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THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS

REPORT ON CONSIDERATION OF THE CONSTITUTION OF KENYA
(AMENDMENT) (NO. 2) BILL, 2025 (SENATE BILLS NO. 16 OF 2025).

APPROVED
RT. HON. SEN
AMASON J. KINGI

31/07/26

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI.

July, 2026

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LIST OF ABBREVIATIONS AND ACRONYMS

AWSC	– Africa Women’s Studies Centre (AWSC), University of Nairobi
CDPOCK	– Consortium of Disabled Persons Organisations in Kenya
COG	– Council of Governors
ELGIA	– Electoral Law and Governance Institute for Africa
FIDA-Kenya	– Federation of Women Lawyers
IEBC	– Independent Electoral and Boundaries Commission
KLRC	– Kenya Law Reform Commission
KNCHR	– Kenya National Commission on Human Rights
LSK	– The Law Society of Kenya
MYWO	– Maendeleo Ya Wanawake Organisation
NCPWD	– National Council for Persons with Disabilities
NGEC	– National Gender and Equality Commission
NT	– National Treasury
NWSC	– National Women’s Steering Committee
OAJ & DoJ	– Office of the Attorney General and Department of Justice
OAK	– Outreach for Action Kenya
ORPP	– Office of the Registrar of Political Parties
SDGAAA	– The State Department for Gender Affairs & Affirmative Action

ESTABLISHMENT, MANDATE AND MEMBERSHIP OF THE COMMITTEE

Establishment and Mandate of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established under the Standing Orders of the Senate and is mandated *‘to consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.*

Membership of the Committee

The Committee comprises -

- | | |
|--|--------------------|
| 1. Sen. Wakili Hillary Sigei, CBS, MP | - Chairperson |
| 2. Sen. Veronica W. Maina, CBS, MP | - Vice-chairperson |
| 3. Sen. Raphael Chimera Mwinzagu, MP | - Member |
| 4. Sen. Karen N. Nyamu, MP | - Member |
| 5. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 6. Sen. (Prof.) Tom Ojienda, SC, MP | - Member |
| 7. Sen. Crystal Kegehi Asige, MP | - Member |
| 8. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member |

Minutes of the Committee in considering the Constitution of Kenya (Amendment) (No. 2) Bill, 2025 (Senate Bills No. 16 of 2025) are attached to this Report as ***Annex I***.

FOREWORD BY THE CHAIRPERSON

Honourable Speaker,

This Report contains the proceedings of the Standing Committee on Justice, Legal Affairs and Human Rights on its consideration of the Constitution of Kenya (Amendment) (No. 2) Bill, 2025 (Senate Bills No. 16 of 2025). The Bill was published on Thursday 8th August, 2025 and was read a First Time in the Senate on 2nd October, 2025, whereupon it stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

Honourable Speaker,

The Constitution of Kenya (Amendment) (No. 2) Bill, 2025 comes before the nation at a significant moment in our constitutional journey. Fifteen years have passed since the promulgation of the 2010 Constitution. While the Constitution has laid a strong foundation for democratic governance, practice has revealed gaps in the full realisation of the two-thirds gender principle in both Houses of Parliament. The Bill seeks to address these gaps directly by introducing a formula for nominating additional special seat members to the National Assembly and the Senate where, after a general election, either House does not meet the constitutional requirement that not more than two-thirds of its members are of the same gender.

Honourable Speaker,

In addition to advancing gender parity, the Bill proposes to amend Articles 97 and 98 of the Constitution to reserve 5% percent of the total membership of the National Assembly and the Senate for persons with disabilities, nominated through party lists in accordance with Article 90. This measure is intended to remedy the historical exclusion of persons with disabilities from legislative decision-making and to ensure that laws and policies reflect the unique circumstances and needs of this segment of the Kenyan population.

Honourable Speaker,

In considering the Bill, the Committee conducted public participation in accordance with the constitutional requirement under Articles 118 and 256 of the Constitution. Notices were published in the *Daily Nation* and *Standard* newspapers on 7th October, 2025 as well as on the Senate website, inviting written submissions from stakeholders

and members of the public. The Committee further held meetings with key State and Non-State actors in March 2026 to deliberate on the proposals contained in the Bill.

In response to the call for public and stakeholder comments on the Bill, the Committee received submissions from seventeen entities as well as individual members of the public. The list of organizations that presented written memoranda and appeared before the Committee is set out at Chapter Two of this Report, which also gives an overview of the submissions received on the respective clauses of the Bill.

Collectively, these submissions underscored the importance of inclusivity, transparency, and accountability in the preparation of party lists and the operationalization of the two-thirds gender principle and five-percent representation of persons with disabilities in both Houses of Parliament.

Honourable Speaker,

This Bill represents a significant step towards realising Kenya's constitutional commitment to inclusivity, equity, and representative democracy. By operationalising the two-thirds gender principle across both Houses of Parliament and ensuring adequate representation of persons with disabilities, it strengthens the legitimacy of legislative institutions and advances the ideals enshrined in the 2010 Constitution.

The Bill also clarifies the party list process under Article 90 by requiring that party lists reflect the representation of marginalised groups to the greatest extent possible and that members elected through the party list system do not hold such office for more than two terms.

Honourable Speaker,

I wish to thank the Offices of the Speaker and the Clerk of the Senate for the support accorded to the Committee during the consideration of this Bill. The Committee also acknowledges and appreciates the stakeholders who honoured the invitations by the Committee to meetings. The submissions, and written memoranda, greatly enriched the consideration of the Bill by the Committee.

I further wish to acknowledge and commend the commitment and diligence of the Members of the Committee, as well as the great support of the Secretariat, whose combined efforts were integral to the successful adoption of this Report.

Honourable Speaker,

It is now my pleasant duty, pursuant to Standing Order 223 of the Senate Standing Orders, to present the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Constitution of Kenya (Amendment) (No. 2) Bill, 2025 (Senate Bills No. 16 of 2025).

Signed



Date.....

28/07/2026

**SEN. WAKILI HILLARY SIGEL, CBS, MP
CHAIRPERSON, STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS
AND HUMAN RIGHTS**

CHAPTER ONE: INTRODUCTION

1.1 Introduction

1. The Constitution of Kenya (Amendment) (No. 2) Bill, 2025 (Senate Bills No. 16 of 2025) was published in the *Kenya Gazette Supplement* on Friday 8th August, 2025. The Bill was read a first time in the Senate on Thursday 2nd October, 2025, and thereafter stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. A copy of the Bill is attached to this Report as *Annex 2*.

1.2 Objective of the Bill

2. The principal object of the Bill is to amend Articles 90, 97, 98 and 101 of the Constitution to introduce a formula for nominating additional members to achieve the two thirds gender principle and to provide for a minimum 5% representation of persons with disabilities (PWDs) in both Houses of Parliament.

1.3 Overview of the Bill

3. **Clause 3** of the Bill proposes to amend Article 90 of the Constitution. The Bill first, seeks to update the cross-references in Article 90(1) to include the new categories of seats proposed under amendments to Articles 97 and 98. Second, it expands Article 90(2) by adding two new requirements: that political party members must be democratically involved in generating party lists through a fair and competitive process, and that each party list must reflect the representation of marginalized groups identified in Article 100, to the greatest extent possible. Finally, the clause introduces a new clause (4) in Article 90, which provides that a person elected through a party-list under Article 90(1) shall not hold office for more than two terms.
4. **Clause 4** proposes to amend Article 97 of the Constitution, which sets out the membership of the National Assembly. First, it removes the reference to persons with disabilities from the list of special interests represented under Article 97(1)(c). It then introduces a new paragraph, (ca) in Article 97(1), which provides that five percent of the total number of members elected under Article 97(1)(a), (b) and (c) shall be nominated by parliamentary political parties, in proportion to their representation in the National Assembly, to represent persons with disabilities.

5. The clause also inserts two new provisions, clauses (1A) and (1B) in Article 97. Clause (1A) provides that if, after a general election, the membership of the National Assembly does not comply with the constitutional requirement that no more than two-thirds of its members shall be of the same gender, additional special-seat members shall be nominated to ensure compliance. Clause (1B) states that the number of such special seats shall be determined after the declaration of the general election results.
6. **Clause 5** proposes to amend Article 98 of the Constitution, which sets out the membership of the Senate. First, it replaces the existing provision for two members representing persons with disabilities with a new requirement that five percent of the total number of members elected under Article 98(1)(a), (b), and (c) shall be nominated by parliamentary political parties, in proportion to their elected members, to represent persons with disabilities.
7. The clause also introduces two new provisions, (1A) and (1B) in Article 98. Clause (1A) provides that if, after a general election, the composition of the Senate does not comply with the constitutional requirement that no more than two thirds of its members shall be of the same gender, additional special seat members shall be nominated to ensure compliance. Clause (1B) states that the number of such special seats shall be determined after the declaration of the general election results.
8. **Clause 6** amends Article 101(2) of the Constitution as a consequential amendment to update the references to the categories of members whose vacancies are filled through party lists. It replaces the existing references to Article 97(1)(c) and Article 98(1)(b), (c) and (d) with updated references that include the new categories introduced by the Bill, namely Article 97(1)(c), (ca) and (1A), and Article 98(1)(b), (c), (d) and (1A).

1.4 Consequences of the Bill

9. The Bill proposes to alter the composition of both the National Assembly and the Senate by introducing two new categories of members—
 - a) a 5% quota for persons with disabilities (PWDs), nominated proportionately by parliamentary political parties; and
 - b) additional special seat members to ensure compliance with the two thirds gender principle after every general election.

10. As a result, the total number of members in both Houses would increase beyond the current numbers. An increase in the membership of Parliament may yield several positive outcomes for representation and governance. The creation of additional seats dedicated to persons with disabilities and correcting gender imbalance would broaden the inclusivity of both Houses and ensure that groups historically underrepresented in national decision making have a more consistent and structured presence. This expanded representation may enhance the diversity of perspectives brought to legislative debates, strengthen Parliament's responsiveness to the needs of marginalised communities, and contribute to more comprehensive policy outcomes.
11. The proportional nomination of additional members through party lists may also improve the overall representational balance by aligning parliamentary composition more closely with constitutional principles on equality and inclusion. In addition, the presence of more members may allow committees to distribute workloads more effectively, support specialization in emerging policy areas, and enhance the capacity of Parliament to undertake oversight, legislative scrutiny, and constituency engagement. Over time, these changes may contribute to a more representative, accessible, and responsive parliamentary institution.
12. This increase in the membership of Parliament, as proposed in the Bill, also raises some considerations. The creation of additional seats, both for the five percent representation of persons with disabilities and for the gender top up mechanism, would ultimately expand the size of both Houses beyond their current numbers, resulting in higher recurrent expenditure on salaries, allowances, committee facilitation, office support, and general administrative operations.
13. A broader concern arising from the increase in parliamentary membership is the effect it may have on Parliament's overall representational composition. By expanding the number of nominated and special seat members, the Bill could shift the balance between directly elected constituency representatives (who embody the people's sovereign will under Articles 1 and 94) and those selected through party lists. This rebalancing may alter the character of representation by increasing the proportion of members who enter Parliament through party driven processes rather than direct electoral choice.

CHAPTER TWO: CONDUCT OF PUBLIC PARTICIPATION ON THE BILL

2.1 Introduction

14. Pursuant to Articles 118 (1) and 256 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill.
15. In this regard, the Committee –
 - a) placed an advertisement in the *Daily Nation* and the *Standard* newspapers on 7th October, 2025 inviting members of the public to submit comments by way of written memoranda on the Bill. A copy of the newspaper advertisement is attached to this Report as *Annex 3*; and
 - b) held meetings with key stakeholders on 16th and 23rd March, 2026 to deliberate on the Bill.
16. In response to the invitation for the submission of views, comments and input on the Bill, the Committee received written submissions from seventeen entities, namely-
 - a) African Women's Studies Centre (AWSC), University of Nairobi
 - b) Consortium of Disabled Persons Organizations in Kenya (CDPOK)
 - c) Electoral Law and Governance Institute for Africa (ELGIA)
 - d) Federation of Women Lawyers (FIDA-Kenya)
 - e) Kenya Law Reform Commission (KLRC)
 - f) Kenya National Commission on Human Rights (KNCHR)
 - g) Maendeleo ya Wanawake Organization (MYWO)
 - h) National Council for Persons with Disabilities (NCPWD)
 - i) National Gender and Equality Commission (NGEC)
 - j) The National Treasury
 - k) National Women's Steering Committee (NWSC)
 - l) Office of the Attorney General and Department of Justice
 - m) Outreach for Action Kenya
 - n) Independent Electoral and Boundaries Commission (IEBC)
 - o) Law Society of Kenya (LSK)
 - p) Office of the Registrar of Political Parties (ORPP)
 - q) State Department for Gender Affairs & Affirmative Action (SDGAAA)
17. Copies of the said submissions are attached to this Report as *Annex 4*, while the matrix summarizing the submissions received with respect to each clause is attached to this Report as *Annex 5*.

2.2 Overview of the Submissions received on the Bill

2.2.1 Clause 1 – Short Title

18. KLRC observed that the Bill would come into force following a referendum conducted under Article 255 of the Constitution. The Commission noted that the title appropriately recognises that the amendments relate to the functions of Parliament, which necessitates a referendum under the stated Article.

2.2.2 Clause 2 – Application

19. Clause 2 stipulates that the provisions of this Act shall apply to the conduct of the general elections held immediately following its commencement.
20. ORPP drew the Committee's attention to the statutory timelines governing the submission of party lists under the Elections Act. The Stakeholder cautioned that the Bill may come into force after those statutory deadlines have elapsed yet before a general election is conducted, thereby creating a legal gap. Specifically, it noted that sections 35 and 35A of the Elections Act require party lists to be submitted to the Independent Electoral and Boundaries Commission (IEBC) at least 45 days before a general election, with parties filing their lists 14 days prior to that statutory deadline.
21. ORPP further reasoned that if the Bill were to come into force after the statutory timelines, political parties would already have submitted their lists under the pre-existing framework. Such lists would not incorporate the new constitutional obligations introduced by the Bill that is the gender top-up, the 5% percent quota for persons with disabilities, and inclusion of marginalised groups; thereby risking Parliament being constituted without meeting the constitutional thresholds prescribed under Articles 27(8), 54(2) and 81(b). Critically, neither the IEBC nor ORPP would have the legal authority to demand revised lists once the statutory deadlines had lapsed, leaving both institutions unable to enforce the new requirements. ORPP accordingly urged the Committee to address this gap through a transitional provision to ensure legal certainty.

2.2.3 Clause 3 – Amendment of Article 90 (Party Lists)

22. Clause 3 proposes to expand Article 90 of the Constitution so that party lists accommodate the additional special seats created under Articles 97 and 98. The clause further introduces requirements for democratic generation of party lists and limits the tenure of nominated members to a period of two-term.

2.2.3.1 Clause 3 (b) – Democratic generation of Party Lists

23. IEBC welcomed the proposal in Clause 3(b), noting that it seeks to strengthen party list democracy through a fair and competitive process. The Commission observed that the proposed amendment is consistent with section 34(6) of the Elections Act and Regulation 6 of the Elections (Party Primaries and Party Lists) Regulations, 2017, both of which require political parties to include procedures for the conduct of party primaries and nomination of party lists in their nomination rules.
24. CDPOK acknowledged the progress intended by the proposed amendment but expressed concern that party lists have historically been controlled by elites, rendered non-transparent, and operated in a manner that is exclusionary to persons with disabilities at the grassroots level. The Stakeholder therefore proposed further strengthening Article 90 through introduction of mandatory quotas requiring at least 5% PWDs in winnable positions on party lists, and not merely symbolic placement. The Stakeholder recommended enacting disability-sensitive nomination guidelines, enforced by IEBC, to ensure accessibility and OPD participation. Further, the organisation proposed disability-sensitive nomination guidelines to be enforced by the IEBC, a mandatory legal requirement for political parties to consult registered Organisations of Persons with Disabilities (OPDs) when preparing lists, and transparency mechanisms mandating public disclosure and independent audits of party lists for inclusion compliance.
25. ORPP submitted that the requirement for democratic involvement in the generation of party lists is already addressed in existing statutes. Specifically, Section 34 of the Elections Act requires that party lists submitted to IEBC is prepared in accordance with the party's constitution and nomination rules. Section 34(6B) of the Elections Act provided the basis for the Elections (Party Primaries and Party Lists) Regulations, 2017, which set out guidelines for the preparations of the party lists. Section 9 of the Political Parties Act, read together with the Second Schedule, prescribes requirements for party constitutions and rules, including provisions on nomination of candidates to party lists. Further, Part IVA of the Political Parties Act, and Sections 28 and 31 of the Elections Act already confines party nominations to party members, either directly or indirectly. The Stakeholder therefore observed that under the current legal regime, a political party submits 98 party lists to the IEBC, and accordingly proposed an amendment of the phrase '*party list*' to read '*party lists*' in plural form.

26. NGEAC agreed with the proposed amendment, and proposed a further amendment to ensure only special interest groups members nominate one of their own to represent their interests, so as to guarantee authentic community driven representation.
27. KNCHR noted that the proposal would strengthen the internal mechanisms of political parties by mandating a transparent and democratic nomination process, and that representatives of special interest groups be selected on merit. It further proposed that the word '*objective*' be inserted immediately after '*fair*', so that the clause reads '*fair, objective and competitive process*', thereby addressing concerns of opacity and undue influence in nominations. and mandate them to carry out the nomination process in a transparent, and democratic manner and that the representatives of special interest groups are selected on merit.
28. AWSC observed that Clause 3(d) is prone to subjective interpretation and recommended strengthening it to require political party lists be prepared through an inclusive, transparent, competitive, and participatory process based on objective and publicly accessible criteria, with adequate notice and equal opportunity for members in line with Articles 10, 27 and 100 of the Constitution. The Stakeholder further proposed that party lists alternate by gender, beginning with a female candidate, and be submitted together with a declaration of compliance to the IEBC, which should be empowered to reject non-compliant lists and require repetition of the process where necessary. It stakeholder emphasised that this framework would enhance internal party democracy, address opacity and exclusion in nominations, and establish accountability through IEBC oversight. The Stakeholder noted that the proposed 50:50 representation of young men and women aligns with Article 98(1)(d) of the Constitution.
29. SDGAAA while agreeing with the intent to democratise party lists and ensure representation of marginalised groups, cautioned that detailed operational procedures for internal party processes may be better addressed through the Political Parties Act and IEBC regulations rather than being entrenched in the Constitution. The Department expressed concerns that embedding such rules in the Constitution may unnecessarily make electoral law rigid. The Stakeholder recommended that the distinction between constitutional and legislative frameworks be maintained to preserve the flexibility necessary within the electoral legal framework.
30. KLRC welcomed the proposal however cautioned that the phrase '*democratically involved*' is too vague and susceptible to varying interpretation by political parties.

The Commission recommended that ‘*democratic involvement*’ be defined under the Elections Act as a consequential amendment, or operationalised by reference to a prescribed process under the Elections (Party Primaries and Party Lists) Regulations.

31. NCPWD proposed that the Commission be assigned a monitoring role to verify that political party nomination processes for PwDs are genuinely fair and competitive, as required under the proposed Article 90(2)(d).
32. ORPP noted that the proposed amendment aligns with Article 91(1)(e), which provision requires political parties to respect the right of all persons, including minorities and marginalised groups to participate in the political process. However, the Stakeholder noted that the provision is redundant at the constitutional level, as the principle is already embedded in the Elections Act and the Political Parties Act. ORPP emphasised that such requirements are more appropriately housed in legislation and regulations, where they can be updated and enforced with greater flexibility, rather than being elevated into the Constitution. Further the Stakeholder proposed invited the Committee to consider a further amendment by changing the phrase from “*party list*” to “*party lists*” in the existing law, to ensure political parties submit 98 party lists hence the need for the list to be in plural form.
33. NCWPD proposed that the Committee advocates for assigning the NCPWD a monitoring role to verify that political party nomination processes for persons with disabilities are genuinely fair and competitive, as required under the new Article 90(2)(d).

2.2.3.2 Clause 3 (b) – Inclusion of Marginalised Groups in Party Lists

34. Clause 3(b) inserts a new paragraph (e) into Article 90(2) requiring that each party list reflects the representation of the marginalised groups to the greatest extent possible as set out in Article 100, taking into account the nature of the party list.
35. IEBC noted that while the proposed amendment is well-intentioned and consistent with constitutional principles of inclusion, practical implementation may prove difficult. The Commission pointed to the absence of clarity on who qualifies as ethnic and other minorities and marginalised communities as a fundamental impediment to implementation. The Commission accordingly proposed that Parliament enact a legislation operationalising Articles 100 and 197, incorporating precise statutory definitions and policy reinforcement to ensure certainty during

elections of party lists, and effective representation in Parliament, and County Assemblies of different categories of the marginalised communities. The Commission acknowledged the development of a policy document by the Office of the Deputy President addressing this lacuna, however maintaining that appropriate legislation is necessary to reinforce the policy framework.

36. KNHCR recognised the proposal to be consistent with Kenya's obligations under Article 27, 54, 81 and 100 of the Constitution as well regional instruments particularly Article 9 of the Maputo Protocol, which requires States parties to ensure increased and effective representation of women at all levels of decision-making, including through national legislation where necessary.
37. ORPP noted that the scope of Article 100 does not cover all the categories within the various party lists. It gave an example, that the party list under Article 97(1)(c) includes workers, a category not expressly provided for under Article 100. Requiring such party lists to reflect only groups enumerated under Article 100 would potentially distort the original parameters of Article 97(1)(c) with respect to workers. The Stakeholder accordingly urged the Committee to reconsider the provision by grounding it in the broader framework on equality captured under Article 27(4) of the Constitution, which carries a broader description of marginalised groups, rather than restricting it to the narrower categories in Article 100.
38. KNCHR proposed that the phrase '*to the greatest extent possible*' be replaced with a minimum representation requirement, on the basis that the current phrase is vague and open-ended, creating a risk of non-compliance by parties, particularly with respect to marginalised group representation.

2.2.3.3 Clause 3 (c) – Two-Term Limit for Nominated Members

39. Clause 3(c) introduces a new clause (4) to Article 90, providing that a person elected under clause shall not hold such office for more than two terms.
40. IEBC and NGEC welcomed the proposed term limit for nominated members, noting it would ensure wider access to representation and reinforce the principle that party list seats as transitional mechanisms rather than permanent entitlements. IEBC, however, proposed for a further amendment to clarify whether the two-term limit is absolutely one-off, or a nominated person may serve the National Assembly for a maximum of two terms and thereafter the Senate for another two terms.

41. ORPP proposed reducing the term limit to one term only, arguing that party list seats should serve as transitional platforms offering exposure before a person contest in single-majority constituencies. The Stakeholder cited data indicating that some individuals who entered Parliament through party list nominations subsequently won elective seats, and submitted that the mechanism is effective only if individuals do not monopolise seats across electoral cycles. ORPP further emphasised that, as an affirmative action seat, a special seat should be a platform for building the capacity of a person to be able to contest in single majority elections.
42. KLRC noted that the two-term limit is a sound anti-entrenchment measure. The Stakeholder however observed that the Bill does not clarify whether the restriction also applies to persons nominated under the new gender top-up provisions under the proposed Articles 97(1A) and 98(1A); or only to regular proportional representations seats under Clause 3 or both. The Commission was of the view that the Bill expressly clarify the scope of the term limit to ensure consistency and prevent loopholes, and recommended the insertion of a sub-clause to that effect.
43. SDGAAA acknowledged the value of leadership renewal afforded by term limits, however advised that such policy matters are more appropriately addressed through legislation or regulatory frameworks governing electoral processes rather than through constitutional amendment.
44. NCPWD submitted that party lists should be democratised through fair, constitutionally grounded processes, should explicitly reflect marginalised groups as espoused under Article 100, and should be subject to a two-term limit on nominees to promote leadership renewal and prevent monopolisation of special seats.

2.2.3.4 General Comments on Clause 3

45. LSK proposed deletion of Clause 3 of the Bill. The Stakeholder noted that the proposed amendment does not necessarily address any identified constitutional gap, and in converse only restate existing constitutional provisions that are already adequately regulated under the present Constitution of Kenya, 2010. For instance, the Stakeholder pointed at among others Article(s)10 which enshrines national values and principles of governance, including democracy, inclusiveness, and accountability; Article 27 guarantees equality and non-discrimination; Article 91 sets out the basic requirements for political parties; and Article 100 mandates

Parliament to enact legislation to promote representation of marginalised groups. The Stakeholder emphasised that provisions under Articles 10, 27, 91, and 100, are operationalised through the Elections Act and Political Parties Act.

46. Further, LSK noted that Section 34 of the Elections Act requires proportional representation for party list seats in the National Assembly, Senate, and county assemblies in line with Article 90. It highlighted Section 36, which mandates county assembly lists to include eight candidates, with at least two persons with disabilities, two youth, and two from other marginalised groups. Similarly, the Political Parties Act (Sections 3, 4A(c), and 9) obliges parties to uphold internal democracy, inclusiveness, and meaningful participation, while ensuring representation of persons with disabilities and marginalized groups in Parliament and county assemblies. The Stakeholder viewed that such proposed amendments could be executed through an amendment of the Elections Act and the Political Parties Act.

2.2.4 Clause 4 - Amendment of Article 97 (Membership of the National Assembly)

47. Clause 4 introduces two principal amendments to Article 97. First, the deletion of the phrase '*persons with disabilities*' from Article 97(1)(c), and the introduction of dedicated seats constituting 5% percent of the total National Assembly membership for persons with disabilities under a new paragraph (ca). Second, a formula-based mechanism under new clauses (1A) and (1B) to nominate additional special seats to achieve compliance with the two-thirds gender principle following the declaration of general election results.

2.2.4.1 Clause 4(a)(i)- Deletion of '*Persons with Disabilities*' from Article 97(1)(c)

48. KLRC noted that the proposed removal of persons with disabilities from the existing paragraph (c) and its establishment as a standalone category under paragraph (ca) is constitutionally sound, and improves the structure of Article 97.
49. ORPP supported the deletion but cautioned that the term '*including*' in Article 97(1)(c), if retained, would still permit persons with disabilities to be listed under the general category of the 'Special Interests', potentially enabling double representation and encroachment on the representational space of other demographics within the special interest category. The Stakeholder recommended that if full exclusion is intended, a clear proviso be inserted to expressly exclude persons with disabilities from Article 97(1)(c).

50. AWSC submitted that the proposed amendment does not provide for express trigger mechanism, and urged the Committee to provide that the IEBC shall declare persons nominated under this Article within seven days of the final declaration of election results, and that such members shall be deemed duly elected members of the National Assembly for all purposes. AWSC further proposed that the National Assembly should not be constituted for its first sitting unless the requirements of this Article have been satisfied, thereby converting the two-thirds gender principle from a declaratory norm into a binding and enforceable rule. AWSC argued that such a self-executing mechanism assigns a clear institutional duty to the electoral commission and eliminates ambiguity.

2.2.4.2 Clause 4(a)(ii) – 5% Representation for Persons with Disabilities in the National Assembly

51. KLRC observed that the proposed 5% percent seats for PwDs would add approximately 17 to 18 Members to the National Assembly, with significant fiscal implications not addressed in the Bill.
52. ORPP concurred with the amendment, noting that Article 54(2) of the Constitution places on the State a duty to ensure the progressive implementation of the principle that at least 5% percent of members of the public in elective and appointive bodies are persons with disabilities. The Stakeholder further noted that the provision has never been fully implemented since 2010, making this Bill an important step towards operationalising the constitutional requirement.
53. ELGIA recommends restructuring the Bill so that the 5% calculation for PWD seats under Clause (ca) is done after the two-thirds gender top-up under Clause 4(b), with a mandatory clause requiring that no more than two-thirds of the PWD list be of the same gender. This ensures compliance with both Articles 27(8) and 54(2) of the Constitution, resolves the conflict between them at implementation, and ultimately guarantees more seats for PWDs in the House.
54. NGEC proposed that Clause 4(a)(ii) be amended to calculate the five percent representation of persons with disabilities solely from the 290 elected members under Article 97(1)(a), and not from the total membership, since the other categories are already affirmative measures. NGEC further proposed accommodating eight members representing youth and eight members representing ethnic minorities and marginalised communities within the same provision, and highlighted that such an approach would also promote the election

of women with disabilities while gradually shifting public attitudes toward inclusion.

55. NCPWD observed that the provision does not specify how disability status will be verified, and urged that the five percent quota be linked to registration with and certification by NCPWD under the Persons with Disabilities Act, 2025. The Council further sought clarification on whether the 5% percent is calculated before or after the gender top-up seats are added, to ensure the disability quota is not diluted. NCPWD also raised concern about the risk of tokenism, and proposed that the five percent threshold be clearly defined in absolute numbers rather than left to interpretation.
56. LSK proposed deletion of the provision, arguing that it would unnecessarily expand membership in the National Assembly, inflating the wage bill and straining public finances contrary to Article 201 of the Constitution on prudent use of public money. LSK further submitted that persons with disabilities already enjoy robust constitutional protection and guaranteed representation under Article 97(1)(c), rendering the amendment redundant. The Society cautioned that the Bill's reliance on nomination formulas risks entrenching dependency on political patronage rather than empowering marginalised groups to compete equitably.
57. KNCHR welcomed the proposed amendment terming it consistent with Kenya's obligations under Articles 27, 54, 81 and 100 of the Constitution and regional instruments including the Maputo Protocol, proposed the introduction of a sunset clause of 20 years for the gender top-up seats. The Commission noted public concerns about the creation of additional seats, including fears of a bloated legislature, unsustainable financial burden, and the risk of nominated women being perceived as token representatives rather than leaders who earned their positions, and advised that the constitutional amendments must be transitionally capped at 20 years.
58. OAG & DOJ supported the Bill in principle but noted that the gender top-up mechanism must be accompanied by clear and transparent criteria for nominating special seat members, so as to guarantee fairness and accountability in the allocation of such seats. The Solicitor-General reiterated that the proposed amendments to Articles 97 and 98 introduce a formula for Gender Top-Up through party lists where additional special seat members will be nominated in order to conform to the gender principle, and recommended that the amendment be revised to include specific criteria for nominating special seat members.

59. IEBC observed that the proposed amendment presents implementation challenges, particularly the risk that enforcing the 5% percent disability quota after applying the gender top-up could undermine gender parity and potentially lead to perpetual reallocation, as the Commission would be compelled to balance both quotas simultaneously. This raises the question of whether there is a hierarchy or priority for the different categories of marginalised groups. The Commission proposed that the categories of marginalised groups to be included in the list of 12 twelve Members under Article 97(1)(c) be clearly defined, and that the disability quota allocation precede the gender top-up allocation, mirroring the practice at county assembly level where the marginalised list is administered before the gender top-up list. The Commission also proposed in its submissions that Clause 4(1B) specify the IEBC as the body responsible for computing the gender top-up number and prescribe a timeframe not exceeding 21 days from declaration of results for the nomination to be completed. The Commission further recommended clarification on whether five percent is computed on the basis of total House membership including the Speaker, or only the elected and nominated members under paragraphs (a), (b) and (c).
60. KLRC raised several concerns regarding the gender top-up mechanism. The Stakeholder highlighted that the absence of a ceiling on the number of additional seats, risks of distorted voting dynamics and committee balance, and the democratic concern arising from nominees exercising full legislative powers without a direct voter mandate. The Commission cautioned that a system permitting the post-election nomination of additional members without a clearly defined ceiling may lead to a variable size of Parliament across electoral cycles, undermining predictability and stability.
61. MYWO strongly supported the Bill, emphasising that the proposed additional seats are not a favour extended to women but a constitutional requirement that affirms equality as a national duty. The Stakeholder urged that Kenya cannot continue to violate its own Constitution, as doing so means women continue to be underrepresented in leadership. The organisation proposed that priority in nomination be given to women who have actively championed gender equality and women's empowerment, and called for strict guidelines to prevent the use of these seats as political rewards. It also cautioned that the additional seats should be subject to a review after two general elections to assess progress, as these are temporary corrective measures and not the final solution.

2.2.4.3 Clause 4(b)(1A) – Gender Top-Up Mechanism for the National Assembly

62. Clause 4(b)(1A) provides for the allocation of special seats to ensure that the National Assembly complies with the two-thirds gender principle after the declaration of general election results. Specifically, where the membership of the National Assembly under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, there shall be nominated such additional number of special seat members as is necessary to ensure conformity.
63. ORPP agreed with the proposed amendment noting that it aligns with Article 81 of the Constitution on the two-thirds gender principle in elective positions, and ensures that Parliament is constitutionally constituted with respect to gender.
64. ELGIA observed that the repeated phrase in Clause 4(b) '*not more than two-thirds of the members are of the same gender*' introduces redundancy and proposed its deletion, noting that restating the principle verbatim at both the beginning and end of the clause adds no substantive value and risks generating interpretive inconsistency if the wording differs in any material respect from the source provision in Article 27(8).
65. LSK proposed deletion of the proposed amendment in its entirety. The Society argued that the present constitutional framework provides for a fixed membership of the National Assembly and defined special seats rather than an open-ended number of nominees. LSK maintained that the proposed amendment yields an indefinite nomination mechanism that undermines constitutional certainty, the rule of law, and good governance under Article 10, while violating Article 201 by creating an unpredictable wage bill. The Society contended that gender compliance should be pursued through alternatives with less financial burden, particularly by strengthening political party accountability as the primary mechanism, with the nomination formula serving only as a last resort corrective measure.
66. NGEC submitted that the proposal would enable political parties to strategically nominate candidates of the opposite gender while factoring in disability considerations, thereby advancing the two-thirds gender principle. NGEC further viewed the amendment as likely to promote the election of women with disabilities, encourage parties to field candidates who resonate with the electorate, and gradually shift public attitudes toward electing persons with disabilities.

67. SDGAA welcomed the proposed amendment as progressive measures that promote gender equality and disability inclusion in legislative institutions, recognising them as a constructive effort to address the longstanding constitutional requirement under Article 27(8). The Department noted that the operationalisation of the two-thirds gender principle has remained a constitutional imperative since the promulgation of the Constitution in 2010, making the Bill both timely and commendable.

2.2.4.4 Clause 4(b)(1B) – Determination of Special Seats After General Election Results

68. Clause 4(b)(1B) provides that the number of special seats shall be determined after the declaration of general election results.
69. ORPP agreed with and supported the proposal, submitting that special seats can only be determined after the general election on the basis of qualifying political parties and the required number of special seats to be filled.

2.2.5 Clause 5 – Amendment of Article 98 (Membership of the Senate)

70. Clause 5 mirrors the amendments proposed for the National Assembly in Clause 4. The amendment applies them to the Senate by proposing replacement of the current two fixed seats for persons with disabilities under Article 98(1)(d) with a 5% percent representation under a revised paragraph (d) and introduces a gender top-up mechanism for the Senate under new clauses (1A) and (1B).

2.2.5.1 Clause 5(a) – Five Percent Representation for Persons with Disabilities in the Senate

71. Clause 5(a) provides that the composition of the Senate shall include five percent of the total number of members in paragraphs (a), (b) and (c) nominated by parliamentary political parties according to their proportion of members of the Senate in accordance with Article 90, to represent persons with disabilities, thereby replacing the two fixed seats previously reserved for persons with disabilities under paragraph (d).
72. KLRC noted that the substitution of the two fixed PWD seats with a five percent formula yields approximately three PWD seats in the Senate, and that this is consistent with Article 54(2) of the Constitution.

73. ORPP agreed with and supported the proposed amendment, noting its consistency with Article 54(2) of the Constitution, which requires the State to ensure the progressive implementation of the principle that at least five percent of members of the public in elective and appointive bodies are persons with disabilities.
74. ELGIA recommended that the five percent allocation for persons with disabilities under the proposed paragraph (d) be calculated after the two-thirds gender top-up, and further proposed a clause requiring gender balance within the disability list, to ensure simultaneous compliance with both Articles 27(8) and 54(2) of the Constitution.
75. CDPOK welcomed the proposed amendment but raised concerns over the loss of guaranteed representation and the over-reliance on party nominations, which have historically lacked transparency and been controlled by party elites. The organisation strongly recommended retention of at least two guaranteed seats for persons with disabilities alongside the five percent threshold, ensuring a baseline of representation regardless of the five percent formula outcome. CDPOK also proposed ensuring regional diversity across counties, and proposed strengthening the Senate's oversight role by empowering Senators representing persons with disabilities to monitor disability inclusion in counties and influence resource allocation.
76. NGEC similarly acknowledged the intent of the proposed amendment however expressed concern of such a proposal disadvantaging persons with disabilities, relative to the other groups protected under Articles 55 and 56 of the Constitution. NGEC proposed that the five percent representation for persons with disabilities be calculated solely from the 47 elected members under Article 98(1)(a), and further proposed increasing youth representation from two to four members and introducing four seats for ethnic minorities and marginalised communities. NGEC further highlighted that the Commission's proposals on the Senate are based on Articles 81, 100 and 177 because the Commission also introduces new proposals to amend Articles 100 and 177 of the Constitution.
77. NCPWD raised the same concerns as in respect of Clause 4 regarding verification of disability status and the order of calculation of the five percent quota in relation to the gender top-up seats, and proposed that any vacancy for a person with disabilities seat must be filled by another qualified person with a disability from the same category.

78. KLRC recommended that the Bill maintain a minimum floor of two members to guarantee certainty of representation for persons with disabilities in the Senate, noting that the deletion of the two fixed seats and their replacement with a proportional formula may reduce certainty of representation if the Senate's total membership were to be reduced in the future. The Commission recommended applying the same implementing provisions for Article 97 equally to Article 98: the IEBC to compute top-up numbers within a prescribed 21-day timeframe after declaration of results.
79. LSK proposed deletion of the provision.

2.2.5.2 Clause 5(b)(1A) – Gender Top-Up Mechanism for the Senate

80. Clause 5(b)(1A) provides for the allocation of special seats to ensure that the Senate complies with the two-thirds gender principle after the declaration of general election results. Specifically, where the membership of the Senate under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, there shall be nominated such additional number of special seat members as is necessary to ensure conformity.
81. ORPP submitted that the proposal aligns with Article 81 of the Constitution on the two-thirds gender principle in elective positions and ensures that Parliament is constitutionally constituted with respect to gender.
82. ELGIA recommended deletion of the restated phrase in Clause 5(b), noting that the principle is already enshrined in Article 27(8) of the Constitution, and that its verbatim restatement in Clause 5(b) is superfluous and risks generating interpretive inconsistency if the wording differs in any material respect from the source provision.
83. AWSC proposed a further amendment to provide for the IEBC to declare persons nominated under this Article within seven days of the final declaration of election results, and deem such Members as duly elected Members of the Senate. The Stakeholder further proposed that the First Sitting of the Senate should not be constituted unless the requirements of this Act have been satisfied. The Stakeholder affirmed that converting the two-thirds gender principle from a declaratory norm into a self-executing and enforceable rule shall eliminate ambiguity, prevent delay, and ensure automatic realisation of constitutional obligation on equality.

84. OAG & DOJ also supported the principle however reiterated the need for clear and transparent nomination criteria to ensure fairness and accountability in the allocation of such seats.
85. LSK proposed deletion for the same reasons advanced in respect of Clause 4(b)(1A).

2.2.5.3 Clause 5(b)(1B) – Determination of Special Seats After General Election Results

86. Clause 5(b)(1B) provides that the number of special seats in the Senate shall be determined after the declaration of general election results.
87. ORPP agreed with the proposal, noting that special seats could only be determined after the general election on the basis of qualifying political parties, upon filling of the required number of special seats.

2.2.6 Clause 6 – Filling of Vacancies (Amendment of Article 101)

88. Clause 6 amends Article 101(2) to expand the provisions for filling vacancies to accommodate the new categories of membership introduced under Clauses 4 and 5. The reference to vacancies in the National Assembly under Article 97(1)(c) and the Senate under Article 98(1)(b), (c) or (d) is amended to also cover the new paragraph (ca) and clause (1A) under Article 97, and the new clause (1A) under Article 98.
89. ORPP agreed with the proposed amendment noting that the proposal relates to all seats in Parliament and regulates how vacancies in those seats are filled, including the seats introduced through the present Bill.
90. IEBC agreed with the proposed amendment characterising as a consequential provision flowing from the proposals under Articles 90, 97 and 98. The Commission acknowledged that the proposal represents a practical legislative attempt to resolve the longstanding challenge of implementing the two-thirds gender principle while enhancing representation for persons with disabilities. However, the Stakeholder requested the Committee to take into account the implementation challenges identified in the Commission's submitted matrix. What challenge

91. CDPOK considered the proposed amendment as necessary but incomplete. The Stakeholder expressed concerns of risks associated with representation gaps arising from vacancies. The organisation proposed a priority replacement rule requiring any vacancy in seats designated for persons with disabilities to be filled by another qualified person with a disability from the same category. The Stakeholder further proposed strict timelines to prevent prolonged underrepresentation and safeguards against political manipulation, including a requirement that replacements follow the original party list order and be validated with oversight from Organisations of Persons with Disabilities. The Stakeholder emphasised that representation should go beyond numbers to ensure meaningful participation, dignity, and influence in decision-making.
92. LSK proposed deletion of Clause 6 in its entirety, noting that it is consequential to and dependent upon Clauses 4 and 5, which the Society had similarly proposed for deletion.

2.2.7 General Recommendations

93. The Committee received general submissions addressing broader constitutional, institutional and policy concerns. A synthesis of those submissions is set out below.

2.2.7.1 Amendments to Articles 100 and 177 – County Assembly Representation

94. NGEK proposed an amendment to Article 100 of the Constitution to insert the words '*and County Assemblies*' after the word '*Parliament*', so as to extend the obligation to promote representation of marginalised groups to county assemblies. The Stakeholder further proposed an amendment to Article 177 to introduce 5% percent representation for persons with disabilities, two (2) seats for youth, and two (2) seats for ethnic minorities and marginalised communities, with each category split equally between men and women. It justified these proposals on the basis that over the years many county assemblies have persistently failed to comply with existing requirements on inclusion of persons with disabilities and other marginalised groups at the county level.

2.2.7.2 Constitutional Pathway for Amendments in Article 255 or Article 256

95. Outreach for Action Kenya raised the question of whether the Bill safely within the parameters set out in Article 256 of the Constitution, which prescribes the procedure of amendment to the Constitution, or whether its cumulative effect

meets the required thresholds under Article 255, which requires a referendum. The organisation advanced three grounds: first, that the Bill introduces automatic post-election nominations that shift representation from being voter-determined to being partly adjusted after elections, which may alter the exercise of popular sovereignty; second, that proposals allowing to expand the size of Parliament after elections depending on compliance ultimately changes the constitutional structure of Parliament; and third, that normalising corrective nomination as a central rather than supplementary mechanism may subtly shift Kenya's representational philosophy. The organisation accordingly urged Committee and Parliament at large to clarify the constitutional pathway before the Bill's enactment.

96. LSK similarly submitted that the proposed amendments touch on Article 255 of the Constitution and cannot be lawfully enacted without the approval of the people through a referendum. The Society maintained that the proposed framework violates the Constitution and urged that its comments be considered before enactment.
97. KNCHR also noted that the proposed constitutional amendment relates to the principles of inclusiveness, equality, human rights, non-discrimination and protection of the marginalised under Article 10 of the Constitution, and would therefore require a referendum under Article 255 of the Constitution.
98. From the foregoing recommendations, key to note that the Memorandum of Objects and Reasons of the Bill expressly states that none of the proposed amendments relate to the matters set out under Article 255(1) and that no referendum is required. The above submissions from stakeholders represent advocacy positions that the Committee must weigh against that express legislative declaration.

2.2.7.3 Fiscal Implications

99. Outreach for Action Kenya observed that the Bill acknowledges that its enactment will occasion additional public expenditure arising from the nomination of additional members to Parliament under the proposed Articles 97(1A) and 98(1A). The organisation cautioned that in the absence of an express cap on corrective nominations, the Bill creates an open-ended fiscal obligation whose scale cannot be reasonably predicted, raising concerns for fiscal planning and accountability. The organisation recommended that Parliament model the maximum potential financial exposure based on a plausible extreme electoral scenario, to enable informed public debate on the sustainability of the proposed mechanism.

100. A member of the public, Frank Mutuma Mwiti, proposed a two-tiered model as a fiscally neutral alternative to address the two-thirds gender principle. Under the first tier, the existing 47 County Woman Representative seats under Article 97(1)(b) would be redesignated as ‘County Gender Balance Seats’, to be filled by whichever gender is under-represented, without increasing the size of Parliament. Under the second tier, the proposed top-up mechanism in the Bill could be retained as a conditional backstop, triggered only if the gender deficit cannot be resolved through full utilisation of the 47 redesignated seats.

2.2.7.4 General Support for the Bill

101. CROWN Trust, through the Women’s Steering Committee, fully supported the Bill as a constitutionally faithful and necessary intervention to cure Parliament’s longstanding failure to implement the two-thirds gender principle. The Steering Committee welcomed the post-election nomination mechanism as a predictable and automatic safeguard that anchors compliance on actual election results while respecting voter choice, and noted that the mechanism mirrors the county-level framework under Article 177(b). The Steering Committee also endorsed the constitutionalising of the enforcement mechanism, arguing that reliance on ordinary legislation has proven inadequate and vulnerable to political inertia.
102. Kenya Women Parliamentary Association (KEWOPA) fully supported the Bill, describing it as a historic and long-overdue intervention. On the five percent allocation for persons with disabilities, it endorsed the principle however recommended a phased approach over four parliamentary terms, to allow institutions to adjust gradually while remaining faithful to constitutional principles. KEWOPA further called for clear statutory guidelines, objective eligibility criteria, transparency in ranking, and public disclosure of party list selection processes, and recommended that the IEBC be empowered to audit and reject non-compliant lists.
103. FIDA-Kenya firmly supported the Bill as a constitutionally mandated corrective measure, anchored in Articles 27, 81 and 94 of the Constitution. The Stakeholder emphasised the intersectional dimension of representation, noting that women with disabilities face compounded discrimination and must be specifically included in the five percent quota. The organisation further called for complementary legislation on campaign financing equity, stronger enforcement against electoral violence, and gender-responsive political party frameworks. It also highlighted the High Court’s 2024 decision in *Kenya Human Rights*

Commission & Others v IEBC, which reaffirmed that party lists must comply with constitutional equality standards and that the IEBC has a binding duty to reject non-compliant lists, and urged explicit sanctions for violations.

104. LSK submitted that women and persons with disabilities have been historically marginalised in Kenya's political life. The 2010 Constitution introduced the two-thirds gender rule and the five percent rule as transitional corrective measures. Submissions cautioned that reliance on post-election nomination formulas risks entrenching patronage and undermining the transformative intent of affirmative action.
105. Maendeleo ya Wanawake Organisation (MYWO) urged Parliament to demonstrate full support for the Bill, emphasising that the proposed additional seats are not a favour extended to women, but a constitutional requirement that affirms equality as a national duty. The organisation argued that excluding women is more costly than including them, because equality should not be viewed as optional but as a constitutional duty. It urged priority in nomination for women who have actively championed gender equality and empowerment, called for strong action against political violence targeting women in politics, and cautioned that the additional seats should be subject to a review after two general elections to assess progress and prepare for the day when women can achieve the two-thirds threshold through elections alone. The Stakeholder further proposed establishing a structured framework for collaboration between MYWO, elected, and nominated women leaders.

2.2.7.5 Concerns with the Bill

106. LSK noted that creating permanent additional seats departs from the Constitution's transitional design and could distort Parliament's representative character. They warned that nomination formulas controlled by political parties' risk tokenism, making women and PWDs accountable to party structures rather than the electorate. Concerns were also raised about fiscal costs of expanded membership and the Bill's failure to address structural barriers such as opaque party practices, inaccessible electoral processes, and socio-cultural impediments.
107. While supporting the Bill's objective of accelerating equality, stakeholders urged Parliament to ensure reforms are transparent, proportionate, time-bound, and consistent with constitutional values. The Stakeholder argued that genuine inclusion requires upstream reforms to party practices, with fallback mechanisms serving only as a constitutional safeguard.

2.2.7.6 *Alternative Policy Approaches*

108. LSK proposed that sustainable implementation of the two-thirds gender principle and meaningful inclusion of persons with disabilities be pursued primarily through reforms targeting political party processes and electoral participation, rather than through expansion of parliamentary seats.
109. The Society maintained that affirmative action was envisaged as a transitional, corrective measure aimed at levelling the playing field, and that the Bill's proposal to create additional seats risks converting these measures into permanent fixtures, thereby distorting the representative character of Parliament. Three key reforms were proposed: first, amending the Political Parties Act to require that at least one-third of candidates nominated by each party for elective positions are women, and at least five percent are persons with disabilities; second, empowering the IEBC and the Registrar of Political Parties to enforce compliance through financial penalties, including reduction or suspension of public funding and rejection of non-compliant party lists; and third, requiring political parties to publish their nomination criteria and candidate selection processes, subject to independent audit by the Registrar of Political Parties.
110. LSK proposed that the nomination formulas in the Bill should operate only as a last resort corrective measure, to be triggered only if, after declaration of election results, Parliament still fails to meet the two-thirds gender rule or the five percent rule. This sequencing, the Society argued, ensures that affirmative action remains transitional, empowering marginalised groups to compete equitably, while the fallback mechanism provides a safety net against systemic failure. LSK maintained that these reforms would address the root causes of exclusion and strengthen democratic participation without altering the constitutional architecture of Parliament.
111. LSK emphasised strengthening political party accountability as the primary pathway to inclusion. Proposed measures included mandatory candidate quotas for women and PWDs, enforceable sanctions for non-compliance, and transparent nomination processes subject to independent audit. Stakeholders further recommended reframing the Bill's nomination formula as a fallback mechanism, activated only after parties fail to meet quota obligations, thereby preserving the transitional character of affirmative action.

