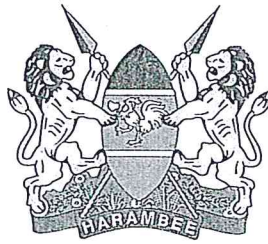


REPUBLIC OF KENYA



TWELFTH PARLIAMENT

THE SENATE

THE STANDING COMMITTEE

ON

DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

REPORT ON CONSIDERATION OF

THE ASSUMPTION OF THE OFFICE OF THE COUNTY GOVERNOR,
2018

Rt Hon Speaker

*Have we recommended
for tabling?*

*Eg
28/23/18*

*A. R. M. O.
29/3/2018*

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

MARCH, 2018

ABBREVIATIONS

COG Council of Governors

SEN. Senator

S.O Standing Order

Secretariat of the Committee

The Committee secretariat is comprised of-

- | | |
|--------------------------|-----------------------------|
| 1. Mr. Julius Ariwomoi | - Principal Clerk Assistant |
| 2. Ms. Carolyn Cheruiyot | - Legal Counsel |
| 3. Ms. Fiona Musili | - Research Officer |
| 4. Ms. Lucianne Limo | - Media Relations Officer |
| 5. Ms. Regina Munyao | - Legal Pupil |
| 6. Ms. Lucy Mwaniki | - Serjeant-At-Arms |
| 7. Mr. John Pere | - Serjeant-At-Arms |

Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the conduct of the public hearings and during meetings with relevant stakeholders. The Committee also expresses its gratitude to members of the public and stakeholders who made submissions, both orally and in writing.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 137, to present a Report of the Standing Committee on Devolution and Intergovernmental Relations on the consideration of The Assumption of Office of County Governor Bill, 2018 (Senate Bills No. 1 of 2018).

Signed.....

Date..... 28/3/2018

SEN. JOHN KINYUA NDERITU, MP
CHAIRPERSON,
STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL
RELATIONS

1. INTRODUCTION

1.1. The Assumption of the Office of County Governor Bill, 2018 (Senate Bills No. 1 of 2018)

The Assumption of the Office of the County Governor Bill, 2018 is sponsored by Senator Paul Kimani Wamatangi, MP. The principal object of the Bill is to provide a legal framework for the procedure and ceremony associated with the assumption of Office of the Governor by a Governor-elect and the assumption of the Office of Governor by a Deputy Governor or a Speaker of a County Assembly pursuant to Article 182(2) and (4) of the Constitution. The framework is important as it would ensure a successful and smooth transition of the assumption of the office of a Governor-elect.

2. OVERVIEW OF THE BILL

2.1. The Assumption of the Office of County Governor Bill, 2018 (Senate Bills No.1 of 2018)

(1) The Assumption of Office of County Governor Committee

Clause 5(1) of the Bill establishes in each County, the Assumption of the Office of County Governor Committee (*ad-hoc*) to ensure a smooth transition of the Office of Governor and assumption to Office of a Governor-elect. The Committee is tasked to, among others —

- (a) facilitate the handling over process by the outgoing Governor to the Governor-elect;
- (b) ensure the provision of security services of the Governor- elect;
- (c) put in place the necessary facilities and deploy the necessary personnel to be at the service of the Governor-elect upon assumption of office;
- (d) facilitate communication between the outgoing Governor and the Governor Elect; and
- (e) prepare the programme and organize for the swearing- in ceremony of

Further, the Bill proposes that in the event that the Governor-elect dies after being declared elected as Governor but before assuming office, or is unable to assume office, the deputy Governor shall be sworn in as acting Governor and fresh elections shall be held within sixty days after the death of Governor-elect.

In addition, if the Deputy Governor-elect dies before assuming office or is unable to assume office, the Office of Deputy Governor shall be declared vacant on the assumption of office of the person declared elected as Governor. The Bill further sets out timelines and the procedure for swearing in a person who assumes the Office of Governor under article 182(2) of the Constitution.

Clause 13 of the Bill sets out instances where the Office of the Deputy County Governor becomes vacant. It gives powers to the person who assumes the office of the County Governor under Article 182(2) of the Constitution to nominate, within fourteen (14) days and with the approval of County Assembly appoint a Deputy Governor. A motion for the approval of appointment of a Deputy Governor shall be supported by a majority of members of the respective County Assembly.

(3) Swearing-in Ceremony

Part IV of the Bill highlights process and the manner of the Swearing-in Ceremony. Clause 15 of the Bill proposes that the swearing-in of a Governor-elect shall be conducted in a public ceremony, on the first Tuesday following the twenty first (21st) day after the declaration of the results by a resident High Court Judge or in the Judge's absence, the Resident Chief Magistrate.

