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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION - 2024

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY

REPORT ON:

THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2023 (SENATE BILLS NO. 25 OF 2023)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 09 OCT 2024	
DAY: Wednesday	
TABLED BY:	<i>Vice Chairman Hon. Diolo Rao</i>
CLERK-AT THE-TABLE:	<i>Randa Cililei</i>

Published by: -
Directorate of Departmental Committees
Clerk's Chambers
Parliament Buildings
NAIROBI

OCTOBER, 2024

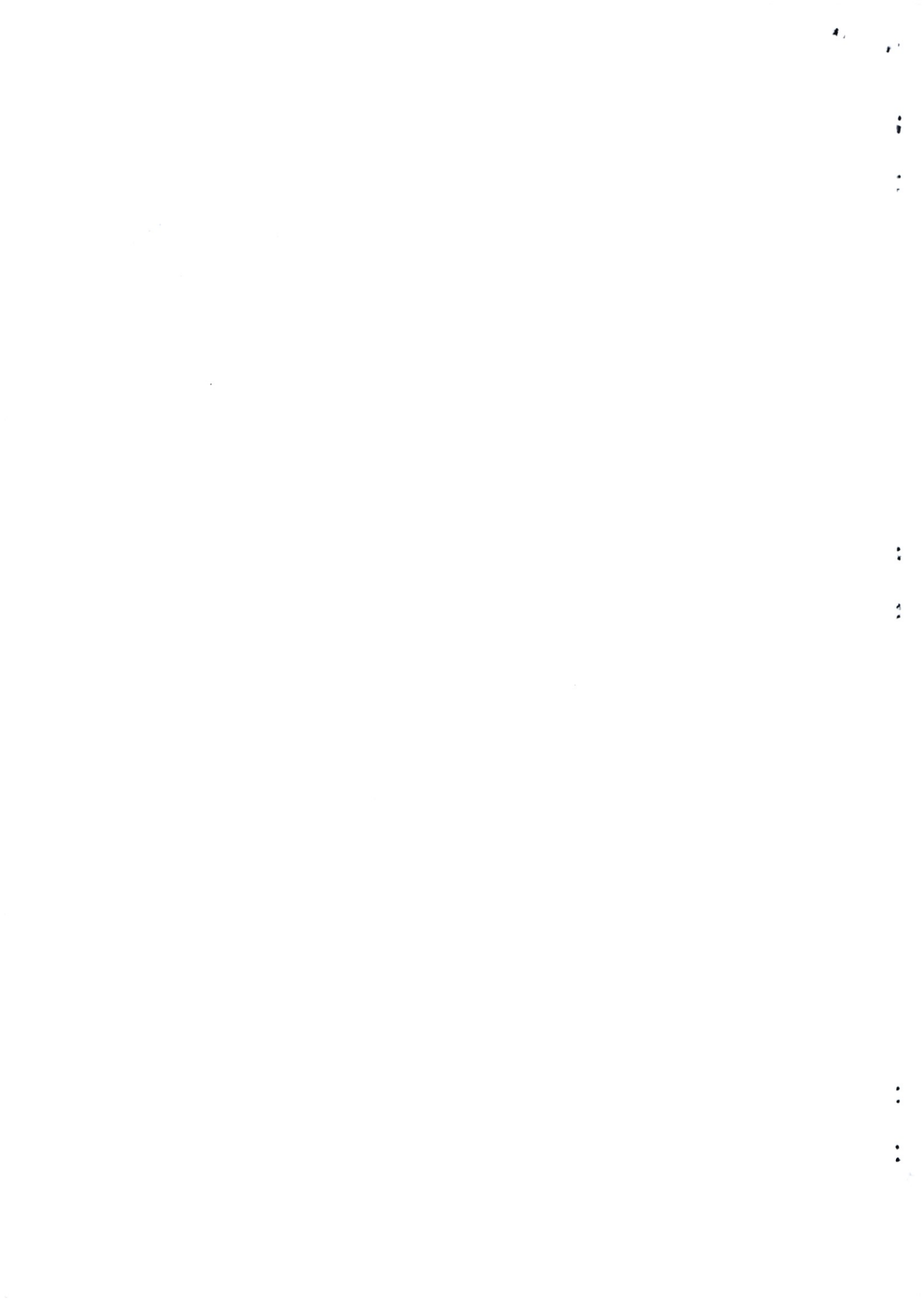


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CHAIRPERSON'S FOREWORD

The County Governments (Amendment) Bill Senate No. 25 of 2023 sponsored by Sen. Samson Cherarkey and Hon. Timothy Kipchumba, MP seek to amend Section 40 of the County Governments Act, Cap 265 to increase the threshold for removal of a member of such as member from the required "one-third" of the members of the County Assembly to "two-thirds" of the members of the County Assembly.

The Bill was published on 16th June 2023. It was processed in the Senate pursuant to Article 118 of the Constitution and transmitted to the National Assembly pursuant to National Assembly Standing Order 143.

On 5th June 2024, the Bill was committed to the Departmental Committee on Administration and Security. The Committee placed a newspaper advertisement calling for submission of memoranda on 16th July 2024. The Committee received memoranda from the State Department for Devolution, the Council of Governors and the County Assemblies Forum.

In considering the Bill, on 8th August 2024, Hon. Timothy Toroitich appeared before the Committee and made submissions on the Bill

The Committee having considered the Bill and taking into consideration the views and recommendations of stakeholders pursuant to National Assembly Standing Order 127(3A) made observations and recommendations contained in section 4.0 and 5.0 of this Report.

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded during the sittings. The Committee further wishes to thank the sponsors of the Bill and all the stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and Secretariat who made useful contributions towards consideration of the Bill and production of this report.

On behalf of the Departmental Committee on Administration and Internal Security, and pursuant to provisions of Standing Orders 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the County Governments (Amendment) Bill Senate No. 25 of 2023.



