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REPUBLIC OF KENYA

NAIROBI, 25th November, 2020

CONTENT

Bill to amend the Constitution of Kenya, 2010—

The Constitution of Kenya (Amendment) Bill, 2020

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THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

A Bill for

AN ACT to amend the Constitution by popular initiative.

ENACTED by the people of Kenya, as follows—

Short title.

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2020.

Insertion of new Article 10A in the Constitution.

2. The Constitution is amended by inserting the following new Article immediately after Article 10—

10A. Regional integration and cohesion

(1) This Constitution embraces the goals of African Unity and political confederation of the eastern Africa region as integral towards attainment of sustainable development, prosperity for all and stability.

(2) The State shall take legislative, policy and other measures to give effect to this Article.

Insertion of new Article 11A in the Constitution.

3. The Constitution is amended by inserting the following new Article immediately after Article 11—

11A. Economy and shared prosperity

(1) This Constitution recognises the need for an economic system that provides equitable opportunities for all the people of Kenya to benefit from economic growth in a comprehensive, fair and sustainable manner.

(2) The State shall promote—

(a) productivity through protection of intellectual property rights;

(b) investment, enterprise and industrialisation for sustainable economic development;

(c) sustainable sources of livelihood including agriculture, pastoralism and the blue economy;

(d) an economic system that supports small and micro enterprises;

- (e) an infrastructure that supports the digital economy; and
- (f) application of science and technology in the production system.

(3) Parliament shall enact legislation to give full effect to this Article.

4. The Constitution is amended by inserting the following new Article immediately after Article 18—

Insertion of
new Article
18A in the
Constitution.

18A. Responsibilities of a citizen

(1) This Constitution recognises responsibilities of a citizen as key to building a prosperous, fair and secure nation.

(2) Every citizen has a responsibility to—

- (a) cultivate national unity on the basis of respecting Kenya's ethnic, intellectual, economic and cultural diversity;
- (b) promote and protect the well-being of the family including respect for their parents and elders;
- (c) practice ethical conduct and combat corruption;
- (d) fulfil parental responsibilities towards their children;
- (e) develop one's abilities and skills for the advancement of self, the community and the nation;
- (f) honestly declare their incomes to lawful agencies and pay prescribed taxes and duties;
- (g) respect private property and protect public property from waste and misuse; and
- (h) promote the unity and dignity of Africa and her people.

(3) The responsibilities set out in clause (2) apply equally, where appropriate, to non-citizens.

Amendment of
Article 31 of
the
Constitution.

5. Article 31 of the Constitution is amended by inserting the following new paragraph immediately after paragraph (d)—

“(e) their personal data infringed.”

Amendment of
Article 80 of
the
Constitution.

6. Article 80 of the Constitution is amended by inserting the following new paragraph immediately after paragraph (a)—

“(aa) for the effective and expeditious investigation, prosecution and trial of cases relating to this Chapter.”

Amendment of
Article 82 of
the
Constitution.

7. Article 82 (1) of the Constitution is amended by inserting the following new paragraph immediately after paragraph (e) —

“(f) sanctions for a political party that fails to comply with the principle that not more than two-thirds of the party’s candidates are of the same gender.”

Amendment of
Article 87 of
the
Constitution.

8. Article 87 of the Constitution is amended—

(a) in clause (1) by inserting the words “including those arising from nomination of candidates by a political party” at the end of the clause; and

(b) in clause (3) by inserting the words “or through electronic media prescribed by legislation” at the end of the clause.

Amendment of
Article 88 of
the
Constitution.

9. Article 88 of the Constitution is amended—

(a) in clause (2) (a) by deleting sub-paragraph (i) and substituting therefor the following new sub-paragraph—

“(i) a President, Deputy President, a county governor, a deputy county governor, a member of Parliament or a member of county assembly”;

(b) in clause (4) by—

(i) inserting the words “including ensuring that not more than two-thirds of the party’s candidates are of the same gender” at the end of paragraph (d)”; and

(ii) deleting paragraph (e).

Amendment of
Article 89 of
the
Constitution.

10. Article 89 (1) of the Constitution is amended by deleting the words “two hundred and ninety” and substituting therefor the words “three hundred and sixty”.

Amendment of
Article 90 of
the
Constitution.

11. Article 90 of the Constitution is amended—

- (a) in clause (1) by deleting the expression “Articles 97 (1) (c) and 98 (1) (b), (c) and (d), and substituting therefor the expression “Article 97 (1) (b), (c) and (ca)”;
- (b) in clause (2) (b) by deleting the expression “except in the case of the seats provided for under Article 98 (1) (b)”;
- (c) in clause (3) by deleting the words “seats won by candidates of the political party at the general election” and substituting therefor the expression “votes received by a political party participating in a general election under Articles 97(1) (a) and 177 (1) (a)”.

Amendment of
Article 96 of
the
Constitution.

12. Article 96 (3) of the Constitution is amended by deleting the words “national revenue allocated to the county governments” and substituting therefor the words “revenue allocated to, raised by, or otherwise received by county governments and their expenditure”.

Amendment of
Article 97 of
the
Constitution.

13. Article 97 of the Constitution is amended—

(a) in clause (1) by—

(i) deleting the words “two hundred and ninety” and substituting therefor the words “three hundred and sixty” in paragraph (a).

(ii) deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) four members, being two women and two men, representing persons with disabilities;

(iii) deleting paragraph (c) and substituting therefor the following new paragraphs—

“(c) two members, being one woman and one man, representing the youth;

(ca) the number of special seats members necessary to ensure that no

more than two-thirds of the membership of Parliament are of the same gender;”

(iv) inserting the following new paragraphs immediately after paragraphs (d)—

“(e) the Leader of Official Opposition;

(f) the Attorney-General, who is an *ex officio* member; and

(g) the Cabinet Ministers, who are not elected members of the National Assembly, who are *ex officio* members.”

(b) by inserting the following new clauses immediately after clause (3)—

“(3) The members referred to in clause (1) (b), (c) and (ca) shall be elected in accordance with Article 90.

(4) The filling of special seats under clause (1) (ca) shall—

(a) be determined after declaration of elected members from each constituency; and

(b) comprise of candidates who stood for election under clause (1) (a) with precedence being given to those who received the greatest number of votes.

(5) Clauses (1) (ca) and (4) lapse after the next three general elections from the commencement date.”

Amendment of
Article 98 of
the
Constitution.

14. Article 98 of the Constitution is amended—

(a) in clause (1) by—

(i) deleting paragraph (a) and substituting therefor the following new paragraph—

“(b) ninety-four members, being one woman and one man from each county, elected by the registered voters of the counties.”

(ii) deleting paragraph (b);

Amendment of
Article 99 of
the
Constitution.

by—

- (iii) deleting paragraph (c); and
- (iv) deleting paragraph (d).

(b) by deleting clause (2).

15. Article 99 (2) of the Constitution is amended

(a) inserting the words “or a county assembly” at the end of paragraph (a); and

(b) deleting paragraph (d).

Insertion of a
new Article
107A in the
Constitution.

16. The Constitution is amended by inserting the following new Article immediately after Article 107—

107A. Leader of Official Opposition

(1) There shall be a Leader of Official Opposition in the National Assembly.

(2) The Leader of Official Opposition shall be the person—

(a) who received the second greatest number of votes in a presidential election; and

(b) whose political party or coalition of parties has at least twenty-five percent of all the members of the National Assembly.

(3) Where the person under clause (2) is unable to assume office, or the office becomes vacant under Article 103, the political party or coalition of parties not forming government to which the person was a member shall nominate another person to be the Leader of Official Opposition.

(4) A person shall not assume the office of the Leader of the Official Opposition if the Prime Minister is appointed from the person’s political party or coalition of parties.

Repeal and replacement of Article 108 of the Constitution.