The Governor-elect shall during the swearing-in ceremony take and subscribe to the oath or affirmation of the office not earlier than 10.00 am and not later than 2.00 pm and shall upon the taking of oath or affirmation, sign a certificate of inauguration in the presence of the High Court Judge or their alternate who conducts the ceremony.

Clause 17 provides that upon signing the certificate of inauguration, the outgoing

NO.	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
			Notice on the Framework for the Assumption of the Office of Governor.
10.	6 (New provision)	Council Governors of	Insert a new clause to ensure the preparation of the oath that the Governor-elect will read and sign. This is to avoid confusion as was experienced in the last swearing in of governors. Further, the certificate of inauguration should be prescribed so as to be the same across all counties to ensure uniformity.
11.	9	Council Governors of	Redraft to address the typographical error in the clause.
12.	10(2)	Council Governors of	The Bill provides that the county governor-elect may, in carrying out preparations for the assumption of office request in writing, for such information from a county public officer as the county governor-elect may consider necessary. CoG proposes that it should be the committee and not the governor-elect asking for the information as one of their roles is to coordinate briefings by the relevant county public officers.
13.	15(1)	Council Governors of	The swearing in should be conducted by a High Court Judge and not the resident High Court Judge, or, in the absence of the resident High Court Judge, the resident Chief Magistrate as proposed in the Bill.
14.	15(2)	Council Governors of	The swearing in of governors-elect should be conducted before the swearing in of the President
15.	15(2)	Judiciary	The swearing in of governors-elect should be conducted on the first Thursday after the tenth day following gazettelement of the governors-elect.
16.	15(3) (New provision)	Council Governors Judiciary of	The Bill should provide that the committee publishes by notice in the <i>Gazette</i> , the date, time and place for the swearing in. The Bill should provide that the swearing in should be done in public at a place duly stated in the <i>Gazette</i> .
17.	16(1)	Council Governors of	Redraft to address the typographical error in the clause.
18.	17(1)	Council Governors of	Include the county coat of arms as one of the instruments to be handed over by the outgoing governor.
19.	17 (New provision)	Council Governors of	Insert a new clause to the effect that where the outgoing governor is not present during the swearing in or where the current governor is re-elected, the presiding Judge shall hand over the county symbols.
20.	17(1)	Judiciary	The judiciary should not be involved in the handover of instruments

4. COMMITTEE RECOMMENDATIONS

The Committee upon deliberation recommends the following amendments -

CLAUSE 5

THAT clause 5 of the Bill be amended –

(a) by deleting the proposed new subsection (2) and substituting therefor the following new subsection –

(2) The Committee shall be an *ad hoc* committee and shall comprise –

- (a) the County Secretary who shall be the chairperson;
- (b) the officer in charge of legal matters in the county;
- (c) the chief officer in the department responsible for matters relating to county public service;
- (d) the chief officer in the department responsible for matters relating to information and communication;
- (e) the chief officer in the department responsible for matters relating to finance;
- (f) the chief officer in the department responsible for matters relating to culture and social services;
- (g) the County Commissioner;
- (h) a representative of the National Intelligence Service at the county level;
- (i) a representative of the National Police Service at the county level appointed under section 41 (1)(c) of the National Police Service Act;
- (j) a representative of the County Policing Authority appointed under section 41 (1)(e) of the National Police Service Act;
- (k) the Clerk of the county assembly;
- (l) a representative of the Judiciary at the county level; and
- (m) two persons, one man and one woman nominated by

No. 11A of
2011.

No. 11A of
2011.



The Committee received views from the following groups/persons: -

(1) Isiolo Community

- (i) Yusuf H. Jillo
- (ii) Hassan Wako Wario
- (iii) Dr. Abdullahi Dima Jillo

This group noted that the boundaries of Meru and Isiolo Counties were very contentious, emotive and sensitive. They presented a memorandum and documents (including Court rulings) on the matter and requested the Committee to give consideration to the plea of Isiolo Community when looking at the County Boundaries Bill, 2018. They also noted that development projects in the contested boundaries such as LAPSSET Corridor development project (among others in the area) may be affected if the matter is not well addressed. The group further noted the need to amend the Constitution to consider historical boundaries dating way back into 1963 since the 1991 boundaries recognized in the Constitution presented overlaps and marginalization in some Counties.

