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KENYA NATIONAL ASSEMBLY

NINTH PARLIAMENT – FIFTH SESSION (2006)



**THE DEPARTMENTAL COMMITTEE
ON
ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS**



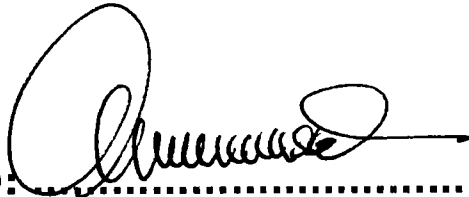
**REPORT ON THE WAY FORWARD ON THE CONSTITUTION
REVIEW PROCESS**

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

December, 2006

Mr. Speaker Sir,

The Departmental Committee on administration of Justice and Legal Affairs has the pleasure of presenting its report pursuant to Standing Order No. 151 (4) (f), to the House for consideration and adoption.



SIGNED:

**Hon. Kenneth Marende, MP
Member, Departmental Committee on Administration of
Justice and Legal Affairs**

DATE: *7th DECEMBER, 2006*

PREFACE

The Departmental Committee on Administration of Justice and Legal Affairs is established under Standing Order No. 151; its mandate pursuant to Standing Order 151(4) is:-

- a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
- b) to study the programme and policy objectives of the Ministries and departments and the effectiveness for implementation;*
- c) to study and know all legislation after First Reading, subject to the exceptions under Standing Order 101A (4);*
- d) to study, assess and analyze the relative success of Ministries and departments as measured by the results obtained as compared with its stated objectives;*
- e) to investigate and inquire into all matters relating to all assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister and;*
- f) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.***

The Committee comprises the following:

- (i) Hon. Paul K. Muite, MP – Chairman
- (ii) Hon. Kenneth Marende, MP
- (iii) Hon. Jim Choge, MP
- (iv) Hon. Amina Abdalla, MP
- (v) Hon. Gideon Ndambuki, MP
- (vi) Hon. Moses Cheboi, MP
- (vii) Hon. Macharia Mukiri, MP
- (viii) Hon. Bifwoli Wakoli, MP
- (ix) Hon. Omingo Magara, MP
- (x) Hon. Zaddock Syong’o, MP
- (xi) Hon. Njoki Ndung’u, MP

Mr. Speaker Sir, following the defeat of the Draft Constitution in the 2005 Referendum and in the light of recent Constitutional developments, the Committee met on 22nd February 2006 and appointed a sub-committee chaired by Hon. Kenneth Marende, whose terms of reference among others is to consider possible options on the way forward for the Constitutional Review Process. The sub-committee was mandated to initiate consultations with all Political Parties represented in Parliament with a view to building the widest possible consensus on the way forward.

Mr. Speaker Sir, the Committee consulted widely and held several meetings with key stake holders among them leaders of the political parties represented in Parliament, the Electoral Commission of Kenya, the Judiciary, the Multi-Sectoral Constitutional Review Committee (Windsor Committee), the Law Society of Kenya, the Kenya National Commission on Human Rights, Religious leaders, the Kenya Women Political Caucus and the Kenya Women Political Alliance. In compiling this report, the Committee was guided by a key recommendation by the Committee of Eminent Persons on the Constitution Review Process, that the current political mood in the country does not allow comprehensive constitutional review.

Mr. Speaker Sir, the end result of the Committee's consultation is a detailed recommendation on proposed amendments to the Constitution so as to realize minimum reforms necessary for the enhancement of democracy and rule of law. These reforms are necessary in order to ensure a level playing field at the 2007 general elections and to confer upon Kenyans better governance. **The proposed amendments are annexed herewith as a draft Constitution of Kenya (Amendment) Bill, 2006 for consideration by the House.**

Mr. Speaker Sir, the proposed amendments seek to, among others:-

- i) anchor the comprehensive review process in the Constitution by providing for replacement of the Constitution through a referendum;
- ii) enhance the independence of the Electoral Commission of Kenya to provide for an autonomous and financially independent electoral commission devoid of political manipulation;
- iii) enhance the independence of the Judiciary by providing for financial and operational autonomy of the Judicial Service Commission with regard to the administration of the judiciary;
- iv) entrench affirmative action in the Constitution by increasing the number of nominated Members of Parliament to thirty six of whom at least twenty four must be women;

- v) provide for the winner of a Presidential election to receive more than fifty per cent of all the votes cast in addition to the requirement of twenty five percent of the votes cast in at least five of the eight provinces failure of which there shall be a run off between the candidate who received the highest number of votes and the one who received the second highest;
- vi) enhance the independence of the Legislature in relation to the summoning, prorogation and dissolution of Parliament;
- vii) entrench and protect multiparty democracy by requiring a Member of Parliament of an opposition political party who opts to join the Government to do so only upon approval certified by his or her political party, the absence of which the member shall lose his or her seat. This will also ensure that any coalition between political parties is negotiated and agreed by the parties and also to provide for the management and funding of political parties;
- viii) ensure that constitutional office holders are appointed on merit, ability, integrity and not on political agenda by providing for vetting and approval by the National Assembly of appointments to these offices;
- ix) provide for dual citizenship;
- x) provide for the establishment of a committee that will oversee the equitable distribution of the national wealth.

RECOMMENDATIONS

- i) The Committee recommends that the House do consider and adopt this report.
- ii) The Committee also recommends that in the event the Multi-Sectoral Constitution Review Committee (Windsor Committee) completes its task ahead of the next General elections, and provided the minimum reforms will have been enacted, then the New Draft Constitution be subjected to a referendum simultaneously with the ballot in next year's General Elections. This could save time and money.

**THE CONSTITUTION OF KENYA (AMENDMENT) (NO...)
BILL, 2006**

A Bill for

AN ACT of Parliament to amend the Constitution of Kenya

ENACTED by the Parliament of Kenya, as follows-

Short title and
commencement.

1. This Act may be cited as the Constitution of Kenya (Amendment) (No...) Act, 2006 and shall come into operation upon the expiry of seven days from its date of assent.

Amendment of
section 5 of the
Constitution.

