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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 11th August, 2023

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THE NATIONAL ASSEMBLY OF KENYA



LEGISLATIVE ASSEMBLY

KENYA GAZETTE SUPPLEMENT

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A BILL TO AMEND THE

CONSTITUTION

IN RESPECT OF THE NATIONAL ASSEMBLY

OF KENYA

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ENACTED BY THE NATIONAL ASSEMBLY OF KENYA

THE TRIBUNALS BILL, 2023
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FIRST SCHEDULE—OATH/AFFIRMATION OF THE OFFICES OF CHAIRPERSON AND MEMBERS OF TRIBUNALS

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THE TRIBUNALS BILL, 2023

A Bill for

AN ACT of Parliament to give effect to Articles 1(3)(c), 20(4), 47(3), 159(1) and 169 of the Constitution regarding Tribunals; to establish the Office of the Registrar of Tribunals; to provide for the functions of the Registrar of Tribunals; to rationalize and regulate the administration and functions of Tribunals; and for connected purposes

ENACTED by the Parliament of Kenya as follows —

PART I — PRELIMINARY

1. This Act may be cited as the Tribunals Act, 2023.

Short title.

2. In this Act, unless the context otherwise requires

Interpretation.

“Commission” means the Judicial Service Commission established by Article 171 of the Constitution;

“Chief Registrar” means the Office of the Chief Registrar of the Judiciary established in Article 161 of the Constitution;

Cap 21.

“decree” has the meaning assigned to it under the Civil Procedure Act;

“Deputy Registrar” means a Deputy Registrar deployed to a Tribunal by the Judicial Service Commission;

“Registrar” means the Registrar of Tribunals appointed pursuant to section 6; and

“Tribunal” means a Tribunal established by an Act of Parliament pursuant to Article 169(1)(d) of the Constitution.

3. The purpose of this Act is to provide a legislative framework to —

Objects and purposes of the Act.

(a) rationalize and regulate Tribunals;

(b) streamline the governance and operations of Tribunals;

(c) provide a reasonable standard for the establishment of Tribunals;

- (d) set appropriate qualifications for Chairpersons and members of Tribunals;
- (e) ensure expeditious settlement of disputes by Tribunals;
- (f) enhance access to justice; and
- (g) improve quality of service delivery by Tribunals.

4. (1) This Act shall apply to Tribunals established pursuant to Article 169(1)(d) of the Constitution.

Application of the Act.

(2) For the avoidance of doubt, this Act shall not apply to any Tribunal established by the Constitution or an arbitral Tribunal established under the Arbitration Act, 1995.

No.4 of 1995.

PART II — ESTABLISHMENT AND ADMINISTRATION OF TRIBUNALS

5. (1) In addition to the functions of the Commission under Article 172 of the Constitution, the Commission shall

Functions and powers of the Judicial Service Commission.

- (a) develop policies for the regulation of Tribunals;
- (b) ensure the enhancement of a fair, efficient and accessible Tribunal system and jurisprudence;
- (c) evaluate, rationalize and recommend to Parliament the Tribunals to be established, merged or abolished;
- (d) regulate and oversee the functioning of Tribunals;
- (e) set standards and monitor compliance with the standards by the Tribunals in their functioning and service delivery;
- (f) develop a Code of Conduct for Tribunals;
- (g) ensure Tribunals adhere to the provisions of the law, regulations, policies, Code of Conduct, rules or guidelines;
- (h) provide strategic direction to Tribunals;
- (i) facilitate training programmes for members and staff of Tribunals;

- (j) facilitate law reporting on decisions of Tribunals in consultation with the National Council for Law Reporting;
- (k) facilitate public education on the role of Tribunals; and
- (l) perform any other function as may be necessary for the proper discharge of its responsibilities under this Act.

(2) Despite subsection (1), the Commission shall within two years of the commencement of this Act —

- (a) formulate and adopt guidelines for evaluation and rationalization of Tribunals; and
- (b) undertake the first evaluation and rationalization exercise and recommend to Parliament the Tribunals to be established, merged or abolished.

6. (1) There shall be a Registrar of Tribunals who shall, pursuant to Article 161(3) of the Constitution, be appointed by the Commission.

Registrar of
Tribunals.

(2) There shall be such number of Deputy Registrars for Tribunals as the Commission may deem necessary.

(3) A person shall be qualified for appointment as Registrar or as a Deputy Registrar if the person —

- (a) holds a degree in law from a university recognised in Kenya;
- (b) has, in the case of the Registrar, at least ten years post qualification experience and, in the case of a Deputy Registrar, has at least five years post qualification experience; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

7. (1) The Registrar shall perform such duties as the Chief Registrar may direct, and in particular shall be responsible for —

Functions of the
Registrar.

- (a) the establishment of registries of Tribunals;
- (b) the day to day administration and management of the Secretariat;

- (c) overseeing support services for Tribunals including the planning, development and the organization of staff;
- (d) the monitoring of administration and office procedures to uphold efficiency and quality of service;
- (e) the planning, preparation and implementation of the budget of Tribunals;
- (f) the preparation of reports and proposals on administrative issues as may be required from time to time;
- (g) overseeing the procurement and disposal of assets;
- (h) the acceptance, transmission, service and custody of documents in accordance with the law;
- (i) the facilitation of the enforcement of the decisions of Tribunals;
- (j) the certification of any order, direction or decision as an order, direction or decision of Tribunals;
- (k) causing to be kept records of the proceedings and minutes of the meetings of Tribunals and such other records as Tribunals may direct;
- (l) the management of the library of Tribunals;
- (m) the facilitation of access to judgments and records of Tribunals; and
- (n) undertaking any other duties, in relation to the regulation and management of Tribunals, assigned by the Commission under this Act or any other written law.

(2) The Registrar and Deputy Registrars shall work under the general direction of the Chief Registrar and shall have all the powers necessary for the execution of their functions under this Act.

8. (1) A Deputy Registrar shall be responsible to the Registrar for —

Functions of the
Deputy Registrar.

- (a) the administration and management of a Tribunal;
- (b) case management within the Tribunal;

- (c) efficient management of the day-to-day operations and administration of human resources in the Tribunal;
- (d) performing judicial functions as may be assigned by the Chief Registrar pursuant to the provisions of any law;
- (e) supporting the Registrar through supervision and coordination of the operations of the Tribunal's registry;
- (f) accounting for any service in respect of which monies have been allocated and for which issues are made from the Judiciary Fund;
- (g) planning, preparing, implementing and monitoring the budget and collecting and accounting for revenue in the Tribunal; and
- (h) any other function as may be assigned by the Registrar.

(2) In relation to the proceedings before a Tribunal, a Deputy Registrar may consider and dispose of procedural or administrative matters in accordance with the Rules or on the direction of the Registrar.

9. Except as provided under this Act or any other law, the Registrar may in writing delegate to a Deputy Registrar, any of the powers or responsibilities vested in the Registrar.

Registrar's power to delegate.

10. (1) There shall be a Tribunals Secretariat which shall be headed by the Registrar.

Secretariat.

(2) The Secretariat under subsection (1) shall consist of —

- (a) such Deputy Registrars as may be determined by the Commission;
- (b) such technical, administrative and support staff as may be appointed by the Commission under this Act; and
- (c) such public officers as may be seconded by the Public Service Commission upon a request by the Commission.

(3) The officers and staff under subsection (2) shall be appointed upon such terms and conditions of service as the Commission may determine.

11. (1) Where a Ministry, Department or Agency intends to establish a Tribunal, the responsible Cabinet Secretary shall submit to the Commission, a written request for the proposed establishment of the Tribunal.

Procedure for
establishment of
Tribunals.

(2) The request of the responsible Cabinet Secretary shall be accompanied by —

- (a) a detailed statement justifying the proposed establishment of the Tribunal; and
- (b) a feasibility assessment report for the purpose of ascertaining —
 - (i) the strategic viability of establishing the proposed Tribunal;
 - (ii) the practicability of the mandate of the proposed Tribunal being conducted by an existing Tribunal; and
 - (iii) whether or not there is need to establish a new Tribunal.

(3) The Commission shall consider the request and feasibility assessment report submitted to it under subsection (2) and shall submit its decision, in writing to the relevant Cabinet Secretary and to the Cabinet Secretary to the National Treasury, within sixty days of receipt of the report.

(4) Where the Commission recommends the proposed establishment of the Tribunal, the Cabinet Secretary shall submit the request together with the views of the National Treasury on the financial implications of establishing the Tribunal and the decision of the Commission to the Cabinet for consideration and approval.

(5) Upon approval by the Cabinet under subsection (4), a Tribunal shall be established through an Act of Parliament.

(6) Nothing under this section shall preclude the Commission from recommending the appointment of an ad hoc panel of experts to enquire into and determine a dispute

arising out of an emergency and in respect of which no Tribunal has competent jurisdiction.

(7) A panel constituted under subsection (6) shall subject to rules made under this Act have the powers of a Tribunal.

(8) Notwithstanding the provisions of any other law, no Tribunal shall be established without the recommendation of the Commission.

(9) The Commission may prescribe the manner and procedure for the evaluation under subsection (3).

12. (1) Every Tribunal shall consist of a minimum of three members, one of whom shall be the Chairperson.

Appointment of Chairpersons and members of a Tribunal.

(2) The Commission shall through a competitive process appoint the Chairperson and members of a Tribunal.

(3) The members of the Tribunal appointed under this section shall elect a Vice-Chairperson from amongst themselves and the Chairperson and the Vice-Chairperson shall not be of the same gender.

No. 1 of 2011.

(4) The provisions of the Judicial Service Act relating to appointment, discipline and removal of judicial officers shall apply with necessary modifications to members of a Tribunal.

13. (1) A person shall be qualified for appointment as the Chairperson of a Tribunal if that person —

Qualifications for appointment of Chairpersons and members of Tribunal.

(a) is a Kenyan citizen;

(b) holds a degree in law from a university recognized in Kenya and is an advocate of the High Court of Kenya;

(c) has not less than ten years' post-qualification experience; and

(d) meets the requirements of Chapter Six of the Constitution.

(2) A person shall be qualified for appointment as a member of a Tribunal if that person —

(a) is a Kenyan citizen;

- (b) holds a degree from a university recognized in Kenya;
- (c) has knowledge and experience of not less than five years in the respective field; and
- (d) meets the requirements of Chapter Six of the Constitution.

14. A person shall not be qualified for appointment as a Chairperson or a member of a Tribunal if the person —

Disqualifications.

- (a) is of unsound mind;
- (b) is an undischarged bankrupt;
- (c) is convicted of an offence and is sentenced to a term of imprisonment for a period of six months or more;
- (d) is an employee of a government agency whose decisions are a subject of appeal in the respective Tribunal; or
- (e) has been removed from any office for gross violation of the Constitution or any other written law.

15. (1) A Chairperson or a member of a Tribunal shall hold office for a term of five years and shall be eligible for re-appointment for one further term of five years.

Tenure of members of a Tribunal.

(2) The Commission shall appoint members at different times to ensure continuity in the affairs of the Tribunal.

(3) A Chairperson or a member of a Tribunal shall serve on full or part time basis as determined by the Commission.

(4) A Chairperson or member of a Tribunal serving on a fulltime basis shall not hold any other public office.

16. (1) The office of the Chairperson or member of a Tribunal shall become vacant if the holder —

Vacancy in the office of Chairperson or member of a Tribunal.

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Commission;
- (c) is convicted of an offence and is sentenced to a term of imprisonment for a period of six months or more;

- (d) completes their term of office;
- (e) in the case of a member, is absent from three consecutive meetings of the Tribunal without the permission of the Chairperson of the Tribunal and in the case of the Chairperson, is absent from three consecutive meetings of the Tribunal without the permission of the Chief Registrar; or
- (f) is removed from office on any of the following grounds —
 - (i) gross violation of the Constitution or any other written law;
 - (ii) gross misconduct or misbehaviour;
 - (iii) inability to perform functions of the office arising out of physical or mental infirmity;
 - (iv) incompetence or neglect of duty; or
 - (v) bankruptcy.

(2) The Commission shall fill any vacancy under this section within three months of the vacancy arising.

17. Subject to this Act or any other law, a Tribunal seized of a matter shall —

General principles.

- (a) conduct its proceedings with minimum formality;
- (b) hear and determine the matter expeditiously;
- (c) not be bound by the rules of evidence and procedure;
- (d) encourage mediation, arbitration and other forms of alternative dispute resolution;
- (e) ensure the investigation of fact if the Tribunal is of the opinion that such investigation is necessary for the ends of justice; and
- (f) act according to equity, good conscience and the substantial merits of the case without undue regard to legal technicalities.

18. (1) The Chairperson shall be responsible for —

Arrangement of business.

- (a) ensuring the orderly and expeditious discharge of the mandate of the Tribunal; and

- (b) constituting any panel to hear any matter before the Tribunal.(2) Notwithstanding the provisions of subsection (1), the Tribunal shall determine the place at which a panel may sit with a view to securing a reasonable opportunity for parties to appear before the Tribunal with as little inconvenience and expense as is practicable.

19. (1) The quorum of a Tribunal shall be three members. Quorum.

(2) The Chairperson shall preside at all sittings of a Tribunal at which the Chairperson shall be present and in the absence of the Chairperson, the Vice-Chairperson shall preside and in the absence of the Vice-Chairperson, the members shall nominate one of their own to preside.

(3) Notwithstanding any other provision of this Act, the Chairperson of a Tribunal or a Vice-Chairperson acting alone shall have jurisdiction to deal with interlocutory matters

20. The Chairperson and members of a Tribunal shall be paid such salaries, allowances and benefits as the Commission shall, in consultation with the Salaries and Remuneration Commission, determine.

