

An Act of Parliament to amend the Constitution, and for matters incidental thereto and connected therewith

ENACTED by the Parliament of Kenya, as follows:—

PART I—PRELIMINARY

Short title,
construction and
commencement.

1. (1) This Act may be cited as the Constitution of Kenya (Amendment) Act, 1965.

L.N. 718/1963.

(2) This Act shall be read and construed as one with the Kenya Independence Order in Council, 1963, the Constitution of Kenya contained in Schedule 2 of that Order, the Amendment Act and the Amendment (No. 2) Act, in so far as it makes amendments to that Order, that Constitution or those Acts.

(3) This Act shall be deemed to have come into operation on 12th December 1964.

Interpretation.

2. (1) In this Act, unless the context otherwise requires—

28 of 1964.

“Amendment Act” means the Constitution of Kenya (Amendment) Act, 1964;

“Amendment Acts” means the Amendment Act, the Amendment (No. 2) Act and this Act;

38 of 1964.

“Amendment (No. 2) Act” means the Constitution of Kenya (Amendment) (No. 2) Act, 1964;

“Constitution” means—

(a) in Part II of this Act, the Constitution contained in Schedule 2 of the Kenya Independence Order in Council, 1963 as amended by the Amendment Act and by the Amendment (No. 2) Act;

(b) in section 2 (3) and in Part III of this Act, that Constitution as so amended and as further amended by this Act;

“constitutional changes” means the changes in the constitutional position of Kenya and in the Constitution as in force immediately before 12th December 1964, effected by the Amendment Acts; and

“existing law” means any Act, enactment, law, rule, regulation, order or other instrument having effect as part of the law of Kenya or any part thereof immediately before 12th December 1964, or any Act of the Parliament of the United Kingdom or Order of Her Majesty in Council (other than the Kenya Independence Order in Council, 1963) so having effect.

(2) Save where the context otherwise requires, references in this Act to any law are references to that law as amended by or under any other law.

(3) Save where the context otherwise requires, expressions used in this Act have the same meaning as in the Constitution and the provisions of section 247 of the Constitution shall apply for the purposes of interpreting this Act as they apply for the purposes of interpreting the Constitution.

PART II—CONSTITUTIONAL CHANGES

3. Subject to the provisions of sections 13, 14 and 19 of the Kenya Independence Order in Council, 1963, Part III of the Amendment Act and Part III of this Act, the Constitution contained in Schedule 2 of that Order, as amended by the Amendment Acts, shall be the Constitution of the Republic of Kenya.

Constitution of Republic of Kenya.
L.N. 718/1963.

4. (1) The provisions of the Constitution specified in the first column of Part I of the First Schedule to this Act shall be amended in the manner specified in relation thereto in the second column of that Part of that Schedule.

Amendment of Constitution.

(2) Subject to subsection (1) of this section, there shall be substituted for the expressions specified in the first column of Part II of the First Schedule to this Act, wherever they appear in the Constitution, the expressions specified in the second column of that Part of that Schedule.

5. The provisions of the Kenya Independence Act, 1963, the Kenya Independence Order in Council, 1963, the Amendment Act and the Amendment (No. 2) Act specified in the first column of the Second Schedule to this Act shall be amended in the manner specified in relation thereto in the second column of that Schedule.

Amendment of other laws.

PART III—CONSEQUENTIAL PROVISIONS

Existing laws.

6. (1) Subject to the provisions of this Act, the existing laws shall, notwithstanding the constitutional changes, continue in force as from 12th December 1964 as if they had been made in pursuance of the Constitution, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(2) Any existing law, to the extent to which—

(a) it makes provision with respect to any matter with respect to which a Provincial Council may make laws under the Constitution; and

(b) it was made by a Regional Assembly or it had effect under the Constitution immediately before 12th December 1964 as if it had been so made,

shall have effect as from 12th December 1964 as if it had been made by (or, as the case may require, as if it had been made under a law made by) the Provincial Council which was formerly that Regional Assembly, but the existing laws shall otherwise have effect as from 12th December 1964 as if they had been made by Parliament (or, as the case may require, as if they had been made under an Act of Parliament):

Provided that any existing law made by (or under a law made by) a Regional Assembly which by virtue of this subsection has effect as a law made by (or under a law made by) Parliament shall have effect so as to apply only in the Province which was formerly the Region in which that Regional Assembly had jurisdiction.

(3) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other person or authority is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for immediately before 12th December 1964 by or under the Constitution as then in force, that prescription or provision shall, as from 12th December 1964, have effect as if it had been made under the Constitution by Parliament or, as the case may be, by that other person or authority.

(4) The President may by order made and published in the Kenya Gazette at any time before 12th December 1965 make such amendments to any existing law, to the extent to which it makes provision with respect to any matter with respect to which, under the Constitution, Parliament may make laws, as may appear to him to be necessary or expedient for bringing that law into conformity with the Constitution, or for giving effect or enabling effect to be given to that law or to the Constitution, or which he otherwise considers necessary or expedient in consequence of the coming into operation of the Constitution.

