

SPECIAL ISSUE

Kenya Gazette Supplement No. 108 (National Assembly Bills No. 53)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2019

NAIROBI, 4th July, 2019

CONTENT

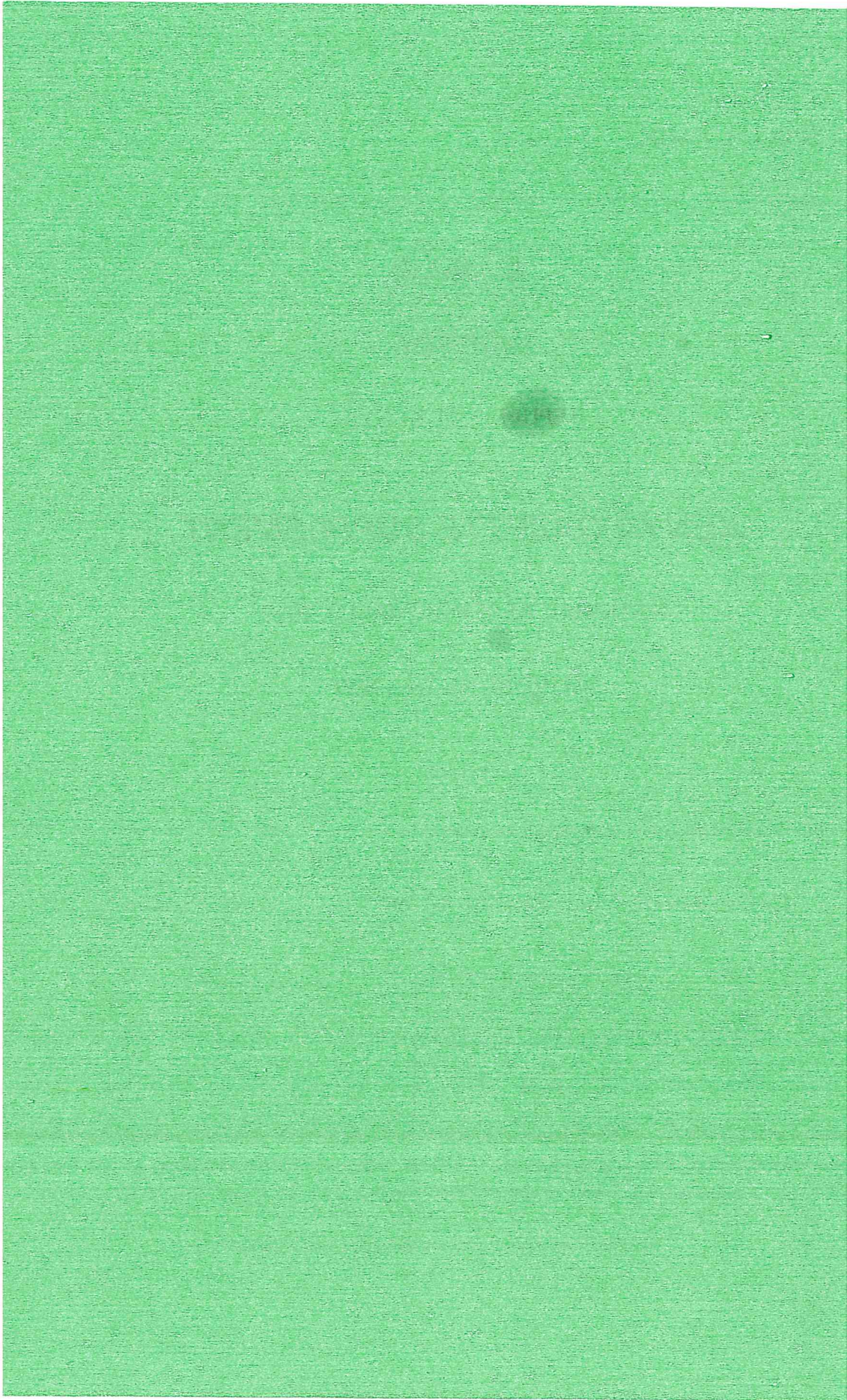
Bill for Introduction into the National Assembly—

PAGE

The Constitution of Kenya (Amendment) Bill, 2019 863



PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI



THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2019

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, 2019. Short title.

2. Article 89 of the Constitution is amended—

Amendment of
Article 89 of the
Constitution of
Kenya.

(a) by inserting the following new clause immediately after clause (1) as follows—

“(1A) There shall be one thousand four hundred and fifty wards for the purposes of the election of the members of county assemblies provided for in Article 177 (1) (a).”