*Remuneration of
Chairperson and
members.*

21. (1) A Tribunal may seek technical advice from persons whose specialized knowledge or experience may assist the Tribunal in its proceedings.

*Tribunal may seek
technical advice.*

(2) A person whose advice is sought under subsection (1) shall disclose any interest they may have in the matter before the Tribunal or any subsequent interest acquired relating to the matter in question.

(3) Any person who gives technical advice to the Tribunal in accordance with this section shall be paid such allowance as may be determined by the Commission.

22. (1) Except as provided by law, every Tribunal shall have jurisdiction to hear and determine any matter provided under the law establishing the Tribunal.

*Jurisdiction of
Tribunals.*

(2) The jurisdiction of a Tribunal shall not include the trial of any criminal offence except as provided for under section 26 of this Act.

(3) A Tribunal shall have power to grant equitable relief including injunctions, penalties, damages and specific performance.

Act 4 of 2015.

(4) A Tribunal may in appropriate cases hear and determine a complaint before it arising under Article 47(3) of the Constitution, the Fair Administrative Action Act or any other written law.

(5) Despite subsection (1), disputes governed by dispute settlement mechanisms under international instruments to which Kenya is a party may only be settled under such instruments.

23. Any person who is aggrieved by a decision of a Tribunal from which no appeal has been preferred, may apply for a review of the decision to the Tribunal which made the decision, and the Tribunal may make such order thereon as it thinks fit.

Power to review own decision.

24. A Tribunal may, on application by a decree-holder, order execution of the decree in the manner provided for in the Civil Procedure Act.

Enforcement of decisions.

Cap. 21.

25. (1) Where a Tribunal awards costs in any matter, it shall, on application by the person to whom the costs are awarded, issue to him a certificate stating the amount of costs.

Award of costs.

(2) Every certificate issued under subsection (1) shall be deemed to be a decree and may be executed as such:

Provided that an order for costs against the Government shall not be enforced save in the manner provided for by the Government Proceedings Act.

Cap 40.

26. It shall be an offence for any person to engage in acts or make omissions amounting to contempt of the Tribunal and the Tribunal may punish such person for contempt in accordance with the provisions of this Act.

Contempt.

27. (1) A person aggrieved by a decision of a Tribunal may appeal to the High Court or Court of equal status, as the case may be, within thirty days from the date of such decision.

Appeals.

(2) The Court in subsection (1) shall within one year of the filing of the appeal, dispense with any appeal filed

under this section and the decision of the Court shall be final.

28. Every Tribunal shall determine any matter filed before it within six months of filing except where an Act establishing a Tribunal provides a shorter period.

Period for determination of matters.

29. (1) The expenses of Tribunals shall be a charge on the Judiciary Fund.

Budget and funding of Tribunals.

(2) At least three months before the commencement of each financial year, the Registrar shall prepare estimates of all expenditure required for purposes of this Act for the next financial year, and submit them to the Chief Registrar for inclusion in the annual estimates of the Judiciary.

(3) The Chief Registrar shall allocate adequate resources to facilitate the effective discharge of the functions of Tribunals.

30. (1) At the end of each financial year, the Chief Registrar shall prepare and submit an annual report on the activities of Tribunals to the Commission.

Annual report.

(2) The annual report shall contain —

- (a) the financial statements of Tribunals;
- (b) a description of the activities and outcomes of functioning of the Tribunals; and
- (c) any other information that the Commission may consider relevant.

(3) The Commission shall ensure that the report submitted under subsection (1) is consolidated in the report that the Commission submits to Parliament under section 38 of the Judicial Service Act, 2011.

31. The Chief Registrar may in accordance with the Public Finance Management Act, open bank accounts on behalf of Tribunals and shall, as the accounting officer, be responsible for the proper management of the finances of Tribunals.

No. 1 of 2011
Bank accounts.

No. 18 of 2012

PART III— GENERAL PROVISIONS

32. A Chairperson or member of a Tribunal shall on appointment, subscribe to the oath contained in the First Schedule.

Oath of office.

33. Nothing done by a member of a Tribunal or by any person working under the instructions of the

Protection from personal liability.

Commission or a Tribunal, shall if done in good faith for the purpose of executing the powers, functions or duties of the Commission or Tribunal under the Constitution, this Act or any other relevant law, render such member or officer personally liable for any action, claim or demand.

34. (1) The Chairperson or a member of a Tribunal who has a direct or indirect personal interest in a matter being considered or to be considered by the Tribunal shall as soon as reasonably practicable after the relevant facts concerning the matter have come to their knowledge, disclose the nature of such interest.

Conflict of interest.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting and the Chairperson or member of the Tribunal shall not take part in the consideration or discussion on or vote during any deliberations on the matter.

(3) A member of the Tribunal shall recuse themselves from proceedings before the Tribunal in which they have apparent or perceived conflict of interest.

(4) A person who fails to make the requisite disclosure under this section commits an offence.

35. (1) A member or staff of a Tribunal shall not without the consent in writing given by, or on behalf of, the Registrar, publish or disclose to any person otherwise than in the course of the person's duties the contents of any document, communication or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act.

Confidentiality.

(2) The limitation on disclosure referred to under subsection (1) shall not be construed to prevent the disclosure of criminal activity by a member or staff of a Tribunal.

36. A person responsible for a matter in question before a Tribunal shall co-operate with the Tribunal and shall in particular —

Duty to co-operate.

(a) respond to any inquiry made by the Tribunal; and

(b) provide any other information that the Tribunal may require in the performance of its functions under the Constitution, this Act or any other written law.

37. (1) The common seal of a Tribunal shall be kept in such custody as the Tribunal shall direct and shall not be used except on the order of the Tribunal.

Common seal.

(2) The common seal of the Tribunal shall, when affixed to a document and duly authenticated, be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization of the Tribunal under this section shall be presumed to have been duly given.

38. (1) A person who —

Offences.

- (a) obstructs, hinders or threatens a member, officer, employee or agent of a Tribunal acting under this Act;
- (b) disregards an order of a Tribunal;
- (c) submits false or misleading information to a Tribunal; or
- (d) makes a false representation to, or knowingly misleads a member, officer, employee or agent of a Tribunal acting under this Act,

commits an offence and shall be liable on conviction, to a fine of not less than two hundred thousand shillings or to imprisonment for a term of not less than one year, or to both such fine and imprisonment.

(2) Any person who commits an offence under this Act for which no other penalty is provided, shall be liable on conviction to a fine not exceeding two hundred and fifty thousand shillings or to imprisonment for a term not exceeding six months, or both.

39. (1) The Chief Justice may make regulations for the better carrying into effect of the provisions of this Act.

Regulations.

(2) The regulations made under this Act may provide for —

- (a) rationalization, clustering or classification of Tribunals, including categorization of Tribunals in terms of specialization;
- (b) decentralization of services of Tribunals, including their sitting anywhere in the country;
- (c) terms of and conditions of service of staff of Tribunals;

- (d) a framework for harmonization of standard procedures and rules for Tribunals;
- (e) enhancement of access to justice and expeditious disposal of disputes including the use of technology;
- (f) alternative dispute resolution mechanisms;
- (g) the conduct of investigations;
- (h) mechanisms that mandate the courts to refer cases to a Tribunal at initial stages if the Tribunal has jurisdiction to entertain a certain matter and vice versa;
- (i) reporting modalities made in consultation with the National Council for Law Reporting and ensuring accessibility of those reports to the public;
- (j) appointment and procedures of ad hoc panels of experts; and
- (k) standards of training for members of Tribunals.

(3) The provisions of any regulations made under this Act may —

- (a) apply generally or be limited in its application;
- (b) apply differently according to different kinds and status of Tribunals;
- (c) authorize any matter or thing to be done from time to time; or
- (d) do any combination of (a), (b) and (c).

40. (1) The Chief Justice may make rules to govern the procedures of Tribunals generally.

Rules.

(2) Subject to subsection (1), each Tribunal may make rules to govern its procedures in the following areas —

- (a) filing of cases;
- (b) the standards for minimum filing fees and other fees pro- rated in accordance with the value of the subject matter;
- (c) principles governing hearings;
- (d) parties;

- (e) representation;
- (f) costs;
- (g) appeals;
- (h) power to cure irregularities;
- (i) correction of mistakes;
- (j) review of Tribunal decisions;
- (k) authorizing someone to take evidence;
- (l) enforcement of decisions and orders;
- (m) accessibility of evidence; and
- (n) any other relevant area.

41. Where the provisions of any Act under which a Tribunal is established conflicts with this Act, the provisions of this Act shall prevail.

42. (1) A Tribunal may, for sufficient cause shown, extend the time prescribed for doing any act or taking any proceedings before the Tribunal upon such terms and conditions, if any, as may appear just and expedient.

(2) The Commission may, by notice in the *Gazette*, extend the period specified in respect of any matter under this Act by a period not exceeding thirty days.

PART IV — TRANSITIONAL PROVISIONS

43. Every person who, immediately before the commencement of this Act was a Chairperson or a member of a Tribunal, shall remain in office for their unexpired term or a period of eighteen months whichever is earlier.

44. The Chief Justice may make Rules on the procedure to be followed with regard to pending cases or proceedings before Tribunals.

45. (1) Subject to subsection (2), the Commission shall within a period of eighteen months from the commencement of this Act, employ staff to Tribunals from amongst persons who, immediately before the commencement of this Act were public officers serving in Tribunals.

(2) Before employing a person to whom subsections (1) or (3) apply, the Commission may —

- (a) require such person to make an application for employment or appointment to the Commission; and
- (b) using the criteria prescribed by the Commission, determine the suitability of the person to ensure that the person is fit and proper to serve in the position applied for.

(3) Notwithstanding subsection (1), the public officers shall upon the commencement of this Act, be given an option to elect whether to serve in the Judiciary or to be redeployed to their respective ministries, departments or agencies.

46. The Commission may, where applicable, within a period of eighteen months from the date of commencement of this Act, with respect to existing Tribunals —

Disposal of assets.

- (a) conduct an assessment of assets and liabilities of Tribunals;
- (b) in consultation with the relevant ministries, departments or agencies dispose of the assets not required by the Tribunals in accordance with the law relating to procurement and disposal of public assets; and
- (c) require all ministries, departments or agencies to liquidate all debts of the Tribunals.

47. Subject to section 41, any law establishing a Tribunal in force on or immediately before the commencement of this Act shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Act.

Existing laws.

48. The Acts specified in the Second Schedule are amended in the manner specified in that Schedule.

Consequential amendments to other Acts.

FIRST SCHEDULE**(s. 32)****OATH/AFFIRMATION OF OFFICES FOR
CHAIRPERSONS AND MEMBERS OF TRIBUNALS**

I..... having been appointed (the Chairperson/Member) to the Tribunal do swear/ solemnly affirm that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully, fully and impartially and to the best of my knowledge and ability, discharge the trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said

Before me thisday of

CHIEF JUSTICE.

SECOND SCHEDULE

(s.48)

CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

1. Section 2 of the Rent Restriction Act is amended by inserting the following new definition in proper alphabetical sequence —

Amendment of section 2 of Cap. 296.

“Commission” means the Judicial Service Commission established by Article 171 of the Constitution.

2. The Rent Restriction Act is amended by repealing section 4 and replacing it with the following new subsection —

Amendment of Cap. 296.

4. (1) There is established a Tribunal to be known as the Rent Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Tribunal shall consist of the following members appointed by the Commission —

(a) a Chairman who shall be an advocate of the High Court of Kenya with not less than ten years' post-qualification experience; and

(b) not less than three other persons who shall be persons who possess a degree from a university recognized in Kenya and at least five years' experience in a relevant field.

(3) The Commission shall deploy a Deputy Registrar and such staff as may be necessary for the proper discharge of the functions of the Tribunal under this Act.

(4) The Chairman may establish panels of the Tribunal as he deems appropriate.

(5) The quorum of the Tribunal shall be three members provided that the Chairman shall preside at all sittings of the Tribunal at which the Chairman shall be present and in the absence of the Chairman, the Deputy-Chairman shall preside and in the absence of

the Deputy-Chairman, the members shall nominate one of their own to preside.

(6) Any matter considered by a Tribunal shall be decided by the votes of the majority of the persons constituting the Tribunal and voting, and the person presiding shall have a casting vote.

(7) Notwithstanding any other provision of this Act, the Chairman of a Tribunal acting alone shall have jurisdiction to deal with all interlocutory applications which are not of such a nature as to effect a decision in any matter which is in issue between parties.

(8) The office of the Chairman or member of a Tribunal shall become vacant if the holder —

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Commission;
- (c) is convicted of an offence and is sentenced to a term of imprisonment for a period of six months or more;
- (d) completes their term of office;
- (e) in the case of a member is absent from three consecutive meetings of the Tribunal without the permission of the Chairman of the Tribunal and in the case of the Chairman is absent from three consecutive meetings of the Tribunal without the permission of the Chief Registrar; or
- (f) is removed from office on any of the following grounds—
 - (i) gross violation of the Constitution or any other written law;

- (ii) gross misconduct or misbehaviour;
- (iii) inability to perform functions of the office arising out of physical or mental infirmity;
- (iv) incompetence or neglect of duty; or
- (v) bankruptcy.

3. Section 5 of the Rent Restriction Act is amended in subsection (2) by deleting the words “appoint and employ valuers, inspectors, clerks and other staff” and substituting therefor the words “engage registered valuers and rent inspectors on such terms and conditions as the Tribunal may, with the approval of the Commission, determine”.

Amendment of section 5 of Cap. 296.

4. The Rent Restriction Act is amended by repealing section 31 and replacing it with the following new section —

Amendment of Cap. 296.

Enforcement of orders.

