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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2024**

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**NAIROBI, 30th August, 2024**

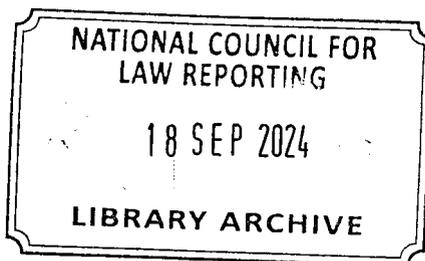
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**THE CONSTITUTION OF KENYA (AMENDMENT)  
(NO. 2) BILL, 2024**

**A Bill for**

**AN ACT of Parliament to amend the Constitution of Kenya.**

**ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the Constitution of Kenya (Amendment) (No. 2) Act, 2024.

Short title.

2. Article 58 of the Constitution of Kenya is amended

Amendment of Article 58 of the Constitution.

(a) in clause (2) by deleting the words “the National Assembly” appearing immediately after the words “the declaration, unless” in paragraph (b) and substituting therefor the word “Parliament”;

(b) by deleting clause (3) and substituting therefor the following new clause—

(3) Parliament may extend a declaration of a state of emergency—

(a) by a resolution adopted—

(i) following a public debate in Parliament; and

(ii) by majorities specified in clause (4); and

(b) for not longer than two months at a time.

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

(4) The first extension of the declaration of a state of emergency requires a supporting vote of at least two-thirds of all the members of the National Assembly and two-thirds of all the county delegations in the Senate, and any subsequent extension requires a supporting vote of at least three-quarters of all the members of the National Assembly and three-quarters of all the county delegations in the Senate.

3. Article 96 of the Constitution of Kenya is amended—

Amendment of Article 96 of the Constitution.

(a) by deleting clause (3) and substituting thereof the following new clause—

(3) The Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over all revenue of county governments.

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

(5) Parliament shall enact legislation to provide the proper mechanisms of oversighting the equitable share of revenue received by a county government and other revenue raised by a county government.

4. Article 101 of the Constitution of Kenya is amended in clause (1) by deleting the word “fifth” appearing immediately after the words “in every” and substituting therefor the word “seventh”.

Amendment of Article 101 of the Constitution.

5. Article 108 of the Constitution of Kenya is amended —

Amendment of Article 108 of the Constitution.

- (a) in clause (1) by inserting the words “for each House of Parliament” immediately after the words “There shall be”;
- (b) in clause (2) by deleting the words “National Assembly” appearing immediately after the words “leader in the” and substituting therefor the words “respective House”;
- (c) in clause (3) by deleting the words “National Assembly” appearing immediately after the words “leader in the” and substituting therefor the words “respective House”;
- (d) by deleting clause (4) and substituting therefor the following new clause —

(4) The following order of precedence shall be observed in each House of Parliament —

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

6. The Constitution of Kenya is amended by deleting Article 109 and substituting therefor the following new Article —

Amendment of Article 109 of the Constitution.

### **Exercise of legislative powers**

**109.** (1) Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the President.

(2) A Bill may be introduced by any member or committee of the respective House of Parliament.

(3) A Bill may originate in either House of Parliament.

(4) A Bill shall be referred to the President for assent only after it has been passed by both Houses of Parliament in accordance with this Constitution.

(5) The Speakers of both Houses shall, within a period of seven days after a Bill has been passed by both Houses, jointly submit to the President –

(a) the Bill, for assent and publication; and

(b) a certificate that the Bill has been passed by both Houses in accordance with this Article.

**7.** The Constitution of Kenya is amended by deleting Article 111 and substituting therefor the following new Article—

Amendment of  
Article 111 of the  
Constitution.

### **Procedure for Division of Revenue Bill and County Allocation of Revenue Bill**

**111.** (1) A County Allocation of Revenue Bill shall proceed in the same manner as any other Bill subject to clauses (2) to (5).

(2) A Division of Revenue Bill shall originate in the National Assembly while a County Allocation of Revenue Bill shall originate in the Senate.

(3) A Division of Revenue Bill or a County Allocation of Revenue Bill that has been passed by the respective House may be amended or vetoed only by a resolution supported by at least two-thirds of all the members of the National Assembly and two-thirds of all the county delegations in the Senate.

(4) If a resolution to amend or veto a Division of Revenue Bill or a County Allocation of Revenue Bill fails to pass, the Bill shall be referred to the President for assent in accordance with Article 109(5).

(5) The Senate may veto a resolution of the National Assembly to amend or veto a County Allocation of Revenue Bill under clause (4) by a resolution supported by at least two-thirds of all the county delegations in the Senate and the Bill shall thereafter be referred to the President for assent in accordance with Article 109(5).

8. The Constitution of Kenya is amended by inserting the following new Article immediately after Article 111 of the Constitution —

Insertion of new Article 111A.

**Procedure for Appropriation Bill and Supplementary Appropriation Bill**

**111A.** (1) An Appropriation Bill or a Supplementary Appropriation Bill shall proceed in the same manner as any other Bill subject to clauses (2) to (5).

(2) An Appropriation Bill and a Supplementary Appropriation Bill shall originate in the National Assembly and thereafter referred to the Senate for consideration.

(3) The Senate may amend or veto an Appropriation Bill or a Supplementary Appropriation Bill that has been passed by the National Assembly only by a resolution supported by at least two-thirds of all the county delegations in the Senate.

(4) If a resolution in the Senate to amend or veto an Appropriation Bill or a Supplementary Appropriation Bill fails to pass, the Bill shall be referred to the President for assent in accordance with Article 109(5).

(5) The National Assembly may veto a resolution of the Senate to amend or veto an Appropriation Bill or a Supplementary

Appropriation Bill under clause (4) by a resolution supported by at least two-thirds of the members of the National Assembly and the Bill shall thereafter be referred to the President for assent in accordance with Article 109(5).

9. The Constitution of Kenya is amended by deleting Article 114 and substituting therefor the following new Article –

Amendment of Article 114 of the Constitution.

