Bill to amend the Constitution of Kenya, 2010 —

The Constitution of Kenya (Amendment) Bill, 2020
THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

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) Act, 2020.

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.

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 agriculture;

(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.

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

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;

(h) serve in defence of the country; and

(i) 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.

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

“(e) their personal data infringed.”

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.”

7. Article 87 of the Constitution is amended—
the Constitution.

(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” at the end of the clause.

Amendment of Article 88 of the Constitution.

8. 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) by inserting the following new clause immediately after clause (3)—

“(3A) The Commission consists of seven members, four of whom shall be representatives of parliamentary political parties.

(3B) A member of the Commission shall hold office for a single term of four years”;

(c) in clause (4) by—

(i) inserting the words “including ensuring compliance with Articles 54(2) and 81(b)” at the end of paragraph (d); and

(ii) deleting paragraph (e).

Amendment of Article 90 of the Constitution.

9. Article 90 of the Constitution is amended—

(a) in clause (1) by deleting the words “the seats in Parliament provided for under Articles 97 (1) (c) and 98 (1) (b), (c) and (d), and for”;

(b) in clause (2) by—

(i) deleting the words “except in the case of the seats provided for under Article 98 (1) (b)” appearing in paragraph (b);

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

“(c) each party list includes women, persons with disabilities, youth, ethnic and other minorities, and marginalised communities”;

(c) in clause (3) by deleting the words “seats won by candidates of the political party at the general election” and substituting therefor the words “votes received by a political party participating in a general under Article 177 (1) (a)”.

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10. Article 91(1) of the Constitution is amended by inserting the following new paragraph immediately after paragraph (h)—

“(i) comply with the principles in Articles 81(b) and 54(2).”

11. Article 97 of the Constitution is amended—

(a) in clause (1) by—

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

“(a) three hundred and sixty members, each elected by the registered voters from two hundred and ninety constituencies constituting a single or multiple member constituency.”

(ii) deleting paragraph (b);

(iii) deleting paragraph (c); and

(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 members of Parliament, who are ex officio members.”

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

“(3) The determination of constituencies for the seats under clause (1) (a) shall comply with Articles 81(d) and 89 (7).”

12. 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);

(iii) deleting paragraph (c); and

(iv) deleting paragraph (d).

(b) by deleting clause (2).
13. Article 99 (2) of the Constitution is amended by deleting paragraph (d).

14. 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.

15. 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.

16. 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”.

17. The Constitution is amended by repealing Article 123.
Amendment of Article 130 of the Constitution.

18. 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.

19. 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.

20. 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) 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.

21. 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.

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

Amendment of Article 140 of the Constitution.

23. 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.

24. 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 a member of the National Assembly who is the leader of the majority party or coalition of parties in the National Assembly.

(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.

25. 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 they appear in the Article and 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 clause (3) and substituting therefor the following new clause—

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

26. Article 153 of the Constitution is amended by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the words “Cabinet Ministers”.

27. Article 154 (2) (a) of the Constitution is amended by deleting the words “nominated and, with the approval of the National Assembly”.

28. 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.”

29. 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.”

30. Article 157 (3) of the Constitution is amended by deleting the words “High Court” and substituting therefor the words “Court of Appeal”.

31. The Constitution is amended by repealing Article 158.

32. 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, other than a presidential election, is final”.

33. 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.

34. 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”.

35. 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.”

36. 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”
(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.

37. 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.”
38. 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 National Assembly, 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 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 enact legislation to give full effect to this Article.

39. 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) by deleting clause (3) and replacing therefor the following new clause—

“(3) Clause (1) (b) lapses after the next two general elections from the date of commencement of this Act.”

(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 clause 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)”.

40. Article 179 of the Constitution is amended 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.”

41. 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.”

42. Article 200 of the Constitution is amended by inserting the following new clause immediately after clause (2)—

“(3) Legislation shall make further provisions on the functions relating to the Nairobi City county assigned to the national government under the Fourth Schedule.”

43. 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
Amendment of Article 203 of the Constitution.

44. 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”.

45. 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.

(2) There shall be paid into the Fund in each financial year at least five per cent of all the county government's revenue in each financial year.

(3) 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.