CHAPTER THREE: COMMITTEE OBSERVATIONS

3.1 Introduction

112. Having considered the Bill and the submissions received thereon, the Committee made the following observations.

3.2 Clause 3 - Amendment to Article 90 (Party Lists)

113. The Committee observed that multiple stakeholders raised concerns regarding the mechanisms used by political parties to generate lists. The Kenya National Commission on Human Rights (KNCHR) and the African Women's Studies Centre (AWSC) both sought to strengthen internal democracy, with KNCHR proposing the insertion of the word "objective" to mandate merit-based selections, and AWSC proposing alternating genders (female first). Conversely, the Office of the Registrar of Political Parties (ORPP) and the State Department for Gender Affairs (SDGAAA) argued that these internal procedures are already covered by existing statutes or belong strictly in regulations. On this matter, the Committee notes that while detailed operational rules belong in statutes and where necessary subsidiary legislation, the core principle of democratic involvement in the generation of party lists must be elevated as a constitutional baseline guarantee to prevent its erosion.
114. The Committee observed that the National Gender and Equality Commission (NGEC) proposed narrowing the clause by inserting "special interest group" before "members". The Committee notes that this would not be advisable. Clause 3(d) is intentionally broad and meant to democratize list generation for all party members, not just special interest categories.
115. The Committee observed that stakeholders representing marginalized groups, including the Consortium of Disabled Persons Organisations in Kenya (CDPOK) and KNCHR, pushed for rigid safeguards, such as replacing the phrase "to the greatest extent possible" with mandatory 5% quotas in winnable positions and strict minimum representation thresholds. The Committee observed that while it validates the need for meaningful, non-symbolic inclusion, embedding highly specific operational quotas, independent audits, and mandatory consultation frameworks directly into the Constitution introduces rigidity. Such mechanisms are more effectively implemented and adjusted through the Elections Act and IEBC regulations.

116. The Committee further observed concerns from the IEBC regarding a lack of clarity on definitions for Article 100 marginalized groups and the challenge it would pose to implementation of clause 3(e). The IEBC has therefore proposed that Parliament be required to enact legislation under Article 100. The Committee noted these concerns and further observed that Article 100 of the Constitution already expressly contemplates legislation to promote representation of marginalized groups. Parliament is therefore already mandated to enact laws that define and operationalize these categories. Accordingly, restating this obligation in Clause 3(e) would be redundant.
117. The Committee observed that there was stakeholder interest in introducing a two-term limit for nominated seats, with the IEBC welcoming it as a tool to prevent the monopolization of affirmative action spaces, while the ORPP suggested shortening the limit to a single term.
118. The Committee noted that the Kenya Law Reform Commission (KLRC) observed that the term limit clause had inadvertently excluded National Assembly special interest nominees under Article 97(1)(c) from the term limit, creating an inconsistency with the Senate. To preserve the core principle of leadership renewal, the Committee observed that this clause needed to be amended to ensure the term limit applies uniformly to all categories of nominated members across both Houses of Parliament.
119. Lastly, on this clause, the Committee observed that the Law Society of Kenya (LSK) recommended the total deletion of Clause 3. LSK argued that the proposed amendments do not fill any genuine constitutional gap and merely restate principles already robustly regulated under Articles 10, 27, 91, and 100, which are safely operationalized via the Elections Act and Political Parties Act.

3.3 Clause 4 - Amendment to Article 97 (Membership of the National Assembly)

(a) Enforcement and Timelines of the Two-Thirds Gender Top-Up Mechanism (Clause 4(b))

120. The Committee observed that the African Women's Studies Centre (AWSC) raised concerns that the current wording for the gender top-up mechanism is indeterminate and non-self-executing, risking a continuation of historical failures to implement Article 27(8). To remedy this, AWSC proposed a self-executing mechanism requiring the Independent Electoral and Boundaries Commission

(IEBC) to automatically allocate and declare additional special seats within seven days of general election results, conditioning the lawful constitution of the Assembly on compliance.

121. The Committee further observed that the Electoral Law and Governance Institute for Africa (ELGIA) noted that Clause 4(b) repeats the phrase “*not more than two-thirds of the members are of the same gender*” at both the beginning and end of the provision. The Committee observed that a deletion of the redundant phrase would streamline the text and maintain precise legal coherence.

(b) Calculation Denominator and Safeguards for the 5% PWD Quota (Clause 4(a)(ii))

122. The Committee observed that multiple stakeholders raised concerns regarding how the five percent disability quota would be mathematically determined and protected. The National Gender and Equality Commission (NGEC) cautioned that calculating the 5% quota using the total membership of the National Assembly (which includes affirmative action seats) risks double-counting and diluting equity across groups. NGEC proposed pegging the calculation strictly to the 290 directly elected constituency members to keep the quota clear and fair.
123. The Committee observed that the 5% quota is a minimum floor, not a maximum ceiling, meaning the constitutional requirement of inclusion is not undermined regardless of whether the 290 or 349 membership figure is used as the denominator, and that the IEBC is best placed to manage these operational details.
124. The Committee further observed that the National Council for Persons with Disabilities (NCPWD) and the Consortium of Disabled Persons Organisations in Kenya (CDPOK) noted that Clause 4 does not specify a verification mechanism for disability status, leaving the quota vulnerable to abuse. The Committee noted that while the quota principle must be stated in the Constitution, verification mechanisms should be anchored in legislation and regulations that link eligibility directly to NCPWD certification.

(c) Quota Sequencing and Intersectionality

125. The Committee observed that the IEBC and ELGIA both highlighted practical and institutional challenges in simultaneously implementing the two-thirds gender rule and the 5% disability quota, noting that adjustments for one requirement could inadvertently disrupt the other. The IEBC also raised the issue of intersectionality,

noting that the current drafting fails to account for individuals who belong to more than one marginalized group.

126. The Committee observed that to prevent interpretive conflicts, ELGIA proposed a statutory sequencing rule where the IEBC would first apply the gender top-up mechanism, followed by the calculation of the 5% PWD quota, while ensuring the PWD list itself respects gender balance (not more than two-thirds of either gender).
127. The Committee observed that the African Women's Studies Centre (AWSC) and the Maendeleo ya Wanawake Organization (MYWO) pointed out that Clause 4(a)(ii) fails to secure gender balance within the disability quota, risking a scenario where one gender is privileged over the other, and ignores the distinct lived experiences of men and women with disabilities. AWSC, on their part, proposed embedding a strict 50:50 gender parity split within the 5% quota to align with Article 27.

(d) Representative Democracy vs. Performance-Based Corrective Models

128. The Committee observed that Outreach for Action Kenya argued that relying heavily on post-election corrective nominations dilutes voter agency, shifts the representational philosophy of Kenya, and creates a perverse incentive for political parties to under-invest in fielding female candidates. To protect democratic legitimacy, they proposed a performance-based model where post-election gender gaps are filled sequentially from a national pool of the best-performing, unelected constituency candidates of the under-represented gender who cross a minimum vote threshold.
129. The Committee further observed that the Kenya Law Reform Commission (KLRC) warned that an open-ended nomination framework could distort voting dynamics, weaken the mandate of elected representatives, and lead to an unpredictable expansion of Parliament.

(e) Double Representation and Wording in Article 97(1)(c)

130. The Committee observed that the Office of the Registrar of Political Parties (ORPP) noted that although the Bill deletes the express reference to PWDs from Article 97(1)(c) to accommodate the new 5% quota, the residual word "including" in that clause means PWDs could still be nominated under the general "special interests" category. To prevent PWDs from crowding out other groups like

workers or youth, the ORPP recommended explicitly qualifying Article 97(1)(c) to exclude PWDs.

131. On this residual wording, the Committee observed that under the rules of interpretation, the expression of one thing is the exclusion of the other (*expressio unius est exclusio alterius*). This means that the creation of a dedicated 5% quota legally separates PWDs from the general catch-all category. Furthermore, since the 5% quota functions as a floor rather than a ceiling, any incidental double representation carries no harm.

(f) Fiscal Sustainability and Total Deletion of the Clause

132. The Committee observed that the Law Society of Kenya (LSK) proposed the total deletion of Clauses 4(a)(ii) and 4(b). LSK argued that an open-ended, unspecified number of corrective nominations creates an unpredictable, escalating wage bill that violates the principles of public finance under Article 201. They further argued that the provisions are constitutionally redundant, risk fueling voter apathy against women perceived as token nominees, and that inclusion should instead be achieved via mandatory internal party quotas enforced through the Political Parties Act.
133. The Committee observed that the KLRC and the National Treasury similarly expressed serious concerns that adding an estimated 17 to 18 members for the PWD quota alone creates massive, unaddressed fiscal implications that threaten ongoing fiscal consolidation efforts.

3.4 Clause 5 - Amendment of Article 98 (Membership of the Senate)

(a) Scope of Representation and the Denominator for the 5% PWD Quota (Clause 5(a))

134. The Committee observed that the National Gender and Equality Commission (NGEC) proposed substituting the Bill's PWD provision with an expanded clause that includes additional reserved seats for youth (four members) and ethnic minorities/marginalized communities (four members) in the Senate. The Committee noted this expansion and observed that Clause 5(a) is strictly intended for disability inclusion, and introducing youth or minority quotas without existing statutory definitions under Article 100 would create severe implementation challenges for the IEBC.

135. The Committee observed that NGEC similarly recommended that the 5% disability quota in the Senate be calculated strictly from the 47 directly elected Senators to avoid double-counting affirmative measures and to ensure equity across groups. The Committee noted this recommendation, but reiterated that because the 5% quota is a minimum safeguard, the constitutional promise remains intact regardless of the denominator used, and the operational formulas are best managed by the IEBC.

(b) *Quota Sequencing, Verification, and Intersectionality (Clause 5(a) & 5(b))*

136. The Committee observed that the Independent Electoral and Boundaries Commission (IEBC) and the National Council for Persons with Disabilities (NCPWD) raised operational concerns regarding the simultaneous implementation of the two-thirds gender rule and the 5% disability quota in the Senate. They noted that adjusting for one quota could disrupt the other, and that the Bill fails to clarify how intersectional candidates belonging to multiple marginalized groups should be counted.
137. The Committee observed that the NCPWD also highlighted the absence of a constitutional mechanism to verify genuine disability status, warning that the quota is highly vulnerable to abuse and tokenistic nominations.
138. The Committee considered these submissions and observed that while verification mechanisms linking eligibility to NCPWD certification should be anchored in subsequent legislation and not constitutional text. The Committee recommended a sequencing rule where the IEBC first applies the gender top-up mechanism, followed by the computation and allocation of the 5% PWD quota, ensuring the PWD list itself respects gender balance (not more than two-thirds of either gender).

(c) *Retaining a Fixed Minimum Floor for PWD Senate Seats*

139. The Committee observed that the Kenya Law Reform Commission (KLRC) and the Consortium of Disabled Persons Organisations in Kenya (CDPOK) cautioned against deleting the Senate's two fixed PWD seats and replacing them entirely with a proportional formula. They observed that if the Senate's total membership is reduced in the future, a purely proportional 5% quota would reduce the certainty of PWD representation.

140. The Committee observed that under the Bill's proposed 5% formula, the Senate's current membership yields 2.35 seats, which mathematically translates to three members. To provide a safety net and guarantee baseline representation regardless of future electoral shifts, the KLRC and CDPOK recommended maintaining a minimum floor of at least two guaranteed PWD seats alongside the proportional threshold. The Committee considered these submissions and noted that to safeguard against future electoral or demographic shifts, it would be preferable to introduce an amendment to Clause 5(a) to establish a dual-layered protection mechanism: retaining a floor of at least two guaranteed PWD seats while simultaneously applying the five percent proportional threshold as a progressive target.

(d) Gender Parity Within Senate Disability Representation (Clause 5(d))

141. The Committee observed that the African Women's Studies Centre (AWSC) noted that Clause 5(d) does not safeguard gender balance within the disability quota, creating a risk that one gender could monopolize the seats and ignore the distinct lived experiences of men and women with disabilities. AWSC proposed embedding a strict 50:50 gender parity split within the PWD quota to ensure compliance with Article 27.

142. On this matter, the Committee observed that while gender balance is an important safeguard, the small size of the Senate makes a 50:50 numerical division mathematically impossible, as a 5% quota translates to approximately three members which cannot be evenly split. The Committee noted that this operational distribution should be left to the IEBC to balance after the general gender quota is fulfilled.

(e) Enforcement and Wording of the Senate Gender Top-Up Mechanism (Clause 5(b))

143. The Committee observed that the African Women's Studies Centre (AWSC) raised concerns that the Senate gender top-up mechanism is indeterminate and non-self-executing, leaving compliance vulnerable to discretionary delays that perpetuate historical failures to implement Article 27(8). To remedy this, AWSC proposed a self-executing mechanism requiring the IEBC to automatically allocate and declare additional special seats within seven days of general election results, prohibiting the Senate from lawfully sitting until compliance is achieved.

144. The Committee further observed that the Electoral Law and Governance Institute for Africa (ELGIA) noted a redundancy where Clause 5(b) repeats the constitutional phrase “not more than two-thirds of the membership of the House are of the same gender”. To resolve this, ELGIA recommended a deletion of the redundant clause to streamline the text.

(f) Regional Diversity and Oversight Roles for PWD Senators

145. The Committee observed that the Consortium of Disabled Persons Organisations in Kenya (CDPOK) proposed adding constitutional requirements for regional diversity in the selection of PWD Senators to avoid concentrating representation in a few counties, alongside explicitly empowering PWD Senators with a strengthened oversight role to monitor disability inclusion and resource allocation in county governance. The Committee observed that while regional diversity safeguards are valuable, they are more appropriately addressed through statutory nomination rules, legislation, and regulations rather than constitutional drafting.

(g) Fiscal Constraints and Total Deletion of the Clause

146. The Committee observed that the Law Society of Kenya (LSK) proposed the total deletion of Clauses 5(a) and 5(b). LSK argued that an open-ended, unspecified number of post-election nominations creates an unpredictable and escalating public wage bill that directly violates the principles of prudent finance under Article 201. They further contended that the amendments are redundant, risk causing public backlash and voter apathy against women due to perceptions of tokenism, and that gender and disability compliance should instead be achieved through mandatory candidate quotas within the Political Parties Act.

3.5 Clause 6 - Article 101 (Election of Members of Parliament)

147. The Committee observed that the Consortium of Disabled Persons Organisations in Kenya (CDPOK) proposed strengthening Clause 6 to guarantee absolute continuity and authenticity in the representation of persons with disabilities when vacancies arise. They recommended a “priority replacement rule” requiring that any vacancy in a seat reserved for PWDs be filled promptly by another qualified person with a disability from the exact same category, thereby preserving internal diversity and preventing the dilution of representation.
148. The Committee observed that CDPOK further proposed that replacements must strictly follow the original party list order and be subjected to mandatory

validation and oversight from registered Organizations of Persons with Disabilities (OPDs) to protect the process from political manipulation and elite capture.

149. The Committee observed that the Law Society of Kenya (LSK) recommended the total deletion of Clause 6. LSK argued that Clause 6, which proposes to amend Article 101 regarding the filling of vacancies, is purely consequential and derives its entire legal basis from the substantive changes introduced under Clauses 4 and 5. The Committee observed that because LSK has advocated for the total deletion of the gender top-up and 5% disability quotas in those preceding clauses, they contend that Clause 6 is rendered entirely redundant, unnecessary, and incapable of independent operation.

3.6 The Referendum Trigger and Constitutional Thresholds (Article 255 vs. 256)

150. The Committee observed that Outreach for Action Kenya raised a critical constitutional question regarding whether the Bill falls under Article 256 as an ordinary amendment or triggers a mandatory referendum under Article 255. They argued that by shifting Kenya's representational philosophy from a purely voter-determined model to an automatic post-election nomination model, the Bill alters the exercise of popular sovereignty. Furthermore, they cautioned that creating an elastic, unpredictable parliamentary size that expands post-election could be construed as fundamentally altering the structure and protected functions of Parliament under Article 255(1)(g).
151. The Committee observed that, conversely, the National Women's Steering Committee (NWSC) strongly rejected the referendum argument, maintaining that the Bill is safely within Article 256. They argued that the post-election mechanism is merely a targeted, minimally intrusive remedial tool that mirrors the existing county-level framework under Article 177(b), and therefore does not require a referendum.
152. On the referendum question, the Committee noted that the Bill does not alter the fundamental structure of governance or the protected constitutional clauses outlined in Article 255(1). Instead, the Committee noted that the proposed post-election top-up mechanism functions as a procedural remedy to actualize an existing constitutional requirement rather than an overhaul of Kenya's electoral system. Consequently, the Committee concluded that the Bill does not trigger a

mandatory referendum and can be processed through the ordinary parliamentary amendment under Article 256 of the Constitution.

3.7 The Fiscal Impact

153. The Committee observed that the National Treasury and the Kenya Law Reform Commission (KLRC) expressed reservations regarding the Bill's lack of a hard cap on corrective nominations, noting that the Bill creates an open-ended, unpredictable fiscal obligation. The National Treasury cautioned that an escalating public wage bill (covering salaries, allowances, and pensions) risks crowding out development expenditure, destabilizing the Medium-Term Expenditure Framework, and violating Article 201's mandate for prudent financial management.
154. The Committee observed that civil society organizations, including the NWSC and the African Women's Studies Centre (AWSC), pushed back against cost-based objections, presenting a joint report with the Institute of Economic Affairs (IEA). They argued that gender equality is an economic public good with high developmental multipliers, and that even in a worst-case scenario, the annual compliance cost would be a negligible fraction of the national budget (approximately Kshs. 4.84 billion, or Kshs. 83 per Kenyan, per year). They maintained that constitutional compliance and the rule of law should never be subordinated to fiscal preference.
155. On cost implications, the Committee observed that the Kenya Association of Women Parliamentarians (KEWOPA) acknowledged public concern but insisted that constitutional compliance should not be reduced to financial considerations. They noted that resistance to the two-thirds gender rule has often been framed around cost, yet the National Treasury has published no detailed analysis of the cost implications. KEWOPA recommended that the National Treasury undertake and publish a comprehensive cost-benefit analysis, showing the marginal impact relative to the national budget and highlighting the long-term socio-economic benefits of inclusive governance. Such analysis should also be incorporated into civic education to counter misinformation.

3.8 Political Party Accountability, Post-Election Nominations, Inclusivity

156. The Committee observed that the Law Society of Kenya (LSK) and the Federation of Women Lawyers (FIDA-Kenya) emphasized that reliance on post-election nomination formulas risks fostering political patronage and reducing women and

PWDs to token representatives beholden to party elites rather than the electorate. LSK recommended shifting the primary burden of compliance onto political parties by amending the Political Parties Act to enforce mandatory candidate quotas (such as a 1/3 gender and 5% PWD rule) across all competitive elective nominations, leaving the Bill's formulas strictly as a last-resort fallback mechanism.

157. The Committee observed that multiple stakeholders, including Maendeleo ya Wanawake Organisation (MYWO), LSK and FIDA-Kenya, stressed that formal numerical equality is insufficient without addressing deep structural barriers like campaign financing inequities, cultural biases, and electoral violence. Furthermore, the Consortium of Disabled Persons Organisations in Kenya (CDPOK) pushed for structural support, like a dedicated Disability Inclusion Electoral Fund and mandatory accessible polling infrastructure.

3.9 Phased Implementation

158. The Committee observed that KEWOPA strongly endorsed the Bill's overarching objectives but raised unique institutional and strategic recommendations to ensure its long-term political and fiscal sustainability. To mitigate the risk of a sudden, disproportionate expansion of the National Assembly, KEWOPA proposed a progressive realization model, recommending that the five percent disability quota be phased in gradually over four parliamentary terms (approximately 20 years) to allow state institutions time to adjust.

CHAPTER FOUR: RECOMMENDATIONS

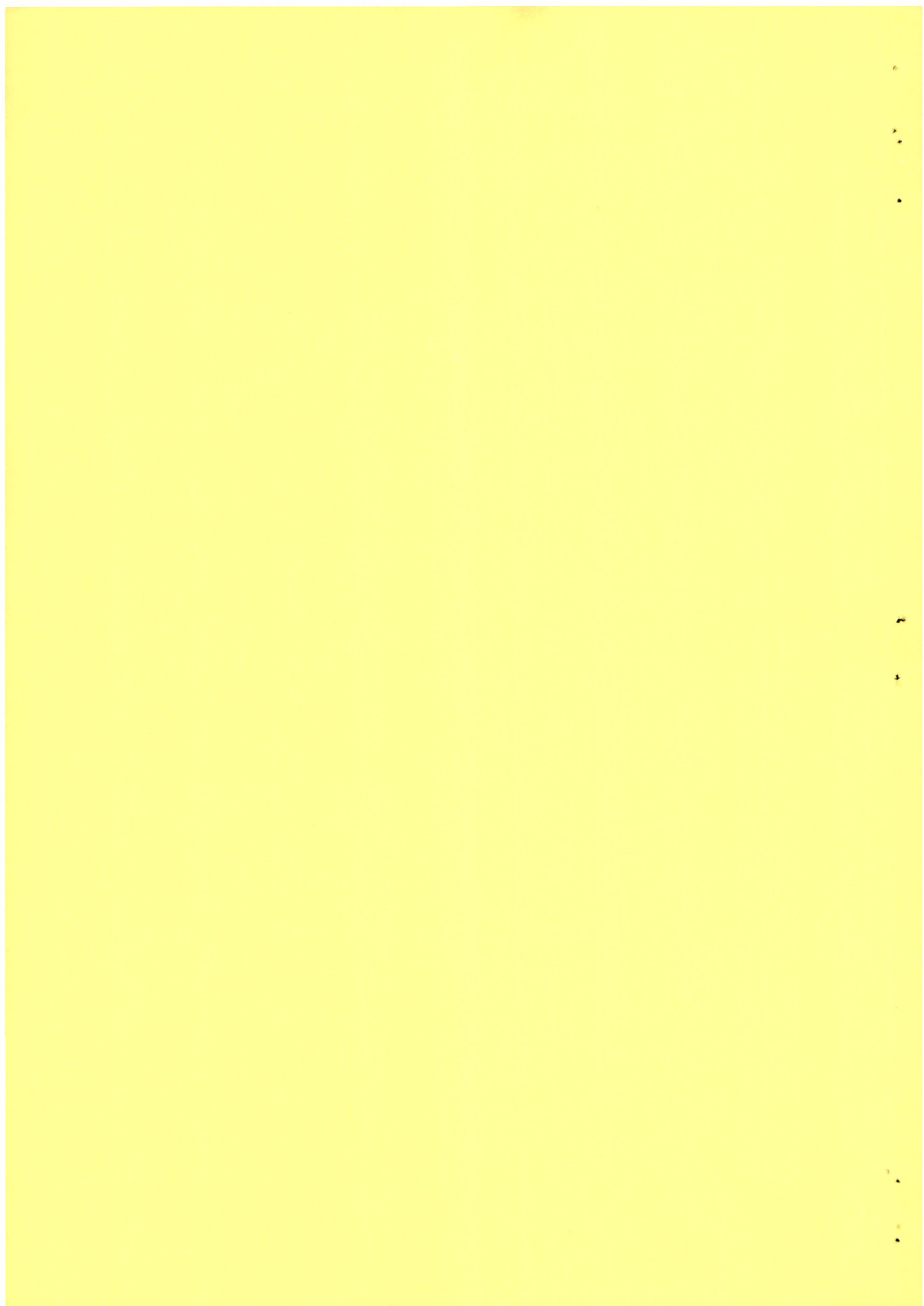
4.1 Committee Recommendations

159. Having considered Constitution of Kenya (Amendment) (No. 2) Bill (Senate Bills No. 16 of 2025) and the submissions received thereon, the Standing Committee on Justice, Legal Affairs and Human Rights recommends that the Senate **passes the Bill with amendments** as proposed by the Committee.
160. The text of the amendments proposed by the Committee is attached to this Report as *Annex 6*.

LIST OF ANNEXURES

- Annex 1* Minutes of the sittings of the Committee in considering the Bill
- Annex 2* Copy of the Constitution of Kenya (Amendment) (No. 2) Bill, 2025 (Senate Bills No. 16 of 2025)
- Annex 3* Advertisement published in the *Daily Nation* and *Standard* newspapers on 7th October, 2025
- Annex 4* Copies of Stakeholder submissions on the Bill
- Annex 5* Matrix of stakeholder submissions on the Bill
- Annex 6* Text of the proposed Committee amendments to the Bill

***Annex 1: Minutes
of the Committee
in considering
the Bill***





13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 267TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 3RD MARCH, 2026 AT 8:00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|--|
| 1. Sen. Veronica W. Maina, CBS, MP | - Vice-Chairperson (<i>Chairing</i>) |
| 2. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 3. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member |
| 4. Sen. Crystal Kegehi Asige, MP | - Member |
| 5. Sen. (Prof.) Tom Ojienda, SC, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|---------------------------------------|---------------|
| 1. Sen. Wakili Hillary Sigei, CBS, MP | - Chairperson |
| 2. Sen. Karen Njeri Nyamu, MP | - Member |
| 3. Sen. Raphael Chimera Mwinzagu, MP | - Member |

SECRETARIAT

- | | |
|------------------------|--|
| 1. Mr. Charles Munyua | - Principal Clerk Assistant II |
| 2. Mr. Boniface Kiambi | - Senior Clerk Assistant (<i>Taking Minutes</i>) |
| 3. Ms. Faith Wangui | - Legal Counsel II |
| 4. Ms. Angela Bonaya | - Clerk Assistant III |
| 5. Ms. Linet Aseka | - Research Officer III |
| 6. Mr. Josphat Ngeno | - Media Relations Officer |
| 7. Ms. Rosebella Ngesa | - Public Communications Officer |
| 8. Mr. Zenton Williams | - Audio Officer |
| 9. Ms. Anne Kigoro | - Pupil |

MIN. NO. 859/2026

PRELIMINARIES

The meeting was called to order at seven minutes past eight O'clock and opened with a word of Prayer.

MIN. NO. 860/2026

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Daniel Kitonga Maanzo, EBS, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 861/2026**CONFIRMATION OF MINUTES**

- a) The Minutes of the 265th Sitting were confirmed as a true record of the proceedings having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Daniel Kitonga Maanzo, EBS, MP.
- b) The Minutes of the 266th Sitting were confirmed as a true record of the proceedings having been proposed by Sen. Crystal Kegehi Asige, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 862/2026**THE CONSTITUTION OF KENYA (AMENDMENT)
(NO.2) BILL, 2025 (SENATE BILLS NO. 16 OF 2025)**

The Committee resumed consideration of the Constitution of Kenya (Amendment) (No.2) Bill, 2025 (Senate Bills No. 16 of 2025) and was taken through a brief on the practice in comparative jurisdictions for the inclusion and representation in Parliament of women and persons with disability.

During deliberations, Members –

- i) noted that while the number of women elected to Parliament had increased gradually from the 11th to 13th Parliaments, it still fell short of the two-thirds gender principle as mandated by the Constitution;
- ii) observed the challenges presented in implementing the principle in a *first-past-the-post* electoral system, as compared to jurisdictions where the public voted for parties which then nominated members to Parliament; and
- iii) noted that the proposed top-up model would lead to a situation where one could not predict the number of members of Parliament, as this would be dependent on the number of women elected in each electoral cycle. This, in turn, would have implications on public finance.

The Committee further took note that previous efforts to enact legislation on the principle had failed to attain the threshold for passage of a Bill to amend the Constitution, and underscored the need for extensive sensitization of the public, stakeholders as well as Members of Parliament to support and vote in favour of the Bill.

Thereupon, the Committee resolved to proceed with consideration of the Bill as previously resolved, including the stakeholder engagements and public hearings scheduled during the months of March and April, respectively.

MIN. NO. 863/2026**ADJOURNMENT**

The Chairperson adjourned the meeting at thirty five minutes past nine O'clock. The next meeting will be held on Thursday, 5th March, 2026 at 8.00 a.m.

SIGNED: 

DATE: 22.7.2026



13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 268TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 10TH MARCH, 2026 AT 8:00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Sigei, CBS, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 3. Sen. Karen Njeri Nyamu, MP | - Member |
| 4. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member |
| 5. Sen. (Prof.) Tom Ojienda, SC, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|--------------------|
| 1. Sen. Veronica W. Maina, CBS, MP | - Vice-Chairperson |
| 2. Sen. Crystal Kegehi Asige, MP | - Member |
| 3. Sen. Raphael Chimera Mwinzagu, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Ms. Mercy Thanji | - Deputy Director, Litigation & Compliance |
| 2. Mr. Charles Munyua | - Principal Clerk Assistant II |
| 3. Mr. Boniface Kiambi | - Senior Clerk Assistant |
| 4. Ms. Faith Wangui | - Legal Counsel II |
| 5. Ms. Angela Bonaya | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 6. Mr. Jackson Matheshe | - Research Officer III |
| 7. Ms. Linet Aseka | - Research Officer III |
| 8. Mr. Kennedy Owuoth | - Fiscal Analyst |
| 9. Mr. Josphat Ngeno | - Media Relations Officer |
| 10. Ms. Rosebella Ngesa | - Public Communications Officer |
| 11. Mr. Zenton Williams | - Audio Officer |
| 12. Ms. Anne Kigoro | - Pupil |
| 13. Ms. Birisio Anna | - Pupil |
| 14. Mr. Ham Mulaa | - Pupil |

MIN. NO. 864/2026

PRELIMINARIES

The meeting was called to order at thirteen minutes past eight O'clock and opened with a word of Prayer.

MIN. NO. 865/2026

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Karen Njeri Nyamu, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 866/2026

CONFIRMATION OF MINUTES

The Minutes of the 267th Sitting were confirmed as a true record of the proceedings having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. (Prof.) Tom Ojienda, SC, MP.

MIN. NO. 867/2026

**THE CONSTITUTION OF KENYA (AMENDMENT)
(NO. 2) BILL, 2025 (SENATE BILLS NO. 16 OF 2025)**

The Committee resumed its consideration of the above captioned Bill whereupon it was taken through a Brief on the financial implications of implementing the proposals contained in the Bill.

During deliberations, Members –

- i) noted that, based on the average number of women elected to Parliament in the 2013, 2017 and 2022 general elections, attaining the not more than two-thirds principle would require the nomination of an additional 63 women MPs to the National Assembly and 4 women to the Senate;
- ii) further noted that the cost of maintaining these additional 67 Members of Parliament would amount to approximately Kshs. 3.87 billion annually; and
- iii) observed that attainment of the 5% quota for persons with disabilities (PWDs) would require an average of 2 additional seats in the Senate and 6 seats in the National Assembly. In this regard, it was noted that the total cost of accommodating 8 new Members representing PWDs would amount to approximately Kshs. 162.4 million annually.

Thereupon, the Committee resolved that a summary of the costing analysis be included in the Committee Report on the Bill.

MIN. NO. 868/2026

ANY OTHER BUSINESS

Court of Appeal Judgment in Civil Appeal No. E884 of 2024: The National Assembly v Wanjiru Gikonyo and 9 others

Members were informed that, following delivery of the Court of Appeal Judgment the above captioned matter relating to constitutionality of the National Government Constituency Development Fund Act, 2015, Katiba Institute had filed a Record of Appeal at the Supreme Court challenging the judgment of the Court of Appeal.

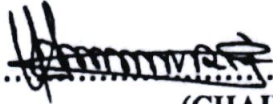
Following deliberations, it was resolved that the Directorate of Litigation and Compliance prepares a brief on the matter for consideration by the Committee at its next meeting.

MIN. NO. 869/2026

ADJOURNMENT

The meeting was adjourned at fifty-nine minutes past eight O'clock. The next meeting would be held on Thursday, 12th March, 2026.

SIGNED



(CHAIRPERSON)

DATE:

22.7.2026



13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 270TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON MONDAY, 16TH MARCH, 2026 AT 9:00 A.M. AT FOUR POINTS BY SHERATON HOTEL, IN MACHAKOS COUNTY

PRESENT

- | | |
|--|---------------|
| 1. Sen. Wakili Hillary Sigei, CBS, MP | - Chairperson |
| 2. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member |
| 3. Sen. (Prof.) Tom Ojienda, SC, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|--------------------|
| 1. Sen. Veronica W. Maina, CBS, MP | - Vice-Chairperson |
| 2. Sen. Karen Njeri Nyamu, MP | - Member |
| 3. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 4. Sen. Crystal Kegehi Asige, MP | - Member |
| 5. Sen. Raphael Chimera Mwinzagu, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|--|
| 1. Mr. Charles Munyua | - Principal Clerk Assistant II |
| 2. Mr. Boniface Kiambi | - Senior Clerk Assistant (<i>Taking Minutes</i>) |
| 3. Ms. Faith Wangui | - Legal Counsel II |
| 4. Ms. Angela Bonaya | - Clerk Assistant III |
| 5. Mr. Jackson Matheshe | - Research Officer III |
| 6. Mr. Josphat Ngeno | - Media Relations Officer III |
| 7. Mr. Kennedy Owuoth | - Fiscal Analyst |
| 8. Mr. John Lekampule | - Serjeant at Arms |
| 9. Mr. Zenton Williams | - Audio Officer |

IN ATTENDANCE

List Annexed

MIN. NO. 875/2026

PRELIMINARIES

The meeting was called to order at seven minutes past ten O'clock and opened with a word of Prayer. This was followed by introductions of the Members, Secretariat and stakeholders present.

MIN. NO. 876/2026

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Daniel Kitonga Maanzo, EBS, MP and seconded by Sen. (Prof.) Tom Ojienda, SC, MP.

MIN. NO. 877/2026

**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2025 (SENATE BILLS NO. 16 OF 2025)**

The Committee resumed deliberations on the Constitution of Kenya (Amendment) (No. 2) Bill, 2025 (Senate Bills No. 16 of 2025), which seeks to amend Articles 90, 97, 98 and 101 of the Constitution to operationalize the two-thirds gender principle, guarantee representation of persons with disabilities (PWDs), introduce term limits for party-list members, and strengthen democratic generation of political party lists.

Upon invitation by the Committee, the following stakeholders presented their submissions on the Bill –

1. Office of the Attorney General and Department of Justice;
2. National Gender and Equality Commission;
3. Independent Electoral and Boundaries Commission; and
4. Office of the Registrar of Political Parties.

Due to lapse of time, the Committee resolved to continue with the stakeholder engagement in the afternoon.

MIN. NO. 878/2026

ADJOURNMENT

The Chairperson adjourned the meeting at five minutes past one O'clock. The next meeting will be held on same day at 2.00 p.m.

SIGNED:

DATE: 22. 7. 2026



13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 271ST SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON MONDAY, 16TH MARCH, 2026 AT 2:00 P.M. AT FOUR POINTS BY SHERATON HOTEL, IN MACHAKOS COUNTY

PRESENT

- | | |
|--|---------------|
| 1. Sen. Wakili Hillary Sigei, CBS, MP | - Chairperson |
| 2. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member |
| 3. Sen. (Prof.) Tom Ojienda, SC, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|--------------------|
| 1. Sen. Veronica W. Maina, CBS, MP | - Vice-Chairperson |
| 2. Sen. Karen Njeri Nyamu, MP | - Member |
| 3. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 4. Sen. Crystal Kegehi Asige, MP | - Member |
| 5. Sen. Raphael Chimera Mwinzagu, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|--|
| 1. Mr. Charles Munyua | - Principal Clerk Assistant II |
| 2. Mr. Boniface Kiambi | - Senior Clerk Assistant (<i>Taking Minutes</i>) |
| 3. Ms. Faith Wangui | - Legal Counsel II |
| 4. Ms. Angela Bonaya | - Clerk Assistant III |
| 5. Mr. Jackson Matheshe | - Research Officer III |
| 6. Mr. Josphat Ngeno | - Media Relations Officer III |
| 7. Mr. Kennedy Owuoth | - Fiscal Analyst |
| 8. Mr. John Lekampule | - Serjeant at Arms |
| 9. Mr. Zenton Williams | - Audio Officer |

IN ATTENDANCE

List Annexed

MIN. NO. 879/2026

PRELIMINARIES

The meeting was called to order at five minutes past two O'clock and opened with a word of Prayer.

MIN. NO. 880/2026

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. (Prof.) Tom Ojienda, SC, MP and seconded by Sen. Daniel Kitonga Maanzo, EBS, MP.

MIN. NO. 881/2026

**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2025 (SENATE BILLS NO. 16 OF 2025)**

The Committee resumed deliberations on the Constitution of Kenya (Amendment) (No. 2) Bill, 2025 (Senate Bills No. 16 of 2025), which seeks to amend Articles 90, 97, 98 and 101 of the Constitution to operationalize the two-thirds gender principle, guarantee representation of persons with disabilities (PWDs), introduce term limits for party-list members, and strengthen democratic generation of political party lists.

Upon invitation by the Committee, the following stakeholders presented their submissions on the Bill –

1. Kenya Law Reform Commission;
2. National Council for Persons with Disabilities; and
3. Law Society of Kenya.

During deliberations –

- a) it was noted that the invited stakeholders supported the Bill in principle, noting that it seeks to address longstanding constitutional gaps in the implementation of the two-thirds gender principle and representation of persons with disabilities; and
- b) concerns were raised regarding implementation modalities, including the formula for allocating additional seats, verification of disability status, and the need for consequential amendments to electoral legislation to support effective operationalization of the proposed constitutional changes.

Thereupon, the Committee took note of the scheduled further stakeholder engagements and public hearings on the Bill, following which it would proceed to consider the submissions received and to prepare its Report thereon for tabling in the Senate.

MIN. NO. 882/2026

ADJOURNMENT

The Chairperson adjourned the meeting at thirty five minutes past three O'clock. The next meeting will be held on Tuesday, 17th March, 2026 at 8.00 a.m.

SIGNED:

DATE: 22.7.2026



13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 274TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON MONDAY, 23RD MARCH, 2026 AT 9:00 A.M. AT FOUR POINTS BY SHERATON HOTEL, IN MACHAKOS COUNTY

PRESENT

- | | |
|---------------------------------------|--------------------|
| 1. Sen. Wakili Hillary Sigei, CBS, MP | - Chairperson |
| 2. Sen. Veronica W. Maina, CBS, MP | - Vice-Chairperson |
| 3. Sen. Andrew Omtatah Okoit, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Raphael Chimera Mwinzagu, MP | - Member |
| 2. Sen. Karen Njeri Nyamu, MP | - Member |
| 3. Sen. Crystal Kegehi Asige, MP | - Member |
| 4. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member |
| 5. Sen. (Prof.) Tom Ojienda, SC, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Hassan Odhwa | - PCA I/ HoD, Governance Committees |
| 2. Mr. Charles Munyua | - Principal Clerk Assistant II |
| 3. Mr. Boniface Kiambi | - Senior Clerk Assistant |
| 4. Ms. Faith Wangui | - Legal Counsel II |
| 5. Ms. Angela Bonaya | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 6. Mr. Jackson Matheshe | - Research Officer III |
| 7. Mr. Josphat Ngeno | - Media Relations Officer |
| 8. Ms. Rosebella Ngesa | - Public Communications Officer |
| 9. Mr. Kennedy Owuoth | - Fiscal Analyst |
| 10. Mr. John Lekampule | - Serjeant at Arms |
| 11. Mr. Zenton Williams | - Audio Officer |

IN ATTENDANCE

List Annexed

MIN. NO. 892/2026

PRELIMINARIES

The meeting was called to order at seven minutes past ten O'clock and opened with a word of Prayer. This was followed by introductions from the Members, Secretariat and stakeholders present.

MIN. NO. 893/2026

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Veronica W. Maina, CBS, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 894/2026

**THE CONSTITUTION OF KENYA (AMENDMENT)
(NO. 2) BILL, 2025 (SENATE BILLS NO. 16 OF 2025)**

The Committee resumed deliberations on the Constitution of Kenya (Amendment) (No. 2) Bill, 2025 (Senate Bills No. 16 of 2025), which seeks to amend Articles 90, 97, 98 and 101 of the Constitution to operationalize the two-thirds gender principle, guarantee representation of persons with disabilities (PWDs), introduce term limits for party-list members, and strengthen democratic generation of political party lists.

Upon invitation by the Committee, the following stakeholders presented their submissions on the Bill –

1. Maendeleo ya Wanawake;
2. National Women's Steering Committee; and
3. African Women Studies Centre, University of Nairobi

Thereupon, the Committee thanked the stakeholders for their submissions on the Bill and resolved to deliberate further on the same.

MIN. NO. 895/2026

ADJOURNMENT

The Chairperson adjourned the meeting at fifty minutes past twelve O'clock. The next meeting will be held on the same day, Monday, 23rd March, 2026 at 2.00 p.m.

SIGNED: 

DATE: 22.7.2026



13TH PARLIAMENT | 5TH SESSION

**MINUTES OF THE 275TH SITTING OF THE STANDING COMMITTEE ON
JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON MONDAY,
23RD MARCH, 2026 AT 2:00 P.M. AT FOUR POINTS BY SHERATON HOTEL,
IN MACHAKOS COUNTY**

PRESENT

- | | |
|---------------------------------------|--------------------|
| 1. Sen. Wakili Hillary Sigei, CBS, MP | - Chairperson |
| 2. Sen. Veronica W. Maina, CBS, MP | - Vice-Chairperson |
| 3. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Raphael Chimera Mwinzagu, MP | - Member |
| 2. Sen. Karen Njeri Nyamu, MP | - Member |
| 3. Sen. Crystal Kegehi Asige, MP | - Member |
| 4. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member |
| 5. Sen. (Prof.) Tom Ojienda, SC, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Hassan Odhwa | - PCA I/ HoD, Governance Committees |
| 2. Mr. Charles Munyua | - Principal Clerk Assistant II |
| 3. Mr. Boniface Kiambi | - Senior Clerk Assistant |
| 4. Ms. Faith Wangui | - Legal Counsel II |
| 5. Ms. Angela Bonaya | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 6. Mr. Jackson Matheshe | - Research Officer III |
| 7. Mr. Josphat Ngeno | - Media Relations Officer |
| 8. Ms. Rosebella Ngesa | - Public Communications Officer |
| 9. Mr. Kennedy Owuoth | - Fiscal Analyst |
| 10. Mr. John Lekampule | - Serjeant at Arms |
| 11. Mr. Zenton Williams | - Audio Officer |

IN ATTENDANCE

List Annexed

MIN. NO. 896/2026

PRELIMINARIES

The meeting was called to order at two O'clock and opened with a word of Prayer.

MIN. NO. 897/2026**ADOPTION OF THE AGENDA**

The Agenda of the meeting was adopted having been proposed by Sen. Veronica W. Maina, CBS, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 898/2026**THE CONSTITUTION OF KENYA (AMENDMENT)
(NO. 2) BILL, 2025 (SENATE BILLS NO. 16 OF 2025)**

The Committee resumed deliberations on the Constitution of Kenya (Amendment) (No. 2) Bill, 2025 (Senate Bills No. 16 of 2025), which seeks to amend Articles 90, 97, 98 and 101 of the Constitution to operationalize the two-thirds gender principle, guarantee representation of persons with disabilities (PWDs), introduce term limits for party-list members, and strengthen democratic generation of political party lists.

Upon invitation by the Committee, the following stakeholders presented their submissions on the Bill –

1. Consortium of Disabled Persons' Organizations in Kenya;
2. Mzalendo Trust; and
3. Electoral Law and Governance Institute of Africa (ELGIA).

Thereupon, the Committee thanked the stakeholders for their submissions and resolved to further consider and deliberate on the same.

MIN. NO. 899/2026**ADJOURNMENT**

The Chairperson adjourned the meeting at ten minutes past four O'clock. The next meeting would be held on Thursday, 26th March, 2026 at 8.00 a.m.

SIGNED:

DATE:
22-7-2026



13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 281ST SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 28TH APRIL, 2026 AT 8:00 A.M. VIRTUALLY ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|------------------------------|
| 1. Sen. Crystal Kegehi Asige, MP | - Member (<i>Chairing</i>) |
| 2. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member |
| 3. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 4. Sen. (Prof.) Tom Ojienda, SC, MP | - Member |
| 5. Sen. Karen Njeri Nyamu, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|---------------------------------------|--------------------|
| 1. Sen. Wakili Hillary Sigei, CBS, MP | - Chairperson |
| 2. Sen. Veronica W. Maina, CBS, MP | - Vice-chairperson |
| 3. Sen. Raphael Chimera Mwinzagu, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|--|
| 1. Mr. Charles Munyua | - Principal Clerk Assistant II |
| 2. Mr. Boniface Kiambi | - Senior Clerk Assistant (<i>Taking Minutes</i>) |
| 3. Ms. Faith Wangui | - Legal Counsel II |
| 4. Ms. Angela Bonaya | - Clerk Assistant III |
| 5. Mr. Jackson Matheshe | - Research Officer III |
| 6. Mr. Josphat Ngeno | - Media Relations Officer |
| 7. Ms. Rosebella Ngesa | - Public Communications Officer |
| 8. Mr. Zenton Williams | - Audio Officer |
| 9. Ms. Anne Kigoro | - Pupil |

MIN. NO. 925/2026

PRELIMINARIES

The meeting was called to order at twenty-nine minutes past eight O'clock and opened with a word of Prayer.

MIN. NO. 926/2026

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. (Prof.) Tom Ojienda, SC, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 927/2026

CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

- a) The Minutes of the 279th Sitting were confirmed as the true record of the proceedings having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. (Prof.) Tom Ojienda, SC, MP.
- b) Confirmation of the Minutes of the 280th Sitting was deferred.

MIN. NO. 928/2026

MATTERS ARISING

Min. No. 922/2026 - Meeting with the Governor, Nairobi City County to deliberate on a Statement Sought by Sen. Catherine Mumma, MP, regarding the Eviction of Tenants from Old Ngara Estate in Nairobi City County

Members were informed that processing of the Summons to the Governor of Nairobi City County was ongoing as directed by the Committee.

MIN. NO. 929/2026

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2025 (SENATE BILLS NO. 13 OF 2025)

Members noted that, while the Committee had held stakeholder engagements and a public hearing on the Bill in September and October 2025, further consideration of the Bill was deferred to allow for consultations on the next steps.

It was observed that, while one of the reasons cited for deferring consideration of the Bill was to allow for the consideration and passage of the Referendum Bill, the said Bill was yet to be introduced in the Senate for First Reading as it was undergoing concurrence.

Following deliberations, it was resolved that the Committee proceeds to consider the submissions on the Bill, following which it would consider and adopt its Report for tabling in the Senate.

MIN. NO. 930/2026

THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL, 2025 (SENATE BILLS NO. 16 OF 2025)

Members recalled that the Committee was scheduled to consider the submissions on the Bill at a retreat in Kiambu County on Monday, 27th April, 2026. However, due to lack of quorum, the meeting did not proceed.

Following consultations, the Committee resolved to hold a retreat on Monday, 4th May, 2026 in Kiambu County to consider the submissions received on the Bill, following which the Committee would consider and adopt its Report on the Bill for tabling in the Senate.

MIN. NO. 931/2026

ANY OTHER BUSINESS

Members were reminded of the public hearing on the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026) coming up on Thursday, 30th April, 2026 from 9.00 a.m. at the KICC Amphitheater.

MIN. NO. 932/2026

ADJOURNMENT

The Chairperson adjourned the meeting at fifty-four minutes past eight O'clock. The next meeting will be held on Thursday, 30th April, 2026 at 9.00 a.m.

SIGNED: 

DATE: 22. 7. 2026



13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 288TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON MONDAY, 25TH JUNE, 2026 AT 11.45 A.M. AT SERENA BEACH RESORT, MOMBASA COUNTY

PRESENT

- | | |
|--|------------------------------|
| 1. Sen. Wakili Hillary Sigei, CBS, MP | - Chairperson |
| 2. Sen. Veronica W. Maina, CBS, MP | - Vice-chairperson |
| 3. Sen. Raphael Chimera Mwinzagu, MP | - Member |
| 4. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 5. Sen. Crystal Kegehi Asige, MP | - Member |
| 6. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member (<i>Chairing</i>) |
| 7. Sen. (Prof.) Tom Ojienda, SC, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------------|----------|
| 1. Sen. Karen Njeri Nyamu, MP | - Member |
|-------------------------------|----------|

SECRETARIAT

- | | |
|----------------------------|--|
| 1. Mr. Njenga Njuguna, OGW | - Director, Governance & Accountability Committees |
| 2. Mr. Hassan Odhwa | - PCA 1/ HoD, Governance Committees |
| 3. Mr. Charles Munyua | - Principal Clerk Assistant II |
| 4. Mr. Boniface Kiambi | - Senior Clerk Assistant |
| 5. Ms. Faith Wangui | - Legal Counsel II |
| 6. Mr. Jackson Wekesa | - Legal Counsel II |
| 7. Ms. Angela Bonaya | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 8. Mr. Jackson Matheshe | - Research Officer III |
| 9. Ms. Linet Aseka | - Research Officer III |
| 10. Mr. Josphat Ngeno | - Media Relations Officer |
| 11. Mr. John Lekampule | - Serjeant at Arms |
| 12. Mr. Zenton Williams | - Audio Officer |

MIN. NO. 960/2026

PRELIMINARIES

The meeting was called to order at fifteen minutes to noon.

MIN. NO. 961/2026

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded Sen. Raphael Chimera Mwinzagu, MP.

MIN. NO. 962/2026

**THE CONSTITUTION OF KENYA (AMENDMENT)
(NO. 2) BILL, 2025 (SENATE BILLS NO. 16 OF 2025)**

The Committee commenced consideration of submissions received on the Constitution of Kenya (Amendment) (No. 2) Bill, 2025 (Senate Bills No. 16 of 2025).

During deliberations, Members–

- i) noted that a total of eighteen (18) written memoranda were received on the Bill;
- ii) agreed that a commencement provision be included clarifying when the amendments would come into effect, particularly considering that the timelines for submission of party lists for the next general elections may have passed by the time the Bill is enacted into law;
- iii) noted the fiscal implications of implementing the Bill by the introduction of additional seats to meet the two-thirds gender principle quota and the five percent PWD representation quota;
- iv) deliberated whether the Bill required to be subjected to a referendum in line with Article 255 of the Constitution as it alters the structure of Parliament post-election by introducing additional seats.
- v) observed that the two-thirds gender quota should be applied ahead of the five percent quota for PWDs, to enable maximum benefit for PWDs;
- vi) rejected the proposal by the National Council of Persons with Disabilities to be given a monitoring role in verifying that political party nomination processes for PWDs are fair and competitive as this mandate lies with the Independent Electoral and Boundaries Commission; and
- vii) noted that some submissions were better suited for amendments to the relevant Statutes or Regulations.

Thereupon, it was resolved that the Secretariat proceeds to prepare the draft report for consideration by the Committee, including any proposed Committee stage amendments to the Bill.

MIN. NO. 963/2026

ADJOURNMENT

The Chairperson adjourned the meeting at fifteen minutes past one O'clock. The next meeting would be held the same day at 2.30 pm.