(5) Without prejudice to the powers of the President under subsection (4) of this section the President may, by order made and published in the Kenya Gazette at any time before 12th December 1965, repeal any law made by (or under a law made by) a Regional Assembly before 12th December 1964, to the extent to which it makes provision with respect to any matter with respect to which, under the Constitution, Parliament may make laws, if it appears to him to be necessary or expedient to do so in consequence of the coming into operation of the Constitution.

(6) The provisions of this section shall be without prejudice to any powers conferred by this Act or by the Constitution or by any other law upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

(7) The Kenya (Land Control) (Transitional Provisions) Regulations, 1963, as amended by the Kenya (Land Control) (Transitional Provisions) (Amendment) Regulations, 1963, and the Kenya (Land Control) (Transitional Provisions) (Amendment) (No. 2) Regulations, 1963, shall, notwithstanding the foregoing provisions of this section and notwithstanding that those laws are not in conformity with the Constitution, continue in force as from 12th December 1964 (with the substitution therein for references to the Governor, Central Legislature, Regional Gazette, and to any provision of the Constitution as in force immediately before 12th December 1963, of references to the President, Parliament, the Kenya Gazette and the corresponding provision of the Constitution, respectively) until 12th December 1965, or until they are earlier revoked by the President by notice published in the Kenya Gazette, and those laws shall then expire.

L.N. 457/1963.

L.N. 523/1963.

L.N. 578/1963.

L.N. 319/1963.

(8) The Kenya (Jurisdiction of Courts and Pending Proceedings) Regulations, 1963, shall, without prejudice to the foregoing provisions of this section, be deemed always to have had effect since 1st June 1963 and shall, except as may be otherwise provided by Parliament, continue in force as from 12th December 1964 as if a power to make those regulations were conferred upon the President by this section, and as if the President had made those regulations in pursuance of that power.

Adaptation of existing laws.

7. (1) Save as may be provided in this Act or in any other written law, and unless the context otherwise requires—

- (a) any reference in an existing law to Her Majesty (whether or not that expression is used), or to the Crown, in respect of Kenya shall be read and construed as from 12th December 1964 as if it were a reference to the Republic of Kenya;
- (b) any reference in an existing law to the Governor-General (including any reference to the Governor and Commander-in-Chief of the former Colony and Protectorate of Kenya, or to the Governor in Council, or any such reference which by reason of any law which had effect immediately before 12th December 1964 is to be read and construed as a reference to the Governor-General) shall be read and construed as from 12th December 1964 as if it were a reference to the President;
- (c) any reference in an existing law to the Prime Minister shall be read and construed as from 12th December 1964 as if it were a reference to the President;
- (d) any reference in an existing law to a Parliamentary Secretary shall be read and construed as from 12th December 1964 as if it were a reference to an Assistant Minister;
- (e) any reference in an existing law to the Supreme Court shall be read and construed as from 12th December 1964 as if it were a reference to the High Court;
- (f) any reference in an existing law to a Region, a Regional Assembly or the Finance and Establishments committee of that Regional Assembly shall be read and construed as from 12th December 1964

as if it were a reference to the Province which was formerly that Region, to the Provincial Council which was formerly that Regional Assembly or to the General Purposes committee of that Provincial Council, as the case may be;

(g) any reference in an existing law to the President or Vice-President of a Regional Assembly shall be read and construed as from 12th December 1964 as if it were a reference to the Chairman or Vice-Chairman, as the case may be, of the Provincial Council which was formerly that Regional Assembly;

(h) any reference in an existing law to the Civil Secretary, a Regional Government Agent or an Assistant Regional Government Agent of a Region shall be read and construed as from 12th December 1964 as if it included a reference to the Provincial Commissioner, a District Commissioner or a District Officer, as the case may be, of the Province which was formerly that Region; and

(i) any reference in an existing law to the Inspector-General of Police, to a Regional Commissioner of Police or to any other police officer shall be read and construed as from 12th December 1964 as if it included a reference to the Commissioner of Police, the police officer in charge of a Province, or to a police officer of equivalent rank, as the case may be.

(2) Notwithstanding the constitutional changes, the existing laws shall, until provision to the contrary is made by any law, have the same operation in Kenya as they would have had if Kenya had not become a Republic.

8. Where under any existing law any prerogatives or privileges are vested in Her Majesty in respect of Kenya those prerogatives or privileges shall as from 12th December 1964 vest in the Government of the Republic of Kenya and, subject to the provisions of the Constitution and any other law, the President shall have power to do all things necessary for the exercise thereof.

Prerogatives and
privileges of
Crown.

9. (1) Subject to the provisions of this section, any person who immediately before 12th December 1964 held or was acting in any office established by or in pursuance of the Constitution shall, so far as is consistent with the

Existing offices.

provisions of the Constitution, be deemed as from 12th December 1964 to have been appointed, elected or otherwise selected to hold or to act in the same or in the equivalent office under the Constitution and to have taken any necessary oath under the Constitution:

Provided that—

(a) any person who under the Constitution as in force immediately before 12th December 1964 or under any existing law would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office at the expiration of that period or on the attainment of that age;

(b) the President may, at any time after the commencement of this Act, require any person who continues in office by virtue of the provisions of this subsection to take an oath of allegiance and any oath for the due execution of his office prescribed by or under any Act of Parliament.

