1960 No. 2201

The Kenya (Constitution) (Amendment No. 2) Order in Council, 1960

Made - - - -	*30th November*, 1960
Laid before Parliament	*6th December*, 1960
Coming into Operation	
Section 18 - -	*7th December*, 1960
Remainder - -	*On a date to be appointed by the Governor.*

At the Court at Buckingham Palace, the 30th day of November, 1960

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in this behalf by the British Settlements Acts, 1887 and 1945(a), the Foreign Jurisdiction Act, 1890(b), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation, construction and commencement

1.—(1) This Order may be cited as the Kenya (Constitution) (Amendment No. 2) Order in Council, 1960, and shall be construed as one with the Kenya (Constitution) Order in Council, 1958(c), the Kenya (Constitution) (Amendment) Order in Council, 1959(d), and the Kenya (Constitution) (Amendment) Order in Council, 1960(e).

(2) The Kenya (Constitution) Order in Council, 1958, the Kenya (Constitution) (Amendment) Order in Council, 1959, the Kenya (Constitution) (Amendment) Order in Council, 1960, and this Order may be cited together as the Kenya (Constitution) Orders in Council, 1958 to 1960.

(3) Section 1 of the Kenya (Constitution) (Amendment) Order in Council, 1960, is amended by the deletion from subsection (1) of all words after the words "Order in Council, 1960".

(4) Save as otherwise provided in this Order, the provisions of this Order shall come into operation on such date, not being earlier than the 7th day of December, 1960, as the Governor may, in his discretion, appoint by proclamation published in the Gazette:

Provided that different dates may be appointed for the coming into operation of different provisions of this Order.

Amendment of Order of 1958

2. Section 2 of the Kenya (Constitution) Order in Council, 1958 (hereinafter referred to as "the principal Order") is amended—

(*a*) by the insertion after the definition of "the Colony" in subsection (1) of the following definition—

> "'elector' means an elector for the purposes of the election of Constituency Members of the Legislative Council";

(a) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7. (b) 53 & 54 Vict. c. 37.
(c) S.I. 1958/600 (1958 I, p. 961). (d) S.I. 1959/1302 (1959 I, p. 982).
(e) S.I. 1960/703 (Pt. I, p. 1218, of this vol.).

(*b*) by the deletion of the words "Assistant Minister" in the definition of "public office" in subsection (1) and the substitution of the words "Parliamentary Secretary";

(*c*) by the insertion after subsection (5) of the following subsection—

"(5A) Any reference in this Order to a law, or to any provision of a law, enacted by the legislature of Kenya, shall, unless the context otherwise requires, be construed as including a reference to any other law amending or replacing such law or provision or amending any law replacing the same.".

3. Section 6 of the principal Order is revoked.

4. Section 11 of the principal Order (as amended by the Kenya (Constitution) (Amendment) Order in Council, 1960) is amended by the deletion of subsection (2) and the substitution of the following subsection—

"(2) Subject to section 16 of this Order, the Council of Ministers shall consist of not more than twelve persons who shall be appointed by the Governor by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State, and of whom not less than four shall be public officers."

5. Section 22 of the principal Order is amended—

(*a*) by the deletion from subsection (1) of the words "not more than six persons (who shall be styled "Assistant Ministers")" and the substitution of the words "as many persons as he may think fit (who shall be styled "Parliamentary Secretaries")";

(*b*) by the deletion from subsection (2) of the words "an Assistant Minister" wherever they occur and the substitution therefor of the words "a Parliamentary Secretary";

and the marginal note to the section shall be amended accordingly.

6. Part IV of the Principal Order is revoked and the following Part is substituted therefor—

"PART IV

LEGISLATIVE COUNCIL

Legislative Council.

23.—(1) There shall be a Legislative Council in and for Kenya.

(2) Subject to the provisions of this Part, the Legislative Council shall consist of—

(*a*) a Speaker appointed in accordance with section 24 of this Order;

(*b*) the persons (who shall be styled "Ex officio Members") who for the time being are Ministers or temporary Ministers and are not members of the Legislative Council under any other provision of this Part;

(*c*) fifty-three persons (who shall be styled "Constituency Members") elected in accordance with the provisions of any law enacted in pursuance of section 25 of this Order;

(*d*) twelve persons (who shall be styled "National Members") elected in accordance with the provisions of regulations made under section 26 of this Order;

(*e*) such persons (who shall be styled "Nominated Members") as may be appointed by the Governor by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State.

The Speaker and Deputy Speaker.

24.—(1) The Speaker of the Legislative Council shall be appointed by the Governor by instrument under the public seal in pursuance of instructions given to him by Her Majesty through a Secretary of State.

(2) The Speaker shall hold his office during Her Majesty's pleasure, but shall in any case vacate his office—

(*a*) at such time (if any) as may be provided by the instrument by which he is appointed; or

(*b*) if he resigns his office by writing under his hand addressed to the Governor.

(3) The Governor may in his discretion, by instrument under the public seal, appoint any member of the Legislative Council (other than a Minister) to be Deputy Speaker of the Council.

(4) The Deputy Speaker shall hold his office at the Governor's pleasure, exercisable in his discretion, but shall in any case vacate his office—

(*a*) at such time (if any) as may be provided in the instrument by which he is appointed; or

(*b*) if he resigns his office by writing under his hand addressed to the Governor; or

(*c*) when the Legislative Council first sits after any dissolution of the Council; or

(*d*) if he ceases to be a member of the Legislative Council for any reason other than a dissolution thereof; or

(*e*) if he is appointed to be a Minister.

