu of rates or royalty is assessed; and
 - (c) prescribing the manner in-which the tax, rate, contribution in lieu of rates or royalty is collected.
- (2) Subject to the provisions of subsections (3) and (4) of this section and of section 145 of this Constitution, the proceeds of any tax, rate, contribution in lieu of rates or royalty that are collected, by virtue of the provisions of subsection (1) of this section, by or on behalf of a local government authority established for the Nairobi Area shall be revenues of that authority.
 - (3) The provisions of subsections (3), (4) and (12) of section 142 and subsection (6) of section 143 of this Constitution shall apply in relation to a tax imposed under this section as they apply in relation to a tax imposed under the said section 142.
 - (4) The provisions of section 142 (5) and subsections (3), (4) and (5) of section 143 of this Constitution shall have-effect as if the Nairobi Area were a municipality within a Region and the City Council of Nairobi were a municipal council, and the said section 142 (5) shall have effect

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as if the reference therein to laws made by Regional Assemblies under section 142 (1) (a) of this Constitution included references to such provision made by or under an Act of Parliament as is referred to in subsection (1) of this section.

- 145.** (1) Subject to the provisions of this section, a law made by the Regional Assembly of a Region may make provision under which a local government authority of the Region may be required to pay, out of the proceeds of any tax, rate, contribution in lieu of rates or royalty collected by or on behalf of that authority, to the revenues of the Region or to the revenues of some other local government authority such amounts or proportions of those proceeds as may be specified by or under the law.
- (2) Subject to the provisions of this section, an Act of Parliament may make provision under which a local government authority established for the Nairobi Area may be required to pay, out of the proceeds of any tax, rate, contribution in lieu of rates or royalty collected by or on behalf of that authority, to the revenues of the Government of Kenya or to the revenues of some other local government authority such amounts or proportions of those proceeds as may be specified by or under the Act.
- (3) A local government authority shall not be required under subsection (1) or subsection (2) of this section to pay, in respect of the proceeds of a tax, rate, contribution or royalty, any amount or proportion other than a fixed amount or proportion notified to that authority before the commencement of the calendar year in which payment is to be made.
- (4) For the purposes of this section the proceeds of a tax collected by or on behalf of a local government authority include any sums remitted to it under section 143 (3) of this Constitution and its share in any tax under section 143 (4) of this Constitution but they do not include any sums which it is required under the said section 143 (3) to remit to any other local government authority or the share of any other local government authority in any tax under the said section 143 (4); and references in this subsection to subsections (3) and (4) of the said section 143 include references to those subsections as they are required to have effect by section 144 (4) of this Constitution.:
- (5) Where any local government authority is required to make a payment under subsection (1) or subsection (2) of this section, it may, within one month of the receipt of the notification given to it in pursuance of subsection (3) of this section, appeal: to the standing advisory committee of the Senate established under section 238 of this Constitution on the ground that the payment required is excessive.

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- (6) The standing advisory committee of the Senate shall consider any appeal made to it in pursuance of subsection (5) of this section and shall, in such consideration, have regard to all the circumstances of the case including the functions that the local government authority concerned is for the time being required to exercise and its general financial position; and in the light of such consideration the committee shall determine whether the local government authority shall make the payment required or shall pay such smaller amount or proportion as the committee may declare to be reasonable.
- (7) The standing advisory committee of the Senate may regulate its own procedure for the discharge of its powers and duties under this section, including the manner in which appeals to it may be made.
- 146.** Where any antiquity or museum in a Region is administered by the Government of Kenya or by an authority of the Government of Kenya there shall be paid by the Government of Kenya to that Region in respect of each financial year an amount equal to the profits (if any) derived by the Government of Kenya from the administration of that antiquity or museum for that financial year.
- 147.** (1) Where power is conferred upon a Regional Assembly by any of the provisions of this Constitution to make laws with respect to any matter or to exercise executive authority with respect to any matter, the Regional Assembly may make laws for the imposition of fees for the purpose of defraying the expenses involved in the administration of that matter.
- (2) Except as provided in section 142 of this Constitution, any power conferred by any provision of this Constitution upon a Regional Assembly to make laws with respect to any matter shall not include power to impose any tax, duty, rate, cess or other impost.
- 148.** Parliament may make provision for regulating the borrowing within Kenya of money by a Region or any officer or authority of a Region: Provided that nothing in this section shall be construed as precluding a Region or a local government authority from borrowing money by way of overdraft upon a bank up to an amount not exceeding one third of its annual revenues for the time being.
- 149.** (1) Parliament may establish:
- (a) a Central Housing Board which shall have the function of making loans to local government authorities of the Regions or of the Nairobi Area for the purposes of housing;

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- (b) a Local Government Loans Authority which shall have the function of making loans to local government authorities of the Regions or of the Nairobi Area for purposes other than housing.
 - (2) A Central Housing Board or a Local Government Loans Authority established under this section shall be composed in such manner as may for the time being be prescribed by or under an Act of Parliament so, however, that it shall contain at least one member representing the Nairobi Area who shall be appointed by the City Council of Nairobi and at least one member representing each Region who shall be appointed by the Chairman of the committee of the Regional Assembly of that Region that is for the time being designated under section 113 of this Constitution to deal with local government and administration, the number of members who are to be so appointed to represent the Regions being the same in the case of all Regions and the number of members who are to be so appointed to represent the Nairobi Area being the same as in the case of each Region.
 - (3) No loan shall be made by the Central Housing Board to a local government authority of a Region unless the Regional Assembly of the Region has approved that application should be made by the local government authority for the grant of that loan.
 - 4) (Any application made by a local government authority of a Region for a loan from the Local Government Loans Authority shall be made through the Regional Assembly of the Region who shall transmit the application, together with its recommendation thereon, to the, Local Government Loans Authority.
- 150.**
- (1) The Prime Minister shall consult with the President of each Regional Assembly before the recommendation of the Governor-General is signified under section 60 (2) of this Constitution with respect to any Bill, or before any instrument is made under an Act of Parliament, the likely effect of which Bill or instrument would be that the sum payable to the Regions under section 187 or section 138 of this Constitution in respect of any financial year would be lower than the sum payable to the Regions under that section in respect of the previous financial year.
 - (2) The Prime Minister shall consult with the President of the Regional Assembly of a Region before the recommendation of the Governor-General is signified under section 60 (2) of this Constitution with respect to any Bill, or before any instrument is made by the Governor-General, a Minister or any officer or authority of the Government of Kenya under an Act of Parliament, the effect of which Bill or instrument would be to reduce the classes of produce in respect of

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which a cess is payable to any local authority in that Region or to reduce the rate of the cess in relation to any such class.

- 151.** (1) Subject to the provisions of section 142 (6) of this Constitution, property in a Region vested in the Governor-General on behalf of Her Majesty in right of the Government of Kenya, in the East African Common Services Organization or any officer or authority of that Organization or in a body corporate established for public purposes by an Act of Parliament shall be exempt from any rate or royalty imposed by any law made by the Regional Assembly of that Region under that section.
- (2) A Region shall not be liable to taxation imposed by any Act of Parliament in respect of income, land or buildings not being income derived from, or land or buildings occupied for the purposes of, any trade or business.
- 152.** (1) For the purposes of this Part of this Chapter: "motor spirit" includes gasoline and other light oils suitable for use as fuel in internal-combustion engines and other products suitable for such use but does not include aviation spirit or other fuels suitable for use in aircraft engines; and "diesel oil" means light amber mineral oil suitable for use as fuel in high-speed internal-combustion engines.
- (2) The motor spirit and the diesel oil that are issued in any financial year from the oil depots situated at the several places specified in column 1 of Schedule of this Constitution shall be regarded for the purposes of section 137 of this Constitution as having been distributed for consumption in that financial year in the Regions (or, as the case may be, in the Nairobi Area) respectively specified in column 2 of that Schedule and, where more than one Region is so specified, in the proportions respectively specified in column 3 of that Schedule.
- 153.** The Minister for the time being responsible for finance may, by regulations published in the Kenya Gazette, make provision:
- (a) for determining the times at which, and the manner in which, the Government of Kenya shall pay to a Region any sums that are required by section 137, section 138, section 140, section 141 or section 146 of this Constitution to be so paid; and
- (b) the making of provisional payments by the Government of Kenya to a Region in respect of any sums that are required by section 137, section 138, section 140, section 141 or section 146 of this Constitution to be paid by the Government of Kenya to that Region, and the subsequent payment or repayment, as the case may be, of any

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amounts by which such provisional payments are less than, or exceed, the sums in respect of which they were made.

