

- (c) the age of the person becomes known, and reveals that the person was older than eight years when found in Kenya.

**Legislation on citizenship.**

18. Parliament shall enact legislation—

- (a) prescribing procedures by which a person may become a citizen;
- (b) governing entry into and residence in Kenya;
- (c) providing for the status of permanent residents;
- (d) providing for voluntary renunciation of citizenship;
- (e) prescribing procedures for revocation of citizenship;
- (f) prescribing the duties and rights of citizens; and
- (g) generally giving effect to the provisions of this Chapter.

**CHAPTER FOUR—THE BILL OF RIGHTS**

PART 1—GENERAL PROVISIONS RELATING TO THE BILL OF RIGHTS

**Rights and fundamental freedoms.**

19. (1) The Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies.

(2) The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.

(3) The rights and fundamental freedoms in the Bill of Rights—

- (a) belong to each individual and are not granted by the State;
- (b) do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and
- (c) are subject only to the limitations contemplated in this Constitution.

**Application of Bill of Rights.**

20. (1) The Bill of Rights applies to all law and binds all State organs and all persons.

(2) Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.

(3) In applying a provision of the Bill of Rights, a court shall—

- (a) develop the law to the extent that it does not give effect to a right or fundamental freedom; and
- (b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom.

(4) In interpreting the Bill of Rights, a court, tribunal or other authority shall promote—

- (a) the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and
- (b) the spirit, purport and objects of the Bill of Rights.

(5) In applying any right under Article 43, if the State claims that it does not have the resources to implement the right, a court, tribunal or other authority shall be guided by the following principles—

- (a) it is the responsibility of the State to show that the resources are not available;
- (b) in allocating resources, the State shall give priority to ensuring the widest possible enjoyment of the right or fundamental freedom having regard to prevailing circumstances, including the vulnerability of particular groups or individuals; and
- (c) the court, tribunal or other authority may not interfere with a decision by a State organ concerning the allocation of available resources, solely on the basis that it would have reached a different conclusion.

### **Implementation of rights and fundamental freedoms.**

**21.** (1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

(2) The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43.

(3) All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children,

youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.

(4) The State shall enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.

### **Enforcement of Bill of Rights.**

**22.** (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—

- (a) a person acting on behalf of another person who cannot act in their own name;
- (b) a person acting as a member of, or in the interest of, a group or class of persons;
- (c) a person acting in the public interest; or
- (d) an association acting in the interest of one or more of its members.

(3) The Chief Justice shall make rules providing for the court proceedings referred to in this Article, which shall satisfy the criteria that—

- (a) the rights of standing provided for in clause (2) are fully facilitated;
- (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation;
- (c) no fee may be charged for commencing the proceedings;
- (d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and
- (e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.

(4) The absence of rules contemplated in clause (3) does not limit the right of any person to commence court proceedings under this Article, and to have the matter heard and determined by a court.

**Authority of courts to uphold and enforce the Bill of Rights.**

**23.** (1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

(2) Parliament shall enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

(3) In any proceedings brought under Article 22, a court may grant appropriate relief, including—

- (a) a declaration of rights;
- (b) an injunction;
- (c) a conservatory order;
- (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
- (e) an order for compensation; and
- (f) an order of judicial review.

**Limitation of rights and fundamental freedoms.**

**24.** (1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

- (a) the nature of the right or fundamental freedom;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
- (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

(2) Despite clause (1), a provision in legislation limiting a right or fundamental freedom—

- (a) in the case of a provision enacted or amended on or after the effective date, is not valid unless the legislation specifically expresses the intention to limit that right or fundamental freedom, and the nature and extent of the limitation;
- (b) shall not be construed as limiting the right or fundamental freedom unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation; and
- (c) shall not limit the right or fundamental freedom so far as to derogate from its core or essential content.

(3) The State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied.

(4) The provisions of this Chapter on equality shall be qualified to the extent strictly necessary for the application of Muslim law before the Kadhis' courts, to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.