### **Money Bills**

**114.** (1) In this Constitution, “a money Bill” means a Bill, other than a Bill specified in Article 218 whose principal or overriding object is to provide for the imposition, abolition, remission, alteration or regulation of any tax and matters incidental to taxation.

(2) A money Bill may not deal with any matter other than that listed in the definition of a “money Bill” in clause (1).

(3) If in the opinion of the Speaker of the relevant House, a motion makes provision for a matter listed in the definition of “a money Bill”, –

(a) in the case of the National Assembly, the Assembly may proceed only in accordance with the recommendation of the relevant Committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance; and

(b) in the case of the Senate, the Speaker shall direct that the motion be proceeded with first at the National Assembly and thereafter the Bill shall be referred to the Senate.

(4) A Bill is not a money Bill if it provides for the matters set out under clause (1) in respect of a county or if it deals with a matter affecting counties or their functions.

10. Article 136 of the Constitution of Kenya is amended in clause (2) by deleting the word “fifth”

Amendment of Article 136 of the Constitution.

appearing immediately after the words “in every” and substituting therefor the word “seventh”.

**11.** The Constitution of Kenya is amended by inserting the following new Article immediately after Article 151 —

Amendment of Article 151 of the Constitution.

**151A.** (1) There shall be a Prime Minister of Kenya who shall be a Member of Parliament appointed by the President from the party or a coalition of majority parties in Parliament.

(2) The Prime Minister shall be the head of government, responsible for the day-to-day administration of the government, and shall be accountable to Parliament.

(3) The Prime Minister shall serve at the pleasure of the President, and the President may, terminate the appointment of the Prime Minister.

**12.** Article 152 of the Constitution of Kenya is amended —

Amendment of Article 152 of the Constitution.

(a) in clause (2) by deleting the words “National Assembly” appearing immediately after the words “approval of the” and substituting therefor the word “Senate”; and

(b) in clause (6) by deleting the introductory clause and substituting therefor the following new introductory clause —

(6) A Senator, supported by at least one-quarter of all the senators, may propose a motion requiring the President to dismiss a Cabinet Secretary —

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

(7) If a motion under clause (6) is supported by at least one-third of all the Senators —

(a) the Senate shall appoint a select committee comprising eleven of its members to investigate the matter; and

(b) the select committee shall, within ten days, report to the Senate whether it finds the allegations against the Cabinet Secretary to be substantiated.

(d) in clause (9) by deleting the words “the National Assembly” appearing immediately after the word “substantiated” in paragraph (b) and substituting for the words “the Senate”; and

(e) in clause (10) by deleting the words “members of the National Assembly” appearing immediately after the words “majority of the” and substituting for the words “Senators”.

**13.** Article 154 of the Constitution of Kenya is amended in clause (2) by deleting the words “National Assembly” appearing immediately after the words “approval of the” in paragraph (a) and substituting therefor the word “Senate”.

Amendment of Article 154 of the Constitution.

**14.** Article 155 of the Constitution of Kenya is amended in clause (3) by deleting the words “National Assembly” appearing immediately after the words “approval of the” in paragraph (b) and substituting therefor the word “Senate”.

Amendment of Article 155 of the Constitution.

**15.** Article 156 of the Constitution of Kenya is amended in clause (2) by deleting the words “National Assembly” appearing immediately after the words “approval of the” and substituting therefor the word “Senate”.

Amendment of Article 156 of the Constitution.

**16.** Article 157 of the Constitution of Kenya is amended in clause (2) by deleting the words “National Assembly” appearing immediately after the words “approval of the” and substituting therefor the word “Senate”.

Amendment of Article 157 of the Constitution.

**17.** Article 166 of the Constitution of Kenya is amended in clause (1) by deleting the words “the National Assembly” appearing after the words “approval of the” in paragraph (a) and substituting therefor the word “Senate”.

Amendment of Article 166 of the Constitution

**18.** Article 177 of the Constitution of Kenya is amended in clause (1) by deleting the word “fifth” appearing immediately after the words “August, in every” in paragraph (a) and substituting therefor the word “seventh”.

Amendment of Article 177 of the Constitution.

**19.** Article 180 of the Constitution of Kenya is amended in clause (1) by deleting the word “fifth”

Amendment of Article 180 of the Constitution.

appearing immediately after the words “August, in every” and substituting therefor the word “seventh”.

**20.** Article 181 of the Constitution of Kenya is amended by deleting clause (2) and substituting therefor the following new clauses –

Amendment of  
Article 181 of the  
Constitution

(2) A member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a motion for the removal of the county governor on the grounds set out under clause (1).

(3) If a motion under clause (2) is supported by at least two-thirds of all the members of the county assembly –

(a) the speaker of the county assembly shall inform the Speaker of the Senate of that resolution within two days; and

(b) the governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this Article.

(4) Within seven days after receiving notice of a resolution from the speaker of the county assembly –

(a) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor; and

(b) the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.

(5) A special committee appointed under clause (4)(b) shall –

(a) investigate the matter; and

(b) report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated.

(6) The governor shall have the right to appear and be represented before the special committee during its investigations.

(7) If the special committee reports that the particulars of any allegation against the governor –

(a) have not been substantiated, further proceedings shall not be taken under this Article in respect of that allegation; or

(b) have been substantiated, the Senate shall, after according the governor an opportunity to be heard, vote on the impeachment charges.

(8) If at least two-thirds of all the county delegations of the Senate vote to uphold any impeachment charge, the governor shall cease to hold office.

(9) If a vote in the Senate fails to result in the removal of the governor, the Speaker of the Senate shall notify the speaker of the concerned county assembly accordingly and the motion by the assembly for the removal of the governor on the same charges may only be re-introduced to the Senate on the expiry of three months from the date of such vote.

(10) The procedure for the removal of the President on grounds of incapacity under Article 144 of the Constitution shall, with necessary modifications, apply to the removal of a governor.

(11) This Article shall, with necessary modifications, apply to the removal of a deputy governor.

**21.** The Constitution of Kenya is amended by inserting the following new Article immediately after Article 181 –

Insertion of new clause 181A.

Questions as to validity of removal of governor.

