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**THE INTERGOVERNMENTAL RELATIONS
(AMENDMENT) BILL, 2024**

A Bill for

**AN ACT of Parliament to amend the
Intergovernmental Relations Act and for connected
purposes.**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Intergovernmental Relations (Amendment) Act, 2024. Short title.

2. The Intergovernmental Relations Act, in this Act referred to as “the Principal Act”, is amended in section 2 by—

(a) insert the following new definition—

“agency” means the Intergovernmental Relations Agency established under section 11;

(b) deleting the definition of “secretariat”; and

(c) deleting the definition of “technical committee”.

3. Section 11 of the principal Act is amended —

(a) in subsection (1) by deleting the words “Technical Committee” appearing immediately after the words “Intergovernmental Relations” and substituting therefor the word “Agency”;

(b) in subsection (2) by —

(i) deleting the words “Technical Committee” appearing immediately after the word “The” in the introductory clause and substituting therefor the word “Agency”; and

(ii) deleting paragraph (c);

(c) in subsection (3) by deleting the words “Technical Committee” appearing immediately after the word “The” and substituting therefor the words “members of the Agency”;

(d) by deleting subsection (4) and substituting therefor the following new subsection —

(4) A person shall be qualified for appointment as a chairperson of the Agency if such person—

Amendment of
section 11 of Cap.
265F.

- (a) holds a Master’s degree from a university recognized in Kenya;
 - (b) meets the requirements of Chapter Six of the Constitution; and
 - (c) has had a distinguished career in their respective fields.
- (e) by deleting subsection (5) and substituting therefor the following new subsections –
- (5) A person shall be qualified for appointment as a member of the Agency if such person—
 - (a) holds a degree from a university recognized in Kenya;
 - (b) has knowledge and experience of at least ten years in matters relating to devolved functions;
 - (c) meets the requirements of Chapter Six of the Constitution; and
 - (d) has had a distinguished career in their respective fields.
 - (5A) The chairperson and members of the Intergovernmental Agency shall serve on a full-time basis and shall hold office for a single non-renewable term of six years.
- (f) in subsection (6) by deleting the words “Technical Committee” appearing immediately after the words “member of the” in the introductory phrase to and substituting therefor the word “Agency”.

4. Section 12 of the principal Act is amended—

- (a) in the introductory phrase by deleting the words “Technical Committee” and substituting therefor the word “Agency”;
- (b) by inserting the following new paragraphs immediately after paragraph (c)—
 - (ca) analyse the resolutions of the Summit with regard to the performance of national and county governments in the provision of services and recommend to the Summit the

Amendment to
section 12 of Cap
265F

- appropriate promotive, preventive or corrective action where necessary;
- (cb) facilitate dispute resolution between the national government and county governments within the framework provided under this Act;
 - (cc) provide technical assistance on emerging issues in the implementation of the transfer of functions as contemplated under Article 187 of the Constitution including unbundling, costing and assignment of functions;
 - (cd) provide a platform for exchange of information and coordination of policies between the two levels of government;
 - (ce) receive and transmit to the Summit, reports from sectoral forums, joint committees and any other intergovernmental structures or mechanisms established under this Act;
 - (cf) establish and maintain a repository of information and knowledge on intergovernmental matters;
 - (cg) coordinate the development of a standardized costing framework for the transferred functions in line with Article 187 of the Constitution;
 - (ch) witness the execution of all relevant legal instruments pertaining to the transfer of functions; and
 - (ci) provide a repository for the legal instruments for transfer of functions.

5. The principal Act is amended by inserting the following new section immediately after section 12—

Insertion of
section 12A of
Cap 265F

12A. Powers of the Agency

(1) The Agency shall have all the powers necessary for the performance of its functions under this Act and, in particular, shall have the power to, on its own motion—

- (a) gather, by such means as it considers appropriate, any relevant information including requisition of

reports, records, documents or any information from any source, including any State organ, and to compel the production of such information where it considers necessary;

- (b) hold inquiries for the purposes of performing its functions under this Act;
- (c) take any measures it considers necessary to ensure compliance with the principles of cooperation between the national and county governments set out in Articles 6 and 189 of the Constitution;
- (d) issue directions with respect to intergovernmental disputes under this Act; and
- (e) summon any person to appear before it for the purposes of performing its functions under this Act.

(2) In the exercise of its powers and the discharge of its functions, the Agency—

- (a) may receive written or oral statements; and
- (b) is not bound by the strict rules of evidence.

