

SPECIAL ISSUE

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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2016

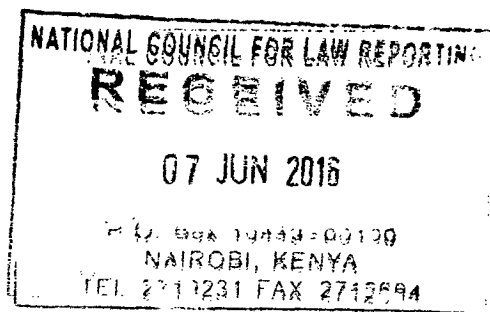
NAIROBI, 2nd June, 2016

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**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2016**

A Bill for

**AN ACT of Parliament to amend the Constitution of
Kenya and for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2016.

Short title.

2. Article 88 of the Constitution is amended in clause (4) by deleting paragraph (e);

Amendment of Article 88 of the Constitution of Kenya.

3. Article 140 of the Constitution is amended in clause (2) by deleting the word “fourteen” appearing immediately after the word “Within” and substituting therefor the word “thirty”;

Amendment of Article 140 of the Constitution of Kenya.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this amendment Bill is to amend various provisions of the Constitution dealing with electoral disputes. It is based on experiential lessons obtained from the challenges previously experienced in the determination of electoral disputes. This amendment seeks to provide for mechanisms that will facilitate seamless determination of election petitions in future as follows

Clause 2 of the Bill seeks to transfer the function of settlement of electoral disputes, including disputes relating to or arising from nominations from the Independent Electoral and Boundaries Commission (IEBC). It is envisaged that Parliament will by legislation assign the function of settlement of electoral disputes arising from nominations to an independent Tribunal.

Clause 3 of the Bill extends the period for the determination of the Presidential Petition from fourteen to thirty days to give the Supreme Court sufficient time to not only declare a verdict but to deliver the reasons for the decision along with the verdict.

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

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

Statement as to whether the Bill concerns County governments

The Bill does not concern County Governments in terms of Articles 110 (1) (a) of the Constitution.

Statements 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 variation the imposition of public funds as it seeks to reassign a function to another public body.

Dated the 31st May, 2016.

SAMUEL CHEPKONG'A,
Member of Parliament.

Article 88 of the Constitution which it is proposed to amend—

88. (1) There is established the Independent Electoral and Boundaries Commission.

(2) A person is not eligible for appointment as a member of the Commission if the person—

(a) has, at any time within the preceding five years, held office, or stood for election as—

(i) a member of Parliament or of a county assembly; or

(ii) a member of the governing body of a political party; or

(b) holds any State office.

(3) A member of the Commission shall not hold another public office.

(4) The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution, and any other elections as prescribed by an Act of Parliament and, in particular, for—

(a) the continuous registration of citizens as voters;

(b) the regular revision of the voters' roll;

(c) the delimitation of constituencies and wards;

(d) the regulation of the process by which parties nominate candidates for elections;

(e) the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results;

(f) the registration of candidates for election;

(g) voter education;

(h) the facilitation of the observation, monitoring and evaluation of elections;

(i) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;

(j) the development of a code of conduct for candidates and parties contesting elections; and

(k) the monitoring of compliance with the legislation required by Article 82 (1) (b) relating to nomination of candidates by parties.

(5) The Commission shall exercise its powers and perform its functions in accordance with this Constitution and national legislation.

Article 140 of the Constitution which it is proposed to amend—

140. (1) A person may file a petition in the Supreme Court to challenge the election of the President-elect within seven days after the date of the declaration of the results of the presidential election.

(2) Within fourteen days after the filing of a petition under clause (1), the Supreme Court shall hear and determine the petition and its decision shall be final.

(3) If the Supreme Court determines the election of the President-elect to be invalid, a fresh election shall be held within sixty days after the determination.