(5) Subject to section 35 of this Order, during any period when the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, those functions shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant or the Deputy Speaker is for any reason unable to perform those functions, by such person as the Governor may in his discretion nominate.

Constituency Members.

25.—(1) Of the seats in the Legislative Council for Constituency Members—

(*a*) ten shall be reserved for Europeans;

(*b*) eight shall be reserved for Asians, of which three shall be reserved for Asians of the Muslim faith and five shall be reserved for Asians not of that faith;

(*c*) two shall be reserved for Arabs.

(2) Subject to the provisions of this Order, provision may be made by or in pursuance of any law enacted under this Order for the election in Kenya of persons as Constituency Members, including (without prejudice to the generality of the foregoing power) the following matters—

(*a*) the qualifications and disqualifications of electors;

(*b*) the registration of electors;

(*c*) the establishment of constituencies for purpose of returning Constituency Members; and the division of such constituencies for any purpose connected with the registration of electors or with elections;

(*d*) the allocation to such constituencies of seats in the Legislative Council;

(*e*) the reservation of seats in the Legislative Council in pursuance of subsection (1) of this section;

(*f*) the nomination of candidates for election, including, in relation to any reserved seats, nomination by means of a primary election by electors possessing the same qualifications as to race or, in the case of a seat reserved for an Asian, as to race and faith as are required for election to the seat;

(*g*) the ascertainment of the qualifications of persons who submit themselves for election;

(*h*) the holding of elections, including primary elections, and the manner of voting at such elections;

(*i*) the definition and trial of offences relating to elections and the imposition of penalties therefor, including the disqualification for election as a Constituency Member of any person concerned in any such offence;

(*j*) the disqualification for election as a Constituency Member of any person by reason of—

(i) his holding or acting in any office or appointment specified (either individually or by reference to any class of office or appointment) by or in pursuance of any such law as aforesaid; or

(ii) his belonging to any of the armed forces of the Crown or any police force so specified or to any class of person so specified that is comprised in any such force.

(3) Whenever the seat of a Constituency Member is vacant and, on the completion of any procedure or, as the case may be, on the expiration of any period provided under the last foregoing subsection for the nomination of candidates for election to that seat, no person has been nominated as such a candidate, the Governor may in his discretion, by instrument under the public seal, appoint to hold that seat any person who, if he were nominated as a candidate for election on the date of his appointment, would be qualified for election thereto, and the person so appointed shall, with effect from the date of his appointment, be deemed for all purposes to be a Constituency Member as if he had been duly elected to that seat.

National Members.

26.—(1) Of the seats in the Legislative Council for National Members—

(*a*) four shall be held by Africans ;

(*b*) four shall be held by Europeans ;

(*c*) three shall be held by Asians, of which one shall be held by an Asian of the Muslim faith and two shall be held by Asians not of that faith ; and

(*d*) one shall be held by an Arab.

(2) Subject to the provisions of this Order, the Governor may, by regulations, make provision for the election of the National Members by the Constituency Members of the Legislative Council, including (without prejudice to the generality of the foregoing power) the following matters—

(*a*) the nomination of candidates for election ;

(*b*) the ascertainment of the qualifications for persons who submit themselves for election ;

(*c*) the manner in which such Members shall be elected ; and

(*d*) the application, subject to such exceptions and modifications (if any) as may be specified in the regulations, to the election of the National Members of any provisions of any law enacted in pursuance of paragraph (i) of subsection (2) of the last foregoing section.

(3) Regulations made under the last foregoing subsection—

(*a*) may empower any person or authority prescribed by the regulations to make rules or orders for any of the purposes for which such regulations may be made ; and

(*b*) may be amended or revoked by further regulations made under that subsection.

(4) Whenever the seat of a National Member is vacant and, on the completion of any procedure or, as the case may be, on the expiration of any period provided by any regulations made under this section for the nomination of candidates for election to that seat, no person has been nominated as such a candidate, the Governor may in his discretion, by instrument under the public seal, appoint to hold that seat any person who, if he were nominated as a candidate for election on the date of his appointment, would be qualified for election thereto, and the person so appointed shall, with effect from the date of his appointment, be deemed for all purposes to be a National Member as if he had been duly elected to that seat.

Qualifications for election or appointment of members.

27.—(1) Subject to subsection (2) of this section and to the next following section, a person shall be qualified to be elected or appointed as a Constituency Member, a National Member or a Nominated Member if, and shall not be qualified to be so elected or appointed unless, he

(*a*) is of the age of twenty-one years or upwards ; and

(*b*) is a British subject or a British protected person or—

(i) is a member of any race indigenous to the sub-continent of India ; and

(ii) was immediately before the 15th August, 1947, under the suzerainty or protection of Her Majesty ; and

(iii) has at any time since that day and before the 5th day of August, 1960, been registered as an elector for the purposes of the election of Asian members of the Legislative Council then established for Kenya :

and also, in the case of a Constituency Member or a National Member, he—

(*c*) is registered as an elector ; and

(*d*) has been ordinarily resident in Kenya for a period of two years immediately before the date of his nomination for election ; and

(*e*) is able to read, write and speak the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Legislative Council.

