

REPUBLIC OF KENYA



*Rt. Hon. Speaker
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THE SENATE

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TWELFTH PARLIAMENT
FIFTH SESSION
2021

*Approved
21/12/2021*

SENATE STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS

REPORT ON
THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL,
2021 (SENATE BILLS NO. 37 OF 2021)

PAPERS LAID	
DATE	21.12.2021
TABLED BY	Chairperson - Devolution
COMMITTEE	Devolution C/tee
CLERK AT THE TABLE	F. Mbaye

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

DECEMBER, 2021

*DC-EG
Recommended & Forwarded for approval
for processing
20/12/2021*

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PREFACE

Mr. Speaker,

The Standing Committee on Devolution and Intergovernmental Relations is established pursuant to Senate Standing Order standing order 218 of the Senate Standing Orders and mandated to -

'consider all matters relating to devolution, intergovernmental and inter-county relations, governance and management of county governments, cities, towns and urban areas.'

The Committee is comprised of the following members -

- | | |
|------------------------------------|--------------------|
| 1. Sen. Moses Kajwang', MP | - Chairperson |
| 2. Sen. Anuar Loitiptip, MP | - Vice Chairperson |
| 3. Sen. Kipchumba Murkomen,EGH, MP | - Member |
| 4. Sen. Aaron Cheruiyot,MP | - Member |
| 5. Sen. Rose Nyamunga, CBS,MP | - Member |
| 6. Sen. Cleophas Malalah, MP | - Member |
| 7. Sen. Agnes Kavindu Muthama, MP | - Member |
| 8. Sen. Abdulkadir Haji, MP | - Member |
| 9. Sen. Isaac Ngugi Githua, MP | - Member |

Mr. Speaker,

The Intergovernmental Relations (Amendment) Bill, 2021 (Senate Bills No. 37 of 2021) seeks to amend the Intergovernmental Relations Act, 2012 to address challenges related to the transfer of functions between the two levels of Government. Transfer of functions between the National Government and County Governments is governed by the Constitution and the Intergovernmental Relations Act, 2012.

The Committee considered the Bill at length, conducted public participation and deliberated on the submissions received from various stakeholders. Based on the deliberations and public participation, the Committee will present some amendments with a view of strengthening the provisions of the Bill for consideration by this House.

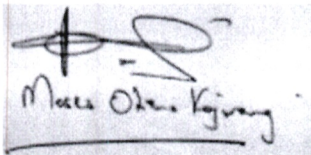
Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate as well as the Secretariat comprised of Ms. Sylvia Nasambu, Ms. Carolyne Cheruiyot, Ms. Clare Kidombo, Ms. Lucianne Limo and Mr. Simon Muinde for the support extended to it in the conduct of the public hearings and in fulfilling its mandate.

Further, the Committee wishes to thank members of the public and stakeholders who sent written submissions including the Intergovernmental Relations Technical Committee (IGRTC) and the County Assemblies Forum (CAF).

Mr. Speaker,

It is now my pleasant duty, pursuant to standing order 143 of the Senate Standing Orders, to present the Report of the Standing Committee on Devolution and Intergovernmental Relations on the Intergovernmental Relations (Amendment) Bill, 2021 (Senate Bills No. 37 of 2021).



Moses Oduo Kijwang

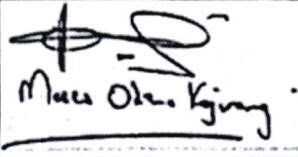
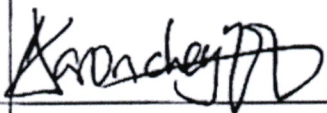
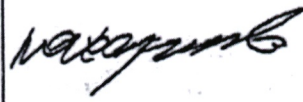
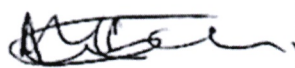


Signed..... Date...19TH NOVEMBER, 2021.....

SEN. MOSES KAJWANG', MP

CHAIRPERSON,
STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS ON THE ON THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL, 2021 (SENATE BILLS NO. 37 OF 2021)

We, the undersigned Members of the Standing Committee on Devolution and Intergovernmental Relations, do hereby append our signatures to adopt this Report-

Sen. Moses Kajwang', MP	- Chairperson	
Sen. Anuar Loitiptip, MP	- Vice-Chairperson	
Sen. Kipchumba Murkomen, EGH, MP	- Member	
Sen. Aaron Cheruiyot, MP	- Member	
Sen. Rose Nyamunga, CBS, MP	- Member	
Sen. Cleophas Malalah, MP	- Member	
Sen. Agnes Kavindu, MP	- Member	
Sen. Abdulkadir Haji, MP	- Member	
Sen. Isaac Ngugi Githua, MP	- Member	