HON. GABRIEL TONGOYO, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL
SECURITY

CHAPTER ONE

1.0 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Administration and Internal Security is constituted pursuant to the provisions of Standing Order No. 216(1) of the National Assembly Standing Orders. The functions of the Committee are to: -
 - 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 the implementation; on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - c. *study and review all legislation referred to it;*
 - d. *study, assess and analyze the relative success of the Ministries and departments by the results obtained as compared with their stated objectives;*
 - e. *investigate and inquire 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);*
 - (fa) *examine treaties, agreements and conventions;*
 - g. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - h. *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - i. *examine any questions raised by Members on a matter within its mandate.*
2. In executing its mandate, the Committee is mandated to consider the following subjects:
 - a. Home affairs, internal security – including police services and coast guard services;
 - b. Public administration; and
 - c. Immigration and citizenship.

1.2 Committee Membership

3. The Committee comprises of the following Members: -

Hon. Gabriel Tongoyo, MP
Chairperson
Narok West Constituency

Hon. Col. (Rtd.) Dido Rasso, MBS, MP
Vice Chairperson
Saku Constituency

Hon. Kaluma George Peter, MP
Homa Bay Constituency

Hon Protus Ewesit Akujah, MP
MP Loima Constituency

Hon. Aduma Owuor, MP
Nyakach Constituency

Hon. Rozaah Akinyi Buyu, MP
Kisumu West Constituency

Hon. Fred C. Kapondi, MP
Mt. Elgon Constituency

Hon. Caroline Ng'elechi, MP
Elgeyo-Marakwet County

Hon. Liza Chepkorir Chelule, MP
Nakuru County

Hon. Fatuma Jehow, MP
Wajir County

Hon. Sarah Paulata Korere, MP
Laikipia North Constituency

Hon. Francis Sigei, EBS, MP
Sotik Constituency

Hon. Oku Kaunya, MP
Teso North Constituency

Hon. Hussein Weytan, MP
Mandera East Constituency,

Hon. Mburu Kahangara, MP
Lari Constituency

4. The Committee Secretariat consists of the following:

Mr. John Mugoma
Head of Secretariat

Ms. Grace Wahu
Clerk Assistant II

Mr. Edison Odhiambo
Fiscal Analyst I

Ms. Delvin Onyancha
Research Officer II

Ms. Judith Kanyoko
Legal Counsel II

Mr. Rodgers Kilungya
Audio Officer

Mr. Gideon Kipkogei
Clerk Assistant II

Ms. Clara Kimeli
Legal Counsel I

Mr. Benson Kimanzi
Serjeant at Arms

Ms. Ivy Maritim
Media Relations Officer III

CHAPTER TWO

2.0 BACKGROUND

5. The County Governments (Amendment) Bill. (Senate Bill. No. 25 of 2023) is a Bill originating from the Senate and was passed by the Senate on 2nd May 2024. It was subsequently referred to the National Assembly in accordance with the provisions of Article 110(4) of the Constitution, which provides—

110(4) When any Bill concerning county government has been passed by one House of Parliament, the Speaker of that House shall refer it to the Speaker of the other House.

6. Upon being referred to the Speaker of the National Assembly, the Bill was read a first time on Wednesday, 5th June 2024 and committed to the Departmental Committee on Administration and Internal Security for review and reporting to the House.
7. The Committee received memoranda from the State Department for Devolution, the Council of Governors and the County Assemblies Forum.

2.1 Object of the Bill

8. The primary objective of this Bill is to increase the threshold required to remove a member of the County Executive Committee by increasing the proportion of members required to support a proposal to remove a County Executive Committee member from one-third to two-thirds and increasing the proportion of members required to support the finding of a select committee from a simple majority to two thirds.

2.2 Analysis of Clauses

The Bill contains two clauses as analyzed below—

9. **Clause 1** of the Bill is the short title.
10. **Clause 2** of the Bill proposes to amend section 40 of the County Governments Act in subsection (2) by deleting the words “one-third” appearing immediately after the words “supported by at least” and substituting therefor the words “two-thirds”. Section 40 of the County Government Act provides for the procedure for the removal of a county executive committee member. It provides as follows—

(2) A member of the county assembly, supported by at least one-third of all the members of the county assembly, may propose a motion requiring the Governor to dismiss a county executive committee member on any of the following grounds —

- (a) gross violation of the Constitution or any other law;*
 - (b) incompetence;*
 - (c) abuse of office;*
 - (d) gross misconduct; or*
 - (e) if convicted of an offence punishable by imprisonment for at least six months.*
11. The effect of the proposed amendment would be to increase the threshold of members required to propose a motion for removal from one third of all members to two thirds.

12. The Bill further proposes to amend section 40 Of the County Government Act in subsection (3) by deleting the words “one third” appearing immediately after the words “supported by at least” and substituting therefor the words “two-thirds”. Subsection (3) provides for the threshold of Members of the County Assembly required to support a motion for removal of a member of the County Executive Committee and to thus, set in motion the appointment of a select committee to investigate the matter. It provides—

(3) If a motion under subsection (2) is supported by at least one-third of the members of the county assembly—

(a) the county assembly shall appoint a select committee comprising five of its members to investigate the matter; and

(b) the select committee shall report, within ten days, to the county assembly whether it finds the allegations against the county executive committee member to be substantiated.

13. The effect of amending subsection (3) as proposed would be to increase the threshold of members required to support a motion for removal from one third of members of the assembly to two thirds and to thus, set in motion the appointment of a select committee to investigate the matter.

14. The Bill also proposes to amend Section 40 of the County Governments Act in subsection (6) by deleting the words “a majority” appearing immediately after the words “supported by” and substituting therefor the words “at least two-thirds”. Subsection (6) provides for the threshold of the members of the county assembly required to support a finding of substantiated allegations by the select committee. It provides—

(6) If a resolution under subsection (5)(b) is supported by a majority of the members of the county assembly—

(a) the speaker of the county assembly shall promptly deliver the resolution to the Governor; and

(b) the Governor shall dismiss the county executive committee member.

