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TWELFTH PARLIAMENT (SIXTH SESSION)

THE SENATE

PAPERS LAID

DATE	5/04/2022
TABLED BY	DLM
COMMITTEE	—
CLERK AT THE TABLE	MR. AMOLO

Eg 31/03/22

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

REPORT ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL  
(SENATE BILLS NO. 46 OF 2021)

Approved  
31/3/2022

Rt. Hon Speaker  
You may approve  
for tabling  
31/03/22

Clerk's Chambers,  
First Floor,  
Parliament Buildings,  
**NAIROBI.**

DC-EG  
Recommended & Forwarded March, 2022  
31/03/22

PARLIAMENT  
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31 MAY 13

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RT. Hon. Charles  
for many years  
for the  
21/05/13

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## FOREWORD BY THE CHAIRPERSON

1. One of the objects of devolution as provided for under Article 174 of the Constitution is ‘to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya’. The Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) seeks to ensure that the expansive county of Kitui is divided into Kitui County and Mwingi County, thereby bringing services and resources closer to the people.
2. The Bill was read a First Time in the Senate on 29<sup>th</sup> September, 2021 and thereafter stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. Pursuant to Article 118 of the Constitution and standing order 140(5) of the Senate Standing Orders, the Committee proceeded to invite stakeholder and public comments on the Bill, whereupon it received written submissions from one (1) stakeholder.
3. While the Committee intended to undertake extensive public hearings on the Bill in Kitui County and across various regions of the country, this was hindered by the prevailing COVID-19 situation in the country at the time. Notably, between October and December 2021, Kenya reached an all-time high COVID-19 infection rate, with positive results in nearly a third of tests, fueled by the highly transmissible omicron variant.
4. Upon resumption of consideration of the Bill during the first part of the Sixth Session, the Committee observed that –
  - i) Article 256(1) (c) of the Constitution provides that a Bill to amend the Constitution by parliamentary initiative ‘shall not be called for second reading in either House within ninety days after the first reading of the Bill in that House’;
  - ii) Unlike other Bills, the Constitution at Article 256(2), imposed a specific obligation on Parliament ‘to publicise any Bill to amend this Constitution, and facilitate public discussion about the Bill.’
  - iii) While Article 94(3) of the Constitution grants Parliament the power to alter county boundaries, and Article 188(2) outlines the criteria and procedure to be followed in making such an alteration, the Constitution is silent on the criteria and procedure to be followed in varying the number of counties, either by

- increasing or reducing their number. Consequently, there would be need for extensive stakeholder and public engagements in determining these aspects prior to consideration and passage of a Bill to increase or reduce the number of counties;
- iv) The time remaining in the legislative calendar of the current Parliament would not be sufficient to have the Bill considered in the said manner and passed by both Houses by mid-June, when the two Houses were scheduled to adjourn *sine die*; and
  - v) The schedule of activities preceding the 2022 General Elections was well underway. This meant that it may not be possible to facilitate extensive public discussions on the Bill, as required under Article 256(2) of the Constitution and, even if the Bill was passed, there would not be sufficient time to undertake a referendum or to have the provisions of the Bill apply to the 2022 General Elections.
5. Arising from the said observations, the Standing Committee on Justice, Legal Affairs and Human Rights recommends that –
- i) the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) be not proceeded with, and that the sponsor withdraws the Bill, pursuant to standing order 154 of the Senate Standing Orders; and
  - ii) on commencement of the next term of Parliament, the Standing Committee on Justice, Legal Affairs and Human Rights to facilitate public discourse on the criteria and procedure to be followed in considering a Bill to increase or reduce the number of counties.
6. An opportunity may however be accorded to the Mover to move the Bill at Second Reading stage, and have Senators make their contributions, following which the Mover would withdraw the Bill before the Question on Second Reading of the Bill is put.
7. The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in undertaking this assignment. The Committee further wishes to thank the stakeholders who submitted written memoranda on the Bill, as well as the sponsor of the Bill, who robustly engaged with the Committee both at pre-publication stage and during the substantive consideration of the Bill.



7. It is now my pleasant duty, pursuant to standing order 143 (1), to present a Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021).

Signed.....

Date *29<sup>TH</sup> MARCH 2022* .....

**SEN. ERICK OKONG'O MOGENI, SC, MP,  
CHAIRPERSON,  
STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN  
RIGHTS**

## PREFACE

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to the Senate Standing Order 212 and is mandated to: -

*'consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.'*






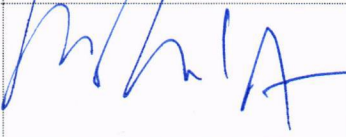



The Committee is comprised of --

- 1) Sen. Erick Okong'o Mogeni, SC, MP - Chairperson
- 2) Sen. (Canon) Naomi Jillo Waqo, MP - Vice Chairperson
- 3) Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP
- 4) Sen. James Orengo, EGH, SC, MP
- 5) Sen. Fatuma Dullo, CBS, MP
- 6) Sen. Mutula Kilonzo Junior, CBS, MP
- 7) Sen. (Dr) Irungu Kang'ata, CBS, MP
- 8) Sen. Johnson Sakaja, CBS, MP
- 9) Sen. Isaac Ngugi Githua, MP

The Minutes of the Sittings of the Committee in considering the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) are attached to this Report collectively as *Annex 1*.