SIGNED:

DATE:



22.7.2026



13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 298TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON MONDAY, 15TH JUNE, 2026 AT 2:00 P.M. AT GLEE HOTEL IN KIAMBU COUNTY

PRESENT

- | | |
|--|--------------------|
| 1. Sen. Wakili Hillary Sigei, CBS, MP | - Chairperson |
| 2. Sen. Veronica W. Maina, CBS, MP | - Vice-chairperson |
| 3. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 4. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member |
| 5. Sen. Crystal Kegehi Asige, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|----------|
| 1. Sen. (Prof.) Tom Ojienda, SC, MP | - Member |
| 2. Sen. Karen Njeri Nyamu, MP | - Member |
| 3. Sen. Raphael Chimera Mwinzagu, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|--|
| 1. Mr. Boniface Kiambi | - Senior Clerk Assistant (<i>Taking Minutes</i>) |
| 2. Mr. Malcom Ngugi | - Senior Legal Counsel |
| 3. Ms. Faith Wangui | - Legal Counsel II |
| 4. Ms. Angela Bonaya | - Clerk Assistant III |
| 5. Mr. Jackson Matheshe | - Research Officer III |
| 6. Mr. Josphat Ngeno | - Media Relations Officer |
| 7. Ms. Rosebella Ngesa | - Public Communications Officer |
| 8. Mr. Zenton Williams | - Audio Officer |
| 9. Mr. John Lekampule | - Serjeant-at-Arms |
| 10. Ms. Anne Kigoro | - Pupil |

MIN. NO. 1007/2026

PRELIMINARIES

The meeting was called to order at ten minutes past two O'clock and opened with a word of Prayer.

MIN. NO. 1008/2026

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Veronica W. Maina, CBS, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 1009/2026

**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2026 (SENATE BILLS NO. 7 OF 2026)**

The Committee resumed consideration of the stakeholder submissions on the Bill and considered proposed amendments to various Articles of the Constitution, including those relating to the introduction of a five-year cooling-off period for former County Governors seeking election to the Senate or County Assemblies.

Following deliberations on the submissions and proposed amendments, the Committee adopted the Report, subject to the agreed amendments, having been proposed by Sen. Crystal Kegehi Asige, MP and seconded by Sen. Daniel Kitonga Maanzo, EBS, MP.

MIN. NO. 1010/2026

**THE CONSTITUTION OF KENYA (AMENDMENT)
(NO. 2) BILL, 2025 (SENATE BILLS NO. 16 OF 2025)**

The Committee resumed the consideration of stakeholder submissions and considered proposed amendments to various Articles of the Constitution, including those relating to implementation of the two-thirds gender principle and disability quotas.

Following deliberations on the submissions and proposed amendments, the Committee adopted the Report, subject to the agreed amendments, having been proposed by Sen. Crystal Kegehi Asige, MP and seconded by Sen. Daniel Kitonga Maanzo, EBS, MP.

MIN. NO. 1011/2026

ADJOURNMENT

The Chairperson adjourned the meeting at ten minutes past three O'clock. The next meeting will be held on Wednesday, 16th June, 2026 at 8:00 a.m.

SIGNED: 

DATE: 22/7/2026



13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 302ND SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY, 16TH JULY, 2026 AT 8.00 A.M. VIRTUALLY ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|---------------|
| 1. Sen. Wakili Hillary Sigei, CBS, MP | - Chairperson |
| 2. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 3. Sen. (Prof.) Tom Ojienda, SC, MP | - Member |
| 4. Sen. Crystal Kegehi Asige, MP | - Member |
| 5. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|--------------------|
| 1. Sen. Veronica W. Maina, CBS, MP | - Vice-chairperson |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Member |
| 3. Sen. Karen Njeri Nyamu, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Charles Munyua | - Principal Clerk Assistant II |
| 2. Mr. Boniface Kiambi | - Senior Clerk Assistant |
| 3. Mr. Malcom Ngugi | - Senior Legal Counsel |
| 4. Ms. Faith Wangui | - Legal Counsel II |
| 5. Ms. Angela Bonaya | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 6. Mr. Jackson Matheshe | - Research Officer III |
| 7. Ms. Linet Aseka | - Research Officer III |
| 8. Mr. Josphat Ngeno | - Media Relations Officer |
| 9. Ms. Rosebella Ngesa | - Public Communications Officer |
| 10. Mr. Zenton Williams | - Audio Officer |

MIN. NO. 1026/2026

PRELIMINARIES

The meeting was called to order at fourteen minutes past eight O'clock and opened with a word of Prayer.

MIN. NO. 1027/2026

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Crystal Kegehi Asige, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 1028/2026 **CONFIRMATION OF MINUTES**

- a) Confirmation of the Minutes of the 294th Sitting was deferred.
- b) The Minutes of the 297th Sitting were confirmed as a true record of the proceedings having been proposed by Sen. Crystal Kegehi Asige, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.
- c) The Minutes of the 298th Sitting were confirmed as a true record of the proceedings having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Crystal Kegehi Asige, MP.
- d) The Minutes of the 299th Sitting were confirmed as a true record of the proceedings having been proposed by Sen. Daniel Kitonga Maanzo, EBS, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.
- e) Confirmation of the Minutes of the 300th Sitting was deferred.
- f) The Minutes of the 301st Sitting were confirmed as a true record of the proceedings having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Daniel Kitonga Maanzo, EBS, MP.

MIN. NO. 1029/2026 **MATTERS ARISING**

Under Min. No. 1019/2026 The Referendum Bill, 2026 (Senate Bills No. 3 of 2026)

The Committee was informed that the draft Report on the captioned Bill as well as the Committee Stage Amendments were undergoing review and would be scheduled for consideration by the Committee at its next meeting.

Under Min. No. 1024/2026 Appeal of the Judgment of the Court of Appeal in Civil Appeal E884 of 2024: The National Assembly of Kenya v Wanjiru Gikonyo & Others

Members were informed that the draft pleadings in relation to the appeal to the Supreme Court would be presented to the Committee the following week.

MIN. NO. 1030/2026 **THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2025 (SENATE BILLS NO. 13 OF 2025)**

The Committee considered and adopted the text of the proposed amendments to the Bill.

Thereupon, the Committee resolved that the Report on the Bill, incorporating the proposed Committee-stage amendments, be processed for tabling in the Senate.

MIN. NO. 1031/2026

**THE CONSTITUTION OF KENYA (AMENDMENT)
(NO. 2) BILL, 2025 (SENATE BILLS NO. 16 OF 2025)**

The Committee considered and adopted the text of the proposed amendments to the Bill.

Thereupon, the Committee resolved that the Report on the Bill, incorporating the proposed Committee-stage amendments, be processed for tabling in the Senate.

MIN. NO. 1032/2026

**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2026 (SENATE BILLS NO. 7 OF 2026)**

The Committee considered and adopted the text of the proposed amendments to the Bill.

Thereupon, the Committee resolved that the Report on the Bill, incorporating the proposed Committee-stage amendments, be processed for tabling in the Senate.

MIN. NO. 1033/2026

ANY OTHER BUSINESS

- i) *Statement sought by Sen. Catherine Mumma, MP regarding the criminalization and re-victimization of survivors of female genital mutilation (FGM)*

The Committee resolved to conduct a fact-finding visit to Narok and Bomet Counties from Thursday, 23rd July, 2026 to Saturday, 25th July, 2026 with Friday, 24th July, 2026 being the working day.

- ii) *Legislative Business before the Committee*

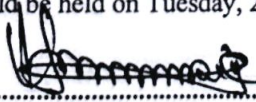
Members were notified of legislative business referred to the Committee during the plenary sittings of the Senate held on 14th and 15th July, 2026, and resolved-

- a) That a letter be sent to the Kenya National Commission on Human Rights (KNCHR) inviting the Commission to submit a written response and to appear before the Committee to deliberate on the Statement sought by Sen. Godfrey Osotsi, CBS, MP regarding the implementation of the Government's compensation and reparations programme for victims of demonstration-related violence and enforced disappearance; and
- b) That the Petition by Mohamed U. Alasow seeking the re-introduction of the Elections (Amendment) Bill, 2021, and the Petition by Mr. Laban Omusundi seeking limitation of tenure of nominated MCAs to one term limit, be scheduled for consideration by the Committee on Thursday, 23rd July, 2026.

MIN. NO. 1034/2026

ADJOURNMENT

The Chairperson adjourned the meeting at fifty-four minutes past eight O'clock. The next meeting would be held on Tuesday, 21st July, 2026.

SIGNED: 

DATE: 22/07/2026

***Annex 2: Copy of
the Constitution
of Kenya
(Amendment) (No.
2) Bill, 2025
(Senate Bills No.
16 of 2025)***

SPECIAL ISSUE

Kenya Gazette Supplement No. 138 (Senate Bills No. 16)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2025

NAIROBI, 8th August, 2025

CONTENT

Bill for Introduction into the Senate —

PAGE

The Constitution of Kenya (Amendment) (No. 2) Bill, 2025 231

THE CONSTITUTION OF KENYA (AMENDMENT)
(No. 2) BILL, 2025

A Bill for

AN ACT of Parliament to amend the Constitution of Kenya.

ENACTED by the Parliament of Kenya, as follows –

- | | |
|--|---|
| <p>1. This Act may be cited as the Constitution of Kenya (Amendment) (No. 2) Act, 2025.</p> | <p>Short title.</p> |
| <p>2. This Act shall apply to the general elections following the coming into force of this Act.</p> | <p>Application.</p> |
| <p>3. Article 90 of the Constitution is amended by—</p> <p>(a) in clause (1), by deleting the expression "Articles 97(1)(c) and 98(1)(b), (c) and (d)" and substituting therefor the expression "Articles 97(1)(c)(ca) and (1A) and 98(1)(b), (c), (d) and (1A)";</p> <p>(b) in clause (2) by inserting the following new paragraphs immediately after paragraph (c)—</p> <p>(d) members of a political party are democratically involved in the generation of the party list through a fair and competitive process as set out in the respective party constitution and nomination rules; and</p> <p>(e) each party list reflects the representation of the marginalized groups set out in Article 100 to the greatest extent possible taking into account the nature of the party list;</p> <p>(c) inserting the following new clause immediately after clause (3) —</p> <p style="padding-left: 40px;">(4) A person elected under clause (1) for a seat shall not hold such office for more than two terms.</p> | <p>Amendment of Article 90 of the Constitution</p> |
| <p>4. Article 97 of the Constitution is amended —</p> <p>(a) in clause (1) —</p> <p style="padding-left: 40px;">(i) by deleting the word "persons with disabilities" appearing immediately after the words "including the youth" in paragraph (c);</p> | <p>Amendment of Article 97 of the Constitution.</p> |

- (ii) by inserting the following new paragraph immediately after paragraph (c) —

(ca) five percent of the total number of members in paragraphs (a), (b) and (c) nominated by parliamentary political parties according to their proportion of members of the National Assembly and in accordance with Article 90, to represent persons with disabilities.

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

(1A) In the event that the membership of the National Assembly under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, there shall be nominated additional number of special seat members necessary to ensure that not more than two-thirds of the membership of the House are of the same gender.

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

5. Article 98 of the Constitution is amended—

Amendment of
Article 98 of the
Constitution.

- (a) in clause (1) by deleting paragraph (d) and substituting therefor the following new paragraph —

(d) five percent of the total number of members in paragraphs (a), (b) and (c) nominated by parliamentary political parties according to their proportion of members of the Senate and in accordance with Article 90, to represent persons with disabilities.

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

(1A) In the event that the membership of the Senate under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, there shall be

nominated additional number of special seat members necessary to ensure that no more than two-thirds of the membership of the House are of the same gender.

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

6. Article 101 of the Constitution is amended in clause (2) by deleting the words “under Article 97 (1)(c) or of the Senate under Article 98 (1)(b),(c) or (d)” appearing immediately after the words “National Assembly” in the introductory clause and substituting therefor the words under “Article 97(1)(c), (ca) or (1A) or of the Senate under Article 98 (1)(b),(c), (d) or (1A)”.

Amendment of
Article 101 of the
Constitution

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Constitution of Kenya through Parliamentary initiative by-

- (a) amending Article 90 to accommodate the proposals to amend Articles 97 and 98 accordingly;
- (b) amending Article 97 to provide for a formula to nominate additional special seat members of the National Assembly if, after declaration of results following a national election, the membership of the National Assembly does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender; and
- (c) amending Article 98 to provide for a formula to nominate additional special seat members of the Senate if, after declaration of results following a national election, the membership of the Senate does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender.

The Bill also seeks to amend the Constitution of Kenya to provide for additional seats in the National Assembly and Senate in order to implement the principle of at least five percent of the members of the public in elective and appointive bodies should be persons with disabilities.

The Bill proposes to amend Articles 97 and 98 of the Constitution to ensure that five percent of members of the National Assembly and the Senate are representatives of persons with disability. This is intended to promote representation of PWDs in the National Assembly and Senate so as to address the historical exclusion of PWDs from decision-making processes, resulting in laws and policies that do not reflect their unique challenges and needs. By ensuring the adequate representation of PWDs in government, the Bill aims to ensure that their voices are heard, and their interests and needs are taken into account in decision-making.

Statement that the proposed Bill does not relate to matters set out under Article 255 of the Constitution

None of the proposed amendments relate to the matters set out under Article 255 (1) and therefore need not be approved by a referendum.

The enactment of this Act shall occasion additional expenditure of public funds, which shall be provided for in the estimates

Dated the 23rd July, 2025.

AARON CHERUIYOT,
Senator.

Article 90 of the Constitution which it is proposed to amend

90. Allocation of party list seats

(1) Elections for the seats in Parliament provided for under Articles 97(1)(c) and 98(1)(b), (c) and (d), and for the members of County assemblies under article 177(1)(b) and (c), shall be on the basis of proportional representation by use of party lists.

(2) The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that—

- (a) each political party participating in a general election nominates and submits a list of all the persons who would stand elected if the party were to be entitled to all the seats provided for under clause (1), within the time prescribed by national legislation;
- (b) except in the case of the seats provided for under Article 98(1)(b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed; and
- (c) except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya.

(3) The seats referred to in clause (1) shall be allocated to political parties in proportion to the total number of seats won by candidates of the political party at the general election.

Article 97 of the Constitution that the Bill proposes to amend —

97. Membership of the National Assembly

(1) The National Assembly consists of—

- (a) two hundred and ninety members, each elected by the registered voters of single member constituencies;
- (b) forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency;
- (c) twelve members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers; and
- (d) the Speaker, who is an ex officio member.

(2) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1) (a).

Article 98 of the Constitution that the Bill proposes to amend—

98. Membership of the Senate

(1) The Senate consists of—

- (a) forty-seven members each elected by the registered voters of the counties, each county constituting a single member constituency;
- (b) sixteen women members who shall be nominated by political parties according to their proportion of members of the Senate elected under clause (a) in accordance with Article 90;
- (c) two members, being one man and one woman, representing the youth;
- (d) two members, being one man and one woman, representing persons with disabilities; and
- (e) the Speaker, who shall be an ex officio member.

(2) The members referred to in clause (1) (c) and (d) shall be elected in accordance with Article 90.

(3) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1) (a).

101. Election of members of Parliament

(1) A general election of members of Parliament shall be held on the second Tuesday in August in every fifth year.

(2) Whenever a vacancy occurs in the office of a member of the National Assembly under Article 97(1)(c), or of the Senate under Article 98(1) (b), (c) or (d), the respective Speaker shall, within twenty-one days of the occurrence of the vacancy, give notice in writing of the vacancy to—

- (a) the Independent Electoral and Boundaries Commission; and
- (b) the political party on whose party list the member was elected or nominated.

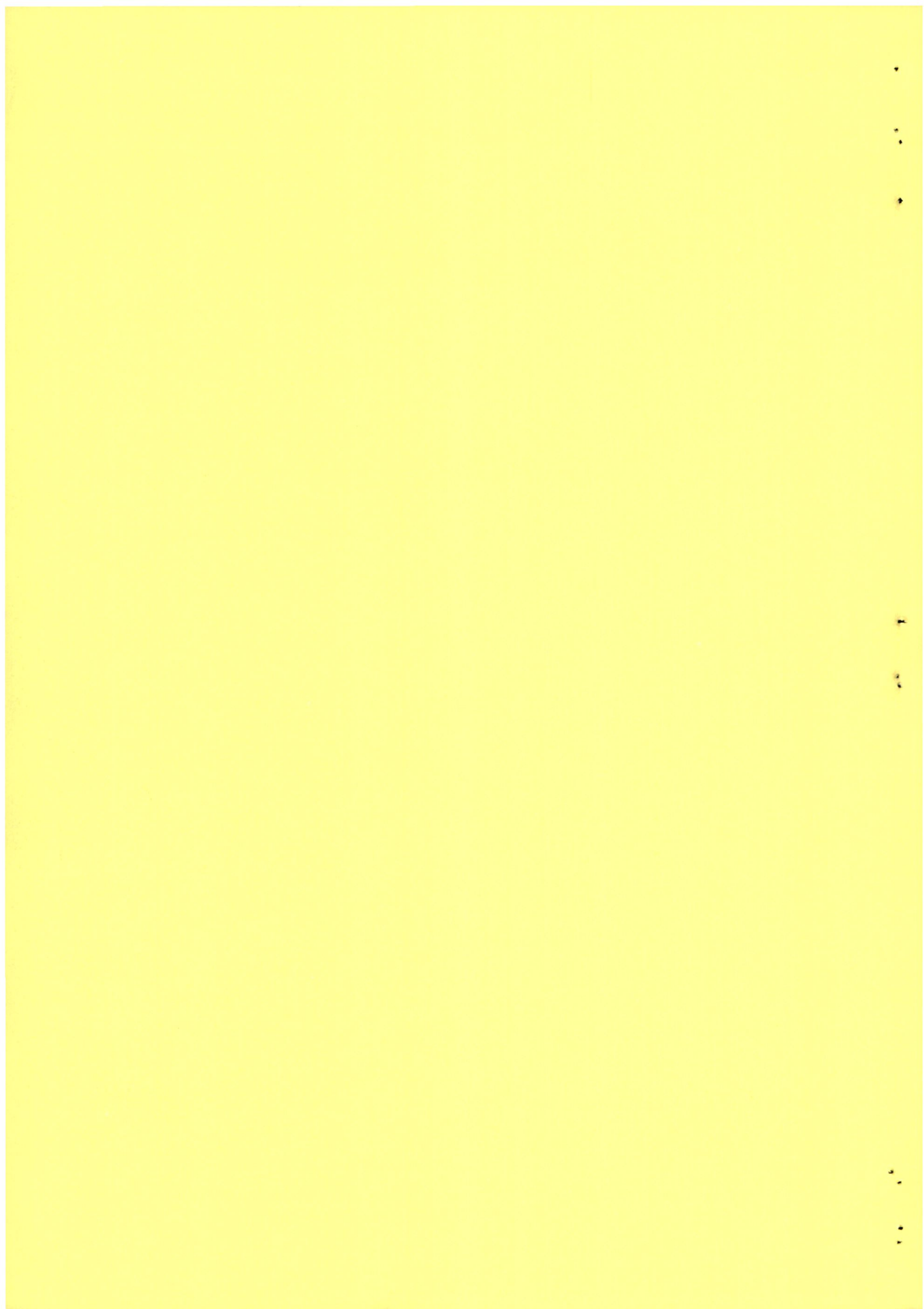
(3) A vacancy referred to in clause (2) shall, subject to clause (5), be filled in the manner prescribed by an Act of Parliament within twenty-one days of the notification by the respective Speaker.

(4) Whenever a vacancy occurs in the office of a member of the National Assembly elected under Article 97(1)(a) or (b), or of the Senate

elected under Article 98(1)(a)—(a)the respective Speaker shall, within twenty-one days after the occurrence of the vacancy, give notice in writing of the vacancy to the Independent Electoral and Boundaries Commission; and(b)a by-election shall be held within ninety days of the occurrence of the vacancy, subject to clause (5).

(5) A vacancy referred to in clause (4) shall not be filled within the three months immediately before a general election.

Annex 3:
Advertisement
published in the
Daily Nation and
Standard
Newspapers on
7th October, 2025



REPUBLIC OF KENYA



**THIRTEENTH PARLIAMENT | FOURTH SESSION
THE SENATE**

INVITATION FOR SUBMISSION OF MEMORANDA AND PUBLIC HEARINGS

**THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL, 2025
[SENATE BILLS NO. 16 OF 2025]**

The **Constitution of Kenya (Amendment) (No. 2) Bill, 2025 [Senate Bills No. 16 of 2025]** was read a First Time in the Senate on Thursday, 2nd October, 2025 and thereafter stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. The Committee is required, under standing order 145(5) of the Senate Standing Orders, to facilitate public participation on the Bill and to take into account the views and recommendations of the public when the Committee makes its report to the Senate.

The Bill seeks to amend the Constitution of Kenya to provide for additional seats in the National Assembly and the Senate in order to –

- (a) implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender; and
- (b) implement the principle that at least five percent of the members of elective and appointive bodies should be persons with disability.

The Bill proposes to achieve this by –

- (i) amending Article 90 of the Constitution to accommodate the proposals to amend Articles 97 and 98 accordingly;
- (ii) amending Article 97 of the Constitution to provide a formula to nominate additional special seat members of the National Assembly if, after declaration of results following a national election, the membership of the National Assembly does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender;
- (iii) amending Article 98 of the Constitution to provide a formula to nominate additional special seat members of the Senate if, after declaration of results following a national election, the membership of the Senate does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender; and
- (iv) amending Articles 97 and 98 of the Constitution to ensure that five percent of members of the National Assembly and the Senate are representatives of persons with disability.

In accordance with the provisions of Articles 118(1)(b) and 256(2) of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Standing Committee on Justice, Legal Affairs and Human Rights now invites members of the public to submit any representations that they may have on the Bill by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P. O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to maoni@parliament.go.ke to be received on or before **Friday, 30th January, 2026 at 5.00 p.m.**

In addition, the Senate will hold public hearings on the Bill on dates and venues to be communicated.

The Bill and a digest that summarizes the contents and context of the Bill may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

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

Annex 4: Copies of stakeholder submissions on the Bill





UNIVERSITY OF NAIROBI



African Women Studies
Centre (AWSC)

**UNIVERSITY OF NAIROBI
AFRICAN WOMEN STUDIES CENTRE
WOMEN IN LEADERSHIP**

**P.O. Box 30197-00100 | Tel: +254-705 541 746
Email: awsckenya@uonbi.ac.ke | Website: awsc.uonbi.ac.ke**

SUBMISSION OF MEMORANDUM BY THE UNIVERSITY OF NAIROBI ON:

CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL, 2025

SENATE BILLS, 2025

Contact person:

Prof Wanjiku M. Kabira

Tel no:

0728907978

Email: wkabira1@gmail.com cc. wambuimk@uonbi.ac.ke

Date: March 20th, 2026

SUBMISSION OF MEMORANDUM BY THE UNIVERSITY OF NAIROBI ON:

CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL, 2025

BY

THE AFRICA WOMEN'S STUDIES CENTRE, UNIVERSITY OF NAIROBI

Introduction

The African Women Studies, UON takes a keen interest in the representation of Women in decision-making institutions and processes in Kenya. The view of supporting the increased participation of women in the National Assembly and the Senate is based on the principles of gender equity and equality enshrined in the Constitution (CoK) and other international and regional treaties or conventions ratified by Kenya that form part of the law of Kenya under this Constitution (CoK Article 2(6)). The recommendations are also guided by the WIN WIN spirit of the constitution-making process in Kenya, where no individual or group was to lose what was already granted to them as well as the principle of the UN Sustainable Development Goals that ensures *no one is left behind*. We therefore, take cognizance of the rights of other marginalized groups including the youth and persons with disability, that are enshrined in the Constitution of Kenya and which they should not lose.

It is based on the above that AWSC conducted a gender and inclusion analysis of the proposed Senate Bill, 2025, and came up with the following proposals:

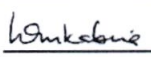
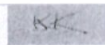
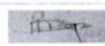
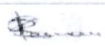
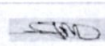
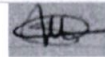
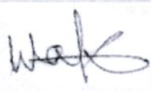
Section of the Bill	Issue	Proposed Amendment	Justification
3(d)	Could invite subjective interpretation	A political party shall prepare its party list through an inclusive, transparent, competitive, and participatory process based on pre-determined, objective, and publicly accessible criteria, ensuring adequate notice to members, equal opportunity for participation, and compliance with Article 10, Article 27, and Article 100.	The proposed provision strengthens internal party democracy by requiring political parties to prepare party lists through a transparent, competitive, and participatory process based on objective and publicly accessible criteria, thereby addressing concerns of opacity, exclusion, and undue influence in nominations while ensuring equal opportunity for members. The requirement for a declaration of compliance, coupled with verification and oversight by the Independent Electoral and Boundaries
		The Political Party List prepared shall be published and publicized by the Party.	
		A political party shall ensure at least half of the listed nominees shall be 50:50 young men and women as defined under Article 260 of the CoK	

		A political party list shall be structured such that candidates are alternated by gender in the order of female and male, beginning with a female candidate, so as to give full effect to Article 27 of the Constitution of Kenya 2010.	Commission, establishes a clear mechanism for accountability and pre-emptive enforcement, enabling the rejection of non-compliant party lists before elections. The proposed 50:50 representation of the young men and women is in line with the representation stipulated in the Constitution of Kenya Article 98: 1(d).
	New Proposal	The party shall submit the list, together with a declaration of compliance in accordance with provisions of Article 10, 27 and 100 of the Constitution., to the Independent Electoral and Boundaries Commission, which shall reject any non-compliant list and may require the process to be repeated in conformity with the Constitution.	
4(a)(i) Membership of the National Assembly	Doesn't provide for express trigger mechanism, the article should be self-executing	If, upon the declaration of the results of a general election, the membership of the National Assembly elected does not comply with the principle set out in Article 27(8) that not more than two-thirds of the members shall be of the same gender, the Independent Electoral and Boundaries Commission shall, in accordance with this Article, allocate and declare additional special seat members of the underrepresented gender to ensure compliance with that principle.	The amendment replaces an indeterminate and non-self-executing provision with a precise, self-executing constitutional mechanism that assigns a clear institutional duty to the electoral commission, thereby transforming the two-thirds gender principle from a declaratory norm into a binding and enforceable rule.
	New proposal 1(E) 1(E)	The Independent Electoral and Boundaries Commission shall declare the persons nominated under this Article within seven days of the final declaration of election results, and such members shall be deemed duly elected members of the National Assembly for all purposes. National Assembly (NA) shall not be constituted for its first sitting unless	

	1(F)	the requirements of this Article have been satisfied. This Article shall be implemented notwithstanding any other provision relating to the composition or number of members of the National Assembly.	
4: a(ii)	5% representation of PWDs may comply with 50:50 representation of men and women	(ca) five percent, comprised of 50:50 men and women , of the total number of members in paragraphs (a), (b) and (c) nominated by parliamentary political parties according to their proportion of members of the National Assembly and in accordance with Article 90, to represent persons with disabilities.	The proposal in 4:a(ii) and 5(d) are in line with the spirit of the constitution making of win win and CoK, Article 98:1(d) considering that men and women with disability have different life experiences that should inform national policies and decisions.
Membership of the Senate 5 (d)	The 5% PWDs may not comply with CoK Article 98: 1(d) on 50:50 representation of men and women PWDs	five percent, comprised of 50:50 men and women, of the total number of members in paragraphs (a), (b) and (c) nominated by parliamentary political parties according to their proportion of members of the Senate and in accordance with Article 90, to represent persons with disabilities.	
5(b)	Provide for a direct trigger mechanism	(1A) If, upon the declaration of the results of a general election, the membership of the Senate elected and nominated under this Article does not comply with the principle set out in Article 27(8) that not more than two-thirds of the members shall be of the same gender, the Independent Electoral and Boundaries Commission shall, in accordance with this Article, allocate and declare additional special seat members of the underrepresented gender to ensure compliance with that principle.	The proposed amendments introduce a direct, time-bound, and institutionally anchored trigger mechanism that converts the two-thirds gender principle from a declaratory constitutional norm into a self-executing and enforceable rule. By assigning a clear duty to the electoral commission, imposing a strict implementation timeline, and conditioning the lawful constitution of the Senate on compliance, the amendment eliminates ambiguity, prevents delay, and ensures automatic realization of constitutional equality
	New proposals	The Independent Electoral and Boundaries Commission shall declare the persons nominated	

	1(D)	under this Article within seven days of the final declaration of election results, and such members shall be deemed duly elected members of the Senate for all purposes.	
	(1E)	The Senate shall not be constituted for its first sitting unless the requirements of this Article have been satisfied.	

Submitted by AWSC and partners:

No.	Name	Organization	Signature
1	Prof Wanjiku Kabira	AWSC University of Nairobi	
1.	Jane Kamwaga	Murang'a Women's Economic Empowerment Network	
2.	Beatrice Mampei	Kajiado County women's Network	
3.	Zipporah Kamau	We Believe Community Organization	
4.	Beatrice Kamau	Women's Political Alliance _ Kenya	
5.	Hon. Joyce Muriuki	Ripples International	
6.	Joy Kiambati	NABWEE	
7.	Mary Wambui Kanyi	IRDA	



MEMORANDUM SUBMITTED TO
THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS
ON
THE CONSTITUTION OF KENYA (AMENDMENT) NO.2 BILL (SENATE BILLS NO.16
OF 2025)

SUBMITTED BY:

THE FEDERATION OF WOMEN LAWYERS IN KENYA
AMBOSELI ROAD. GITANGA ROAD, LAVINGTON, NAIROBI

P.O. Box 46324-00100, Nairobi, Kenya

Office Tel: +254-710607241 | +254 722509760

Email: info@fidakenya.org/sophie@fidakenya.org

INTRODUCTION

FIDA-Kenya respectfully submits this Memorandum pursuant to **Article 118 of the Constitution of Kenya, 2010**, which guarantees public participation in parliamentary processes, and in response to the Committee's call for submissions.

As a key stakeholder in advancing constitutionalism, equality, and human rights, FIDA-Kenya is guided by the national values and principles of governance under **Article 10**, including human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination, and protection of the marginalized.

BACKGROUND

FIDA-Kenya is a non-profit, non-partisan organization committed to eliminating discrimination against women in line with **Article 27 of the Constitution**, which guarantees equality and freedom from discrimination, and specifically mandates the State to take legislative and other measures to implement the **two-thirds gender principle** under **Article 27(8)**.

Despite this clear constitutional command, Parliament has, for over a decade, failed to enact an effective mechanism to operationalize this requirement, contrary to:

- **Article 100**, which obligates Parliament to promote representation of women, persons with disabilities, youth, ethnic and other marginalized groups
- **Article 261 and the Fifth Schedule**, which required timely enactment of legislation to implement the gender principle

This continued non-compliance has been the subject of judicial intervention, including in **Centre for Rights Education and Awareness (CREAW) & 7 Others v Attorney General [2017]**, where the Court affirmed Parliament's obligation to actualize the gender principle.

GENERAL POSITION ON THE BILL

FIDA-Kenya **supports the Amendment Bill** as a necessary corrective measure to give effect to:

- **Article 27(6) and (8)** on substantive equality
- **Article 81(b)**, which requires that not more than two-thirds of elective public bodies be of the same gender
- **Article 94(1)**, which vests legislative authority in Parliament, including the duty to uphold constitutional supremacy

The Bill is therefore a constitutionally compliant and overdue intervention to cure persistent legislative inaction.

KEY PROVISIONS OF INTEREST

1. Gender Representation (Two-Thirds Rule)

The proposed mechanism aligns directly with:

- **Article 81(b)** (gender balance in elective bodies)
- **Article 27(8)** (legislative measures to implement gender equity)

FIDA-Kenya supports the introduction of a formula-based corrective mechanism, including nomination of special seat members, as a **legally sound and enforceable approach** to achieving compliance.

2. Representation of Persons with Disabilities

The proposed five percent threshold advances:

- **Article 54(2)**, which guarantees representation of persons with disabilities in elective and appointive bodies
- **Article 56**, on affirmative action for minorities and marginalized groups

This provision reflects Kenya's obligations under both domestic and international human rights frameworks, including the **UN Convention on the Rights of Persons with Disabilities (CRPD)**.

CRITICAL CONSIDERATIONS AND RECOMMENDATIONS

1. Address Structural Barriers (Substantive Equality under Article 27(6))

While the Bill advances formal equality, **Article 27(6)** requires the State to take legislative and policy measures to address systemic disadvantage.

The Supreme Court in **Advisory Opinion No. 2 of 2012 (In the Matter of the Principle of Gender Representation)** emphasized that the realization of the two-thirds principle requires a **progressive and structured approach**, not mere numerical compliance.

Recommendation:

Parliament should:

- Introduce complementary legislation on **campaign financing equity** (see Political Parties Act and Elections Act)
- Strengthen enforcement of laws addressing **electoral violence**, including the **Elections Offences Act, 2016**
- Institutionalize gender-responsive political party frameworks under the **Political Parties Act, 2011**

2. Intersectionality and Inclusion of Women with Disabilities

The combined reading of:

- **Article 27 (equality and non-discrimination)**
- **Article 54 (rights of persons with disabilities)**
- **Article 56 (affirmative action)**

creates a constitutional obligation to address **intersectional discrimination**.

Recommendation:

- Require political parties, under the **Political Parties Act**, to demonstrate compliance with inclusion standards in nominations
- Mandate IEBC oversight under **Article 88(4)** to enforce inclusive party lists

3. Enforcement and Accountability Mechanisms

The High Court in **Kenya Human Rights Commission & 4 Others v IEBC & 3 Others (2024)** reaffirmed that:

- Party lists must comply with constitutional requirements on equality and non-discrimination
- The IEBC has a binding duty to reject non-compliant lists

This aligns with:

- **Article 90(2)** on party list proportional representation
- **Article 88(4)(d)** on IEBC's responsibility to regulate political parties' nomination processes

Recommendation:

- Introduce explicit sanctions for non-compliance
- Strengthen IEBC's enforcement mandate through legislative clarity

4. Linking Representation to Devolution Outcomes

The Bill's implications must be read alongside:

- **Article 174** (objects of devolution), including equitable development and protection of marginalized groups
- **Article 175(c)** (principle of democratic and accountable exercise of power)

Enhanced gender representation in the Senate strengthens its constitutional mandate under **Article 96**, particularly in protecting county interests and oversight of national revenue allocation.

Recommendation:

Institutionalize **gender-responsive budgeting and oversight frameworks** to ensure representation translates into tangible benefits in:

- Healthcare (Article 43(1)(a))
- Education (Article 43(1)(f))
- Social protection and dignity

STRATEGIC IMPORTANCE OF THE BILL

The Bill advances:

- **Article 2 (Supremacy of the Constitution)**
- **Article 3 (Obligation to respect, uphold and defend the Constitution)**

By addressing long-standing non-compliance, Parliament will be fulfilling its constitutional duty and restoring public confidence in democratic institutions.

CONCLUSION

FIDA-Kenya reiterates that the Amendment Bill is a **constitutionally grounded, jurisprudentially supported, and socially necessary reform**.

However, its success depends on full alignment with:

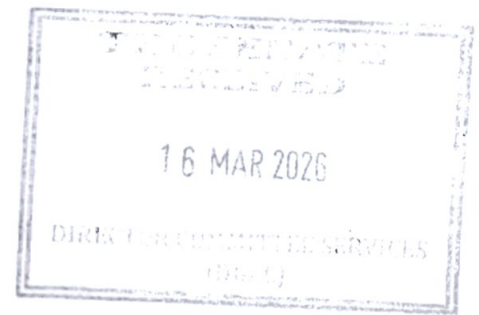
- **Articles 10, 27, 54, 56, 81, 90, 96, 100, and 174**
- Judicial guidance from the **Supreme Court and High Court**
- Effective enforcement by Parliament, IEBC, and political parties

Parliament now has a historic opportunity to move beyond declaratory commitments and **actualize substantive equality as envisioned in the Constitution of Kenya, 2010**.

Failure to do so risks continued violation of constitutional rights and erosion of democratic legitimacy.

SUBMITTED BY:

FIDA-KENYA



KENYA LAW REFORM COMMISSION

Our Ref: KLRC/8/86 VOL IX (6)

Mr. J. M. Nyegenye, CBS
Clerk of the Senate
Parliament Buildings
P. O. Box 41842 - 00100
NAIROBI



13th March 2026

Handwritten: HOD - GOVERNANCE
PCB - JLAHRC

Handwritten: Kindly Send
16/03/2026

**RE: THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL, 2025
(SENATE BILLS NO. 16 OF 2025)**

Reference is made to your letter SEN/DGAC/DGC/JLAHRC/2026/2(h) dated 2nd March, 2026.

We are pleased to forward the comments of the Kenya Law Reform Commission on the Constitution of Kenya (Amendment) (No. 2) Bill, 2025 (Senate Bill No. 16 of 2025), for your consideration.

Peter Musyimi, HSC
Ag. SECRETARY/CEO

Encl.

Copy to:

Ms. Christine Agimba, SC, MBS
Chairperson
Kenya Law Reform Commission
NAIROBI

KENYA LAW REFORM COMMISSION MEMORANDUM ON THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL, 2025 (*Senate Bill No. 16 of 2025*)

1. INTRODUCTION

The Kenya Law Reform Commission (KLRC) received a letter from the Clerk of the Senate dated 2 March 2026 (Ref: SEN/DGAC/DGC/JLAHRC/2026/2(h)) inviting the Commission to submit written comments on the Constitution of Kenya (Amendment) (No. 2) Bill, 2025.

The Kenya Law Reform Commission is established under the Kenya Law Reform Commission Act (Cap. 3) and is mandated under section 6(h) to advise the national and county governments on the review, reform, and development of legislation, including the provision of technical advice on proposed legislative and constitutional amendments.

Pursuant to this mandate, the Commission has undertaken a preliminary review of the proposed constitutional amendments contained in the Bill and prepared this memorandum to assist the Committee in its deliberations.

This memorandum provides an objective legal and institutional analysis of the proposed amendments, with particular attention to—

- a) their consistency with the Constitution;
- b) the intended legal and institutional effects of the proposed changes; and
- c) the potential implications for the existing constitutional and legislative framework, including relevant electoral laws.

The observations contained in this memorandum are intended to assist the Committee in its consideration of the Bill and do not seek to advance a particular policy position, but rather to highlight legal and constitutional issues that may arise from the proposed amendments.

2. PURPOSE AND OBJECTIVES OF THE BILL

The Constitution of Kenya (Amendment) (No. 2) Bill, 2025 seeks to address two constitutional requirements, namely—

- a) the two-thirds gender principle provided under Articles 27(8), 81(b), 97 and 98 of the Constitution; and
- b) the requirement under Article 54(2) that at least five percent of members of elective and appointive bodies shall be persons with disabilities (PWDs).

The Bill proposes constitutional amendments intended to introduce institutional mechanisms for addressing representational imbalances that may arise from electoral outcomes, particularly in relation to gender representation and the inclusion of persons with disabilities.

Specifically, the Bill proposes to—

- a) Amend Article 90, which currently governs the allocation of special seats through proportional representation based on party lists submitted before elections. The proposed amendment would allow the introduction of corrective nomination mechanisms that may be applied where electoral outcomes do not meet the constitutional gender threshold.
- b) Amend Article 97, which establishes the composition of the National Assembly, by introducing a post-election formula through which additional members may be nominated in circumstances where the composition of the House does not comply with the two-thirds gender principle.
- c) Introduce measures aimed at facilitating representation of persons with disabilities in elective bodies, in order to operationalize the constitutional requirement contained in Article 54(2).

The amendments therefore seek to provide a constitutional framework for addressing representational gaps that may arise through electoral processes, particularly in relation to gender equality and the inclusion of persons with disabilities. In this context, the Bill raises important considerations regarding the institutional mechanisms required to implement equality guarantees in the Constitution, as well as the potential implications of such mechanisms for the structure, composition, and functioning of Parliament.

3. CONSTITUTIONAL CONTEXT

The Constitution of Kenya establishes a framework for inclusive governance, equality, and equitable representation in public institutions. In relation to the issues addressed by the Bill, three constitutional provisions are particularly relevant.

- a) Article 27(8) – Legislative Measures to Achieve Gender Balance: This Article requires the State to take legislative and other measures to ensure that not more than two-thirds of the members of elective or appointive bodies are of the same gender. This provision reflects the Constitution's commitment to substantive equality, recognizing that historical and structural barriers have affected the participation of women in political leadership. Importantly, Article 27(8) expressly contemplates legislative intervention, indicating that the realization of the gender principle may require the development of institutional mechanisms through law.
- b) Article 81(b) – Gender Principle in the Electoral System: Establishes the two-thirds

By incorporating the gender principle within the electoral framework, the Constitution recognizes that the design and operation of electoral institutions must take into account the objective of inclusive representation.

- c) Article 54(2) – Representation of Persons with Disabilities: Requires the State to ensure that at least five percent of members of elective and appointive bodies are persons with disabilities. This provision acknowledges the historical exclusion of persons with disabilities from political participation and obligates the State to adopt measures that facilitate their representation within public institutions.

Overall Constitutional Framework

Taken together, these provisions establish a constitutional commitment to inclusive representation in public governance. They also contemplate the adoption of legislative or institutional mechanisms capable of translating constitutional equality guarantees into practical representational outcomes. The proposed amendments contained in the Bill therefore arise within a broader constitutional framework that seeks to advance equality, representation, and participation in public decision-making bodies.

4. STRUCTURAL CHALLENGES IN IMPLEMENTING THESE PROVISIONS

Despite the clarity of the constitutional provisions outlined above, their implementation has encountered structural challenges within Kenya's electoral system. Kenya's electoral framework for the National Assembly and Senate is largely based on single-member constituency elections conducted under the first-past-the-post system. While this system facilitates direct electoral competition within constituencies, it does not necessarily guarantee representational outcomes that satisfy the constitutional requirements relating to gender balance and the inclusion of persons with disabilities.

As a result, successive electoral cycles have produced parliamentary compositions that fall short of the two-thirds gender requirement, leading to ongoing institutional and legislative discussions regarding the mechanisms required to give practical effect to these constitutional provisions.

In this context, the Bill proposes amendments intended to introduce corrective mechanisms that may be applied where electoral outcomes do not meet the constitutional thresholds for representation. The proposed amendments therefore raise broader questions regarding the institutional design of mechanisms capable of translating constitutional equality guarantees into representative outcomes within elective bodies, particularly within an electoral system primarily structured around single-member constituencies.

5. CONSTITUTIONAL ISSUES ARISING

The proposed amendments raise a number of constitutional and institutional considerations relating to the structure of Parliament, the relationship between electoral outcomes and representation, and the institutional responsibilities of electoral management bodies.

Expansion of Parliamentary Membership

The Bill proposes a system of corrective nomination of additional members where electoral outcomes fail to satisfy the two-thirds gender principle. While this approach seeks to advance the constitutional objective of gender equality, it raises several institutional considerations.

(i) Indeterminate Size of Parliament

The Constitution presently defines the composition of Parliament under Articles 97 and 98. A system that permits the post-election nomination of additional members without a clearly defined ceiling may lead to a variable size of Parliament across electoral cycles, depending on electoral outcomes.

Such variability may raise questions regarding the predictability and stability of the constitutional design of Parliament.

(ii) Institutional Balance within Parliament

The Constitution establishes a structural balance between elected members and nominated members. A significant expansion of nominated members may alter this balance and could affect internal parliamentary processes, including—

- committee composition;
- party representation within the Houses; and
- voting dynamics in closely divided legislative decisions.

Observation

In order to enhance institutional predictability, the Committee may wish to consider whether the Bill should provide greater clarity regarding the potential number of additional seats that may arise through the corrective mechanism.

Electoral Integrity and Democratic Representation

The proposed corrective mechanism operates after elections have been concluded, which raises questions regarding the relationship between electoral outcomes and parliamentary composition.

(i) Relationship Between Electoral Outcomes and Representation

Under Article 1 of the Constitution, sovereign power belongs to the people and is exercised through democratic elections. Where mechanisms modify parliamentary composition after elections, questions may arise regarding how electoral outcomes are translated into final legislative representation.

(ii) Legislative Authority of Corrective Nominees

The Bill does not explicitly clarify whether the additional nominated members would exercise the same legislative powers as elected members, including participation in voting on legislation and budgets. If corrective nominees possess full legislative voting rights, the mechanism may influence legislative outcomes within Parliament.

Observation

The Committee may wish to consider whether the corrective nomination mechanism should operate within the proportional representation party-list framework under Article 90, in order to maintain a clearer relationship between electoral outcomes and post-election nominations.

(c) Role of the Independent Electoral and Boundaries Commission (IEBC)

The Bill does not expressly identify the institution responsible for determining whether the two-thirds gender threshold has been met following elections. Under Article 88 of the Constitution, the Independent Electoral and Boundaries Commission (IEBC) is responsible for the conduct and supervision of elections.

Given this constitutional mandate, it may be appropriate for the legislation to clarify the institution responsible for determining compliance with the gender threshold; and the authority responsible for administering any corrective nomination process.

Observation

The Committee may wish to consider whether the Bill should explicitly provide for the role of IEBC in determining gender compliance and administering any corrective nomination mechanism.

IMPLEMENTATION AND CONSEQUENTIAL LEGISLATION

The Bill does not fully address the operational mechanics of the proposed gender top-up mechanism. Key implementation issues include—

- (i) the formula for allocating additional seats among political parties;
- (ii) the timeframe within which nominations must be completed after elections;
- (iii) procedures where party lists are exhausted before quotas are met.

These matters would require consequential amendments to the Elections Act and related electoral regulations.

CONCLUSION

The Commission commends the proposals in Bill aimed at giving practical effect to the two-thirds gender principle and the representation of persons with disabilities, both of which are fundamental constitutional commitments. The Bill represents an important effort to address a long-standing constitutional implementation challenge.

The recommendations contained in this memorandum are intended to strengthen the constitutional soundness, fiscal sustainability, and institutional clarity of the proposed amendments, thereby supporting Parliament in designing a durable and workable framework for achieving inclusive representation.

The Commission has further undertaken a clause-by-clause analysis of the Bill and makes the following clause specific proposals.

CLAUSE	PROPOSED AMENDMENT	KLRC COMMENT	KLRC RECOMMENDATION
Clause 3 (Amendment of Article 90)	Inserts new paragraph (d): party members must be democratically involved in generation of party list through a fair and competitive	The new paragraphs (d) and (e) are commendable additions that address systemic party list abuses. However, the phrase "democratically involved" in	KLRC recommends specifying in paragraph (d) that "democratic involvement" be defined under the Election Act as a consequential amendment or operationalized by reference to a prescribed process under the Elections (Party Primaries and Party Lists) Regulations.

	Inserts new paragraph (e): each party list shall reflect marginalized groups in Article 100. Inserts new clause (4): a person elected under clause (1) shall not hold the seat for more than two terms.	vague and may be subject to varying interpretation by political parties. The two-term limit in clause (4) is a sound anti-entrenchment measure. However, it is unclear whether this limit applies to top-up members nominated under the new Articles 97(1A) and 98(1A), or only to the regular proportional representation seats under clause (1).	KLRC further recommends clarifying whether the two-term limit in clause (4) applies to gender top-up nominees under Articles 97(1A) and 98(1A), by inserting a sub-clause to that effect.
Clause 4 Amendment of Article 97 - National Assembly)	Inserts new paragraph (ca): five percent of total National Assembly members in paragraphs (a), (b), and (c) nominated by parties to represent PWDs.	The five percent PWD seats under paragraph (ca) will add approximately 17 to 18 members to the National Assembly (being five percent of the members in paragraphs (a), (b), and (c)). This will	KLRC recommends that clause (1B) specify the IEBC as the body responsible for computing the gender top-up number, and prescribe a timeframe (not exceeding 21 days from declaration of results) for the nomination to be completed. KLRC recommends that the Bill clarify whether five percent is

Inserts clause (1A):
if post-election
membership of the
National Assembly
does not conform
to the two-thirds
gender rule,
additional special
seat members shall
be nominated to
ensure compliance.

Inserts clause (1B):
the number of
special seats under
clause (1A) is to be
determined after
declaration of
general election
results.

have substantial
fiscal implications
not addressed in the
Bill.

Clause (1A) does not
specify: (i) the body
responsible for
determining the
number of top-up
seats; (ii) the
timeframe for
completing the
nomination; or (iii)
the procedure where
a party's list is
exhausted before the
top-up quota is met.

The removal of
'persons with
disabilities' from the
existing paragraph
(c) and its
establishment as a
standalone category
under paragraph (ca)
is constitutionally
sound and improves
the structure of
Article 97.

computed on the basis of total
House membership (including the
Speaker) or only the elected and
nominated members under
paragraphs (a), (b), and (c).

Clause 5 (Amendment of Article 98 - Senate)	Deletes existing paragraph (d) (two fixed PWD seats) and substitutes: five percent of total Senate members in paragraphs (a), (b), and (c) nominated by parties to represent PWDs. Inserts clause (1A): if post-election Senate membership does not conform to the two-thirds gender rule, additional special seat members shall be nominated to restore compliance. Inserts clause (1B): the number of special seats under clause (1A) shall be determined after declaration of general election results.	The substitution of two fixed PWD seats with a five percent formula yields approximately three PWD seats (five percent of members in paragraphs (a), (b), and (c)). This is consistent with Article 54(2) of the Constitution. The same implementation gaps identified for Clause 4 apply equally here: the absence of a designated implementing body, a specified timeframe, and a party list exhaustion remedy. The deletion of the two fixed seats and their replacement with a proportional formula may reduce certainty of PWD representation if the	KLRC recommends that the same implementing provisions recommended for in Article 97 be applied equally to Article 98: the IEBC to compute top-up numbers within a prescribed 21-day timeframe after declaration of results. KLRC recommends the Committee consider whether a minimum floor of two PWD seats should be retained to guarantee a baseline of representation, regardless of the five percent formula outcome.
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		Senate's total membership is reduced in future.	
Clause 6 (Amendment of Article 101)	Amends clause (2) of Article 101 to update cross-references to Articles 97 and 98 to include the new sub-provisions (ca), (1A), and (1B) introduced by Clauses 4 and 5.	This is a necessary consequential amendment to Article 101, which governs the filling of vacancies in Parliament. The amendment ensures that vacancies in the new PWD and gender top-up seats are filled in the same manner as other nominated and party list vacancies. However, the amendment does not address whether a replacement for a top-up gender seat must be of the same gender as the vacating member, which is essential to preserve the gender balance achieved	KLRC recommends that the Bill, or the consequential amendments to the Elections Act, specify that any replacement for a gender top-up seat under Articles 97(1A) and 98(1A) must be of the same gender as the vacating member, to protect the constitutional purpose of the top-up mechanism.