(2) Mount Elgon Sabaot Community Representative

Mr. Martin Simotwo: Presented a memorandum on the County boundaries bill, 2017.

(3) Africa Art Group

Mr. Wanjohi Nyamu made oral presentation to the Committee. He explained the need to respect Independent Commissions such as IEBC in undertaking their constitutional mandates. He also noted the need to consider reviewing the Constitution.

Some memoranda sent by the public were also received through mails sent via the office of the Clerk of the Senate and via the official email address given to the public during the advertisement.

MINUTE SEN/SCDIR/27/2018: DATE OF NEXT MEETING & ADJOURNMENT

The Committee resolved to hold its next meeting on Thursday 8th March, 2018.

There being no other business, the meeting was adjourned at 12.10 p.m.

SIGNATURE.....

(CHAIRPERSON: SEN. NDERITU JOHN KINYUA, M.P.)

DATE..... 13/3/2018

1. Governor Stephen Sang, Chair of Intergovernmental Relations Committee of the CoG;
2. Mr. Barnabas K. Ngeno, CEC Member for Lands, Kericho County
3. Mr. Bramwel Murgor, CEC Member for Lands, Bungoma County
4. Eng. Lucy Kariuki, CEC Member for Lands, Nakuru County
5. Mr. Timothy Kariuki, Embu County Attorney
6. Ms. Rosemary Njaramba, Legal Officer
7. Ms. Eva Sawe, Legal Officer
8. Ms. Mukami Kibaara, Legal Officer

The Council of Governors (CoG) made presentations on the following bills:-
 a. The Assumption of Office of County Governor Bill, 2018; and
 b. The County Boundaries Bill, 2017.

They presented written memoranda on some areas of interest in the two bills. The presentation is annexed in the Committee report.

MINUTE SEN/SCDIR/36/2018: CONSIDERATION OF THE COMMITTEE REPORT

The Committee resolved to hold a meeting this afternoon at 4.00pm to consider the matrix of the proposed amendments prepared by the secretariat and to adopt its report.

MINUTE SEN/SCDIR/37/2018: DATE OF NEXT MEETING & ADJOURNMENT

There being no other business, the meeting was adjourned at 1.20 p.m.

SIGNATURE.....

(CHAIRPERSON: SEN. NDERITU JOHN KINYUA, M.P.)

DATE.....13/3/2018

MINUTE SEN/SCDIR/40/2018: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS AND MATTERS ARISING

The Minutes of the following meetings were confirmed by the members present and signed by the Chairperson:

- (i) Minutes of the 4th Meeting held on 6th March 2018 proposed by Sen. Wario Gorich Juma, MP and seconded by Sen. Boy Issa Juma, MP.
- (ii) Minutes of the 5th Meeting held on 7th March 2018 proposed by Sen. Iman Falhada Dekow, MP and seconded by Sen. Amos Wako, MP.
- (iii) Minutes of the 6th Meeting held on 8th March 2018 proposed by Sen. Wario Gorich Juma, MP and seconded by Sen. Amos Wako, MP.
- (iv) Minutes of the 7th Meeting held on 13th March 2018 proposed by Sen. Iman Falhada Dekow, MP and seconded by Sen. Wario Gorich Juma, MP.

There were no matters arising from the minutes.

MINUTE SEN/SCDIR/41/2018 ADOPTION OF THE COMMITTEE REPORT

The Committee considered its draft report on the following three bills: -

- a. The Urban Areas and Cities (Amendment) Bill, 2017;
- b. The County Governments (Amendment) (No.2) Bill, 2017; and
- c. The County Governments (Amendment) Bill, 2017

After going through its draft report and the draft amendments prepared by the legal counsel, the Committee unanimously adopted the report.

MINUTE SEN/SCDIR/42/2018: DATE OF NEXT MEETING & ADJOURNMENT

The Committee resolved to hold its next meeting on Thursday 15th March, 2018, to consider and adopt the report on the Assumption of Office of County Governor Bill, 2018.

There being no other business, the meeting was adjourned at 6.45 p.m.

SIGNATURE.....

(CHAIRPERSON: SEN. NDERITU JOHN KINYUA, M.P.)

DATE.....13/3/2018.....

MINUTE SEN/SCDIR/52/2018 CONSIDERATION OF THE MATRIX AND ADOPTION OF THE COMMITTEE REPORT

The Committee considered the matrix of the proposed amendments (as proposed by various stakeholders) which were compiled by the Committee Legal Counsel.

Upon consideration and finalization of the matrix, the Committee unanimously adopted its report on the Assumption of Office of County Governor Bill, 2018.

