

# CIVIC EDUCATION HANDBOOK

THE CONSTITUTION OF  
KENYA AMENDMENT  
BILL 2020

Understand The Bill  
Make Informed Choices



# Constitution of Kenya Amendment Bill 2020

## Civic Education Handbook

Understand The Bill, Make Informed Choices

**Developed by the National Council of Churches of Kenya**

# Constitution of Kenya Amendment Bill 2020

## Civic Education Handbook

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February 2021

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## **PREFACE**

Guided by her motto “For Wananchi”, the National Council of Churches of Kenya has for more than a hundred years contributed to the betterment of the lives of the people of Kenya. This commitment is captured in the Vision of the NCCCK, which is One Church; United in faith and mission witnessing to Jesus Christ and Transforming Lives.

Inspired by this Vision, the Council works to achieve her Mission of “Holistic transformation of lives for a just, resilient and sustainable society”.

It is in this regard that the NCCCK continually engages in the governance and social-political processes in the nation, always endeavouring to inject godliness, justice, resilience and sustainability.

In seeking the betterment of our nation, the Council partnered with other faith institutions under the umbrella of the Dialogue Reference Group and in 2018 recommended that a National Dialogue Process be embraced. During the same period, the President partnered with the former Prime Minister to establish the Building Bridges to a Better Kenya Initiative. This move sought to bring to an end the crisis that emerged after the 2017 General Elections. The NCCCK through the Dialogue Reference Group made a presentation to the Building Bridges Initiative Task Force, in which we recommended various measures to resolve the underlying causes of the perpetual cycle of violence around elections. The outcome of the BBI process was the development of the Constitution of Kenya Amendment Bill 2020, with a referendum anticipated in the course of 2021 to accord Kenyans a chance to vote on it.

Towards this, the NCCCK has developed this Civic Education Manual which is aimed at presenting the proposed amendments of the constitution in a simple and easily understandable format. The manual seeks to help the reader understand the implications and possible outcomes of each of the proposed constitutional amendments.

We hope that this Manual will play a role in the civic empowerment of Kenyans as we prepare for the referendum on the Constitution of Kenya Amendment Bill 2020.

**Rev Canon Chris Kinyanjui**  
**General Secretary**  
**February 2021**

## ABOUT NCCK

### Background

The National Council of Churches of Kenya was formed in 1913 during the United Missionary Conference held at the Church of the Torch, Thogoto (near Nairobi) when four missionary organizations signed a constitution that established the Federation of Missions. In 1918, the name of the federation was changed to Alliance of Protestant Missions. A more representative body was created in 1924 to take over the work of the Alliance, which was called the Kenya Missionary Council (KMC). Later, in 1943, KMC changed its name to Christian Council of Kenya (CCK) so as to accommodate non-missionary organizations.

After independence, the CCK changed its name to National Christian Council of Kenya in 1966. The current name of the organization, National Council of Churches of Kenya (NCCK), was adopted in 1984 to reflect the fact that membership of the Council is by churches, not individual Christians.

### Our Vision

One Church; United in Faith and Mission Witnessing to Jesus Christ and Transforming Lives

### Our Mission

Holistic transformation of lives for a just, resilient and sustainable society

### Our Values

- Integrity
- Stewardship
- Professionalism
- Partnership
- Servanthood

### Governance Structure

#### *i. General Assembly*

This is the supreme governing body of the Council. It meets once every three years, and brings together delegates from the membership and the regions.

#### *ii. Executive Committee*

This is the executive arm of the General Assembly. It consists of representatives of member Churches and organizations and the Regions, and meets twice a year.

#### *iii. Sub Committees of the Executive Committee*

The Executive Committee operates through three Sub Committees:

- a. The Finance and Administration Committee deals with financial, human resource and administration policy issues.
- b. The Programme Committee provides policy guidance to the programme work of the Council.

c. The Membership Committee considers and gives guidance regarding applications for membership.

### **Regional Structure**

To enhance its grassroots reach, the Council has devolved to regions and counties. In this structure, the member churches and organisations come together at the county level to form a County Coordinating Committee (CCC). Thereafter, several counties are clustered together to form a region, and as a result the Council has divided the country into nine regions which serve as the primary theatre of activity.

To effect the regional structure, the following organs have been established:

#### *i. Regional Conference*

This brings together representatives of member Churches and organizations within the Region. It meets once every three years in between the Council's General Assemblies.

#### *ii. Regional Committee*

This is the executive arm of the Regional Conference, and meets twice a year. It is responsible to the Regional Conference, and works closely with the Council staff at the Regional office.

#### *iii. County Coordinating Committee*

These are set up to facilitate the work of the Regional Committees at the County Level. They are answerable to the Regional Committee.

NOTE: Regions do not have legal autonomy separate from the Council, and their decisions must be in accord with the Council constitution, the decisions of the Council's national governing organs, and the Council's corporate Vision, Mission, Values and Plans.

For more information about the NCCK, visit [www.ncck.org](http://www.ncck.org)





# CHAPTER 1

## Introductions

### **(a) What is the Constitution of Kenya Amendment Bill 2020**

The Constitution of Kenya Amendment Bill 2020 is a document that contains proposals to amend the Constitution of Kenya 2010. It was published on November 25, 2020.

The Bill was published by the promoters of the proposed amendments as provided for in the Constitution.

The Constitution of Kenya Amendment Bill 2020, commonly known as the BBI Bill, is the third attempt to amend the Constitution of Kenya through a popular initiative. The two other attempts were the Okoa Kenya Bill developed by the Coalition for Reforms and Democracy (CORD) in 2016 and the Punguza Mzigo Bill developed by the Third Way Alliance in 2019.

To change the Constitution of Kenya through a popular initiative, one is supposed to get at least one million Kenyans, who are registered voters, to support the proposed change by signing a form. They will then submit to the list of supporters of the, and a draft Bill showing what they want changed, to the Independent Electoral and Boundaries Commission (IEBC). The IEBC checks the lists to confirm that the list has at least one million registered voters. If this is so, the IEBC then sends the draft Bill to all the County Assemblies for discussion. If 24 or more County Assemblies vote to support the proposed changes in the Constitution, then Parliament (both National Assembly and Senate) will discuss and vote on the draft Bill. If Parliament passes the Bill, then the President will sign it into law.

However, if Parliament does not pass the Bill, or if the proposed changes touch on the protected areas of the Constitution, then IEBC will be required to organize a referendum so that Kenyans decide whether to make the changes in the Constitution or not.

The protected areas of the Constitution of Kenya 2010 are the article which Parliament cannot amend and must only be changed through a referendum. There are 10 areas that have this special protection:

i. The Supremacy of the Constitution



ii. The territory of Kenya



iii. The Sovereignty of the People



iv. The National Values and Principles of Governance in Article 10(2)



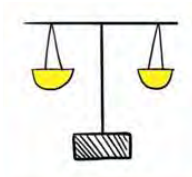
v. The Bill of Rights



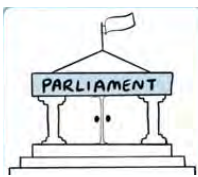
vi. The term of office of the President



vii. The Independence of the Judiciary and the Commissions and Independent Offices referred to in Chapter 15



viii. The functions of Parliament



ix. The objects, principles and structure of Devolved Governments



x. The provisions in the Constitution that relate to the amendment of the Constitution



For this reason, the BBI Bill will have to be submitted to a referendum if it is passed by 24 Counties



In terms of process, the BBI was published in November 2020. The promoters then collected signatures and submitted them to the IEBC. On January 26, 2021, the IEBC announced that the Bill had been supported by more than 1 million registered voters, and passed it to the County Assemblies. If at least 24 County Assemblies pass the Bill, it will be presented to Kenyans during a referendum in the course of this year.

## **(b) Background to the Building Bridges Initiative**

The Building Bridges was established by His Excellency President Uhuru Kenyatta and the former Prime Minister Rt Hon Raila Odinga in March 2018. They did this to end the political crisis in the country that resulted from the dispute about the results of the Presidential Elections held in 2017. During the presidential elections, Rt Hon Odinga challenged the results in court, and the results were cancelled. This forced the country to hold a second Presidential Election. Rt Hon Odinga did not participate in the second poll. However, the political crisis continued, with a lot of violence between Rt Hon Odinga's supporters and the security agencies.

To end the crisis, and after a lot of background mediation work by religious leaders, diplomats and other actors spearheaded talks between the two leaders. The result was the Handshake between the two leaders.