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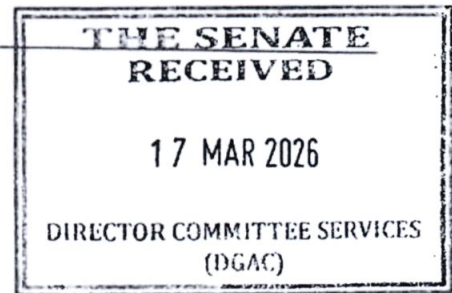
17/03/2026



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

MEMORANDUM ON
THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL, 2025
SUBMITTED TO

CLERK OF THE SENATE



DATED: 13TH MARCH 2026

Kenya National Commission on Human Rights
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A. INTRODUCTION

1. The Kenya National Commission on Human Rights (“KNCHR” or “National Commission”) is an independent National Human Rights Institution established under Article 59 of the Constitution with a broad mandate to promote a culture of respect for human rights in the Republic of Kenya. The operations of the National Human Rights Commission are guided by the KNCHR Act and the United Nations *Paris Principles* on the establishment and functioning of independent national human rights institutions commonly referred to as the Paris Principles and as such enjoys an “A” status accreditation.
2. The National Commission under Article 249 of the Constitution has a mandate to secure observance of all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the Constitution. One of the strategies pursued by the Commission to secure observance of all state organs of democratic values and principles is through human rights monitoring, review of new and existing laws and policies, and the issuance of advisories informed by the KNCHR’s analysis.
3. In this regard, the KNCHR submits its comments on the Constitution of Kenya (Amendment) (No. 2) Bill, 2025 sponsored by the Hon. Senator Aaron Cheruiyot, Leader of the Majority Party. The advisory has three parts; Section A covers preliminary introduction, Section B provides General observations and recommendations, while specific comments/observations on particular clauses of the Bill are detailed in Section C.

B. GENERAL COMMENTS

4. The Commission welcomes the proposed constitutional amendment seeking to provide for additional seats in the National Assembly and Senate in order to implement the principle of at least five percent of the members of the public in elective or appointive position should be persons with disabilities. The Commission notes that the amendment under clause 4 which proposes to introduce a new Article 97 (1) (ca) to qualify that five percent of the total number of members nominated by parliamentary political parties according to their proportion of members of the National Assembly shall represent persons with disabilities. This departs from the current provision under Article 97 (1) (c) providing only 12 slots of representation shared by the youth, persons with disabilities and workers towards practical implementation of Article 54 (2) of the Constitution. It is worth noting that the current formula of representation for persons with disabilities has caused uncertainty to the effect that their numbers are ever low. However, this consequential amendment will ensure that the membership of the National Assembly will guarantee that about 18 persons with disabilities make it to parliament under the new proposed Article 97 (1)(ca).

5. The proposed introduction of a new Article 97 (1A) to provide for the nomination of additional number of special seat members necessary to ensure that not more than two-thirds of the membership of the House are of the same gender. The Commission welcomes this proposal noting that it is in line with the 2022 Presidential Memorandum¹ to Parliament on the need to resolve the long-standing stalemate on the implementation of the gender equity principle by establishing a workable formula as well as aligning with the concluding observation made to Kenya under the Protocol to the African Charter on Human and Peoples Rights on the rights of women in Africa (Maputo Protocol) recommending that the State continues its efforts to amend the Constitution, to put in place mechanisms for achieving the two-thirds gender rule, and/or: adopt a specific legislation on the implementation of the two-thirds gender rule.

6. The Commission is alive to concerns of sections of the electorate that the proposal to create additional seats for women at the National Assembly and Senate in the event that their membership does not conform to the two-thirds gender-rule. Such concerns have are that Kenya will have a bloated legislature, Increase of financial burden thus unsustainable and may not empower women in the long run. Other quarters have continued to argue that special seats undermine the democratic principle that representatives should be directly elected by the people. The Women nominated to these positions may be seen as “token” representatives rather than leaders who earned their position, thereby undermining their credibility and authority to make decisions. It is therefore the Commission’s advice that the Constitutional Amendments must transitional capped at 20 years.

7. The Commission notes Kenya has a robust legal and policy framework that supports women’s political participation. The Elections Act, 2011, the Electoral Code of Conduct and the Political Parties Act, 2011 prohibit acts that would interfere with the participation of women in politics, such as violence, intimidation and voter bribery; give authority to the Independent Electoral and Boundaries Commission to ensure that political parties comply with electoral rules, including on gender diversity and inclusion and require political parties to comply with the constitutional gender requirement to qualify for full registration. However, these frameworks have not been effectively implemented. Women still face financial and cultural barriers to political participation. The Human Rights Committee, in its 2021 recommendations, urged Kenya to strengthen measures to address and prevent violence and harassment among women seeking elective office, including the prosecution of such crimes.

¹<https://www.parliament.go.ke/sites/default/files/2023-12/Presidential%20Memorandum%20on%20constitutional%20amendments%20Dec%202022.pdf#:~:text=I%20am%20encouraged%20o%20note%20that%20the,parameters%20set%20out%20by%20the%20constitutional%20court.>

8. The Commission also notes that the proposed amendment Bill relates to the principles of inclusiveness, equality, human rights, non-discrimination and protection of the marginalized under Article 10 of the Constitution and would therefore require a referendum.
9. The proposed amendment to Article 98 of the Constitution to effect that the representation of persons with disabilities in the Senate shall be five per cent of the total number of members elected under Article 98 (1)(a)(b)(c) is progressive. This will out-rightly translate to additional representation slots from the current 2 provided under Article 98 (1)(d) to a guaranteed 4 slots for persons with disabilities. The Commission also welcomes the proposal to ensure that representation of the members of the Senate conforms to the two-thirds gender principle through the amendment proposed under clause 5 (b).
10. The Commission is of the view that the proposed Constitutional amendment will cure the gaps that the Elections Act, Cap 7 has failed to address over the years regarding allocation and reallocation of special seats under sections 36 and 37 of the Act. The Commission is concerned about the phrase "to the greatest extent possible" under clause 3 (e) which is vague and open-ended, and may result in non-compliance by parties, especially on inadequate marginalized group representation.
11. The Commission further calls for the full implementation of the Independent Electoral and Boundaries Commission's mandate under Article 90(2) on its responsibility to conduct and supervise elections of the seats for special interest groups, which should include reviewing, verifying, and where necessary, rejecting party lists that do not meet the standards under Clause 3 of the bill on fair and competitive process.

C. SPECIFIC COMMENTS

Clause & Title	Proposed Amendment	Rationale
Clause 3 – Amendment of Article 90 of the Constitution	Clause 3 amends Article 90 of the Constitution of Kenya 2010 by extending its scope to accommodate the proposed additional Persons with Disabilities and gender seats in the National Assembly and Senate, to strengthen the process of generating party lists via fair and democratic member participation and imposing a two-term limit on persons elected under the party lists. Amend Clause 3 (e) to replace 'to the greatest extent possible' with a minimum representation requirement.	The Commission recognizes that the proposed amendments is consistent with Kenya's obligations under Article 27, 54, 81 and 100 to secure inclusive representation. Furthermore, the Commission reiterates that the proposed amendment aligns with regional instruments such as the Maputo Protocol, under Article 9 which requires States parties to ensure the increased and effective representation of women at all levels of decision-making, including the use of national legislation where necessary. However, the phrase to the greatest extent possible is vague and open ended, which may risk non-compliance by parties especially on inadequate marginalized group representation.
Clause 3 (b)(d) – Amendment of Article 90 of the Constitution	Article 90 of the Constitution is amended in clause 2 by inserting the following new paragraphs immediately after paragraph (c)-Members of a political party are democratically involved in the generation of the party	This will strengthen the internal mechanisms of political parties and mandate them to carry out the nomination process in a transparent and democratic manner and that the representatives of special interest groups are selected on merit.

Clause & Title	Proposed Amendment	Rationale
	list through a fair and competitive process as set out in the respective party constitution and nomination rules. Proposal: Insert the word “objective” immediately after the word “fair”. The amendment should read: <i>Members of a political party are democratically involved in the generation of the party list through a fair, objective and competitive process as set out in the respective party constitution and nomination rules.</i>	

D. CONCLUSION

The Commission welcomes the proposed legislation as it seeks to implement recommendations made to Kenya by international and regional human rights treaty bodies such as the 2021 concluding observations on Kenya's periodic report under the International Covenant on Civil and Political Rights (ICCPR) where the Human Rights Committee urged Kenya to intensify efforts to implement constitutional provisions requiring not more than two thirds of elective and appointive positions to be persons of the same gender. This also aligns with Kenya's obligations under Article 9 of the Maputo Protocol. The Commission further observes that the proposed constitutional amendment will necessitate consequential amendments of election-related laws, such as the Elections Act, Cap. 7 that makes reference to Articles 90, 97, 98, and 101 to enhance legislative harmony. Lastly, the Commission reiterates the need for Parliament to enact a comprehensive legislation envisaged under Article 100. Political parties should also adhere to the provisions of sections 36 and 37 of the Elections Act, Cap 7 on the allocation and reallocation of special seats to promote the representation of marginalized groups.

SIGNED BY:



Dr. Bernard Mogesa, PhD., CBS

COMMISSION SECRETARY/CEO



MEMORANDUM ON THE CONSTITUTION OF KENYA (AMMENDMENT) (NO.2) BILL, 2025 (SENATE BILLS NO.16 OF 2025)

The Council calls on the Committee to consider the following matters regarding the amendments to the Bill in respect of the provisions set out hereunder.

Constitutional provision	Current provision in the constitution	Proposed amendment in the bill
Article 90- Allocation of party seats	Elections for party list seats for the National Assembly, Senate, and County Assemblies are conducted through proportional representation using party lists submitted by political parties. Elections for party list seats for the National Assembly, Senate, and County Assemblies are conducted through proportional representation using party lists submitted by political parties.	The Bill proposes to expand Article 90 so that party lists will also accommodate additional special seats created under Articles 97 and 98.
Article 97- composition of the National Assembly	The National Assembly currently consists of: • 290 constituency representatives • 47 women representatives (counties) • 12 nominated members representing special interests (youth, PWDs, workers) • Speaker (ex-officio).	The Bill proposes: 1. Additional special seat members to be nominated if the two-thirds gender rule is not met. 2. Guaranteed minimum representation of persons with disabilities (5%) in the National Assembly.

Article 98 - Composition of the Senate	The Senate currently consists of: • 47 elected senators (counties) • 16 women nominated by parties • 2 youth representatives (1 male, 1 female) • 2 persons with disabilities (1 male, 1 female) • Speaker (ex-officio).	The Bill proposes: 1. Additional nominated senators if the Senate does not meet the two-thirds gender rule. 2. Increased or adjusted nomination formula to ensure 5% representation of persons with disabilities
Article 101- Elecction of members of parliament	Provides timelines for general elections and by-elections for the National Assembly and Senate.	The amendment updates reference to Articles 97 and 98 to include the new categories of nominated members introduced by the Bill.

SUMMARY IN RELATION TO PERSONS WITH DISABILITIES

The Bill proposes constitutional amendments to ensure:

1. At least 5% representation of persons with disabilities in elective and appointive bodies.
2. Additional special seat nominations if representation is not achieved through elections.
3. Representation through party lists under Article 90.

ALIGNMENT WITH THE PERSONS WITH DISABILITIES ACT 2025

ANALYSIS OF PROPOSED CONSTITUTIONAL AMENDMENTS

A. Article 90: Allocation of Party List Seats

The Bill proposes rigorous new standards for how political parties generate their nomination lists:

- **Democratization of Lists:** Parties must ensure members are democratically involved through a fair and competitive process governed by party constitutions.
- **Marginalized Representation:** Lists must explicitly reflect marginalized groups as defined in Article 100.
- **Term Limits:** In a major shift, any person elected via a party list is now restricted to a maximum of two terms. This is intended to encourage leadership renewal and prevent the "monopolization" of nominated seats.

B. Article 97: National Assembly Membership

Representation of Persons with Disabilities: The Persons with Disabilities Act, 2025 promotes: • Political participation of persons with disabilities • Inclusion in public decision-making • Equality and non-discrimination	The Bill supports these principles by proposing: • Five percent of members nominated by parliamentary political parties to represent persons with disabilities.
(b) Affirmative Action The Persons with Disabilities Act 2025 requires government institutions to implement affirmative measures for inclusion	The Bill introduces: • Special seat nominations if the gender rule is not met. • 5% representation for persons with disabilities. This is consistent with affirmative action measures encouraged under disability legislation.

The amendment redefines how Person with Disabilities and gender balance are handled in the lower house:

- **Dedicated Persons with Disabilities Quota:** It deletes "persons with disabilities" from the general "special interests" pool in Article 97(1)(c), where they currently compete with youth and workers.

AREAS THAT REQUIRE CLARIFICATION

Using the acronym 'PWD':	Using the acronym "PWD" can be considered inappropriate or offensive in certain contexts because it may appear to reduce individuals to a label rather than recognizing them as people first. Many disability-rights frameworks therefore encourage the use of the full term "persons with disabilities."
No verification mechanism	The Bill states: "<i>five percent of members...to represent persons with disabilities.</i>" • But it does not indicate how disability status will be verified. • Under the Persons with Disabilities Act 2025, verification usually requires: ✓ registration with NCPWD ✓ disability certification.
Clarify "Total Membership	clarification on whether the 5% is calculated before or after the gender "top-up" seats are added, to ensure the Persons with Disabilities quota is not diluted.
Party Oversight	Advocate for a monitoring role for the NCPWD in verifying that political party nomination processes for PWDs are truly "fair and competitive" as required by the new Article 90(2)(d).

CONSTITUTIONAL CONSISTENCY

The Bill is also consistent with:

Article 27 – Equality and freedom from discrimination

Article 54 – Rights of persons with disabilities

Article 100 – Promotion of representation of marginalized groups

ACHIEVABILITY OF THE 5% REPRESENTATION OF PERSONS WITH DISABILITIES

The proposed amendment seeks to ensure 5% representation of persons with disabilities in Parliament.

This objective aligns with:

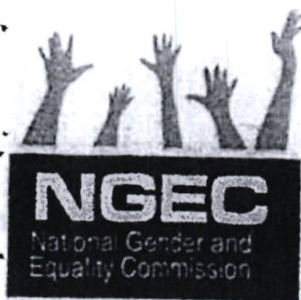
Article 54(2) of the Constitution, which requires that at least 5% of members of elective and appointive bodies be persons with disabilities.

However, the provision has never been fully implemented since 2010. The amendment attempts to operationalize this constitutional requirement by creating mechanisms for nomination if the threshold is not met.

The amendment is achievable because:

- Parliament already uses party lists for special interest groups.
- Political parties can nominate persons with disabilities through this system.
- The Independent Electoral and Boundaries Commission (IEBC) already manages party list nominations.

Thus, implementation mechanisms already exist.



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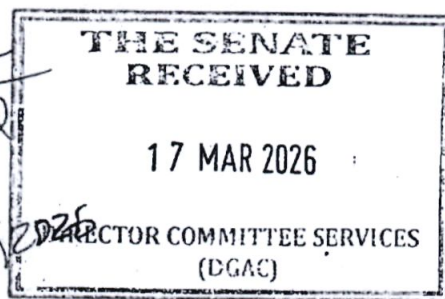


NGEC/CS/LEGAL/VOL.III (37)

Mr. Jeremiah. M. Nyegenye, CBS,
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DLS
DENC-CLERK

Kindly deal
17/03/2026



Dear Mr Nyegenye

COMMENTS ON THE CONSTITUTION (AMENDMENT) BILL, SENATE BILLS No. 16 OF 2025

Reference is made to your call for the submission of memoranda on The Constitution (Amendment) Bill, 2025

Section 8(b) of the National Gender and Equality Commission Act, CAP7K, mandates the Commission to, 'monitor, facilitate and advise on the integration of the principles of equality, and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions';

In line with its mandate, the Commission presents to you a memorandum analyzing the proposed bill and making proposals where necessary.

Yours

Sincerely

Paul Kuria, OGW

For: COMMISSION SECRETARY/CEO



MEMORANDA: THE CONSTITUTION (AMENDMENT) BILL, SENATE BILLS No. 16 OF 2025

S/NO	CLAUSE	PROPOSALS	JUSTIFICATION/ COMMENTS
1.	New proposal by the Commission Article 81 of the Constitution- General principles for the electoral system The electoral system shall comply with the following principles— (a) freedom of citizens to exercise their political rights under Article 38; (b) not more than two-thirds of the members of elective public bodies shall be of the same gender; (c) fair representation of persons with disabilities;	Article 81 of the Constitution is amended in paragraph (c) by deleting the expression “fair representation of ..” and substituting with “ At least five percent of the members of elective public bodies are” Article 81 of the Constitution is amended further by inserting the following new paragraphs immediately after paragraph (c)— (ca) fair representation of ethnic minorities and marginalized communities. (cb) fair representation of youth;	The proposals by the Commission ensure that the general principles integrate the provisions on inclusive governance in Articles 54(2), 55 (b) and 56(a) of the Constitution The proposal by the commission also aligns with the proposal in the Bill on the immediate implementation of Article 54(2) on 5%of Persons with Disabilities Proposals in (ca) and (cb) seek to ensure inclusivity of the other special interest groups so that these principles would be amplified in the self-executing articles of the constitution as well as implementing legislations-Elections Act

	(d) universal suffrage based on the aspiration for fair representation and equality of vote; and (e) free and fair elections, which are— (i) by secret ballot; (ii) free from violence, intimidation, improper influence or corruption;		(Cap 7) and Political Parties Act (Cap 7D)
2.	Clause 3 3. Article 90 of the Constitution is amended by— (a) in clause (1), by deleting the expression "Articles 97(1)(c) and 98(1)(b), (c) and (d)" and Substituting therefor the expression "Articles 97(1)(c)(ca) and (1A) and 98(1)(b), (c), (d) and (1A)"; (b) in clause (2) by inserting the following new paragraphs immediately after paragraph (c)— (d) members of a political party are democratically involved in the generation of the party list through a fair and competitive process as set out	Propose to amend (d) by inserting the phrase "Special Interest group" before the phrase "members" to read thus: Special Interest group members of a political party are democratically involved in the generation of the party list through a fair and competitive process as set out in the respective party constitution and nomination rules	The Commission agrees with the proposals in clause (3)(b) that inserts a new sub-clause (d) on members of the party generating the party lists. The Commission lauds the proposal but proposes an amendment to ensure that only special interest groups members nominate one of their own to represent their interests. The Commission is also in agreement with the proposals in Clause (3)(c), inserting a new sub clause 4, that caps the term of the nomination seats to not more than two terms

	in the respective party constitution and nomination rules; and (e) each party list reflects the representation of the marginalized groups set out in Article 100 to the greatest extent possible, taking into account the nature of the party list; (c) inserting the following new clause immediately after clause (3) — (4) A person elected under clause (1) for a seat shall not hold such office for more than two terms		
3.	Clause 4 Amendment of Article 97 of the Constitution 4. Article 97 of the Constitution is amended — (a) in clause (1) — (i) by deleting the word “persons with disabilities” appearing immediately after the words “including the youth” in paragraph (c); (ii) by inserting the following new paragraph immediately after paragraph (c) —	Amendment retained as is.	The Commission supports the proposal on the following grounds: 1. Under Proposed 97 (1)(b) a) PWD women will ultimately come out to contest for party tickets-thus more presence and support within political parties or as independent candidates; b) The electorate will increasingly have an attitude change on perceptions and capabilities of PWD women running for election and being elected.

	(ca) five percent of the total number of members in paragraphs (a), (b) and (c) nominated by parliamentary political parties according to their proportion of members of the National Assembly and in accordance with Article 90, to represent persons with disabilities. (b)by inserting the following new clauses immediately after clause (1) — (1A) In the event that the membership of the National Assembly under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, there shall be nominated additional number of special seat members necessary to ensure that not more than two-thirds of the membership of the House are of the same gender. (1B) The number of special seats under clause (1A) shall be determined after the declaration of the results of a general election		c) Holistically, electoral biases based on perception of PWD will begin to decline leading to a more inclusive and cohesive electoral society. 2. Under 97 (1)(c) a) Political parties would result to also nominating PWD youth, workers and other special interest groups. b) Under the new clause 1A, Political parties would be strategically aim to nominate opposite genders in addition to considering PWDs considerations in order to contribute to the not more than two thirds gender principle. d) an promotes election of PWD women by parties and candidates making the choices on candidates that they can sell to electorate for election and on same breadth, electorate to increasingly have an attitude change towards electing
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			PWDs but also PWDs in participating in elections.
4.		However, the Commission proposes the following amendments in the alternative: Propose to amend clause 4(a)(ii) (ca) by substituting the entire clause with the following-; (ca) Five percent of the total number of members in paragraph(a), to represent persons with various categories of disabilities of either gender, eight members, being four men and four women, representing the youth and eight members, being four men and four women, representing the ethnic minorities and marginalized communities nominated by parliamentary political parties according to their proportion of members of the National Assembly and in accordance with Article 90, to represent persons with disabilities	The proposal in the Bill seeks to implement Article 54(2) in respect of persons with disabilities to the disadvantage of the other groups as envisaged in Articles 55(b) and 56(a). The Commission's proposal seeks to implement Articles 55, 56 and 100. The Bill also proposes five percent of members in 97(a),(b) and (c) but the commission's proposal is for 5% of Clause 97(a), which are the 290 elected members. The rationale is that clause 97(b), which is 47 women elected to represent Counties, is also an affirmative measure and 97(c) which is the 12 members is also an affirmative measure to which amendments have been proposed as well. We have proposed further amendments to 97 (c) by increasing the youth by eight members and ethnic and

			marginalized communities representation by eight members.
5.	Clause 5 Amendment of Article 98 of the Constitution. 5. Article 98 of the Constitution is amended— (a) in clause (1) by deleting paragraph (d) and substituting therefor the following new paragraph —(d) five percent of the total number of members in paragraphs (a), (b) and (c) nominated by parliamentary political parties according to their proportion of members of the Senate and in accordance with Article 90, to represent persons with disabilities. (b) by inserting the following new clauses immediately after clause (1)— (1A) In the event that the membership of the Senate under clause (1) does not conform to the principle that not more than two-thirds of the members are of	Propose to amend clause 5 by substituting the entire clause with the following—; (d) Five percent of the total number of members in paragraph(a), to represent persons with various categories of disabilities and of either gender, four members being two men and two women, representing the youth and four members being two men and two women, representing the ethnic minorities and marginalized communities nominated by parliamentary political parties according to their proportion of members of the Senate and in accordance with Article 90, to represent persons with disabilities	The proposal in the Bill seeks to implement Article 54(2) in respect of persons with disabilities to the disadvantage of the other groups as envisaged in Articles 55(b) and 56(a). The Commission's further proposal seeks to implement Articles 55, 56 and 100 which have been omitted in the proposed Bill The Bill also proposes five percent of members in 98(a),(b) and (c). The Commission's proposal is for 5% of (a) which are the 47 elected members because (b) which is 16 women nominated to represent Counties is also an affirmative measure and (c) which is the 2 members to represent the youth is also an affirmative measure. We have proposed amendments to increase the number of youth from 2 to 4 and then proposed a new affirmative measure for 4 seats for the ethnic

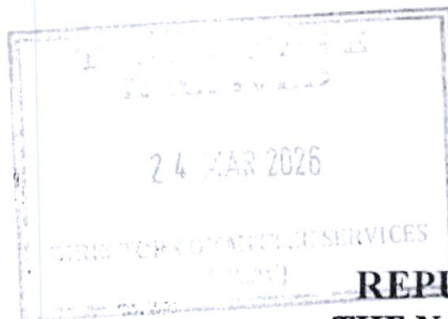
	the same gender, there shall be nominated additional number of special seat members necessary to ensure that no more than two-thirds of the membership of the House are of the same gender. (1B) The number of special seats under clause (1A) shall be determined after the declaration of the results of a general election		minorities and marginalized communities' representation.
6.	New proposal Article 100 of the Constitution Promotion of representation of marginalized groups Parliament shall enact legislation to promote the representation in Parliament of— (a) women; (b) persons with disabilities; (c) youth; (d) ethnic and other minorities; and (e) Marginalized communities.	Article 100 of the Constitution is amended— (a) By inserting after the expression "parliament" the following "and County Assemblies"	The Commission proposes the inclusion of County Assemblies to obligate Parliament to enact legislation on representation in the County Assemblies as well

7.	New proposal by the Commission Article 177 of the Constitution- Membership of the County Assembly (1) A county assembly consists of— (a) members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year; (b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender; (c) the number of members of marginalized groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and (d) the Speaker, who is an ex officio member. (2) The members contemplated in clause (1)(b) and (c) shall, in each case, be	Propose to amend as follows-; Article 177 of the Constitution is amended— (a) in clause (1), by deleting paragraph (c). (b) in clause (1), by inserting the following new paragraphs immediately after paragraph (b)— (c) five percent of the membership in (a) of either gender, representing various categories of persons with disabilities; (ca) two members, being one man and one woman, representing the youth; (cb) Two members, being one man and one woman, representing ethnic minorities and marginalized communities/in clause (2), by inserting the expression “(ca) and (cb)” immediately after the expression “(c)”	The Commission's proposals seek to implement Articles 54(2), 55(b) and 56(a) of the County Assemblies as well. The Commission's concern is based on the fact that over the years many County Assemblies have not been compliant with inclusion of Persons with disabilities and other marginalized groups at the County level.
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	nominated by political parties in proportion to the seats received in that election in that county by each political party under paragraph (a) in accordance with Article 90.		
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General Comments

- 1) The Commission lauds the purpose of the proposed Bill, which provides a formula to nominate additional membership of the National Assembly and Senate if, after the declaration of results following a national election, they do not conform to the constitutional principle that not more than two-thirds of the members are of the same gender
- 2) The Commission also lauds the proposals to amend the Constitution of Kenya to provide for additional seats in the National Assembly and Senate in order to implement the principle of at least five percent of the members of the Public in elective and appointive bodies should be persons with disabilities. **The Commission, however, proposes an amendment for the 5% to be based only on the elected members, exclusive of the 47 Seats of Women's Representation in the National Assembly and the 16 nomination seats in the Senate, because they are also affirmative seats**
- 3) The Commission also introduces new proposals to amend Articles 81, 100, and 177 because they correlate with the amendments proposed in the Bill
- 4) And finally, the Commission's amendments seek to implement the principle of fair representation of the youth and ethnic minorities and marginalized communities in the National Assembly, the Senate, and the County Assemblies.



REPUBLIC OF KENYA
THE NATIONAL TREASURY

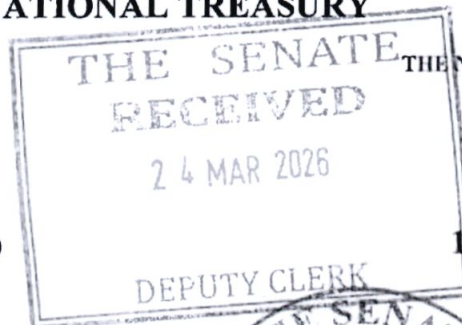
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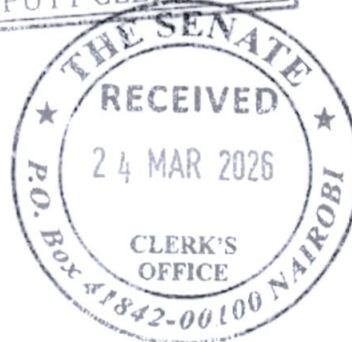
J.M. Nyegenye, CBS
Clerk of the Senate
Parliament Buildings
P.O. Box 41842 - 00100
NAIROBI

Dear *Clerk*



THE NATIONAL TREASURY
P.O. Box 30007 - 00100
NAIROBI
KENYA

13th March 2026



DGAC

DH

Kindly deal.

24/03/2026

*1/400/1601
Clerk JLA
Please
24/03/2026*

THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL, 2025

We acknowledge receipt of your correspondence referenced **SEN/DGAC/DGC/JLAHRC/2026/2(c)** and dated **2nd March 2026**, inviting the National Treasury to submit a memorandum on the above-captioned Bill. We appreciate the Committee's efforts to promote inclusive governance.

The National Treasury recognize the significance of ensuring equitable representation of gender and persons with disabilities in both elective and appointive positions. We commend the Committee's initiative to align national legislation with constitutional principles of equality and non-discrimination.

However, we wish to highlight several considerations for further review:

1) Indeterminate Legislative Costs and Fiscal Volatility

The Bill proposes an unspecified number of special seats, which could lead to a substantial increase in the number of representatives in both the National

Assembly and the Senate. This potential expansion introduces unpredictability in recurrent expenditure, complicating fiscal planning and conflicting with the government's fiscal consolidation objectives. It also undermines the stability of the Medium-Term Expenditure Framework (MTEF), which relies on predictable expenditure projections.

2) Impact on the Public Wage Bill and Fiscal Sustainability

The creation of additional parliamentary seats will inevitably increase the wage bill, including salaries, allowances, medical benefits, pensions, and other staff-related costs. This expansion contradicts ongoing efforts to reduce public sector wage bills and maintain fiscal discipline. The increased costs could crowd out essential development expenditures, thereby negatively affecting economic growth and development trajectories.

3) Considerations Under Article 114 (Money Bill)

Although the Bill is styled as a constitutional amendment, the memorandum explicitly states that its enactment will result in additional public expenditure. This characteristic aligns it with a Money Bill, which requires careful fiscal assessment. Given the current state of the national exchequer, there are concerns about the availability of fiscal space to accommodate the increased costs associated with an expanded Parliament.

4) Legal Consistency

The proposal should be cross-checked against existing constitutional provisions to avoid redundancy or conflict. In this regard, a thorough review is necessary to ensure consistency with existing constitutional provisions and relevant statutes, especially those related to electoral boundaries and public service appointments. Further, the Bill should clearly define mechanisms for enforcement, monitoring, and compliance to ensure effective execution and reduce ambiguity.

5) Consider Revenue-Neutral Alternatives

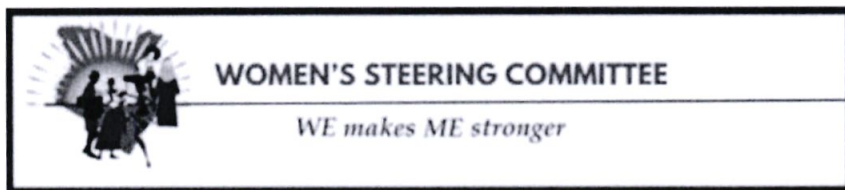
In light of these issues, the National Treasury recommends exploring revenue-neutral alternatives to achieve the Bill's objectives. For example, political parties could be mandated to ensure gender and PWD representation during the nomination process, such as through stricter compliance with candidate lists, rather than creating additional seats funded from the Consolidated Fund.

We remain available to provide technical support and collaborate with the Committee to refine the Bill, ensuring its feasibility and alignment with national development priorities.

Yours

Sincerely


HON. FCPA JOHN MBADI NG'ONGO, EGH
CABINET SECRETARY



WOMEN'S STEERING COMMITTEE (WSC)
MEMORANDUM TO THE SENATE
ON THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL, 2025
(Senate Bills No. 16 of 2025)

SUBMITTED PURSUANT TO:

Article 118(1)(b) of the Constitution of Kenya, 2010

Standing Order 104 of the Senate Standing Orders

Invitation for Submission of Memoranda and Public Hearings issued by the Senate

INTRODUCTION

The Women's Steering Committee (WSC) is a national coalition platform comprising women leaders, grassroots women's movements, civil society organisations, and professional networks working to advance women's political and economic inclusion, gender equality, and constitutionalism in Kenya. The WSC's work is anchored in the Constitution of Kenya, 2010, and focuses on translating women's numerical strength into substantive representation, leadership, and influence in every sphere. The WSC is hosted and coordinated by Community Advocacy and Awareness Trust- CRAWN Trust, which is the permanent secretariat for the coalition platform.

Pursuant to the invitation by Parliament for public submissions on the Constitution of Kenya (Amendment) (No. 2) Bill, 2025, and in furtherance of Article 118(1)(b) of the Constitution, the WSC hereby submits this memorandum in support of the proposed amendments contained in Senate Bill No. 16 of 2025.

CONSTITUTIONAL AND POLICY CONTEXT

Article 27(8) of the Constitution of Kenya, 2010 imposes a mandatory obligation on the State to ensure that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. This obligation is immediate, justiciable, and not subject to progressive realisation. This principle is further reiterated in Article 81(b) as among the principles of the electoral process.

Despite this clear constitutional command, Parliament has, since the promulgation of the 2010 Constitution and within the stipulated timeline within the Fifth Schedule, failed to enact

and operationalize an effective mechanism to ensure compliance with the two-thirds gender principle in both the National Assembly and the Senate. This persistent failure has been the subject of multiple judicial determinations and advisory opinions, underscoring that constitutional supremacy cannot be subordinated to political convenience.

The Women's Steering Committee has consistently maintained that the legitimacy of Parliament is inseparable from its compliance with the Constitution. Our previous submissions to Parliament emphasised that constitutional amendments must serve to cure constitutional violations, not perpetuate them. In this context, the Constitution of Kenya (Amendment) (No. 2) Bill, 2025 represents a focused and constitutionally responsive intervention.

SUPPORT FOR THE OBJECTS AND PROVISIONS OF THE BILL

Operationalisation of the Not More than Two-Thirds Gender Principle

The WSC strongly supports the proposed amendments to Articles 97 and 98 of the Constitution, which establish a fall back, post-election mechanism, for the nomination of additional special seat members where election outcomes fail to meet the two-thirds gender principle.

We note, in particular, that the Bill: anchors compliance on actual election results, thereby respecting voter choice; provides a clear, predictable and automatic constitutional mechanism triggered by non-compliance which is already working at the County level; eliminates ambiguity that has previously frustrated legislative and judicial efforts to enforce Article 27(8) at the national level.

The WSC considers this approach to be constitutionally sound, minimally intrusive, and faithful to an already existing approach as provided in Article 177(b) and in the principle that affirmative action measures are remedial tools designed to correct historical and structural exclusion.

Strengthening Legal Certainty and Constitutional Compliance

The entrenchment of the compliance mechanism within the Constitution itself is a critical reform. Previous reliance on ordinary legislation has proven inadequate and vulnerable to political inertia and legal contestation.

By constitutionalising the enforcement framework, the Bill enhances: legal certainty in electoral outcomes; institutional stability in parliamentary composition; public confidence in Parliament's commitment to constitutionalism and the rule of law.

Inclusion of Persons with Disabilities

The WSC supports the Bill's proposal to guarantee that at least five percent of the membership of the National Assembly and the Senate shall consist of persons with disabilities, nominated proportionately through party lists.

Women with disabilities experience compounded and intersectional discrimination on the basis of both gender and disability. Strengthening the constitutional representation of persons with disabilities advances substantive equality and reinforces Kenya's obligations under Articles 27 and 54(2) of the Constitution.

Reform of Party List Processes under Article 90

The WSC supports the amendments to Article 90 that require political parties to ensure that: party list candidates are generated through democratic, transparent, and competitive internal party processes; and that party lists reflect the representation of marginalised groups contemplated under Article 100 of the Constitution.

These reforms directly address the historical misuse of party lists as instruments of patronage and exclusion, practices that have disproportionately undermined women's access to legislative representation.

Term Limits for Nominated Members

The introduction of a two-term limit for members elected through party lists is a progressive and necessary reform. The WSC supports this provision as it: prevents perpetual occupation of affirmative action spaces by the same individuals; expands opportunities for new and emerging women leaders; reinforces the principle that affirmative action measures are transitional and redistributive, not permanent entitlements.

CONSTITUTIONALITY OF THE AMENDMENT PROCESS

The WSC notes that the Bill expressly states that the proposed amendments do not relate to matters specified under Article 255(1) of the Constitution and therefore do not require approval by referendum. On the face of the Bill, the proposed amendments are limited, targeted, and consistent with the constitutional amendment pathway under Article 256.

CONCLUSION AND RECOMMENDATION

The Women's Steering Committee supports the Constitution of Kenya (Amendment) (No. 2) Bill, 2025 as a necessary, proportionate, and constitutionally faithful response to a long standing failure to implement gender equality and inclusive representation in Parliament.

The Bill does not seek to overhaul the constitutional order. Rather, it addresses a specific constitutional deficit, strengthens Parliament's legitimacy and affirms the supremacy of the Constitution of Kenya, 2010.

The WSC therefore urges Parliament to: uphold its constitutional obligations; enact the Bill without delay; and demonstrate its commitment to gender equality, inclusion and constitutional governance.

DATED at Nairobi this 29th day of January 2026

WOMEN'S STEERING COMMITTEE (WSC)

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Implementing the Constitutional Two-Thirds Gender Principle The Cost of Representation



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The National Women's Steering Committee
In partnership with
Institute of Economic Affairs

May 2015

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Foreward

“The most important determinant of a country’s competitiveness is its human talent – the skills and productivity of its workforce.”

World Economic Forum Global Gender Gap Report 2013

This report was commissioned by the National Women’s Steering Committee in an effort to promote informed discussion and debate on one of the most important gender issues of our time and among the most significant of the Uhuru Kenyatta administration, as the first government elected under the Constitution of Kenya 2010.

Kenya has an ambitious vision which is contained in the national development blue print Vision 2030. This guiding document seeks to create a globally competitive and prosperous nation with a high quality of life by 2030. It is impossible to realize this laudable national vision without fully including the majority of the population in representation and public leadership and decision making positions.

Gender equality is not just a Constitutional requirement, it is an economic imperative for any country seeking to compete globally. As part of the broader constitutionally mandated changes to the governance framework, it is also a pre-requisite to the realization of Vision 2030 and the Second Mid Term Plan 2013-2017. It is in this context that we encourage public officials and the general public to read this report rather than as a stand-alone document.

There are changes which are by their nature incremental, progressive if you will, but even incremental change has a tipping point. At a time when it can be said ‘this is who we were’ and ‘this is who we are,’ Kenya is faced with just such a decision. With the August 27, 2015 deadline for all consequential legislation required by Constitution of Kenya 2010 fast approaching, Kenya must make a decision on whether we will try to hold back time or have the courage to leave the past behind and step boldly into the future.

This is an historic time and we are privileged to be a part of it. Kenyans will witness the audacity of visionary leaders who will dare to urge us forward and who understand that the present and future of successful nations demand adherence to certain basic principles, fidelity to the Constitution, integrity, equality and the rule of law. We will also witness a different type of leadership – one that is backward looking, led by people who live in fear of change and who are ruled by the past because they cannot imagine what lies before us is greater than our history.

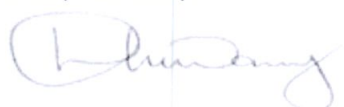
This report is intended to inform the leadership and the people of Kenya by injecting into the not more than two-thirds same gender principle debate data to inform decision making. We hope to elevate public policy decisions beyond party politics, socialization and bias.

It is our ardent hope that through reading this report and the Constitution, Kenyans and their leaders will choose to align their actions with the Constitution of Kenya 2010 and the times. We must recognize the status quo for what it is: entrenchment of gender inequality and a failure to deal with what Hillary Clinton called “the great unfinished business of the 21st century.”

This isn't an issue for men or women, but an issue for humanity.

We wish to thank our partners Action Aid International Kenya for their unwavering support to the National Women's Steering Committee and their commitment to women's empowerment and advancement and for fully supporting this work. Our thanks also go to The Institute of Economic Affairs (IEA) for their commitment to enriching the dialogue through data and helping us advocate for better public policy decisions – those informed by the law and data.

Daisy Amdany



Executive Director

CRAWN TRUST

Host Organization and Convener of the NWSC 2014-2017

Executive Summary

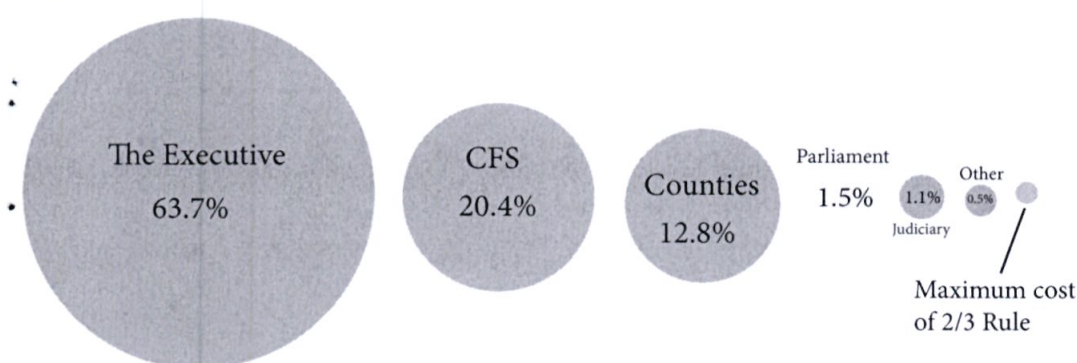
Inclusivity is a key value of democratic politics. It ensures that all identity groups have a voice in the policy making process, whether defined by gender, ethnicity, religion, region, socioeconomic status, age, or education. One dimension of accommodating diversity is actively ensuring the inclusion of women in the electoral system. In recent decades, there have been campaigns for an increase in representation of women across the globe, and many with positive and instructive outcomes. As Kenya seeks to implement a constitutionally required gender balance in the National Assembly and Senate, the national debate ought to be informed by the experiences of other countries, and the economic realities of Kenya itself.

Representation of women in Kenya's parliament has been and remains minimal. Only 9.8% of the tenth parliament was comprised of women, and only 20.7% of the eleventh (sitting) parliament is women — the lowest in East Africa. Underrepresentation of women in positions of power is untenable; a country simply cannot progress economically, politically or socially without half its citizens participating meaningfully in political spheres and critical decision-making processes. Clearly, there is progress to be made toward equitable gender representation in Kenya. Recognizing this, the Constitution of Kenya entrenches the concept in Article 27 (8): "Not more than two thirds of the members of elective or appointive bodies shall be of the same gender." Although the article is technically gender neutral, its intent in the current political context is to provide redress for the underrepresentation of women.

Kenya's constitution came into effect in 2010, but the requirement that not more than two thirds of members of elective or appointive bodies be of the same gender was to come into effect gradually. The current policy debate concerns how to implement the requirement in the face of too few women being elected to comprise at least one third of the National Assembly and Senate. A technical working group under the Attorney General is working with an August 27, 2015 deadline issued by the Supreme Court to pass legislation creating a mechanism for full implementation of the two-thirds requirement.

Unfortunately, many public figures, including women in both elected and nominated positions, have claimed that full implementation of the two-thirds requirement is expensive. Some have claimed that it is prohibitively expensive, and should not be implemented because it is too expensive. However, these individuals have failed to provide the cost of implementation that is, they argue, too high for the Kenyan taxpayer. Figure A lends perspective on the small fraction of the national budget estimated to be consumed by Parliament in 2014/15. The share of the entire national legislature, including both houses' recurrent and development costs, is only 1.5% of the national budget estimates for 2014/14.

Figure A: Estimates of National Budget Allocation for 2014/15



Source: 2014/15 Programme Based Budget

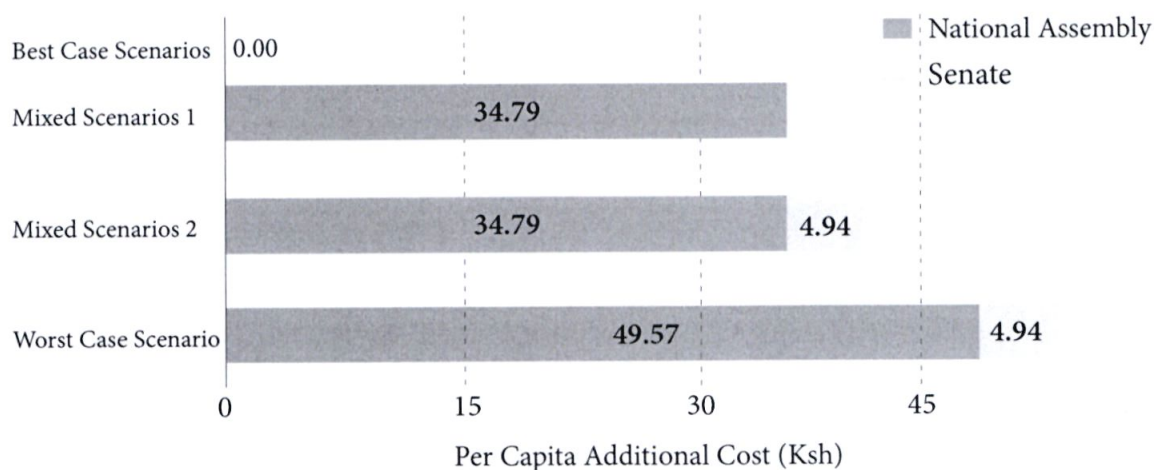
Note: CFS – Consolidated Fund Services

The conventional wisdom that Kenya's parliament is already expensive is not the focus of this report. However, it is important to put into perspective in advance the portion of the national budget that would be affected by a potential increase in the number of seats in the legislature.

This report seeks to inform two aspects of the debate where improved knowledge can produce improved policy outcomes. Part I is a comparative analysis of legal approaches to women representation, and shows that equity in gender representation has been successfully achieved in other countries through affirmative action programmes. Despite having the greatest capacity to afford an affirmative action programme to increase the participation of women in parliament, Kenya is the only country in East Africa that has yet to achieve a one-third gender equity minimum. The parliaments of Tanzania, Uganda, Rwanda, and Burundi are all comprised of at least one-third women. Their successes in this area are direct results of quota systems to ensure a minimum threshold of gender equity using reserved seats for women, and have been shown to increase the participation of women outside of reserved seats as well.

Section II is a budget analysis and estimation of the cost of adding seats to the National Assembly and Senate should too few women be elected to satisfy the two-thirds requirement. It is particularly critical to informing the current debate: The findings of this report show that despite claims by many public figures, the expansion of houses of parliament to ensure the inclusion of women is not prohibitively expensive to the Kenyan taxpayer. This report provides verifiable evidence that has thus far been absent in the current debate: the cost of additional seats in the National Assembly and the Senate. The critical figures for policy debates are the cost of one additional seat in the National Assembly, and one additional seat in the Senate. This report does not speculate on the mechanism for filling additional seats, or the number of additional seats; these details will be subject to complex decision-making processes and election cycles. Instead, it provides scenarios based on possible (not necessarily likely) mathematical outcomes, guided by the current political realities, including the current gender composition of each house of parliament. Table A below summarizes the additional cost of these scenarios, presented in detail in Part II.

Table A: Cost of Additional Seats to the National Assembly and Senate to Comply with Two-Thirds Requirement



Source: Estimates of Recurrent and Development Expenditure of the Parliamentary Service Commission for the year ending 30th June 2014 and Projections for 2014/2015-2016

Failure to craft and implement a mechanism to satisfy the two-thirds requirement by August 27, 2015, would be unconstitutional. Criticism of the mechanism for satisfying the constitutional requirement should not be directed at the value of affirmative action (which is in fact high, achievable and constitutionally mandated) or its costs (which are in fact low) as demonstrated by facts and analysis in this report.

SECTION I

A COMPARATIVE ANALYSIS
OF LEGAL APPROACHES
TO WOMEN
REPRESENTATION

1.1 Introduction

Gender equality is one of many protections guaranteed by the Constitution of Kenya. Article 27 recognizes that every person is equal before the law and has the right to equal protection and equal benefit of the law, ensuring freedom from discrimination in very certain terms. ¹Not only does Article 27 provide for protection against discrimination; it puts the full weight of the constitution behind initiatives aimed at the active promotion of the rights of marginalized groups and minorities, requiring the state to take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.² This includes those measures to implement the requirement that not more than two thirds of the members of elective and appointive bodies shall be of the same gender.

Chapter Seven of the Constitution (Representation of the People) sets out how the right to vote is realized. It enumerates the general principles that provide the bedrock of the electoral system. Article 81 (b) provides the following: “Not more than two thirds of the members of the elective public bodies shall be of the same gender.” The constitution does not, however, provide specifically for how these requirements are to be met. Article 100 of the constitution goes further to oblige Parliament to enact legislation to promote the representation in Parliament of marginalized groups, including women.

1.2 Women and the Constitutional Composition of the National Assembly & Senate

Guaranteed representation of women is written into the composition of Kenya’s two national legislative houses. The composition of Kenya’s National Assembly is described in Article 97 of the Kenyan Constitution. Of its 349 seats, 290 are for those elected from Kenya’s 290 constituencies, 47 are for women elected to represent each county, and 12 seats for nominated individuals to represent youth, persons with disabilities and workers. This composition, itself a testament to the high priority of affirmative action toward equitable representation of women in Kenya, is displayed in Table 1 below.

Table 1: Composition of the National Assembly (Article 97)	
Members Elected by Constituencies	290
Women County Representatives	47
Nominated Members	12
Total	349

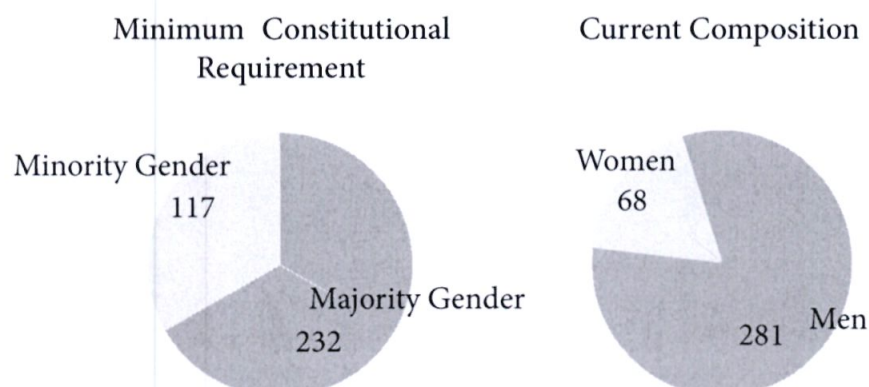
Source: The Constitution of Kenya

¹Constitution of Kenya, Article 27(3).

²Constitution of Kenya, Article 27(6).

If no single gender can constitute more than two-thirds of the National Assembly, then the minority gender must constitute at least one third of its membership. The minority gender in the National Assembly, then, must constitute at least 117 of its 349 seats. Figure 1 below shows the minimum threshold for compliance with the two-thirds gender rule and the current gender composition of the National Assembly.

Figure 1: Minimum Constitutional Requirement and Current (2015) Gender Composition of National Assembly.