(2) A person shall not be qualified to be elected as a Constituency Member to a seat that is reserved in pursuance of subsection (1) of section 25 of this Order unless he belongs to the category of persons for whom that seat is so reserved ; and a person shall not be qualified to be elected as a National Member to any seat unless he belongs to the category of persons to whom that seat is allocated by subsection (1) of the last foregoing section.

Disqualifications for election or appointment of members.

28.—(1) No person shall be qualified to be elected or appointed as a Constituency Member, a National Member or a Nominated Member who—

(*a*) is, by virtue of his own act, under any acknowledgment of allegiance, obedience, or adherence to a foreign power or state ;

(*b*) is a member of the Council of State or holds or is acting in the office of judge of the Supreme Court, judge of Her Majesty's Court of Appeal for Eastern Africa or judge or magistrate of any inferior court of Kenya ;

(*c*) subject to the provisions of subsection (4) of this section, is under sentence of death imposed on him by a court in any part of Her Majesty's dominions or is serving a sentence of imprisonment (by whatever name called) of or exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him as aforesaid or is under such a sentence of imprisonment the execution of which has been suspended ;

(*d*) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Kenya ;

(*e*) has been adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's dominions and has not been discharged ;

(*f*) is restricted as to residence in consequence of an order made under the Deportation (Immigrant British Subjects) Ordinance, 1949(**a**), or is detained or restricted as to residence in pursuance of any regulations made under the Emergency Powers Order in Council, 1939(**b**), as amended(**c**), the Detained and Restricted Persons (Special Provisions) Ordinance, 1960(**d**), or the Preservation of Public Security Ordinance, 1960(**e**) ; or

(*g*) is disqualified for election as a Constituency Member by virtue of any law enacted in pursuance of paragraph (i) of subsection (2) of section 25 of this Order or is disqualified for election as a National Member by virtue of any regulations made in pursuance of paragraph (*d*) of subsection (2) of section 26 of this Order.

(2) No person shall be qualified to be elected as a Constituency Member or a National Member who—

(*a*) is disqualified for election as a Constituency Member by virtue of any law enacted in pursuance of paragraph (*j*) of subsection (2) of section 25 of this Order ; or

(*b*) has served a sentence of imprisonment (by whatever name called) exceeding two years imposed on him by a court in any part of Her Majesty's dominions or substituted by competent authority for some other sentence so imposed on him.

(3) A person shall not be qualified to be elected as a National Member if, at the date of his nomination as a candidate for election, he is a Constituency Member, or to be elected as a Constituency Member if, at the date of his nomination as a candidate for election, he is a National Member.

(4) For the purposes of paragraph (*c*) of subsection (1) and paragraph (*b*) of subsection (2) of this section—

(*a*) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences except that, for the purposes of the said paragraph (*c*), if any one of those sentences is of or exceeds twelve months they shall be regarded as one sentence ; and

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

Tenure of seats of members.

29.—(1) Subject to the provisions of this section, the Nominated Members shall hold their seats in the Legislative Council during Her Majesty's pleasure.

(**a**) Kenya Ordinance No. 37/1949. (**b**) See S.I. 1952 I, at p. 621.
(**c**) S.I. 1956/731, 1959/1310, 2205 (1956 I, p. 512; 1959 II, p. 1996, 1998).
(**d**) Kenya Ordinance No. 3/1960. (**e**) Kenya Ordinance No. 2/1960.

(2) Every member of the Legislative Council other than the Speaker shall vacate his seat in the Council at a dissolution of the Council.

(3) A Constituency Member, a National Member, or a Nominated Member shall vacate his seat in the Legislative Council—

(*a*) if he resigns his seat by writing under his hand addressed to the Governor;

(*b*) if, not being unable to perform his functions as a member by virtue of the next following subsection or of a declaration made under section 30 of this Order, he is absent from eight successive sittings of the Council and, before the end of the last of those sittings, the Speaker has not, by writing under his hand, excused such absence;

(*c*) if he ceases to be either a British subject or a British protected person;

(*d*) subject to the three next following subsections, if any circumstances arise that, if he were not a member of the Legislative Council, would cause him to be disqualified for election or appointment as such by virtue of subsection (1) of the last foregoing section or (in the case of a Constituency or a National Member) paragraph (*a*) of subsection (2) of that section.

(4) (*a*) If circumstances such as are referred to in paragraph (*d*) of the last foregoing subsection arise because a member is under sentence of death or imprisonment, adjudged to be of unsound mind, declared bankrupt or convicted of an offence relating to elections and if it is open to the member to appeal against the decision (either with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his functions as a member but, subject to the next following paragraph, he shall not vacate his seat until the expiration of thirty days thereafter or such further period as the Governor in his discretion may, at the request of the member, direct in order to enable the member to appeal against the decision

(*b*) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.

(*c*) If at any time before the member vacates his seat such circumstances as aforesaid cease to exist his seat shall not become vacant on the expiration of the period referred to in paragraph (*a*) of this subsection and he may resume the performance of his functions as a member.

(5) If circumstances such as are referred to in paragraph (*d*) of subsection (3) of this section arise because a member is detained and if, under section 64B of this Order, that member has the right to require that his case should be

referred within sixty days of the beginning of the period of detention to a tribunal, he shall forthwith cease to perform his functions as a member for so long as such circumstances continue to exist, but he shall not vacate his seat unless and until—

(*a*) the said period of sixty days expires without either such circumstances as aforesaid having ceased to exist or his having exercised the right aforesaid; or

(*b*) at any time after he has exercised that right and the tribunal has considered his case he is notified by the authority that ordered his detention that his detention will continue.

