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CONTENT

Bill for Introduction into the National Assembly —

	PAGE
The Constitution of Kenya (Amendment) Bill, 2020	1005

**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2020**

A Bill for

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

ENACTED by the Parliament of Kenya as follows—

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2020.

Short title.

2. Article 152 of the Constitution is amended—

Amendment of
Article 152 of the
Constitution.

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

“(3) The President shall appoint Cabinet Secretaries under clause (2) from among members of Parliament.”

(b) in clause (5), by inserting the following new paragraph immediately after paragraph (b)—

“(ba) may assign the Attorney-General the duties of a Cabinet Secretary.”

3. Article 153 of the Constitution is amended by inserting the following new clause immediately after clause 2—

Amendment of
Article 153 of the
Constitution.

“(2A) The Cabinet shall be collectively responsible to the National Assembly for all things done by or under the authority of the President in the execution of his office.”

4. Article 156 of the Constitution is amended in clause (4) by inserting the following new paragraph immediately after paragraph (b)—

Amendment of
Article 156 of the
Constitution.

“(ba) may perform the functions of a Cabinet Secretary as assigned by the President;”

5. Article 179 of the Constitution is amended—

Amendment of
Article 179 of the
Constitution.

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

“(b) members appointed by the county governor, with the approval of the assembly, from among the members of the county assembly.”

- (b) by inserting the following new clause immediately after clause (6)—

“(6A) A member of a county executive committee shall attend before a committee of the assembly when required by the committee, and answer any question concerning a matter for which the member of the county executive committee is responsible.”

- (c) by inserting the following new clause immediately after clause (7)—

“(8) Members of a county executive committee shall—

- (a) act in accordance with this Constitution;
and
- (b) provide the assembly with full and regular reports concerning matters under their control.”

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The Principal object of this Bill is to amend the Constitution in order to allow the President to appoint Cabinet Secretaries from among Members of Parliament. The amendment further seeks to ensure that the President may assign the Attorney-General the duties of a Cabinet Secretary.

The Bill also seeks to amend Article 179 of the Constitution to allow the county governor to appoint members of the county assembly as members of the county executive committee. The amendment to Article 179 further seeks to ensure that members of the county executive committees shall be accountable to the people through the county assembly.

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

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

Statement of how the Bill concerns county governments

The Bill concerns county governments in terms of Article 109(5) of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

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

Dated the 22nd October, 2020.

JEREMIAH KIONI,
Member of Parliament.

Article 103 of the Constitution which the Bill proposes to amend—

Vacation of office of member of Parliament

103. (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 152 of the Constitution which the Bill proposes to amend—

Cabinet

152. (1) The Cabinet consists of—

- (a) the President;
- (b) the Deputy President;
- (c) the Attorney-General; and
- (d) not fewer than fourteen and not more than twenty-two Cabinet Secretaries.

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

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

(4) Each person appointed as a Cabinet Secretary—

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

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

(5) The President—

(a) may re-assign a Cabinet Secretary;

(b) may dismiss a Cabinet Secretary; and

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

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

(a) on the ground of a gross violation of a provision of this Constitution or of any other law;

(b) where there are serious reasons for believing that the Cabinet Secretary has committed a crime under national or international law; or

(c) for gross misconduct.

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

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

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

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

Article 179 of the Constitution which the Bill proposes to amend—

County executive committees

179. (1) The executive authority of the county is vested in, and exercised by, a county executive committee.

(2) The county executive committee consists of—

(a) the county governor and the deputy county governor; and

(b) members appointed by the county governor, with the approval of the assembly, from among persons who are not members of the assembly.

(3) The number of members appointed under clause (2)(b) shall not exceed—

(a) one-third of the number of members of the county assembly, if the assembly has less than thirty members; or

(b) ten, if the assembly has thirty or more members.

(4) The county governor and the deputy county governor are the chief executive and deputy chief executive of the county, respectively.

(5) When the county governor is absent, the deputy county governor shall act as the county governor.

(6) Members of a county executive committee are accountable to the county governor for the performance of their functions and exercise of their powers.

(7) If a vacancy arises in the office of the county governor, the members of the county executive committee appointed under clause (2)(b) cease to hold office.