- 154.** Any payments that are required by section 137, section 138, section 140, section 141 or section 146 of this Constitution to be made by the Government of Kenya to a Region shall be a charge on the Consolidated Fund.
- 155.** Any sum that is required by section 137, section 138, section 140, section 141 or section 146 of this Constitution to be paid by the Government of Kenya to a Region may be set off by the Government of Kenya towards the payment of any sum due from the Region to the Government of Kenya in respect of a loan to that Region.
- 156.** (1) Not earlier than 1st July 1964 and not later than 1st July 1966 and thereafter at intervals of not less than two nor more than three years the Governor-General shall appoint:
- (a) a person (from among persons who are experienced in government finance and who are not Ministers, Parliamentary Secretaries, members of either House of the National Assembly or of a Regional Assembly or members of; a committee of a Regional Assembly) to review:
 - i. the operation of section 137 (2) (b) of this Constitution in so far as it determines the Regions to which the amount therein referred to is to be paid and the proportions in which it is to be paid to those Regions;
 - ii. the operation of Part II of Schedule 3 of this Constitution;
 - iii. the sum payable by the Government of Kenya to the Regions under section 138 (1) of this Constitution; and
 - iv. the sum (being the amount of the proceeds of any royalty in excess of which payments shall be made by the Government of Kenya to the Regions) specified in section 140 (1) of the Constitution; and
 - (b) a Commission to advise the National Assembly with respect to that review (hereinafter in this section referred to as an Advisory Commission).
- (2) An Advisory Commission shall be composed in such manner as may be determined by the Governor-General so, however, that it shall contain at least one member representing each Region who shall be appointed by the President of the Regional Assembly of that Region, the number of members who are to be so appointed to represent the Regions being the same in the case of all Regions.

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- (3) A person appointed under subsection (1) (a) of this section shall, as soon as practicable, submit to the Advisory Commission a report upon the matters he is required to review and the Advisory Commission shall consider that report and shall make recommendations to both Houses of the National Assembly with respect to those matters.
- (4) If Parliament makes provision altering:
- (a) the provisions of section 137 (2) (b) of this Constitution in so far as it determines the Regions to which the amount therein referred to is to be paid and the proportions in which it is to be paid to those Regions; or
 - (b) the provisions of Part II of Schedule 3 of this Constitution; or
 - (c) the sum payable by the Government of Kenya to the Regions under section 138 (1) of this Constitution; or
 - (d) the sum (being the amount of the proceeds of any royalty in excess of which payments are to be made by the Government of Kenya to the Regions) specified in section 140 (1) of this Constitution, section 137 (2) (b), Part II of Schedule 3, section 138 (1) or section 140 (1) of this Constitution shall be altered accordingly with effect from such date as may be prescribed by Parliament:
Provided that:
 - (a) a Bill for an Act of Parliament under this subsection shall be introduced into the National Assembly only in the session in which recommendations of an Advisory Commission are submitted to the National Assembly or in the next succeeding session;
 - (b) a Bill for an Act of Parliament under this subsection shall not be passed by either House of the National Assembly unless it has been supported on the second and third readings by the votes of two-thirds of all the members of that House;
 - (c) no Act of Parliament under this subsection shall come into operation unless the Regional Assemblies of at least four Regions have, by resolution, signified their consent that the Act should: have effect.

CHAPTER IX - 1963 Constitution

Police

- 157.** (1) There shall be a Police Force which shall consist of a Regional Contingent for each Region, a Nairobi Contingent and the specialized branches.
- (2) Expenses of a Regional Contingent (including the salaries and allowances of the members of that Contingent) shall be defrayed out of moneys provided by the Regional Assembly, and the expenses of the Nairobi Contingent and the specialized branches (including the salaries and allowances of members of that Contingent and those branches) shall be defrayed out of moneys provided by Parliament.
- (3) Subject to the provisions of section 165 of this Constitution:
- (a) the Police Force shall be under the general command of an Inspector General of Police; and
 - (b) subject to the general command of the Inspector General, each Regional Contingent shall be under the direct command of a member of that Contingent who shall be styled Regional Commissioner of Police.
- (4) Subject to the provisions of this Chapter, the Police Force shall be organized and administered in accordance with such provision as may be made in that behalf by Parliament and, without prejudice to the generality of the foregoing but subject to the provisions of section 126 of this Constitution:
- (a) the salaries, allowances and other conditions of service of members of the Police Force shall be such as may be prescribed by or under any Act of Parliament; and
 - (b) provision may be made by or under an Act of Parliament prescribing the standards of qualifications to be required of members of the Police Force generally or of members of the Police Force who hold a particular rank or who are engaged on particular duties.
- (5) Subject to the provisions of this Constitution, the members of the Police Force shall have such powers and duties as may be conferred on them by any law.
- (6) Subject to the provisions of subsection (7) of this section, no other police force shall be established for Kenya or any part thereof.

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- (7) Parliament may make provision for police forces forming part of naval, military or air forces. 158. (1) There shall be a National Security Council which shall consist of
- (a) the Minister; and
 - (b) the Chairman of the Law and Order committee of each Regional Assembly.
- (2) The Inspector General and a representative of the Nairobi Area (being a member of the City Council of Nairobi for the time being designated in that behalf by the City Council of Nairobi) shall be entitled to attend all meetings of the Council and to take part, in all the proceedings of the Council, but neither the Inspector General nor the representative of the Nairobi Area shall be regarded as a member of the Council or be entitled to vote on any question before the Council.
- (3) The Chairman of the Law and Order committee of a Regional Assembly shall be entitled to bring with him as his adviser at any meeting, of the Council the Regional Commissioner of Police for his Region, but a Regional Commissioner of Police shall not be regarded as a member of the Council, shall not be entitled to take part in the proceedings of the Council otherwise than as the Council may direct and shall not be entitled to vote on any question before the Council.
- (4) The Council shall not be summoned except by the authority of the Minister who shall, so far as is practicable, attend and preside at all meetings of the Council, and, in the absence of the Minister, such member of the Council as the other members may elect for that purpose shall preside.
- (5) The Minister may summon a meeting of the Council whenever he considers it desirable to do so, and he shall summon a meeting of the Council:
- (a) upon the request of any three members of the Council; or
 - (b) in the circumstances specified in section 165 (4) (b) and 165 (5) (b) of this Constitution.
- (6) The Council may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member, and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

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Provided that any decision of the Council shall require the concurrence of a majority of all the members thereof.

- (7) Subject to the provisions of this Chapter, the Council may regulate its own procedure.
- 159.** (1) In addition to the other functions vested in the National Security Council by this Constitution, it shall be the duty of the Council to keep under constant review all matters relating to the organization, maintenance and administration of the Police Force, and the Council may make recommendations with respect to any such matter to the Minister, the Law and Order committee of any Regional Assembly, the Inspector General or any Regional Commissioner of Police.
- (2) The Council shall determine from time to time the establishment of each Regional Contingent, the Nairobi Contingent and each specialized branch, that is to say, the number of officers in the Police Force in each such Contingent or branch and their respective ranks (being ranks provided for under the provisions of section 157 (4) of this Constitution).
- 160.** (1) There shall be a Police Service Commission which shall consist of two ex officio members, that is to say:
- (a) the Chairman of the Public Service Commission; and
 - (b) such Justice of Appeal or judge of the Supreme Court as may for the time being be designated in that behalf by the Chief Justice, and three appointed members who shall be appointed by the two ex officio members, acting jointly but after consultation with the Inspector-General.
- (2) The Police Service Commission shall be presided over by such one of the appointed members (hereinafter referred to as "the Chairman of the Police Service Commission") as may for the time being be designated in that behalf by the members of the Commission.
- (3) A person shall not be qualified to be appointed as a member of the Police Service Commission if:
- (a) he is, or has at any time been, a member of either House of the National Assembly, a member of a Regional Assembly or a member (other than an ex officio, an appointed or a nominated member) of any Legislative Council established for Kenya by any Order of Her Majesty in Council; or

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- (b) he is, or has at any time been nominated as a candidate for election as a member of either House of the National Assembly or of a Regional Assembly or of any such Legislative Council; or
 - (c) he is, or has at any time been, the holder of an office in any political organization that sponsors or otherwise supports, or has at any time sponsored or otherwise supported, a candidate for election as a member of either House of the National Assembly or of a Regional Assembly or of such a Legislative Council or of any local government authority (whether established under Chapter XIII of this Constitution or by or under any law in force at any time before 12th December 1968); or
 - (d) he is a public officer.
- (4) An appointed member of the Police Service Commission shall not, within a period of three years commencing with the day on which he last held or acted in the office of a member of the Commission, be eligible for appointment to or to act in any public office.
- (5) Subject to the provisions of subsection (7) of this section, the office of an appointed member of the Police Service Commission shall become vacant:
- (a) at the expiration of three years from the date of his appointment; or
 - (b) if any circumstances arise that, if he were not such a member, would cause him to be disqualified to be appointed as such.
- (6) A person holding the office of appointed member of the Police Service Commission may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and may not be so removed except in accordance with the provisions of this section.
- (7) An appointed member of the Police Service Commission shall be removed from office by the Governor-General if the question of his removal has been referred to a tribunal appointed under subsection (8) of this section and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.
- (8) If the Prime Minister or the President of any Regional Assembly or either of the ex officio members of the Police Service Commission represents to the Governor-General that the question of removing an