(2) The provisions of this section shall be without prejudice to any powers conferred by or under the Constitution or any other law upon any person or authority to make provision for the abolition of offices, for the removal from office of persons holding or acting in any office, and for requiring persons to retire from office.

(3) In determining (for the purpose of any law relating to pensions benefits or otherwise to length of service) the length of service of a public officer to whom subsection (1) of this section applies, service as a public officer under the Crown which terminates immediately before 12th December 1964 shall be deemed to be continuous with service as a public officer under the Republic which begins on that day.

Parliament.

10. (1) Subject to the provisions of section 65 (4) of the Constitution, Parliament shall, unless sooner dissolved, stand dissolved on 7th June 1968.

(2) The terms of office of the Senators who were divided by lot into three classes in pursuance of section 6 of the Kenya Order in Council 1963 shall be as provided by that section; that is to say, the term of every Senator in the first class shall expire on 7th June 1965, the term of every Senator in the second class shall expire on 7th June 1967, and the term of every Senator in the third class shall expire on 7th June 1969.

L.N. 245/1963.

(3) As soon as possible after the Senate first meets after 12th December 1964, the Speaker of the Senate shall, by lot, divide the Senators representing the North-Eastern Region into three classes; and the term of office of the Senator in the first class shall expire on 7th June 1965, the term of office of the Senator in the second class shall expire on 7th June 1967, and the term of office of the Senator in the third class shall expire on 7th June 1969.

(4) Subsections (2) and (3) of this section shall have effect notwithstanding the provisions of section 42 (3) of the Constitution.

(5) The Standing Orders of the Senate and the Standing Orders of the House of Representatives as in force immediately before 12th December 1964 shall, except as may be otherwise provided by the Senate or the House of Representatives, as the case may be, continue in force after the commencement of this Act, but all such Standing Orders shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(6) Notwithstanding the provisions of section 49 (4) of the Constitution, the Electoral Commission shall, before 12th December 1965 and in accordance with the provisions of the said section 49, 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 the said section 49 to such extent as it considers desirable in the light of the review, and any order made by the Commission under this section shall be published in the Kenya Gazette and shall come into effect as if it had been made in pursuance of the said section 49.

(7) For the purposes of section 49 (4) of the Constitution, the date when the Electoral Commission commences a review of the number and the boundaries of the constituencies pursuant to subsection (6) of this section shall be the date on which the Commission shall be deemed to have first held a review in performance of its duty under the said section 49 (4).

11. (1) The Regional Assemblies established by law immediately before 12th December 1964 (hereinafter referred to as "the existing Regional Assemblies") shall be the Provincial Councils from that day until the first dissolution of Provincial Councils thereafter.

Provincial
Councils.

(2) The Provincial Councils shall, unless sooner dissolved, stand dissolved on 1st June 1968.

(3) The persons who immediately before 12th December 1964 were the Elected or the Specially Elected Members of the existing Regional Assemblies shall be the Elected or, as the case may be, the Specially Elected Members of the Provincial Councils as from that day and shall hold their seats therein in accordance with the provisions of the Constitution.

(4) The Standing Orders of the existing Regional Assemblies as in force immediately before 12th December 1964 shall, except as may be otherwise provided by the Provincial Council concerned, continue in force as from that day as the Standing Orders of the Provincial Councils, but all such Standing Orders shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

Registers of voters.

12. Any registers of voters in force immediately before 12th December 1964 shall continue in force as from that day, and any such register of voters in elections to a Regional Assembly shall have effect as the register of voters in elections to the corresponding Provincial Council.

Savings.

13. (1) Notwithstanding any of the provisions of the Amendment Acts, where any matter or thing has been commenced before 12th December 1964 by any authority or person having power in that behalf under the Constitution or any law as then in force, that matter or thing may be carried on and completed by the authority or person having power in that behalf on or after 12th December 1964 and, unless the President in any case otherwise directs, it shall not be necessary for the latter authority or person to commence such matter or thing *de novo*.

(2) Notwithstanding any of the provisions of this Act any act or other thing done after 11th December 1964 and before the publication of this Act by any authority or person which, by virtue of the retrospective operation of this Act, ceased on 12th December 1964 to be the appropriate authority or person, shall be deemed to have been done by the authority or person which, by virtue of the amendments to the Constitution made by this Act, is the appropriate authority or person.

Legal
proceedings.

14. (1) Subject to the provisions of this Act, all proceedings that immediately before 12th December 1964 were pending before any court having jurisdiction in Kenya may be continued and concluded after that day before the corresponding court.

(2) Until otherwise provided by any law, all proceedings that are continued in pursuance of this section in which Her Majesty or any public officer is a party in respect of Kenya, or the Government of Kenya is a party, shall continue—

- (a) in the case of proceedings brought in accordance with the Criminal Procedure Code, with the Republic (whether or not that expression is used) substituted as a party; and
- (b) in the case of all other proceedings, with the Attorney-General, or some other public officer representing the Republic, as a party.

(3) Subject to the provisions of this section and of section 15 of this Act, any decision given before 12th December 1964 by any court having jurisdiction in Kenya shall, for the purpose of its enforcement or for the purpose of any appeal therefrom, have effect as from that day as if it were a decision given by the corresponding court in the exercise of the jurisdiction conferred on it by the law in force on that day.