Source: The Constitution of Kenya; Inter-Parliamentary Union at <http://www.ipu.org/wmn-e/classif.htm>.

The composition of Kenya's Senate is described in Article 98 of the constitution, and also provides for women's representation. Of its 67 seats, 47 are for those elected from the 47 counties, 16 are reserved for women to be nominated by political parties, two seats for those representing youth (one woman, one man), and two seats for representatives of persons with disabilities (one man, one woman). Equitable gender representation is written into the nominated positions in the Senate, a contrast from the National Assembly, whose 12 nominated positions do not have a constitutionally prescribed gender allocation.

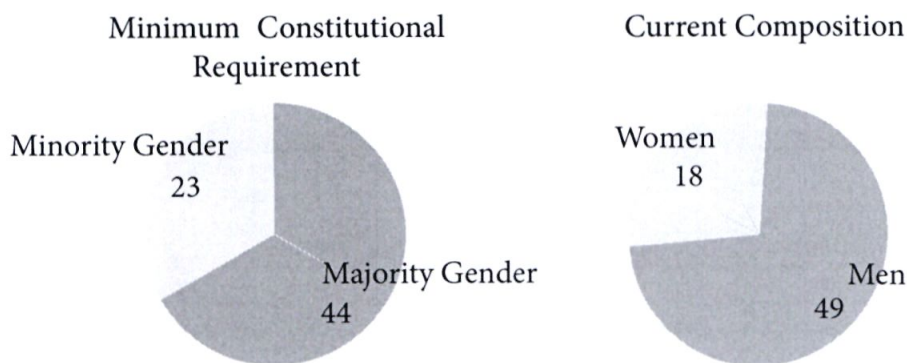
Table 2: Composition of the Senate (Article 98)

Members Elected by Counties	47
Nominated Women Senators	16
Nominated Youth Representatives	2 (one man, one woman)
Nominated Disabled Persons Representatives	2 (one man, one woman)
Total	67

Source: The Constitution of Kenya

To satisfy the two-thirds gender requirement in the Senate, at least 23 members must be of the minority gender. Currently, 18 seats are reserved by the Constitution for women: 16 nominated women, one youth representative, and one representative for persons with disabilities. In the 2013 election, the 47 county constituencies elected no women to the Senate, and currently women only hold the 18 seats reserved for women, or 26.87%. All 47 elected positions in the Senate are filled by men. Figure 2 below shows the minimum constitutional requirement to satisfy the two-thirds rule and the current gender composition of the Senate.

Figure 2: Minimum Constitutional Requirement and Current (2015) Gender Composition of the Senate



Source: The Constitution of Kenya; Inter-Parliamentary Union at <http://www.ipu.org/wmn-e/classif.htm>.

Neither house of parliament is currently in compliance with the two-thirds requirement. If the proportions of the 2013 results are to be a lesson, there is reason for concern that an insufficient number of women will be elected in 2017 to meet the requirement that they comprise at least one third of the National Assembly and Senate. This begs the question: *What if the electorate fails to vote in the requisite number of women at the next general elections?* Failure to bridge the gap could translate to a constitutional crisis. This section describes the legal background for the debate on the two-thirds rule.

1.3 The Supreme Court Advisory Opinion

The Attorney General, foreseeing a possible constitutional crisis in the National Assembly and Senate if the two-thirds gender rule were not achieved by the electoral process alone, sought the Supreme Court's Advisory Opinion³ on the implementation of the principle. His application sought to bring to finality the matter that had previously been filed at the High Court in by the Federation of Women Lawyers, in which the court held that the principle was subject to progressive, not immediate, realization. In its opinion on the implementation of the two-thirds gender requirement, the Supreme Court held that if the measures required to ensure the crystallization of the two-thirds requirement into an enforceable right were not taken before the March 2013 elections, it would not be applicable at that time.

Consequently, the Supreme Court sought to answer the next emerging question: *If not applicable to the March 2013 general elections, at what time will the principle apply?* The core of their opinion was informed by Article 20(3) of the Constitution, which provides that in applying a provision of the Bill of Rights, a court shall adopt the interpretation that most favors the enforcement of a right or fundamental freedom. The court developed the principle in Article 81(b) into an enforceable right, setting it on a path to maturation through progressive, phased-out realization. Guided by the terms of Article 100 on

³Supreme Court of Kenya Advisory Opinion No. 2 of 2012.

promotion of representation of marginalized groups, and by the Fifth Schedule, which prescribes the timelines for the enactment of required legislation to effect the full implementation of the constitution, the Supreme Court held that legislative measures for giving effect to the two-thirds gender principle under Article 81(b) should be taken by August 27, 2015. This is the date by which the current debate on the nature of and mechanism for implementation of the two-thirds gender requirement must be settled.

Following the advisory opinion issued by the Supreme Court on implementation of Article 81(b) of the Constitution, the Attorney General constituted the Technical Working Group to Implement the Supreme Court Advisory on the Two-thirds Gender Principle. The working group's primary task was to develop a realistic framework towards the realization of the two-thirds gender rule in political representation. The working group had representatives drawn from a number of relevant stakeholders. Among the terms of reference of the technical working group was to develop enabling mechanisms for the attainment of the two-thirds gender requirement, engage the relevant stakeholders, experts and institutions affected by the principle, and review the submitted proposals. Subsequently, the working group has issued a number of proposals to enable the implementation of the principle. Table 3 shows the proposals the working group has considered.

Table 3: Technical Working Group Proposals for Implementation of Two-Thirds Requirement

Proposal	Description
Gender balance through party list	- Requires an amendment to Articles 97 and 98 of the Constitution - Provision similar to Article 177(1)(b) for county governments mandating addition of special seats - Political parties to nominate the members in proportion to the seats won in the general election - Applies to both the National Assembly and Senate and guarantees the gender requirement is met
Doubling the 47 Women County Seats in the National Assembly	- Increase County Women Representative seats to 94 - Requires an amendment to Article 97 of the Constitution, The Elections Act and Political Parties Act - Does not guarantee two-thirds gender requirement is met in the National Assembly (more women must be elected to meet two-thirds) - Does not affect the Senate
Proportional Representation	- Proposes to distribute additional Women County Representatives to all counties - Increases the number of women to be proportionate to constituencies in each county and reflect the size of the population - Guarantees two-thirds gender requirement at the National Assembly - Does not apply to the Senate
Tripling the 47 Women County Seats in the National Assembly	- Proposes to increase County women seats to 141 - Requires an amendment to Article 97 of the Constitution, The Elections Act and Political Parties Act

	• Does not guarantee the two-thirds gender requirement is met • Does not apply to the Senate
Voting for a party ticket (“twinning”)	• Requires Kenyans to vote for closed party tickets each comprising two candidates of opposite gender • Applies to both the National Assembly and the Senate • If two-thirds gender requirement is not met at the elections, constituencies with the weakest winning ticket will be subject to affirmative action • Guarantees the gender requirement is met
Gender quotas for party strongholds	• Proposes to reserve women seats in party strongholds • Definition of ‘stronghold’ remains unclear • Requires a Constitutional amendment and amendment to the Elections Act • Applies to both the National Assembly and Senate • Does not necessarily guarantee the two-thirds gender requirement is met
Rotational seats for affirmative action	• Requires the clustering of the 290 constituencies into 73 clusters of 4 constituencies each • Each cluster is required to elect a woman at least once in four election cycles • Used for both the National Assembly and Senate • Requires amendment of Article 88(4) and 89 of the Constitution • Guarantees the two-thirds requirement is met
Reconfiguration of constituencies	• Requires a Constitutional amendment to reconfigure the constituencies • Proposes to reduce constituencies from 290 to 150 • Each constituency to elect two candidates, a man and a woman, making a total of 300 MPs • Guarantees the two-thirds gender requirement is met • Does not apply to the Senate
Best runner up	• After the elections, the IEBC calculates the number of women short to meet two-thirds gender requirement • In constituencies where a man won on weakest winning ticket, the man to be replaced with the strongest woman candidate in the constituency • Applies to both National Assembly and Senate • Guarantees gender requirement is met

Source: Technical Working Group for Implementation of the Two-Thirds Requirement

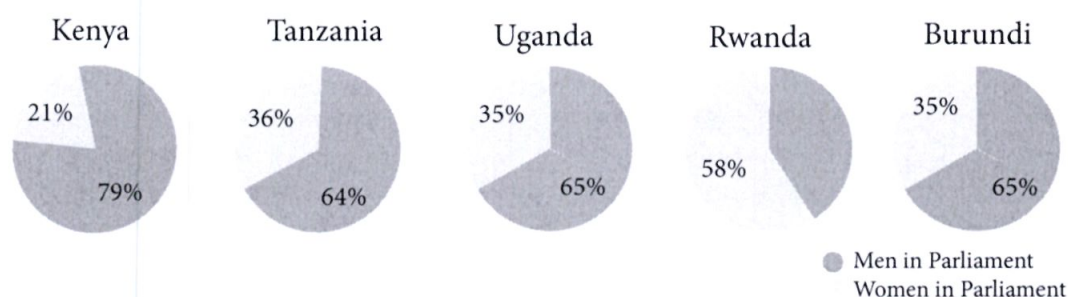
Of these proposals, the technical working group proposes the option on voting for a party ticket — or “twinning” — as their preferred mode of implementation. They argue that this option has no financial implications since it does not increase the size of Parliament and does not require amending the constitution. Its noteworthy that this proposal is not backed by any financial analysis; this is the gap that this study hopes to fill by estimating the additional cost of implementing the two-thirds rule given a number of scenarios.

Secondly, the technical committee did not exhaust all the statutory instruments available for implementing the two-thirds rule.

1.4 Comparative Perspectives

The low proportional representation of women in political and governance structures across the globe has necessitated the introduction of gender quotas in different countries to remedy underrepresentation. In 1995, the Beijing Process advocated for 30% women's parliamentary representation globally. The *Convention to Eliminate All Forms of Discrimination against Women* (CEDAW) also refers to a critical mass of 30-35% women's participation that should be achieved in governance structures for objective representation. Despite its relatively large economy, Kenya is the only country in East Africa that has not achieved gender equity in its legislature, measured by women comprising at least one third of its national legislators. Figure 3 below shows the percentages of men and women in East Africa's parliaments.

Figure 3: Representation of Women in Parliaments in East Africa in 2015



Source: Inter-Parliamentary Union at <http://www.ipu.org/wmn-e/classif.htm>.

The pursuit to ensure gender equity in representation has raised a number of questions regarding the value addition in insisting that both genders are represented. Questions abound as to whether the gender of a person has any effect on their capacity as a representative and, if so, whether the women elected are expected to represent the party's goals or women's interests only. In Kenya, these questions have been answered solidly: The Kenyan Constitution enshrines the importance of equitable gender representation in Article 81(b): the two-thirds requirement for the National Assembly and Senate.

Kenya is not unique in its pursuit of gender equity in a political system in which women are grossly underrepresented. Out of the 37 countries that had more than 30% women in the lower houses of parliament as of November 2013, 30 (81%) use some type of gender quota. In particular, 14 countries (38%) use legislated candidate quotas, ten (27%) use voluntary party quotas, six (16%) use a reserved seat system, and only seven (19%) do not use any type of quotas. Many governments have used affirmative action to ensure the critical participation of women is strong in number and in contributions, and Kenya will need to do the same. This section presents examples from Kenya's neighbors (Rwanda and Uganda), and from Denmark, shown in table 4 below on comparative perspectives on gender representation. At various stages of the process of promoting gender equality, lessons from the experiences of these countries are valuable for Kenya.

Uganda: Women in Uganda are well represented in parliament as a direct result of an affirmative action policy for women since the sixth parliament (1996–2001). Today, women parliamentarians comprise 35% of Uganda’s legislature. The current composition of Uganda’s Parliament includes 112 reserved seats for women (31%) in addition to 238 constituency representatives and other special reserved seats. In the 2011 general election, 131 seats were won by women, including the 112 district women representatives; 11 women elected through constituency representatives, two youth representatives; two representatives of disabled persons; two workers’ representatives; and two representatives of the Uganda People’s Defense Forces.⁴

Rwanda: The 2003 Rwandan constitution included a mandated quota of 30% reserved seats for women in the legislature. The representation of women increased from 17% in 1995, to 49% in 2003, to 58% in 2013, the highest in the world. Half of the country’s Supreme Court Justices are women, and of the 24 women who gained seats directly after the quota implementation in 2003, many joined political parties and chose to run again and were elected. This is evidence that the quota system works as an “incubator” for driving women’s participation in leadership. Women appointed and elected to a range of public positions have been so successful in making a positive influence and getting elected that Rwanda will soon reach a point where its gender quotas become unnecessary.

Table 4: Comparative Perspectives on Gender Representation

	Uganda	Rwanda	Denmark
Size of Parliament	338	106	179
Number of Women in Office	135	61	68
Percentage Women	35	58	38
Constituency Reserved Seats	Yes	Yes	No

Source: Inter-Parliamentary Union at <http://www.ipu.org/wmn-e/classif.htm>.⁵

Denmark: Women’s representation reached a historic worldwide high in the Scandinavian countries — Denmark, Norway and Sweden — due to affirmative action quotas. Denmark, where the representation of women is currently 38%, no longer has legal quotas for gender representation. The quotas outlived their usefulness and were erased. The process of promoting equity in gender representation began with legislation in 1976 and saw continuous efforts to enlarge and improve the work on *de jure* equality between women and men. By 1996, they were no longer necessary as the participation of women in public and private spheres no longer required historical redress through quotas.

Kenya can learn lessons from Denmark, where in spite of the lack of constitutional entrenchment of electoral gender quotas, there exists a comprehensive legislative framework on gender equality with five parliamentary acts specifically on the subject. These include acts on equal opportunity, equal pay, equal treatment, equality in appointing members of public committees, and in appointing board members of the civil service. The constitution

⁴Global Database of Quotas for Women-Uganda, 2015. Available from: <<http://www.quotaproject.org/uid/countryview.cfm?CountryCode=UG>>. [23 April 2015].

⁵Inter-Parliamentary Union at <http://www.ipu.org/wmn-e/classif.htm>

and the equality laws impose a duty on the public sector as well on the private sector to ensure respect for gender equality. This is also true for the political system, which has a duty to implement the equality acts and other *de jure* and *de facto* measures influencing the work for equality.

SECTION II

METHODOLOGY

The primary objective of this study is to estimate what the direct costs of achieving the 2/3rds rule would be in Kenya. In essence this is an attempt to understand the additional costs that would be borne by Kenyan tax payers in order to achieve a parliamentary result where no gender comprises more than 66.66% of the total composition in both the National Assembly and The Senate. What this requires is to calculate the marginal cost for a single member of the National Assembly and the Senate separately. We determined that the data that is required should be as close as possible to that which applies for the financial year 2013/14.

The main source of data for estimation of the marginal cost of a single member comes from the estimates of recurrent expenditure that were presented to the National Assembly in respect of the year 2013/2014. This publication contains the total expenditure by parliament for that financial year together with a breakdown according to the chart of accounts. We reviewed the chart of accounts by line item to determine which costs are fixed and which would vary according to the total number of representatives required for each house to achieve at least one third of the minority gender. For the purposes of calculating the additional cost of representation that ensures full compliance with the rule, it is only the variable costs that matter because the fixed costs of parliamentary representation remain unaffected.

The data sources for the computation of the cost of representation in the National Assembly and the Senate were as follows:

The Constitution of Kenya was used to determine the mandated composition of the Senate and the National assembly in terms of the members elected by constituencies, the women county representatives and the nominated members for the National Assembly on the one side and the Senate on the other. In determining the current gender composition in both houses, we used online resources from the Inter-Parliamentary Union and the website of the Kenyan parliament which contains the names of every member of the Senate and the National Assembly. Based on the current gender composition in the Senate and National Assembly, the Institute of Economic Affairs created four different scenarios detailing what additional seats are required to ensure compliance with the two-thirds gender requirement with the baseline as the current composition by the National Assembly. Regarding the Senate, two scenarios are created with the baseline as the current situation.

The cost of representation for both houses was estimated using the Estimates of Recurrent and Development Expenditure of the Parliamentary Service Commission 2013/2014. Although the Salary and Remuneration Commission's recommendations contained in the Kenya Gazette Notice in 2013 differed from the Parliamentary Service Commission's estimates—possibly unconstitutionally so—the estimates from the PSC reflect actual remuneration more accurately, and so these were used to estimate costs for this study. While the reports issued by the office of the Controller of Budget for 2013/14 confirmed the accuracy of the cumulative amounts projected by the estimates of the Parliamentary Service Commission, they are not disaggregated by function or programme leading to the reliance on the estimates.. National population figures were derived from estimates

published by the Kenya National Bureau of Statistics; Economic Survey 2014 showing that Kenya's population was 41.8 million. The added cost of additional seats in either house was based on costs that vary with the size of the elective body. Many fixed costs do not vary with the total membership of parliament. For instance, the Parliamentary Service Commission (PSC) faces a cost in maintain the infrastructure of parliament and this cost does not directly relate to the number of parliamentarians but is a fixed cost.

Joint Service and CPST costs distributions between the National Assembly and Senate are not necessarily equal as we have assumed. The Parliamentary Service Commission budget estimates provides cumulative values for these, not specific estimates for each house. However, the assumption of equal distribution between the houses is reasonable and any error is not consequential in calculating variable costs, nor cumulative (National Assembly and Senate) proportional changes in total costs for Parliament. Additionally, the Estimates of Recurrent and Development Expenditure of the Parliamentary Service Commission for the year ending 30th June 2014 and Projections for 2014/2015-2016 incorrectly calculated the total Recurrent Estimates for 2013/2014 at 20,495,580,600 Ksh. The total is in fact 20,498,580,600 Ksh, a difference of 3,000,000 Ksh, and error of Kshs.-3,000,000 Ksh.

Table 5 below summarizes the items that were selected as part of the cost or representation for each elective position (at Senate and National Assembly), and the rationale for why it was selected.

Table 5: The Rationale and Assumptions for Variable Costs Used in the Costing of Representation

Budget Item	Rationale
Basic Salary	Because every Member of Parliament earns a basic salary, and it varies directly with the size of the membership of each house. An additional MP or Senator implies a direct increase in wages for that member
Personal Allowances Paid as Part of the Salary/ Reimbursements:	These allowances are paid to members as sitting allowances for the various house sitting and committee sittings, and payments for pre-existing medical conditions not covered by the insurance plan. While we think that the sizes of committees should not vary with the size of the legislature, we include these costs because of the quest to build in a bias towards the maximum costs considering that legislature may expand committees
Domestic and Foreign Travel and Subsistence:	An amount is set aside for each member to cater for their travel costs, such as per diem for both domestic and international travel while performing their formal duties. We make the same assumption as above that the number of trips or size of delegations need not vary by size of parliament but still accommodate the upper limit by considering this cost as variable
Insurance Costs	Because insurance costs are provided to each member, this factor is definitely a variable cost because it would change in proportion to the number of legislators
Hospitality Supplies and Other	While the hospitality costs are not disaggregated, they could vary with the number of legislators and are considered in the same way
Car Grant*	The Salaries and Remuneration Commission (SRC) acceded to a demand by the Parliamentary Service Commission that members of the

	national Assembly and Senate are entitled to a car grant. The effect of that concession is that each member of either house received a car grant and which is a cost. While this cost has no basis in Kenya's constitution and Public Finance Management law, we include it as part of the cost of representation for uniformity.
Committee Services	These are services provided to legislators who are members of parliamentary committees; this is variable since the size of a committee may change depending on the size of the house
Administration Cost	These are standard operations that must be carried out and as such, we factored in a 2% cost for administrative services that come with addition of representatives. This is an added cost having considered all the variable costs and adding a 2% premium to that total cost to account for any additions that may be necessary.

Having identified the data source and isolated the variable costs, the study computed the costs of full compliance under scenarios applicable to the National Assembly and The Senate. Thus the additional cost for each scenario is compared against the Baseline, which is the state of affairs in 2013 when the Senate and the National Assembly were formally constituted. In sum, the additional cost of representation emerges from variation from the baseline number.

SECTION III

THE COST OF FULL
IMPLEMENTATION OF THE
TWO-THIRDS GENDER
RULE

Introduction

This section describes possible scenarios and associated costs of full implementation of the Kenyan Constitution's two-thirds gender requirement in the National Assembly and Senate. Based on the advisory opinion described in the previous section, the method of achieving full compliance with the two-thirds rule may involve the addition of seats filled by the minority gender to both houses if such a number are not elected in 2017 to satisfy the rule. This section also addresses the gender composition of appointive bodies, which are also subject to the two-thirds gender requirement under Article 27 of the constitution. As gender equity in government cannot be achieved in legislative or elective bodies alone, it is critical to apply scrutiny to these appointive bodies as well.

Though the Attorney General's technical working group is considering mechanisms for implementation of the two-thirds requirement that do not add seats to the National Assembly and Senate, the scenarios in this section are useful for understanding what the cost of adding seats would be, should the chosen mechanism require it. Furthermore, it is important for the debate surrounding the possibility of the addition of seats to be informed by verifiable evidence of what such a choice for implementation would cost. Mechanisms for implementation that expand the membership of the National Assembly and Senate should not be ruled out because they are potentially costly without an understanding of what those costs will be. Estimating the cost of these additional seats requires an understanding of the current composition of the houses of Parliament, drawing scenarios for possible composition of those houses after the 2017 election, and establishing the cost of those scenarios using verifiable data on current costs of both houses of Parliament.

It is important to note that the Kenyan Constitution's two-thirds gender rule is gender neutral: "Not more than two-thirds of the members of elective public bodies shall be of the same gender." This means that neither men nor women may constitute a majority of more than two-thirds. However, the current political reality is that women are underrepresented in the National Assembly and the Senate. The following discussion and analysis of scenarios regarding the addition of seats, therefore, respects the gender neutrality of the Constitution, but recognizes the reality of the current situation. It will address the process of achieving full compliance with the two-thirds gender rule in terms of increasing the representation of women.

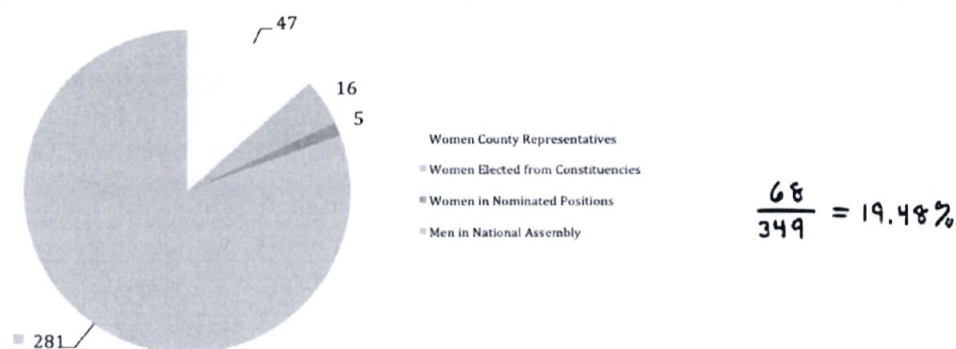
3.0 The National Assembly

Depending on the number of women and men elected in any election, the scenarios for the number of additional seats vary. For those proposals for mechanisms that require addition of seats to either houses of parliament, if fewer women are elected, more seats may be added, increasing the cost of implementing the two-thirds rule. If more women are elected, the cost is minimized to as little as zero. We can use the realities of the current gender composition of the houses of Parliament as a guide to estimate likely costs associated with likely scenarios relating to the addition of seats.

Understanding that women are currently the minority gender, this section will address the scenarios for ensuring that women constitute at least one-third of the membership (117seats) of the National Assembly. The Constitution ensures that 47 members of the National Assembly are women already. For women to constitute the minimum threshold of 117 seats, an additional 70 women must be elected or nominated from the 290 constituencies and 12 nominated seats. This would ensure full compliance with the two-thirds rule without the addition of seats to the National Assembly.

The current composition of the National Assembly does not satisfy the two-thirds rule. In addition to the 47 County Women Representatives, only 16 women were elected from the 290 constituencies in the 2013 election, and women hold five of the 12 nominated positions. There is a total, then, of 68 women in the National Assembly, falling 49 short of the 117 required for full compliance with the two-thirds gender rule. Figure 4 below shows the gender composition of the National Assembly as of April 2015, the same gender composition of the Assembly since the March 2013 elections.

Figure 4: Current (2015) Gender Composition of the National Assembly



Source: Inter-Parliamentary Union at <http://www.ipu.org/wmn-e/classif.htm>.

Based on the low numbers of women elected to the National Assembly relative to men, it is reasonable to believe that the results of the 2017 election may produce a gender imbalance such that the membership of the National Assembly will require expansion of seats reserved for women to fully comply with the two-thirds gender rule. The following are scenarios whose costs we estimate as a range of possible outcomes of the 2017 election. These scenarios are summarized in Figure 5 and Table 7 below.

Baseline: (Current Situation) There are 68 women in the National Assembly (47 Women County Representatives, 16 elected from constituencies, 5 nominated), and 281 men (274 elected from constituencies, 7 nominated). The percentage of women is 19.48%, and no seats have been added to the National Assembly. This is not in compliance with the two-thirds requirement.

Scenario 1: (Compliance by Election I) This is one of two possible outcomes of the 2017 election that would not require the addition of seats to the National Assembly. There would be a minimum threshold of 117 women in the National Assembly (47 Women County Representatives, 70 elected, 0 nominated), and 232 men. The percentage of women is 33.52%, and no seats need to be added to the Assembly. This would constitute full

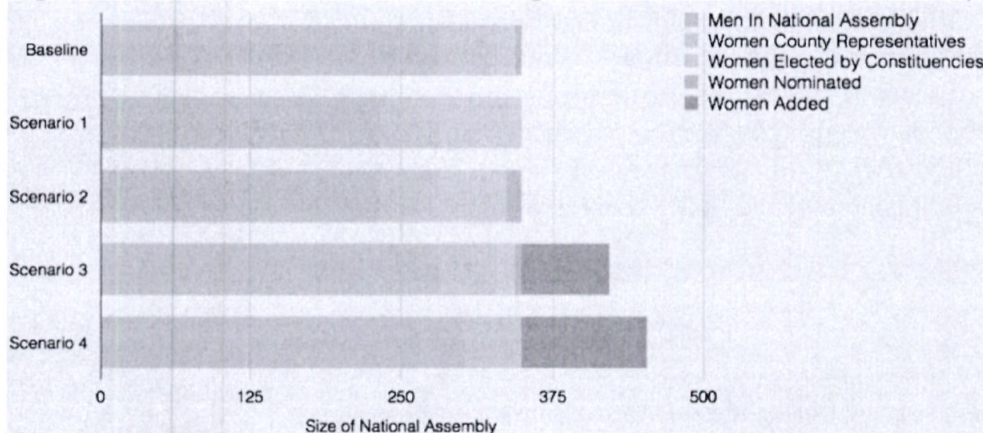
compliance with the two-thirds rule.

Scenario 2: (Compliance by Election II) This is the other of two possible outcomes of the 2017 election that would not require the addition of seats to the National Assembly. There would be a minimum threshold of 117 women in the National Assembly (47 Women County Representatives, 58 elected from constituencies, 12 nominated), and 232 men. The percentage of women is 33.52%, and no seats need to be added to the Assembly. This constitutes full compliance with the two-thirds rule. (The only difference between Scenario 1 and Scenario 2 is the number of women elected from constituencies and nominated. In both, the sum is 70, but Scenario 1 maximizes the number elected from constituencies and Scenario 2 maximizes the number of women nominated. In both, women occupy 117 of 349 seats, and full compliance is achieved without expanding the National Assembly.)

Scenario 3: (Current Composition) This can be viewed as a “likely” scenario if the numbers of women elected and nominated are assumed to remain the same. In 2017, the same number of women would be elected from constituencies (16) and nominated (5) as in the 2013 election. There would be 68 women (47 Women Representatives, 16 elected from constituencies, 5 nominated) and 281 men (274 elected from constituencies, 7 nominated). For full compliance with the two-thirds rule, an additional 73 seats reserved for women would be added. The total size of the National Assembly would grow to 422. Women would constitute 33.41% of the National Assembly. Because this scenario is based on the current gender composition of the National Assembly, consistent since the 2013 election, this would be the cost of representation if the two-thirds requirement had been implemented after the 2013 elections, or the cost of implementation today.

Scenario 4: (Worst-Case Scenario) This can be regarded as a worst-case scenario wherein no women are elected nor nominated to the National Assembly, except for the 47 County Women Representatives. There would be 302 men (290 elected from constituencies, 12 nominated). An additional 104 seats to be filled by women would have to be added to the Assembly to reach full compliance with the two-thirds rule such that the total membership of the Assembly would be 453. This is the most expensive, yet least likely scenario for the Kenyan taxpayer. Women would constitute 33.33% of the National Assembly.

Figure 5: Scenarios for the Gender Composition of the National Assembly in 2017



Source: Author's calculations.

Table 6 below summarizes the gender proportions of the four scenarios. All four scenarios are compliant with the two-thirds rule, shown by the Percentage Women row. The values in this row are shown in green if the scenario is compliant with the two-thirds gender requirement. The red value for the baseline shows that the current composition is out of compliance with the two-thirds requirement.

Table 6: Scenarios for the Gender Composition of the National Assembly in 2017

	Baseline	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Women Reps	47	47	47	47	47
Women Elected	16	70	58	16	0
Women Nominated	5	0	12	5	0
Women Added	0	0	0	73	104
Men In National Assembly	281	232	232	281	302
Percentage Women	19.48	33.52	33.52	33.41	33.33
Size of National Assembly	349	349	349	422	453

Source: Author's calculations.

To understand the cost of expanding membership of the National Assembly to comply with the two-thirds rule, we establish the costs that would vary with the addition of a single member. Table 7 below shows the Parliamentary Service Commission's recurrent cost estimates for the National Assembly for 2013/2014. Only some of these costs would vary with the addition of seats. For example, additional members would earn salaries, so basic salaries are costs that vary with the size of the membership, because they would increase with the number of members of the National Assembly. However, new members would not increase budget items associated only with the Office of the Speaker of the National Assembly, which are the same regardless of the number of members. Costs of such a fixed nature, which would not change with expanded membership, are not included in the additional costs of an expanded National Assembly. Budget items in Table 7 are marked with a "+" symbol if they are variable costs that would increase proportionally with the number of seats added. Budget items not marked with a "+" symbol are costs that would not vary with the addition of seats. It is clear from examining the table that few of the costs of maintaining the National Assembly would vary with the addition of new members to satisfy the two-thirds requirement. Most costs would remain the same. A detailed explanation of the selection of variable versus fixed costs is available in the Methodology section.

*** Some values in this row exceed the minimum threshold of one third. If the total size of the National Assembly is not a multiple of three, the constitutional requirement of "no more than two-thirds... shall be of the same gender" requires that not less than one third be of the minority gender. That is, to satisfy the two-thirds rule, the percentage of the minority gender must exceed a perfect third [$1/3 = 33.3\%$] if it cannot be exactly one third, as is only the case when the total size of the assembly is a multiple of three.*

Table 7: Recurrent Estimates for the National Assembly 2013/2014

Office of the Clerk	Ksh
Basic Salaries — Permanent Employees	240,785,006
Personal Allowance Paid as Part of Salary	550,375,490
Employer Contribution to Compulsory National Social Security Schemes	2,229,626
Employer Contributions to Social Benefit Schemes	64,200,000
Domestic Travel and Subsistence and Other Transportation Costs	21,558,880
Foreign Travel and Subsistence and Other Transportation Costs	58,431,081
Training Expense (Including Capacity Building)	25,000,000
Hospitality Supplies and Services	24,000,000
Specialized Materials and Supplies	5,000,000
Other Operating Expenses	5,000,000
Legislative Services	
+ Basic Salaries—Members of Parliament	841,200,000
+ Personal Allowances Paid as Part of Salary	3,309,840,000
+ Personal Allowances Paid as Reimbursements	100,000,000
+ Domestic Travel and Subsistence, and Other Transportation Costs	1,302,000,000
+ Foreign Travel and Subsistence and Other Transportation Costs	116,300,000
+ Hospitality Supplies and Services	12,000,000
+ Insurance Costs	440,000,000
+ Other Capital Grants and Transfers	2,450,000,000
Government Pension and Retirement Benefits	30,000,000
Office of the Speaker	
Domestic Travel and Subsistence and Other Transportation Costs	21,300,000
Foreign Travel and Subsistence and Other Transportation Costs	20,000,000
Hospitality Supplies and Services	4,500,000
Fuel Oil and Lubricants	4,000,000
Committee Services	
+ Domestic Travel and Subsistence and Other Transportation Costs	154,600,000
+ Foreign Travel and Subsistence and Other Transportation Costs	355,600,000
+ Hospitality Supplies and Services	135,000,000
Legal Services	
Domestic Travel and Subsistence and Other Transportation Costs	19,500,000
Foreign Travel and Subsistence and Other Transportation Costs	22,000,000
Hospitality Supplies and Services	40,000,000
Constituency Offices	
Basic Wages — Temporary Employees	816,660,000
Other Operating Expenses	700,000,000
Total	11,891,080,083

Source: Estimates of Recurrent and Development Expenditure of the Parliamentary Service Commission for the year ending 30th June 2014 and Projections for 2014/2015-2016. The table total varies from that given by the Parliamentary Service Commission by 42 Ksh, likely due to rounding error. The difference is not significant.

Table 8 below shows the variable costs identified in Table 7 that are associated with representation in the National Assembly: basic salary, personal allowances, travel and subsistence, insurance cost, hospitality, car grant, committee services and administration costs. Some figures for individual members of the National Assembly are weighted averages, reflecting the different pay scales associated with different members. The cost of the car grant is divided by five to reflect the annual cost to taxpayers over a member's five-year term. The categories of remuneration to the members of the National Assembly included in Table 7 are not inclusive of other fixed costs. They are only those variable costs that would increase with the addition of seats to the National Assembly.

Table 8: Variable Costs of Representation in the National Assembly for 2013/2014

	Total for 2013/17 (Ksh)	Annual Amount per Senator (Ksh)
Basic Salary	841,200,000	2,403,428.57
Personal Allowances	3,409,840,000	9,742,400.00
Foreign & Domestic Travel/Subsistence	1,414,830,000	4,042,371.43
Insurance Cost	440,000,000	1,257,142.86
Hospitality Supplies and Others	12,000,000	34,285.70
Car Grant	488,600,000	1,400,000.00
Committee Services	645,200,000	1,843,428.57
Administration (2%)		414,461.14
Total	7,251,670,000	21,137,518.27

Source: Estimates of Recurrent and Development Expenditure of the Parliamentary Service Commission for the year ending 30th June 2014 and Projections for 2014/2015-2016; author's calculations.

The sum of the costs that vary with the size of the membership of the National Assembly is approximately 7.25 billion Ksh annually. While there are other fixed costs associated with the National Assembly, those costs that vary with the number of members give us an estimate of the cost of adding one additional member to the National Assembly. The sum of the variable costs associated with a single member is 21,137,518.27 Ksh annually. To estimate the cost of adding many additional seats, as in Scenario 3 and Scenario 4, we multiply the cost of one additional seat per year (21,137,518.27 Ksh) by the number of seats added.

Table 9 summarizes the additional costs of Scenarios 1-4 using this method and gives the added annual cost per capita; that is, the cost per Kenyan per year of each scenario. Additionally, it gives the percentage increase in the total cost of the National Assembly, including fixed costs. The total cost of the National Assembly is higher than the sum of the variable costs of 7.25 billion Ksh from Table 8, because it includes many fixed costs

as well. (For 2013/2014, the Parliamentary Service Commission estimated this cost at 16,071,629,752.2 Ksh. See Table 10).

Table 9: Additional Annual Cost of Scenarios 1-4 for the National Assembly Based on 2013/2014 Estimates

	Women Seats Added	Annual Added Cost (Ksh)	Annual Added Cost Per Capita (Ksh)	Percentage Increase in Total Cost of the Senate
Scenario 1	0	0	0	0.00
Scenario 2	0	0	0	0.00
Scenario 3	73	1,543,038,834	34.79	9.60
Scenario 4	104	2,198,301,900	49.57	13.68

Source: Estimates of Recurrent and Development Expenditure of the Parliamentary Service Commission for the year ending 30th June 2014 and Projections for 2014/2015-2016; and author's calculations. Population estimate used for per capita calculations: 44.35 million (2013). Source: The World Bank at <http://data.worldbank.org/country/kenya>.

Scenario 3 would cost each Kenyan an additional 34.79 Ksh per year; Scenario 4, about 50 Ksh per year. For perspective, Kenyans are currently spending 586.21 Ksh per capita on the whole of Parliament annually, including recurrent and development costs for both houses. That is, the legislative branch currently costs each Kenyan 586.21 Ksh per year. Table 10 below shows the Parliamentary Service Commission's estimates for total spending on the National Assembly and Senate for 2013/2014, from which the Table 9 per capita and percentage increase estimates were made. Total spending on the National Assembly is around 16 billion Ksh, and total spending on the Senate is about 8.3 billion Ksh. The total for both houses, then, is 24.5 billion Ksh.

Table 10: Estimate of Recurrent and Development Spending for National Assembly 2013/2014

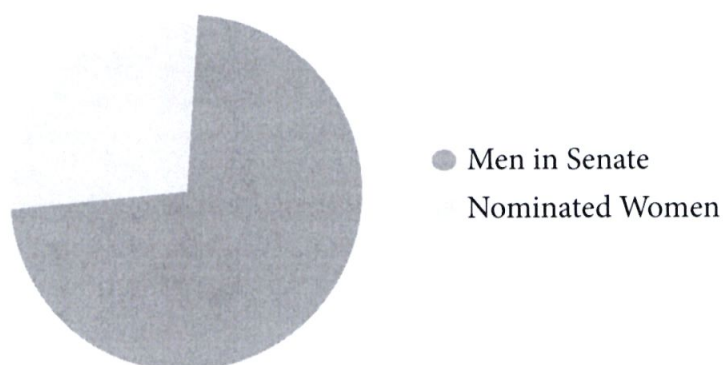
	National Assembly (Ksh)	Senate (Ksh)	Combined (Ksh)
Recurrent			
Main	11,891,080,041	3,391,401,136	15,282,481,177
Joint Service	2,552,149,711.5	2,552,149,711.5	5,104,299,423
CPST	55,900,000	55,900,000	111,800,000
Total	14,499,129,752.5	5,999,450,847.5	20,498,580,600
Development			
Main	0	860,000,000	860,000,000
Joint Service	1,447,500,000	1,447,500,000	2,895,000,000
CPST	125,000,000	125,000,000	250,000,000
Total	1,572,500,000	2,432,500,000	4,005,000,000
Total	16,071,629,752.5	8,341,950,847.5	24,503,580,600

Source: Estimates of Recurrent and Development Expenditure of the Parliamentary Service Commission for the year ending 30th June 2014 and Projections for 2014/2015-2016; author's calculations

4.0 The Senate

The smaller size and greater proportion of seats already reserved for women in the Senate makes compliance scenarios less complicated, and potential costs of implementation lower relative to the National Assembly. Already, nearly 27% of the Senate is comprised of women and it would take only an additional five women in elected positions to reach full compliance with the two-thirds rule. Figure 6 below shows the current gender composition of the Senate. All 18 women currently in the Senate were nominated. We present only two scenarios for the Senate, described in Table 11 and displayed in Figure 7.

Figure 6: Current (2015) Gender Composition of the Senate



Source: Inter-Parliamentary Union at <http://www.ipu.org/wmn-e/classif.htm>.

Baseline: (Current Situation) There are 18 women in the Senate filling the 18 seats reserved for women by the Constitution. Men fill all 47 elected seats, plus an additional two seats reserved for those nominated to represent youth and persons with disabilities. Women constitute 26.87% of the body, which is 6.47% short of the constitutional requirement. This is not in compliance with the two-thirds rule.

Scenario 1: (Compliance by Election) This is a no-additional-cost scenario for compliance with the two-thirds rule without the addition of seats to the Senate. If a minimum of five women are elected among the 47 county constituencies in 2017, in addition to the 18 seats reserved for women, women will hold 23 of 67 seats, or 34.33%. This will constitute full compliance with the two-thirds rule at no additional cost to Kenyan taxpayers.

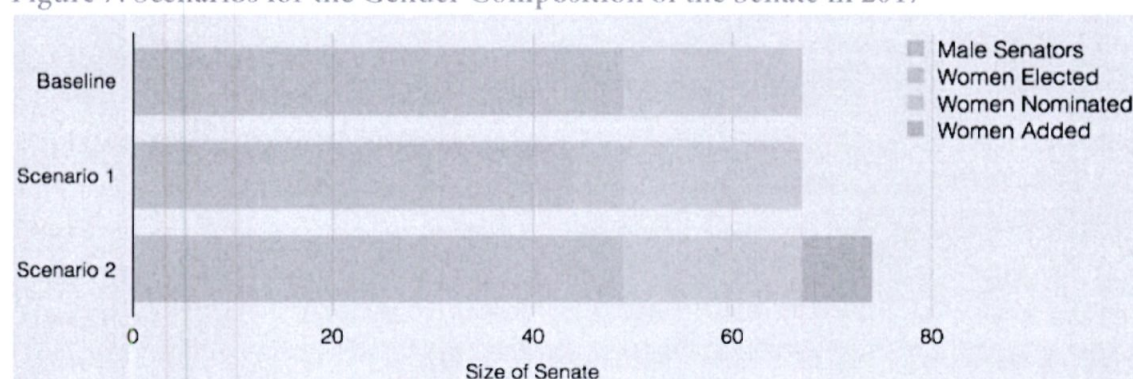
Scenario 2: (Worst-Case Scenario) This can be regarded as a “worst-case” scenario in which no women are elected and hold only the 18 seats reserved in the Constitution. In this case, seven additional seats would have to be added to the existing 67 seats. Women would hold the 18 existing reserved seats, and seven additional seats for a total of 25 out of an expanded membership of 74. Women would constitute 33.78% of the Senate, and this would be in full compliance with the two-thirds rule.

Table 11: Scenarios for the Gender Composition of the Senate in 2017

	Baseline	Scenario 1	Scenario 2
Women Elected	0	5	0
Women	18	18	18
Women Added	0	0	7
Male Senators	49	44	49
Percentage Women	26.87	34.33	33.78
Size of Senate	67	67	74

Source: Author's calculations.#

Figure 7: Scenarios for the Gender Composition of the Senate in 2017



Source: Author's calculations.

As with the estimates for expansion of the National Assembly, to estimate the cost of expanding the membership of the Senate, we identify the costs that vary with the size of the Senate. All budget items identified by the Parliamentary Service Commission are shown in Table 12 below. Budget items in Table 12 are marked with a “+” symbol if they are variable costs that would increase proportionally with the number of seats added. Budget items not marked with a “+” symbol are costs that would not vary with the addition of seats. As with the costs for the National Assembly, it is clear from examining the table that few of the costs of maintaining the Senate would vary with the addition of new members to satisfy the two-thirds requirement.

Some values in this row exceed the minimum threshold of one third. If the total size of the National Assembly is not a multiple of three, the constitutional requirement of “no more than two-thirds... shall be of the same gender” requires that not less than one third be of the minority gender. That is, to satisfy the two-thirds rule, the percentage of the minority gender must exceed a perfect third [$1/3 = 33.3\%$] if it cannot be exactly one third, as is only the case when the total size of the assembly is a multiple of three.

Table 12: Recurrent Estimates for the Senate 2013/2014

Office of the Clerk	Ksh
Basic Salaries — Permanent Employees	203,907,883
Personal Allowance Paid as Part of Salary	275,068,453
Employer Contribution to Compulsory National Social Security Schemes	600,000
Employer Contributions to Social Benefit Schemes	40,000,000
Domestic Travel and Subsistence and Other Transportation Costs	6,300,000
Foreign Travel and Subsistence and Other Transportation Costs	38,100,000
Training Expense (Including Capacity Building)	19,600,000
Hospitality Supplies and Services	12,000,000
Specialized Materials and Supplies	4,000,000
Other Operating Expenses	5,000,000
Legislative Services	
+ Basic Salaries—Members of Parliament	449,514,000
+ Personal Allowances Paid as Part of Salary	663,020,800
+ Personal Allowances Paid as Reimbursements	45,000,000
+ Domestic Travel and Subsistence, and Other Transportation Costs	297,000,000
+ Foreign Travel and Subsistence and Other Transportation Costs	64,080,000
+ Hospitality Supplies and Services	6,000,000
+ Insurance Costs	100,000,000
+ Other Capital Grants and Transfers	476,000,000
Office of the Speaker	
Domestic Travel and Subsistence and Other Transportation Costs	14,300,000
Foreign Travel and Subsistence and Other Transportation Costs	15,500,000
Hospitality Supplies and Services	6,500,000
Fuel Oil and Lubricants	3,500,000
Committee Services	
+ Domestic Travel and Subsistence and Other Transportation Costs	132,100,000
+ Foreign Travel and Subsistence and Other Transportation Costs	180,600,000
+ Hospitality Supplies and Services	52,000,000
Legal Services	
Domestic Travel and Subsistence and Other Transportation Costs	20,000,000
Foreign Travel and Subsistence and Other Transportation Costs	15,000,000
Hospitality Supplies and Services	5,000,000
Constituency Offices	
Basic Wages — Temporary Employees	171,360,000
Other Operating Expenses	70,350,000
Total	3,391,401,136

Source: Estimates of Recurrent and Development Expenditure of the Parliamentary Service Commission for the year ending 30th June 2014 and Projections for 2014/2015-2016

Table 13 below shows the variable costs of representation in the Senate identified in Table 12: basic salary, personal allowances, travel and subsistence, insurance cost, hospitality, car grant, committee services and administration costs. The figures for individual Senators are weighted averages, reflecting the different pay scales of different members. The cost of the car grant, though it is paid in the first year of members' terms, is divided by five to reflect the annual cost to taxpayers over a five-year term. The categories of remuneration to the members of the Senate included in the table are not exhaustive nor inclusive of other fixed costs. They represent those costs that would increase with the addition of seats, not other fixed costs that would not vary with additional members.

Table 13: Variable Costs of Representation in the Senate Based on 2013/2014 Estimates

	Total for 2013/17 (Ksh)	Annual Amount per Senator (Ksh)
Basic Salary	449,514,000	6,610,500
Personal Allowances	708,020,800	10,412,071
Foreign & Domestic Travel/Subsistence	361,080,000	5,310,000
Insurance Cost	100,000,000	1,470,588
Hospitality Supplies and Others	6,000,000	88,235
Car Grant	476,000,000	1,400,000
Committee Services	364,700,000	5,363,235
Administration (2%)		613,093
Total	2,465,314,800	31,276,722

Source: Estimates of Recurrent and Development Expenditure of the Parliamentary Service Commission for the year ending 30th June 2014 and Projections for 2014/2015-2016; and author's calculations

Every additional seat added to the Senate will cost Kenyan taxpayers roughly 31.3 million Ksh annually. Table 14 below summarizes the cost of Scenarios 1-2 for the Senate based on the number of seats to be added. The actual amount would depend on the number of women elected to the Senate in 2017, and could be as little as zero or as much as 218,874,054 Ksh annually if no women are elected and seven seats must be added for full compliance with the two-thirds rule. The actual cost of full implementation will be between zero and about 219 million Ksh, as the values in Scenario 2 are maximums based on the worst-case scenario. Table 14 also gives the maximum per capita cost of adding seats to the Senate and the maximum percentage increase in total costs of the Senate. The added costs, whether viewed as a per capita or percentage increase, have maximums that are affordable to Kenyan taxpayers. Because so few recurrent costs in the Senate would vary with the addition of seats, the percentage increase of the total with the addition of new members is in fact quite small: only 2.62% for the Senate.

Table 14: Additional Cost of Scenarios 1-2 for the Senate Based on 2013/2014 Estimates

	Women Seats Added	Annual Added Cost (Ksh)	Annual Added Cost Per Capita (Ksh)	Percentage Increase in Total Cost of the Senate
Scenario 1	0	0	0	0.00
Scenario 2	7	218,874,054	5.24	2.62

Source: Estimates of Recurrent and Development Expenditure of the Parliamentary Service Commission for the year ending 30th June 2014 and Projections for 2014/2015-2016; and author's calculations. Population estimate used for per capita calculations: 41.8 million (2013). Source: Economic Survey 2014

5.0 Cost and Budget in a Regional Perspective

Table 15 below shows the total costs for both houses of parliament based on the best (low cost) and worst (high cost) scenarios presented in the previous section. The worst-case scenario is a 9.86% increase in total spending on parliament, costing every Kenyan about 58 Ksh per year. The actual figure would be much less if, as is already the case, some women are elected to the National Assembly and Senate.

Table 15: Total Potential Increase in Cost of Parliament Based on 2013/2014 Estimates

	Senate (Ksh)	National Assembly (Ksh)	Total (Ksh)	Total Per Capita (Ksh)	Percentage Increase in Total Spending on Parliament
Additional Cost	0	0	0	0.00	0.00
Additional Cost	218,874,054	1,543,038,834	1,761,912,888	42.15	7.19
Additional Cost	218,874,054	2,198,301,900	2,417,175,954	57.83	9.86

Source: Author's calculations.

The baseless claims that the implementation of the two-thirds requirement is prohibitively expensive should be seen in a regional perspective and in the context of public spending in Kenya. Kenya is the largest economy in East Africa, and enjoys by far the highest GDP per capita. The increase in GDP per capita after the Kenyan economy was rebased in 2014 caused a lot of media excitement about Kenya's new status as a middle-income country. None of its neighbors have reached the same level of income, but all of them have reached gender equity in their parliaments, measured by at least one-third of legislators being women. Table 16 below shows the GDP per capita and percentage of women in parliament for five East African countries.