17. The Constitution is amended by repealing Article 108 and replacing it with the following new Article—

108. Order of Precedence in the National Assembly

The following order of precedence shall be observed in the National Assembly—

- (a) the Speaker of the National Assembly;
- (b) the Prime Minister; and
- (c) the Leader of Official Opposition.

Insertion of a new Article 108A in the Constitution.

18. The Constitution is amended by inserting the following new Article immediately after Article 108—

108A. Party Leaders in the Senate

(1) There shall be a leader of the majority party and a leader of the minority party in the Senate.

(2) The leader of the majority party shall be the person who is the leader in the Senate of the largest party or coalition of parties.

(3) The leader of the minority party shall be the person who is the leader in the Senate of the second largest party or coalition of parties.

(4) The following order of precedence shall be observed in in the Senate —

- (a) the Speaker of the Senate;
- (b) the leader of the majority party; and
- (c) the leader of the minority party.

Amendment of Article 113 of the Constitution.

19. Article 113 (3) of the Constitution is amended by deleting the words “the National Assembly shall refer the Bill to the President within seven” and substituting therefor the words “the originating House shall refer the Bill to the President within fourteen”.

Amendment of Article 115 of the Constitution.

20. Article 115 (4) (b) of the Constitution is amended by deleting the words “the delegations in” and substituting therefor the words “members of”.

Repeal of Article 123 of the Constitution.

21. The Constitution is amended by repealing Article 123.

Amendment of Article 130 of the Constitution.

22. Article 130 (1) of the Constitution is amended by inserting the words “the Prime Minister, the Deputy Prime Ministers” immediately after the words “the Deputy President.”

Amendment of Article 131 of the Constitution.

23. Article 131(1) (b) of the Constitution is amended by—

- (a) inserting the words “the Prime Minister, the Deputy Prime Ministers” immediately after the words “the Deputy President”; and
- (b) deleting the words “Cabinet Secretaries” and substituting therefor the words “Cabinet Ministers”.

Amendment of Article 132 of the Constitution.

24. Article 132 of the Constitution is amended—

- (a) in clause (1) by inserting the expression “and economic and social rights referred to in Article 43” at the end of paragraph (c)(i); and
- (b) in clause (2) by inserting the words “where applicable” immediately after the words “National Assembly” in the introductory phrase;
- (c) by deleting the words deleting “Cabinet Secretaries” appearing in clause (2)(a) and clause (5) and substituting therefor the words “Cabinet Ministers”.

Amendment of Article 134 of the Constitution.

25. Article 134 (2) (c) of the Constitution is amended by deleting the words “Cabinet Secretaries” and substituting therefor the words “Cabinet Ministers”

Amendment of Article 138 of the Constitution.

26. Article 138 (8) (b) of the Constitution is amended by deleting the words “or Deputy President”.

Amendment of Article 140 of the Constitution.

27. Article 140 (2) of the Constitution is amended by deleting the word “fourteen” and substituting therefor the word “thirty”.

Insertion of
new part 2A in
the
Constitution.

28. The Constitution is amended by inserting the following new Part immediately after Article 151—

PART 2A — THE PRIME MINISTER AND DEPUTY PRIME MINISTERS

151A. Office of the Prime Minister

(1) There shall be a Prime Minister appointed by the President in accordance with Article 151B.

(2) The Prime Minister shall—

(a) be the leader of government business in the National Assembly;

(b) oversee the legislative agenda in the National Assembly on behalf of government;

(c) supervise the execution of the functions of ministries and government departments;

(d) chair cabinet committee meetings as assigned by the President;

(e) assign any of the functions of the Office to the Deputy Prime Ministers; and

(f) perform any other duty assigned by the President or conferred by legislation.

151B. Appointment of the Prime Minister

(1) Within seven days of the President being sworn in after a general election, or following an occurrence of a vacancy in the office of the Prime Minister, the President shall nominate a Prime Minister in accordance with this Article.

(2) A person is eligible to be nominated as the Prime Minister if the person is an elected member of the National Assembly who is the leader in the National Assembly of the largest party or coalition of parties.

(3) Within seven days of the Speaker receiving a nomination from the President, the Speaker shall call a vote in the National Assembly

to confirm the appointment of the person proposed by the President.

(4) A vote under clause (3) passes if it is supported by more than half of all the members of the National Assembly.

(5) Where the National Assembly fails to confirm the appointment of a person nominated by the President, the largest party or coalition of parties shall within seven days of rejection of a nominee, designate another member to be the party leader in the National Assembly and clauses (1), (2) and (3) shall apply.

(6) If the National Assembly fails to confirm the appointment of the person proposed under clause (5), the President shall appoint a member who, in the President's opinion, is able to command the confidence of the National Assembly.

151C. Vacancy in the Office of the Prime Minister

(1) The office of the Prime Minister becomes vacant if the holder of the office —

(a) is dismissed by the President;

(b) ceases to be a member of the National Assembly in accordance with Article 103;

(c) resigns from office in writing addressed to the President; or

(d) is impeached from office in accordance with this Article.

(2) A member of the National Assembly, supported by at least one-quarter of all members may propose a motion of no confidence in the Prime Minister.

(3) If the National Assembly, by a resolution supported by more than half of all members pass the motion of no confidence in the Prime Minister, the Prime Minister ceases to hold office.

151D. The Deputy Prime Ministers

(1) There shall be two Deputy Prime Ministers appointed by the President from among the Cabinet Ministers.

(2) A Deputy Prime Minister shall, in addition to their functions as a Cabinet Minister, —

(a) deputise for the Prime Minister in the execution of the Prime Minister's functions; and

(b) perform any other function the Prime Minister may assign.

(3) The office of a Deputy Prime Minister becomes vacant if the person —

(a) is dismissed by the President;

(b) ceases to be a member of Parliament under Article 103;

(c) ceases to be a Cabinet Minister; or

(d) resigns in writing addressed to the President.

Amendment of
Article 152 of
the
Constitution.

29. Article 152 of the Constitution is amended—

(a) in clause (1) by inserting the following new paragraphs immediately after paragraph (b)—

“(ba) the Prime Minister; and

(bb) the Deputy Prime Ministers;”

(b) by deleting the words “Cabinet Secretary” and “Cabinet Secretaries” wherever the words appear in the Article and respectively substituting therefor the words “Cabinet Minister” or “Cabinet Ministers”;

(c) in clause (2) by deleting the words “nominate and, with the approval of the National Assembly”;

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

“(3) The Cabinet Ministers may be appointed from among the members of the National Assembly.”; and

- (e) by inserting the following new clause immediately after clause (10) —

“(11) When an election of Parliament is held, the Cabinet shall remain in office until the President-elect assumes office.”

Amendment of Article 153 of the Constitution.

30. Article 153 of the Constitution is amended—

- (a) in clause (2) by inserting the words “and the National Assembly” immediately after the words “the President”; and
- (b) by deleting the words “Cabinet Secretary” wherever they appear in the Article and substituting therefor the words “Cabinet Minister.”;

Insertion of new Article 153A in the Constitution.

31. The Constitution is amended by inserting the following new Article immediately after Article 153—

153A. Deputy Ministers

(1) The President may appoint not fewer than fourteen and not more than twenty-two Deputy Ministers.

(2) A Deputy Minister—

- (a) may be appointed from among the members of the National Assembly;
- (b) shall deputise for the Cabinet Minister in the execution of the Cabinet Minister’s functions; and
- (c) is accountable to the President and to the National Assembly for the exercise of their powers and performance of their functions.

(3) The President may re-assign or dismiss a Deputy Minister.

