

Annexure 4

The Draft Constitution of Kenya (Amendment) Bill, 2024 by the National Dialogue Committee

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Constitution by parliamentary initiative.

ENACTED by the Parliament of Kenya, as follows—

Short title and commencement.

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2023, and shall come into operation or be deemed to have come into operation as follows—

- (a) sections 7, 8, 13, 14, 23 and 24 of this Act immediately after the general elections held following the enactment of this Act; and
- (b) all other sections, upon publication in the Gazette.

Amendment of Article 75 of the Constitution.

2. Article 75 of the Constitution is amended by inserting the following new clauses immediately after clause (3) —

(4) A State Officer or public officer as provided for under Article 80(c), shall promptly obey and act in accordance with a court order.

(5) A court may impose appropriate sanctions against any state or public officer who fails to comply with a court order.

Amendment of Article 88 of the Constitution.

3. Article 88(4) of the Constitution is amended by deleting paragraph (e).

Amendment of Article 89 of the Constitution.

4. Article 89 of the Constitution is amended by inserting the following new clause immediately after clause (2) —

(2A) Where for any reason the review of the names and boundaries of constituencies is not completed within the time stipulated under clause (2) or there are justifiable reasons for the extension of the period for review, Parliament may extend the period provided for under clause (2) by a resolution passed by —

- (a) the National Assembly, with the support of a majority of all the Members of the Assembly; and
- (b) the Senate, with the support of a majority of all the county delegations.

Amendment of
Article 91 of the
Constitution.

5. Article 91 of the Constitution is amended —

(a) in clause (1) —

(i) by inserting the following new paragraphs immediately after paragraph (d) —

- (da) promote discipline within the party;
- (db) conduct its affairs in a manner that promotes democracy and peaceful politics;
- (dc) adhere to the values and principles of the Constitution in the nomination of persons to appointive or elective positions including Article 27, Article 54, Article 55, Article 56, Article 57 and Article 100 of the Constitution;

(ii) by inserting the words “and as such other code of conduct as may be prescribed by the Independent Electoral and Boundaries Commission” immediately after the words “political parties” appearing in paragraph (h);

(b) by inserting the following new clauses immediately after clause (2) —

(3) A member of a political party shall—

- (a) subscribe to the constitution, rules and regulations of the political party; and

- (b) be bound by the policies, ideology, philosophy and manifesto of the party.
- (4) A citizen shall not be a member of more than one political party at any given time.
- (5) Subject to clause (11), a member once deregistered from a political party shall cease holding any appointive or elective position held by virtue of such membership including a position held as a Member of Parliament, a county governor or a member of a county assembly.
- (6) For purposes of clause (5), the reasons for deregistration or resignation of a member from a political party shall be exclusively determined in accordance with the constitution or regulations of a political party, by the internal dispute resolution mechanism of the party.
- (7) An appeal against the decision of the internal dispute resolution mechanism of the party under clause (6) may be made to the relevant statutory body responsible for determining such disputes.
- (8) An appeal against the decision of the relevant statutory body under clause (7) shall be made to the High Court.
- (9) All disputes relating to deregistration or resignation of a member of a political party shall be heard and determined within a period not exceeding ninety days from the date of filing the appeal.
- (10) Subject to exhaustion of appeal mechanisms, the body responsible for regulation of political parties, Speakers of both Houses of Parliament and speakers of county assemblies shall give effect to the

decision of the political party or the courts, as the case may be.

(11) A party shall not deregister a member of a political party unless the procedures for deregistration adheres to—

- (a) the freedom of expression set out in Article 33;
- (b) the freedom of association set out in Article 36;
- (c) the political rights set out in Article 38;
- (d) the right of fair administrative action set out in Article 47; and
- (e) the right to fair hearing set out in Article 50.

Insertion of a new Article 92A in the Constitution.

6. The Constitution is amended by inserting the following new Article immediately after Article 92—

Part 4—Office of the Leader of the Opposition

92A. Leader of the Opposition

- (1) There is established the office of the Leader of the Opposition.
- (2) The Leader of the Opposition shall be the person who is—
 - (a) the leader of the party or coalition of parties which garnered the second greatest number of votes in the immediately preceding presidential election; or
 - (b) the person designated to hold that office in accordance with a resolution of a party or coalition agreement.
- (3) There shall be two Deputy Leaders of the Opposition who shall deputize the Leader of Opposition.

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(4) The remuneration and benefits payable to the Leader of the Opposition and Deputy Leaders of the Opposition shall be a charge on the Consolidated Fund.

(5) Parliament shall enact legislation to give further effect to this Article.

Amendment
of Article
101 of the
Constitution.

7. Article 101 of the Constitution is amended by deleting clause (1) and substituting therefor the following new clause—

- (1) A general election of members of Parliament shall be held on the second Tuesday in August in—
- (a) every fifth year in the case of the National Assembly; and
 - (b) every seventh year in the case of the Senate.

Amendment of
Article 102 of the
Constitution.

8. Article 102 of the Constitution is amended by deleting clause (1) and substituting therefor the following new clause—

- (1) The term of a House of Parliament expires—
- (a) on the date of the next general election in every fifth year, in the case of the National Assembly; and
 - (b) on the seventh year from the date of the last election, in the case of the Senate.

Amendment of
Article 103 of
the Constitution.