(4) Notwithstanding that this Act makes provision for the replacement, with retrospective effect from 12th December 1964, of the Supreme Court by the High Court, all decisions and proceedings of the Supreme Court and all enforcements thereof, and all decisions and proceedings in any appeal to or from the Supreme Court and all enforcements thereof, given, held or effected after 11th December 1964 and before the publication of this Act, shall be of full force and effect, and shall be deemed to have been decisions or proceedings of the High Court or enforcements thereof, or decisions or proceedings in an appeal to or from the High Court or enforcements thereof, as the case may be, and may be continued, concluded and enforced accordingly (as the case may require).

(5) In this section "the corresponding court" means—

- (a) in relation to the Court of Appeal for Eastern Africa, the same court;

(b) in relation to the Supreme Court established by the Constitution as in force immediately before 12th December 1964, the High Court established by the Constitution; and

(c) in relation to any other court established for Kenya at any time before 12th December 1964, the court established for Kenya by the law in force on that day that exercises the same jurisdiction as, or a jurisdiction corresponding to, the jurisdiction formerly exercised by that other court.

Abolition of
appeals to
Judicial
Committee and
transitional
provisions.

15. (1) Subject to the provisions of this section, no appeal shall lie to the Judicial Committee from any court having jurisdiction in Kenya.

(2) Any appeal to the Judicial Committee from a decision given before 12th December 1964 by any court having jurisdiction in Kenya, being an appeal in which the records have been registered in the office of the Privy Council before 12th March 1965, shall continue to lie to the Judicial Committee.

(3) For the purposes of any appeal that lies to the Judicial Committee under subsection (2) of this section—

(a) the Judicial Committee shall exercise the jurisdiction that was conferred on it by the Constitution and any other law as in force immediately before 12th December 1964; and

(b) that appeal may be prosecuted and disposed of in accordance with the law regulating the procedure in appeals to the Judicial Committee from decisions given by the courts having jurisdiction in Kenya that was in force immediately before 12th December 1964.

(4) Any decision given by the Judicial Committee in any appeal that lies to that Committee under subsection (2) of this section or in any appeal that has been made to that Committee at any time before 12th December 1964 shall be enforced in accordance with the law regulating the enforcement of decisions of the Judicial Committee that was in force immediately before that day.

(5) Any Order made by Her Majesty in Council in any appeal that has been made to Her Majesty in Council at any

time before 12th December 1963 shall be enforced in accordance with the law regulating the enforcement of such Orders that was in force immediately before that day.

(6) In this section "the Judicial Committee" means the Judicial Committee of the Privy Council established by the Judicial Committee Act, 1833, as from time to time amended by any Act of the Parliament of the United Kingdom.

3 and 4 Will.
4, c. 41.

16. Any area of forest that is situated on Trust land (as defined by section 208 of the Constitution as in force immediately before 12th December 1964) and that, immediately before 12th December 1964, was (or was part of) a Central Forest shall continue to be (or, as the case may require, to be part of) a Central Forest under the Constitution and as from 12th December 1964 shall be deemed to have been designated as a Central Forest in accordance with the provisions of the Constitution.

Central Forests
on Trust Land.

PART IV—LAND

17. Subject to the provisions of any law, the President or any person or authority authorized in that behalf by the President may make grants or dispositions of any estates, interests or rights in or over land that are for the time being vested in the Government of the Republic of Kenya.

Disposition
of land by
Government of
Kenya.

18. (1) Where any person in whom there is vested an estate, interest or right in or over land to which this section applies dies intestate and without heirs, that estate, interest or right shall escheat to the Government of the Republic of Kenya.

Escheat.

(2) Where a company in which there is vested any estate, interest or right in or over land to which this section applies is dissolved, then, except to the extent to which provision is made by or under the Companies Act or any law amending or replacing that Act for the vesting of that estate, interest or right in some other person or authority, it shall escheat in like manner as if it were vested in a person who dies intestate and without heirs.

Cap. 486.

(3) This section applies to all land, other than land to which section 211 of the Constitution as in force immediately before 12th December 1964 (which relates to Trust land) applies.

Authorization
of Commissioner
of Lands to
administer
Trust Land.
Cap. 288.

19. (1) The Commissioner of Lands shall be deemed for the purposes of section 53 of the Trust Land Act to have been authorized upon the commencement of this Act by every county council to administer the Trust land for the time being vested in it.

(2) The authority conferred upon the Commissioner of Lands by this section shall cease to have effect on 12th December 1965.

(3) In this section "county council" includes every local government authority in which any Trust land is for the time being vested.

Powers of
county councils
to set apart
Trust land.
L.N. 625/1963.

20. (1) Regulation 10 of the Kenya (Amendment of Laws) (Trust Land) Regulations, 1963, shall be deemed always to have had effect since 1st June 1963 and shall, as amended and construed in accordance with subsections (2) and (3) of this section, and except as may be otherwise provided by or under an Act of Parliament, continue in force as from 12th December 1964 as if a power to make that regulation (as so amended and construed) were conferred upon the President by this section, and as if the President had made that regulation (as so amended and construed) in pursuance of that power.

