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THE REPUBLIC OF KENYA

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ACTS, 1985

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CONTENTS

Acts—

	PAGE
The Universities Act, 1985	143
The Constitution of Kenya (Amendment) Act, 1985	154

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THE UNIVERSITIES ACT, 1985

No. 5 of 1985

Date of Assent: 11th July, 1985

Date of Commencement: By Notice

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

- 1—Short title and commencement.
- 2—Interpretation.

PART II—THE COMMISSION FOR HIGHER EDUCATION

- 3—Establishment of the Commission for Higher Education.
- 4—Constitution of the Commission.
- 5—Secretary to the Commission.
- 6—Functions of the Commission.
- 7—Procedure of the Commission.
- 8—Committees.

PART III—PROVISIONS RELATING TO PUBLIC UNIVERSITIES

- 9—Powers of the Minister in relation to public universities.

PART IV—ESTABLISHMENT OF PRIVATE UNIVERSITIES

- 10—Application of Part.
- 11—Establishment of private universities.
- 12—Granting of charters.
- 13—Matters to be specified in a charter.
- 14—Publication of charter.
- 15—Protection of name.
- 16—Variation and revocation of charter.

PART V—MISCELLANEOUS PROVISIONS

- 17—Financial year.
- 18—Annual estimates.
- 19—Accounts and audit.
- 20—Appointment of auditor.
- 21—Rules.

An Act of Parliament to make better provisions for the advancement of university education in Kenya and for connected purposes

ENACTED by the Parliament of Kenya as follows:—

PART I—PRELIMINARY

Short title
and
commencement.

1. This Act may be cited as the Universities Act, 1985 and shall come into operation on such day as the Minister may, by notice in the Gazette, appoint.

Interpretation.

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

“charter” means a charter granted by the President under this Act;

“Commission” means the Commission for Higher Education established by section 3;

“course of study” means the structure for degrees or other academic qualifications and the subjects of study in the course;

“course regulations” means any regulations or statutes of a university concerning the course of study for a degree or other academic qualification of that university;

Cap. 210.
No 8 of 1984.

“university” means the University of Nairobi established by the University of Nairobi Act, Moi University established by the Moi University Act, 1984 and any other university, whether public or private, established after the commencement of this Act;

“public university” means a university maintained or assisted out of public funds;

“private university” means a university established with funds other than public funds.

PART II—THE COMMISSION FOR HIGHER EDUCATION

Establishment
of the
Commission
for Higher
Education.

3. (1) There is hereby established a Commission, to be known as the Commission for Higher Education, which shall be a body corporate with perpetual succession and a common seal.

(2) The Commission shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money;
- (d) entering into contracts; and
- (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

4. (1) The Commission shall consist of—

Constitution
of the
Commission.

- (a) a chairman and vice-chairman appointed by the President;
- (b) not more than fifteen and not less than eleven members appointed by the President by virtue of their experience in university education and research;
- (c) the Permanent Secretary to the Ministry for the time being responsible for university education;
- (d) the Permanent Secretary to the Ministry for the time being responsible for finance;
- (e) four persons appointed by the Minister to represent other areas of university education;
- (f) the Chief Secretary;
- (g) the Director of Personnel Management;
- (h) such other persons, not more than three in number, as the Commission may co-opt.

(2) The members of the Commission, other than *ex-officio* members, shall hold office for a period of five years and shall then retire but shall be eligible for re-appointment.

(3) A member of the Commission other than an *ex-officio* member or a member appointed under section 4 (1) (e), may resign his appointment by a letter in writing addressed to the President.

(4) A member of the Commission appointed under section 4 (1) (e) may resign his appointment by a letter in writing addressed to the Minister.

(5) A member of the Commission co-opted under section 4 (h) may resign his appointment by a letter in writing addressed to the Commission.

Secretary to
the Commission.

5. (1) There shall be a secretary to the Commission who shall be appointed by the Minister and who shall be the chief executive of the Commission responsible for the management of the Commission's day-to-day business.

(2) The secretary shall be an *ex-officio* member of the Commission but shall have no voting rights.

Functions of
the Commission.

6. The functions of the Commission shall be—

- (a) to promote the objectives of university education, namely the development, processing, storage and dissemination of knowledge for the benefit of mankind;
- (b) to advise the Minister on the establishment of public universities;
- (c) to accredit universities;
- (d) to co-ordinate the long-term planning, staff development, scholarship and physical development of university education;
- (e) to promote national unity and identity in universities;
- (f) to liaise with Government departments and the public and private sectors of the economy in matters relating to overall national manpower development and requirements;
- (g) to co-operate with the Government in the planned development of university education;
- (h) to examine and approve proposals for courses of study and course regulations submitted to it by private universities;
- (i) to receive and consider applications from persons seeking to establish private universities in Kenya and make recommendations thereon to the Minister;