(6) If circumstances such as are referred to in paragraph (*d*) of subsection (3) of this section arise because a member is restricted as to residence, that member shall forthwith cease to perform his functions as a member for so long as such circumstances continue to exist, but he shall not vacate his seat unless and until he has been subject to such restriction for a period of ninety consecutive days.

(7) A Constituency Member who holds a seat that is reserved for Asians in pursuance of paragraph (*b*) of subsection (1) of section 25 of this Order or a National Member who is an Asian shall vacate his seat if he adopts the Muslim faith or ceases to be of that faith, as the case may be.

Inability of members to perform functions, and suspension of members.

30.—(1) The Governor may by instrument under the public seal declare that a Constituency Member, National Member or Nominated Member is, by reason of absence, illness or other cause, unable to perform his functions as a member, and thereupon that member shall not perform his said functions until he is declared in manner aforesaid to be again able to perform them.

(2) (*a*) The Governor may by instrument under the public seal declare that a Nominated Member is suspended from the performance of his functions as a member of the Legislative Council, and thereupon that Member shall not perform his said functions so long as his suspension remains in force.

(*b*) Every suspension under paragraph (*a*) of this subsection shall forthwith be reported to Her Majesty through a Secretary of State and shall remain in force until it is revoked by Her Majesty by instructions given through a Secretary of State or by the Governor by instrument under the public seal or the person suspended ceases to be a member of the Legislative Council.

(3) The powers conferred upon the Governor by this section shall be exercised by him in his discretion.

(4) Whenever a Minister who is an Ex officio Member is unable to perform his functions as a Minister by reason of a declaration made under section 15 of this Order he shall not perform his functions as a member of the Legislative Council.

Temporary Members.

30A.—(1) Whenever a member of the Legislative Council is incapable of performing his functions as a member by virtue of subsection (4), (5) or (6) of section 29 of this Order or by reason of a declaration made under the last foregoing section, the Governor in his discretion may, by instrument under the public seal, appoint to be temporarily a member of the Legislative Council a person who, if he were nominated as a candidate for election on the date of his appointment, would be qualified for election, or who is qualified for appointment, to the seat of that member.

(2) The provisions of subsections (3) and (7) of section 29 of this Order shall apply to a member appointed under this section as they apply to the member on account of whose incapacity he was appointed except that the provisions of paragraph (*d*) of the said subsection (3) shall apply as if they were not expressed to be subject to the three next following subsections.

(3) An appointment made under this section on account of the incapacity of a Nominated Member may be revoked by the Governor in his discretion, by instrument under the public seal, and any appointment under this section shall in any case cease to have effect when the member on account of whose incapacity the appointment was made is again able to perform his functions as a member or the seat of that member becomes vacant.

Determination of questions as to membership.

30B.—(1) Save as otherwise provided in pursuance of the following provisions of this section, any question whether any person has become a member of the Legislative Council or has vacated his seat in the Council or is incapable of performing his functions as a member or the functions of the office of Speaker shall be referred to and determined by the Governor in his discretion.

(2) Provision may be made by or in pursuance of any law enacted under this Order for the determination of any question that may arise whether any person has been validly elected as a Constituency Member or any Constituency Member has vacated his seat or is incapable of performing his functions as a member by virtue of subsection (4), (5) or (6) of section 29 of this Order.

(3) (*a*) The Governor may, by regulations, make provision for the determination of any question that may arise whether any person has been validly elected as a National Member or any National Member has vacated his seat or is incapable of performing his functions as a member by virtue of subsection (4), (5) or (6) of section 29 of this Order.

(*b*) Subsection (3) of section 26 of this Order shall apply in relation to regulations made under this subsection as it applies in relation to regulations made under that section."

7. Section 35 of the principal Order is revoked and the following section is substituted therefor—

"Presiding in Legislative Council.

35.—(1) Subject to subsection (3) of this section, there shall preside at any sitting of the Legislative Council—

(*a*) the Speaker; or

(*b*) during any period when the Speaker is absent from the sitting, the Deputy Speaker; or

(*c*) during any period when both the Speaker and the Deputy Speaker are absent from the sitting, such member of the Legislative Council as the senior member of the Council of Ministers present may appoint.

(2) References in the last foregoing subsection to circumstances in which the Speaker or Deputy Speaker is absent include references to circumstances in which the office of Speaker or Deputy Speaker is vacant.

(3) The Deputy Speaker shall not be required to preside over any proceedings of the Legislative Council at which he is present if he considers that it is desirable that he should take part in those proceedings otherwise than as the person presiding, and during any period when, in pursuance of this subsection, the Deputy Speaker does not preside paragraph (*c*) of subsection (1) of this section shall have effect as if the Deputy Speaker were absent from the sitting."

8. Section 40 of the principal Order is amended by the insertion immediately after the words "Consolidated Fund Bill" wherever they occur in paragraph (*a*) of subsection (3) of the words "or a Supplementary Appropriation Bill".

9. Subsection (3) of section 44 of the principal Order is amended—

(*a*) by the deletion of the word "Elected" immediately after the word "Constituency"; and

(*b*) by the deletion of the words "Specially Elected Members" and the substitution therefor of the words "National Members".