**ADOPTION OF THE REPORT ON THE CONSTITUTION OF KENYA  
(AMENDMENT) BILL (SENATE BILLS NO. 46 OF 2021)**

**We, the undersigned Members of the Senate Standing Committee on Justice, Legal Affairs and Human Rights, do hereby append our signatures to adopt this Report –**

Sen. Erick Okong'o Mogeni, SC, MP	-Chairperson	
Sen. (Canon) Naomi Jillo Waqo, MP	-Vice-Chairperson	
Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP	-Member	
Sen. James Orengo, EGH, SC, MP	-Member	
Sen. Fatuma Dullo, CBS, MP	-Member	
Sen. Mutula Kilonzo Junior, CBS, MP	-Member	
Sen. (Dr) Irungu Kang'ata, CBS, MP	-Member	
Sen. Johnson Sakaja, CBS, MP	-Member	
Sen. Isaac Ngugi Githua, MP	-Member	



## CHAPTER ONE: INTRODUCTION

### A. Background

1. The object of the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) is to amend the Constitution of Kenya to ensure that resources and services are brought closer to the people by splitting the vast expansive Kitui County into two Counties, namely Kitui and Mwingi Counties, respectively.
2. As currently constituted, the larger Mwingi region has three constituencies. These are Mwingi Central, Mwingi North and Mwingi West. The proposed new Mwingi County shall also include Kitui East constituency. The four constituencies have a cumulative population of 558,000 people according to the 2019 national census report. This population is spread in twenty-one (21) wards distributed as follows –

CONSTITUENCY	WARD	
1. Mwingi Central	1.	Kivou ward
	2.	Nguni ward
	3.	Nuu ward
	4.	Mui ward
	5.	Central Ward
2. Mwingi West	1.	Kyome/Thaana Ward
	2.	Nguutani Ward
	3.	Kiomo/Kyethani Ward
	4.	Migwani Ward
3. Mwingi North	1.	Ngomeni Ward
	2.	Kyuso Ward
	3.	Mumoni Ward
	4.	Tharaka Ward
	5.	Tseikuru Ward
4. Kitui East	1.	Endau/Malalani Ward
	2.	Zombe/Mwitika Ward
	3.	Mutitu/Kaliku Ward
	4.	Voo/Kyamatu Ward
	5.	Nzambani Ward
	6.	Chuluni Ward

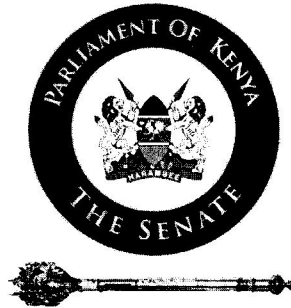
### C. Recommendation

27. Arising from the said observations, and following consultations with the sponsor of the Bill, the Standing Committee on Justice, Legal Affairs and Human Rights recommends that –
- a) the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) be **stepped down**, and that it be reintroduced for consideration early during the next term of Parliament, when there would be sufficient time to undertake extensive public participation and meet the timelines for processing of the Bill as set out in the Constitution; and
  - b) on commencement of the next term of Parliament, the Standing Committee on Justice, Legal Affairs and Human Rights to facilitate public discourse on the criteria and procedure to be followed in considering a Bill to increase or reduce the number of counties.

### LIST OF ANNEXES

<i>Annex 1:</i>	Minutes of the Committee in considering the Bill
<i>Annex 2:</i>	The Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021)
<i>Annex 3:</i>	Advertisement published in the <i>Daily Nation</i> and <i>Standard</i> newspapers on Friday, 1 <sup>st</sup> October, 2021
<i>Annex 4:</i>	Copies of stakeholder submissions on the Bill





**TWELFTH PARLIAMENT | SIXTH SESSION**

**MINUTES OF THE THIRTY FOURTH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON TUESDAY, 22<sup>ND</sup> MARCH, 2022, AT 10:30 AM.**

**PRESENT**

- |  |                                   |
|--|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP   | - Chairperson ( <b>Chairing</b> ) |
| 2. Sen. (Canon) Naomi Jillo Waqo, MP   | - Vice Chairperson                |
| 3. Sen. Fatuma Dullo, CBS, MP          | - Member                          |
| 4. Sen. Mutula Kilonzo Junior, CBS, MP | - Member                          |
| 5. Sen. (Dr.) Irungu Kang'ata, CBS, MP | - Member                          |
| 6. Sen. Isaac Ngugi Githua, MP         | - Member                          |

**ABSENT WITH APOLOGY**

- |  |          |
|--|----------|
| 1. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member |
| 2. Sen. James Orenge, EGH, SC, MP            | - Member |
| 3. Sen. Johnson Sakaja, CBS, MP              | - Member |

**SECRETARIAT**

- |                         |   |
|-------------------------|---|
| 1. Mr. Charles Munyua   | - Clerk Assistant                           |
| 2. Mr. Moses Kenyanchui | - Legal Counsel                             |
| 3. Mr. Mitchell Otoro   | - Legal Counsel                             |
| 4. Mr. Said Osman       | - Research Officer                          |
| 5. Mr. Kennedy Owuoth   | - Fiscal Analyst                            |
| 6. Ms. Purity Orutwa    | - Clerk Assistant ( <i>Taking minutes</i> ) |
| 7. Mr. James Kimiti     | - Hansard/ Audio Officer                    |
| 8. Ms. Hawa Abdi        | - Serjeant at Arms                          |
| 9. Ms. Sandra Alusa     | - Intern                                    |
| 10. Mr. Titus Michubu   | - Pupil                                     |

**MIN. NO. 180/2022**

**PRAYER**

The sitting commenced with a word of prayer by the Vice Chairperson.

**MIN. NO. 181/2022**      **ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. (Dr.) Irungu Kang'ata, CBS, MP.

**MIN. NO. 182/2022**      **THE POLITICAL PARTY PRIMARIES BILL (SENATE BILLS NO. 35 OF 2020)**

The Committee considered and adopted the Report on the Political Party Primaries Bill (Senate Bills No. 35 of 2020), having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. Isaac Ngugi Githua, MP.

**MIN. NO. 183/2022**      **THE ALTERNATIVE DISPUTE RESOLUTION BILL (SENATE BILLS NO.34 OF 2021)**

The Committee considered and adopted the Report on the Alternative Dispute Resolution Bill (Senate Bills No.34 of 2021), having been proposed by Sen. (Dr.) Irungu Kang'ata, CBS, MP and seconded by Sen. (Canon) Naomi Jillo Waqo, MP.