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appointed member of that Commission under this section ought to be investigated, then:

- (a) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other-members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
 - (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the member ought to be removed under this section.
- (9) If the question of removing an appointed member of the Police Service Commission has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Chairman of the Public Service Commission, may suspend that member from the exercise of the functions of his office, and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that that member should not be removed.
- (10) If the office of an appointed member of the Police Service Commission is vacant or if such a member is for any reason unable to exercise the functions of his office, the ex officio members, acting jointly but after consultation with the Inspector General, may appoint a person who is qualified to be appointed to the office of that member to act in place of that member; and any person so appointed shall, subject to the provisions of subsections (5), (7) and (9) of this section, continue to act until a person has been appointed to the office in which he is acting and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions.
- (11) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member, and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:
Provided that any decision of the Commission shall require the concurrence of a majority of all the members thereof.
- (12) Subject to the provisions of this Chapter, the Commission may regulate its own procedure and, with the consent of the Prime Minister in the

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case of a public officer serving on the establishment of the Government of Kenya or in the case of any authority of that Government and with the consent of the President of the Regional Assembly in the case of a public officer serving on the establishment of a Region or in the case of any authority of a Region, may confer powers or impose duties on such an officer or authority for the purpose of the discharge of its functions.

- (13) Subject to the provisions of this Chapter, the Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.
- 161.** (1) In addition to the other functions vested in the Police Service Commission by this Chapter, it shall be the duty of the Commission to keep under review all matters relating to the salaries, allowances and other conditions of service of members of the Police Force and to give advice thereon to the Minister.
- (2) It shall be the duty of the Commission to keep under review all matters relating to the standards or qualifications (whether in respect of health, education, efficiency or of any other kind) that may be required of members of the Police Force generally or members of the Police Force who hold a particular rank or who are engaged on particular duties and to give advice thereon as occasion may require to the Minister, to the Inspector General and to the Law and Order committee of any Regional Assembly.
- 162.** (1) The Inspector General shall be appointed by the Governor-General acting in accordance with the advice of the Police Service Commission.
- (2) If the office of Inspector General is vacant or if the Inspector General is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the Police Service Commission, may appoint a person to act as Inspector-General, and any person so appointed shall, subject to the provisions of subsections (3), (5) and (7) of this section, continue to act until a person has been appointed to the office of Inspector General and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions.
- (3) Subject to the provisions of subsection (5) of this section, the Inspector General shall vacate his office when he attains such age may be prescribed by Parliament.
- (4) A person holding the office of Inspector General may be removed from

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office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

- (5) The Inspector General shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (6) of this section and the tribunal has recommended to the Governor-General that he ought to be removed for inability as aforesaid or for misbehaviour.
- (6) If the Chairman of the Police Service Commission represents to the Governor-General that the question of removing the Inspector General under this section ought to be investigated, then:
 - (a) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
 - (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the Inspector General ought to be removed under this section.
- (7) If the question of removing the Inspector General has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Police Service Commission, may suspend the Inspector General from the exercise of the functions of his office, and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the Inspector General should not be removed.

- 163.** (1) The power to appoint persons to hold or act in any offices in the Police Force of or above the rank of Sub-Inspector (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Police Service Commission.
- (2) The Police Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more members of the

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Commission, to the Inspector General or to a Regional Commissioner of Police.

- (3) The power to appoint persons to hold or act in any offices in the Police Force below the rank of Sub-Inspector (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall best, in the case of an office in a Regional Contingent, in the Regional Commissioner of Police and, in the case of any other office, in the Inspector General.
 - (4) A Regional Commissioner of Police or the Inspector General may by directions given in such manner as he thinks fit and subject to such conditions as he thinks fit, delegate any of his powers under subsection (3) of this section to any other member of the Police Force.
 - (5) When the power to exercise disciplinary control over any member of the Police Force (including the power to remove him from office has been exercised under this section by any person (hereinafter referred to as "the disciplinary authority") other than the Police Service Commission, the member of the Police Force in respect of whom it was exercised may appeal from the decision of the disciplinary authority: to the Police Service Commission:
Provided that, in the case of a decision of the disciplinary authority that is made in exercise of a power delegated to that authority under subsection (2) or subsection (4) of this section, the authority by whom the delegation is made may require appeals to be made to a member of the Police Force of higher rank than the disciplinary authority before they are made under this subsection to the Police Service Commission.
 - (6) The Police Service Commission may by regulation or otherwise provide for the time and manner of the making of appeals to it under subsection (5) of this section and all matters incidental to such appeals.
 - (7) The power conferred on any person or authority by or under this section to appoint person to hold or act in any offices in the Police Force shall be subject to the power conferred on the Inspector General by section 164 (1) of this Constitution.
- 164.** (1) The power to post any member of the Police Force from an office in one Contingent to an office in another Contingent or in a specialized branch or from an office in one specialized branch to an office in another specialized branch or in a Contingent shall, where the offices to and from which the posting is to be made are of the same rank, vest in the Inspector-General:

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Provided that, before posting a person to serve in any Region as Regional Commissioner of Police and before posting elsewhere any person who is so serving, the Inspector General shall consult with the Law and Order committee of the Regional Assembly of the Region to or from which the posting is to be made.

- (2) The power to post a member of a Regional Contingent to serve in any appointment within that Contingent shall vest in the Regional Commissioner of Police, the power to post a member of the Nairobi Contingent to serve in any appointment within that Contingent shall vest in the Inspector General and the power to post a member of one of the specialized branches to serve in any appointment within that branch shall likewise vest in the Inspector General.
 - (3) The Inspector General or a Regional Commissioner of Police may, by directions given in such manner as he thinks fit and subject to such conditions as he thinks fit, delegate any of his powers under this section to any other member of the Police Force.
- 165.**
- (1) A Regional Commissioner of Police shall, as well as having command of his Regional Contingent, have operational command of all other units of the Police Force that, in accordance with the provisions of this Chapter, are posted to serve in his Region.
 - (2) Subject to the provisions of subsections (4) and (5) of this-section, a Regional Commissioner of Police shall, in the exercise of his power to determine the use and to control the operations of the Regional Contingent and any other units under his command, comply with such general direction of policy with respect to maintaining public safety and public order in the Region as the Law and Order Committee of his Regional Assembly may give to him.
 - (3) Subject to the provisions of subsection (4) and (5) of this section, a Regional Commissioner of Police shall be responsible to the Law and Order committee of the Regional Assembly of his Region for the organisation, maintenance and administration of the Regional Contingent (otherwise than in respect of the exercise of the powers vested in him by sections 164 (2) and 168 of this Constitution), and shall comply with all lawful instructions as to the discharge of that responsibility that the committee may give to him.
 - (4) When a Regional Commissioner of Police considers that the interests of public safety and public order in his Region so require, he may refer to the Inspector General the directions or instructions given to him in any matter by the Law and Order committee under subsection (2) or subsection (8) of this section, and the Regional Commissioner of

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Police shall then comply with all lawful instructions given to him in that matter by the Inspector General:

Provided that:

- (a) the Inspector General shall consult with the committee before giving instructions to the Regional Commissioner of Police under this subsection; and
 - (b) when the instructions which he gives to the Regional Commissioner of Police under this subsection differ from those given by the committee, the Inspector General shall forthwith submit to the Minister a report on his action in that case and the Minister shall summon a meeting of the National Security Council as soon as is practicable and shall lay the report before the Council.
- (5) When the Inspector General considers that the interests of public safety and public order in Kenya so require, he may give instructions to a Regional Commissioner of Police as to the exercise by the Regional Commissioner of Police of his functions under this Chapter, and the Regional Commissioner of Police shall comply with all lawful instructions given to him by the Inspector General under this subsection:
- Provided that:
- (a) the Inspector General shall consult with the Law and Order committee of the Regional Assembly before giving instructions to the Regional Commissioner of Police under this subsection; and
 - (b) unless the committee otherwise directs, the Inspector General shall forthwith submit to the Minister a report on his action in any such case and the Minister shall summon a meeting of the National Security Council as soon as is practicable and shall lay the report before the Council.

166. (1) Subject to the provisions of section 165 (1) of this Constitution, the Inspector General shall, as well as having general command of the Police Force, have direct command of the Nairobi Contingent and the specialised branches.