6. Section 13 of the principal Act, is amended in subsection (1) by deleting the words “Technical Committee” appearing immediately after the word “The” and substituting therefor the word “Agency”.

Amendment of
section 13 of Cap
265F

7. Section 14 of the principal Act is amended in—

- (a) by deleting the words “technical committee” appearing immediately after the word “The” in the introductory phrase and substituting therefor the word “Agency”;
- (b) paragraph (a) by deleting the words “the Council” appearing immediately after the words “and to” and substituting therefor the word “Parliament”; and
- (c) paragraph (b) by deleting the words “and to the Council” appearing immediately after the words “to the summit”.

Amendment of
section 14 of Cap
265F

8. Section 15 of the principal Act is amended in—

- (a) subsection (1) by deleting the words “Technical Committee” appearing immediately after the

Amendment of
Section 15 of Cap
265F

words “secretariat of the” and substituting therefor the word “Agency”;

(b) subsection (2) by deleting the words “Technical Committee” appearing immediately after the words “appointed by the” and substituting therefor the word “Agency”;

(c) subsection (4) by deleting paragraph (b) and substituting therefor the following new paragraph-

(b) responsible to the Agency for the day to day administration of the affairs of the secretariat and implementation of the decisions of the Summit;

(d) in subsection (5) –

(a) by deleting the words “the Council and the Technical Committee” appearing immediately after the words “of the Summit” in paragraph (a) and substituting therefor the words “and the Agency;”;

(b) by deleting the words “the Council and the Technical Committee” appearing immediately after the words “expenses of the Summit” in paragraph (e) and substituting therefor the words “and the Agency”; and

(c) by deleting the words “the Council and the Technical Committee” appearing immediately after the words “by the Summit” in paragraph (f) and substituting therefor the words “and the Agency”.

9. Section 16 of the principal Act is amended in the introductory phrase by deleting the words “Technical Committee” appearing immediately after the words “office by the” and substituting therefor the word “Agency”.

Amendment of
Section 16 of Cap
265F

10. The principal Act is amended by deleting section 17 and substituting therefor the following new section—

Amendment of
Section 17 of Cap
265F

Staff of the summit.

17. The Agency may employ staff as are necessary for the proper discharge of the functions of the Agency under this Act.

11. The principal Act is amended in section 18 by deleting the words “Technical Committee” appearing immediately after the words “determined by the” and substituting therefor the word “Agency”.

Amendment of
Section 18 of Cap
265F

12. The principal Act is amended by inserting the following new section immediately after section 20—

Insertion of a new
Section 20A of
Cap 265F

20A. Funding of the Council

(1) The funds of the Council shall consist of—

- (a) annual subscriptions by county governments; and
- (b) such monies as may be lawfully granted or donated to the Council.

(2) The Council shall determine bi-annually the amounts to be paid by county governments as subscriptions.

13. The principal Act is amended by inserting the following new sections immediately after section 23—

Insertion of new
sections.

23A. Establishment of the Council Secretariat

(1) There shall be a secretariat to the Council which shall be headed by a chief executive officer.

(2) The chief executive officer shall be competitively recruited and appointed by the Council.

(3) A person is qualified to be appointed as the chief executive officer if that person—

- (a) holds a degree from a university recognised in Kenya;
- (b) has at least ten years relevant professional experience;
- (c) has demonstrable competence in administration of not less than five years; and
- (d) satisfies the requirements of leadership and integrity provided under Chapter Six of the Constitution.

(4) The chief executive officer shall be—

- (a) the accounting officer of the secretariat;
- (b) the Secretary to the Council; and
- (c) responsible to the Council for the day to day administration of the affairs of the Secretariat.

(5) Without prejudice to the generality of the provisions of subsection (4), the chief executive officer shall be responsible for—

- (a) the implementation of decisions of the Council;
- (b) the establishment and development of an efficient administration of the Secretariat;
- (c) the organization, control and management of staff of the Secretariat;
- (d) maintaining accurate records on financial matters and resource use;
- (e) ensuring the preparation and approval of the budget for the required funding of the operational expenses of the Council; and
- (f) performing any other duties as may be assigned by the Council.

(6) The chief executive officer shall be appointed for a single term of six years and shall not be eligible for reappointment.

23B. Removal from office of the chief executive officer

The chief executive officer may be removed from office by the Council in accordance with the terms and conditions of service, for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or negligence of duty; or

- (d) any other ground that would justify removal from office under the terms and conditions of service.

