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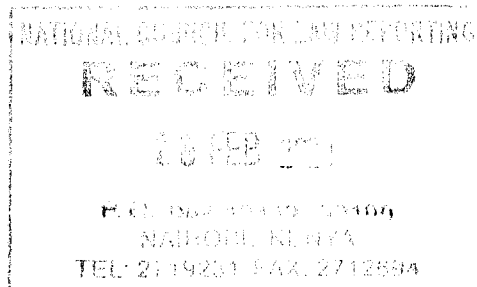
NAIROBI, 24th July, 2019

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**THE CONSTITUTION OF KENYA (AMENDMENT)
(No. 2) BILL, 2019**

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) (No. 2) Act, 2019.

Short title.

2. The Constitution of Kenya is amended in Article 117 by inserting the following two new clauses immediately after clause (2) as follows—

Amendment of Article 117 of the Constitution of Kenya.

(2A) A member of Parliament is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a function of Parliament.

(2B) The remuneration and benefits payable to, or in respect of, a Member of Parliament shall not be varied to the disadvantage of that Member or former Member, and the terminal benefits of a Member shall not be varied to the disadvantage of the Member or the former Member during the lifetime of that Member or former Member.

3. Article 165 of the Constitution of Kenya is amended—

Amendment of Article 165 of the Constitution of Kenya.

(a) in clause (5) by inserting the following new paragraph immediately after paragraph (b)—

(c) falling within the functions of Parliament, either of its Houses or a county assembly as provided for in this Constitution in so far as those matters are pending or undergoing consideration before Parliament, either of its Houses or a county assembly.

(b) in clause (6) by inserting the words “Parliament, either of its Houses or a county assembly” immediately after the words “superior courts”.

4. Article 127 of the Constitution of Kenya is amended by inserting the following new clause immediately after clause (6)—

Amendment of article 127 of the Constitution of Kenya.

(6A) (a) There is established a fund to be known as the Parliamentary Fund which shall be administered by an officer appointed by the Parliamentary Service Commission.

(b) The Fund shall be used for administrative purposes and such other purposes as may be necessary for the discharge of the functions of Parliament.

(c) Each financial year, the officer administering the Fund shall subject to clause 6A prepare estimates of expenditure of the Commission for the following year and submit them to the Commission for approval.

(d) Upon approval by the National Assembly, the expenditure of the Parliamentary Service Commission shall be a charge on the Consolidated Fund and the funds shall be paid directly into the Parliamentary Fund.

(e) Parliament shall enact legislation to provide for the regulation of the Fund.

5. Article 196 of the Constitution of Kenya is amended by inserting the following new clause immediately after clause (2) —

Amendment of
Article 196 of the
Constitution of
Kenya.

(2A) A member of a county assembly is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a function of a county assembly.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

This Bill seeks to amend the Constitution of Kenya so as to restrain the Courts from intervening with matters pending consideration or being proceeded with before Parliament, the County Assemblies or any of their Committees in line with international practice where courts only intervene after Parliament has executed its mandate.

These amendments are intended to entrench the governance ideal of separation of powers in the functions and functioning of the arms of government and to limit interference by the respective organs of government in the internal functions of each other as may be mandated by the Constitution. While the amendments preclude the courts from interfering in the proceedings of Parliament and the County Assemblies mandated by the Constitution the amendments by implication recognize the court's jurisdiction to determine constitutionality of legislations made by Parliament and the County Assemblies.

In public law, Parliament and the High Court are equal and co-ordinate organs of government exercising separate constitutional functions. Therefore, the High Court enjoys no supervisory powers over Parliament but its powers are limited to determining the constitutionality of laws made by Parliament.

The Bill further seeks to enhance the independence of Parliament by creating a Parliamentary Fund in which all monies appropriated to Parliament will be deposited.

It also seeks to maintain and protect the integrity of Members of Parliament by requiring that their terms and conditions of service once established should not be varied to their disadvantage.

Statement on the Delegation of Legislative Powers and Limitation of Fundamental Rights and Freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement as to whether the Bill concerns County Governments

The Bill affects the functions of the county governments and is therefore a Bill concerning counties for purposes of the Standing Orders.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The Bill is a money Bill for the purposes of Article 114 of the Constitution as the enactment of this Bill will occasion additional expenditure of public funds.