During their talks, the two leaders identified nine priority issues. These were:

- a) Ethnic antagonism and competition
- b) Lack of a national ethos
- c) Inclusivity
- d) Devolution
- e) Divisive elections
- f) Safety and security
- g) Corruption
- h) Shared prosperity
- i) Responsibilities and rights

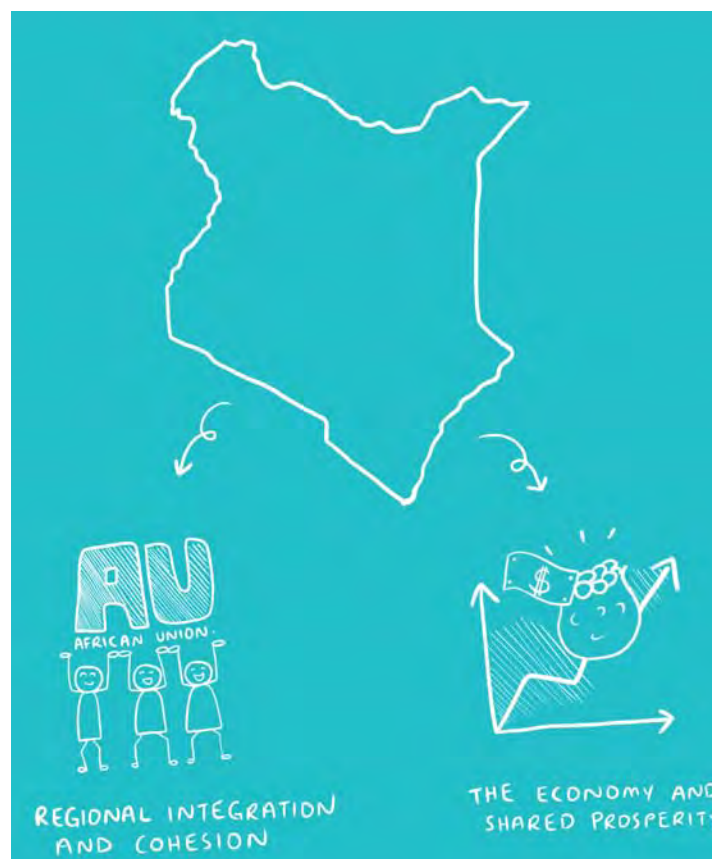
A Committee was established by the two leaders to facilitate the implantation of the nine priority issues. In November 2020, the BBI Secretariat released their report, which included the proposed Constitution of Kenya Amendment Bill.

# CHAPTER 2

## Understanding the Proposed Amendments

### 3.1 Article 10 – National values and principals of Government

The Bill proposes to amend the Constitution by adding a new article, **Article 10A – Regional Integration and Cohesion** to say that the Constitution embraces the goals of the African Union and the East African Community.



#### EFFECTS

If passed, this Article will make Kenya's participation in the African Union and the East African Community a constitution obligation, not merely a policy decision as is currently the case.

### 3.2 Article 11 – Culture

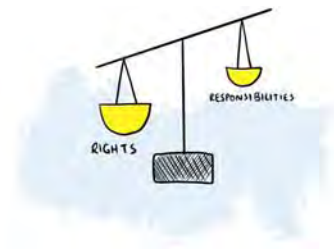
The Bill proposes to add a new article, **Article 11A – Economy and Shared Prosperity** which will require the state to put in place an economic system that provides equal opportunities for all people promote industrialization, and supports small and micro-enterprises.

#### EFFECTS

If passed, this Article will make the state have laws for the protection of intellectual rights (inventions and ideas) of Kenyans, supporting industrialization and small businesses, and overall redefining the economic system in the country.

### 3.3 Article 18 – Legislation on Citizenship

The Bill proposes to add a new article, **Article 18A – Responsibilities of a Citizen** which lists the responsibilities each citizen will be expected to embrace and practice. These responsibilities will also apply to non-citizens where appropriate.



#### EFFECTS

If passed, this Article will require all Kenyan citizens to cultivate national unity, promote the wellbeing of the family, practice ethical conduct, fight corruption, honestly pay taxes, respect private property, and promote the unity and dignity of African people.

### 3.4 Article 31 – Privacy

The Bill proposes to add a new sub-article to **Article 31, (e) – their personal data infringed** which adds another area in which the privacy of a citizen is protected by the Constitution.

#### EFFECTS

If passed, this Sub-Article will protect the personal data of individual citizens from surveillance in the context of advances in technology.

However, considering that one’s private information and that relating to family are already protected under sub-article (c), this amendment will likely lead to hindrance of investigation of crimes and corruption where suspects argue that their personal data is being infringed during the investigation.

### 3.5 Article 80 – Legislation on Leadership

The Bill proposes to add a new sub-article to Article 80, (aa) –which requires Parliament to, within two years, pass legislation to guide speedy investigations, prosecution and trial of Chapter 6 related issues.



## EFFECTS

If passed, this Sub-Article will require Parliament to put in place a law to give timelines for investigation, prosecution and trials of leadership-related issues including corruption.

It is notable that a two-year window is provided, which further delays the war against corruption until after the 2022 General Elections. The current government, therefore, loses the chance to advance the war on corruption.



## 3.6 Article 82 – Legislation on Elections

The Bill proposes to add a new sub-article to Article 82 (1), (f) – which requires Parliament to, within six months, pass legislation to provide punishment for political parties whose nomination lists do not meet the two-thirds gender principle.

## EFFECTS

If passed, this Sub-Article will require Parliament to put in place a law to give punishments for political parties whose nomination lists have one gender allotted more than two-thirds of the slots. It will then be up to the citizens to ensure that women are not disadvantaged by being nominated to contest in areas where the particular political party does not have a huge following.

## 3.7 Article 87 – Electoral Disputes

The Bill proposes to amend sub-articles (1) and (3) of the Article. The first proposal will require Parliament, within six months, to include guidelines for solving disputes that arise from party nominations. The second proposed amendment will allow a petition to be served through electronic media that is recognized by legislation.

## EFFECTS

If passed, this Sub-Article will require Parliament to pass a law to guide how disputes arising from political party nominations are settled. Currently, there is no law to manage this.

The second proposed amendment will make it easier for petitioners to serve respondents. This will address the current situation where the people to be served cannot be traced.

### 3.8 Article 88 – Independent Electoral and Boundaries Commission

The Bill proposes to make three amendments to Article 88. The first proposed amendment is revise sub-paragraph (2)(a)(i) so as to stop persons who have been or have contested for positions of President, Deputy President, County Governor and Deputy County Governor in the previous five years from being appointed Commissioners of the IEBC.

The second proposed amendment revises sub-article 4 to give the IEBC a mandate of ensuring that the candidates nominated by a political party observe the two-thirds gender rule.

The third proposed amendment is to delete sub-paragraph (4)(e) and thereby take away the responsibility of settling electoral disputes from the IEBC.



## EFFECTS

If passed, the first amendment will bar persons who contest for all political parties from being appointed to the IEBC for a period of five years. This is by adding the President, Deputy President, Governor and Deputy Governor to the list. Previously only Members of Parliament and Members of County Assemblies were on the list.

If passed, the second amendment will further strengthen gender balance in political party nominations.

If passed, the third amendment will remove the mandate of settling electoral disputes from the IEBC. Notably, the IEBC is an actor in nomination processes and therefore is removed from dealing with disputes arising from there. The resolution of the electoral disputes will then be left to the Internal Dispute Resolution Organs of political parties, the Political Parties Tribunal, and the High Court.

### **3.9 Article 89 – Delimitation of Electoral Units**

The Bill proposes to amend sub-article (1) to increase the number of constituencies from two hundred and ninety to three hundred and sixty.

#### **EFFECTS**

If passed, this amendment will increase the number of Members of the National Assembly by 24%. The goal is to promote fair representation in the National Assembly. Previously, the Constitution had anticipated that the IEBC would review boundaries of constituencies every eight to twelve years so as to balance population quotas of the constituencies. Other factors that would be considered during the review of boundaries would be geographical features and urban centres, community of interest, historical, economic, cultural ties, and means of communication.

While the proposed amendment resolves the concerns that some existing constituencies would be merged where the population is low, it could create precedence where in future new constituencies are created rather than delimiting those already existing.

### **3.10 Changes to Parliament – Amendments to Articles 90, 97 and 98**

The Bill proposes to amend the membership of Parliament by amending a number of Articles and Sub Articles. The proposed amendments are:





Article / clause	Change	Effect
97(1)(a)	Delete two hundred and ninety and substitute with three hundred and sixty	Confirm the proposed increase of Members of National Assembly elected through constituencies from 290 to 360
97(1)(b)	Delete the current provision and replace with a new sentence	Change from having 47 women elected by counties, to having 4 persons nominated to represent persons with disabilities
97(1)(c)	Delete current provision and replace with new sentence	Change from 12 persons nominated by political parties to represent special interests, to having 2 persons nominated by political parties to represent the youth
97(1)(ca)	Add a new provision	Provide for nomination of special seat members required to ensure that Parliament meets the two thirds gender rule
97(1)	Add new provisions (e), (f) and (g)	Provide for nomination of special seat members required to ensure that Parliament meets the two thirds gender rule
97(3)	Add a new provision	Add to the list of the Members of National Assembly: Leader of Official Opposition, Attorney General (ex officio), and Cabinet Ministers who are not elected Members of the National Assembly (ex officio)
97(4)	Add a new provision	Provide that nominations to balance gender are done after the election of Members of National Assembly, and that the provision will lapse after the next three general elections
98(1)(a)	Change from forty seven to ninety four	Increase the number of Senators to 94, with two from each county