31. A Tribunal may, on application by a decree-holder, order execution of the decree in the manner provided for in the Civil Procedure Act.

5. Section 32 of the Rent Restriction Act is amended by deleting the words “chairman of the”.

Amendment of section 32 of Cap. 296.

6. Section 36 of the Rent Restriction Act is amended by deleting subsection 2 and substituting therefor the following new subsections —

Amendment of section 36 of Cap. 296.

(2) Without prejudice to the generality of the powers conferred by subsection (1), the regulations under that subsection may prescribe the fees to be paid in respect of any matter or thing to be done under this Act.

(3) The Tribunal may make regulations prescribing —

- (a) the procedure of the Tribunal; and
- (b) the circumstances and manner in which a tenant may, notwithstanding any contractual obligation, elect to pay and pay to the Tribunal rent due to his

landlord, the manner in which rent so paid may be claimed from the Tribunal by the landlord or, if not so claimed, may be disposed of by the Tribunal, and the amount of commission which the Tribunal may retain out of rent so paid to it.

7. Section 2 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act is amended by inserting the following new definitions in proper alphabetical sequence —

Amendment of
section 2 of Cap
301.

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to land;

“Commission” means the Judicial Service Commission established under Article 171 of the Constitution.

8. The Landlord and Tenant (Shops, Hotels and Catering Establishments) Act is amended by repealing section 11 and replacing it with the following new section —

Amendment of
Cap 301.

Establishment of
the Tribunal.

11. (1) There is established a Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Tribunal shall consist of the following members appointed by the Commission —

- (a) a chairperson;
- (b) not less than two persons who shall be persons who possess a degree from a university recognized in Kenya and at least five years' experience in a relevant field.

(3) A person shall be qualified for appointment as the Chairperson of the Tribunal if that person —

- (a) holds a degree in law from a University recognized in Kenya and is an advocate of the High Court of Kenya; and
- (b) has not less than ten years' post-qualification experience.

(4) The Chairperson and members shall be appointed for a term of five years and shall be eligible for reappointment for one further term of five years.

(5) The Chairperson and members shall serve on fulltime or part time basis as the Commission may determine.

(6) The members shall elect a Vice Chairperson from among themselves, provided that the Chairperson and Vice Chairperson shall not be of the same gender.

(7) The quorum of the Tribunal shall be three members.

(8) The Chairperson of the Tribunal shall preside at all sittings of the Tribunal at which the Chairperson shall be present and in the absence of the Chairperson, the Vice-Chairperson shall preside and in the absence of the Vice-Chairperson, the members shall nominate one of their own to preside.

(9) The Chairperson and members shall be paid such remuneration and allowances as the Commission may, in consultation with the Salaries and Remuneration Commission, determine.

(10) The Commission shall deploy a Deputy Registrar and such staff including valuers and inspectors as may be necessary for the proper discharge of the functions of the Tribunal under this Act.

(11) The expenses of the Tribunal shall be paid out of the Judiciary Fund.

9. Section 12 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) is amended —

Amendment of
section 12 of Cap
301.

- (a) in sub section (2) by deleting the words “or entertain any criminal proceedings for any offence whether under this Act or otherwise” and substituting therefor the words “except in contempt proceedings”;

(b) by deleting subsection (3) and substituting there^e the following new subsection —

(3) Where a Tribunal has deployed a valuer, inspector, officer, or other person to inspect or view any premises, any report made in that behalf shall be communicated to the landlord or tenant or both.

10. The Landlord and Tenant (Shops, Hotels and Catering Establishments) is amended by repealing section 14 and replacing it with the following new section —

Amendment of
Cap 301.

Enforcement of
orders.

14. A Tribunal may, on application by a decree-holder, order execution of the decree in the manner provided for in the Civil Procedure Act.

11. The Landlord and Tenant (Shops, Hotels and Catering Establishments) is amended by repealing section 16 and replacing it with the following new section —

Amendment of
Cap 301.

Regulations.

16. (1) The Cabinet Secretary may make regulations for the better carrying out of the provisions of this Act.

(2) The Tribunal shall make regulations prescribing the following —

- (a) the manner in which the Tribunal shall conduct its business;
- (b) the procedure in connexion with any reference to the Tribunal, or the determination of any matter by the Tribunal;
- (c) matters which the Tribunal shall take into account in exercising its powers under this Act;
- (d) the fees which shall be payable in respect of any matter or thing to be done under this Act; and
- (e) the scale and taxation of costs and expenses of witnesses in proceedings before the Tribunal.

12. Section 2 of the Standards Act is amended by inserting the following new definition in proper alphabetical sequence —

Amendment of
section 2 of Cap.
496.

“Commission” means the Judicial Service Commission established under Article 171 of the Constitution.

13. The Standards Act is amended by repealing section 16A and replacing it with the following new section —

Amendment of
Cap. 496.

Standards Tribunal.

16A. (1) There is established a Tribunal to be known as the Standards Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Tribunal shall consist of the following members appointed by the Commission —

- (a) a Chairperson who is an advocate of the High Court of Kenya with not less than ten years’ post-qualification experience;
- (b) one person who shall be a holder of a degree from a university recognised in Kenya and who shall have at least five years’ experience in customs and excise; and
- (c) three persons who shall be holders of a degree from a university recognised in Kenya and who shall have at least five years’ experience in standardisation.

(3) The Commission shall deploy a Deputy Registrar to the Tribunal.

(4) The Chairman and members of the Tribunal shall serve for a term of five years and shall be eligible for reappointment for one further term of five years.

(5) The office of the Chairman or member of the Tribunal shall become vacant if the holder —

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Commission;

- (c) is convicted of an offence and is sentenced to a term of imprisonment for a period of six months or more;
- (d) completes their term of office;
- (e) in the case of a member, is absent from three consecutive meetings of the Tribunal without the permission of the Chairperson of the Tribunal and in the case of the Chairperson, is absent from three consecutive meetings of the Tribunal without the permission of the Chief Registrar; or
- (f) is removed from office on any of the following grounds —
 - (i) gross violation of the Constitution or any other written law;
 - (ii) gross misconduct or misbehaviour;
 - (iii) inability to perform functions of the office arising out of physical or
 - (iv) mental infirmity;
 - (v) incompetence or neglect of duty; or
 - (vi) bankruptcy.

(6) The Commission shall fill any vacancy under this section within three months of the vacancy arising.

14. The Standards Act is amended by repealing section 16B and replacing it with the following new section

Amendment of
Cap. 496.

16B. The Chairperson and members of the Tribunal shall be paid such salaries, allowances and benefits as the Commission shall in consultation with the Salaries and Remuneration Commission determine.

15. Section 16H of the Standards Act is amended by deleting the word “Minister” and substituting therefor the words “Chief Justice.”

Amendment of section 16H of Cap. 496.

16. Section 20(2) of the Standards Act is amended by deleting paragraph (d).

Amendment of section 20 of Cap. 496.

17. Section 2 of the Seeds and Plant Varieties Act is amended by inserting the following new definition in proper alphabetical sequence —

Amendment of section 2 of Cap. 326.

“Commission” means the Judicial Service Commission established by Article 171 of the Constitution.

18. Section 28 of the Seeds and Plant Varieties Act is amended —

Amendment of section 28 of Cap. 326.

(a) in subsection (1) by inserting the words “which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution” immediately after the word “Tribunal”;

(b) in subsection (2) by deleting the word “Minister” and substituting therefor the words “Chief Justice”.

19. Section 29 of the Seeds and Plant Varieties Act is amended —

Amendment of section 29 of Cap. 326.

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

(1A) A duly certified copy of any determination or order of the Tribunal shall be enforced as a decree of the court. ;

(b) by deleting subsection (1B).

20. The Seeds and Plant Varieties Act is amended by repealing the Sixth Schedule and replacing it with the following new Schedule —

Amendment of Cap. 326.

SIXTH SCHEDULE (s.28)

1.(1) The Tribunal shall consist of the following persons appointed by the Commission —

(a) a Chairman who shall be an advocate of the High Court of Kenya with not less than ten years’ post-qualification experience;

- (b) two other persons who have a degree from a university recognised in Kenya and have years' experience in agriculture, horticulture, forestry or specialized knowledge of particular species or groups of plants.

(2) The Chairman and members of the Tribunal shall be appointed for a term of five years and shall be eligible for reappointment for one further term of five years.

(3) The Chairman may at any time resign his office by notice in writing to the Commission.

(4) If the Commission is satisfied that the Chairman is unfit to continue in office or is incapable of discharging his duties, the Commission may revoke the appointment of the Chairman.

2. The Chairman may establish benches of the Tribunal as he deems appropriate.

3. The Chairman and members of the Tribunal shall be paid such salaries, allowances and benefits as the Commission shall, in consultation with the Salaries and Remuneration Commission determine.

4. For the purposes of hearing and determining any cause or matter under this Act, the quorum of the Tribunal shall be three members:

Provided that where for any reason the Chairman is absent, the Vice-Chairman shall preside and in the absence of the Vice-Chairman, the members shall nominate one of their own to preside.

5. (1) The Tribunal may order any party to the proceedings to pay to any other party either a specified sum in respect of the costs incurred by the second mentioned party, or the taxed amount of those costs, and any costs required to be taxed for that purpose shall be taxed in the same manner and on the same scale as costs in a subordinate court.

(2) The Chief Justice may make rules relating to the procedure and proceedings before the Tribunal and in particular the rules may make provision as to the —

- (a) circumstances in which the Tribunal need not, or shall not, sit in public;

- (b) form of any decision of the Tribunal;
- (c) time within which such proceedings are to be instituted;
- (d) evidence, and the form thereof, which may be required or admitted;
- (e) examination of the parties and of witnesses;
- (f) procedure for securing the attendance of witnesses and the production of documents; and
- (g) fees chargeable in respect of those proceedings.

21. Section 2 of the Insurance Act is amended by inserting the following new definition in proper alphabetical sequence —

Amendment of section 2 of Cap 487.

“Commission” means the Judicial Service Commission established in accordance with Article 171 of the Constitution”;

22. The Insurance Act is amended by repealing section 169 and replacing it with the following new section —

Amendment of Cap 487.

169. (1) There is established a Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Tribunal shall consist of the following members appointed by the Commission —

- (a) a Chairman, who shall be an advocate of the High Court of Kenya with not less than ten years’ post-qualification experience; and
- (b) not less than two and not more than four members who shall be holders of a degree from a University recognised in Kenya and have five years’ experience in the relevant field.

(3) The members of the Tribunal appointed under this section shall elect a

Vice-Chairman from amongst themselves and the Chairman and the Vice-Chairman shall not be of the same gender.

(4) For the purposes of hearing and determining any cause or matter under this Act, the quorum of the Tribunal shall be three members:

Provided that where for any reason the Chairman is absent, the Vice-Chairman shall preside and in the absence of the Vice-Chairman, the members shall nominate one of their own to preside.

(5) The members of the Tribunal shall be paid such allowances as the Commission shall in consultation with the Salaries and Remuneration Commission determine.

(6) The Cabinet Secretary may make rules—

- (a) prescribing the manner in which an appeal shall be made to the Tribunal and the fees to be paid in respect of an appeal;
- (b) prescribing the procedure to be adopted by the Tribunal in hearing an appeal and the records to be kept by the Tribunal;
- (c) prescribing the manner in which the Tribunal shall be convened and the places where and the time at which sittings shall be held;
- (d) prescribing a scale of costs which may be awarded by the Tribunal; and
- (e) generally for the better carrying out of the provisions of this Act relating to the Tribunal and appeals thereto.

23. Section 170 of the Insurance Act is amended in subsection (1) by deleting the words “of a Resident Magistrate's Court of the first class”.

Amendment of section 170 of Cap 487.

24. Section 171 of the Insurance Act is amended in subsection (2) by deleting the words “may be filed in the court by the person in whose favour the costs have been awarded and, upon being so filed”.

Amendment of section 171 of Cap 487.

25. Section 2 of the State Corporations Act is amended by inserting the following new definition in proper alphabetical sequence —

Amendment of section 2 of Cap. 446.

“Commission” means the Judicial Service Commission established by Article 171 of the Constitution.

26. The State Corporations Act is amended by repealing section 22 and replacing it with the following new section —

Amendment of Cap. 446.

22. (1) There is established a Tribunal to be known as the Standards Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Tribunal is established for the purposes of hearing appeals under this Act.

(3) The Tribunal shall consist of the following persons appointed by the Commission —

- (a) a Chairman who shall be an advocate of the High Court of Kenya with not less than ten years' post-qualification experience;
- (b) an advocate of the High Court of not less than five years' standing; and
- (c) a person who has a degree from a university recognised in Kenya and has practised as an accountant for a period of not less than five years.

(3) The Commission shall deploy a Deputy Registrar to the Tribunal.

(4) The quorum of the Tribunal shall be three members:

Provided that where for any reason the Chairman is absent, the Deputy-Chairman shall preside and in the absence of the Deputy-Chairman, the members shall nominate one of their own to preside.

(5) The Chairman and members of the Tribunal shall be appointed for a term of five years and shall be eligible for reappointment for one further term of five years.

(6) The Commission shall deploy such staff to the Tribunal as may be necessary for the proper discharge of the functions of the Tribunal under this Act.

(8) The Chairman and members of the Tribunal shall be paid such salaries, allowances and benefits as the Commission shall, in consultation with the Salaries and Remuneration Commission, determine.

(9) The expenses of the Tribunal shall be a charge on the Judiciary Fund.

(10) The members of the Tribunal shall not be personally liable for any act or default of the Tribunal done or committed in good faith in the course of exercising the powers conferred by this Act.