9. Article 103 of the Constitution is amended —

- (a) in clause (1)(e) by deleting paragraph (i) and substituting therefor the following new paragraph—
 - (i) as a member of a political party, the member resigns or is deregistered from the party in accordance with this Constitution.

(b) by deleting clause (3).

Insertion of new Article 108A in the Constitution.

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

Recognition of international legislative bodies

108A. Parliament shall enact legislation to provide for the recognition and status of representatives in international legislative bodies of which Kenya is a member.

Amendment of Article 130 of the Constitution.

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

Amendment of Article 131 of the Constitution.

12. Article 131(1) of the Constitution is amended in paragraph (b) by inserting the words “the Prime Minister” immediately after the words “the Deputy President”.

Amendment of Article 132 of the Constitution.

13. Article 132 of the Constitution is amended—

- (a) in clause (1) by inserting the words “House of” immediately after the words “newly elected” appearing in paragraph (a); and
- (b) in clause (2) by inserting the words “Prime Minister and” immediately before the words “Cabinet Secretaries” appearing in paragraph (a).

Amendment of Article 136 of the Constitution.

14. Article 136(2) of the Constitution is amended in paragraph (a) by deleting the word “Parliament” and substituting therefor the words “the National Assembly”.

Amendment of Article 137 of the Constitution.

15. Article 137(3) of the Constitution is amended by inserting the following new paragraphs immediately after paragraph (b) —

- (ba) the Prime Minister;
- (bb) the Leader of the Opposition;
- (bc) a Deputy Leader of the Opposition;

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Amendment of Article 138 of the Constitution.

16. Article 138(10) of the Constitution is amended by inserting the words “as verified by the Independent Electoral and Boundaries Commission under clause (3)(c)” immediately after the words “declare the result of the election” appearing in paragraph (a).

Amendment of Article 140 of the Constitution.

17. Article 140(2) of the Constitution is amended by deleting the word “fourteen” and substituting therefor the word “twenty-one”.

Insertion of a new Article 151A in the Constitution.

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

Office of the Prime Minister

151A. (1) There is established the office of the Prime Minister.

(2) The Prime Minister shall be nominated and, with the approval of the National Assembly, appointed by the President.

(3) The Prime Minister shall not be a Member of Parliament.

(4) The Prime Minister shall —

(a) assist the President and the Deputy President in the coordination, supervision and implementation of the national government policies, programmes and projects across all government ministries and state departments;

(b) coordinate the national government’s legislative agenda across all ministries and state departments; and

(c) perform any other function as may be directed by the President.

(5) The provisions of Article 152(4), (5), (6), (7), (8), (9) and (10) and Article 153(2), (3) and (4) shall apply with the necessary modifications to the Prime Minister.

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Amendment of
Article 152 of
the Constitution.

19. Article 152 of the Constitution is amended—

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

—
(ba) the Prime Minister;

(b) in clause (2) by inserting the words “the Prime Minister and” immediately after the words “National Assembly appoint”.

Amendment of
Article 162 of
the Constitution.

20. Article 162 of the Constitution is amended—

(a) in clause (1) by deleting the words “the High Court and the courts referred to in clause (2) and substituting therefor the words” and the High Court”;

(b) by deleting clause (2); and

(c) by deleting clause (3).

Amendment of
Article 165 of
the Constitution.

21. Article 165(5) of the Constitution is amended by deleting paragraph (b).

Amendment of
Article 169 of
the Constitution.

22. Article 169(1) of the Constitution is amended in paragraph (d) by deleting the words “other than the courts established as required by Article 162(2)”.

Amendment of
Article 177 of the
Constitution.

23. Article 177(1) of the Constitution is amended in paragraph (a) by deleting the word “Parliament” and substituting therefor the words “the National Assembly”.

Amendment of
Article 180 of the
Constitution.

24. Article 180(1) of the Constitution is amended by deleting the word “Parliament” and substituting therefor the words “the National Assembly”.

Amendment of
Article 181 of the
Constitution.

25. Article 181(1) of the Constitution is amended by inserting the following new paragraph immediately after paragraph (d) —

(e) having been elected as a governor as a member of a political party, the governor resigns or is deregistered from that political party;

Amendment of Article 194 of the Constitution.

26. Article 194 of the Constitution is amended —

(a) in clause (1)(e) by deleting paragraph (i) and substituting therefor the following new paragraph—

(i) as a member of a political party, the member resigns or is deregistered from the party in accordance with this Constitution.

(b) by deleting clause (2).

Amendment of Article 203 of the Constitution.

27. Article 203(2) of the Constitution is amended by deleting the words “fifteen per cent” and substituting therefor the words “twenty per cent”.

Insertion of new Articles 204A, 204B and 204C in the Constitution.

28. The Constitution is amended by inserting the following new Articles immediately after Article 204—

The National Government Constituencies Development Fund.

204A. (1) There is established the National Government Constituencies Development Fund which shall be a national government fund consisting of monies appropriated from the national government’s share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution.

(2) All monies allocated under this Article shall be considered as funds allocated to constituencies pursuant to Article 206(2)(c) of the Constitution and is to be administered in accordance with the provisions of an Act of Parliament.

(3) Parliament shall enact legislation to make further provisions for the operation of this Article.

The Senate Oversight Fund

204B. (1) There is established the Senate Oversight Fund which shall be a national government fund consisting of monies appropriated from the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution.