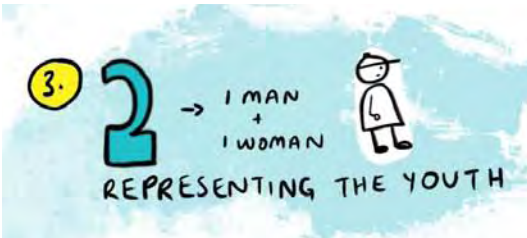
98(1)	Delete all other sub articles	Increase the number of Senators to 94, with two from each county
98(2)	Delete all other sub articles	Remove provision of how nomination of Senators is to be done
90(1)	Delete the words “Articles 97 (1) (c) and 98 (1) (b), (c) and (d)”, and substituting therefor the expression “Article 97 (1) (b), (c) and (ca)”	Update to reflect the positions for which nominations are to be done
90(2)	Delete the words “except in the case of the seats provided for under Article 98 (1) (b)”	Update to reflect that the nominations in Senate are removed
90(3)	Amend from “seats won by candidates of the political party” to “votes received by a political party”	Change the allocation of nomination seats from being based on number of seats won by a political party to the number of votes received by the political party during a general election

OVERALL EFFECTS

If passed, these amendments will restructure the National Assembly and Senate. It is notable that:

(a) Overall membership of the National Assembly could exceed five hundred and fifty

- i. 360 members, each elected from constituencies
- ii. Four members being two women and two men representing persons with disabilities
- iii. Two members being one man and one woman representing youth





iv. Members nominated to meet the two-thirds gender rule (could be up to 110)

v. Speaker (ex officio)

vi. Leader of Official Opposition

vii. The Attorney General (ex officio)

viii. Cabinet Ministers who are not elected members of the Assembly (ex officio)

- b) Youth, persons with disabilities lose out since seats for nomination are reduced from 12 to 6
- c) The Youth are disadvantaged whereby they are allocated two slots, whereas previously they had four
- d) Workers lose out since they are no longer considered for representation
- e) Women lose out since the 47 reserved seats in National Assembly are removed
- f) Considering that the two-thirds gender rule is applied to Parliament as a whole, women representation in the National Assembly is weakened whereby only 110 are required as opposed to 130 if the rule were applied to each house separately
- g) Provision that nomination slots are allocated on the basis of votes received rather than seats won would favour political parties that perform well in elections but don't win

- h) The Executive arm of government is re-introduced to the National Assembly thereby defeating the principle of separation of powers and diminishes the capacity of Parliament to hold the Executive to account

### 3.11 Article 96 – Role of Senate

The Bill proposes to amend Sub-Article 96(3) by replacing the words “national revenue allocated to county governments” with “revenue allocated to, raised by, or otherwise received by county governments and their expenditure”.

#### EFFECTS

If passed, this amendment will expand the scope of oversight that the Senate exercises over counties to cover the funds allocated by the national treasury, revenue that counties raise, and donations from elsewhere, and the expenditure of the funds. This will promote greater accountability on the part of county governments.

### 3.12 Article 99 – Qualifications and Disqualifications for Election as Member of Parliament

The Bill proposes to amend sub-article (2)(a) by adding the words “or a county assembly” and to delete sub-article (2)(b) which barred Members of County Assemblies from seeking to be elected as Members of Parliament.

#### EFFECTS

If passed, the two amendments will allow Members of County Assemblies to vie for Member of Parliament positions without being required to have resigned six months earlier, as is required of other state officers.

### 3.13 Article 107A – Leader of Official Opposition

The Bill proposes to amend the Constitution by inserting a new Article numbered 107A. The Article seeks to establish the Leader of Official Opposition, and defines who can assume the office. The Leader of Official Opposition will be the person who gets the second greatest number of votes in a presidential election, and whose political party or coalition wins at least 25% of the seats in the National Assembly. Further, the Leader of Official Opposition and the Prime Minister cannot be drawn from the same political party or coalition.

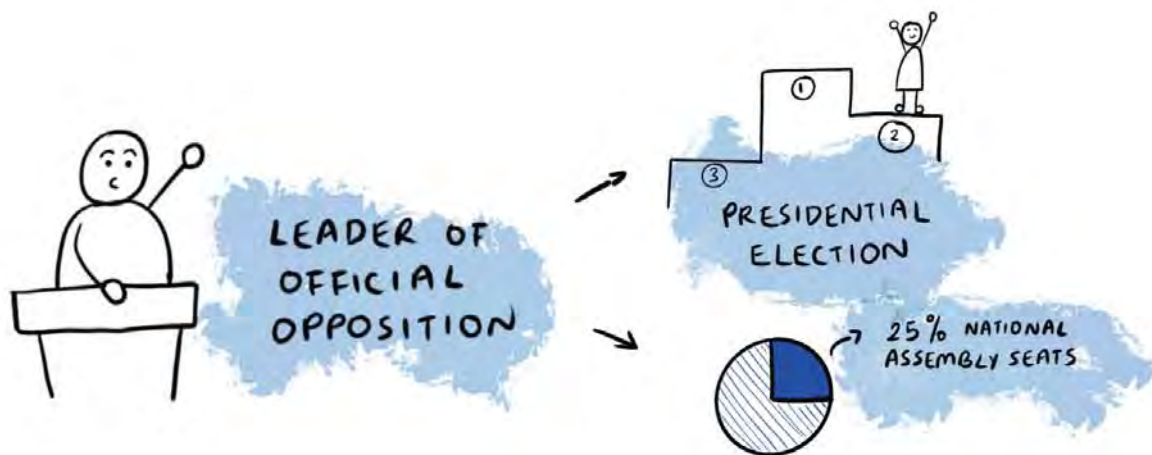
## EFFECTS

If passed, this amendment will dignify the opposition and addresses the “winner takes it all” problem that has been a major concern in elections in Kenya. The person who comes second in a presidential poll will not be excluded from national life, but will automatically join Parliament as the Leader of Official Opposition in the National Assembly. The government of the day will be held to account in the National Assembly, not on the streets as has happened in the past.



**94**  
SENATORS :  
1 MAN + 1 WOMAN  
FROM EACH COUNTY

It is however not clear what will happen if the party or coalition of the person who comes second does not win 25% of the seats in the National Assembly. Will the country go for that parliamentary period without a leader of official opposition?



### 3.13 Article 108 – Party Leaders

The Bill proposes to repeal Article 108 and replace it with a new one – Article 108 – Order of Precedence in the National Assembly, which states that the order of precedence in the National Assembly will be The Speaker, the Prime Minister, then the Leader of Official Opposition.

The Bill further propose to introduce a new article – **Article 108A – Party Leaders in the Senate**, which provides for the positions of Leader of Majority Party and Leader of Minority Party. It also provides that the order of precedence in Senate shall be The Speaker, the Leader of the Majority Party, then the Leader of the Minority Party.

#### EFFECTS

If passed, this amendment will introduce Party Leaders and Order of Precedence in Senate, which would be required if the changes to Parliament structure are adopted.

### 3.14 Article 113 – Mediation Committees

The Bill proposes to amend sub-article 113(3) to provide that after a Bill that has been referred to Mediation Committee is passed by both houses, it is the speaker of the house that originated the Bill who will refer it to the President. The period for referring the Bill to the President is also extended from seven to fourteen days.

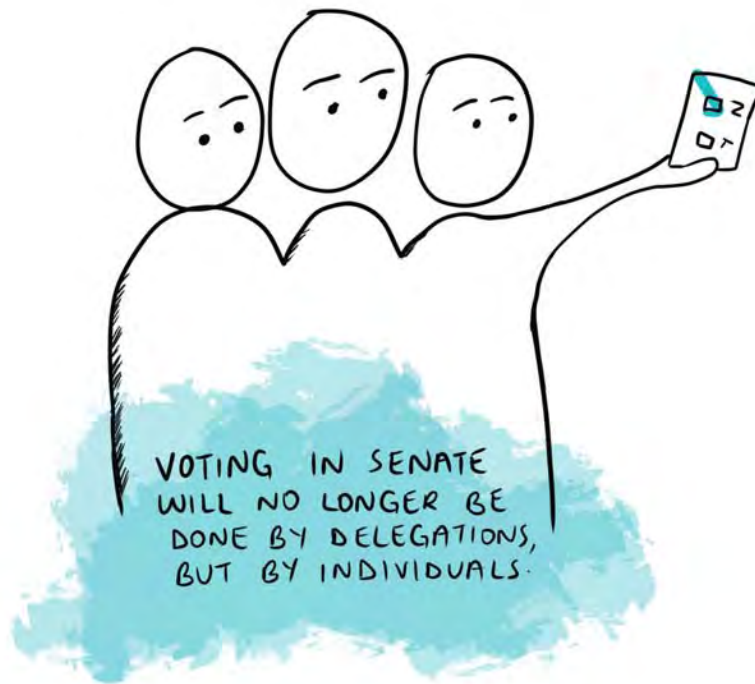
#### EFFECTS

If passed, this amendment will allow the Speaker of the Senate to refer to the President Bills that originated from the Senate unlike before when such Bills were submitted by the Speaker of the National Assembly. The Speaker of either house will have 14 days to refer to the President bills that originated from their house.

### 3.15 Article 115 – Presidential Assent and Referral

The Bill proposes to amend sub-article 115(4)(b) to provide that voting in the Senate is by Members of the Senate, not by delegations in the Senate, as is currently the case.





### EFFECTS

If passed, this amendment will allow the Members of the Senate to vote individually, removing the element of voting through delegations. Voting in the Senate is normally done through delegations due to the presence of nominated Senators, resulting in a situation where more than one Senator would originate from a county. This will be feasible if the changes to the structure of Parliament are adopted.