(4) Parliament shall enact legislation to provide for—

(a) the management of the Fund;

(b) criteria for disbursement of the funds to each ward in the county;
(c) public participation and identification of the development projects by residents of the ward; and

(d) any other matter necessary to give effect to this Article.

46. 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”.

47. The Constitution is amended by repealing Article 218 and replacing it with the following new Article—

218. Annual Division of Revenue Bill

(1) A Division of Revenue Bill, which shall divide revenue raised nationally between the national and county levels of government, shall be introduced in the National Assembly at least four months before the end of each financial year and enacted by Parliament not later than two months before the end of each financial year.

(2) A Division of Revenue Bill 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 deviation.

(3) The National Assembly shall consider the Division of Revenue Bill within twenty-one days from the date of its publication.

(4) The Speaker of the National Assembly shall refer the Division of Revenue Bill passed under clause (1) to the Senate within seven days of passing of the Bill by the National Assembly.
(5) The Senate shall, within twenty-one days from the date of receipt under clause (4), consider the Bill and refer it back to the National Assembly which shall consider the Bill within fourteen days.

(6) If the National Assembly passes the Bill and the Senate—

(a) passes the Bill in the same form, the Speaker of the National Assembly shall, within seven days after a Bill has been passed by both Houses, submit it to the President for assent;

(b) passes the Bill in an amended form, it shall be referred back to the National Assembly for reconsideration; or

(c) rejects the Bill, or fails to consider the Bill within the period specified in clause (5), it shall be referred to a mediation committee appointed under this Article.

(7) If the National Assembly has considered the Bill referred back to it under clause (6)(b) and the House—

(a) passes the Bill as amended, the Speaker of the National Assembly shall refer the Bill to the President within seven days for assent; or

(b) rejects the Bill as amended, the Bill shall be referred to a mediation committee under this Article.

(8) The Speakers of both Houses of Parliament shall appoint a mediation committee consisting of equal members of each House to develop a mediated version of the Bill.

(9) For purposes of this Article, the mediation committee shall request and consider recommendations from—

(a) the Commission on Revenue Allocation;

(b) the county governors; and

(c) the National Treasury.

(10) The mediation committee shall formulate a mediated version of the Bill and submit it to the National Assembly within fourteen days.

(11) The National Assembly may by resolution supported by at least a majority of all the members adopt the Bill that shall thereafter be referred to the President for assent.
(12) If the Division 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.

48. The Constitution is amended by inserting the following new Article immediately after Article 218—

218A. County Allocation of Revenue Bill

(1) 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 according to the resolution in force under Article 217, shall be introduced in the Senate and enacted by Parliament within thirty days from the date of enactment of the Division of Revenue Act.

(2) A County Allocation of Revenue Bill shall be accompanied by memorandum providing details set out under Article 218 (2).

(3) The Senate shall consider the County Allocation of Revenue Bill within fourteen days from the date of its publication.

(4) The Speaker of the Senate shall refer the County Allocation of Revenue Bill passed under clause (3) to the National Assembly within seven days of passing of the Bill by the Senate.

(5) Upon receipt of the County Allocation of Revenue Bill, the National Assembly shall within fourteen days —

(a) consider and pass the Bill without any amendments; or

(b) consider and pass the Bill with amendments.

(6) The Speaker of the National Assembly shall refer the County Allocation of Revenue Bill back to the Senate within seven days of passing of the Bill in the National Assembly.
(7) The Speaker of the Senate may, where the County Allocation of Revenue Bill was passed in the National Assembly without any amendment, refer the Bill to the President for assent.

(8) The Senate may veto a resolution of the National Assembly to amend the County Allocation of Revenue Bill under clause (6) by a resolution supported by at least a majority of all the members of the Senate and the Bill shall thereafter be referred to the President for assent.

49. 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.

50. Article 221(2) of the Constitution is amended by inserting the following new paragraph immediately after paragraph (a)—

“(aa) be prepared on the basis of the Division of Revenue Act passed by Parliament”;

51. Article 223 (1) of the Constitution is amended by deleting paragraphs (a) and (b) and substituting therefor the following new paragraphs—

“(a) that amount is part of the national government’s equitable share of revenue as determined by the Division of Revenue Act of that financial year; and

(b) either—

(i) an emergency that was not reasonably foreseen has arisen for expenditure for a purpose for which no amount had been appropriated; or

(ii) money has been withdrawn from the Contingencies Fund.”