(5) Despite clause (1) and (2), a provision in legislation may limit the application of the rights or fundamental freedoms in the following provisions to persons serving in the Kenya Defence Forces or the National Police Service—

- (a) Article 31—Privacy;
- (b) Article 36—Freedom of association;
- (c) Article 37—Assembly, demonstration, picketing and petition;
- (d) Article 41—Labour relations;
- (e) Article 43—Economic and social rights; and
- (f) Article 49—Rights of arrested persons.

**Fundamental Rights and freedoms that may not be limited.**

**25.** Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited—

- (a) freedom from torture and cruel, inhuman or degrading treatment or punishment;

- (b) freedom from slavery or servitude;
- (c) the right to a fair trial; and
- (d) the right to an order of *habeas corpus*.

#### PART 2—RIGHTS AND FUNDAMENTAL FREEDOMS

##### **Right to life.**

26. (1) Every person has the right to life.

(2) The life of a person begins at conception.

(3) A person shall not be deprived of life intentionally, except to the extent authorised by this Constitution or other written law.

(4) Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.

##### **Equality and freedom from discrimination.**

27. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

(6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

(7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.

(8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

### **Human dignity.**

**28.** Every person has inherent dignity and the right to have that dignity respected and protected.

### **Freedom and security of the person.**

**29.** Every person has the right to freedom and security of the person, which includes the right not to be—

- (a) deprived of freedom arbitrarily or without just cause;
- (b) detained without trial, except during a state of emergency, in which case the detention is subject to Article 58;
- (c) subjected to any form of violence from either public or private sources;
- (d) subjected to torture in any manner, whether physical or psychological;
- (e) subjected to corporal punishment; or
- (f) treated or punished in a cruel, inhuman or degrading manner.

### **Slavery, servitude and forced labour.**

**30.** (1) A person shall not be held in slavery or servitude.

(2) A person shall not be required to perform forced labour.

### **Privacy.**

**31.** Every person has the right to privacy, which includes the right not to have—

- (a) their person, home or property searched;
- (b) their possessions seized;
- (c) information relating to their family or private affairs unnecessarily required or revealed; or
- (d) the privacy of their communications infringed.

**Freedom of conscience, religion, belief and opinion.**

**32.** (1) Every person has the right to freedom of conscience, religion, thought, belief and opinion.

(2) Every person has the right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, practice, teaching or observance, including observance of a day of worship.

(3) A person may not be denied access to any institution, employment or facility, or the enjoyment of any right, because of the person's belief or religion.

(4) A person shall not be compelled to act, or engage in any act, that is contrary to the person's belief or religion.

**Freedom of expression.**

**33.** (1) Every person has the right to freedom of expression, which includes—

- (a) freedom to seek, receive or impart information or ideas;
- (b) freedom of artistic creativity; and
- (c) academic freedom and freedom of scientific research.

(2) The right to freedom of expression does not extend to—

- (a) propaganda for war;
- (b) incitement to violence;
- (c) hate speech; or
- (d) advocacy of hatred that—
  - (i) constitutes ethnic incitement, vilification of others or incitement to cause harm; or
  - (ii) is based on any ground of discrimination specified or contemplated in Article 27 (4).

(3) In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others.

**Freedom of the media.**

**34.** (1) Freedom and independence of electronic, print and all other types of media is guaranteed, but does not extend to any expression specified in Article 33 (2).

(2) The State shall not—

- (a) exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or
- (b) penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.

(3) Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that—

- (a) are necessary to regulate the airwaves and other forms of signal distribution; and
- (b) are independent of control by government, political interests or commercial interests.

(4) All State-owned media shall—

- (a) be free to determine independently the editorial content of their broadcasts or other communications;
- (b) be impartial; and
- (c) afford fair opportunity for the presentation of divergent views and dissenting opinions.

(5) Parliament shall enact legislation that provides for the establishment of a body, which shall—

- (a) be independent of control by government, political interests or commercial interests;
- (b) reflect the interests of all sections of the society; and
- (c) set media standards and regulate and monitor compliance with those standards.

**Access to information.**

35. (1) Every citizen has the right of access to—

- (a) information held by the State; and
- (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.

(2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person.

(3) The State shall publish and publicise any important information affecting the nation.

**Freedom of association.**

**36.** (1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.

(2) A person shall not be compelled to join an association of any kind.