### 3.16 Article 123 – Decisions of the Senate

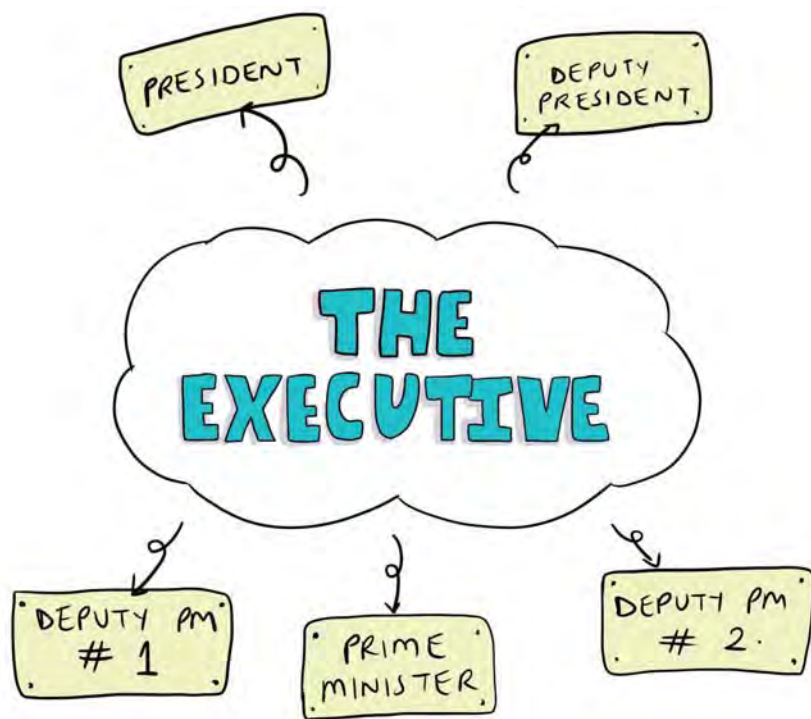
The Bill proposes to repeal Article 123 which provides the procedure for voting by delegations in the Senate.

### EFFECTS

If passed, this amendment will actualize the proposed amendment of Article 115 in which the voting through delegations in the Senate is repealed. If the Senate is reconstituted to have 94 elected members, then each will have a single vote.

### 3.17 Article 130– The National Executive

The Bill proposes to amend Sub-Article 130(1) to include the Prime Minister and Deputy Prime Ministers as part of the National Executive.



### EFFECTS

If passed, this amendment will increase the members of the National Executive to 5, up from the current 2 (President and Deputy President). This amendment is required to actualize the proposed amendment of Article 151A – Office of the Prime Minister. The proposed amendment will ensure that the national executive reflects the regional and ethnic diversity of the people of Kenya.

## 3.18 Article 131 – Authority of the President

The Bill proposes to amend Sub-Article 131(1)(b) to include the Prime Minister and Deputy Prime Ministers, and to change reference from Cabinet Secretaries to Cabinet Ministers.

### EFFECTS

If passed, this amendment will include the Prime Minister and Deputy Prime Ministers as part of those who assist the President in exercising executive authority.

Cabinet Secretaries will also be renamed Cabinet Ministers, mostly to be in tandem with the title of Prime Minister.

## 3.19 Article 132 – Functions of the President

The Bill proposes to amend Article 132 in two places: One, by adding the words “and economic and social rights referred to in Article 43” on sub-article 132(1)(c)(i). This will require the President to provide an annual report on the measures taken and achievements made in the area of economic and social rights.

Two, the words “where applicable” are proposed to be added on Sub-Article 132(2) immediately after the words “National Assembly”, which means that not all Presidential nominees will be vetted by the National Assembly.

### EFFECTS

If passed, these amendments will expand the contents of the annual address by the President to the nation to include achievements in the area of economic and social rights.

Secondly, the proposed amendment will allow the President to appoint and dismiss Cabinet Secretaries, Secretary to the Cabinet, Principal Secretaries, High Commissioners, Ambassadors, Diplomatic and Consular Representatives and any other state or public officers without vetting by Parliament. This will limit the oversight role of the National Assembly over the President.



### 3.20 Articles 132, 134, 152 and 153 – Cabinet Secretaries

The Bill proposes to amend Articles 132, 134, 152 and 153 by changing the term “Cabinet Secretary” to “Cabinet Minister” wherever it appears.

MINISTER  
~~CABINET SECRETARY~~

### EFFECTS

If passed, these amendments rename Cabinet Secretaries to Cabinet Ministers, which would be in tandem with the titles “Prime Minister” and “Deputy Prime Ministers”.

**3.21 Articles 138 – Procedure at Presidential Election**

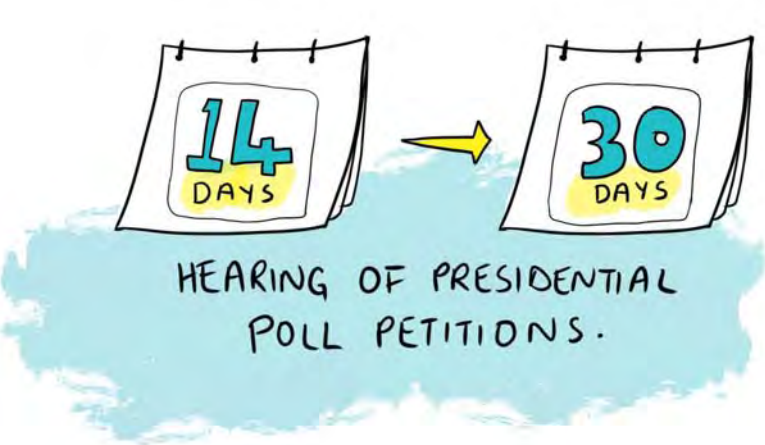
The Bill proposes to amend Sub-Article 138(8)(b) by removing the words “or Deputy President” to provide that a Presidential Election will not be stopped if any of the Deputy President candidates dies before the election.

**EFFECTS**

If passed, this amendment will enable a Presidential candidate to select a new Deputy President candidate should the one they picked earlier die before the date of the election.

**3.22 Articles 140 – Questions as to Validity of Presidential Election**

The Bill proposes to amend Article 140(2) by replacing the word “fourteen” with “thirty”, thereby extending the time allocated for hearing of presidential poll petitions.



**EFFECTS**

If passed, this amendment will provide a longer period for the Supreme Court to determine presidential election petitions, allowing them to receive and consider all evidence availed.

**3.23 Articles 151A – 151D – Office of the Prime Minister and Deputy Prime Ministers**

The Bill proposes to amend the Constitution by introducing new Article 151A, 151B, 151C and 151D to establish the positions of Prime Minister and two Deputy Prime Ministers. The Article defines the functions, appointment and dismissal of the Prime Minister and Deputy Prime Ministers. The Prime Minister, who will be nominated by the President and vetted by the National Assembly, will be the leader of government business in the National Assembly.

To be appointed Prime Minister, a person will be an elected Member of the National Assembly, and will be the leader of the largest party or coalition. He or she will be dismissed by the President, or be removed by the National Assembly through a vote of no confidence.

The Deputy Prime Ministers will be appointed by the President from among the Cabinet Ministers but will not be subject to approval by the National Assembly.

### EFFECTS

If passed, this amendment will introduce the Prime Minister and Deputy Prime Ministers. These will be appointees of the President and will expand the top executive from two to five.

The creation of these positions was proposed by different actors, including religious leaders, to address the sense of exclusion felt by many Kenyans arising from the fact that the Constitution of Kenya 2010 created only two positions at the top, the President and Deputy President. The feeling of exclusion resulted in calls for secession after the 2013 and 2017 elections. This amendment is meant to address this.

There is uncertainty however of what will happen if the political party or coalition of the President is not the largest in Parliament, in which case then the person who would have assumed the position of Leader of Official Opposition would have to be appointed the Prime Minister.

In addition, the power to appoint and dismiss the Prime Minister and Deputy Prime Ministers further consolidates power in the hands of the President, which is contrary to the objective of reducing the “winner takes all” nature of governance in the country.

## 3.24 Articles 152 – The Cabinet

The Bill proposes to amend Article 152 in five areas: One, in Sub-Article (1) to include the Prime Minister and Deputy Prime Ministers as members of the Cabinet;

Two, replacing the word “Cabinet Secretary” or “Cabinet Secretaries” with “Cabinet Minister” or “Cabinet Ministers” wherever these occur;

Three, in Sub-Article (2) to remove the requirement that the Cabinet Ministers are approved by the National Assembly;

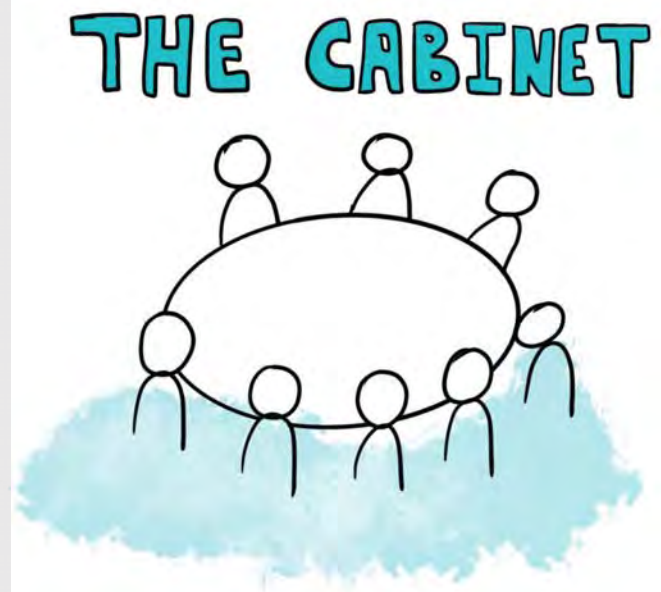
Four, changing the contents of Sub-Article (3) to allow Members of the National Assembly to be appointed Cabinet Ministers; and,

Five, by introducing a new Sub-Article (1) to provide that Cabinet Ministers remain in office until the President-elect assumes office.