- (j) to make regulations in respect of admission of persons seeking to enrol in universities and to provide a central admissions service to public universities;
- (k) to ensure the maintenance of standards for courses of study and examinations in the universities;
- (l) to advise and make recommendations to the Government on matters relating to university education and research requiring the consideration of the Government;
- (m) to collect, examine and publish information relating to university education and research;
- (n) to plan and provide for the financial needs of university education and research, including the recurrent and non-recurrent needs of universities;
- (o) to determine and recommend to the Minister the allocation of grants of money for appropriation by Parliament to meet the needs of university education and research and review expenditure by universities of moneys appropriated by Parliament;
- (p) to advise the Government on the standardization, recognition and equation of degrees, diplomas and certificates conferred or awarded by foreign and private universities;
- (q) to co-ordinate education and training courses offered in post secondary school institutions for the purposes of higher education and university admission;
- (r) to arrange for regular visitations and inspection of private universities;
- (s) to perform and exercise all other functions and powers conferred on it by this Act.

7. (1) The chairman shall preside at all meetings of the Commission unless he is absent from a particular meeting in which case the vice-chairman shall preside.

(2) In the event of the chairman and the vice-chairman being absent from a meeting of the Commission the members present shall elect one of the members present at that particular meeting to preside.

Procedure of
the Commission.

(3) The Commission shall meet at least four times in each year, but the chairman may, and upon application in writing by five members shall, convene a special meeting of the Commission at any time.

(4) The quorum necessary for the transaction of the business of the Commission shall be twelve.

(5) All questions at a meeting of the Commission shall be determined by a majority of the votes of the members present and voting.

(6) The chairman shall have, in case of equality of votes, a casting vote in addition to his deliberative vote.

(7) The Commission shall cause minutes of all proceedings of meetings of the Commission to be entered in books kept for that purpose.

(8) Subject to this Act, the Commission shall regulate its own proceedings.

Committees.

8. (1) The Commission shall, by resolution, appoint a Central Universities Admissions Committee and a Universities Grants Committee.

(2) The Universities Grants Committee shall consist of such members as may be appointed by the Commission.

(3) The Central Universities Admissions Committee shall consist of—

(a) the chairman of the Commission;

(b) the vice-chancellors of the public universities;

(c) the Chief Secretary;

(d) the Permanent Secretary to the Ministry for the time being responsible for university education;

(e) the Director of Personnel Management;

(f) seven other members appointed by the Commission;

(4) The Commission shall delegate to the Universities Grants Committee such of its functions as it may determine.

(5) The Central Universities Admissions Committee shall advise the Council on the following matters—

(a) the co-ordination of admissions to public universities on a national basis;

(b) the establishment and maintenance by such means as it considers appropriate of equivalent educational standards as a prerequisite for university admission;

(c) prescribing the minimum requirements upon compliance with which a person may become academically qualified for admission to a university.

(6) The Commission may, by resolution, appoint such other committees as it may think fit.

(7) The Commission shall prescribe the powers, duties and procedures of committees appointed by it under this section and the terms of office of persons appointed to those committees.

PART III—PROVISIONS RELATING TO PUBLIC UNIVERSITIES

9. (1) The Minister shall, on the advice of the Commission, promote university education for the benefit of the people of Kenya through the establishment and progressive development of public universities.

Powers of the Minister in relation to public universities.

(2) For the purpose of exercising his powers under subsection (1), the Minister may from time to time formulate a development plan for the expansion of public universities consistent with the national plan for the economic and social development of Kenya.

PART IV—ESTABLISHMENT OF PRIVATE UNIVERSITIES

10. This Part shall apply to private universities.

Application of Part.

11. (1) Every private university intended to be set up in Kenya shall be established by a charter granted by the President in accordance with the provisions of this Act.

Establishment of private universities.

(2) Any person wishing to establish a private university in Kenya shall make application in writing to the Commission in the prescribed manner, for the grant of a charter setting up the private university.

(3) An application for the grant of a charter shall be accompanied by a draft of the charter containing the matters specified under section 13.

(4) The Commission shall consider every application made under subsection (1) and submit it to the Minister together with its recommendations or observations and the Minister shall submit the application to the President together with any recommendations or observations which he may wish to make thereon.

Granting of charters.

12. If, after considering the documents submitted to him under section 11 (4), the President is of the opinion that the grant of a charter to the institution concerned may be of benefit to the future development of university education in Kenya he may grant a charter either in form of the draft submitted to him or in such other form as he may consider appropriate.

Matters to be specified in a charter.

13. In addition to any other matter which the President may consider necessary, a charter shall contain the following matters—

- (a) the name of the private university;
- (b) the aims and objectives for which the private university is to be established;
- (c) the membership and government of the private university;
- (d) the extent to which, and the form in which, regulations may be made by such body of the private university as may be specified for the better functioning of the institution; and
- (e) the financial control and expenditure and the administrative control of other property of the university.

Publication of charter.

14. The Minister may, by notice in the Gazette, publish the charter and with effect from the date of publication of the charter the institution established by the charter shall be a body corporate by the name cited in the charter with perpetual succession and a common seal, and shall, in that name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

- (c) borrowing and lending money;
- (d) entering into contracts; and
- (e) doing or performing all such other things or acts for the proper performance of its functions under the charter which may lawfully be done or performed by a body corporate.

