

Paper laid

28/8/2018

REPUBLIC OF KENYA



PARLIAMENT
OF KENYA
LIBRARY

THE NATIONAL ASSEMBLY

12TH PARLIAMENT – SECOND SESSION – 2018

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON:

CONSIDERATION OF
THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2018
(NATIONAL ASSEMBLY BILLS No. 4)

VOLUME 1

Directorate of Committee Services,
Parliament Buildings,
NAIROBI

August, 2018

TABLE OF CONTENTS

ABBREVIATIONS AND ACRONYMS	3
LIST OF ANNEXURES	4
CHAIRPERSON’S FOREWORD	5
1.0 PREFACE	6
1.1.Mandate of the Committee	6
1.2. Committee Membership	7
1.3. Committee Secretariat	7
2.1 Introduction and Background of the Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 4) 2018	8
2.2 Memorandum of objects and reasons of the Bill	9
3 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL.....	10
3.1 Legal provisions on public participation.....	10
3.2 Methodology used by the Committee in public participation.....	11
(a) Nairobi, Machakos and Mombasa	11
(b) Kisumu, Kakamega and Uasin Gishu	12
(c) Nakuru, Nyeri and Isiolo	12
(d) Wajir	12
(e) Turkana	12
3.3 Sources of views.....	13
3.4 Views from the public	14
4. CONSIDERATION OF THE BILL BY THE COMMITTEE	17
4.1.1 Proposed amendment to Article 90 of the Constitution.....	17
4.1.2 Proposed amendment to Article 97 of the Constitution.....	17
4.1.3 Proposed amendment to Article 98 of the Constitution.....	19
4.2 GENERAL OBSERVATIONS.....	20
4.3 GENERAL RECOMMENDATION.....	21
DISSENTING OPINION.....	21

ABBREVIATIONS AND ACRONYMS

CBO	Community Based Organization
CEDAW	Convention on Elimination of All Forms of Discrimination Against Women
CMD	Centre for Multi-Party Democracy
CRAWN TRUST	Community Advocacy and Awareness Trust
CREAW	Centre for rights and Awareness and
FIDA Kenya	Federation of Women Lawyers in Kenya
IEBC	Independent Electoral and Boundaries Commission
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and Communication Technology
LSK	Law Society of Kenya
MP	Member of Parliament
SDGs	Sustainable Development Goals
UNDHR	United Nations Declaration on Human Rights
WEL	Women Empowerment League
WUSETE	Women United for Social Economic and Total Empowerment

LIST OF ANNEXURES

VOLUME 1

- Annexure 1:** Minutes of Committee sittings on consideration of the Bill
- Annexure 2:** Members' signed report adoption list
- Annexure 3:** Copy of newspaper advertisement of 8th March, 2018 inviting the public to submit memoranda on the Bill
- Annexure 4:** Copy of newspaper advertisement of 18th May 2018 inviting the public to hearings on the Bill in selected counties
- Annexure 5:** Matrix on submissions on the Bill

VOLUME 2

- Annexure 6:** Public memoranda on the Bill
- Annexure 7:** List of members of the public who participated in public hearings

CHAIRPERSON'S FOREWORD

The Constitution of Kenya (Amendment) Bill 2018 (National Assembly Bill No. 4) on the two-thirds gender principle underwent First Reading on 27th February, 2018. Thereafter, the Bill was committed to the Departmental Committee on Justice and Legal Affairs for review and report to the House pursuant to the provisions of Standing Order 216(5)(c).

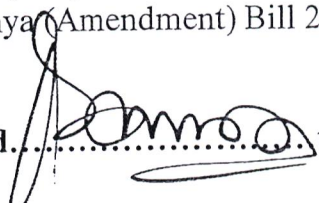
Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127(3) of the National Assembly Standing Orders, the Committee through local daily newspapers of Thursday, 8th March, 2018 published an advertisement inviting the public to submit memoranda on the Bill and indeed received memoranda. The Committee pursuant to local daily newspapers advertisement of 18th May, 2018 conducted public hearings on the Bill in selected counties.

The public hearings took place in Nairobi, Machakos, Mombasa, Kisumu, Kakamega, Eldoret, Nakuru, Nyeri, Isiolo, Wajir and Turkana during which members of the public either individually or representing institutions and organizations made oral presentations and or submitted written memoranda which the Committee took into account while reviewing the Bill.

The report is in two Volumes. Volume I is the main report on the consideration of the Bill and contains *inter-alia* analysis of the Bill, public participation process, observations and recommendations. Volume II contains attendance list for public hearings and written memoranda received from the public

May I take this opportunity to thank and commend Committee Members for devotion and commitment to duty, the Speaker and Clerk of the National Assembly for providing leadership and direction and finally the Committee secretariat for exemplary performance in the provision of technical and logistical support. Indeed, their efforts were critical in the consideration of the Bill and production of this report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199 (6), it's my pleasant privilege and duty to present to the House a report of the Committee on the Constitution of Kenya (Amendment) Bill 2018 (National Assembly Bill No. 4).

Signed.......... this...14th..... day of...August.....2018

HON WILLIAM CHEPTUMO, M.P.

Chairperson, Departmental Committee on Justice and Legal Affairs

1.0 PREFACE

1.1. Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees *inter alia* as follows-

(a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*

(b) *study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*

(c) *study and review all legislation referred to it;*

(d) *study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*

(e) *investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*

(f) *vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)*

(g) *examine treaties, agreements and conventions;*

(h) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*

(i) *consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and*

(j) *examine any questions raised by Members on a matter within its mandate.*

2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-

- (i) Constitutional affairs;
- (ii) The administration of law and Justice
- (iii) The Judiciary;
- (iv) Public prosecutions;

- (v) Elections;
- (vi) Ethics, integrity and anti-corruption; and
- (vii) Human rights.

1.2. Committee Membership

3. The Committee was constituted on Thursday, 14th December, 2017 and comprises the following Honourable Members-

Hon. William Cheptumo, M.P.	–	<i>Chairperson</i>
Hon. Alice Muthoni Wahome, M.P.	–	<i>Vice Chairperson</i>
Hon. John Olago Aluoch, M.P.		
Hon. Roselinda Soipan Tuya, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Johana Ng'eno, M.P.		
Hon. William Kamoti Mwamkale, M.P.		
Hon. Ben Orori Momanyi, M.P.		
Hon. Peter Opondo Kaluma, M.P.		
Hon. Zuleikha Hassan, M.P.		
Hon. Jennifer Shamalla, M.P.		
Hon. Beatrice Adagala, M.P.		
Hon. Gladys Boss Shollei, CBS, M.P.		
Hon. John Munene Wambugu, M.P.		
Hon. George Gitonga Murugara, M.P.		
Hon. Anthony Githiaka Kiai, M.P.		
Hon. John Kiarie Waweru, M.P.		
Hon. Japheth Mutai, M.P.		
Hon. Adan Haji Yussuf, M.P.		

1.3. Committee Secretariat

Mr. George Gazemba	-	Principal Clerk Assistant II
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Doreen Karani	-	Legal Counsel II
Ms. Halima Hussein	-	Clerk Assistant III
Ms. Fiona Musili	-	Research Officer III
Mr. Omar Abdirahim	-	Fiscal Analyst III
Mr. James Macharia	-	Media Liaison Officer
Ms. Roselyne Ndegi	-	Serjeant-at-Arms
Mr. Richard Sang'	-	Serjeant-at-Arms
Mr. Ian Otieno	-	Audio Officer

4. Minutes of the Committee sittings in respect of the consideration of the Bill are attached to this report as annexure 1.

2.0 ANALYSIS OF THE BILL

2.1 Introduction and Background of the Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 4) 2018

5. One of the aspirations of the people of Kenya as they enacted the Constitution was to eliminate any disadvantages that citizens may face by virtue of their gender. This transformative goal was expressed under various provisions requiring affirmative action measures to be taken to empower the long disadvantaged gender.
6. Article 81 (b) of the Constitution requires that not more than two-thirds of the members of elective public bodies shall be of one gender. This provision intends to empower any person who may be politically disadvantaged on the grounds of gender.
7. Article 27 (8) requires the state to take legislative measures to implement the two-thirds gender principle. It is notable from the Fifth Schedule to the Constitution that any legislation that required to be passed under the Constitution/to implement the Constitution, for which a timeline had not been specified, was to be enacted within five years from the promulgation date. This period lapsed in August 2015 but was subsequently extended to August 2016.
8. Several Bills were introduced in the 11th Parliament to implement the constitutional provisions on the representation of women in Parliament. However, as they were not enacted during the term of that Parliament they lapsed pursuant to National Assembly standing order 141 (4) which provides that-

“a Bill the consideration of which has not been concluded at the end of the term of a Parliament shall lapse.”
9. These Bills introduced in the 11th Parliament were-
 - (i) *The Constitution of Kenya Amendment Bills (No 4) (National Assembly Bills No 38), 2015.* The Bill seeks to give effect the one-third gender principle through the creation of special seats that would ensure that the gender principle is realised in Parliament for a period of twenty years from the subsequent general election (August 8, 2017). It is hoped that by that time, both genders would be competing on an equal plane. Further, to ensure that empowerment through nomination is spread to as many people as possible; the Bill proposes to provide that any person elected to any House of Parliament or Legislative Assembly by way of nomination would enjoy such a nomination to a maximum of two terms.
 - (ii) *The Constitution of Kenya Amendment Bills (No 6) (National Assembly Bills No 64A), 2015.* The principal object of this Bill is to amend the

Constitution to ensure that the membership of the National Assembly and the Senate conformed to the two-thirds gender principle provided for in Article 81(b) of the Constitution. The Bill seeks to give effect to the two-thirds gender principle through the creation of special seats that would ensure that the gender principle is realized in Parliament over a period of twenty years from the next general election. A sunset clause of twenty-years is included in the amendment with an option for extension for one further fixed period of ten years as it was expected that by that time, enormous gains would have been made with regard to gender parity in elected members of Parliament.

- (iii) *The Constitution Amendment Bill (No 3) (National Assembly Bills No 50), 2015* whose objective is to provide for the progressive implementation of legislation to ensure that the two-thirds gender principle is achieved. The progressive realization of this principle is to be achieved through amendments to the statute law under the legislative framework intended to give effect to Article 100 of the Constitution.
- (iv) *The Two- Thirds Gender Rule Laws (Amendment) Bill (National Assembly Bills No 20), 2015.* It sought to amend various laws; to give effect to Article 100 of the Constitution; to promote the representation in Parliament of women, youth, persons with disabilities, ethnic minorities and marginalized communities in elective and appointive positions and for connected purposes.

10. Indeed, the Constitution put in place safeguards to ensure that Parliament enacts legislation that required to be enacted to give effect to the Constitution. Article 261(5) provides that any person may petition the High Court if Parliament fails to enact any particular legislation within the specified time. It is on this basis that the High Court in 2017 found Parliament to have contravened the Constitution and did not meet its obligations by failing to enact the law to give effect to the two-thirds gender principle and ordered Parliament and the Attorney-General to take necessary steps to enact legislation for the implementation of this constitutional requirement within sixty days, failing which, Parliament would be faced with the possibility of its dissolution. The prescribed time on sixty days lapsed on 29th June, 2017. This decision was made following a Petition by the *Centre for Rights Education and Awareness & 2 others v. The Speaker of the National Assembly, the Speaker of the Senate and AG.*

2.2 Memorandum of objects and reasons of the Bill

- 11. The principal object of this Bill is to amend the Constitution to ensure that the membership of the National Assembly and the Senate conforms to the two-thirds gender principle provided for in Article 81(b) of the Constitution. The Bill seeks to give effect to the two-thirds gender principle through the creation

of special seats that will ensure that the gender principle is realized in Parliament over a period of twenty years from the next general election. It is hoped that by that time, both genders will have been given a level playing field and will be able to compete on an equal plane.