**MIN. NO. 184/2022**      **THE ELECTION (AMENDMENT) (NO.2) BILL (SENATE BILLS NO. 43 OF 2021)**

The Committee considered and adopted the Report on the Election (Amendment) (No.2) Bill (Senate Bills No. 43 of 2021) having been proposed by Sen. (Canon) Naomi Jillo Waqo, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

**MIN. NO. 185/2022**      **THE CONSTITUTION OF KENYA (AMENDMENT) BILL (SENATE BILLS NO. 46 OF 2021)**

The Committee considered and adopted the Report on the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021), having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. Isaac Ngugi Githua, MP.

**MIN. NO. 186/2022**      **PETITION ON AMENDMENT TO THE CONSTITUTION OF KENYA AND OTHER RELEVANT LAWS ON THE ELECTION OF A DEPUTY PRESIDENT AND A DEPUTY GOVERNOR**

The Committee considered and adopted the Report on a Petition by Taratisio Ireri Kawc, regarding proposed amendments to the Constitution and various statutes on the election of a Deputy President and Deputy Governor, whenever such a position became vacant. The Report was proposed by Sen. (Dr.) Irungu Kang'ata, CBS, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

**MIN. NO. 187/2022      ANY OTHER BUSINESS**

Members were informed that the following meetings were scheduled for Wednesday and Thursday that week, and that the respective stakeholders had confirmed attendance. Consequently, Members were urged to avail themselves for the meetings –

<b>No.</b>	<b>Date</b>	<b>Time</b>	<b>Meeting</b>
a)	Wednesday, 23 <sup>rd</sup> March, 2022	8.00 am	Meeting with the Attorney General and the Law Society of Kenya to consider a Statement sought by Sen. Samson Cherarkey, MP on unqualified persons practicing as Advocates in various private companies.
b)	Thursday, 24 <sup>th</sup> March, 2022	8.00 am	Meeting with the Chairperson of the Independent Electoral and Boundaries Commission to discuss the status of preparedness for the 2022 General Elections.

**MIN. NO. 188/2022      ADJOURNMENT**

The meeting was adjourned at 11:14am. The next meeting was scheduled for Wednesday, 23<sup>rd</sup> March at 8:00 am.



**SIGNED:** .....

**(CHAIRPERSON)**

**DATE:** ..... 30/03/2022 .....



**MIN. NO. 459/2021**

**I) THE ELECTION (AMENDMENT) BILL (SENATE BILLS NO. 42 OF 2021);**

**II) THE ELECTION (AMENDMENT) (NO. 2) BILL (SENATE BILLS NO. 43 OF 2021);**

**III) THE ELECTION (AMENDMENT) (NO 3) BILL (SENATE BILLS NO. 48 OF 2021); AND**

**IV) THE CONSTITUTION OF KENYA (AMENDMENT) BILL (SENATE BILLS NO. 46 OF 2021).**

The Committee considered the Election (Amendment) Bill (Senate Bills No. 42 of 2021); the Election (Amendment) (No. 2) Bill (Senate Bills No. 43 of 2021); the Election (Amendment) (No 3) Bill (Senate Bills No. 48 of 2021); and, the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021).

It was noted that, the Bills being of great public interest, there was need to ensure that adequate public participation was undertaken thereon, to avoid any legal challenges that may be brought up relating to the process for passage of the said Bills.

Consequently, the Committee resolved to hold a public hearing on the Bills on Friday, 3<sup>rd</sup> December, 2021.

**MIN. NO. 460/2021**

**ANY OTHER BUSINESS**

The Committee noted with concern that, following the tabling and debate on the Committee Reports relating to extrajudicial killings and the delay in appointment of Judges, the Chairperson of the Committee had been targeted in a sustained campaign on social media to malign his name and character. The Committee resolved to not be intimidated in the conduct of its business.

**MIN. NO. 461/2021**

**ADJOURNMENT**

There being no other business, the meeting was adjourned at 8.45 am. The next sitting will be held on Friday, 26<sup>th</sup> November, 2021 at 9.00 am, in Mombasa County.



**SIGNED: .....**  
**(CHAIRPERSON)**

**DATE: ..... 30/10/2022 .....**

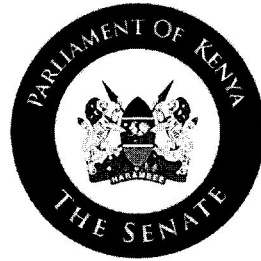
11. Clause 3 of the Bill proposes to amend Article 98(1)(a) of the Constitution to increase the number of elected Senators from forty-seven to forty-eight. Additionally, the clause proposes to amend Article 98(1)(b) of the Constitution to increase the specially elected women from sixteen to eighteen Senators.
12. Clause 3 of the Bill proposes to amend the First Schedule to the Constitution to insert county No. 15A, "Mwingi".

**F. Consequences of the Bill**

13. One of the objects of devolution as provided for under Article 174 of the Constitution is '*to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya*'. The Bill seeks to ensure that the now very expansive county of Kitui is divided into Kitui County and Mwingi County thereby bringing services and resources closer to the people.
14. Currently the larger Mwingi region has three constituencies: Mwingi Central, Mwingi North and Mwingi West. It is proposed that the new Mwingi County shall also include Kitui East constituency. The four constituencies have a cumulative population of 558,000 people according to the 2019 national census report. This population is spread in twenty-one (21) wards.
15. By increasing the number of counties, and increasing the number of specially elected Senators, the number of Senators will increase from the current sixty-seven to seventy. The number of women elected to represent each county in the National Assembly will also increase from forty-seven to forty-eight
16. The legislative proposal is a constitutional amendment by way of Parliamentary initiative as provided for under Article 256 of the Constitution. Additionally, if an amendment relates to any of the matters set out under Article 255(1), the amendment shall be subjected to a referendum in accordance with Article 255(2) of the Constitution.
17. One of the matters set out under Article 255(1) of the Constitution is '*the objects, principles and structure of devolved government*'. The intention of the Bill is to bring resources and services closer to the people. Additionally, Article 175 of the Constitution sets out the principles of devolved government. One of these principles

as provided for under Article 175(b) is that '*county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively*'. The proposed new county will require resources in order to deliver services.