2. Section 5 of the Constitution is amended-

(a) in subsection (3) by deleting the words "a greater number of valid votes cast in the presidential election than any other candidate" appearing in paragraph (f) and substituting therefor the words "more than fifty per cent of valid votes cast in the presidential election";

(b) in subsection (5) by deleting the words "a greater number of valid votes cast in the presidential election than any other candidate" appearing in paragraph (e) and substituting therefor the words "more than fifty per cent of valid votes cast in the presidential election".

Amendment of
section 6 of the
Constitution.

3. Section 6 of the Constitution is amended in subsection (3)-

(a) by deleting paragraph (b);

(b) by deleting the word “Assistant” wherever it appears in paragraphs (c) and (e) and substituting therefor the word “Deputy”.

Amendment of section 16 of the Constitution.

4. Section 16 of the Constitution is amended by deleting the words “such offices of Minister of the Government of Kenya as may be established by Parliament or, subject to any provisions made by Parliament,” appearing in subsection (2) and substituting therefor the words “not less than fifteen and not more than twenty five offices of Ministers of the Government of Kenya as may be established”.

Amendment of section 17 of the Constitution.

5. Section 17 of the Constitution is amended in subsection (4)-

(a) by deleting the word “Assistant” wherever it appears in paragraph (a) and substituting therefor the word “Deputy”;

(b) by deleting paragraph (b).

Amendment of section 19 of the Constitution.

6. Section 19 of the Constitution is amended-

(a) by deleting the word “Assistant” wherever it appears and substituting therefor the word “Deputy”;

(b) by inserting a new subsection immediately after subsection (1) as follows-

(1A) The number of Deputy Ministers shall not at any time exceed the number of Ministers appointed under section 16.

Amendment of section 20 of the Constitution.

7. Section 20 of the Constitution is amended by deleting the word “Assistant” and substituting therefor the word “Deputy”.

Amendment of section 21 of the Constitution.

8. Section 21 of the Constitution is amended by deleting the word “Assistant” and substituting therefor the word “Deputy”.

Amendment of section 33 of the Constitution.

9. Section 33 of the Constitution is amended-

- (a) by deleting the words "twelve nominated members of the National Assembly" appearing in subsection (1) and substituting therefor the words “thirty-six nominated members of the National Assembly, of whom at least twenty-four shall be women”;
- (b) by deleting the words “gender equality” appearing in subsection (3) and substituting therefor the words “affirmative action set out in sub section (1).”
- (c) by deleting the words “gender equality” appearing in subsection (3) and substituting therefor the words “affirmative action set out in sub section (1).”

Amendment of section 37 of the Constitution.

10. Section 37 of the Constitution is amended by deleting the word “Assistant” appearing in subsection (1) and substituting therefor the word “Deputy”.

Amendment of section 38 of the Constitution.

11. Section 38 of the Constitution is amended by deleting the word “Assistant” wherever it appears and substituting therefor the word “Deputy”.

Amendment of section 40 of the Constitution.

12.Section 40 of the Constitution is amended-

(a) by deleting the word “either”;

(b) by inserting a new paragraph immediately after paragraph (b) as follows-

(c) without the certified written approval of that party, takes up an appointment as a Vice President, Minister or Deputy Minister.

Insertion of new sections 40A and into the Constitution.

13. The Constitution is amended by inserting the following new section immediately after section 40-

Political Parties.

40A. (1) There shall be no coalition between political parties unless such coalition is negotiated and agreed to by the political parties forming that coalition.

(2) Parliament shall make provision for the management of political parties with particular regard to-

- (a) the regulation of political parties;
- (b) the roles and functions of political parties;
- (c) the registration and supervision of political parties by the Electoral Commission under section 41(22) of this Constitution;
- (d) the establishment and management of the Political Parties Fund in accordance with subsection (3);
- (e) the accounts and audit of political parties;
- (f) the discipline of political parties;
- (g) restrictions on the use of public resources to promote the interests of political parties;
- (h) such other matters as may be necessary for the management of political parties.

(3) The Political Parties Fund shall be administered by the Electoral Commission and shall be a charge on the Consolidated

Fund to be used to provide financial support to registered political parties in the discharge of their roles and functions.

(4) No political party shall be eligible for financial support under subsection (3) unless such party has as its member at least one sitting member of Parliament.

Amendment of section 41 of the Constitution.

14. The Constitution is amended by repealing section 41 and replacing it with the following new section.

Electoral Commission.

41 (1) There shall be an Electoral Commission, which shall consist of a chairman and eight other members nominated by the National Assembly and appointed by the President in accordance with this section.

(2) The National Assembly shall, by advertisement in the Gazette and in at least three daily newspapers of national circulation, invite applications from persons qualified under this section for nomination as members of the Commission.

(3) An application under sub section (1) shall be forwarded to the National Assembly within twenty one days of the advertisement and may be made by-

(a) any qualified person; or

(b) any person or organization proposing the nomination of any qualified person.

(4) The National Assembly shall, within seven days of the expiry of the period specified under subsection (3), cause its relevant committee to –

(a) consider all applications received under subsection (3); and

(b) recommend to the National Assembly suitably qualified persons for nomination as members of the Commission.

(5) The committee shall, within thirty days, consider all the applications received under subsection (3) and shall recommend to the National Assembly therefrom, twelve persons for nomination as members of the Commission.

(6) The National Assembly shall, upon receipt of the recommendations of the committee under subsection (5), nominate twelve persons for appointment as members of the Commission and shall submit the list of its nominees to the

Attorney General for onward transmission to the President.

(7) The nomination of members for appointment under subsections (5) and (6) shall be by consensus but in the absence of consensus, each nominee for appointment to the Commission shall be supported by the votes of not less than sixty-five percent of all the members of the committee of the National Assembly before which a vote is taken on the matter, and sixty-five per cent of all the members of the Assembly (*excluding the ex officio*).

Provided that if on the taking of a vote in either a committee of the National Assembly or in the Assembly the requisite vote is not attained, a third vote shall be taken at which the matter shall be resolved by the votes of a majority of the members of the committee or of the Assembly.