12. The Bill proposes to amend Article 90 of the Constitution to reflect the amendments proposed to Article 97 and 98 and to ensure that empowerment through nomination is spread to as many people as possible by precluding persons elected to any House of Parliament or county assemblies by way of nomination from enjoying such a nomination for more than two terms.
13. The Bill also proposes to amend Article 97 and 98 of the Constitution to ensure that both Houses of Parliament comply with the two-thirds gender principle and that the special seats are allocated proportionately to the number of seats won by a political party. The number of special seats is to be determined after a general election.
14. A sunset clause of twenty-years is included in the amendment with an option for extension for one further fixed period of ten years as it is expected that by that time enormous gains will have been made with regard to gender parity in elected members of Parliament.
15. The Bill does not concern county governments within the meaning of Article 110 of the Constitution. The enactment of this Bill shall occasion additional expenditure of public funds.

3 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

3.1 Legal provisions on public participation

16. Article 118 (1) (b) of the Constitution of Kenya provides as follows-

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”

17. Standing Order 127(3) provides as follows-

“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”

3.2 Methodology used by the Committee in public participation

18. The Bill was read a First time on 27th February, 2018 and immediately committed to the Departmental Committee on Justice and Legal Affairs for review. The review process was to entail public participation through appropriate mechanisms including inviting submission of memoranda, holding public hearings and consulting relevant stakeholders pursuant to the provisions of Article 118 (1) (b) and Standing Order 127(3) of the National Assembly Standing Orders.
19. Pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee in the local daily newspapers of Thursday, 8th March, 2018 invited the public to make representations on the Bill by way of written memoranda as per annexure 3 of the report. The public submitted memoranda.
20. Pursuant to another advertisement of 18th May, 2018 as per annexure 4 of the report, the Committee conducted public hearings in selected counties reflecting the face of Kenya. The public hearings were conducted in the counties of Nairobi, Machakos, Mombasa, Kisumu, Kakamega, Eldoret, Nakuru, Nyeri, Isiolo, Wajir and Turkana during which members of the public either individually or representing institutions and organizations made presentations and or submitted memoranda which the Committee considered while reviewing the Bill.
21. In order to conveniently cover as may counties as possible in public participation while considering the Committee's tight work schedule, timelines and logistical challenges, the Committee constituted five (5) sub-committees which conducted hearings concurrently in various counties.

(a) Nairobi, Machakos and Mombasa

22. The Members of the sub-committee who conducted the public hearings in these counties were-
 - (i) Hon. George Gitonga Murugara, M.P. - chairing
 - (ii) Hon. Beatrice Adagala, M.P.
 - (iii) Hon. William Kamoti Mwamkale, M.P
23. The public hearings were conducted at County Hall, Parliament Buildings in Nairobi, Machakos Youth Centre in Machakos and Kenya School of Government Meeting Hall in Mombasa on 23rd, 24th and 25th May, 2018 respectively.

(b) Kisumu, Kakamega and Uasin Gishu

24. The sub-committee Members who conducted public hearings in these counties were-

- (i) Hon. John Olago Aluoch, M.P. - chairing
- (ii) Hon. Ben Orori Momanyi, M.P.
- (iii) Hon. Peter Opondo Kaluma, M.P.
- (iv) Hon. John Munene Wambugu, M.P.
- (v) Hon. Anthony Githiaka Kiai, M.P.

25. The public hearings were held at the Tom Mboya Labour College Hall in Kisumu, Magharibi Hall in Kakamega and Eldoret County Hall in Eldoret.

(c) Nakuru, Nyeri and Isiolo

26. The sub-committee Members who conducted public hearings in these counties were-

- (i) Hon. Alice Wahome, M.P. - chairing
- (ii) Hon. Adan Haji Yussuf, M.P.
- (iii) Hon. Jennifer Shamalla, M.P.
- (iv) Hon. Charles Gimose, M.P.
- (v) Hon. Japheth Mutai, M.P.

27. The public hearings were held at the Old Town Hall in Nakuru, IFAD Hall in Nyeri and Catholic Church Hall in Isiolo on 23rd, 24th and 25th May, 2018 respectively.

(d) Wajir

28. Members of the sub-committee who conducted the public hearing in this county were-

- (i) Hon. George Gitonga Murugara, M.P. - Chairing
- (ii) Hon. Beatrice Adagala, M.P.
- (iii) Hon. Adan Haji Yussuf, M.P.
- (iv) Hon. Japheth Mutai, M.P.
- (v) Hon. Anthony Githiaka Kiai, M.P.

29. The public hearing was held at the Wajir ICT Hall in Wajir on 28th May, 2018.

(e) Turkana

30. Members of the sub-committee who conducted the public hearing in this county were-

- (i) Hon. John Olago Oluoch, M.P. - Chairing
- (ii) Hon. William Kamoti Mwamkale, M.P
- (iii) Hon. Jennifer Shamalla, M.P

31. The public hearing was held at Lodwar Vocational Training Centre in Lodwar on 28th May, 2018.

3.3 Sources of views

32. In response to the Committee's invitation, several members of the public either individually or representing institutions and organizations submitted their views to the Committee by way of written and oral submissions.

33. Indeed, the turnout at the public hearings was overwhelming as during the four (4) days when the Committees visited the various counties, one thousand eight hundred and forty-five (1845) persons and fifty-nine (59) institutions or groups turned up.

34. The institutions which made representations to the Committee were-

- (i) We are 52pc;
- (ii) Amani National Congress-Women's League Mombasa;
- (iii) Centre for Enhancing Democracy in Good Governance;
- (iv) Centre for Multi-Party Democracy (CMD);
- (v) Centre for Rights and Awareness (CREAW);
- (vi) Chamber of Commerce;
- (vii) Council of Elders of Isiolo and Borana;
- (viii) Council of Imams;
- (ix) Eco-Ethics International;
- (x) Federation of Women Lawyers of Kenya (FIDA K);
- (xi) Groots Kenya;
- (xii) Humming Bird Group;
- (xiii) Isiolo Women Social Accountability Group;
- (xiv) Isukha Makuti Group;
- (xv) Jubilee Party in Wajir County;
- (xvi) Kenya Girl Guides Association;
- (xvii) Kenya Scouts Association;
- (xviii) Kisumu County Technical working group;
- (xix) Komesi Women Network-Kacheliba;
- (xx) Law Society of Kenya (LSK);
- (xxi) Lonaman CBO Group;
- (xxii) Machakos Network Group for Persons with Disabilities;
- (xxiii) Maendeleo Ya Wanawake Organization;
- (xxiv) Nakuru County Women Leaders;
- (xxv) National Women Steering Committee;

- (xxvi) Nyarongi Women Network;
- (xxvii) Nyeri Women Social Accountability Group;
- (xxviii) Pambazuko la Wanawake Magharibi;
- (xxix) Peace Elders in Wajir South;
- (xxx) Pokot Women Empowerment Organization;
- (xxxi) Political Parties Liaison Committee;
- (xxxii) Kenya Prison Services (Machakos);
- (xxxiii) Sauti ya Wanawake;
- (xxxiv) Shilekho Home Based Care and Counselling Unit;
- (xxxv) Soroptimist International Union of Kenya;
- (xxxvi) Tabgulbei Women Networks;
- (xxxvii) Transparency International;
- (xxxviii) United Green Movement;
- (xxxix) URAIA Trust;
- (xl) Wild March of Women;
- (xli) Women Empowerment Link (WEL);
- (xlii) Women Political Alliance;
- (xliii) Women United for Social Economic and Total Empowerment (WUSETE); and
- (xliv) Women Visionary Group.

38. A comprehensive list of members of the public who attended the hearings in the various counties is in Volume II of the report. The written submissions received from the public noting general comments in support of or against the amendments are in Volume II of the report. A matrix documenting various proposed amendments by the public is in Volume I of the report as annexure 5.

39. The written submissions received and as illustrated in annexure 5 of this report, in analysing the views received from the public, the Committee categorised the views received as follows-

- (i) Views in support of the amendments;
- (ii) Views in opposition of the amendments;
- (iii) Proposed amendments to the Bill; and
- (iv) General views from the public not relating to the amendments.

3.4 Views from the public

38. A total of two hundred and five (205) persons and institutions or groups submitted oral and written submissions in support of the amendments on the Bill while thirty (30) persons or institutions and groups opposed the Bill.

39. In summary, the Committee received views as follows: -

Source	Comments in support of amendments	Comments against amendments
Institutions	54	3
Individuals	151	27
Total	205	30
Percentage of total views received	87.2%	12.8%

Table showing breakdown of sources of views

40. The Committee observed that some of those who made representations did not give substantive reasons for their support or opposition. Those who supported the amendments with reasons cited the following -

- a) The two-thirds gender principle was a constitutional right and outstanding deliverable of Parliament. There was consistent jurisprudence on the matter and the import therefore was that Parliament is compelled by law to enact the necessary legislation. Failure by the National Assembly to pass the Constitution of Kenya (Amendment) Bill would mean the only recourse per the Constitution, the judgments of the Supreme Court in 2012, the High Court in 2015 and 2017 as well as the advisory by the National Gender and Equality Commission, would be invocation of the provisions of Article 261 (6) and (7). To avoid the dissolution of Parliament, the Committee must therefore advise the National Assembly as to the urgency and importance of immediate enactment of the Bill;
- b) The Attorney-General had indicated that there could be a constitutional crisis if the Bill is not enacted;
- c) Over 50% of Kenya's population comprised of the female gender and as such, representation that is democratic must at a minimum represent the majority population in the proportions provided for by the Constitution. The deprivation of women their right should not be tolerated further;
- d) The enactment of the Bill would be a step forward in achieving Sustainable Development Goals numbers five and fifteen;
- e) Kenya was ranked last in the East African Community in terms of women representation in Parliament. The women representation in Kenya in the twelfth Parliament stood at twenty-two (22) % way below other states.
- f) Kenya's image globally in terms of women representation in Parliament was not good. Observations of the Eight Episodic Report by the

Committee on the Elimination of Discrimination Against Women (CEDAW) in November 2017 stated:

“16. The Committee is concerned that seven years after the adoption of the new Constitution, the rule that no more than two thirds of elective public bodies are to be of the same gender (the two-thirds gender rule), is still not being implemented.”

- g) Kenya was also a signatory to various international treaties *inter-alia*; The Universal Declaration of Human Rights, the Beijing Declaration and Platform for Action, the African Union Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol) and the Solemn Declaration on Gender Equality in Africa. In this regard, Kenya was falling behind on her regional and international commitments and obligations;
- h) Non-implementation of the two-thirds gender principle cannot be justified legally or economically based on a report of the National Women’s Steering Committee in partnership with Institute of Economic Affairs in May 2015 which demonstrated that the cost of implementing the principle was sustainable;
- i) The first pillar of the Jubilee Coalition’s policy agenda was *“Transforming Kenya: Securing Kenya’s Prosperity 2013-2017”* (commonly referred to as the Jubilee Manifesto) centred on women empowerment and provided as follows-

“The Jubilee Government is committed to promoting and protecting the role of women in society and we will fully implement the one-third rule.”

41. The Committee observed that those who opposed the Bill with reasons cited the following-

- a) The main concern was that the implementation of the principle would be by way of nominations whereas women and men have equal capacity and ability to vie for elective positions and garner votes. No gender should be handed elective positions on a silver platter.
- b) Nominating women to elective positions in order to realize the two-thirds gender principle would amount to gender-based discrimination which would be unfair to men;
- c) Those of the Muslim faith against women holding political positions; and
- d) Implementation of the principle would be an increased burden to taxpayers.

4. CONSIDERATION OF THE BILL BY THE COMMITTEE

4.1.1 Proposed amendment to Article 90 of the Constitution

Clause 2 - Article 90 of the Constitution is amended—

(a) in clause (1), by deleting the expression "Articles 97(1)(c) and 98(1)(b), (c) and (d)" appearing immediately after the words "provided for under" and substituting therefor the expression "Articles 97(1)(c) and (ca) and 98(1)(c), (d) and (da)";

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

“(1A) A person elected to Parliament or a county assembly under clause (1) shall be eligible for re-election for one final term under that clause.”