- Amendment of Article 154 of the Constitution.
- 32.** Article 154 (2) (a) of the Constitution is amended by deleting the words “nominated and, with the approval of the National Assembly”.
- Amendment of Article 155 of the Constitution.
- 33.** Article 155 of the Constitution is amended by deleting clause (3) and substituting therefor the following new clause—
- “(3) The President shall appoint Principal Secretaries from among persons recommended by the Public Service Commission.”
- Amendment of Article 156 of the Constitution.
- 34.** Article 156 (4) (c) of the Constitution is amended by inserting the words “functions of a Cabinet Minister and” immediately after the words “shall perform.”
- Amendment of Article 157 of the Constitution.
- 35.** Article 157 (3) of the Constitution is amended by deleting the words “High Court” and substituting therefor the words “Court of Appeal.”
- Repeal of Article 158 of the Constitution.
- 36.** The Constitution is amended by repealing Article 158.
- Amendment of Article 164 of the Constitution.
- 37.** Article 164 of the Constitution is amended by—
- (a) inserting the words “and shall hold office for a single term of five years” at the end of clause (2); and
- (b) inserting the following new clause immediately after clause (3)—
- “(4) Despite Article 163 (4), a determination by the Court of Appeal on an appeal relating to a petition concerning an election is final”.
- Amendment of Article 165 of the Constitution.
- 38.** Article 165 (2) of the Constitution is amended by inserting the words “and shall hold office for a single term of five years” at the end of clause.
- Amendment of Article 166 of the Constitution.
- 39.** Article 166 of the Constitution is amended—
- (a) in clause (3) by deleting the word “fifteen” wherever it appears in paragraphs (a) (b) and (c) and substituting therefor the word “twenty”; and
- (b) in clause (4) by deleting the word “ten” wherever it appears in paragraphs (a) (b) and (c) and substituting therefor the word “fifteen”.

Amendment of
Article 167 of
the
Constitution.

40. Article 167 of the Constitution is amended by inserting the following new clause immediately after clause (5)—

“(6) The provisions of clauses (2), (3) and (4) relating to the tenure of office of the Chief Justice shall apply to the office of the Deputy Chief Justice.”

Amendment of
Article 168 of
the
Constitution.

41. Article 168 (2) of the Constitution is amended by inserting the words “on a motion by the Judiciary Ombudsman” immediately after the words “acting on its own motion”.

Amendment of
Article 171 of
the
Constitution.

42. Article 171 of the Constitution is amended—

(a) in clause (2) by inserting the following new paragraph immediately after paragraph (h)—

“(i) the Judiciary Ombudsman, who is an *ex officio* member”

(b) in clause (4) by deleting the words “and shall be eligible to be nominated for one further term of five years”.

(c) by inserting the following new clauses immediately after clause (4)—

“(5) The members of the Commission elected under clause (2) (f) shall not practice in courts and tribunals during their period of service with the Commission.

Amendment of
Article 172 of
the
Constitution.

43. Article 172 (1) of the Constitution is amended by inserting the following new paragraph immediately after paragraph (c)—

“(ca) receive complaints against judges, investigate and discipline judges by warning, reprimanding or suspending a judge.”

Insertion of
new Article
172A in the
Constitution.

44. The Constitution is amended by inserting the following new Article immediately after Article 172—

172A. The Office of the Judiciary Ombudsman

(1) There is established the Office of the Judiciary Ombudsman.

(2) The President shall nominate and, with the approval of the Senate, appoint the Judiciary Ombudsman.

(3) The Judiciary Ombudsman shall—

(a) receive and conduct inquiries into complaints against judges, registrars, magistrates, and other judicial officers and other staff of the judiciary;

(b) sensitise and promote engagement with the public on the role and performance of the Judiciary; and

(c) improve transparency and accountability of the Judiciary.

(4) The Judiciary Ombudsman shall prepare regular reports to the Judicial Service Commission and an annual report to Parliament on any complaint under clause (3), which shall state—

(a) the findings of the Judiciary Ombudsman; and

(b) recommendations on the action to be taken by the Judicial Service Commission.

(5) The qualifications for appointment as the Judiciary Ombudsman are the same as for the appointment as a judge of the Supreme Court.

(6) The Judiciary Ombudsman shall not investigate any matter pending before any court or tribunal or reopen a court or tribunal case or review a judge's decision.

(7) The Judiciary Ombudsman shall hold office for a single term of five years and is not eligible for re-appointment.

(8) Parliament shall—

(a) allocate adequate funds to enable the office of the Judiciary Ombudsman to perform its functions; and

(b) enact legislation to give full effect to this Article.

Amendment of
Article 177 of
the
Constitution.

45. Article 177 of the Constitution is amended—

(a) in clause (2) by deleting the words “be nominated by political parties in proportion to the seats received” and substituting therefor the words “be elected through the party list by political parties in proportion to the votes received”;

(b) in clause (3) by inserting the words “comprise of candidates who stood for election under clause (1) (a) with precedence being given to those who received the greatest number of votes” at the end of the clause;

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

“(4) The term of a county assembly expires on the date of the next general election”.

(d) by inserting the following new clauses immediately after clause (4)—

“(5) A member of a county assembly may be recalled, before the end of term of the assembly, by—

(a) the electorate, for members elected under Article 177(1)(a); and

(b) the nominating political party, for members elected under Articles 177(1) (b) and (c)”.

(6) Clauses (1) (b) and (3) lapse after the next two general elections from the commencement date.”

Amendment of
Article 179 of
the
Constitution.

46. Article 179 of the Constitution is amended—

(a) in clause (2) (b) by deleting the words “from among persons who are not members of the assembly”;

(b) by inserting the words “and of whom, not more than half may be appointed from the members of the assembly” at the end of the clause (3)(b);

(c) in clause (4) by inserting the words “and shall be accountable to a respective county assembly” at the end of the clause; and

(d) by deleting clause (7) and substituting therefor the following new clause—

“(7) The county governor may re-assign or dismiss a member of the county executive committee.”

Amendment of Article 180 of the Constitution.

47. Article 180 of the Constitution is amended by inserting the following new clause immediately after clause (5)—

“5A. In making the nomination under clause (5), a candidate for election as a county governor shall consider a person of the opposite gender.”

Amendment of Article 189 of the Constitution.

48. Article 188 (1) (b) (ii) of the Constitution is amended by deleting the words “county delegations” and substituting therefor the words “members of the Senate”.

Amendment of Article 202 of the Constitution.

49. Article 202 of the Constitution is amended by inserting the following new clause immediately after clause (2)—

“(3) Where revenue sharing in this Constitution is based on the approval of the most recent audited accounts by the National Assembly and the Assembly has not approved the accounts, the most recent audited accounts of revenue submitted by the Auditor General shall be taken as the accounts of revenue for that purpose.”

Amendment of Article 203 of the Constitution.

50. Article 203 of the Constitution is amended—

(a) in clause (1) by inserting the following new paragraphs immediately after paragraph (k)—

“(l) the need to eradicate corrupt practices and wastage of public resources;

(m) the need to ensure the attainment of the economic and social rights guaranteed under Article 43; and

(n) the need to ensure that the average amount of money allocated per person to a county with the highest allocation does not

exceed three times the average amount per person allocated to a county with the lowest allocation”

- (b) in clause (2) by deleting the word “fifteen” and substituting therefor the word “thirty-five”.

Amendment of Article 204 of the Constitution.

51. Article 204 of the Constitution is amended—

- (a) by deleting the word “twenty” and substituting therefor the word “thirty”; and
- (b) in clause (8) by deleting the words “county delegations in” and substituting therefor the words “members of”.

Insertion of new Article 206A in the Constitution

52. The Constitution is amended by inserting the following new Article immediately after Article 206—

206A. Constituencies Development Fund

(1) There is established a Constituencies Development Fund.

(2) The Fund shall be used to facilitate the performance and implementation of national government development priorities set out in the national budget within the constituencies.

(3) An Act of Parliament shall provide for the management of the Fund including public participation by residents in a constituency.

Amendment of Article 207 of the Constitution.

53. Article 207 (4) (b) of the Constitution is amended by inserting the words “a county assembly fund and” immediately after the words the “establishment of”.