27. Section 2 of the Capital Markets Act is amended by inserting the following new definition in proper alphabetical sequence —

Amendment of section 2 of Cap 485A.

“Commission” means the Judicial Service Commission established under Article 171 of the Constitution.

28. Section 35A of the Capital Markets Act is amended —

Amendment of section 35A of Cap 485A.

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

(1) There is established a Tribunal to be known as the Capital Markets Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of

the Constitution and shall consist of the following members appointed by the Commission —

- (a) a Chairman who shall be an advocate of the High Court of Kenya of not less than ten years standing;
 - (b) one lawyer having at least five years' experience in the commercial and corporate sector;
 - (c) an accountant who shall have been in practice for a period of not less five years; and
 - (d) two persons who are holders of a relevant degree from a University recognized in Kenya and five years' experience in the field of securities.
- (b) by deleting subsection (2) and substituting therefor the following new subsection —
- (2) The Chairman and members shall be appointed for a term of five years and shall be eligible for re-appointment for one further term of five years.
- (c) by inserting the following new subsections immediately after subsection (2) —

(2A) The members of the Tribunal shall elect a Deputy-Chairman from among themselves, provided that the Chairman and Deputy Chairman shall not be of the same gender.

(2B) The Commission shall deploy a Deputy Registrar and such other staff as may be necessary for the performance of the functions of the Tribunal under this Act."

- (d) in subsection (3)(a) by deleting the word "three" and substituting therefor the word "five";
- (e) in subsection (3) (c) by deleting the word "Minister" and substituting therefor the word "Commission";
- (f) by deleting subsection (14) and substituting therefor the following new subsection —

(14) The quorum of the Tribunal shall be three members:

Provided that where for any reason the Chairman is absent, the Deputy-Chairman shall preside and

in the absence of the Deputy- Chairman, the members shall nominate one of their own to preside.

- (g) by deleting subsection (20) and substituting therefor the following new subsection —

(20) Every certificate issued under subsection (19) shall be deemed to be a decree of the Tribunal and may be executed as such.

- (h) by deleting subsection (25) and substituting therefor the following new subsection —

(25) There shall be paid to the chairman and the members of the Tribunal, such remuneration and allowances as the Commission may, in consultation with the Salaries and Remuneration Commission, determine.”

- (i) in subsection (26) by deleting the words “general fund of the Authority” and substituting therefore the words “Judiciary Fund”.

29. Section 2 of the Retirement Benefits Act is amended by inserting the following new definition in proper alphabetical sequence —

Amendment of
section 2 of
Cap. 496.

“Commission” means the Judicial Service Commission established under Article 171 of the Constitution.

30. The Retirement Benefits Act is amended by repealing section 47 and substituting therefor the following new section —

Amendment of
Cap. 496.

47. (1) There is established a Tribunal to be known as the Appeals Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Tribunal shall consist of the following members appointed by the Commission —

- (a) a Chairman who shall be an advocate of the High Court of Kenya with not less than ten years’ post-qualification experience; and
- (b) four persons who are holders of a degree from a university recognized in Kenya and

have at least five years' experience in the relevant field.

(3) The members of the Tribunal shall elect a Deputy-Chairman from among themselves and the Chairman and the Deputy Chairman shall not be of the same gender.

(4) The Chairman and members shall hold office for a period of five years and shall be eligible for re-appointment for one further term of five years.

(5) For the purposes of hearing and determining any cause or matter under this Act, the quorum of the Tribunal shall be three members:

Provided that where for any reason the Chairman is absent, the Deputy-Chairman shall preside and in the absence of the Deputy-Chairman, the members shall nominate one of their own to preside.

(7) Subject to subsection (5), all matters before the Tribunal shall, in the event of a difference of opinion, be decided by the votes of the majority of the members thereof.

31. Section 51 of the Retirement Benefits Act is amended in subsection (2) by deleting the words "may be filed in the High Court by the person in whose favour the costs have been awarded and upon being so filed."

Amendment of section 51 of Cap. 496.

32. Section 2 of the Co-operatives Societies Act is amended by inserting the following new definition in proper alphabetical sequence —

Amendment of section 2 of No. 12 of 1997.

"Commission" means the Judicial Service Commission established under Article 171 of the Constitution."

33. The Co-operatives Societies Act is amended by repealing section 77 and replacing it with the following new section —

Amendment of Cap. 496.

77. (1) There is established a Tribunal to be known as the Co-operative Tribunal which shall consist of the following members appointed by the Commission —

- (a) a Chairman who shall be an advocate of the High Court of Kenya with ten years' post qualification experience;
- (b) three persons who are holders of a law degree from a university recognized in Kenya and have at least five years' experience in co-operative law or management; and
- (c) three persons who are holders of a degree from a university recognized in Kenya and have at least five years' experience in co-operative management and practice."

(2) The Tribunal shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(3) A Chairperson or a member of a Tribunal shall hold office for a term of five years and shall be eligible for re-appointment for one further term of five years.

(4) The office of the Chairperson or member of a Tribunal shall become vacant if the holder —

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Commission;
- (c) is convicted of an offence and is sentenced to a term of imprisonment for a period of six months or more;
- (d) completes their term of office;
- (e) in the case of a member, is absent from three consecutive meetings of the Tribunal without the permission of the Chairperson of the Tribunal and in the case of the Chairperson, is absent from three consecutive meetings of the Tribunal without the permission of the Chief Registrar; or
- (f) is removed from office on any of the following grounds —
 - (i) gross violation of the Constitution or any other written law;
 - (ii) gross misconduct or misbehaviour;
 - (iii) inability to perform functions of the office arising out of physical or mental infirmity;

- (iv) incompetence or neglect of duty; or
- (v) bankruptcy.

(6) The Commission shall fill any vacancy under this section within three months of the vacancy arising.

34. Section 80 of the Co-operatives Societies Act is amended —

Amendment of
section 80 of Cap.
496.

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

(1) For the purposes of hearing and determining any cause or matter under this Act, the quorum of the Tribunal shall be three members:

Provided that where for any reason the Chairman is absent, the Deputy-Chairman shall preside and in the absence of the Deputy-Chairman, the members shall nominate one of their own to preside;

- (b) in subsection (3) by deleting the words “Provided that any point of law arising in any proceedings before the Tribunal shall be reserved to, and pronounced upon, by the person presiding exclusively;
- (c) in subsection (4) by inserting the expression “or the Deputy-Chairman” immediately after the word “Chairman”.

35. Section 84 of the Co-operatives Societies Act is amended by deleting the words “Minister shall” and substituting therefor the words “Commission shall in consultation with the Salaries and Remuneration Commission”.

Amendment of
section 84 of Cap.
496.

36. The Co-operatives Societies Act is amended by repealing section 85 and replacing it with the following new section —

Amendment of
Cap. 496.

85. (1) The Commission shall deploy a Deputy Registrar to the Tribunal.

(2) A person shall be qualified for appointment as a Deputy Registrar if the person —

- (a) holds a degree in law from a university recognised in Kenya;
- (b) has at least five years post qualification experience; and

- (c) satisfies the requirements of Chapter Six of the Constitution.

37. The Kenya Information and Communications Act is amended by repealing section 102 and replacing it with the following new section —

Amendment of
No.2 of 1998.

102. (1) There is established a Tribunal to be known as the Communications and Multimedia Appeals Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Tribunal shall consist of not more than seven members appointed by the Commission, as follows —

- (a) a Chairperson who shall be an advocate of the High Court of Kenya with ten years' post qualification experience;
 - (b) at least four persons who are holders of a degree from a University recognized in Kenya with five years' experience in media, telecommunications, postal, courier systems, radio communications, information technology, business practice or finance, and who are not in the employment of the Government, the Media Council or the Authority.
- (3) The members shall elect a Vice Chairperson from among themselves, provided that the Chairperson and Vice Chairperson shall not be of the same gender.
- (4) When appointing the members of the Tribunal, the Judicial Service Commission shall —
- (a) ensure that the nominees to the Tribunal reflect the interests of all sections of the society;
 - (b) ensure equal opportunities for persons with disabilities and other marginalized groups; and
 - (c) ensure that not more than two-thirds of the members shall be of the same gender.

(5) The Chairperson and members of the Tribunal shall hold office for a term of five years and shall be eligible for reappointment for one further term of five years.

(6) The office of the Chairperson or member of a Tribunal shall become vacant if the holder —

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Commission;
- (c) is convicted of an offence and is sentenced to a term of imprisonment for a period of six months or more;
- (d) completes their term of office;
- (e) in the case of a member, is absent from three consecutive meetings of the Tribunal without the permission of the Chairperson of the Tribunal and in the case of the Chairperson, is absent from three consecutive meetings of the Tribunal without the permission of the Chief Registrar; or
- (f) is removed from office on any of the following grounds —
 - (i) gross violation of the Constitution or any other written law;
 - (ii) gross misconduct or misbehaviour;
 - (iii) inability to perform functions of the office arising out of physical or mental infirmity;
 - (iv) incompetence or neglect of duty; or
 - (v) bankruptcy.

(6) The Commission shall fill any vacancy under this section within three months of the vacancy arising.

38. Section 102C (3) of the Kenya Information and Communications Act is amended by deleting subsection (3) and substituting therefor the following new subsection —

Amendment of
section 102C of
No.2 of 1998.

(3) For purposes of hearing and determining any cause or matter under this Act or the Media Council Act, the quorum of the Tribunal shall be three members:

Provided that where for any reason the Chairperson is absent, the Vice Chairperson shall preside and in the absence of the Vice Chairperson, the members shall nominate one of their own to preside."

39. Section 102I of the Kenya Information and Communications Act is amended by deleting the words "Salaries and Remuneration Commission may determine" and substituting therefor the words "Judicial Service Commission shall, in consultation with the Salaries and Remuneration Commission, determine."

Amendment of
section 102I of
No.2 of 1998.

40. The Second Schedule to the Kenya Information and Communications Act is amended —

Amendment of
No.2 of 1998.

(a) in paragraph 2 by deleting the word "Minister" and substituting therefor the word "Judicial Service Commission";

(b) in paragraph 3 by deleting subparagraph (1) and substituting therefor the following new subparagraph —

(1) The office of the Chairperson or a member shall become vacant if the Chairperson or member is appointed to the Board or the Commission.;

(c) in paragraph 3(2) by deleting the word "Minister" and substituting therefor the word "Judicial Service Commission";

(d) by deleting paragraph 4 and substituting therefor the following new paragraph —

4. The Chairperson or a member of a Tribunal who has a direct or indirect personal interest in a matter being considered or to be considered by the Tribunal shall as soon as reasonably practicable after the relevant facts concerning the matter have come to their knowledge, disclose the nature of such interest.

(e) by deleting paragraph 5 and substituting therefor the following new paragraph —

5. The Judicial Service Commission shall fill any vacancy under this section within three months of the vacancy arising.

41. Section 125 of the Environmental Management and Co-ordination Act is amended —

Amendment of
section 125 of No.
8 of 1999.

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

(1) There is established a Tribunal to be known as the National Environment Tribunal which shall consist of the following members appointed by the Judicial Service Commission —

- (a) a Chairperson, who shall be an advocate of the High Court of Kenya with not less than ten years' post-qualification experience;
- (b) an advocate of the High Court of Kenya;
- (c) an advocate of the High Court of Kenya with not less than five years' experience in environmental law; and
- (d) three persons who have a degree from a university recognized in Kenya and not less than five years' experience in environmental matters, including but not limited to land, energy, mining, water, forestry, wildlife and maritime affairs.

(b) in subsection (2) by deleting the words "issued by the Cabinet Secretary"

(c) in subsection (4)(a) by deleting the word "three" and substituting therefor the word "five";

(d) in subsection (4)(c) by deleting the words "Cabinet Secretary" and substituting therefor the word "Commission";

(e) by deleting subsection (5) and substituting therefor the following new subsection —

(5) The members shall elect the Vice Chairperson to the Tribunal from amongst the members.

42. Section 134 of the Environmental Management and Co-ordination Act is amended —

Amendment of
section 134 of No.
8 of 1999.

(a) in subsection (1) by deleting the words “Cabinet Secretary” and substituting therefor the word “Commission”;

(b) in subsection (2) by deleting the words “monies voted by Parliament for that purpose” and substituting therefor the words “Judiciary Fund”.

43. The Environmental Management and Co-ordination Act is amended by repealing section 135 and replacing it with the following new section—

Amendment of
No. 8 of 1999.

Deputy Registrar.

135. The Commission shall deploy a Deputy Registrar to the Tribunal for the performance of its functions under this Act.

44. The Environmental Management and Co-ordination Act is amended by repealing section 136.

Amendment of
No. 8 of 1999.

45. Section 2 of the Industrial Property Act is amended by inserting the following new definition in proper alphabetical sequence —

Amendment of
section 2 of
No. 3 of 2001.

“Commission” means the Judicial Service Commission established by Article 171 of the Constitution.

46. The Industrial Property Act is amended by repealing section 113 and replacing it with the following new section —

Amendment of
No. 3 of 2001.

113. (1) There is established a Tribunal to be known as the Industrial Property Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.”

(2) The Tribunal shall consist of the following members appointed by the Commission —

(a) a Chairman who shall be an advocate of the High Court of Kenya with not less than ten years’ post-qualification experience; and

(b) two advocates of the High Court of Kenya who shall have at least five years’ post qualification experience; and

(c) two other persons who are holders of a degree from a university recognized in Kenya and have at least five years’ experience in industrial, scientific and technological fields.

(3) The Commission shall deploy a Deputy Registrar and such staff as are necessary for the performance of the functions of the Tribunal under this Act.

(4) The Chairman and members of the Tribunal shall hold office for a term of five years and shall be eligible for reappointment for one further term of five years.