10. Section 49 of the principal Order is amended—

(*a*) by the insertion at the beginning of paragraph (*d*) of subsection (3) of the words "subject to the next following subsection";

(*b*) by the deletion of paragraph (*e*) of subsection (3) and the substitution therefor of the following paragraph—

"(*e*) subject to the two next following subsections, if he becomes subject to a sentence of death imposed on him by a court in any part of Her Majesty's dominions or to a sentence of imprisonment (by whatever name called) for a term of or exceeding twelve months imposed on him by such a court or authority or substituted by competent authority for some other sentence imposed on him as aforesaid;"

(*c*) by the insertion at the beginning of paragraph (*f*) of subsection (3) of the words "subject to the next following subsection";

(*d*) by the insertion immediately after subsection (3) of the following subsections—

"(3A) (*a*). If circumstances such as are referred to in paragraphs (*d*), (*e*) or (*f*) of the last foregoing subsection arise and it is open to the member to appeal against the decision (either with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his functions as a member but, subject to the next following paragraph, he shall not vacate his seat until the expiration of thirty days thereafter or such further period as the Governor in his discretion may, at the request of the member, direct in order to enable the member to appeal against the decision.

(*b*) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.

(*c*) If at any time before the member vacates his seat such circumstances as aforesaid cease to exist his seat shall not become vacant on the expiration of the period referred to in paragraph (*a*) of this subsection and he may resume the performance of his functions as a member.

(3B) For the purposes of paragraph (*e*) of subsection (3) of this section—

(*a*) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences ; and

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

11. Subsection (2) of section 50 of the principal Order is amended by the insertion immediately after the word "subsection" of the words "or by virtue of subsection (3A) of the last foregoing section".

12. Section 51 of the principal Order is amended by the insertion immediately after the word "section" at the end of paragraph (*b*) of the words "or by virtue of subsection (3A) of section 49 of this Order."

13. Section 52 of the principal Order is amended by the deletion of the words "Assistant Minister" in subsection (6) and the substitution of the words "Parliamentary Secretary".

14. Section 56 of the principal Order is amended by the deletion of paragraph (*c*) of subsection (7).

15. The principal Order is amended by the insertion after Part VII of the following Part—

"PART VIIA—FUNDAMENTAL RIGHTS

Fundamental rights.

64A.—(1) Subject to the provisions of this section, the provisions contained in the Fourth Schedule to this Order shall have effect in Kenya.

(2) At any time when—

(*a*) Her Majesty is at war ; or

(*b*) Part II of the Emergency Powers Order in Council, 1939(**a**), as amended(**b**), or subsection (2) of section 3 or subsection (2) of section 4 of the Preservation of Public Security Ordinance, 1960(**c**), is in operation in Kenya ;

measures may be taken in accordance with regulations made under the said Order in Council or the said Ordinance or in accordance with provisions made by or under any other law enacted under this Order derogating from the provisions of the Fourth Schedule to this Order to such extent as may be reasonably justifiable in order to deal with the situation then prevailing in Kenya:

Provided that nothing in this subsection shall authorize a derogation from the provisions of section 1 of that Schedule except in respect of deaths resulting from lawful acts of war or from the provisions of section 2, section 3 or subsection (8) of section 5 of that Schedule.

(3) Nothing in the Fourth Schedule to this Order shall affect the operation of the provisions of the Detained and Restricted Persons (Special Provisions) Ordinance, 1960(**d**), as in force on the 30th day of November, 1960.

Reference to tribunal in certain cases.

64B.—(1) Where any person is detained in derogation from the provisions of section 4 of the Fourth Schedule to this Order by virtue of subsection (2) of the last foregoing section, that person shall be entitled to require that his case should be referred within sixty days of the beginning of the period of detention and thereafter during that period at intervals of not more than twelve months to a tribunal established by law, and that tribunal may make recommendations concerning the necessity or expediency of continuing the detention to the authority that has ordered it; but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendation.

(2) A tribunal established for the purposes of this section shall be constituted in such manner as to ensure its independence and impartiality, and its chairman shall be a person who holds or has held judicial office, whether in Kenya or elsewhere, or is qualified to be appointed to such office in Kenya.

Enforcement of fundamental rights.

64C.—(1) Any person who alleges that any of the provisions of this Part or of the Fourth Schedule to this Order has been contravened in relation to him may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the

(**a**) See S.I. 1952 I, at p. 621.
(**b**) S.I. 1956/731, 1959/1310, 2205 (1956 I, p. 512); 1959 II, pp. 1996, 1998).
(**c**) Kenya Ordinance No. 2/1960. (**d**) Kenya Ordinance No. 3/1960.

enforcement of any rights to which the person who makes the application may be entitled under this Part or under the Fourth Schedule to this Order.

(3) Provision may be made by or under any law enacted under this Order for conferring upon the Supreme Court such powers in addition to those conferred by this section as are necessary or desirable for the purpose of enabling the Supreme Court more effectively to exercise the jurisdiction conferred upon it by this section.

(4) Rules of court making provision with respect to the practice and procedure of the Supreme Court for the purposes of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of that court generally.

(5) Any party to any proceedings brought in the Supreme Court in pursuance of this section shall have the same rights of appeal as are accorded generally to parties to civil proceedings in the Supreme Court sitting as a court of original jurisdiction."

16. Section 65 of the principal Order is amended by the deletion of the words "Assistant Minister" and the substitution of the words "Parliamentary Secretary".

17. The principal Order is amended by the insertion after the Third Schedule thereto of the Schedule set out in the Schedule to this Order.