18. Therefore, by increasing the number of counties, ensuring access to services and resources to the people, and the fact that the proposed new county will require reliable resources, the proposed amendment will be subjected to a referendum as provided for under Article 255 of the Constitution.



**TWELFTH PARLIAMENT | FIFTH SESSION**

**MINUTES OF THE NINETY-SIXTH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD AT WHITESANDS BEACH RESORT, IN MOMBASA COUNTY, ON FRIDAY, 26<sup>TH</sup> NOVEMBER, 2021 AT 10.00 A.M.**

**PRESENT**

- |  |                                   |
|--|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP         | - Chairperson ( <b>Chairing</b> ) |
| 2. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member                          |
| 3. Sen. Fatuma Dullo, CBS, MP                | - Member (V)                      |
| 4. Sen. (Dr.) Irungu Kang'ata, CBS, MP       | - Member                          |
| 5. Sen. Isaac Ngugi Githua, MP               | - Member (V)                      |

**ABSENT WITH APOLOGY**

- |  |                    |
|--|--------------------|
| 1. Sen. (Canon) Naomi Jillo Waqo, MP   | - Vice Chairperson |
| 2. Sen. James Orenge, EGH, SC, MP      | - Member           |
| 3. Sen. Mutula Kilonzo Junior, CBS, MP | - Member           |
| 4. Sen. Johnson Sakaja, CBS, MP        | - Member           |

**SECRETARIAT**

- |                         |   |
|-------------------------|---|
| 1. Dr. Johnson Okello   | - Director, Legal Services                  |
| 2. Ms. Mercy Thanji     | - Legal Counsel                             |
| 3. Mr. Charles Munyua   | - Clerk Assistant                           |
| 4. Mr. Said Osman       | - Research Officer                          |
| 5. Mr. Moses Kenyanchui | - Legal Counsel                             |
| 6. Ms. Lucianne Limo    | - Media Relations Officer                   |
| 7. Mr. Javan Nang'eyo   | - Sergeant at Arms                          |
| 8. Ms. Purity Orutwa    | - Clerk Assistant ( <i>Taking Minutes</i> ) |
| 9. Ms. Hawa Abdi        | - Sergeant at Arms                          |
| 10. Mr. James Kimiti    | - Hansard Officer                           |

**MIN. NO. 462/2021**

**PRAYER**

The sitting commenced with a word of prayer by Sen. Fatuma Dullo, CBS, MP.

3. Article 6(1) of the Constitution of Kenya provides that the territory of Kenya is divided into the counties specified in the First Schedule. The First Schedule then lists forty-seven (47) counties. This Bill therefore amends the First Schedule by introducing “Mwingi” as a county hived off from Kitui County.

**B. Prepublication scrutiny**

4. The draft Constitution of Kenya (Amendment) Bill, 2021 was submitted to the Honourable Speaker of the Senate on 13<sup>th</sup> April, 2021 and, pursuant to Senate Standing Order 125(3)(a), referred to the Standing Committee on Justice, Legal Affairs and Human Rights for pre-publication scrutiny and comments.
5. The Committee considered the legislative proposal and noted that—
  - a) The legislative proposal sought to amend the First Schedule of the Constitution to establish a new County named Mwingi, to be hived off the expansive Kitui County. Arising from this, the legislative proposal further sought to amend—
    - i) Article 98(1)(a) of the Constitution, to increase the number of elected Senators from forty-seven to forty-eight; and
    - ii) Article 98(1)(b) of the Constitution, to increase the number of women nominated to the Senate, under that provision, from sixteen to eighteen.
  - b) The legislative proposal would give rise to a Bill relating to matters specified under Article 255(1) of the Constitution and would, upon passage by Parliament, need to be subjected to a referendum as provided for at Article 255(2) and 256(5) of the Constitution.
  - c) While the Bill sought to amend Article 98(1)(a) of the Constitution on the membership of the Senate, a similar amendment ought to have been proposed to Article 97(1)(b) of the Constitution, to increase the number of women elected to represent each county in the National Assembly, from forty-seven to forty-eight.
  - d) The provisions of the legislative proposal referring to Article 98(1)(a) and (b) of the Constitution, on the membership of the Senate, would become moot in the event the Constitution of Kenya (Amendment) Bill, 2020 that is promoted by the Building Bridges Initiative, was passed.

Noting that a Bill to amend the Constitution cannot be amended, this would necessitate withdrawal of the Bill, its redrafting to reflect the revised membership of the Senate, republication, and re-introduction, pursuant to standing orders 154 and 125 of the Senate Standing Orders.

- c) The sponsor may amend the legislative proposal before its publication to include the proposed amendment to Article 97(1)(b) of the Constitution, to increase the number of women elected to represent each county in the National Assembly, from forty-seven to forty-eight.
6. The Committee therefore resolved to recommend to the Honourable Speaker of the Senate to direct that the legislative proposal be accepted and that it be published as a Bill, pursuant to Senate Standing Order 126(2).

**C. Publication, First Reading and Committal of the Bill**

7. The Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) was published *vide* Kenya Gazette Supplement No. 155 of 12<sup>th</sup> August, 2021 and was introduced in the Senate by way of First Reading on 29<sup>th</sup> September, 2021. A copy of the Bill is attached to this Report as *Annex 2*.
8. Pursuant to Article 118 of the Constitution and standing order 140(1) of the Senate Standing Orders, the Bill was committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration and public participation.

**D. Purpose of the Bill**

9. The purpose of the Bill is to amend the Constitution of Kenya to ensure that resources and services are brought closer to the people by splitting the vast expansive Kitui County into two Counties, Kitui and Mwingi, and to address the one-third gender rule in the composition of the Senate by increasing the specially elected women from sixteen to eighteen Senators.