CHAPTER ONE

INTRODUCTION

1.0 Background

1. The Intergovernmental Relations (Amendment) Bill, 2021 (Senate Bills No. 37 of 2021) was sponsored by Sen. Moses Otieno Kajwang', M.P. Senator, Homa Bay County and Chairperson of the Standing Committee on Devolution and Intergovernmental Relations. The Bill seeks to amend the Intergovernmental Relations Act, 2012 to address challenges related to the transfer of functions between the two levels of Government. Transfer of functions between the two levels of government is governed by the Constitution and the Intergovernmental Relations Act, 2012.
2. The Bill was published on 27th May, 2021, and read a First Time in the Senate on 14th July, 2021. Following the First Reading in the Senate, it stood committed, pursuant to standing order 140(1) of the Senate Standing Orders, to the Standing Committee on Standing Committee on Devolution and Intergovernmental Relations for facilitation of public participation. Subsequently, the Committee, pursuant to Article 118(1)(b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement on the Daily Nation and The Standard Newspapers dated 16th July, 2021:

1.1 The Object of the Bill

3. The Intergovernmental Relations Act, 2012 was enacted to —
 - (a) establish a framework for consultation and cooperation between the national and county governments and amongst county governments; and
 - (b) establish mechanisms for the resolution of intergovernmental disputes pursuant to Articles 6 and 189 of the Constitution.
4. Part III of the Intergovernmental Relations Act, 2012 provides for the transfer and delegation of powers, functions and competencies subject to Articles 186 and 187 of the Constitution.
5. The Deed of Transfer of Functions from the Nairobi City County Government to the National Government was gazetted on 25th February, 2020 via Gazette Notice No. 1609 of 2020. In the case of the transfer of functions of Nairobi City County to the National Government, there were several challenges that were identified by the various stakeholders in the implementation phase of the Deed.

1.2 Overview of the Bill

6. The Bill provides for the following –

1.2.1 Clause 2 of the Bill- Amendment section 26(2) of the Intergovernmental Relations Act, 2012

Clause 2 of the Bill seeks to insert additional requirements that must be contained in a transfer or delegation of powers, functions or competencies. The additional requirements are as follows –

- (a) the challenges facing the implementation of the function, power or competency transferred or delegated and the interventions necessary to address the challenge;
- (b) the roles and responsibilities of each level of Government in implementing the function, power or competency transferred or delegated;
- (c) the relevant human resources to be deployed or seconded from one level of a government to the other;
- (d) the institutional framework for the execution of the transferred function, power or competency transferred or delegated;
- (e) the duration of the agreement;
- (f) the necessary instruments to facilitate the secondment or deployment of the necessary human resources;
- (g) the priorities, aims and desired outcomes;
- (h) indicators to measure the effective implementation of the function, power or competency transferred or delegated; and
- (i) the oversight mechanisms and procedures for monitoring the effective implementation of the function, power or competency transferred or delegated.

1.2.2 Clause 3 of the Bill- Approval Process by the County Assembly and the Senate

7. Clause 3 seeks to streamline the approval process of the transfer before a County Assembly. The proposed approval process will be as follows –

- (1) A transfer agreement shall be introduced in the relevant county assembly in line with that county assembly's standing orders.
- (2) The county assembly shall, within a period of thirty days, consider the agreement and may by resolution supported by a majority of the members of the county assembly, approve, with or without amendment or reject the agreement. A county assembly shall conduct public participation in all the wards in the respective county.

- (3) Once approved by the county assembly resolves, the Speaker of the county assembly shall inform the Speaker of the Senate, in writing, of that resolution within seven days.
8. The proposed section 26B provides for the role of the Senate which commences within seven sitting days after receiving the notice of a resolution from the Speaker of a county assembly. The Senate shall –
 - (1) consider the agreement within thirty days from the date of receipt of the notice of resolution; and
 - (2) either approve, with or without amendment, or reject the agreement supported by a majority of the county delegations in the Senate.
9. The Senate may in considering the agreement conduct public participation. The Speaker of the Senate shall then notify the speaker of the respective County Assembly of the Senate's resolution within a period of seven days of the resolution by the Senate. Further, the Senate shall exercise oversight over the implementation of the agreement by the National Government and the respective county government.
10. The proposed section 26C provides for an agreement to transfer a power, function or competency of the National Government to a county government which shall be introduced in the National Assembly for approval. The agreement shall be approved by a majority of the members of the National Assembly within thirty days of its introduction in the National Assembly.
11. Once approved, the Speaker of the National Assembly shall inform the Speaker of the Senate in writing within seven days. The Senate shall then consider the resolution within thirty days. If one House of Parliament rejects the resolution, the matter shall be referred to a joint committee of the two Houses of Parliament for mediation in accordance with Article 113 of the Constitution.
12. The proposed section 26D provides that the level of government which transfers a power, function or competency shall appropriate the monies necessary for the execution of the transferred power, function or competency.
13. The proposed section 26E provides for the execution phase of the agreement which shall signed by an authorized person or officer and published in the Kenya Gazette and the county Gazette in respect of the county to which it relates, at least fourteen days before the effective date of the transfer or delegation.

14. The proposed section 26E provides that an agreement for the transfer and delegation of powers, functions and competencies shall lapse on the date of the next general election.