23C. Staff of the Council-the it can only be staff of the council secretariat

The Council may employ staff as are necessary for the proper discharge of its functions.

23D. Remuneration of staff

The Chief Executive Officer and staff of the Secretariat shall be paid such salaries, benefits and allowances for expenses as may be determined by the Council, in consultation with the Salaries and Remuneration Commission.

23E. Establishment of County Assemblies Forum

(1) There is established a County Assemblies Forum which shall consist of all the members of County Assemblies and speakers of the forty-seven county assemblies.

(2) The forum shall be managed by a National Executive Board.

(3) The members of the National Executive Board shall elect—

- (a) a chairperson who shall be a speaker of a County assembly;
- (b) a vice-chairperson; and
- (c) seven other members from amongst its members.

(4) Notwithstanding the generality of subsection under (3) members of County assemblies shall have at least 5 members in the National Executive Board.

(5) No County Assembly shall have more than two board members.

(6) The National Executive Board of the forum shall serve for a term of two years and shall be eligible for re-election for one further term.

23F. Functions of the Forum

- (1) The Forum shall provide an avenue for—
 - (a) consultation amongst county assemblies;
 - (b) sharing of information on the performance of the County Assemblies in the execution of their functions with the objective of learning and promotion of best practice and where necessary, initiating preventive or corrective action;
 - (c) facilitating disputes within County Assemblies;
 - (d) considering matters of common interest to County Assemblies; and
 - (e) facilitating capacity building for members of the forum.
- (2) The Forum may establish working groups or committees for the better carrying out of its functions.

23G. Funding of the Forum

- (1) The funds of the Forum shall consist of—
 - (a) mandatory annual subscriptions by County Assemblies; and
 - (b) such monies as may be lawfully granted or donated to the Forum.
- (2) The Board shall determine bi-annually the amounts to be paid by County Assemblies as subscriptions.

23H. Meetings of the Forum

- (1) The Forum shall meet at least once every year.
- (2) The Forum shall prescribe its own procedures.

23I. Reports by the Forum

- (1) The Forum shall submit an annual report to the Senate.

(2) The report under subsection (1) shall be transmitted to the county assemblies within three months after the end of every financial year.

23J. Establishment of the Forum Secretariat

(1) There shall be a Secretariat of the Forum which shall be headed by a chief executive officer.

(2) The Chief Executive Officer shall be the Secretary to the Forum.

(3) The chief executive officer shall be competitively recruited and appointed by the National Executive Board.

(4) A person is qualified to be appointed as the chief executive officer if that person—

- (a) holds a degree from a university recognised in Kenya;
- (b) has at least ten years relevant professional experience;
- (c) has demonstrable competence in administration of not less than five years; and
- (d) satisfies the requirements of leadership and integrity provided under Chapter Six of the Constitution.

(5) The chief executive officer shall be—

- (a) the accounting officer to the Forum;
- (b) the Secretary to the forum; and
- (c) responsible to the Forum for the day to day administration of the affairs of the Secretariat.

(6) Without prejudice to the generality of the provisions of subsection (5), the Chief Executive Officer shall be responsible for—

- (a) the implementation of decisions of the Forum;
- (b) the establishment and development of an efficient administration of the Secretariat;

- (c) the organization, control and management of staff of the Secretariat;
- (d) maintaining accurate records on financial matters and resource use;
- (e) ensuring the preparation and approval of the budget for the required funding of the operational expenses of the Forum; and
- (f) performing any other duties as may be assigned to them by the Forum.

(7) The chief executive officer shall be appointed for a term of three years and shall be eligible for reappointment once.

23K. Removal from office of the Chief Executive Officer

The chief executive officer may be removed from office by the National Executive Board in accordance with the terms and conditions of service, for— - where has this entity come from?

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or negligence of duty; or
- (d) any other ground that would justify removal from office under the terms and conditions of service.

23L. Staff of the Forum

The Forum may employ staff as are necessary for the proper discharge of its functions.

23M. Remuneration of staff

The Chief Executive Officer and staff of the Forum shall be paid such salaries, benefits and allowances for expenses as may be determined by the National Executive Board, in consultation with the Salaries and Remuneration Commission.

