DOWNLOAD PDF KENYAN LEGAL SYSTEM

Chapter 1 : Structure of The Court System in Kenya - ZaKenya

Kenya Law: How Does Kenya's Legal System Work? How does the Kenya law system work? The Kenyan legal system consists of a mix of Kenya statutory (written) law and Kenyan and English common law, mixed with elements of tribal and Islamic law. Kenya's basic legal system and body of law is very similar to that found in western or European countries.

Discuss any 3 legal systems for the world, compare and contrast them with the legal system of Kenya. Introduction The study of legal philosophy is called Jurisprudence. Philosophers have debated the essential nature of law for centuries, yet there is no single commonly accepted definition. Before comparing and contrasting them to the Kenyan Legal System I will have to explain the following legal systems. Common Law Common law is generally uncodified. This means that there is no comprehensive compilation of legal rules and statutes. While common law does rely on some scattered statutes, which are legislative decisions, it is largely based on precedent, meaning the judicial decisions that have already been made in similar cases. These precedents are maintained over time through the records of the courts as well as historically documented in collections of case law known as yearbooks and reports. The precedents to be applied in the decision of each new case are determined by the presiding judge. As a result, judges have an enormous role in shaping the laws. Common law functions as an adversarial system, a contest between two opposing parties before a judge who moderates. A jury of ordinary people without legal training decides on the facts of the case. Religious Law For many religions, religious law is thought to be a higher body of understanding in which reality and knowledge is defined by God and is applicable to all human beings. At the end of the day they are many religions and all try to establish their laws as they best understand them. A further interesting area of religious law is that of the code of morality and ethics which is largely avoided by traditional law. Religious law is thought to include this type of code of conduct and is governed ultimately by the relevant laws. Religious law is derived from two primary sources: Customary Law Customary law refers to the laws, practices and customs of indigenous and local communities which are an intrinsic and central part of the way of life of these communities. Customary laws are embedded in the culture and values of a community or society; they govern acceptable standards of behavior and are actively enforced by members of the community. As these laws are peculiar to the specific cultures in which they have evolved, the global landscape of customary laws and practices is rich and highly diverse. One of the most important doctrines of Common Law is the doctrine or precedent. A precedent is a judgment or decision of a court, normally recorded in a law report, used as an authority for reaching the same decision in a subsequent case. The substance of common law got incorporated in the Kenyan law through the Judicature Act The Jurisdiction of the Court of Appeal, High Court and all other Subordinate courts shall be exercised in conforming to common law. The Supreme Court normally follows its own decisions but it can overrule them so that they are set aside and cease to have force of precedent. A lower court can only choose to decline to follow or be bound by the decision of a court above it where the lower court finds that the circumstances of the case before it are peculiar and different to those in the previous case. This is called distinguishing a case. The processes of distinguishing and overruling previous cases act as checks against a rigid application of the doctrine of precedent prevents bad decisions from acquiring the force of law. People are able to order their affairs and come to settlements with a certain amount of confidence when the outcome of litigation can be predicted by referring to previous decisions of the court. Generally, a judge is bound to follow the law enunciated in previous case unless he or she can overrule or distinguish it. The courts can lay down new principles quicker, or extend old principles, to meet novel circumstances. This provision constitutes Muslim Law as a source of Kenyan Law for specified purposes. The provision constitutes Hindu customs as a source of Kenyan Law for the specified purposes. Customary law as used in the Kenyan Legal System Customary law is generally understood to be rules of law derived from the customs and usages of different communities. A custom is a habit, norm or usages by a given community that has lasted over time and has its roots in wisdom, need and character of a particular community. Before the arrival of the British and other European colonialists, indigenous legal institutions

were to be found everywhere. These institutions were customary in origin. It is erroneous to assume that indigenous customary laws of the various African societies were basically uniform. There were points of similarities such as the institution of chiefs or the elders. There were enormous varieties both in structure and content between the legal systems of the various communities, which were in different stages of economic and political development. One of the major points of similarities between all these customary laws was that they were unwritten and there was no written legislation, law reports, legal instruments or written legal process. The main reason why customary law is ranked second to the European law and the separate application was mainly due to its unwritten character. The arrival of the European colonial powers imported a fundamental revolution in Africa legal arrangements, the results of which are with us to this day. Each colonizing power when it had established its rule in a new territory, it first introduced its own legal system or a variant of it as the fundamental law or a general law of its territory. Secondly, it tolerated traditional African law and judicial institutions so long as these customary traditions did not interfere with colonial administration of the states and where they did so interfere, they were branded repugnant to justice and morality of the civilized people. The statutory application of customary law is provided by two statues: This Section 3 2 has been referred to as Repugnancy clause. This essay has shown how the Kenyan legal system has incorporated the worlds legal systems and has used them. Discuss the concept of Legal Aid in Kenya Legal aid can be summarized as the provision of essential legal assistance to the less privileged with a view of promoting equity and the rule of law in a country. Kenya is currently undergoing a transition; socially, economically and politically. And in the effort to achieve this, the essence of the rule of law must be embraced. Kenya is one of the few African countries to have a provision for Legal Aid in its constitution as it stipulates in article 48 that the constitution of Kenya recognizes that there should be justice to all, by providing that the State shall ensure access to justice for all persons and, that if any fee is required it shall be reasonable and shall not impede justice. As the discussion on the topic of Legal aid schemes progress in this essay, it will be evident that this sort of legal aid mentioned above are not the actualized legal aid schemes present in Kenya. The fact that "providing legal services to the underprivileged" is frequently repeated in the different definitions of Legal aid does not mean that this part of the definition is put into action. Being that Kenya is an African country, its budget for Legal aid schemes is still quite limited and can only afford to help a certain group of people or help in only specific cases. This will be evaluated later on in this essay as the State funded programs are first analyzed to see to what extent they do provide legal aid. Secondly how the Law Society of Kenya help into providing legal awareness and services to underprivileged. The five major roles of justice are to prevent the abuse of power and liberty, to fairly decide disputes and to fairly adapt to change. It is the duty of every state to ensure that every individual enjoys his or her right to justice and one of the best ways to do this is by supplying legal aid services to those who are likely to suffer if is not provided for them. Equality of justice should not rely on the ability of an individual to pay. Many people struggle to understand their legal rights and obligations. From the expensive fees that one is required to pay to hire a legal expert to the complexity that surrounds court procedures, many of the accused persons would rather wish for a quick end to their trials regardless of the consequences of their outcomes. Those accused often feel helpless when faced with legal problems and without adequate help they are unable to resolve these issues. It is for this reason that for the underprivileged, the right to legal aid is one of their most fundamental rights. They are reluctant to access the law for many reasons apart from the traditional social stigmatization which comes with any involvement with the judiciary. Being frequently or permanently exposed to illegality as both predators and victims, they naturally do not seek official contact with legal institutions because of their low education they also cannot comprehend legal language. This experience grounds deep mistrust in the law and an unwillingness or even fear to approach its institutions. This statement proves that if society is to assist the underprivileged to access justice and further advance the policy of equality under the law, then a system of legal aid needs to be put in place. In a democratic society all citizens have a right to access justice and get a fair trial and this is why in Kenya the right to free legal aid for indigents is a constitutional right as seen in Article The provision of legal aids makes a difference for suspects who find themselves in situations where they have been charged of committing a crime. This is because when they find themselves in such situations they are not able to suitably defend