**181A.** (1) A person may file a petition in the Supreme Court to challenge the decision of the Senate under Article 181 within a period of seven days from the date of the resolution of the Senate.

(2) A petition filed under clause (1) shall be heard and determined within thirty days.

**22.** Article 203 of the Constitution of Kenya is amended in clause (2) by deleting the word “fifteen” appearing immediately after the words “not less than” and substituting therefor the word “forty”.

Amendment of Article 203 of the Constitution.

**23.** Article 215 of the Constitution of Kenya is amended in clause (2) by deleting the words “National Assembly” appearing immediately after the words “approved by the” in paragraph (a) and substituting therefor the word “Senate”.

Amendment of Article 215 of the Constitution.

**24.** Article 218 of the Constitution of Kenya is amended by deleting clause (1) and substituting therefor the following new clauses –

Amendment of Article 218 of the Constitution.

(1) A Division of Revenue Bill, which shall divide revenue raised by the national government between the national and county levels of government, shall be –

- (a) introduced in the National Assembly at least four months before the end of each financial year in accordance with this Constitution; and
- (b) enacted by Parliament not later than three months before the end of each financial year in accordance with this Constitution.

(1A) A County Allocation of Revenue Bill, which shall divide among the counties the revenue allocated to the county level of government on the basis determined in accordance with the resolution in force under Article 217, shall be introduced in the Senate and enacted by Parliament within a period of thirty days from the date of enactment of the Division of Revenue Act.

**25.** Article 224 of the Constitution of Kenya is amended by deleting the words “Division of Revenue Bill” appearing immediately after the words “basis of the” and substituting therefor the words “County Allocation of Revenue Bill”.

Amendment of Article 224 of the Constitution.

**26.** Article 226 of the Constitution of Kenya is amended in clause (2) by inserting the word “Senate” immediately after the words “accountable to the”.

Amendment of Article 226 of the Constitution.

**27.** Article 228 of the Constitution of Kenya is amended in clause (1) by deleting the words “National Assembly” appearing immediately after the words “approval of the” and substituting therefor the word “Senate”.

Amendment of Article 228 of the Constitution.

**28.** Article 229 of the Constitution of Kenya is amended –

Amendment of Article 229 of the Constitution.

- (a) in clause (1) by deleting the words “National Assembly” appearing immediately after the words “approval of the” and substituting therefor the word “Senate”; and

(b) by inserting the following new clause immediately after clause (8) –

(9) The Auditor-General shall prepare annual estimates of expenditure for the Office of the Auditor-General and submit the estimates to Parliament for approval.

**29.** Article 233 of the Constitution of Kenya is amended in clause (2) by deleting the words “National Assembly” appearing immediately after the words “approval of the” and substituting therefor the word “Senate”.

Amendment of Article 233 of the Constitution.

**30.** Article 241 of the Constitution of Kenya is amended in clause (3) by—

Amendment of Article 241 of the Constitution.

(a) deleting the words “the National Assembly” appearing immediately after the words “report to the” in paragraph (b) and substituting therefor the word “Parliament”; and

(b) deleting the words “the National Assembly” appearing immediately after the words “approval of the” in paragraph (c) and substituting therefor the word “Parliament”.

**31.** Article 245 of the Constitution of Kenya is amended in clause (2) by deleting the word “Parliament” appearing immediately after the words “the approval of” in paragraph (a) and substituting therefor the words “the Senate”.

Amendment of Article 245 of the Constitution.

**32.** Article 250 of the Constitution is amended in clause (2) by deleting the words “National Assembly” appearing immediately after the words “approved by the” in paragraph (b) and substituting therefor the word “Senate”.

Amendment of Article 250 of the Constitution.

**33.** Article 251 of the Constitution of Kenya is amended —

Amendment of Article 251 of the Constitution.

(a) in clause (2) by deleting the words “National Assembly” appearing immediately after the words “petition to the” and substituting therefor the word “Senate”; and

(b) in clause (3) by deleting the words “National Assembly” appearing immediately after the word “The” and substituting therefor the word “Senate”.

## MEMORANDUM OF OBJECTS AND REASONS

### Statement of the Objects and Reasons for the Bill

The Constitution of Kenya provides for a devolved system of government and provides a bicameral legislature at the national level. The role that the Senate plays in the execution of its oversight and legislative roles calls for more participation of the Senate in matters to do with governance. This Bill therefore seeks to increase the parliamentary role of the Senate by addressing the issues that have hampered the implementation of the constitution.

The Bill proposes to amend **Article 58** of the Constitution to provide for the involvement of the Senate and the National Assembly as the Houses of Parliament in the approval of an extension of a state of emergency. A state of emergency affects the stability and functioning of the national and county governments and the nation as a whole. Consequently, it is important that both Houses be involved in this process.

The Bill further proposes to amend **96** of the Constitution which provides that the Senate is to exercise oversight over revenue allocated to, raised by, or otherwise received by the county governments and its expenditure. This proposed amendment seeks to ensure that there is greater clarity in the role of the Senate in overseeing all county revenues and giving Parliament the mandate to legislate on the parameters of both nationally allocated and locally generated revenue.

The Bill additionally proposes to amend of **Article 101** extend the term of a Member of Parliament from five years to seven years.

The Bill proposes to amend of **Article 108** of the Constitution to provide for the leadership and the order of precedence in the Senate. As currently worded, Article 108 of the Constitution only provides for the leadership and the order of precedence in the National Assembly, omitting that of the Senate.

The Bill proposes to amend **Article 109** of the Constitution to provide for the origination of any Bill in either House of Parliament, save for a money Bill which may only originate in the National Assembly before going to the Senate. In addition, the Bill seeks to provide for the procedure for the consideration of a County Allocation of Revenue Bill by both Houses of Parliament, given the impact the Bill would have on county governments.

In addition, the Bill also proposes to insert a new **Article 111A** to provide for the procedure for the consideration and approval of an Appropriation Bill and a Supplementary Appropriation Bill by both

Houses of Parliament and to provide for the procedure for the consideration of Bills by both Houses of Parliament.