- (2) The Inspector General shall be responsible to the minister for the organisation, maintenance and administration of the Nairobi Contingent and the specialised branches (otherwise than in respect of the powers vested in him by section 164 and 168 of this Constitution³, and shall comply with all lawful instructions as to the discharge of that responsibility that the Minister may give to him.

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- (3) The Inspector General shall have a general responsibility for keeping the Minister fully informed as to the manner in which he has exercised his various functions under this Chapter.
- (4) The Inspector General shall from time to time inspect the several Regional Contingents and shall submit reports on his inspection to the Law and Order committees of the respective Regional Assemblies and to the Minister; and the Minister shall lay all such reports before -the National Security Council. (5) The Inspector General may, whenever he considers that the interests of public safety and public order in Kenya so require, post to serve as reinforcements in any part of Kenya units of the Police Force from any other part of Kenya.
- 167.** The Attorney General may require the Inspector General or any Regional Commissioner of Police to investigate any matter which, in the Attorney Generals opinion, relates to any offence or alleged offence or suspected offence, and the Inspector General or the Regional Commissioner of Police shall comply with that requirement, and shall report to the Attorney General upon the investigation.
- 168.** The power to second any member of the Police Fore to a police training establishment for the purpose of undergoing a course of training shall vest, in the case of a member of a Regional Contingent, in the Regional Commissioner of Police acting with the concurrence of the Inspector General and, in the case of any other member of the Police Force, in the Inspector General; and the Inspector General or a Regional Commissioner of Police may, by directions given in such manner as he thinks fit and subject to such conditions as he thinks fit, delegate any of his powers under this section to any other member of the Police Force.
- 169.** (1) Provision may be made by or under an Act of Parliament that during any period of emergency (which expression shall in this section have the meaning assigned to it in section 69 of this Constitution):
- (a) the Inspector General, in the exercise of his power to determine the use and to control the operations of any part of the Police Force, shall comply with such general directions of policy with respect to maintaining public safety and public order in Kenya or any part thereof as the Minister may give to him;
 - (b) the power to give general directions vested in the Law and Order committee of any Regional Assembly by section 165 (2) of this Constitution shall cease to be exercisable by that committee;
 - (c) the Inspector General shall be responsible to the Minister for the

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- organization, maintenance and administration of every Regional Contingent and shall comply with all lawful instructions as to the discharge of that responsibility that the Minister may give to him;
- (d) the power to give instructions vested in the Law and Order committee of any Regional Assembly by section 165 (3) of this Constitution shall cease to be exercised by that committee;
 - (e) the Inspector General shall be relieved from any obligation under this Chapter (other than under section 167 of this Constitution) to submit reports to or to consult with any person or authority; or
 - (f) the function vested in the National Security Council by section 159 (2) of this Constitution shall cease to be exercisable by the Council and shall be exercisable instead by the Minister.
- (2) Provision may be made by or under a law made for a Region by Parliament in pursuance of section 70 of this Constitution that:
- (a) the Inspector General shall, in the exercise of his power to determine the use and to control the operations of the Regional Contingent of that Region or any other units under the command of the Regional Commissioner of Police of that Region, comply with such general directions of policy with respect to maintaining public safety and public order in the Region as the Minister may give to him;
 - (b) the power to give general directions vested in the Law and Order committee of the Regional Assembly of that Region by section 165 (2) of this Constitution shall cease to be exercisable by that committee;
 - (c) the Inspector General shall be responsible to the Minister for the organization, maintenance and administration of the Regional Contingent of that Region and shall comply with all lawful instructions as to the discharge of that responsibility that the Minister may give to him;
 - (d) the power to give instructions vested in the Law and Order committee of the Regional Assembly of that Region by section 165 (3) of this Constitution shall cease to be exercisable by that committee; or
 - (e) the Inspector General shall, in the exercise of any of his functions under this Chapter that relate to the Regional Contingent of that Region and the maintenance of public safety and public order in that Region, be relieved from any obligation under this Chapter to submit reports to or to consult with the National Security Council or the Law and Order committee of the Regional Assembly of that Region.

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170.

- (1) For the purpose of this Chapter:
- (a) "the specialized branches" are the staff of the Inspector-General, any General Service Unit, the Criminal Investigation Department, the Special Branch, the Police Air Wing, the Police Signals Branch, the Police Transport Branch, any police unit established to carry out the policing of Kenya's international frontiers, any police unit established for the protection of harbours, waterways, railways or airfields, any police training establishment and all police supply services: Provided that the National Security Council may declare any other branch of the Police Force to be a specialized branch for the purposes of this Chapter or may declare that any branch shall cease to be a specialized branch for those purposes;
 - (b) the Minister" means the Minister for the time being responsible for matters relating to the Police Force; and
 - (c) the Law and Order committee of a Regional Assembly" means the Committee of that Regional Assembly that is for the time being designated under section 113 (2) of this Constitution to deal with public safety and public order.
- (2) If provision is made under section 157 (4) of this Constitution altering the ranks into which the Police Force is divided, the Police Service Commission may, by notice published in the Kenya Gazette, specify some rank other than the rank of Sub-Inspector as being equivalent to the rank of Sub-Inspector as it exists under the law in force on 11th December 1963, and references in this Chapter to the rank of Sub-Inspector shall then be construed as if they were references to the rank for the time being so specified.

CHAPTER X- 1963 constitution

THE JUDICATURE

Part 1. The Supreme Court

- 171.** (1) There shall be a Supreme Court which shall have unlimited original Jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law.
- (2) The judges of the Supreme Court shall be the Chief Justice and such number, not being less than eleven, or other judges (hereinafter referred to as "the puisne judges") as may be prescribed by Parliament: Provided that the office of a puisne judge shall not be abolished while there is a substantive holder thereof.
- (3) The Supreme Court shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.
- (4) The Supreme Court shall sit in such places as the Chief Justice may appoint.
- 172.** (1) The Chief Justice shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister:
Provided that before tendering advice of the purpose of this subsection the Prime Minister shall consult the Presidents of the Regional Assemblies and shall not advise the Governor-General to appoint any person as Chief Justice unless the Presidents of not less than four Regional Assemblies concur in his tendering such advice.
- (2) The puisne judges shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial Service Commission.
- (3) (a) A person shall not be qualified to be appointed as a judge of the Supreme Court unless:
- i. he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or a court having jurisdiction in appeals from such a court; or
 - ii. he holds one of the specified qualifications and has held one or other of those qualifications for a total period, of not less than seven years.

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- (c) In this subsection "the specified qualifications" means the professional qualifications specified by the Advocates Ordinance (or by or under any law amending or replacing that Ordinance) one of which must be held by any person before he may apply under that Ordinance (or under any such law) to be admitted as an advocate in Kenya.
- (4) If the office of Chief Justice is vacant or the Chief Justice is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, they shall be exercised by such one of the Justices of Appeal or the puisne judges as may for the time being be designated in that behalf by the Governor-General, acting in accordance with the advice of the Prime Minister.
- (5) If the office of any puisne judge is vacant or if any such judge is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office or if the Chief Justice advises the Governor-General that the state of business in the Supreme Court so requires, the Governor-General acting in accordance with the advice of the Judicial Service Commission, may appoint a person who is qualified to be appointed as a judge of the Supreme Court to act as a puisne judge of that court:
Provided that a person may act as a judge notwithstanding that he has attained the age prescribed for the purposes of section 173 (1) of this Constitution.
- (6) Any person appointed under subsection (5) of this section to act as a puisne judge shall, subject to the provisions of sections 173 (4) and 173 (7) of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the Governor-General, acting in accordance with the advice of the Judicial Service Commission:
Provided that, notwithstanding the expiration of the period of his appointment or the revocation of his appointment, he may thereafter continue to act as a puisne judge for so long as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.
- 173.** (1) Subject to the provisions of this section, a person holding the office of a judge of the Supreme Court shall vacate that office when he attains such age as may be prescribed by Parliament.
- (2) Notwithstanding that he has attained the age prescribed for the purposes of subsection (1) of this section, a person holding the office

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of a judge of the Supreme Court may continue in office for so long after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

- (3) A person holding the office of a judge of the Supreme Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except, in accordance with the provisions of this section.
- (4) A judge of the Supreme Court shall be removed from office by the Governor-General if the question of his removal has been referred by the Governor-General to the Judicial Committee under subsection (5) of this section and the Judicial Committee has advised the Governor-General that the judge ought to be removed from office for inability as aforesaid or for misbehaviour.
- (5) If the Prime Minister or the President of any Regional Assembly or, in the case of a puisne judge, the Chief Justice represents to the Governor-General that the question of removing a judge under this section ought to be investigated, then:
 - (a) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected in accordance with the provisions of subsection (6) of this section from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court;
 - (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether the question of the removal of that judge from office should be referred by him to the Judicial Committee; and
 - (c) if the tribunal so recommends, the Governor-General shall refer the question to the Judicial Committee which shall then advise the Governor-General thereon.
- (6) When the question of removing the Chief Justice is to be investigated the members of the tribunal shall be selected by the Chairman of the Public Service Commission, and when the question of removing a puisne judge is to be investigated they shall be selected by the Chief Justice.