Transitional provisions relating to legislation concerning election of Constituency Members

18.—(1) At any time before section 6 of this Order comes into operation provision may be made by or in pursuance of any law enacted under the principal Order as in force at that time for all or any of the matters specified in subsection (2) of section 25 and subsection (2) of section 30B of the Part IV set out in the said section 6

(2) (*a*) Section 3 of the Kenya (Electoral Provisions) Order in Council, 1960(a), is revoked.

(*b*) Notwithstanding the revocation of the said section 3—

(i) any law enacted in pursuance of subsection (1) of that section and having effect immediately before the day on which this section comes into operation shall continue to have effect on and after that day as if it had been enacted in pursuance of the last foregoing subsection; and

(ii) any regulations made in pursuance of subsection (2) of that section and having effect immediately before that day shall continue to have effect on and after that day subject to the provisions of the next following paragraph.

(*c*) Any regulations that continue to have effect by virtue of subparagraph (ii) of the last foregoing paragraph may be amended or revoked by or in pursuance of any law enacted in pursuance of the last foregoing subsection or under the principal Order as in force after section 6 of this Order comes into operation, and

(a) S.I. 1960/1276 (Pt. I, p. 1240, of this vol.).

if any such regulations are inconsistent with any such law or any instrument made thereunder that law or instrument shall, to the extent of the inconsistency, prevail over the regulations.

(3) No election of Constituency Members shall be held under any law enacted in pursuance of subsection (1) of this section or under any regulations that continue to have effect by virtue of the last foregoing subsection until section 6 of this Order has come into operation; but registration of electors may take place and all other things necessary or expedient to prepare for such elections may be done in pursuance of such law or regulations notwithstanding that section 6 has not come into operation.

(4) This section shall come into operation on the 7th day of December, 1960.

W. G. Agnew.

THE SCHEDULE

Section 17.

Schedule to be inserted as Fourth Schedule to the Kenya (Constitution) Order in Council, 1958.

"FOURTH SCHEDULE

Section 64A.

FUNDAMENTAL RIGHTS

Deprivation of life.

1.—(1) No person shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty.

(2) A person shall not be regarded as having been deprived of his life in contravention of subsection (1) of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable—

(*a*) for the defence of any person from violence or for the defence of property; or

(*b*) in order to effect an arrest or to prevent the escape of a person detained; or

(*c*) for the purpose of suppressing a riot, insurrection or mutiny; or

(*d*) in order to prevent the commission by that person of a criminal offence.

Inhuman treatment.

2.—(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing in this section shall invalidate any law by reason only that it authorizes the infliction of any punishment that is lawful in Kenya on the 30th day of November, 1960.

Slavery and forced labour.

3.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section "forced labour" does not include—

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

(*b*) any labour required of members of the armed forces of the Crown in pursuance of their duties as such or, in the case of persons who have conscientious objections to service in the armed forces, any labour required instead of such service; or

(*c*) any labour required in the event of an emergency or calamity threatening the life or well-being of the community; or

(*d*) any labour that forms part of normal communal or other civil obligations.

Deprivation of personal liberty.

4.—(1) No person shall be deprived of his personal liberty save in the following cases and in accordance with a procedure permitted by law—

(*a*) in consequence of his unfitness to plead to a criminal charge, in execution of the sentence or order of a court, whether in Kenya or elsewhere, in respect of a criminal offence of which he has been found guilty or in execution of the order of a court of record in Kenya punishing him for contempt of that court or of a court inferior to it; or

(*b*) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him by law; or

(*c*) for the purpose of bringing him before a court either in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or, to such extent as may be reasonably necessary, to prevent his committing a criminal offence; or

(d) in the case of a person who has not attained the age of twenty-one years, for the purpose of his education or welfare; or

(*e*) for the purpose of preventing the spreading of infectious or contageous diseases, or in the case of persons who are, or are reasonably suspected to be, of unsound mind, addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

(*f*) for the purpose of preventing the unlawful entry of that person into Kenya, or for the purpose of effecting the lawful expulsion, extradition or other lawful removal from Kenya of that person or the taking of proceedings relating thereto; or

(*g*) for the purpose of taking proceedings relating to the imposition of any order prohibiting that person from entering or from leaving any area in Kenya or for the purpose of securing the enforcement of any such order or of any conditions contained in any order suspending such an order as aforesaid.

(2) Any person who is arrested or detained shall be promptly informed, in language that he understands, of the reasons for his arrest or detention.

(3) Any person who is detained in accordance with paragraph (*c*) of subsection (1) of this section shall be brought before a court without undue delay unless sooner released, and if he is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial or for proceedings preliminary to trial at a later date.

(4) Any person who is unlawfully arrested or detained shall be entitled to compensation.

(5) Nothing in subsection (1) of this section shall invalidate any law by reason only that it authorises—

(*a*) the arrest or detention of a member of the armed forces of the Crown or a member of a police force for the purpose of bringing him before an officer of such armed forces or an officer of such police force, as the case may be, upon reasonable suspicion of his having committed an offence against the discipline of such armed forces or such police force; or

(*b*) the detention of such a member in execution of a sentence of detention for a period not exceeding three months imposed by such an officer in respect of such an offence punishable by detention of which that member has been found guilty;

but in any case such as is referred to in paragraph (*a*) of this subsection, subsections (2) and (3) of this section shall apply and for the purposes of such application subsection (3) shall be construed as if the reference to paragraph (*c*) of subsection (1) of this section were omitted and as if the reference therein to a court were a reference to such an officer as aforesaid.