The Bill proposes to amend **Article 114** of the Constitution to provide clarity regarding the definition of a money Bill which has been subject to multiple interpretations. The amendment seeks to limit the definition of a money bill to be restricted only to tax related matters.

The Bill proposes to amend of **Article 136** to amend the term of President from five years to seven years.

The Bill seeks to amend **Article 151** by inserting article 151A which proposes to create the office of the Prime Minister who shall be appointed by the president from amongst the members of Parliament. The Prime Minister shall be the leader of the largest party or coalition of parties in Parliament.

The Bill proposes to amend **Articles 152, 154, 155, 156 157, 166, 215, 228, 229, 245, 250 and 251** the Constitution to assign the responsibility of appointment and removal from office of various State officers to the Senate and the National Assembly as follows –

1. The Senate to vet and approves all offices including cabinet secretaries;
2. all approvals of nominees for offices relating to High Commissioners and ambassadors to be approved by the National Assembly.

The Bill therefore proposes that the approvals be undertaken as follows –

### **National Assembly**

- (a) High Commissioners, Ambassadors and Diplomatic and Consular Representatives.

### **Senate**

- (a) Attorney-General;
- (b) Cabinet Secretaries;
- (c) Secretary to the Cabinet;
- (d) Principal Secretaries;
- (e) Director of Public Prosecutions
- (f) Chair and Members of Constitutional Commissions;
- (g) Chief Justice;

- (h) Deputy Chief Justice;
- (i) Auditor-General;
- (j) Inspector-General of the National Police Service;
- (k) Controller of Budget;
- (l) Nominees to the Commission on Revenue Allocation under Article 215; and
- (m) Members of the Public Service Commission under Article 233.

The Bill proposes to amend **Article 177** of the Constitution to amend the term of Members of County Assembly from five to seven years.

The Bill proposes to amend **Article 180** of the Constitution to amend the term of Governor from five to seven years.

The Bill proposes to amend **Article 181** of the Constitution to provide for the procedure for removal of a Governor from office. The bill also seeks to provide the same procedure for the removal of a deputy governor from office.

The Bill proposes to amend **Article 203** of the Constitution to enhance the percentage of the allocation of resources to county governments from fifteen percent to forty percent. This is aimed at ensuring that the system of devolution is adequately supported through the provision of adequate resources for the effective performance of the functions of county governments.

The Bill proposes to amend **Article 218** to provide for the process of consideration of a Division of Revenue Bill and a County Allocation of Revenue Bill by both the Senate and the National Assembly while providing timelines within which the Bills are to be passed by Parliament to enable the county assemblies to prepare and pass their budgets before the end of the financial year.

The Bill proposes to amend **Article 224** of the Constitution to clarify that the basis for the preparation of budgets by county Governments is a County Allocation of Revenue Bill and not the Division of Revenue Act.

The Bill proposes to amend **Article 226** of the Constitution to provide for a mechanism of accountability with regard to accounting officers of State organs and national public entities, county governments and the accounting officers of county public entities. The amendment seeks to clarify the oversight powers of the Senate as a second-tier oversight mechanism for county governments.

The Bill also proposes to amend **Article 229** of the Constitution to provide for the submission of the annual estimates of expenditure for the Office of the Auditor General directly by the Auditor General to Parliament for approval.

The Bill proposes to amend **Article 241** of the Constitution to require the approval of both Houses of Parliament before the deployment of the Kenya Defence Forces in any part of Kenya.

The Bill proposes to provide a framework that would strengthen the existing system of devolution. It aims to do this by aligning the roles and functions of Parliament and all entities at the national and county levels of government in a manner that would promote the effective administration of the devolved system of government. In addition, the Bill proposes to provide a system of accountability at the national and county levels of government particularly with regard to the allocation and utilization of resources allocated by, and to, the respective levels of government. The Bill also seeks to ensure that adequate resources are allocated to the county governments for the carrying out of their functions as set out under the Fourth Schedule to the Constitution. The Bill is therefore a Bill concerning county governments.

Dated the 31st July, 2024.

SAMSON KIPROTICH CHERARKEY,  
*Senator.*

*Article 58 of which it is proposed to amend—*

**58. State of emergency**

(1) A state of emergency may be declared only under Article 132 (4)(d) and only when—

- (a) the State is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
- (b) the declaration is necessary to meet the circumstances for which the emergency is declared.

(2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of the declaration, shall be effective only—

- (a) prospectively; and
- (b) for not longer than fourteen days from the date of the declaration, unless the National Assembly resolves to extend the declaration.

(3) The National Assembly may extend a declaration of a state of emergency—

- (a) by resolution adopted—
  - (i) following a public debate in the National Assembly; and
  - (ii) by the majorities specified in clause (4); and
- (b) for not longer than two months at a time.

(4) The first extension of the declaration of a state of emergency requires a supporting vote of at least two-thirds of all the members of the National Assembly and any subsequent extension requires a supporting vote of at least three-quarters of all the members of the National Assembly.

(5) The Supreme Court may decide on the validity of—

- (a) a declaration of a state of emergency;
- (b) any extension of a declaration of a state of emergency; and
- (c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.

(6) Any legislation enacted in consequence of a declaration of a state of emergency—

- (a) may limit a right or fundamental freedom in the Bill of Rights only to the extent that—

- (i) the limitation is strictly required by the emergency; and
- (ii) the legislation is consistent with the Republic's obligations under international law applicable to a state of emergency; and

(b) shall not take effect until it is published in the *Gazette*.

(7) A declaration of a state of emergency, or legislation enacted or other action taken in consequence of any declaration, may not permit or authorise the indemnification of the State, or of any person, in respect of any unlawful act or omission.

*Article 96 of the Constitution of which it is proposed to repeal—*

### **96. Role of the Senate**

(1) The Senate represents the counties, and serves to protect the interests of the counties and their governments.

(2) The Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113.

(3) The Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments.

(4) The Senate participates in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with Article 145.

*Article 101 of the Constitution of which it is proposed to repeal—*

### **101. Election of members of Parliament**

(1) A general election of members of Parliament shall be held on the second Tuesday in August in every fifth year.