(8) The Attorney General shall forthwith forward the names of the persons nominated under subsection (6) to the President who shall, within seven days of receipt of the list, appoint nine members from that list.

(9) The composition of the Commission shall reflect-

(a) the regional and other

diversities of the people
of Kenya; and

(b) the principle of
affirmative action.

(10) A person shall be qualified to be
appointed a member of the Commission if
such person—

(a) is a citizen of Kenya;

(b) is a person high moral
character and proven integrity;

(c) holds a university degree from
a recognised university ;

(d) in the case of the chairman and
the vice chairman of the
Commission, has held or is
qualified to hold office of
judge of the High Court or
judge of appeal under this
Constitution.

(11) A person shall not be qualified
to be appointed a member of the
Commission if such person—

(a) is a member of the National
Assembly;

(b) is a member of a local

authority;

(c) is a member of the executive body of a political party; or

(d) holds or is acting in any office in the public service or in the armed forces of the Republic.

(12) The Commission shall elect from among its members, as vice-chairman, a person of the opposite gender from that of the chairman.

(13) Subject to this section , a member of the Commission shall serve for a single term of seven years and the office of the member of the Commission shall become vacant-

(a) at the expiration of seven years from the date of his appointment or on the attainment of the age of seventy years, whichever comes first, or.

(b) if circumstances arise that if he were not a member of the Commission would cause him to be disqualified to be appointed as such;

Provided that any member of the

Commission, who immediately before the commencement of this section was a member of the Commission, shall serve for a term of three years.

(14) A 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 from any other cause) or for misbehaviour, and shall not be so removed except in accordance with this section.

(15) A member of the Commission shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (16) and the tribunal recommends to the President that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(16) If the President considers that the question of removing a member of the Commission under this section ought to be investigated, then-

- (a) the President shall appoint a tribunal which shall consist of a chairman and four other members selected by the President and approved by the National Assembly from

among persons-

- (i) who hold or have held the office of judge of the High Court or judge of appeal; or
- (ii) who are qualified to be appointed as judges of the High Court under section 61 (3); or
- (iii) upon whom the President has conferred the rank of Senior Counsel under the Advocates Act, and

(b) the tribunal shall within six months, inquire into the matter and report on the facts thereof to the President and recommend to him whether the member ought to be removed.

(17) If the question of removing a member of the Commission has been referred to a tribunal under this section, the President shall suspend that member from the exercise of the functions of his office and such suspension shall cease to have effect if the tribunal recommends to the President that member should not be removed.

(18) 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.

(19) Subject to this Constitution and without prejudice to subsection (18), Parliament may provide for the orderly and effective conduct of the operations and business of the Commission and for the powers of the Commission to appoint staff and establish committees and regulate their procedure.

(20) The expenses of the Commission shall be charged on and issued out of the Consolidated Fund.

(21) The Commission may, subject to its rules of procedures, act notwithstanding a vacancy in its membership or the absence of a member, and its proceedings shall not be invalidated by the presence or participation of a 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 its members.

(22) The Electoral Commission shall be responsible for-

- (a) the registration of voters and the maintenance and revision of the register of voters;
- (b) the registration of political parties, administration of the political Parties Fund and the maintenance and revision of the register of political parties;
- (c) directing and supervising the Presidential, National Assembly and Local Government elections;
- (d) conducting a referendum pursuant to section 47;
- (e) promoting free and fair elections;
- (f) promoting voter education throughout Kenya; and
- (g) such other functions as may be prescribed by law.

Amendment of section 47 of the Constitution.

15. Section 47 of the Constitution is amended-

- (a) by inserting the following new subsections immediately after subsection (1) –

(1A) A proposed amendment to this Constitution in respect of any of the provisions relating to-

- (a) the Republic of Kenya under Chapter 1;
- (b) the establishment of the office of the President under section 4;
- (c) the term of office of the President under section 9;
- (d) the legislative power of the Republic under section 30;
- (e) the establishment of the High Court and the Court of Appeal under Part I of Chapter IV;
- (f) the protection of the fundamental rights and freedoms of the individual under Chapter V ;
- (g) this section,

shall be enacted in accordance with the provisions of subsection (1C) (a).

(1B) A proposed amendment to this Constitution not contemplated in

sub section (1A) shall be enacted in accordance with the provisions of sub section (1C)(b)

(1C) Where a Bill to alter this Constitution relates to alteration of this Constitution in the manner set out-

(a) under subsection (1A) or subsection (6) (b) (ii), the Bill shall be styled “A Bill for an Act of the People”

(b) under subsection (1B), the Bill shall be styled “A Bill for an Act of Parliament”;

(b) by inserting the words “or an Act of the People” immediately after the word “Parliament” appearing in subsection (2);

(c) by deleting the words “to alter this Constitution has been introduced into the National Assembly, no alterations shall be made in it before it is presented to the President for his assent” and substituting therefor the words “or an Act of the People to alter this Constitution has been introduced into the National Assembly, no alterations shall be made in it”;

(d) by inserting the following new subsections immediately after subsection (5) -

(5A) A Bill for an Act of the People shall, within ninety days of being passed by the National Assembly in accordance with this section, be subjected to a referendum by the people to be carried out by the Electoral Commission in such manner as shall be provided for in an Act of Parliament.

(5B) When a Bill for an Act of the People has been passed by a simple majority of the people voting in a referendum, the Electoral Commission shall, within seven days of its passage, present it to the President for proclamation.

(5C) The President shall, within seven days after the Bill has been presented to him under subsection (5B) proclaim to the people a new Constitution.

(e) by deleting paragraph (b) of subsection (6) and substituting therefor the following new paragraph-

(b) references to the alteration of this Constitution are references to-

(i) the amendment, modification or re-enactment, with or without amendment or modification, of any provision of this Constitution, the suspension or

repeal of that provision and the making of a different provision in the place of that provision;

(ii) the repeal and replacement of the whole Constitution.

Amendment of section 50 of the Constitution.

16. Section 50 of the Constitution is amended by deleting the word “Assistant” appearing in paragraph (c) and substituting therefor the word “Deputy”.

Repeal and replacement of Part 3 of Chapter III of the Constitution.