Insertion of new Article 207A in the Constitution

54. The Constitution is amended by inserting the following new Article immediately after Article 207—

207A. Ward Development Fund

(1) There is established a Ward Development Fund for each county, into which shall be paid in each financial year at least five per cent of all the county government's revenue in each financial year.

(2) The Fund shall be used only for development expenditure—

- (a) falling within the functions of the county government within the county wards; and
- (b) to facilitate actualisation of the rights guaranteed under Article 43 within the county wards.

(3) An Act of Parliament shall provide for—

- (a) the management of the Fund;
- (b) criteria for disbursement of the funds to each ward in a county; and
- (c) public participation and identification of the development projects.

Amendment of Article 215 of the Constitution.

55. Article 215 (2) of the Constitution is amended—

- (a) in paragraph (c) by deleting the word “five” and substituting therefor the word “two”; and
- (b) by inserting the following new paragraph immediately after paragraph (c)—

“(ca) two persons, one woman and one man, nominated by the county governors; and

(cb) one person, nominated by the members of the statutory body responsible for the professional regulation of accountants”.

Amendment of Article 218 of the Constitution.

56. Article 218 of the Constitution is amended by inserting the following new clause immediately after clause (2)—

“(3) If the County Allocation of Revenue Act for a financial year has not been passed by Parliament before the beginning of that financial year, the Controller of Budget may—

- (a) authorise the withdrawal from the Consolidated Fund of up to fifty per cent of the minimum amount of equitable share guaranteed to county governments under Article 203(2) based on the criteria contained in the Division of Revenue Act of the immediately preceding financial year; and

(b) disburse to the respective Revenue Funds of the counties the amount under paragraph (a) based on the criteria contained in the County Allocation of Revenue Act of the immediately preceding financial year.”

Amendment of Article 220 of the Constitution.

57. Article 220 of the Constitution is amended—

(a) in clause (1) by inserting the following new paragraph immediately after paragraph (c)—

“(d) an explanation of previous, current and proposed budgetary measures taken to give effect to Article 21(2)”;

(b) in clause (2)(a) by deleting the words “counties” and substituting therefor the words “the national government and counties” at the end of the clause.

Amendment of Article 224 of the Constitution.

58. Article 224 of the Constitution is amended by deleting the words “On the basis of the Division of Revenue Bill passed by Parliament under Article 218”.

Amendment of Article 225 of the Constitution.

59. Article 225 of the Constitution is amended—

(a) in clause (3) by—

(i) deleting the expression “Legislation under clause (2) may authorise the Cabinet Secretary responsible for finance to” appearing in the introductory phrase and substituting therefor the words “The Cabinet Minister responsible for finance shall”;

(ii) in paragraph (a) by deleting the words “that legislation” and substituting therefor the words “by legislation under clause (2)”.

(b) by inserting the following new clauses immediately after clause (3)—

“(3A) Where the Cabinet Minister stops a transfer of funds under clause (3), the Cabinet Minister shall within thirty days table the matter—

(a) in the case of a transfer to a State organ or other public entity, in the National Assembly; and

(b) in the case of a transfer to a county government, in the Senate”.

Amendment of Article 228 of the Constitution.

60. Article 228 (1) of the Constitution is amended by deleting the word “National Assembly” and substituting therefor the word “Senate”.

Amendment of Article 230 of the Constitution.

61. Article 230 of the Constitution is amended—

(a) by deleting clause (2) and substituting therefor the following new clause—

“(2) The Salaries and Remuneration Commission consists of a chairperson and six other members, who have extensive professional experience in human resources and economic matters, nominated by the President and approved by the National Assembly.”

(b) by deleting clause (3);

(c) in clause (4) by inserting the following new paragraph immediately after paragraph (b)—

“(c) determine and harmonise the rates paid by national and county governments to professional consultants for services rendered.”

(d) in clause (5) by inserting the following new paragraph immediately after paragraph (c)—

“(ca) the need to rationalize and harmonise remuneration and benefits paid to all State Officers and public officers.”

Amendment of Article 234 of the Constitution.

62. Article 234 (3) (c) of the Constitution is amended by deleting sub-paragraph (iv) and substituting therefor the following new sub-paragraph—

“(iv) the national security organs referred to in Article 239 (1).”

Insertion of new Article

63. The Constitution is amended by inserting the following new Article immediately after Article 237—

237A in the
Constitution.

237A. The Youth Commission

- (1) There is established the Youth Commission.
- (2) The Commission shall consist of the following persons appointed by the President, with the approval of the Senate—
 - (a) a chairperson; and
 - (b) six members, with equal representation of both genders, at least four of whom shall be youth.
- (3) The members of the Commission shall—
 - (a) include persons with experience in youth affairs and governance; and
 - (b) hold office for a single term of four years.
- (4) The functions of the Commission are to—
 - (a) advance the participation of the youth in all spheres of public and private life;
 - (b) ensure the mainstreaming of the youth perspectives in planning and decision making;
 - (c) advise the national and county governments on the design, implementation and evaluation of policies and programs to secure sustainable livelihoods for the youth;
 - (d) facilitate generational mentorship and integration of African traditional values with contemporary youth lifestyles;
 - (e) promote the preservation and dissemination of African morals, traditions and cultures among the young people; and
 - (f) propose legislative, policy and other measures for the attainment of this Article.
- (5) Parliament shall enact legislation to give full effect to this Article.

Amendment of
Article 240 of
the
Constitution.

64. Article 240 (2) of the Constitution is amended by inserting the following new paragraph immediately after paragraph (b)—

“(ba) the Prime Minister”.

Amendment of
Article 243 of
the
Constitution.

65. Article 243 (2) of the Constitution is amended by inserting the following new paragraph immediately after paragraph (b)—

“(c) the Directorate of Criminal Investigations.”

Amendment of
Article 245 of
the
Constitution.

66. Article 245 of the Constitution is amended—

(a) in clause (2) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) shall—

(i) exercise independent command over the Service;

(ii) determine promotions and transfers within the Service;

(iii) exercise disciplinary control through suspension of officers in the Service; and

(iv) perform any other functions prescribed by legislation.”

(b) in clause (3) by deleting the words “and the Administration Police Service” and substituting therefor the words “the Administration Police Service, and the Directorate of Criminal Investigations”; and

(c) by deleting the words “Cabinet Secretary” appearing in clauses (4) and (5) and substituting therefor the words “Cabinet Minister”.

Amendment of
Article 246 of
the
Constitution.

67. Article 246 of the Constitution is amended—

(a) in clause (2) (c) by deleting the word “both” and substituting therefor the word “the”;

(b) in clause (3) by—

(i) deleting the words “confirm appointments, and determine promotions and transfers” and substituting therefor the words “and

confirm appointments” in paragraph (a)” and

- (ii) deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) set and regularly review the conditions of service and code of conduct within the Service”; and

- (c) inserting the following new clause immediately after clause (4)—

“(5) The Commission may delegate, in writing, with or without conditions, any of its functions and powers under this Article to any officer, body or authority in the National Police Service.”

Amendment of Article 248 of the Constitution.

68. Article 248 (3) of the Constitution is amended by inserting the following new paragraph immediately after paragraph (b)—

“(c) the Director of Public Prosecutions.”

Amendment of Article 250 of the Constitution

69. Article 250 (1) of the Constitution is amended by deleting the word “nine” and substituting therefor the word “seven”.

Amendment of Article 259 of the Constitution.

70. Article 259 of the Constitution is amended by inserting the following new clause immediately after clause (11)—

“(12) Where an appointive office with tenure under this Constitution is due to fall vacant, the process of replacing the holder of that office shall commence at least six months before the lapse of the term of the office holder and conclude before the lapse of the term of the office holder.”

Amendment of Article 260 of the Constitution.