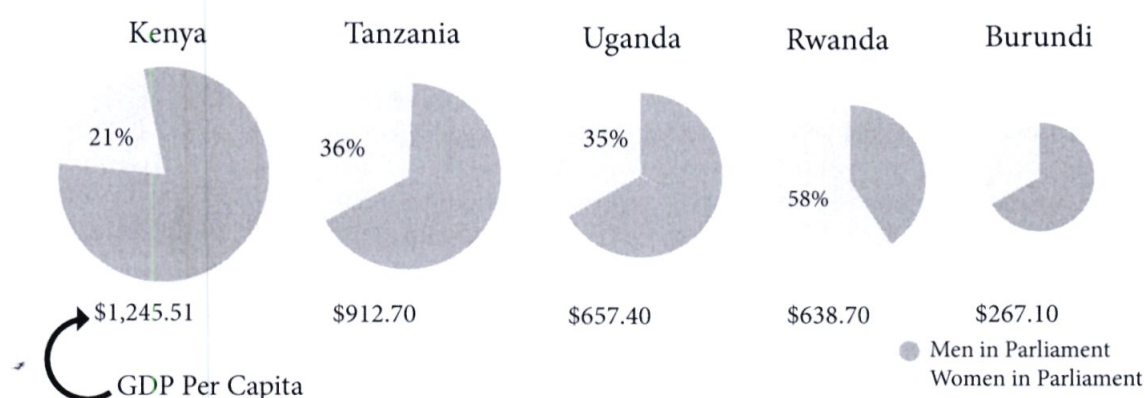
Table 16: GDP Per Capita (2013) and Gender Equity in East African Parliaments

	Kenya	Tanzania	Uganda	Rwanda	Burundi
GDP Per Capita	\$1,245.51	\$912.70	\$657.40	\$638.70	\$257.10
Women in Parliament	20.67%	36%	34.97%	57.55%	34.93%

Source: World Bank national accounts data, OECD National Accounts data files at data.worldbank.org/; Inter-Parliamentary Union at <http://www.ipu.org/wmn-e/classif.htm>.

Kenyans enjoy the highest GDP per capita at \$1,245.51, but have the lowest percentage of women in parliament, and the only one in East Africa below one third. The pie charts in Figure 7 below show the same information in a format that reveals the differences in relative capacity to afford affirmative action programmes. The size of each pie chart is proportional to its GDP per capita. Kenya, the largest circle, corresponds to its GDP per capita of \$1,245.41; Burundi, the smallest circle, corresponds to its GDP per capita of \$267.10. The percentage of women in parliament is displayed for each country.

Figure 8: GDP Per Capita (2013) and Gender Equity in East African Parliaments

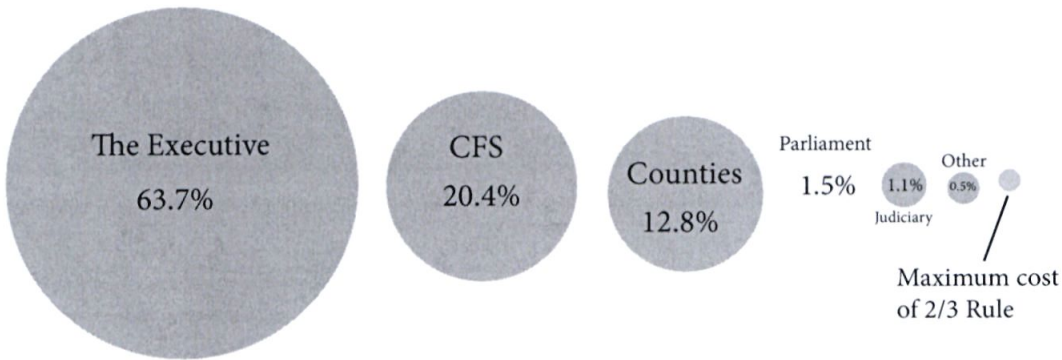


Source: World Bank national accounts data, OECD National Accounts data files at <http://data.worldbank.org/country/kenya>; Inter-Parliamentary Union at <http://www.ipu.org/wmn-e/classif.htm>.

Among its regional peers, Kenya has the greatest capacity to afford an affirmative action programme to increase the representation of women in its parliament, and a constitution and Supreme Court opinion that guarantee equitable gender representation as an enforceable right. Failure to fully implement the two-thirds requirement, then, can be justified neither legally nor economically.

Furthermore, the share of the national budget allocated to the three branches of government lends a relative perspective to the cost of implementing the two-thirds requirement. In the Programme Based Budget Estimates for 2014/15, overall government spending is estimated at 1.77 trillion Ksh. The Executive's share is 1,130.5 billion Ksh (63.7%), the Judiciary's is 18.7 billion Ksh (1.1%), and Parliament's is 26.5 billion Ksh (1.5%). Figure 8 below shows these and the percentage shares for Counties, Consolidated Fund Service, and Other (Equalisation Fund and Contingency Fund). The budget allocation for the Parliamentary Service Commission (PSC) is in yellow. The maximum (worst-case scenario) additional cost of implementing the two-thirds principle is in orange.

Figure 9: Kenya National Budget Allocation

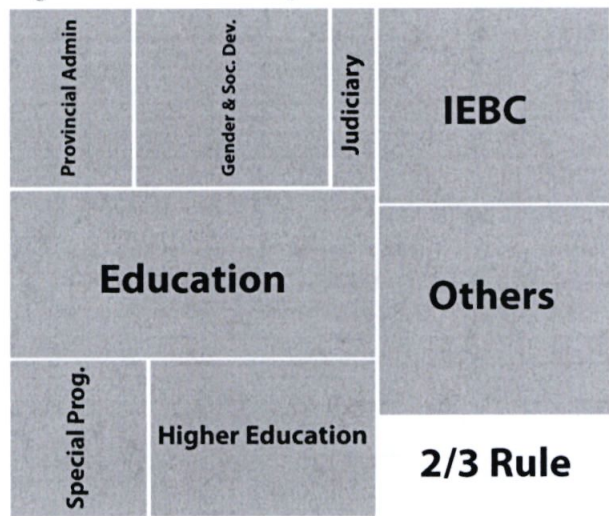


Source: : Programme Based Budget Estimates for 2014/15

It is clear from Figure 8 that the Executive branch accounts for the lion’s share of public spending in Kenya. Budget allocations under the Executive amount to more than 42 times the budget allocations for the Parliamentary Service Commission, and nearly 60 times the budget estimate for the Judiciary. A relatively small increase in spending on the parliament (yellow circle) to fully implement the constitution’s two-thirds requirement would have virtually no effect on the rest of the national budget.

Furthermore, we can compare the maximum cost of full implementation of the two-thirds rule in both houses to the unsupported expenditure by ministries and departments for 2012/13; that is, the cost of implementation of the two-thirds rule compared to how much public money Executive agencies and the Judiciary failed to account for in reports by the Auditor General. The green boxes below are proportional to the amount of public money unaccounted for in 2012/13. For example, the largest box, Education, failed to account for 6.8 billion Ksh. That means that Education failed to account for almost 3 times more public money than the maximum amount it would cost to implement the two-thirds principle.

Figure 10: Cost of Implementation Compared to Unsupported Expenditures 2012/13



Source: Summary of the auditor-general report for the year 2012/2013

6.0 Appointments

Gender inclusion in government cannot be limited to elective legislative bodies if it is to be meaningful and effective in advancing the position of those who have historically faced discrimination and underrepresentation. The composition of appointed bodies also requires scrutiny for equitable gender representation. Table 17 below shows the number of appointments per month since March 2013, when the current government came to power, and the number and percentage of appointments held by women in the 25 months after.

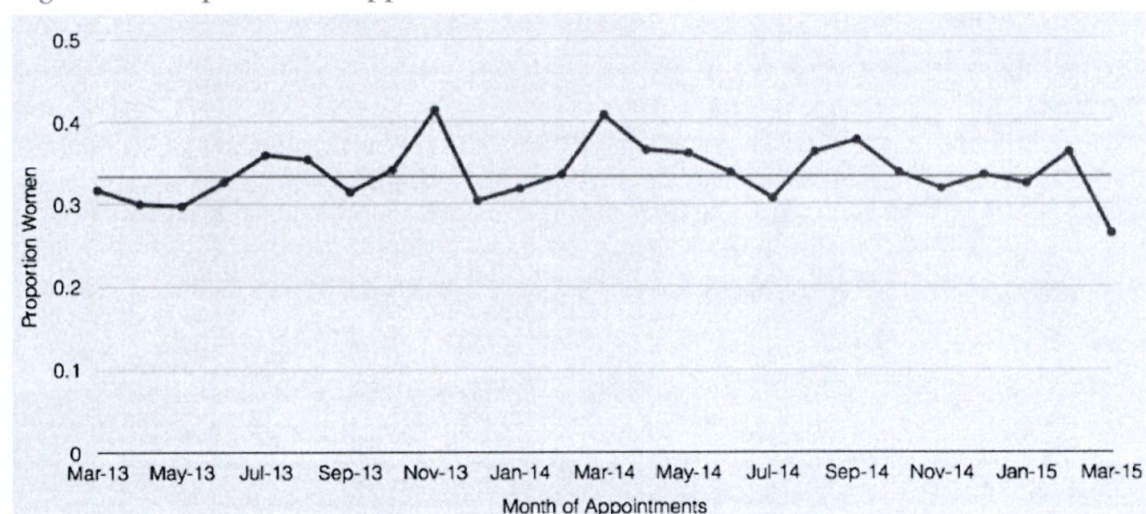
Table 17: Appointed Positions Held by Women, March 2013 – March 2015

Month of	Women Appointed	Total Appointments	Percentage Women
March 2013	45	142	31.69
April 2013	24	80	30.00
May 2013	58	195	29.74
June 2013	90	276	32.61
July 2013	150	417	35.97
August 2013	67	189	35.45
September 2013	33	105	31.43
October 2013	41	120	34.17
November 2013	118	285	41.40
December 2013	42	138	30.43
January 2014	44	138	31.88
February 2014	43	128	33.59
March 2014	1,110	2,723	40.76
April 2014	142	388	36.60
May 2014	139	384	36.20
June 2014	90	266	33.83
July 2014	62	202	30.69
August 2014	245	674	36.35
September 2014	397	1,050	37.81
October 2014	132	390	33.85
November 2014	15	47	31.91
December 2014	776	2,314	33.54
January 2015	26	80	32.50
February 2015	40	110	36.36
March 2015	157	592	26.52
Total	4,068	11,433	35.58

Source: The Kenya Gazette at http://kenyalaw.org/kenya_gazette/. Note: Three months have significantly higher numbers of appointments than others: March 2014, September 2014 and December 2014. These appointments can be attributed to the Uwezo Fund Management Committees and county, district and sub-district Hospital Management Committees, Hospital Management Boards, Dispensaries Management Committees and County Health Center Committees.

Months in red in the Percentage Women column are those during which men constituted more than two thirds of the appointments in that month, and women less than one third. Overall, however, men do not constitute more than two-thirds of appointments as women constitute 36.27% of appointments in the 25-month period. Figure 9 below shows the trend in the proportion of appointments to women candidates during the period. The solid green line shows the minimum threshold of one third; the blue trend line shows the proportion of women appointments from one month to the next. Months with proportions of appointments to women below the threshold of one third, those that appeared red in Table 17, fall below the green line in Figure 9. There were no appointments in January and February 2015, so there is a break in the plot from December 2014 to March 2015.

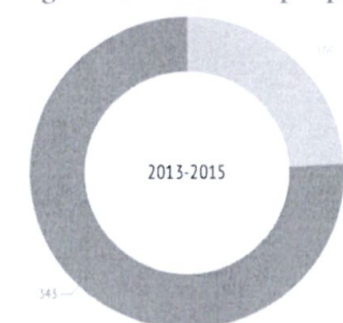
Figure 11: Proportion of Appointments to Women, March 2013 – March 2015



Source: The Kenya Gazette at http://kenyalaw.org/kenya_gazette/.

The level of appointments of women should also be of interest. Although 35.58% of appointments have been to women candidates in the given time period overall, are women appointed to leadership positions in similar proportion? The research team identified the following leadership roles to scrutinize for the gender of appointees: chairperson, vice chairperson, secretary, managing director, university chancellor, director general, presidential returning officer, deputy returning officer. By this definition, there were 452 total appointments to leadership positions from March 2013 to March 2015. Only 109 of those appointments — about 24% — were to women candidates.

Figure12: Leadership Appointments by Gender, March 2013 – March 2015



Source: The Kenya Gazette at http://kenyalaw.org/kenya_gazette/.

7.0 Conclusion

Based on the evidence from case studies of affirmative action programmes in representation in Part I, we can reach an important conclusion: Reserved seats are an effective way to increase the meaningful participation of women in national legislatures, politics and decision-making. The experiences of Uganda, Rwanda and Denmark demonstrate a clear process of which the extremes are quite distinct. In Uganda, the reservation of seats for women ensures their participation in high numbers through affirmative action. The same is true in Rwanda, where a longer period and more deliberate action toward inclusion of women in politics has influenced women's participation outside of reserved seats. Women parliamentarians elected to seats that are also open to men now outnumber those in affirmative action seats reserved for women alone. In Denmark, efforts to correct the historical marginalization of women in politics are now decades old and affirmative action in the form of reserved seats is no longer necessary. That is the journey that Kenya must begin.

Kenya seeks to be a regional and global leader in the twenty-first century, and policies regarding gender inclusion must exhibit the same seriousness that the constitution does for the inclusion of women in politics. Failure to begin what has been a long-term process of gender inclusion in other countries will have consequences for decades. Kenya will already be the last country in East Africa to achieve equity in gender representation in its parliament. Surely, that should be sign enough that the Supreme Court's deadline must give Kenyans a different story to tell about Kenyan women in politics.

When public figures make statements that are not true, we must wonder whether they are uninformed or dishonest. Many public figures have claimed that the two-thirds requirement should not be implemented because the costs are too high. They are wrong for two reasons. The first is that the constitutional requirement to ensure that not more than two thirds of elective bodies are comprised of a single gender does not stipulate that it is to be implemented unless its critics are opposed to the financial implications. There is no contingency clause, and proper constitutionalism requires full implementation of this constitutional requirement as it does any other. The second reason these claims are false is simply that the costs, as demonstrated clearly in Part II, are simply not prohibitive to the Kenyan taxpayer. At most, full implementation in the form of additional reserved seats for women would cost individual Kenyans about 58 Ksh annually, less than a ten percent increase in spending on parliament. Even after the maximum hypothetical increase, parliament would still only use a miniscule fraction of total public resources relative to other branches of government.

Sixty-eight percent of Kenyans voted in favor of the constitution in 2010, and pay their taxes for government to implement it. There is no basis in the claim that achieving the two-thirds gender rule would be prohibitively expensive. Tanzanians and Ugandans have already achieved the 33% threshold with smaller economies than Kenya's and similarly large legislatures.

It seems the major impediment to full compliance with the two-thirds gender rule in Kenya is politics and not about affordability or the lack of a mechanism.

In the effort to craft legislation for a mechanism to comply with the two-thirds requirement in Kenya, ideas that use reserved seats for women cannot be ruled out. Quota systems in national legislatures are effective in the long-term in Western countries as well as in Africa, and their costs are inconsequential even in the most expensive hypothetical.



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Governance Forum



WANGU KANJA FOUNDATION



Women Empowerment Society



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REPUBLIC OF KENYA
OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: AG/LDD/1101/1/101

2nd March, 2026

Your Ref: SEN/DGAC/DGC/JLAHRC/2026/1(a)

Mr. Jeremiah Nyegenye, CBS

Clerk of the Senate

Clerk's Chambers, Parliament Buildings

P. O. Box 41842-00100

NAIROBI

RE: THE CONSTITUTIONAL (AMENDMENT) (NO.2) BILL, 2025. (SENATE BILL NO.16 OF 2025)

Reference is made to your letter dated 17th February, 2026 and referenced SEN/DGAC/DGC/JLAHRC/2026/1(a) requesting this Office to submit comments on the Constitution of Kenya (Amendment) (No.2) Bill, 2025 (Senate Bills No. 16 of 2025).

We have reviewed the Constitution of Kenya (Amendment) (No.2) Bill, 2025 (Senate Bills No. 16 of 2025) and note as hereunder.

Caluse 3 of the proposed Bill amends Article 90 of the Constitution to align with proposals to amend Articles 97 and 98.

Clause 4 of the proposed Bill amends Article 97 of the Constitution to provide a formula for the nomination of additional special seat members of the National Assembly if, after declaration of results following a General Election, the membership of the National Assembly does not conform to the Constitutional principle that not more than two-thirds of the members are of the same gender.

Clause 5 of the proposed Bill amends Article 98 of the Constitution to provide a formula for the nomination of additional special seat members of the Senate if, after declaration of results following a general election, the membership of the Senate does not conform to the Constitutional principle that not more than two-thirds of the members are of the same gender.

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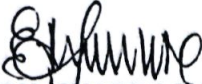
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We note that the proposed amendments to Article 97 and 98 of the Constitution introduces a formula for Gender Top-Up through party lists where additional special seat members will be nominated in order to conform to the gender principle. To ensure transparency and fairness, the proposed nominations must adhere to specific criteria that has not been provided by the proposed amendment. We therefore recommend that this amendment be revised to include a criteria for nominating special seat members.

We thank you and assure you of our continued support.


HON. SHADRACK J. MOSE, CBS
SOLICITOR-GENERAL





REPUBLIC OF KENYA

MINISTRY OF GENDER, CULTURE AND CHILDREN SERVICES
STATE DEPARTMENT FOR GENDER AFFAIRS AND AFFIRMATIVE ACTION
OFFICE OF THE PRINCIPAL SECRETARY

Our Ref: MGCCS/SDGAA/LGL/11/12

16th March, 2026

J.M Nyegenye, CBS
Clerk of the Senate
Parliament Buildings
Parliament Road
NAIROBI

RE: COMMENTS ON THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL, 2025 (SENATE BILL NO. 16 OF 2025)

The State Department for Gender Affairs and Affirmative Action conveys its compliments to the Senate and refers to the request by your Office inviting comments from stakeholders on the Constitution of Kenya (Amendment) (No. 2) Bill, 2025, which seeks to **amend Articles 90, 97, 98 and 101 of the Constitution.**

We note the principal objectives of the Bill are to:

1. Operationalise the **two-thirds gender principle** in Parliament through post-election special seat nominations;
2. Guarantee **five percent representation of persons with disabilities (PWDs)** in Parliament;
3. Introduce **term limits for party-list nominated members**; and
4. Strengthen **democratic generation of party lists** by political parties.

At the outset, the State Department commends the Senate for its continued leadership in advancing legislative initiatives aimed at strengthening constitutional governance and promoting inclusive representation as embodied in the Constitution of Kenya, 2010. The State Department further expresses its appreciation for the consistent support that the Senate has accorded the Ministry and its agencies in championing reforms that advance gender equality, social justice, and the protection of vulnerable and marginalised groups in our society.

Having carefully reviewed the proposed Bill and the applicable constitutional and legal framework, the State Department supports the Bill in principle, while respectfully submitting the following observations for consideration by the Senate during the legislative process.

i. Amendment of Article 90 (Party Lists and Term Limits for Nominated Members)

Under Clause 3(d)(e), the Bill proposes the democratic generation of party lists through a fair and competitive process and that party lists reflect representation of marginalised groups. This proposal aligns with Article 91(1)(d) of the Constitution, which requires *inter-alia* that political parties promote democratic governance.

The Department observes that detailed operational procedures relating to internal political party processes may more appropriately be addressed through the Political Parties Act, Cap 7D and electoral regulations administered by the Independent Electoral and Boundaries Commission (IEBC). Constitutionalizing internal party nomination procedures may unnecessarily rigidify electoral law. It is thus proposed that the distinction be maintained to preserve the flexibility necessary within the electoral framework.

ii. Term Limits for Nominated Members

Clause 3 of the Bill proposes the introduction of two-term limits for nominated members elected through party lists. While this measure may enhance leadership renewal and promote broader opportunities for representation, the Department notes that such policy matters are better addressed through legislative or regulatory frameworks governing electoral processes.

iii. Amendment of Articles 97 & 98 – Composition of the National Assembly and the Senate

Clause 4 and 5 of the Bill propose to provide five percent representation of persons with disabilities in the National Assembly and the Senate. This is fully consistent with Article 54(2) and also aligns with the United Nations Convention on the Rights of Persons with Disabilities and the Persons with Disabilities Act, 2025.

Clause 4 and 5 also introduces additional special seat nominations where necessary to ensure compliance with the two-thirds gender principle in both houses. The State Department recognizes this constructive effort to address the longstanding constitutional requirement under Article 27(8). The Department therefore welcomes these provisions as progressive measures that promote gender equality and disability inclusion in legislative institutions.

Conclusion

The operationalization of the two-thirds gender principle has remained a constitutional imperative since the promulgation of the Constitution in 2010. In this regard, the proposed Bill is both timely and commendable, as it represents an important legislative initiative towards advancing the constitutional agenda of gender equality, inclusivity, and representation.

Accordingly, and in light of the mandate vested upon the State Department under Executive Order No. 1 of 2025, in particular, gender policy management, the State Department wishes to convey its support for the Bill in principle, subject to the observations outlined in this submission.

Thank you once again for your continued partnership and support.


MOSES MUTO
For PRINCIPAL SECRETARY

Copy to: Cabinet Secretary
Ministry of Gender, Culture and Children Services
Kenya National Library
Upper, Hill
NAIROBI

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MEMORANDUM ON

THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL, 2025

(Senate Bills No. 16 of 2025)

SUBMITTED TO:

The Standing Committee on Justice, Legal Affairs and Human Rights

The Senate of the Republic of Kenya

SUBMITTED BY:

OUTREACH FOR ACTION KENYA.

Outreach For Action Kenya welcomes the opportunity to submit its views on the Constitution of Kenya (Amendment) (No. 2) Bill, 2025. As an organisation committed to constitutional governance and democratic integrity, we support the Bill's objectives of advancing gender equality and improving the representation of persons with disabilities in Parliament.

Our memorandum is intended to assist the Committee by examining whether the mechanisms proposed by the Bill achieve these objectives in a manner that is constitutionally coherent, democratically legitimate, and fiscally sustainable.

We note that the Bill seeks to address two long-standing constitutional concerns: the non-implementation of the two-thirds gender principle under Articles 27(8) and 100 of the Constitution, and the under-representation of persons with disabilities at the national legislative level. While both objectives are important, this memorandum focuses primarily on the Bill's approach to implementing the two-thirds gender principle. This focus is deliberate, as the proposed gender-corrective mechanisms raise significant questions of constitutional design, particularly regarding post-election nomination, electoral choice, and the structure of parliamentary representation.

Our concern is therefore not with the ends sought by the Bill, with which we are in agreement, but with the means adopted to realise them.

Against this background, and recognising the urgency of giving effect to the two-thirds gender principle, this memorandum examines the Bill through a set of interrelated

constitutional and institutional considerations. These are addressed sequentially, beginning with the broader constitutional context and threshold issues, before turning to the specific mechanisms proposed by the Bill and their democratic and fiscal implications

Background: The Two-Thirds Gender Principle

Since the promulgation of the Constitution in 2010, the two-thirds gender principle has remained unimplemented in Parliament despite its clear constitutional entrenchment. Successive electoral cycles have shown that electoral competition alone has not produced the required gender balance, while legislative efforts to operationalise the principle have faced constitutional and practical constraints. The result has been a prolonged state of constitutional non-compliance, underscoring the need for a sustainable and constitutionally sound mechanism to give effect to the principle.

1.Threshold Considerations under Article 255 of the Constitution

The constitutional questions addressed in this section arise from the combined effect of **clause 3, clause 4(b), and clause 5(b)** of the Bill, which amend **Articles 90, 97, and 98** of the Constitution.

While the Bill is expressly framed as an amendment intended to implement existing constitutional principles, its proposed mechanisms invite consideration of whether, in effect, the amendment approaches areas of constitutional change that Article 255 of the Constitution reserves for heightened scrutiny, including approval by referendum. We do not assert that the Bill necessarily falls within the scope of Article 255. Rather, we raise these considerations to invite clarity that the proposed amendments do not, by their cumulative effect, cross into constitutionally protected terrain.

Our question is : On what constitutional basis does Parliament consider this Bill to fall within ordinary amendment power rather than the heightened threshold under Article 255? i.e. We seek clarity that Parliament does not, even unintentionally, exercise power that the Constitution reserves to the people through a referendum.

(a) Sovereignty of the People and the Mediation of Electoral Choice

Article 255(1)(a), read together with Article 1 of the Constitution, safeguards the sovereignty of the people and the manner in which that sovereignty is exercised, whether directly or through democratically elected representatives.

The proposed insertion of **Articles 97(1A) and 98(1A)** requires the nomination of additional members to the National Assembly and the Senate where, after the declaration

of election results, the membership of either House does not comply with the two-thirds gender principle .

The Bill retains elections as the primary mode of constituting Parliament. However, by introducing an automatic post-election corrective mechanism that adds members to Parliament after the declaration of results, the Bill alters the point at which electoral outcomes are deemed constitutionally complete. Representation is no longer finalised solely through voter choice, but is supplemented by institutional correction triggered by constitutional thresholds.

This raises a threshold question as to whether, and to what extent, the exercise of popular sovereignty remains predominantly electoral, or whether it is increasingly mediated through post-electoral constitutional mechanisms. While such mediation is not inherently impermissible, its expansion invites careful consideration to ensure that the locus of democratic authority remains consistent with the constitutional settlement envisaged under Article 1.

(b) Structure of Parliament

Article 255(1)(c) protects the structure of Parliament. Structure, in this context, extends beyond the existence of a bicameral legislature to include the manner in which parliamentary membership is constituted, the balance between elected and nominated members, and the predictability of parliamentary composition.

The structural implications of the Bill arise directly from **clause 4(b)** and **clause 5(b)**, which permit the nomination of an additional number of members to the National Assembly and the Senate respectively, determined only after the declaration of election results . Unlike existing nomination provisions, the number of corrective seats is neither fixed nor known in advance, but is contingent on electoral outcomes.

Under the existing constitutional framework, while nomination is recognised, the size and composition of Parliament are largely known in advance of elections. The Bill introduces a degree of elasticity by permitting the expansion of parliamentary membership after elections, contingent on electoral outcomes and compliance with the gender principle.

This raises a legitimate question as to whether Parliament remains an institution with a largely predetermined structure, or whether it becomes one whose final composition is constitutionally determined only after elections have concluded. While such elasticity

may be defensible as an implementation choice, its structural implications warrant reflection to ensure that the amendment does not inadvertently reshape Parliament's institutional architecture in a manner that would attract Article 255 scrutiny.

(c) Principles of Representation

Article 255(1)(d) protects the principles of representation. The Constitution embodies a blended model of representation, combining electoral legitimacy with limited corrective nomination to advance inclusivity.

The representational implications of the Bill arise from the interaction between the post-election corrective mechanism in **Articles 97(1A) and 98(1A)** and the amendments to **Article 90** introduced through **clause 3(b)**.

The Bill deepens the corrective dimension of this model by normalising post-election nomination as a central mechanism for achieving constitutional compliance. In doing so, it subtly shifts the representational logic from one in which corrective nomination supplements electoral outcomes, to one in which electoral outcomes may routinely require constitutional adjustment.

This raises a threshold question as to whether the amendment remains within the representational balance originally contemplated by the Constitution, or whether it moves toward a materially different representational philosophy in which constitutional correction becomes a primary, rather than supplementary, basis for parliamentary membership. Such a shift may be constitutionally permissible, but it merits explicit recognition and justification as a matter of constitutional design.

Our Recommendation:

Taken individually, none of the foregoing considerations necessarily places the Bill within the ambit of Article 255. The Bill is, on its face, framed as an effort to implement existing constitutional principles rather than to reconstitute Parliament or redefine the basis of representation.

However, the particular mechanisms adopted to achieve this implementation; especially the use of automatic, post-election corrective nomination, operate at the level of representational logic and institutional design, rather than mere procedural detail. Taken cumulatively, these features suggest that the Bill operates in close proximity to areas of constitutional protection that attract heightened procedural and democratic safeguards.

We therefore respectfully recommend that the Committee expressly consider and clarify whether the Bill, in its current form, remains wholly within the category of permissible constitutional implementation under Article 256, or whether any aspect of its design approaches the threshold contemplated under Article 255. Such clarification would strengthen the Bill's constitutional footing and enhance its democratic legitimacy.

2. Post-election nomination, party lists, and implementation challenges

In implementing the two-thirds gender principle, the Bill relies on post-election corrective nomination through party lists. While this approach is constitutionally recognised, its expanded and automatic use raises practical and institutional challenges that bear on the effectiveness and democratic legitimacy of the proposed mechanism.

First, the proposed **Articles 97(1A) and 98(1A)** introduce automatic post-election nomination of additional members where electoral outcomes do not meet the gender threshold. While intended to secure compliance with the constitutional principle of gender balance, this approach may dilute voter agency by finalising parliamentary composition after elections, and may create perverse incentives for political parties to under-invest in fielding candidates from the under-represented gender—most commonly women, given observed electoral trends—relying instead on nomination to achieve compliance.

Second, through clause 3(b), the Bill amends Article 90 to constitutionalise aspects of internal party processes, including democratic participation in the generation of party lists and alignment with Article 100. While the objective is laudable, this approach raises two distinct concerns: first, that constitutionalising these processes may entrench party gatekeeping power and shift accountability away from voters toward party leadership; and second, that matters of party nomination practices and internal democracy may, as a matter of constitutional design, be more appropriately regulated through statutory frameworks rather than constitutional entrenchment.

Our Recommendation: A Performance-Based Corrective Model

Given the challenges associated with reliance on party lists for post-election gender correction, we recommend that the Committee consider an alternative, performance-based model. Under this approach, any corrective seats required to meet the two-thirds gender principle would be filled from a national pool comprised of unelected candidates (*that is, candidates who contested the election but were not successful*) of the under-represented gender.

Where a gender gap arises after the declaration of results, a national pool would be generated comprising candidates of the affected gender who were the best-performing candidates of that gender in their respective constituencies, subject to meeting a minimum vote threshold. Candidates within this pool would then be ranked nationally based primarily on the percentage of votes obtained in their constituencies, with absolute votes received used only as a secondary criterion where two or more candidates attain the same percentage. The required number of corrective seats would be filled sequentially from this ranked pool.

This approach intentionally avoids ranking candidates solely on the basis of absolute vote totals, as doing so would systematically advantage candidates from constituencies with larger voter populations over those from smaller constituencies, irrespective of relative electoral support. Prioritising vote share ensures that performance is assessed proportionately within each constituency rather than by raw numbers alone. The minimum vote threshold further serves to exclude purely nominal candidacies, including situations where a candidate garners only a negligible number of votes (such as a single self-cast vote) ensuring that inclusion in the corrective pool reflects a demonstrable level of electoral support rather than mere participation.

This model preserves the corrective objective of the Bill while grounding post-election inclusion in demonstrated voter support rather than party discretion. It reduces party gatekeeping, mitigates perverse incentives to avoid fielding women candidates, and encourages greater participation by women in competitive electoral contests.

Note on the representational status of nominees under a performance-based model

Should a performance-based corrective model be adopted in place of party-list nomination, it is important that the representational status of nominated members be clearly defined. Although such nominees would be drawn from candidates who contested constituency elections, their nomination should not be construed as conferring a mandate to represent any particular constituency. To avoid duplication of representation and potential institutional conflict – where both an elected and a nominated member appear to represent the same constituency – we recommend that such nominees be expressly designated as serving a national or special-interest representational role rather than a constituency-based one.

On this basis, their functions and offices should be structured accordingly, with a primary focus on legislative participation and the advancement of the constitutional objective underlying their nomination, rather than constituency service. This distinction would preserve the integrity of constituency representation while allowing the corrective mechanism to operate without creating competing claims of electoral mandate.

3.Expansion of Parliament and fiscal implications

The Bill acknowledges that its enactment will occasion additional public expenditure arising from the nomination of additional members to Parliament under the proposed **Articles 97(1A) and 98(1A)**. We recognise that the precise fiscal cost cannot be determined in advance and will vary across electoral cycles. However, in the absence of an express cap on corrective nominations, the Bill creates an open-ended fiscal obligation whose scale cannot be reasonably predicted, raising concerns for fiscal planning and accountability.

Our Recommendation:

We recommend that Parliament assess the potential fiscal impact of the proposed mechanism on the basis of a plausible extreme electoral scenario. While such a scenario may not materialise, modelling the maximum potential exposure would provide a clearer indication of the financial burden created by the Bill, enabling informed public debate on the sustainability of the expenditure and the sources from which it would be financed.

Submitted By:

Isabella Mandi-Manduku (Director)



Cliff Matundura Nyandusi (Director)



On behalf of :

OUTREACH FOR ACTION KENYA. (A Company Limited by Guarantee)

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THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

MEMORANDUM ON

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2025

(SENATE BILLS NO. 16 OF 2025)

Dated 13TH MARCH, 2026

Independent Electoral & Boundaries Commission (IEBC)

Anniversary Towers, 6th Floor, Off University Way

P.O. Box 45371 – 00100, Nairobi – Kenya

Telephone: + 254 (0) 20 29925

A. Introduction

1. The Independent Electoral and Boundaries Commission (IEBC) hereinafter referred to as “the Commission” is a Constitutional Commission established under Article 88 of the Constitution of Kenya.
2. Article 88(4) Constitution of Kenya outlines its general mandate to conduct and supervise referenda and elections to any elective body or office established by the Constitution and any other elections as prescribed by an Act of Parliament.
3. Article 88(4)(d) further states that the Commission is responsible for the regulation of the process by which parties nominate candidates for election.
4. Article 90(2) mandates the Commission to conduct and supervise elections for the allocation of party list seats for Parliament under Articles 97(1)(c) and 98(1)(b), (c) and (d), and for the members of County Assemblies under 177(1)(b) and (c) based on proportional representation.
5. These special seats are reserved for the purpose of representing the marginalized groups in both Parliament and the County Assemblies. These include women, persons with disabilities, youth, ethnic and other minorities and marginalised communities.
6. In discharging its mandate under Article 90(2), the Commission is guided by the provisions of Article 90 of the Constitution, Sections 34 – 37 of the Elections Act, 2011, Regulations 54 -56 of the Elections (General) Regulations, 2012 and the Elections (Party Primaries and Party List) Regulations, 2017.
7. Section 36 of the Elections Act sets out the requirements for the political party lists to be submitted to the Commission by political parties in terms of numbers and the

categories of persons to be included in the lists as well as the allocation of seats by the Commission.

8. Article 27(8) of the Constitution introduces the not more than two thirds gender principle for elective and appointive bodies. While there is a mechanism for enforcement in the county assemblies under Article 177, there are no similar mechanisms to realize this requirement in the National Assembly and the Senate.
9. Article 54(2) of the Constitution on the rights of Persons with Disabilities provides,
“The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.”
10. The Constitution sets the number of Persons with Disabilities to be nominated to the Senate at two (2). The number is not specified for the National Assembly and the County Assemblies. Under Article 97 and 177, Persons with Disabilities are to be included as nominated persons to represent a marginalised group.
11. Article 177 (1)(c) provides that the number of members of the county assemblies representing marginalized groups is to be determined by an Act of Parliament. In this regard, section 34 (8) of the Elections Act puts the number at 4 for the marginalized category.
12. It is worth noting that while Article 177(1)(c) outlines the categories of persons to be included in the marginalized lists, Article 90(2)(b) of the Constitution emphasizes that the Commission shall administer the party lists in the **priority** in which the candidates are listed by the political party.
13. As such, the Commission is limited to the order of the persons in the marginalized list as submitted by the political party. Notwithstanding this state of affairs, the

Commission continues to sensitize political parties on the importance of ensuring that marginalized groups and indeed persons with disabilities are given priority in the party lists.

14. The Commission reiterates its commitment towards realizing the rights of persons with disabilities and the effective representation of marginalized groups and notes the need for Parliament to enact legislation to realize the provisions of Articles 100 and 197 of the Constitution.

B. Purpose of the Bill

15. The Constitution of Kenya (Amendment) Bill, 2025 seeks to implement the two-thirds gender principle in Parliament by allowing additional nominated members where the threshold is not met, ensuring 5% representation of persons with disabilities (PWDs) in both the National Assembly and the Senate and Introducing term limits for party list seats.
16. We welcome the Bill and wish to make general comments as outlined below;

C. General Comments

17. We note that the Bill gives salient proposals towards the implementation of the two-thirds gender principle as well as realizing the provisions of Article 54(2) of the Constitution by amending Articles 90,97,98 and 101 of the Constitution. The proposals would also result into consequential amendments to the party list provisions in the Elections Act, Cap 7 and other enabling legislation.
18. The Commission appreciates the proposals made in the Bill. However, we note that there will be implementation challenges on the Commission's part and suggest a review of the proposals reflected in the matrix below.

D. Specific Comments

19. The Commission has endeavored to highlight its submissions in matrix format on the relevant provision of law proposed for amendment, clause of the Bill, comments on the same and proposals for review where necessary.

TABLE: MATRIX OF IECB'S COMMENTS ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2025

S No.	Section of the law	Clause of the Bill	IECB Comments	Proposals and Justification
1.	Allocation of party list seats. 90. (1) Elections for the seats in Parliament provided for under Articles 97(1)(c) and 98(1)(b), (c) and (d), and for the members of county assemblies under 177(1)(b) and (c), shall be on the basis of proportional representation by use of party lists. (2) The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that— (a) each political party participating in a general election nominates and submits a list of all the persons who would stand elected if the party were to be entitled to all the seats provided for under clause (1), within the time prescribed by national legislation;	Clause 3 Article 90 of the Constitution is amended by— (a) in clause (1), by deleting the expression "Articles 97(1)(c) and 98(1)(b), (c) and (d)" and substituting therefor the expression "Articles 97(1)(c)(ca) and (1A) and 98(1)(b), (c), (d) and (1A)"; (b) in clause (2) by inserting the following new paragraphs immediately after paragraph (c)— (d) members of a political party are democratically involved in the generation of the party list through a fair and competitive process as set out in the respective party constitution and nomination rules; and (e) each party list reflects the representation of the marginalized groups set out in Article 100 to the greatest extent possible taking into account the nature of the party list;	i. The Commission welcomes the proposal in sub clause (b) as it attempts to strengthen party list democracy through a fair and competitive process. This is in line with Section 34(6) of the Elections Act, Cap 7 and Regulation 6 of the Elections (Party Primaries and Party Lists) Regulations, 2017 which requires political parties to include procedures for conduct of party primaries and nomination of party lists in their nomination rules. The Commission enforces this provision by assessing compliance with the law of the nomination rules submitted by a Party to the Commission under Section 27 of the Act before an election.	Parliament to enact legislation that operationalises Articles 100 and 197 of the Constitution. This would promote effective representation in Parliament and County Assemblies of the different categories of marginalized groups listed in the Article. In addition, the Commission submits that there is need to provide a clear definition of the term ethnic and other minorities in the law for certainty during the party list election. Indeed, the office of the Deputy President has developed a policy document that addresses the lacunae. Appropriate legislation reinforcing the policy stipulation ought to be enacted.

S No.	Section of the law	Clause of the Bill	IEBC Comments	Proposals and Justification
	(b) except in the case of the seats provided for under Article 98(1)(b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed; and (c) except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya. (3) The seats referred to in clause (1) shall be allocated to political parties in proportion to the total number of seats won by candidates of the political party at the general election.		ii. Clause 3 (b) (e) makes reference to Article 100 which requires Parliament to enact legislation to promote representation in Parliament of specific marginalized groups. The proposal is well intentioned and consistent with constitutional principles of inclusion, but its practical implementation may be difficult as there is need for clarity on who qualify as ethnic and other minorities and marginalized communities. It is important to have clarity to help the Commission implement the provisions.	
		(c) inserting the following new clause immediately after clause (3) — (4) A person elected under clause (1) for a seat shall not hold such office for more than two terms	iii. The Commission welcomes the proposal to set a term limit for nominated members. This will allow more persons to access representation and realize the intention of party list representation being a transitional	It is proposed that the term limit be defined further to state whether the two term limit is one off or a nominated person may serve the National Assembly for a maximum of two terms and thereafter the Senate for another two terms.

S No.	Section of the law	Clause of the Bill	IEBC Comments	Proposals and Justification
2.	Membership of the National Assembly. 97. (1) The National Assembly consists of— (a) two hundred and ninety members, each elected by the registered voters of single member constituencies; (b) forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency; (c) twelve members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers; and (d) the Speaker, who is an <i>ex officio</i> member.	Clause 4 Article 97 of the Constitution is amended — (a) in clause (1) — (i) by deleting the word “persons with disabilities” appearing immediately after the words “including the youth” in paragraph (c); (ii) by inserting the following new paragraph immediately after paragraph (c) — (ca) five percent of the total number of members in paragraphs (a), (b) and (c) nominated by parliamentary political parties according to their proportion of members of the National Assembly and in accordance with Article 90, to represent persons with disabilities. (b) by inserting the following new clauses immediately after clause (1) — (1A) In the event that the	mechanism and not a permanent entitlement for a few members. The proposal poses the challenge of implementation on the Commission’s part. Enforcing the 5% quota for persons with disabilities after allocating the gender top may result in a fall short in meeting gender parity. This may result into perpetual allocation as the Commission will be required to strike a balance between the gender and PWD quota. This raises the conversation on whether there is a hierarchy or priority for the different categories of marginalized groups. Intersectionality and its applicability in the party list framework also needs to be considered.	i. In amending Article 97(1)(c), it would be prudent to establish the specific categories of marginalized groups to be included in the list of 12 members. ii. In the meantime, noting the progressive realization referenced under Article 54(2), in the guidelines on the requirements for the party lists given to political parties, the Commission may require political parties to prioritize categories of marginalized groups such as persons with disabilities that remain underrepresented. The allocation could also be done in the same fashion that allocation is done in the county assemblies’ list where a

S No.	Section of the law	Clause of the Bill	IEBC Comments	Proposals and Justification
	(2) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1)(a).	membership of the National Assembly under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, there shall be nominated additional number of special seat members necessary to ensure that not more than two-thirds of the membership of the House are of the same gender. (1B) The number of special seats under clause (1A) shall be determined after the declaration of the results of a general election.		marginalized list is administered first before the gender top up list. Therefore, the PWD quota should precede the gender top up allocation. It would be imperative to have a consequential provision that would ensure representation of PwDs in each County Assembly.
3.	Membership of the Senate. 98. (1) The Senate consists of— (a) forty-seven members each elected by the registered voters of the counties, each county constituting a single member constituency; (b) sixteen women members who shall be nominated by political parties according to their proportion of members of the Senate elected	Clause 5 Article 98 of the Constitution is amended— (a) in clause (1) by deleting paragraph (d) and substituting therefor the following new paragraph — (d) five percent of the total number of members in paragraphs (a), (b) and (c) nominated by parliamentary	Implementation of the proposal poses the same challenges as outlined under clause 4 above.	

S No.	Section of the law	Clause of the Bill	IEBC Comments	Proposals and Justification
	under paragraph (a) in accordance with Article 90; (c) two members, being one man and one woman, representing the youth; (d) two members, being one man and one woman, representing persons with disabilities; and (e) the Speaker, who shall be an <i>ex officio</i> member. (2) The members referred to in paragraph (1)(c) and (d) shall be elected in accordance with Article 90. (3) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1)(a).	political parties according to their proportion of members of the Senate and in accordance with Article 90, to represent persons with disabilities. (b) by inserting the following new clauses immediately after clause (1)— (1A) In the event that the membership of the Senate under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, there shall be nominated additional number of special seat members necessary to ensure that no more than two-thirds of the membership of the House are of the same gender. (1B) The number of special seats under clause (1A) shall be determined after the declaration of the results of a general election.		
4.	Election of members of Parliament.	Clause 6	The Commission notes the proposal as a consequential	

S No.	Section of the law	Clause of the Bill	IEBC Comments	Proposals and Justification
	101. (1) A general election of members of Parliament shall be held on the second Tuesday in August in every fifth year. (2) Whenever a vacancy occurs in the office of a member of the National Assembly under Article 97(1)(c), or of the Senate under Article 98(1) (b), (c) or (d), the respective Speaker shall, within twenty-one days of the occurrence of the vacancy, give notice in writing of the vacancy to— (a) the Independent Electoral and Boundaries Commission; and (b) the political party on whose party list the member was elected or nominated. (3) A vacancy referred to in clause (2) shall, subject to clause (5), be filled in the manner prescribed by an Act of Parliament within twenty-one days of the notification by the respective Speaker. (4) Whenever a vacancy occurs in the office of a member of the National	Article 101 of the Constitution is amended in clause (2) by deleting the words “under Article 97 (1)(c) or of the Senate under Article 98 (1)(b),(c) or (d)” appearing immediately after the words “National Assembly” in the introductory clause and substituting therefor the words under “Article 97(1)(c), (ca) or (1A) or of the Senate under Article 98 (1)(b),(c), (d) or (1A)”.	amendment following the proposals under Articles 90, 97 and 98.	

S No.	Section of the law	Clause of the Bill	IEBC Comments	Proposals and Justification
	Assembly elected under Article 97(1)(a) or (b), or of the Senate elected under Article 98(1)(a)— (a) the respective Speaker shall, within twenty-one days after the occurrence of the vacancy, give notice in writing of the vacancy to the Independent Electoral and Boundaries Commission; and (b) a by-election shall be held within ninety days of the occurrence of the vacancy, subject to clause (5). (5) A vacancy referred to in clause (4) shall not be filled within the three months immediately before a general election.			

E. CONCLUSION

The Bill presents a practical legislative attempt to resolve the long-standing challenge of implementing the two-thirds gender principle while enhancing PWD representation. However, the Committee is requested to consider the implementation challenges identified in the matrix and to consider the issues raised.