52. 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”.

53. 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”.

54. 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 experience in matters relating to the management of human resources and wages, appointed by the President.”

(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.”

55. 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).”
56. The Constitution is amended by inserting the following new Article immediately after Article 237—

**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 National Assembly—

(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 effect to this Article.

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

“(ba) the Prime Minister”.
58. Article 243 of the Constitution is amended by deleting clause (2).

59. 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 transfers in the Service;
   (iii) recommend a member of the Service for promotion;
   (iv) exercise disciplinary control through suspension of officers in the Service; and
   (v) perform any other functions prescribed by legislation.”
   (b) by deleting clause (3); and
   (c) by deleting the words “Cabinet Secretary” appearing in clauses (4) and (5) and substituting therefor the words “Cabinet Minister”.

60. The Constitution is amended by repealing Article 246 and replacing it with the following new Article—

**246. The Kenya Police Council.**

(1) There is established the Kenya Police Council.

(2) The Council consist of—
   (a) the Cabinet Secretary responsible for internal security, who is the chairperson;
   (b) the Inspector General of the National Police Service;
   (c) two senior members of the National Police Service units appointed by the President; and
   (d) the Principal Secretary in the Ministry responsible for internal security.

(3) The Council shall—
   (a) be responsible for overall policy, control and supervision of the National Police Service; and
   (b) perform any other function prescribed by national legislation.
61. The Constitution is amended by inserting the following new Article immediately after Article 246—

**246A. The Independent Policing Oversight Commission.**

(1) There is established the Independent Policing Oversight Commission.

(2) The Commission shall—

(a) monitor and report on adherence to the objects in Article 244;

(b) hold the members of the National Police Service accountable to the public in the performance of their functions; and

(c) perform any other function prescribed by national legislation.

62. Article 248 of the Constitution is amended—

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

“(j) the Independent Policing Oversight Commission;

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

“(c) the Director of Public Prosecutions.”

63. 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.”

64. 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;

(ea) Judiciary Ombudsman;”

65. 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”.

The Fourth Schedule to the Constitution is amended in Part 1 by inserting the following new item immediately after item 35—

“36. The functions and powers relating to the Nairobi City county on items 2, 5, 8, 11 and 12 under Part 2 of this Schedule”.

(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.

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

(sect 67 (1))

LEGISLATION TO BE ENACTED BY PARLIAMENT.

<table>
<thead>
<tr>
<th>ARTICLE</th>
<th>RECOMMENDED TIME SPECIFICATION</th>
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</thead>
<tbody>
<tr>
<td>Legislation on elections (Articles 87, 88, 90, and 97)</td>
<td>Six months.</td>
</tr>
<tr>
<td>Office of the Judiciary Ombudsman (Article 172A)</td>
<td>One year.</td>
</tr>
<tr>
<td>Legislation on the functions of Nairobi City county assigned to the national government (Article 200)</td>
<td>One year.</td>
</tr>
<tr>
<td>Ward Development Fund (Article 207A)</td>
<td>One year.</td>
</tr>
<tr>
<td>The Youth Commission (Article 237A)</td>
<td>One year.</td>
</tr>
<tr>
<td>Legislation on the Kenya Police Council (Article 246)</td>
<td>One year.</td>
</tr>
<tr>
<td>Any other legislation necessary to give effect to the provisions of this Act.</td>
<td>Two years.</td>
</tr>
</tbody>
</table>

SECOND SCHEDULE

(sect 68)

TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

1. **Independent Electoral and Boundaries Commission.**

   (1) The vacant positions in the membership of the Independent Electoral and Boundaries Commission shall be filled within sixty days of the commencement of this Act.

   (2) Despite Article 251 of the Constitution, within thirty days from the commencement of this Act, the members of the Independent Electoral and
Boundaries Commission who were in office on the commencement date shall be vetted to determine their suitability to continue serving in accordance with the values set out in Articles 10 and Chapter Six.

(3) The President shall appoint a vetting panel for purposes of section (2), which shall consist of the following five members—

(a) a chairperson who shall be qualified to be a Supreme Court judge;

(b) two members nominated by political parties, one from the majority party and one from the minority party, represented in the National Assembly; and

(c) two members nominated by a joint forum representing religious organisations.