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- (7) If the question of removing a judge from office has been referred to a tribunal under subsection (5) of this section, the Governor-General, acting in accordance with the advice of the Chief Justice in the case of a puisne judge and in accordance with the advice of the Prime Minister in the case of the Chief Justice, may suspend the judge from exercising the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect:
- (a) if the tribunal recommends to the Governor-General that the question of the removal of the judge from office should not be referred to the Judicial Committee; or
 - (b) if the Judicial Committee advises the Governor-General that the judge ought not to be removed from office.

174. A judge of the Supreme Court shall not enter upon the duties of his office until 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.

175. (1) Where any question as to the interpretation of this Constitution arises in any proceedings in any subordinate court and the court is of the opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court.

(2) Where any question is referred to the Supreme Court in pursuance of this section, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under section 180 of this Constitution to the Court of Appeal for Kenya or (whether mediately or direct) to the Judicial Committee, in accordance with the decision of the Court of Appeal for Kenya or, as the case be, the Judicial Committee.

(3) When the Supreme Court is determining any matter in connection with a reference to it under this section (other than an interlocutory matter) it shall be composed of an uneven number of judges, not being less than three.

Part 2. Interterritorial courts of appeal and Court of Appeal for Kenya

176. (1) If Parliament so provides, then, subject to the provisions of this Constitution:

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- (a) the Court of Appeal for Eastern Africa established by the Act of the East African Common Services Organization entitled the Court of Appeal for Eastern Africa Act 1962 or by or under any law amending or replacing that Act that has effect for the purposes of this paragraph; or
- (b) any other court that may be established as an appellate court for Kenya and any one or more other countries or territories by or under any law that has effect for the purposes of this paragraph, shall have such jurisdiction in relation to appeals from the Court of Appeal for Kenya or the Supreme Court and such powers in relation to that jurisdiction as may be conferred on it by any law:

Provided that no jurisdiction may be conferred under this section on the Court of Appeal for Eastern Africa or any other court to entertain appeals direct from the Supreme Court to the extent to which jurisdiction to entertain such appeals is for the time being conferred on the Court of Appeal for Kenya.

- (2) A law shall have effect for the purpose of paragraph (a) or paragraph (b) of subsection (1) of this section if:
 - (a) in the case of an Act of Parliament, the bill for the Act, was supported on the final reading in each House of the National Assembly by the votes of three quarters of all the members of that House; and
 - (b) in the case of any other law, it has been approved by a resolution of each House of the National Assembly supported by the votes of three quarters of all the members of that House.
- (3) Any jurisdiction conferred upon the Court of Appeal for Eastern Africa or any other court under this section shall not extend to:
 - (a) any question as to the interpretation of this Constitution; or
 - (b) any question as to the contravention of any of the provisions of sections 14 to 27 (inclusive) of this Constitution (which relate to fundamental rights and freedoms); or
 - (c) any question for the determination of which a right of access to the Supreme Court is guaranteed by section 19 of this Constitution (which relates to the right of persons whose property is compulsorily acquired).

177. (1) Parliament may, if it thinks fit, establish a Court of Appeal for Kenya

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which, subject to the provisions of this Constitution, shall have such jurisdiction and powers as may be conferred on it by any law.

- (2) The judges of the Court of Appeal for Kenya shall be:
 - (a) the Chief Justice, as President;
 - (b) such number of Justice of Appeal (if any) as may be prescribed by Parliament: Provided that the office of a Justice of Appeal shall not be abolished while there is a substantive holder thereof; and
 - (c) the puisne judges for the time being of the Supreme Court.
- (3) The provisions of sections 171 (3), 171 (4), 172, 173, and 174 of this Constitution shall apply in relation to the Court of Appeal for Kenya and to a Justice of Appeal as they apply in relation to the Supreme Court and to a puisne judge of the Supreme Court.
- (4) When the Court of Appeal for Kenya is determining any matter other than an interlocutory matter, it shall be composed of an uneven number of judges, not being less than three.

Part 3. Other courts

- 178.** (1) Parliament may establish courts subordinate to the Supreme Court and courts-martial, and any such court shall, subject to the provisions of this Constitution, have such jurisdiction and powers as may be conferred on it by any law.
- (2) The Supreme Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court or any court-martial and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court.
- (3) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by subsection (2) of this section.
- 179.** (1) There shall be a Chief Kadhi and such number, not being less than three, of other Kadhis as may be prescribed by Parliament.
- (2) A person shall not be qualified to be appointed to hold or act in the office of Kadhi unless:
 - (a) he professes the Muslim religion; and

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- (b) he possesses such knowledge of the Muslim law applicable to any sect or sects of Muslims as qualifies him, in the opinion of the Judicial Service Commission, to hold a court of a Kadhi.
- (3) Without prejudice to the generality of section 178 (1) of this Constitution and subject to the provisions of subsection (4) of this section, there shall be such subordinate courts held by Kadhis (in this Chapter referred to as "courts of a Kadhi") as Parliament may establish and each court of a Kadhi shall, subject to the provisions of this Constitution, have such jurisdiction and powers as may be conferred on it by any law.
- (4) The Chief Kadhi and the other Kadhis, or the Chief Kadhi and such of the other Kadhis (not being less than three in number) as may be prescribed by or under an Act of Parliament, shall each be empowered to hold a court of a Kadhi having jurisdiction within the former Protectorate or within such part of the former Protectorate as may be so prescribed:
Provided that no part of the former Protectorate shall be outside the jurisdiction of some court of a Kadhi.
- (5) The jurisdiction of a court of a Kadhi shall extend to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion.

Part 4. Appeals

- 180.** (1) If a Court of Appeal for Kenya is established under section 177 of this Constitution, then, subject to the provisions of sections 50 (5), 61 (7), 101 (5) and 210 (5) of this Constitution, an appeal direct to that court shall lie as of right from decisions of the Supreme Court in the following cases, that is to say:
- (a) final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution;
 - (b) final decisions given in exercise of the jurisdiction conferred on the Supreme Court by section 28 of this Constitution (which relates to the enforcement of fundamental rights and freedoms); and
 - (c) final decisions in the determination of any of the question for the determination of which a right of access to the Supreme Court is guaranteed by section 19 of this Constitution (which relates to the rights of persons whose property is compulsorily acquired); and an appeal shall lie as of right direct to the Judicial Committee from any decision of the Court of Appeal for Kenya in any such case.

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- (2) If no Court of Appeal for Kenya is established under section 177 of this Constitution, then, subject as aforesaid, an appeal from decision of the Supreme Court in any of the cases specified in subsection (1) of this section shall lie as of right direct to the Judicial Committee.
- (3) In this section:
 - (a) references to final decisions of the Supreme Court shall be construed as including references to decisions given in pursuance of section 28 (4) or section 175 (2) of this Constitution; and
 - (b) references to decisions of the Court of Appeal for Kenya in any cases specified in subsection (1) of this section shall be construed as including references to decisions given by that Court on appeal from decisions of the Supreme Court in any such cases.
- 181.** (1) Subject to the provisions of sections 50 (5), 61 (7), 101 (5) and 210 (5) of this Constitution and of subsection (4) of this section, an appeal shall lie as of right to the Judicial Committee from any decision given by the Court of Appeal for Kenya or the Supreme Court in any of the cases to which this subsection applies or from any decision given in any such case by the Court of Appeal for Eastern Africa or any other court in the exercise of any jurisdiction conferred under section 176 of this Constitution.
- (2) The cases to which subsection (1) of this section applies are:
 - (a) final decisions in any civil proceedings where the matter in dispute on the appeal to the Judicial Committee is of the value of ?1,000 or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of ?1,000 or upwards;
 - (b) final decisions in proceedings for dissolution or nullity of marriage; and
 - (c) such other cases as may be prescribed by any law.
- (3) Subject to the provisions of sections 50 (5), 61 (7), 101 (5) and 210 (5) of this Constitution and of subsection (4) of this section, an appeal from decisions given by the Court of Appeal for Kenya or the Supreme Court or from decisions given by the Court of Appeal for Eastern Africa or any other court in exercise of any jurisdiction conferred under section 176 of this Constitution shall, with the leave of the court that gave the decision, lie to the Judicial Committee in the following

