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NATIONAL COUNCIL FOR LAW REPORTING

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**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2023**

A Bill for

AN ACT of Parliament to amend the Constitution of Kenya.

ENACTED by the Parliament of Kenya, as follows—

- | | |
|---|---|
| <p>1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2023.</p> | <p>Short title.</p> |
| <p>2. This Act shall apply to the general elections following the coming into force of this Act.</p> | <p>Application.</p> |
| <p>3. Article 81 of the Constitution is amended by –</p> <p style="margin-left: 20px;">(a) renumbering the existing provision as clause (1); and</p> <p style="margin-left: 20px;">(b) inserting the following new clause immediately after the new clause (1) –</p> <p style="margin-left: 40px;">(2) The State shall take legislative, policy and other measures including the setting of standards, to achieve the realization of clause (1)(b).</p> | <p>Amendment of Article 81 of the Constitution.</p> |
| <p>4. Article 90 of the Constitution is amended –</p> <p style="margin-left: 20px;">(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)”; and</p> <p style="margin-left: 20px;">(b) by inserting the following new clause immediately after clause (1) –</p> <p style="margin-left: 40px;">(1A) A person elected for a seat under Articles 97(1) (c) and (ca), 98(1) (b), (c), (d) and (da) and 177(1)(b) shall not be eligible for re-election under clause (1).</p> | <p>Amendment of Article 90 of the Constitution.</p> |

5. Article 97 of the Constitution is amended—Amendment of
Article 97 of the
Constitution.**(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 results of a general election.****(1B) The members referred to in clause (1)(c) and (ca) shall be elected in accordance with Article 90.****6. Article 98 of the Constitution is amended—**Amendment of
Article 98 of the
Constitution.**(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 clause immediately after clause (1)—****(1A) The number of special seats under clause (1) (da) shall be determined after the declaration of the results of a general election.****(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 proposes 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 under this Article only once.**
- (e) 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.**
- (f) Finally, to ensure that the enactment of this Bill does not affect the composition of the Thirteenth 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 29th March, 2023.

BETH SYENGO,
Senator.

Article 81 that the Bill proposes to amend-

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

General principles for the electoral system.

- (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.

Allocation of party list seats.

(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—

Membership of
the National
Assembly.

- (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—

Membership of
the Senate.

- (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).