(4) The Public Service Commission shall provide secretariat services and facilities required by the vetting panel in the performance of its functions.

(5) The vetting panel shall determine its own procedure.

(6) The vetting panel shall consider information gathered in the course of personal interviews, summary of the complaints, if any, from the public against the members, as well as their records.

(7) The vetting panel shall within fourteen days of finalizing the vetting, inform the concerned member, in writing, of the outcome of the vetting.

(8) A member shall continue to serve for the remainder of their term where the vetting panel determines the member to be suitable to continue holding office.

(9) Once informed of the decision of unsuitability to continue holding office under subsection (8), the member shall be deemed to have been removed from office.

(10) The vetting panel shall stand dissolved upon the finalisation of the vetting.

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.


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.
4. National Police Service

(1) Any person serving as the Deputy Inspector General of Police before the commencement of this Act shall continue to serve in the same capacity for the remainder of their unexpired term unless otherwise lawfully removed from office.

(2) Any person serving as an officer in the Kenya Police Service or Administration Police Service before the commencement of this Act shall continue serving in the National Police Service unless otherwise lawfully removed from the Service.


The Members of the National Police Service Commission shall continue to hold office for their unexpired term, unless otherwise removed in accordance with the Constitution.

6. Independent Policing Oversight Authority.

(1) The Independent Policing Oversight Commission shall be the successor to the Independent Policing Oversight Authority established under the Independent Policing Oversight Authority Act, 2011 (No. 35 of 2011).

(2) The members of the Board of the Independent Policing Oversight Authority shall become members of the Independent Policing Oversight Commission for their unexpired terms but each shall retain the terms of service as at the commencement date.
MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to amend the Constitution of Kenya to address issues arising from its implementation including the need to:

(a) resolve issues of divisive elections arising from electoral processes;
(b) strengthen the structure of devolution and increase resources allocated to the counties;
(c) strengthen mechanisms that provide equitable opportunities for all the people of Kenya to benefit from economic growth in a comprehensive, fair and sustainable manner;
(d) harmonise certain roles and functions of the bicameral legislature;
(e) provide a mechanism for monitoring, evaluating and enforcing implementation of economic and social rights under Article 43 of the Constitution;
(f) strengthen the national ethos by specifying the responsibilities of citizens; and
(g) promote inclusivity and gender equity in governance.

(h) Strengthen accountability for public resources and the fight against corruption.

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. The Bill focuses on these issues with an objective of promoting a cohesive society and to further the ideals of a united, prosperous and just nation.

CLAUSES

The Bill proposes 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 proposes 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 consolidate the principles of national ethos, which comprises 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 proposes 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 proposes to amend **Chapter Six** of the Constitution on Leadership and Integrity to strengthen the fight against corruption by providing a mechanism for more 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 proposes to amend **Chapter Seven** of the Constitution on Representation of the People so as to enhance transparency and fairness of representation in the electoral system by changing the electoral system to give effect to the principles set out in Articles 81(d) and 89(7) (b). This is to promote electoral competition based on ideologies and values and to ensure that every vote cast by a citizen counts.

**Clause 7** of the Bill proposes to amend Article 87 (**Electoral disputes**) to remove the jurisdiction to handle disputes arising from the nominations of candidates by political parties from the Independent Electoral and Boundaries Commission and vest this jurisdiction in the Political Parties’ Disputes Tribunal so as to achieve speedy adjudication of those disputes and also streamline the mandate of the Commission. The amendment further seeks to broaden modes of service of a petition relating to an election to include print and electronic media to take cognizance of the advancement in technology.
Clause 8 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. The amendment proposes to include some of the offices which were not part of this list. The amendment also specifies the membership of the Commission in the Constitution to include four members to represent Political Parties.

Clause 9 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 for the members of the National Assembly to be drawn from both single member and multiple member constituencies. Further, the candidates to be nominated from a party list for 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 the political party.