### EFFECTS

If passed, this amendment will restructure the Cabinet by introducing the Prime Minister and Deputy Prime Ministers as members, and by allowing that Cabinet Ministers be appointed from among the Members of the National Assembly. The vetting of Cabinet Minister nominees will also be removed. This will compromise the oversight role of the National Assembly which will no longer vet Presidential appointees, and also erode the principle of separation of powers by merging the Executive with the Legislature. The vetting of appointees by the National Assembly was included in the Constitution to provide checks and balances against excesses in the exercise of executive authority by the Executive.



### 3.25 Articles 153 – Decisions, Responsibilities and Accountability of the Cabinet

The Bill proposes to amend Article 153 by adding the words “National Assembly” before “The President” in Sub-Article (2), and changing the words “Cabinet Secretary” to “Cabinet Minister” wherever they appear.

### EFFECTS

If passed, this amendment will make Cabinet Ministers accountable to the National Assembly and the President.

### 3.26 Articles 153A – Deputy Ministers

The Bill proposes to amend the Constitution by adding a new article, Article 153A – Deputy Ministers, which will require the President to appoint not less than 14 and not more than twenty-two Deputy Ministers. These may be appointed from among the Members of the National Assembly, and the President has the authority to re-assign or dismiss them.

THE PRESIDENT  
SHALL APPOINT  
**14-22**  
DEPUTY MINISTERS.





### EFFECTS

If passed, this amendment will further consolidate the power of the President, in addition to eroding the principal of separation of powers. The oversight role of the National Assembly will be reduced since they do not vet those appointed to be Deputy Ministers.

### 3.27 Articles 154 – Secretary to the Cabinet

The Bill proposes to amend Sub-Article 154(2)(a) to remove the requirement that the person appointed Secretary to the Cabinet is vetted by the National Assembly.

### EFFECTS

If passed, this amendment will further consolidate power in the hands of the President and weaken the oversight role of the National Assembly.

### 3.28 Articles 155 – Principal Secretaries

The Bill proposes to amend Article 155 by amending Sub-Article (3) to remove the requirement that persons appointed as Principal Secretaries are vetted by the National Assembly. Principal Secretaries, once nominated by the Public Service Commission, are to be appointed by the President.

### EFFECTS

If passed, this amendment will further consolidate power in the hands of the President and weaken the oversight role of the National Assembly.

### 3.29 Articles 156 – Attorney General

The Bill proposes to amend Sub-Article 156(4)(c) to provide that the Attorney General shall perform the functions of a Cabinet Minister.

### EFFECTS

If passed, this amendment will remedy the current situation where the Attorney General is listed as a member of the Cabinet but is not required to perform the duties of a Cabinet Secretary.

**3.30 Articles 157 – Director of Public Prosecutions**

The Bill proposes to amend Sub-Article 157(3) to require that the qualifications for appointment to the position of Director of Public Prosecutions be similar to those of appointment as a judge of the Court of Appeal. Currently the requirement is that one be qualified for appointment as a judge of the High Court.

**EFFECTS**

If passed, this amendment will require that a person to be appointed Director of Public Prosecutions have an experience of fifteen years.

**3.31 Articles 158 – Removal and Resignation of the Director of Public Prosecutions**

The Bill proposes to amend the Constitution by repealing Article 158.

**EFFECTS**

If passed, this amendment will supplement the other proposed amendments in which the Office of the Director of Public Prosecutions is elevated to the level of an Independent Office. In that case, the applicable procedure for removal from offices is as provided for in Article 251.

**3.32 Articles 164 – Court of Appeal**

The Bill proposes to amend Sub-Article 164(2) to provide that the president of the Court of Appeal shall serve for one term of five years.

**EFFECTS**

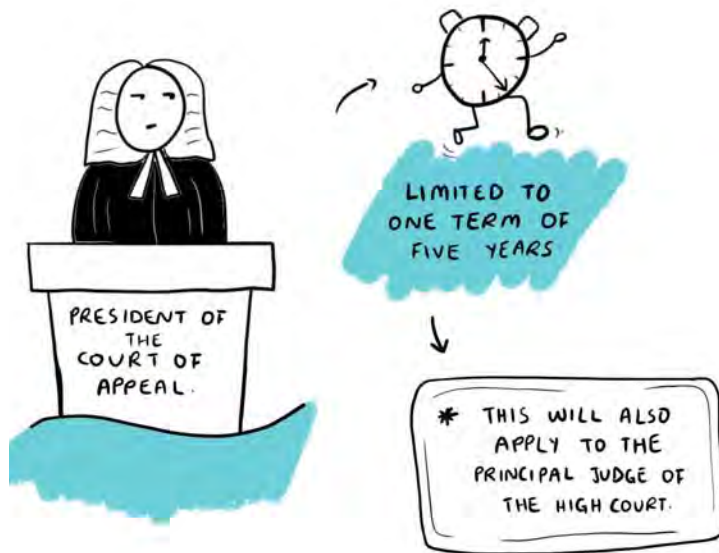
If passed, this amendment will provide a term in office for the person elected president of the Court of Appeal, which is not currently provided for.

**3.33 Articles 164 – Court of Appeal**

The Bill proposes to amend Article 164 by adding a new Sub-Article 4 to provide that election petitions shall terminate at the Court of Appeal.

### EFFECTS

If passed, this amendment will limit the Supreme Court to only deal with election petitions related to the election of the President, while all other petitions terminate at the Court of Appeal. While this will reduce the number of petitions escalated to the Supreme Court, it can also be interpreted as hindering the petitioners from accessing justice.



### 3.34 Articles 165 – High Court

The Bill proposes to amend Sub-Article 165(2) to provide that the Principal Judge of the High Court shall serve for one term of five years.

### EFFECTS

If passed, this amendment will provide a term in office for the person elected Principal Judge of the High Court, which is not currently provided for.

### 3.35 Articles 166 – Appointment of Chief Justice, Deputy Chief Justice and other Judges

The Bill proposes to amend Article 166 to require that a person to be appointed Chief Justice, Deputy Chief Justice or Judge of the Supreme Court to have experience of twenty years, up from fifteen, and to increase the experience of Court of Appeal Judges from ten to fifteen.

### EFFECTS

If passed, this amendment will enhance the performance of the judges by increase the period of experience one must have before appointment.

**3.36 Articles 167 – Tenure of Office of the Chief Justice and Other Judges**

The Bill proposes to amend Article 167 to provide that the provisions in Sub-Articles (2), (3), and (4) relating to the term in office of the Chief Justice will apply to the Deputy Chief Justice.

**EFFECTS**

If passed, this amendment will provide a tenure of office for the Deputy Chief Justice, which is currently not provided for

**3.37 Articles 168 – Removal From Office**

The Bill proposes to amend Sub-Article 168(2) to provide that the removal of a judge can be initiated on a motion moved by the Judiciary Ombudsman.

**EFFECTS**

If passed, this amendment will provide a locus for one of the roles of the position of Judiciary Ombudsman, which the Bill proposes to establish.



**3.38 Articles 171 – Establishment of the Judicial Service Commission**

The Bill proposes to amend Article 171 (2) to include the Judiciary Ombudsman as a member of the Judicial Service Commission; and Sub-Article 171(4) to provide that members of the Judicial Service Commission will serve for only one term of five years. The Chief Justice and Deputy Chief Justice are exempted from this term limit.

**EFFECTS**

If passed, this amendment will review the membership of the Judicial Service Commission by introducing the Judiciary Ombudsman as a member, and providing a term limit for the members.

**3.39 Articles 171 – Establishment of the Judicial Service Commission**

The Bill proposes to amend Article 171 by introducing a new Sub-Article (5) to require that representatives of the Law Society of Kenya on the JSC will not practice in courts or tribunals during their period of service o the JSC.

**EFFECTS**

If passed, this amendment will prevent a situation where the representatives of the Law Society of Kenya presents a case before a Judge or Magistrate whose matter they are handling at the JSC.