**E. Overview of the Bill**

10. Clause 2 of the Bill proposes to amend Article 97(1)(b) of the Constitution to increase the number of women elected to represent each county in the National Assembly, from forty-seven to forty-eight.



**MIN. NO. 463/2021**      **ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, having been proposed by Sen. (Dr.) Irungu Kang'ata, CBS, MP and seconded by Sen. Isaac Ngugi Githua, MP.

**MIN. NO. 464/2021**      **JUDGMENT BY THE COURT OF APPEAL IN CIVIL APPEAL NO. E084 OF 2021 - SPEAKER OF THE NATIONAL ASSEMBLY OF THE REPUBLIC OF KENYA & ANOTHER Vs SENATE OF THE REPUBLIC OF KENYA & 12 OTHERS**

The Committee was taken through a brief on the Judgment delivered by the Court of Appeal on 19<sup>th</sup> November, 2021 in Civil Appeal No. E084 of 2021 - *Speaker of the National Assembly of the Republic of Kenya & Another Vs Senate of the Republic of Kenya & 12 Others*.

It was noted that the Judgment had greatly eroded the gains made in the Judgment delivered by the High Court on 29<sup>th</sup> October 2020 in HC Petition No. 284 of 2019. Consequently, it was resolved that an appeal be preferred to the Supreme Court on the aspects of the Court of Appeal Judgment that the Senate was dissatisfied with.

In this regard, the Committee directed the legal team to file the Notice of Appeal within the required timelines. The Committee would convene at a later date to consider the draft Petition and Record of Appeal to be filed at the Supreme Court.

**MIN. NO. 465/2021**      **THE ALTERNATIVE DISPUTE RESOLUTION BILL (SENATE BILLS NO. 34 OF 2021)**

The Committee noted that, due to the extensive public and stakeholder submissions received on the Bill, it was important that the matrix be considered at a physical sitting during which at least five Members were present, to enable decisions to be made on the respective clauses of the Bill.

Consequently, further consideration of the Bill was deferred.

**MIN. NO. 466/2021**      **THE LIFESTYLE AUDIT BILL, (SENATE BILL NO. 36 OF 2021)**

The Committee noted that, due to the extensive public and stakeholder submissions received on the Bill, it was important that the matrix be considered at a physical sitting during which at least five Members were present, to enable decisions to be made on the respective clauses of the Bill.

Consequently, further consideration of the Bill was deferred.

## CHAPTER TWO: CONSIDERATION OF THE BILL

### A. Invitation of stakeholder submissions on the Bill

19. The Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) was read a First Time in the Senate on 29<sup>th</sup> September, 2021 and thereafter stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.
20. In compliance with the provisions of Article 118 of the Constitution and Standing Order 140 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the *Daily Nation* and *Standard* newspapers on Friday, 1<sup>st</sup> October, 2021 inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website and social media platforms. A copy of the advertisement is attached as *Annex 3*.
21. In response to the advertisement and invitations, the Committee received written submissions from one (1) stakeholder, that is the Kariobangi Paralegal Network. A copy of the said submissions is attached to this Report as *Annex 4*.

### B. Consideration of the Bill by the Committee

22. The Committee, in considering the Bill, noted that it was required to undertake extensive public participation to comply with the Constitution and judicial pronouncements on the threshold to be met in processing such amendment to the Constitution. Unlike other Bills, the Constitution, at Article 256(2), imposed a specific obligation on Parliament '*to publicise any Bill to amend this Constitution, and facilitate public discussion about the Bill.*'
23. In this regard, the Committee proposed to undertake a series of public hearings on the Bill in Kitui County and across various regions of the country. Due to the prevailing COVID-19 situation in the country at the time, the Committee was however unable to undertake the said visits during the last part of the Fifth Session.
24. Consequently, the Committee resumed consideration of the Bill during the first part of the Sixth Session.

### CHAPTER THREE: COMMITTEE OBSERVATIONS AND RECOMMENDATION

#### B. Observations

25. One of the objects of devolution as provided for under Article 174 of the Constitution is 'to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya'. The Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) seeks to ensure that the now very expansive county of Kitui is divided into Kitui County and Mwingi County, thereby bringing services and resources closer to the people.
26. The Committee, in considering the Bill, observed that –
- i) Article 256(1) (c) of the Constitution provides that a Bill to amend the Constitution by parliamentary initiative 'shall not be called for second reading in either House within ninety days after the first reading of the Bill in that House';
  - ii) Unlike other Bills, the Constitution at Article 256(2), imposed a specific obligation on Parliament 'to publicise any Bill to amend this Constitution, and facilitate public discussion about the Bill.'
  - iii) While Article 94(3) of the Constitution grants Parliament the power to alter county boundaries, and Article 188(2) outlines the criteria and procedure to be followed in making such an alteration, the Constitution is silent on the criteria and procedure to be followed in varying the number of counties, either by increasing or reducing their number. Consequently, there would be need for extensive stakeholder and public engagements in determining these aspects prior to consideration and passage of a Bill to increase or reduce the number of counties.
  - iv) The time remaining in the legislative calendar of the current Parliament would not be sufficient to have the Bill considered in the said manner and passed by both Houses by mid-June, when the two Houses were scheduled to adjourn *sine die*; and
  - v) The schedule of activities preceding the 2022 General Elections was well underway. This meant that it may not be possible to facilitate extensive public discussions on the Bill, as required under Article 256(2) of the Constitution and, even if the Bill was passed, there would not be sufficient time to undertake a referendum or to have the provisions of the Bill apply to the 2022 General Elections.

**MIN. NO. 467/2021**

- I) THE ELECTION (AMENDMENT) BILL (SENATE BILLS NO. 42 OF 2021);**
- II) THE ELECTION (AMENDMENT) (NO. 2) BILL (SENATE BILLS NO. 43 OF 2021); AND**
- III) THE ELECTION (AMENDMENT) (NO 3) BILL (SENATE BILLS NO. 48 OF 2021).**

The Committee noted that a public hearing on the three Bills was scheduled to be held in Nairobi on 3<sup>rd</sup> December, 2021. The Committee further resolved to explore the possibility of undertaking public hearings on the Bills, at selected regions outside Nairobi, in January, 2022.

