

SPECIAL ISSUE

Kenya Gazette Supplement No. 138 (Senate Bills No. 16)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2025

NAIROBI, 8th August, 2025

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**THE CONSTITUTION OF KENYA (AMENDMENT)
(No. 2) BILL, 2025**

A Bill for

AN ACT of Parliament to amend the Constitution of Kenya.

ENACTED by the Parliament of Kenya, as follows –

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| <p>1. This Act may be cited as the Constitution of Kenya (Amendment) (No. 2) Act, 2025.</p> | <p>Short title.</p> |
| <p>2. This Act shall apply to the general elections following the coming into force of this Act.</p> | <p>Application.</p> |
| <p>3. Article 90 of the Constitution is amended by —</p> <p>(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)(ca) and (1A) and 98(1)(b), (c), (d) and (1A)";</p> <p>(b) in clause (2) by inserting the following new paragraphs immediately after paragraph (c)—</p> <p>(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; and</p> <p>(e) each party list reflects the representation of the marginalized groups set out in Article 100 to the greatest extent possible taking into account the nature of the party list;</p> <p>(c) inserting the following new clause immediately after clause (3) —</p> <p style="padding-left: 40px;">(4) A person elected under clause (1) for a seat shall not hold such office for more than two terms.</p> | <p>Amendment of Article 90 of the Constitution</p> |
| <p>4. Article 97 of the Constitution is amended —</p> <p>(a) in clause (1) —</p> <p style="padding-left: 40px;">(i) by deleting the word "persons with disabilities" appearing immediately after the words "including the youth" in paragraph (c);</p> | <p>Amendment of Article 97 of the Constitution.</p> |

(ii) by inserting the following new paragraph immediately after paragraph (c) —

(ca) five percent of the total number of members in paragraphs (a), (b) and (c) nominated by parliamentary political parties according to their proportion of members of the National Assembly and in accordance with Article 90, to represent persons with disabilities.

(b) 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 not 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 a general election.

5. Article 98 of the Constitution is amended —

Amendment of
Article 98 of the
Constitution.

(a) in clause (1) by deleting paragraph (d) and substituting therefor the following new paragraph —

(d) five percent of the total number of members in paragraphs (a), (b) and (c) nominated by parliamentary political parties according to their proportion of members of the Senate and in accordance with Article 90, to represent persons with disabilities.

(b) by inserting the following new clauses immediately after clause (1) —

(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 a general election.

6. Article 101 of the Constitution is amended in clause (2) by deleting the words “under Article 97 (1)(c) or of the Senate under Article 98 (1)(b),(c) or (d)” appearing immediately after the words “National Assembly” in the introductory clause and substituting therefor the words under “Article 97(1)(c), (ca) or (1A) or of the Senate under Article 98 (1)(b),(c), (d) or (1A)”.

Amendment of
Article 101 of the
Constitution

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Constitution of Kenya through Parliamentary initiative by-

- (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; and
- (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.

The Bill also seeks to amend the Constitution of Kenya to provide for additional seats in the National Assembly and Senate in order to implement the principle of at least five percent of the members of the public in elective and appointive bodies should be persons with disabilities.

The Bill proposes to amend Articles 97 and 98 of the Constitution to ensure that five percent of members of the National Assembly and the Senate are representatives of persons with disability. This is intended to promote representation of PWDs in the National Assembly and Senate so as to address the historical exclusion of PWDs from decision-making processes, resulting in laws and policies that do not reflect their unique challenges and needs. By ensuring the adequate representation of PWDs in government, the Bill aims to ensure that their voices are heard, and their interests and needs are taken into account in decision-making.

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 23rd July, 2025.

AARON CHERUIYOT,
Senator.

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-

- (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 that the Bill proposes 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 that the Bill proposes 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).

101. Election of members of Parliament

(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 referred to 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.