(i) Observations

The Committee observed that the new clause 1A will ensure that a person nominated under Articles 97 and 98 may be nominated for a maximum of two terms

(ii) Recommendation

The Committee recommends that the amendment in the Bill be agreed to.

4.1.2 Proposed amendment to Article 97 of the Constitution

Clause 3 - Article 97 of the Constitution is amended—

(a) in clause (1) by inserting the following new paragraph immediately after paragraph (c)—

“(ca) the number of special seat members necessary to ensure that no more than two-thirds of the members elected under clause (1)(a) are of the same gender;”

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

“(1A) The number of special seats under clause (1) (ca) shall be determined after the declaration of the results of a general election.

“(1B) The members referred to in clause (1) (c) and (ca) shall be elected in accordance with Article 90.

“(1C) Subject to clause (1D), the provisions of clause 1(ca) shall lapse twenty years from the date of the first general elections after commencement of this Act.

“(1D) Parliament may enact legislation to extend the period under clause (1C) for one further fixed period not exceeding ten years.

“(1E) Legislation under clause (1D) shall be supported by not less than two-thirds of all members of the National Assembly and not less than two-thirds of all the county delegations in the Senate.”

(i) Stakeholders’ submissions

- (a) The Federation of Women Lawyers in Kenya (FIDA Kenya) and Mr. Alexander Roberts proposed that Clause 3 be amended in paragraph (b) in the proposed new clause (1D) by inserting a new provision to allow for assessment of whether affirmative action has yielded results then if not increase the timeline;

Rationale: To allow for a mechanism for review on whether the rule has been attained.

- (b) The Centre for Rights and Awareness (CREAW) and Community Advocacy and Awareness Trust (CRAWN Trust) proposed that clause 3 of the Bill be amended in paragraph (b) by deleting the proposed new clauses (1C), (1D) and (1E);

Rationale: The two-thirds gender principle is anchored in the Bill of Rights hence providing a timeline limits rights under the Bill of Rights. It is not clear what will happen after the sunset clause. The mechanism should be self-regulatory so that at any point, the tipping point will be the two-third of either gender.

- (c) The Centre for Rights and Awareness (CREAW) and Community Advocacy and Awareness Trust (CRAWN Trust) proposed that clause 3 of the Bill be amended so as to include the current Parliament;

Rationale: The current parliament is not constitutionally constituted. It is important to consider what will happen to the 12th Parliament because the Bill as drafted proposes to commence after the next general election.

- (d) Kenya Women Candidates Caucus, URAIA Trust, Women Political Alliance, Transparency International and Ms. Beatrice Karwitha proposed that Clause 3 be amended in paragraph (b) by deleting the “sunset clauses” i.e. proposed new clauses 1(C), (1D) and (1E);

Rationale: The two-thirds gender principle is anchored in the Bill of Rights hence providing a timeline limits rights under the Bill of Rights. It is not sunset clear what will happen after clause. The mechanism should be self-regulatory so that at any point, the tipping point will be the two-third of either gender.

(ii) Observations

The Committee observed as follows-

- (a) This amendment will allow for the nomination of persons of the gender that will not have achieved the minimum required numbers being one-third of the member selected under Article 97 (1)(a);
- (b) The provision on nomination is what would lapse after twenty years while the requirement on the one-third rule will still be in the Constitution. At that time, Parliament will be tasked to ensure that the principle is still met.

(iii) Recommendation

The Committee recommends that the proposed amendments in the Bill be agreed to.

4.1.3 Proposed amendment to Article 98 of the Constitution

Clause 4 - Article 98 of the Constitution is amended—

(a) in clause (1) by—

(i) inserting the following new paragraph immediately after paragraph (d)—

“(da) the number of special seat members necessary to ensure that no more than two-thirds of the members elected under clause (1)(a) are of the same gender;”

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

“(1A) The number of special seats under clause (1) (da) shall be determined after the declaration of the results of a general election.

“(1B) Subject to clause (1C), the provisions of clause 1(da) shall lapse twenty years from the date of the first general elections after commencement of this Act.

“(1C) Parliament may enact legislation to extend the period under clause (1B) for one further fixed period not exceeding ten years.

“(1D) Legislation under clause (1C) shall be supported by not less than two-thirds of all members of the National Assembly and not less than two-thirds of all the county delegations in the Senate.”

- (b) in clause 2, by deleting the expression "(1)(c) and (d)" appearing immediately after the words "to in clause" and substituting therefor the expression "(1)(c), (d) and (da)".

(i) **Stakeholders' submissions**

The Law Society of Kenya proposed that Clause 4 of the Bill be amended by deleting paragraph (b).

Rationale: If the bill is enacted as it is, political parties will have to submit two parallel lists to IEBC on nomination of women in the Senate (that is one of the sixteen members under 98(1) (d) and another of the proposed 98(1) (da)

(ii) **Observations**

The Committee observed as follows-

- (a) The amendment will allow for the nomination of persons of the gender that will not have achieved the minimum required numbers being one-third of the members elected under Article 98 (1)(a);
- (b) The provision on nomination is what would lapse after twenty years while the requirement on the one-third rule will still be in the Constitution. At that time, Parliament will still be tasked to ensure that the principle will still be met.

(c) **Recommendation**

The Committee recommends that the proposed amendments in the Bill be agreed to.

4.2 GENERAL OBSERVATIONS

The Committee observed as follows-

- (a) In his communication on 20th August 2015 (*on whether Bill to amend the Constitution may be amended by the House*), the Speaker guided that amendments should not be proposed on a Bill to amend the Constitution unless there is something extraordinary in the proposed Bill that would require application of extraordinary measures;

- (b) In view of the Speaker's ruling, the committee did not adopt any of the amendments proposed by the public;
- (c) Kenyans who appeared before the Committee to present their views overwhelmingly supported the amendments;
- (d) There is consistent jurisprudence on the matter of implementation of the gender principle, meaning that the National Assembly is compelled by law to enact the necessary legislation. Failure by the National Assembly to pass the Constitution of Kenya (Amendment) Bill means that the likelihood of dissolution of Parliament as provided under Article 261 (6) & (7) is real. The judgments of the Supreme Court in 2012, the High Court in 2015 and 2017 as well as the advisory by the National Gender and Equality Commission, all issued against the House, point to the gravity of the matter.


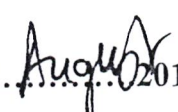
4.3 GENERAL RECOMMENDATION

The Committee recommends that the proposed amendments in the Bill be agreed to without amendments.

DISSENTING OPINION

The Hon. Peter Opondo Kaluma, M.P. registered his dissenting opinion on the amendments on the following grounds –

- a) Article 27(8) of the Constitution requires the State to take legislative measures to ensure the implementation of the principle that no more than two-thirds of the members of elective bodies shall be of the same gender. The import of this requirement is that Parliament should enact legislation to implement the principle and not to amend the Constitution.
- b) The Bill proposes realization of the two-thirds gender principal by way of nomination which is not democratic.

SIGNED..........this ^{14th}..... day of..........2018

HON. WILLIAM CHEPTUMO, M.P.
Chairperson, Departmental Committee on Justice and Legal Affairs

ANNEXURE 1

(Minutes of Committee sittings)

MINUTES OF THE SIXTY-THIRD SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 7TH AUGUST, 2018 AT 10:00 A.M. IN THE COMMITTEE ROOM ON 10TH FLOOR, HARAMBEE CO-OPERATIVE PLAZA

PRESENT

- | | | |
|------------------------------------|---|-------------------------|
| 1. Hon. William Cheptumo, M.P. | - | Chairperson |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P. | | |
| 4. Hon. Ben Momanyi, MP. | | |
| 5. Hon. Peter O. Kaluma, M.P. | | |
| 6. Hon. Beatrice Adagala, M.P | | |
| 7. Hon. Jennifer Shamalla, M.P. | | |
| 8. Hon. Anthony G. Kiai, M.P. | | |
| 9. Hon. George G. Murugara, M.P | | |
| 10. Hon. Adan Haji Yussuf, M.P. | | |

ABSENT WITH APOLOGIES

1. Hon. William K. Mwamkale, M.P.
2. Hon. Charles Gimose, M.P.
3. Hon. Johana Ng'eno, M.P.
4. Hon. Zuleikha Hassan, M.P.
5. Hon. Japheth Mutai, M.P.
6. Hon. Gladys Boss Shollei, CBS, M.P
7. Hon. Roselinda Soipan Tuya, M.P.
8. Hon. John M. Wambugu, M.P.
9. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE

COMMITTEE SECRETARIAT

- | | | |
|---------------------|---|-----------------------|
| Ms. Naserian Lotuai | - | Third Clerk Assistant |
| Ms. Doreen Karani | - | Legal Counsel II |
| Ms. Fiona Musili | - | Research Officer III |

MIN No. 222 /2018:- PRELIMINARIES

The Chairperson called the meeting to order at 10:23 a.m. which was followed by a word of prayer from himself.

MIN No. 223/2018:- CONFIRMATION OF MINUTES

- a) Minutes of the 35th sitting held on 2nd May, 2018 at 11.00 a.m. were confirmed as true record of proceedings and signed by the Chairperson after being proposed by Hon. George Murugara, M.P. and seconded by Hon. John Olago Aluoch, M.P.
- b) Minutes of the 36th sitting held on 3rd May, 2018 at 10.00 a.m. were confirmed as true record of proceedings and signed by the Chairperson after being proposed by Hon. Anthony Kiai, M.P. and seconded by Hon. Jennifer Shamalla, M.P.
- c) Minutes of the 38th sitting held on 16th May, 2018 at 10.00 a.m. were confirmed as true record of proceedings and signed by the Chairperson after being proposed by Hon. George Murugara, M.P. and seconded Hon. Anthony Githiaki Kiai, M.P.
- d) Minutes of the 39th sitting held on Thursday, 16th May, 2018 at 2.30 p.m. were confirmed as true record of proceedings and signed by the Chairperson after being proposed by Hon. John Olago Aluoch, M.P. and seconded by Hon. Anthony Kiai, M.P.
- e) Minutes of the 40th sitting held on 17th May, 2018 at 11.00 a.m. were confirmed as true record of proceedings and signed by the Chairperson after being proposed by Hon. George Murugara, M.P. and seconded by Hon. John Olago Aluoch, MP.
- f) Minutes of the 41st sitting held on 18th May at 10.00 a.m. were confirmed as true record of proceedings and signed by the Chairperson after being proposed by Hon. John Olago Aluoch, M.P. and seconded by Hon. Anthony Kiai, M.P.
- g) Minutes of the 42nd sitting held on 18th May at 2.00 p.m. were confirmed as true record of proceedings and signed by the Chairperson after being proposed by Hon. Anthony Kiai, M.P. and seconded by Hon. John Olago Aluoch, M.P.
- h) Minutes of the 43rd sitting held on 19th May, 2018 at 10.00 a.m. were confirmed as true record of proceedings and signed by the Chairperson after being proposed by Hon. Anthony Kiai, M.P. and seconded by Hon. John Olago Aluoch, M.P.
- i) Minutes of the 45th sitting held on 19th May, 2018 at 2.00 p.m. were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Jennifer Shamalla, MP and seconded by Hon. Peter Kaluma, M.P.
- j) Minutes of the 46th sitting held on 5th June, 2018 at 10.00 a.m. were confirmed as true record of proceedings and signed by the Chairperson after being proposed by Hon. Jeniffer Shamalla, M.P. and seconded by Hon. George Murugara, M.P.
- k) Minutes of the 47th sitting held on 6th June, 2018 at 11.00 a.m. were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. John Olago Aluoch, M.P. and seconded by Hon. Jennifer Shamalla, M.P.

