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Kenya
Constitution

**CHAPTER V
PROTECTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS OF THE
INDIVIDUAL.**

Fundamental rights and
freedoms of the individual

70 —Whereas every person in Kenya is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin or residence or other local connection, political opinions, color, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-

- (a) life, liberty, security of the person and the protection of the law; (b) freedom of conscience, of expression and of assembly and association; and
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life

71 —(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of criminal offence under the law of Kenya of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in those cases hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such an extent as is reasonably justifiable in the circumstances of the case-

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (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,

or if he dies as the result of a lawful act of war.

Protection of right to
personal liberty

20 of 1987

4 of 1988 s. 5

72 —(1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases-

(a) in execution of the sentence or order of a court, whether established for Kenya or some other country, in respect of a criminal offence of which he has been convicted; (b) in execution of the order of the High Court or the Court of Appeal punishing him for contempt of that court or of another court or tribunal; (c) in execution of the order of a court made to secure the fulfillment of an obligation imposed on him by law; (d) for the purpose of bringing him before a court in execution of the order of a court; (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Kenya; (f) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare; (g) for the purpose of preventing the spread of an infectious or contagious disease; (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; (i) for the purpose of preventing the unlawful entry of that person into Kenya, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Kenya or for the purpose of restricting that person while he is being conveyed through Kenya in the course of his extradition or removal as a convicted prisoner from one country to another; or (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Kenya or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably

justifiable for restraining that person during a visit that he is permitted to make to a part of Kenya in which, in consequence of the order, his presence would otherwise be unlawful.

(2) A person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) A person who is arrested or detained-

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty-four hours of his arrest or from the commencement of his detention, or within fourteen days of his arrest or detention where he is arrested or detained upon reasonable suspicion of his having committed or about to commit an offence punishable by death, the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.

(4) Where a person is brought before a court in execution of the order of a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If a person arrested or detained as mentioned in subsection (3) (b) is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall, unless he is charged with an offence punishable by death, be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) A person who is unlawfully arrested or detained by another person shall be entitled to compensation therefor from that other person.

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

(a) labour required in consequence of the sentence or order of a court; (b) labour required of a person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained; (c) labour required of a member of a disciplined force in pursuance of his duties as such, or, in the case of a person who has conscientious objections to service as a member of an armed force, labour that that person is required by law to perform in place of such service; (d) labour required during a period when Kenya is at war or an order under section 85 is in force or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of the labour is reasonably justifiable, in the circumstances of a situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or (e) labour reasonably required as part of reasonable and normal communal or other civic obligations.

Protection from inhuman treatment

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

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorized the infliction of any description of punishment that was lawful in Kenya on 11th December, 1963.

Protection from deprivation of property

13 of 1977 s. 3

75 —(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied-

(a) the taking of 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 or utilization of property so as to promote the public benefit; and (b) the necessity therefor is such as to afford reasonable justification for the causing of hardship that may result to any person having an interest in or right over the property; and (c) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

(2) Every person having an interest or right in or over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for-

(a) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled; and (b) the purpose of obtaining prompt payment of that compensation:

Provided that if Parliament so provides in relation to a matter referred to in paragraph (a) the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the right or interest in the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

(3) The Chief Justice may make rules with respect to the practice and procedure of the High Court or any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection (2) or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the High Court or applications to the other tribunal or authority may be brought).

(4) and (5) (Deleted by 13 of 1977, s. 3.)

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or (2)-

(a) to the extent that the law in question makes provision for the taking of possession of property-

(i) in satisfaction of any tax, duty, rate, cess or other impost;

(ii) by way of penalty for breach of the law, whether

under civil process or after conviction of criminal offence under the law of Kenya;

(iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

(vi) in consequence of any law with respect to the limitation of actions; or

(vii) for so long only as may be necessary for the purposes of an examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to the development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out).

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(b) to the extent that the law in question makes provision for the taking of possession or acquisition of-

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(7) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the Act in question makes provision for the compulsory taking possession of property or the compulsory acquisition of any interest in or right over property where that property, interest or right is vested in a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided by Parliament.

Protection against arbitrary search or entry

76 —(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision--

(a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilization of mineral resources, or the development or utilization of any other property in such a manner as to promote the public benefit;

(b) that is reasonably required for the purpose of promoting the rights or freedoms of other persons;

(c) that authorizes an officer or agent of the Government of Kenya, or of a local government authority, or of a body corporate established by law for public purposes, to enter on the premises of a person in order to inspect those premises or anything thereon for the purpose of a tax, rate or due or in order to carry out work connected with property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or

(d) that authorizes, for the purpose of enforcing the judgment or order of a court in civil proceedings, the entry upon premises by order of a court,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Provisions to secure protection of law

77 —(1) If a person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence-

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence with which he is charged;

(c) shall be given adequate time and facilities for the preparation of his defence;

(d) shall be pertained to defend himself before the court in person or by a legal representative of his own choice;

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for a criminal offence, the accused person or a person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of an act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a 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 of that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be

compelled to give evidence at the trial.