**MIN. NO. 468/2021**

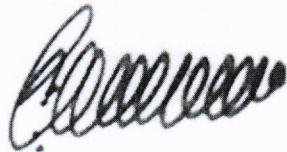
**THE CONSTITUTION OF KENYA (AMENDMENT) BILL (SENATE BILLS NO. 46 OF 2021).**

The Committee resolved to explore the possibility of undertaking public hearings on the Bills, in Kitui County and other selected regions, in January, 2022.

**MIN. NO. 469/2021**

**ADJOURNMENT**

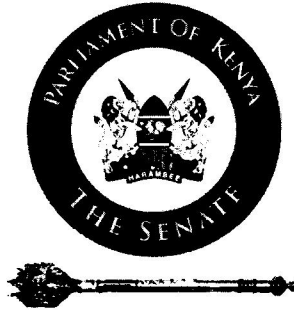
There being no other business, the meeting was adjourned at 12.45 pm. The next sitting will be held on Friday, 26<sup>th</sup> November, 2021 at 2.00 pm, in Mombasa County.



**SIGNED: .....**

**(CHAIRPERSON)**

**DATE: ..... 30/03/2022 .....**



**TWELFTH PARLIAMENT | FIFTH SESSION**

**MINUTES OF THE NINETY-FIFTH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON THURSDAY, 18<sup>TH</sup> NOVEMBER, 2021 AT 8.10 A.M.**

**PRESENT**

- |  |                                   |
|--|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP   | - Chairperson ( <b>Chairing</b> ) |
| 2. Sen. (Canon) Naomi Jillo Waqo, MP   | - Vice Chairperson                |
| 3. Sen. Mutula Kilonzo Junior, CBS, MP | - Member                          |
| 4. Sen. Johnson Sakaja, CBS, MP        | - Member                          |
| 5. Sen. Isaac Ngugi Githua, MP         | - Member                          |

**ABSENT WITH APOLOGY**

- |  |          |
|--|----------|
| 1. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member |
| 2. Sen. James Orengo, EGH, SC, MP            | - Member |
| 3. Sen. Fatuma Dullo, CBS, MP                | - Member |
| 4. Sen. (Dr.) Irungu Kang'ata, CBS, MP       | - Member |

**SECRETARIAT**

- |                         |   |
|-------------------------|---|
| 1. Mr. Charles Munyua   | - Clerk Assistant                           |
| 2. Mr. Said Osman       | - Research Officer                          |
| 3. Mr. Moses Kenyanchui | - Legal Counsel                             |
| 4. Ms. Purity Orutwa    | - Clerk Assistant ( <i>Taking Minutes</i> ) |
| 5. Ms. Hawa Abdi        | - Sergeant at Arms                          |
| 6. Mr. James Kimiti     | - Hansard Officer                           |
| 7. Ms. Cynthia Wanjiku  | - Pupil                                     |

**MIN. NO. 457/2021      PRAYER**

The sitting commenced with a word of prayer by the Vice Chairperson.

**MIN. NO. 458/2021      ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Isaac Ngugi Githua, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 155 (Senate Bills No. 46)*



REPUBLIC OF KENYA

***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2021**

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**NAIROBI, 12th August, 2021**

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CONTENT

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**THE CONSTITUTION OF KENYA  
(AMENDMENT) BILL, 2021**

**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, 2021.

Short title.

**2.** Article 97 of the Constitution is amended in clause 1(b) by deleting the word “forty-seven” appearing at the beginning of the clause and substituting therefor the word “forty-eight”.

Amendment of Article 97 of the Constitution.

**3.** Article 98 of the Constitution is amended —

Amendment of Article 98 of the Constitution.

(a) in clause (1)(a) by deleting the word “forty-seven” appearing at the beginning of the clause and substituting therefor the word “forty-eight”; and

(b) in clause (1)(b) by deleting the word “sixteen” appearing at the beginning of the clause and substituting therefor the word “eighteen”.

**4.** The First Schedule of the Constitution is amended by inserting the following new paragraph immediately after paragraph 15 —

Amendment of the First Schedule of the Constitution.

**15A.** Mwingi.

**MEMORANDUM OF OBJECTS AND REASONS**

The object of this Bill is to amend the Constitution of Kenya to ensure that resources and services are brought closer to the people by splitting the vast expansive Kitui County into two Counties of Kitui and Mwingi respectively.

As currently constituted, the larger Mwingi region has three constituencies. These are Mwingi Central, Mwingi North and Mwingi West. The proposed new Mwingi County shall also include Kitui East constituency. The four constituencies have a cumulative population of 558,000 people according to the 2019 national census report. This population is spread in twenty-one (21) wards distributed as follows —

<b>CONSTITUENCY</b>	<b>WARD</b>
1. Mwingi Central	1. Kivou ward 2. Nguni ward 3. Nuu ward 4. Mui ward 5. Central Ward
2. Mwingi West	1. Kyome/Thaana Ward 2. Nguutani Ward 3. Kiomo/Kyethani Ward 4. Migwani Ward
3. Mwingi North	1. Ngomeni Ward 2. Kyuso Ward 3. Mumoni Ward 4. Tharaka Ward 5. Tseikuru Ward
4. Kitui East	1. Endau/Malalani Ward 2. Zombe/Mwitika Ward 3. Mutitu/Kaliku Ward 4. Voo/Kyamatu Ward 5. Nzambani 6. WardChuluni Ward

Article 6(1) of the Constitution of Kenya, provides that the territory of Kenya is divided into the counties specified in the First Schedule. The First Schedule then lists forty-seven (47) counties. This Bill therefore amends the First Schedule by introducing “Mwingi” as a county hived off from Kitui County.

Clause 1 of the Bill is the short title of the Bill.