**3.40 Articles 172 – Functions of the Judicial Service Commission**

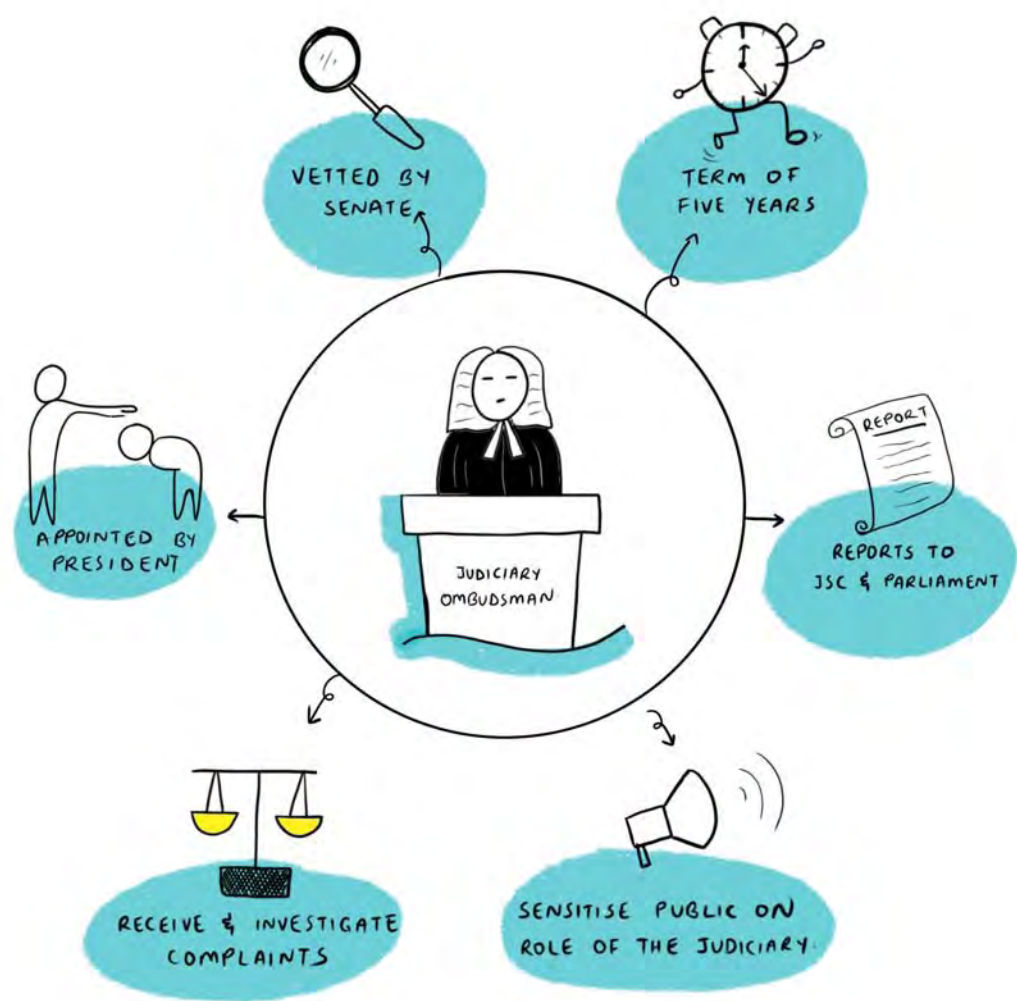
The Bill proposes to amend Article 172 by adding a new Sub-Article (1)(ca) to mandate the Judicial Service Commission to receive complaints against judges, investigate them, and discipline the judges by warning, reprimanding or suspension.

**EFFECTS**

If passed, this amendment will provide for disciplinary actions against judges for offences that do not warrant removal.

3.41 Articles 172A – Office of the Judiciary Ombudsman

The Bill proposes to amend the Constitution by introducing a new Article 172A to establish the office of the Judiciary Ombudsman. The Ombudsman is to be nominated by the President and vetted by the Senate. The mandate of the Ombudsman will be to receive and investigate complaints against judicial officers and judges, and to promote engagement with the public on the role of the Judiciary. The Ombudsman will also be required to prepare regular reports to the Judicial Service Commission and annual reports to Parliament. The Ombudsman, appointed for a single term of five years, will have the same qualifications as a judge of the Supreme Court.



EFFECTS

If passed, this amendment will establish the Office of the Judiciary Ombudsman, which currently does not exist.

The appointment of the Ombudsman by the President will further consolidate power in the hands of the President, and will weaken the separation of powers between the Executive and the Judiciary.



3.42 Articles 177 – Members of County Assembly

The Bill proposes to amend Article 177 in four ways: One, by amending Sub-Article (2) to require that nominated members are based on the number of votes received by political parties during an election and not on the basis of seats won; Two, by amending Sub-Article (3) to provide that during nominations, precedence will be given to those who stood for election and received the greatest number of votes; Three, by editing Sub-Article (4) to state that the term of a county assembly ends on the date of the next general election; Four, by adding a new Sub-Article (5) to provide for recall of Members of County Assemblies; and Five, by adding a new Sub-Article (6) to provide that the nomination of members to meet the two-thirds gender rule will end after two general elections.

EFFECTS

If passed, these amendments will streamline nomination of special members by providing that the process be based on number of votes the party receives rather than seats won, and that those nominated be drawn from political party lists with preference going to those who contested and received the highest number of votes.

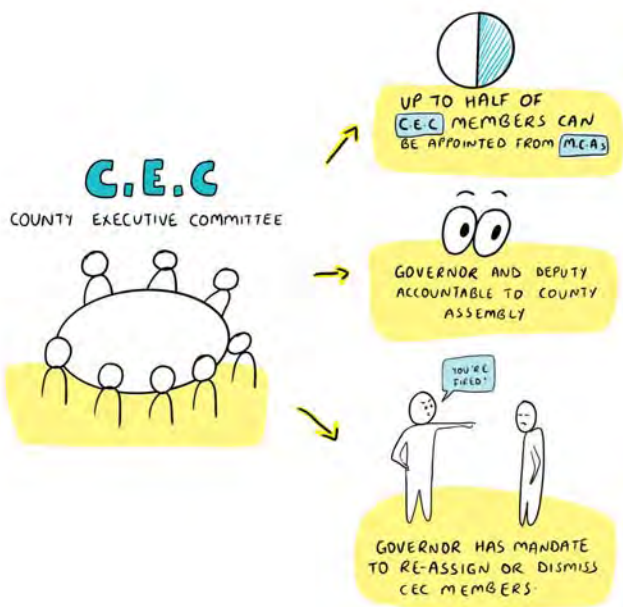
3.43 Articles 179 – County Executive Committee

The Bill proposes to amend Article 179 in four ways: One, by amending Sub-Article (2) (b) to allow that Members of the County Assembly can be appointed to the County Executive Committee;

Two, by amending Sub-Article (3)(b) to provide that up to half of the members of the County Executive Committee can be appointed from the County Assembly;

Three, by amending Sub-Article (4) to provide that the Governor and Deputy Governor are accountable to the respective County Assembly; and,

Four, by amending Sub-Article (7) to mandate the Governor to re-assign or dismiss a member of the County Executive Committee. This will also remove the current provision that the term of office of a member of the County Executive Committee ends when a Governor leaves office.



### EFFECTS

If passed, these amendments will restructure the membership of the County Executive Committees by allowing members of the County Assembly to be appointed. This will erode the oversight role of the County Assembly and weaken the principle of separation of powers between the County Executive and the County Assembly.

The provision that the Governor and Deputy Governor are accountable to the County Assembly will enhance accountability in the governance.

The repeal of the current Sub-Article (7) will limit disruption of service which occurs when there is a vacancy in the office of the Governor and all the CEC members are deemed to be out of office. They would now remain in office until a new governor assumes office and appoints new members.

### 3.44 Articles 180 – Election of County Governor and Deputy County Governor

The Bill proposes to amend Article 180 by introducing a new Sub-Article (5A) to require a candidate for election as Governor to consider nominating a deputy governor who is of the opposite gender.

### EFFECTS

If passed, this amendment will promote the realisation of gender balance. The proposal however is not mandatory.

### 3.45 Articles 188 – Boundaries of Counties

The Bill proposes to amend Sub-Article 188(1)(b)(ii) to provide that voting is by members of Senate, not county delegations.

### EFFECTS

If passed, this amendment will put the Article in tandem with the proposed provisions on the Senate.

### 3.46 Articles 202 – Equitable Sharing of Revenue

The Bill proposes to amend Article 202 by adding a new Sub-Article (3) to provide that the most recent audited accounts submitted by the Auditor General will be used to determine revenue sharing in instances where the National Assembly delays approving audited accounts.