(2) All monies allocated under this Article shall be considered as funds allocated to the Senate pursuant to Article 206(2)(c) of the Constitution and is to be administered in accordance with the provisions of an Act of Parliament.

(3) Parliament shall enact legislation to make further provisions for the operation of this Article.

The National Government Affirmative Action Fund.

204C. (1) There is established the National Government Affirmative Action Fund whose object and purpose shall be to complement the National Government programmes on affirmative action.

(2) The Fund shall be a national government fund consisting of monies appropriated from the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution.

(3) Parliament shall enact legislation to make further provisions for the operation of this Article.

Amendment of
Article 240 of
the Constitution.

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

(ba) the Prime Minister;

Amendment of
Article 260 of
the Constitution.

30. Article 260 of the Constitution is amended in the definition of a "State office" by inserting the following new paragraph immediately after paragraph (b) —

(ba) the Prime Minister;

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Consequential
legislation.

31. (1) Parliament shall enact any legislation required to be enacted under this Act within a period of six months of the coming into force of this Act.

(2) Parliament shall prepare the relevant Bills for tabling as soon as is reasonably practicable to enable enactment of the legislation within the prescribed time under sub-section (1).

Transition
provision.

32. A person who immediately before the commencement of this Act was serving as a judge in a court established under Article 162(2) of the Constitution (now repealed) shall continue serving as a judge of the High Court established under Article 165 of the Constitution without loss of any benefits or status.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend the Constitution by parliamentary initiative in seeking to resolve issues of concern to the people of Kenya, promote national unity and inclusivity, enhance representative democracy, transparency, accountability and good governance and establish adequate checks and balances. The Bill seeks to give effect to the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 of the Bill sets out the short title of the Bill and provides for its commencement date.

Clause 2 of the Bill seeks to amend Article 75 of the Constitution to ensure compliance with court orders by state and public officers.

Clause 3 of the Bill proposes to amend Article 88 of the Constitution to review the framework for election dispute resolution. The Bill seeks to remove the role of settlement of electoral disputes, (including disputes relating to or arising from nominations) from the Independent Electoral and Boundaries Commission and confer the mandate to the Political Parties Disputes Tribunal established under the Political Parties Act, 2011.

Clause 4 of the Bill seeks to amend Article 89 of the Constitution to provide that where for any reason the review of the names and boundaries of constituencies by the Independent Electoral and Boundaries Commission is not completed within the time stipulated under Article 89(2) or where there are justifiable reasons for the extension of the period for review, Parliament may extend the period provided for under Article 89(2) of the Constitution by a resolution passed by the National Assembly, with the support of a majority of all the Members of the Assembly; and the Senate, with the support of a majority of all the county delegations.

As it is presently, the deadline for the review of the boundaries of constituencies is March, 2024. Cognizant of the fact that the Independent Electoral and Boundaries Commission is yet to be reconstituted, it is paramount to amend Article 89(2) of the Constitution and provide for for

the extension of the period for review of boundaries of constituencies by the Commission once reconstituted.

Clause 5 of the Bill seeks to amend Article 91 of the Constitution to include in the basic requirements of political parties that every political party shall promote discipline within the party; conduct its affairs in a manner that promotes democracy and peaceful politics; and adhere to the values and principles of the Constitution in the nomination of persons to appointive or elective positions including Article 27, Article 54, Article 55, Article 56, Article 57 and Article 100 of the Constitution. Further, the Bill seeks to amend Article 91 of the Constitution to promote multipartyism and fidelity to Political Parties by entrenching procedures for deregistration of members of political parties.

Clause 6 of the Bill proposes to insert a new Article 92A in the Constitution to provide for the establishment of the office of the Leader of the Opposition. The Leader of Opposition shall be deputized by two Deputy Leaders of Opposition. The clause further provides that Parliament shall enact legislation to give further effect to the new Article 92A of the Constitution. The Clause seeks to enhance national unity, inclusivity and good governance by ensuring that the views and interests of the opposition are represented.

Clauses 7 and 8 of the Bill seeks to amend Articles 101 and 102 of the Constitution to provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 9 of the Bill seeks to amend Article 103 of the Constitution to provide that where a member of a political party, who was elected to Parliament resigns or is deregistered from the party in accordance with the Constitution, the office of the member shall become vacant. This is intended to promote party discipline and fidelity to political parties by removing the apparently unenforceable deeming provisions provided for in Article 103 of the Constitution.

Clause 10 of the Bill proposes to amend the Constitution to insert new Article 108A to provide for recognition of representatives in international legislative bodies of which Kenya is a member.

Clauses 11, 12 and 13 of the Bill proposes to amend Articles 130, 131 and 132 of the Constitution to institutionalize the office of the Prime Minister

which is mandated to perform the key functions of coordination, supervision and implementation of national government policies, programmes and projects across all government ministries and state departments. Further, clause 13 of the Bill proposes to amend Article 132 of the Constitution to align with the proposed amendments to Articles 101 and 102 of the Constitution.

Clause 14 of the Bill seeks to amend Article 136(2) of the Constitution to align with the proposed amendments to Articles 101 and 102 of the Constitution which provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 15 of the Bill proposes to amend Article 137(3) of the Constitution to provide that the disqualifications under Article 137(2) of the Constitution shall not apply to the Prime Minister, Leader of the Opposition and the Deputy Leaders of Opposition.