(2) There shall be substituted in regulation 10 of the said Regulations for the expressions "Regional Gazette", "Ordinance" and "Regional Government Agent", the expressions "Gazette", "Trust Land Act" and "District Commissioner", respectively; and paragraph (6) of that regulation shall be deleted.

(3) In the said regulation the expression "the Divisional Board" shall mean the appropriate Divisional Land Board established under the Trust Land Act.

Cap. 288.

Control over
transactions in
agricultural
land.

21. (1) Notwithstanding the repeal by this Act of Part 3 of Chapter XII of the Constitution as in force immediately before 12th December 1964 (in this section referred to as "the existing provisions"), those provisions shall, except as may be otherwise provided by or under an Act of Parliament, continue in force as from 12th December 1964 as amended by the

Amendment (No. 2) Act and as further amended in accordance with the provisions of subsection (2) of this section, as if they had been re-enacted as part of this Act.

(2) The provisions of the existing provisions (as amended by the Amendment (No. 2) Act) that are specified in the first column of Part I of the Third Schedule to this Act shall be amended in the manner specified in relation thereto in the second column of that Part of that Schedule; and there shall be substituted for the expressions specified in the first column of Part II of that Schedule, wherever they appear in those provisions, the expressions specified in the second column of that Part of that Schedule.

(3) Except as Parliament, or any other person or authority having power in that behalf, may determine—

(a) the Divisional Land Control Boards and the Appeals Tribunal established under the existing provisions (in this section referred to respectively as “the existing Boards” and “the existing Tribunal”) shall be the Boards and the Tribunal for the purposes of those provisions as continued in force by this Act, and the members of the existing Boards and the existing Tribunal shall continue in office as from 12th December 1964, and shall be deemed to have been appointed, elected or otherwise selected in accordance with those provisions as so continued in force to serve for the remainder of the term for which, and subject to the same terms and conditions under which, they were appointed, elected or otherwise selected in pursuance of the existing provisions; and

(b) any resolution, prescription, rule, determination or other act made or done before 12th December 1964 in pursuance of the existing provisions by any county council (as defined by section 215 (2) of the existing provisions) or by any of the existing Boards or by the existing Tribunal shall continue to have effect as from 12th December 1964 as if made or done in pursuance of the existing provisions as continued in force by this Act, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the existing provisions as so continued in force.

FIRST SCHEDULE

(s. 4)

AMENDMENTS TO THE CONSTITUTION

Part I

<i>Provision</i>	<i>Amendment</i>
Chapter II.	
Section 25.	<p>(a) In subsection (1) substitute for the word "person" the words "citizen of Kenya".</p> <p>(b) Delete paragraph (d) of subsection (3).</p> <p>(c) In subsection (6)—</p> <p>(i) substitute for the words "a law made by the Regional Assembly of a Region" the word "Parliament";</p> <p>(ii) delete the words "in that Region".</p>
Section 26 (6).	Substitute for the words "Part 3 of Chapter XII of this Constitution" the words "the provisions of Part 3 of Chapter XII of the Constitution as in force on 11th December 1964, or by those or any other bodies or authorities established for the purpose of controlling transactions in agricultural land by or under any law amending, continuing or replacing those provisions".
Section 29.	<p>(a) Substitute for the expression "65 per cent" wherever it appears in the section, the words "the majority".</p> <p>(b) Substitute for the words "seven days" wherever they appear in the section, the words "twenty-one days".</p> <p>(c) Substitute for the words "two months" wherever they appear in the section, the words "three months".</p>
Section 30.	In the definition of "court" delete the words "the Judicial Committee and,".
Chapter IV.	
Section 60 (1).	<p>In paragraph (b)—</p> <p>(i) insert immediately before the words "proceed upon" the words "except on the recommendation of the President signified by a Minister";</p> <p>(ii) substitute for the words "any Bill" the words "any provision of a Bill, being a provision".</p>
Section 66.	<p>(a) Delete subsection (2) and substitute a new subsection as follows—</p> <p>(2) Wherever under this Constitution a power is conferred on a Provincial Council to make laws for the Province with respect to any matter, Parliament shall have a concurrent power to make laws for the Province with respect to that matter:</p> <p>Provided that all the provisions of this Constitution qualifying the power of a Provincial Council to make a law, other than a provision requiring any special majority for the passing of that law, shall apply to the power of Parliament to make such a law.</p> <p>(b) Delete subsection (3).</p>

FIRST SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
Section 67.	Delete whole section.
Section 68.	Delete whole section.
Section 69.	Delete whole section.
Section 70.	Delete whole section.
Section 71.	(a) In subsection (1) delete the words "or (in so far as it forms part of the law of Kenya) any of the provisions of the Kenya Independence Act 1963". (b) In subsection (2)— (i) delete the words "Subject to the provisions of subsection (3) of this section,"; (ii) substitute for the words "three-quarters" the words "65 per cent". (c) Delete subsections (3), (4), (5), (6) and (7). (d) In subsection (9) substitute for the words "subsections (3) and" the word "subsection". (e) In subsection (10) delete the words "subsection (4) or". (f) In subsection (11) in paragraphs (a) and (b) thereof delete the words "or of the Kenya Independence Act 1963".
Chapter V.	
Section 72.	Delete subsections (3), (4), (6) and (7).
Section 86.	In subsection (6) delete the words "(including the Judicial Committee)".
Section 88.	Delete subsection (2).
Section 89 (1).	Delete paragraph (a).
Section 90.	Delete whole section and substitute a new section as follows—
Functions of Advisory Committee on Prerogative of Mercy.	90. (1) Where any person has been sentenced to death (otherwise than by a court-martial) for any offence, the President 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 exercise any of his functions under section 88 of this Constitution. (2) The President may consult with the Committee before deciding whether to exercise any of his functions under the said section 88 in any case not falling within subsection (1) of this section, but he shall not be obliged to act in accordance with the advice of the Committee.