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cases, that is to say:

- (a) decisions in any civil proceedings where, in the opinion of the court that gave the decision, the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Judicial Committee; and
 - (b) such other cases as may be prescribed by any law.
- (4) An appeal shall, with the special leave of the Judicial Committee, lie to the Judicial Committee from decisions given in any civil or criminal matter by the Court of Appeal for Kenya or the Supreme Court or from decisions given in any civil or criminal matter by the Court of Appeal for Eastern Africa or any other court in exercise of any jurisdiction conferred under section 176 of this Constitution.
- (5) No appeal shall lie under this section direct to the Judicial Committee from a decision given by any of the courts referred to in sub-section (1), (3) and (4) of this section if, under any law:
- (a) an appeal lies as of right from that decision to any other of those courts; or
 - (b) an appeal lies from that decision to any other of those courts with the leave of the court that gave the decision or some other court and that leave has not been withheld.
- 182.** (1) Subject to the provisions of subsection (2) of this section, an appeal shall lie as of right to the Supreme Court from final decisions given by any subordinate court or a court-martial in any civil or criminal proceedings on questions as to the interpretation of this Constitution (not being questions that have been referred to the Supreme Court in pursuance of section 175 of this Constitution) or as to the contravention of any of the provisions of sections 14 to 27 (inclusive) of this Constitution (not being questions that have been referred to the Supreme Court in pursuance of section 28 (3) of this Constitution).
- (2) An appeal from a decision given by a subordinate court or a court-martial in any of the cases referred to in subsection (1) of this section:
- (a) shall not lie direct to the Court of Appeal for Kenya; and (b) shall not lie direct to the Supreme Court if, under any law:
 - i. an appeal lies as of right from that decision to another subordinate court or court-martial; or

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- ii. an appeal lies from that decision to another subordinate court or court-martial with the leave of the court that gave the decision or of some other court and that leave has not been withheld.
- (3) An appeal shall lie as of right to the Supreme Court from final decisions given by any subordinate court in any case in which, if the decision of the subordinate court were a decision of the Supreme Court, then, subject to the provisions of subsection (5) of section 181 of this Constitution, an appeal would lie as of right to the Judicial Committee under the said section 181: Provided that: :
 - (a) an appeal shall not lie to the Supreme Court-from decision given by a subordinate court in any such case if, under any law:
 - i. an appeal lies as of right from that decision to the Court of Appeal for Kenya; or
 - ii. an appeal lies from that decision to the Court of Appeal for Kenya with the leave of the court that gave the decision or of some other court and that leave has not been withheld; and
 - (b) an appeal shall not lie direct to the Court of Appeal for Kenya or direct to the Supreme Court from a decision given by a subordinate court in any such case if, under any law:
 - i. an appeal lies as of right from that decision to another sub- ordinate court; or
 - ii. an appeal lies from that decision to another subordinate court with the leave of the court that gave the decision or of some other court and that leave has been withheld.
- (4) An appeal shall lie from a subordinate court or a court-martial to:
 - (a) the Supreme Court; or
 - (b) the Court of Appeal for Kenya, in such cases (other than the cases referred to in subsection (1) or subsection (3) of this section) as may be prescribed by any law.
- 183.** (1) The provisions of the Judicial Committee Act 1833 and of any rules made thereunder from time to time shall apply in relation to proceedings before the Judicial Committee under this Chapter but only in so far as those provisions relate to the powers of the Judicial Committee and the procedure to be adopted with respect to such proceedings and for that purpose they shall be construed with such

modifications, adaptations, qualifications and exceptions as may be necessary by reason of the nature of those proceedings or otherwise to bring them into conformity with the provisions of this Constitution.

- (2) Subject to the provisions of this Chapter, provision may be made by or under an Act of Parliament regulating the procedure to be adopted by any court established for Kenya with respect to any appeal to the Judicial Committee under this Chapter or by the parties to any such appeal.
- (3) Any decision given by the Judicial Committee in any appeal under this Chapter shall be enforced in like manner as if it were a decision of the court from whose decision the appeal to the Judicial Committee was made.
- (4) Subject to the provisions of subsection (3) of this section, the Judicial Committee shall, in relation to any appeal to it under this Chapter in any case, have all the jurisdiction and powers possessed in relation to that case by the court from whose decision the appeal to the Judicial Committee was made.

Part 5. Judicial Service Commission

- 184.** (1) There shall be a Judicial Service Commission which shall consist of:
- (a) the Chief Justice, as Chairman;
 - (b) two persons who are for the time being designated in that behalf by the Governor-General, acting in accordance with the advice of the Chief Justice, from among the Justices of Appeal or the puisne judges of the Supreme Court; and
 - (c) two persons who are for the time being designated in that behalf by the Governor-General, acting in accordance with the advice of the Chairman of the Public Service Commission, from among the members of that Commission.
- (2) In the exercise of its functions under this Constitution, the Commission shall not be subject to the direction or control of any other person or authority.
- (3) subject to the provisions of this Chapter, the Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister in the case of a public officer serving on the establishment of the Government of Kenya or in the case of any authority of that Government and with the consent of the President of the Regional Assembly in the case of a public officer serving on the

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establishment of a Region or in the case of any authority of a Region may confer powers or impose duties on such an officer or authority for the purpose of the discharge of its functions.

- (4) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all the members thereof.

- 185.** (1) The power to appoint persons to hold or act in any offices to which this section applies (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Judicial Service Commission.

- (2) The Judicial Service Commission may, by direction in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more of its members or to any judge of the Supreme Court or to any person holding or acting in an office to which this section applies or, in the case of a power that relates to an office connected with the Court of Appeal for Kenya, to any judge of that Court:

Provided that a power that relates to an office the holder of which is required to possess legal qualifications may not be delegated under this subsection except to one or more members of the Commission.

- (3) The offices to which this section applies are:

- (a) the office of Registrar or Deputy Registrar of the Court of Appeal for Kenya;
- (b) the office of Registrar or Deputy Registrar of the Supreme Court;
- (c) the office of Senior Resident Magistrate or Resident Magistrate;
- (d) the office of Kadhi;
- (e) the office of president or member of any African court;
- (f) the office of president or member of any subordinate court (other than an African court or the court of a Kadhi or the court of any magistrate who is authorized, by or under any law, to hold such a court by virtue of his holding or acting in any public office); or

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- (g) such other offices of member of any court (other than the Judicial Committee) or connected with any court (other than the Judicial Committee) as may be prescribed by Parliament.

CHAPTER XI – 1963 Constitution

The Public Service Of Kenya

- 186.** (1) There shall be a Public Service Commission which shall consist of a Chairman, a Deputy Chairman and five other members.
- (2) The members of the Commission shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial Service Commission.
- (3) A person shall not be qualified to be appointed as a member of the Commission if:
- (a) he is, or has at any time been, a member of either House of the National Assembly, a member of a Regional Assembly or a member (other than ex officio, an appointed or a nominated member) of any Legislative Council established for Kenya by any Order of Her Majesty in Council; or
 - (b) he is, or has at any time been, nominated as a candidate for election as a member of either House of the National Assembly or of a Regional Assembly or of any such Legislative Council; or
 - (c) he is, or has at any time been, the holder of an office in any political organization that sponsors or otherwise supports, or has at any time sponsored or otherwise supported, a candidate for election as a member of either House of the National Assembly or of a Regional Assembly or of such a Legislative Council or of any local government authority (whether established under Chapter XIII of this constitution or by or under any law in force at any time before 12th December 1963; or
 - (d) he is a public officer.
- (4) A member of the Commission shall not, within a period of three years commencing with the day on which he last held or acted in the office of a member of the Commission, be eligible for appointment to or to act in any public office.
- (5) Subject to the provisions of subsection (7) of this section, the office of a member of the Commission shall become vacant:
- (a) at the expiration of three years from the date of his appointment; or
 - (b) if any circumstances arise that, if he were not such a member, would

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cause him to be disqualified to be appointed as such .

- (6) A person holding the office of member of the Commission may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and may not be so removed except in accordance with the provisions of this section.
- (7) A member of the Commission shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (8) of this section and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.
- (8) If the Prime Minister or the President of any Regional Assembly represents to the Governor-General that the question of removing a member of the Commission under this section ought to be investigated, then:
 - (a) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
 - (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the member ought to be removed under this section.
- (9) If the question of removing a member of the Commission has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Judicial Service Commission, may suspend that member from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that that member should not be removed.
- (10) If the office of Chairman of the Commission is vacant or the Chairman is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, the Deputy Chairman or, if the office of Deputy Chairman is vacant or the Deputy Chairman is for any reason

unable to perform the functions of the office of Chairman, such one of the other members as the Governor-General, acting in accordance with the advice of the Judicial Service Commission, may appoint shall act as Chairman; and the Deputy Chairman or the other member shall, subject to the provisions of subsections (5), (7) and (9) of this section, continue to act until a person has been appointed to the office of Chairman and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has assumed or resumed those functions.

