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REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2019**

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**NAIROBI, 14th November, 2019**

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**THE CONSTITUTION OF KENYA (AMENDMENT)  
(No. 6) BILL, 2019**

**A Bill for**

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

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

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|---|--|
| <p><b>1.</b> This Act may be cited as the Constitution of Kenya (Amendment) (No. 6) Act, 2019.</p>  | <p>Short title.</p>                                  |
| <p><b>2.</b> Article 114 of the Constitution is amended in clause (2) by deleting the word “Cabinet Secretary” and substituting therefor the word “Cabinet Minister”.</p>   | <p>Amendment of Article 114 of the Constitution.</p> |
| <p><b>3.</b> Article 131 of the Constitution is amended in clause (1) by deleting the word “Cabinet Secretaries” appearing in paragraph (b) and substituting therefor the word “Cabinet Ministers”.</p>   | <p>Amendment of Article 131 of the Constitution.</p> |
| <p><b>4.</b> Article 132 of the Constitution is amended—</p> <p>(a) in clause (2) by deleting the word “Cabinet Secretaries” appearing in paragraph (a) and substituting therefor the word “Cabinet Ministers”.</p> <p>(b) in clause (3) by deleting the word “Cabinet Secretary” appearing in paragraph (c) and substituting therefor the word “Cabinet Minister”.</p> <p>(c) in clause (5) by deleting the word “Cabinet Secretaries” and substituting therefor the word “Cabinet Ministers”.</p> | <p>Amendment of Article 132 of the Constitution.</p> |
| <p><b>5.</b> Article 133 of the Constitution is amended in clause (2) by deleting the word “Cabinet Secretary” appearing in paragraph (b) and substituting therefor the word “Cabinet Minister”.</p>  | <p>Amendment of Article 133 of the Constitution.</p> |
| <p><b>6.</b> Article 134 of the Constitution is amended in clause (2) by deleting the word “Cabinet Secretaries” appearing in paragraph (c) and substituting therefor the word “Cabinet Minister”.</p>  | <p>Amendment of Article 134 of the Constitution.</p> |
| <p><b>7.</b> Article 152 of the Constitution is amended—</p> <p>(a) by deleting the word “Cabinet Secretaries” wherever it appears and substituting therefor the word “Cabinet Ministers”;</p>  | <p>Amendment of Article 152 of the Constitution.</p> |

- (b) by deleting the word “Cabinet Secretary” wherever it appears and substituting therefor the word “Cabinet Minister”;
- (c) by deleting clause (3).
- 8.** Article 153 of the Constitution is amended— Article 153 of the Constitution.
- (a) by deleting the word “Cabinet Secretaries” wherever it appears and substituting therefor the word “Cabinet Ministers”;
- (b) by deleting the word “Cabinet Secretary” wherever it appears and substituting therefor the word “Cabinet Minister”.
- 9.** Article 208 of the Constitution is amended in clause (2) by deleting the word “Cabinet Secretary” and substituting therefor the word “Cabinet Minister”. Article 208 of the Constitution.
- 10.** Article 217 of the Constitution is amended in clause (2) by deleting the word “Cabinet Secretary” appearing in paragraph (c) and substituting therefor the word “Cabinet Minister”. Article 217 of the Constitution.
- 11.** Article 221 of the Constitution is amended in clause (1) by deleting the word “Cabinet Secretary” and substituting therefor the word “Cabinet Minister”. Article 221 of the Constitution.
- 12.** Article 225 of the Constitution is amended in clause (3) by deleting the word “Cabinet Secretary” and substituting therefor the word “Cabinet Minister”. Article 225 of the Constitution.
- 13.** Article 230 of the Constitution is amended by deleting the word “Cabinet Secretary” wherever it appears and substituting therefor the word “Cabinet Minister”. Article 230 of the Constitution.
- 14.** Article 240 of the Constitution is amended by deleting the word “Cabinet Secretary” wherever it appears and substituting therefor the word “Cabinet Minister”. Article 240 of the Constitution.
- 15.** Article 241 of the Constitution is amended in clause (6) by deleting the word “Cabinet Secretary” appearing in paragraph (a) and substituting therefor the word “Cabinet Minister”. Article 241 of the Constitution.
- 16.** Article 245 of the Constitution is amended by deleting the word “Cabinet Secretary” wherever it appears and substituting therefor the word “Cabinet Minister”. Article 245 of the Constitution.
- 17.** Article 260 of the Constitution is amended in the definition of the term “State Office” by deleting the word Article 260 of the Constitution.