Clause 10 of the Bill proposes to amend Article 91 (Basic Requirements for Political Parties) to require political parties take measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

The Bill proposes to amend Chapter Eight of the Constitution on the Legislature to remodel the parliamentary system by including the government in the National Assembly. The Executive will be represented in the National Assembly by the Prime Minister, Deputy Prime Ministers, Cabinet Ministers and the Attorney-General. The office of the Leader of the Official Opposition is established. The existing disqualification for the members of the county assemblies from being qualified to be elected as members of Parliament is removed. The Bill further proposes to amend the composition of Parliament to give effect to the gender equity principle.

Clause 11 of the Bill proposes to amend Article 97 (Membership of the National Assembly) to provide for the members of the National Assembly to be drawn from both the single member and multiple member constituencies. Further, this amendment proposes to include the Leader of the Official Opposition as a member of the National Assembly and the Cabinet Ministers who are not members of the National Assembly and the Attorney General as ex-officio members of the National Assembly.

Clause 12 of the Bill proposes to amend Article 98 (Membership of the Senate) to structure the membership of the Senate to achieve gender parity pursuant to the provisions of Articles 27(8) and 81(b) as read with Article 96(1).

Clause 13 of the Bill proposes to amend Article 99 (Qualification and disqualifications for election as member of Parliament) to remove disqualification barring members of the county assemblies from being qualified to be elected as members of Parliament.
Clause 14 of the Bill proposes to insert a new Article 107A (the Leader of Official Opposition) into the Constitution. The Article provides that 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.

Clause 15 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 16 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 seven days to fourteen days. This is to allow for adequate time for consultation and refining the bill by the institutions involved in the legislative process.

Clause 17 of the Bill proposes to repeal Article 123 (Decisions of Senate) to do away with the concept of voting by delegation in the Senate and consequently result to members of the Senate having an equal vote. The amendment originates from a proposal seeking to amend Article 98 that equalizes representation of the counties in the Senate.

The Bill proposes 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 of Kenya. 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 18 of the Bill proposes to amend Article 130 (the National Executive) to introduce the Prime Minister and the Deputy Prime Ministers.

Clause 19 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 shall assist 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 the members of the National Assembly.

Clause 20 of the Bill proposes to amend Article 132 (Functions of the President) to provide for the President to report on the progress in achieving the economic and social rights guaranteed under Article 43 by submitting a report for debate to the National Assembly.

Clause 21 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 22 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 23 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.

Clause 24 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 25 of the Bill proposes to amend Article 152 (Cabinet) to provide for a mixed cabinet with some members of the Cabinet being drawn from the members of National Assembly. The proposed amendment further provides for the membership of the Prime Minister and Deputy Prime Ministers into the Cabinet.

Clause 26 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.

Clause 27 of the Bill proposes to amend Article 155 (Secretary to the Cabinet) to remove the requirement for the vetting of the Secretary to the Cabinet by the National Assembly.

Clause 28 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 colour and ensure that their accountability is administrative and technical.

Clause 29 of the Bill proposes to amend Article 156 (Attorney General) to clarify that as a member of the Cabinet, the Attorney General shall perform the functions of a Cabinet Secretary.

Clause 30 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 31 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 proposes 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 amendment also seeks to introduce the Judiciary Ombudsman as a member of the Judicial Service Commission.

Clause 32 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 33 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 34 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 35 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 36 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 for the purpose of minimising instances of conflict of interest.

Clause 37 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 38 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 proposes 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 39 of the Bill proposes to amend Article 177 (Membership of county assembly). It introduces the nomination of candidates through a party list. A political party will be entitled to nominate the candidates based on the votes received by a political party in an election, instead of the current status where it is based on the seats won. Further, it seeks to align the term of county assemblies to the election cycle.

Clause 40 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.

Clause 41 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 who is not of the same gender.

Clause 42 of the Bill proposes to amend Article 200 (Legislation on Chapter) to require that Parliament to make legislation to provide mechanisms for the carrying out functions of certain functions relating to the Nairobi City county distributed to the national government.

The Bill proposes 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 43 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
The Constitution of Kenya (Amendment) Bill, 2020

Clause 44 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 45 of the Bill proposes to insert new Articles 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 46 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 47 of the Bill proposes to amend Article 218 (Annual Division and Allocation of Revenue Bills) to streamline the roles and functions of the two Houses of Parliament in enacting the Annual Division and Allocation of Revenue Bills.