(3) Any legislation that requires registration of an association of any kind shall provide that—

- (a) registration may not be withheld or withdrawn unreasonably; and
- (b) there shall be a right to have a fair hearing before a registration is cancelled.

**Assembly, demonstration, picketing and petition.**

**37.** Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.

**Political rights.**

**38.** (1) Every citizen is free to make political choices, which includes the right—

- (a) to form, or participate in forming, a political party;
- (b) to participate in the activities of, or recruit members for, a political party; or
- (c) to campaign for a political party or cause.

(2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for—

- (a) any elective public body or office established under this Constitution; or
- (b) any office of any political party of which the citizen is a member.

(3) Every adult citizen has the right, without unreasonable restrictions—

- (a) to be registered as a voter;
- (b) to vote by secret ballot in any election or referendum; and
- (c) to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.

**Freedom of movement and residence.**

**39.** (1) Every person has the right to freedom of movement.

(2) Every person has the right to leave Kenya.

(3) Every citizen has the right to enter, remain in and reside anywhere in Kenya.

**Protection of right to property.**

**40.** (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—

(a) of any description; and

(b) in any part of Kenya.

(2) Parliament shall not enact a law that permits the State or any person—

(a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or

(b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).

(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—

(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or

(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—

(i) requires prompt payment in full, of just compensation to the person; and

(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.

(4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.

(5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.

(6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

### **Labour relations.**

**41.** (1) Every person has the right to fair labour practices.

(2) Every worker has the right—

(a) to fair remuneration;

(b) to reasonable working conditions;

(c) to form, join or participate in the activities and programmes of a trade union; and

(d) to go on strike.

(3) Every employer has the right—

(e) to form and join an employers organisation; and

(f) to participate in the activities and programmes of an employers organisation.

(4) Every trade union and every employers' organisation has the right—

(a) to determine its own administration, programmes and activities;

(b) to organise; and

(c) to form and join a federation.

(5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

**Environment.**

**42.** Every person has the right to a clean and healthy environment, which includes the right—

- (a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and
- (b) to have obligations relating to the environment fulfilled under Article 70.

**Economic and social rights.**

**43.** (1) Every person has the right—

- (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
- (b) to accessible and adequate housing, and to reasonable standards of sanitation;
- (c) to be free from hunger, and to have adequate food of acceptable quality;
- (d) to clean and safe water in adequate quantities;
- (e) to social security; and
- (f) to education.

(2) A person shall not be denied emergency medical treatment.

(3) The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.

**Language and culture.**

**44.** (1) Every person has the right to use the language, and to participate in the cultural life, of the person's choice.

(2) A person belonging to a cultural or linguistic community has the right, with other members of that community—

- (a) to enjoy the person's culture and use the person's language;  
or
- (b) to form, join and maintain cultural and linguistic associations and other organs of civil society.

(3) A person shall not compel another person to perform, observe or undergo any cultural practice or rite.

**Family.**

**45.** (1) The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State.

(2) Every adult has the right to marry a person of the opposite sex, based on the free consent of the parties.

(3) Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.

(4) Parliament shall enact legislation that recognises—

(a) marriages concluded under any tradition, or system of religious, personal or family law; and

(b) any system of personal and family law under any tradition, or adhered to by persons professing a particular religion,

to the extent that any such marriages or systems of law are consistent with this Constitution.

**Consumer rights.**

**46.** (1) Consumers have the right—

(a) to goods and services of reasonable quality;

(b) to the information necessary for them to gain full benefit from goods and services;

(c) to the protection of their health, safety, and economic interests; and

(d) to compensation for loss or injury arising from defects in goods or services.

(2) Parliament shall enact legislation to provide for consumer protection and for fair, honest and decent advertising.

(3) This Article applies to goods and services offered by public entities or private persons.

**Fair administrative action.**

**47.** (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is

likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

(3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—

- (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
- (b) promote efficient administration.