15. (1) Notwithstanding any other written law, no public officer performing functions relating to the registration of companies, business names or trade marks shall accept for registration a name which is identical to, or so similar as to be liable to confuse the public with, the name of a private university to which a charter has been granted under this Act unless the consent of the governing body of the university has been obtained.

Protection
of name.

(2) A person who, except with the written consent of the governing body of the university concerned, uses the name of the university to which a charter has been granted under this Act in furtherance of, or as, or in connection with, an advertisement for, any trade, business, calling or profession, shall be guilty of an offence and liable to a fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

16. (1) The President may, at any time, vary the provisions of a charter if he is of the opinion that the variation is in the interests of university education in Kenya generally or may assist the institution concerned to carry out its functions in a more efficient manner.

Variation and
revocation
of charter.

(2) The President may, at any time, revoke a charter granted to a university if he is of the opinion that the university concerned is not carrying out its functions in a proper manner, or is in breach of its charter, or that the revocation is in the interests of university education generally.

(3) Where a charter is revoked under subsection (2) the Minister shall forthwith cause a notice of the revocation to be published in the Gazette, and the private university concerned shall cease to be a university at the expiry of one year from the date of publication of the notice: except so however that the revocation of a charter shall not affect the validity of the degrees previously granted by the university.

PART V—MISCELLANEOUS PROVISIONS

Financial
year.

7.1 17. (1) The financial year of the Commission shall be the period of twelve months commencing on such day in each year as the Government may determine.

7.2 (2) In the event of any change in the financial year, and for the purposes of the transition from the old financial year to the new financial year consequent upon that change, the transitional period, whether more or less than twelve months, shall be deemed for all the purposes of this Act to be a financial year.

Annual
estimates.

7.3 18. (1) The Commission shall submit to the Minister an estimate of its expenditure and income during the succeeding financial year six months before the commencement of the financial year.

7.4 (2) The Minister shall communicate to the Commission his approval of the annual estimates at least one calendar month before the commencement of the financial year.

7.5 (3) The annual estimates shall make provisions for all the estimates of expenditure of the Commission for the financial year and shall provide for—

7.5.1 (a) the cost of administration of the Commission including payment of salaries, allowances, pensions, gratuities and other charges whatsoever payable to the staff and members of the Commission;

7.5.2 (b) the payment of reimbursement to the members of the Commission;

7.5.3 (c) the maintenance of any property vested in the Commission.

7.6 (4) No expenditure shall be incurred for the purposes of the Commission except in accordance with the annual estimates approved under subsection (2).

Accounts
and audit.

7.7 19. (1) The Commission shall cause to be kept all proper books and records of accounts for the income and expenditure and assets of the Commission.

7.8 (2) Within three months from the end of each financial year, the secretary of the Commission shall submit to the

Controller and Auditor-General the accounts of the Council together with—

7.8.1 (a) a statement of income and expenditure during the year; and

7.8.2 (b) a statement of the assets and liabilities of the Commission existing at the end of the year.

7.9 20. (1) The accounts of the Commission shall be audited by the Controller and Auditor-General.

Appointment
of auditors.

7.10 (2) The Controller and Auditor-General shall present to the Commission, within a period of six months after the end of each financial year, a report of the examinations and audit of the accounts and the report shall also be forwarded to the Minister.

7.11 (3) The Minister shall lay the Commission's report and the Controller and Auditor-General's report before the National Assembly within thirty days after the receipt of the reports by him, or if the National Assembly is not then sitting, within fourteen days after the commencement of the next sitting.

21. The Minister may, after consultation with the Commission, make rules generally for better carrying into effect of the provisions of this Act and in particular providing for the following purposes—

Rules.

(a) for the recruitment and terms and conditions of service, pension and other benefits for the employees of the Commission;

(b) enabling the Commission to make provisions for the boarding and lodging facilities for students in public universities;

(c) prescribing anything which may be prescribed under this Act.

**THE CONSTITUTION OF KENYA (AMENDMENT)
ACT, 1985**

No. 6 of 1985

Date of Assent: 11th July, 1985

Date of Commencement: 19th July, 1985

An Act of Parliament to amend the Constitution

ENACTED by the Parliament of Kenya as follows:—

Short
title.

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 1985.

Replacement
of section
89.

2. Section 89 of the Constitution is repealed and replaced by—

Persons
born in
Kenya after
11th
December,
1963.

89. Every person born in Kenya after 11th December, 1963 shall become a citizen of Kenya if at the date of his birth one of his parents is a citizen of Kenya; except that a person shall not become a citizen of Kenya by virtue of this section if at the date of his birth—

(a) his father possesses immunity from suit and legal process as is accorded to the envoy of a foreign state accredited to Kenya; or

(b) his father is a citizen of a country with which Kenya is at war and the birth occurs in a place then under occupation by that country.