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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2017

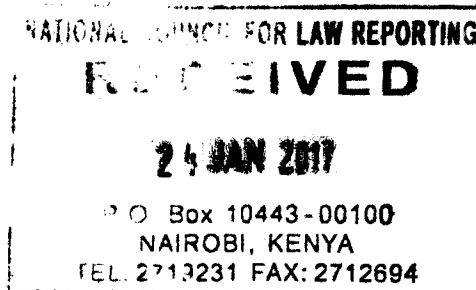
NAIROBI, 11th January, 2017

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**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2017**

A Bill for

AN ACT of Parliament to amend the Constitution

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2017 and shall come into force upon publication in the Gazette. Short title.

2. The Constitution is amended by inserting the following new Article immediately after Article 206— Amendment of the Constitution.

**206A. National Government Constituencies
Development Fund**

(1) There is established the National Government Constituencies Development Fund which shall be a national government fund consisting of monies of an amount of not less than 2.5% of all the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 or as may be provided for in legislation. The funds shall vest in and be operated and managed by a Board established under an Act of Parliament.

(2) The National Government Constituencies Development Fund is established for the following purposes-

- (a) to provide for the sustainable and equitable development of all parts of the Republic by ensuring minimum annual development finance allocations to every constituency in the Republic;
- (b) to recognize the constituency as a platform for identification, performance and implementation of national government functions;

- (c) to facilitate the performance and implementation of national government functions in all parts of the Republic;
 - (d) to provide for the participation of the people in the determination and implementation of identified national government development projects at the constituency level;
 - (e) to provide mechanisms for supplementing infrastructure development at the constituency level in matters within the functions of the national government under this Constitution;
 - (f) to provide mechanisms for elected Members of the National Assembly to effectively represent their constituencies in national government development prioritisation programmes;
 - (g) to provide mechanisms for the National Assembly to exercise oversight over the performance of specified national government functions at the constituency level; and
 - (h) to build local accountability and transparency in the use of national resources.
- (3) An Act of Parliament shall make further provisions on the management and operation of the National Government Constituencies Development Fund.

3. The Constitution is amended by inserting the following new Articles immediately after Article 208-

Amendment of the
Constitution.

208A. National Government Affirmative Action Fund

- (1) There is established the National Government Affirmative Action Fund which shall vest in and be operated and managed by a Board established by an Act of Parliament.

- (2) The object and purpose of the National Government Affirmative Action Fund is to—
 - (a) complement the national government's programmes on affirmative action measures;
 - (b) promote equality in the enjoyment of all fundamental rights and freedoms;
 - (c) promote the right to equal opportunities for all Kenyans.

208B. Parliamentary Oversight Fund

- (1) There is established the Parliamentary Oversight Fund which shall be a national government fund consisting of monies allocated by the National Assembly in every financial year.
- (2) The object and purpose of the Parliamentary Oversight Fund is to—
 - (a) provide facilitation to Senators to enable them exercise oversight over national government revenue allocated to the county governments;
 - (b) provide facilitation to Senators to enable them safeguard devolution;
 - (c) provide facilitation to Members of the National Assembly to enable them exercise oversight over national revenue and its expenditure;
- (3) An Act of Parliament shall make further provisions on the management and operations of the Parliamentary Oversight Fund.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to amend the Constitution of Kenya by inserting a new Article 206A to provide for the establishment of the National Government Constituencies Development Fund and two new Articles 208A and 208B to provide for the establishment of the National Government Affirmative Action Fund and the Parliamentary Oversight Fund, respectively.

It is noted that the existing National Government Constituencies Development Fund established under the National Government Constituency Development Fund Act, No. 30 of 2015, was originally established in 2003 through the enactment of the Constituencies Development Fund Act, No. 10 of 2003.

Since its inception, it has been manifestly self-evident that the National Government Constituencies Development Fund has facilitated life changing community development and empowerment projects in the fields of education, health, security, roads and provision of clean water to our people.

The National Government Affirmative Action Fund, on its part, is established under the Public Finance Management (National Government Affirmative Action Fund) Regulations, 2016 made pursuant to the provisions of the Public Finance Management Act, No. 18 of 2012.

The promulgation of a new Constitution by Kenya in August 2010 brought with it devolution and the attendant two levels of government: the national government on the one hand and the county governments on the other. Notwithstanding the two levels of government, the Constituency Development Fund has been and continues to add value to the citizenry. The Constituency Development Fund continues to meet specialized needs thereby contributing immensely towards development in stated areas at the grassroots level, thus the need to constitutionalise the fund thereby aligning it to realities of the new Constitutional order.

It is in light of these developments that **Clause 2** of the Bill seeks to insert a new Article 206A to;

- (a) recognize the constituency as a platform for identification, performance and implementation of national government functions;
- (b) facilitate the performance and implementation of national government functions in all parts of the Republic;
- (c) provide for the participation of the people in the determination and implementation of identified national government development projects at the constituency level,

- (d) promote the national values of human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;
- (e) provide for the sustainable and equitable development of all parts of the Republic by ensuring minimum annual development finance allocations to every constituency in the Republic;
- (f) provide mechanisms for National Assembly to exercise oversight over the performance of specified national government functions at the constituency level as provided for under Article 95 of the Constitution;
- (g) provide for mechanisms for supplementing infrastructure development at the constituency level in matters falling within the functions of the national government at that level in accordance with the Constitution;
- (h) provide a framework for citizens led development to assist the national government in planning and prioritizing the use of its resources;
- (i) create a harmonious relationship between citizens and the national government and its officers in local development;
- (j) provide a platform for citizens participation in service delivery; and
- (k) build local accountability and transparency in the use of resources.

Clause 3 of the Bill seeks to insert new Articles 208A and 208B in the Constitution in order to anchor the National Government Affirmative Action Fund and the Parliamentary Oversight Fund in the Constitution.

The principal object and purpose for the establishment of the National Government Affirmative Action Fund is to complement the national government's programmes on affirmative action measures.

The principal object and purpose for the establishment of the Parliamentary Oversight Fund is to provide facilitation to Senators and Members of the National Assembly to enable them exercise oversight over government revenue and expenditure as provided for in the Constitution.

Statement on whether Bill concerns county governments

The Bill is a constitution amendment Bill and shall be enacted in accordance with the provisions of Article 256 of the Constitution.

Statement on the delegation of legislative powers

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

Statement on financial implications of the Bill

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

Dated the 6th January, 2017.

BONFACE OTSIULA,
Member of Parliament.