- l) Minutes of the 48th sitting held on 7th June, 2018 at noon were confirmed as true record of proceedings and signed by the Chairperson after being proposed by Hon. Anthony Kiai, M.P. and seconded by Hon. Jennifer Shamalla, M.P.
- m) Minutes of the 49th sitting held on 13th June, 2018 at 11.30 a.m. were confirmed as true record of proceedings and signed by the Chairperson after being proposed by Hon. Jennifer Shamalla, M.P. and seconded by Hon. George Murugara, M.P.
- n) Minutes of the 50th sitting held on 14th June, 2018 at 11.00 a.m. were confirmed as true record of proceedings and signed by the Chairperson after being proposed by Hon. Jennifer Shamalla, M.P. and seconded by Hon. George Murugara, M.P.
- o) Minutes of the 51st sitting held on 14th June at 3.00 p.m. were confirmed as true record of proceedings and signed by the Chairperson after being proposed by Hon. George Murugara, M.P. and seconded by Hon. Jennifer Shamalla, M.P.
- p) Minutes of the 52nd sitting held on 19th June, 2018 at 11.00 a.m. were confirmed as true record of proceedings and signed by the Chairperson after being proposed by Hon. John Olago Aluoch, M.P. and seconded by Hon. Anthony Kiai, M.P.
- q) Minutes of the 53rd sitting held on 21st June, 2018 at 3.30 p.m. were confirmed as true record of proceedings and signed by the Chairperson after being proposed by Hon. John Olago Aluoch, M.P. and seconded by Hon. Jennifer Shamalla, M.P.

MIN No. 224 /2018:- **MATTERS ARISING**

Under Minutes of the 52nd sitting that took place on 14th June 2018, it was noted that Hon. Jennifer Shamalla, M.P. was recorded as being absent instead of present.

MIN No. 225/2018:- **CONSIDERATION AND ADOPTION OF REPORT ON THE CONSTITUTION OF KENYA (AMENDMENT) (No. 2) BILL, 2018, (NATIONAL ASSEMBLY BILLS NO. 5)**

The Committee considered and adopted its report on the Constitution of Kenya (Amendment) (No. 2) Bill, 2018 (National Assembly Bills No. 5) seeking to change the general election date from second Tuesday of August to third Monday of December in every year of election. Hon. Peter Kaluma M.P. registered his dissenting opinion on the report on the following grounds-

- (a) The date of the general elections was changed from December to August following extensive public participation and consultation leading up to the promulgation of the Constitution of Kenya in the year 2010;
- (b) The memorandum of objects and reasons in the Bill evinces no good reasons to revert the date of general elections to December;

- (c) The amendments have the effect of altering the term of office of the President and pursuant to Article 255 of the Constitution of Kenya, the Bill should be subjected to a popular referendum prior to adoption by the House;
- (d) Kenyans should vote for leaders in areas they reside full time or better part of their time as opposed to voting in areas where they are on holiday in December;
- (e) The Presidential election process including petition challenging results should be concluded in the year the general elections are held to avoid a situation where two (2) years are affected by the elections.

MIN No. 226/2018:-

CONSIDERATION AND ADOPTION OF REPORT ON THE
CONSTITUTION OF KENYA (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS No. 4)

The Committee considered and adopted its report on the Constitution of Kenya (Amendment) Bill, 2018 (National Assembly Bill No. 4). Hon. Peter Kaluma M.P. registered a dissenting view to the report on the following grounds-

- a) Article 27(8) of the Constitution requires the State to take legislative measures to ensure the implementation of the principle that no more than two-thirds of the members of elective positions shall be of the same gender. The import of this requirement is that Parliament should enact legislation to implement the principle and not by way of amendment to the Constitution.
- b) The Bill proposes realization of the two-thirds gender principle by way of nomination which is not democratic.

MIN No. 227 /2018:- ANY OTHER BUSINESS

The Committee considered a request from Hon. Dennitah Ghata, HSC, M.P. to appear before it to make representations on clause 3(a) of the Constitution of Kenya (Amendment) Bill (No. 2), 2018 (National Assembly Bills No. 4) and resolved that she appears on Thursday, 9th August 2018 at 10.00 a.m.

MIN No. 228/2018:-

ADJOURNMENT

There being no other business to transact, the Chairperson adjourned the meeting at 11.30 pm.

Signed.....

 Chairperson

Date..... 14. 08. 018

ANNEXURE 2

(Members signed report adoption list)

KENYA NATIONAL ASSEMBLY




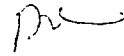

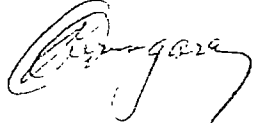
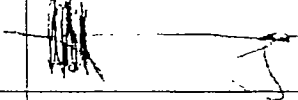


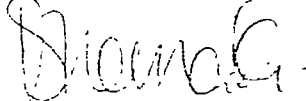


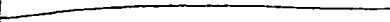
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS


ATTENDANCE REGISTER FOR MEMBERS

DATE 7th August 2012 TIME 10:40 am

VENUE 10th floor Harambee

NO.	NAME	SIGNATURE
1.	Hon. William Cheptumo, M.P. – Chairperson	
2.	Hon. Alice Wahome, MP. - Vice Chairperson	
3.	Hon. John Olago Aluoch, MP.	
4.	Hon. Roselinda Soipan Tuyu, MP.	
5.	Hon. Ben Momanyi, MP.	
5.	Hon. Mwamkale William Kamoti, MP.	
7.	Hon. Charles Gimose, MP.	
3.	Hon. Zuleikha Hassan, MP.	

9.	Hon. Johana Ngeno Kipyegon, MP.	
10.	Hon. Peter Opondo Kaluma, MP.	
11.	Hon. John Kiarie Waweru, MP.	
12.	Hon. George Gitonga Murugara, MP.	
13.	Hon. Adan Haji Yussuf, MP.	
14.	Hon. Japheth Kiplangat Mutai, MP.	
15.	Hon. Anthony Githiaka Kiai, MP.	
16.	Hon. Jennifer Shamalla, MP.	
17.	Hon. Beatrice Adagala, MP.	
18.	Hon. John Munene Wambugu, MP.	
19.	Hon. Boss Shollei, CBS, MP.	


GEORGE GAZEMBA, ACI Arb
For: CLERK OF THE NATIONAL ASSEMBLY

ANNEXURE 5

(Matrix on public submissions on the
Bill)

**MATRIX ON THE VIEWS OF THE PUBLIC ON THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2018 (NATIONAL ASSEMBLY BILLS No. 4)**

This matrix contains the summarized views/submissions by members of the public received by the Departmental Committee on Justice and Legal Affairs by way of written memoranda or oral submissions during public hearings on the Constitution of Kenya (Amendment) (No.2) Bill, 2018 held in the Counties of Nairobi, Machakos, Mombasa, Nakuru, Nyeri, Isiolo, Kakamega, Uasin Gishu, Turkana, Wajir and Kisumu.

NAIROBI COUNTY	
COMMENTS IN SUPPORT OF AMENDMENTS	COMMENTS AGAINST AMENDMENTS
<p style="text-align: center;">Institutions</p> <ol style="list-style-type: none"> 1. Centre for Rights Education and Awareness (CREAW) supported amendments save for the sunset provisions. 2. Federation of Women Lawyers in Kenya (FIDA-Kenya) FIDA supported the amendments save for the sunset provisions and inclusion of an assessment provision as a tool to measure progress. 3. Women Empowerment League (WEL) supported the amendments. 4. Kenya Girl Guides Association supported the amendments stating that Kenya could afford it but could not afford to continue offending the requirements set out under the Constitution. 5. URALA Trust supported the Bill to the extent that the political field has never been level for men and women hence the need for affirmative action. They proposed the introduction of long term projects to enable women 	<p style="text-align: center;">Institutions</p> <p>No institution opposed the amendments</p>

compete with men.

6. Wild March of Women represented by Ms. Sophie Dola supported the provision as, in her opinion, Kenya is lagging behind in Africa compared to other African Nations such as Rwanda that has 60% women representation in Parliament.

7. Political Parties Liaison Committee supported the amendments as Kenya has ratified various conventions on gender equality. The following were cited; United Nations Declaration on Human Rights (UNDHR), International Covenant on Civil and Political Rights (ICCPR), Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and the Sustainable Development goals (SDGs). The Committee also stated that it is important to ensure Parliament attains this outstanding deliverable and cited the Judgment in CREA W case in paragraph 111.

8. #Weare52pc, represented by Ms. Marilyn Kamuru, supported the proposed amendments as Parliament is required to protect and uphold the constitution. To her, there is consistent jurisprudence on the matter and the import therefore is that Parliament is compelled by law to enact the necessary legislation. The Attorney General has also indicated that there are prospects of a constitutional crisis and this is not a discretionary matter. In line with commitment to SDGs 5, 15. CEDAW committee also shared in these sentiments as Kenya's Image is being negatively impacted owing to negative citation/reference at international fora. Non-implementation cannot be justified legally or economically following the report of the National Women's Steering Committee in partnership with Institute of Economic Affairs in May 2015.

9. Hummingbird group, represented by Ms. Wanja who gave

her personal experience with a view to demonstrate the challenges that women living with disabilities face also supported the amendments. She stated that she had sought to join politics as a Member of the Murang'a County Assembly but failed to be either elected or nominated. To her, there is need for the affirmative action taken to be cognizant of the different challenges faced by women that are not homogenous. In her view, it is important to include persons living with disability i.e. to allocate at least five percent of those nomination positions to women living with disabilities.

10. The Women Political Alliance was of the view that women have worked hard in legislation including constitutional making hence to them, women have done all they need to do and now have faith in Parliament to implement the principle. However, the nomination process must be relooked at in order to ensure transparency. To them, as it is currently, the nomination process is a mysterious one that is not clear.

11. Soroptimist Union of Kenya, Millmani club represented by Ms. Emma Odongo supported the bill on the grounds that an outstanding deliverable of parliament. In their opening statement the union cautioned the House that it is presently not constitutionally constituted and this can be attributed to the lack of enabling legislation to actualize the one-third gender principle. She noted that in 2013 it was the first pillar of the Jubilee Manifesto in 2013 that the coalition would promote and protect the role of women in society and fully implement the one-third gender principle.

Individuals

12. Mr. John Ayieko from Dagoretti South Constituency

Individuals

<p>supported the amendment as it is a constitutional requirement but cautioned that it may be expensive.</p> <p>13. Ms. Beatrice Karwitha supported from Meru County supported the amendment but requested the deletion of the sunset clause. Nomination by top-up should not be done by political parties since independents were discriminated against in the previous election. In terms of marginalization, it needs to be assessed politically and not only economically.</p> <p>14. Ms Edita Odhimabo supported the amendment but for implementation to be done in a manner that is not discriminatory.</p>	<p>No individual opposed the amendments</p>
<p>MACHAKOS COUNTY</p>	
<p>COMMENTS IN SUPPORT OF AMENDMENTS</p>	<p>COMMENTS AGAINST AMENDMENTS</p>
<p>Institutions</p> <p>15. Women Visionary group, a group of PWDs, represented by Brigitta Mbenya, supported the Bill but they requested for civic education to be carried out as in their view most members of the community were unaware of the amendments.</p> <p>16. Ms. Rachel Nzive from the Kenya Girl Guides association supported the amendment.</p> <p>17. Mr. Timothy Mutua from the Machakos Network Group for Disabled supported the Bill but requests PWDs to be involved in the numbers. They would like to represent as elected members and not nominated members.</p> <p>18. Mr. Sadique Macharia from the Prisons Service stated that the one-third gender principle can only be realized if</p>	<p>Institutions</p> <p>No institution opposed the amendments</p>

the implementation mechanism is applied from the grassroots since the electorate cannot elect the requisite numbers if candidates of the affected gender do not vie for positions.