## EFFECTS

If passed, this amendment will allow revenue sharing to be based on current accounts, which will cure the current challenge whereby revenue sharing is based on outdated accounts

### 3.47 Articles 203 – Equitable Share and Other Financial Laws

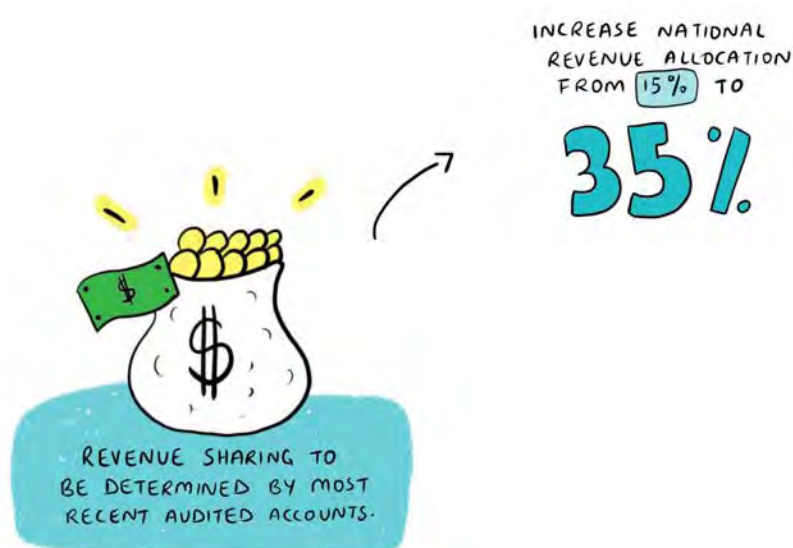
The Bill proposes to amend Sub-Article 203 (1) by adding three new sub-articles (l – n) which specify further criteria to be considered during sharing of revenue. These are: One, need to eradicate corrupt practices and wastage of public resources; Two, to ensure attainment of economic and social rights; and Three, to ensure that the highest per capita allocation does not exceed three times the per capital allocation in the county with the lowest allocation.

## EFFECTS

If passed, these amendments will strengthen the criteria used during the sharing of resources, and move the country further towards the “one man one shilling” principle. It is however not clear how the allocations will curb corrupt practices and wastage of public resources.

### 3.48 Articles 203 – Equitable Share and Other Financial Laws

The Bill proposes to amend Sub-Article 203 (2) to increase percentage of national revenue allocated to county governments from fifteen to thirty-five.



## EFFECTS

If passed, this amendment will increase the share of revenue allocated to county governments.

**3.49 Articles 204 – Equalisation Fund**

The Bill proposes to amend Sub-Article 204 (6) to increase the effective period of the Equalization Fund from twenty to thirty years, and to amend Sub-Article (8) to clarify that voting in the Senate is by individual members not by county delegations.

**EFFECTS**

If passed, this amendment will increase the effective operational period of the Equalization Fund to thirty years, while retaining the right of Parliament to extend the period through legislation.

**3.50 Articles 206A – Constituencies Development Fund**

The Bill proposes to amend the Constitution by introducing a new Article 206A – Constituencies Development Fund. The article will regularize the Fund by introducing it into the Constitution.

**EFFECTS**

If passed, this amendment will elevate the Constituency Development Fund from a statutory provision to a Constitutional fund. This will insulate the fund from court cases as have been witnessed in the past. Concern nonetheless remains that involvement of Members of National Assembly in development work affects their legislative and oversight mandates.

**3.51 Articles 207 – Reserve Funds for County Governments**

The Bill proposes to amend Sub-Article 207(4)(b) to provide that a County Assembly Fund may be established through an Act of Parliament.

**EFFECTS**

If passed, this amendment will allow for the establishment of a County Assembly Fund through an Act of Parliament. The amendment will enhance the independence of the County Assemblies from the County Executives by providing for financial autonomy. Currently, the County Executives have control over the budgets of the County Assemblies.

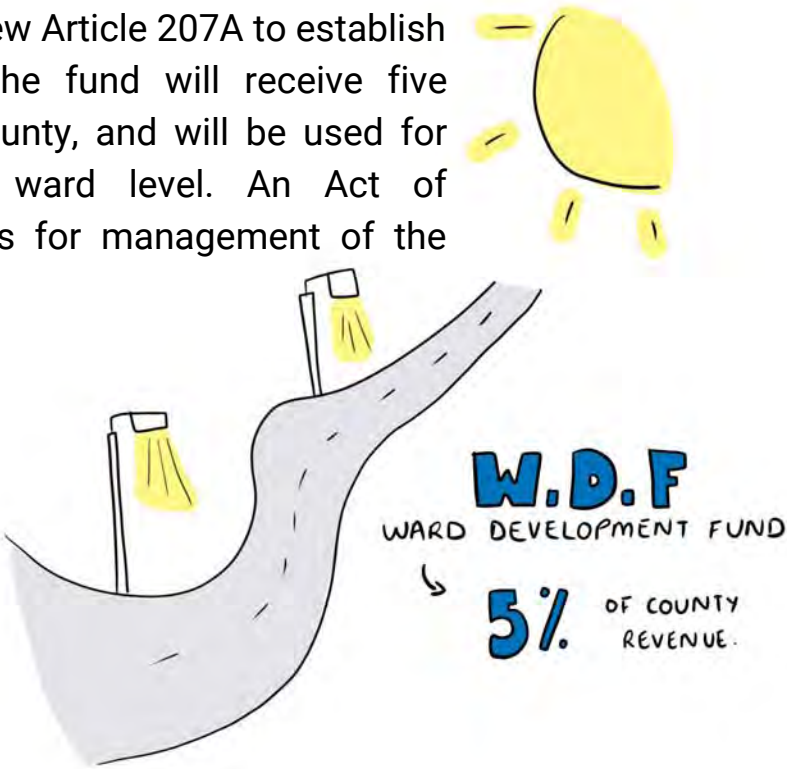
3.52 Articles 207A – Ward Development Fund

The Bill proposes to introduce a new Article 207A to establish the Ward Development Fund. The fund will receive five percent of the revenue of the county, and will be used for development purposes at the ward level. An Act of Parliament will provide guidelines for management of the fund.

EFFECTS

If passed, this amendment will establish a Ward Development Fund.

Concern nonetheless remains that the involvement of Members of County Assemblies in development work will affect their legislative and oversight mandates.



3.53 Articles 215 – Commission on Revenue Allocation

The Bill proposes to amend Article 215 to restructure the membership of the Commission on Revenue Allocation. The changes reduce the number of persons nominated by Senate from five to two, and instead allocate the three slots to two nominees of county governors and one nominee from the regulatory professional body of accountants.

EFFECTS

If passed, this amendment will diversify the membership of the Commission to enhance inclusivity by bringing in more stakeholders.

**3.54 Articles 218 – Division of Revenue**

The Bill proposes to amend Article 218 by adding a new Sub-Article (3) that will allow the Controller of Budget to authorise County Governments to withdraw from the Consolidated Fund up to 50% of the equitable share based on the criteria contained in the previous year’s Division of Revenue Act, and also to transfer funds to the revenue funds of counties.

**EFFECTS**

If passed, this amendment will safeguard county governments from delayed fund disbursements that have been witnessed whenever there is a delay in the passing of the Division of Revenue Act.

**3.55 Articles 220 – Form, Content and Timing of Budgets**

The Bill proposes to amend Article 220 by inserting a new Sub-Article to require national and county government budgets to provide an explanation of previous, current and future budgetary measures towards achievement of social and economic rights of citizens guaranteed in Article 43. The Bill in addition proposes to amend Sub-Article (2) (a) to require national legislation to prescribe the structure of the development plans and budgets of national government and counties.

**EFFECTS**

If passed, these amendments will enhance accountability and value for money while promoting efficiency in the use of public resources.

**3.56 Articles 224 – County Appropriation Bills**

The Bill proposes to amend Article 224 by deleting the requirement that county government budgets and appropriation bills be based on the Division of Revenue Bill passed by Parliament

**EFFECTS**

If passed, this amendment will enable the county governments to include funds raised independently in their budgets and appropriation bills.



**3.57 Articles 225 – Financial Control**

The Bill proposes to amend Sub-Article 225 (3) to provide that the Cabinet Minister for finance shall be required to stop transfer funds to state organs or public entities when there is material breach or persistent material breach of measures established under legislation. A further proposed amendment seeks to clarify that Sub-Article (3)(a) is referring to legislation provided for in Clause 2.

**EFFECTS**

If passed, this amendment will require the Cabinet Minister to stop transfer of funds to entities that have a material breach of measures. Currently the stoppage is not required. The amendment will also provide clarity and correct the title to Cabinet Minister.

**3.58 Articles 225 – Financial Control**

The Bill proposes to amend the Constitution by introducing a new Sub-Article 225(3A) to require the Cabinet Minister for finance to, within thirty days, file a report with the Senate if he / she stops transfer of funds to a county, or with the national assembly if he / she stops transfer of funds to a state organ or public entity.

**EFFECTS**

If passed, this amendment will strengthen financial controls by making it mandatory for the Cabinet Minister to stop the transfer of funds if the conditions warrant the same.

**3.59 Articles 228 – Controller of Budget**

The Bill proposes to amend Sub-Article (1) by replacing the words “National Assembly” with “Senate”.