FIRST SCHEDULE—(Contd.)

Amendment

<i>Provision</i>	
Chapter VI.	
Section 96 (1).	Delete paragraphs (f) and (g) and substitute a new paragraph as follows— (f) is a public officer.
Section 100.	Delete whole section.
Section 101.	(a) In subsections (2) and (3) substitute for the words "Clerk to the Regional Assembly" the words "Attorney-General". (b) Delete subsection (6).
Part 3.	Delete the title to Part 3 and delete section 102 and substitute a new title and two new sections as follows—
	<i>Functions of Provincial Councils</i>
Functions of Provincial Councils.	102. Subject to the provisions of this Constitution, a Provincial Council shall have such functions as are conferred upon it by this Constitution and as may be conferred upon it by or under any Act of Parliament.
Power of Provincial Councils to make laws.	102A. (1) Subject to the provisions of this Constitution, a Provincial Council shall have power to make laws for the Province or any part thereof with respect to such matters as are specified in this Constitution and such further matters as may be specified by Act of Parliament. (2) An Act of Parliament conferring power on a Provincial Council to make laws may be general or specific, may be given for an indefinite period or for a specific period, and may be subject to such conditions or restrictions as may be specified in the Act.
Section 103.	In the proviso to subsection (4)— (i) delete paragraph (a); (ii) delete paragraph (c) and substitute a new paragraph as follows— (c) a Provincial Council may make a law with retrospective effect in any case where the power to make the law is conferred by this Constitution, and in any case where the power to make the law is conferred by Act of Parliament if the power to give the law retrospective effect is expressly conferred by that Act.
Part 4.	Delete whole Part.
Part 5.	
Section 111.	(a) In subsection (1) substitute for the words "Clerk to the Regional Assembly" the words "Attorney-General" (b) Delete subsection (2).

FIRST SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
Section 113.	<p>(a) Delete subsection (1) and substitute a new subsection as follows—</p> <p>(1) Every Provincial Council shall establish a General Purposes committee, and without prejudice to the generality of section 112 (1) of this Constitution, a Provincial Council may establish other committees for such general or special purposes as it thinks fit.</p> <p>(b) Delete subsection (2).</p>
Part 6.	
Section 116.	Delete whole section.
Section 117.	Delete whole section.
Chapter IX.	
Section 162 (6) (a).	Substitute for the words "Governor-General" the word "President".
Chapter X.	
Section 171.	<p>(a) Delete subsection (1) and substitute a new subsection as follows—</p> <p>(1) There shall be a High Court which shall be a superior court of record and which shall have unlimited original jurisdiction in civil and criminal matters and such other jurisdiction and powers as may be conferred on it by this Constitution or any other law.</p> <p>(b) In subsection (2) substitute for the word "or" the word "of".</p> <p>(c) Delete subsection (3).</p>
Section 173.	<p>(a) Delete subsection (4) and substitute a new subsection as follows—</p> <p>(4) A judge of the High Court shall be removed from office by the President if the question of his removal has been referred to a tribunal appointed under subsection (5) of this section and the tribunal has recommended to the President that the judge ought to be removed from office for inability as aforesaid or for misbehaviour.</p> <p>(b) In subsection (5)—</p> <p>(i) in paragraph (a) substitute for the words "such a court;" the words "such a court; and";</p> <p>(ii) in paragraph (b) substitute for the words "the question of the removal of that judge from office should be referred by him to the Judicial Committee; and" the words "that judge ought to be removed under this section";</p> <p>(iii) delete paragraph (c).</p>

FIRST SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
Section 173— (Contd.)	(c) Delete subsection (7) and substitute a new subsection as follows— (7) If the question of removing a judge from office has been referred to a tribunal under this section the President, acting in accordance with the advice of the Chief Justice in the case of a puisne judge and in accordance with his own deliberate judgement 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 President, acting in accordance with the advice of the Chief Justice in the case of a puisne judge, and shall in any case cease to have effect if the tribunal recommends to the President that the judge should not be removed.
Section 175 (2).	(a) Substitute for the words “under section 180 of this Constitution to the Court of Appeal for Kenya, or (whether mediately or direct) to the Judicial Committee” the words “to a court to which an appeal lies in such cases under any law”. (b) Substitute for the words “the Court of Appeal for Kenya or, as the case may be, the Judicial Committee” the words “that court”.
Section 176.	Delete subsections (2) and (3).
Part 4.	Delete the expression “Part 4” and delete the title “Appeals”.
Section 180.	Delete whole section.
Section 181.	Delete whole section.
Section 182.	Delete subsection (3) and substitute two new subsections as follows— (3) An appeal shall lie as of right to the High Court from decisions given by a subordinate court in the following cases, that is to say— (a) final decisions in any civil proceedings where the matter in dispute on the appeal to the High Court 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 to the value of £1,000 or upwards; and (b) final decisions in proceedings for dissolution or nullity of marriage. (3A) An appeal from a decision given by a subordinate court in any of the cases referred to in subsection (3) of this section— (a) shall not lie to the High Court if, under any law— (i) an appeal lies as of right from that decision to the Court of Appeal for Kenya; or

FIRST SCHEDULE—(Contd.)