“Cabinet Secretary” appearing in paragraph (c) and substituting therefor the word “Cabinet Minister”.

**18.** The Third Schedule to the Constitution is amended in the oath or solemn affirmation of due execution of office for a Cabinet Secretary by deleting the word “Cabinet Secretary” wherever it appears and substituting therefor the word “Cabinet Minister”.

Third Schedule to  
the Constitution.

**MEMORANDUM OF OBJECTS AND REASONS****Statement of objects and reasons**

The principal object of this Bill is to amend the Constitution to delete reference to the term Cabinet Secretary and substitute with the term Minister as was the case with the repealed Constitution and provide for appointment of Ministers from among the Members of Parliament.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

**Statement that the Bill does not concern County Governments**

The Bill is not a Bill concerning County Governments in terms of Article 110 (1) (a) of the Constitution but shall require approval by both Houses of Parliament in terms of Article 256 of the Constitution.

**Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill may not occasion additional expenditure of public funds.

Dated the 12th November, 2019.

VINCENT KEMOSI MOGAKA,  
*Member of Parliament.*

*Article 114 of the Constitution which is proposed to be amended—*

### **Money Bills**

**114.** (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 132 of the Constitution which is proposed to be amended—*

### **Functions of the President**

**132.** (1) The President shall—

- (a) address the opening of each newly elected Parliament;
- (b) address a special sitting of Parliament once every year and may address Parliament at any other time; and
- (c) once every year—
  - (i) report, in an address to the nation, on all the measures taken and the progress achieved in the realisation of the national values, referred to in Article 10;
  - (ii) publish in the *Gazette* the details of the measures and progress under sub-paragraph (i); and
  - (iii) submit a report for debate to the National Assembly on the progress made in fulfilling the international obligations of the Republic.

(2) The President shall nominate and, with the approval of the National Assembly, appoint, and may dismiss—

- (a) the Cabinet Secretaries, in accordance with Article 152;
- (b) the Attorney-General, in accordance with Article 156;
- (c) the Secretary to the Cabinet in accordance with Article 154;
- (d) Principal Secretaries in accordance with Article 155;
- (e) high commissioners, ambassadors and diplomatic and consular representatives; and
- (f) in accordance with this Constitution, any other State or public officer whom this Constitution requires or empowers the President to appoint or dismiss.

(3) The President shall—

- (a) chair Cabinet meetings;
- (b) direct and co-ordinate the functions of ministries and government departments; and
- (c) by a decision published in the *Gazette*, assign responsibility for the implementation and administration of any Act of Parliament to a Cabinet Secretary, to the extent not inconsistent with any Act of Parliament.

(4) The President may—

- (a) perform any other executive function provided for in this Constitution or in national legislation and, except as otherwise provided for in this Constitution, may establish an office in the public service in accordance with the recommendation of the Public Service Commission;
- (b) receive foreign diplomatic and consular representatives;
- (c) confer honours in the name of the people and the Republic;
- (d) subject to Article 58, declare a state of emergency; and
- (e) with the approval of Parliament, declare war.

(5) The President shall ensure that the international obligations of the Republic are fulfilled through the actions of the relevant Cabinet Secretaries.



*Article 133 of the Constitution which is proposed to be amended—*

**Power of mercy**

**133.** (1) On the petition of any person, the President may exercise a power of mercy in accordance with the advice of the Advisory Committee established under clause (2), by—

- (a) granting a free or conditional pardon to a person convicted of an offence;
- (b) postponing the carrying out of a punishment, either for a specified or indefinite period;
- (c) substituting a less severe form of punishment; or
- (d) remitting all or part of a punishment.

(2) There shall be an Advisory Committee on the Power of Mercy, comprising—

- (a) the Attorney-General;
- (b) the Cabinet Secretary responsible for correctional services; and
- (c) at least five other members as prescribed by an Act of Parliament, none of whom may be a State officer or in public service.

(3) Parliament shall enact legislation to provide for—

- (a) the tenure of the members of the Advisory Committee;
- (b) the procedure of the Advisory Committee; and
- (c) criteria that shall be applied by the Advisory Committee in formulating its advice.

(4) The Advisory Committee may take into account the views of the victims of the offence in respect of which it is considering making recommendations to the President.

