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**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2016**

A Bill for

**AN ACT of Parliament to amend the Constitution of
Kenya and for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2016. Short title.

2. Article 143 of the Constitution is amended—

Amendment of
Article 143 of the
Constitution of
Kenya.

(a) in clause (1) by inserting the words “or the Deputy President” immediately after the word “President”;

(b) in clause (2) by inserting the words “or the Deputy President” immediately after the word “President”;

(c) in clause (3) by inserting the words “or the Deputy President” immediately after the word “President”;

(d) in clause (4) by deleting the words “under this Article shall not extend to a crime for which the President” and substituting therefor the words “or the Deputy President under this Article shall extend to a crime for which the President or Deputy President”

3. Article 245 of the Constitution is amended in clause (2) by deleting the word “Parliament” appearing in paragraph (a) and substituting therefor the words “the National Assembly;” Amendment of
Article 245 of the
Constitution of
Kenya.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to give effect to Article 2 (5) of the Constitution of Kenya which entrenches the general rules of international law as being part of the law of Kenya. It asserts the immunities recognized under customary law for the President and Deputy President.

The Bill seeks to amend Article 143 of the Constitution in order to extend the immunities of the President to the Deputy President not only because he performs sovereign functions but also because the Deputy President symbolizes Kenya's sovereignty. Article 147 of the Constitution provides that the Deputy President is the principal assistant of the President, thus the need to extend the immunities of the President to the Deputy President. However, the immunities are only conferred as long as the individual remains in office and will therefore not result in impunity or abuse of office.

The Bill further seeks to cure inherent contradictions in Article 143 of the Constitution. Article 143 sub-articles (1), (2) and (3) shield the President from criminal and civil proceedings. However, sub-article (4) negates the preceding provisions by introducing an exemption to the immunity of the President by providing that immunity shall not extend to a crime for which the President may be prosecuted under any treaty to which Kenya is a party and which prohibits such immunity.

Further, the Bill seeks to amend Article 245 of the Constitution in order to ensure Constitutional uniformity and harmony by providing that the approval of the appointment of the Inspector General of the National Police Service shall be undertaken by the National Assembly which is the constitutional body that undertakes approval of all other appointments by the President.

The Bill does not affect the functions of County governments and is therefore not a Bill concerning counties for purposes of the Standing Orders.

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

Dated the 23rd February, 2016.

MITHIKA LINTURI,
Member of Parliament.

Article 143 of the Constitution which it is proposed to amend—

143. (1) Criminal proceedings shall not be instituted or continued in any court against the president or a person performing the function of that office during their tenure of office.

(2) Civil proceeding shall not be instituted in any court against the president or any person performing the function of that office during their tenure in office in respect of anything done or not done in the exercise of their powers under this Constitution.

(3) Where provision is made in law limiting the time within which proceeding under clause (1) or (2) may be brought against a person, a period of time during which the person holds or performs the functions of the office of the President shall not be taken into account in calculating the period of time prescribed by that law.

(4) The immunity of the President under this Article shall not extend to a crime for which the President may be prosecuted under any treaty to which Kenya is a party and which prohibits such immunity.

245. (1) There is established the office of the Inspector-General of the National Police Service.

(2) The Inspector-General—

(a) is appointed by the President with the approval of Parliament; and

(b) shall exercise independent command over the National Police Service, and perform any other functions prescribed by national legislation.

(3) The Kenya Police Service and the Administration Police Service shall each be headed by a Deputy Inspector-General appointed by the President in accordance with the recommendation of the National Police Service Commission.

(4) The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector General with respect to—

(a) the investigation of any particular offence or offences;

(b) (b) the enforcement of the law against any particular person or persons; or

(c) the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.

(5) Any direction given to the Inspector-General by the Cabinet secretary responsible for police services under clause (4), or any direction given to the Inspector-General by the Director of Public Prosecutions under Article 157(4), shall be in writing.

(6) The Inspector-General shall be appointed for a single four-year term, and is not eligible for re-appointment.

(7) The Inspector-General may be removed from office by the President only on the grounds of—

- (a) serious violation of this Constitution or any other law, including a contravention of Chapter Six;
- (b) gross misconduct whether in the performance of the office holder's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence;
- (e) bankruptcy; or
- (f) any other just cause.

(8) Parliament shall enact legislation to give full effect to this Article.