- (11) If the office of a member of the Commission other than the Chairman is vacant or if such a member is acting as Chairman under subsection (10) of this section or is for any other reason unable to exercise the functions of his office, the Governor-General, acting in accordance, with the advice of the Judicial Service Commission, may appoint a person who is qualified to be appointed to be a member to act in place of that member; and any person so appointed shall, subject to the provisions of subsections (5), (7) and (9) of this section, continue to act until a person has been appointed to the office in which he is acting and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions.
- (12) Subject to the provisions of this Chapter, the Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.
- (13) Subject to the provisions of this Chapter, the Commission may by regulation or otherwise regulate its own procedure and, with the consent of the Prime Minister in the case of a public officer serving on the establishment of the Government of Kenya or in the case of any authority of that Government and with the consent of the President of the Regional Assembly in the case of a public officer serving on the establishment of a Region or in the case of any authority of a Region, may confer powers or impose duties on such an officer or authority for the purpose of the discharge of its functions.
- (14) The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all the members thereof.

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- 187.** (1) Parliament may, to the exclusion of any Regional Assembly, prescribe, or make provision for the prescription of, the grades into which the several offices in the public service shall be divided, the qualifications for appointment to offices in any such grade and, subject to the provisions of section 12 of this Constitution, the salaries, allowances and other terms of service of persons holding or acting in offices in any such grade.
- (2) The establishment of the Government of Kenya, that is to say, the number of offices of each grade in the public service that are to be filled by persons employed by that Government, shall be determined as provided by section 87 of this Constitution: Provided that the Governor-General, acting after consultation with the Prime Minister, may, by regulations published in the Kenya Gazette, prescribe the number of offices of each grade in public service that are to constitute the offices on his personal staff.
- (3) The establishment of each Region, that is to say, the number of offices of each grade in the public service that are to be filled by persons employed by that Region, shall, subject to the provisions of this Constitution and of any law made: by the Regional Assembly of that Region, be determined by the Finance and Establishments committee of that Regional Assembly.
- 188.** (1) Subject to the provisions of this Constitution, the power to appoint persons to hold or act in offices in the Public Service (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.
- (2) The Public Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) of this section to any one or more members of the Commission or, where the power relates to an office on the establishment of the Government of Kenya and with the consent of the Prime Minister, to any person holding or acting in an office on that establishment or, where the power relates to an office on the establishment of a Region and with the consent of the President of the Regional Assembly of that Region, to any person holding or acting in an office on the establishment of that Region.
- (3) When the Public Service Commission has, in pursuance of sub-section (2) of this section, delegated to a disciplinary authority, that is to say, one or more of its members or a person holding or acting in an office on the establishment of the Government of Kenya or of a Region, the

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power to exercise disciplinary control over any public officer (including the power to remove him from office) and that power has been exercised by the disciplinary authority, the officer in respect of whom it was so exercised may appeal from the decision of the disciplinary authority to the Public Service Commission:

Provided that, where the disciplinary authority is a person holding or acting in an office on the establishment of the Government of Kenya or of a Region, the Commission may require appeals to be made to a person holding or acting in an office on that establishment of higher rank than that of the disciplinary authority before they are made under this subsection to the Commission.

- (4) The Public Service Commission may by regulation or otherwise provide for the time and manner of the making of appeals to it under subsection (3) of this section and all matters incidental to such appeals.
- (5) Where an office on the establishment of the Government of Kenya or of any Region is vacant or the holder of that office is temporarily unable to exercise the functions of his; office, the Minister for the time being responsible for the Public Service may represent to the Public Service Commission that there is an urgent need in the national interest for those functions to be exercised without delay and, accordingly, for another public officer to be appointed to or to act in that office, and he may, if he considers that the situation so requires, specify a particular public officer (being an officer who already holds or is acting in an office of the same grade as that office) as the officer to be so appointed; and, upon receiving any such representation, the Public Service Commission shall with all practicable speed make such an appointment, either substantive or on secondment, and, if the Ministers has specified a particular public officer as the officer to be so appointed, shall so appoint that officer.
- (6) The Public Service Commission shall, if requested so to do by the Minister for the time being responsible for the public service, second any public officer to undergo any course of training (whether within Kenya or abroad) that the Minister may specify, and the Public Service Commission shall, upon the termination of that course of training and if requested by the Minister so to do, appoint that officer to or to act in any public office on the establishment of the Government of Kenya or of any Region that is specified by the Minister, being an office of the grade then held by that officer.
- (7) Subject to the provisions of subsections (5) and (6) of this section, the Public Service Commission shall, before appointing a person to or to act in any office on the establishment of the Government of Kenya or of any Region, consult with the Minister for the time being responsible

for the Public Service or, as the case may be, the Finance and Establishments Committee of the Regional Assembly of that Region regarding any special attributes (in addition to any qualifications prescribed under section 187 (1) of this Constitution) which the Minister or the Committee would wish to be possessed by any person who is appointed to or to act in that office.

- (8) Where a person has been appointed to or to act in any office on the establishment of the Government of Kenya or of a Region, the power to determine the appointment or post in which he shall serve or the duties which he shall carry out shall vest in the Government of Kenya or, as the case may be, in the Region and shall be exercised in accordance with the provisions of section 72 (1) or section 105 (2) of this Constitution:
Provided that, in making any representation to the Public Service Commission under subsection (5) of this section, the Minister for the time being responsible for the public service may direct that any officer who, in pursuance of that subsection, is to be appointed by the Public Service Commission to or to act in any office shall serve in the same appointment or post or carry out the same duties as was served in or were carried out by the last person previously to exercise the functions of that office, and that officer shall thereafter not be removed from that appointment or post or relieved of those duties save with the consent of the Public Service Commission which shall, before giving such consent, consult the Minister.
- (9) In exercising its powers under this section to appoint persons to hold or act in offices on the establishment of the Government of Kenya, the Public Service Commission shall endeavour to secure, as far as is practicable, that that establishment is staffed at every level by a reasonable number of persons from each Region and from the Nairobi Area.
- (10) In exercising its powers under this section to appoint persons to hold or act in offices on the establishment of a Region, the Public Service Commission shall endeavour to secure, as far as is practicable, that that establishment is staffed at every level by a substantial proportion of persons from that Region.
- (11) No person shall be appointed under this section to or to act in any office on the personal staff of the Governor-General except with the concurrence of the Governor-General.
- (12) Before any of the powers conferred by this section in relation to the Clerk or a Clerk-Assistant of a House of the National Assembly are exercised by the Public Service Commission or any other person or

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authority, the Commission or that person or authority shall consult with the Speaker of that House.

- (13) Before the Public Service Commission or any other person or authority exercises its power under this section to appoint to or to act in any public office any person who holds or is acting in any office the power to make appointments to which is vested by this Constitution in the Judicial Service Commission, the Public Service Commission, or that person or authority shall consult with the Judicial Service Commission.
- (14) A public officer shall not be removed from office or subjected to any other punishment under this section on the grounds of any act done or omitted by him in the exercise of a judicial function conferred on him unless the Judicial Service Commission concurs therein.
- (15) The provisions of this section shall not apply in relation to any of the following offices, that is to say:
- (a) the office of a Justice of Appeal or a judge of the Supreme Court;
 - (b) the office of Attorney General;
 - (c) the office of Controller and Auditor-General;
 - (d) so far as relates to appointments thereto or to act therein, the office of a permanent secretary or the office of the Secretary to the Cabinet;
 - (e) the office of Ambassador, High Commissioner or other principal representative of Kenya in any other country;
 - (f) so far as relates to appointments thereto or to act therein, the office of Civil Secretary of a Region;
 - (g) any office-to which section 185 of this Constitution (which relates to offices within the jurisdiction of the Judicial Service Commission) applies; or
 - (h) the office of Inspector General of Police or any other office in the Police Force.

- 189.** (1) The Attorney General shall be appointed by the Governor- General, acting in accordance with the advice of the Public Service Commission.

Provided that, before tendering advice for the purposes of this subsection, the Public Service Commission shall consult the Prime

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Minister.