Dated the 7th June, 2019.

JEREMIAH KIONI,
Chairperson, Constitutional Implementation Oversight Committee.

Article 117 of the Constitution of Kenya which it is proposed to amend—

Powers, Privileges and Immunities

117. (1) There shall be freedom of speech and debate in Parliament.

(2) Parliament may, for the purpose of the orderly and effective discharge of the business of Parliament, provide for the powers, privileges and immunities of Parliament, its committees, the leader of the majority party, the leader of the minority party, the chairpersons of committees and members.

Article 127 of the Constitution of Kenya which it is proposed to amend—

Parliamentary Service Commission

127. (1) There is established the Parliamentary Service Commission.

(2) The Commission consists of—

- (a) the Speaker of the National Assembly, as chairperson;
- (b) a vice-chairperson elected by the Commission from the members appointed under paragraph (c);
- (c) seven members appointed by Parliament from among its members of whom—
 - (i) four shall be nominated equally from both Houses by the party or coalition of parties forming the national government, of whom at least two shall be women; and
 - (ii) three shall be nominated by the parties not forming the national government, at least one of whom shall be nominated from each House and at least one of whom shall be a woman; and
- (d) one man and one woman appointed by Parliament from among persons who are experienced in public affairs, but are not members of Parliament.

(3) The Clerk of the Senate shall be the Secretary to the Commission.

(4) A member of the Commission shall vacate office—

- (a) if the person is a member of Parliament—
 - (i) at the end of the term of the House of which the person is a member; or
 - (ii) if the person ceases to be a member of Parliament; or

- (b) if the person is an appointed member, on revocation of the person's appointment by Parliament.

(5) Despite clause (4), when the term of a House of Parliament ends, a member of the Commission appointed under clause (2) (c) shall continue in office until a new member has been appointed in the member's place by the next House.

(6) The Commission is responsible for—

- (a) providing services and facilities to ensure the efficient and effective functioning of Parliament;
- (b) constituting offices in the parliamentary service, and appointing and supervising office holders;
- (c) preparing annual estimates of expenditure of the parliamentary service and submitting them to the National Assembly for approval, and exercising budgetary control over the service;
- (d) undertaking, singly or jointly with other relevant organisations, programmes to promote the ideals of parliamentary democracy; and
- (e) performing other functions —
 - (i) necessary for the well-being of the members and staff of Parliament; or
 - (ii) prescribed by national legislation.

Article 165 of the Constitution of Kenya which it is proposed to amend—

High Court

165. (1) There is established the High Court, which—

- (a) shall consist of the number of judges prescribed by an Act of Parliament; and
- (b) shall be organised and administered in the manner prescribed by an Act of Parliament.

(2) There shall be a Principal Judge of the High Court, who shall be elected by the judges of the High Court from among themselves.

(3) Subject to clause (5), the High Court shall have—

- (a) unlimited original jurisdiction in criminal and civil matters;
- (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;

- (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
 - (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
 - (i) the question whether any law is inconsistent with or in contravention of this Constitution;
 - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - (iv) a question relating to conflict of laws under Article 191; and
 - (e) any other jurisdiction, original or appellate, conferred on it by legislation.
- (4) Any matter certified by the court as raising a substantial question of law under clause (3) (b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.
- (5) The High Court shall not have jurisdiction in respect of matters—
- (a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or
 - (b) falling within the jurisdiction of the courts contemplated in Article 162 (2).
- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

Article 196 of the Constitution which it is proposed to amend—

Public Participation and County Assembly Powers, Privileges and Immunities

196. (1) A county assembly shall—

- (a) conduct its business in an open manner, and hold its sittings and those of its committees, in public; and
- (b) facilitate public participation and involvement in the legislative and other business of the assembly and its committees.

(2) A county assembly may not exclude the public, or any media, from any sitting unless in exceptional circumstances the speaker has determined that there are justifiable reasons for doing so.

(3) Parliament shall enact legislation providing for the powers, privileges and immunities of county assemblies, their committees and members.