19. Mr. Fred Ithau from Uraia Trust Machakos county coordinator supported the bill as it is.

20. Ms. Joyce Nthenge, representing WUSETTE Organisation, supported the two thirds bill to give women opportunities to address their issues

Individuals

21. Ms. Beth a person living with disability supported the Bill but suggested the inclusion of youth women living with disabilities.

22. Catherine Mathi supported the Bill as women make up half of the population and need representation by themselves for their special needs. To her it will not be expensive and the constitutional gains justify the expenses. Affirmative action is needed as leadership by women is yet to come about naturally. To her, women will always be outnumbered in parliament without affirmative action and the amendments will bring women to an even playing field.

23. Iman Anas Ali supported the amendment but cited the implementation mechanism as the main challenge, which will require to be relooked into.

24. Mr. Reuben Musembi supported however expressed concern that much needs to be done to ensure the smooth implementation of it.

25. Ms. Sarah Nzomo supported the bill as it will support youth employment.

26. Ms. Salome Muthama a children officer, supported the bill as it will empower women.

Individuals

1. Humphrey Kabindu opposed bill.

2. Saadia Hussein from Tana River opposed the Bill on basis that its implementation is on top-up basis. He suggested that women should have special wards instead to be elected so as to attain respect and an equal platform to air women issues.

27. Mr. Nzuki supported the amendment as the women of Kenya comprise the majority in society.
28. Ms. Lydia Omollo a youth, supported the amendment but seeks that issues be addressed such as financial constraints, tribalism etc.
29. Ms. Susan Kyengo supported gender bill but seeks issues be addressed on empowerment and education especially in patriarchal communities
30. Ms. Charity Ndolo supported two-thirds gender bill but stated that there should be no need to include education qualifications for candidates as these are unnecessary. In her view, the leaders know people's needs and can best articulate those needs in the legislature in any language and through any means hence degrees are unnecessary to enable one lead.
31. Mr. Robert Mbuva constituency administrator officer of Machakos constituency representing Hon. Member, supported two thirds gender rule bill to give women financial empowerment.
32. Mr. McDonald David Muli supported enactment of the gender principle but by using a different formula where women have special constituencies. The present nomination mechanism is flawed as there isn't a clear mechanism on how nominees are selected. He was of the further opinion that there is no need to amend the constitution on any other matters and a fine should be imposed on those proposing to amend the Constitution without due reason.
33. Ms. Catherine Ndunge supported the Bill in order to empower women.
34. Ms. Esther Mbithi supported the amendments
35. Ms. Jacqueline Ndinda supported the amendments
36. Ms. Margaret Njeri from Prison, supported the

<p>amendments but proposed that political parties do nominate sufficient numbers and reserve seats in strongholds.</p> <p>37. John Nzomo Musyoki, supported the gender bill and sought empowerment for hairdressers and barbers. Supported change of election date.</p> <p>38. Ms. Rose Kanini supported the amendments.</p> <p>39. Mr. Peter Kimeu a village elder supported the amendments as women are the backbone of society and must be afforded the opportunity to lead.</p> <p>40. Mr. Albanus Mutune supported the amendment as women have a special place in society and therefore their voices must be heard at the leadership table.</p> <p>41. Mc Justice supported the Bill but requested women to support fellow women and for the youth should be considered in the nominations.</p>	
MOMBASA COUNTY	
COMMENTS IN SUPPORT OF AMENDMENTS	COMMENTS AGAINST AMENDMENTS
<p style="text-align: center;">Institutions</p> <p>42. United Green Movement represented by Ms. Hamisa Dada supported the amendments but urged the committee to look at the implementation as political party nominations are not transparent and the seats ought either be competitively distributed between women or elective.</p> <p>43. ANC Women League, represented by Ms. Loise Eboso supported the amendment.</p> <p>44. Lonaman CBO group represented by Mr. Ali Babu</p>	<p style="text-align: center;">Institutions</p> <p>No institution opposed the amendments</p> <p style="text-align: center;">Individuals</p> <p>No institution opposed the amendments</p>

supported amendment.

45. Sauti ya Wanawake represented by Ms. Naima Achieng supported the amendment because the enabling legislation is long overdue not to be done progressively but immediately. It is necessary in order to pass the same to support and empower women.
46. FIDA-Kenya Mombasa secretariat represented by Ms. Jackline Were supported the Bill as it is long overdue.
47. Eco ethics International supported the amendment and proposed the removal of the timelines.
48. Transparency International represented by Ms. Mary Maneno from Coast Branch supported the Bill.
49. Soroptimist International Mombasa supported the amendment to the Bill on the two-thirds gender rule.

Individuals

50. Ms. Shubi Abdalla from Maendeleo ya Wanawake supported the amendments
51. Mr Idris Ingw'aru Election to be done in December. Reduce the timeline to ten years.
52. Ferry Abukakar Musa from Mombasa supported the amendments.
53. Mr. Hassan Halaku agreed with amendments for two thirds but opposed change of election date
54. Mr. Omar Komora from Tana River supported the Bill but proposed that the implementation should be immediate and not in 2022. Further, that the same should be elective as opposed to nominations. The implementation mechanism commonly referred to as "top up", to him, will lead to negative discrimination and low caliber nominees as has been experienced in the counties assemblies.
55. Ms. Aisha Mizar former aspirant Lamu County

<p>supported bills</p> <p>56. Ms. Hawa Abdul Salim, former Kwale County woman representative aspirant supported the amendment.</p> <p>57. Rachel Karisa supported the bill but proposed that the top up mechanism be replaced with an elective one.</p>	
TURKANA COUNTY	
<p>COMMENTS IN SUPPORT OF AMENDMENTS</p>	<p>COMMENTS AGAINST AMENDMENTS</p>
<p>Institutions</p> <p>58. Mr. Moses Etelei County Chairman on Kenya Scouts Association, supported the amendments but requests the implementation mechanism be reviewed. Special constituencies should be established for the minority gender.</p> <p>59. Mr. Dominic Emase from Transparency International supported the bill but posed a challenge to the legislators to ensure there are requisite numbers are to pass the amendment.</p> <p>Individuals</p> <p>60. David Ekichelar, a comedian, supported the two thirds gender bill as women are essential in the society</p> <p>61. Lucas supported the two-thirds gender rule amendment as women are the pillar of the home.</p> <p>62. Amos Ezro, a writer, supported the amendment as women are the backbone of society.</p> <p>63. Mr. Wekesa Godfrey supported the amendments so that</p>	<p>Institutions</p> <p>No institution opposed the amendments</p> <p>Individuals</p> <p>No institution opposed the amendments</p>

<p>if election fails, top-up is necessary.</p> <p>64. Ms. Agnes Silowa the supported the two-thirds gender bill</p> <p>65. Mr. John Nyaperi proposed that the implementation be by way of elections. However, PWDs he was of the view that women PWDs may be nominated.</p> <p>66. Ms. Jennifer Kioko Ewotoi, a teacher, supported the two-thirds amendment</p> <p>67. Mr. Suleiman Eka Loturu supported the amendment.</p> <p>68. Ms. Esther Ng'ing'ina an elder, supported the amendments</p> <p>69. Ms. Elizabeth, an elder, supported the amendments.</p> <p>70. Lawrence, area chief of Loima, supported amendments.</p> <p>71. Ms. Margaret, area chief of Lodwar, proposed that nominations should be reserved for those members who vied.</p> <p>72. Mr. Daniel Ewaton supported the changes but noted that civic education is necessary to empower women and enlighten all voters to vote for women.</p>	
<p>NAKURU COUNTY</p>	
<p>COMMENTS IN SUPPORT OF AMENDMENTS</p>	<p>COMMENTS AGAINST AMENDMENTS</p>
<p>Institutions</p> <p>73. Rev. Muthoni Kimani, on behalf of the Nakuru County Women Leaders and through a joint memorandum, supported the amendments on the following grounds:</p> <ul style="list-style-type: none"> a) The two-thirds gender principle is a constitutional right b) There can be no democracy without women's 	<p>Institutions</p> <p>No institution opposed the amendments</p>

<p>meaningful representation in the national legislature</p> <p>c) Because First Pillar of the Jubilee Coalition's policy agenda- Transforming Kenya: Securing Kenya's Prosperity 2013-2017 (commonly referred to as the Jubilee Manifesto) was unity under the section on Women Empowerment and Equal Share the administration made the following commitment: "The Jubilee Government is committed to promoting and protecting the role of women in society and we will fully implement the one-third rule."</p> <p>d) Kenya must reclaim its place as a leader in the region in women representation; currently, Kenya is the last in the East Africa Community in terms of women's representation in Parliament at 22%</p> <p>e) Kenya cannot afford to exclude women</p> <p>f) Women are tax-payers too</p> <p>g) Inclusive must include women; the Building Bridges initiative should include women</p> <p>74. Ms. Judith Abondo, on behalf of Soroptimist International Club of Nakuru, supported the Bill on the following grounds:</p> <p>a) Failure of the National Assembly to pass the Constitution of Kenya (Amendment) Bill 2018 by at least two-thirds majority at the second reading would mean the only recourse per the Constitution, and the judgments of the Supreme Court in 2012 and the High Court in</p>	
--	--

2015 and 2017 as well as the advisory by the National Gender and Equality Commission would be invocation of the provisions of Article 261 (6) & (7) and to avoid the dissolution of Parliament, the Committee must therefore advise the National Assembly as to the urgency and importance of immediate enactment of the Bill

- b) Article 2(1) of the Constitution provides that “This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government”; further, Article 4(2) provides that “The Republic of Kenya shall be a multi-party democratic State founded on the national values and principles of governance in Article 10”;
- c) Over 50% of Kenya’s population is female, therefore representation that is democratic must at a minimum represent the majority population in the proportions required in the Constitution;
- d) The first pillar of Jubilee’s policy agenda entitled Transforming Kenya: Securing Kenya’s Prosperity 2013-2017 (commonly referred to as the Jubilee Manifesto) was unity under the section on Women Empowerment and Equal Share the administration made the following commitment:
“The Jubilee Government is committed to promoting and protecting the role of women

in society and we will fully implement the one-third rule.”

e) Women are people; the rights of the people-men and women-are not a gift from the State; they precede the State and the State is mandated to respect these rights; Article 19(1) of the Constitution recognizes that rights are an integral part of our “democratic state” and “the framework for social, economic and cultural policies”.

f) The Observations on the Eight Episodic Report by the Committee on the Elimination of Discrimination Against Women (CEDAW) in November 2017 stated:

“16. The Committee is concerned that seven years after the adoption of the new Constitution, the rule that no more than two thirds of elective public bodies are to be of the same gender (the two-thirds gender rule), is still not being implemented.”

Kenya is falling behind on her regional and international commitments.

Women problems will be resolved by women as they will articulate women issues better

75. Mr. John Kamande, on behalf of the Centre for Enhancing Democracy in Good Governance, supported the Bill on the following grounds—

a) The jurisprudence from 2012 to date, from the Supreme Court to the High Court has been consistent

and unequivocal on the necessity of legislation to guarantee that “not more than two thirds of the members of elective bodies shall be of the same gender”

b) Article 2(1) of the Constitution provides that “This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government”; further, Article 4(2) provides that “The Republic of Kenya shall be a multi-party democratic State founded on the national values and principles of governance in Article 10”;

d)The Jubilee Coalition came into office with a policy agenda entitled Transforming Kenya: Securing Kenya’s Prosperity 2013-2017 (commonly referred to as the Jubilee Manifesto) was unity under the section on Women Empowerment and Equal Share the administration made the following commitment:

“The Jubilee Government is committed to promoting and protecting the role of women in society and we will fully implement the one-third rule.”

e) Women are people; the rights of the people-men and women- are not a gift from the State; they precede the State and the State is mandated to respect these rights; Article 19(1) of the Constitution recognizes that rights are an integral part of our “democratic state” and “the framework for social, economic and cultural policies”.

f) The Observations on the Eight Episodic Report by the Committee on the Elimination of Discrimination

Against Women (CEDAW) in November 2017 stated:

“16. The Committee is concerned that seven years after the adoption of the new Constitution, the rule that no more than two thirds of elective public bodies are to be of the same gender (the two-thirds gender rule), is still not being implemented.”
Kenya is falling behind on her regional and international commitments.

