



The Constitution of Kenya (Amendment) Bill, 2020

Review of Amendments to Chapters 9 & 12 (The Executive & Public Finance)

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Outline

- Introduction
- The Executive
- Public Finance
- Conclusion

Chapter 9

The National Executive

The National Executive

- Clause 22: Proposes to amend 130(1), Adds PM, 2 DPMs to the National Executive, Cabinet Secretaries renamed to Cabinet Ministers
- Clause 23: Proposes to amend 131(1)(b) adds PM, 2 DPMs amongst DP and Cabinet as assistants of the President in exercising Executive Authority.
- Clause 24: Proposes to amend Art 132, makes it mandatory for the President to report to the nation on Economic and Social Rights outlined in Article 43
 - Clause 24 (b) Vetting would happen where applicable (Cabinet Ministers from outside Parliament)
 - Replaces Cabinet Secretaries with Cabinet Ministers

National Executive.....Cont

- Clause 25: Replaces Cabinet Secretaries with Cabinet Ministers
- Clause 26: Proposes to amend 138(8), limits the scenarios where an election shall be cancelled and new election held, to only Death of a Presidential Candidate (Removes instance of death of the DP Candidate)
- Clause 27: Lengthens the Period of Supreme Court determination of a Presidential election from 14 to 30 days

National Executive... Cont

- Clause 28: Inserts 151A, creates the Office of the PM, sets out roles
 - Leader of Government Business
 - Oversee Legislative Agenda in National Assembly
 - Supervise Execution of functions of ministries and government departments
 - Chair Cabinet Meetings as assigned by President
 - Assign any Functions to office of the Deputy PM's

National Executive...Cont

- Clause 28: Inserts 151B, Appointment of PM
 - Nominated by the President (within 7 days of being sworn in) from largest party or coalition of parties
 - Vote called by Speaker of National Assembly within 7 days
- Inserts 151C, detailing vacancy in the Office of the Prime Minister
 - Through dismissal by the President
 - Loses National Assembly seat through article 103
 - Resigns from office in writing to the President
 - Impeachment

National Executive...Cont

- Inserts 151D, details process of appointing Deputy PM's and vacancy in their Offices
 - Functions- deputize Prime Minister in execution of PM's Functions
 - DPM's can be dismissed by President, ceases to be an MP under Article 103, ceases to be a Cabinet Minister, or resigns in writing addressed to the President
- Clause 29: Proposes to amend Article 152, alters the Composition of the Cabinet by adding Prime Minister and Deputy PM's to Cabinet
 - Deletes the requirement for nomination and approval of National Assembly
 - Adds the provision that Cabinet may be appointed from Members of National Assembly, limits separation of powers between Executive and Legislature
 - Adds Clause 11, Cabinet shall remain in Office until the President elect assumes office

National Executive...Cont

- Clause 30: Proposes to amend Article 153, Requires Cabinet Secretaries to be accountable to the President and National Assembly in the exercise of their powers. Adds more powers to One House despite the Legislature being Bicameral
- Clause 31: Inserts 153A, creates Office of Deputy Ministers
 - They may be appointed from National Assembly
 - Accountable to the President and National Assembly in exercise of Powers and performance of their functions
 - Can be reassigned or dismissed by the President

National Executive...Cont

- Clause 32: Proposes to amend 154(2)(a) deleting the words “nominated and, with the approval of the National Assembly
 - Removes the vetting and approval by National Assembly before the Secretary of Cabinet is appointed.
- Clause 33: Proposes to amend 155(3), The President shall appoint Principal Secretaries from among persons recommended by the Public Service Commission
 - Removes vetting requirement for Principle Secretaries
- Clause 34: Proposes to amend 156(4), requiring the Attorney General to Perform Functions of Cabinet Minister

National Executive...Cont

- Clause 35: Proposes to amend Article 157(3), Raises qualifications for appointment as Director of Public Prosecutions to the level of a Judge of Court of Appeal(From High Court Level)
- Clause 36: Article 158 is repealed

Chapter 12

Public Finance

Public Finance

- Clause 49: Amends **Article 202** by introducing (3), which requires that the most recent audited accounts of revenue submitted by the Auditor General shall be taken as the accounts of revenue for that purpose if Parliament delays on Approval.
- Clause 50: Amends Article 203,
Introduces (l),(m), & (n) in 203(1)
 - (l) The need to eradicate corrupt practices and wastage of public resources;
 - (m) the need to ensure the attainment of the Article 43 rights
 - (n) the need to ensure that the average amount of money allocated per person to a county with the highest allocation does not exceed three times the average amount per person allocated to a county with the lowest allocation”

Amends 203(2)

Raises Counties minimum shareable Revenue from 15- 35%

Public Finance.....Cont.

Clause 51: Article 204 is extended by another 10 years, by increasing operational period from 20 years- 30 years from the Promulgation of the Constitution.

-204(8) is also ammended to take into consideration ways in which Senate votes.

Clause 52: introduces Article 206A to Article 206, Establishes the Constituencies Development Fund

Clause 53: Amends Article 204(b), Introduces County Assembly Fund

Clause 54: introduces 207(A), immediately after Article 207, introduces Ward Development Fund. 5% of all County Governments Revenue each fiscal year

Public Finance.....Cont.

- Clause 55: amends Article 215(2), changes composition of CRA by limiting numbers that can be appointed by Political Parties from 5 to 2.
 - Also, proposes 2 persons(1 man, 1 woman) appointed by County Governors & 1 person from statutory body for regulation of accountants.
- Clause 56: amends 218, adds new clause (3), if CARRA has not been passed by Parliament, the CoB may authorise withdrawal from Consolidated Fund of upto 50% of equitable share under Article 203(2) and disburse to respective Revenue funds.
- Clause 57: Amends Article 220, adds(d) requiring adherence to Article 21(2) by giving an explanation of previous, current and proposed budgetary measures taken to give effect to Article 21(2)
 - Adds the Requirement of Article that form, timing and content of **national** and **county** budgets shall be prescribed by National Legislation.

Public Finance.....Cont.

- Clause 58: amends Article 224, Removes the limitation that County Governments can only prepare the budget only on the basis of Division of Revenue Bill passed by Parliament under Article 218
- Clause 59: amends Article 225(3) empowers the Cabinet Minister for Finance to stop transfer of funds to any entity for any serious breaches, or persistent breaches
 - Adds 3A to 225(3) giving 30 days to Cabinet Minister for Finance to notify National Assembly for stoppage of funds to National Entities, or Senate in case of Counties
- Clause 60: amends 228(1) to make Senate as the confirmation House for the Controller of Budget

Public Finance.....Cont.

- Clause 61: amends Article 230, changes Composition of SRC to a 7 member commission (Chair, 6 Members) nominated by President and approved by National Assembly
 - Deletes 230(3)
 - Adds (c) to 230(4) which Expands Mandate of SRC, to determining Rates for consultants under National and County governments for services rendered.
 - Adds (ca) to 230(5), which adds another principle for SRC, which includes the need to rationalize and harmonise remuneration and benefits paid to all public officers.

END

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