MINUTE SEN/SCDIR/53/2018 CONSIDERATION AND APPROVAL OF THE COMMITTEE QUARTERLY WORK PLAN

The Committee deliberated its draft Quarterly work plan for the period April – July 2018 and approved it with the following amendments: -

- (i) The County visits due for 25th June – 1st July, 2018 to include Laikipia County;
- (ii) The Report Writing Retreat scheduled for July to be undertaken in Diani, Kwale County.

MINUTE SEN/SCDIR/54/2018: DATE OF NEXT MEETING & ADJOURNMENT

The Committee resolved to hold its next meeting on Thursday 22nd March, 2018, to meet with the sponsor of the County Governments (Amendment) Bill, 2018.

There being no other business, the meeting was adjourned at 6.10 p.m.

SIGNATURE.....

(CHAIRPERSON: SEN. JOHN KINYUA NDERITU, M.P.)

DATE..... 28/03/2018

NO.	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE RESOLUTION
8.	6(1)(c)	Council of Governors	<p>CoG proposes that the committee should ensure and coordinate the provision of security services of the Governor-elect to ensure that protocol is observed.</p> <p>The Bill provides that one of the functions of the <i>ad hoc</i> committee shall be to put in place the necessary facilities and deploy the necessary personnel to be at the service of the Governor-elect upon assumption of office.</p> <p>CoG proposes that for clarity and precision, the Bill should clarify the activities and the personnel and their roles.</p>	
9.	6(1)(d)	Council of Governors	<p>The Bill provides that one of the functions of the <i>ad hoc</i> committee shall be to co-ordinate the briefings of the Governor-elect by relevant county public officers.</p> <p>CoG proposes that the briefings should include –</p> <ul style="list-style-type: none"> (i) an up to date assets register; (ii) an up to date register of liabilities; (iii) a complete list of all bank accounts and reconciled balances; (iv) a report of staff establishment per department; (v) a comprehensive report on county entities (corporations) and agencies containing information outlined in (i) to (iv); (vi) a report on all ongoing projects including donor funded projects; (vii) an up to date report on all legal pending cases; and (viii) county source of funding. <p>This proposal was also provided for in the <i>Gazette</i> Notice on the Framework for the Assumption of the Office of Governor.</p>	

NO.	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE RESOLUTION
			public at a place duly stated in the <i>Gazette</i> .	
17.	16(1)	Council of Governors	Redraft to address the typographical error in the clause.	
18.	17(1)	Council of Governors	Include the county coat of arms as one of the instruments to be handed over by the outgoing governor.	
19.	17 (New provision)	Council of Governors	Insert a new clause to the effect that where the outgoing governor is not present during the swearing in or where the current governor is re-elected, the presiding Judge shall hand over the county symbols.	
20.	17(1)	Judiciary	The judiciary should not be involved in the handover of instruments	
21.	22(1)	Council of Governors	Delete the provision since it is already covered in clause 21(4)	
22.	23(1)	Council of Governors	Redraft to merge clauses 23(1) and 23(2) since they address the same issue and to ensure clarity.	
23.	New provision	Council of Governors	The funding for the assumption of office of a governor shall be borne by the respective county government. This provision should be clearly entrenched in law.	
24.	New provision	Council of Governors	Introduce a new clause to cover the day to day functioning of the office of governor before and during the assumption of office by the governor-elect which should be governed by the Constitution and other relevant laws.	



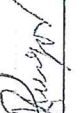




SENATE STANDING COMMITTEE ON DEVOLUTION & INTER-GOVERNMENTAL RELATIONS

VENUE: BOARD ROOM FIRST FLOOR, RED CROSS

DATE: 13/3/2018

COG

REGISTRATION FORM

NO.	NAME	INSTITUTION/ORGANIZATION	Contacts:- TELEPHONE NO.	ID NO.	SIGN
1.	Stephen K Sang	COG	0723232619	22692387	
2.	Barnabas M. Ngene	CECM Kericho County Govt	0722935711	22536289	
3.	BRAMUEL MURGOD	CECM Land Bungoma	0724874475	811137	
4.	Eng Lucy Karuki	CECM Land Nakuru	0921593574	11524058	
5.	TIMOTHY KAMBILI	COUNTY ATTORNEY, EMBU	0722266436	1081249	
6.	Mukami Kibani	COG, Legal Officer	0724797753	28464603	
7.	ROSEMARY NIGAMBAY	COG, Legal Officer	0722481736	25272368	
8.	Eva Sawe	COG, Legal Officer	0721406302	26107138	