15. The effect of amending subsection (6) would be to increase the threshold of members required to support a finding of substantiated allegations by the select committee from a simple majority of the members of the Assembly to at least two-thirds of the Members.

CHAPTER THREE

3.0 PUBLIC PARTICIPATION OF THE COUNTY GOVERNMENTS (AMENDMENTS) BILL, 2023 (SENATE BILLS NO 25 OF 2023)

16. In consideration of the Bill, the Committee met with the co-sponsor of the Bill and the following stakeholders;
- i. County Assemblies Forum (CAF)
 - ii. Council of Governors
 - iii. State Department for Devolution

3.1 Submissions from the Hon. Timothy Toroitich, M.P

17. The Hon. Timothy Toroitich appeared before the Committee on 8th August 2024 and 10th September 2024. He submitted as follows—
- (a) Kenya has a presidential system of government, in which county governors are sometimes elected from the minority party;
 - (b) The Members of the County Executive Committee are appointed by the Governor;
 - (c) Where a county assembly consists of members from the majority party and a governor from the minority party, the County Executive Committee Members are often forced into acceding to the demands of the county assembly thus hampering service delivery by the County Executive;
 - (d) A higher threshold is therefore justified to ensure that the County Executive Committee Members perform their functions effectively;

3.2 County Assemblies Forum

18. Represented by their Legal Counsel Mr. Austine Munene, the County Assemblies Forum appeared before the Committee and submitted that Section 40 of the County Government Act should remain as it is for the following reasons:
- a) For preservation of Oversight Authority; the County Assemblies serve as the primary oversight bodies for county governments, acting as the voice of the people and the custodians of their interests. The existing threshold for CEC removal is essential tool that empowers County Assemblies to exercise authority effectively.
 - b) Accountability and transparency: County Assemblies understand that accountability is the cornerstone of good governance. The current threshold enables County Assemblies to hold CECs accountable for their actions and decisions. maintaining this threshold ensures transparency in the management of county resources and execution of county functions.
 - c) Checks and balances; The current threshold serves as a necessary check and balance within the county government structure. It prevents the concentration of power and ensures that CECs are answerable to the representatives of the people.
 - d) Ward representatives; MCAs are elected to represent the interests of their constituents at county level. The existing threshold allows MCAs to act on behalf of their constituents when they perceive misconduct, incompetence or other issues that warrant the removal of CEC.

- e) Balancing Accountability and Fairness; the County Assemblies emphasize on the need to protect the rights of the CECs and maintaining accountability. The current threshold has already incorporated the due process, investigations and grounds for removal, ensuring fairness in the impeachment process.

19. The County Assemblies Forum further submitted the list of motions to remove County Executive Committee Members since 2013. It shows that since 2013, there have been introduced 82 motions, with the highest number being 7 motions in Tharaka Nithi County Assembly. Of the 82 motions, 39 motions (47.6%) were successful. Of the successful motions, petitions in sixteen counties were challenged in court and fourteen were decided in the Petitioners' favour.

3.3 State Department for Devolution

The Council of Governors submitted that;

- 20. In Section 40 (2), while the Governor is the senior most office in the County, the threshold is one-third. The threshold for removal of the county executive member should not be higher than that of the Governor.
- 21. The voting in Section 40(3) is to allow for investigations to be conducted by a select committee. The voting to either remove County Executive Committee Members (CECMs) from office or not will still be conducted at a later stage. At this point, a higher threshold (two-thirds) is not necessary. In case of a Governor, this is the final voting at the county level thus the higher threshold of two-thirds.
- 22. In Section 40(6), the threshold for removal of a Governor is a majority. The Governor is the senior most office at the county and so the threshold for removal of CECs should not be higher than that of the Governor. The threshold should be maintained.

3.4 Council of Governors

- 23. The Council of Governors submitted that they supported the Bill that seeks to amend Section 40(2), (3) and (6) to increase the voting threshold required in a county assembly to remove CECMs to at least two-thirds of the assembly because;
 - a) CECMs are appointed to oversee various departments in the County Government and are responsible for the effective discharge of devolved functions as defined in Part 2 of the Fourth Schedule of the Constitution. By raising the voting threshold for the removal of CECMs, the proposed amendments will enhance stability and reduce the potential for politically motivated or arbitrary removals. This change will contribute to a more robust governance structure and foster a more stable administrative environment.
 - b) There is need for rationalization of the Bill with County Governments (State Officers 'Removal from Office) Procedure Bill, 2024, (Senate Bills No. 34 of 2024) which proposes that tabling a motion for removal of CECM requires a third of the members of county assembly and the same passes if supported by simple majority.

CHAPTER FOUR


4.0 COMMITTEE OBSERVATIONS

24. Upon reviewing the Bill and submissions received, the Committee made the following observations:
- (a) The removal of a Member of a County Executive Committee is integral in the County Assemblies' role to ensure accountability of the County Executive;
 - (b) Increasing the threshold at all stages of the removal process will hamper the County Assemblies' oversight function by making it difficult to remove a Member of the County Executive Committee;
 - (c) A majority of successful motions for the removal of a Member of a County Executive Committee have been successfully challenged in Court;
 - (d) There is need to balance the role of the County Assemblies to provide oversight and ensure accountability and the right of a Member of a County Executive Committee to fair administrative action under Article 47 of the Constitution; and
 - (e) At the National level, the threshold for removal of a Cabinet Secretary is one quarter of the Members of the National Assembly to propose a motion for removal, one third to support a motion for removal and a majority of the members to support the resolution for dismissal;

CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATIONS

The Committee, having considered the County Governments (Amendment) Bill Senate No. 25 of 2023 and the submissions from the sponsor of the Bill, the members of the public and stakeholders, recommends that the House approves the Bill with amendments contained in the Schedule of Amendments forming CHAPTER SIX.