- 14.** Section 26 of the principal Act is amended in — Amendment of
Section 26 of Cap
265F
- (a) subsection (4) by inserting the words “and the Senate” immediately after the words “The National Assembly”; and
- (b) subsection (5) by deleting the words “A County Assembly” appearing at the beginning of the subsection and substituting therefor the words “The Senate and respective county assembly”.
- 15.** Section 30 of the principal Act is amended in subsection (2) by deleting paragraph (b). — what is the rationale and what provisions will county governments rely on for dispute resolution? Amendment of
Section 30 of
Cap 265F
- 16.** Section 30 of the principal Act is amended in subsection (2) by— Amendment of
Section 33 of Cap
265F
- (a) deleting the word “may” appearing immediately after the words “party to the dispute” and substituting therefor the word “shall”; and
- (b) deleting the words “Summit, the Council” and substituting therefor the word “Agency”.
- 29.** Section 34 of the principal Act is amended in subsection (1) by — Amendment of
Section 34 of Cap
265F
- (a) deleting the words “twenty-one” appearing immediately after the word “Within” in the introductory phrase and substituting therefor the word “seven”; and
- (b) deleting the words “Summit the Council” appearing immediately after the words “a dispute the” and substituting therefor the word “Agency”.
— it needs to be clear where these words are. If it is in the introductory clause, it might be necessary to combine this deletion with the one under (a) above since the words are not far from each other and rewrite the phrase.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Intergovernmental Relations Act, No. 2 of 2012 to establish a structured framework for intergovernmental relations. This will enhance intergovernmental relations amongst the national government, County executive and County assemblies.

The Bill proposes to provide the vertical role of Intergovernmental Relations Agency and enhance its functions and powers. The Bill proposes to amend the Intergovernmental Relations Act to provide for the Council of Governors Secretariat as well as the County Assemblies Forum and Secretariat to provide for their role in horizontal intergovernmental relations.

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 the fundamental rights and freedoms.

Statement on how the Bill concerns county governments

Intergovernmental Relations Technical Committee handles intergovernmental relations between Counties and National Government. The Council of Governors and County Assemblies Forum are Intergovernmental structures that deal with the unity of County executives and County Assemblies respectively.

The Bill is therefore a Bill concerning county governments in terms of Article 110(1)(a) of the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 6th March, 2024.

AARON CHERUIYOT,
Senate Majority Leader.

Section 10 of No. 2 of 2012 of the laws of Kenya, which it is proposed to amend—

10. Reports by the Summit

(1) The Summit shall submit an annual report to the National Assembly, the Senate and the county assemblies, within three months after the end of every financial year.

(2) The procedure and details of the report under subsection (1), shall be provided by Regulations.

(3) The National Assembly, the Senate or the county assemblies shall, upon receiving the annual report under subsection (1), make such recommendations to the Summit as they may consider necessary.

(4) Despite subsection (1), the National Assembly, the Senate or the county assemblies may, at any time, request information from the Summit on any matter.

Section 11 of No. 2 of 2012 of the laws of Kenya, which it is proposed to amend—

Intergovernmental Relations Technical Committee

11. Establishment of the Intergovernmental Relations Technical Committee

(1) There is established an Intergovernmental Relations Technical Committee.

(2) The Technical Committee shall comprise—

- (a) a chairperson competitively recruited and appointed by the Summit;
- (b) not more than eight members who shall be competitively recruited and appointed by the Summit; and
- (c) the Principal Secretary of the State department for the time being responsible for matters relating to devolution.

(3) The Technical Committee shall be appointed on such terms and conditions as the Summit may determine.

(4) A person shall be qualified for appointment as a chairperson of the Technical Committee if such person—

- (a) holds a masters degree from a university recognized in Kenya;
- (b) has a distinguished career in senior management position in either private or public sector;

(c) holds at least fifteen years' post qualification professional experience; and

(d) satisfies the requirements of Chapter Six of the Constitution.

(5) A person shall be qualified for appointment as a member of the Technical Committee if such person—

(a) holds a degree from a university recognized in Kenya;

(b) has a distinguished career in their respective field;

(c) has at least ten years' post qualification professional experience; and

(d) satisfies the requirements of Chapter Six of the Constitution.

(6) A person shall not be qualified for appointment as the chairperson or a member of the Technical Committee if the person—

(a) is a member of Parliament or County Assembly;

(b) is a member of a governing body of a political party;

(c) is an elected or nominated member of a local authority;

(d) is a member of a Commission established under the Constitution;

(e) is an undischarged bankrupt;

(f) has been removed from office for contravening the Constitution or any other law; or

(g) has, in the conduct of his affairs, not met any statutory obligations.