Provision

Amendment

Section 182—
(Contd.)

(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; or

(b) shall not lie direct to the Court of Appeal for Kenya or direct to the High Court in any such case if, under any law—

(i) an appeal lies as of right from that decision to another subordinate 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 not been withheld.

Section 183.

Delete whole section.

Section
184 (1).

(a) Immediately after paragraph (a) insert a new paragraph as follows—

(b) the Attorney-General;

(b) In paragraph (b) substitute for the letter “(b)” the letter “(c)”.

(c) In paragraph (c) substitute for the words “(c) two persons who are” the words “(d) one person who is”.

Section
185 (3).

In paragraph (g) delete the words “(other than the Judicial Committee)” wherever they appear.

Chapter XI.

Section
188 (15).

In paragraph (d) substitute for the words “a permanent secretary or the office of the Secretary to the Cabinet” the words “the Secretary to the Cabinet or Solicitor-General or Permanent Secretary or Director of Personnel”.

Section 191.

Substitute for the words “permanent secretary or Secretary to the Cabinet” the words “Secretary to the Cabinet or Solicitor-General or Permanent Secretary”.

Chapter XII.

In the title to the Chapter substitute for the word “LAND” the words “TRUST LAND”.

Part 1.

Delete the expression “Part 1” and delete the title “Central Land Board”.

Part 2.

Delete the expression “Part 2” and delete the title “Land tenure”.

Section 202.

Delete the words “Part of this” wherever they appear.

Section 208.

(a) In subsection (2) substitute for the words “a law made by the Regional Assembly of the Region in which the land is situated” the words “Act of Parliament”.

FIRST SCHEDULE—(Contd.)

Provision

Amendment

Section 208—
(Contd.)

(b) In subsection (4) insert immediately after the word "situated" a proviso as follows—

Provided that there shall not vest in any county council by virtue of this subsection any unextracted minerals, mineral oils or bodies of water that were immediately before 12th December 1964 vested in any person or authority in right of the Government of Kenya or in a Region.

(c) In subsection (6) substitute for the words "a Regional Assembly" the word "Parliament".

(d) In subsection (7)—

(i) substitute for the words "the Regional Assembly of a Region" the word "Parliament";

(ii) delete the words "within the Region".

Section
209 (3).

Delete the words "Chairman of the Regional Assembly of the Region in which the land is situated and with the".

Section 210.

In the marginal note delete the words "or Regional".

Section 211.

Delete the whole section and substitute two new sections as follows—

Escheat of
former Trust
land.

211. (1) Where any person in whom there is vested an estate, interest or right in or over land to which this section applies dies intestate and without heirs, that estate, interest or right shall escheat to the county council in whose area of jurisdiction the land is situated.

(2) Where a company in which there is vested any estate, interest or right in or over land to which this section applies is dissolved, then, except to the extent to which provision is made by or under the Companies Act or any law amending or replacing that Act for the vesting of that estate, interest or right in some other person or authority, it shall escheat in like manner as if it were vested in a person who dies intestate and without heirs.

(3) The land to which this section applies is the land, other than land that is situated in the Nairobi Area, that is situated in the Special Areas or is such land as is specified in paragraph (b) or paragraph (c) of section 208 (1) of this Constitution.

Forests on
Trust land.

212. Notwithstanding any of the provisions of this Chapter—

(a) the Minister for the time being responsible for forests may, by order published in the Kenya Gazette, designate any area or areas of forest that are situated on Trust land as a Central Forest; and

FIRST SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
Section 211— (Contd.)	(b) subject to the provisions of any law made in that behalf— (i) the executive authority to establish, manage and operate Central Forests on Trust land shall vest exclusively in the Government of Kenya; and (ii) the revenues from such Forests shall belong to the Government of Kenya.
Part 3.	Delete whole Part.
Chapter XV. Section 247.	(a) In subsection (1)— (i) delete the definition of “the former Colony of Kenya”; (ii) delete the definition of “the Judicial Committee”; (iii) in the definition of “Kenya” substitute for the words “the former Colony of Kenya and the former Protectorate” the words “Kenya on 11th December 1964”; (iv) delete the definition of “the former Protectorate”; (v) in the definition of “subordinate court” delete paragraph (a). (b) In subsection 3 (b) delete the words “a member of a Divisional Land Control Board, a member of the Appeals Tribunal appointed under section 220 of this Constitution,”.
Schedule 1.	Delete whole Schedule.
Schedule 4.	Delete whole Schedule.
Schedule 10.	In the title to the Schedule delete the expression “OF PARTS 2 AND 3”.
Schedule 13.	Substitute for the words “Fort Hall”, wherever they appear in the Schedule, the word “Murang’a”.

