

SPECIAL ISSUE

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REPUBLIC OF KENYA

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NATIONAL ASSEMBLY BILLS, 2020

NAIROBI, 15th October, 2020

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**THE JUDICIAL SERVICE (AMENDMENT) BILL,
2020**

A Bill for

**AN ACT of Parliament to amend the Judicial Service
Act, 2011**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Judicial Service
(Amendment) Act, 2020.

Short title.

2. Section 30 of the Judicial Service Act, 2011, is
amended by inserting the following new sub-section
immediately after sub-section (5)—

Amendment of s.
30 of No. 1 of
2011.

(6) Despite the provisions of paragraph 3 of the
First Schedule, the Commission shall commence
the process of filling a vacancy in the office of the
Chief Justice at least six months before the
retirement date or expiry of the term of the Chief
Justice under Article 167 of the Constitution.

MEMORANDUM OF OBJECTS AND REASONS**Statement of objects and reasons for the Bill**

The principal purpose of the Bill is to amend section 30 of the Judicial Service Act, No.1 of 2011 in order to insert a provision empowering the Judicial Service Commission to commence the process of recruitment of a new Chief Justice at least six months before the expected retirement date or expiry of the term of the Chief Justice under Article 167 of the Constitution.

It is noted that Article 167(1) of the Constitution provides that a judge shall retire from office on attaining the age of seventy years, but may elect to retire at any time after attaining the age of sixty-five years and Article 167(2) provides that the Chief Justice shall hold office for a maximum period of ten years or until retiring under Article 167(1), whichever is the earlier.

In light of the cited constitutional provisions, it is apparent that the Judicial Service Commission can foresee the arising of a vacancy in the office of the Chief justice and commence the recruitment process before the date of the actual occurrence of the vacancy. In this respect, the Bill seeks to codify the best practice in democratic jurisdictions where there is an understanding that critical constitutional offices like that of the Chief Justice or the Chairperson of the Independent Electoral and Boundaries Commission should not remain vacant for a long period.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

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

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

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

Statement on whether the Bill concerns county governments

The Bill does not concern county governments as it does not contain provisions affecting the functions and powers of the county governments set out in the Fourth Schedule to the Constitution.

Dated the 12th October, 2020.

CLEMENT MUTURI KIGANO,
Chairperson,
Departmental Committee on Justice and Legal Affairs.

Section 30 of the Judicial Service Act, No. 1 of 2011 which it is proposed to amend—

30. Appointment of Judges

(1) For the purposes of transparent recruitment of judges, the Commission shall constitute a selection panel consisting of at least five members.

(2) The function of the selection panel shall be to shortlist persons for nomination by the Commission in accordance with the First Schedule.

(3) The provisions of this section shall apply to the appointment of the Chief Justice and Deputy Chief Justice except that—

- (a) the Secretary shall, within three days of the Commission's vote, forward the names of three qualified persons for each vacant position to the President;
- (b) the President shall, within fourteen days of receipt of the names forwarded select the person to fill the each vacant position and forward the name of the person to the National Assembly for approval;
- (c) the National Assembly shall, within twenty-one days of the day it next sits after receipt of the name of a person nominated for appointment to the post of Chief Justice or Deputy Chief Justice vet and consider the person;
- (d) where the National Assembly approves of the appointment of a person to the post of Chief Justice or Deputy Chief Justice, the Speaker of the National Assembly shall forward the name of the person to the President for appointment;
- (e) where the National Assembly rejects the nomination of a person for appointment to the post of Chief Justice or Deputy Chief Justice, the Speaker shall within three days communicate its decision to the President and request the President to submit a fresh nomination;
- (f) where a nominee is rejected by the National Assembly the President shall within seven days, submit to the National Assembly a fresh nomination from amongst the three persons shortlisted and forwarded by the Commission under paragraph (a); and
- (g) if the National Assembly rejects all of the subsequent nominees submitted by the President for approval the Commission shall constitute a different selection panel and conduct the recruitment afresh.

(4) Members of the selection panel shall elect a Chairperson from amongst their number.

(5) Subject to the provisions of the First Schedule, the selection panel may determine its own procedure.