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 09 OCT 2024	
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CHAPTER SIX

6.0 SCHEDULE OF AMENDMENTS

CLAUSE 2

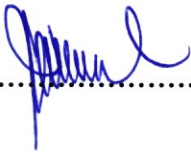
THAT clause 2 of the Bill be amended—

- (a) in paragraph (a), by deleting the expression “two-thirds” and substituting therefor the expression “one-quarter”;
- (b) by deleting paragraph (b); and
- (c) by deleting paragraph (c)

JUSTIFICATION

To reflect the threshold for removal of a Cabinet Secretary under Article 152(6), (7) and 10 of the Constitution by providing for a gradual increase in the threshold for removal of a Member of the County Executive Committee, with the lowest threshold at the initiation of the process and the highest threshold at the final stage.


SIGN..... DATE.....

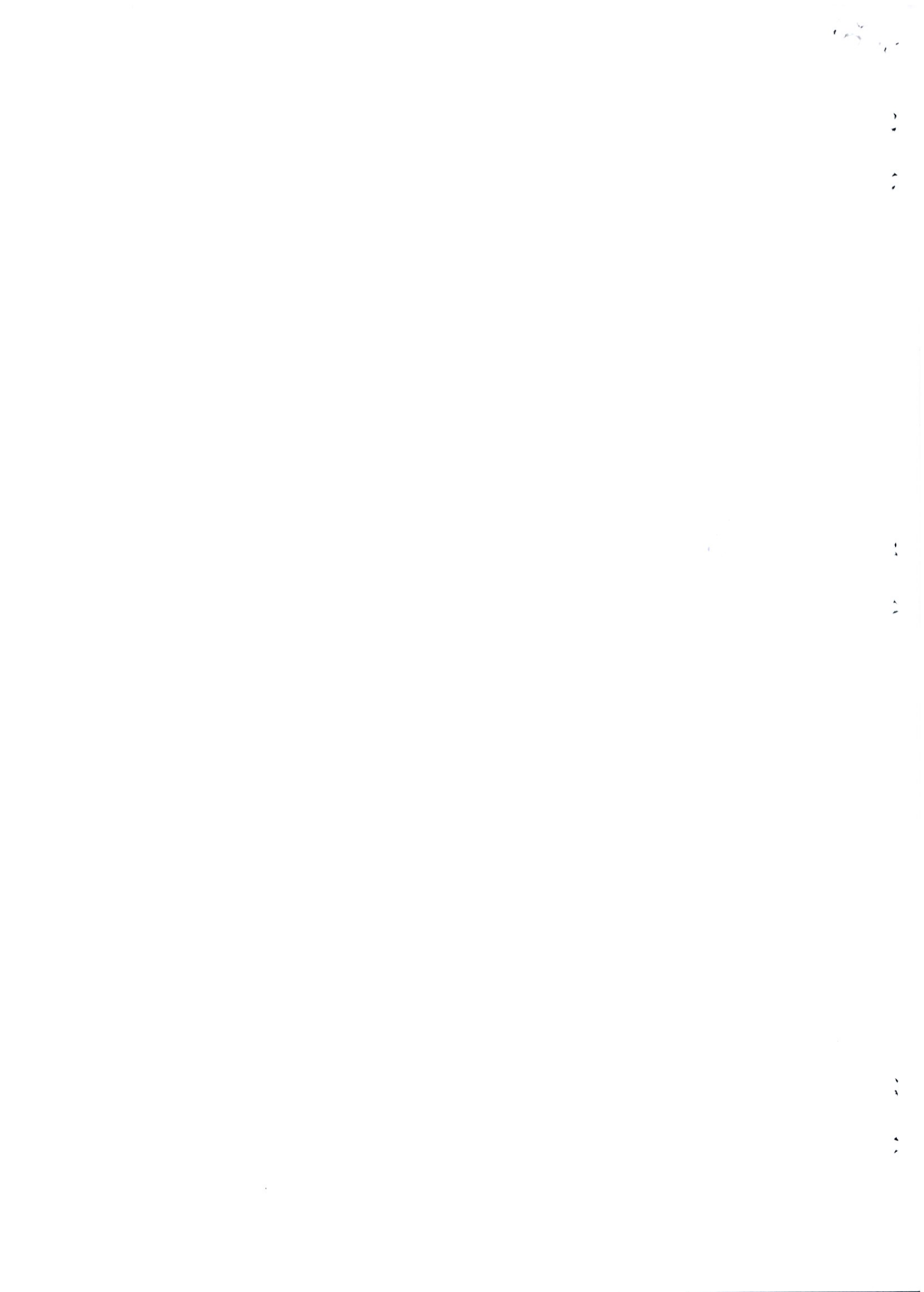


02/10/2024

**HON. GABRIEL TONGOYO, MP
CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL
SECURITY**

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 09 OCT 2024	
DAY.	
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CLERK-AT THE-TABLE:	





THE NATIONAL ASSEMBLY
13TH PARLIAMENT – THIRD SESSION (2024)
DIRECTORATE OF DEPARTMENTAL COMMITTEES
COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY
REPORT ADOPTION SCHEDULE

Agenda: Adoption of the County Governments (Amendment) Bill 2023 (Senate Bill No. 25)

Date: 24th September 2024

No.	MEMBER	SIGNATURE
1.	Hon. Gabriel Koshal Tongoyo, MP - Chairperson	
2.	Hon. Col (Rtd) Dido Rasso, MBS, MP - Vice Chairperson	
3.	Hon. Kaluma George Peter, CBS, MP	
4.	Hon. Fred C. Kapondi, MP	
5.	Hon. Aduma Owuor, MP	
6.	Hon. Sarah Paulata Korere, MP	
7.	Hon. Liza Chepkorir Chelule, MP	
8.	Hon. Mburu Kahangara, MP	
9.	Hon. Protus Ewesit Akujah, MP	
10.	Hon. Oku Kaunya, MP	
11.	Hon. Rozaah Akinyi Buyu, MP	
12.	Hon. Amb. Francis Kipyegon Sigei, EBS, MP	
13.	Hon. Fatuma Abdi Jehow, MP	
14.	Hon. Caroline Jeptoo Ng'elechei, MP	
15.	Hon. Hussein Weytan Mohammed, MP	

MINUTES OF THE 78TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY HELD ON TUESDAY, 24TH SEPTEMBER, 2024 IN COMMITTEE ROOM 13, 2ND FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS AT 10.00AM.