(5) The office of the Chairman or member of the Tribunal shall become vacant if the holder —

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Commission;
- (c) is convicted of an offence and is sentenced to a term of imprisonment for a period of six months or more;
- (d) completes their term of office;
- (e) in the case of a member, is absent from three consecutive meetings of the Tribunal without the permission of the Chairman of the Tribunal and in the case of the Chairman, is absent from three consecutive meetings of the Tribunal without the permission of the Chief Registrar; or
- (f) is removed from office on any of the following grounds —
 - (i) gross violation of the Constitution or any other written law;
 - (ii) gross misconduct or misbehaviour;
 - (iii) inability to perform functions of the office arising out of physical or mental infirmity;
 - (iv) incompetence or neglect of duty; or
 - (v) bankruptcy.

(6) The Commission shall fill any vacancy under this section within three months of the vacancy arising.

(7) The Chairperson and members of the Tribunal shall be paid such salaries, allowances and benefits as the Commission shall, in consultation with the Salaries and Remuneration Commission determine.

47. Section 117 of the Industrial Property Act is amended by deleting the words “Cabinet Secretary” and substituting therefor the word “Tribunal”.

Amendment of section 117 of No. 3 of 2001.

48. Section 2 of the Copyright Act is amended by inserting the following new definition in proper alphabetical sequence —

Amendment of section 2 of Cap. 130.

“Commission” means the Judicial Service Commission established under Article 171 of the Constitution.

49. Section 48 of the Copyright Act is amended —

Amendment of section 48 of Cap. 130.

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

(1) There is established a Tribunal to be known as the Copyright Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.;

(b) by deleting subsection (2) and substituting therefor the following new subsection —

(2) The Copyright Tribunal shall consist of the following persons appointed by the Commission —

(a) a chairperson, who shall be an advocate of the High Court of Kenya of not less than ten years standing; and

(b) not less than two and not more than four members who shall be holders of a degree from a university recognised in Kenya and have five years’ experience in the relevant field.

50. The Privatization Act is amended by repealing section 44 and replacing it with the following new section —

Amendment of No. 2 of 2005.

44. (1) There is established a Tribunal to be known as the Privatization Appeals Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Tribunal shall consist of the following members appointed by the Judicial Service Commission —

- (a) a Chairman, who shall be an advocate of the High Court of Kenya with not less than ten years' post-qualification experience; and
- (b) two persons who are holders of a degree from a university recognized in Kenya and have at least five years' experience and knowledge in matters related to privatization or management.

(3) A person is not qualified to be appointed as a member of the Tribunal if the person is an employee or member of the Commission or a member of the public service.

(4) The Chairman and members of the Tribunal shall be appointed for a term of five years and shall be eligible for reappointment for one further term of five years.

(5) The office of the Chairman or member of the Tribunal shall become vacant if the holder —

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Commission;
- (c) is convicted of an offence and is sentenced to a term of imprisonment for a period of six months or more;
- (d) completes their term of office;
- (e) in the case of a member, is absent from three consecutive meetings of the Tribunal without the permission of the Chairman of the Tribunal and in the case of the Chairman, is absent from three

consecutive meetings of the Tribunal without the permission of the Chief Registrar; or

(f) is removed from office on any of the following grounds —

(i) gross violation of the Constitution or any other written law;

(ii) gross misconduct or misbehaviour;

(iii) inability to perform functions of the office arising out of physical or mental infirmity;

(iv) incompetence or neglect of duty; or

(v) bankruptcy.

(6) The Commission shall fill any vacancy under this section within three months of the vacancy arising.

51. The Privatization Act is amended by repealing section 45 and replacing it with the following new section —

Amendment of
No. 2 of 2005.

Deputy Registrar

45. The Commission shall appoint a Deputy Registrar to the Tribunal.

52. The Privatization Act is amended by repealing section 46 and replacing it with the following new section —

Amendment of
No. 2 of 2005.

46. (1) The Chairperson and members of the Tribunal shall be paid such salaries, allowances and benefits as the Commission shall, in consultation with the Salaries and Remuneration Commission determine.

(2) The expenses of the Tribunal shall be a charge on the Judiciary Fund.

53. The Second Schedule to the Privatization Act is amended in paragraph 3(1) by deleting the word “secretary” and substituting therefor the word “Deputy Registrar”.

Amendment of
the Schedule to
No. 2 of 2005.

54. Section 2 of the HIV and AIDS Prevention and Control Act is amended by inserting the following new definition in proper alphabetical sequence —

Amendment of
section 2 of No.
14 of 2006.

“Commission” means the Judicial Service Commission established by Article 171 of the Constitution.

55. The HIV and AIDS Prevention and Control Act is amended by repealing section 25 and replacing it with the following new section —

Amendment of
No. 14 of 2006.

25. (1) There is established a Tribunal to be known as the HIV and AIDS Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Tribunal shall consist of the following members appointed by the Commission —

- (a) a chairman who shall be an advocate of the High Court of not less than ten years standing;
- (b) two advocates of the High Court of not less than five years standing;
- (c) two medical practitioners recognized by the Medical Practitioners and Dentists Board as specialists under the Medical Practitioners and Dentists Act (Cap. 253; and
- (d) two persons who have a degree from a university recognised in Kenya and five years' experience in a relevant field.

(3) At least two of the persons appointed under subsection (2) (a), (b) and (c) shall be women.

(4) The members of the Tribunal appointed under this section shall elect a Vice-Chairman from amongst themselves and the Chairman and the Vice-Chairman shall not be of the same gender.

(5) For the purposes of hearing and determining any cause or matter under this Act, the quorum of the Tribunal shall be three members:

Provided that where for any reason the Chairman is absent, the Vice-Chairman shall preside and in the absence of the Vice-Chairman, the members shall nominate one of their own to preside.

(6) All matters before the Tribunal shall be decided by the votes of a majority of the members present.

(7) The Chairperson and members of the Tribunal shall be paid such salaries, allowances and benefits as the Commission shall, in consultation with the Salaries and Remuneration Commission determine.

(8) The office of the Chairperson or member of a Tribunal shall become vacant if the holder —

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Commission;
- (c) is convicted of an offence and is sentenced to a term of imprisonment for a period of six months or more;
- (d) completes their term of office;
- (e) in the case of a member, is absent from three consecutive meetings of the Tribunal without the permission of the Chairperson of the Tribunal and in the case of the Chairperson, is absent from three consecutive meetings of the Tribunal without the permission of the Chief Registrar; or
- (f) is removed from office on any of the following grounds —
 - (i) gross violation of the Constitution or any other written law;

- (ii) gross misconduct or misbehaviour;
- (iii) inability to perform functions of the office arising out of physical or mental infirmity;
- (iv) incompetence or neglect of duty; or
- (v) bankruptcy.

(9) The Commission shall fill any vacancy under this section within three months of the vacancy arising.

56. Section 29 (2) of the HIV and AIDS Prevention and Control Act is amended —

Amendment of section 29 of No. 14 of 2006.

- (a) by deleting the words “may be filed in the High Court by the person in whose favour the damages or costs have been awarded and, upon being so filed;
- (b) by deleting the words “High Court” and substituting therefor the word “Tribunal.”

57. Section 35 of the Biosafety Act is amended —

Amendment of section 35 of No. 2 of 2009.

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

(1) There is established an Appeals Board which shall consist of members appointed by the Commission as follows —

- (a) a chairperson, who shall be an advocate of the High Court of Kenya of not less than ten years standing; and
- (b) four persons who are holders of a degree from a University recognized in Kenya and have at least five years' experience in biological, environmental or social sciences.
- (c) by inserting the following new subsection immediately after subsection (1) —

(1A) The Tribunal shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

- (d) by deleting subsection (3) and substituting therefor the following new subsection —

(3) The Chairperson and members of the Appeals Board shall hold office for a term of five years and shall be eligible for reappointment for one further term of five years.

- (e) in subsection (8) by deleting the word “Minister” and substituting therefor the words “Chief Justice”.

58. The Sixth Schedule to the Biosafety Act is amended by deleting paragraph 3.

Amendment of
the Sixth
Schedule to No. 2
of 2009.
Amendment of
No. 12 of 2010.

59. The Competition Act is amended by repealing section 71 and replacing it with the following new section

71. (1) There is established a Tribunal to be known as the Competition Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Competition Tribunal shall consist of the following members appointed by the Commission —

- (a) a Chairman who shall be an advocate of the High Court of Kenya with not less than ten years’ post-qualification experience;
- (b) not less than two and not more than four members who shall be holders of a degree from a university recognised in Kenya and have five years’ experience in the relevant field.

(3) The members of the Tribunal appointed under this section shall elect a Deputy Chairman from amongst themselves and the Chairman and Deputy Chairman shall not be of the same gender.

(4) The Chairman and members of the Tribunal shall hold office for a term of five years and shall be eligible for re-appointment for one further term of five years.

(5) The office of the Chairman or member of the Tribunal shall become vacant if the holder —

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Commission;
- (c) is convicted of an offence and is sentenced to a term of imprisonment for a period of six months or more;
- (d) completes their term of office;
- (e) in the case of a member is absent from three consecutive meetings of the Tribunal without the permission of the Chairman of the Tribunal and in the case of the Chairman is absent from three consecutive meetings of the Tribunal without the permission of the Chief Registrar; or
- (f) is removed from office on any of the following grounds —
 - (i) gross violation of the Constitution or any other written law;
 - (ii) gross misconduct or misbehaviour;
 - (iii) inability to perform functions of the office arising out of physical or mental infirmity;
 - (iv) incompetence or neglect of duty; or
 - (v) bankruptcy.

(6) For the purposes of hearing and determining any cause or matter under this Act, the quorum of the Tribunal shall be three members:

Provided that where for any reason the Chairman is absent, the Deputy Chairman shall preside and in the absence of the Deputy Chairman, the members shall nominate one of their own to preside.”

(7) The Chairperson and members of the Tribunal shall be paid such salaries, allowances and benefits

as the Commission shall, in consultation with the Salaries and Remuneration Commission determine.

(8) The Chief Justice may, in consultation with the Tribunal, make rules —

- (a) prescribing the manner in which an appeal shall be made to the Tribunal and the fees to be paid in respect of all appeals;
- (b) prescribing the procedure to be adopted by the Tribunal in hearing an appeal and the records to be kept by the Tribunal;
- (c) prescribing the manner in which the Tribunal shall be convened and places where and the time at which the sittings shall be held;
- (d) generally for the better carrying out of the provisions of this Act relating to the Tribunal and appeals thereto.

60. The Political Parties Act is amended by repealing section 39 and replacing it with the following new section —

Amendment of
No. 11 of 2011.

39. (1) There is established a Tribunal to be known as the Political Parties Disputes Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Tribunal shall consist of the following members, appointed by the Judicial Service Commission —

- (a) a chairperson who shall be an advocate of the High Court of Kenya with not less than ten years' post-qualification experience;
- (b) three advocates of the High Court of five years standing; and
- (c) three persons who hold a degree from a University recognised in Kenya and at least five years' experience in governance, administrative matters, political affairs, economic matters or other relevant field.

(3) The members of the Tribunal shall elect a vice chairperson from amongst the members who are Advocates of the High Court of Kenya.

(4) The Chairperson and members of the Tribunal shall serve on part-time basis.

(5) The Chairman and members of the Tribunal shall hold office for a term of five years and shall be eligible for re-appointment for one further term of five years.

(6) A person shall not be qualified to be appointed as a member of the Tribunal if that person is a member of the public service or takes an active part in the activities of a political party.

(7) A person shall not qualify for appointment under this section unless the person has met the requirement of Chapter Six of the Constitution.

(8) For the purposes of hearing and determining any cause or matter under this Act, the quorum of the Tribunal shall be three members:

Provided that where for any reason the Chairperson is absent, the Vice-Chairperson shall preside and in the absence of the vice-Chairperson, the members shall nominate one of their own to preside.

61. Section 39A of the Political Parties Act is amended —

Amendment of
section 39A of
No. 11 of 2011.

- (a) in subsection (1) (a) by deleting the word “seven” and substituting therefor the word “five”;
- (b) in subsection (1) (b) by deleting the words “outstanding governance, administrative, social, political, economic and other record” and substituting therefor the words “a degree from a university recognised in Kenya and not less than five years’ experience in governance, administrative matters, political affairs, economic matters or other relevant field”

62. Section 43 of the Political Parties Act is amended by deleting the words “appoint the Secretary” and

Amendment of
section 43 of
No. 11 of 2011.

substituting therefor the words “deploy a Deputy Registrar.”

63. The Tourism Act is amended by repealing section 87 and replacing it with the following new section —

Amendment of
No. 28 of 2011.

87. (1) There is established a Tribunal to be known as the Tourism Tribunal which shall consist of the following members appointed by the Judicial Service Commission —

- (a) a Chairperson who is an advocate of the High Court of Kenya with not less than ten years’ post-qualification experience;
- (b) an advocate of the High Court of Kenya who has at least five years’ post qualification experience;
- (c) three persons who are holders of a degree from a university recognized in Kenya and have at least five years’ experience in the tourism or hospitality sector.

(2) The Tribunal in subsection (1) shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(3) The members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(4) The appointment of members of the Tribunal under subsection (1) shall be through a competitive process taking into account regional balance and gender parity.

(5) The members of the Tribunal appointed under this section shall elect a Vice-Chairperson from amongst themselves.

64. The Tourism Act is amended by repealing section 88 and replacing it with the following new section —

Amendment of
No. 28 of 2011.

88. (1) A member of the Tribunal shall hold office for a term of five years but shall be eligible for re-appointment for one further term of five years.