71. Article 260 of the Constitution is amended in the definition of the words “state office” by inserting the following new items in their proper sequence—

“(ba) Prime Minister;

(bb) Deputy Prime Minister;

(ca) Deputy Minister;

(ea) Judiciary Ombudsman;”

Amendment of
the Third
Schedule to the
Constitution.

72. The Third Schedule to the Constitution is amended by—

- (a) inserting the words “Prime Minister/Deputy Prime Minister” immediately before the words “Cabinet Secretary” wherever the words appear in the prescription of the “OATH OF SOLEMN AFFIRMATION OF DUE EXECUTION FOR THE CABINET SECRETARY”; and
- (b) inserting the words “Deputy Chief Justice” immediately after the words “President of the Supreme Court” wherever the words appear in the prescription of the “OATHS FOR THE CHIEF JUSTICE/PRESIDENT OF THE SUPREME COURT, JUDGES OF THE SUPREME COURT, JUDGES OF THE COURT OF APPEAL, AND JUDGES OF THE HIGH COURT”.

Consequential
legislation.

73. (1) Parliament shall enact any legislation required by this Act to be enacted to govern a particular matter within the period recommended in the First Schedule.

(2) For purposes of clause (1), the Kenya Law Reform Commission and the Attorney General shall prepare the relevant Bills for tabling before Parliament as soon as is reasonably practicable to enable Parliament to enact the legislation within the recommended period in the First Schedule commencing on the date this Act comes into force.

Transition and
consequential
provisions.

74. The transitions and consequential provisions set out in the second schedule shall take effect on the date this Act comes into force.

FIRST SCHEDULE

(sec 73 (1))

LEGISLATION TO BE ENACTED BY PARLIAMENT.

ARTICLE	RECOMMENDED TIME SPECIFICATION
Legislation on Economy and Shared Prosperity (Article 11A)	One year.
Legislation on elections (Articles 82, 87, 88, 90, and 97)	Six months.
Office of the Judiciary Ombudsman (Article 172A)	One year.
Constituency Development Fund (Article 206A).	One year.
Ward Development Fund (Article 207A)	One year.
The Youth Commission (Article 237A)	One year.
Any other legislation necessary to give effect to the provisions of this Act.	Two years.

SECOND SCHEDULE

(sec 74)

TRANSITIONAL AND CONSEQUENTIAL PROVISIONS**1. Delimitation of number of Constituencies**

(1) Within six months from the commencement date of this Act, the Independent Electoral and Boundaries Commission shall, subject to subsection (2), determine the boundaries of the additional seventy constituencies created in Article 89 (1) using the criteria provided for in Articles 81 (d) and 87 (7).

(2) The additional seventy constituencies shall be spread among the counties set out in the first column in a manner specified in the second column.

County	Additional Constituencies
Mombasa	Three
Kwale	Three
Kilifi	Four
Mandera	One
Meru	Two
Embu	One
Machakos	Three
Makueni	One
Kirinyaga	One
Murang'a	One
Kiambu	Six
Turkana	One
West Pokot	One
Trans Nzoia	Two
Uasin Gishu	Three
Nandi	One
Laikipia	One
Nakuru	Five
Narok	Three
Kajiado	Three
Kericho	One
Bomet	Two
Kakamega	Two
Bungoma	Three
Siaya	One
Kisumu	Two
Nyamira	One
Nairobi City	Twelve

(3) The allocation of additional constituencies among the counties specified under subsection (2) shall —

- (a) prioritise the constituencies underrepresented in the National Assembly on the basis of population quota; and
- (b) be made in a manner that ensures the number of inhabitants in a constituency is as nearly as possible to the population quota.

(4) The creation of additional constituencies in Article 89 (1) shall not result in the loss of a constituency existing before the commencement date of this Act.

(5) For greater certainty, any protected constituency in the counties of Tana River, Lamu, Taita Taveta, Marsabit, Isiolo, Nyandarua, Nyeri, Samburu, Elgeyo/Marakwet, Baringo, Vihiga and Busia shall not have their protected status impaired by the delimitation of additional constituencies mentioned in this schedule.

(6) The requirement in Article 89 (4) does not apply to the review of boundaries for the additional constituencies preceding the first general election from the commencement date of this Act.

2. Executive

The provisions of this Act relating to Chapter Nine of the Constitution shall take effect from the next general election after the commencement of this Act.

3. Salaries and Remuneration Commission

The Members of the Salaries and Remuneration Commission shall continue to hold office for their unexpired term, unless otherwise removed in accordance with the Constitution.

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to amend the Constitution of Kenya to address issues arising from its implementation, specifically the need to resolve issues of divisive elections and promote gender equity in governance; strengthen the structure of devolution and increase resource allocation to the counties; broaden mechanisms for all the people of Kenya benefit from economic growth; harmonise certain roles and functions of the bicameral legislature; fortify national ethos by specifying the responsibilities of citizens; and strengthen accountability on public resources and the fight against corruption.

In embarking on this constitutional amendment process, the people of Kenya reaffirm their conviction in the words of the preamble to the Constitution asserting the supremacy of the Almighty God in shaping the destiny of the nation.

The proposed constitutional reforms originate from the views of citizens expressed through the Building Bridges Initiative (the BBI). Through the BBI, citizens from all corners of the country shared their concerns and views on issues ranging from their responsibilities and rights, national ethos and responsible citizenship, corruption, productivity and shared prosperity, devolution, divisive elections, ethnic antagonism, inclusivity and security, among others. This Bill focuses on these issues, with an overriding objective of promoting a cohesive society and to further the ideals of a united, prosperous and just nation.

CLAUSES

The Bill seeks to amend Chapter Two of the Constitution on formative aspects of the Republic to address regional integration, cohesion, shared prosperity and the centrality of the economy. The aspiration is to enhance Kenya's standing and leadership in the region and to balance production and sharing.

Clause 2 of the Bill proposes to insert a new Article 10A (**Regional integration and cohesion**) into the Constitution to recognise integration and cohesion of the eastern Africa region and Africa as integral towards achieving national economic goals. The provision obligates the State to take policy and legislative measures for the attainment of this ideal.

Clause 3 of the Bill proposes to insert a new Article 11A (**Economy and shared prosperity**) into the Constitution so as to anchor the aspiration of a new economic model based on value creation and that

provides equitable opportunities for all the people, promotes industrialization and supports small and micro enterprises.

The Bill seeks to amend Chapter Three of the Constitution on Citizenship to introduce a new Article on the responsibilities of a citizen to enhance patriotism and set out the duties of a citizen to the country and to fellow citizens.

Clause 4 of the Bill proposes to insert a new Article 18A (**Responsibilities of a citizen**) into the Constitution to inculcate virtues and engender the principles of national ethos, comprising the spirit of oneness, honesty and integrity and to set out moral principles to be adhered to by every citizen. The responsibilities include the duty to promote harmonious living with other citizens, to pay taxes and contribute to national development, among others. This Article seeks to give life to the words of our national anthem that when the individual thrives, the country thrives.

The Bill seeks to amend Chapter Four of the Constitution on the Bill of Rights to provide a constitutional underpinning for privacy of personal data of citizens as an emerging area in human rights owing to technological advancement.

Clause 5 of the Bill proposes to amend Article 31 (**Privacy**) to incorporate the right for the protection of personal data of citizens. The proposed amendment protects personal data of citizens in view of the advancement and adoption of digital technology by a large percentage of the population and boosts the taming of surveillance capitalism.

The Bill seeks to amend Chapter Six of the Constitution on Leadership and Integrity to strengthen the fight against corruption by providing a mechanism for expeditious conduct of investigation, prosecution and trial of corruption related matters.

Clause 6 of the Bill proposes to amend Article 80 (**Legislation on leadership**) to require Parliament to enact legislation establishing mechanisms to facilitate the expeditious investigation, prosecution and trial of cases relating to corruption and integrity, so as to achieve speedy disposal of such matters.