**Access to justice.**

48. The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.

**Rights of arrested persons.**

49. (1) An arrested person has the right—

- (a) to be informed promptly, in language that the person understands, of—
  - (i) the reason for the arrest;
  - (ii) the right to remain silent; and
  - (iii) the consequences of not remaining silent;
- (b) to remain silent;
- (c) to communicate with an advocate, and other persons whose assistance is necessary;
- (d) not to be compelled to make any confession or admission that could be used in evidence against the person;
- (e) to be held separately from persons who are serving a sentence;
- (f) to be brought before a court as soon as reasonably possible, but not later than—
  - (i) twenty-four hours after being arrested; or
  - (ii) if the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;
- (g) at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

(2) A person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months.

### **Fair hearing.**

**50.** (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

(2) Every accused person has the right to a fair trial, which includes the right—

- (a) to be presumed innocent until the contrary is proved;
- (b) to be informed of the charge, with sufficient detail to answer it;
- (c) to have adequate time and facilities to prepare a defence;
- (d) to a public trial before a court established under this Constitution;
- (e) to have the trial begin and conclude without unreasonable delay;
- (f) to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed;
- (g) to choose, and be represented by, an advocate, and to be informed of this right promptly;
- (h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (i) to remain silent, and not to testify during the proceedings;
- (j) to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence;
- (k) to adduce and challenge evidence;
- (l) to refuse to give self-incriminating evidence;

- (m) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial;
- (n) not to be convicted for an act or omission that at the time it was committed or omitted was not—
  - (i) an offence in Kenya; or
  - (ii) a crime under international law;
- (o) not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted;
- (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
- (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.

(3) If this Article requires information to be given to a person, the information shall be given in language that the person understands.

(4) Evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair, or would otherwise be detrimental to the administration of justice.

(5) An accused person—

- (a) charged with an offence, other than an offence that the court may try by summary procedures, is entitled during the trial to a copy of the record of the proceedings of the trial on request; and
- (b) has the right to a copy of the record of the proceedings within a reasonable period after they are concluded, in return for a reasonable fee as prescribed by law.

(6) A person who is convicted of a criminal offence may petition the High Court for a new trial if—

- (a) the person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
- (b) new and compelling evidence has become available.

(7) In the interest of justice, a court may allow an intermediary to assist a complainant or an accused person to communicate with the court.

(8) This Article does not prevent the exclusion of the press or other members of the public from any proceedings if the exclusion is necessary, in a free and democratic society, to protect witnesses or vulnerable persons, morality, public order or national security.

(9) Parliament shall enact legislation providing for the protection, rights and welfare of victims of offences.

### **Rights of persons detained, held in custody or imprisoned.**

**51.** (1) A person who is detained, held in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or a fundamental freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned.

(2) A person who is detained or held in custody is entitled to petition for an order of *habeas corpus*.

(3) Parliament shall enact legislation that—

- (a) provides for the humane treatment of persons detained, held in custody or imprisoned; and
- (b) takes into account the relevant international human rights instruments.

### PART 3— SPECIFIC APPLICATION OF RIGHTS

#### **Interpretation of this Part.**

**52.** (1) This Part elaborates certain rights to ensure greater certainty as to the application of those rights and fundamental freedoms to certain groups of persons.

(2) This Part shall not be construed as limiting or qualifying any right.

#### **Children.**

**53.** (1) Every child has the right—

- (a) to a name and nationality from birth;
- (b) to free and compulsory basic education;
- (c) to basic nutrition, shelter and health care;

- (d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;
- (e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and
- (f) not to be detained, except as a measure of last resort, and when detained, to be held—
  - (i) for the shortest appropriate period of time; and
  - (ii) separate from adults and in conditions that take account of the child's sex and age.

(2) A child's best interests are of paramount importance in every matter concerning the child.

#### **Persons with disabilities.**

**54.** (1) A person with any disability is entitled—

- (a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;
- (b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;
- (c) to reasonable access to all places, public transport and information;
- (d) to use Sign language, Braille or other appropriate means of communication; and
- (e) to access materials and devices to overcome constraints arising from the person's disability.

(2) The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.

#### **Youth.**

**55.** The State shall take measures, including affirmative action programmes, to ensure that the youth—

- (a) access relevant education and training;

- (b) have opportunities to associate, be represented and participate in political, social, economic and other spheres of life;
- (c) access employment; and
- (d) are protected from harmful cultural practices and exploitation.