Clause 16 of the Bill proposes to amend Article 138(10) of the Constitution to provide clarity that the chairperson of the Independent Electoral and Boundaries Commission shall declare the result of the presidential election as verified by the Independent Electoral and Boundaries Commission in accordance with Article 138(3)(c) of the Constitution.

Clause 17 of the Bill proposes to amend Article 140(2) of the Constitution to increase the timelines within which the Supreme Court shall hear and determine the validity of presidential election from fourteen to twenty-one days.

Clauses 18 and 19 of the Bill proposes to insert a new Article 151A and amend Article 152 of the Constitution to institutionalize the office of the Prime Minister which is mandated to perform the key functions of coordination, supervision and implementation of the national government policies, programmes and projects across all government ministries and state departments.

Clause 20 of the Bill seeks to amend Article 162 of the Constitution to make the Environment and Land Court and the Employment and Labour Relations Court (ELRC) part of the High Court. This is intended to broaden the experience of judges within the High Court. Presently, a judge serving

in the two specialized courts cannot serve in the High Court or preside over a matter in the High Court.

Clause 21 of the Bill proposes to amend Article 165 of the Constitution to align with the proposed amendments to Article 162 of the Constitution.

Clause 22 of the Bill proposes to amend Article 169 of the Constitution to align with the proposed amendments to Article 162 of the Constitution.

Clause 23 of the Bill proposes to amend Article 177(1) of the Constitution to align with the proposed amendments to Articles 101 and 102 of the Constitution which provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 24 of the Bill proposes to amend Article 180(1) of the Constitution to align with the proposed amendments to Articles 101 and 102 of the Constitution which provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 25 of the Bill proposes to amend Article 181 of the Constitution to provide that a county governor may be removed from office where having been elected as a governor, as a member of a political party, the governor resigns or is deregistered from that political party.

Clause 26 of the Bill proposes to amend Article 194 of the Constitution to provide that where a member of a political party who was elected to a county assembly, resigns or is deregistered from the party in accordance with the Constitution, the office of the member shall become vacant. This is intended to promote party discipline and fidelity to political parties by removing the deeming provisions provided for in Article 194 of the Constitution.

Clause 27 of the Bill proposes to amend Article 203(2) of the Constitution to increase the equitable share of the revenue raised nationally that is allocated to county governments from not less than fifteen per cent of all revenue collected by the national government to not less than twenty per cent of all revenue collected by the national government.

Clause 28 of the Bill proposes to insert new Articles 204A, 204B and 204C in the Constitution to entrench the following Funds as Funds established in the Constitution—

- (a) the National Government Constituencies Development Fund;
- (b) the National Government Affirmative Action Fund; and
- (c) the Senate Oversight Fund.

The entrenchment of the Funds in the Constitution seeks to ensure funding and implementation of national government projects in all parts of the Republic. The Senate Oversight Fund shall enhance the oversight role of the Senate as enshrined under Article 96 of the Constitution.

Clauses 29 of the Bill proposes to amend Article 240 of the Constitution to provide that the Prime Minister shall be a member of the National Security Council in light of the functions conferred to the office.

Clause 30 of the Bill proposes to amend Article 260 of the Constitution to provide that the office of the Prime Minister shall be a state office for purposes of Article 260 of the Constitution and for which the requirements under Chapter Six of the Constitution on leadership and integrity shall apply.

Clause 31 of the Bill provides for enactment by Parliament of any legislation required to be enacted under the Act within a period of six months.

Clause 32 of the Bill is the transition provision. The clause provides for a transition provision to the amendment to Article 162(2) of the Constitution in order to provide that a person who immediately before the commencement of the Act was serving as a judge in a court established under Article 162(2) of the Constitution (now repealed) shall continue serving as a judge of the High Court established under Article 165 of the Constitution without loss of any benefits or status.

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 any fundamental rights and freedoms.

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Statement on whether the Bill concerns county governments

The Bill shall be considered and passed by both Houses of Parliament in terms of Article 256 of the Constitution.

Statement on the financial implications of the Bill

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

Dated the, 2023

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of Minority Party.

Article 75 of the Constitution which it is proposed to amend—

75. Conduct of State officers

(1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—

- (a) any conflict between personal interests and public or official duties;
- (b) compromising any public or official interest in favour of a personal interest; or
- (c) demeaning the office the officer holds.

(2) A person who contravenes clause (1), or Article 76, 77 or 78(2)—

- (a) shall be subject to the applicable disciplinary procedure for the relevant office; and

(b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

(3) A person who has been dismissed or otherwise removed from office for a contravention of the provisions specified in clause (2) is disqualified from holding any other State office.

Article 88 of the Constitution which it is proposed to amend—

88. Independent Electoral and Boundaries Commission

(1) There is established the Independent Electoral and Boundaries Commission.

(2) A person is not eligible for appointment as a member of the Commission if the person—

(a) has, at any time within the preceding five years, held office, or stood for election as—

(i) a member of Parliament or of a county assembly; or

(ii) a member of the governing body of a political party;
or

(b) holds any State office.

(3) A member of the Commission shall not hold another public office.