Individuals

76. Mr. Isaac Njagi supported the Bill; however, he indicates that elderly men have been discriminated against and there was need for equality.
77. Ms. Constance Wambui supported the Bill.
78. Mr. Chepelion supported the Bill but indicated that nominations have been ineffective and there was therefore need to make nominations competitive.
79. Ms. Florence Chepkorir supported the Bill but proposed that the woman who fails to be elected should be the one to be nominated by the political party.
80. Mr. Otieno supported the Bill.
81. Mr. Ibrahim Ogeto supported the Bill and proposes that the funds allocated to the Affirmative Action Fund should be increased.
82. Mr. Kimani supported the Bill but proposed that the number of representation of youths should be increased.
83. Mr. Kimani wa Kimani supported the Bill.
84. Ms. Julianne Muthoni supported the Bill.
85. Ms. Jane Nyandiko supported the Bill.

Individuals

3. Ms. Judy Waitimu opposed the amendments because it does not also address men and women with disabilities since they are marginalized too.
4. Ms. Margaret Sang opposed the amendments on the following grounds:
 - a) She does not understand the methods of attaining two-thirds gender principle and that it is not effective
 - b) There have been discrepancies in nominations and this should be resolved first
5. Mr. Kanau Kisia opposed the amendments on the grounds that women have the ability to clinch elective positions.

NYERI COUNTY

COMMENTS IN SUPPORT OF AMENDMENTS

Institutions

86. Ms. Veronica Wangari Maina, on behalf of Maendeleo ya Wanawake at Nyeri, supported the amendments.
87. The Nyeri Women Social Accountability Group supported the amendments on the following grounds—
- a) Both the Supreme Court and High Court have since 2012, pointed out the serious consequences of failing to pass legislation on the two thirds gender rule which include possible dissolution of the 12th Parliament which currently does not meet the gender threshold
 - b) Enactment of the Bill is necessary to safeguard our constitutional democracy and our values under Article 10 of the Constitution
 - c) In 2013, the Jubilee administration came into office and made commitments towards Women Empowerment and committed to promoting and protecting the role of women in society which included fully implementing the one-third rule
 - d) Kenya is also a signatory to various international treaties including among others: The Universal Declaration of Human Rights, the Beijing Declaration and Platform for Action; the African Union Protocol to the African Charter on Human

COMMENTS AGAINST AMENDMENTS

Institutions

6. Mr. Sheikh Gulel, on behalf of Council of Imams, opposed the amendments on the following grounds—
- a) Increased representation will be costly to Kenyans
 - b) Nominations have been affected by favouritism, nepotism and nominations should be scrapped
 - c) Democratic elections are favourable

and People's Rights on the Rights of Women in Africa (Maputo Protocol), and the Solemn Declaration on Gender Equality in Africa

Individuals

88. Ms. Margaret Nyathogori supported the amendments on the following grounds—

- a) Both the High Court and the Supreme Court have pronounced themselves on this matter
- b) Failure to pass the Bill will be an insult to the Constitution and the values enshrined in the Constitution
- c) Failure to pass the Bill will undermine Jubilee's commitment to the realization of the two-thirds gender representation
- d) Kenya is a signatory to various international treaties and conventions

- 89. Mr. Joseph Gatonga supported the amendments.
- 90. Mr. Waciuri Galuko supported the amendments.
- 91. Ms. Caro Wangai supported the amendments.
- 92. Mr. Maina Mwangi supported the amendments.
- 93. Mr. Charles Wachira Muthengi supported the amendments.
- 94. Mr. Raphael Wanyeki Mbutia supported the amendments.
- 95. Mr. Paul Ndung'u supported the amendments.
- 96. Mr. Ndung'u Muchai supported the amendments.
- 97. Ms. Margaret Wanjiru supported the amendments and encouraged men to champion the Bill since men have always sought votes from women.

Individuals

- 7. Mr. Nahashon, a youth, opposed the amendments on the ground that the youths are not fairly represented
- 8. Mr. Dickson K. Wachira, from Nyeri Central, opposed the amendments on the ground that any other addition should be on merit, as the female gender is being favoured even in the courts while the "children gender" of the family is forgotten.

<p>98. Ms. Mary Wangui supported the amendments. 99. Ms. Elizabeth Muthui supported the amendments.</p>	
<p>ISIOLO COUNTY</p>	
<p>COMMENTS IN SUPPORT OF AMENDMENTS</p>	<p>COMMENTS AGAINST AMENDMENTS</p>
<p>Institutions</p> <p>100. Mr. Abdullahi, on behalf of the Council of Elders of Isiolo and Borana, supported the amendments but proposes that there should be no nominations.</p> <p>101. The Isiolo Women Social Accountability Group, comprising of women in Isiolo from Garbatulla, Merti and Isiolo Central sub-counties, supported the amendments on the following grounds—</p> <ul style="list-style-type: none"> a) Both the Supreme Court and High Court have since 2012, pointed out the serious consequences of failing to pass legislation on the two thirds gender rule which include possible dissolution of the 12th Parliament which currently does not meet the gender threshold b) Enactment of the Bill is necessary to safeguard our constitutional democracy and our values under Article 10 of the Constitution c) In 2013, the Jubilee administration came into office and made commitments towards Women Empowerment and committed to promoting and protecting the role of women in society which included fully implementing the one-third rule 	<p>Institutions</p> <p>No institutions presented views</p>

d) Kenya is also a signatory to various international treaties including among others: The Universal Declaration of Human Rights, the Beijing Declaration and Platform for Action; the African Union Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), and the Solemn Declaration on Gender Equality in Africa

Individuals

- 102. Mr. Mohamed Godana supported the amendments.
- 103. Mr. Jackson Ndegere supported the amendments.
- 104. Ms. Rose Waititu supported the amendments.
- 105. Ms. Elizabeth supported the amendments.
- 106. Ms. Halima Dullo supported the amendments.
- 107. Mr. Omar Godana supported the amendments.
- 108. Ms. Njeri supported the amendments.
- 109. Ms. Hellan Kathure supported the amendments.
- 110. Mr. Abdullahi Hassan supported the amendments.
- 111. Ms. Shoba Libau supported the amendments but proposed that nominations should be merit-based.
- 112. Mr. Mohamed Rashid supported the amendments.
- 113. Pastor Wambua supported the amendments.
- 114. Mr. Dabaso Boru supported the Bill but nominations should result in better women leaders.
- 115. Mr. Annab Kassim supported the Bill and proposed that it should be implemented immediately.
- 116. Mr. Gufu supported the amendments.
- 117. Mr. Hassan Abdi supported the amendments but observed that Jubilee Government has tried to

Individuals

- 9. Mr. Francis Njuguna does not support the amendments on the grounds that it subjugates men.
- 10. Mr. Hassan Mbagacho does not support the amendments on the grounds that women should seek elective positions.
- 11. Mr. Rahman does not support the amendments and proposes that women should seek elective posts.
- 12. Mr. Mohamed Issa Musa does not support the amendments on the following grounds—
 - a) Women Representatives are already there
 - b) Women should seek elective positions and jostle for these seats
- 13. Mr. Rashid Wario does not support the amendments on the grounds that youths have been forgotten and that there is need for more youth representation.

- implement the principle since 2013 but failed.
118. Ms. Consolata Lomilio supported the amendments
119. Ms. Rukia Waqo supported the amendments but proposes that it should not be progressive and that there should be no nominations.
120. Ms. Betsy Mburuko supported the amendments on the following grounds—
- a) Kenya's census results have revealed that women are more than men
 - b) Women are incorruptible and have a big heart
121. Ms. Raukia Salim supported the amendments.
122. Mr. John Long'eya supported the amendments but proposed that persons with disabilities should also be included.
123. Mr. Ondiek Matunda supported the amendments but observed that the nominations would not be useful.
124. Mr. Japheth Muthama supported the amendments but proposed that youth should be represented.
125. Mr. Katama Kura supported the amendments but observed that there was no civic education on the Bills.
126. Mr. George Kiriki supported the amendments.
127. Ms. Valentine Nyaguthii, a former contestant for the position of a Member of a County Assembly, supported the amendments but pointed out the discrepancies in nominations which are not merit-based.
128. Mr. Paul Muthuri, supported the amendments.
129. Ms. Glory Kajuju, supported the amendments on the following grounds—
- a) Women can multi-task

<p>b) The number of women is more than men c) Women are not discriminative</p> <p>130. Ms. Risper Ntwiki supported the amendments on the grounds that women educate their children.</p> <p>131. Ms. Caroline Gatwiri supported the amendments on the grounds that election campaigns are costlier to women.</p> <p>132. Mr. Gabriel Mudibwi supported the amendments</p> <p>133. Mr. Hussein supported the amendments on the grounds that women are trust-worthy.</p> <p>134. Mr. Wago supported the amendments.</p>	
WAJIR	
COMMENTS IN SUPPORT OF AMENDMENTS	COMMENTS AGAINST AMENDMENTS
<p>Institutions</p> <p>135. Mr. Mohamed Dagale, Chairman of Peace Elders in Wajir South, supported the amendments since the two thirds gender principle is expressed in the Constitution.</p> <p>136. Mr. Mohammed Mahamud, the Chairman of Jubilee Party in Wajir, supported the amendments.</p> <p>137. Ms. Jane Kotut, on behalf of Centre for Multiparty Democracy, supported the amendments and called for its enactment.</p> <p>Individuals</p> <p>138. Ms. Fatuma, a person with disability, supported the amendments and proposes that the number of persons with disabilities nominated should be increased.</p>	<p>Institutions</p> <p>14. Mr. Abdulrahman Muhammad, Chairman of Chamber of Commerce, opposed the amendments on the grounds that the two thirds gender rule is a European concept and that elections should be democratic.</p> <p>15. Mr. Abdi Farah Omar, the Chairperson for the Disabled in Wajir, opposed the amendments on the grounds that Islam does not support the two-thirds gender rule and that the nominated women Members of County Assemblies are a burden to the taxpayers.</p> <p>Individuals</p> <p>16. Mr. Aden Garad opposed the amendments on grounds that out of the 47 counties, only 3 counties</p>

<p>139. Mr. Nicmo Araj supported the amendments but proposes that the number of women representatives should be placed at 40%</p> <p>140. Ms. Rukia Abdile, a former nominated Member of County Assembly (2013) and a former councilor (2007), supported the amendments but observed that the greatest impediments to the implementation of the two thirds gender rule are culture and religion. She proposed that the office should come with a “package” i.e. advocacy office, e.t.c.</p> <p>141. Ms. Hassanali supported the amendments on the grounds that women don’t take bribes and are not violent.</p> <p>142. Mr. Noor Mohammed, Executive Secretary of Kenya National Union of Teachers in Wajir, supported the amendments.</p> <p>143. Ms. Fatuma Abdullahi from Wajir East supported the amendments.</p> <p>144. Mr. Mohamed Abdikarim supported the amendments on the grounds that women are capable of providing leadership.</p> <p>145. A representative from Wajir West supported the amendments.</p> <p>146. Mr. Ahmed Hajj Aldas supported the amendments.</p> <p>147. Mr. Dahala Abdi supported the amendments.</p> <p>148. Mr. Mohamed Issa supported the amendments on the grounds that women are more receptive in offices than men.</p> <p>149. Mr. Ali Bulle, an elder from Wajir East, supported the amendments.</p>	<p>elected women Governors. He submitted that the two-thirds gender principle should be implemented progressively.</p> <p>17. Mr. Abdi Abdullahi Kullow opposed the amendments on grounds that his wife was troubling him at home.</p> <p>18. Mr. Mohamed Abdi opposed the amendments on grounds that the Islamic religion does not allow the two-thirds gender principle.</p>
--	--