17. The Constitution is amended by repealing Part 3 of Chapter III and substituting therefor the following new Part 3 –

PART 3

Calendar of Parliament

Summoning and adjournment of National Assembly.

58. (1) Subject to this Part, each session of Parliament shall be held at such place, within Kenya, as the National Assembly may appoint.

(2) Subject to section 59, the sittings of the National Assembly in a session of Parliament shall be held at such times and on such days as may be determined by the Parliamentary Service Commission and approved by the Assembly.

(3) Notwithstanding subsection (2), the National Assembly may, by a resolution supported by the votes of a majority of all

the members of the Assembly (excluding the *ex officio*-members), adjourn itself to a specified day other than the normal sitting day in a session of Parliament.

(4) Whenever the National Assembly stands adjourned in a session, or Parliament stands prorogued, as the case may be, the Speaker shall, at the request in writing of not less than twenty per cent of all the members of the Assembly (excluding the *ex officio* members), convene a meeting of the Assembly on the day appointed and for the purpose specified in the request:

(5) If, between the dissolution of Parliament but before a general election and the first session of the new Parliament, an emergency arises of such a nature that it is necessary to recall Parliament, the Speaker shall, at the request in writing of not less than sixty-five per cent of all members of the National Assembly (excluding the *ex officio* members), convene a meeting of the Assembly on the day appointed and for the purpose specified in the request:

Provided that notwithstanding anything to the contrary in Part 2 of this Chapter, any question proposed for decision in the Assembly shall be determined by the votes of not less than sixty-five per cent of all

members of the Assembly (excluding the *ex officio* members).

Prorogation and
dissolution of
Parliament.

59. (1) Parliament shall stand prorogued on the 30th November in every year and the new session shall commence on the first Tuesday of February in the following year.

(2) Without prejudice to the generality of subsection (1), Parliament shall stand dissolved on the 30th November of the fifth year after Parliament first meets after a general election and all business of the National Assembly shall lapse.

(3) Whenever Parliament stands dissolved in accordance with subsection (2), a general election of members of the National Assembly shall be held and the Speaker shall convene the first session of the new Parliament on the first Tuesday of February in the following year.

Provided that the members of the Assembly in office immediately prior to dissolution of Parliament under subsection (2) shall continue to be in office, as if Parliament were prorogued under this section, until the members elected or nominated at the ensuing general election take up their seats in accordance with section 49.

(4) Parliament shall continue for five

years from the date when the National Assembly first meets after dissolution and shall then stand dissolved.

(5) At any time when Kenya is at war, Parliament may, by a resolution supported by the votes of not less than sixty-five per cent of all the members of the National Assembly (excluding the *ex officio* members), extend the period of five years specified in subsection (4) for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection by more than five years.

Insertion of new sections 59A and into the Constitution.

18. The Constitution is amended in Part I of Chapter IV by inserting the following new section immediately before section 60-

Independence of the Judiciary.

59A. (1) In the exercise of its functions and powers under this Chapter, the Court of Appeal, High Court and subordinate courts shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any other person or authority.

(2) A member of an office set out under section 69 (3) shall not be liable in an action or suit in respect of anything done in good faith in the lawful

performance of a judicial function.

Amendment of
section 68 of the
Constitution.

19.Section 68 of the Constitution is amended by deleting paragraphs (a), (b), (c) and (d) of subsection (1) and substituting therefor the following new paragraphs-

- (a) one Court of Appeal judge elected by the judges of the Court of Appeal , who shall be the chairman of the Commission;
- (b) two judges of the High Court elected by the judges of the High Court;
- (c) the Attorney-General;
- (d) the Chief Kadhi;
- (e) two advocates each of at least fifteen year's standing nominated by the Law Society of Kenya; and
- (f) one person nominated by the Public Service Commission

Amendment of
section 69 of the
Constitution.

20.Section 69 of the Constitution is amended-

- (a) by deleting subsection (1) and substituting therefor the following new subsection-

(1) Subject to sub section (4), the Judicial Service Commission shall have power to -

- (a) appoint persons to hold or act in the offices to which this section applies (the judicial service), including the power to confirm appointments and to exercise disciplinary control over persons holding or acting in those offices and the power to remove those persons from office;
- (b) provide such services and facilities as are necessary to ensure efficient and effective functioning of the judicial service;
- (c) supervise the administration of the services and facilities provided by the judicial service, and exercise budgetary control over, the service;
- (d) provide security staff as may be necessary, to maintain security for members of the judicial service and for the services and

facilities of the service;

(e) in such manner as may be prescribed by or under an Act of Parliament –

(i) cause to be prepared and laid before the National Assembly in each financial year estimates of expenditure (which shall be a charge on the Consolidated Fund) of the judicial service for the next following year;

(ii) cause to be audited and a report thereon laid before the Assembly at least once every year, the accounts of the judicial service provided that until such time as the manner of the audit and report prescribed as aforesaid section 105 shall continue to apply *mutatis mutandis*

- (f) determine the terms and conditions of service of persons holding or acting in the offices of the judicial service;
- (g) from time to time as necessity arises, appoint an independent body to review and make recommendations on the salaries and allowances of the members of the judicial service;
- (h) initiate, co-ordinate and harmonize policies and strategies relating to the development of the judicial service;
- (i) undertake, singly or jointly with other relevant authorities and organisations, such programmes as will promote the ideals of judicial independence in Kenya;
- (j) do such other things as may be necessary for the well-being of the members and staff of the

judicial service; and

(k) exercise such other functions as may be prescribed by or under an Act of Parliament.

(b) by renumbering the existing paragraph (a) of subsection (3) as paragraph (aa) and inserting a new paragraph (a) as follows-

(a) a judge of the High Court or a judge of the Court of Appeal;

(c) by inserting the following new subsections immediately after subsection (3) -

(4) Subsection (1) (a) shall not apply to the office of a judge of the High Court or a judge of the Court of Appeal.