Clause 2 of the Bill proposes to amend Article 97(1)(b) of the Constitution by increasing the number of women elected members of the National Assembly in respect of each county constituting a single member constituency from the current forty-seven to forty-eight.

Clause 3 of the Bill proposes to amend Article 98(1)(a) of the Constitution by increasing the number of elected Senators from the current ‘forty-seven’ to ‘forty-eight’. The clause also amends Article 98(1)(b) to take into account the one third gender rule in the composition of the Senate by increasing the specially elected women from sixteen to eighteen Senators.

Clause 4 of the Bill proposes to amend the First Schedule of the Constitution of Kenya to introduce county No. 15A which is “Mwingi”.

This Bill will ensure that the now very expansive county of Kitui is divided into Kitui and Mwingi respectively and thereby bringing services and resources closer to the people of this county.

Dated the 11th May, 2021

ENOCH WAMBUA,  
*Senator.*

**1. 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).

**2. 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).

**3. The First Schedule of the Constitution that the Bill proposes to amend—**

**FIRST SCHEDULE**

**Article 6(1)**

1. Mombasa
2. Kwale
3. Kilifi
4. Tana River
5. Lamu
6. Taita/Taveta
7. Garissa
8. Wajir
9. Mandera
10. Marsabit
11. Isiolo
12. Meru
13. Tharaka-Nithi
14. Embu
15. Kitui
16. Machakos
17. Makueni
18. Nyandarua
19. Nyeri
20. Kirinyaga
21. Murang'a
22. Kiambu
23. Turkana
24. West Pokot
25. Samburu
26. Trans Nzoia
27. Uasin Gishu

28. Elgeyo/Marakwet
29. Mandi
30. Baringo
31. Laikipia
32. Nakuru
33. Narok
34. Kajiado
35. Kericho
36. Bomet
37. Kakamega
38. Vihiga
39. Bungoma
40. Busia
41. Siaya
42. Kisumu
43. Homa Bay
44. Migori
45. Kisii
46. Nyamira
47. Nairobi City



# REPUBLIC OF KENYA



## TWELFTH PARLIAMENT | FIFTH SESSION THE SENATE

### INVITATION FOR SUBMISSION OF MEMORANDA

At the sittings of the Senate held on Tuesday, 28<sup>th</sup> September, 2021 and Wednesday, 29<sup>th</sup> September, 2021, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 140 (5) of the Standing Orders of the Senate, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The Memoranda may be sent **by email** on the address: [csenate@parliament.go.ke](mailto:csenate@parliament.go.ke) and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before **Friday, 15<sup>th</sup> October, 2021 at 5.00 p.m.**

	Bill	Committee Referred To	Email Address
a)	The Election (Amendment) (No. 3) Bill (Senate Bills No. 48 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	<a href="mailto:senatejlahrc@parliament.go.ke">senatejlahrc@parliament.go.ke</a>
b)	The Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	<a href="mailto:senatejlahrc@parliament.go.ke">senatejlahrc@parliament.go.ke</a>
c)	The County Resource Development Bill (Senate Bills No. 45 of 2021)	Standing Committee on Finance and Budget	<a href="mailto:scfinanceandbudget@gmail.com">scfinanceandbudget@gmail.com</a>

The Bills may be found on the Parliament website at <http://www.parliament.go.ke/the-senate/senate-bills>.

**J.M. NYEGENYE, CBS,  
CLERK OF THE SENATE.**

7<sup>th</sup> March, 2022

The Clerk of the Senate  
Parliament Buildings  
NAIROBI

**RE: COMMITTEE STAGE AMENDMENTS TO THE ELECTION CAMPAIGN  
FINANCING (AMENDMENT) BILL, SENATE BILLS NO. 51 OF 2021**

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**NOTICE** is given that Sen. Erick Okong'o Mogeni, the Chairperson to the Standing Committee on Justice, Legal Affairs and Human Rights, intends to move the following amendments to the Election Campaign Financing (Amendment) Bill, Senate Bills No. 51 of 2021, at the Committee Stage ---

**CLAUSE 6**

**THAT** clause 6 of the Bill be amended by ---

- (a) deleting paragraph (a)(ii) and substituting therefor the following new paragraph
  - (ii) deleting paragraph (d) and substituting therefor the following new paragraph  
--
  - (b) an agent of a referendum committee.
- (b) by deleting paragraph (d) and substituting therefor the following new paragraph  
--
- (d) deleting subsection (4) and substituting therefor the following new subsection  
--
  - (4) A candidate, a political party or a referendum committee shall, within seven days, notify the Commission of any changes in the authorised persons or in the details of such persons.

**CLAUSE 12**

**THAT** clause 12 of the Bill be amended in the proposed new section 11(1) by deleting the words "A political party" appearing at the beginning of the section and substituting therefor the words "A candidate, political party or referendum committee".

**NEW CLAUSE 22**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 21 ---

Amendment of section 29  
of No. 42 of 2013.

**22.** Section 29 of the principal Act is amended in subsection (1) by inserting the words “and the Senate” immediately after the words “the National Assembly”.

Dated 7<sup>th</sup> day of March, 2022



Erick Okong'o Mogeni,  
*Chairperson,*  
*Standing Committee on Justice, Legal Affairs and Human Rights.*

15 OCT 2021



# Kariobangi Paralegal Network

Tel: 0720 201613, P.O. Box 47714, 00100 GPO, Nairobi, Kenya  
E-mail: kariobangiparanet@gmail.com

**THIS MEMORANDUM IS BASED ON A CALL BY THE SENATE TO THE GENERAL PUBLIC ON PUBLIC PARTICIPATION IN THE AMENDMENTS TO THE ELECTIONS (AMENDMENT) (BILL NO 3) OF 2021.**

**Presentation by kariobangi Paralegal Network 14/10/2021**

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15/10/2021

## BACKGROUND

1. THE KARIOBANGI PARALEGAL NETWORK (KAPARANET) hereby wish to register our comments and feedback;
2. With reference to the Elections Amendment Act, Bill No.3 of 2021, we therefore wish to state as follows: -
3. Kenyans acknowledge that legislative authority is derived from the people of Kenya and that parliament shall exercise legislative authority through bills passed by Parliament as captured in Article 94 and 109 of the Kenyan Constitution respectively.
4. Kenyans recognize that under article 38(3) and 38(2) of the Kenyan constitution, every Kenyan citizen has the right to be a candidate for public office and the right to free and fair elections based on universal suffrage.
5. For the sake of transparency and accountability, Kenyans would like the use of a popular name by electoral candidates to be consistent throughout the election process, and without irregularity as to the identification and use of a candidate's popular names.