themselves due to the difficulty involved in the legal and judicial processes. Legal aid ensures they get a fair trial and helps them play a fuller role in society. The Kenyan government only provides court appointed legal representation to those individuals who are accused of capital offenses such as murder or treason. These accused are heard by the High Court, and for such situations the Judiciary appoints lawyers, jurist and paralegals. As a result individuals who have not been accused of a capital offense or who want to bring a civil claim must represent themselves, hire a lawyer or hope to receive the help of a local NGO. The establishment of national legal aid scheme is to enable more Kenyans to access justice given the levels of legal services. Ideally, the government should establish a national legal aid scheme to enable more Kenyans to have access to justice. The National Legal Aid and Awareness Program were launched in order to assist economically challenged accused individuals. Currently the government provides minimum legal aid which does not cover all people who cannot afford legal services. In rural parts of Kenya, justice is sought through the use of non-state justice systems such as council of elders, extended family members and religious institutions. The government may request private bars to ask their lawyers to offer pro-bono services or the court may order the bars to provide such services but only to defendants charged with capital offenses. The Law Society of Kenya exists to maintain and promote the rule of law throughout Kenya by ensuring that an independent and efficient legal profession serves the people of Kenya. The members of the Law Society of Kenya offer pro-bono services to the public. The problem with pro-bono services is that it stipulates nowhere how and to what extent such services must be provided. This results in making this non-systematic and thus not all of the people who are in dire need for legal services do get any of it. The lack of organization in law firms and the law society of Kenya culminate into the legal aid not being spread all over the country. In general the rural areas are overlooked by private lawyers and it is mainly urban areas that can actually benefit from their services. The fact that the Law Society of Kenya is also part of NALEAP makes it even harder for a combined organization to happen between the private and public sections of legal aid. Similarly, the guarantees are provided under the UN convention on the Rights of the Child and the UN Declaration of Human Rights in regard to these international instruments the Constitution of Kenya recognizes their importance in trying to achieve universal standards in access to justice. FIDA It was established in FIDA services include offering legal services to women, to create awareness on legal rights and educate women on self-representation. They also advocates for the reform of Laws and policies that discriminate against women. Its aim is committed to bridge the gap between the government and the citizenry, and in particular, the disadvantaged women. Indeed, so justice is going on in our society. There is also too much of moral decay, patriarchal customs and practices that discriminates against women. Apart from receiving only those who visit the legal aid clinics in Nairobi, Mombasa and Kisumu FIDA Kenya has strategically put in place mechanisms to reach out to that indigent woman right at the community level. Legal Aid Through formal justice System: FIDA Kenya takes up the files court cases on behalf of the poor and the needy women. Through the Informal Justice System:

Chapter 2 : Legal Systems Question Papers -

Legal system: mixed legal system of English common law, Islamic law, and customary law; judicial review in a new Supreme Court established pursuant to the new constitution Definition: This entry provides the description of a country's legal system.

ATC also applied other alternative dispute resolution mechanisms that included reconciliation, mediation and arbitration. However, they instituted the Courts Actions as the last resort, because the people since time immemorial were aware of the fact that the Court proceedings were naturally adversarial. Hitherto, there existed two systems â€" one for the African native and another for European settlers. In three major laws were enacted. These Acts have streamlined the administration of justice in Kenya. These three statutes repealed all other legislations other than the provisions of in the Lancaster Conference Constitution, by directing the law that was to be applied by the Courts. Kenyan law system today is therefore significantly based on the Constitution of Kenya and other Acts of Parliament. The Judiciary was such that the Office of the Chief Justice operated as a judicial monarch supported by the Registrar of the High Court. Power and authority were highly centralized. Accountability mechanisms were weak and reporting requirements absent. The Judiciary institution had: The new Constitution The Constitution of Kenya has radically altered ugly State of Judiciary that had been re-designed by the political governing regimes to fail. Now, the Transformation Agenda speared being by Dr. The CJ is assisted by Chief Registrar of the Judiciary who is chief administrator and accounting officer of the Judiciary. The Judiciary plans to set up a Leadership Committee which will act as a management team for the entire Judiciary once the staff recruitment process and vetting of Judges and Magistrates is finalized. The High Court has been restructured into four divisions: Division of Land and Environment â€" To make ruling on issues of sustainable development and equitable distribution of resources. Division of Judicial Review. Division of Commercial and Admiralty â€" To adjudicate commercial disputes and reduce the transaction costs of justice for the private sector. The Judiciary has institutionalized Performance Contracting PC by planning to establish a fully fledged directorate of performance management. RBM is a participatory team based approach designed to achieve defined results by improving programme and management efficiency, effectiveness, accountability and transparency. Performance based management practices will be applicable to both judicial and administrative staff. In order to promote sound management practices, the judiciary has also established Transformation Steering Committee and where all stakeholders in the judicial system are represented. An Ombudsperson was appointed and began to receive and respond to complaints by staff and the public. The curriculum is being drafted and the Director has been appointed. The JTI is to become judicial think tank, an institute of excellence, the nerve centre of robust and rich intellectual exchange, where the interface between the judiciary and contemporary issues in the society will occur. Superior Courts and Subordinate Courts. The important aspects in the Structure of Courts are: The figure illustrates the structure and explains the hierarch of the Courts as it is today in Kenya. The arrows show flow of appeal from one level to the next. The arrows represent flow of appeals in both civil and criminal appeals except criminal appeals from District Magistrate class III which go to Resident Magistrates courts. This structure of the courts is based on the provisions of the Constitution, the Magistrates Court Act Cap. The Supreme Court is properly constituted for purposes of its proceedings when it has a composition of five judges and has exclusive original jurisdiction to hear and determine disputes relating to the elections to the office of President arising under Article and subject to clause 4 and 5 of Article of the Constitution, appellate jurisdiction to hear and determine appeals from the Court of Appeal and any other court or tribunal as prescribed by national legislation. Appeals from the Court of Appeal to the Supreme Court are as a matter of right in any case involving the interpretation or application of this Constitution and in any other case in which the Supreme Court, or the Court of Appeal, certifies that a matter of general public importance is involved, subject to clause 5. The Supreme Court may review a certification by the Court of Appeal and either affirms, vary or overturn it. The Supreme Court may give an advisory opinion at the request of the national government, any State organ, or any county government with respect to any matter concerning county government. All courts, other than the Supreme Court, are bound

