

**PARLIAMENT OF KENYA  
THE SENATE**

**SENATE BILLS DIGEST**

**THE TREATY MAKING AND RATIFICATION (AMENDMENT) BILL,  
SENATE BILLS NO. 23 OF 2018**

<b>Sponsor:</b>	Sen. Fatuma Adan Dullo
<b>Date of Publication:</b>	10 <sup>th</sup> August, 2018
<b>Date of First Reading:</b>	12 <sup>th</sup> September, 2018
<b>Committee referred to:</b>	Standing Committee on Justice, Legal Affairs and Human Rights
<b>Type of Bill:</b>	Ordinary Bill

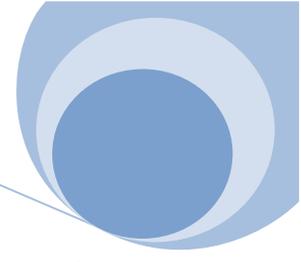
**1. Purpose of the Bill**

The principal objective of this Bill is to amend the Treaty Making and Ratification Act No. 45 of 2012.

**2. Background**

Article 2(6) of the Constitution provides that “*any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution*”. Article 94(1) of the Constitution further provides that the legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament. 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*”. It would therefore follow that both the Senate and the National Assembly would be involved in the process of treaty making and ratification.

Presently, section 8 of the Treaty Making and Ratification Act provides for the National Assembly to consider and approve the ratification of a treaty. Some of the treaties to which Kenya is a signatory to or to which Kenya proposes to be signatory to may not only affect the functions of the national government but also affect the functions of county governments under Part 2 of the Fourth Schedule to the Constitution. For instance a treaty affecting trade, boundaries or the environment would have a direct impact on the effective discharge of the functions of county governments under the Constitution. Article 96(1) of



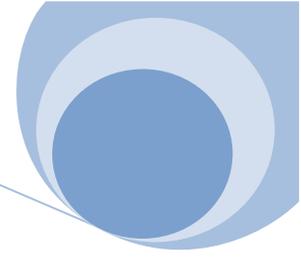
the Constitution provides that the Senate represents the counties, and serves to protect the interests of the counties and their governments. It would therefore follow that the Senate must be involved in the consideration and approval of ratification of treaties as there is a nexus between international obligations that Kenya may be subject to and the delivery of services by the county governments.

### **3. Overview of the Bill**

The Bill proposes an amendment to section 8 of the Act to provide as follows-

- (a) where the Cabinet approves ratification of a treaty, the Cabinet Secretary shall forward the treaty and a memorandum on the treaty to the Speakers of Parliament for approval by Parliament. The import of this amendment is that the Senate shall be involved in the process of treaty making and ratification. Presently the law provides only for the National Assembly to approve the ratification of treaties;
- (b) Parliament shall approve a treaty for ratification;
- (c) the process of approval of a treaty shall commence in the National Assembly which is required to consider a treaty within fourteen days and forward its resolution to the Senate for consideration;
- (d) in the event that the National Assembly fails to consider a treaty within fourteen days, the Senate shall commence consideration of the treaty and shall forward its resolution to the National Assembly;
- (e) the Speaker of the National Assembly shall notify the relevant Cabinet Secretary of the decision of Parliament either to approve or to reject the treaty within seven days of the decision.;
- (f) where one House approves the ratification of a treaty and the other House does not, the treaty shall be referred to a joint committee for mediation in accordance with Article 113 of the Constitution which shall apply with the necessary modifications.

The Bill proposes a further amendment to section 15 of the Act to provide that the Cabinet Secretary shall lay before the Senate and the National Assembly, at least once every financial year, a report containing records of all treaties which Kenya has ratified and which may in any way bind Kenya to specific actions.



#### **4. Consequences of the Bill**

The Bill seeks to provide an inclusive process for parliamentary approval of treaties for ratification. The involvement of the Senate in this process will ensure that the interests of counties, within the context of international obligations, are protected. Consequently, counties will play an active role in ensuring that Kenya meets its international obligations.

#### **Way Forward**

Pursuant to standing order 140(5) of the Senate Standing Orders, the Standing Committee on Justice, Legal Affairs and Human Rights shall facilitate public participation and shall take into account the views and recommendations of the public when the committee submits its report to the Senate.

Further, pursuant to standing order 143(1) of the Senate Standing Orders, the Committee is required to submit its report to the Senate within thirty (30) calendar days of the committal of the Bill to the Committee, therefore, **by 12<sup>th</sup> October, 2018.**

**Any comments on the Bill may be submitted to the Office of the Clerk of the Senate, 1<sup>st</sup> Floor, Main Parliament Buildings, Nairobi, Kenya, through P.O. Box 41842-00100, Nairobi, Kenya or email: [senatebills@parliament.go.ke](mailto:senatebills@parliament.go.ke).**

#### **Note:**

1. This Digest reflects the Bill as published and does not cover any subsequent amendments to the Bill made after publication of the Bill.
2. The Digest does not have any official legal status.