(5) The administrative expenses , including the remuneration and benefits payable to, or in respect of, members of the offices set out under subsection (3) shall be a charge on the Consolidated Fund

(6) For the avoidance of doubt, section 48 and section 107(1) shall not apply in relation to the judicial service

Amendment of
section 90 of the

21. Section 90 of the Constitution is amended by

Constitution. inserting the words “or mother” immediately after the word “father”.

Repeal and replacement of section 97 of the Constitution. **22.** The Constitution is amended by repealing section 97 and substituting therefor the following new section-

- Dual citizenship.
- (i) **97.**A person who is a citizen by birth –
- (a) does not lose citizenship by reason only of acquiring the citizenship of another country; and
 - (b) may apply to regain citizenship, if the person had ceased to be a citizen as a result of acquiring the citizenship of another country.

Amendment of section 99 of the Constitution. **23.** Section 99 of the Constitution is amended by inserting the following new subsection immediately after section (4)-

(5) Parliament may make provision for the establishment of a committee to oversee and ensure the equitable distribution of national wealth and the recommendations of this committee shall be binding on the Minister for the time being responsible for finance while exercising his functions under this section

Amendment of section 104 of the Constitution. **24.** Section 104 of the Constitution is amended by deleting the words “judge of the High Court, judge of the Court of appeal” appearing in sub section (5).

Insertion of new sections 122A into the Constitution.

25. The Constitution is amended by inserting the following new section immediately after section 122-

Approval of appointments by Parliament.

122A.(1) If the Constitution or an Act of Parliament provides for an appointment to be made with the approval of Parliament, that appointment shall not be made until it has been-

- (a) reviewed by the relevant committee of the National Assembly; and
- (b) approved by the National Assembly.

(2) Notwithstanding anything to the contrary in this Constitution, an appointment or re appointment of the following officers shall be made with the approval of Parliament-

- (a) a judge of the High Court or the Court of Appeal ;
- (b) the Attorney-General;
- (c) the Controller and Auditor-General;
- (d) a Permanent Secretary, the Secretary to the Cabinet or

- the Director of Personnel;
- (e) the Commissioner of Police;
- (f) an Ambassador, High Commissioner or any other principal representative of Kenya in another country;
- (g) a member of the Public Service Commission;
- (h) a member of any tribunal established under this Constitution;
- (i) a member of any office established under an Act of Parliament in which the President is the appointing authority.

(3) Subject to subsection (4), a person who immediately before the commencement of this section, held or was acting in the offices referred to in section 41 or section 122A (2) shall cease to hold office.

- (4) A person who ceases to hold office under subsection (3) shall be at liberty to hold or act in that office until a new appointment is made to such office subject to the process

referred to in section 122A (1).

(5)

(5) The provisions of sub section (4) shall not be construed as conferring any new term of office upon the person holding or acting in that office.

(6) A holder of an office referred to in sub section (3) who, on the date of commencement of this section has attained the age of sixty years may retire and is entitled on retirement to the benefits he would have been entitled to at the date of the retirement.

(7) The option provided for in sub-section (6) shall be exercised within thirty days of the date of commencement of this section.

(8) This section shall have effect notwithstanding any other provision of this Constitution and accordingly, if any such provision is inconsistent with this section, this section shall apply.

Amendment of
section 123 of the
Constitution.

26. Section 123 of the Constitution is amended by deleting the definition of "session" and substituting therefor the following new definition-

"session" means the period beginning when the National Assembly first meets after Parliament is

prorogued or dissolved and ending when Parliament is prorogued or dissolved.

MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to make various amendments to the Constitution so as to realize minimum reforms necessary for the enhancement of democracy and the rule of law³. In a nutshell, the Bill seeks to, amongst others, provide for the replacement of the Constitution through a referendum, enhancement of the independence of the Legislature, the Judiciary and the Electoral Commission, affirmative action, dual citizenship and the protection of political parties. These reforms are necessary in order to have a level playing field at the 2007 general elections.

The Bill is not rewriting but amending the Constitution. Hence, it necessarily adopts the format, language and style of the existing Constitution.

CLAUSE 2 proposes to amend section 5 of the Constitution so as to require the winner of a Presidential election to receive more than fifty per cent of all the votes cast in addition to the requirement of twenty five percent of the votes cast in at least five of the eight provinces failure of which there shall be a run off between the candidate who received the highest number of votes and the one who received the second highest..

CLAUSES 3, 5 and 23 contain consequential amendments necessary to harmonize the changes proposed under clause 17 with the rest of the Constitution.

CLAUSE 4 proposes to amend section 16 of the Constitution so as to provide for a fixed size of the Cabinet which shall consist of between fifteen and twenty five Ministers.

CLAUSE 6 proposes to amend section 19 of the Constitution so as to provide for a number of Deputy Ministers similar to that of Ministers and change the title "Assistant Minister" to "Deputy Minister".

CLAUSES 5, 7, 8, 10, 11 and 16 contain consequential amendments necessary to harmonize the changes proposed under clause 6 with the rest of the Constitution.

CLAUSE 9 proposes to amend section 33 of the Constitution so as to entrench affirmative action in the Constitution by increasing the number of nominated Members of Parliament from twelve to thirty six of whom at least twenty four must be women.

CLAUSE 12 proposes to amend section 40 of the Constitution so as to ensure the protection of multiparty democracy by requiring a Member of Parliament of an opposition political party who opts to join the Government to do so only upon approval certified by his political party, the absence of which the member shall lose his seat.

CLAUSE 13 proposes to amend section 40 of the Constitution so as to ensure that any coalition between political parties is negotiated and agreed by the parties and also to provide for the management and funding of political parties.

CLAUSE 14 proposes to amend section 41 of the Constitution so as to provide for an autonomous and financially independent Electoral Commission devoid of political manipulation.

CLAUSE 15 proposes to amend section 47 of the Constitution so as to provide for a replacement of the whole Constitution or some certain important aspects of it through a referendum.

CLAUSE 17 seeks to repeal and replace Part 3 of Chapter III of the Constitution, which relates to the summoning, prorogation and dissolution of Parliament. Henceforward, Parliament will stand prorogued or dissolved and reconvene on a definite date and may be recalled after prorogation. The National Assembly may also be recalled after an adjournment.