(4) The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution, and any other elections as prescribed by an Act of Parliament and, in particular, for—

(a) the continuous registration of citizens as voters;

(b) the regular revision of the voters' roll;

(c) the delimitation of constituencies and wards;

(d) the regulation of the process by which parties nominate candidates for elections;

- (e) the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results;
- (f) the registration of candidates for election;
- (g) voter education;
- (h) the facilitation of the observation, monitoring and evaluation of elections;
- (i) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;
- (j) the development of a code of conduct for candidates and parties contesting elections; and
- (k) the monitoring of compliance with the legislation required by Article 82 (1) (b) relating to nomination of candidates by parties.

(5) The Commission shall exercise its powers and perform its functions in accordance with this Constitution and national legislation.

Article 89 of the Constitution which it is proposed to amend—

89. Delimitation of electoral units

(1) There shall be two hundred and ninety constituencies for the purposes of the election of the members of the National Assembly provided for in Article 97 (1) (a).

(2) The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years, but any review shall be completed at least twelve months before a general election of members of Parliament.

(3) The Commission shall review the number, names and boundaries of wards periodically.

- (4) If a general election is to be held within twelve months after the completion of a review by the Commission, the new boundaries shall not take effect for purposes of that election.
- (5) The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota, but the number of inhabitants of a constituency may be greater or lesser than the population quota in the manner specified in clause (6) to take account of—
- (a) geographical features and urban centres;
 - (b) community of interest, historical, economic and cultural ties; and
 - (c) means of communication.
- (6) The number of inhabitants of a constituency or ward may be greater or lesser than the population quota by a margin of not more than—
- (a) forty per cent for cities and sparsely populated areas; and
 - (b) thirty per cent for the other areas.
- (7) In reviewing constituency and ward boundaries the Commission shall—
- (a) consult all interested parties; and
 - (b) progressively work towards ensuring that the number of inhabitants in each constituency and ward is, as nearly as possible, equal to the population quota.
- (8) If necessary, the Commission shall alter the names and boundaries of constituencies, and the number, names and boundaries of wards.
- (9) Subject to clauses (1), (2), (3) and (4), the names and details of the boundaries of constituencies and wards determined by the Commission

shall be published in the Gazette, and shall come into effect on the dissolution of Parliament first following their publication.

(10) A person may apply to the High Court for review of a decision of the Commission made under this Article.

(11) An application for the review of a decision made under this Article shall be filed within thirty days of the publication of the decision in the Gazette and shall be heard and determined within three months of the date on which it is filed.

(12) For the purposes of this Article, "population quota" means the number obtained by dividing the number of inhabitants of Kenya by the number of constituencies or wards, as applicable, into which Kenya is divided under this Article.

Article 91 of the Constitution which it is proposed to amend—

91. Basic requirements for political parties

(1) Every political party shall—

- (a) have a national character as prescribed by an Act of Parliament;
- (b) have a democratically elected governing body;
- (c) promote and uphold national unity;
- (d) abide by the democratic principles of good governance, promote and practise democracy through regular, fair and free elections within the party;
- (e) respect the right of all persons to participate in the political process, including minorities and marginalized groups;
- (f) respect and promote human rights and fundamental freedoms, and gender equality and equity;

- (g) promote the objects and principles of this Constitution and the rule of law; and
 - (h) subscribe to and observe the code of conduct for political parties.
- (2) A political party shall not—
- (a) be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis;
 - (b) engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person;
 - (c) establish or maintain a paramilitary force, militia or similar organization;
 - (d) engage in bribery or other forms of corruption; or
 - (e) except as is provided under this Chapter or by an Act of Parliament, accept or use public resources to promote its interests or its candidates in elections.

Article 93 of the Constitution which it is proposed to amend—

93. Establishment of Parliament

- (1) There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.
- (2) The National Assembly and the Senate shall perform their respective functions in accordance with this Constitution.

Article 101 of the Constitution which it is proposed to amend—

101. Election of members of Parliament

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

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

(a) the Independent Electoral and Boundaries Commission;
and

(b) the political party on whose party list the member was elected or nominated.

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

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

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

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

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

Article 102 of the Constitution which it is proposed to amend—

102. Term of Parliament

(1) The term of each House of Parliament expires on the date of the next general election.

(2) When Kenya is at war, Parliament may, by resolution supported in each House by at least two-thirds of all the members of the House, from time to time extend the term of Parliament by not more than six months at a time.

(3) The term of Parliament shall not be extended under clause (2) for a total of more than twelve months.

Article 103 of the Constitution which it is proposed to amend—

103. Vacation of office of member of Parliament

(1) The office of a member of Parliament becomes vacant—

(a) if the member dies;

(b) if, during any session of Parliament, the member is absent from eight sittings of the relevant House without permission, in writing, from the Speaker, and is unable to offer a satisfactory explanation for the absence to the relevant committee;

(c) if the member is otherwise removed from office under this Constitution or legislation enacted under Article 80;

(d) if the member resigns from Parliament in writing to the Speaker;

(e) if, having been elected to Parliament—

(i) as a member of a political party, the member resigns from that party or is deemed to have resigned from the party as determined in accordance with the legislation contemplated in clause (2); or

(ii) as an independent candidate, the member joins a political party;

(f) at the end of the term of the relevant House; or

(g) if the member becomes disqualified for election to Parliament under Article 99 (2) (d) to (h).

(3) Parliament shall enact legislation providing for the circumstances under which a member of a political party shall be deemed, for the purposes of clause (1) (e), to have resigned from the party.