Section 12 of No. 2 of 2012 of the laws of Kenya, which it is proposed to amend—

12. Functions of the Technical Committee

The Technical Committee shall—

(a) be responsible for the day to day administration of the Summit and of the Council and in particular—

(i) facilitate the activities of the Summit and of the Council; and

(ii) implement the decisions of the Summit and of the Council;

(b) take over the residual functions of the transition entity established under the law relating to transition to devolved government after dissolution of such entity;

- (c) convene a meeting of the forty-seven County Secretaries within thirty days preceding every Summit meeting; and
- (d) perform any other function as may be conferred on it by the Summit, the Council, this Act or any other legislation.

Section 13 of No. 2 of 2012 of the laws of Kenya, which it is proposed to amend—

13. Sectoral working groups or committees

(1) The Technical Committee may establish sectoral working groups or committees for the better carrying out of its functions.

(2) Nothing in this section may be construed as precluding a Cabinet Secretary from convening consultative fora on sectoral issues of common interest to the national and county governments.

Section 14 of No. 2 of 2012 of the laws of Kenya, which it is proposed to amend—

14. Reports by the Technical Committee etc.

The Technical Committee shall—

- (a) submit quarterly reports to the Summit and to the Council; and
- (b) be accountable to the Summit and to the Council.

Section 15 of No. 2 of 2012 of the laws of Kenya, which it is proposed to amend—

15. Establishment of the Intergovernmental Relations Secretariat

(1) There shall be a Secretariat of the Technical Committee which shall be headed by a Secretary.

(2) The secretary shall be competitively recruited and appointed by the Technical Committee, with the approval of the Summit.

(3) A person is qualified to be appointed as the secretary if that person—

- (a) holds a degree from a university recognised in Kenya;
- (b) has at least five years relevant professional experience;
- (c) has demonstrable competence in administration of not less than five years; and
- (d) satisfies the requirements of leadership and integrity provided under Chapter Six of the Constitution.

(4) The secretary shall be—

- (a) the chief executive and accounting officer of the Secretariat; and
 - (b) responsible to the Technical Committee for the day to day administration of the affairs of the Secretariat and implementation of the decisions arising from the intergovernmental relations structures established under this Act.
- (5) Without prejudice to the generality of the provisions of subsection (4), the secretary shall be responsible for—
- (a) the implementation of decisions of the Summit, the Council and the Technical Committee;
 - (b) the establishment and development of an efficient administration of the Secretariat;
 - (c) the organization, control and management of staff of the Secretariat;
 - (d) maintaining accurate records on financial matters and resource use;
 - (e) ensuring the preparation and approval of the budget for the required funding of the operational expenses of the Summit, the Council and the Technical Committee; and
 - (f) performing any other duties as may be assigned to him by the Summit, the Council and the Technical Committee.
- (6) The Secretary shall be appointed for a single term of six years and shall not be eligible for reappointment.

Section 16 of No. 2 of 2012 of the laws of Kenya, which it is proposed to amend—

16. Removal from office of the Secretary

The Secretary may be removed from office by the Technical Committee with the approval of the Summit in accordance with the terms and conditions of service, for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or negligence of duty; or
- (d) any other ground that would justify removal from office under the terms and conditions of service.

Section 17 of No. 2 of 2012 of the laws of Kenya, which it is proposed to amend—

17. Staff of the Summit and Technical Committee

The Technical Committee may employ officers and staff as are necessary for the proper discharge of the functions of the Technical Committee, the Council and the Summit under this Act.

Section 18 of No. 2 of 2012 of the laws of Kenya, which it is proposed to amend—

18. Remuneration of staff

The Secretary, officers and staff of the Secretariat shall be paid such salaries, benefits and allowances for expenses as may be determined by the Technical Committee, in consultation with the Salaries and Remuneration Commission.

Section 20 of No. 2 of 2012 of the laws of Kenya, which it is proposed to amend—

20. Functions of the Council

- (1) The Council shall provide a forum for—
 - (a) consultation amongst county governments;
 - (b) sharing of information on the performance of the counties in the execution of their functions with the objective of learning and promotion of best practice and where necessary, initiating preventive or corrective action;
 - (c) considering matters of common interest to county governments;
 - (d) dispute resolution between counties within the framework provided under this Act;
 - (e) facilitating capacity building for governors;
 - (f) receiving reports and monitoring the implementation of inter-county agreements on inter-county projects;
 - (g) consideration of matters referred to the Council by a member of the public;
 - (h) consideration of reports from other intergovernmental forums on matters affecting national and county interests or relating to the performance of counties; and

- (i) performing any other function as may be conferred on it by this Act or any other legislation or that it may consider necessary or appropriate.