(2) Whenever a vacancy occurs in the office of a member of the National Assembly under Article 97 (1) (c), or of the Senate under Article 98 (1) (b), (c) or (d), the respective Speaker shall, within twenty-one days of the occurrence of the vacancy, give notice in writing of the vacancy to—

- (a) the Independent Electoral and Boundaries Commission; and
- (b) the political party on whose party list the member was elected or nominated.

(3) A vacancy referred to in clause (2) shall, subject to clause (5), be filled in the manner prescribed by an Act of Parliament within twenty-one days of the notification by the respective Speaker.

(4) Whenever a vacancy occurs in the office of a member of the National Assembly elected under Article 97 (1) (a) or (b), or of the Senate elected under Article 98 (1) (a)—

(a) the respective Speaker shall, within twenty-one days after the occurrence of the vacancy, give notice in writing of the vacancy to the Independent Electoral and Boundaries Commission; and

(b) a by-election shall be held within ninety days of the occurrence of the vacancy, subject to clause (5).

(5) A vacancy referred to in clause (4) shall not be filled within the three months immediately before a general election.

*Article 108 of the Constitution of which it is proposed to amend—*

### **108. Party leaders**

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

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

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

(a) the Speaker of the National Assembly;

(b) the leader of the majority party; and

(c) the leader of the minority party.

*Article 109 of the Constitution of which it is proposed to amend—*

### **109. Exercise of legislative powers**

(1) Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the President.

(2) Any Bill may originate in the National Assembly.

(3) A Bill not concerning county government is considered only in the National Assembly, and passed in accordance with Article 122 and the Standing Orders of the Assembly.

(4) A Bill concerning county government may originate in the National Assembly or the Senate, and is passed in accordance with Articles 110 to 113, Articles 122 and 123 and the Standing Orders of the Houses.

(5) A Bill may be introduced by any member or committee of the relevant House of Parliament, but a money Bill may be introduced only in the National Assembly in accordance with Article 114.

*Article 111 of the Constitution of which it is proposed to amend—*

### **111. Special Bills concerning county governments**

(1) A special Bill concerning a county government shall proceed in the same manner as an ordinary Bill concerning county government, subject to clauses (2) and (3).

(2) The National Assembly may amend or veto a special Bill that has been passed by the Senate only by a resolution supported by at least two-thirds of the members of the Assembly.

(3) If a resolution in the National Assembly to amend or veto a special Bill fails to pass, the Speaker of the Assembly shall, within seven days, refer the Bill, in the form adopted by the Senate, to the President for assent.

*Article 114 of the Constitution of which it is proposed to repeal—*

### **114. Money Bills**

(1) A money Bill may not deal with any matter other than those listed in the definition of “**a money Bill**” in clause (3).

(2) If, in the opinion of the Speaker of the National Assembly, a motion makes provision for a matter listed in the definition of “**a money Bill**”, the Assembly may proceed only in accordance with the recommendation of the relevant Committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance.

(3) In this Constitution, “**a money Bill**” means a Bill, other than a Bill specified in Article 218, that contains provisions dealing with—

- (a) taxes;
- (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
- (c) the appropriation, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; or

(e) matters incidental to any of those matters.

(4) In clause (3), “tax”, “public money”, and “loan” do not include any tax, public money or loan raised by a county.

*Article 136 of the Constitution of which it is proposed to amend—*

### **136. Election of the President**

(1) The President shall be elected by registered voters in a national election conducted in accordance with this Constitution and any Act of Parliament regulating presidential elections.

(2) An election of the President shall be held—

(a) on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year; or

(b) in the circumstances contemplated in Article 146.

*Article 152 of the Constitution of which it is proposed to amend—*

### **152. Cabinet**

(1) The Cabinet consists of—

(a) the President;

(b) the Deputy President;

(c) the Attorney-General; and

(d) not fewer than fourteen and not more than twenty-two Cabinet Secretaries.

(2) The President shall nominate and, with the approval of the National Assembly, appoint Cabinet Secretaries.

(3) A Cabinet Secretary shall not be a Member of Parliament.

(4) Each person appointed as a Cabinet Secretary—

(a) assumes office by swearing or affirming faithfulness to the people and the Republic of Kenya and obedience to this Constitution, before the President and in accordance with the Third Schedule; and

(b) may resign by delivering a written statement of resignation to the President.

(5) The President—

(a) may re-assign a Cabinet Secretary;

(b) may dismiss a Cabinet Secretary; and

(c) shall dismiss a Cabinet Secretary if required to do so by a resolution adopted under clauses (6) to (10).

(6) A member of the National Assembly, supported by at least one-quarter of all the members of the Assembly, may propose a motion requiring the President to dismiss a Cabinet Secretary—

- (a) on the ground of a gross violation of a provision of this Constitution or of any other law;
- (b) where there are serious reasons for believing that the Cabinet Secretary has committed a crime under national or international law; or
- (c) for gross misconduct.

(7) If a motion under clause (6) is supported by at least one-third of the members of the National Assembly—

- (a) the Assembly shall appoint a select committee comprising eleven of its members to investigate the matter; and
- (b) the select committee shall, within ten days, report to the Assembly whether it finds the allegations against the Cabinet Secretary to be substantiated.

(8) The Cabinet Secretary has the right to appear and be represented before the select committee during its investigations.

(9) If the select committee reports that it finds the allegations—

- (a) unsubstantiated, no further proceedings shall be taken; or
- (b) substantiated, the National Assembly shall—
  - (i) afford the Cabinet Secretary an opportunity to be heard; and
  - (ii) vote whether to approve the resolution requiring the Cabinet Secretary to be dismissed.

(10) If a resolution under clause (9) (b) (ii) requiring the President to dismiss a Cabinet Secretary is supported by a majority of the members of the National Assembly—

- (a) the Speaker shall promptly deliver the resolution to the President; and
- (b) the President shall dismiss the Cabinet Secretary.

*Article 154 of the Constitution of which it is proposed to amend—*

#### **154. Secretary to the Cabinet**

(1) There is established the office of Secretary to the Cabinet, which is an office in the public service.