The Bill seeks to amend Chapter Seven of the Constitution on Representation of the People to enhance equity, transparency and fairness of the electoral system and specifically to give effect to the principles set out in Articles 81(d) and 89 (7) (b). The aim is to foster electoral competition hinged on ideologies and values and to ensure that every vote cast by a citizen count.

Clause 7 of the Bill proposes to amend Article 82 (**Legislation on elections**) to provide for Parliament to enact legislation imposing sanctions on a political party that fails to ensure that the party's list of nominated candidates comply with the principle that not more than one-thirds of such candidates are of the same gender. This is to compel political parties to facilitate the actualization of the gender rule in the electoral process from the nomination stage.

Clause 8 of the Bill proposes to amend Article 87 (**Electoral disputes**) to broaden modes of service of a petition relating to an election to include electronic media to take cognizance of the advancement in technology. It also provides for Parliament to enact legislation to establish mechanisms for settling disputes arising from party nominations.

Clause 9 of the Bill proposes to amend Article 88 (**Independent Electoral and Boundaries Commission**) to bar persons who have, within five years preceding an election, held office or stood for election as President, Deputy President, county governor or a Member of Parliament from being members of the Commission. This is to include some of the offices which were not part of this list. Further, the proposed amendment mandates the IEBC to ensure a list of candidates nominated by a political party for an election comply with the principle that not more than two thirds of the nominated candidates shall be of the same gender. Lastly, the amendment removes the jurisdiction of handling disputes arising from the nominations of candidates by political parties from IEBC and vest it in the Political Parties' Disputes Tribunal so as to achieve speedy adjudication of such disputes and streamline the mandate of the Commission.

Clause 10 of the Bill proposes to amend Article 89 (**Delimitation of electoral units**) to increase the number of constituencies from the current two hundred and ninety constituencies to three hundred and sixty constituencies. This is to facilitate attainment of fair representation in the National Assembly and to actualize the aspiration of the equality of the vote principle especially in the currently underrepresented electoral areas.

Clause 11 of the Bill proposes to amend Article 90 (**Allocation of party list seats**) to promote the principle of equality of the vote and entrench ideals of a transparent electoral process. The proposed amendment provides the candidates to be nominated from a party list for seats in the National Assembly and county assemblies shall be allotted on the basis of the total votes received by their political party

as opposed to the current practice where such allocation is based on seats won by a political party.

The Bill seeks to amend Chapter Eight of the Constitution on the Legislature to remodel the parliamentary system by including the government in the National Assembly and to enhance the oversight powers of the Houses of Parliament. It is proposed that the Executive will be represented in the National Assembly by the Prime Minister, Deputy Prime Ministers, Cabinet Ministers Deputy Ministers and the Attorney-General. The office of the Leader of the Official Opposition is established. The existing disqualifications for the members of the county assemblies from being qualified to be elected as members of Parliament are removed. The Bill further proposes to expand the composition of Parliament to give effect to the gender equity and equality of the vote principles.

Clause 12 of the Bill proposes to amend Article 96 (**Role of the Senate**) to enhance the oversight role of the Senate on matters relating to all county revenues and their expenditures. The existing provision only mandates the Senate with oversight role on the national revenue allocated to the county governments and does not expressly extend such mandate to counties' own source of revenue and borrowings and their expenditures. This is expected to enhance accountability of counties in matters of public finance and enhance service delivery to the people.

Clause 13 of the Bill proposes to amend Article 97 (**Membership of the National Assembly**) to increase the number of the members of the National Assembly elected from constituencies from the current 290 members to 360 members. This is a consequence of the proposed increase in the number of constituencies. Further, this amendment proposes to include the Leader of the Official Opposition, the Cabinet Ministers who are not members of the National Assembly and the Attorney General as members of the National Assembly. Further, the amendment provides for the nomination of persons with disabilities and the youth to the National Assembly. Lastly, special top up seats are created to ensure the gender principle is actualized. However, in filling of the special top up seats, it is provided that a first priority in the nomination shall be given to candidates who contested for the constituency seats and were not elected. The affirmative action for top-up will only last for fifteen years.

Clause 14 of the Bill proposes to amend Article 98 (**Membership of the Senate**) to structure the membership of the Senate to achieve gender parity. It is proposed for the Senate to have ninety-four

members, each county represented by a woman and a man elected by voters in the counties.

Clause 15 of the Bill proposes to amend Article 99 (**Qualification and disqualifications for election as member of Parliament**) to remove a disqualification barring member of the county assemblies from being qualified to be elected as members of Parliament.

Clause 16 of the Bill proposes to insert a new Article 107A (**the Leader of Official Opposition**) into the Constitution. It is proposed the Leader of Official Opposition shall be the person who received the second greatest number of votes in a presidential election and whose political party or coalition of parties has at least twenty-five per cent of the members of the National Assembly. Further, a Leader of Official Opposition and the Prime Minister shall not be members of the same political party.

Clause 17 of the Bill proposes to repeal and replace Article 108 (**Party Leaders**) with a new Article 108 (**Order of precedence in the National Assembly**) to provide for the new order of precedence in the National Assembly to include the Prime Minister and the Leader of Official Opposition.

Clause 18 of the Bill proposes to insert a new Article 108A (**Party Leaders in the Senate**) into the Constitution to constitutionalize the party leadership structure and order of precedence in the Senate.

Clause 19 of the Bill proposes to amend **Article 113 (Mediation committee)** to expand the period within which a Bill shall be referred to the President for assent from the current seven days to fourteen days. This is to allow for adequate time for consultations and refining of the bill by the institutions involved in the legislative process.

Clause 20 of the Bill proposes to amend **Article 115 (Presidential assent and referral)** to remove the voting by delegation in the Senate. This is a consequential amendment flowing from the proposed repeal of Article 123.

Clause 21 of the Bill proposes to repeal Article 123 (**Decisions of Senate**) to do away with the concept of voting by delegation in the Senate. This consequently results to members of the Senate having an equal vote. The amendment originates from proposed amendment of Article 98 that equalizes representation of the counties in the Senate hence making the concept of voting by delegation moot.

The Bill seeks to amend Chapter Nine of the Constitution on the Executive to broaden the executive structure to achieve inclusivity,

cohesiveness, and unity for the benefit of the people. This Chapter introduces the office of the Prime Minister and two Deputy Prime Ministers, with leadership roles in the executive and Parliament. It also provides that Cabinet Ministers may be appointed from among members of the National Assembly.

Clause 22 of the Bill proposes to amend Article 130 (**the National Executive**) to introduce the Prime Minister and the Deputy Prime Ministers in the composition of the national executive.

Clause 23 of the Bill proposes to amend Article 131 (**Authority of the President**) to include the Prime Minister and Deputy Prime Ministers in the list of persons who assists the President in the exercise of the executive authority. The amendment also proposes to rename the office of Cabinet Secretary as Cabinet Minister to reflect a profile change of this office noting that some holders may be appointed from among the members of the National Assembly.

Clause 24 of the Bill proposes to amend Article 132 (**Functions of the President**) to mandate the President to report on the progress made towards achieving the economic and social rights guaranteed under Article 43 by submitting a report for debate to the National Assembly.

Clause 25 of the Bill proposes to amend Article 134 (**Exercise of Presidential powers during temporary incumbency**) as a consequential amendment of renaming the office of Cabinet Secretary as Cabinet Minister.

Clause 26 of the Bill proposes to amend Article 138 (**Procedure at presidential election**) to remove the condition that requires a presidential election to be cancelled and a new election held where a person nominated as a deputy president dies on or before a scheduled election. This is to ensure that a presidential election is held despite the death of a running mate of the presidential candidate to avoid uncertainty and minimize tension in a presidential election.

Clause 27 of the Bill proposes to amend Article 140 (**Questions as to validity of presidential election**) to increase the period during which the Supreme Court is required to hear and determine a petition on questions as to validity of a presidential election from fourteen days to thirty days. This is to provide a more realistic period of finalizing the presidential election petition and is informed by previous experience on the same.

