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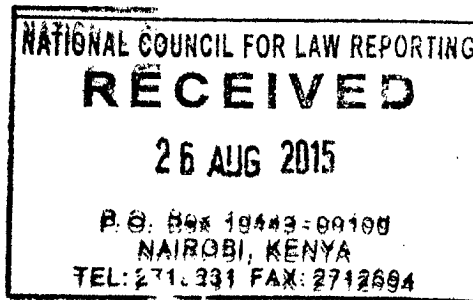
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**THE CONSTITUTION OF KENYA (AMENDMENT)
(NO. 4) BILL, 2015**

A Bill for

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

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2015.

Short title.

2. This Act shall apply to the general elections following the coming into force of this Act.

Application.

3. Article 90 of the Constitution is amended—

Amendment of
Article 90 of the
Constitution.

(a) in clause (1), by deleting the expression “Articles 97(1)(c) and 98(1)(b), (c) and (d)” appearing immediately after the words “provided for under” and substituting therefor the expression “Articles 97(1) (c) and (ca) and 98(1) (c), (d) and (da)”;

(b) by inserting the following new clause immediately after clause (1)—

(1A) A person elected under clause (1) for a seat in Parliament or a county assembly shall be eligible for re-election for one final term under clause (1);

(c) in clause (2), by deleting the words “except in the case of the seats provided for under Article 98(1)(b)” appearing at the beginning of paragraph (b).

4. Article 97 of the Constitution is amended—Amendment of
Article 97 of the
Constitution.**(a) in clause (1) by inserting the following new paragraph immediately after paragraph (c) —**

(ca) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the National Assembly is of the same gender;

(b) by inserting the following new clauses immediately after clause (1)—

(1A) The number of special seats under clause (1)(ca) shall be determined after the declaration of the members elected under clause (1)(a), (b) and (c) following a general election.

(1B) The members referred to in clause (1)(c) and (ca) shall be elected in accordance with Article 90.

(1C) Clause (1)(ca) lapses twenty years from the date on which the members under clause 1(ca) are first elected to the National Assembly.

5. Article 98 of the Constitution is amended—Amendment of
Article 98 of the
Constitution.**(a) in clause (1) by—**

(i) deleting paragraph (b);

(ii) inserting the following new paragraph immediately after paragraph (d)—

(da) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the Senate is of the same gender;

(b) by inserting the following new clauses immediately after clause (1)—

(1A) The number of special seats under clause (1) (da) shall be determined after the declaration of the members elected under clause (1)(a), (c), and (d) following a general election.

(1B) Clause (1)(da) lapses twenty years from the date on which the members under clause (1)(da) are first elected to the Senate;

- (c) in clause 2, by deleting the expression “(1)(c) and (d)” appearing immediately after the words “to in clause” and substituting therefor the expression “(1)(c), (d) and (da)”.

6. Article 177 of the Constitution is amended by inserting the following new clause immediately after clause (1)—

Amendment of
Article 177 of the
Constitution.

(1B) Clause (1)(b) lapses twenty years after the date of the second general elections held under this Constitution.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Constitution to ensure that the membership of the National Assembly and the Senate conforms to the two-thirds gender principle enunciated in Article 81(b) of the Constitution which provides as follows—

The electoral system shall comply with the following principles —

(b) not more than two-thirds of the members of elective public bodies shall be of the same gender;...

The Constitution is unequivocal in requiring the application of the two-thirds gender principle in elective and appointed offices and in effect, imposes an obligation on the State to put in place legislative measures to ensure that offices and bodies constituted under the Constitution adhere to this principle. However, while the Constitution imposes this requirement, it has, in relation to the election of Members of the National Assembly and Senators, left it to the election process to address this issue and fails to provide a mechanism for ensuring that the one-third gender principle is observed should the threshold not be met through the election process.

This Bill therefore seeks to give effect to the one-third gender principle through the creation of special seats that will ensure that the gender principal is realised in Parliament for a period of twenty years from the next general election. It is hoped that by that time, both genders will have been given a level playing field and will be able to compete on an equal plane. The Bill therefore proposes to amend Articles 81, 97, 98 and 177 of the Constitution so as provide that the two-thirds gender rule for elective positions shall lapse twenty years from the next general election.

Further, to ensure that empowerment through nomination is spread to as many people as possible, the Bill further proposes to provide that any person who is elected to any House of Parliament or Legislative Assembly by way of nomination shall enjoy such a nomination to a maximum of two terms.

The Bill proposes to amend Article 90 to reflect the amendments proposed in Article 97 and 98 as explained here below.

The Bill proposes to amend Article 97 on the composition of the National Assembly in clause (1) by introducing a new paragraph (ca) to ensure that the National Assembly complies with the requirement that not more than two-thirds of its members are of the same gender.

The Bill also proposes to amend Article 98(1) of the Constitution by deleting paragraph (b) and inserting a new paragraph (da) to ensure that

the Senate complies with the not more than two-thirds of its members are of the same gender.

Further, the Bill introduces new clauses (1A), (1B) in Articles 97 and 98 to ensure that the special seats are allocated proportionate to the number of seats won by a political party, determined after a general election and that a beneficiary of the affirmative action clause serve a maximum of two terms under the affirmative action clause.

Dated the 20th July, 2015.

ADEN DUALE,
Leader of the Majority Party.

Article 90 of the Constitution of Kenya which it is proposed to amend—

90. (1) Elections for the seats in Parliament provided for under Articles 97(1)(c) and 98(1)(b), (c) and (d), and for the members of county assemblies under article 177(1)(b) and (c), shall be on the basis of proportional representation by use of party lists.

(2) The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that—

- (a) each political party participating in a general election nominates and submits a list of all the persons who would stand elected if the party were to be entitled to all the seats provided for under clause (1), within the time prescribed by national legislation;
- (b) except in the case of the seats provided for under Article 98(1)(b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed; and
- (c) except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya.

(3) The seats referred to in clause (1) shall be allocated to political parties in proportion to the total number of seats won by candidates of the political party at the general election.

Article 97 of the Constitution of Kenya which it is proposed to amend—

97. (1) The National Assembly consists of—

- (a) two hundred and ninety members, each elected by the registered voters of single member constituencies;
- (b) forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency;
- (c) twelve members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers; and
- (d) the Speaker, who is an ex officio member.

(2) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1)(a).

Article 98 of the Constitution of Kenya which it is proposed to amend –

98. (1) The Senate consists of—

- (a) forty-seven members each elected by the registered voters of the counties, each county constituting a single member constituency;
- (b) sixteen women members who shall be nominated by political parties according to their proportion of members of the Senate elected under clause (a) in accordance with Article 90;
- (c) two members, being one man and one woman, representing the youth;
- (d) two members, being one man and one woman, representing persons with disabilities; and
- (e) the Speaker, who shall be an ex officio member.

(2) The members referred to in clause (1)(c) and (d) shall be elected in accordance with Article 90.

(3) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1)(a).

Article 177 of the Constitution of Kenya which it is proposed to amend—

177. (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.

