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THE ELECTION LAWS (AMENDMENT) BILL, 2015

A Bill for

AN ACT of Parliament to amend various laws relating to elections to give effect to Article 81 (b) of the Constitution

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Election Laws (Amendment) Act, 2015.

2. Section 21 of the Political Parties Act, 2011 is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (g) —

(h) has contravened the provisions of Article 81 (b) of the Constitution.

3. Section 25 of the Political Parties Act, 2011 is amended by deleting subsection (1) and substituting therefor the following new subsection—

(1) The Fund shall be distributed as follows—

(a) eighty percent of the Fund proportionately by reference to the total number of votes secured by each political party in the preceding general election;

(b) fifteen percent of the Fund proportionately by reference to the proportion of women elected within each party in Parliament; and

(c) five percent for the administration expenses of the Fund.

4. The Political Parties Act, 2011 is amended by inserting the following new section immediately after section 26—

26A (1) There is established a Fund to be known as the Special Election Fund which shall be administered by the
Registrar.

(2) The sources of the Fund shall consist of—

(a) such moneys as may provided by Parliament for that purpose;
(b) contributions and donations to the Fund from any other lawful source.

(3) Moneys from the Fund shall be used to support women candidates in an election carried out under this Act.

5. The First Schedule to the Political Parties Act, 2011 is amended in paragraph (5)—

(a) by deleting sub paragraph (a) and substituting therefor the following new sub paragraph—

(a) respect, protect and ensure the right of all persons including women, youth, minorities and marginalised groups to participate in the political process;
(b) in subparagraph (b) by inserting the word “safeguard immediately after the word “respect”;

6. The Second Schedule to the Political Parties Act, 2011 is amended by deleting paragraph 19 and substituting therefor the following new paragraph—

(19) The political party rules with respect to—

(a) elections of the party officials;
(b) nomination of candidates for election; and
(c) nomination of candidates to political party lists.

7. The Elections Act, 2011 is amended—

(a) in section 13 by inserting the following new subsection immediately after subsection (1)—

(1A) Every political party participating in the nomination of candidates shall during party nominations ensure that at least one-third of its seats in all constituencies within a county for either gender.

(b) by inserting the following new subsection
immediately after subsection (3)—

(4) Notwithstanding the other provisions of this section, the Commission shall not accept the list of candidates nominated under this section unless the total number of such candidates comprises of at least one third of either gender.

8. Section 34 of the Elections Act, 2011 is amended—

(a) in subsection (1) by deleting the expressions “97 (1) (c) and 98 (1) (b), (c) and (d)” and substituting therefor the expressions “97 (1) (c), (ca) and (cb) and 98 (1) (b), (c), (d) and (da)”; 

(b) in subsection (2) by deleting the expression “97 (1) (c) and substituting therefor the expression “97 (1) (c), (ca) and (cb)”;

(c) in subsection (3) by deleting the expression “98 (1) (b) and (c) and substituting therefor the expression “98 (1) (b), (c), (d) and (da)”.

9. The Elections Act, 2011 is amended by inserting the following new section immediately after section 35—

35A. (1) The election of members for the National Assembly, County Assemblies and the Senate for party lists specified under Articles 97(1A), 98(1A) and 177(1)(b) and (c) shall be proportional to the number of women elected in each party in the preceding election and shall be done in accordance with this section.

(2) Every political party participating in nomination of candidates for parliamentary elections shall prepare a list of all women candidates taking part in the nominations in all constituencies showing the number and percentage of votes garnered by those women candidates as against votes cast during the nominations.

(3) The list contemplated under subsection (2) shall rank the candidates in the order of the percentage of votes garnered during nominations, starting with the candidate with the highest percentage and
progressing downwards, and shall be published in the Gazette.

(4) The nomination of members under Articles 97(1)(ca) and 98(1)(da) shall be on the basis of party lists prepared under subsection (3), and candidates shall automatically qualify for nomination to the number and vacancies available for each party.

(5) In nominating members under subsection (4), a political party shall have due regard to regional and ethnic balance, youth and persons with disabilities.

(6) The names of members nominated under this section shall be submitted to the Commission for gazettement.

10. Section 36 of the Elections Act, 2011 is amended—

(a) by inserting the following new subsection immediately after subsection (2)—

(2A) A party list submitted under for the purpose of Article 97 (1) (c) shall have the name of a female candidate at the top of the list:

Provided that the sequence of female candidates shall alternate between a youth and an older female candidate.

(b) in subsection (5) by deleting the expression “97 (1) (c)” and substituting therefor the expression “97 (1) (c), (ca) and (cb)”;

(c) in subsection (6) by deleting the expression “98 (1) (b) and (c) and (d)” and substituting therefor the expression “98 (1) (b), (c), (d) and (da)”. 