by the decisions of the Supreme Court. The Court of Appeal consists of a number of judges, being not fewer than 12 twelve , as may be prescribed by an Act of Parliament and the Court is to be organized and administered in the manner prescribed by an Act of Parliament. The Court comprises of a President of the Court of Appeal who is elected by the judges of the Court of Appeal from among themselves. The Court of Appeal Judges retire at the age of 74 years. The Court of Appeal is a superior court of record therefore it sets precedents. It has limited original jurisdiction. It was created to hear appeals from the High court. The only moment the Court Appeal can have original jurisdiction is in punishment for contempt of court, and when stating execution of orders of the High Court. The practice and procedure of the court of appeal are regulated by the rules of court made by the Rules Committee constituted under the Appellate Jurisdiction Act Cap. The Act provides that an uneven number of at least three judges shall sit for the determination of any matter by the court. The decision of the court shall be according to the opinion of a majority of the judges who sat for the purposes of determining that matter. The court has powers to: The High Court is established under Article and it consists of a number of judges to be prescribed by an Act of Parliament. The Court is organized and administered in the manner prescribed by an Act of Parliament. The Court has a Principal Judge, who is elected by the judges of the High Court from among themselves. Ordinarily, the High Court is duly constituted by one Judge sitting alone. However there are instances where two or more High Court Judges may be required to determine certain kinds of cases. Are appointed by the President in accordance with the advice of Judicial Service Commission. They are laid down special qualifications required of a person to be eligible for appointment as a Judge, namely: Also being a Superior court of record means that the decisions of the High Court as precedents, are binding on the subordinate courts by the doctrine of stare decisis. The High Court has power to pass any sentence authorized by law. Thus, the High Court enjoys special powers and jurisdiction in the following matters as conferred to it by the constitution and other legislations some of which are given hereinafter: Supervisory Jurisdiction The Constitution confers specific, powers on the High Court to exercise supervisory jurisdiction in any civil and criminal proceedings before subordinate courts and may make such orders, issue such writs and give such directions as may consider appropriate for the purpose of ensuring that justice is duly administered by such courts. This includes the power of the High Court to transfer proceedings from one court to the other. To invoke the supervisory jurisdiction of the High Court a person must have exhausted all other available remedies and right of appeal. In exercise of its supervisory powers under judicial review, the high court may issue any of the prerogative orders of: This is an Order issued by the High Court to any person or body commanding him or them to perform a public duty imposed by law or state. The order is available to compel administrative tribunals to do their duty e. This is an Order issued by the High Court directed at an inferior court body exercising judicial or quasi-judicial functions to have the records of the proceedings presented to the High Court for the purposes: To Secure an impartial trial, To review an excess of jurisdiction, To challenge an ultra vires act, To correct errors of law on the face of the record. To quash a judicial decision made against the rules of natural justice. An order of certiorari will be wherever anybody of persons having legal authority to determine questions affecting the rights and having a duty to act judicially, acts in excess of their legal authority. It therefore serves to quash what has been done irregularly. Prohibition â€" This is an order issued by the High Court to prevent an inferior court or tribunal from hearing or continuing to hear a case either In excess of its jurisdiction or in violation of the rules of natural justice. This order is issued where the personal liberty of a person is curtailed by arrest and confinement without legal justification. By issuing this order, the High Court calls upon the person holding the body to answer by what authority are they continuing to withhold the individual and with the aims at securing release of such persons held apparently without legal justification. The High Court shall be composed of an uneven number of judges, not being less than three when it determines the constitutional question referred to it. The High Court may make an order as it deems fit, including the nullification of the election results upon hearing of a petition presented to it by a voter or loser in the election. For the High Court to nullify the election of a Member of Parliament, the petitioner must prove that an election offence has been committed. The composition of the High court is that one 1 Judge sits to determine dispute in parliamentary election while Three 3 Judges must sit if it is presidential election. Any appeal on the High Court decision on Presidential election goes to the

Court of Appeal where at least five 5 Judges will sit to determine the appeal. Disputes in the election of councilors go to subordinate courts. In exercise of its matrimonial jurisdiction, the High Court may issue orders for:

Chapter 3 : Legal systems | Wex Legal Dictionary / Encyclopedia | LII / Legal Information Institute

Supreme Court of Kenya[edit] Main article: Supreme Court of Kenya The Supreme Court is the highest court in Kenya, and all other courts are bound by its decisions. It was established under Article of the Constitution as the final arbiter and interpreter of the Constitution. Court of Appeal[edit] Main article: It will constitute not less than 12 judges and will be headed by a President elected by the Court of Appeal judges among themselves. Each station of the court is led by a Principal Judge. It has supervisory jurisdiction over all other subordinate courts and any other persons, body or authority exercising a judicial or quasi-judicial function. The judges responsible elect one of them to act as the topmost principal judge in the court system. Has unlimited original jurisdiction and carries out supervisory roles. Any disputes relating to employments is preliminarily held at this court , and any further proceedings are taken to High court if the case is not determined to conscience of the complainant Environment and Land Court[edit] An Act of Parliament to give effect to Article 2 b of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers, and for connected purposes The courts below the High Court are referred to as Subordinate courts. The Magistrate Court[edit] Article 1,a of the constitution of Kenya creates the Magistrate court. This is where majority of the judiciaries cases are heard. Magistrate courts are generally located in every district in Kenya. For instance, the pecuniary jurisdiction where the Court is presided over by a chief magistrate has been increased from KES 7 million to KES 20 million shillings. The Chief Justice is however empowered to revise the pecuniary limits of the civil jurisdiction by a Gazette notice, by taking into account inflation and prevailing economic conditions. Their authorities vary in administrative responsibility and range of fining and sentencing abilities. The Judicature Act is the statute passed by parliament detailing the varying powers and jurisdiction of Magistrates and Judges. This is a court that hears civil matters relating to Islamic law. The parties involved must all be followers of Islam and all must agree that the matter to be decided under Islamic law. The matter must be civil in nature e. The court is headed by a Chief Kadhi and parliament is given the authority to enact laws describing the guidelines, qualification and jurisdiction of this court. Appeals from Kadhi Court are heard by the High Court. Courts Martial[edit] Article 1,c of the constitution of Kenya creates the Martial courts. Generally, this type of jurisdiction involves a group of law administrators, that is, the military court where matters involving members of the Kenya Defense Forces are heard. Appeals from this court are heard by the High Court. Administration within the Judiciary[edit] The chief administrator of the Supreme court is the Chief Justice , who is the President of the supreme court. Certain situations dictate that the Chief Justice appoint a judge or panel of judges to deal with a specific matter. The judges of the High Court and the Court of Appeal each elect a member to deal with administrative issues as well as represent them in the Judicial Service Commission. The Chief Registrar of the Supreme Court has the responsibility of being the chief administrator and accounting officer of the Judiciary. The Court of Appeal, High Court and Magistrate Court all have a Registrar to serve as administrator, record keeper and accounting officer in each of the courts.

Chapter 4 : Judiciary of Kenya - Wikipedia

The Kenyan legal system is made up of many of the world's legal systems. The ones which have been discussed in this essay are Common Law, Religious Law and Customary law. This essay has shown how the Kenyan legal system has incorporated the worlds legal systems and has used them.