Part II—General Amendments

<i>Expression in Constitution</i>	<i>Expression to be substituted</i>
“Supreme Court”.	“High Court”.
“Region”.	“Province”.
“Regions”.	“Provinces”.
“Regional Assembly”.	“Provincial Council”.
“Regional Assemblies”.	“Provincial Councils”.
“Regional”.	“Provincial”.
“Finance and Establishments committee”.	“General Purposes committee”.
“Chief Commissioner of Police”.	“Commissioner of Police”.
“Chief Commissioner”.	“Commissioner”.

No. 14

Constitution of Kenya (Amendment)

1965

SECOND SCHEDULE

(s. 5)

AMENDMENTS TO OTHER LAWS

*Provision**Amendment**Kenya Independence Act, 1963*

- Section 6. Delete whole section.
- Kenya Independence Order in Council 1963*
- Section 1 (3). (a) Delete the words "sections 1 to 20 (inclusive) of".
(b) Delete all the words after "in the Constitution".
- Section 2. Delete whole section.
- Section 3. Delete whole section.
- Section 4. Delete subsections (7) and (8).
- Section 7. Delete whole section.
- Section 8. Delete whole section.
- Section 16. Delete whole section.
- Section 17. Delete whole section.
- Section 20. Delete whole section and substitute a new section as follows—
Alteration of this Order. 20. Parliament may alter any of the provisions of this Order in the same manner as it may alter any of the provisions of the Constitution.
- Schedule 1. Delete whole Schedule.

Constitution of Kenya (Amendment) Act, 1964

- Section 2. (a) In subsection (1) delete the definitions of "constitutional changes" and "existing law".
(b) Delete subsection (3).
- Section 14. Delete whole section.
- Section 15. Delete whole section.
- Section 16. Delete whole section.
- Section 17. Delete whole section.
- Section 18. Delete whole section.
- Section 19. Delete whole section.
- Section 21. In subsection (1)—
(i) insert immediately before the word "Region" wherever it appears, the word "former";
(ii) delete the words "the Republic of".

SECOND SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
Section 23.	Insert immediately before the word "Region" the word "former".
Section 27.	(a) In subsection (1)— (i) insert immediately before the word "Region" wherever it appears, the word "former"; (ii) delete the words "the Republic of". (b) In subsection (2) insert immediately before the word "Regions" the word "former".
Section 30.	Delete whole section.
Fourth Schedule.	Delete whole Schedule and substitute a new Schedule as follows—

FOURTH SCHEDULE (s. 29)

AMENDMENTS TO PART I AND SECTION 212 OF CHAPTER XII OF THE CONSTITUTION FOR THE PURPOSES OF THIS ACT

<i>Provision</i>	<i>Amendment</i>
Part I.	In sections 197, 198 and 201, wherever they appear substitute for the words— (i) "Governor-General" the word "President"; (ii) "Region" the word "Province"; (iii) "President" the word "Chairman"; (iv) "Regional Assembly" the word "Provincial Council"; (v) "a Parliamentary Secretary" the words "an Assistant Minister"; (vi) "of this Constitution" (except in section 198 (2)) the words "of this Part"; and
Section 197.	(a) In subsection (1) (c) delete the words "acting in accordance with the advice of the Prime Minister". (b) In subsection (6)— (i) delete the words "Prime Minister or the President of any Regional Assembly represents to the"; (ii) insert immediately before the words "that the question" the word "considers".
Section 198.	(a) In subsection (2) delete the words "and the Regions" and the words "established by paragraph 12 (2) of Schedule 2 of this Constitution". (b) In subsection (5) substitute for the date "1965" the date "1956".

SECOND SCHEDULE—(Contd.)

<i>Provision</i>	<i>Amendment</i>
Section 199 (4).	Substitute for the word "Chapter" the word "Part".
Section 200 (3).	(a) Substitute for the words "this Constitution" the words "the Constitution". (b) Delete the expression "160 (s) (d), 160 (4)".
Section 212.	(a) Substitute for the words "of this Constitution" the words "of this Part". (b) Substitute for the words "the Governor-General or in the Region in which the land is situated" the words "the Government of the Republic of Kenya".

Constitution of Kenya (Amendment) (No. 2) Act, 1964

Part III. Delete whole Part.

THIRD SCHEDULE

(s. 21)

AMENDMENTS TO PART 3 OF CHAPTER XII OF THE CONSTITUTION FOR THE PURPOSES OF THIS ACT

Part I

<i>Provision</i>	<i>Amendment</i>
Section 215 (2).	Substitute for the words "this Constitution" the words "the Constitution as in force on 11th December 1964".
Section 218 (5).	Delete whole subsection and substitute a new subsection as follows— (5) The provisions of this section shall not apply to any transaction to which the Government of Kenya, or any person or authority acting on behalf of the Government, the Central Land Board or the Settlement Fund Trustees or (in respect of Trust land) a county council is a party.

Part II

<i>Expression in Constitution</i>	<i>Expression to be substituted</i>
"Chapter".	"Act".
"Region".	"Province".
"Constitution".	"Act" (except in section 215 (2)).
"Regional Assembly".	"Provincial Council".
"Regional Assemblies".	"Provincial Councils".