The proposed amendment provides the procedure for the introduction and enactment of a Division of Revenue Bill and a County Allocation of Revenue Bill and the timelines attendant to the respective processes. The Division of Revenue Bill to divide revenue raised nationally between the national and county levels of government, shall be introduced in the National Assembly which shall consider it within twenty-one days from the date of publication. The amendment specifies timelines within which the Bill shall be considered by each House.

The Bill also provides for the mediation committee appointed for purposes of considering the Annual Division and Allocation of Revenue Bill to consider recommendations from the Commission for Revenue Allocation, county governors and the Cabinet Minister responsible for Finance.

The Bill further provides for 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 Division of Revenue Act for a financial year has not been passed by Parliament before the beginning of that financial year.

**Clause 48** of the Bill proposes to insert a new Article 218A (*County Allocation of Revenue Bill*) into the Constitution to streamline the roles and functions of the bicameral legislature in enacting the County Allocation of Revenue Bills.

The amendments provide that a County Allocation of Revenue Bill, which shall divide among the counties the revenue allocated them on the basis determined according to the resolution in force under Article 217, is to 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. The proposed amendment specifies timelines within which the Bill shall be considered by each House and the veto power by the Senate.

**Clause 49** 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 50** of the Bill proposes to amend Article 221 (*Budget estimates and the annual Appropriation Bill*) to streamline the process of preparing the budget by providing for annual estimates to be prepared on the basis of the Division of Revenue.

**Clause 51** of the Bill proposes to amend Article 223 (*Supplementary appropriation*) seeks to limit the supplementary appropriation to an emergency or if monies in the contingencies fund is insufficient to meet that demand.

**Clause 52** 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 53** of the Bill proposes to amend Article 225 (*Financial control*) to empower the Cabinet Secretary 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 54** 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 establish remove the national security organs from the ambit of the Public Service Commission.

Clause 55 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 56 of the Bill proposes to insert a new Articles 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 proposes to amend Chapter Fourteen of the Constitution on National Security to merge the constituent units of the National Police Service and to provide clarity on the unity of command in the Service. Further, the National Police Service Commission is removed as a commission and replaced by the Kenya Police Council to oversee policy and command functions of the National Police Service in collaboration with the Inspector General of Police. The amendment also seeks to establish the Independent Policing Oversight Commission as an independent commission with the mandate to ensure accountability of the police service.

Clause 57 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 58 of the Bill proposes to amend Article 243 (Establishment of the National Police Service) to merge the Kenya Police Service and Administration Police Service and integrate them into the National Police Service.

Clause 59 of the Bill proposes to amend Article 245 (Command of the National Police Service) to provide offer clarity on centrality of command control by the Inspector General of Police to the Police Service.

Clause 60 of the Bill proposes to repeal Article 246 (National Police Service Commission) and replace with a new article establishing the Kenya Police Council that shall be responsible for overall policy coordination of the National Police Service.

Clause 61 of the Bill proposes to insert a new Article 246A (Independent Policing Oversight Commission) into the Constitution to establish the Independent Policing Oversight Commission. The Commission shall be the successor to the Independent Policing Oversight Authority, which is establish under an Act of Parliament. The Commission is expected to provide an effective mechanism of oversight on the conduct of the members of the police service in discharging their work and their relation to the citizens.
The Bill proposes 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 62** of the Bill proposes to amend Article 248 (**Commissions and Independent Offices**) to add the Independent Policing Oversight Commission as a constitutional commission to which Chapter Fifteen of the Constitution applies. The amendment also includes the Director of Public Prosecutions as an independent office to enhance the independence and budgetary autonomy of the office.

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

**Clause 63** 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 64** of the Bill proposes to amend Article 260 (**Interpretation**) to include the offices of the Prime Minister, Deputy Prime 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 65** 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 66** of the Bill proposes to amend the Fourth Schedule to provide that functions and powers on county health services, county transport, county planning and development, county public works and fire fighting services and disaster management relating to the Nairobi Capital city shall be distributed as functions of the national government.

**Clause 67** 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 Attorney General and the Kenya Law Reform Commission 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 68 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 Bill further provides for the vetting of the members of the Independent Electoral and Boundaries Commission.

The First Schedule lists the legislation proposed for Parliament to enact 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.