PRESENT

1. **Hon. Gabriel Koshal Tongoyo, MP** - Chairperson
2. **Hon. Col (Rtd) Dido Rasso, MBS, MP** - Vice Chairperson
3. Hon. Fred C. Kapondi, MP
4. Hon. Sarah Paulata Korere, MP
5. Hon. Liza Chepkorir Chelule, MP
6. Hon. Protus Ewesit Akujah, MP
7. Hon. Oku Kaunya, MP
8. Hon. Rozaah Akinyi Buyu, MP
9. Hon. Amb. Francis Kipyegon Sigei, **EBS**, MP
10. Hon. Fatuma Abdi Jehow, MP
11. Hon. Hussein Weytan Mohammed, MP

ABSENT WITH APOLOGY

1. Hon. Kaluma George Peter, MP
2. Hon. Aduma Owuor, MP
3. Hon. Mburu Kahangara, MP
4. Hon. Caroline Jeptoo Ng'elechei, MP

IN-ATTENDANCE

COMMITTEE SECRETARIAT

1. Mr. John Mugoma - Clerk Assistant I
2. Ms. Grace Wahu - Clerk Assistant II
3. Mr. Gideon Kipkoech - Clerk Assistant II
4. Ms. Judith Kanyoko -Legal Counsel
5. Ms. Delvin Onyancha -Research Officer II
6. Ms. Ivy Maritim -Media Relation Officer
7. Mr. Benson Kimanzi - Serjeant-At-Arms
8. Mr. Rodgers Kilungya - Audio Officer

AGENDA

1. Prayers;
2. Preliminaries;
 - i. Introductions;
 - ii. Adoption of the Agenda;
 - iii. Communication from the Chairperson;
 - iv. Confirmation of Minutes of previous Sittings.
3. **Consideration and Adoption of The Report on County Government (Amendments) Bill, 2023(Senate Bill No.25 of 2023)**
4. Any Other Business; and
5. Adjournment.

MIN./NO./DC-AIS/2024/389: PRELIMINARIES & ADOPTION OF AGENDA

The Chairperson, Hon. Gabriel Tongoyo, M.P called the meeting to order at 10.00 am. and said a prayer. The agenda of the meeting was adopted having been proposed by Hon. Fatuma Abdi Jehow, MP and seconded by Hon. Fred C. Kapondi, MP.

MIN./NO./DC-AIS/2024/390: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

The following minutes were confirmed as true record of the committee proceedings; -

Minutes of the 61st sitting were confirmed as a true reflection of the proceedings having being proposed by Hon. Fred C. Kapondi, MP and seconded by Hon. Protus Ewesit Akujah, MP

Minutes of the 62nd sitting were confirmed as a true reflection of the proceedings having being proposed by Hon. Liza Chepkorir Chelule, MP and seconded by Hon. Fred C. Kapondi, MP

Minutes of the 63rd sitting were confirmed as a true reflection of the proceedings having being proposed by Hon. Col (Rtd) Dido Rasso, MBS, MP and seconded by Hon. Liza Chepkorir Chelule, MP

Minutes of the 64th sitting were confirmed as a true reflection of the proceedings having being proposed by Hon. Fatuma Abdi Jehow, MP and seconded by Hon. Fred C. Kapondi, MP

Minutes of the 65th sitting were confirmed as a true reflection of the proceedings having being proposed by by Hon. Col (Rtd) Dido Rasso, MBS, MP and seconded by Hon. Fatuma Abdi Jehow, MP

MIN./NO./DC-AIS/2024/391: CONSIDERATION AND ADOPTION OF THE REPORT ON COUNTY GOVERNMENT (AMENDEMENTS) BILL, 2023 (SENATE BILL NO.25 OF 2023)

COMMITTEE OBSERVATIONS

Upon reviewing the Bill and submissions received, the Committee made the following observations:

- (a) The removal of a Member of a County Executive Committee is integral in the County Assemblies' role to ensure accountability of the County Executive;
- (b) Increasing the threshold at all stages of the removal process will hamper the County Assemblies' oversight function by making it difficult to remove a Member of the County Executive Committee;
- (c) A majority of successful motions for the removal of a Member of a County Executive Committee have been successfully challenged in Court;
- (d) There is need to balance the role of the County Assemblies to provide oversight and ensure accountability and the right of a Member of a County Executive Committee to fair administrative action under Article 47 of the Constitution; and
- (e) At the National level, the threshold for removal of a Cabinet Secretary is one quarter of the Members of the National Assembly to propose a motion for removal, one third to support a motion for removal and a majority of the members to support the resolution for dismissal;

COMMITTEE RECOMMENDATIONS

The Committee, having considered the County Governments (Amendment) Bill Senate No. 25 of 2023 and the submissions from the sponsor of the Bill, the members of the public and stakeholders, recommends that the House **approves** the Bill with amendments contained in the Schedule of Amendments forming

SCHEDULE OF AMENDMENTS

CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) in paragraph (a), by deleting the expression “two-thirds” and substituting therefor the expression “one-quarter”;
- (b) by deleting paragraph (b); and
- (c) by deleting paragraph (c)

JUSTIFICATION

To reflect the threshold for removal of a Cabinet Secretary under Article 152(6), (7) and 10 of the Constitution by providing for a gradual increase in the threshold for removal of a Member of the County Executive Committee, with the lowest threshold at the initiation of the process and the highest threshold at the final stage.

