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*Kenya Gazette Supplement No. 50 (National Assembly Bills No. 18)*



REPUBLIC OF KENYA

# **KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2015**

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**NAIROBI, 30th April, 2015**

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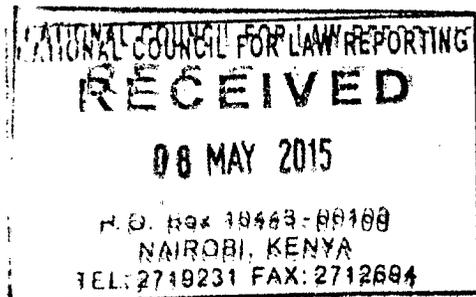
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**THE CONSTITUTION OF KENYA (AMENDMENT)  
BILL, 2015**

**A Bill for**

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

**ENACTED** by the Parliament of Kenya, as follows—

**1.** This Bill may be cited as the Constitution of Kenya (Amendment) Bill, 2015. Short title.

**2.** Article 81 of the Constitution of Kenya is amended by inserting the words “progressive implementation of legislation to ensure that” at the beginning of paragraph (b). Amendment of  
Article 81 of the  
Constitution of  
Kenya

## MEMORANDUM OF OBJECTS AND REASONS

The general principles of Kenya's electoral system are set out Article 81 of the Constitution. Article 81 (b) specifically requires the electoral system to comply with the principle that: "not more than two-thirds of the members of elective public bodies shall be of the same gender."

This provision is also contained in Article 27(8) of the Constitution which obligates the State to take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

Whereas Article 177 of the Constitution ensures that the principles outlined in Articles 81(b) and 27 (8) are complied with at the county level through the nomination of requisite special seat members to meet the quota, Articles 97 and 98 restricts the membership of both the National Assembly and the Senate to specific numbers.

The Fifth Schedule to the Constitution requires that all the legislation required under the Constitution must be enacted not later than five years after the promulgation of the Constitution. Five years after the promulgation of the Constitution shall lapse on August 27<sup>th</sup>, 2015.

In the year 2012, the Attorney-General sought the Advisory Opinion of Supreme Court (No. 2 of 2012) as to whether the two-thirds gender principle is to be realized by the first general elections under the new Constitution (i.e. March 2013) or progressively over a longer period of time. The Supreme Court on 11<sup>th</sup> December, 2012 held that Article 81(b) was to be progressively realized and gave Parliament up to August 27, 2015 to come up with legislation on how the one-third gender rule will be met in the 2017 General Election.

A number of options for the realization of the principle have been considered and analyzed by various agencies and all the options require an amendment to the Constitution to be implemented. The objective of this Bill is to propose an amendment to Article 81 of the Constitution to insert the phrase "progressive realization of the principle that" at the beginning of paragraph (b).

The progressive realization of this principle shall be achieved through amendments the statute law under the legislative framework intended to give effect to Article 100 of the Constitution. Among the objectives of the intended amendments are to:

- (a) strengthen the institutional framework for monitoring the implementation equality policies not only in representation but also in ensuring increased participation in the political process;

- (b) emphasize more on election of women in addition to nominations through building capacities, civic education, facilitation and participation in political party affairs;
- (c) built on the gains so far realized and incrementally achieve the two-thirds gender principle;
- (d) provide for sanctions for political parties who fail to meet certain thresholds; and
- (e) empower the Independent Electoral and Boundaries Commission and the Registrar of political parties to gazette the necessary mechanisms and procedures, from time to time, by way of subsidiary legislation.

The proposed amendment may be effected through a Parliamentary initiative and does not require a referendum since it does not relate to the matters specified in Article 255 (1).

This Bill has no provision seeking to limit the rights and fundamental freedoms.

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

Dated 28th April, 2015.

SAMUEL CHEPKONG'A,  
*Chairperson, Justice and Legal Affairs Committee.*

**Article 81 of the Constitution which it is proposed to be amended—****General principles for the electoral system**

**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.