(8) No person shall be convicted of a criminal offence unless that offence is defined, and the penalty therefor is prescribed, in a written law:

Provided that nothing in this subsection shall prevent a court from punishing a person for contempt notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

(9) A court or other adjudicating authority prescribed by law for the determination of the existence or extent of a civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by a person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in subsection (10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority-

(a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(b) may by law be empowered or required to do in the interests of defence, public safety or public order.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of-

(a) subsection (2) (a) to the extent that the law in question imposes upon a person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2) (e) to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

or

(c) subsection (5) to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding a trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that a court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, subsection (1), paragraphs (d) and (e) of subsection (2) and subsection (3) shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in lawful detention.

(14) Nothing contained in subsection (2) (d) shall be construed as entitling a person to legal representation at public expense.

(15) In this section "criminal offence" means a criminal offence under the law of Kenya.

Protection of freedom of
conscience

78 —(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section that freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage a place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at a place of education which it wholly maintains or in the course of any education which it otherwise provides.

(3) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending a place of education shall be required to receive religious instruction or to take part in or attend a religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(4) No person shall be compelled to take an oath which is contrary to his religion or belief or to take an oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in

contravention of this section to the extent that the law in question makes provision which is reasonably required--

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

(b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice a religion without the unsolicited intervention of members of another religion;

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

Protection of freedom of expression

79 —(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision--

(a) that it is reasonably required in the interests of defence, public safety, public order, public morality or public health--

(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

(c) that imposes restrictions upon public or upon persons in the service of a local government authority, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of assembly and association

80 —(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble

freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision--

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(c) that imposes restrictions upon public officers, members of a disciplined force, or persons in the service of a local government authority; or

(d) for the registration of trade unions and associations of trade unions in a register established by or under any law, and for imposing reasonable conditions relating to the requirements for entry on such a register (including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration, or of members necessary to constitute an association of trade unions qualified for registration, and conditions whereby registration may be refused on the grounds that another trade union already registered or association of trade unions already registered, as the case may be, is sufficiently representative of the whole of a substantial proportion of the interests in respect of which registration of a trade union or association of trade unions is sought),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of movement

81 —(1) No citizen of Kenya shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Kenya, the right to reside in any part of Kenya, the right to enter Kenya, the right to leave Kenya and immunity from expulsion from Kenya.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision--

(a) for the imposition of restrictions on the movement or

residence within Kenya of any person or on any person's right to leave Kenya that are reasonably required in the interests of defence, public safety or public order;

(b) for the imposition of restrictions on the movement or residence within Kenya or on the right to leave Kenya of persons generally or any class of persons that are reasonably required in the interests of defence, public safety, public order, public morality, public health or the protection or control of nomadic peoples and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(c) for the imposition of restrictions, by order of a court, on the movement or residence within Kenya of any person's right to leave Kenya either in consequence of his having been found guilty of a criminal offence under the law of Kenya or for the purpose of ensuring that he appears before a court at a later date for trial at such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Kenya;

(d) for the imposition of restrictions on the acquisition or use by any person of land or other property in Kenya;

(e) for the imposition of restrictions upon the movement or residence within Kenya or on the right to leave Kenya of public officers or of members of a disciplined force;

(f) for the removal of a person from Kenya to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence at a court in respect of a criminal offence under the law of Kenya of which he has been convicted; or

(g) for the imposition of restrictions on the right of any person to leave Kenya that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.

(4) If a person whose freedom of movement has been restricted by virtue of a provision referred to in subsection (3) (a) so requests at any time during the period of that restriction not earlier than three months after the order was made or three months after he last made the request, as the case may be, his case shall be reviewed by independent and impartial tribunal presided over by a person appointed by the President from among persons qualified to be appointed as a judge of the High Court.

(5) On a review by a tribunal in pursuance of subsection (4) of the case of a person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

(6) Until it is otherwise provided by Act of Parliament nothing in this section shall affect the operation of the Outlying Districts Act* or the Special Districts (Administration) Act* or any law amending or replacing either of those Acts: Provided that no law amending or replacing either of those Acts shall impose or authorize the imposition of, restrictions on the rights guaranteed by this section greater than the restrictions on those rights in force under that Act on 31st May, 1963, and no such restriction shall be imposed under either of those Acts, or by or under any such law, in or in respect of any area other than an area in or in respect of which a restriction was in force under that Act on 31st May, 1963.

*Note these Actts were repealed by 10 of 1997

Protection from
discrimination on grounds
of race etc.

82 —(1) Subject to subsections (4), (5) and (8), no law shall make any provision that is discriminatory either of itself or in its effect.

9 of 1997 s. 9

(2) Subject to subsections (6), (8) and (9), no person shall be treated in a discriminatory manner by a person acting by virtue of any written law or in the performance of the functions of a public office or a public authority.