CLAUSE 18 proposes to insert a new provision in the Constitution so as to provide for the independence of the Judiciary in the discharge of its functions.

CLAUSE 19 proposes to amend section 68 of the Constitution so as to provide for the independence of the Judicial Service Commission with regard to appointment of its members.

CLAUSE 20 proposes to amend section 69 of the Constitution so as to provide for the operational autonomy of the Judicial Service Commission with regard to the administration of the judiciary.

CLAUSE 21 proposes to amend section 90 of the Constitution so as to provide for the citizenship for persons born out of the country but of which their mother is a Kenyan citizen.

CLAUSE 22 proposes to repeal and replace section 97 of the Constitution so as to provide for dual citizenship.

CLAUSE 23 proposes to amend section 99 of the Constitution so as to provide for the establishment of a committee that will oversee the equitable distribution of the national wealth.

CLAUSE 24 proposes to amend section 104 of the Constitution so as to harmonize it with the changes proposed under clauses 19 and 20

CLAUSE 25 proposes to insert a new section 122A into the Constitution so as to provide for approval by the National Assembly of appointments to the offices of which the President is the appointing authority. The holders of these offices shall continue to hold office until they are reappointed to that office or until new appointments are made.

CLAUSE 26 contains a consequential amendment necessary to harmonize the changes proposed under clause 17 with the rest of the Constitution.

It will be necessary to make consequential amendments to the National Assembly and Presidential Elections Act (Cap.7) and the National Assembly Standing Orders so as to ensure the symmetry of Parliamentary law.

This Bill shall occasion additional expenditure of public funds which shall be catered for through the estimates.

Dated the, 2006.

PAUL MUIITE,
Member of Parliament.

Section 5 of the Constitution which it is proposed to amend-

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

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

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

(a) is a citizen of Kenya; and

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

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

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

- (a) each political party taking part in the general election shall nominate one candidate for President in such manner as may be prescribed by or under an Act of Parliament;
- (b) the nomination of a candidate for President shall not be valid unless it is supported, in such manner as may be prescribed by or under an Act of Parliament, by not less than one thousand persons registered as voters in elections to the National Assembly;
- (c) where only one candidate for President is validly nominated, and that candidate is elected as a member of the National Assembly, he shall be declared to be elected as President;
- (d) where more than one candidate for President is validly nominated, a poll shall be taken each constituency for the election of a President (whether or not a poll is required to be taken for an election to the National Assembly in that constituency);
- (e) in every constituency in which a poll is required to be taken both for the election of a President and for the election of a member of the National Assembly separate polls shall be taken;
- (f) the candidate for President who is elected as a member of the National Assembly and who receives a greater number of valid votes cast in the presidential election than any other candidate for President and who, in addition, receives a minimum of twenty-five per cent of the valid votes cast in at least five of the eight provinces shall be declared to be elected as President.

(4) A fresh election of a President shall be commenced and held in the manner prescribed by subsection (5) where -

(a) no candidate for President has been validly nominated before the expiration of the time for the delivery of nominations in a presidential election;

(b) a candidate for President who is validly nominated dies on or before any of the days on which the poll is taken in a presidential election;

(c) a candidate for President, who would but for his death have been entitled to be declared elected as President under this section, dies after the taking of the poll has begun in the presidential election and before he has been declared elected as President;

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

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

(i) the candidate who scored the highest number of votes at the election; and

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

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

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

(b) the nomination of a candidate for President shall not be valid unless it is supported, in such manner

as may be prescribed by or under an Act of Parliament, by not less than one thousand persons registered as voters in elections to the National Assembly;

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

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

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

Section 6 of the Constitution which it is proposed to amend

Vacancy in office of
the President

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

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

(a) by the Vice-President; or

(b) if there is no Vice-President, or if the Vice-President considers that his is for any reason unable to discharge the functions of the office

of President, by such Minister as may be appointed by the Cabinet.

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

- (a) the preservation of public security under section 85 or under Part III of the Preservation of Public Security Act;
- (b) the prorogation and dissolution of Parliament under subsection (1) and (3) of section 59;
- (c) the appointment and removal of Ministers and Assistant Ministers under sections 16 and 19;
- (d) the assignment or responsibility to a Minister under section 18; or
- (e) the giving of consent to a Minister or Assistant Minister absenting himself from Kenya under section 20.

Section 16 of the Constitution which it is proposed to amend

Ministers of
Government of
Kenya

9 of 1997 s.4

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

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

Provided that, if occasion arises for making an appointment to the office of any Minister while Parliament

stands dissolved, a person who was a member of the National Assembly immediately before the dissolution may be appointed to that office.

(3) The office of a Minister shall become vacant -

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

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

Section 17 of the Constitution which it is proposed to amend-

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

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

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

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

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

Section 19 of the Constitution which it is proposed to amend-

Assistant Ministers

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

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

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

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

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

- (a) if the President so directs; or
- (b) if the holder of the office ceases to be a member of the National Assembly otherwise than by reason of the dissolution of Parliament; or
- (c) in the case of an Assistant Minister who, immediately before the dissolution of Parliament, was a member of

the National Assembly, if when the Assembly first meets after that dissolution, he is not then a member thereof; or

(d) upon the election of a person to the office of President.

Section 21 of the Constitution which it is proposed to amend-

Oaths to be taken by
Ministers and
Assistant Ministers

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

Section 33 of the Constitution which it is proposed to amend

Nominated
members
9 of 1997 s.5

33. (1) Subject to this section, there shall be twelve nominated members of the National Assembly appointed by the President following a general election, to represent special interests.

(2) The persons to be appointed shall be persons who, if they had been nominated for a parliamentary election, would be qualified to be elected as members of the National Assembly.

(3) The persons to be appointed shall be nominated by the parliamentary parties according to the proportion of every parliamentary party in the National Assembly, taking into account the principle of gender equality.

(4) The proportions under subsection (3) shall be determined by the Electoral Commission after every general election and shall be signified by the chairman of the Commission to the leaders of the concerned parliamentary parties, the President and the Speaker.

(5) The names of the nominees of parliamentary parties shall be forwarded to the President through the Electoral Commission who shall ensure observance of the principle of

gender equality in the nominations.