*Article 134 of the Constitution which is proposed to be amended—*

**Exercise of presidential powers during temporary incumbency**

**134.** (1) A person who holds the office of President or who is authorised in terms of this Constitution to exercise the powers of the President—

- (a) during the period commencing on the date of the first vote in a presidential election, and ending when the newly elected President assumes office; or
- (b) while the President is absent or incapacitated, or at other times contemplated in Article 147 (3),

- (c) may not exercise the powers of the President specified in clause (2).
- (2) The powers referred to in clause (1) are—
  - (a) the nomination or appointment of the judges of the superior courts;
  - (b) the nomination or appointment of any other public officer whom this Constitution or legislation requires the President to appoint;
  - (c) the nomination or appointment or dismissal of Cabinet Secretaries and other State or Public officers;
  - (d) the nomination or appointment or dismissal of a high commissioner, ambassador, or diplomatic or consular representative;
  - (e) the power of mercy; and
  - (f) the authority to confer honours in the name of the people and the Republic.

*Article 152 of the Constitution which is proposed to be amended—*

**Cabinet**

- 152.** (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 153 of the Constitution which is proposed to be amended—*

**Decisions, responsibility and accountability of the Cabinet**

**153.** (1) A decision by the Cabinet shall be in writing.

(2) Cabinet Secretaries are accountable individually, and collectively, to the President for the exercise of their powers and the performance of their functions.

(3) A Cabinet Secretary shall attend before a committee of the National Assembly, or the Senate, when required by the committee, and answer any question concerning a matter for which the Cabinet Secretary is responsible.

(4) Cabinet Secretaries shall—

(a) act in accordance with this Constitution; and

(b) provide Parliament with full and regular reports concerning matters under their control.

*Article 208 of the Constitution which is proposed to be amended—*

**Contingencies Fund**

**208.** (1) There is established a Contingencies Fund, the operation of which shall be in accordance with an Act of Parliament.

(2) An Act of Parliament shall provide for advances from the Contingencies Fund if the Cabinet Secretary responsible for finance is satisfied that there is an urgent and unforeseen need for expenditure for which there is no other authority.

*Article 211 of the Constitution which is proposed to be amended—*

**Borrowing by national government**

**211.** (1) Parliament may, by legislation—

(a) prescribe the terms on which the national government may borrow; and

(b) impose reporting requirements.

(2) Within seven days after either House of Parliament so requests by resolution, the Cabinet Secretary responsible for finance shall present to the relevant committee, information concerning any particular loan or guarantee, including all information necessary to show—

(a) the extent of the total indebtedness by way of principal and accumulated interest;

(b) the use made or to be made of the proceeds of the loan;

- (c) the provision made for servicing or repayment of the loan; and
- (d) the progress made in the repayment of the loan.

*Article 217 of the Constitution which is proposed to be amended—*

**Division of revenue**

**217.** (1) Once every five years, the Senate shall, by resolution, determine the basis for allocating among the counties the share of national revenue that is annually allocated to the county level of government.

(2) In determining the basis of revenue sharing under clause (1), the Senate shall—

- (a) take the criteria in Article 203 (1) into account;
- (b) request and consider recommendations from the Commission on Revenue Allocation;
- (c) consult the county governors, the Cabinet Secretary responsible for finance and any organisation of county governments; and
- (d) invite the public, including professional bodies, to make submissions to it on the matter.

(3) Within ten days after the Senate adopts a resolution under clause (1), the Speaker of the Senate shall refer the resolution to the Speaker of the National Assembly.

(4) Within sixty days after the Senate's resolution is referred under clause (3), the National Assembly may consider the resolution, and vote to approve it, with or without amendments, or to reject it.

(5) If the National Assembly—

- (a) does not vote on the resolution within sixty days, the resolution shall be regarded as having been approved by the National Assembly without amendment; or
- (b) votes on the resolution, the resolution shall have been—
  - (i) amended only if at least two-thirds of the members of the Assembly vote in support of an amendment;
  - (ii) rejected only if at least two-thirds of the members of the Assembly vote against it, irrespective whether it has first been amended by the Assembly; or
  - (iii) approved, in any other case.

(6) If the National Assembly approves an amended version of the resolution, or rejects the resolution, the Senate, at its option, may either—

- (a) adopt a new resolution under clause (1), in which case the provisions of this clause and clause (4) and (5) apply afresh; or
- (b) request that the matter be referred to a joint committee of the two Houses of Parliament for mediation under Article 113, applied with the necessary modifications.