A legal system is a procedure or process for interpreting and enforcing the law. Overview There are hundreds of legal systems in the world. At the global level, international law is of great importance, whether created by the practice of sovereign states or by agreement among them in the form of treaties and other accords. Some transnational entities such as the European Union have created their own legal structures. At the national level there are over sovereign states in the United Nations Organization. Many of these are federal , and their constituent parts may have their own additional laws. But, despite this great variety, it is important to begin by emphasizing the division between religious legal systems and secular legal systems. Each holds quite different views as to law, in its source, scope, sanctions, and function. The source of religious law is the deity, legislating through the prophets. Secular law, however, is made by human beings. In a religious legal system disputes are usually adjudicated by an officer of that religion, so the same person is both judge and priest. In a secular system, by contrast, the office of judge is separate, and is often reinforced by guarantees of judicial independence. Nowadays there are few countries whose legal system is exclusively religious. By contrast, a large number of countries have secular systems, and this feature may be built into their legal structure, as in the French and the Russian constitutions, or the very first words of the First Amendment to the American Constitution: A number of other countries have dual systems. However, a secular system with state courts covers the wider fields of public and commercial law. This was the position in England until the s, and is the case today in Israel , India , and Pakistan. In these dual jurisdictions, the proportion of human activity governed by one or the other system may depend on the stage of economic and political development of the country in question. Constitutions Constitutions differ widely. Some handle serious internal ethnic, linguistic, and religious differences, while others are written for a homogeneous population. Some are largely restricted to a set of justifiable rules of law, while others contain manifesto-like proclamations A few are contained in no given text or texts, notably in Andorra, Israel, New Zealand and the United Kingdom. Typically there are only a few generalizations that may be made across various constitutions. First, constitutions aspire to regulate the allocation of powers, functions, and duties among the various agencies and officers of government and to define the relationship between these and the public. Second, no constitution, however well designed, can protect a a political system against effective usurpation. Third, in many countries the holders of power ignore the constitution more or less entirely. Fourth, even where constitutions work, none is complete: Sixth, they usually separate the legislative, executive and judicial organs of state. Seventh, they usually contain, or incorporate, a Bill of Rights. Eighth, they often provide some method for annulling laws and other instruments which conflict with the constitution, including the Bill of Rights. Ninth, they address the international scene only in generalities and, in practice, confer wide powers on the federal executive. Finally, they deal with the status of international law by either according or denying it direct internal effect. Adoption and amendment The idea of endowing a country with a single written constitution is relatively modern, though now widespread. Both legal and political importance attach to the methods by which a constitution may be amended. They may divide the amending power among people, legislature, and executive, or between a federation and its components. They may express basic values by declaring certain features to be unamendable. Some constitutions specify that certain matters may be amended only by referendum or by an entirely new constitution. In federal systems, amendments normally require special majorities in the federal legislature followed by ratification by a special majority of the states. A common method is to require a special majority in the legislature - two-thirds in Germany, three-fifths in France, with similar systems in India and other Commonwealth countries and this used to be the pattern in the Soviet bloc. Another parliamentary alternative is to require a second vote Italy, Denmark, Finland. Finally, some systems divide the amending power between legislature and people, by requiring a referendum either for certain types or methods of

amendment Denmark, France, Ireland or for any Japan. Federalism In federal constitutions, listed powers are often allotted to the center governing structure, with other powers being left to the constituent parts. In practice the main powers of defense, taxation, and commerce go to the center, while education and healthcare may go to the constituent parts. The constituent parts are protected, at least in theory, by representation within the center governing structure i. United States Congress and by their own powers of governance in their territories. General Constitutional Features Although constitutions vary greatly in length, usually the greatest detail is devoted to the legislature and to the executive and the relations between them. Federal systems naturally have a bicameral legislature. But so also do many unitary systems, with the lower house directly elected and the upper composed of those perhaps representing rural interests France or possessing special skills Ireland. In most countries but not the USA the lower house can ultimately override the upper. Two widespread patterns are those of the presidential and those of the parliamentary system. The first fuses ceremonial and political power into one office, with its incumbent elected directly and quite separately from the legislature: It separates executive and legislative powers so that neither body can dissolve the other: The President nominates Ministers for confirmation by the legislature, but there is no collective cabinet responsibility. The President usually has a veto over legislation, which may be overridden only by special parliamentary majority. On the other hand, the crucial power to tax remains with the legislature. The new Russian structure embodies several of these features, but expands the presidency in a number of ways. First, following a tradition going back to the Tsars, the office of the President is given wide power to rule by edict ukaz. Apart from the need to comply with the constitution and with federal legislation, this power seems virtually unlimited. Second, the President appoints the prime minister with the consent of the lower House and may dismiss the government. As in the US, the Russian President may veto legislation, but can then be overridden by special majority. Finally, the President can dissolve the lower House and call new elections if it thrice rejects his or her candidate for premier, or if it passes a motion of no-confidence in the government. In the parliamentary system, the Head of State is distinct from the head of government - called Prime Minister, Premier or, in Germany, Chancellor. The Head of State may be a hereditary monarch or directly elected President. However, the premier is not directly chosen by the electorate, but appointed from the majority or coalition group in the legislature. The Premier and other ministers have no fixed term of office but can in principle be forced to resign by parliamentary vote of no confidence in the government. This is usually balanced by executive power to dissolve the legislature and call new elections although there may be some protection against hasty or repeated dissolutions. The premier and ministers dominate in two directions. Second, the executive controls the legislative timetable and usually has the exclusive power to introduce finance bills. For instance in France the President is far from being merely a titular Head of State. In association with the government he or she can present bills to the people to enact by referendum, thereby bypassing the Parliament, and can dissolve the National Assembly and call new elections. The Judiciary The United States is virtually alone in allowing a federal court of general jurisdiction to decide matters of constitutionality. Normally such questions are for a Supreme Court or special Constitutional court. France innovation allows bills to be referred to the judiciary only after they have passed through Parliament and before they are promulgated by the President. In England a court can examine the validity of a duly enacted statute unless it conflicts with the law of the European Community; the same may be true of Scottish courts, although some say they could examine UK statutes for conformity with the Act of Union This does not invalidate or render the statute ineffective: Emergency powers The greater the constitutional commitment to a Bill of Rights, the more difficult it is to frame emergency powers. On the one hand the executive must be permitted to take emergency action; on the other the emergency power should not be capable of being used to subvert both the legislature and the Bill of Rights. The usual safeguard is to forbid the executive to use emergency powers to suspend, or curtail the power of, either of the other branches of government. In the UK a permanent statute permits the government to proclaim a state of emergency, but regulations are subject to Parliamentary scrutiny. Special powers to deal with threats to security in Northern Ireland have been enumerated in statute. The statutes restrict freedom of association and confer wide powers of arrest without warrant and, in Northern Ireland, limit the use of release on bail and jury trial. These statutes are subject to

annual renewal by Parliament. Human Rights The older pattern of constitutional protection of human rights is usually expressed by a negative: Congress shall make no law abridging the freedom of the press; the right to keep and bear Arms shall not be infringed; the right to be secure shall not be violated; no person shall be deprived of life, liberty, or property without due process of law. This century has seen the addition of positive claims on the state - to education, employment and so on - and entitlements against discrimination on the grounds of gender, religion, nationality and the like. Such provisions are often declared to be entrenched and to bind the government. Common Law and Civil Law Most modern legal systems may be describes as either common law, civil law, or a mix of the two. A purely common law system is created by the judiciary, as the law comes from case law , rather than statute. Thus a common law system has a strong focus on judicial precedent. A pure civil law system, however, is governed by statutes, rather than by case law. Common law is typically found in places once occupied by the British, such as: Civil law is typically found in places once occupied by the French, such as: But their long contacts with Britain mean that their public law and systems of court procedure owe much to the common law. Scotland, Louisiana, Mauritius and Quebec are examples of a private law based on older civil and customary rules uncodified in Scotland struggling to endure in a common-law environment. Israel has a system all its own, where the older Ottoman and British mandate layers are now overriden by a modern system. It has no single constitutional document, but much of the modern law combines the broad legislative simplicity of the great codes of civil law with the careful transparency of the common-law judgment. Whatever their origin, most legal systems agree on certain basic premises. First, that no one can be guilty of a crime unless the offense is defined as such beforehand, and the conviction arrived at by a lawful procedure. Second that no one can be prosecuted twice for the same thing. Third, it is a crime to attempt a crime, or to conspire with others to commit one.