Determination of civil rights and obligations and of criminal charges.

5.—(1) Every court, and any tribunal having jurisdiction in Kenya to determine the civil rights and obligations of any person, shall be established by law and so constituted as to be independent and impartial.

(2) Where proceedings for the determination of the civil rights or obligations of any person are instituted before any court or tribunal that person shall be entitled to a fair hearing within a reasonable time.

(3) Whenever a person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing within a reasonable time by a court.

(4) All proceedings of every court and the proceedings of any tribunal relating to the determination of a person's civil rights or obligations (including the announcement of the decisions of the court or tribunal) shall be in public:

Provided that a court or such a tribunal may, to such extent as it may consider necessary in special circumstances where publicity would prejudice the interests of justice or to such extent as it may be empowered or required so to do by or under any law in the interests of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of twenty-one years, or the protection of the private lives of persons concerned in the proceedings, exclude from its proceedings persons other than the parties thereto and their legal representatives or order that the identity of any person concerned in the proceedings shall not be publicly disclosed.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty:

Provided that nothing in this sub-section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

(6) Every person who is charged with a criminal offence shall be entitled—

(*a*) to be informed promptly, in language that he understands and in detail, of the nature of the offence; and

(*b*) to be given adequate time and facilities for the preparation of his defence; and

(*c*) to defend himself in person or by legal representatives of his own choice; and

(*d*) to examine in person or by his legal representatives the witnesses called by the prosecution before any court and to obtain the attendance of witnesses to testify on his behalf before the court on the same conditions as those applying to the witnesses called by the prosecution, and to examine such witnesses in person or by his legal representatives; and

(*e*) to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence:

Provided that nothing in this subsection shall invalidate any law by reason only that it prohibits legal representation in African courts.

(7) When any person is tried for any criminal offence, the court shall keep a record of the proceedings, and the accused person or any person authorized by him in that behalf shall be entitled to obtain copies of the record within a reasonable time upon payment of such fee as may be prescribed by law.

(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.

(9) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could

have been convicted at the trial for that offence save upon the order of a superior court; and no person who shows that he has been pardoned for a criminal offence shall thereafter be tried for that offence:

Provided that nothing in this subsection shall invalidate any law by reason only that it authorises any court (other than a court-martial) to try any member of the armed forces of the Crown for a criminal offence notwithstanding that he has been tried for that offence or for any other offence by a court-martial and either convicted or acquitted; but if any such member, having been found guilty by a court-martial of any offence, and having been awarded any punishment in respect thereof, is subsequently convicted by a court (other than a court-martial) of that offence or of any other criminal offence of which he could have been found guilty at the trial by court-martial, the court convicting him shall, in sentencing him to any punishment, take into account any punishment awarded to him for the offence of which he was found guilty by such court-martial.

(10) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

Private and family life.

6.—(1) Every person shall be entitled to respect for his private and family life, his home and his correspondence.

(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society—

(*a*) in the interests of defence, public safety, public order, public morality, public health or the economic well-being of the community; or

(*b*) for the purpose of protecting the rights or freedoms of other persons.

Freedom of conscience.

7.—(1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom, either alone or in community with others, and in public or in private to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observances if such instruction, ceremony or observances relate to a religion other than his own.

(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in the course of any education provided by that community or denomination.

(4) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society—

(*a*) in the interests of defence, public safety, public order, public morality or public health; or

(*b*) for the purpose of protecting the rights or freedoms of other persons, including their right or freedom to observe and practice their religions without the unsolicited intervention of members of other religions.

Freedom of expression.

8.—(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society—

(*a*) in the interests of defence, public safety, public order, public morality or public health; or

(*b*) for the purpose of protecting the rights, reputations and freedoms of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating telephony, telegraphy, posts, wireless broadcasting or television or regulating public exhibitions or entertainments; or

(*c*) for the purpose of imposing restrictions upon persons holding office under the Crown, members of the armed forces of the Crown or members of a police force.

Right of assembly and association.

9.—(1) Every person shall be entitled to assemble freely and associate with other persons and in particular to form and belong to trade unions and other associations for the protection of his interests.

(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society—

(*a*) in the interests of defence, public safety, public order, public morality or public health ; or

(*b*) for the purpose of protecting the rights or freedoms of other persons ; or

(*c*) for the purpose of imposing restrictions upon persons holding office under the Crown, members of the armed forces of the Crown or members of a police force.

Compulsory acquisition of property.

10.—(1) No property, movable or immovable, shall be compulsorily taken possession of, and no right over or interest in any such property shall be compulsorily acquired, except—

(*a*) where such taking possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development and utilisation of any property to the promotion of the public benefit ; and

(*b*) where the necessity therefor in any such interests as aforesaid is so imperative as to afford reasonable justification for the causing of any hardship that may result to any person owning, or having any other right over or interest in, the property ; and

(*c*) by or under the provisions of a law which, of itself or when read with any other law in force in Kenya—

(i) requires the prompt payment of full compensation ; and

(ii) gives to any person owning, or having any other right over or interest in, the property a right of access to the Supreme Court for the determination of his ownership of, or other right over or interest in, the property, the legality of the taking possession of the property or the acquisition of his right over or interest in the property, his right to compensation and to prompt payment thereof, and the amount of compensation ; and

(iii) gives to any party to any proceedings in the Supreme Court relating to any of the matters aforesaid the same rights of appeal from the determination of that Court as are accorded generally to parties to civil proceedings in the Supreme Court sitting as a court of original jurisdiction.