(7) A resolution under this Article that is approved under clause (5) shall be binding until a subsequent resolution has been approved.

(8) Despite clause (1), the Senate may, by resolution supported by at least two-thirds of its members, amend a resolution at any time after it has been approved.

(9) Clauses (2) to (8), with the necessary modifications, apply to a resolution under clause (8).

*Article 221 of the Constitution which is proposed to be amended—*

### **Budget estimates and annual Appropriation Bill**

**221.** (1) At least two months before the end of each financial year, the Cabinet Secretary responsible for finance shall submit to the National Assembly estimates of the revenue and expenditure of the national government for the next financial year to be tabled in the National Assembly.

(2) The estimates referred to in clause (1) shall—

- (a) include estimates for expenditure from the Equalisation Fund; and
- (b) be in the form, and according to the procedure, prescribed by an Act of Parliament.

(3) The National Assembly shall consider the estimates submitted under clause (1) together with the estimates submitted by the Parliamentary Service Commission and the Chief Registrar of the Judiciary under Articles 127 and 173 respectively.

(4) Before the National Assembly considers the estimates of revenue and expenditure, a committee of the Assembly shall discuss and review the estimates and make recommendations to the Assembly.

(5) In discussing and reviewing the estimates, the committee shall seek representations from the public and the recommendations shall be taken into account when the committee makes its recommendations to the National Assembly.

(6) When the estimates of national government expenditure, and the estimates of expenditure for the Judiciary and Parliament have been approved by the National Assembly, they shall be included in an

Appropriation Bill, which shall be introduced into the National Assembly to authorise the withdrawal from the Consolidated Fund of the money needed for the expenditure, and for the appropriation of that money for the purposes mentioned in the Bill.

(7) The Appropriation Bill mentioned in clause (6) shall not include expenditures that are charged on the Consolidated Fund by this Constitution or an Act of Parliament.

*Article 225 of the Constitution which is proposed to be amended—*

**Financial control**

**225.** (1) An Act of Parliament shall provide for the establishment, functions and responsibilities of the national Treasury.

(2) Parliament shall enact legislation to ensure both expenditure control and transparency in all governments and establish mechanisms to ensure their implementation.

(3) Legislation under clause (2) may authorise the Cabinet Secretary responsible for finance to stop the transfer of funds to a State organ or any other public entity—

- (a) only for a serious material breach or persistent material breaches of the measures established under that legislation; and
- (b) subject to the requirements of clauses (4) to (7).

(4) A decision to stop the transfer of funds under clause (3) may not stop the transfer of more than fifty per cent of funds due to a county government.

(5) A decision to stop the transfer of funds as contemplated in clause (3)—

- (a) shall not stop the transfer of funds for more than sixty days; and
- (b) may be enforced immediately, but will lapse retrospectively unless, within thirty days after the date of the decision, Parliament approves it by resolution passed by both Houses.

(6) Parliament may renew a decision to stop the transfer of funds but for no more than sixty days at a time.

(7) Parliament may not approve or renew a decision to stop the transfer of funds unless—

- (a) the Controller of Budget has presented a report on the matter to Parliament; and

- (b) the public entity has been given an opportunity to answer the allegations against it, and to state its case, before the relevant parliamentary committee.

*Article 230 of the Constitution which is proposed to be amended—*

**Salaries and Remuneration Commission**

**230.** (1) There is established the Salaries and Remuneration Commission.

(2) The Salaries and Remuneration Commission consists of the following persons appointed by the President—

- (a) a chairperson;
  - (b) one person each nominated by the following bodies from among persons who are not members or employees of those bodies—
    - (i) the Parliamentary Service Commission;
    - (ii) the Public Service Commission;
    - (iii) the Judicial Service Commission;
    - (iv) the Teachers Service Commission;
    - (v) the National Police Service Commission;
    - (vi) the Defence Council; and
    - (vii) the Senate, on behalf of the county governments;
  - (c) one person each nominated by—
    - (i) an umbrella body representing trade unions;
    - (ii) an umbrella body representing employers; and
    - (iii) a joint forum of professional bodies as provided by legislation;
  - (d) one person each nominated by—
    - (i) the Cabinet Secretary responsible for finance; and
    - (ii) the Attorney-General; and
  - (e) one person who has experience in the management of human resources in the public service, nominated by the Cabinet Secretary responsible for public service.
- (3) The Commissioners under clause (1) (d) and (e) shall have no vote.