(2) The office of a member of the Tribunal shall become vacant—

- (a) at the expiry of five years from the date of appointment;
- (b) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him not eligible for appointment to the office of a member of the Tribunal; or
- (c) if he is removed from membership of the Tribunal by the Judicial Service Commission for reasons of physical or mental infirmity, or inability to exercise the functions of his office;
- (d) if he resigns his office by writing under his hand addressed to the Chairperson of the Judicial Service Commission;
- (e) under section 95(2); or
- (f) upon his death.

(3) The Chairperson and members of the Tribunal shall be paid such salaries, allowances and benefits as the Commission shall, in consultation with the Salaries and Remuneration Commission determine.

65. The Tourism Act is amended by repealing section 89 and replacing it with the following new section —

Deputy Registrar.

89. (1) The Commission shall deploy a Deputy Registrar to the Tribunal.

(2) A person shall be qualified for appointment as a Deputy Registrar if the person —

- (a) holds a degree in law from a university recognised in Kenya;
- (b) has at least five years post qualification experience; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

(3) The Deputy Registrar shall be responsible for the day to day affairs of the Tribunal and shall be answerable to the Tribunal in performance of his functions.

(4) The Deputy Registrar shall perform any other functions determined by the Tribunal.

66. The Tourism Act is amended by repealing section 94 and replacing it with the following new section —

Amendment of
No. 2 of 2011.

94. For the purposes of hearing and determining any cause or matter under this Act, the quorum of the Tribunal shall be three members:

Provided that where for any reason the Chairperson is absent, the Vice-Chairperson shall preside and in the absence of the vice-Chairperson, the members shall nominate one of their own to preside.

67. Section 2 of the Kenya Citizens and Foreign Nationals Management Service Act is amended by inserting the following new definition in proper alphabetical sequence —

Amendment of
section 2 of No.
31 of 2011.

“Commission” means the Judicial Service Commission established by Article 171 of the Constitution.

68. Section 23 of the Kenya Citizens and Foreign Nationals Management Service Act is amended —

Amendment of
section 23 of No.
31 of 2011.

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

(1) There is established a Tribunal to known as the Kenya Citizenship and Immigration Service Appeals Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(c) by deleting subsection (2) and substituting therefor the following new subsection —

(2) The Tribunal shall consist of the following members appointed by the Judicial Service Commission —

- (a) a Chairperson who is an advocate of the High Court of Kenya with not less than ten years' post-qualification experience;
- (b) two persons who are holders of a degree from a university recognized in Kenya and have at least five years' experience in matters relating to public administration, immigration or demography.
- (d) by deleting subsection (3) and substituting therefor the following new subsection —

(3) The Judicial Service Commission shall deploy a Deputy Registrar and such staff as shall be necessary for the Tribunal to perform its functions.

69. The National Construction Authority Act is amended in section 2 by inserting the following new definitions in proper alphabetical sequence —

Amendment of section 2 of No. 41 of 2011.

“Appeals Board” means the Appeals Board established under section 27 of this Act;

“Commission” means the Judicial Service Commission established under Article 171 of the Constitution.”

70. Section 27 of the National Construction Authority Act is amended —

Amendment of section 27 of No. 41 of 2011.

- (a) in subsection (1) by inserting the words “which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution” immediately after the words “the Appeals Board”;
- (b) by deleting subsection (2) and substituting therefor the following new subsection —
 - (2) The Appeals Board shall consist of the following members appointed by the Commission —
 - (a) a Chairperson who shall be an advocate of the High Court of Kenya of not less than ten years standing; and
 - (b) two persons who are holders of a degree from a university recognized in Kenya and

have at least five years' experience in architecture, quantity surveying, engineering, building surveying or project management.

71. The National Construction Authority Act is amended by repealing section 29 and replacing it with the following new section —

Amendment of
No. 41 of 2011.

29. The expenses of the Tribunal shall be a charge on the Judiciary Fund.

72. Section 133A of the Land Act is amended —

Amendment of
section 133A of
No. 6 of 2012.

(a) in subsection (1) by deleting the words “consist of three persons appointed by the Cabinet Secretary through a notice in the Gazette” and substituting therefor the expression “be a subordinate court pursuant to Article 169(1)(d) of the Constitution.”

(b) by deleting subsection (2) and substituting therefor the following new subsection —

(2) The Tribunal shall consist of the following members appointed by the Judicial Service Commission —

(a) a Chairperson who shall be an advocate of the High Court of Kenya with not less than ten years' post-qualification experience;

(b) two persons who are holders of a degree from a university recognised in Kenya and have at least five years' experience in the relevant field.

73. Section 133B of the Land Act is amended —

Amendment of
section 133B of
No. 6 of 2012.

(a) in subsection (1) by deleting the word “four” wherever it appears and substituting therefor the word “five”;

(b) in subsection (2) by deleting the word “three” wherever it appears and substituting therefor the word “five”.

74. Section 133D of the Land Act is amended by deleting subsection (2).

Amendment of
section 133D of
No. 6 of 2012.

75. Section 29 of the Legal Education Act is amended

Amendment of
section 29 of No.
27 of 2012.

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

(1) There is established a Tribunal to be known as the Legal Education Appeals Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution and shall consist of the following members appointed by the Judicial Service Commission —

- (a) a Chairperson who shall be an advocate of the High Court of Kenya of not less than ten years standing; and
- (b) four persons who are holders of a law degree from a university recognized in Kenya and have at least five years' experience in the field of legal education.

- (b) by inserting the following new subsection immediately after subsection (3) —

(4). The Judicial Service Commission shall appoint a Deputy Registrar who has the following qualifications —

- (a) holds a degree in law from a university recognised in Kenya;
- (b) has at least five years post qualification experience; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

76. Section 30 of the Legal Education Act is amended

Amendment of
section 30 of No.
27 of 2012.

- (a) in paragraph (b) by deleting the words "Cabinet Secretary" and substituting therefor the words "Judicial Service Commission";
- (b) in paragraph (e) by deleting the word "Council" and substituting therefor the word "Tribunal";
- (c) in paragraph (f) by deleting the word "Board" and substituting therefor the word "Tribunal".

77. Section 33 of the Legal Education Act is amended by deleting subsection (4) and substituting therefor the following new section —

Amendment of
section 33 of No.
27 of 2012.

(4) For the purposes of hearing and determining any cause or matter under this Act, the quorum of the Tribunal shall be three members:

Provided that where for any reason the Chairperson is absent, the members shall nominate one of their own to preside.

78. Section 37 of the Legal Education Act is amended in subsection (3) by deleting the words “may be filed in the High Court by the person in whose favour the costs have been awarded and upon filing, the certificate of costs”.

Amendment of
section 37 of No.
27 of 2012.

79. The Legal Education Act is amended by repealing section 40 and replacing it with the following new section

Amendment of
No. 27 of 2012.

40. (1) There shall be paid to the Chairperson and the members of the Tribunal, such remuneration and allowances as the Judicial Service Commission shall, from time to time, upon the advice of the Salaries and Remuneration Commission determine.

80. The Kenya National Examinations Council Act is amended by repealing section 40B and replacing it with the following new section —

Amendment of
section 40B of
No. 29 of 2012.

40B. (1) There is established a Tribunal to be known as the National Examinations Appeals Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Tribunal shall consist of the following members appointed by the Judicial Service Commission —

- (a) a Chairperson, who shall be an advocate of the High Court of Kenya of not less than ten years standing;
- (b) four persons who are holders of a degree from a university recognised in Kenya and have at least five years' experience in education management, marking examinations or other relevant field.

(3) The Judicial Service Commission shall appoint the members of the Tribunal by notice in the *Gazette*.

(4) A person shall not be eligible for appointment under subsection (2) if at the time of appointment the person is an employee of the Council or was an employee of the Council five years before the date of appointment.

(5) In making appointments under subsection (2) the Judicial Service Commission shall —

- (a) ensure that not more than two-thirds of the appointees are of the same gender; and
- (b) have regard to the principle of regional balance.

81. Section 40C of the Kenya National Examinations Council Act is amended —

Amendment of
section 40C of
No. 29 of 2012.

- (a) in subsection (1) by deleting the word “four” and substituting therefor the word “five”;
- (b) in subsection (2) by deleting the word “three” wherever it appears and substituting therefor the word “five”;

82. Section 40D of the Kenya National Examinations Council Act is amended by deleting the words “Cabinet Secretary” and substituting therefor the words “Judicial Service Commission”.

Amendment of
section 40D of
No. 29 of 2012.

83. Section 40E of the Kenya National Examinations Council Act is amended —

Amendment of
section 40E of No.
29 of 2012.

- (a) in paragraph (a) by deleting the words “Cabinet Secretary” and substituting therefor the words “Judicial Service Commission”;
- (b) by deleting paragraph (c) and substituting therefor the following new paragraph —
- (c) fails to attend three consecutive meetings of the Tribunal without the permission of the Chairperson of the Tribunal and in the case of the Chairperson fails to attend three consecutive meetings of the Tribunal without the permission of the Chief Registrar.

84. The Kenya National Examinations Council Act is amended by repealing section 40I and replacing it with the following new section —

Amendment of
No. 29 of 2012.

Deputy Registrar and
staff.

40I. (1) The Commission shall deploy a Deputy Registrar and such other staff of the Tribunal as may be necessary for the performance of its functions under this Act.

85. Section 40N of the Kenya National Examinations Council Act is amended by deleting subsection (2) and substituting therefor the following new section —

Amendment of
section 40N of
No. 29 of 2012.

(2) A certificate issued under subsection (1), shall be deemed to be a decree of the Tribunal and may be executed as such.

86. Section 2 of the National Transport and Safety Authority is amended by inserting the following new definition in proper alphabetical sequence —

Amendment of
section 2 of No.
33 of 2012.

“Appeals Board” means the Transport Licensing Appeals Board established under section 39 of this Act.

87. Section 39 of the National Transport and Safety Authority is amended —

Amendment of
section 39 of No.
33 of 2012.

(a) in subsection (1) by inserting the expression “which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution” immediately after the word “Board”;

(b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) The Appeals Board shall consist of the following members appointed by the Judicial Service Commission—

(a) a Chairperson, who shall be an advocate of the High Court of Kenya of not less than ten years standing; and

(b) four other members who shall be holders of a degree from a university recognised in Kenya and have five years’ experience in the relevant field.

- (c) by inserting the following new subsection immediately after subsection (2) —

(2A) The members of the Appeals Board appointed under this section shall elect a Vice-Chairperson from amongst themselves;

in subsection (3) by deleting the words “such term and under such conditions as the Cabinet Secretary may determine” and

- (d) substituting the following words “five years and shall be eligible for re-appointment for one further term of five years.”;

- (e) by deleting subsection (4) and substituting therefor the following new subsection —

(4) For the purposes of hearing and determining any cause or matter under this Act, the quorum of the Appeals Board shall be three members:

Provided that where for any reason the Chairperson is absent, the Vice-Chairperson shall preside and in the absence of the Vice-Chairperson, the members shall nominate one of their own to preside.

- (f) in subsection (8) by deleting the words “Cabinet Secretary” and substituting therefor the words “Chief Justice.”

88. Section 2 of the Micro and Small Enterprises Act is amended by inserting the following new definition in proper alphabetical sequence —

“Commission” means the Judicial Service Commission established under Article 171 of the Constitution.

Amendment of
section 2 of No.
55 of 2012.

89. Section 11 of the Micro and Small Enterprises Act is amended in subsection (2) by deleting the words “points of law”.

Amendment of
section 11 of No.
55 of 2012.

90. Section 54 of the Micro and Small Enterprises Act is amended —

Amendment of
section 54 of No.
55 of 2012.

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

(1) There is established a Tribunal to be known as the Micro and Small Enterprises Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

- (b) by deleting subsection (2) and substituting therefor the following subsection —

(2) The Tribunal shall consist of the following members appointed by the Commission —

- (a) a Chairperson who shall be an advocate of the High Court of Kenya of not less than ten years standing;
- (b) two advocates of the High Court of Kenya who have at least five years' post qualification experience;
- (c) two advocates of the High Court of Kenya who have at least five years' experience in micro and small enterprises matters; and
- (d) two persons who are holders of a degree in the relevant field and have at least five years' experience in micro and small enterprises matters.

- (c) by inserting the following new subsection immediately after subsection (2) —

(2A). The Commission shall appoint a Deputy Registrar who shall have the following qualifications —

- (a) holds a degree in law from a university recognised in Kenya;
- (b) has at least five years post qualification experience; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

- (d) in subsection (5)(c) by deleting the words "Cabinet Secretary" and substituting therefor the word "Commission".

91. Section 58 of the Micro and Small Enterprises Act is amended by deleting subsection (1) and substituting therefor the following new subsection —

Amendment of
section 58 of No.
55 of 2012.

(1) For the purposes of hearing and determining any cause or matter under this Act, the quorum of the Tribunal shall be three members:

Provided that where for any reason the Chairperson is absent, the Vice-Chairperson shall preside and in the absence of the Vice-Chairperson, the members shall nominate one of their own to preside.

92. Section 59 (1) of the Micro and Small Enterprises Act is amended by inserting the words “may appeal to the Tribunal.” immediately after paragraph (d).

Amendment of
section 59 of No.
55 of 2012.

93. The Micro and Small Enterprises Act is amended by repealing section 65 and replacing it with the following new section —

Amendment of
No. 55 of 2012.

65. (1) The expenses of the Tribunal for the conduct of its business shall be met from the Judiciary Fund.

(2) There shall be paid to the Chairperson and the members of the Tribunal such remuneration and allowances as the Commission may, in consultation with the Salaries and Remuneration Commission, determine from time to time.

94. The Basic Education Act is amended by repealing section 93 and replacing it with the following new section —

Amendment of
No. 14 of 2013.

