

**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2011**

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, 2011.

Short title.

2. Article 90 of the Constitution is amended in clause (1), by deleting the expression “Articles 97(1)(c) and 98(1)(b), (c) and (d)” and substituting therefor the expression “Articles 97(1)(ba) and (c) and 98(1)(b), (c), (d) and (da)”.

Amendment of Article 90 of the Constitution.

3. 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 (b)-

(ba) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the National Assembly are of the same gender;

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

(1A) The members contemplated in clause (1) (ba) shall be nominated by political parties in proportion to the National Assembly seats received by the political party at the general election.

- (1B) The filling of special seats under clause (1) (ba) shall be determined after the declaration of elected members from each constituency.

4. 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 are of the same gender.
- (b) by inserting the following new clauses immediately after clause (1)-

(1A) The members contemplated in clause (1)(da) shall be nominated by political parties in proportion to the Senate seats received by the political party at the general election.

(1B) The filling of special seats under clause (1) (da) shall be determined after the declaration of elected members from each county.

5. The Constitution is amended in Article 101, by deleting the words “the second Tuesday in August” and substituting therefor the words “the third Monday in December”.

Amendment of Article 101 of the Constitution.

6. The Constitution is amended in Article 136(2)(a), by deleting the words “the second Tuesday in August” and substituting therefor the words “the third Monday in December”.

Amendment of Article 136 of the Constitution.

7. The Constitution is amended in Article 177(1)(a), by deleting the words “the second Tuesday in August”

Amendment of Article 177 of the Constitution.

and substituting therefor the words “the third Monday in December”.

8. The Constitution is amended in Article 180(1), by deleting the words “the second Tuesday in August” and substituting therefor the words “the third Monday in December”.

Amendment of
Article 180 of the
Constitution.

MEMORANDUM OF OBJECTS AND REASONS

The Bill aims at giving full effect to Articles 27(8) and 81(b) which provides that not more than two-thirds of the members of elective public bodies shall be of the same gender. The Bill further seeks to bring clarity and certainty to the term of the tenth Parliament while also removing any doubts as to the date of the next general elections under the Constitution of Kenya 2010.

The Bill therefore seeks to give lasting solutions to the issues of gender parity and equity in elective positions and more specifically in the National Assembly and the Senate.

The Bill proposes to amend Article 97 on the composition of the National Assembly by inserting a new clause (1)(ba) and clauses (1A) and (1B) to provide for the realization of and implementation of Articles 27(8) and 81(b) of the Constitution.

The Bill further proposes to amend Article 98 on the composition of the Senate by inserting a new clause (1)(ba) and clauses (1A) and (1B) to provide for the number of special seat members necessary to ensure that not more than two-thirds of the membership of the Senate are of the same gender.

The Bill also proposes to amend Articles 101(1), 136(2)(a), 177(1)(a) and 180(1) of the Constitution by introducing a date that settles all controversy surrounding the date for the next general election.

The effect of the amendment is to ensure that at all times not more than two thirds of members of Parliament shall be of the same gender. The amendments will also put to rest all doubts regarding the date of the next general elections as well as the expiry of the term of the current Parliament.

The enactment of this Act shall occasion additional expenditure of public funds, which shall be provided for in the estimates.

Dated 21st September, 2011.

MUTULA KILONZO,
*Minister for Justice, National Cohesion
and Constitutional Affairs.*

Article 90 of the Constitution of Kenya which it is proposed to amend-

Allocation of party list seats

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.

(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 amend-

Membership of the National Assembly

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 amend-

Membership of the Senate

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).

Article 101 of the Constitution of Kenya which it is proposed to amend-

Election of members of Parliament

101. (1) A general election of members of Parliament shall be held on the second Tuesday in August in every fifth year.

(2) Whenever a vacancy occurs in the office of a member of the National Assembly under Article 97 (1) (c), or of the Senate under Article 98 (1) (b), (c) or (d), the respective Speaker shall, within twenty-one days

of the occurrence of the vacancy, give notice in writing of the vacancy to —

- (a) the Independent Electoral and Boundaries Commission;
and
- (b) the political party on whose party list the member was
elected or nominated.

(3) A vacancy referred to in clause (2) shall, subject to clause (5), be filled in the manner prescribed by an Act of Parliament within twenty-one days of the notification by the respective Speaker.

(4) Whenever a vacancy occurs in the office of a member of the National Assembly elected under Article 97 (1) (a) or (b), or of the Senate elected under Article 98 (1) (a)—

- (a) the respective Speaker shall, within twenty-one days
after the occurrence of the vacancy, give notice in
writing of the vacancy to the Independent Electoral and
Boundaries Commission; and
- (b) a by-election shall be held within ninety days of the
occurrence of the vacancy, subject to clause (5).

(5) A vacancy referred to in clause (4) shall not be filled within the three months immediately before a general election.

Article 136 of the Constitution of Kenya which it is proposed to amend-

Election of the President

136. (1) The President shall be elected by registered voters in a national election conducted in accordance with this Constitution and any Act of Parliament regulating presidential elections.

(2) An election of the President shall be held—

- (a) on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year; or
- (b) in the circumstances contemplated in Article 146.

Article 177 of the Constitution of Kenya which it is proposed to amend-

Membership of county assembly

177. (1) A county assembly consists of—

- (a) members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year;
- (b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;
- (c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and
- (d) the Speaker, who is an *ex officio* member.

(2) The members contemplated in clause (1) (b) and (c) shall, in each case, be nominated by political parties in proportion to the seats received in that election in that county by each political party under paragraph (a) in accordance with Article 90.

(3) The filling of special seats under clause (1) (b) shall be determined after declaration of elected members from each ward.

(4) A county assembly is elected for a term of five years.

Article 180 of the Constitution of Kenya which it is proposed to amend-

Election of county governor and deputy county governor

180. (1) The county governor shall be directly elected by the voters registered in the county, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year.

(2) To be eligible for election as county governor, a person must be eligible for election as a member of the county assembly.

(3) If only one candidate for county governor is nominated, that candidate shall be declared elected.

(4) If two or more candidates are nominated, an election shall be held in the county and the candidate who receives the greatest number of votes shall be declared elected.

(5) Each candidate for election as county governor shall nominate a person who is qualified for nomination for election as county governor as a candidate for deputy governor.

(6) The Independent Electoral and Boundaries Commission shall not conduct a separate election for the deputy governor but shall declare the candidate nominated by the person who is elected county governor to have been elected as the deputy governor.

(7) A person shall not hold office—

(a) as a county governor for more than two terms; or

(b) as a deputy county governor for more than two terms.

(8) For the purposes of clause (7), a person who has assumed the office of county governor shall be deemed to have served a full term, subject only to Article 182 (3) (b).