Chapter 5 : Politics of Kenya - Wikipedia

KENYAN LEGAL SYSTEM. The Kenyan Legal System is based on English Common Law. The Kenyan Constitution is the supreme law of the land, and any other law that is inconsistent with the Constitution, shall, to the extent of the inconsistency, be null and void. The Constitution of Kenya is divided into eleven parts.

Supreme Court Comprises of the chief justice, vice chief justice,5other judges and the president making a total of about seven members. The court has got exclusive jurisdiction and majority and nearly all issues that pertain the electoral petitions. Hears appeals from the high court and also major tribunals. It can play the role of offering advisory opinion to the national government. Court of Appeal It is composed of not less than 12judges. Hears discontents from lower courts combined with various tribunals. It includes conducting operations by acts done within the premises of a court. Furthermore, it listens to the contempt of court as an original jurisdiction. It appeals on the fundamental human rights and freedoms. It further deals with court martial cases. The High Court Established under section ,of the Kenyan constitution. The judges responsible elect one of them to act as the topmost principal judge in the court system. Has unlimited original jurisdiction and caries out supervisory roles. It also deals with issues related to succession and matrimonial cases. Subordinate Courts Constitutes of the chief magistrate, senior and principal magistrate. They deal with civil jurisdiction but differ in subject matter in most cases. They also hear issues related to serious criminal offences that attract penalties. The resident magistrate court deals with misdemeanors. Kadhis Court The court deals with cases that affect and relate to people that believe in the Muslim religion. The court is headed by a chief kadhi who must also be a Muslim. Court Martial The court deals with very serious cases regarding the military department. Headed by chief of general staff. However, it can also be conducted by a person having major rank in the military field. Deals with issues regarding cowardice, insubordination and destruction of the owned by military officials.

Chapter 6 : UPDATE: Researching Kenyan Law - GlobaLex

Supreme Court. Comprises of the chief justice, vice chief justice,5other judges and the president making a total of about seven members. The court has got exclusive jurisdiction and majority and nearly all issues that pertain the electoral petitions.

There have been several amendments to the Constitution since then, and currently, Kenya is undergoing the Constitution Review Process. The Government The powers of the Government are divided into 3 functions: The executive implements all the laws made by parliament. The Executive authority is vested in the President. Kenya has a Parliamentary president, where the president is both the Head of State and Government, and also a member of parliament. At the same time, the whole government can, by law, be dismissed from office by an adverse vote in parliament. The Cabinet consists of the president, vice-president and ministers. Its function is to aid and advice the president. The President has power to dissolve and prorogue parliament, but he has to summon it into session not later than 12 months from the end of the preceding session, if parliament has been prorogued, or three months from the end of that session if parliament is dissolved. The Legislature Parliament only has one chamber. The main function of the legislature is to make laws. The legislature consists of the president and the National Assembly. The National Assembly is currently composed of members, being Members of parliament and 2 ex-officio members, the Attorney General, and the Speaker of the National Assembly. The Speaker presides over the meetings of the National Assembly. Most of the laws in Kenya emanate from an act of Parliament. These are introduced into Parliament as Bills. The Bill has to be published, in the Kenya Gazette, fourteen days before its introduction. It then has its First Reading, which is a formal reading of the title of the Bill. This is followed by a Second Reading, which is an occasion for debate on the general principles of the Bill, after which it is referred to a Committee of the National Assembly for debate and discussion on the detailed provisions. If the Committee reports favorably to the Assembly, then the Bill has its Third and final reading, where the debate, if any, is restricted to a general statement or reiteration of objections. If approved, the Bill is ready for the Presidential assent, after which it becomes an Act of Parliament. The date of commencement of the Act is either the date it received the Presidential Assent, or a date shortly afterwards, or it can be brought into operation by order made by the appropriate Minister. Parliament also plays an important, but not exclusive, role in the financial control of Government expenditure. Parliament control over revenue and expenditure is secured by the establishment of the Consolidated Fund, into which all revenue of the Government must be paid. However, Parliament may authorize the establishment of other funds for specified purposes, and may also provide that some of the revenue need not be paid into any established fund but may be retained by the authority which received it, for offsetting the expenses of that authority. Parliament also acts as a control and criticism of the Government, in that it can pass a vote of no confidence, which can lead, depending on the decision of the president, either to the dissolution of Parliament or the resignation of the Government. The judiciary determines disputes which arise between individuals, and those arising between individuals and the State. It has only appellate jurisdiction, in both civil and criminal cases, it has no inherent jurisdiction. It is presided over by the Judges of Appeal, who are appointed by the President. The decisions of the Court of Appeal are binding on all other subordinate courts, including the High Court. The Court of appeal sits mainly in Nairobi, the capital of Kenya, but travels on circuit to other principal towns in Kenya to hear appeals. The High Court It is presided over by puisne judges, judges of the High Court, who are appointed by the president. It has unlimited original jurisdiction in civil matters. In Criminal matters, it only hears cases of murder and treason. It also has appellate jurisdiction in both civil and criminal matters, in that appeals from the subordinate courts are preferred to the High Court. Subordinate Courts The jurisdiction of these courts is determined on a territorial and pecuniary basis. They are presided over by magistrates. It has jurisdiction to determine questions of Muslim law relating to personal status, marriage, divorce and inheritance in proceedings in which all the parties profess the Muslim religion. It hears cases concerning parental responsibility, children institutions, custody and maintenance, orders for the protection of children, children in need of care and protection. It however does not hear cases where the child is charged