MIN./NO./DC-AIS/2024/392: ANY OTHER BUSINESS

The Hon, Rasso Dido Ali, MP raised concerns on the raising cases of mysterious disappearance and missing persons in the country. The committee noted that the police should follow the law while arresting people who are suspects and threat to national security.

Committee resolution

The committee resolved to invite the Inspector-General of police to appear before the committee to give statement of raising cases of mysterious disappearance and missing persons and status of security in the country.

MIN./NO./DC-AIS/2024/393 : ADJOURNMENT

There being no other business, the meeting was adjourned at 12.00 pm. The next meeting will be held on notice.

SIGNED _____



DATE _____

09/10/2024

HON. GABRIEL TONGOYO, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON ADMINISTRATION & INTERNAL SECURITY



COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@cog.go.ke

Our Ref: COG/6/10 Vol. 12(94)

9th September, 2024

Mr. Samuel Njoroge
The Clerk of the National Assembly
Parliament Buildings
Nairobi

Dear

Mr. Njoroge,

MEETING WITH THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY REGARDING THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILLS NO. 25 OF 2023)

Greetings from the Council of Governors.

We refer to your letter dated 28th August, 2024 Ref. No. NA/DDC/AIS2024/118 inviting the Chief Executive Officer, Council of Governors for a meeting with the Departmental Committee on Administration and Internal Security to make submissions on the **County Governments (Amendment) Bill (Senate Bills No. 25 of 2023) ("the Bill")** on **Tuesday, 10th September, 2024 at 10am.**

The Council of Governors has reviewed the Bill and wishes to convey its support for the Bill. This Bill seeks to amend Section 40 (2), (3) and (6) to increase the voting threshold required in a county assembly to remove County Executive Committee Members (CECMs) **to at least two-thirds of the assembly.**

CECMs are appointed to oversee various departments in the County Government and are responsible for the effective discharge of devolved functions as defined in Part 2 of the Fourth Schedule to the Constitution. By raising the voting threshold for the removal of CECMs, the proposed amendment will enhance stability and reduce the potential for politically motivated or arbitrary removals. This change will contribute to a more robust governance structure and foster a more stable administrative environment.

However, we note that there is need for rationalization of the Bill with the **County Governments (State Officers' Removal From Office) Procedure Bill, 2024 (Senate Bills No. 34 of 2024)** which proposes that tabling a motion for removal of a CECM requires a **third of the members of county assembly and the same passes if supported by a simple majority.**

We urge the Senate to support the Bill, which we are confident will have a positive impact on the governance and operational effectiveness of our County administrations.

Please accept the assurance of our highest esteem and consideration.

Yours

Sincerely,

A handwritten signature in black ink, appearing to read 'Mary Mwiti', enclosed within a large, loopy oval shape.

Mary Mwiti
Chief Executive Officer

REPUBLIC OF KENYA



OFFICE OF THE DEPUTY PRESIDENT
STATE DEPARTMENT FOR DEVOLUTION

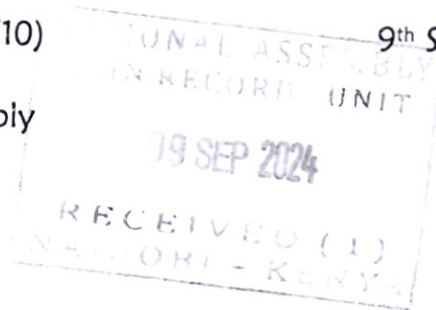
Fax No: 2217869
Telephone: +254-020-2215245
Web: <https://www.devolutionasals.go.ke>
Email: ps@devolution.go.ke

Telposta Towers
Kenyatta Avenue
P.O. Box 30004-00100
NAIROBI

Ref: MDP/DD/L/GEN/VOL. IV (10)

9th September, 2024

The Clerk of the National Assembly
Main Parliament Building
P.O. Box 41842 - 00100
NAIROBI



RE: INVITATION TO SUBMIT COMMENTS ON THE COUNTY GOVERNMENTS (AMENDMENT BILL) (SENATE BILL NO 25 OF 2023).