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MOSES SUNKULI, OGW

Ag. COMMISSION SECRETARY/CEO

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		In addition to nomination, Parliament should establish direct electoral pathways for persons with disabilities, ensuring that they can access representation through competitive elections as well as party lists. Further, the amendment should require diversity within disability representation, mandating inclusion of women with disabilities, youth with disabilities, and persons across different disability categories to reflect the full spectrum of lived experiences. To support effective participation, the State should provide leadership and governance training for representatives with disabilities, equipping them with the skills and resources necessary to exercise their mandate meaningfully.	Embedding diversity safeguards will ensure that women, youth, and persons across different disability categories are meaningfully included, reflecting the full spectrum of lived experiences. Finally, state-supported leadership and governance training will equip PWD representatives with the skills and resources necessary to exercise their mandate effectively. Together, these measures will move disability representation beyond numerical compliance toward substantive participation, dignity, and influence in decision-making.
	AWSC	AWSC observes that the Bill's current provision for enforcing the two-thirds gender principle in the National Assembly (Clause 4(a)(i)) is indeterminate and non-self-executing. It leaves compliance dependent on discretionary or delayed processes rather than embedding a clear constitutional trigger. This risks perpetuating the historical failure to	To remedy this, AWSC proposes a self-executing mechanism: immediately upon declaration of general election results, if the Assembly does not meet the two-thirds gender threshold, the Independent Electoral and Boundaries Commission (IEBC) shall automatically allocate and declare additional special seat members of the under-represented gender. IEBC must act within seven days, and the Assembly shall not be lawfully constituted for its first sitting until compliance is achieved.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		First, the proposed Articles 97(1A) and 98(1A) introduce automatic post-election nomination of additional members where electoral outcomes do not meet the gender threshold. While intended to secure compliance with the constitutional principle of gender balance, this approach may dilute voter agency by finalising parliamentary composition after elections, and may create perverse incentives for political parties to under-invest in fielding candidates from the under-represented gender—most commonly women, given observed electoral trends—relying instead on nomination to achieve compliance.	This method avoids disadvantaging candidates from smaller constituencies and ensures that performance is assessed proportionately. The corrective seats would then be filled sequentially from this ranked pool. This model has several advantages: it grounds post-election inclusion in demonstrated voter support rather than party discretion, reduces party gatekeeping, discourages parties from neglecting women candidates, and encourages greater participation of women in competitive contests. Outreach also stresses the importance of clarifying the representational status of nominees under this model. Although they would be drawn from constituency contests, they should not be treated as constituency MPs. Instead, they should be designated as national or special-interest representatives, focusing on legislative participation and advancing constitutional objectives rather than constituency service. This distinction preserves the integrity of constituency representation while allowing the corrective mechanism to operate without creating competing claims of mandate.
	The Consortium of Disabled Persons Organisations in Kenya	Clause 4 should be strengthened to ensure that the constitutional guarantee of five percent representation for persons with disabilities is both clear and substantive. The threshold should be defined in absolute numbers, rather than left to interpretation, so that compliance is measurable and enforceable.	This proposed amendment will ensure that the constitutional guarantee of five percent representation for persons with disabilities is not left vague or symbolic, but translated into measurable and enforceable outcomes. Defining the quota in absolute numbers will prevent ambiguity. Introducing direct electoral pathways alongside nomination will reduce the risk of tokenism and affirm the political agency of PWDs as elected representatives.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		and procedures if party lists are exhausted before quotas are met.	would exercise full legislative powers without direct voter mandate.
	ORPP	Amend this provision further to fully exclude PWDs from Article 97(1)(c).	The Bill deletes the reference to persons with disabilities (PWDs) from Article 97(1)(c) and instead introduces a dedicated 5% quota for their representation in Parliament. ORPP supports this approach but cautions that unless the drafting is explicit, PWDs could still be nominated under the general “special interests” category in Article 97(1)(c) because of the residual wording (“including”). This would create double representation: PWDs would benefit both from their guaranteed 5% quota and from the special interest seats, thereby crowding out other groups such as workers, youth, or minorities who rely on Article 97(1)(c) for representation. To avoid this duplication, ORPP recommends that Article 97(1)(c) be expressly qualified to exclude PWDs, ensuring that their representation is secured solely through the new 5% quota. This preserves balance among special interest categories, prevents overlap, and guarantees that each group has distinct and protected space within Parliament.
	Outreach for Action Kenya	In implementing the two-thirds gender principle, the Bill relies on post-election corrective nomination through party lists. While this approach is constitutionally recognised, its expanded and automatic use raises practical and institutional challenges that bear on the effectiveness and democratic legitimacy of the proposed mechanism.	Outreach for Action Kenya proposes replacing party-list nominations with a performance-based corrective model. Under this approach, when a gender gap arises after elections, a national pool would be created from the best-performing unelected candidates of the under-represented gender. To qualify, candidates must meet a minimum vote threshold, ensuring that only those with genuine electoral support are considered. The pool would be ranked nationally by vote share (percentage of votes obtained in their constituency), with absolute vote totals used only as a secondary tie-breaker.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
			and how to account for individuals who belong to more than one marginalized group (intersectionality)
	OAG-DOJ	The OAG-DOJ supports the Bill in principle but notes that the gender top-up mechanism must be accompanied by clear, transparent criteria for nominating special seat members.	Including explicit criteria for nomination will guarantee transparency and fairness in the allocation of gender top-up seats.
	KLRC	On the PWD quota, the KLRC noted that the 5% PWD seats under the new proposed paragraph (ca) will add approximately 17 to 18 members in the National Assembly. This will create fiscal implications not addressed in the Bill. Regarding the gender quota top-up, the KLRC noted that there is a need to— ○ provide clarity on the maximum number of additional seats, ○ consider anchoring corrective nominations within the party-list proportional representation framework under Article 90; ○ explicitly assign the IEBC the responsibility for computing compliance and administering corrective nominations; ○ provide for a formula for allocating additional seats among parties, timeframe for completing nominations for instance 21 days	The Kenya Law Reform Commission recognizes the Bill's intent to finally operationalize constitutional guarantees of gender equality and disability inclusion. However, they caution that the proposed mechanisms raise serious institutional, fiscal, and democratic concerns that must be addressed before enactment. On the PWD quota, KLRC noted that introducing a five percent requirement under the new paragraph (ca) in Article 97 would add approximately 17–18 members to the National Assembly. This expansion has significant fiscal implications that the Bill does not address, raising questions about sustainability and prudent use of public resources. On the gender quota top-up, KLRC highlighted several risks. First, the absence of a ceiling on the number of additional seats could lead to ballooning the size of Parliament, undermining predictability and stability in its composition. Second, a large increase in nominated members risks distorting voting dynamics and committee balance, weakening the role of elected representatives. Third, corrective nominations made after elections may dilute the sovereignty of electoral choices, since nominees

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
			legislature, impose an unsustainable financial burden, and fail to genuinely empower women. It has also been argued that special seats undermine the democratic principle of direct election, with nominated women potentially being perceived as “token” representatives rather than leaders who earned their positions, thereby weakening their credibility and authority.
	NCPWD	The Bill states: <i>“five percent of members...to represent persons with disabilities.”</i> but it does not indicate how disability status will be verified. A clarification is also needed on whether the 5% will be calculated before or after the gender "top-up" seats are added.	Without a clear mechanism to verify who qualifies as a “person with disabilities,” the five percent quota risks being misapplied or abused. Verification ensures that only individuals who genuinely meet the criteria benefit from the constitutional provision. The National Council for Persons with Disabilities already has a certification system, so linking the quota to such verification would safeguard integrity and prevent tokenistic or fraudulent nominations. Secondly, it is important to specify whether the five percent quota is calculated before or after gender “top-up” seats are added. If calculated after, the quota could be diluted or inconsistently applied, undermining the constitutional guarantee of representation. Clear guidance ensures that the intended minimum representation of persons with disabilities is achieved consistently, without being overshadowed by other affirmative action measures.
	IEBC	There is a need to clarify which of the various nominated positions will take priority over others. Should the disability quota come first, or the gender quota? What happens to intersectional candidates?	Implementing both the two-thirds gender rule and the five percent disability quota at the same time may cause difficulties. Adjusting for one requirement could disrupt the other, leading to repeated allocations and uncertainty. This raises questions about whether one quota should take priority,

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		guarantee genuine inclusion of women, youth, and persons with disabilities.	By requiring publication of party lists, alternating candidates by gender (female first), and embedding a 50:50 representation of young men and women, the amendment eliminates opacity and tokenism. More importantly, empowering IEBC to reject non-compliant lists and require repetition introduces a pre-emptive enforcement mechanism, ensuring accountability before elections rather than relying on post-hoc remedies.
4	NGEC	Amend clause 4(a)(ii) by deleting the new paragraph ca and substitute with the following— (ca) Five percent of the total number of members in paragraph (a) to represent persons with various categories of disabilities of either gender, eight members being four men and four women representing the youth and eight members, being four men and four women representing the ethnic minorities and marginalised communities nominated by parliamentary political parties according to their proportion of members of the National Assembly and in accordance with Article 90 to represent persons with disabilities.	This proposal seeks to implement Articles 55, 56 and 100. The proposal also proposes to calculate the 5% percentage of PWD from the 290 elected members and not all the members as proposed in the Bill since the Bill's proposal includes both the directly elected members and the affirmative action members. NGEC's approach avoids double-counting affirmative measures and ensures equity across groups.
	KNCHR	Proposes to introduce a sunset provision of 20 years for the gender top up.	Public concerns have arisen about the proposal to create additional seats for women in Parliament. These concerns include fears that such measures could lead to a bloated

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		(IEBC) should develop and enforce disability sensitive nomination guidelines, guaranteeing accessibility of nomination processes and mandating the participation of registered Organizations of Persons with Disabilities (OPDs) in vetting candidates. (c) Political parties should have a legal obligation to consult OPDs when preparing party lists, ensuring that disability representation is not left to party discretion alone. (d) To promote transparency and accountability, all party lists should be publicly disclosed and subjected to independent audit to verify compliance with inclusion requirements.	equality and prevent the capture of affirmative action spaces by politically connected individuals. In this way, the amendment transforms party lists from symbolic gestures into meaningful vehicles of democratic inclusion.
	African Women Studies Centre (AWSC)	AWSC notes that the Bill's current wording on party list preparation could invite subjective interpretation and leave room for opaque, exclusionary, or elite-controlled nomination practices. Without clear standards, party lists risk being manipulated, undermining internal party democracy and failing to	AWSC proposes that party lists be prepared through an inclusive, transparent, competitive, and participatory process based on predetermined, objective, and publicly accessible criteria. This ensures equal opportunity for members, compliance with constitutional principles (Articles 10, 27, and 100), and strengthens internal party democracy.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		Be that as it may, requiring a party list under Article 90 of the Constitution to reflect marginalised groups does not strictly translate to the composition of Parliament given that political parties are at liberty to prioritize certain demographics over others unless stated otherwise in law.	
	ORPP	Amend the term limit from two terms to one term.	Party list seats should serve as a stepping stone into mainstream politics. Once someone has benefited from the exposure and experience of serving through a special seat, they should ideally progress to contesting in single-majority constituencies. Data shows that some individuals who first entered Parliament through party list nominations later successfully contested elective seats. This demonstrates that affirmative action seats can work as transitional platforms, but only if they are not monopolized by the same people cycle after cycle.
	The Consortium of Disabled Persons Organisations in Kenya	Clause 3 should be amended to ensure the meaningful inclusion of persons with disabilities in party list processes. Specifically— (a) political parties should be required to include at least five percent of persons with disabilities in winnable positions on their party lists, rather than symbolic placements. (b) The Independent Electoral and Boundaries Commission	This amendment is necessary to ensure that the constitutional promise of inclusion for persons with disabilities is realised in practice rather than diluted through tokenistic placements. Historically, party lists have been controlled by elites and used as instruments of patronage, often sidelining grassroots PWDs. By mandating quotas in winnable positions, requiring disability-sensitive guidelines, and embedding consultation with OPDs, the amendment guarantees that representation will be substantive and grounded in lived experience. Public disclosure and independent audits further safeguard transparency and accountability, ensuring that party lists genuinely advance

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
	ORPP	Clause 3(e) provides that each party list is to reflect the representation of the marginalised groups set out in Article 100 to the greatest extent possible taking into account the nature of the party list. Article 100 of the Constitution requires Parliament to enact a legislation to promote representation in Parliament of women, persons with disabilities, youth, ethnic and other minorities, and marginalised groups. Various party lists have different parameters that are not confined to the demographics under Article 100 of the Constitution. For instance, the party list that leads to satisfaction of Article 97(1)(c) includes workers. Demanding that the said list reflects Article 100 marginalised groups would be changing the parameters of Article 97(1)(c) particularly with respect to workers. A reading of Article 97(1)(c) does not require workers to be drawn from the Article 100 groups. Further, Articles 27(4) and 260 of the Constitution have a broader description of marginalised groups that would not affect Article 97(1)(c) of the Constitution with regard to workers.	Recraft the provision to reference broader equality language (such as Article 27(4)) rather than limiting it to Article 100 groups. This avoids narrowing categories like workers and ensures inclusivity without constitutional clashes. ORPP also notes that reflecting Article 100 groups in party lists does not automatically guarantee Parliament's composition will mirror those groups, since parties retain discretion unless the law explicitly requires balance.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		proposed Article 97(1A) or only to the regular proportional representations seats under clause 1 or both.	Similarly, KLRC noted that the proposed two-term limit for party list members is a sound safeguard against entrenchment, but it is unclear whether this restriction also applies to those nominated under the new gender top-up provisions. They advise that the Bill should explicitly clarify the scope of the term limit to ensure consistency and prevent loopholes.
	ORPP	The proposal for democratic involvement in selection of party lists aligns with Article 91(1)(e), which provides that every political party shall respect the right of persons to participate in the political process, including minorities and marginalised groups. ORPP's position is that while the Bill's proposal to involve party members democratically in list generation is commendable, it is redundant at the constitutional level because the principle is already embedded in the Elections Act and Political Parties Act. They argue that such provisions should remain in legislation and regulations, where they can be more easily updated and enforced, rather than being elevated into the Constitution.	The ORPP's submission on Clause 3(d) points out that the requirement for party members to be "democratically involved" in generating party lists is already addressed in existing statutes. Specifically— ➤ Section 34 of the Elections Act requires that party lists submitted to IEBC must be prepared in accordance with the party's constitution and nomination rules. ➤ Section 34(6B) of the Elections Act led to the development of the Elections (Party Primaries and Party Lists) Regulations, 2017, which provide detailed guidelines on how party lists should be prepared. ➤ Section 9 of the Political Parties Act, read together with the Second Schedule, sets out requirements for party constitutions and rules, including provisions on nomination of candidates to party lists. ➤ Additionally, Part IVA of the Political Parties Act and Sections 28 and 31 of the Elections Act already confine party nominations to party members, either directly or indirectly.
	ORPP	Regarding clause 3(d), the ORPP recommends an amendment from " <i>party list</i> " to " <i>party lists</i> ".	Under the existing law, political parties submit 98 party lists hence the need for the list to be in plural form.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		minorities and marginalized communities. It is important to have clarity to help the Commission implement the provisions.	Appropriate legislation reinforcing the policy stipulation ought to be enacted.
	IEBC	On the proposal to introduce term limits for nominated members, the Commission welcomes the proposal to set a term limit for nominated members. This will allow more persons to access representation and realize the intention of party list representation being a transitional mechanism and not a permanent entitlement for a few members. However, it is proposed that the term limit be defined further to state whether the two term limit is one off or a nominated person may serve the National Assembly for a maximum of two terms and thereafter the Senate for another two terms.	Clarification of term limits will broaden representation and prevent the monopolization of affirmative action sets.
	KLRC	The KLRC proposal in clause 3 are as follows— One, define what the term “<i>democratically involved</i>” means to avoid vagueness. Secondly, the two-term limit should clarify whether it applies to top up members nominated under the new	KLRC welcomed the idea of requiring party members to be “ <i>democratically involved</i> ” in generating party lists, but cautioned that the phrase is too vague and could be interpreted differently by each political party. To avoid abuse or superficial compliance, they recommend that the Elections Act or regulations spell out exactly what “democratic involvement” means, for example, whether it requires internal voting, consultations, or transparent nomination procedures.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		<i>as set out in the respective party constitution and nomination rules.</i>	
	NCPWD	Proposes an amendment to give the NWPWD a monitoring role in verifying that political party nomination processes for PWDs are truly " <i>fair and competitive</i> " as required by the new Article 90(2)(d).	This will ensure that party nomination processes for persons with disabilities are genuinely fair and competitive.
	State Department for Gender Affairs and Affirmative Action (SDGAAA)	Propose a refinement or narrowing of Article 90's proposed changes—removing or avoiding prescriptive language about internal party procedures from the Constitution, and leaving it to statutory or regulatory frameworks.	The Department agrees with the intent to democratise party lists and ensure representation of marginalised groups. However, it cautions that detailed operational procedures for internal party processes may be better handled through the Political Parties Act and IEBC regulations, rather than being entrenched in the Constitution. This would preserve flexibility in electoral law.
	State Department for Gender Affairs and Affirmative Action (SDGAAA)	Delete the provision on term limits for nominated members.	On term limits for nominated members, the Department acknowledges the value of leadership renewal and broader representation but similarly advises that such policy matters are more appropriately addressed through legislation or regulations, not constitutional amendment.
	IEBC	Clause 3 (b) (e) makes reference to Article 100 which requires Parliament to enact legislation to promote representation in Parliament of specific marginalized groups. The proposal is well intentioned and consistent with constitutional principles of inclusion, but its practical implementation may be difficult as there is need for clarity on who qualify as ethnic and other	Parliament to enact legislation that operationalises Articles 100 and 197 of the Constitution. This would promote effective representation in Parliament and County Assemblies of the different categories of marginalized groups listed in the Article. In addition, the Commission submits that there is need to provide a clear definition of the term ethnic and other minorities in the law for certainty during the party list election.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		submissions of party lists but before a general election.	force after the statutory deadlines for submitting party lists but before the general election, political parties would already have filed their lists under the old legal framework. Party lists would not reflect the new constitutional obligations (gender top-up, 5% PWD quota, broader marginalized groups). Parliament could be constituted without meeting the new thresholds, undermining compliance with Articles 27(8), 54(2), and 81(b). IEBC and ORPP would lack authority to demand revised lists once deadlines have passed, leaving them unable to implement the new rules.
3	NGEC	Amend paragraph (d) by inserting the phrase “ <i>special interest group</i> ” before the phrase “ <i>members</i> ”.	This is to ensure that only special interest group members nominate one of their own to represent their interests. If accepted, the new clause would read as follows— <i>“special interest group members of a political party are democratically involved in the generation of the party list through a fair and competitive process as set out in the respective party constitution and nomination rules”</i>
	KNCHR	Amend Clause 3 (e) to replace ‘ <i>to the greatest extent possible</i> ’ with a minimum representation requirement.	The phrase “ <i>to the greatest extent possible</i> ” is vague and open-ended, which may risk non-compliance by parties, especially in cases of inadequate or marginalized group representation.
		Amend clause 3(d) to insert the word “<i>objective</i>” immediately after the word “<i>fair</i>”. The amendment should read as follows— <i>Members of a political party are democratically involved in the generation of the party list through a fair, objective and competitive process</i>	This will strengthen the internal mechanisms of political parties and mandate them to carry out the nomination process in a transparent and democratic manner and that the representatives of special interest groups are selected on merit.

THE SENATE



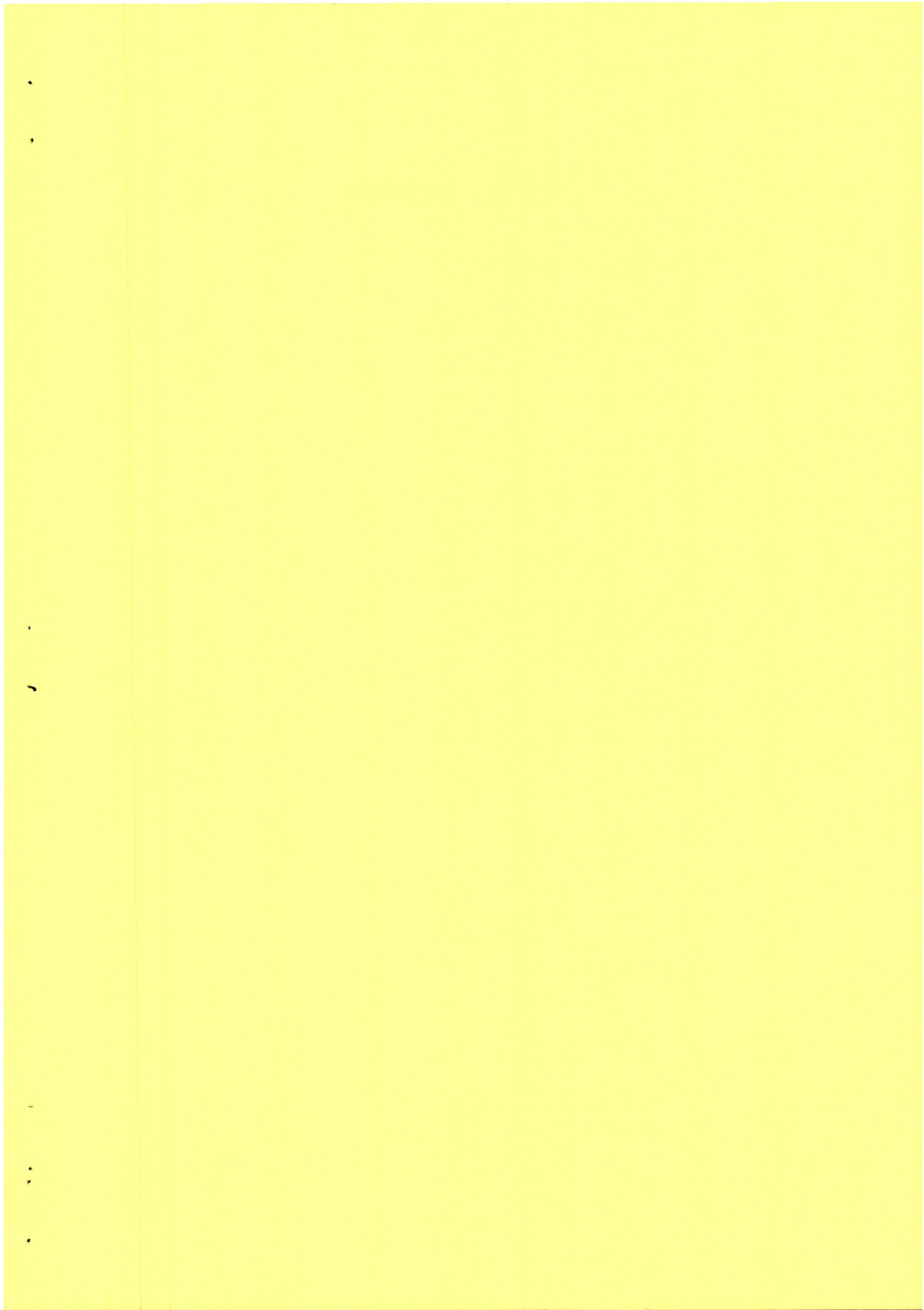
MATRIX

THE CONSTITUTION OF KENYA (AMENDMENT)(NO. 2) BILL, 2025 (SENATE BILLS NO. 16 OF 2025)

Stakeholders:

- | | |
|---|--|
| <ol style="list-style-type: none">1. African Women's Studies Centre (AWSC), University of Nairobi2. The Office of the Registrar of Political Parties3. Maendeleo ya Wanawake Organization (MYWO)4. Kenya National Commission on Human Rights (KNCHR)5. Electoral Law and Governance Institute for Africa (ELGIA)6. National Council for Persons with Disabilities (NCPWD)7. National Treasury8. The Independent Electoral and Boundaries Commission (IEBC)9. Federation of Women Lawyers (FIDA-Kenya) | <ol style="list-style-type: none">10. The State Department for Gender Affairs & Affirmative Action11. The Law Society of Kenya (LSK)12. Kenya Law Reform Commission13. National Women's Steering Committee (NWSC)14. National Gender and Equality Commission15. Office of the Attorney General and Department of Justice16. FIDA-Kenya17. Consortium of Disabled Persons Organizations in Kenya (CDPOK)18. Outreach for Action Kenya |
|---|--|

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
2	ORPP	The Committee should take note of the timelines for submission of party lists under the Elections Act. The Bill may come into force after the timelines for	Under the provisions of section 35 and 35A of the Elections Act, a party list is submitted to IEBC at least 45 days before a general election while parties submit party lists at least 14 days before the date of submission of the lists to IEBC. The implication is that if the Bill comes into

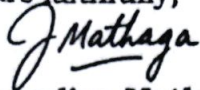


***Annex 5: Matrix
of stakeholder
submissions on
the Bill***

by parents and caregivers, without creating competition, hierarchy, or unintended exclusion within the disability community.

I appreciate the opportunity to submit these views for consideration and trust that the Senate will give due weight to the lived experiences of persons with disabilities and their families as it deliberates on this important Bill.

Yours faithfully,



Jacqueline Mathaga

Trustee Arthur's Dream Autism Trust (ADAT Foundation)

Founder Through The Roof Parent Network

Constitution and Kenya's obligations under the United Nations Convention on the Rights of Persons with Disabilities.

Against this backdrop, I respectfully submit that constitutional amendments relating to disability must be approached with care. While constitutional recognition is vital, it does not on its own guarantee meaningful participation. The lived reality for many persons with disabilities and their families remains one of limited access to inclusive education, affordable healthcare, assistive devices, social protection, and full participation in public and community life. These challenges persist despite robust constitutional and legislative provisions, pointing to ongoing gaps in implementation, enforcement, and resourcing.

I note that the proposed amendments rely significantly on party list mechanisms under Article 90 of the Constitution. I respectfully urge the Senate to ensure that any additional nomination formulas, including those relating to persons with disabilities, are accompanied by clear eligibility criteria, transparent processes, and strong safeguards against tokenism. Without such measures, there is a risk that increased numerical representation may not translate into effective advocacy or accountability for the disability community.

In this regard, I wish to underscore the importance of recognising parents and primary caregivers of children with disabilities as a critical stakeholder group within any party list or nomination framework developed pursuant to Article 90. Parents of children with disabilities often serve as lifelong advocates, system navigators, and coordinators of care for their children, particularly where children are young, non-speaking, or require significant support. Their lived experience offers valuable insight into policy gaps across education, healthcare, social protection, and community inclusion, and can meaningfully inform legislative and oversight functions.

At the same time, it is essential that such recognition does not displace or diminish the fundamental principle that persons with disabilities must represent themselves. Political representation of persons with disabilities should remain anchored in the leadership, voice, and agency of persons with disabilities themselves, in keeping with the spirit of dignity, autonomy, and participation affirmed under Article 54 of the Constitution and the Persons with Disabilities Act, 2023. Parents and caregivers should therefore be understood as complementary contributors to disability representation, not substitutes for self-representation.

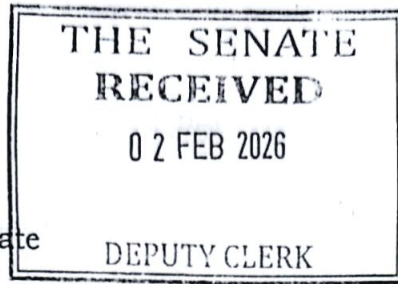
I respectfully urge the Senate to ensure that nomination criteria and party list frameworks strike this balance carefully, so that enhanced representation strengthens both self-advocacy by persons with disabilities and informed advocacy

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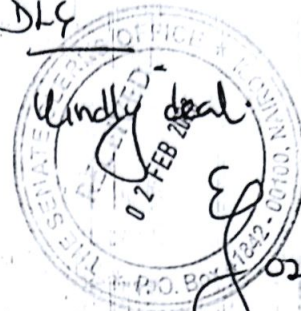
March 30th, 2026

To:

The Clerk of the Senate
Parliament of Kenya
Nairobi



DGAC
DLG



Has/Lead
Clerk
JLHPC
Please deal
my
21/2/2026

02/02/2026

RE: Submission on The Constitution of Kenya (Amendment) (No. 2) Bill, 2025 (Senate Bills No. 16 of 2025)

Dear Sir,

I write to submit my views on the Constitution of Kenya (Amendment) (No. 2) Bill, 2025, pursuant to the invitation for public participation issued by the Senate.

I make this submission as a Kenyan citizen, a parent of a child with a disability, and a disability advocate with lived and professional experience working alongside families, institutions, and policymakers on matters of disability inclusion, access to services, and justice.

I wish at the outset to affirm the intent of the Bill, particularly the proposal to amend Articles 97 and 98 of the Constitution to ensure that at least five percent of the members of the National Assembly and the Senate are representatives of persons with disabilities. This proposal addresses a long-standing gap in political representation and is consistent with the national values and principles of governance set out in Article 10 of the Constitution, including human dignity, equity, inclusion, and protection of the marginalised.

The Constitution of Kenya (2010) already provides a strong foundation for the protection and participation of persons with disabilities. Article 54 guarantees the right to dignity, respect, reasonable access to public spaces and services, appropriate communication formats, and opportunities that enable full participation in society. Article 27 affirms equality and freedom from discrimination, while Article 56 places an affirmative obligation on the State to implement measures in favour of minorities and marginalised groups. In this context, enhanced political representation of persons with disabilities is constitutionally sound and necessary.

I further note that Parliament recently enacted the Persons with Disabilities Act, 2023, which repealed the Persons with Disabilities Act, 2003. The 2023 Act significantly strengthens Kenya's disability rights framework by providing detailed provisions on participation, representation, accessibility, enforcement, and institutional responsibility, and by aligning domestic law more closely with the

- **Implementation:** The creation of new, additional nominated seats (the Top-Up), as currently proposed by the Bill, shall be legislatively stipulated as a **conditional backstop**.
- **Activation:** This mechanism must **only be triggered** when the deficit for the under-represented gender cannot be covered by fully utilizing the 47 Tier 1 Gender Balance Seats.

Conclusion and Final Recommendation

By making the Bill's Top-Up Mechanism the **secondary, conditional backstop**, and making the existing 47 seats the **primary, fiscally-neutral mechanism**, Parliament introduces a framework that is both constitutionally compliant and fiscally responsible.

I recommend that the Committee **pass the Bill** with an amendment establishing this tiered order of implementation. This approach respects the need for an immediate legal solution (the Top-Up) while ensuring **long-term structural sustainability** for the benefit of all Kenyan taxpayers.

Public Participation Comment on the Constitution of Kenya (Amendment) Bill, 2025 (The Two-Thirds Gender Rule)

To: The Committee on Justice and Legal Affairs (JLAC) / Relevant Parliamentary Committee
From: Frank Mutuma Mwangi
Subject: Strong Support for the Bill's Objective with a Proposed Amendment for Sustainable Implementation.

Affirmation of Constitutional Mandate and Support for the Bill

I fully support the principal object of this Bill to achieve immediate compliance with **Article 27(8)** and **Article 81(b)** of the Constitution. The creation of new, additional seats through party lists—the **Top-Up Mechanism** proposed by the Bill—is a necessary measure to guarantee constitutional fidelity now and provide the long-awaited legal framework for the two-thirds gender rule. We must act decisively to settle this constitutional debt.

Proposed Amendment: Integrating a Fiscally Prudent, Two-Tiered Implementation

While the Bill's Top-Up Mechanism (new seats) is necessary for immediate compliance, it is also a permanent increase to the public wage bill. The Committee is mandated to ensure that any solution is consistent with the **National Value of Sustainable Development** under **Article 10(2)(d)**. I propose an amendment to the Bill that establishes a tiered implementation order, prioritizing fiscal prudence for the long term.

Constitutional and Political Context

I acknowledge that the structural change required for a fiscally neutral solution may not be immediately applicable in fully solving our current gender deficit. However, relying solely on expanding Parliament is fiscally unsustainable and runs counter to the spirit of good governance. The national interest demands that Parliament adopt a sustainable framework for the future, even as we pass the necessary amendment now.

The Sustainable Compliance Model: An Amendment to the Implementation Order

I recommend that the Bill be amended to establish the following **Two-Tiered Implementation Order** for achieving the required minimum number of the under-represented gender:

1. **Tier 1: Primary Mechanism (Fiscally Neutral & Impartial):**
 - **Action:** Amend the designation of the **47 County Woman Representative seats (Article 97(1)(b))** to be "County Gender Balance Seats."
 - **Implementation:** These seats shall be mandated as the **primary and convertible mechanism** for gender balancing, filled by the under-represented gender (male or female) to meet the one-third threshold. This is a **fiscally neutral** solution utilizing existing resources first.
2. **Tier 2: Secondary Mechanism (The Bill's Proposed Top-Up):**

IN CONCLUSION:

KEWOPA reiterates its unwavering support for the Constitution of Kenya (Amendment) Bill, 2025 (Senate Bills No.16 of 2025). The Bill presents a historic opportunity to finally give life to the promise of equality enshrined in the Constitution. With the proposed refinements, the Bill can achieve constitutional compliance in a manner that is progressive, transparent, inclusive, and sustainable.

KEWOPA once again appreciates the opportunity to present its submissions on the Bill and remains available at any given time to provide further clarification on the issues canvassed in this memorandum.

Yours Sincerely,



Hon. Leah Sankaire, MP

CHAIRPERSON – KENYA WOMEN PARLIAMENTARY ASSOCIATION

- The Bill expressly mandates the development of subsidiary legislation within a fixed timeline post-enactment to operationalize these safeguards.

These measures would ensure that nomination seats fulfill their constitutional purpose of promoting inclusion, competence, and equity.

3. Cost Implications of Additional Seats

KEWOPA is also cognizant of public concerns regarding the cost implications of the additional top-up seats proposed under the Bill. Through its engagements with various stakeholders, KEWOPA has noted that financial considerations have become a central point of concern and resistance to the realization of the two-thirds gender rule. While the Multi-Sectoral Working Group report estimates that the cost to the average Kenyan would be approximately sixty shillings, this figure has not been supported by a detailed and publicly accessible cost analysis from the National Treasury. KEWOPA is of the view that the absence of such analysis risks fueling misinformation and undermining public confidence in the Bill. It is therefore recommended that the National Treasury undertake and publish a comprehensive cost implication and cost-benefit analysis to demonstrate that the financial impact of the top-up mechanism is marginal relative to the national budget and outweighed by the long-term democratic, social and economic benefits of inclusive governance. Importantly, KEWOPA underscores that constitutional compliance, and the realization of fundamental rights should not be reduced to cost considerations alone.

KEWOPA therefore recommends that:

- The National Treasury be required to undertake and publish a **comprehensive cost-benefit analysis** of the Bill.
- Such analysis should highlight the marginal cost relative to the national budget; long-term socio-economic benefits of inclusive governance; comparative costs of alternative compliance mechanisms.
- The findings be incorporated into public education and civic engagement efforts to counter misinformation.

- Such a formula could culminate in the full 5% realization within four parliamentary terms (approximately 20 years), allowing institutions to adjust gradually.
- This phased approach would likely result in the incremental addition of approximately 17 members over the period, thereby minimizing resistance, ensuring sustainability, and enhancing political acceptability. This approach balances constitutional fidelity with practical implementation and reduces the risk of backlash that could undermine broader inclusion efforts.

2. Clause 3(d-e) of the Bill: Safeguarding the Integrity of Nomination Seats and Party Lists

KEWOPA further welcomes the proposed amendments to Article 90, particularly the requirement that party lists be generated through democratic, fair and competitive processes involving party members, and that such lists reflect the representation of marginalized groups as envisaged under Article 100. The introduction of a two-term limit for nominations under the top-up system is also a positive development, as it promotes rotation and discourages entrenchment. However, KEWOPA remains concerned that these provisions, as currently framed, may not sufficiently address the long-standing abuse of party lists and nomination processes. In practice, women have often been shortchanged through opaque party list processes, with nomination slots awarded to politically connected individuals rather than competent and deserving candidates who actively advance party ideology and objectives.

To safeguard the integrity of nomination seats, KEWOPA emphasizes the need for clearer guidelines to govern party list preparation and nomination processes. These guidelines should promote transparency, accountability and merit, and ensure that nomination seats serve their intended constitutional purpose of enhancing inclusion rather than rewarding patronage. Political parties should be required to demonstrate how nominated individuals meet objective eligibility criteria and how they have contributed to the party's agenda. Equally important is the role of the Independent Electoral and Boundaries Commission, which should be empowered to scrutinize, audit and reject non-compliant party lists. KEWOPA further recommends that the Bill either incorporates these safeguards directly or expressly mandates the development of subsidiary legislation within a defined timeframe after enactment to operationalize these principles.

KEWOPA therefore recommends that:

- Clear statutory guidelines be included (or expressly mandated) to govern the preparation of party lists, including objective eligibility criteria; transparency in ranking and selection; public disclosure of the criteria used.
- Political parties be required to demonstrate how nominated individuals have contributed to or advanced the party's agenda; provide written justification for deviations from gender-balanced rankings.
- The IEBC be empowered to reject non-compliant party lists; audit party list processes prior to elections and before the nomination process.

The Bill therefore represents a critical opportunity for Parliament to finally fulfil its constitutional obligation under Articles 27(8), 81(b), 100 and related provisions, while also aligning Kenya with its international and regional commitments under instruments such as the Convention on the Elimination of Discrimination Against Women, 1979 (CEDAW) and the Maputo Protocol, 2003.

KEWOPA welcomes and strongly supports the Bill as a historic and necessary intervention to resolve a constitutional crisis that has persisted since the promulgation of the Constitution in 2010. The failure to operationalize the two-thirds gender principle has undermined constitutional supremacy, weakened public confidence in democratic institutions, and perpetuated structural exclusion of women from political leadership.

While KEWOPA is broadly in support of the Bill, we wish to highlight specific clauses that require refinement to ensure the Bill is implementable and equitable while remaining faithful to the spirit and letter of the Constitution.

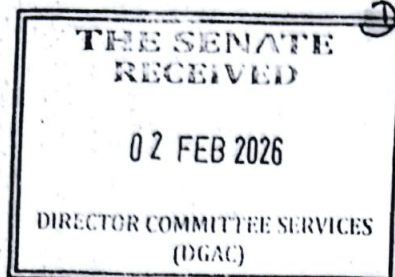
1. Clause 4(a) and 5(a) of the Bill on the 5% Allocation for Persons with Disabilities (PWDs)

Regarding Clause 4(a) and 5(a) of the Bill on the proposed 5% allocation for persons with disabilities, KEWOPA supports the objective of enhancing the representation of persons with disabilities in Parliament, consistent with Article 54 of the Constitution. However, KEWOPA notes that the immediate application of a full 5% threshold, particularly in the National Assembly, is likely to result in a sudden and significant increase in the total number of Members of Parliament. When calculated against the current membership of 349 Members, the proposed allocation may inadvertently lead to disproportionately high numerical representation without a clear transition framework.

While the proposal is constitutionally sound and aligned with Kenya's obligations towards persons with disabilities, KEWOPA is of the view that such representation should be framed as a matter of progressive realization, in line with Article 54(2) of the Constitution. A phased and clearly defined formula that incrementally increases PWD representation over time would enhance both political acceptability and institutional sustainability. Such an approach could reasonably culminate in the full realization of the 5% threshold within four parliamentary terms, thereby allowing Parliament to gradually adjust while still remaining faithful to constitutional principles. This phased model would also help mitigate resistance within the House and safeguard the broader objective of inclusive representation. KEWOPA thus recommends that:

- The 5% threshold be framed as a progressive realization standard, in line with Article 54(2) of the Constitution.
- The Bill introduces a phased formula that incrementally increases PWD representation over a defined period.

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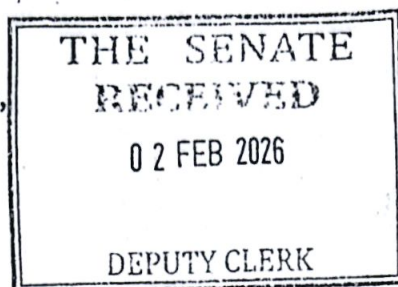


DKS
DKAC
kindly deal
30 JAN 2026
02/02/2026

Kenya Women Parliamentary Association,
C/O Parliament of Kenya, Harambee Plaza 8th Floor
P.O. Box 41842 - 00100, Nairobi, Kenya
Tel: +254 748 264 294
Email: info@kewopa.org
Website: www.kewopa.org

TO:

The Clerk of the Senate,
P.O. Box 41842-00100,
Main Parliament Buildings,
Nairobi, KENYA.



HOD/Lead one
JL & AC
please deal
2/2/2026
27TH JANUARY, 2026.

Dear Sir,

RE: SUBMISSIONS BY THE KENYA WOMEN PARLIAMENTARY ASSOCIATION (KEWOPA) ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2025 (SENATE BILLS NO. 16 OF 2025)

Receive greetings from the Kenya Women Parliamentary Association (KEWOPA).

KEWOPA is a non-partisan parliamentary caucus bringing together women Members of Parliament from both the National Assembly and the Senate, with a mandate to promote women's leadership, gender equality, and inclusive governance in Kenya. Over the years, KEWOPA has been at the forefront of advocacy efforts aimed at realising Article 27(8) of the Constitution and related provisions on gender equality and non-discrimination.

KEWOPA appreciates the invitation by the Senate to participate in the public participation process on the Constitution of Kenya (Amendment) Bill, 2025, (Senate Bills No.16 of 2025) which seeks to give effect to the long-standing constitutional requirement that no more than two-thirds of the members of elective and appointive bodies shall be of the same gender.

KEWOPA strongly welcomes and supports the Bill as a long-overdue legislative intervention to give effect to the constitutional requirement that no more than two-thirds of the members of elective and appointive bodies shall be of the same gender. Since the promulgation of the Constitution in 2010, the continued failure to operationalize this principle has created a persistent constitutional crisis, undermined the supremacy of the Constitution, and perpetuated the systemic exclusion of women from political decision-making spaces.

9.	Clause 5(a) provides that the composition of the Senate includes 5% of persons with disabilities, the 5% is to be determined following the determination of the 47 single majority members, 16 women, and the 2 youth.	Article 54(2) of the Constitution provides that State has the duty to ensure the progressive implementation of the principle that at least 5% of the members of the public in elective and appointive bodies are persons with disabilities.	The ORPP agrees with and supports the proposal.
10.	Clause 5(b) (1A) provides for allocation of special seats to ensure that the Senate complies with the two-third gender principle.	The proposal aligns with Article 81 of the Constitution on the two-third gender principle in elective positions. Further, the clause ensures that Parliament is constitutionally constituted with respect to gender.	The ORPP supports and agrees with the proposal.
11.	Clause 5(b) (1B) provides that the number of special seats shall be determined after declaration general elections results.	Special seats can only be determined after the general elections on the basis of qualifying political parties and as well as determining the required numbers of special seats.	The ORPP supports and agrees with the proposal.
12.	Clause 6 provides for election of members of parliament by including the seats introduced through the present Bill.	The clause relates to all the seats in Parliament and how a vacancy is filled.	The ORPP agrees with the proposal in so far as it relates to the election of members of Parliament including filling of vacancies.

OFFICE OF THE REGISTRAR OF POLITICAL PARTIES
P. O. Box 1131 - 00606
NAIROBI - KENYA



**CPA FLORENCE BIRYA – ARPP
FOR: REGISTRAR OF POLITICAL PARTIES**

		scenario would enable Persons with Disabilities to encroach on the space for other demographics within the special interest category. If the intention is to completely exclude Persons with disabilities from Article 97(1) (c) of the Constitution, there should be a proviso that excludes PWDs from Article 97(1) (c).	
6.	Clause 4(a)(ii) provides that the composition of the National Assembly includes 5% of persons with disabilities, the 5% is determined following determination of the 290 single majority members, 47 single majority members, and the 12 special seats.	Article 54(2) of the Constitution provides that State has the duty to ensure the progressive implementation of the principle that at least 5% of the members of the public in elective and appointive bodies are persons with disabilities.	The ORPP agrees with the proposal.
7.	Clause 4(b) (1A) provides for allocation of special seats to ensure that the National Assembly complies with the two-third gender principle.	The proposal aligns with Article 81 of the Constitution on the two-third gender principle in elective positions. Further, the clause ensures that Parliament is constitutionally constituted with respect to gender.	The ORPP agrees with and supports the proposal.
8.	Clause 4(b) (1B) provides that the number of special seats shall be determined after declaration general elections results.	Special seats can only be determined after the general elections on the basis of qualifying political parties and as well as determining the required numbers of special seats.	The ORPP agrees with and supports the proposal.

		Constitution have a broader description of marginalised groups that would not affect Article 97(1) (c) of the Constitution with regard to workers. Be that as it may, requiring a party list under Article 90 of the Constitution to reflect marginalised groups does not strictly translate to the composition of Parliament given that political parties are at liberty to prioritize certain demographics over others unless stated otherwise in law.	
5.	Clause 3(4) provides that a person elected under clause (1) for a seat shall not hold such office for more than two terms.	The clause is meant to limit repeat nominations in the party list election. The limitation opens up the special seats to other people who are qualified to hold special seats. As an affirmative action seat, a special seat should a platform for building the capacity of a person to be able to contest in the single majority elections. Available data illustrates individuals that were elected once through the party list election then proceeded to contest in the single majority elections and won seats.	The ORPP agrees with the provision in so far as it relates to limiting repeat election through party election. Further, given that the special seats are limited as compared to the number of people, the Committee may consider limiting the election through party list to a single term only.
6.	Clause 4(a) (i) provides for deletion of the phrase "persons with disabilities" appearing in the current Article 97(1) (c).	The preposition "including" is still part of Article 97(1) (c) of the Constitution. This means that Persons with Disabilities could still be listed on the party lists under Article 97(1) (c) of the Constitution; such a	The ORPP requests the committee to consider qualifying Article 97(1) (c) of the Constitution so that persons with disabilities are excluded from Article 97(1) (c).

		Therefore, nomination for party list through party members need not appear in the Constitution but the relevant statutes.	
3.	Clause 3(d) requires party members to be democratically involved in the generation of party lists through a fair and competitive process as set out in the respective party constitution and nomination rules.	The phrase used under clause 3(d) is "party list". The clause addresses all the party lists to be submitted to IEBC. It is to be noted that under the current law, a political party submits 98 party lists hence the need for the phrase "party list" to be in plural form.	The ORPP invites the Committee to consider changing the phrase from "party list" to "party lists".
4.	Clause 3(e) provides that each party list is to reflect the representation of the marginalised groups set out in Article 100 to the greatest extent possible taking into account the nature of the party list.	Article 100 of the Constitution requires Parliament to enact a legislation to promote representation in Parliament of women, persons with disabilities, youth, ethnic and other minorities, and marginalised groups. Various party lists have different parameters that are not confined to the demographics under Article 100 of the Constitution. For instance, the party list that leads to satisfaction of Article 97(1) (c) includes workers. Demanding that the said list reflects Article 100 marginalised groups would be changing the parameters of Article 97(1) (c) particularly with respect to workers. A reading of Article 97(1) (c) does not require workers to be drawn from the Article 100 groups. Further, Articles 27(4) and 260 of the	The Committee should consider recrafting the provision to the party lists reflecting Article 27(4) of the Constitution as it is broad.

	members; however, the statutory provision could be expanded to unequivocally provide for the place of party members. For instance, Section 34(6) of the Elections Act stipulates that the party lists submitted to the Commission under this section shall be in accordance with the constitution or nomination rules of the political party concerned. Additionally, pursuant to Section 34(6B) of the Elections Act, the Elections (Party Primaries and Party Lists) Regulations, 2017 were developed to provide guidelines on preparation of party lists. Further, Section 9 of the Political Parties Act Cap. 7D as read with the Second Schedule to the PPA provides for the content of constitution or rules of a political party with regard to, inter alia, nomination of candidates to political party lists. We may draw parallels with party nominations for the single majority elections whereby under Part IVA of the Political Parties Act, nomination is confined to party members through direct and indirect nomination. Further, Section 28 and 31 of the Elections Act contemplate party nominations being confined to party members.	
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II. MATRIX OF OBSERVATIONS AND RECOMMENDATIONS

5. The observations and recommendations are captured herein below in detail;

No.	PROVISION/ELEMENT	OBSERVATIONS	RECOMMENDATIONS
1.	Clause 2 provides that the Act shall apply to the general elections following the coming into force of the Act.	The clause contains a transition period to prevent a scenario where Parliament's composition does not align with the proposed law. For instance, without the clause, and were the Act to come into force within this electoral cycle, Parliament would not be lawfully constituted. However, the Committee should take note of the timelines for submission of party lists under the Elections Act. The Act may come into force after the timelines for submissions of party lists but before a general election.	The ORPP agrees with this proposal in terms of the transition period. Further, ORPP calls upon the Committee to take note of the timeline for submission of party lists to IEBC and ORPP under Section 35 and 35A of the Elections Act Cap.7. A party list is submitted to IEBC at least 45 days before a general election while parties submit party lists to ORPP at least 14 days before the date of submission of party lists to IEBC.
2.	Clause 3(d) requires party members to be democratically involved in the generation of party lists through a fair and competitive process as set out in the respective party constitution and nomination rules.	The proposal aligns with Article 91(1)(e) Constitution which provides that every political party shall respect the right of all persons to participate in the political process, including minorities and marginalised groups. While the proposal is geared towards centering party members in generation of party lists, the proposal is covered under Section 34 of the Elections Act which provides for nomination of party list	The ORPP invites the Committee to consider the observations with regard to matters that could be covered comprehensively under the Elections Act and the Political Parties Act Cap. 7D.



ORPP MEMORANDUM ON THE CONSTITUTION OF KENYA (AMENDMENT) (NO.2) BILL, 2025

I. INTRODUCTION

1. Pursuant to Article 118(1) (b) of the Constitution, the Senate's Standing Committee on Justice, Legal Affairs and Human Rights vide a letter of 2nd March 2026 called for submission of views on the Constitution of Kenya (Amendment) (No.2) Bill, 2025.
2. The Office of the Registrar of Political Parties (ORPP) is established under Section 33 of the Political Parties Act Cap. 7D (PPA) as an independent State Office within the meaning of Article 260 of the Constitution. Its mandate, as drawn from Section 34 of the PPA, includes registration and regulation of political parties as well as administration of the Political Parties Fund.
3. The ORPP supports the attempt to realize the two-thirds gender principle in elective bodies as provided under Article 81 of the Constitution as well as realizing Article 54 of the Constitution with respect to ensuring that at least five percent of the members of elective and appointive bodies are persons with disabilities.
4. The Committee should however consider an inclusive approach in accommodating the various demographics under the marginalised group category so as to avoid a scenario where some demographics are not represented. For instance, the youth is a transitory age group hence without meaningful inclusion of the youth, the particular group may only have limited representation in the elective bodies.

OFFICE OF THE REGISTRAR OF POLITICAL PARTIES
P. O. Box 1131 – 00606
NAIROBI – KENYA



REPUBLIC OF KENYA

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When replying please quote

Ref: RPP/ELE/13(25)

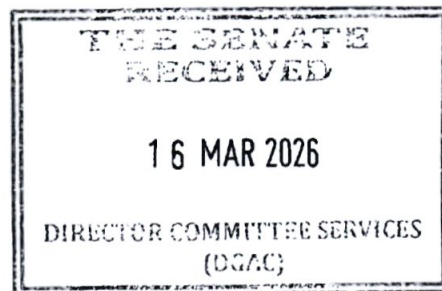
Clerk of the Senate
Clerk's Chambers
Senate, Parliament Buildings
P.O. Box 41842-00100
NAIROBI

Dear Sir,



Lion Place, 1st & 4th Floor
Off Waiyaki Way
P.O. Box 1131-00606
Sarit Centre, Nairobi.

Date: 13th March 2026



RE: ORPP MEMORANDUM ON THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL, 2025

Reference is made to the above subject matter.

This Office acknowledges receipt of your letter dated 2nd March 2026 and the attachment thereto calling for submission of views on the Constitution of Kenya (Amendment) (No. 2) Bill, 2025.

Annexed herewith is a signed memorandum of the Office of the Registrar of Political Parties.

Yours faithfully,

CPA Florence Birya – ARPP
For: Registrar of Political Parties/CEO

Encl. (1)

DLS
ADD - Governance
PCP - JLASRL

Kindly Seal
16/03/2026

STEP 4. Fallback:

Only if, after declaration of election results, Parliament still fails to meet the two-thirds gender rule or the five percent rule, then the nomination formulas for additional seats are triggered.

This sequencing ensures that affirmative action remains transitional, empowering marginalized groups to compete equitably, while the fallback mechanism provides a safety net against systemic failure

CONCLUSION

The Bill demonstrates commendable intent and represents progress towards constitutional equality. However, its current design requires refinement to avoid dependency, tokenism, and fiscal strain. Affirmative action must remain a transitional tool aimed at substantive equality, not a permanent structural distortion of representative democracy.

Society therefore urges Parliament to refine the proposals by entrenching political party accountability as the first line of compliance, with nomination formulas serving only as a last resort corrective measure. This approach preserves the integrity of affirmative action, ensures genuine empowerment, and aligns with the Constitution's vision of equality, fairness, and inclusion.

Yours faithfully,



Faith Odhiambo

President Law Society of Kenya.

RECOMMENDATIONS

1. STRENGTHEN POLITICAL PARTY ACCOUNTABILITY

The most effective way to achieve genuine inclusion of women and Persons with Disabilities (PWDs) in Parliament is to reform political party practices. Political parties remain the gatekeepers of electoral competition, and their nomination processes determine who ultimately has access to electoral seats. Without binding obligations on parties, affirmative action risks being reduced to symbolic gestures.

Key elements for reform in this regard are:

(a) Mandatory Candidate Quotas

Amend the Political Parties Act to require that at least one-third of candidates nominated by each party for elective positions are women, and at least five percent are PWDs. These quotas must apply not only to the overall party list but also to nominated candidates to run for elective positions.

(b) Enforceable Sanctions

Parties that fail to meet these thresholds should face financial penalties, including reduction or suspension of public funding under the Political Parties Fund. The IEBC should be empowered to reject party lists that do not comply, thereby ensuring that non-compliant parties cannot field candidates.

(c) Transparency in Nomination Processes

Require parties to publish their nomination criteria and candidate selection processes, subject to independent audit by the Registrar of Political Parties. This transparency will reduce the risk of tokenism and ensure that women and PWDs are nominated based on merit and genuine party support.

2. THE PROPOSALS AS A FALLBACK MECHANISM

The nomination formulas proposed in the Bill should operate only as a last resort corrective measure. The sequence should be:

STEP 1. Primary Obligation:

Political parties must comply with quotas and nomination requirements.

STEP 2. Verification:

IEBC and the Registrar of Political Parties audit compliance before elections.

STEP 3. Sanctions:

Non-compliant parties face penalties and rejection of lists.

perceptions of arbitrariness, ensures proportionality across political parties, and secures genuine representation rather than tokenism.

Accordingly, while the society welcomes the spirit of the amendments, it urges Parliament to refine the proposals to ensure that they deliver durable, credible and inclusive representation consistent with the Constitution's broader values of equality, fairness and accountability.

Specifically, we register the following concerns: -

1. DEPARTURE FROM CONSTITUTIONAL INTENT

Affirmative action was envisaged as transitional, corrective measures aimed at leveling the playing field. The Bill's proposal to create additional seats risks converting these measures into permanent fixtures, thereby distorting the representative character of Parliament unless carefully safeguarded.

2. RISK OF TOKENISM

Nomination formulas may inadvertently reduce women and PWDs to token representatives, beholden to party structures rather than accountable to the electorate. This undermines democratic legitimacy and weakens the voice of marginalized groups in substantive decision-making.

3. FINANCIAL AND INSTITUTIONAL CONSIDERATIONS

The creation of additional seats imposes financial costs on the taxpayer without guaranteeing meaningful empowerment. Expanding Parliament in this manner, absent safeguards, risks public backlash and erodes confidence in affirmative action as a legitimate tool of justice.