Clause 28 of the Bill proposes to insert new Articles 151A, 151B, 151C, and 151D (**The Office of the Prime Minister and Deputy Prime Ministers**) to provide for the mode of appointment of the Prime Minister and the two Deputy Prime Ministers. The functions of the

Prime Minister shall be to coordinate and supervise government functions. The Prime Minister is to be nominated by the President from among the elected Members of the National Assembly from a political party having a majority of Members in the National Assembly through a stipulated procedure.

The nominee shall not assume office until his or her nomination is confirmed by a resolution of the National Assembly supported by a majority vote of the members. If the second nominee for a Prime Minister proposed by the President is not confirmed, the President shall appoint the Prime Minister without reference to the National Assembly. The Prime Minister may be dismissed by the President or through a vote of no confidence in the National Assembly. The amendment further provides for the Deputy Prime Ministers to be appointed from among the Cabinet Ministers.

Clause 29 of the Bill proposes to amend Article 152 (**Cabinet**) to provide for a mixed cabinet with some members of the Cabinet being appointed from the members of National Assembly. The amendment further provides for the membership of the Prime Minister and Deputy Prime Ministers into the Cabinet. Lastly, the tenure of office of the Cabinet is provided, outlining that the Cabinet remains in office until the President-elect assumes office.

Clause 30 of the Bill proposes to amend Article 153 (**Decision, responsibility and accountability of the Cabinet**) as a consequential amendment of renaming the office of the Cabinet Secretary as Cabinet Minister. The amendment further provides that the term of office of the Cabinet lapses when the President-elect assumes offices.

Clause 31 of the Bill proposes to insert a new Article 153A (**Deputy Ministers**) into the Constitution to establish the office of the Deputy Ministers whose functions shall be to deputise for Cabinet Ministers in the execution of the Cabinet Ministers' functions.

Clause 32 of the Bill proposes to amend Article 154 (**Secretary to the Cabinet**) to remove the requirement for the vetting of the Secretary to the Cabinet by the National Assembly.

Clause 33 of the Bill proposes to amend Article 155 (**Principal Secretaries**) to remove the requirement for the vetting of the Principal Secretaries by the National Assembly. This is to ensure the Public service remains impartial and ready to serve the people under governments of any political formation and ensure that their accountability is administrative and technical.

Clause 34 of the Bill proposes to amend Article 156 (**Attorney General**) to clarify that as a member of the Cabinet, the Attorney General may be assigned by the President to perform the functions of a Cabinet Secretary.

Clause 35 of the Bill proposes to amend Article 157 (**Director of Public Prosecutions**) to enhance the qualification for appointment as the Director of Public Prosecution to be the same as that of a judge of the Court of Appeal.

Clause 36 of the Bill proposes to repeal Article 158 (**Removal and resignation of Director of Public Prosecutions**) to align the removal and resignation of the Director of Public Prosecutions with that of the constitutional commissions and independent offices. This is to reflect that the office of Director of Public Prosecutions is proposed to be included as an independent office in Chapter 15 of the Constitution.

The Bill seeks to amend Chapter Ten of the Constitution on the Judiciary to provide for more transparency in the judicial processes. The proposed amendments provide for the finality of the decisions of Court of Appeal in petitions concerning an election and limits the tenure of the president of the Court of Appeal and High Court to five years. The amendments further provide for the tenure of the Deputy Chief Justice and aligns it with that of the Chief Justice. The Bill further seeks to introduce the Judiciary Ombudsman as a non-voting member of the Judicial Service Commission.

Clause 37 of the Bill proposes to amend Article 164 (**Court of Appeal**) to provide for the finality of the determination by the Court of Appeal on the validity of any appeal relating to an election, other than a presidential election. The amendment further seeks to limit the tenure of the president of the Court of Appeal to a single term of five years.

Clause 38 of the Bill proposes to amend Article 165 (**High Court**) to limit the tenure of the president of the High Court to a single term of five years.

Clause 39 of the Bill proposes to amend Article 166 (**Appointment of Chief Justice, Deputy Chief Justice and other Judges**) to enhance the qualifications of the judges of the Supreme Court and the Court of Appeal relating to their experience. The amendment provides the qualification of a judge of the Supreme Court to be twenty years, a judge of the Court of Appeal to be fifteen years and that of a judge of the High Court to be ten years.

Clause 40 of the Bill proposes to amend Article 167 (**Tenure of office of the Chief Justice and other judges**) to provide for the tenure of

office of the Deputy Chief Justice and harmonise it with the tenure of office of the Chief Justice.

Clause 41 of the Bill proposes to amend Article 168 (**Removal from Office**) to provide that the Judiciary Ombudsman may initiate a motion to remove a judge from office on account of complaints received from the members of the public. This enables the Judiciary Ombudsman to prosecute complaints received against a judge in the Judicial Service Commission.

Clause 42 of the Bill proposes to amend Article 171 (**Establishment of the Judicial Service Commission**) to include the Judiciary Ombudsman as a non-voting member of the Judicial Service Commission. The amendment further provides that elected advocates in the Commission shall not practise in the courts and tribunals in order to minimize potential instances of conflict of interest.

Clause 43 of the Bill proposes to amend Article 172 (**Functions of the Judicial Service Commission**) to provide a mechanism to enable the Judicial Service Commission to discipline judicial officers including judges.

Clause 44 of the Bill proposes to insert a new Article 172A (**The Office of the Judiciary Ombudsman**) into the Constitution to establish the Office of the Judiciary Ombudsman which shall be responsible for handling complaints on the judicial process from the members of the public.

The Bill seeks to amend Chapter Eleven of the Constitution on the Devolved Government to provide for further clarity on the nomination of members of the county assembly and powers of a county governor.

Clause 45 of the Bill proposes to amend Article 177 (**Membership of county assembly**) to change the nomination of candidates from being based on seats won to being based on the votes received by a political party in an election. Further, it seeks to align the term of county assemblies to the election cycle and provide that the special top-up seats shall expire after ten years, in view that affirmative action measures ought to have time limitations.

Clause 46 of the Bill proposes to amend Article 179 (**County executive committees**) to provide clarity that a county governor has powers to dismiss or reassign their county executive committee members. This ensures that a member of the county executive committee does not automatically vacate office when the person holding the office of the county governor becomes vacant. Further, the amendments offer leeway for the county governor to appoint members

of a county assembly into the county executive committee. Lastly, it is provided that the county governors shall be accountable to their respective assemblies in the performance of their functions.

Clause 47 of the Bill proposes to amend Article 180 (**Election of county governor and deputy county governor**) to enhance gender parity in the governance of counties by providing for the candidate of the county governor, in nominating a deputy governor, to consider a person of the opposite gender.

Clause 48 of the Bill proposes to amend **Article 188 (Boundaries of counties)** to remove the voting by delegation in the Senate as a consequential amendment flowing from the proposed repeal of Article 123.

The Bill seeks to amend Chapter Twelve of the Constitution on Public Finance to streamline various public finance principles and processes to promote efficiency and ensure expenditures are directed to maximise utility. The proposals promote the actualization of the rights guaranteed under Article 43 and strengthens devolution.

Clause 49 of the Bill proposes to amend Article 202 (**Equitable sharing of national and other financial laws**) to provide that, where any revenue sharing in the Constitution is to be based on audited accounts and the National Assembly has not approved such accounts, the most recent audited accounts of revenue submitted by the Auditor General shall be used as the basis of revenue sharing.

Clause 50 of the Bill proposes to amend Article 203 (**Equitable share and other financial laws**) to expand the criteria for determining equitable share to include the need to eradicate corrupt practices and wastage of public resources the need to ensure the attainment of the economic and social rights guaranteed under Article 43 and ensure the average amount of money allocated per person to a county with highest allocation does not exceed three times the average amount per person allocated to a county with the lowest allocation. It further increases the percentage of funds allocated to county governments from fifteen to thirty-five to strengthen devolution and ensure that county governments have adequate funds to carry out their operations.

