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**THE TREATY MAKING AND RATIFICATION
(AMENDMENT) BILL, 2018**

A Bill for

AN ACT of Parliament to make amendments to the Treaty Making and Ratification Act and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Treaty Making and Ratification (Amendment) Act, 2018.

Short title.

2. The Treaty Making and Ratification Act, in this Act referred to as “the principal Act”, is amended by deleting section 8 and inserting therefor the following new section—

Amendment of section 8 of No. 45 of 2012.

Consideration by Parliament

8. (1) Where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speakers of Parliament for approval by Parliament.

(2) A treaty approved for ratification by the Cabinet under section 7 shall be considered by Parliament in accordance with the procedure set out in section 8A.

(3) The relevant parliamentary committee shall, during its consideration of the treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures.

(4) Parliament may approve the ratification of a treaty with or without reservations to specific provisions of the treaty.

(5) A proposed reservation shall be introduced as a provision in the treaty in accordance with the procedure set out in the Standing Orders.

3. The principal Act is amended by inserting the following new section immediately after section 8—

Insertion of section 8A of No. 45 of 2012.

Approval
process

8A. (1) The process of approval of a treaty shall commence in the National Assembly.

(2) The National Assembly shall consider a treaty within fourteen days of its submission to the National Assembly and shall forward its resolution to the Senate for consideration.

(3) If within fourteen days of submission of a treaty to the National Assembly, the National Assembly has not forwarded its resolution on the treaty to the Senate, the Senate shall commence its consideration of the treaty and shall forward its resolution to the National Assembly.

(4) If both Houses—

- (a) approve the ratification of a treaty; or
- (b) do not approve the ratification of a treaty;
- (c) the Speaker of the National Assembly shall, within seven days of the decision, notify the relevant Cabinet Secretary.

(5) Where one House approves the ratification of a treaty and the other House does not approve the ratification of that treaty, the treaty shall be referred to a joint committee for mediation in accordance with Article 113 of the Constitution which shall be applied with the necessary modifications.

(6) Parliament shall not approve—

- (a) the ratification of a treaty or part of it if its provisions are contrary to the Constitution; or
- (b) a reservation to a treaty or part of it if that reservation negates any of the provisions of the Constitution even if the

reservation is permitted under the relevant treaty.

(7) Nothing in this Act precludes the re-submission of a treaty to Parliament where approval for the ratification of the treaty had been denied.

4. Section 9 of the principal Act is amended—

Amendment of section 9 of No. 45 of 2012.

- (a) in sub-section (1) by deleting the words “the National Assembly” appearing immediately after the words “approved by” and inserting therefore the word “Parliament”; and
- (b) in sub-section (3) by deleting the words “the National Assembly” appearing immediately after the word “Where” and inserting therefore the word “Parliament”.

5. Section 15 of the principal Act is amended in subsection (1) by inserting the words “and the Senate” immediately after the words “laid before the National Assembly”.

Amendment of section 15 of No. 45 of 2012.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons

The purpose of the Bill is to amend the Treaty Making and Ratification Act, No. 45 of 2012, in order to set out the role of the Senate in the treaty making and ratification process.

The Constitution of Kenya at Article 2(6) states that “*any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution*”. Pursuant to Article 94(1) of the Constitution, *the legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament. Further, Article 94(5) provides that “no person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation”*.

Parliament consists of both the National Assembly and the Senate. Consequently, the function of considering and approving the ratification of treaties is a function that resides in both Houses of Parliament in exercise of their shared legislative authority under Article 94 of the Constitution.

The proposed amendments to the Treaty Making and Ratification Act are therefore intended to bring the provisions of the Act into conformity with the letter and spirit of the Constitution.

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 of how the Bill concerns County Governments

The Bill concerns county governments in terms of Article 110 (1) (a) of the Constitution as it affects the functions and powers of County Governments set out in the Fourth Schedule.

Treaties and conventions in Kenya as currently enshrined in the Constitution form part of the Laws of Kenya. The content of treaties and conventions impact the functions of county governments as stipulated in Part 2 of the Fourth Schedule to the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 31st July, 2018.

FATUMA ADAN DULLO,
Senator.

Section 8 of No. 45 of 2012 which it is proposed to amend—

Consideration by the National Assembly

8. Where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.

(1) Deleted by Act No. 18 of 2014, Sch.

(2) The relevant parliamentary committee shall, during its consideration of the Treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures.

(3) The National Assembly may approve the ratification of a treaty with or without reservations to specific provisions of the treaty.

(4) A proposed reservation shall be introduced as a provision into the treaty in accordance with the procedure set out in the Standing Orders.

(5) Deleted by Act No. 18 of 2014, Sch.

(6) Where the National Assembly refuses to approve the ratification of a treaty, the Clerk of the National Assembly shall submit the resolution of the House to the relevant Cabinet Secretary within fourteen days of the resolution.

(7) Deleted by Act No. 18 of 2014, Sch.

(8) The National Assembly shall not approve the ratification of a treaty or part of it if its provisions are contrary to Constitution, nor shall the House approve a reservation to a treaty or part of it if that reservation negates any of the provisions of the Constitution even if the reservation is permitted under the relevant treaty.

Section 9 of No. 45 of 2012 of which it is proposed to amend—

Approval for ratification

9. (1) Where the ratification of a treaty referred to in section 7 is approved by the National Assembly without any reservations to the treaty, the relevant Cabinet Secretary shall, within thirty days from the date of the approval of the ratification of treaty request the Cabinet Secretary to prepare the instrument of ratification of the treaty.

(2) Where a treaty referred to in section 7 is approved for ratification with reservations to some provisions of the treaty, the treaty shall be ratified with those reservations to the corresponding article in the treaty.

(3) Where the National Assembly refuses to approve the ratification of the treaty referred to in section 7, the Government shall not ratify the treaty.

[Act No. 18 of 2014, Sch.]