(2) The Council shall have powers to establish other intergovernmental forums including inter-city and municipality forums.

(3) The Council may establish sectoral working groups or committees for the better carrying out of its functions.

Section 23 of No. 2 of 2012 of the laws of Kenya, which it is proposed to amend—

23. Joint committees

The national or a county government may establish a joint committee with a specific mandate where such a committee is necessary for the achievement of—

- (a) the objects and principles of devolution provided in Articles 174 and 175 of the Constitution; and
- (b) the objects and purposes of this Act.

Section 26 of No. 2 of 2012 of the laws of Kenya, which it is proposed to amend—

26. Agreements on transfer or delegation of powers, functions or competencies

(1) A transfer or delegation of powers, functions or competencies under this Part shall be by a written agreement.

(2) The agreement for the transfer or delegation under subsection (1) shall include—

- (a) the function, power or competency transferred or delegated;
- (b) the specific legal provisions supporting the transfer or delegation;
- (c) the reasons for the transfer or delegation;
- (d) the performance standards and frameworks in respect of the transfer or delegation;
- (e) the resourcing framework for delivery of the powers, function or competency transferred or delegated;
- (f) the capacity of the receiving entity to exercise or perform the powers, function, or competency transferred or delegated;

- (g) the capacity building framework for enhancing any deficits identified in the entity to which the transfer or delegation has been effected;
- (h) the method of resolving any dispute that may arise under the agreement; and
- (i) the terms and conditions for the exercise or performance of the power, function or competency including the time frame.

(3) The agreement shall be—

- (a) signed by an authorized person or officer; and
- (b) published in the Kenya Gazette and the county Gazette in respect of the county to which it relates, at least fourteen days before the effective date of the transfer or delegation.

(4) The National Assembly shall be notified of the decision to transfer a national government power, function or competency.

(5) A county assembly shall be notified of the decision to transfer a county government power, function or competency.

Section 30 of No. 2 of 2012 of the laws of Kenya, which it is proposed to amend—

30. Application of this Part

(1) In this Part, unless the context otherwise requires, "dispute" means an intergovernmental dispute.

(2) This Part shall apply to the resolution of disputes arising—

- (a) between the national government and a county government; or
- (b) amongst county governments.

Section 33 of No. 2 of 2012 of the laws of Kenya, which it is proposed to amend—

33. Formal declaration of a dispute

(1) Before formally declaring the existence of a dispute, parties to a dispute shall, in good faith, make every reasonable effort and take all necessary steps to amicably resolve the matter by initiating direct negotiations with each other or through an intermediary.

(2) Where the negotiations under subsection (1) fail, a party to the dispute may formally declare a dispute by referring the matter to the Summit, the Council or any other intergovernmental structure established under this Act, as may be appropriate.

Section 34 of No. 2 of 2012 of the laws of Kenya, which it is proposed to amend—

34. Procedure after formal declaration of a dispute

(1) Within twenty-one days of the formal declaration of a dispute, the Summit, the Council or any other intergovernmental structure established under this Act shall convene a meeting inviting the parties or their designated representatives—

(a) to determine the nature of the dispute, including—

- (i) the precise issues in dispute; and
- (ii) any material issues which are not in dispute; and

(b) to—

- (i) identify the mechanisms or procedures, other than judicial proceedings, that are available to the parties to assist in settling the dispute, including a mechanism or procedure provided for in this Act, other legislation or in an agreement, if any, between the parties; or
- (ii) subject to Article 189 of the Constitution, agree on an appropriate mechanism or procedure for resolving the dispute, including mediation or arbitration, as contemplated by Articles 159 and 189 of the Constitution.

(2) Where a mechanism or procedure is specifically provided for in legislation or in an agreement between the parties, the parties shall make every reasonable effort to resolve the dispute in terms of that mechanism or procedure.

(3) Where a dispute referred to the Council or any other intergovernmental structure established under this Act, fails to be resolved in accordance with section 33 (2), the Summit shall convene a meeting between the parties in an effort to resolve the dispute and may recommend an appropriate course of action for the resolution of the dispute.