**Minorities and marginalised groups.**

**56.** The State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups—

- (a) participate and are represented in governance and other spheres of life;
- (b) are provided special opportunities in educational and economic fields;
- (c) are provided special opportunities for access to employment;
- (d) develop their cultural values, languages and practices; and
- (e) have reasonable access to water, health services and infrastructure.

**Older members of society.**

**57.** The State shall take measures to ensure the rights of older persons—

- (a) to fully participate in the affairs of society;
- (b) to pursue their personal development;
- (c) to live in dignity and respect and be free from abuse; and
- (d) to receive reasonable care and assistance from their family and the State.

PART 4—STATE OF EMERGENCY

**State of emergency.**

**58.** (1) A state of emergency may be declared only under Article 132 (4) (d) and only when—

- (a) the State is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
- (b) the declaration is necessary to meet the circumstances for which the emergency is declared.

(2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of the declaration, shall be effective only—

- (a) prospectively; and
- (b) for not longer than fourteen days from the date of the declaration, unless the National Assembly resolves to extend the declaration.

(3) The National Assembly may extend a declaration of a state of emergency—

- (a) by resolution adopted—
  - (i) following a public debate in the National Assembly; and
  - (ii) by the majorities specified in clause (4); and
- (b) for not longer than two months at a time.

(4) The first extension of the declaration of a state of emergency requires a supporting vote of at least two-thirds of all the members of the National Assembly, and any subsequent extension requires a supporting vote of at least three-quarters of all the members of the National Assembly.

(5) The Supreme Court may decide on the validity of—

- (a) a declaration of a state of emergency;
- (b) any extension of a declaration of a state of emergency; and
- (c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.

(6) Any legislation enacted in consequence of a declaration of a state of emergency—

- (a) may limit a right or fundamental freedom in the Bill of Rights only to the extent that—
  - (i) the limitation is strictly required by the emergency; and
  - (ii) the legislation is consistent with the Republic's obligations under international law applicable to a state of emergency; and

(b) shall not take effect until it is published in the *Gazette*.

(7) A declaration of a state of emergency, or legislation enacted

or other action taken in consequence of any declaration, may not permit or authorise the indemnification of the State, or of any person, in respect of any unlawful act or omission.

PART 5—KENYA NATIONAL HUMAN RIGHTS AND EQUALITY COMMISSION

**Kenya National Human Rights and Equality Commission.**

**59.** (1) There is established the Kenya National Human Rights and Equality Commission.

(2) The functions of the Commission are—

- (a) to promote respect for human rights and develop a culture of human rights in the Republic;
- (b) to promote gender equality and equity generally and to coordinate and facilitate gender mainstreaming in national development;
- (c) to promote the protection, and observance of human rights in public and private institutions;
- (d) to monitor, investigate and report on the observance of human rights in all spheres of life in the Republic, including observance by the national security organs;
- (e) to receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated;
- (f) on its own initiative or on the basis of complaints, to investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs;
- (g) to act as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights;
- (h) to investigate any conduct in state affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice;
- (i) to investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct;

(j) to report on complaints investigated under paragraphs (h) and (i) and take remedial action; and

(k) to perform any other functions prescribed by legislation.

(3) Every person has the right to complain to the Commission, alleging that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

(4) Parliament shall enact legislation to give full effect to this Part, and any such legislation may restructure the Commission into two or more separate commissions.

(5) If Parliament enacts legislation restructuring the Commission under clause (4)—

(a) that legislation shall assign each function of the Commission specified in this Article to one or the other of the successor commissions;

(b) each of the successor commissions shall have powers equivalent to the powers of the Commission under this Article; and

(c) each successor commission shall be a commission within the meaning of Chapter Fifteen, and shall have the status and powers of a commission under that Chapter.

## **CHAPTER FIVE—LAND AND ENVIRONMENT**

### **PART 1—LAND**

#### **Principles of land policy.**

**60.** (1) Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles—

(a) equitable access to land;

(b) security of land rights;

(c) sustainable and productive management of land resources;

(d) transparent and cost effective administration of land;

(e) sound conservation and protection of ecologically sensitive areas;