with murder, or jointly with adults. Tribunals - These are quasi-judicial bodies established piecemeal to deal with specific matters. The more prominent tribunals are: It is presided over by judges appointed by the president and eight other members appointed by the Minister of Labour. Its function is to settle trade disputes generally and trade disputes in essential services. Rent Tribunals - These deal with matters concerning landlord and tenant relations. The Constitution It is the supreme law of the land, taking precedence over all other forms of law, written and unwritten. If any other law is inconsistent with it, the constitution prevails, and the other law, to the extent of its inconsistency, is void. Many Acts of Parliament are made pursuant to particular provisions in the Constitution. Acts of Parliament These are passed by parliament and also include subsidiary legislation, that is, laws made under the authority of an Act of Parliament. The Admiralty Offences Colonial Act, The Evidence Act, , sections 7 and The Foreign Tribunals Evidence Act, The Evidence by Commission Act, The British Law Ascertainment Act, The Admiralty Offences Colonial Act , The Foreign Law Ascertainment Act, The Conveyancing Scotland Act, Section English Statutes of General application in Force in England on 12th August The English statutes of general application passed before 12th August the reception date , are law in Kenya, unless a Kenyan statute, or a latter English statute made applicable in Kenya, as repealed any such statute. A statute of general application, if repealed by a later English statute would still be law in Kenya. Statutes of general application include public Acts of Parliament, that is, those which apply to the inhabitants at large and which are not limited in their application to prescribed persons or areas. The statutes are also applicable in Kenya in the form that they had at the reception date. Any subsequent amendments of such statutes in England have no effect in Kenya. The only way to alter such statutes is for the Kenya Parliament to amend these by independent legislation. The Substance of Common Law and Doctrines of Equity These are only applicable to the Kenyan inhabitants in so far as the circumstances of Kenya permit, subject to such qualifications as those circumstances may render necessary. African Customary Law This is applicable only on civil cases where one or more of the parties is subject to or affected by it, in so far as it is applicable and is not repugnant to justice and morality or inconsistent with any other law. African Customary law differs from tribe to tribe. Islamic Law This is a very limited source of law in Kenya. International Instruments Though not listed in the Judicature Act, international law is a source of Kenyan law. The government is party to a number of international legal instruments and Kenyans can use these as an additional tool for the advancement of their rights. However, it only becomes enforceable in Kenya after they have been incorporated into our domestic legal system by implementing legislation. Law Reporting Kenyan Laws In book form, the Law of Kenya comprises over individual Acts of Parliament and a host of rules and regulations made under the authority of Acts of Parliament, usually referred to as subsidiary legislation. In booklet form, the Law of Kenya runs into over 20, pages and is published in over booklets clustered in 15 hard copy binders the Volumes of the Law of Kenya. These can be purchased from the Government Bookshop, but the statutes are not amended, the amendments can be bought or done at any of the High Court libraries in the Country. East African Law Reports , for the period between and There are seven volumes and the reports cover decisions from all courts of different jurisdictions in the then East Africa Protectorate. Between and , twenty-one volumes of the Kenya Law Reports K. These include decisions of the High Court only. They are twenty- three volumes in total and they report the decisions of the then Court of Appeal of Eastern Africa and of the Privy Council. A were introduced in , and were published in nineteen volumes until The reports went out of publication following the collapse of the east African Community. There were sporadic and transitory attempts at law reporting. Six volumes of the New Kenya Law Reports were published by the East African Publishing House limited, covering and including the years of to They cover the decisions of the Court of Appeal of Kenya selected over that period. The Council has published succeeding volumes fro each year since It also includes the Kenya Gazette from The site also has a digital format of the Kenya Law Reports, where one can search for cases from , but printing is not available once a decision has been published in the Kenya Law Reports. The site also has bench updates, which are recent decisions of the High Court and the Court of Appeal that are unreported. Laws of Kenya provides a comprehensive, up to date collection of laws and subsidiary legislation on pay per minute basis. Laws current to January can be downloaded at no charge with an option to buy updates. Kenya Government is the official Kenya Government portal on the web and

provides links to sites of various Government Ministries and other state agencies. Secondary Legal Information There are a number of legal textbooks written by members of the Kenyan academia, the bench and the bar over the years. A few important ones include: Burial Disputes in Modern Kenya: African Customary Law in a Judicial Conundrum. Restatement of African Law: P and McAuslan, J. Public Law and Political Change in Kenya. Oxford University Press, Nairobi, East African Literature Bureau.

Chapter 7 : Researching Kenyan Law - GlobaLex

Toggle display of website navigation Argument: July 9, , 1: In , Kenya had only 53 judges and magistrates for a population of There was a massive backlog of almost 1 million cases. In , 43 percent of Kenyans who sought services from the judiciary reported paying bribes, according to Transparency International. Few of the judges responsible for managing court stations had any training or experience in administration, and many received no on-the-job guidance. The courts were also widely seen as politically biased. The ruling Party of National Unity was declared the winner of a close race, but the opposition Orange Democratic Movement accused the government of fraud, and both national and international observers said the tallies had been manipulated. However, opposition leaders refused to settle the issue in court because they believed their party would not receive a fair hearing. In the weeks of violence following the election, approximately 1, Kenyans were killed and up to , were displaced. The resulting constitution provided a clear mandate for judicial reform, specifying a restructured court system headed by a Supreme Court and separating the Judicial Service Commission from the executive. The team began to sort through the many previously proposed reforms â€" internal reports, recommendations from civil society organizations, and the work of a task force. They consulted extensively with judges, magistrates, and staff to ensure internal support for the reform agenda. The result was a plan known as the Judiciary Transformation Framework , issued in May , which identified four pillars of reform: The first pillar, which focused on ensuring access to justice and public engagement, included such actions as establishing customer care desks to answer questions, simplifying court procedures, creating a case management system, and strengthening complaint mechanisms. The third and fourth pillars sought to expand the court system, to computerize its procedures, and to upgrade its IT infrastructure. To oversee the implementation of these plans, Mutunga appointed Ngugi as director of the Judiciary Transformation Secretariat, a new office charged with coordinating initiatives, tracking progress, and sharing best practices across courts. The secretariat led 38 workshops across the country to present the new reform program to judicial employees. The workshops brought together judicial officers and support staff â€" including those, such as cleaners and drivers, who had never interacted with judges on an even footing. The vetting process required by the constitution, in which each judicial officer faced a board review to determine if he or she was fit to remain on the bench, also helped head off opposition. The judicial officers most likely to resist reforms â€" those with histories of corruption, bias, or unreasonable delays â€" were also the ones most concerned about removal by the vetting board. They were fighting for their professions for almost three years. The transformation framework called for streamlined court procedures and clearer processes for litigants trying to navigate the system. Court registrars took the lead on standardizing and communicating administrative processes that had previously varied from court to court. Each court station was required to produce a service charter in the form of a billboard, listing requirements, fees, and timelines for each court process, and each level of the court system worked to produce a registry manual that clearly spelled out procedures for both staff and users. Basic physical organization of the case files was a priority â€" they were often difficult to locate, and that made it easy for unscrupulous staff members to remove important documents or hide whole files. Introducing better monitoring and information sharing practices was essential. Initially, the reform team had wanted to roll out an electronic case management system to monitor delays, digitally store and share documents, and assign cases to judges randomly to limit corruption opportunities. Agency for International Development and technical support from law reporting agency Kenya Law. Similar systems were introduced piecemeal in other courts, but scaling up to the entire country proved more challenging. Many courts had no internet connections, reliable electricity, or even computers. And because courts varied in their processes, it was impossible to develop a single nationwide system without first standardizing procedures. At the end of the

day, an administrative officer at each station would update the spreadsheet and send a copy to the central directorate that monitored performance, sometimes from an Internet cafe if the court lacked a reliable Internet connection. The template allowed the directorate to track case assignments and processing times and facilitated distribution of caseloads. However, the tool did not allow document sharing, and it was difficult to verify the data that court stations submitted. Ideally, citizens would be able to bring their complaints to the office, call, send text messages, letters, or emails. After receiving an alert from the database, liaison officers had to resolve the problem or provide an explanation within the allotted time. Inadequate responses or patterns of complaints could be grounds for disciplinary action against judges and administrative staff. However, getting citizens to use the resource was a challenge. Kennedy Bidali, the first ombudsman, believed his team received only a fraction of the complaints they could have helped address. Court Users Committees, which brought together judges, police, civil society organizations, and community leaders to share information and solve problems, had existed at many courts since The new transformation framework made these committees an official part of the justice system, and employed them to collect information about local issues and performance. In addition, committee members were better able to inform their communities about new policies, such as new procedures for traffic arrests and other small infractions. After a close presidential race, the losing candidate, Raila Odinga, challenged the vote count in the Supreme Court. The decision received intense criticism. She was dismissed , along with several other senior administrative staff implicated in the scandal. This high-level administrative corruption drew attention to the persistence of graft throughout the judiciary. The judiciary hired more than new judges and magistrates and established 25 new court stations since in an effort to increase capacity and access to the judiciary in remote areas. But, while public perception of the courts improved significantly in the early years of the reform effort, with Gallup citing that 61 percent of Kenyans had confidence in the judiciary in , as compared to 27 percent in , the gains eroded over time. Nevertheless, there are signs that the focus on cultural change had paid dividends, said Chief Registrar Anne Amadi. After his retirement this June, much will depend on the next chief justice. Mutunga himself said that some reforms, like increased salaries and data-driven decision making, would be difficult to reverse, but others, from cultural changes to fighting corruption, required sustained support. Caroline Jones contributed research and editing.