Article 130 of the Constitution which it is proposed to amend—

130. The National Executive

(1) The national executive of the Republic comprises the President, the Deputy President and the rest of the Cabinet.

(2) The composition of the national executive shall reflect the regional and ethnic diversity of the people of Kenya.

Article 131 of the Constitution which it is proposed to amend—

131. Authority of the President

(1) The President—

(a) is the Head of State and Government;

(b) exercises the executive authority of the Republic, with the assistance of the Deputy President and Cabinet Secretaries;

(c) is the Commander-in-Chief of the Kenya Defence Forces;

(d) is the chairperson of the National Security Council; and

(e) is a symbol of national unity.

(2) The President shall—

(a) respect, uphold and safeguard this Constitution;

(b) safeguard the sovereignty of the Republic;

(c) promote and enhance the unity of the nation;

- (d) promote respect for the diversity of the people and communities of Kenya; and
 - (e) ensure the protection of human rights and fundamental freedoms and the rule of law.
- (3) The President shall not hold any other State or public office.

Article 132 of the Constitution which it is proposed to amend—

132. Functions of the President

- (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 136 of the Constitution which it is proposed to amend—

136. Election of the President

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

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

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

(b) in the circumstances contemplated in Article 146.

Article 137 of the Constitution which it is proposed to amend—

137. Qualifications and disqualifications for election as President

(1) A person qualifies for nomination as a presidential candidate if the person—

(a) is a citizen by birth;

(b) is qualified to stand for election as a member of Parliament;

(c) is nominated by a political party, or is an independent candidate; and

(d) is nominated by not fewer than two thousand voters from each of a majority of the counties.

(2) A person is not qualified for nomination as a presidential candidate if the person—

(a) owes allegiance to a foreign state; or

(b) is a public officer, or is acting in any State or other public office.

(3) Clause (2)(b) shall not apply to—

(a) the President;

(b) the Deputy President; or

(c) a member of Parliament.

Article 138 of the Constitution which it is proposed to amend—

138. Procedure at presidential election

(1) If only one candidate for President is nominated, that candidate shall be declared elected.

(2) If two or more candidates for President are nominated, an election shall be held in each constituency.

(3) In a presidential election—

(a) all persons registered as voters for the purposes of parliamentary elections are entitled to vote;

(b) the poll shall be taken by secret ballot on the day specified in Article 101 (1) at the time, in the places and in the manner prescribed under an Act of Parliament; and

(c) after counting the votes in the polling stations, the Independent Electoral and Boundaries Commission shall tally and verify the count and declare the result.

(4) A candidate shall be declared elected as President if the candidate receives—

(a) more than half of all the votes cast in the election; and

(b) at least twenty-five per cent of the votes cast in each of more than half of the counties.

(5) If no candidate is elected, a fresh election shall be held within thirty days after the previous election and in that fresh election the only candidates shall be—

(a) the candidate, or the candidates, who received the greatest number of votes; and

(b) the candidate, or the candidates, who received the second greatest number of votes.

(6) If more than one candidate receives the greatest number of votes, clause (5)(b) shall not apply and the only candidates in the fresh election shall be those contemplated in clause (5)(a).

(7) The candidate who receives the most votes in the fresh election shall be declared elected as President.

(8) A presidential election shall be cancelled and a new election held if—

(a) no person has been nominated as a candidate before the expiry of the period set for the delivery of nominations;

(b) a candidate for election as President or Deputy President dies on or before the scheduled election date; or

(c) a candidate who would have been entitled to be declared elected as President, dies before being declared elected as President.

(9) A new presidential election under clause (8) shall be held within sixty days after the date set for the previous presidential election.

(10) Within seven days after the presidential election, the chairperson of the Independent Electoral and Boundaries Commission shall—

(a) declare the result of the election; and

(b) deliver a written notification of the result to the Chief Justice and the incumbent President.

Article 140 of the Constitution which it is proposed to amend—

140. Questions as to validity of presidential election

(1) A person may file a petition in the Supreme Court to challenge the election of the President-elect within seven days after the date of the declaration of the results of the presidential election.

(2) Within fourteen days after the filing of a petition under clause (1), the Supreme Court shall hear and determine the petition and its decision shall be final.

(3) If the Supreme Court determines the election of the President-elect to be invalid, a fresh election shall be held within sixty days after the determination.

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

152. Cabinet

- (1) The Cabinet consists of—
 - (a) the President;
 - (b) the Deputy President;
 - (c) the Attorney-General; and
 - (d) not fewer than fourteen and not more than twenty-two Cabinet Secretaries.
- (2) The President shall nominate and, with the approval of the National Assembly, appoint Cabinet Secretaries.
- (3) A Cabinet Secretary shall not be a Member of Parliament.
- (4) Each person appointed as a Cabinet Secretary—
 - (a) assumes office by swearing or affirming faithfulness to the people and the Republic of Kenya and obedience to this Constitution, before the President and in accordance with the Third Schedule; and
 - (b) may resign by delivering a written statement of resignation to the President.
- (5) The President—
 - (a) may re-assign a Cabinet Secretary;
 - (b) may dismiss a Cabinet Secretary; and
 - (c) shall dismiss a Cabinet Secretary if required to do so by a resolution adopted under clauses (6) to (10).
- (6) A member of the National Assembly, supported by at least one-quarter of all the members of the Assembly, may propose a motion requiring the President to dismiss a Cabinet Secretary—
 - (a) on the ground of a gross violation of a provision of this Constitution or of any other law;