Amendment of section 36 of No. 24 of 2011.
MEMORANDUM OF OBJECTS AND REASONS

This legislative proposal giving rise to this Bill has been prepared by the Attorney-General pursuant to the ruling of the Supreme Court in the Advisory Reference filed by the Attorney-General requesting for direction from the Supreme Court on the interpretation of Articles 27 and 81(b) of the Constitution with regards to the two thirds gender principle. The Supreme court directed that legislative measures to give effect to these Articles be in place by 27th August, 2015. This decision was reinstated by the High Court judgement in Petition No 182 of 2015 (Centre for Rights Education and Awareness Versus the Attorney-General and Commission for the Implementation of the Constitution) in which the court directed the Attorney-General and the Commission for Implementation of the Constitution to prepare the relevant Bill(s) for tabling in Parliament for purposes of the implementation of Articles 27(8) and 81(b) of the Constitution as read with Article 100 within forty days of the judgement.

This Bill has been prepared in order to comply with the direction of the two courts but is dependent upon the amendment of the Constitution in the manner contemplated in the Constitution of Kenya (Amendment) (No 4) Bill, 2015.

This Bill will therefore only be read a First Time upon enactment of the Constitution of Kenya (Amendment) (No 4) Bill, 2015.

The principal object of this Bill is to make minor amendments to election laws to give effect to Article 81(b) of the Constitution.

Clause 1 of the Bill sets out the short title of the proposed Act.

Clause 2 of the Bill seeks to amend the Political Parties Act to allow the Registrar of Political Parties to deregister a political party that does not comply with Article 81(b) of the Constitution.

Clause 3 amends the Political Parties Act to create the Women Campaign Fund to support women candidates during an election.

Clause 4 seeks to amend the First Schedule of the Political Parties Act to ensure protection of the right of all persons participating in the political process.

Clause 5 amends the Second Schedule to the Political Parties Act to make the provision clear and to ensure that it conforms with the Elections Act 2011.

Clause 6 of the Bill proposes to amend section 25 of the Political Parties Act No. 11 of 2011 to provide for eighty percent of the Political Parties Fund to be distributed to political parties who secure the most seats in a general election, fifteen percent is distributed proportionately to
political parties according to the number of women elected in each political party in the preceding general election and five percent is reserved for the administration expenses of the Fund.

Clause 7 seeks to amend the Elections Act, 2011 to provide for political party to ensure that at least one-third of the seats available during party primaries are provided for either gender. The clause also seeks to ensure that the Independent Electoral and Boundaries Commission does not accept the total list of candidates from party nominations for elections unless the candidates from the political party comprise of at least one third of either gender.

Clause 8 of the Bill seeks to amend section 34 of the Elections Act to ensure it conforms with the amended provisions in the Constitution.

Clause 9 seeks to amend the Elections Act, 2011, to come up with a criterion for nominating female candidates to the National Assembly, County Assemblies and the Senate, where the number of elected female members falls short of the number required to ensure that not more than two-thirds of the members are of the same gender.

It requires political parties taking part in nomination of candidates for parliamentary elections, to prepare party lists consisting of the names of all female candidates taking part in the nominations, showing the percentage of the votes garnered, and ranking them in the order of the percentages garnered. That ranked list is the one the party will use to nominate its members, with due regard being had to the need to realise regional balance.

Clause 10 seeks to amend the Elections Act, 2011 to ensure that all party lists submitted by political parties have the name of a female candidate at the top of the list. This is to ensure that women are nominated from each political party entitled to a nomination seat.

This Bill is a Bill concerning county governments

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 5th August, 2015.

ADEN DUALE,

Leader of the Majority Party.
Section 21 of No. 11 of 2011 which it is proposed to amend—

21. (1) The Registrar may deregister a political party if the political party—

(a) has contravened the provisions of Article 91 of the Constitution;
(b) does not promote free and fair nomination of candidates;
(c) does not adhere to the law relating to the nomination of candidates;
(d) does not respect the national values and principles of the Constitution;
(e) obtained its registration in a fraudulent manner;
(f) has instigated or participated in the commission of an election offence; or
(g) has acted contrary to the provisions of section 26.

(2) The Registrar shall, before deregistering a political party—

(a) inform the political party, in writing, of the particulars of the breach or contravention;
(b) inform the political party, in writing, of the intention to deregister the political party; and
(c) direct the political party to remedy the breach or contravention within ninety days or otherwise show cause why the party should not be deregistered.

(3) The Registrar may suspend the registration of a political party to enable that political party to remedy the breach specified in the notice issued by the Registrar under subsection (2).

(4) A political party that has been suspended under subsection (3) shall not be entitled to any of the rights and privileges specified in section 15.

(5) The Registrar shall deregister a political party which has not remedied the breach or complied with the Act as required by the Registrar under subsection (2).

(6) The Registrar shall deregister a political party which has been declared to be a prohibited organisation under the provisions of any written law.

Section 25 of No. 11 of 2011 which it is proposed to amend—

25. (1) The Fund shall be distributed as follows—
(a) ninety-five per cent of the Fund proportionately by reference to the total number of votes secured by each political party in the preceding general election; and

(b) five per cent for the administration expenses of the Fund.

(2) Notwithstanding subsection (1), a political party shall not be entitled to receive funding from the Fund if—

(a) the party does not secure at least five per cent of the total number of votes at the preceding general elections; or

(b) more than two-thirds of its registered office bearers are of the same gender.

