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NATIONAL ASSEMBLY BILLS, 2018

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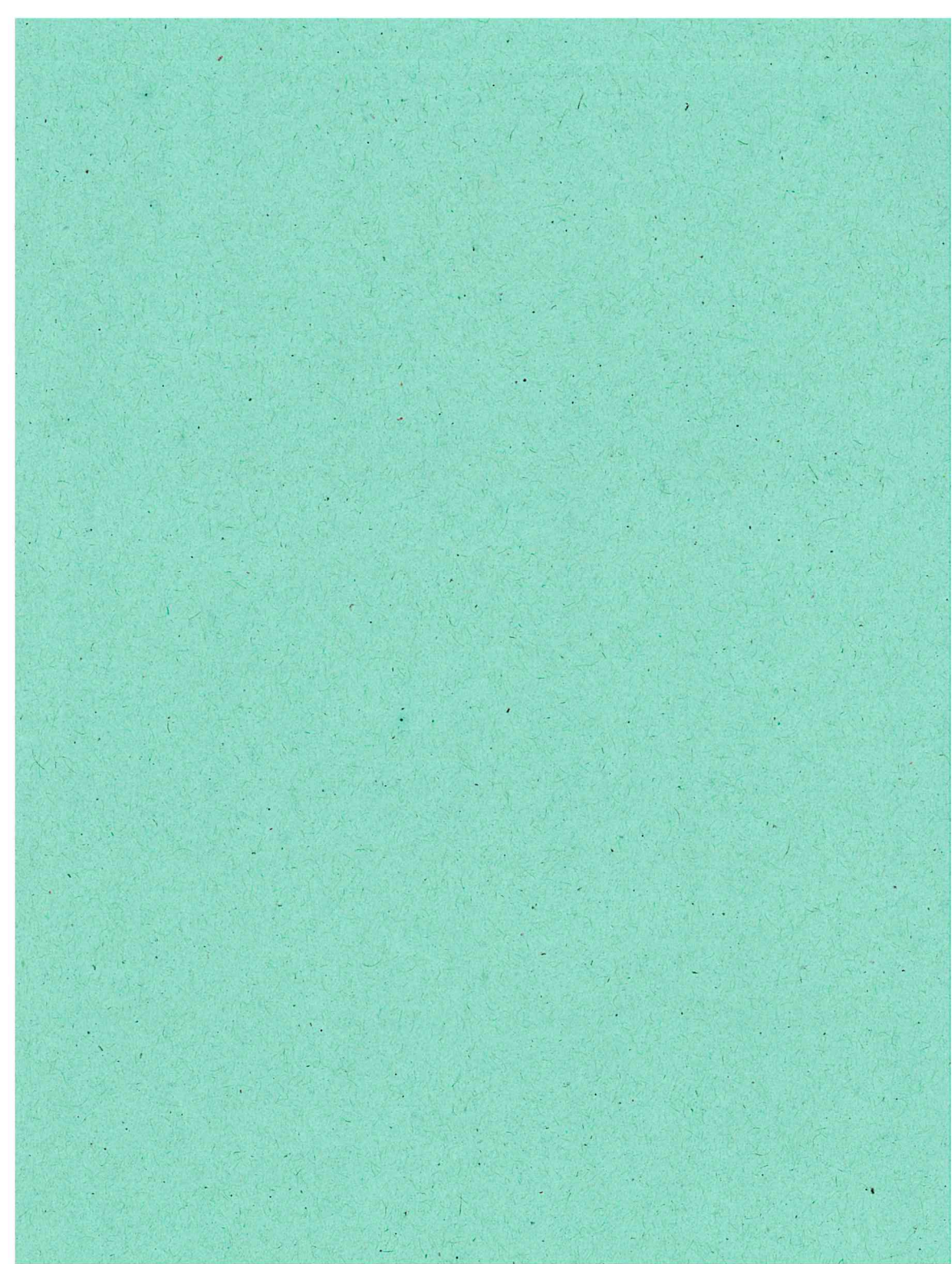
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**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2018**

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 101 of the Constitution of Kenya is amended by deleting the words “second Tuesday in August” appearing in clause (1) and substituting therefor the word “third Monday in December”.

Amendment of Article 101 of the Constitution of Kenya.

3. Article 136 of the Constitution of Kenya is amended in clause (2) by deleting the word “second Tuesday in August” appearing in paragraph (a) and substituting therefor the words “third Monday in December”.

Amendment of Article 136 of the Constitution of Kenya.

4. Article 177 of the Constitution of Kenya is amended in clause (1) by deleting the words “second Tuesday in August” appearing in paragraph (a) and substituting therefor the words “third Monday in December”.

Amendment of Article 177 of the Constitution of Kenya.

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

Amendment of Article 180 of the Constitution of Kenya.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal objective of the Bill is to amend Articles 101 (1), 136 (2) (a), 177 (1) (a) and 180 (1) of the Constitution of Kenya by changing the existing date for the general election for members of Parliament, the President, member of County Assembly and the county governors and deputy county governors from second Tuesday of August in every fifth year to third Monday in December in every fifth year.

The Bill seeks to introduce a new date for conducting a general election that would be more favourable to Kenya's circumstances.

The amendment is to ensure that the date of elections reflects the unique circumstances and tradition of Kenya. The current date for the general elections unduly disrupts the education calendar and most importantly the conduction of national examination in case of either a fresh election or a "run-off" or an invalidation of a Presidential election. Also, the tradition of reading the Budget concurrently in East Africa has been disrupted by the current election date.

The amendment seeks to restore the tourism high season and the aspirations of a section of Kenyans who are not able to get time out of their busy schedules to take part in the general elections at their places of preference. The amendment will also clarify and put to rest all doubts regarding the exact date of the next general elections and the term of the current Parliament.

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

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

Statement as to whether the Bill does concerns county governments

The Bill affects the functions of the county governments and is therefore a Bill concerning counties for purposes of the Standing Orders.

Statement 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 occasion additional expenditure of public funds.

Dated the 17th November, 2017.

CHRIS WAMALWA,
Member of Parliament.

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 mentioned 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 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 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).