Section 37 of the Constitution which it is proposed to amend

Speaker of National
Assembly

37 (1) There shall be a Speaker of the National Assembly, who shall be elected by the Assembly, in accordance with the standing orders, from among persons who are members of the Assembly or are qualified to be elected as such members, other than the President, the Vice-President, Ministers, Assistant Ministers and the Attorney-General.

(2) The Speaker shall vacate his office-

- (a) when the National Assembly first meets after a dissolution of Parliament; or
- (b) if circumstances arise that, if he were not Speaker, would disqualify him to be elected as such; or
- (c) if the National Assembly so resolves, by resolution supported by the votes of not less than seventy-five per cent of all its members (excluding the ex officio members).

(3) No business shall be transacted in the National Assembly (other than an election of the Speaker) at any time when the office of Speaker is vacant, but this subsection shall not prevent the transaction of business by a committee of the Assembly.

(4) The Speaker shall be an ex officio member of the National Assembly, whether or not he is elected from among the members of the Assembly.

Section 38 of the Constitution which it is proposed to amend

Deputy Speaker of
National Assembly

38 (1) There shall be a Deputy Speaker of the National Assembly, who shall be elected by the Assembly, in accordance with its standing orders, from among persons who

are members of the Assembly other than the President, the Vice-President, Ministers, Assistant Ministers and the Attorney-General.

(2) The National Assembly shall elect a Deputy Speaker--

(a) subject to section 37 (3), 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

(3) The Deputy Speaker shall vacate his office--

(a) when the National Assembly first meets after a dissolution of Parliament; or

(b) if he is elected as President or becomes the Vice-President, or a Minister or an Assistant Minister; or

(c) if he ceases to be a member of the National Assembly otherwise than by reason of the dissolution of Parliament; or

(d) if the National Assembly so resolves, by resolution supported by the votes of not less than seventy-five per cent of all its members (excluding the ex officio members).

Section 40 of the Constitution which it is proposed to amend

Vacation of seat in National Assembly upon resignation from party

12 of 1991 s.6

40 A member of the National Assembly who, having stood at his election as an elected member with the support of or as a supporter of a political party, or having accepted appointment as a nominated member as a supporter of a political party, either-

(a) resigns from that party at a time when that party is a

parliamentary party; or

- (b) having, after the dissolution of that party, been a member of another parliamentary party, resigns from that other party at a time when that other party is a parliamentary party,

shall vacate his seat forthwith unless in the meantime that party of which he was last a member has ceased to exist as a parliamentary party or he has resigned his seat:

Provided that this subsection shall not apply to any member who is elected as Speaker.

Section 47 of the Constitution which it is proposed to amend

Alteration of
Constitution

47 (1) Subject to this section, Parliament may alter this Constitution.

(2) A Bill for an Act of Parliament to alter this Constitution shall not be passed by the National Assembly unless it has been supported on the second and third readings by the votes of not less than sixty-five per cent of all the members of the Assembly (excluding the ex officio members).

(3) If, on the taking of a vote for the purposes of subsection (2), the Bill is supported by a majority of the members of the Assembly voting but not by the number of votes required by that subsection, and the Bill is not opposed by thirty-five per cent of all the members of the Assembly or more, then, subject to such limitations and conditions as may be prescribed by the standing orders of the Assembly, a further vote may be taken.

(4) When a Bill for an Act of Parliament to alter this Constitution has been introduced into the National Assembly, no alterations shall be made in it before it is presented to the President for his assent, except alterations which are certified by the Speaker to be necessary because of the time that has elapsed since the Bill was first introduced into the Assembly.

(5) A certificate of the Speaker under subsection (4) shall be conclusive as regards proceedings in the Assembly, and shall not be questioned in any court.

(6) In this section-

(a) references to this Constitution are references to this Constitution as from time to time amended; and

(b) references to the alteration of this Constitution are references to the amendment, modification or re-enactment, with or without amendment or modification, of any provision of this Constitution, the suspension or repeal of that provision and the making of a different provision in the place of that provision.

Section 50 of the Constitution which it is proposed to amend

Presiding in National
Assembly

50 There shall preside at any sitting of the National Assembly-

(a) the Speaker; or

(b) in the absence of the Speaker, the Deputy Speaker; or

(c) in the absence of the Speaker, the Deputy Speaker, such member of the Assembly (not being the President, the Vice-President, a Minister or an Assistant Minister) as the Assembly may elect for that purpose.

Part 3 of Chapter III of the Constitution which it is proposed to replace-

PART 3

Summoning of
Parliament.

Summoning, Prorogation and Dissolution of Parliament.

58. (1) Subject to this section, each session of Parliament shall be held at such place within Kenya and shall commence at such times as the President may appoint.

(2) There shall be a session of Parliament at least once in very year, so that a period of twelve months shall not intervene between the last sitting of the National Assembly in one session and the first sitting thereof in the session.

(3) Whenever Parliament is dissolved, a general election of members of the National Assembly shall held, and the first session of the new Parliament shall commence within three months after dissolution.

(4) Subject to this section, the sittings of the National Assembly in a session of Parliament shall commence within three months after dissolution.

Prorogation and
dissolution of
Parliament.

59. (1) The President may at any time prorogue Parliament.

(2) The President may at any time dissolve Parliament.

(3) If the National Assembly passes a resolution which is supported by the votes of a majority of all the members of the Assembly (excluding the ex-officio members), and of which not less than seven day's notice has been given in accordance with the standing orders of the Assembly, declaring that it has no confidence in the Government of Kenya, and the President does not within three days of the passing of that resolution either resign from his office or dissolve Parliament, Parliament shall stand dissolved on the fourth day following the day on which that resolution was passed.

(4) Parliament unless sooner dissolved shall continue for five years from the date when the National Assembly first meets after dissolution and shall then stand dissolved.

(5) At any time when Kenya is at war, Parliament

may from time to time provide for the extension of the period of five years specified in subsection (4) for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection by more than five years.