- (b) where there are serious reasons for believing that the Cabinet Secretary has committed a crime under national or international law; or
 - (c) for gross misconduct.
- (7) If a motion under clause (6) is supported by at least one-third of the members of the National Assembly—
- (a) the Assembly shall appoint a select committee comprising eleven of its members to investigate the matter; and
 - (b) the select committee shall, within ten days, report to the Assembly whether it finds the allegations against the Cabinet Secretary to be substantiated.
- (8) The Cabinet Secretary has the right to appear and be represented before the select committee during its investigations.
- (9) If the select committee reports that it finds the allegations—
- (a) unsubstantiated, no further proceedings shall be taken; or
 - (b) substantiated, the National Assembly shall—
 - (i) afford the Cabinet Secretary an opportunity to be heard; and
 - (ii) vote whether to approve the resolution requiring the Cabinet Secretary to be dismissed.
- (10) If a resolution under clause (9) (b) (ii) requiring the President to dismiss a Cabinet Secretary is supported by a majority of the members of the National Assembly—
- (a) the Speaker shall promptly deliver the resolution to the President; and
 - (b) the President shall dismiss the Cabinet Secretary.

Article 162 of the Constitution which it is proposed to be amended—

162. System of courts

- (1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).

(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

(a) employment and labour relations; and

(b) the environment and the use and occupation of, and title to, land.

(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

(4) The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.

Article 165 of the Constitution which it is proposed to be amended—

165. High Court

(1) There is established the High Court, which—

(a) shall consist of the number of judges prescribed by an Act of Parliament; and

(b) shall be organised and administered in the manner prescribed by an Act of Parliament.

(2) There shall be a Principal Judge of the High Court, who shall be elected by the judges of the High Court from among themselves.

(3) Subject to clause (5), the High Court shall have—

(a) unlimited original jurisdiction in criminal and civil matters;

(b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;

(c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;

(d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—

- (i) the question whether any law is inconsistent with or in contravention of this Constitution;
 - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - (iv) a question relating to conflict of laws under Article 191; and
 - (e) any other jurisdiction, original or appellate, conferred on it by legislation.
- (4) Any matter certified by the court as raising a substantial question of law under clause (3) (b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.
- (5) The High Court shall not have jurisdiction in respect of matters—
- (a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or
 - (b) falling within the jurisdiction of the courts contemplated in Article 162 (2).
- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

Article 169 of the Constitution which it is proposed to be amended—

169. Subordinate courts

- (1) The subordinate courts are—

- (a) the Magistrates courts;
 - (b) the Kadhis' courts;
 - (c) the Courts Martial; and
 - (d) any other court or local tribunal as may be established by an Act of Parliament, other than the courts established as required by Article 162 (2).
- (2) Parliament shall enact legislation conferring jurisdiction, functions and powers on the courts established under clause (1).

Article 177 of the Constitution which it is proposed to be amended—

177. Membership of county assembly

- (1) A county assembly consists of—
- (a) members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year;
 - (b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;
 - (c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and
 - (d) the Speaker, who is an ex officio member.
- (2) The members contemplated in clause (1) (b) and (c) shall, in each case, be nominated by political parties in proportion to the seats received in that election in that county by each political party under paragraph (a) in accordance with Article 90.
- (3) The filling of special seats under clause (1) (b) shall be determined after declaration of elected members from each ward.
- (4) A county assembly is elected for a term of five years.

Article 180 of the Constitution which it is proposed to be amended—

180. Election of county governor and deputy county governor

- (1) The county governor shall be directly elected by the voters registered in the county, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year.
- (2) To be eligible for election as county governor, a person must be eligible for election as a member of the county assembly.
- (3) If only one candidate for county governor is nominated, that candidate shall be declared elected.
- (4) If two or more candidates are nominated, an election shall be held in the county and the candidate who receives the greatest number of votes shall be declared elected.
- (5) Each candidate for election as county governor shall nominate a person who is qualified for nomination for election as county governor as a candidate for deputy governor.
- (6) The Independent Electoral and Boundaries Commission shall not conduct a separate election for the deputy governor but shall declare the candidate nominated by the person who is elected county governor to have been elected as the deputy governor.
- (7) A person shall not hold office—
 - (a) as a county governor for more than two terms; or
 - (b) as a deputy county governor for more than two terms.
- (8) For the purposes of clause (7), a person who has assumed the office of county governor shall be deemed to have served a full term, subject only to Article 182 (3) (b).

Article 181 of the Constitution which it is proposed to be amended—

181. Removal of a county governor

- (1) A county governor may be removed from office on any of the following grounds—
- (a) gross violation of this Constitution or any other law;
 - (b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;
 - (c) abuse of office or gross misconduct; or
 - (d) physical or mental incapacity to perform the functions of office of county governor.
- (2) Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds specified in clause (1).

Article 194 of the Constitution which it is proposed to be amended—

194. Vacation of office of member of county assembly

- (1) The office of a member of a county assembly becomes vacant—
- (a) if the member dies;
 - (b) if the member is absent from eight sittings of the assembly without permission, in writing, of the speaker of the assembly, and is unable to offer satisfactory explanation for the absence;
 - (c) if the member is removed from office under this Constitution or legislation enacted under Article 80;
 - (d) if the member resigns in writing addressed to the speaker of the assembly;
 - (e) if, having been elected to the assembly—
 - (i) as a member of a political party, the member resigns from the party, or is deemed to have resigned from the party as determined in accordance with the legislation contemplated in clause (2); or
 - (ii) as an independent candidate, the member joins a political party;
 - (f) at the end of the term of the assembly; or

(g) if the member becomes disqualified for election on grounds specified in Article 193 (2).