(2) The Secretary to the Cabinet shall—

(a) be nominated and, with the approval of the National Assembly, appointed by the President; and

(b) may be dismissed by the President.

(3) The Secretary to the Cabinet shall—

(a) have charge of the Cabinet office;

(b) be responsible, subject to the directions of the Cabinet, for arranging the business, and keeping the minutes, of the Cabinet;

(c) convey the decisions of the Cabinet to the appropriate persons or authorities; and

(d) have other functions as directed by the Cabinet.

(4) The Secretary to the Cabinet may resign from office by giving notice, in writing, to the President.

*Article 155 of the Constitution of which it is proposed to amend—*

### **155. Principal Secretaries**

(1) There is established the office of Principal Secretary, which is an office in the public service.

(2) Each State department shall be under the administration of a Principal Secretary.

(3) The President shall—

(a) nominate a person for appointment as Principal Secretary from among persons recommended by the Public Service Commission; and

(b) with the approval of the National Assembly, appoint Principal Secretaries.

(4) The President may re-assign a Principal Secretary.

(5) A Principal Secretary may resign from office by giving notice, in writing, to the President.

*Article 156 of the Constitution of which it is proposed to amend—*

### **156. Attorney-General**

(1) There is established the office of Attorney-General.

(2) The Attorney-General shall be nominated by the President and, with the approval of the National Assembly, appointed by the President.

(3) The qualifications for appointment as Attorney-General are the same as for appointment to the office of Chief Justice.

(4) The Attorney-General—

(a) is the principal legal adviser to the Government;

(b) shall represent the national government in court or in any other legal proceedings to which the national government is a party, other than criminal proceedings; and

(c) shall perform any other functions conferred on the office by an Act of Parliament or by the President.

(5) The Attorney-General shall have authority, with the leave of the court, to appear as a friend of the court in any civil proceedings to which the Government is not a party.

(6) The Attorney-General shall promote, protect and uphold the rule of law and defend the public interest.

(7) The powers of the Attorney-General may be exercised in person or by subordinate officers acting in accordance with general or special instructions.

*Article 157 of the Constitution of which it is proposed to amend—*

### **157. Director of Public Prosecutions**

(1) There is established the office of Director of Public Prosecutions.

(2) The Director of Public Prosecutions shall be nominated and, with the approval of the National Assembly, appointed by the President.

(3) The qualifications for appointment as Director of Public Prosecutions are the same as for the appointment as a judge of the High Court.

(4) The Director of Public Prosecutions shall have power to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such direction.

(5) The Director of Public Prosecutions shall hold office for a term of eight years and shall not be eligible for re-appointment.

(6) The Director of Public Prosecutions shall exercise State powers of prosecution and may—

(a) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;

- (b) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and
- (c) subject to clauses (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).

(7) If the discontinuance of any proceedings under clause (6)(c) takes place after the close of the prosecution's case, the defendant shall be acquitted.

(8) The Director of Public Prosecutions may not discontinue a prosecution without the permission of the court.

(9) The powers of the Director of Public Prosecutions may be exercised in person or by subordinate officers acting in accordance with general or special instructions.

(10) The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority.

(11) In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.

(12) Parliament may enact legislation conferring powers of prosecution on authorities other than the Director of Public Prosecutions.

*Article 166 of the Constitution of which it is proposed to amend—*

## **166. Appointment of Chief Justice, Deputy Chief Justice and other judges**

- (1) The President shall appoint—
  - (a) the Chief Justice and the Deputy Chief Justice, in accordance with the recommendation of the Judicial Service Commission, and subject to the approval of the National Assembly; and
  - (b) all other judges, in accordance with the recommendation of the Judicial Service Commission.

(2) Each judge of a superior court shall be appointed from among persons who —

- (a) hold a law degree from a recognised university, or are advocates of the High Court of Kenya, or possess an equivalent qualification in a common-law jurisdiction;
- (b) possess the experience required under clauses (3) to (6) as applicable, irrespective of whether that experience was gained in Kenya or in another Commonwealth common-law jurisdiction; and
- (c) have a high moral character, integrity and impartiality.

(3) The Chief Justice and other judges of the Supreme Court shall be appointed from among persons who have—

- (a) at least fifteen years experience as a superior court judge; or
- (b) at least fifteen years' experience as a distinguished academic, judicial officer, legal practitioner or such experience in other relevant legal field; or
- (c) held the qualifications specified in paragraphs (a) and (b) for a period amounting, in the aggregate, to fifteen years.

(4) Each judge of the Court of Appeal shall be appointed from among persons who have—

- (a) at least ten years' experience as a superior court judge; or
- (b) at least ten years' experience as a distinguished academic or legal practitioner or such experience in other relevant legal field; or
- (c) held the qualifications mentioned in paragraphs (a) and (b) for a period amounting, in the aggregate, to ten years.

(5) Each judge of the High Court shall be appointed from among persons who have—

- (a) at least ten years' experience as a superior court judge or professionally qualified magistrate; or
- (b) at least ten years' experience as a distinguished academic or legal practitioner or such experience in other relevant legal field; or
- (c) held the qualifications specified in paragraphs (a) and (b) for a period amounting, in the aggregate, to ten years.

*Article 177 of the Constitution of which it is proposed to amend—*

### **177. Membership of county assembly**

(1) A county assembly consists of—

- (a) members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year;
- (b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;
- (c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and
- (d) the Speaker, who is an ex officio member.

(2) The members contemplated in clause (1) (b) and (c) shall, in each case, be nominated by political parties in proportion to the seats received in that election in that county by each political party under paragraph (a) in accordance with Article 90.

(3) The filling of special seats under clause (1) (b) shall be determined after declaration of elected members from each ward.

(4) A county assembly is elected for a term of five years.

*Article 180 of the Constitution of which it is proposed to amend—*

### **180. Election of county governor and deputy county governor**

(1) The county governor shall be directly elected by the voters registered in the county, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year.

(2) To be eligible for election as county governor, a person must be eligible for election as a member of the county assembly.

(3) If only one candidate for county governor is nominated, that candidate shall be declared elected.