11-30

CAS- JIAMB

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15/10/2021

6. Kenyans propose that in connection with any legal proceedings flowing from the use of a popular name by an electoral candidate, that candidate's name shall be sufficient for trial for purposes of legal proceedings.
7. The popular name should not be based on any discriminatory grounds and should not suggest money.
8. We are concurrence with a clear definition of the term popular name and party primary.
9. There is a need to popularize the amendments to the Elections Act, that is, S2 and S32(A) to sensitize the public.
10. As regards Section 32(A)(3), we call for adequate resourcing of the IEBC in order to facilitate the electoral process. The efficient and prompt communication from IEBC will cushion it from a plethora of litigation for failure to notify candidates of its decision in time.
11. We notice that the use of popular names is restrictive to the electoral process. What happens to the same candidate, beyond the electoral process in legal proceedings?
12. We are in harmony with the thresholds envisaged under Section 32. (A), (4). However, political parties and candidates must religiously adhere to the rule of law to the requirements in Section 31. Additionally, political parties should avoid issuing nomination certificates to the candidates that have not been authenticated as winners in party primaries, and parties that flout due process should be barred from fielding candidates from elective positions.
13. We are in agreement with the insertion of new section 32(a) which will precede article 32.

However, there is need to clarify a few issues regarding the Bill:

- a. We highlight the following demerits of popular names for your attention:
  1. Person with the popular name can deny the name when brought before court for commission of crime or omission in doing something.
  2. As much as the voters may be able to recognize the person due to the popular name, citizens may not be in a position to recognize the person's real name even when the person does something e.g., publishing a book (importance of identity).
  3. May result to violence in the sense that the candidate with popular name may reject the outcome after the conclusion of tallying of votes if defeated if he did not adhere to the processes.
  4. Popular candidates should not use their popular names to radicalize members of society, inciting political upheavals which may lead to violence and disharmony.
  5. We recommend that persons who use popular names in electoral processes should go ahead and include their popular names in their identification cards as part of their legal names.

DATED and SIGNED at NAIROBI on this 14<sup>th</sup> DAY OF OCTOBER 2021.

Chief Executive Officer  
Kariobangi Paralegal Network





# Kariobangi Paralegal Network

Tel: 0720 201613, P.O. Box 47714, 00100 GPO, Nairobi, Kenya  
E-mail: kariobangiparanets@gmail.com

**THIS MEMORANDUM IS BASED ON A CALL BY THE SENATE TO THE GENERAL PUBLIC ON PUBLIC PARTICIPATION IN THE CONSTITUTIONAL AMENDMENT 2021. Kenya Gazette Supplement No. 155 (Senate Bills No. 46)**

**Presentation by kariobangi Paralegal Network 14/10/2021**

## **BACKGROUND**

1. THE KARIOBANGI PARALEGAL NETWORK (KAPARANET) hereby wish to register our comments and feedback; With reference to the Constitutional Amendment, we therefore wish to state as follows: -
2. Kenyans recognize that in accordance with Article 2, 5 and 89 of the Constitution of Kenya, an amendment to the Constitution touching on territorial integrity of borders, demarcations and delimitations of counties is a protected process, and thus, requires a constitutional referendum.
3. Kenyans appreciate that a constitutional amendment can be initiated through a parliamentary process as established by article 256 of the Kenyan Constitution.
4. Would like to highlight that Kenyans would like the requisite threshold of cumulative population to be met before Kitui County can be further demarcated.
5. That the government considers the challenges and objections from within Kitui County, and across other counties in Kenya to the delimitation of Mwingi from Kitui County.
6. Kenya needs an appropriate time, free from the present restrictions that restrict public gatherings where quality information can be disseminated to them, where they can comprehend the Bill and provide candid feedback.
7. That we appreciate this as an important undertaking. However, we fear that it may be drowned by the prevailing charged 2022 political environment that will divert the

attention of the citizens from participating in an important constitutional requirement like this.

8. We acknowledge that Kitui County sufficiently meets the requisite criteria needed for delimitation of Mwingi from Kitui County.
9. That the IEBC shall consult all interested parties to the delimitation of Mwingi from Kitui County as prescribed by Article 89 (7) of the Kenyan Constitution.
10. We recognize that this process may not spark clamor for similar processes by other processes, thus, causing conflict.
11. We reaffirm the need for counties to generate revenue and provide services closer to the citizens in a more prudent manner.
12. We emphasize the need for supportive skills to launch and develop Mwingi County, unlike the transition authority era in 2013. This will be in respect of the values of leadership and integrity in Chapter 6 of the Constitution, for purposes of development and stability.

However, there is valid fear that require clarification:

1. There will be a need for Kitui to de-link fully from Kitui East, including the use of a suitable name to avoid contestation of names after extensive consultation with stakeholders.
2. We would prefer that the IEBC be given authority to conduct the delimitation process as it is their preserve at once, in a one-off referendum.
3. Based on the purposes and objectives of devolution of resources and services, the community of Kariobangi thus supports the delimitation of Mwingi from Kitui County, into Kitui and Mwingi Counties, respectively. However, the role of delimiting electoral units is under the purview of the IEBC under Article 89(2) of the Kenyan Constitution.

DATED and SIGNED at NAIROBI on this 14<sup>th</sup> DAY OF OCTOBER 2021.

Chief Executive Officer

Kariobangi Paralegal Network