(3) In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) shall not apply to any law so far as that law makes provision-

(a) with respect to persons who are not citizens of Kenya;

(b) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

(c) for the application in the case of members of a particular race or tribe of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or

(d) whereby persons of a description mentioned in subsection (3) may be subjected to a disability or restriction or may be accorded a privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, tribe, place of origin or residence or other local connection, political opinion, colour or creed) to be required of a person who is appointed to an office in the public service, in a disciplined force, in the service of a local government authority or in a body corporate established by any law for public purposes.

(6) Subsection (2) shall not apply to--

(a) anything which is expressly or by necessary implication authorized to be done by a provision of law referred to in subsection (4); or

(b) the giving or withholding of consent to a transaction in agricultural land by any body or authority established by or under any law for the purpose of controlling transactions in agricultural land.

(7) Subject to subsection (8), no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating houses, beer halls or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

(8) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of a description mentioned in, subsection (3) may be subjected to a restriction on the rights and freedoms guaranteed by sections 76, 78, 79, 80 and 81, being a restriction authorized by section 76 (2), 78 (5), 79 (2), 80 (2), or paragraph (a) or (b) of section 81 (3).

(9) Nothing in subsection (2) shall affect any discretion

relating to the institution, conduct or discontinuance of civil or criminal proceedings in a court that is vested in a person by or under this Constitution or any other law.

83 —(1) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 72, 76, 79, 80, 81 or 82 when Kenya is at war, and nothing contained in or done under the authority of any provision of Part III of the Preservation of Public Security Act shall be held to be inconsistent with or in contravention of those sections of this Constitution when and in so far as the provision is in operation by virtue of an order made under section 85.

(2) Where a person is detained by virtue of a law referred to in subsection (1) the following provisions shall apply-

(a) he shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Kenya Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorized;

(c) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the President from among persons qualified to be appointed as a judge of the High Court;

(d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and

(e) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(3) On a review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to

act in accordance with any such recommendations.

(4) Nothing contained in subsection (2) (d) or (e) shall be construed as entitling a person to legal representation at public expense.

Enforcement of protective provisions

6 of 1992 s. 10

9 of 1997 s. 10

84 —(1) Subject to subsection (6), if a person alleges that any of the provisions of sections 70 to 83 (inclusive) has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if another person alleges a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction--

(a) to hear and determine an application made by a person in pursuance of subsection (1);

(b) to determine any question arising in the case of a person which is referred to it in pursuance of subsection (3),

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 enforcement of any of the provisions of sections 70 to 83 (inclusive).

(3) If in proceedings in a subordinate court a question arises as to the contravention of any of the provisions of sections 70 to 83 (inclusive), the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous and vexatious.

(4) Where a question is referred to the High Court in pursuance of subsection (3), the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision.

(5) Parliament-

(a) may confer upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that Court, more effectively, to exercise the jurisdiction conferred upon it by this section; and

(b) shall make provision-

(i) for the rendering of financial assistance to any indigent citizen of Kenya where his right under this Chapter has been infringed or with a view to enabling him engage the services of an advocate to prosecute his

claim; and

(ii) for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

(6) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the High Court).

(7) A person aggrieved by the determination of the Court under this section may appeal to the Court of Appeal as of right.

Preservation of Public Security

Cap. 57

85 —(1) Subject to this section, the President may at any time, by order published in the Kenya Gazette, bring into operation, generally or in any part of Kenya, Part III of the Preservation of Public Security Act or any of the provisions of that Part of that Act.

(2) An order made under this section shall cease to have effect on the expiration of the period of twenty-eight days commencing with the day on which the order is made, unless before the expiration of that period it has been approved by a resolution of the National Assembly, but in reckoning any period of twenty-eight days for the purposes of this subsection no account shall be taken of any time during which Parliament is dissolved.

(3) An order made under this section may at any time be revoked by the President by an order published in the Kenya Gazette.

(4) An order made under this section and approved by a resolution of the National Assembly in accordance with subsection (2) may at any time be revoked by a resolution of the Assembly supported by a majority of all the members of the Assembly (excluding the ex officio members).

(5) Whenever the election of the President results in a change in the holder of that office an order made under this section and in force immediately before the day on which the President assumes office shall cease to have effect on the expiration of seven days commencing with that day.

(6) The expiry or revocation of an order made under this section shall be without prejudice to the validity of anything previously done under the order or to the making of a new order.

Interpretation and savings

86 —(1) In this Chapter, except where the context otherwise requires-

"contravention", in relation to a requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any court having jurisdiction in Kenya other than a court established by a disciplinary law, but includes, in sections 71 and 73, a court established by a disciplinary law;

"disciplinary law" means a law regulating the discipline of a disciplined force;

"disciplined force" means-

- (a) any of the armed forces;
- (b) a police force;
- (c) a prison service; or
- (d) the National Youth Service;

"legal representative" means a person entitled to practice as an advocate in Kenya; and

"member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In relation to a person who is a member of a disciplined force raised under any law in force in Kenya, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 71, 73 and 74.

(3) In relation to a person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Kenya, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.