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THE CONSTITUTION OF KENYA (AMENDMENT) 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.

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

3. Article 81 of the Constitution is amended by—

(a) renumbering the existing provision as clause (1); and

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

(2) The State shall take legislative, policy and other measures including the setting of standards, to achieve the realization of clause (1)(b).

4. Article 90 of the Constitution is amended—

(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) (b), (c), (d) and (da)”;

(b) inserting the following new clauses 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 under clause (1) for two further terms only.

(1B) Despite clause (1A), a person elected under clause (1) for a seat in Parliament or a county assembly in the first general election held under this Constitution shall be eligible for election under clause (1) for two further terms.
5. Article 97 of the Constitution is amended—

(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) Parliament shall review clause (1)(ca) on the expiry of twenty years from the date on which the members under clause (1)(ca) are first elected to the National Assembly with a view to determining whether the principle under Article 81(b) can be achieved without the special seats provided for under (ca).

6. Article 98 of the Constitution is amended—

(a) in clause (1) by 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), (b), (c), and (d) following a general election.

(1B) Parliament shall review clause (1)(da) on the expiry of twenty years from the date on
which the members under clause (1)(da) are first elected to the Senate with a view to determining whether the principle under Article 81(b) can be achieved without the special seats provided for under clause (1)(da); and

(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)”.
MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Constitution to give effect to the two-thirds gender principle through the creation of special seats that will ensure that the gender principle is realised in Parliament and further that the state takes legislative, policy and other measures including the setting of standards, to achieve the realization of the principle.

The Bill proposes to amend the Constitution as follows—

(a) The Bill proposes to amend Article 97, on the composition of the National Assembly, by introducing a new paragraph (ca) in clause (1) to ensure that the composition of the National Assembly complies with the requirement that not more than two-thirds of its members are of the same gender. The new paragraph (ca) would require the election, through party lists, of 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) The Bill also proposes to amend Article 98(1) of the Constitution, on the composition of the Senate, by inserting a new paragraph (da) to ensure that the Senate complies with the requirement not more than two-thirds of its members are of the same gender. The new paragraph (da) would require the election, through party lists, of 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.

(c) Further, the Bill introduces new clauses 97 (1A) and (1B) and 98 (1A) and (1B) which require the elections for the special seats to be undertaken in accordance with Article 90.

(d) The Bill further proposed to amend Article 90(1) by inserting a new clause (1A) which would require that a person who has been elected for a party-list seat under clause 1 whether in Parliament or a county assembly shall be eligible for election for a party list seat only twice.

(e) The Bill at the proposed new Articles 97 (1C) and 98 (1B) provides for a sunset clause so that the affirmative action provisions on gender representation would be reviewed twenty years from the date of the next general elections.

(f) The Bill further proposes to amend Article 81 of the Constitution to require the state to take legislative, policy and other measures to ensure that not more than two-thirds of the members of elective public bodies shall be of the same gender. These measures would
be expected to resolve the gender representation matter for all time.

(g) Finally, to ensure that the enactment of this Bill does not affect the composition of the Eleventh Parliament, the Bill at clause 2 expressly provides that the proposed provisions shall apply to the general elections following the coming into force of the Act.

Dated the 4th August, 2015.

JUDITH SIJENY,
Senator.
**Article 81 that the Bill proposes to amend—**

81. The electoral system shall comply with the following principles—

(a) freedom of citizens to exercise their political rights under Article 38;

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

(c) fair representation of persons with disabilities;

(d) universal suffrage based on the aspiration for fair representation and equality of vote; and

(e) free and fair elections, which are—

(i) by secret ballot;

(ii) free from violence, intimidation, improper influence or corruption;

(iii) conducted by an independent body;

(iv) transparent; and

(v) administered in an impartial, neutral, efficient, accurate and accountable manner.

**Article 90 that the Bill proposes 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 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

(b) provided for under clause (1), within the time prescribed by national legislation;

(c) 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

(d) 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 mentioned 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 that the Bill proposes 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 that the Bill proposes 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).