93. (1) There is established an Education Appeals Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Education Appeals Tribunal shall consist of the following members appointed by the Judicial Service Commission —

- (a) a Chairperson who shall be an advocate of the High Court of Kenya of not less than ten years standing; and
- (b) six persons who are holders of a degree from a university recognized in Kenya and have at least five years’ experience in the relevant field.”

(3) The Commission shall deploy a Deputy Registrar and such staff as are necessary for the performance of the functions of the Tribunal under this Act.

(4) Any person aggrieved by the decisions of the County Education Board may appeal to the Education Appeals Tribunal.

(5) The Chief Justice may make Regulations for the better carrying into effect of the provisions of this Act.

95. Section 50 of the Public Benefits Organizations Act is amended —

Amendment of
section 50 of No.
18 of 2013.

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

(1) There is established a Tribunal to be known as the Public Benefit Organizations Disputes Tribunal which shall consist of the following members appointed by the Judicial Service Commission —

- (a) a Chairperson who shall be an advocate of the High Court of Kenya with not less than ten years' post-qualification experience;
- (b) two advocates of the High Court of not less than five years standing; and
- (c) two persons who are holders of a degree from a university recognised in Kenya and have at least five years' experience in a field relevant to the discharge of the functions of the Tribunal.

(b) by inserting the following new subsections immediately after subsection (2) —

(2A) The Tribunal shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2B) The Chairperson and members shall be appointed for a term of five years and shall be eligible for reappointment for one further term of five years.

(c) by deleting subsection (4) and substituting therefor the following new subsection —

(4) For the purposes of hearing and determining any cause or matter under this Act, the quorum of the Tribunal shall be three members:

Provided that where for any reason the Chairperson is absent, the Vice-Chairperson shall preside and in the absence of the Vice-Chairperson, the members shall nominate one of their own to preside.

- (d) in subsection (5) by deleting the words "Authority" and substituting therefor the words "Judicial Service Commission";
- (e) in subsection (6)(a) by deleting the word "three" and substituting therefor the words "five";
- (f) in subsection (6)(c) by deleting the words "Chief Justice" and substituting therefor the words "Judicial Service Commission";

96. Section 54 of the Public Benefits Organizations Act is amended by deleting subsection (2) and substituting therefor the following new subsection —

Amendment of
section 54 of No.
18 of 2013.

(2) Every certificate issued under subsection (1), shall be deemed to be a decree of the Tribunal and may be executed as such.

97. The Civil Aviation Act is amended by repealing section 66 and replacing it with the following new section —

Amendment of
No. 55 of 2012.

66. (1) There is established a Tribunal to be known as the National Civil Aviation Administrative Review Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Tribunal shall consist of the following members appointed by the Commission —

- (a) a Chairperson who shall be an advocate of the High Court of Kenya of not less than ten years standing; and

- (b) four persons who are holders of a degree from a university recognized in Kenya and have at least five years' experience in the field of civil aviation.

(3) The Commission shall appoint a Deputy Registrar who has the following qualifications —

- (a) holds a degree in law from a university recognised in Kenya;
- (b) has at least five years post qualification experience; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

(4) In appointing the Chairperson and members of the Tribunal under this section, the Judicial Service Commission shall take cognizance of the provisions of the Constitution relating regional and other diversities of the people of Kenya.

(5) The members of the Tribunal shall elect a Vice-Chairperson amongst themselves and the chairperson and the Vice-Chairperson shall be persons of the opposite gender.

98. The Civil Aviation Act is amended by repealing section 67 and replacing it with the following new section

Amendment of
No. 55 of 2012.

67. (1) A member of the Tribunal shall hold office for a term of five years but shall be eligible for re-appointment for one further term of five years.

(2) The office of a member of the Tribunal shall become vacant —

- (a) at the expiration of five years from the date of his or her appointment;
- (b) if he or she accepts any office the holding of which, if he or her were not a member of the Tribunal, would give rise to the existence of a conflict of interest with his or her membership to the Tribunal;

- (c) if he or she is removed from membership of the Tribunal by the Commission upon findings of an inquiry determining his or her failure to discharge the functions of his or her office (whether arising from infirmity of body or mind or from any other lawful cause) or for misbehaviour;
- (d) if he or she resigns the office of member of the Tribunal; or
- (e) upon death.

(3) Members of the Tribunal shall be paid allowances as the Commission shall, in consultation with the Salaries and Remuneration Commission determine.

99. The Civil Aviation Act is amended by repealing section 68.

Amendment of
No. 55 of 2012.

100. Section 72(4) of the Civil Aviation Act is amended by deleting the words “may be filed in the High Court by the person in whose favour the costs have been awarded and upon being so filed”.

Amendment of
section 72 of No.
55 of 2012.

101. The Civil Aviation Act is amended by repealing section 75 and replacing it with the following new section

Amendment of
No. 55 of 2012.

75. The quorum of the Tribunal shall be three members provided that where for any reason the Chairperson is absent, the Vice-Chairperson shall preside and in the absence of the Vice-Chairperson, the members shall nominate one of their own to preside.

102. The Civil Aviation Act is amended by deleting section 78.

Amendment of
No. 55 of 2012.

103. Section 2 of the Sports Act is amended by deleting the definition of “sports institutions” and substituting therefor the following new definition —

Amendment of
section 2 of No.
25 of 2013.

“sports institutions” means the Sports Kenya and the Kenya Academy of Sports established under this Act”.

104. Section 6 (1) (h) of the Sports Act is amended by deleting the word “Secretary” and substituting therefore the words “Deputy Registrar.”

Amendment of
section 6 of No.
25 of 2013.

105. The Sports Act is amended by repealing section 55 and replacing it with the following new section —

Amendment of
No. 25 of 2013.

55. (1) There is established a Tribunal to be known as the Sports Disputes Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Tribunal shall consist of the following members appointed by the Commission —

- (a) a Chairperson who shall be an advocate of the High Court of Kenya with not less than ten years' post-qualification experience; and
- (b) two advocates of the High Court of Kenya who shall have at least five years' experience in legal matters relating to sports or have been involved in sport in any capacity; and
- (c) at least two and not more than six other persons who are holders of a degree in the relevant field and have at least five years' experience in sports, in any capacity.

(3) The members of the Tribunal shall elect a Vice-Chairperson from among themselves, provided that the Chairperson and Vice-Chairperson shall not be of the same gender.

106. Section 60 of the Sports Act is amended by deleting the words "appoint the Secretary" and substituting therefore the words "deploy a Deputy Registrar."

Amendment of
section 60 of No.
25 of 2013.

107. Section 2 of the Tax Appeals Tribunal Act is amended by —

Amendment of
section 2 of No.
40 of 2013.

- (a) inserting the following new definition in proper alphabetical sequence —

"Deputy Registrar" means the Deputy Registrar deployed to the Tribunal by the Commission under section 7";

- (b) deleting the definition of the word "Secretary."

108. Section 3 of the Tax Appeals Tribunal Act is amended by —

Amendment of section 3 of No. 40 of 2013.

- (a) renumbering the existing provision as subsection (1); and
- (b) inserting the following new subsection immediately after subsection (1) —

(2) The Tribunal shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

109. The Water Act is amended by repealing section 119 and replacing it with the following new section —

Amendment of section 119 of No. 43 of 2016.

(1) There is established a Water Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Water Tribunal shall consist of the following members appointed by the Judicial Service Commission —

- (a) a Chairperson who shall be an advocate of the High Court of Kenya with not less than ten years' post-qualification experience; and
- (b) four other persons who possess a degree from a university recognized in Kenya and at least five years' experience in a relevant field.

(3) The Chairperson and members of the Tribunal shall be appointed for a term of five years and shall be eligible for reappointment for one further term of five years.

(4) The Chairperson and members of the Tribunal shall be paid such remuneration and allowances as the Judicial Service Commission may, in consultation with the Salaries and Remuneration Commission, determine.

110. The Water Act is amended by repealing section 120 and replacing it with the following new section —

Amendment of No. 43 of 2016.

Deputy Registrar
and Staff of the
Tribunal

120. The Judicial Service Commission shall deploy a Deputy Registrar and such staff as are necessary for the performance of the functions of the Tribunal under this Act.

111. Section 124 of the Water Act is amended by deleting the words “on an issue of law”.

Amendment of section 124 of No. 43 of 2016.

112. The First Schedule to the Water Act is amended

Amendment of the first schedule to No. 43 of 2016.

-
- (a) in paragraph 1(1)(f) of the First Schedule by deleting the words ‘or Tribunal’;
 - (b) in paragraph 1 by deleting subparagraph (2) and substituting therefor the following new subparagraph —

(2) In this Schedule, unless the context otherwise requires —

“board” means a board to which this Schedule applies;

“Chairperson” means the Chairperson of a board or Committee;

“member” means a member of a board or committee.

- (c) in paragraph 2(1) by deleting the words ‘the Tribunal’.

113. Section 27 of the Public Procurement and Asset Disposal Act is amended in subsection (1) by deleting the words “as an unincorporated Board” and substituting therefor the words “which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.”;

Amendment of section 27 of No. 33 of 2015.

114. Section 28 of the Public Procurement and Asset Disposal Act is amended —

Amendment of section 28 of No. 33 of 2015.

- (a) in subsection (2) by deleting the words “Cabinet Secretary” and substituting therefor the words “Chief Justice”;

- (b) by deleting section (3) and substituting therefor the following —

(3) The Commission shall deploy a Deputy Registrar and such staff as may be necessary for the proper discharge of the functions of the Review Board under this Act.;

115. The Public Procurement and Asset Disposal Act is amended by repealing section 29 and replacing it with the following new section —

Amendment of No. 33 of 2015.

29. (1) The Review Board shall comprise of the following members who shall be appointed

by the Judicial Service Commission taking into account regional and gender balance —

- (a) a Chairperson;
- (b) fourteen other members who hold a degree from a university recognised in Kenya and not less than five years' experience in a relevant field.

(2) For the purposes of performing its functions under subsection 28(1)(a), the quorum of the Review Board shall be three members:

Provided that where for any reason the Chairperson is absent, the Vice-Chairperson shall preside and in the absence of the Vice-Chairperson, the members shall nominate one of their own to preside.

116. Section 30 of the Public Procurement and Asset Disposal Act is amended —

Amendment of section 30 of No. 33 of 2015.

- (a) in subsection (1) (b) by deleting the word “seven” and substituting therefor the word “five”; and
- (b) in subsection (2) by deleting the words “a person who qualifies to be a judge of the High Court” and substituting therefor the words “an advocate of the High Court of Kenya with not less than ten years' post-qualification experience.”

117. Section 31 of the Public Procurement and Asset Disposal Act is amended —

Amendment of No. 31 of 2015.

- (a) in subsection (1) by deleting the word “three” and substituting therefor the word “five”; and
- (b) in subsection (2) by deleting the words “on a staggered period of six months” and substituting therefor the words “done at different times.”

118. Section 32 of the Public Procurement and Asset Disposal Act is amended by deleting the words “Cabinet Secretary and” and substituting therefor the words “Commission in consultation with.”

Amendment of No. 32 of 2015.

119. The Public Procurement and Asset Disposal Act is amended by inserting the following new section immediately after section 32 —

Amendment of No. 32 of 2015.

Funds of the Review Board

32A. The expenses of the Review Board shall be a charge on the Judiciary Fund.

120. Section 168 of the Public Procurement and Asset Disposal Act is amended by deleting the word “Secretary” and substituting therefor the words “Deputy Registrar”.

Amendment of section 168 of No. 33 of 2015.

121. Section 35 of the Nairobi International Financial Centre Act is amended —

Amendment of section 35 of No. 25 of 2017.

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

(1) There is established a Tribunal to be known as the Financial Centre Tribunal which shall be a subordinate court pursuant Article 169(1)(d) of the Constitution and shall consist of the following members appointed by the Commission —

- (a) a Chairperson who shall be an advocate of the High Court of Kenya of not less than ten years standing; and
- (b) four other members who are holders of a degree from a university recognized in Kenya and five years' experience in the financial services sector.
- (b) in subsection (3) by deleting the word “three” wherever it appears and substituting therefor the word “five”.
- (c) in subsection (5) by deleting paragraph (e) and substituting therefor the following paragraph—
- (e) fails to attend three consecutive meetings of the Tribunal without the permission of the Chairperson of the Tribunal and in the case of the Chairperson fails to attend three consecutive meetings of the Tribunal without the permission of the Chief Registrar.

122. The Nairobi International Financial Centre Act is amended by deleting section 36.

Amendment of No. 25 of 2017.

123. Section 37 (1) of the Nairobi International Financial Centre Act is amended by inserting the words “a Deputy Registrar and” immediately after the word “appoint”.

Amendment of section 37 of No. 25 of 2017.

124. Section 2 of the Energy Act is amended by inserting the following new definition in proper alphabetical sequence —

Amendment of section 2 of No.1 of 2019.

“Commission” means the Judicial Service Commission established under Article 171 of the Constitution.

125. Section 25 of the Energy Act is amended —

Amendment of
section 25 of No.1
of 2019.

- (a) by renumbering the existing provision as subsection (1); and
- (b) by inserting the following new subsection immediately after the renumbered subsection (1) —

(2) The Tribunal shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

126. The Energy Act is amended by repealing section 25 and substituting therefor the following new section —

Amendment of
No.1 of 2019.

25. (1) The Tribunal shall consist of not more than seven members as follows —

- (a) a Chairperson who shall be an advocate of the High Court of Kenya with ten years' post qualification experience;
- (b) six other persons who are holders of a degree from a University recognized in Kenya with at least five years' experience in law, petroleum and energy and who are not in the employment of the Agency or Authority.