4. FAILURE TO ADDRESS ROOT CAUSES

The Bill does not directly tackle structural barriers such as discriminatory party nomination practices, inaccessible electoral processes for PWDs, or socio-cultural impediments to women's political participation. Without addressing these root causes, numerical compliance will remain superficial.

GENERAL COMMENTS.

The Constitution of Kenya (Amendment) (No. 2) Bill, 2025 seeks to introduce amendments to provide for additional seats in the National Assembly and Senate in order to implement the principle of at least five percent of the members of the public in elective and appointive bodies should be persons with disabilities.

Further, it seeks to introduce amendments to provide for a formula to nominate additional special seat members in both the National Assembly and the Senate, if after declaration of results following a national election, the membership of either the National Assembly or the Senate does not conform to the principle that not more than two-thirds of the members are of the same gender.

We commend the efforts to move towards the implementation of the two-thirds gender rule and further, the principle that at least five percent of the members of the public in elective and appointive bodies should be persons with disabilities (*"the five percent rule"*). However, we are of the considered view that the proposals, as currently framed, can be further refined to ensure they achieve their intended purpose.

Both women and Persons with Disabilities (PWDs) have been historically and systematically marginalized through distinct social and legal imperfections that have relegated them to the periphery of public political life. These groups have been neglected and denied access to national leadership compared to their counterparts.

Consequently, the two-thirds gender rule and the five percent rule were introduced to the Constitution as affirmative action initiatives to recognize the historical marginalization of these groups and make special provisions to cushion them from electoral and political vagaries. Affirmative Action is a transitional mechanism to dismantle barriers and level the playing field, not a permanent structural distortion of representative democracy.

The Bill's reliance on nomination formulas risks entrenching dependency on political patronage rather than empowering marginalized groups to compete equitably. By shifting focus from systemic reform to numerical compliance, the proposals dilute the spirit of affirmative action and weaken its transformative purpose.

In particular, the society believes that while the Bill makes important strides in addressing historical exclusion, the mechanisms proposed for allocating additional seats may benefit from clearer safeguards to ensure transparency, predictability and sustainability. The formula for nomination of special seat members may benefit from clearer safeguards to ensure transparency, predictability and sustainability. The formula for nomination of special seat members should be designed in a way that avoids

INTRODUCTION

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- President, Faith Mony Odhiambo
- Vice President, Mwaura Kabata
- General Membership Representatives, Tom K'opere, Teresia Wavinya, Hosea Manwa
- Nairobi Representatives, Gloria Kimani, Irene Otto, Stephen Mbugua
- Up-country Representatives, Vincent Githaiga, Lindah Kiome, Hezekiah Aseso, Zulfa Roble
- Coast Representative, Elizabeth Wanjeri
- Secretary/CEO, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Kenya. Pursuant to this statutory mandate, the Law Society makes the following presentation the Constitution of Kenya (Amendment) (No. 2) Bill, 2025.



LAW SOCIETY OF KENYA

Lavington, Opposite Valley Arcade

Gitanga Road

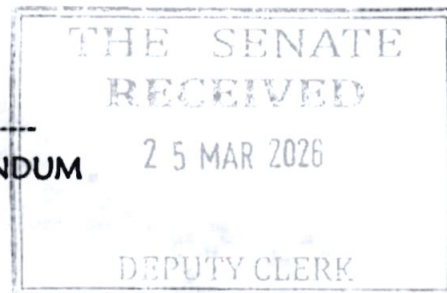
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NAIROBI

Tel. +254 111 045 300



SUPPLEMENTARY MEMORANDUM



TO

THE SENATE

ON

THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL, 2025
[SENATE BILLS NO. 16]

MARCH, 2026

Faith Mony Odhiambo, President Law Society of Kenya

Lavington, opp Valley Arcade,

Gitanga Road P.O Box 72219 - 00200 Nairobi | Kenya

Tel: +254 111 045 300

Email: president@lsk.or.ke

Website: www.lsk.or.ke

DGAC
DLC

Kindly deal

26/03/2026

Hos / lead
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Please deal
26/3/2026

25. Require parties to publish their nomination criteria and candidate selection processes, subject to independent audit by the Registrar of Political Parties. This transparency will reduce the risk of tokenism and ensure that women and PWDs are nominated based on merit and genuine party support.

26. These reforms would address the root causes of exclusion and strengthen democratic participation without altering the constitutional architecture of Parliament.

CONCLUSION.

27. We affirm that the two-thirds gender principle is a constitutional obligation under Articles 27(8) and 81(b). The Law Society of Kenya recognizes that the failure to realize the two-thirds gender principle more than a decade after the promulgation of the Constitution is a challenge that continues to disadvantage women. Data from successive electoral cycles confirms that incremental progress has been achieved but compliance remains elusive. Nevertheless, we opine that the solution to this challenge must not undermine the sovereignty of the people, violate the national values and principles of governance or fundamentally alter the constitutional structure of Parliament.

28. Based on the above reasons and notwithstanding the objective of achieving the two-thirds gender rule, the proposed framework violates the provisions of the Constitution. Additionally, it touches on Article 255 of the Constitution hence cannot be lawfully enacted without the approval of the people through a referendum. We further reiterate flowing from our justification, that persons with disabilities and marginalized groups are protected in the Constitution and are guaranteed representation through existing special seats.

29. Based on the above, we humbly submit that our comments be considered before enactment of the Bill.

Yours faithfully,



Faith Odhiambo

President Law Society of Kenya.

RECOMMENDATIONS

Alternative Policy Approaches

21. The Law Society of Kenya proposes that sustainable implementation of the two-thirds gender principle and meaningful inclusion of persons with disabilities should primarily be pursued through **reforms targeting political party processes and electoral participation**, rather than expansion of parliamentary seats.

1. Strengthen Political Party Accountability

22. The most effective way to achieve genuine inclusion of women and Persons with Disabilities (PWDs) in Parliament is to reform political party practices. Political parties remain the gatekeepers of electoral competition. Genuine inclusion of women and persons with disabilities will therefore depend largely on reforms within political party nomination systems.

Key reforms that should be considered include:

(a) Mandatory Candidate Quotas

23. Amend the Political Parties Act to require that at least one-third of candidates nominated by each party for elective positions are women, and at least five percent are PWDs. These quotas must apply not only to the overall party list but also to nominated candidates to run for elective positions.

(b) Enforceable Compliance Mechanisms

24. Parties that fail to meet these thresholds should face financial penalties, including reduction or suspension of public funding under the Political Parties Fund and rejection of party lists that does not comply. The IEBC and the Registrar of Political Parties should be empowered to enforce compliance through clear sanctions.

(c) Transparency in Nomination Processes

Clause 6	Clause 6 proposes to amend Article 101 following the new clauses 4 and 5.		
Clause 6	On this basis, the deletion of the clause in its entirety is justified to preserve constitutional structure and fiscal prudence. In addition, the clause violates the principles of public finance under Article 201, as it creates an unpredictable and escalating wage bill thereby placing an unjustifiable burden on public resources. The 2/3 rule compliance should be undertaken in the context of the national economic situation, with options with less financial burden be considered.	This amendment is purely consequential and derives its legal basis solely from the substantive changes proposed under clauses 4 and 5. In light of our proposal for the deletion of those clauses, clause 6 is rendered redundant and incapable of independent operation, and should therefore be deleted in its entirety.	

4 (b) & 5 (b)		The clause authorises the nomination of an undefined number of additional members after every election to ensure that not more than 2/3 of the members of the House are of the same gender.	The effect and import of this is that it would increase the total number of members in the National Assembly.
We propose the deletion of this clause in its entirety.		This approach entrenches an open-ended and/or unspecified number of nominated members with the potential of perpetual expansion of the National Assembly, contrary to the Constitution's clear design on the composition and size of Parliament as set out in Articles 90 and 97. The Constitution contemplates a fixed and predictable membership of the National Assembly, expressly defined special seats and does not sanction an unspecified number of additional nominated members. Further, while Article 27(8) obligates the State to take legislative and other measures to	robustly protected under the Constitution. Persons with disabilities enjoy guaranteed political representation through special seats. Article 97(1)(c) currently provides for nominated members of the National Assembly to represent special interests, including persons with disabilities. The amendment may have unintended consequences of watering down Article 29 of the Constitution through voter apathy against women who would be perceived to have special seats through nominations. This will lead to fewer elected women, overrepresentation and ballooning of the wage bill in parliament with no corresponding public benefit.

Clause 4 (a) (ii) & 5 (a)	The clause provides that five percent of the total number of members in paragraphs (a), (b) and (c) nominated by parliamentary parties according to their proportion of members of the National Assembly and in accordance with Article 90, to represent persons with disabilities.	Delete the clause in its entirety.	The increase of the total number of members in the National Assembly and Senate will have a direct impact on the wage bill which places unnecessary strain on public finances. Therefore, deleting the clause will align with Article 201 of the Constitution on the use of public money in a prudent and responsible manner. Additionally, the proposed amendment is unnecessary and constitutionally redundant. Persons with disabilities are expressly and
			representation and in accordance with Article 90. Section 36 further provides that party lists for county assemblies must include eight candidates, at least two of whom shall be persons with disabilities, two representing youth, and two representing other marginalized groups. Similarly, the Political Parties Act (Sections 3, 4A(c), and 9) requires political parties to promote internal democracy, inclusiveness and meaningful participation of members in the formulation of policies and the nomination of candidates and to ensure representation of persons with disabilities and marginalized groups in Parliament and county assemblies. The proposals if needed can be effected through an amendment of the Elections Act and the Political Parties Act.

20. In light of these concerns, the LSK notes, while the objective of ensuring representation of marginalized groups, persons with disabilities and compliance with the two-thirds gender rule is laudable, the mechanism proposed raises constitutional and practical concerns that warrant careful scrutiny. The proposals and justifications set out below articulate our position in opposition of the Bill.

SPECIFICS COMMENTS

No.	Provision/Issue	Proposal	Justification
Clause 3	The proposed amendment to Article 90 seeks to expand the categories of nominated members by referencing additional sub-clauses in Articles 97 and 98, mandate that political party members participate democratically in generating party lists, require party lists to reflect marginalised groups to the greatest extent possible, and introduce a two-term limit for persons elected under clause (1).	Delete the clause in its entirety.	The proposed amendments to Article 90 are unnecessary and do not address any identified constitutional gap. Instead, they restate and constitutionalise matters that are already adequately regulated under the Constitution and existing legislation. In particular, Article 10 enshrines national values and principles of governance, including democracy, inclusiveness, and accountability; Article 27 guarantees equality and non-discrimination; Article 91 sets out the basic requirements for political parties; and Article 100 mandates Parliament to enact legislation to promote representation of marginalized groups. These constitutional provisions are operationalized through the Elections Act and the Political Parties Act. Section 34 of the Elections Act requires that members for the National Assembly, Senate, and county assemblies for party list seats be elected on the basis of proportional

thirds gender rule. On this basis, the Bill has a bearing on the sovereignty of the people within the meaning of Article 255(1)(c), thereby triggering a referendum.

14. The Bill seeks to advance equality and inclusiveness (gender parity) which are recognised national values under Article 10 of the Constitution. However, the effect of the amendment alters representation and democratic participation. As such, it relates to Article 10 which cannot be treated as an amendment under Articles 256 or 257.

DEPARTURE FROM CONSTITUTIONAL INTENT

15. The Bill further permits the composition of Parliament to be altered after the conclusion of elections through uncertain number of additional nominations to achieve gender compliance. Unlike the Constitution's existing nomination provisions where the number of nominated members is certain the Bill introduces a framework with an unspecified number of additional seats.
16. The Constitution envisaged affirmative action as transitional, corrective measures aimed at levelling the playing field. The Bill's proposal to create additional seats risks converting these measures into permanent fixtures, thereby distorting the representative character of Parliament.

TOKENISM

17. Nomination formulas may reduce women and PWDs to token representatives, beholden to party structures rather than accountable to the electorate. This undermines the principle of democratic legitimacy and weakens the voice of marginalized groups in substantive decision-making.

FISCAL AND INSTITUTIONAL BURDEN

18. The creation of additional seats imposes significant financial costs on the taxpayer without guaranteeing meaningful empowerment. Expanding Parliament in this manner risks public backlash and erodes confidence in affirmative action as a legitimate tool of justice.

FAILURE TO ADDRESS ROOT CAUSES

19. The Bill does not tackle structural barriers such as discriminatory party nomination practices, inaccessible electoral processes for PWDs, or socio-cultural impediments to women's political participation. Without addressing these root causes, numerical compliance will remain superficial.

them from electoral and political vagaries. Whereas affirmative action initiatives require that special consideration be made as a way of compensating for past discrimination, the aim has and should be to “level the playing field”.

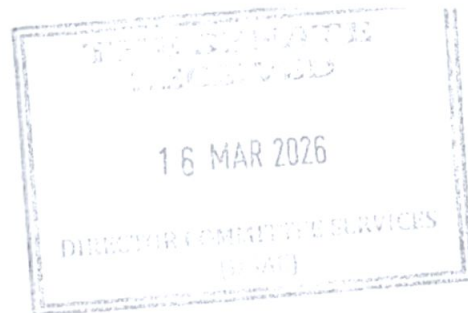
10. Affirmative Action remains a means to an end – a means of gearing society towards substantive equality, not a permanent structural distortion of representative democracy. The objective is to dismantle barriers that have historically excluded women and PWDs from meaningful participation, thereby creating conditions where merit and opportunity can co-exist fairly rather than creating permanent structural adjustments to democratic institutions
11. In this regard the proposals contained in the Constitution of Kenya (Amendment) (No. 2) Bill, 2025, risk undermining this purpose. By introducing additional seats through nomination formulas, the Bill inadvertently entrenches dependency on political patronage rather than empowering marginalized groups to compete equitably in the electoral process, which dilutes the spirit of affirmative action by shifting focus from systemic reform to numerical compliance
12. The Bill's memorandum asserts that none of the proposed amendments relate to matters under Article 255(1) of the Constitution. However, in our considered view that the Bill does, in fact, touch on matters falling within the ambit of Article 255, including:
 - a) The sovereignty of the people;
 - b) National values and principles of governance such as democracy and participation; and
 - c) The composition of Parliament.
13. Article 1(1) and (2) of the Constitution vests all sovereign power in the people of Kenya, to be exercised either directly or through their democratically elected representatives. Elections are the principal mechanism through which the people delegate this sovereign authority. While the Bill does not expressly amend Article 1, its practical effect is to permit post-electoral adjustments, with an indeterminate number of additional seats, to cure non-compliance with the two-

GENERAL COMMENTS

5. The Bill seeks to amend the Constitution of Kenya to provide for additional seats in the National Assembly and Senate in order to:
 - a) Implement the principle that not more than two-thirds of the members of elective and appointive bodies shall be of the same gender; and
 - b) Implement the principle that at least five percent of the members of elective and appointive bodies should be persons with disability.
6. The Bill represents a renewed attempt to address the not more than two-thirds gender rule enshrined in Articles 81(b) and 27 (8) of the Constitution. Despite this constitutional requirement, the rule has faced persistent implementation challenges since 2010. Notably, in 2017, the High Court issued a directive mandating Parliament to enact legislation within 60 days to give effect to the rule, failure to which would result in the dissolution of Parliament. In 2020, the former Chief Justice David Maraga advised the President to dissolve Parliament for failure to enact the legislation implanting the two-third gender rule, a constitutional requirement.
7. While we commend the efforts to move towards the implementation of the two-thirds gender rule and further, the principle that at least five percent of the members of the public in elective and appointive bodies should be persons with disabilities ("*the five percent rule*"), we must object to the proposals made out in the subject bill.
8. First, the proposals are wholly removed from the aims of the two principles. Both women and Persons with Disabilities (PWDs) have been historically and systematically marginalized through distinct social and legal imperfections that have relegated them to the periphery of public political life. These groups have been neglected and denied access to national leadership compared to their counterparts.
9. Consequently, the two-thirds gender rule and the five percent rule were introduced to the Constitution as affirmative action initiatives to recognize the historical marginalization of these groups and make special provisions to cushion

INTRODUCTION

1. The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya.
2. The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.
3. Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:
 - President, Faith Mony Odhiambo
 - Vice President, Mwaura Kabata
 - General Membership Representatives, Tom K'opere, Teresia Wavinya, Hosea Manwa
 - Nairobi Representatives, Gloria Kimani, Irene Otto, Stephen Mbugua
 - Up-country Representatives, Vincent Githaiga, Lindah Kiome, Hezekiah Aseso, Zulfa Roble
 - Coast Representative, Elizabeth Wanjeri
 - Secretary/CEO, Florence W. Muturi
4. One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Kenya. Pursuant to this statutory mandate, the Law Society of Kenya makes a presentation on the **Constitution of Kenya (Amendment) (No. 2) Bill, 2025.**



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Kindly Seal
17/03/2026*

MEMORANDUM

TO

THE SENATE

ON

THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL, 2025

MARCH, 2026

Faith Mony Odhiambo, President Law Society of Kenya

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CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		implement Article 27(8), where the principle that no more than two-thirds of members shall be of the same gender has remained declaratory rather than enforceable.	This will transform the gender principle from a symbolic constitutional aspiration into a binding, enforceable rule. By assigning a clear institutional duty to IEBC, imposing strict timelines, and conditioning the Assembly's constitutionality on compliance, the amendment eliminates ambiguity, prevents delay, and ensures that gender equality is realized in practice rather than deferred indefinitely.
	AWSC	On clause 4(a)(ii), AWSC notes that while the Bill introduces a 5% representation quota for persons with disabilities (PWDs), it does not specify how gender balance within that quota will be achieved. Without explicit safeguards, the provision risks reproducing inequality by privileging one gender over the other, thereby failing to reflect the distinct lived experiences of men and women with disabilities.	To remedy this, AWSC proposes that the 5% quota be comprised of equal representation between men and women with disabilities (50:50). This ensures compliance with Article 27 on gender equality and Article 98(1)(d), which recognizes the need for balanced representation. By embedding gender parity within disability representation, the amendment acknowledges that men and women with disabilities face different challenges that must inform national policy and decision-making. This approach transforms the quota from a numerical target into a substantive guarantee of diversity, dignity, and equality, ensuring that disability inclusion is not only about presence but about balanced voices in legislative processes.
	ELGIA	ELGIA notes that Clause 4(a)(ii) of the Bill introduces a 5% quota for persons with disabilities in the National Assembly. However, they highlight a potential conflict between Article 27(8) (two-thirds gender principle) and Article 54(2) (PWD inclusion) at the point of implementation. The Bill does not clarify whether the gender top-up mechanism or the disability quota	To resolve this, ELGIA proposes that the two-thirds gender top-up under Clause 4(b) be applied first, followed by the calculation of the 5% quota for persons with disabilities. They further recommend that the PWD list itself be subject to gender balance, ensuring that not more than two-thirds of nominees are of the same gender. This sequencing guarantees full compliance with both constitutional provisions, avoids interpretive conflict, and ensures that disability inclusion does not inadvertently undermine gender parity. ELGIA argues that this

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		should be applied first, creating uncertainty and risking inconsistency in compliance.	restructuring would not only harmonize the Bill with constitutional requirements but also increase the number of seats available to PWDs, thereby strengthening substantive inclusion.
	ELGIA	ELGIA observes that Clause 4(b) of the Bill repeats the constitutional phrase “not more than two-thirds of the members are of the same gender” both at the beginning and end of the provision. They argue that this repetition is redundant and unnecessary, since the principle is already enshrined in Article 27(8) of the Constitution. Restating it verbatim within the Bill risks interpretive inconsistency if the wording differs in any material respect from the source provision.	ELGIA recommends deleting the redundant phrase from Clause 4(b) to streamline the text and avoid duplication. This would ensure that the Bill remains precise, avoids unnecessary restatement, and reduces the risk of conflicting interpretations between the Constitution and the amendment. By relying directly on Article 27(8) as the authoritative source, the amendment would remain legally coherent while still achieving its intended purpose of enforcing gender parity through a top-up mechanism.
5	NGEC	Amend clause 5(a) by deleting the new paragraph “d” and substituting with the following— (d) Five percent of the total number of members in paragraph (a) to represent persons with various categories of disabilities of either gender, four members being two men and two women representing the youth and four members, being two men and two women representing the ethnic minorities and marginalised communities nominated by	This proposal seeks to implement Articles 55, 56 and 100 by increasing the number of members representing the youth to four members from two. The proposal also proposes to calculate the 5% percentage of PWD from the 47 elected members and not all the members as proposed in the Bill since the Bill’s proposal includes both the directly elected members and the affirmative action members. NGEC’s approach avoids double-counting affirmative measures and ensures equity across groups.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		parliamentary political parties according to their proportion of members of the Senate and in accordance with Article 90 to represent persons with disabilities.	
	NCPWD	The Bill states: <i>“five percent of members...to represent persons with disabilities.”</i> but it does not indicate how disability status will be verified. A clarification is also needed on whether the 5% will be calculated before or after the gender "top-up" seats are added.	Without a clear mechanism to verify who qualifies as a “person with disabilities,” the five percent quota risks being misapplied or abused. Verification ensures that only individuals who genuinely meet the criteria benefit from the constitutional provision. The National Council for Persons with Disabilities already has a certification system, so linking the quota to such verification would safeguard integrity and prevent tokenistic or fraudulent nominations. Secondly, it is important to specify whether the five percent quota is calculated before or after gender “top-up” seats are added. If calculated after, the quota could be diluted or inconsistently applied, undermining the constitutional guarantee of representation. Clear guidance ensures that the intended minimum representation of persons with disabilities is achieved consistently, without being overshadowed by other affirmative action measures.
	IEBC	There is a need to clarify which of the various nominated positions will take priority over others. Should the disability quota come first, or the gender quota? What happens to intersectional candidates?	Implementing both the two-thirds gender rule and the five percent disability quota at the same time may cause difficulties. Adjusting for one requirement could disrupt the other, leading to repeated allocations and uncertainty. This raises questions about whether one quota should take priority, and how to account for individuals who belong to more than one marginalized group (intersectionality).

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
	OAG-DOJ	The OAG-DOJ supports the Bill in principle but notes that the gender top-up mechanism must be accompanied by clear, transparent criteria for nominating special seat members.	Including explicit criteria for nomination will guarantee transparency and fairness in the allocation of gender top-up seats.
	KLRC	On the PWD quota, the KLRC proposed a minimum floor of 2 PWD seats to guarantee baseline representation, in addition to the 5% quota. Regarding the gender quota top-up, the KLRC noted that there is a need to— ○ consider anchoring corrective nominations within the party-list proportional representation framework under Article 90; ○ explicitly assign the IEBC the responsibility for computing compliance and administering corrective nominations; and ○ provide for a formula for allocating additional seats among parties, timeframe for completing nominations for instance 21 days and procedures if party lists are exhausted before quotas are met.	The KLRC noted that the deletion of two fixed seats and their replacement with a proportional formula may reduce certainty of PWD representation if the Senate's total membership is reduced in future. Therefore, the KLRC recommended that a minimum floor of two members be maintained to guarantee certainty in representation.
	The Consortium of Disabled Persons Organisations in Kenya	Clause 5 should be strengthened to safeguard both the numerical and substantive representation of persons with disabilities in the Senate. In	This amendment will ensure that the Senate does not regress in disability representation by replacing guaranteed seats with a purely proportional quota. Retaining at least two minimum seats alongside the five percent threshold

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		addition to the five percent threshold introduced by the Bill, the Constitution should retain a minimum of two guaranteed seats for PWDs, ensuring that their representation is not left entirely to proportional nomination outcomes. Further, the amendment should require regional diversity in the selection of PWD Senators, so that disability representation reflects the geographical breadth of Kenya and avoids concentration in a few counties. To enhance the impact of inclusion, PWD Senators should be expressly empowered to exercise a strengthened oversight role, including monitoring disability inclusion in county governance and influencing resource allocation to advance accessibility and equality.	will provide a safety net, guaranteeing that persons with disabilities always have a voice in the Senate regardless of electoral or party-list outcomes. Requiring regional diversity will prevent concentration of representation in a few counties and ensure that disability perspectives reflect Kenya's geographical breadth. Ultimately, empowering PWD Senators with an explicit oversight role will enhance their institutional impact, allowing them to effectively monitor inclusion at the county level and influence resource allocation.
	AWSC	On Clause 5(b), AWSC highlights that the Bill's current provision for enforcing the two-thirds gender principle in the Senate is uncertain and non-self-executing. It lacks a direct trigger mechanism, leaving compliance dependent on discretionary processes that may be delayed or contested. This risks perpetuating the historical failure to operationalize Article 27(8), where	To resolve this, AWSC proposes a direct, time-bound, and institutionally anchored trigger mechanism. Immediately upon declaration of general election results, if the Senate does not meet the two-thirds gender threshold, the Independent Electoral and Boundaries Commission (IEBC) shall automatically allocate and declare additional special seat members of the under-represented gender. IEBC must act within seven days, and the Senate shall not be lawfully constituted for its first sitting until compliance is achieved. This amendment transforms the gender

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		the gender principle has remained aspirational rather than binding.	principle into a self-executing and enforceable rule, eliminating ambiguity and preventing delay. By assigning a clear duty to IEBC and conditioning the lawful constitution of the Senate on compliance, the proposal ensures that gender equality is realized in practice, not deferred indefinitely.
	AWSC	On Clause 5(d), AWSC points out that while the Bill introduces a 5% quota for persons with disabilities (PWDs) in the Senate, it does not expressly safeguard gender balance within disability representation. This omission risks reproducing inequality by privileging one gender, thereby undermining the constitutional principle of equality and failing to capture the distinct lived experiences of men and women with disabilities.	To address this, AWSC proposes that the 5% quota for PWDs in the Senate be comprised of equal representation between men and women (50:50). This refinement aligns with Article 27 on gender equality and Article 98(1)(d), which recognizes the need for balanced representation. By embedding gender parity within disability inclusion, the amendment ensures that both men and women with disabilities contribute to legislative processes, reflecting their different challenges and perspectives. This approach transforms the quota from a numerical target into a substantive guarantee of diversity, dignity, and equality, ensuring that disability representation in the Senate is both inclusive and constitutionally faithful.
	ELGIA	ELGIA notes that Clause 5(b) of the Bill repeats the constitutional phrase “not more than two-thirds of the membership of the House are of the same gender” in the context of the Senate top-up mechanism. They argue that this repetition is redundant and unnecessary, since the principle is already firmly established in Article	ELGIA recommends deleting the redundant phrase from Clause 5(b) to streamline the amendment and maintain legal precision. By avoiding duplication, the Bill would remain coherent, reduce the risk of conflicting interpretations, and reinforce the authority of Article 27(8) as the definitive source of the gender principle. This technical clean-up ensures that the Senate top-up mechanism is clear, enforceable, and harmonized with the Constitution without unnecessary restatement.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
		27(8) of the Constitution. Restating it verbatim within the Bill risks interpretive inconsistency if the wording differs in any material respect from the original constitutional text.	
6	The Consortium of Disabled Persons Organisations in Kenya	Clause 6 should be strengthened to guarantee continuity and integrity in the representation of persons with disabilities. Any vacancy arising in a seat reserved for PWDs should be subject to a priority replacement rule, requiring that the vacancy be filled by another qualified person with a disability from the same category, thereby preserving diversity and avoiding dilution of representation. The amendment should also enforce strict timelines for replacement, ensuring that vacancies are filled promptly to prevent prolonged periods of underrepresentation. To protect against political manipulation, replacements shall follow the original party list order and be validated with oversight from registered Organizations of Persons with Disabilities (OPDs). This framework secures fairness, transparency, and accountability in the replacement process while safeguarding the constitutional objective of substantive inclusion.	This amendment will ensure that disability representation remains continuous, authentic, and shielded from political interference. By requiring replacements from the same disability category, the amendment will preserve diversity within representation. Timely replacement prevents gaps that could weaken PWD voices in Parliament, while adherence to the original party list order and OPD oversight guarantees transparency and protects against elite capture.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
NGEC		Proposes to amend Article 100 of the Constitution to insert an obligation to ensure representation of marginalised group to county assemblies	New clause justified because many counties fail to include PWDs and marginalized groups.
		Proposes to amend Article 177 to - Replace current clause with— (i) 5% of elected members for PWDs; (ii) 2 seats for youth (1 male, 1 female); and (iii) 2 seats for ethnic minorities/marginalized communities (1 male, 1 female).	The proposed amendments are intended to address persistent exclusion at the county level.
The Consortium of Disabled Persons Organisations in Kenya		The Consortium also proposes the following further amendments to strengthen the effectiveness of the Bill. The Bill should— (a) be expanded to introduce a comprehensive enforcement and support framework for disability inclusion. Political parties shall be subject to penalties for non-compliance, ensuring that inclusion obligations are not treated as optional but as binding constitutional requirements; (b) be amended to ensure that electoral processes are made fully accessible, with mandatory provision of accessible polling stations, assistive technologies, and inclusive voter education materials, thereby guaranteeing that persons with disabilities can participate meaningfully in elections as both voters and candidates; (c) to establish a Disability Inclusion Electoral Fund to provide financial support for campaigns by candidates with disabilities and to fund civic education initiatives. This measure will reduce structural barriers and level the playing field for PWDs in political competition.	These proposed new amendments are intended to move disability inclusion from aspiration to enforceable reality.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
Outreach for Action Kenya	Parliament should clarify whether the Bill is safely within Article 256 (ordinary amendment) or whether its cumulative effect approaches Article 255 thresholds.		Outreach for Action Kenya supports the objectives of the Bill: advancing gender equality and improving representation of persons with disabilities. Their concern is with the mechanisms chosen, particularly post-election nomination, which they argue raise constitutional, democratic, and fiscal questions. The Outreach for Action Kenya are of the opinion that the Bill falls within Article 255 of the Constitution for the following reasons— 1. The Bill introduces automatic post-election nominations to correct gender imbalance. This shifts representation from being purely voter-determined to being partly adjusted after elections. Outreach asks whether this alters the exercise of popular sovereignty in a way that might require a referendum under Article 255; 2. Currently, Parliament's size and composition are known before elections. The Bill allows expansion after elections depending on gender compliance. Outreach questions whether this elasticity changes the structure of Parliament enough to trigger Article 255 safeguards. 3. The Bill normalises corrective nomination, making it central rather than supplementary. Outreach warns this could subtly shift Kenya's representational philosophy, again raising Article 255 concerns.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
Outreach for Action Kenya		The Bill acknowledges that its enactment will occasion additional public expenditure arising from the nomination of additional members to Parliament under the proposed Articles 97(1A) and 98(1A). They recognise that the precise fiscal cost cannot be determined in advance and will vary across electoral cycles. However, in the absence of an express cap on corrective nominations, the Bill creates an open-ended fiscal obligation whose scale cannot be reasonably predicted, raising concerns for fiscal planning and accountability.	They recommend that Parliament assess the potential fiscal impact of the proposed mechanism based on a plausible extreme electoral scenario. While such a scenario may not materialise, modelling the maximum potential exposure would provide a clearer indication of the financial burden created by the Bill, enabling informed public debate on the sustainability of the expenditure and the sources from which it would be financed.
The National Women's Steering Committee	Fully support the Bill.		The Women's Steering Committee, coordinated by CRAWN Trust, strongly supports the Bill as a constitutionally faithful and necessary intervention to cure Parliament's long-standing failure to implement the two-thirds gender principle. They emphasise that compliance with Article 27(8) and Article 81(b) is immediate and justiciable, and that Parliament's legitimacy depends on adherence to these constitutional commands. On the proposed amendments to Articles 97 and 98, WSC welcomes the post-election nomination mechanism as a predictable, automatic safeguard that anchors compliance on actual election results while respecting voter choice. They note that this approach mirrors the county-level framework under Article 177(b) and is minimally intrusive, serving as a remedial tool to correct structural exclusion. The Committee also supports constitutionalising the enforcement mechanism, arguing that reliance on ordinary legislation has proven inadequate and vulnerable to political inertia. Entrenchment within the Constitution itself enhances legal certainty, stabilises parliamentary

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
			composition, and strengthens public confidence in Parliament's commitment to the rule of law. They further support reforms to party list processes under Article 90, requiring democratic, transparent, and competitive generation of candidates, and ensuring lists reflect marginalised groups under Article 100. These reforms are seen as critical to dismantling the historical misuse of party lists as instruments of patronage that have excluded women. Finally, WSC endorses the introduction of a two-term limit for nominated members, describing it as progressive and necessary to prevent perpetual occupation of affirmative action seats, expand opportunities for new leaders, and reinforce the principle that such measures are transitional rather than permanent entitlements. On constitutionality, WSC agrees with the Bill's position that the amendments do not fall under Article 255 and therefore do not require a referendum. They conclude by urging Parliament to enact the Bill without delay, framing it as a proportionate and targeted response that strengthens Parliament's legitimacy and affirms constitutional supremacy. On the cost issue, the Committee submitted a joint report prepared by the National Women's Steering Committee (NWSC) and Institute of Economic Affairs (IEA). The report situates the debate on gender parity not only in constitutional terms but also in economic perspective. It begins by underscoring that gender equality is both a constitutional requirement and an economic imperative,

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
			essential to Kenya's Vision 2030 and long-term competitiveness. The report stresses that underrepresentation of women in Parliament is untenable, with Kenya lagging behind its East African peers despite having greater capacity to afford affirmative action programmes. The report directly addresses the cost objection often raised against implementing the two-thirds rule. It notes that Parliament's share of the national budget in 2014/15 was only 1.5%, and that the additional cost of compliance with the gender principle would be a small fraction of this. Using scenarios based on the current gender composition of the National Assembly and Senate, the report calculates the per capita cost of additional seats. Even in the worst-case scenario, the additional cost per Kenyan is modest, and in best-case scenarios, the cost is negligible. The report emphasizes that claims of prohibitive expense are not supported by evidence, and that the actual fiscal impact is low compared to the constitutional and developmental benefits of inclusion. Beyond cost, the report highlights the benefits of implementation. It points to comparative experiences in Rwanda, Uganda, Tanzania, and Burundi, where quota systems have successfully increased women's participation and strengthened democratic legitimacy. It argues that affirmative action not only ensures compliance with constitutional requirements but also catalyzes broader participation of women beyond reserved seats. The report frames gender equality as a driver of economic growth,

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
			social justice, and democratic accountability, rather than a burden on the exchequer.
KEWOPA	Fully support the Bill.		KEWOPA, a non-partisan caucus of women Members of Parliament, strongly supports the Bill as a historic and long-overdue intervention to resolve the constitutional crisis created by Parliament's failure to operationalise the two-thirds gender principle since 2010. They frame the Bill as essential to restoring constitutional supremacy, strengthening democratic legitimacy, and aligning Kenya with its international obligations under instruments such as CEDAW and the Maputo Protocol. On the proposed 5% allocation for persons with disabilities, KEWOPA endorses the principle but cautions against immediate implementation. They argue that applying the full threshold at once could cause a sudden and disproportionate increase in parliamentary membership, particularly in the National Assembly. Instead, they recommend a phased approach over four parliamentary terms (about 20 years), allowing institutions to adjust gradually while still remaining faithful to constitutional principles. This progressive realisation model would balance inclusivity with sustainability and political acceptability. KEWOPA also welcomes reforms to party list processes under Article 90, including democratic generation of candidates, reflection of marginalised groups, and the introduction of a two-term limit for nominated members. However, they stress that these provisions must be strengthened to prevent abuse. Women have historically been disadvantaged by opaque party list practices, with

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
			nomination slots often awarded to politically connected individuals. KEWOPA therefore calls for clear statutory guidelines, objective eligibility criteria, transparency in ranking, and public disclosure of selection processes. They further recommend empowering the IEBC to audit and reject non-compliant lists, and mandating subsidiary legislation to operationalise these safeguards. On cost implications, KEWOPA acknowledges public concern but insists that constitutional compliance should not be reduced to financial considerations. They note that resistance to the two-thirds gender rule has often been framed around cost, yet the National Treasury has published no detailed analysis. KEWOPA recommends that Treasury undertake and publish a comprehensive cost-benefit analysis, showing the marginal impact relative to the national budget and highlighting the long-term socio-economic benefits of inclusive governance. Such analysis should also be incorporated into civic education to counter misinformation. In conclusion, KEWOPA reiterates its unwavering support for the Bill, describing it as a historic opportunity to finally give life to the constitutional promise of equality. With refinements to ensure progressive, transparent, and sustainable implementation, they urge Parliament to enact the Bill without delay.
Frank Mutuma Mwiti	Fully supports the Bill.		Frank Mutuma Mwiti expresses strong support for the Bill's objective of achieving immediate compliance with the two-thirds gender principle under Articles 27(8) and 81(b). He agrees that the proposed "Top-Up Mechanism," which creates new seats through party lists, is necessary to

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
			settle Kenya's constitutional debt. However, he cautions that relying solely on expanding Parliament is fiscally unsustainable and inconsistent with the national value of sustainable development under Article 10(2)(d). To address this, Mwiti proposes a two-tiered implementation model. The first tier would repurpose the existing 47 County Woman Representative seats under Article 97(1)(b), redesignating them as "County Gender Balance Seats." These seats would serve as the primary mechanism for gender correction, filled by whichever gender is under-represented. This approach is fiscally neutral, as it uses existing resources without increasing the size of Parliament. The second tier would retain the Bill's proposed Top-Up mechanism, but only as a conditional backstop. It would be triggered only if the gender deficit could not be resolved through full utilisation of the 47 County Gender Balance Seats. In this way, the Top-Up mechanism remains available to guarantee compliance but is not the default solution. Mwiti concludes that this tiered approach balances constitutional fidelity with fiscal prudence. It allows Parliament to act decisively now to resolve the constitutional crisis while embedding a sustainable framework for the future. He urges the Committee to pass the Bill with this amendment, ensuring that Kenya achieves gender equality in a manner that is both immediate and structurally sustainable.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
Maendeleo ya Wanawake Organisation (MYWO)	Fully support the Bill.		MYWO, Kenya's oldest and largest grassroots women's organization, strongly supports the Bill as a long-overdue step toward realizing the constitutional promise of gender equality. They situate their position in a long history of women's advocacy, recalling their role in independence constitutional negotiations and subsequent parliamentary motions for affirmative action. For MYWO, the creation of additional seats is not a concession but a constitutional duty, and Parliament must act to end the prolonged denial of women's rights under Article 27(8). In their proposals, MYWO emphasize that the new seats must be allocated with integrity. They recommend strict nomination guidelines to ensure that women selected have a proven track record in advancing gender equality, rather than being rewarded for political loyalty. They also insist that the 5% quota for persons with disabilities must explicitly include women with disabilities, who face compounded discrimination. Beyond the Bill's text, MYWO highlight structural barriers that continue to lock women out of elective politics—lack of campaign financing, political violence, party favoritism, and cultural biases—and call for strong measures to address these realities. They reject cost arguments against additional seats, stressing that exclusion is more costly to democracy than inclusion. Finally, they propose a review mechanism after two general elections to assess progress, ensuring that the corrective measure of additional seats does not become permanent, but rather transitions toward sustainable parity through competitive elections.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
The National Treasury	Support the Bill in principle but raise concerns about fiscal sustainability.		The National Treasury acknowledges the Bill's intent to promote equitable representation of gender and persons with disabilities, but raises significant fiscal and legal concerns. Their primary issue is that the Bill proposes an unspecified number of special seats, which introduces unpredictability in recurrent expenditure and undermines fiscal planning. Treasury warns that this indeterminacy could destabilize the Medium-Term Expenditure Framework and conflict with ongoing fiscal consolidation efforts. They further caution that the creation of additional parliamentary seats will inevitably increase the public wage bill, covering salaries, allowances, pensions, and benefits. This expansion risks crowding out development expenditure, thereby affecting economic growth. Treasury also points out that, although styled as a constitutional amendment, the Bill has the characteristics of a Money Bill under Article 114, since it entails additional public expenditure. This requires careful fiscal assessment given the limited fiscal space available. On legal consistency, Treasury advises that the Bill be cross-checked against existing constitutional provisions to avoid redundancy or conflict, and that mechanisms for enforcement, monitoring, and compliance be clearly defined to reduce ambiguity. Finally, they recommend exploring revenue-neutral alternatives to achieve the Bill's objectives for example, mandating political parties to ensure gender and disability representation during nominations, rather than creating new seats funded from the Consolidated Fund.

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
			In conclusion, while supportive of the Bill's spirit of inclusion, the National Treasury urges caution. They stress that reforms must be fiscally sustainable, legally coherent, and aligned with national development priorities, and they offer technical support to refine the Bill accordingly.
FIDA-Kenya	Fully support the Bill.		FIDA-Kenya frames its memorandum around constitutional fidelity and the urgent need to cure Parliament's long-standing failure to operationalize the two-thirds gender principle. They emphasize that despite clear constitutional commands under Articles 27, 81, 100, and 261, Parliament has delayed for over a decade, prompting judicial interventions such as the CREAM v Attorney General case. For FIDA, the Bill is therefore not optional but a constitutionally mandated corrective measure. On gender representation, FIDA supports the Bill's formula-based mechanism for nominating special seat members, viewing it as a legally sound and enforceable approach to achieving compliance with Article 27(8) and Article 81(b). On disability inclusion, they endorse the five percent threshold as advancing Article 54(2) and Article 56, while also aligning Kenya with international obligations under the UN Convention on the Rights of Persons with Disabilities. FIDA, however, stresses that formal equality alone is insufficient. They call for measures to address structural barriers that perpetuate substantive inequality, including campaign financing inequities, electoral violence, and weak political party frameworks. They recommend

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
			complementary legislation to strengthen enforcement of the Elections Offences Act, institutionalize gender-responsive party structures, and ensure equitable access to campaign resources. They also highlight intersectionality, insisting that women with disabilities must be explicitly included, and that IEBC should have binding oversight powers to reject non-compliant party lists. Enforcement mechanisms, including sanctions for parties that fail to comply, are seen as critical to the Bill's success. Finally, FIDA links representation to devolution outcomes, arguing that enhanced gender representation in the Senate will strengthen its oversight role under Article 96, particularly in protecting county interests and ensuring equitable revenue allocation. They recommend institutionalizing gender-responsive budgeting frameworks so that representation translates into tangible benefits in healthcare, education, and social protection. In conclusion, FIDA-Kenya strongly supports the Bill as constitutionally grounded, jurisprudentially supported, and socially necessary. They urge Parliament to seize this historic opportunity to move beyond declaratory commitments and actualize substantive equality.
The Law Society of Kenya	Support the Bill in principle but urge caution.		The Law Society of Kenya welcomes the spirit of the Bill, acknowledging its intent to operationalize the two-thirds gender principle and the five percent rule for persons with disabilities. However, it cautions that the proposals, as currently framed, risk undermining the transformative purpose of affirmative action. LSK emphasizes that affirmative action was envisaged as a transitional corrective

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
			measure to dismantle barriers and level the playing field, not as a permanent structural distortion of representative democracy. By relying heavily on nomination formulas, the Bill risks entrenching dependency on political patronage and reducing women and persons with disabilities to token representatives beholden to party structures rather than accountable to the electorate. LSK raises several concerns. First, the creation of additional seats could be seen as a departure from constitutional intent, turning temporary measures into permanent fixtures. Second, nomination formulas may foster tokenism, weakening the substantive voice of marginalized groups. Third, the expansion of Parliament carries financial costs that may provoke public backlash and erode confidence in affirmative action. Finally, the Bill fails to address root causes of exclusion, such as discriminatory party practices, inaccessible electoral processes for persons with disabilities, and socio-cultural impediments to women's political participation. To remedy these shortcomings, LSK recommends strengthening political party accountability as the primary mechanism for inclusion. They propose amending the Political Parties Act to require mandatory candidate quotas, at least one-third women and five percent persons with disabilities, across both party lists and elective nominations. Compliance should be enforced through sanctions, including financial penalties and rejection of non-compliant lists by IEBC. Transparency in nomination processes should be mandated, with parties required to publish criteria and subject them to independent audit. In

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
			this framework, the Bill's nomination formulas would serve only as a fallback mechanism, triggered if Parliament still fails to meet constitutional thresholds after elections. In conclusion, LSK urges Parliament to refine the Bill to preserve the integrity of affirmative action. By entrenching party accountability as the first line of compliance and reserving nomination formulas as a corrective safety net, Parliament can ensure genuine empowerment, avoid dependency and tokenism, and align reforms with the Constitution's vision of equality, fairness, and inclusion.
AWSC	Support the Bill fully.		In their supplementary submissions, the AWSC addressed the cost aspect. They argue that the cost of implementing the two-thirds gender principle is negligible when placed in the context of Kenya's national budget. Parliamentary spending accounts for only 1.2% of total expenditure in FY 2025/26, down from 1.5% in 2014/15. Even under the worst-case scenario, where no women are elected and all additional seats must be filled, the cost would be approximately Ksh 4.84 billion annually, translating to about Ksh 83 per Kenyan per year, or 0.11% of the national budget. In everyday terms, AWSC notes, this is less than the price of a cup of tea. They emphasize that cost is the wrong frame for evaluating the reform. The two-thirds gender principle is a binding constitutional obligation under Articles 27(8) and 81(b), not a discretionary budgetary item. To subordinate constitutional supremacy to fiscal preference would be incompatible with the rule of law. AWSC stresses that women's representation is an economic public good:

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
			women legislators invest more in health, education, and social protection, sectors with high multiplier effects on growth. Excluding women distorts policy and imposes real economic costs. AWSC also highlights comparative evidence. Kenya, despite being the wealthiest economy in East Africa, remains the only country in the region that has not achieved even one-third women in parliament. Rwanda, Uganda, Tanzania, and Burundi—all with smaller economies—have successfully implemented quota systems. They argue that quotas are transitional, not permanent. Rwanda’s experience shows that reserved seats incubate women’s political participation, normalize their leadership, and eventually reduce reliance on quotas. Denmark followed a similar trajectory, repealing quotas once parity became self-sustaining. Finally, AWSC underscores the true cost of inaction: perpetuating constitutional crisis, eroding public trust, distorting policy outcomes, damaging Kenya’s regional reputation, and wasting talent excluded from governance. They conclude that the modest fiscal cost of compliance is far outweighed by the constitutional, economic, and social benefits of inclusion. Parliament, they urge, should disregard cost-based objections and proceed with the Bill as a constitutionally faithful and economically sound reform.

***Annex 6: Text of
the proposed
Committee
amendments to
the Bill***

1st July, 2026

The Clerk of the Senate
Parliament Buildings
NAIROBI

**RE: COMMITTEE STAGE AMENDMENTS TO THE CONSTITUTION OF
KENYA (AMENDMENT) (NO. 2) BILL, 2025 (SENATE BILLS NO. 16 OF 2025)**

NOTICE is given that Sen. Wakili Hillary Kiprotich Sigei, Chairperson to the Standing Committee on Justice, Legal Affairs and Human Rights, intends to move the following amendments to the Constitution of Kenya (Amendment) (No. 2) Bill, 2025 (Senate Bills No. 16 of 2025), at the Committee Stage—

CLAUSE 2

THAT the Bill be amended by deleting clause 2 and substituting therefor the following new clause—

Application.

2. (1) Subject to subsection (2), this Act shall apply to the general elections following the coming into force of this Act.

Cap. 7

(2) If this Act comes into force after the deadline for the submission of party lists to the Independent Electoral and Boundaries Commission under the Elections Act, this Act shall not apply to that immediate general election, but shall apply to the subsequent general election.

CLAUSE 3

THAT clause 3 of the Bill be amended—

- (a) in paragraph (b), by inserting the word “objective” immediately after the words “through a fair” in the new proposed subclause (d);
- (b) in paragraph (c) by deleting the proposed new clause (4) and substituting therefor the following new clause—

(4) A person elected under clause (1) shall not hold office as a nominated member in either House of Parliament for more than two terms.

CLAUSE 4

THAT clause 4 of the Bill be amended—

- (a) in paragraph (a), by inserting the following new paragraph immediately after the proposed new paragraph (ca)—
 - (cb) 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) in paragraph (b), by deleting the proposed new clause (1A) and substituting therefor the following new clause—

(1A) If the membership of the National Assembly under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, the Independent Electoral and Boundaries Commission shall, within fourteen days after the declaration of the results of a general election, determine, allocate, and declare the additional number of special seat members as may be necessary to achieve compliance with that principle.

(c) inserting the following new clause immediately after the proposed new clause (1B)—

(1C) For the purposes of ensuring compliance with clauses (1)(ca) and (1A)—

- (a) the Independent Electoral and Boundaries Commission shall first compute, allocate, and declare the additional special seat members required to satisfy the two-thirds gender principle under clause (1A);
- (b) upon completion of the allocation under paragraph (a), the Independent Electoral and Boundaries Commission shall subsequently compute and allocate the five percent allocation for persons with disabilities; and
- (c) the list of members allocated to represent persons with disabilities under this Article shall reflect gender balance, ensuring that not more than two-thirds of the total nominees are of the same gender.

CLAUSE 5

THAT clause 5 of the Bill be amended—

(a) in paragraph (a), by deleting the proposed new paragraph (d) and substituting therefor the following new paragraphs—

(d) five percent of the total number of members in paragraphs (a), (b) and (c), or two persons, whichever is greater, nominated by parliamentary political parties according to their proportion of members of the Senate and in accordance with Article 90, to represent persons with disabilities.

(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.

(b) in paragraph (b) by—

(a) deleting the proposed new clause (1A) and substituting therefor the following new clause—

(1A) If the membership of the Senate under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, the Independent Electoral and Boundaries Commission shall, within fourteen days after the declaration of the results of a general election, determine, allocate, and declare the additional number of special seat members as may be necessary to achieve compliance with that principle.

- (b) inserting the following new clause immediately after the proposed new clause (1B)—

(1C) For the purposes of ensuring compliance with clauses (1)(d) and (1A)—

- (a) the Independent Electoral and Boundaries Commission shall first compute, allocate, and declare the additional special seat members required to satisfy the two-thirds gender principle under clause (1A);
- (b) upon completion of the allocation under paragraph (a), the Independent Electoral and Boundaries Commission shall subsequently compute and allocate the five percent allocation for persons with disabilities; and
- (c) the list of members allocated to represent persons with disabilities under this Article shall reflect gender balance, ensuring that not more than two-thirds of the total nominees are of the same gender.

Dated 28 / 07 /, 2026.


Wakili Hillary Kiprotich Sigeri,
Chairperson,

Standing Committee on Justice, Legal Affairs and Human Rights.

