

Annexure 8

**The Revised Draft Constitution of
Kenya (Amendment) Bill by the
MSWG on the Realization of the
Two-Thirds Gender Principle**

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2024

A Bill for

An Act of Parliament to amend the Constitution of Kenya, 2010 by Parliamentary initiative pursuant to Article 256 of the Constitution.

ENACTED by the Parliament of Kenya as follows—

Short title

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2024.

Amendment of Article 90 of the Constitution

2. Article 90 of the Constitution is amended by—

(a) 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)(c) and (1A) and 98(1)(b), (c), (d) and (1A) ;

(b) in clause (2) by inserting the following new paragraphs immediately after paragraph (c)—

“(d) members of a political party are democratically involved in the generation of the party list through a fair and competitive process as set out in the respective party constitution and nomination rules;

(e) each party list reflects the representation of the marginalised groups set out in Article 100 to the greatest extent possible taking into account the nature of the party list;

(c) inserting the following new clause immediately after clause (3)—

“(4) A person elected under clause (1) for a seat shall not hold such office for more than two terms in one elective body.

Amendment of Article 97 of the Constitution

3. Article 97 of the Constitution is amended by inserting the following new clauses immediately after clause (1)—

(1A) In the event that the membership of the National Assembly under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, there shall be nominated additional number of special seat members necessary to ensure that no more than two-thirds of the membership of the House are of the same gender.

(1B) The number of special seats under clause (1A) shall be determined after the declaration of the results of the general election.

Amendment of
Article 98 of the
Constitution

4. Article 98 of the Constitution is amended by inserting the following new clauses immediately after clause (I)—

(1A) In the event that the membership of the Senate under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, there shall be nominated additional number of special seat members necessary to ensure that no more than two-thirds of the membership of the House are of the same gender.

(1B) The number of special seats under clause (1A) shall be determined after the declaration of the results of the general election.

Insertion of Article
98A

5. The Constitution is amended by inserting the following new Article immediately after Article 98—

98A. Transitional Provision

(1) For the purposes of ensuring that the current Parliament conforms to the principle that not more than two-thirds of the elected members of either House are of the same gender, there shall be nominated additional number of special seat members necessary to ensure that not more than two-thirds of the members elected under Articles 97(1)(a) and 98(1)(a) are of the same gender.

(2) The Independent Electoral and Boundaries Commission shall—

(a) within thirty days after coming into force of this Act, publish a notice in the gazette—

(i) requiring parliamentary political parties to submit fresh party lists for the purposes of nominating additional special seat members to ensure that no more than two-thirds of the members of the National Assembly and the Senate are of the same gender;

(ii) specifying the day upon which political parties shall submit the party lists in accordance with Article 90; and

- (iii) specifying the day for the nomination of candidates for the parliamentary election;
- (b) within thirty days after the receipt of party lists, designate, from each qualifying list, the party representatives on the basis of proportional representation in accordance with Article 90.
- (3) The procedures for handling nominations for party lists during a general elections under the law relating to elections shall apply with necessary modifications to nominations under this Article.
- (4) For the purposes of Article 90(4), a person elected under this Article shall be deemed to have served a full term.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Constitution of Kenya through Parliamentary initiative by proposing amendments which do not constitute matters set out under Article 255(1) requiring approval through a referendum. The amendments relate to:

- (a) Amending Article 90 to accommodate the proposals to amend Articles 97 and 98 accordingly;
- (b) Amending Article 97 to provide for a formula to nominate additional special seat members of the National Assembly if, after declaration of results following a national election, the membership of the National Assembly does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender;
- (c) Amending Article 98 to provide for a formula to nominate additional special seat members of the Senate if, after declaration of results following a national election, the membership of the Senate does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender; and
- (d) Inserting a transitional Article 98A to enable the current Parliament to conform with the requirements of Article 81(b).

The structure of the Bill is as follows:

Clause 1 provides for the title of the Bill.

Clause 2 proposes to amend Article 90 to require that the election for the special seats to be added in the National Assembly and Senate shall be on the basis of proportional representation by use of party lists.

Clause 3 proposes to amend Article 97 to provide 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. The amendment is intended to take effect only in the event that the membership of the National Assembly does not conform to the constitutional principle, that no more than two-thirds of the members of the House are of the same gender.

Clause 4 proposes to amend Article 98 to provide 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. The amendment is intended to take effect only in the event that the membership of the Senate does not conform to the constitutional principle, that no more than two-thirds of the members of the House are of the same gender.

Clause 5 proposes to insert a new Article 98A to enable parliamentary political parties to prepare fresh party lists for nomination of special seat members necessary to ensure that not more than two-thirds of the elected membership of the current Parliament are of the same gender.

Statement that the proposed Bill does not relate to matters set out under Article 255 of the Constitution

None of the proposed amendments relate to the matters set out under Article 255 (1) and therefore need not be approved by a referendum.

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

Dated the day February, 2024

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Chairperson, Justice and Legal Affairs Committee

Article 90 of the Constitution which it is proposed to amend

90. Allocation of party list seats

(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—

- (e) 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;
- (f) 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
- (g) 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 which it is proposed to amend

97. Membership of the National Assembly

(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 which it is proposed to amend

98. Membership of the Senate

(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).