(b) by deleting clause 3 and substituting therefor the following new clause (3) —

“(3) The Independent Electoral and Boundaries Commission shall—

(a) at least twelve months before a general election of members of Parliament designate—

(i) two adjacent constituencies in each county to be used as electoral units for the purposes of the election of members of Parliament specified in Article 97(1) (b) on the basis of geographical proximity;

(ii) three constituencies with the least number of voters in each county with an odd number of constituencies for the purposes of election of Members of Parliament specified in Article 97 (1) (b); and

(iii) two adjacent wards within each county to be used as electoral units for the purposes of the election of members of county assemblies specified in Article 177 (1) (b) on the basis of geographical proximity.

- (b) review the names and boundaries of constituencies and wards at intervals of not less than eight years, but not more than twelve years, and any review shall be completed at least twelve months before a general election of members of Parliament and county assemblies.
- (c) in clause (5) by inserting the words “or ward” immediately after the words “each constituency”

3. Article 90 of the Constitution is amended in clause (1) by deleting the expression “(b), (c) and (d) and for the members of the county assemblies under Article 177 (1) (b)” appearing immediately after the expression “98 (1)” and substituting therefor the expression “(c) and the members of the county assemblies under Article 177 (1) (b)”.

Amendment of
Article 90 of the
Constitution of
Kenya.

4. Article 97 of the Constitution is amended —

(a) in clause (1) by—

- (i) deleting subclause (b) and substituting therefor the following new subclause —

“(b) subject to clause (3), one hundred and thirty-six women each elected by the registered voters of two adjacent constituencies in each county, the two adjacent constituencies constituting a single member constituency.

- (ii) deleting subclause (c) and substituting therefor the following new subclause —

“(c) twenty-two persons with disability nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90;

(b) by inserting the following new clauses immediately after clause (2)—

“(3) For the purposes of clause (1) (b), the three constituencies with the least number of registered voters shall constitute a single member constituency in counties with an odd number of constituencies.

Amendment of
Article 97 of the
Constitution of
Kenya.

(4) The nominations under clause (1) (c) shall—

- (a) ensure the membership of the National Assembly is constituted in accordance with Article 27 (8);
- (b) subject to clause (3)(a), be representative of other special interests, including the youth and workers.

(5) The provisions of clause 1 (b) shall lapse on the expiry of a period of ten years from the date of the first general elections after the commencement of this Act subject to clause (6).

(6) Parliament may enact legislation to extend the period under clause (5) for one further fixed period not exceeding ten years.

(7) A Bill to enact the provisions of clause (6) shall be passed by a vote supported by not less than two-thirds of all members of the National Assembly and not less than two-thirds of all the county delegations in the Senate.”

5. Article 98 of the Constitution is amended in clause (1)—

Amendment of
Article 98 of the
Constitution of
Kenya.

- (i) by deleting subclause (a) and substituting therefor the following new subclause—

“(a) ninety-four members elected by the voters in the counties, each county constituting a constituency for the election of one man and one woman;

- (ii) by deleting subclause (b);

- (iii) by deleting subclause (c) and substituting therefor the following new subclause (c)—

“(c) six members nominated by political parties according to their proportion of members of the Senate elected under clause (1) (a) in accordance with Article 90 as follows—

- (i) four members representing persons with disabilities; and

- (ii) two members representing the youth and elderly members of the society;”

- (iv) by deleting subclause (d).

6. Article 177 of the Constitution is amended—

- (a) in clause (1) by deleting subclause (b) and substituting therefor the following new subclause

Amendment of
Article 177 of
the Constitution
of Kenya.

“(b) seven hundred and twenty-five women elected by the registered voters of at least two adjacent wards in each county, the adjacent wards constituting a single member ward”

(b) in clause (2) by deleting the expression “(b) and” appearing immediately after the expression “clause (1)”;

(c) by deleting clause (3) and substituting therefor the following new clause (3) —

“(3) For the purposes of clause (1) (b), the adjacent wards shall fall within the county boundaries.

(d) by inserting the following new clauses immediately after clause 3—

“(3A) The nominations under clause (1) (c) shall ensure the membership of the National Assembly is constituted in accordance with Article 27 (8).

(3B) The provisions of clause 1 (b) shall lapse on the expiry of a period of ten years from the date of the first general elections after the commencement of this Act subject to clause (3C).

(3C) Parliament may enact legislation to extend the period under clause (3B) for one further fixed period not exceeding ten years.

(3D) A Bill to enact the provisions of clause (3C) shall be passed by a vote supported by not less than two-thirds of all members of the National Assembly and not less than two-thirds of all the county delegations in the Senate.”

7. The number of members of the National Assembly, the Senate and county assemblies shall remain the same as the number existing before the commencement date of this Act for the purposes of the unexpired term of Parliament and the County Assemblies.

Transition.