(3) For purposes of subsections (1)(a) and (2)(a), the total number of votes secured by a political party shall be computed by adding the total number of votes obtained in the preceding general election by a political party in the election for the President, members of Parliament, county governors and members of county assemblies.

First Schedule of No. 11 of 2011 which it proposes to amend—

5. Every political party shall—

(a) respect the right of all persons to participate in the political process including youth, minorities and marginalized groups;

(b) respect and promote gender equity and equality, human rights and fundamental freedoms; and

(c) be tolerant and inclusive in all their political activities.

Second Schedule of No. 11 of 2011 which it proposes to amend—

19. The political party nomination rules and regulations with respect to elections of the party and rules governing the preparation of party lists.

Section 13 of No. 24 of 2011 which it is proposed to amend—

13. (1) A political party shall nominate its candidates for an election under this Act at least forty-five days before a general election under this Act in accordance with its constitution and nomination rules.

(2) A political party shall not change the candidate nominated after the nomination of that person has been received by the Commission:

Provided that in the event of the death, resignation or incapacity of the nominated candidate or of the violation of the electoral code of conduct by the nominated candidate, the political party may after notifying the candidate that the party seeks to substitute, where applicable, substitute
its candidate before the date of presentation of nomination papers to the Commission.

(3) Notwithstanding subsection (1), in the case of any other election, the Commission shall by notice in the prescribed form, specify the day or days upon which political parties shall nominate candidates to contest in a presidential, parliamentary or county election in accordance with its constitution or rules, which shall be at least forty-five days before such election.

Section 34 of No. 24 of 2011 which it is proposed to amend—

34. (1) The election of members for the National Assembly, Senate and county assemblies for party list seats specified under Articles 97 (1) (c) and 98 (1) (b) (c) and (d) and Article 177(1) (b) and (c) of the Constitution shall be on the basis of proportional representation and in accordance with Article 90 of the Constitution.

(2) A political party which nominates a candidate for election under Article 97 (1) (a) and (b) shall submit to the Commission a party list in accordance with Article 97(1)(c) of the Constitution.

(3) A political party which nominates a candidate for election under Article 98 (1) (a) shall submit to the Commission a party list in accordance with Article 98 (1) (b) and (c) of the Constitution.

(4) A political party which nominates a candidate for election under Article 177 (1) (a) shall submit to the Commission a party list in accordance with Article 177 (1) (b) and (c) of the Constitution.

(5) The party lists under subsections (2), (3) and (4) shall be submitted in order of priority.

(6) The party lists submitted to the Commission under this section shall be in accordance with the constitution or nomination rules of the political party concerned.

(7) The party lists submitted to the Commission shall be valid for the term of Parliament.

(8) A person who is nominated by a political party under subsections (2), (3) and (4) shall be a person who is a member of the political party on the date of submission of the party list by the political party.

(9) The party list may contain a name of any Presidential or Deputy Presidential candidate nominated for an election under this Act.

(10) A party list submitted for purposes of subsections (2), (3), (4) and (5) shall not be amended during the term of Parliament or the county assembly, as the case may be, for which the candidates are elected.
Section 36 of No. 24 of 2011 which it is proposed to amend—

36. (1) A party list submitted by a political party under—

(a) Article 97(1)(c) of the Constitution shall include twelve candidates;

(b) Article 98 (1) (b) of the Constitution shall include sixteen candidates;

(c) Article 98 (1) (c) of the Constitution shall include two candidates;

(d) Article 98 (1) (d) of the Constitution shall include two candidates;

(e) Article 177(1)(b) of the Constitution shall include a list of the number of candidates reflecting the number of wards in the county;

(f) Article 177 (1) (c) of the Constitution shall include eight candidates, at least two of whom shall be persons with disability, two of whom shall be the youth and two of whom shall be person representing a marginalized group.

(2) A party list submitted under subsection (1) (a), (c), (d), (e) and (f) shall contain alternates between male and female candidates in the priority in which they are listed.

(3) The party list referred to under subsection (1) (f) shall prioritise a person with disability, the youth and any other candidate representing a marginalized group.

(4) Within thirty days after the declaration of the election results, the Commission shall designate, from each qualifying list, the party representatives on the basis of proportional representation.

(5) The allocation of seats by the Commission under Article 97 (1) (c) of the Constitution will be proportional to the number of seats won by the party under Article 97 (1) (a) and (b) of the Constitution.

(6) The allocation of seats by the Commission under Article 98(1)(b), (c) and (d) of the Constitution shall be proportional to the number of seats won by the party under Article 98 (1) (a) of the Constitution.

(7) For purposes of Article 177 (1) (b) of the Constitution, the Commission shall draw from the list under subsection (1) (e), such number of special seat members in the order given by the party, necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender.
(8) For purposes of Article 177 (1) (c) of the Constitution, the Commission shall draw from the list under subsection (1)(f) four special seat members in the order given by the party.

(9) The allocation of seats by the Commission under Article 177 (1) (b) and (c) of the Constitution shall be proportional to the number of seats won by the party under Article 177 (1) (a) of the Constitution.