(2) The members of the Tribunal shall elect a Vice-Chairperson who shall be an advocate of the High Court of Kenya and have at least five years' experience in energy and petroleum matters.

(3) In appointing the members of the Tribunal, the Commission shall —

- (a) ensure that the members of the Tribunal reflect the interests of all sections of the society;
- (b) ensure equal opportunities for persons with disabilities and other marginalized communities; and
- (c) ensure that no more than two-thirds of the members shall be of the same gender.

(4) The members of the Tribunal shall hold office for a period of five years, but shall be eligible for reappointment for one further term of five years.

127. The Energy Act is amended by repealing section 27 and substituting therefor the following new section —

Amendment of
No.1 of 2019.

27.(1) The office of the Chairperson or member of a Tribunal shall become vacant if the holder —

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Commission;
- (c) is convicted of an offence and is sentenced to a term of imprisonment for a period of six months or more;
- (d) completes their term of office;
- (e) in the case of a member, is absent from three consecutive meetings of the Tribunal without the permission of the Chairperson of the Tribunal and in the case of the Chairperson, is absent from three consecutive meetings of the Tribunal without the permission of the Chief Registrar; or
- (f) is removed from office on any of the following grounds —
 - (i) gross violation of the Constitution or any other written law;
 - (ii) gross misconduct or misbehaviour;
 - (iii) inability to perform functions of the office arising out of physical or mental infirmity;
 - (iv) incompetence or neglect of duty; or
 - (v) bankruptcy.

(2) The Commission shall fill any vacancy under this section within three months of the vacancy arising.

128. Section 30 of the Energy Act is amended —Amendment of
section 30 of No.1
of 2019.

- (a) in the marginal note by deleting the word “Secretary” and substituting therefor the word “Deputy Registrar”;
- (b) by deleting subsection (1) and substituting therefor the following new subsection —
 - (1) The Commission shall deploy a Deputy Registrar to the Tribunal;
- (c) by deleting subsection (2) and substituting therefor the following new subsection —

(2) A person shall be qualified for appointment as a Deputy Registrar if the person —

- (a) holds a degree in law from a university recognised in Kenya;
- (b) has at least five years post qualification experience;
- (c) satisfies the requirements of Chapter Six of the Constitution; and
- (d) in subsection (3) by deleting the word “Tribunal” and substituting therefor the word ‘Commission’.

129. The Energy Act is amended by repealing section 31.Amendment of
No.1 of 2019.**130.** Section 32 of the Energy Act is amended —Amendment of
section 32 of No.1
of 2019.

- (a) by deleting subsection (2); and
- (b) by deleting subsection (3) and substituting therefor the following new subsection —

(3) The Tribunal shall determine the place at which a panel may sit with a view to securing a reasonable opportunity for applicants to appear before the Tribunal with as little inconvenience and expense as is practicable.

131. Section 33 of the Energy Act is amended —

Amendment of
section 33 of No.1
of 2019.

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

(1) The Chairperson of a Tribunal shall preside at all sittings of the Tribunal at which the Chairperson shall be present and in the absence of the Chairperson, the Vice-Chairperson shall preside and in the absence of the Vice-Chairperson, the members shall nominate one of their own to preside.

- (b) in subsection (2) by deleting the words “including the Chairperson or the Vice-Chairperson as the case may be.”

132. Section 35 of the Energy Act is amended by deleting subsection (1) and substituting therefor the following new subsection —

Amendment of
section 35 of No.1
of 2019.

(1) The Chairperson and members of a Tribunal shall be paid such salaries, allowances and benefits as the Commission shall, in consultation with the Salaries and Remuneration Commission, determine.

133. Section 39 of the Energy Act is amended by deleting subsection (1) and substituting therefor the following new subsection —

Amendment of
section 39 of No.1
of 2019.

(1) The expenses of the Tribunal shall be a charge on the Judiciary Fund.

134. Section 198 of the Energy Act is amended by deleting subsection 2(o).

Amendment of
section 198 of
No.1 of 2019.

135. The Second Schedule to the Energy Act is amended —

Amendment of the
Second Schedule
to No.1 of 2019.

- (a) in the title by deleting the expression “Energy and Petroleum Tribunal (S.31);
- (b) in paragraph 1 of the Second Schedule by deleting the word “Tribunal”;
- (c) in paragraph 2 of the Second Schedule by deleting the word “Tribunal.”;

- (d) in paragraph 6 of the Second Schedule by deleting the word “Tribunal,”;
- (e) in paragraph 7 of the Second Schedule by deleting the word “Tribunal” wherever it appears;
- (f) in paragraph 8 of the Second Schedule by deleting the word “Tribunal” wherever it appears; and
- (g) in paragraph 9 of the Second Schedule by deleting the word “Tribunal” wherever it appears.

136. Section 2 of the Kenya Accreditation Service Act is amended by inserting the following new definition in proper alphabetical sequence —

Amendment of
section 2 of No.
17 of 2019.

“Commission” means the Judicial Service Commission established under Article 171 of the Constitution.

137. The Kenya Accreditation Service Act is amended by repealing section 16 and substituting therefor the following new section —

Amendment of
No. 17 of 2019.

16. (1) There is established a Tribunal to be known as the Accreditation Appeals Tribunal which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

(2) The Accreditation Appeals Tribunal shall consist of five members being —

- (a) a Chairperson appointed competitively by the Commission; and
- (b) four other persons who possess expertise and knowledge in matters relating to accreditation, conformity assessment, standardization or regulatory activities.

(3) A person shall be qualified for appointment under subsection (2)(a) if that person has —

- (a) a degree in law from a University recognized in Kenya and is an advocate of the High Court of Kenya; and
- (b) not less than ten years’ post-qualification experience;

(4) The members under subsection (2)(b) shall be appointed competitively by the Commission from amongst persons who —

- (a) hold a university degree in law or science and technology; and
- (b) possess at least five years relevant experience in their areas of expertise.

(5) The Tribunal shall hear and determine appeals emanating from the decisions of the Service.

138. The Kenya Accreditation Service Act is amended by repealing section 17 and replacing it with the following new section —

Amendment of
No. 17 of 2019.

17. An accredited body that is aggrieved by a decision of the Service may, appeal within twenty-one days of being notified of the decision.

139. The Kenya Accreditation Service Act is amended by inserting the following new section immediately after section 20 —

Amendment of
No. 17 of 2019.

Remuneration of
Chairperson and
members of the
Accreditation Appeals
Tribunal.

20A. The Chairperson and members of the Accreditation Appeals Tribunal shall be paid such salaries, allowances and benefits as the Commission shall, in consultation with the Salaries and Remuneration Commission, determine.

140. The Kenya Accreditation Service Act is amended by repealing section 27 and replacing it with the following new section —

Amendment of
No. 17 of 2019.

Remuneration of
members of the
Board and
committees.

27. The Service shall pay such remuneration and allowances to the members of the Board and committees as approved by the Cabinet Secretary upon the recommendation of the Salaries and Remuneration Commission.”

141. The Kenya Accreditation Service Act is amended by deleting paragraph 7 of the Third Schedule and substituting therefor the following new paragraph —

Amendment of the
Third Schedule to
No. 17 of 2019.

7. (1) The quorum of a Tribunal shall be three members.

(2) The Chairperson shall preside at all sittings of a Tribunal at which the Chairperson shall be present and in the absence of the Chairperson, the Vice-Chairperson shall preside and in the absence of the Vice-Chairperson, the members shall nominate one of their own to preside.

142. Section 11 of the Refugees Act is amended —

Amendment of
section 11 of No.
10 of 2021.

(a) in subsection (1) by inserting the words “which shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.” immediately after the words “Appeals Committee”;

(b) by deleting subsection (2) and substituting therefor the following new subsection —

(2) The Refugee Status Appeals Committee shall consist of the following members appointed by the Judicial Service Commission —

(a) a Chairperson who shall be an advocate of the High Court of Kenya with not less than ten years’ post-qualification experience; and

(b) six persons who are holders of a degree in the relevant field and have at least five years’ experience in refugee matters.;

(c) by deleting subsection (3) and substituting therefor the following new subsection —

(3) For the purposes of hearing and determining any cause or matter under this Act, the quorum of the Appeals Committee shall be three members:

Provided that where for any reason the Chairperson is absent, the vice-Chairperson shall preside and in the absence of the vice-Chairperson, the members shall nominate one of their own to preside.

(d) in subsection (5) by deleting the word “three” and substituting therefor the word “five”;

- (e) in subsection (7) by deleting the words “Public Service Commission” and substituting therefor the words “Judicial Service Commission”.

143. Section 75 of the Public Private Partnerships Act is amended —

Amendment of
section 75 of No.
14 of 2021.

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

(1A) The Petition Committee shall be a subordinate court pursuant to Article 169(1)(d) of the Constitution.

- (b) by deleting subsection (2) and substituting therefor the following new subsection —

(2) The Petition Committee shall consist of the following members appointed by the Commission —

- (a) a Chairperson who shall be an advocate of the High Court of Kenya of not less than ten years standing;
 - (b) six persons who are holders of a law degree and have at least five years’ relevant knowledge and experience;
- (c) in subsection (3) by deleting the word “three” and substituting therefor the word “five”;
- (d) in subsection (9) by deleting the words “Cabinet Secretary” and substituting therefor the word “Commission”.

144. The Public Private Partnerships Act is amended by repealing section 76 and replacing it with the following new section —

Amendment of
No. 14 of 2021.

Deputy Registrar.

76. The Commission shall appoint a Deputy Registrar who has the following qualifications —

- (a) holds a degree in law from a university recognised in Kenya;
- (b) has at least five years post qualification experience; and
- (c) has at least five years post qualification experience; and

- (d) satisfies the requirements of Chapter Six of the Constitution.

145. The Public Private Partnerships Act is amended in section 77 —

Amendment of section 77 of No. 14 of 2021.

- (a) by inserting the word “Petition” immediately after the words “members of the”;
- (b) by deleting the words “Cabinet Secretary” and substituting therefor the word “Commission”.

146. The Public Private Partnerships Act is amended by repealing section 78 and replacing it with the following new section —

Amendment of No. 14 of 2021.

Conflict of interest.

78. A member of the Petition Committee who has a direct or indirect interest in a matter before the Petition Committee shall declare the interest and shall not participate in any proceedings of the Petition Committee on the matter.

147. Section 79 of the Public Private Partnerships Act is amended by deleting subsection (1) and substituting therefor the following new subsection —

Amendment of section 79 of No. 14 of 2021.

- (1) A person shall not —
 - (a) without reasonable cause or lawful excuse, obstruct or hinder, assault or threaten a member of the Petition Committee acting under this Act;
 - (b) without justification, fail to provide information required by the Petition committee under this Act;
 - (c) without justification, fail to provide information within reasonable time that is required by the Petition committee under this Act;
 - (d) submit false or misleading information to the committee; misrepresent to or knowingly mislead a member of the Petition Committee acting under this Act; or
 - (e) interfere with or exert undue influence on any member of the Petition Committee.

148. Section 80 of the Public Private Partnerships Act is amended by section 80 by deleting the word “Committee” and substituting therefor the words “Petition Committee”

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to give effect to Articles 1(3)(c), 20(4), 47(3), 159(1) and 169 of the Constitution in relation to the governance and administrative framework of Tribunals in Kenya. Pursuant to this objective, the Bill proposes to reform the Tribunal system in Kenya by inter alia, rationalizing and regulating the administration and functions of Tribunals, establishing the Tribunals Registry and providing for the structure, membership and administration of Tribunals.

Part I of the Bill contains the preliminary matters.

Part II of the Bill provides for the establishment and administration of Tribunals. **Clause 5** of the Bill provides for additional functions of the Judicial Service Commission. **Clause 6** provides for the establishment of the Office of the Registrar of Tribunals whilst **clause 7** sets out the functions of the Registrar to include the transmission and custody of documents in relation to Tribunals, the implementation of decisions of the Tribunals and causing to be kept records of the proceedings and minutes of the meetings of the Tribunals and such other records as the Judicial Service Commission may direct. This Part further seeks to create jurisprudence on the decisions of the Tribunals by requiring the Commission to have the decisions of Tribunals reported by the National Council for Law Reporting. In addition, **clause 11** provides for the procedure to be followed by the Executive, the Judiciary and Parliament in establishing Tribunals. The procedures seek to include all arms of government in the establishment of Tribunals in view of the specialized nature of Tribunals and also to ensure transparency in the process. **Clauses 12 and 13** provide for the procedure for the appointment of the chairpersons and members of Tribunals and the required qualifications for appointment. **Clause 23 and 24** sets out the power of a Tribunal to review its own decision and empowers Tribunals to enforce their decisions similar to other courts. **Clause 31** empowers the Chief Registrar to open bank accounts on behalf of Tribunals.

Part III of the Bill deals with the general provisions. **Clause 32** requires the members of Tribunals on appointment to subscribe to the oath of office. **Clause 34** requires members of Tribunals to disclose any conflict of interest with regards to any matter under consideration. **Clause 39** empowers the Chief Justice to develop Regulations for the effective discharge of the mandate of Tribunals.

Part IV of the Bill deals with the transitional provisions.

The **First Schedule** sets out the oath or affirmation for the offices of Chairperson and members of the Tribunals.

The **Second Schedule** provides for consequential amendments to several Acts of Parliament.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

Clauses 39 and 40 of the Bill delegate legislative powers to the Chief Justice for the purposes set out in the respective clauses. The Bill does not limit fundamental rights and freedoms.

Statement on whether the Bill concerns county governments

This Bill does not concern county governments in terms of Article 110(l) (a) of the Constitution as it does not affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 26th July, 2023.

KIMANI ICHUNG'WA,
Leader of the Majority Party.