MEMORANDUM OF OBJECTS AND REASONS

Statement of object and reasons

This is a Bill to amend the Constitution by parliamentary initiative in terms of Article 256 of the Constitution. The Bill seeks to amend the Constitution in order to ensure that the number of Members of Parliament reflect the requirement of Article 27 (8) that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. The Bill further seeks to ensure that the membership of Parliament also reflects the requirement of Article 54(2) of the Constitution that at least five percent of the members of the public in elective and appointive bodies be persons with disabilities.

With regard to the Membership of County Assemblies, the Bill seeks to limit the number of representative wards to one thousand four hundred and fifty and provide for the election of one woman for at least every two wards in a County for purposes of gender parity and to remove the provision for post-election gender top-up seats.

The Constitution sets out equality and freedom from discrimination as fundamental rights and freedoms. The proposed amendment seeks to entrench gender equality and the inclusion of historically marginalized persons in the representation of the people by reserving a minimum number of seats in Parliament for women and persons with disability. The Bill shall require a referendum in terms of Article 255 of the Constitution.

Clause 1 is the short title.

Clause 2 of the Bill proposes to amend Article 89 so as to empower the Independent Electoral and Boundaries Commission to designate adjacent constituencies and wards for the election of women to Parliament and county assemblies.

Clause 3 of the Bill proposes to amend Article 90 to remove the reference to the election under Article 98 (1) (b) and 177 (1) (b) which it is proposed to change from nominative to elective.

Clause 4 of the Bill proposes to amend Article 97 increase the number of elected women members of the National Assembly from forty-seven to one hundred and thirty six. It further seeks to increase the number of persons to be nominated to the National Assembly from twelve to twenty two and limit the nominative seats to persons with disability. The proposal contains a sunset clause of ten years with a window of extension for a further ten years through an Act of Parliament.

Clause 5 of the Bill proposes to Amend Article 98 to provide for the election of two members of the Senate of each gender by the electorate in the counties. The clause also proposes the nomination of four persons with disability and two youth to the Senate.

Clause 6 of the Bill proposes to amend Article 177 to provide for the election of a woman member of County assembly for at least every two wards within each county for the purpose of gender parity and removes the provisions on post-election gender top-up seats.

Clause 7 provides for the transition into the proposed membership of Parliament and county assemblies by saving the unexpired term of Parliament and county assemblies from the application of the proposed amendments.

Statement of delegation of legislative powers

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

Statement of whether the Bill concerns county governments

This Bill is a Bill concerning county governments in terms of Article 110(1) of the Constitution as it contains provisions affecting the functions, powers and finances of county governments and relates to the election of members of a county assembly. This Bill shall require the approval of both Houses of Parliament in terms of Article 256 of the Constitution.

Statement of whether the Bill is a money Bill

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 4th July, 2019.

G. B. SHOLLEI,
Member of Parliament.

Article 89 of the Constitution which it is proposed to amend.

Delimitation of electoral units.

89. (1) There shall be two hundred and ninety constituencies for the purposes of the election of the members of the National Assembly provided for in Article 97(1)(a).

(2) The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years, but any review shall be completed **at least twelve months** before a general election of members of Parliament.

(3) The Commission shall review the number, names and boundaries of wards periodically.

(4) If a general election is to be held within twelve months after the completion of a review by the Commission, the new boundaries shall not take effect for purposes of that election.

(5) The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota, but the number of inhabitants of a constituency may be greater or lesser than the population quota in the manner specified in clause (6) to take account of—

- (a) geographical features and urban centres;
- (b) community of interest, historical, economic and cultural ties; and
- (c) means of communication.

(6) The number of inhabitants of a constituency or ward may be greater or lesser than the population quota by a margin of not more than—

- (a) forty per cent for cities and sparsely populated areas; and
- (b) thirty per cent for the other areas.

(7) In reviewing constituency and ward boundaries the Commission shall—

- (a) consult all interested parties; and
- (b) progressively work towards ensuring that the number of inhabitants in each constituency and ward is, as nearly as possible, equal to the population quota.

(8) If necessary, the Commission shall alter the names and boundaries of constituencies, and the number, names and boundaries of wards.

(9) Subject to clauses (1), (2), (3) and (4), the names and details of the boundaries of constituencies and wards determined by the Commission shall be published in the *Gazette*, and shall come into effect on the dissolution of Parliament first following their publication.

(10) A person may apply to the High Court for review of a decision of the Commission made under this Article.

(11) An application for the review of a decision made under this Article shall be filed within thirty days of the publication of the decision in the *Gazette* and shall be heard and determined within three months of the date on which it is filed.

(12) For the purposes of this Article, “population quota” means the number obtained by dividing the number of inhabitants of Kenya by the number of constituencies or wards, as applicable, into which Kenya is divided under this Article.

Article 90 of the Constitution 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 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—

- (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 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 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 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.