Clause 51 of the Bill proposes to amend Article 204 (**Equalisation Fund**) to increase the life span of the Fund from twenty years to thirty years from the effective date.

Clause 52 of the proposes to insert new Article 206A (**Constituencies Development Fund**) into the Constitution to anchor the Constituencies Development Fund, which shall be used to facilitate the

performance of national government functions within the constituencies.

Clause 53 of the Bill proposes to amend Article 207 (**Revenue Funds for county governments**) to provide for an Act of Parliament to establish a county assembly fund as one of the funds in a county.

Clause 54 of the Bill proposes to insert new Article 207A (**Ward Development Fund**) into the Constitution to establish the Ward Development Fund. The Ward Development Fund shall comprise of at least five per cent of all the county government's revenue in each financial year and ensures equitable distribution and development in the wards of money allocated or collected by the county government.

Clause 55 of the Bill proposes to amend Article 215 (**Commission on Revenue Allocation**) to reduce the number of members nominated by political parties represented in the Senate from five to two so as to balance the representation from the two Houses. The amendment also provides for two members to represent county governors and one person nominated by members of a statutory body responsible for professional regulation of accountants.

Clause 56 of the Bill proposes to amend Article 218 (**Annual Division and Allocation of Revenue Bills**) to mandate the Controller of Budget to authorise the withdrawal of up to fifty per cent of the minimum amount of the equitable share guaranteed to county governments, where the County Allocation of Revenue Act for a financial year has not been passed by Parliament before the beginning of that financial year.

Clause 57 of the Bill proposes to amend Article 220 (**Form, content and timing of budgets**) to require the proposed budgets of national and county governments to contain an explanation of the previous, current or proposed budgetary measures for the attainment of social and economic rights. Further, the amendments seek to impose a requirement, which will be set out in legislation, for the making of structure and development plans by national government. Currently, such an obligation is only imposed on counties. The amendment seeks to increase accountability and value for money while entrenching prudence and efficiency in the use of public resources.

Clause 58 of the Bill proposes to amend Article 224 (**County appropriation Bills**) to free the preparation of county annual budgets from being based on the Division of Revenue Bill. This is in light of the fact that a county government can prepare its budget based on its own sources of revenue.

Clause 59 of the Bill proposes to amend Article 225 (**Financial control**) to empower the Cabinet Minister responsible for finance to stop the transfer of funds to a state organ or other public entity or a county government where there are serious and persistent material breaches of the set out financial control measures, and to table the matter before the relevant House of Parliament for approval.

Clause 60 of the Bill proposes to amend Article 228 (**Controller of Budget**) to shift the approval of the Controller of Budget from the National Assembly to the Senate.

Clause 61 of the Bill proposes to amend Article 230 (**Salaries and Remuneration Commission**) to restructure the membership of the Commission to make it lean and effective. Further, the Bill proposes to add the Commission with an added mandate to set, review, rationalise and harmonise the remuneration of all State Officers and public officers. Further, the Commission shall determine and harmonise the rates paid by national and county governments to professional consultants for services rendered.

The Bill proposes to amend Chapter Thirteen of the Constitution on the Public Service to remove the national security organs from the ambit of the Public Service Commission.

Clause 62 of the Bill proposes to amend Article 234 (**Functions and Powers of the Public Service Commission**) to remove the national security organs as one of the offices in the public service to which the Public Service Commission has no mandate.

Clause 63 of the Bill proposes to insert a new Article 237A (**The Youth Commission**) into the Constitution. The amendment proposes to establish and provide for the functions of the Youth Commission to, among others, promote the implementation of the rights of the youth under Article 55.

The Bill seeks to amend Chapter Fourteen of the Constitution on National Security to merge to provide clarity on the unity of command in the Service.

Clause 64 of the Bill proposes to amend Article 240 (**Establishment of the National Security Council**) to include the Prime Minister as a member of the National Security Council.

Clause 65 of the Bill proposes to amend Article 243 (**Establishment of the National Police Service**) to include the Directorate of Criminal Investigations as a third arm of the National Police Service.

Clause 66 of the Bill proposes to amend Article 245 (**Command of the National Police Service**) to provide clarity on the centrality of command by the Inspector General of Police to the Police Service. The amendment further provides that the Directorate of Criminal Investigations shall be headed by a Deputy Inspector-General.

Clause 67 of the Bill proposes to amend Article 246 (**National Police Service Commission**) to harmonise certain functions of the Commission with the function of centrality of command by the Inspector-General of police.

The Bill seeks to amend Chapter Fifteen of the Constitution on commissions and independent offices to require constitutional commissions to enhance corporate governance practices in managing the affairs of the commissions and independent offices and to include the Director of Public Prosecutions as an independent office.

Clause 68 of the Bill proposes to amend Article 248 (**Commissions and Independent Offices**) to include the Director of Public Prosecutions as an independent office to enhance the independence and budgetary autonomy of the office.

Clause 69 of the Bill proposes to amend Article 250 (**Composition, appointment and terms of offices**) to reduce the number of members of the commissions, whose membership is not specified in the main text, from nine to seven. This is to create lean commissions and reduce the recurrent expenditures of the commissions.

The Bill proposes to amend Chapter Sixteen of the Constitution on General Provisions.

Clause 70 of the Bill proposes to amend Article 259 (**Construing the Constitution**) to provide for the filling of a vacancy of an appointive office under the Constitution, and requires that the process of replacing the holder of that office shall commence at least six months before the lapse of the term of the office holder and conclude before the lapse of the term of that office holder. This is to ensure seamless transition and fewer disruptions in the running of the appointive constitutional state offices.

Clause 71 of the Bill proposes to amend Article 260 (**Interpretation**) to include the offices of the Prime Minister, Deputy Prime Minister, Deputy Minister and Judiciary Ombudsman in the definition of the term "state office".

The Bill amends the Third Schedule to the Constitution on National Oaths and Affirmations.

Clause 72 of the Bill proposes to amend the Third Schedule to include the Prime Minister and Deputy Prime Minister as state officers who should take the oath or make a solemn affirmation as prescribed in the Schedule. Similarly, the amendment seeks to include the Deputy Chief Justice as Oaths for The Chief Justice/President of the Supreme Court, Judges of the Supreme Court, Judges of the Court of Appeal, and Judges of the High Court.

Clause 73 of the Bill provides that Parliament shall enact any legislation required by this Act to be enacted to govern a particular matter within the period specified in the First Schedule. It provides that the Kenya Law Reform Commission and the Attorney General shall prepare the relevant Bills for tabling before Parliament as soon as is reasonably practicable to enable Parliament to enact the legislation within the specified period in the First Schedule commencing on the date this Act comes into force.

Clause 74 of the Bill provides for the transitional and consequential provisions to ensure the seamless implementation of the provisions of this Act, especially in view of some constitutional commissions and state offices that have been reconstituted.

The First Schedule lists the legislation proposed for Parliament to enact and recommended time specification in order to ensure the full implementation of the proposed amendments to the Constitution.

The Second Schedule outlines the transition and consequential provisions on various aspects including saving terms of office of various institutions restructured in the Bill. The schedule further guides on the manner of delimitation in respect of additional seventy constituencies that have been proposed and offers a further savings to the protected constituencies.

Dated the 25th November, 2020.

BUILDING BRIDGES INITIATIVE,
The Promoters.

TEXT OF THE CONSTITUTION OF KENYA

- (a) A copy of the Constitution of Kenya, 2010 is available at www.kenyalaw.org
- (b) A document with extracts of the specific Articles of the Constitution which the Bill proposes to amend is available at www.kenyalaw.org or www.bbisignatures.org