(4) If two or more candidates are nominated, an election shall be held in the county and the candidate who receives the greatest number of votes shall be declared elected.

(5) Each candidate for election as county governor shall nominate a person who is qualified for nomination for election as county governor as a candidate for deputy governor.

(6) The Independent Electoral and Boundaries Commission shall not conduct a separate election for the deputy governor but shall declare the candidate nominated by the person who is elected county governor to have been elected as the deputy governor.

(7) A person shall not hold office—

- (a) as a county governor for more than two terms; or
- (b) as a deputy county governor for more than two terms.

(8) For the purposes of clause (7), a person who has assumed the office of county governor shall be deemed to have served a full term, subject only to Article 182 (3) (b).

*Article 181 of the Constitution of which it is proposed to amend—*

### **181. Removal of a county governor**

(1) A county governor may be removed from office on any of the following grounds—

- (a) gross violation of this Constitution or any other law;
- (b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;
- (c) abuse of office or gross misconduct; or
- (d) physical or mental incapacity to perform the functions of office of county governor.

(2) Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds specified in clause (1).

*Article 203 of the Constitution of which it is proposed to amend—*

### **203. Equitable share and other financial laws**

(1) The following criteria shall be taken into account in determining the equitable shares provided for under Article 202 and in all national legislation concerning county government enacted in terms of this Chapter—

- (a) the national interest;
- (b) any provision that must be made in respect of the public debt and other national obligations;
- (c) the needs of the national government, determined by objective criteria;
- (d) the need to ensure that county governments are able to perform the functions allocated to them;
- (e) the fiscal capacity and efficiency of county governments;

- (f) developmental and other needs of counties;
- (g) economic disparities within and among counties and the need to remedy them;
- (h) the need for affirmative action in respect of disadvantaged areas and groups;
- (i) the need for economic optimisation of each county and to provide incentives for each county to optimise its capacity to raise revenue;
- (j) the desirability of stable and predictable allocations of revenue; and
- (k) the need for flexibility in responding to emergencies and other temporary needs, based on similar objective criteria.

(2) For every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenue collected by the national government.

(3) The amount referred to in clause (2) shall be calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

*Article 215 of the Constitution of which it is proposed to amend—*

### **215. Commission on Revenue Allocation**

(1) There is established the Commission on Revenue Allocation.

(2) The Commission shall consist of the following persons appointed by the President—

- (a) a chairperson, who shall be nominated by the President and approved by the National Assembly;
- (b) two persons nominated by the political parties represented in the National Assembly according to their proportion of members in the Assembly;
- (c) five persons nominated by the political parties represented in the Senate according to their proportion of members in the Senate; and
- (d) the Principal Secretary in the Ministry responsible for finance.

(3) The persons nominated under clause (2) shall not be members of Parliament.

(4) To be qualified to be a member of the Commission under clause (2)(a), (b) or (c), a person shall have extensive professional experience in financial and economic matters.

*Article 218 of the Constitution of which it is proposed to amend—*

### **218. Annual Division and Allocation of Revenue Bills**

(1) At least two months before the end of each financial year, there shall be introduced in Parliament—

- (a) a Division of Revenue Bill, which shall divide revenue raised by the national government among the national and county levels of government in accordance with this Constitution; and
- (b) a County Allocation of Revenue Bill, which shall divide among the counties the revenue allocated to the county level of government on the basis determined in accordance with the resolution in force under Article 217.

(2) Each Bill required by clause (1) shall be accompanied by a memorandum setting out—

- (a) an explanation of revenue allocation as proposed by the Bill;
- (b) an evaluation of the Bill in relation to the criteria set out in Article 203(1); and
- (c) a summary of any significant deviation from the Commission on Revenue Allocation's recommendations, with an explanation for each such deviation.

*Article 224 of the Constitution of which it is proposed to amend—*

### **224. County appropriation Bills**

On the basis of the Division of Revenue Bill passed by Parliament under Article 218, each county government shall prepare and adopt its own annual budget and appropriation Bill in the form, and according to the procedure, prescribed in an Act of Parliament.

*Article 226 of the Constitution of which it is proposed to amend—*

### **226. Accounts and audit of public entities**

(1) An Act of Parliament shall provide for—

- (a) the keeping of financial records and the auditing of accounts of all governments and other public entities, and prescribe other measures for securing efficient and transparent fiscal management; and

(b) the designation of an accounting officer in every public entity at the national and county level of government.

(2) The accounting officer of a national public entity is accountable to the National Assembly for its financial management, and the accounting officer of a county public entity is accountable to the county assembly for its financial management.

(3) Subject to clause (4), the accounts of all governments and State organs shall be audited by the Auditor-General.

(4) The accounts of the office of the Auditor-General shall be audited and reported on by a professionally qualified accountant appointed by the National Assembly,

(5) If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not.

*Article 228 of the Constitution of which it is proposed to amend—*

### **228. Controller of Budget**

(1) There shall be a Controller of Budget who shall be nominated by the President and, with the approval of the National Assembly, appointed by the President.

(2) To be qualified to be the Controller, a person shall have extensive knowledge of public finance or at least ten years experience in auditing public finance management.

(3) The Controller shall, subject to Article 251, hold office for a term of eight years and shall not be eligible for re-appointment.

(4) The Controller of Budget shall oversee the implementation of the budgets of the national and county governments by authorising withdrawals from public funds under Articles 204, 206 and 207.

(5) The Controller shall not approve any withdrawal from a public fund unless satisfied that the withdrawal is authorised by law.

(6) Every four months, the Controller shall submit to each House of Parliament a report on the implementation of the budgets of the national and county governments.

*Article 229 of the Constitution of which it is proposed to amend—*

### **229. Auditor-General**

(1) There shall be an Auditor-General who shall be nominated by the President and, with the approval of the National Assembly, appointed by the President.