Chapter 8 : Judicial system - Kenya -

Kenyan law system today is therefore significantly based on the Constitution of Kenya and other Acts of Parliament. Kenya's Judiciary discharges its mandate through the following branches: the Court Systems (structure), the Judicial Service Commission and The National Council for Law Reporting.

A statement on judicial review of legislative acts is also included for a number of countries. The legal systems of nearly all countries are generally modeled upon elements of five main types: An additional type of legal system - international law, which governs the conduct of independent nations in their relationships with one another - is also addressed below. The following list describes these legal systems, the countries or world regions where these systems are enforced, and a brief statement on the origins and major features of each. Civil Law - The most widespread type of legal system in the world, applied in various forms in approximately countries. The major feature of civil law systems is that the laws are organized into systematic written codes. In civil law the sources recognized as authoritative are principally legislation - especially codifications in constitutions or statutes enacted by governments - and secondarily, custom. The civil law systems in some countries are based on more than one code. Common Law - A type of legal system, often synonymous with "English common law," which is the system of England and Wales in the UK, and is also in force in approximately 80 countries formerly part of or influenced by the former British Empire. English common law reflects Biblical influences as well as remnants of law systems imposed by early conquerors including the Romans, Anglo-Saxons, and Normans. The foundation of English common law is "legal precedent" - referred to as stare decisis, meaning "to stand by things decided. Customary Law - A type of legal system that serves as the basis of, or has influenced, the present-day laws in approximately 40 countries - mostly in Africa, but some in the Pacific islands, Europe, and the Near East. Customary law is also referred to as "primitive law," "unwritten law," "indigenous law," and "folk law. The earliest systems of law in human society were customary, and usually developed in small agrarian and hunter-gatherer communities. As the term implies, customary law is based upon the customs of a community. Common attributes of customary legal systems are that they are seldom written down, they embody an organized set of rules regulating social relations, and they are agreed upon by members of the community. Although such law systems include sanctions for law infractions, resolution tends to be reconciliatory rather than punitive. A number of African states practiced customary law many centuries prior to colonial influences. Following colonization, such laws were written down and incorporated to varying extents into the legal systems imposed by their colonial powers. European Union Law - A sub-discipline of international law known as "supranational law" in which the rights of sovereign nations are limited in relation to one another. Also referred to as the Law of the European Union or Community Law, it is the unique and complex legal system that operates in tandem with the laws of the 27 member states of the European Union EU. Fundamental principles of European Union law include: French Law - A type of civil law that is the legal system of France. The French system also serves as the basis for, or is mixed with, other legal systems in approximately 50 countries, notably in North Africa, the Near East, and the French territories and dependencies. French law is primarily codified or systematic written civil law. Prior to the French Revolution , France had no single national legal system. Laws in the northern areas of present-day France were mostly local customs based on privileges and exemptions granted by kings and feudal lords, while in the southern areas Roman law predominated. French law distinguishes between "public law" and "private law. Private law covers issues between private citizens or corporations. The most recent changes to the French legal system - introduced in the s - were the decentralization laws, which transferred authority from centrally appointed government representatives to locally elected representatives of the people. International Law - The law of the international community, or the body of customary rules and treaty rules accepted as legally binding by states in their relations with each other. International law differs from other legal systems in that it primarily concerns sovereign political entities. There are three separate disciplines of international law: At present the European Union is the only entity under a supranational legal system. The term "international law" was coined by Jeremy Bentham in in his Principles of Morals and Legislation, though

laws governing relations between states have been recognized from very early times many centuries B. Modern international law developed alongside the emergence and growth of the European nation-states beginning in the early 16th century. Other factors that influenced the development of international law included the revival of legal studies, the growth of international trade, and the practice of exchanging emissaries and establishing legations. Islamic Law - The most widespread type of religious law, it is the legal system enforced in over 30 countries, particularly in the Near East, but also in Central and South Asia, Africa, and Indonesia. In many countries Islamic law operates in tandem with a civil law system. Islamic law is embodied in the sharia, an Arabic word meaning "the right path. Shia Muslims reject ijmas and qiyas as sources of sharia law. Mixed Law - Also referred to as pluralistic law, mixed law consists of elements of some or all of the other main types of legal systems - civil, common, customary, and religious. The Civil Code was established under Napoleon I, enacted in , and officially designated the Code Napoleon in This legal system combined the Teutonic civil law tradition of the northern provinces of France with the Roman law tradition of the southern and eastern regions of the country. As enacted in , the Code addressed personal status, property, and the acquisition of property. Codes added over the following six years included civil procedures, commercial law, criminal law and procedures, and a penal code. Religious Law - A legal system which stems from the sacred texts of religious traditions and in most cases professes to cover all aspects of life as a seamless part of devotional obligations to a transcendent, imminent, or deep philosophical reality. Implied as the basis of religious law is the concept of unalterability, because the word of God cannot be amended or legislated against by judges or governments. However, a detailed legal system generally requires human elaboration. The main types of religious law are sharia in Islam, halakha in Judaism, and canon law in some Christian groups. Sharia is the most widespread religious legal system see Islamic Law , and is the sole system of law for countries including Iran, the Maldives, and Saudi Arabia. No country is fully governed by halakha, but Jewish people may decide to settle disputes through Jewish courts and be bound by their rulings. Canon law is not a divine law as such because it is not found in revelation. It is viewed instead as human law inspired by the word of God and applying the demands of that revelation to the actual situation of the church. Roman law remained the legal system of the Byzantine Eastern Empire until the fall of Constantinople in Preserved fragments of the first legal text, known as the Law of the Twelve Tables, dating from the 5th century B. Early Roman law was drawn from custom and statutes; later, during the time of the empire, emperors asserted their authority as the ultimate source of law. The basis for Roman laws was the idea that the exact form - not the intention - of words or of actions produced legal consequences. It was only in the late 6th century A. Roman law served as the basis of law systems developed in a number of continental European countries. Roman-Dutch law serves as the basis for legal systems in seven African countries, as well as Guyana, Indonesia, and Sri Lanka. This law system, which originated in the province of Holland and expanded throughout the Netherlands to be replaced by the French Civil Code in , was instituted in a number of sub-Saharan African countries during the Dutch colonial period. Spanish Law - A type of civil law, often referred to as the Spanish Civil Code, it is the present legal system of Spain and is the basis of legal systems in 12 countries mostly in Central and South America, but also in southwestern Europe, northern and western Africa, and southeastern Asia. The Spanish Civil Code reflects a complex mixture of customary, Roman, Napoleonic, local, and modern codified law. The laws of the Visigoth invaders of Spain in the 5th to 7th centuries had the earliest major influence on Spanish legal system development. The Christian Reconquest of Spain in the 11th through 15th centuries witnessed the development of customary law, which combined canon religious and Roman law. During several centuries of Hapsburg and Bourbon rule, systematic recompilations of the existing national legal system were attempted, but these often conflicted with local and regional customary civil laws. Legal system development for most of the 19th century concentrated on formulating a national civil law system, which was finally enacted in as the Spanish Civil Code. Several sections of the code have been revised, the most recent of which are the penal code in and the judiciary code in The Spanish Civil Code separates public and private law. Public law includes constitutional law, administrative law, criminal law, process law, financial and tax law, and international public law. Private law includes civil law, commercial law, labor law, and international private law. United States Law - A type of common law, which