(4) The powers and functions of the Salaries and Remuneration Commission shall be to—

- (a) set and regularly review the remuneration and benefits of all State officers; and
- (b) advise the national and county governments on the remuneration and benefits of all other public officers.

(5) In performing its functions, the Commission shall take the following principles into account—

- (a) the need to ensure that the total public compensation bill is fiscally sustainable;
- (b) the need to ensure that the public services are able to attract and retain the skills required to execute their functions;
- (c) transparency and fairness.

*Article 240 of the Constitution which is proposed to be amended—*

**Establishment of the National Security Council**

**240.** (1) There is established a National Security Council.

(2) The Council consists of—

- (a) the President;
- (b) the Deputy President;
- (c) the Cabinet Secretary responsible for defence;
- (d) the Cabinet Secretary responsible for foreign affairs;
- (e) the Cabinet Secretary responsible for internal security;
- (f) the Attorney-General;
- (g) the Chief of Kenya Defence Forces;
- (h) the Director-General of the National Intelligence Service; and
- (i) the Inspector-General of the National Police Service.

(3) The Council shall exercise supervisory control over national security organs and perform any other functions prescribed by national legislation.

(4) The President shall preside at meetings of the Council.

(5) The Council shall appoint its secretary.

(6) The Council shall—

- (a) integrate the domestic, foreign and military policies relating to national security in order to enable the national security organs to co-operate and function effectively; and
- (b) assess and appraise the objectives, commitments and risks to the Republic in respect of actual and potential national security capabilities.

(7) The Council shall report annually to Parliament on the state of the security of Kenya.

(8) The Council may, with the approval of Parliament—

- (a) deploy national forces outside Kenya for—
  - (i) regional or international peace support operations; or
  - (ii) other support operations; and
- (b) approve the deployment of foreign forces in Kenya.

*Article 241 of the Constitution which is proposed to be amended—*

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

**241.** (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 which is proposed to be amended—*

**Command of the National Police Service**

**245.** (1) There is established the office of the Inspector-General of the National Police 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.

(3) The Kenya Police Service and the Administration Police Service shall each be headed by a Deputy Inspector-General appointed by the President in accordance with the recommendation of the National Police Service Commission.

(4) The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector-General with respect to—

- (a) the investigation of any particular offence or offences;
- (b) the enforcement of the law against any particular person or persons; or
- (c) the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.

(5) Any direction given to the Inspector-General by the Cabinet secretary responsible for police services under clause (4), or any direction given to the Inspector-General by the Director of Public Prosecutions under Article 157(4), shall be in writing.

(6) The Inspector-General shall be appointed for a single four-year term, and is not eligible for re-appointment.

(7) The Inspector-General may be removed from office by the President only on the grounds of—

- (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 office holder's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence;
- (e) bankruptcy; or
- (f) any other just cause.

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

*Article 260 of the Constitution which is proposed to be amended—*

“State office” means any of the following offices—

- (a) President;
- (b) Deputy President;
- (c) Cabinet Secretary;
- (d) Member of Parliament;
- (e) Judges and Magistrates;
- (f) member of a commission to which Chapter Fifteen applies;
- (g) holder of an independent office to which Chapter Fifteen applies;
- (h) member of a county assembly, governor or deputy governor of a county, or other member of the executive committee of a county government;
- (i) Attorney-General;
- (j) Director of Public Prosecutions;
- (k) Secretary to the Cabinet;
- (l) Principal Secretary;
- (m) Chief of the Kenya Defence Forces;
- (n) commander of a service of the Kenya Defence Forces;
- (o) Director-General of the National Intelligence Service;

- (p) Inspector-General, and the Deputy Inspectors-General, of the National Police Service; or
- (q) an office established and designated as a State office by national legislation;

*Third Schedule to the Constitution which the Bill proposes to amend—*

**THIRD SCHEDULE** (Articles 74, 141(3), 148(5) and 152(4))

## National Oaths and Affirmations

**OATH OR SOLEMN AFFIRMATION OF ALLEGIANCE OF THE PRESIDENT/ACTING PRESIDENT AND THE DEPUTY PRESIDENT**

I, ....., in full realisation of the high calling I assume as President/Acting President/Deputy President of the Republic of Kenya, do swear/solemnly affirm that I will be faithful and bear true allegiance to the Republic of Kenya; that I will obey, preserve, protect and defend this Constitution of Kenya, as by law established, and all other laws of the Republic; and that I will protect and uphold the sovereignty, integrity and dignity of the people of Kenya. (In the case of an oath— So help me God.)