(2) ~~To be qualified to be the Auditor-General, a person shall have extensive knowledge of public finance or at least ten years experience in auditing or public finance management.~~

(3) ~~The Auditor-General holds office, subject to Article 251, for a term of eight years and shall not be eligible for re-appointment.~~

(4) ~~Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on—~~

- ~~(a) the accounts of the national and county governments;~~
- ~~(b) the accounts of all funds and authorities of the national and county governments;~~
- ~~(c) the accounts of all courts;~~
- ~~(d) the accounts of every commission and independent office established by this Constitution;~~
- ~~(e) the accounts of the National Assembly, the Senate and the county assemblies;~~
- ~~(f) the accounts of political parties funded from public funds;~~
- ~~(g) the public debt; and~~
- ~~(h) the accounts of any other entity that legislation requires the Auditor-General to audit.~~

~~(5) The Auditor-General may audit and report on the accounts of any entity that is funded from public funds.~~

~~(6) An audit report shall confirm whether or not public money has been applied lawfully and in an effective way.~~

~~(7) Audit reports shall be submitted to Parliament or the relevant county assembly.~~

~~(8) Within three months after receiving an audit report, Parliament or the county assembly shall debate and consider the report and take appropriate action.~~

*Article 233 of the Constitution of which it is proposed to amend—*

### **233. The Public Service Commission**

(1) There is established the Public Service Commission.

(2) The Public Service Commission consists of a chairperson, a vice chairperson and seven other members appointed by the President with the approval of the National Assembly.

(3) Subject to clause (4), a person is not eligible for appointment as a member of the Commission if the person—

- (a) has, at any time within the preceding five years, held office, or stood for election as—
  - (i) a member of Parliament or of a county assembly; or
  - (ii) a member of the governing body of a political party; or
- (b) holds any State office;
- (c) is, or has at any time been, a candidate for election as a member of Parliament or of a county assembly; or
- (d) is, or has at any time been, the holder of an office in any political organisation that sponsors or otherwise supports, or has at any time sponsored or otherwise supported, a candidate for election as a member of Parliament or of a county assembly.

(4) Clause (3)(c) and (d) cease to apply to a person after two general elections for Parliament have been held since the person ceased to be such a candidate or office holder.

(5) There shall be a secretary to the Commission.

(6) The secretary—

- (a) is the chief executive of the Commission; and
- (b) shall be appointed by the Commission for a term of five years, and is eligible for re-appointment once.

*Article 241 of the Constitution of which it is proposed to amend—*

#### **241. Establishment of Defence Forces and Defence Council**

- (1) There are established the Kenya Defence Forces.
- (2) The Defence Forces consist of—
  - (a) the Kenya Army;
  - (b) the Kenya Air Force; and
  - (c) the Kenya Navy.
- (3) The Defence Forces—
  - (a) are responsible for the defence and protection of the sovereignty and territorial integrity of the Republic;

- (b) shall assist and cooperate with other authorities in situations of emergency or disaster, and report to the National Assembly whenever deployed in such circumstances; and
- (c) may be deployed to restore peace in any part of Kenya affected by unrest or instability only with the approval of the National Assembly.

(4) The composition of the command of the Defence Forces shall reflect the regional and ethnic diversity of the people of Kenya.

(5) There is established a Defence Council.

(6) The Council consist of—

- (a) the Cabinet Secretary responsible for defence, who is the chairperson;
- (b) the Chief of the Kenya Defence Forces;
- (c) the three commanders of the defence forces; and
- (d) the Principal Secretary in the Ministry responsible for defence.

(7) The Council—

- (a) is responsible for the overall policy, control, and supervision of the Kenya Defence Forces; and
- (b) performs any other functions prescribed by national legislation.

*Article 245 of the Constitution of which it is proposed to amend—*

#### **245. Command of the National Police Service**

- (1) There is established the National Intelligence Service.
- (2) The Inspector-General—
  - (a) is appointed by the President with the approval of Parliament; and
  - (b) shall exercise independent command over the National Police Service, and perform any other functions prescribed by national legislation.

*Article 250 of the Constitution of which it is proposed to amend—*

#### **250. Composition, appointment and terms of office**

- (1) Each commission shall consist of at least three, but not more than nine, members.
- (2) The chairperson and each member of a commission, and the holder of an independent office, shall be—

- (a) identified and recommended for appointment in a manner prescribed by national legislation;
  - (b) approved by the National Assembly; and
  - (c) appointed by the President.
- (3) To be appointed, a person shall have the specific qualifications required by this Constitution or national legislation.
- (4) Appointments to commissions and independent offices shall take into account the national values referred to in Article 10, and the principle that the composition of the commissions and offices, taken as a whole, shall reflect the regional and ethnic diversity of the people of Kenya.
- (5) A member of a commission may serve on a part-time basis.
- (6) A member of a commission, or the holder of an independent office—
- (a) unless *ex officio*, shall be appointed for a single term of six years and is not eligible for re-appointment; and
  - (b) unless *ex officio* or part-time, shall not hold any other office or employment for profit, whether public or private.
- (7) The remuneration and benefits payable to or in respect of a commissioner or the holder of an independent office shall be a charge on the Consolidated Fund.
- (8) The remuneration and benefits payable to, or in respect of, a commissioner or the holder of an independent office shall not be varied to the disadvantage of that commissioner or holder of an independent office.
- (9) A member of a commission, or the holder of an independent office, is not liable for anything done in good faith in the performance of a function of office.
- (10) The members of a commission shall elect a vice-chairperson from among themselves—
- (a) at the first sitting of the commission; and
  - (b) whenever it is necessary to fill a vacancy in the office of the vicechairperson.
- (11) The chairperson and vice-chairperson of a commission shall not be of the same gender.
- (12) There shall be a Secretary to each commission who shall be—
- (a) appointed by the commission; and
  - (b) the chief executive officer of the commission.

Article 251 of the Constitution of which it is proposed to amend—

**251. Removal from office**

(1) A member of a commission (other than an *ex officio* member), or the holder of an independent office, may be removed from office only for—

- (a) serious violation of this Constitution or any other law, including a contravention of Chapter Six;
- (b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence; or
- (e) bankruptcy.

(2) A person desiring the removal of a member of a commission or of a holder of an independent office on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.

(3) The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), shall send the petition to the President.