is the basis of the legal system of the United States and that of its island possessions in the Caribbean and the Pacific. This legal system has several layers, more possibly than in most other countries, and is due in part to the division between federal and state law. The United States was founded not as one nation but as a union of 13 colonies, each claiming independence from the British Crown. The US Constitution, implemented in , began shifting power away from the states and toward the federal government, though the states today retain substantial legal authority. US law draws its authority from four sources: Constitutional law is based on the US Constitution and serves as the supreme federal law. Taken together with those of the state constitutions, these documents outline the general structure of the federal and state governments and provide the rules and limits of power. The 50 state legislatures have similar authority to enact state statutes. Administrative law is the authority delegated to federal and state executive agencies. Case law, also referred to as common law, covers areas where constitutional or statutory law is lacking. Case law is a collection of judicial decisions, customs, and general principles that began in England centuries ago, that were adopted in America at the time of the Revolution, and that continue to develop today.

Chapter 9 : The Kenyan legal system : an overview | Books | Encyclopedia of law

The Judiciary of Kenya is the system of courts that interprets and applies the law in Kenya. After the promulgation of the constitution of Kenya the general public through parliament sought to reform the judiciary. Parliament passed the Magistrates and Judges vetting act of

Kenya has long been the preferred entry point for investors looking for deals in the East African region. The country facilitates access to the common market that includes Burundi, Rwanda, Tanzania, and Uganda and also provides easier access to Ethiopia, the Democratic Republic of Congo and South Sudan. There has also been an increase in investment activity from India, China and the Middle East. South African firms are also growing more aggressive in their expansion plans into the continent. They were introduced with the aim of encouraging further investment and streamlining business processes in the country. There are several provisions that have been introduced that show a marked movement from the previous regime. The process of incorporation has been eased to a large extent. There are less documentation requirements under the new act. In addition, the abolition of the requirement for an objects clause in the process of incorporation is notable. This means that companies can engage in a wide variety of business activities without having to provide for any and every conceivable object in their incorporation documents. The act provides that objects of a company are unrestricted unless the articles of the company expressly restrict the objects of the company. Under the new regime, it is now possible for a company to have one member as opposed to the previous minimum membership of two. This is possible for both public and private companies and does away with the need for nominee members holding shares in trust. The new act recognises the growing young Kenyan population and hence lowers the minimum age for directorship from 21 to 18 years of age. There is also no need to engage professionals in the incorporation process as one can pursue incorporation individually. It is notable that the new Companies Act entails fewer compliance requirements than the previous act, as it provides that there is no need for private companies to appoint auditors or provide audited financials. They are only required to file annual returns on the anniversary date of incorporation. There is also no requirement for private companies to hold AGMs. The new act recognizes that the wide use of electronic communication in the conduct of business and allows companies to make its public announcements and send notices to its shareholders through company websites. It consolidates procedures relating to bankruptcy of natural persons and corporate insolvency matters, bringing them together under one act. The act adopts a rehabilitation approach in dealing with insolvency. Unlike previous legislations, the act seeks to redeem insolvent companies through administration as opposed to subjecting them to liquidation. The act focuses more on assisting insolvent natural persons, unincorporated entities and insolvent corporate bodies, whose financial position is redeemable. This is so that they may continue to operate as going concerns and meet their financial obligations to the satisfaction of their creditors. In the case of bankruptcy of natural persons, the act provides for alternatives to bankruptcy. This is in line with the purport of the act to rehabilitate debtors in dire financial conditions. The new act is of great significance to investors who have been in operation in the country and may want to close down their Kenyan subsidiaries. The model law is designed to assist states to equip their insolvency laws with a modern, harmonized and fair framework to address instances of cross-border insolvency. The act creates the Office of Insolvency Practitioners regulated and approved to work as such by an Insolvency Practitioners Board. This seeks to ensure adherence to certain minimum standards and thus prevent the abuse of the profession. The regulation of the profession and the institution of a code of conduct under the act are also informed by the need to ensure that insolvency practitioners do not overcharge for their services. The amounts in the act have also been amended to reflect prevailing economic conditions. The no asset procedure provided for in section 14 of the act means to ensure that a business is not dissolved owing to some small debts and adopts the debt forgiveness concept. The new act defines a special economic zone as a designated geographical area where business enabling policies, integrated land uses and sector-appropriate on-site and offsite infrastructure and utilities shall be provided. Alternatively, it could be a geographic area which has the potential to be developed, whether on a public, private or public-private partnership basis, where any goods introduced and specified

services provided are regarded, in so far as import duties and taxes are concerned, as being outside the customs territory and wherein the benefits provided under the SEZ Act apply. Goods taken out of the country into the SEZ are deemed to have been exported from Kenya and the same is true of services. Conversely, goods taken out of the SEZ into Kenya are deemed to be imported. The benefits enjoyed by SEZs as listed under Part IV of the Act include extensive provisions protecting the interests of foreign investors such as full protection of property rights against all risks of nationalization or expropriation and the right to fully repatriate all capital and profits, without any foreign exchange impediments. Under the Income Tax Act as amended by the Finance Act , SEZs will be corporate tax-free for the first 10 years following commencement of operation. Both EPZs and SEZs are subject to the non-resident withholding tax rates on payments they receive, but SEZs are specifically exempt from taxes on their dividend income. The SEZ Authority is required to render a decision on an application for a licence to be an SEZ entity within one month following submission of an application and accompanying documentation. The service conducts the registrations under the act; and maintains registers, data and records on registrations carried out among other functions. The BRS will be based in Nairobi but will have established branches in every county for easy access. The BRS would be headed by the Registrar-General who will be responsible for the overall operations of the service and its staff. The Act was passed to give effect to Article of the Kenyan Constitution , which makes provision for the manner in which a state organ or a public entity should contract for goods, that is, in accordance with a system that is fair, equitable, transparent, competitive and cost-effective. The new act repealed the Public Procurement and Disposal Act of While several provisions in the old act were retained, the new act makes several additional provisions. The application of the act does not extend to asset disposals under any bilateral or multilateral agreements between the government of Kenya and any other foreign government, agency or entity or multilateral agency. The Public Procurement Regulatory Authority PPRA or Authority is established under the act and has prescribed functions that include investigating and acting on complaints received on procurement and asset disposal proceedings from procuring entities, tenderers, contractors or the general public that are not subject of administrative review. The National Treasury is also granted mandate under the act with respect to oversight and public procurement that concerns the development of a public procurement and asset disposal policy. The National Treasury functions are devolved to County Treasury to ensure the monitoring and compliance of the public procurement system at county level. Where a candidate or a tenderer claims to have suffered or risks suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this act or the regulations, the act provides that they may seek administrative review. A review board is set up for this purpose.