UASIN GISHU COUNTY	
<p>150. Ms. Sarah from Wajir East supported the amendments.</p> <p>151. Mr. Abdullahi Sheikh supported the amendments on the grounds that women are good leaders and that the current female Member of Parliament of Wajir County has shown good leadership.</p> <p>152. Mr. Issak Bullo Osman from Wajir South supported the amendments.</p> <p>153. Mr. Mshaa Ali supported the amendments.</p>	
COMMENTS IN SUPPORT OF AMENDMENTS	
<p>Institutions</p> <p>154. Komesi Woman's' Network Kacheliba supported the amendments; on grounds of the unconstitutionality of the 12th Parliament poses significant risks to the legal certainty of 12th Parliament actions and they were urging the Justice and Legal Affairs Committee and the National Assembly as a whole to immediately enact the proposed bill without delay.</p> <p>155. Mary Maru of the National Women Steering Committee stated that they supported the amendment on the following grounds;</p> <p>(a) that the Bill was an outstanding deliverable of Parliament, both the National Assembly and the Senate. The jurisprudence from 2012 to date, from the Supreme Court to the High Court has been</p>	<p>COMMENTS AGAINST AMENDMENTS</p> <p>Institutions</p> <p>No institution opposed the amendments</p> <p>Individuals</p> <p>19. Elizabeth Lagat did not support the amendments and felt women just like men should fight for elective positions</p> <p>20. Benerd Kemboi a Youth Representative of Ainabkoi Constituency did not support the amendments and felt that the positions that the women were looking for should be given to the youth.</p> <p>21. Ronald Kiprop did not support the two thirds gender rule and opined that the positions should be given to the youth.</p> <p>22. Councilor Chemase did not support the two thirds gender rule and felt that persons with disabilities should be given those opportunities.</p>

consistent and unequivocal on the necessity of legislation to guarantee that "not more than two thirds of the members of elective bodies shall be of the same gender." Indeed, the court cases have consistently pointed out the severe constitutional consequences of non-compliance which are contained in Articles 261 (6) & (7), which provide for the dissolution of Parliament. Article 2(1) of the Constitution provides that Further the steering committee stated that the Constitution is the Supreme law of the Republic and binds all persons and all State organs at both levels of government."

(b) Further, Article 4(2) provides that "The Republic of Kenya shall be a multi-party democratic State founded on the national values and principles of governance. Over 50% of Kenya's population is female, therefore representation that is democratic must at a minimum represent the majority population in the proportions required in the Constitution.

156. Pokot Women Empowerment Organization Third, in 2013 the Jubilee Coalition came into office with a policy agenda entitled "Transforming Kenya: Securing Kenya's Prosperity 2013-2017 (commonly referred to as the Jubilee Manifesto)". The First Pillar of the agenda was Unity and under the section on Women Empowerment and Equal Share. The Group therefore believes that the Jubilee Government will implement the two-thirds gender rule.

157. Soroptimist union of Kenya Eldoret Club supported the amendment and stated that Kenya must reclaim her

23. Robert Misoi did not support the amendments and felt that those positions should be given to the youth.
24. Habiba Mwanai did not support the amendments on religious grounds

<p>place as a leader in the region. They stated that Kenya was last country in the East Africa Community in terms of women's representation in Parliament. Despite having some of the most educated and accomplished women on the continent, Kenya is last in women's representation in national legislature. Kenya cannot offer regional leadership while failing to adhere to its national, regional and international commitments, and certainly not while leaving the majority of its population out of leadership.</p> <p>158. Tabgulbei Women Networks supported the amendments on the grounds that Kenya is a signatory of many treaties, conventions and principles of International law and the constitution more less domesticates these laws which support women and they felt that the only reason the National Assembly would fail to enact the Constitution of Kenya (Amendment) Bill 2018 would be if the National Assembly rejects the national and international laws to which Kenya is subjects. The therefore urged the National Assembly to play its important leadership role, upholding its independence and its unique role as representative of the people of Kenya, and pass the Constitution of Kenya (Amendment) Bill 2018 without any amendments as soon as possible.</p> <p>159. Maendeleo ya Wanawake Eldoret chapter supported the constitutional amendment bill because women were said to be the fabric that held society together and their increased numbers in political and other administrative positions would be beneficial to the republic.</p>	
--	--

<p>Individuals</p> <p>160. Charles Chabari supported the Amendments. 161. Peter Sing'oe supported the amendments. 162. Rose Sitati supported the amendments. 163. Bob Ronoh supported the amendments. 164. Cicilia Kiptoo of Nyumba Kumi supported the amendments. 165. Jane Waithera supported the amendments. 166. Celine Misoi supported the amendments. 167. Kennedy Kiproo supported the amendments 168. Macrena Kebenie supported the amendments. 169. Ann Kandie supported the amendments. 170. Ronald Kiproop supported the amendments. 171. Carolyn Chebii supported the amendments. 172. Habiba Dudu from Turbo supported the amendments and stated that political positions were not just a preserve of the men in society. 173. Mary Kuket supported the amendments 174. Mr. Nyambane supported the amendments. 175. Gladies Bulbul supported the amendments.</p>	
KAKAMEGA COUNTY	
COMMENTS IN SUPPORT OF AMENDMENTS	COMMENTS AGAINST AMENDMENTS
<p>Institutions</p> <p>176. Mary Triza Odongo on behalf of Soroptimist union of Kenya Kakamega Club supported the amendment on the</p>	<p>Institutions</p> <p>No institution opposed the amendments</p>

<p>grounds that women have been a marginalized for a long time and this Bill was according women an opportunity to have more representation in the legislatures.</p>	
<p>177. Everlyn Khaemba made a presentation on behalf of Pambazuko la Wanawake Magharibi group supported the Constitutional Amendment and stated that the current Parliament did not meet the constitutional threshold of ensuring at least two thirds of its Members were of one gender and should be disbanded.</p>	
<p>178. Winfred Mugesia County Chairperson of Maendeleo ya wanawake Kakamega chapter supported the constitutional amendment bill on the grounds that world over women were said to be the fabric that held society together and she was of the view that their increased numbers in political arena and other administrative positions was bound to be beneficial to the entire nation.</p>	
<p>179. Groots Kenya supported the constitutional amendment on the grounds that even in the international sphere women had been accorded an opportunity and proceeded to name some East African Countries including Rwanda that had more women in the National Parliaments.</p>	
<p>180. Bernard Kenga of Shilekho Home based care and counselling unit stated that they were in support of the amendment on the grounds that there was a need to make up for the lost time that women have been forced into by patriarchal societies and the position of women should now be elevated as it has been proved that women can make good leaders.</p>	

<p>181. Mr. Vincent Ingosi of Isukha Makuti Group was in support of the amendment on the grounds that rights of women had been suppressed for a long time and it was time to level the playing field.</p>	<p>Individuals</p> <p>25. Fredrick Ambale opposed the amendments on the grounds that women needed to fight for the positions on a levelled playing field like men.</p>
<p>Individuals</p> <p>182. Hon. Dorcas Kedogo former Vihiga County Member of Parliament supported the two thirds gender rule on the grounds that there was an imbalance in the current parliament and since most men did not understand the issues that affect women, it was better if the number of women members would be enhanced so that they can better articulate the issues that affected the female constituent, however she was of the opinion that the nomination positions should be done away with to open up the elective positions.</p>	<p>26. Jimase Ndenda opposed the amendments on the grounds that women had been saying that they are equal to men and therefore they should participate in politics on the same grounds.</p> <p>27. Savan Enoch stated that democracy is about competitiveness and opined that the laws are going to marginalize the men. He further felt that voters needed to be given the right to choose their leaders.</p> <p>28. Douglas Kwalelo representing the community health volunteers did not support the amendment and stated that the Law in Kenya is fair, equal and neural and should remain so, that the amendment was pushing for discrimination on the basis of gender which he felt was unfair.</p>
<p>183. Alice Aleyo an aspiring member of parliament for Vihiga supported the amendment.</p> <p>184. Mary Amalemba from Vihiga County supported the Bill and stated that the issue of progressive realization of the provisions should not be entertained and that Parliament should pass the Bill as soon as possible to alleviate the plight of women.</p>	<p>29. Carolyne Ingosi did not support the Bill on the grounds that women have the ability and capacity to garner for the positions just like men and should not seek to be given the positions on a silver platter.</p>
<p>185. Khadija Juma, a politician, supported the Bill.</p> <p>186. John Wetatomia supported the Bill.</p> <p>187. Phyllis lumiti supported the Bill.</p> <p>188. Mrs Shamal Wafula also supported the Bill.</p> <p>189. Violet Muhati from groots Kenya supported the Bill and enthused that women needed to understand their society that it does not treat men and women as equal therefore</p>	<p>30. Mambo Eric a youth Representative opposed the amendments and was of the opinion that the same should be set aside for the youth.</p>

<p>affirmative action should be allowed to bring the women to the same level as that of men.</p> <p>190. Matalena Amwoga supported the amendments.</p> <p>191. Kisiwa Victor supported the amendments.</p>	
KISUMU COUNTY	
COMMENTS IN SUPPORT OF AMENDMENTS	COMMENTS AGAINST AMENDMENTS
<p>Institutions</p> <p>192. Nyarongi Women Network (NWN) an umbrella network of thirty semi-autonomous women groups in Nyarongi Division, Ndiwa Sub-county, Homabay County with a total of 800 Women. The women group supported the amendments on the ground that there has been litigation on this matter and the courts have unanimously stated that there was an urgent need for parliament to enact this law failure thereto, parliament would risk being dissolved.</p> <p>193. On behalf of Soroptimist union of Kenya Kisumu Club supported the amendment on the grounds that women have been a marginalized for a long time and this Bill was according women an opportunity to have more representation in the legislatures.</p> <p>194. Pambazuko la Wanawake Magharibi group supported the amendments on the grounds that women formed the majority of the population of Kenya and it was only fair</p>	<p>Institutions</p> <p>No institution opposed the amendments</p> <p>Institutions</p> <p>No individual opposed the amendments</p>

that they be given ample representation in the political sphere. Further that woman understood issues affecting their fellow women better than the men and if given a chance would resolve those issues faster.

195. Maendeleo ya Wanawake represented by Susan Onguko Kisumu chapter supported the constitutional amendment bill on the grounds that the rights of women just like those of men were fundamental and it was important That Parliament enacts these laws so as to remove the blatant discrimination that continued to be perpetuated by the obtaining status quo

196. Kisumu County Technical working group presented by Collins Kodhek supported the amendments because the gender principle was a constitutional right. He observed that women were yet to realize the benefits of equal citizenship and there was a supreme court advisor opinion that sort to have Article 81(b) of the constitution implemented. He noted that Kenya is a signatory to the SDG'S which provide for gender equality.

Individuals

197. Irene Adhimabo from Homabay County supported the amendments and noted that the enactment of the law was an outstanding deliverable of Parliament.

198. Everlyn Khaemba supported the amendments but opined that the twenty year period for progressive realization was unconstitutional.