**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR THE PRESIDENT/ACTING PRESIDENT**

I, ....., swear/solemnly affirm that I will truly and diligently serve the people and the Republic of Kenya in the office of the President/ Acting President of the Republic of Kenya; that I will diligently discharge my duties and perform my functions in the Office of President/Acting President of the Republic of Kenya; and I will do justice to all in accordance with this Constitution, as by law established, and the laws of Kenya, without fear, favour, affection or ill-will. (In the case of an oath— So help me God.)

**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR THE DEPUTY PRESIDENT**

I, ..... do swear/solemnly affirm that I will always truly and diligently serve the people and the Republic of Kenya in the office of the Deputy President of the Republic of Kenya; that I will diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I will at all times, when so required, faithfully and truly give my counsel and advice to the President of the Republic of Kenya; that I will do justice to all without fear, favour, affection or ill-will; and that I will not directly or indirectly reveal such matters as shall come to my knowledge in the discharge of my duties and committed to my secrecy. (In the case of an oath— So help me God.)

OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR A CABINET SECRETARY

I, ....., being appointed a Cabinet Secretary of Kenya, do swear/solemnly affirm that I will at all times be faithful to the Republic of Kenya; that I will obey, respect and uphold this Constitution of Kenya and all other laws of the Republic; that I will well and truly serve the people and the Republic of Kenya in the Office of a Cabinet Secretary; that I undertake to hold my office as Cabinet Secretary with honour and dignity; that I will be a true and faithful counsellor to the President for the good management of the public affairs of the Republic of Kenya; that I will not divulge directly or indirectly such matters as shall come to my knowledge in the discharge of my duties and committed to my secrecy except as may be required for the due discharge of my duties as Cabinet Secretary; and that I will perform the functions of my office conscientiously and to the best of my ability. (In the case of an oath— So help me God.).

OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR SECRETARY TO THE CABINET/A PRINCIPAL SECRETARY

I, ....., being called on to exercise the functions of Secretary to the Cabinet /a Principal Secretary, do swear/solemnly affirm that, except with the authority of the President, I will not directly or indirectly reveal the nature or contents of any business, proceedings or document of the Cabinet committed to my secrecy, except as may be required for the due discharge of my duties as Secretary to the Cabinet /such Principal Secretary. (In the case of an oath— So help me God).

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

I, ..... (The Chief Justice/President of the Supreme Court, a judge of the Supreme Court, a judge of the Court of Appeal, a judge of the High Court) do (swear in the name of the Almighty God)/(solemnly affirm) to diligently serve the

people and the Republic of Kenya and to impartially do Justice in accordance with this Constitution as by law established, and the laws and customs of the Republic, without any fear, favour, bias, affection, ill-will, prejudice or any political, religious or other influence. In the exercise of the judicial functions entrusted to me, I will at all times, and to the best of my knowledge and ability, protect, administer and defend this Constitution with a view to upholding the dignity and the respect for the judiciary and the judicial system of Kenya and promoting fairness, independence, competence and integrity within it. (So help me God.)

**OATH /AFFIRMATION OF MEMBER OF PARLIAMENT (SENATE/  
NATIONAL ASSEMBLY)**

I,....., having been elected a member of the Senate/National Assembly do swear (in the name of the Almighty God) (solemnly affirm) that I will bear true faith and allegiance to the People and the Republic of Kenya; that I will obey, respect, uphold, preserve, protect and defend this Constitution of the Republic of Kenya; and that I will faithfully and conscientiously discharge the duties of a member of Parliament. (So help me God).

**OATH FOR SPEAKER/DEPUTY SPEAKER OF THE  
SENATE/NATIONAL ASSEMBLY**

I, ..... , having been elected as Speaker/Deputy Speaker of the Senate/ National Assembly do swear (in the name of the Almighty God) (solemnly affirm) that I will bear true faith and allegiance to the people and the Republic of Kenya; that I will faithfully and conscientiously discharge my duties as Speaker/Deputy Speaker of the Senate/National Assembly; that I will obey, respect, uphold, preserve, protect and defend this Constitution of the Republic of Kenya; and that I will do right to all manner of persons in accordance with this Constitution of Kenya and the laws and conventions of Parliament without fear or favour, affection or ill will (So help me God).