Section 68 of the Constitution which it is proposed to amend-

Judicial Service
Commission

68—(1) There shall be a Judicial Service Commission which shall consist of-

- (a) the Chief Justice as chairman;
- (b) the Attorney-General;
- (c) two person who are for the time being designated by the President from among the puisne judges of the High Court and the judges of the Court of Appeal; and
- (d) the chairman of the Public Service 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 this Chapter, the Commission may make regulations regulating its own procedure and, with the consent of the President, may confer powers or impose duties on any public officer or authority for the purpose for the discharge of it functions.

(4) Subject to any regulations made under subsection (3), the Commission may act notwithstanding a vacancy in its membership or the absence of a member, and its proceedings shall not be invalidated by the presence or participation of a person not entitled to be present at or to participate in those proceedings:

Provided that a decision of the Commission shall require the

concurrence of a majority of all the members thereof.

Section 90 of the Constitution which it is proposed to amend

Person born outside Kenya after 11th December 1963 90 —A person born outside Kenya after 11th December, 1963 shall become a citizen of Kenya at the date of his birth if at that date his father is a citizen of Kenya.

Section 97 of the Constitution which it is proposed to repeal and replace-

Dual citizenship 97 (1) A person who, upon the attainment of the age of twenty-one years, is a citizen of Kenya and also a citizen of some other country other than Kenya shall, subject to subsection (7), 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 born outside Kenya, made and registered such declaration of his intentions concerning residence as may be prescribed by or under an Act of Parliament.

(2) A person who--

- (a) has attained the age of twenty-one years before 12th December, 1963; and
- (b) becomes a citizen of Kenya on that day by virtue of section 87; and
- (c) is immediately after that day also a citizen of some country other than Kenya,

shall subject to subsection (7), 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 section 87 (2), 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 subsection (7), 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 section 88, 91, 92 or 96 or by naturalization under section 93 or 96; and
- (b) is immediately after the day upon which he becomes a citizen of Kenya, also a citizen of some other country,

shall, subject to subsection (7), 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 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 the 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) refers, the date on which he attains the age of twenty-three years;
- (b) in relation to a person to whom subsection (2) refers, 12th December, 1965;
- (c) in relation to a person to whom subsection (3) (b) 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 subsection (4) 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 a person may make a renunciation of citizenship, take an oath or make or register a declaration for the purposes of this section, and, if provision is so made, that person shall not can to be a citizen of Kenya upon the specified date but shall cease to be 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.

Section 69 of the Constitution which it is proposed to amend-

Appointment, etc.,
of judicial officers

4 of 1988 s. 4

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

(2) the Judicial Service Commission may, by directions in

writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection (1) to any one or more of its members or to any judge of the High Court or to any person holding or acting in an office to which this section applies:

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 High Court;

(b) the office of the Chief Magistrate, the Principal Magistrate, the Senior Resident Magistrate, Resident Magistrate or District Magistrate;

(c) the office of any other person empowered to hold or be a member of a subordinate court exercising criminal jurisdiction;

(d) the office of Chief Kadhi and Kadhi; and

(e) such other offices of member of any court or connected with any court as may be prescribed by Parliament.

Section 97 of the Constitution which it is proposed to amend-

Dual citizenship

97 —(1) A person who, upon the attainment of the age of twenty-one years, is a citizen of Kenya and also a citizen of some other country other than Kenya shall, subject to subsection (7), 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 born outside Kenya, made and registered such declaration of his intentions concerning residence as may be prescribed by or under an Act of Parliament.

(2) A person who--

(a) has attained the age of twenty-one years before 12th December, 1963; and

(b) becomes a citizen of Kenya on that day by virtue of section 87; and

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

shall subject to subsection (7), 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 section 87 (2), 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 subsection (7), 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 way be prescribed by or under an Act of Parliament.

Section 104 of the Constitution which it is proposed to amend-

Remuneration of
certain officers

104 —(1) There shall be paid to the holders of the offices to which this section applies such salary and such allowances as

13 of 1977 s 4

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 charged upon the Consolidated Fund.

(3) The salary payable to the holder of an 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), 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 judge of the High Court, judge of the Court of Appeal, member of the Public Service Commission, member of the Electoral Commission, Attorney-General and Controller and Auditor-General.

(6) Nothing in this section shall be construed as prejudicing the provisions of section 112 (which protects certain pensions rights).

Section 123 of the Constitution which it is proposed to amend-

Interpretation

123 —(1) In this Constitution, unless the context otherwise requires-

"the Commonwealth" means Kenya, a country to which section 95 applies and a dependency of any such country;

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

"the East African Community" means the East African Community established by Article I of the Treaty for East African Co-operation signed on 6th June, 1967, and includes the corporations specified in Article 71 of that Treaty and the East African Development Bank established by Article 21 of that Treaty;

"financial year" means the period of twelve months ending on 30th June or on such other day as Parliament may prescribe;

"Kenya" means the territory comprised in Kenya on 12th December, 1963 and the territorial waters of Kenya as for the time being defined by an Act of Parliament;

"local authority" means a municipal, county, town or urban council, or a council for any other area, established by or under an Act of Parliament;

"oath" includes affirmation;

"the oath of allegiance" means an oath of allegiance as may be prescribed by Parliament;

"person" includes a body of persons corporate or unincorporate;

"political party" means a political party which is duly registered under any law which requires political parties to be registered, and which has complied with the requirements of any law as to the constitution or rules of political parties nominating candidates for the National Assembly;

"province" means one of the provinces into which Kenya is divided in the manner prescribed by an Act of Parliament;

"public officer" means a person holding or acting in an office in the public service;

"the public service" includes the public service at any time before 12th December, 1963;

"session" means the period beginning when the National Assembly first sits after 11th December, 1963 or after Parliament is prorogued or dissolved at any time and ending when Parliament is prorogued or is dissolved without having been prorogued;

"sitting" means, in relation to the National Assembly, a period during which the Assembly is sitting without adjournment and includes any period during which it is in committee;

"subordinate court" means a court of law in Kenya other than--

(a) the High Court;

(b) a court having jurisdiction to hear appeals from the High Court; or

(c) a court-martial;

"writing" includes printing and any other mode of reproducing words in a visible form.