(2) (*a*) Nothing in this section shall affect the operation of any existing law.

(*b*) In this subsection the expression " existing law " means a law in force in Kenya on the 30th day of November, 1960, and includes a law made after that date which amends any such law as aforesaid but which does not—

(i) add to the kinds of property that may be taken possession of or the rights over and interests in property that may be acquired ; or

(ii) add to the purposes for which or circumstances in which property may be taken possession of or rights over or interests in property may be acquired ; or

(iii) make the conditions governing entitlement to any compensation or the amount thereof less favourable to any person owning, or having any other right over or interest in, the property ; or

(iv) deprive any person of any right or entitlement such as is mentioned in subparagraph (ii) or subparagraph (iii) of paragraph (*c*) of subsection (1) of this section.

(3) Nothing in this section shall be construed as affecting any provision of law of general application—

(*a*) for the imposition or enforcement of any tax, rate or due; or

(*b*) for the imposition or enforcement of any penalty or forfeiture for breach of the law, whether under civil process or after conviction of a criminal offence; or

(*c*) relating to leases, tenancies, mortgages, charges, bills of sale, chattels transfers or any other rights or obligations arising out of contracts; or

(*d*) relating to the vesting or administration of the property of persons adjudged or otherwise declared bankrupt, of persons or unsound mind, of deceased persons, or of any body, corporate or unincorporate, that is in the course of being wound up; or

(*e*) relating to the execution of judgments or orders of courts; or

(*f*) providing for the taking of possession of property which is in a dangerous state or is injurious to health; or

(*g*) relating to enemy property; or

(*h*) relating to trusts or trustees; or

(*i*) relating to the limitation of actions; or

(*j*) relating to the temporary taking of possession of property for the purposes of any examination, investigation, trial or inquiry; or

(*k*) providing for the carrying out of work on land for the purpose of soil conservation, or for the purpose of agricultural development or improvement where the owner or occupier of the land has, on being required to carry out such development or improvement, refused or failed, without reasonable excuse, to carry out the same.

(4) Nothing in this section shall be construed as affecting any provision of law for the compulsory taking possession in the public interest of any property of, or the compulsory acquisition in the public interest of any right or interest in property of, any body corporate that is established directly by any law in force in Kenya and is financed in whole or in part out of public funds.

Equality of economic opportunity.

11.—(1) Every person shall be entitled to carry on any trade, business, profession or occupation.

(2) Nothing in the last foregoing subsection shall invalidate any law that is reasonably justifiable in a democratic society imposing restrictions upon the carrying on of any trade, business, profession or occupation in the interest of defence, public safety, public order, public morality, or public health or otherwise in the public interest.

(3) A person shall not, by reason only that he is of a particular race, tribe, community, place of origin, religion or political opinion—

(*a*) be subjected either expressly by, or in the practical application of, any law or any executive or administrative action of the Government of Kenya to disabilities, restrictions or disadvantages with respect to taxation, the use or enjoyment of his property, employment or the carrying on of any trade, business, profession or occupation to which persons of other races, tribes, communities, places of origin, religions or political opinions are not made equally subject; or

(*b*) be accorded either expressly by, or in the practical application of, any law or any such executive or administrative action any privilege or advantage with respect to any of the matters aforesaid that is not accorded equally to persons of other races, tribes, communities, places of origin, religions or political opinions.

(4) Nothing in the last foregoing subsection shall invalidate any law or prevent any executive or administrative action by reason only that—

(*a*) it subjects to disabilities, restrictions or disadvantages any person who, under any law in force in Kenya with respect to immigration,

has been permitted to enter, and is entitled to remain in Kenya for temporary purposes only or for not more than four years; or

(*b*) it imposes any disability, restriction or disadvantage, or accords any privilege or advantage that, having regard to its nature and to special circumstances pertaining to the persons to whom it applies, is reasonably justifiable in a democratic society.

(5) Nothing in this section shall invalidate any law or prevent any executive or administrative action that imposes disabilities or restrictions on persons holding office under the Crown or in the service of a body corporate established directly by any law in force in Kenya or members of the armed forces of the Crown or members of a police force or prescribes or imposes qualifications or disqualifications for appointment to any such office or as a member of any such force.

(6) The provisions of subsections (3), (4) and (5) of this section shall be without prejudice to Part VI of this Order.

Interpretation.

12. In this Schedule, unless it is otherwise expressly provided or required by the context—

"African court" means a court established by or under the African Courts Ordinance, 1951(a);

"court" means any court of law having jurisdiction in Kenya (other than a court-martial) and shall be construed as if it includes Her Majesty in Council:

Provided that, in relation to a member of the armed forces of the Crown, it also includes a court-martial;

"law" includes an unwritten rule of law;

"member of the armed forces of the Crown" includes any person who is subject to naval, military or air-force law;

"member of a police force" includes any person who is subject to any law relating to the discipline of a police force.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order amends the Kenya (Constitution) Order in Council, 1958, in order to establish a new Legislative Council for Kenya and by inserting provisions with respect to fundamental human rights. It also amends the Order of 1958 with respect to the composition of the Council of Ministers and makes certain minor or consequential amendments.

(a) Kenya Ordinance No. 65/1951.