- (2) If the office of Attorney General is vacant or if the Attorney General is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the Public Service Commission, may appoint a person to act as Attorney General, and any person so appointed shall, subject to the provisions of subsections (4), (6) and (8) of this section, continue to act until a person has been appointed to the office of Attorney General and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions.
- (3) (a) A person shall not be qualified to be appointed to hold or to act in the office of Attorney General unless he holds one of the specified qualifications and has held one or other of those qualifications for a total period of not less than seven years.
(b) In this subsection "the specified qualifications" means the professional qualifications specified by the Advocates Ordinance (or by or under any law-amending or replacing that Ordinance) one of which must be held by any person before he may apply under that Ordinance (or under any such law) to be admitted as an advocate in Kenya.
- (4) Subject to the provisions of subsection (6) of this section, the Attorney General shall vacate his office when he attains such age as may be prescribed by Parliament.
- (5) A person holding the office of Attorney General may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.
- (6) The Attorney General shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (7) of this section and the tribunal has recommended to the Governor-General that he ought to be removed for inability as aforesaid or for misbehaviour.
- (7) If the Prime Minister or the President of any Regional Assembly or the Chairman of the Public Service Commission represents to the Governor-General that the question of removing the Attorney General under this section ought to be investigated, then:
 - (a) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief

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Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and

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

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

190. (1) The Controller and Auditor-General shall be appointed by the Governor-General, acting in accordance with the advice of the Public Service Commission.

(2) If the office of Controller and Auditor-General is vacant or if the Controller and Auditor-General is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the Public Service Commission, may appoint a person to act as Controller and Auditor-General, and any person so appointed shall, subject to the provisions of subsections (3), (5) and (7) of this section, continue to act until a person has been appointed to the office of Controller and Auditor-General and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions.

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

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

(5) The Controller and Auditor-General shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (6) of this

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section and the tribunal has recommended to the Governor-General that he ought to be removed for inability as aforesaid or for misbehaviour.

- (6) If the Prime Minister or the President of any Regional Assembly or the Chairman of the Public Service Commission represents to the Governor-General that the question of removing the Controller and Auditor-General under this section ought to be investigated, then:
- (a) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and
 - (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the Controller and Auditor-General ought to be removed under this section.
- (7) If the question of removing the Controller and Auditor-General has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Public Service Commission, may suspend the Controller and Auditor-General from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the Controller and Auditor-General should not be removed.
- (8) A person who holds or has held the office of Controller and Auditor-General shall not be eligible to be appointed to or to act in any other public office.

191. The power to appoint a person to hold or act in the office of permanent secretary or Secretary to the Cabinet or Director of Personnel of the Government of Kenya shall vest in the Governor-General, acting in accordance with the advice of the Public Service Commission:
Provided that, before tendering advice for the purposes of this section, the Public Service Commission shall consult the Prime Minister.

192. (1) The power to appoint persons to hold or act in offices to which this Section applies and to remove from office persons holding or acting in such offices shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister.

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- (2) Before tendering advice for the purposes of this section in relation to any person who holds any office in the public service, other than an office to which this section applies, the Prime Minister shall consult the Public Service Commission.
- (3) The offices to which this section applies are the offices of Ambassador, High Commissioner or other principal representative of Kenya in any other country.

193. The power to appoint a person to hold or act in the office of Civil Secretary of a Region shall vest in the Public Service Commission of that Region, but before making any such appointment, the Commission shall consult the President of the Regional Assembly.

194. (1) There shall be on the establishment of the Coast Region such offices of Liwali and such offices of Mudir as may be determined by a law made by the Regional Assembly of that Region or, subject to any such law, by the Finance and Establishments committee of that Regional Assembly.

(2) A person shall not be qualified to be appointed to hold or act in the office of Liwali or the office of Mudir unless he professes the Muslim religion.

(3) Before the Public Service Commission or any other person or authority exercises its power under section 188 of this Constitution to appoint any person to hold or act in the office of Liwali or the office of Mudir, the Commission or that person or authority shall make such consultation as it considers necessary or expedient with any other person or authority that appears to the Commission or to the first-mentioned person or authority to be qualified to advise on the needs and wishes of persons who:

- (a) are resident in the former Protectorate, and
- (b) profess the Muslim religion

or any group or groups of such persons: Provided that a law made by the Regional Assembly of the Coast Region may establish or provide for the establishment of an advisory board for the purposes of this subsection and, if any such board is established, then, without prejudice to the foregoing provisions of this subsection, the Commission or the said person or authority shall, before exercising its power under this section to appoint a person to hold or act in the office of Liwali or the office of Mudir, consult that board.

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- 195.** (1) The law to be applied with respect to any pensions benefits that were granted to any person before 12th December 1963 shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.
- (2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall:
- (a) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before 12th December 1968, be the law that was in force on 11th December 1963; and
- (b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after 11th December 1968, be the law in force on the date on which that period of service commenced,
- or any law in force at a later date that is not less favourable to that person.
- (3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.
- (4) All pensions benefits shall (except to the extent to which, in the case of benefits under the Provident Fund Ordinance, the Widows and Orphans Pensions Ordinance, the Asiatic Widows and Orphans Pensions Ordinance and the Asian Officers Family Pensions Ordinance or under any law amending or replacing any of those Ordinances, they are a charge on a fund established by any of those Ordinances or by any such law and have been duly paid out of that fund to the person or authority to whom payment is due) be a charge on the Consolidated Fund.
- (5) All sums, that, under any of the Ordinances referred to in sub-section (4) of this section or under any law amending or replacing any of those Ordinances, are to be paid by the Government of Kenya into any fund established by any of those Ordinances or by any such law or are otherwise to be paid by the Government of Kenya for the purposes of any of those Ordinances or any such law shall be a charge on the Consolidated Fund.
- (6) Any person who is entitled to the payment of any pensions benefits and who is ordinarily resident outside Kenya may, within a reasonable time

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after he has received that payment, remit the whole of it (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Kenya:

Provided that nothing in this subsection shall be construed as preventing:

- (a) the attachment, by order of a court, of any payment or part of any payment to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party to the extent to which such attachment is permitted by the law with respect to pensions benefits that applies in the case of that person; or
 - (b) the imposition of reasonable restrictions as to the manner in which any payment is to be remitted.
- (7) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependents or personal representatives of such persons in respect of such service.
- (8) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.
- (9) For the purposes of this section:
- (a) any office in any naval, military or air force established by or under any law made by any legislature in Kenya;
 - (b) to the extent to which pensions benefits in respect of service in such an office are payable under any of the Ordinances referred to in subsection (4) of this section or under any law amending or replacing any of those Ordinances, any office in the service of the East Africa High Commission or the East African Common Services Organization; and
 - (c) any office in the service of a body that is specified in Schedule 9 of this Constitution (which specifies certain bodies that are no longer in existence but in respect of former service in which pensions are payable out of Kenya funds) shall be regarded as an office in the public service.

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- (10) Parliament may, to the exclusion of any Regional Assembly, make laws with respect to pensions benefits.
- (11) The power conferred on Parliament by subsection (10) of this section shall include a power to make provision under which persons holding or acting in offices on the establishment of a Region may be required to make contributions to any fund established by any of the Ordinances specified in subsection (4) of this section or by any law amending or replacing any such Ordinance.

- 196.** (1) Where under any law any person or authority has a discretion:
- (a) to decide whether or not any pensions benefits shall be granted; or
 - (b) to withhold, reduce in amount or suspend any such benefits that have been granted,
those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the Public Service Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.
- (2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the Public Service Commission concurs in his being granted benefits of a smaller amount.
- (3) The Public Service Commission shall not concur under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held the office of Justice of Appeal, judge of the Supreme Court, Attorney-General, Controller and Auditor-General or Inspector-General of Police has been guilty of misbehaviour in that office unless he has been removed from that office by reason of such misbehaviour.
- (4) Before the Public Service Commission concurs under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held any office to which, at the time of such action, section 185 of this Constitution applies has been guilty of misbehaviour in that office, the Public Service Commission shall consult the Judicial Service Commission.
- (5) Before the Public Service Commission concurs under subsection (1) or subsection (2) of this section in any action taken on the ground that any person who holds or has held any office in the Police Force (or has

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held any office in any police force in Kenya before 12th December 1968) has been guilty of misbehaviour in that office, the Public Service Commission shall consult the Police Service Commission.

- (6) In this section "pensions benefits" means any pensions, compensation, gratuities or other allowances for persons in respect of their service as public officers or for the widows, children, dependents or personal representatives of such persons in respect of such service.
- (7) For the purposes of this section:
 - (a) any office in any naval, military or air force established by or under any law made by any legislature in Kenya;
 - (b) to the extent to which pensions benefits in respect of service in such an office are payable under any of the Ordinances referred to in section 196 (4) of this Constitution or under any law amending or replacing any of those Ordinances, any office in the service of the East Africa High Commission or the East African Common Services Organization; and
 - (c) Any office in the service of a body that is specified in Schedule 9 of this Constitution (which specifies certain bodies that are no longer in existence but in respect of former service in which pensions are payable out of Kenya funds) shall be regarded as an office in the Public Service.