199. Jackson Onditi supported the amendments.

200. Judith Oturi supported the amendments.

201. Janet Winnie Ogot supported eth amendments on the

<p>grounds that there was an urgent need for equal representation.</p> <p>202. Karen Oloo supported the amendments as the chairperson of Maendeleo ya Wanawake Kisumu Chapter.</p> <p>203. Brenda Onyango supported the amendments.</p> <p>204. Hon Rosa Buyu, MP supported the amendments and urged the committee to ensure that it forwarded the views of the stakeholders to Parliament so as to allow for the enactment of the law.</p> <p>205. Maulder Ojwang supported the amendment and opined that getting positions for women under this amendments was not a favour to the womenfolk, but was a right.</p>	
<p>GENERAL COMMENTS (comments not relating to the amendments in question)</p>	
<p>Nakuru County</p> <ol style="list-style-type: none"> 1. Ms. Kezia proposes that the position of Women Representatives should be removed and that constituencies should be merged. 2. Mr. Otieno proposes that there be four Members of Parliament in every county. 3. Mr. Joseph Ndung'u complained that the President and the Governor is inaccessible. 4. Mr. Daniel Murungu proposes that the number of Members of Parliament should be reduced. 	
<p>Nyeri County</p> <ol style="list-style-type: none"> 5. Mr. Derrick Mukundi proposes the following: <ol style="list-style-type: none"> a) Gender representation in all elective positions and public appointments should be on a 50: 50 basis (equal proportion) b) The number of constituencies should be reduced to 110 	

- c) All positions in the National Assembly and the Senate where there is nomination should be removed
 - d) The position of the Women Representative should be removed
 - e) Every constituency to elect one man and one woman and for Kenya to have 220 Members of Parliament
 - f) Of the two Members of Parliament elected in every constituency, one would be a substantive MP and the other a support MP; the substantive MP would be the one involved in decision-making for the constituency and would be the one who would have gathered majority of votes in every ward whereas the support MP would be the second
6. Mr. Joseph Gatonga proposes that the gender representation in all elective positions and public appointments should be on a 50: 50 basis (equal proportion).
 7. Mr. Waciuri Gakuo proposes that the gender representation in all elective positions and public appointments should be on a 50: 50 basis (equal proportion).
 8. Ms. Veronica Wangari Maina, on behalf of Maendeleo ya Wanawake at Nyeri proposes the following:
 - a) that the gender representation in all elective positions and public appointments should be on a 50: 50 basis (equal proportion)
 - b) nominations of persons for special seats should be scrapped since such persons are not answered to the ordinary Kenyan and the process does not have merit
 9. Ms. Caro Wangai proposes that the gender representation in all elective positions and public appointments should be on a 50: 50 basis (equal proportion) and that nominations should be removed because they have subverted democracy.
 10. Mr. Maina Mwangi proposes the following:
 - a) that the gender representation in all elective positions and public appointments should be on a 50: 50 basis (equal proportion) and that nominations should be scrapped since a nominee is a puppet
 - b) The Constitution and the laws should be amended so that if a sitting Governor dies before lapse of three years in his or her term, then a by-election should be conducted
 - c) The number of Members of Parliament and Senators should be reduced
 11. Mr. Charles Wachira Muthengi proposes that the gender representation in all elective positions and public appointments should be on a 50: 50 basis (equal proportion).
 12. Mr. Raphael Wanyeki Mbuthia proposes the following—
 - a) Gender representation in all elective positions and public appointments should be on a 50: 50 basis (equal proportion)
 - b) Every constituency should have an equal number of voters

- c) Every constituency should have three Members of Parliament; the third Member would be one who represents the ordinary Kenyan, 'Wanjiku'
13. Mr. Paul Ndingu proposes the following—
- a) Gender representation in all elective positions and public appointments should be on a 50: 50 basis (equal proportion)
 - b) There should be vetting before nominations in order to ensure transparency
 - c) It should not be automatic that if the Governor's office becomes vacant, then the Deputy Governor may assume the office; the Deputy Governor should be elected if this happens
14. Mr. Ndingu Muchai proposes the following:
- a) Every county should have three constituencies
 - b) Every constituency should have one man and one woman as Members of Parliament and both should have equal powers
 - c) Senate should be scrapped
 - d) The National Government Constituencies Development Fund should be retained
 - e) The position of a Woman Representative should be scrapped
15. Nominations should be scrapped in County Assemblies since it brings confusion.
16. Ms. Mary Wangui proposes the following—
- a) Gender representation in all elective positions and public appointments should be on a 50: 50 basis (equal proportion)
 - b) Resources in all constituencies should be allocated per head because other constituencies are discriminated against
 - c) The Equalisation Fund is discriminatory
17. Ms. Elizabeth Muthui proposes the following—
18. The current constituencies' boundaries were unfair and promoted inequalities; for instance, she cites Kieni Constituency which is very big. Nominations should be abolished but could be retained if they are merit-based
19. Mr. Sheikh Gulel, on behalf of Council of Imams, proposes the following:
- a) that if there is a vacancy in the position of a President, then it should not be automatic for the deputy president to occupy the seat
 - b) that amendments to the Constitution should be positive
 - c) Kenyans should be allowed to exercise their democratic rights in electing their leaders
20. Mr. Charles Wachira Muthengi observes that the number of Members of Parliament and Senators was too big

and this puts pressure on the wage bill.

21. Mr. Simon Njugi Rukwaro proposes the following:

- a) Village elders should be remunerated
- b) The number of Members of Parliament should be reduced
- c) Nominations should be scrapped

22. Mr. Dickson K. Wacira proposes the following—

- a) The elderly should also have a seat in Parliament since they are not represented
- b) The law on women inheritance should be reviewed as the women claim double inheritance and this has led to family inheritance wars
- c) Parliament should establish a permanent officer in each county to organize consultations
- d) Review idea of a digital forum in e-citizen to invite public comments on Bills

Machakos County

23. Women Visionary group a group of PWDs represented by Brigitta Mbenya, supported the Bill but requested for civic education on the constitutional changes.

24.

Beth, a blind PWD, requested that PWDs and youth women be nominated on priority.

25.

Ms. Sarah Nzomo decried the lack of jobs by the youth who have consequently been forced into crimes and idleness

26.

Ms. Naomi, a teacher requested the committee to look at issues of age and qualification of persons vying or nominated to parliament.

27.

Susan Kyengo sought that the issues of women empowerment and education be approached differently so as to equip voters with information especially given that most Kenyan communities are patriarchal communities.

Isiolo County

28. Mr. Katama Kura proposed that women should be entrusted with leadership of powerful parliamentary committees such as Public Accounts Committee and Public Investments Committee.

Wajir County

29. Mr. Abdulrahman Muhammad, Chairman of Chamber of Commerce, proposed that there should be three Members of Parliament in every county.

30. Mr. Ahmed Hajj Aldas proposes that term of all elected and nominated leaders should be reduced from 5 to 3

years

Nairobi County

31. Kenya Women Candidates, an unregistered group, proposed an amendment to be effected to the election laws to allow submission of party lists to be 21 days after the date of the general elections. Women nominated must be those with an interest in politics. Also proposed that political parties be compelled to observe the rule nomination and those nominees. Proposed the formulas used in Namibia Zebra. Rwanda, Australia. Political parties must also have a code of conduct and allocate 50% of the seats to their supporters who are politicians
32. FIDA proposed an amendment to the Elections and Political Parties Act to allow election for nomination- party lists (Article 90).
33. URAIA Trust proposed that amendments be passed in the relevant law so as to enable those women with interest in politics and with influence in the society who should be nominated.
34. Women Political Alliance sought for feedback mechanism. Further, voting on the Billin the House should not be by secret ballot rather by show of hands.
35. Mr. Simon Karanu from Pipeline ward proposed that the constitution should provide for a formula where county women representatives sit in the county assemblies.

Uasin Gishu County

28. Mr. John Sawe of Agricultural stakeholder forum had the following submissions—

- a) Reduction of numbers of MCA, Women representative and was of the opinion that the same should be reduced as the government cannot afford them.
- b) The presenter was opposed to the introduction of the MCA fund; he stated that the same was affecting the principle of separation of powers because the role of county assemblies is that of oversight while the role of county governments is service delivery to communities in the county. The presenter wondered how plausible it was for MCA to play an oversight role yet they handled the funds.
- c) Equalization Fund-On the equalization Fund Article 204. The Member proposed that the national government should transfer the entire equalization fund from the National Government to the Beneficiary County Governments.
- d) Health Services- On health services the presenter stated that the county health facilities should be managed at the National level as a way of containing industrial strikes that hamper service delivery.

Kisumu County

29. Moses Ogoro a youth representative from Kisumu County requested the committee to come up with policies and laws that would reduce the trading licenses in the country which were according to him very expensive and unaffordable to the youth.

Kakamega County

30. Mr. Alphonse Mahero requested the committee to look into the pending issue of payment of allowances to village elders who played a pivotal role in the day to day operations of their villages especially security and decried the fact that despite their services to their locations, they did not receive any allowances from the government which was demoralizing to them.

31. Mrs. Wilfreda Masitsa from the empowerment of the disabled person group a person with disability condemned the fact that there were no sufficient positions for persons with disabilities in the country. She stated that people living with disabilities were numerous in the Nation and some with severe disabilities were unable to fend for themselves therefore she felt that only when that constituent was ably represented would it be able to fight for others within the. She ended her presentation by stating that there was a need to expand the slots made available to persons with disabilities in politics and in employment matters to allow for a levelled and fair platform.

32. Caleb Shihundu asked the committee to look at way of having Affirmative action for the boy child who had been ingoned in the quest to uplift the plight of the girl child and was now not able to match up to the girls.

33. John Eboso urged the members to look into the matter of social protection as well as the money that had been promised to persons over the age of seventy (70) by the president. He stated that the cash transfers to the elderly, and persons with disabilities were taking too long to get to the recipient which situation had then relegated these categories of people at the mercies of their relatives who also had their own responsibilities. He urged the Members of Parliament to ensure that the cash transfers were getting to the recipients on time and that the amount should also be enhanced given the existing economic upheavals in the nation.

34. It was also felt by some of the members of the public that there was need for the country to formulate policies that would cater for the need of the "boy" child who they decried had been left behind after the spirited affirmative action campaigns that favored the "girl" child. It was felt that the country was bound to suffer if the boys were not encouraged to take up their roles and responsibilities well as this went against the expectations of the African

Society.

CLAUSE	GROUP/PERSON	PROPOSAL/ AMENDMENT	RATIONALE
3 and 4	Federation of Women Lawyers in Kenya (FIDA Kenya)	Amend 1D by inserting a new provision to allow for assessment of whether affirmative action has yielded results then if not increase the timeline.	To allow for a mechanism for review on whether the rule has been attained.
	Centre for rights and Awareness (CREAW) and Community Advocacy and Awareness Trust (CRAWN Trust)	Amend clauses 3 of the Bill by deleting the proposed new clauses IC, 1D and IE Articles 97. No comment on Article 98. Amend to ensure application to current Parliament	The two-thirds gender principle is anchored in the Bill or Rights hence providing a timeline limits rights under the Bill of Rights. It is not sunset clear what will happen after clause. The mechanism should be self-regulatory so that at any point, the tipping point will be the two-third of either gender.
	Kenya Women Candidates Caucus an unregistered group	Delete sunset provisions	
	URAI A Trust Ms. Mabel Isolio Political Parties Liaison Committee	Delete sunset provisions	

Rosemary Kariuki Hummingbird	Amend	It is important to include persons with disability i.e. at least five percent of those nominated should be PWDs.
Women political Alliance	Delete sunset provision Insert a new clause to ensure top-up in this Parliament.	
Alexander Roberts	Inclusion of monitoring and evaluating	
Ms. Beatrice Karwitha	Delete sunset provisions	
Transparency International representative in Eldoret supported the amendment, however were of the opinion that the sunset clause should be removed.	To delete the sunset clause	There is no constitutional democracy without ensuring that the national legislature complies with the minimal constitutional requirements on the representation of Kenya's female majority. Enactment of the Constitution of Kenya (Amendment) Bill 2018 is therefore necessary to safeguard our constitutional democracy. Failure of the Constitution of Kenya (Amendment) Bill 2018 to receive two-thirds support at the second reading would be a repudiation of the Constitution of Kenya 2010 as the supreme law, but also of Kenya's commitment to democracy and this should be implemented as soon as possible.
Law Society of Kenya	Delete Article 98(1)(b)	If the bill is enacted as it is, political parties will have to submit two parallel lists to IEBC

			on nomination of women in the Senate (that is one of the sixteen members under 98(1) (d) and another of the proposed 98(1) (da).
--	--	--	--