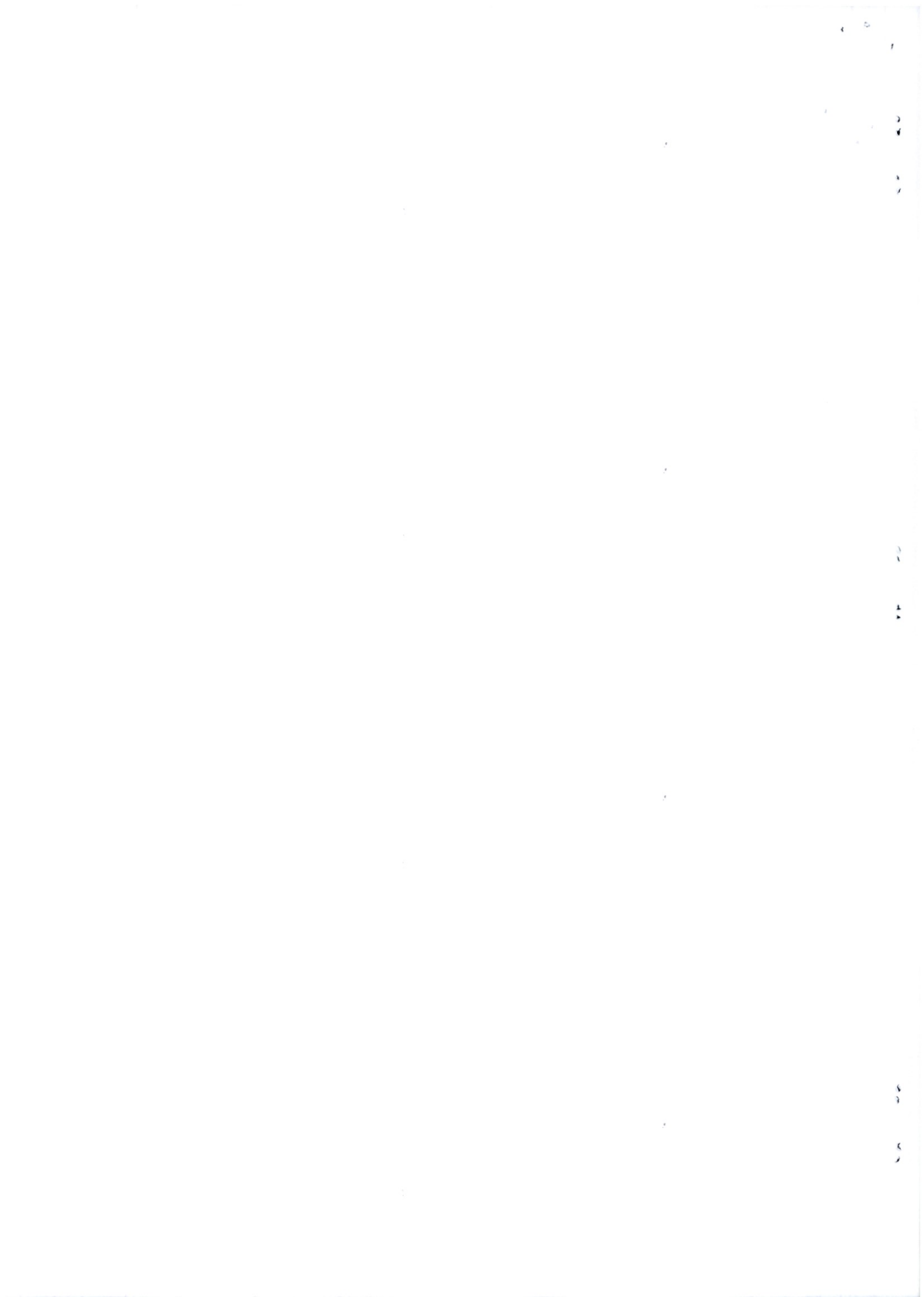
This is in reference to your letter Ref. No: NA/DDC/AIS/2024/118 on the above named subject.

Kindly find the submissions of the State Department for Devolution hereby enclosed for your further action.

A handwritten signature in black ink, appearing to be 'AM' with a flourish.

Alfonso Munyali
FOR: PRINCIPAL SECRETARY

Encl.



REPUBLIC OF KENYA



**OFFICE OF THE DEPUTY PRESIDENT
STATE DEPARTMENT FOR DEVOLUTION**

**SUBMISSIONS TO STANDING DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND
INTERNAL SECURITY ON THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILL
NO 25 OF 2023).**

**MEMORANDUM ON THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2023 (SENATE BILLS
NO. 25 OF 2023).**

Background

The Bill proposes to amend Section 40 of the County Government Act Chapter 265 of the laws of Kenya by amending Section 40 (2) (3) and (6), which provide for the one third threshold for removal of a member of the County Executive Committee by County Assembly.

Section 40 of the County Government Act as enacted mirrors Article 152(6) of the Constitution on the process of removal of the Cabinet Secretary by the national Assembly which provides for a one third threshold.

The following are our specific comments on the Bill:

PROVISIONS IN COUNTY GOVERNMENT ACT CAP 265	THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2023	EFFECT	PROVISIONS IN COUNTY GOVERNMENT ACT ON REMOVAL GOVERNOR	RATIONALE
<p>Section 40(2) A member of the county assembly, supported by at least one third of all the members of the county assembly, may propose a motion requiring the governor to dismiss a county executive committee member on any of the</p>	<p>Section 40 of the County Governments Act, is amended— (a) in subsection (2) by deleting the words “one-third” appearing immediately after the words “supported by at</p>	<p>Increase threshold from one third to two thirds</p>	<p>Section 33(1) A member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a motion for the removal of the governor under</p>	<p>The threshold for removal of Governor is one third. Governor is a more senior office and so the threshold for removal of the county executive member should not be higher than that of the Governor</p>

grounds set out in subsection (1).	least” and substituting therefor the words “ two-thirds ”		Article 181 of the Constitution.	
Section 40(3) If a motion under subsection (2) is supported by at least one third of the members of the county assembly— (a) the county assembly shall appoint a select committee comprising five of its members to investigate the matter; a	in subsection (3) by deleting the words “ one-third ” appearing immediately after the words ‘supported by at least” and substituting therefor the words ‘ two-thirds ”; and	Increase threshold from one third to two thirds	Section 33(2) If a motion under subsection (1) is supported by at least two thirds of all the members of the county assembly— (a) the speaker of the county assembly shall inform the Speaker of the Senate of that resolution within two days; and	The voting at this point in respect to the CECM is to allow for investigations to be conducted by a select committee. The voting to either remove the CECM from office or not will still be conducted at a later stage. At this point therefore, a higher threshold is not necessary and original threshold of one third should be retained. In case of the Governor, this is the final voting at the county level thus the higher threshold of two thirds
Section 40(6) If a resolution under subsection (5)(b) is	in subsection (6) by deleting the words “ a	Increase threshold from a	Section 31(7) If a majority of all the members of the	The threshold for removal of Governor is a majority. Governor is

<p>supported by a majority of the members of the county assembly— (a) the speaker of the county assembly shall promptly deliver the resolution to the governor; and (b) the governor shall dismiss the county executive committee member.</p>	<p>majority” appearing immediately after the words “supported by” and substituting therefor the words “at least two- thirds”.</p>	<p>majority to two thirds</p>	<p>Senate vote to uphold any impeachment charge, the governor shall cease to hold office.</p>	<p>the senior most office at the county and so the threshold for removal of the county executive member should not be higher than that of the Governor. Currently the thresholds are the same and should thus be retained</p>
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COUNTY ASSEMBLIES FORUM (CAF)

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CAF MEMORANDUM ON THE COUNTY GOVERNMENTS (AMENDMENTS) BILL, 2023 (SENATE BILLS NO.25OF 2023)

TO: Mr. Jeremiah Nyegenye, CBS
Clerk of the Senate, Parliament of Kenya.