(2) Parliament shall enact legislation providing for the circumstances under which a member of a political party shall be deemed, for the purposes of clause (1)(e), to have resigned from the party.

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

203. Equitable share and other financial laws

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

- (a) the national interest;
- (b) any provision that must be made in respect of the public debt and other national obligations;
- (c) the needs of the national government, determined by objective criteria;
- (d) the need to ensure that county governments are able to perform the functions allocated to them;
- (e) the fiscal capacity and efficiency of county governments;
- (f) developmental and other needs of counties;
- (g) economic disparities within and among counties and the need to remedy them;
- (h) the need for affirmative action in respect of disadvantaged areas and groups;
- (i) the need for economic optimisation of each county and to provide incentives for each county to optimise its capacity to raise revenue;
- (j) the desirability of stable and predictable allocations of revenue; and

- (k) the need for flexibility in responding to emergencies and other temporary needs, based on similar objective criteria.
- (2) For every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenue collected by the national government.
- (3) The amount referred to in clause (2) shall be calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

Article 240 of the Constitution which it is proposed to amend—

240. Establishment of the National Security Council

- (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 cooperate 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 260 of the Constitution which it is proposed to amend—

260. Interpretation

In this Constitution, unless the context requires otherwise—

"adult" means an individual who has attained the age of eighteen years;

"affirmative action" includes any measure designed to overcome or ameliorate an inequity or the systemic denial or infringement of a right or fundamental freedom;

"child" means an individual who has not attained the age of eighteen years;

"contravene" includes fail to comply with;

"county legislation" means a law made by a county government or under authority conferred by a county Assembly;

"disability" includes any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day-to-day activities;

"document" includes—

- (a) any publication, or any matter written, expressed, or inscribed on any substance by means of letters, figures or marks, or by more than one of those means, that is intended to be used or may be used for the purpose of recording that matter; and
- (b) electronic files;

"effective date" means the date that this Constitution came into force;

"fail" includes refuse;

"financial year" means the period of twelve months ending on the thirtieth day of June or other day prescribed by national legislation, but the initial financial year of any entity is the period of time from its coming into existence until the immediately following thirtieth day of June, or other day prescribed by national legislation;

"*Gazette*" means the Kenya *Gazette* published by authority of the national government, or a supplement to the Kenya *Gazette*;

"guarantee" means any absolute or conditional promise, commitment or undertaking by the national government to partially or completely re-pay any loan to a county government or any person;

"judicial officer" means a registrar, deputy registrar, magistrate, Kadhi or the presiding officer of a court established under Article 169(1)(d);

"land" includes—

- (a) the surface of the earth and the subsurface rock;
- (b) any body of water on or under the surface;
- (c) marine waters in the territorial sea and exclusive economic zone;

- (d) natural resources completely contained on or under the surface; and
- (e) the air space above the surface;

"legislation" includes—

- (a) an Act of Parliament, or a law made under authority conferred by an Act of Parliament; or
- (b) a law made by an assembly of a county government, or under authority conferred by such a law;

"loan" includes any form of borrowing, lending or deferred payment in respect of which money from a public fund may be used, or is required to be used, for payment or repayment;

"marginalised community" means—

- (a) a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;
- (b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;
- (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or
- (d) pastoral persons and communities, whether they are—
 - (i) nomadic; or
 - (ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;

"marginalised group" means a group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4);

"national legislation" means an Act of Parliament, or a law made under authority conferred by an Act of Parliament;

"natural resources" means the physical non-human factors and components, whether renewable or non-renewable, including—

- (a) sunlight;
- (b) surface and groundwater;
- (c) forests, biodiversity and genetic resources; and
- (d) rocks, minerals, fossil fuels and other sources of energy;

"older member of society" means a person who has attained the age of sixty years;

"person" includes a company, association or other body of persons whether incorporated or unincorporated;

"political party" means an association contemplated in Part 3 of Chapter Seven;

"property" includes any vested or contingent right to, or interest in or arising from—

- (a) land, or permanent fixtures on, or improvements to, land;
- (b) goods or personal property;
- (c) intellectual property; or
- (d) money, choses in action or negotiable instruments;

"public officer" means—

- (a) any State officer; or
- (b) any person, other than a State Officer, who holds a public office;

"public office" means an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable

directly from the Consolidated Fund or directly out of money provided by Parliament;

"public service" means the collectivity of all individuals, other than State officers, performing a function within a State organ;

"Republic" means the Republic of Kenya;

"State", when used as a noun, means the collectivity of offices, organs and other entities comprising the government of the Republic under this Constitution;

"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;

"State officer" means a person holding a State office;

"State organ" means a commission, office, agency or other body established under this Constitution;

"writing" includes printing, photography, lithography, typewriting, Braille, and any other means of representing or reproducing words in a visible form; and

"youth" means the collectivity of all individuals in the Republic who—

(a) have attained the age of eighteen years; but

(b) have not attained the age of thirty-five years.