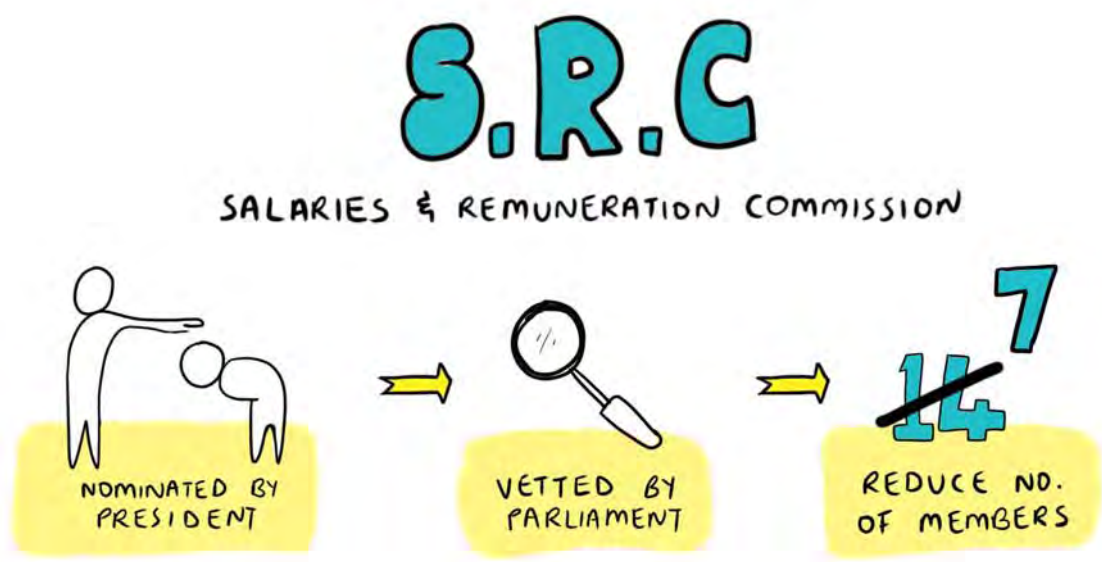
**EFFECTS**

If passed, this amendment will transfer the vetting of the Controller of Budget to Senate.

The rationale for this is not clear since the Controller of Budget is not limited to oversight of county governments only.

3.60 Articles 230 – Salaries and Remuneration Commission

The Bill proposes to amend Sub-Article 230(2) by requiring that the members of the Salaries and Remuneration Commission are nominated by the President and vetted by the National Assembly. This will remove the mandate that other bodies and institution currently have of nominating the members of the Commission.



EFFECTS

If passed, this amendment will reduce the members of the Commission from 14 to seven. However, the participation of other institutions and bodies in the nomination of the members will be removed, leading to further consolidation of the powers of the President.

3.61 Articles 230 – Salaries and Remuneration Commission

The Bill proposes to amend Article 230 by adding a new Sub-Article (4)(c) to give the Salaries and Remuneration Commission a mandate to determine and harmonize rates paid by county and national governments for professional services.

EFFECTS

If passed, this amendment will harmonize the rates paid for professional services paid by the government to reduce wastage and likelihood of fraud.

### 3.62 Articles 230 – Salaries and Remuneration Commission

The Bill proposes to amend Article 230 by adding a new Sub-Article (5)(ca) to include the need to rationalize and harmonize remuneration and benefits of all state and public officers as a guiding principle for the Commission.

#### EFFECTS

If passed, this amendment will promote the harmonization of benefits and remuneration of public and state officers so as to eradicate the overt differences that are sustaining.

### 3.63 Articles 234 – Functions and Powers of the Public Service Commission

The Bill proposes to amend Sub-Article 234(3)(iv) to change reference from National Police Service Commission to refer to national security organs referred to in Article 239(1).

#### EFFECTS

If passed, this amendment will exclude all national security organs from the Public Service Commission.

### 3.64 Articles 237A – The Youth Commission

The Bill proposes to amend the Constitution by inserting a new Article 237A which establishes the Youth Commission and provides for its membership and functions. The Youth Commission is to have a chairperson and six members, all nominated by the President and vetted by the Senate. Parliament is to develop legislation to give full effect of the Article.



### EFFECTS

If passed, this amendment will establish the Youth Commission aimed at advancing the participation of the youth in all spheres of public and private life, ensuring mainstreaming of youth perspectives in planning and decision making, and advising national and county governments on design, implementation and evaluation of youth-related programmes.

The appointment of the members of the Commission will further consolidate power on the President since other actors, including the youth, do not have an opportunity to nominate representatives.

### 3.65 Articles 240 – Establishment of the National Security Council

The Bill proposes to amend the Constitution by inserting a new Article 240(2)(ba) to include the Prime Minister as a member of the National Security Council.

### EFFECTS

If passed, this amendment will include the Prime Minister on the list of members of the National Security Council, in line with the provision that the Prime Minister supervises the performance of all ministries.

However, there is concern that the Prime Minister is an elected member of the National Assembly, and therefore this provision further enmeshes the Executive with the Legislature.

### 3.66 Articles 243 – Establishment of the National Police Service

The Bill proposes to amend the Constitution by inserting a new Article 243(2)(c) to add the Directorate of Criminal Investigations as a formation within the National Police Service.



### EFFECTS

If passed, this amendment will elevate the Directorate of Criminal Investigations to a third arm of the National Police Service, allowing for enhanced administration and operations.

### 3.67 Articles 245 – Command of the National Police Service

The Bill proposes to amend Sub-Article 245(2)(b) to give the Inspector General independent command over the Service, and power to determine promotions and transfers as well as disciplinary control of the service. Further edits on the Article are on Sub-Article (3) to provide that the Directorate of Criminal Investigations is headed by a Deputy Inspector General, and to change the words “Cabinet Secretary” to “Cabinet Minister” on Sub-Articles (4) and (5).

#### EFFECTS

If passed, this amendment will shift the mandate for command, transfers and disciplinary control from the National Police Service Commission to the Inspector General. It is not clear why the mandate is transferred to the Inspector General and not to the National Police Service.

### 3.68 Articles 246 – National Police Service Commission

The Bill proposes to amend Article 246 to redefine the membership of the National Police Service Commission to include the three Deputy Inspector Generals, and to remove the Commission’s mandate in the promotions, transfers and disciplinary control of the officers. The Commission is further given the role of setting and reviewing the conditions of service and code of conduct within the service.

#### EFFECTS

If passed, this amendment will transform the National Police Service Commission into a policy body by reducing its engagement in the day to day operations of the service.

### 3.69 Articles 248 – Application of Chapter

The Bill proposes to amend Sub-Article 248(3) by inserting a new Sub-Article (3)(c) to include the Director of Public Prosecutions on the list of Independent Offices.

#### EFFECTS

If passed, this amendment will elevate the Director of Public Prosecution to an independent office, thereby enhancing its independence.

**3.70 Articles 250 – Composition, Appointment and Terms of Office**

The Bill proposes to amend Sub-Article 250(1) by changing the word “nine” to “seven”.

**EFFECTS**

If passed, this amendment will reduce the membership of each independent commission to a maximum of seven, down from nine.

**3.71 Articles 259 – Construing This Constitution**

The Bill proposes to amend Article 259 by adding a new Sub-Article (12) to provide that the process of replacing the holder of an appointive office will commence six months before the expiry of the term of the incumbent.

**EFFECTS**

If passed, this amendment will ensure there is no lapse between the end of the term of an office holder and the appointment of their successor.

**3.72 Articles 260 – Interpretations**

The Bill proposes to amend Article 260 to include Prime Minister, Deputy Prime Minister, Deputy Minister, and Judiciary Ombudsman on the list of State Officers.

**EFFECTS**

If passed, this amendment will ensure the new offices created through the amendments in this Bill are included on the list of State Officers.

**3.72 Third Schedule of the Constitution**

The Bill proposes to amend the Third Schedule of the Constitution to include the Prime Minister, Deputy Prime Ministers and Deputy Chief Justice on the Oaths of office as appropriate.

**EFFECTS**

If passed, this provision will regularize the offices created/amended through the amendments proposed in the Bill by providing appropriate wordings for their oath of office.



3.73 Consequential Legislation

The Bill provides that the Kenya Law Reform Commission and the Attorney General will prepare the relevant Bills for tabling before Parliament to facilitate enactment of legislation envisaged in the proposed amendments.

EFFECTS

If passed, this provision will provide guidance on the development of legislation required by the proposed amendments.

3.74 First Schedule

The Bill provides that the legislation required to effect the proposed amendments be developed as per the timelines indicated below:

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

EFFECTS

If passed, this provision will provide guidance on the timelines for the development of required legislation.

3.75 Second Schedule – Delimitation of number of Constituencies

The Bill provides that the Independent Electoral and Boundaries Commission will, within six months from the commencement date of the Act, delimit boundaries of the proposed 70 new constituencies.

The Bill further guides that the 70 new constituencies be delimited from the following 28 counties:

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

EFFECTS

If passed, this provision will provide guidance on the counties from which the new constituencies will be delimited.

This however infringes on the constitutional mandate of the Independent Electoral and Boundaries Commission to independently delimit boundaries as per the criteria laid out in the constitution.

It is also notable that the Bill proposes suspension of the provisions Article 89(4) of the Constitution which requires that new boundaries of electoral units do not take effect in a general election if the general election is held within 12 months from the date of the delimitation. This would allow the new constituencies to be part of the general election regardless of the time difference between the completion of delimitation and the next general election.

**3.76 Second Schedule - Executive**

**EFFECTS**

If passed, this provision will provide a timeframe when the proposed changes in the Executive will be effected.

The Bill provides that the provisions in the Bill relating to the Executive will take effect in from the next general election after the commencement of the Act.

**3.77 Second Schedule – Salaries and Remuneration Commission**

The Bill provides that the members of the Salaries and Remuneration Commission shall continue to hold office the remainder of their terms, unless they are removed in accordance with the Constitution.

**EFFECTS**

If passed, this provision will provide continuity in office of the members of the Salaries and Remuneration Commission, which the Bill proposes to restructure.



For comments or enquiries, contact:

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