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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2018**

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**NAIROBI, 10th December, 2018**

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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. This Act shall apply to general elections following the coming into force of this Act. Application.
3. Article 6 of the Constitution is amended by— Amendment of Article 6 of the Constitution.
  - (a) deleting clause (1) and substituting therefor the following new clause -
    - (1) The territory of Kenya is divided into the National Capital City and the counties specified in the First Schedule.
  - (b) inserting the following new clauses immediately after clause (1) —
    - (1A) The National Capital City shall be known as Nairobi and shall be the seat of the National Government.
    - (1B) The President shall, in exercise of the powers conferred upon him by Article 132(2)(a), appoint for the National Capital City, a Cabinet Secretary who shall exercise such powers and perform such functions as may be delegated to the Cabinet Secretary from time to time by the President.
    - (1C) The National Capital City shall comprise-
      - (a) constituencies for purposes of the election of members of the National Assembly provided for under Article 97 (1)(a); and
      - (b) such administrative structures as shall be provided for by an Act of Parliament.

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| <p><b>4.</b> Article 88 of the Constitution is amended in clause (4) by deleting paragraph (c) and substituting therefor the following new paragraph-</p> <p style="padding-left: 40px;">(c) the delimitation of constituencies, wards and the administrative structures provided for under Article 6(1C)(b);</p>   | <p>Amendment of Article 88 of the Constitution.</p>         |
| <p><b>5.</b> Article 89 of the Constitution is amended by deleting clause (3) and substituting therefor the following new clause-</p> <p style="padding-left: 40px;">(3) The Commission shall—</p> <p style="padding-left: 80px;">(a) review the number, names and boundaries of wards periodically;</p> <p style="padding-left: 80px;">(b) review the number, names and boundaries of the administrative structures provided for under Article 6(1C)(b) in the manner provided for by national legislation; and</p> <p style="padding-left: 80px;">(c) not delimit any wards in the National Capital City.</p> | <p>Amendment of Article 89 of the Constitution.</p>         |
| <p><b>6.</b> Article 97 of the Constitution is amended in clause (1) by deleting the words “forty-seven” appearing at the beginning of paragraph (b) and substituting therefor the words “forty-six”.</p>   | <p>Amendment of Article 97 of the Constitution.</p>         |
| <p><b>7.</b> Article 98 of the Constitution is amended in clause (1) by deleting the words “forty-seven” appearing at the beginning of paragraph (a) and substituting therefor the words “forty-six”.</p>   | <p>Amendment of Article 98 of the Constitution.</p>         |
| <p><b>8.</b> Article 200 of the Constitution is amended in clause 2(a) by deleting the words “capital city” appearing immediately after the words “governance of the” and substituting therefor the words “National Capital City”.</p>  | <p>Amendment of Article 200 of the Constitution.</p>        |
| <p><b>9.</b> The First Schedule to the Constitution is amended by deleting item 47.</p>   | <p>Amendment of the First Schedule to the Constitution.</p> |
| <p><b>10.</b> Parliament shall enact the legislation required under this Act within ninety days of the commencement of this Act.</p>  | <p>Enactment of legislation.</p>                            |

### **MEMORANDUM OF OBJECTS AND REASONS**

This Bill seeks to amend the Constitution exclude Nairobi from the ambit of county governments and to place it under the leadership of the National Government. The Bill further seeks to establish Nairobi as the National Capital City and empowers the President to nominate a Cabinet Secretary to be responsible for the management of the City.

Nairobi City is a focal point for development and Kenya's interaction with the rest of the world. It is the seat of the National Government, a strategic hub for business in Africa and the rest of the world and the headquarters of various international organs and embassies for numerous countries. Its cosmopolitan nature, central location and presence of key national government headquarters make it a city for all Kenyans.

Nairobi City is therefore distinct from other counties and requires to be managed and planned for differently. In addition, Nairobi faces unique challenges that are notably different from other counties yet it has been subjected to the same revenue sharing formula as other counties.

This Bill therefore proposes that Nairobi be managed by the National Government which is better resourced and utilizes a significant proportion of the resources in Nairobi.

The approach of having the national Capital managed by the central government has been adopted by many other countries including, Nigeria, Mexico and the United States of America. Indeed at independence, the quasi-federal system of government adopted by Kenya distinguished Nairobi Area from the seven other semi-autonomous regions (*Majimbo*s) despite the fact the regions had extensive political and development powers for delivery of public services.

The Bill is alive to the power of the people and their right to be represented. As such, this right will continue to be fulfilled through the election of representatives to the National Assembly.

AARON CHERUIYOT,  
*Senator.*

*Article 6 which it is proposed to amend—*

## 6. Devolution and access to services

(1) The territory of Kenya is divided into the counties specified in the First Schedule.

(2) The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.

(3) A national State organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service.

*Article 88 which it is proposed to amend—***Independent Electoral and Boundaries Commission.**

88. (1) There is established the Independent Electoral and Boundaries Commission.

(2) A person is not eligible for appointment as a member of the Commission if the person—

- (a) has, at any time within the preceding five years, held office, or stood for election as—
  - (i) a member of Parliament or of a county assembly; or
  - (ii) a member of the governing body of a political party; or

(b) holds any State office.

(3) A member of the Commission shall not hold another public office.

(4) The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution, and any other elections as prescribed by an Act of Parliament and, in particular, for—

- (a) the continuous registration of citizens as voters;
- (b) the regular revision of the voters' roll;
- (c) the delimitation of constituencies and wards;
- (d) the regulation of the process by which parties nominate candidates for elections;
- (e) the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results;

- (f) the registration of candidates for election;
- (g) voter education;
- (h) the facilitation of the observation, monitoring and evaluation of elections;
- (i) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;
- (j) the development of a code of conduct for candidates and parties contesting elections; and
- (k) the monitoring of compliance with the legislation required by Article 82 (1) (b) relating to nomination of candidates by parties.

(5) The Commission shall exercise its powers and perform its functions in accordance with this Constitution and national legislation.

*Article 89 which it is proposed to amend-*

89. Delimitation of electoral units

(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 97 which it is proposed 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 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 200 which it is proposed to amend—*

**200. Legislation on Chapter**

(1) Parliament shall enact legislation providing for all matters necessary or convenient to give effect to this Chapter.

(2) In particular, provision may be made with respect to—

(a) the governance of the capital city, other cities and urban areas;

(b) the transfer of functions and powers by one level of government to another, including the transfer of legislative powers from the national government to county governments;

(c) the manner of election or appointment of persons to, and their removal from, offices in county governments, including the qualifications of voters and candidates;

(d) the procedure of assemblies and executive committees including the chairing and frequency of meetings, quorums and voting; and

(e) the suspension of assemblies and executive committees.