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**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2018**

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) Act, 2018.

Short title.

2. Article 90 of the Constitution is amended—

Amendment of Article 90 of the Constitution.

(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)(c), (d) and (da)";

(b) by inserting the following new clause immediately after clause (1)—

“(1A) A person elected to Parliament or a county assembly under clause (1) shall be eligible for re-election for one final term under that clause.”

3. Article 97 of the Constitution is amended—

Amendment of Article 97 of the Constitution of Kenya.

(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 members elected under clause (1)(a) are 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.

“(IB) The members referred to in clause (1)(c) and (ca) shall be elected in accordance with Article 90.

“(1C) Subject to clause (1D), the provisions of clause 1(ca) shall lapse twenty years from the date of the first general elections after commencement of this Act.

“(1D) Parliament may enact legislation to extend the period under clause (1C) for one further fixed period not exceeding ten years.

“(1E) Legislation under clause (1D) shall be supported by not less than two-thirds of all members of the National Assembly and not less than two-thirds of all the county delegations in the Senate.”

4. Article 98 of the Constitution is amended—

(a) in clause (1) by—

(i) 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 members elected under clause (1)(a) are of the same gender;”

(ii) by inserting the following new clauses 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.

“(1B) Subject to clause (1C), the provisions of clause 1(da) shall lapse twenty years from the date of the first general elections after commencement of this Act.

“(1C) Parliament may enact legislation to extend the period under clause (1B) for one further fixed period not exceeding ten years.

“(1D) Legislation under clause (1C) shall be supported by not less than two-thirds of all members of the National Assembly and not less than two-thirds of all the county delegations in the Senate.”

(b) 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)".

Amendment of
Article 98 of the
Constitution of
Kenya.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Constitution to ensure that the membership of the National Assembly and the Senate conforms to the two-thirds gender principle provided for in Article 81(b) of the Constitution. The Bill seeks to give effect to the two-thirds gender principle through the creation of special seats that will ensure that the gender principle is realized in Parliament over a period of twenty years from the next general election. It is hoped that by that time, both genders will have been given a level playing field and will be able to compete on an equal plane. The Bill therefore proposes to amend Articles 90, 97 and 98 of the Constitution.

Clause 1 of the Bill is the short title.

Clause 2 of the Bill proposes to amend Article 90 of the Constitution to reflect the amendments proposed to Article 97 and 98 and to ensure that empowerment through nomination is spread to as many people as possible by precluding persons elected to any House of Parliament or county assemblies by way of nomination from enjoying such a nomination for more than two terms.

Clauses 3 and 4 of the Bill proposes to amend Article 97 and 98 of the Constitution to ensure that both Houses of Parliament comply with the two-thirds gender principle that the special seats are allocated proportionate to the number of seats won by a political party. The number of special seats is to be determined after a general election. A sunset clause of twenty-years is included in the amendment with an option for extension for one further fixed period of ten years as it is expected that by that time enormous gains will have been made with regard to gender parity in elected members of Parliament.

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

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 1st February, 2018.

ADEN DUALE,
Leader of Majority Party.

Article, 90 of the Constitution of Kenya which it is proposed to be amended—

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 article 177(1)(b) and (c), shall be on the basis of proportional representation by use of party lists.

(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 provided for under clause (1), within the time prescribed by national legislation;
- (b) 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
- (c) 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 referred to 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 of the Constitution of Kenya which it is proposed to be amended—

97. (1) The National Assembly consists of—

- (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 of the Constitution of Kenya which it is proposed to be amended—

98. (1) The Senate consists of—

- (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).