FROM: The County Assemblies Forum

DATE: 9th September 2024.

SUBJECT: CAF Memorandum on the County Governments (Amendments) Bill,2023



1.0 INTRODUCTION

1. The County Assemblies Forum (CAF) is the coordinating body of the 47 County Assemblies in Kenya. The primary mandate of CAF is to promote networking and synergy among the 47 County Assemblies, coordinate intergovernmental relations and enhance good practice in legislative development. Our Mission is to provide effective leadership and coordination of the 47 County Assemblies and through policy and legislative action, promote a conducive working environment for all its members, and in that way deliver quality services to the people.
2. As one of the pillars of the devolved government system, CAF is committed to engage in processes that lead to enhance the Strengthening of the devolved system of Governance.

2.0. BACKGROUND

- 2.1. The principal object of this Bill is to proposes to amend Section 40 of County Governments Act to increase the threshold for removal of a member of a county executive committee;
- 2.2. The Bill opines that that the office of county executive committee member is established by the Constitution and noting the adverse consequences of removal by impeachment of a member of a county executive committee, the threshold for voting for such a removal in the Act are low.
- 2.3. The Bill affects the powers and functions of the county government and it is therefore a Bill that concerns counties in terms of Article 110 (1) (a) of the Constitution

3.0. GENERAL COMMENTS.

- 3.1. The Forum is concerned about the proposed increase in the threshold for the removal of County Executive Committee (CEC) members, County Assemblies would like to stress that raising this threshold could weaken the oversight authority of County Assemblies. County Assemblies serve as the primary oversight bodies for county governments, and their ability to hold CECs accountable is vital to ensuring transparency, efficiency, and good governance at the county level.
- 3.2. From the perspective of County Assemblies and their members (MCAs), maintaining the existing threshold for CEC removal is essential. This threshold has historically served as a means for County Assemblies to exercise their oversight function effectively. It provides a mechanism for MCAs to demand accountability from CECs when they perceive misconduct, incompetence, or other issues that warrant removal.
- 3.3. While the concerns about frivolous or politically motivated impeachment motions are valid, it's crucial to strike a balance between protecting CECs' rights and maintaining the County Assemblies' ability to fulfill their oversight mandate. County Assemblies play a pivotal role in the devolved system of government, and any changes to the removal process should take into account the need for accountability while upholding the principles of justice and fairness.
- 3.4. CAF appreciates the opportunity to contribute to this Bill and on the basis of the foregoing proposes the following amendments:

4.0 SUMMARY MATRIX OF THE PROPOSED AMENDMENTS.

	CLAUSE	AMENDMENT	JUSTIFICATION
1.	<p>Clause 2: Amendment of Section 40</p> <p>Section 40 of the County Governments Act, is amended – (a) in subsection (2) by deleting the words “one-third” appearing immediately after the words “supported by at least” and substituting therefor the words “two-thirds”; (b) in subsection (3) by deleting the words “one-third” appearing immediately after the words ‘supported by at least’ and substituting</p>	No Amendment	<p>The County Assemblies Forum refuses the above amendment and proposes the Section 40 of the CGA remains as it is. The decision to refuse the proposed amendment to raise the threshold for the removal of County Executive Committee (CEC) members is grounded in a strong commitment to upholding the principles of transparency, accountability, and efficient governance within the counties. Here are the justifications for refusing the amendment:</p> <ol style="list-style-type: none"> 1. Preservation of Oversight Authority County Assemblies serve as the

	<p>therefor the words 'two-thirds'; and (c) in subsection (6) by deleting the words "a majority" appearing immediately after the words "supported by" and substituting therefor the words "at least two-thirds".</p>		<p>primary oversight bodies for county governments, acting as the voice of the people and the custodians of their interests. The existing threshold for CEC removal is an essential tool that empowers County Assemblies to exercise their oversight authority effectively. Refusing the amendment ensures that this crucial oversight role is preserved.</p> <p>2. Accountability and Transparency: County Assemblies understand that accountability is the cornerstone of good governance. The current threshold enables County Assemblies to hold CECs accountable for their actions and</p>
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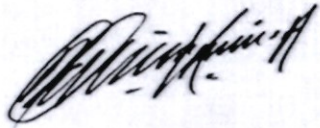
			<p>decisions. Maintaining this threshold ensures transparency in the management of county resources and the execution of county functions.</p> <p>3. Checks and Balances:</p> <p>The current threshold serves as a necessary check and balance within the county government structure. It prevents the concentration of power and ensures that CECs are answerable to the representatives of the people. Refusing the amendment helps maintain these checks and balances, which are essential for the proper functioning of county governments.</p>
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			<p>4. Ward Representation:</p> <p>MCAs are elected to represent the interests of their constituents at the county level. The existing threshold allows MCAs to act on behalf of their constituents when they perceive misconduct, incompetence, or other issues that warrant the removal of a CEC. Refusing the amendment ensures that MCAs can continue to fulfill their role effectively.</p> <p>5. Balancing Accountability and Fairness:</p> <p>While acknowledging concerns about frivolous or politically motivated impeachment motions, County Assemblies emphasize the need to strike a balance between protecting the</p>
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			<p>rights of CECs and maintaining accountability. The current threshold already incorporates due process, investigations, and grounds for removal, ensuring fairness in the impeachment process.</p> <p>In conclusion, the decision to refuse the proposed amendment is not a rejection of the need for accountability or fairness but a firm commitment to preserving the fundamental principles of devolved governance. County Assemblies understand the importance of checks and balances, transparency, and ward representation in county governments and believe that the existing threshold for CEC removal adequately addresses these concerns. Refusing the amendment is a testament</p>
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			to the dedication of County Assemblies to effective and accountable county governance in Kenya.
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Thank you.
Yours sincerely,



HON. PHILEMON SABULEI
CHAIRPERSON, CAF