1.3 Consequences of the Bill

15. The enactment of this Bill is expected to ensure that the seamless transfer of functions between the two levels of government.

CHAPTER TWO

PUBLIC PARTICIPATION

2.0 Attendance by Stakeholders

16. The Committee, pursuant to Article 118 of the Constitution and standing order 140 (5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement on the Daily Nation and The Standard Newspapers on 16th July, 2021.
17. The Committee received written submissions from the Intergovernmental Relations Technical Committee (IGRTC) and the County Assemblies Forum (CAF).

2.1 Submissions from Stakeholders

2.1.1 Clause 2 of the Bill- Amendment section 26(2) of the Intergovernmental Relations Act, 2012

18. Clause 2 of the Bill seeks to amend section 26(2) of the Intergovernmental Relations Act, 2012 to insert additional requirements that must be contained in a transfer or delegation of powers, functions or competencies. The County Assemblies Forum proposed that section 26 of the Act be amended to provide that in case of exclusive functions, they can only be performed by another government only pursuant to an agreement.
19. The rationale for the proposal was that this will fast track the transfer of functions to the counties especially on the mandates still being performed by various national government departments. The uptake of functions at both levels of governments has certainly not been seamless. There are some functions which are exclusive functions to the counties but the national government is still performing them.
20. The Intergovernmental Relations Technical Committee made the following submissions to the Committee with respect to Clause 2 of the Bill-
 - (a) There is need to determine how the process of transfer is initiated and parties that may initiate the process. The process may be initiated by:
 - (i) the level of government responsible for that function;
 - (ii) the Ministry responsible for matters relating to intergovernmental relations;
 - or
 - (iii) a member of public.
 - (b) The Bill does not offer the legal instruments to be used in initiating the transfer or delegation of powers, functions or competencies. It is recommended that a standard

instrument be developed to initiate the process of transfer, for example, a petition. Through subsequent regulations, the details of the transfer may be provided.

- (c) Clause 2 (j) of the Bill provides that the agreement for the transfer should provide for the challenges facing the implementation of the function, power or competency and the interventions necessary to address the challenge. However, it fails to address how the challenges would be determined.

The Bill should provide for self or independent assessment to be conducted against the performance standards for the particular power, function or competency, to determine the challenges faced by the relevant level of government. The assessment report should be shared with County Assembly in the case of a County Government and the National Assembly in the case of the National Government. The relevant Legislature will then determine whether the challenges warrant a transfer, upon which such decision shall be communicated to the Senate in writing. The assessment report should also determine the exact gaps leading to the challenges faced by the relevant level of government.

2.1.2 Clause 3 of the Bill- Approval Process by the County Assembly and the Senate

- 21. Clause 3 seeks to streamline the approval process of the transfer before a County Assembly. The County Assemblies Forum supported that amendment and appreciated the Senate in recognition of the important role played by the County Assemblies in approving transfer of powers, functions and competency Agreements.
- 22. The Intergovernmental Relations Technical Committee made the following submissions to the Committee with respect to Clause 3 of the Bill-
 - (a) The Proposed section 26A(3) provides that a County Assembly shall, in considering the transfer agreement, conduct public participation. The Bill does not envisage a situation where the public rejects the proposal to transfer or delegate a power, function or competency. It is recommended that the Bill makes provisions for what happens in the event that the public through public participation rejects the proposal to transfer or delegate a power, function or competency.
 - (b) The proposed section 26A(3) provides that the National or county government which transfers a power, function or competency shall appropriate such monies as are necessary for the execution of the transferred power, function or competency. The Bill does not provide for approval by the National Assembly and the County Assembly. The allocations for budgets for transferred powers, functions or competencies be

included in the budget estimates of both the County and national government and should be submitted to Parliament and County assembly for approval.

2.1.3 Section 38 of the Intergovernmental Relations Act, 2012

23. Section 38 mandates the Cabinet Secretary to make regulations to aid in the implementation of the Act. The County Assemblies Forum proposed that this section be amended to specifically provide for specific areas for development of Regulations. There is no requirement for regulations to provide the procedures for transfer or delegation of functions to either level of government, public participation under the Act, dispute resolution mechanisms under this Act, among others.

2.1.4 General Comments by Intergovernmental Relations Technical Committee (IGRTC)

24. The Intergovernmental Relations Technical Committee submitted to the Committee that given that IGRTC is mandated with facilitating cooperation and consultation between the National and County Governments as provided under Articles 6 and 189 of the Constitution, the role of IGRTC in the process of transfer or delegation of powers, functions or competencies cannot be overstated. In their view, IGRTC should be involved in the following functions-

- (a) *Attestation of the deed of transfer* as the secretariat to the two levels of government; IGRTC should be mandated to attest to the execution of the deed of transfer.
- (b) *Repository function* - on the basis of its unique role as the neutral body between the two levels of government, IGRTC should provide repository for the deed of transfer.
- (c) *Monitoring and Evaluation of the Implementation of the transferred or delegated power, function or competency*- Section 8 (f) and (h) of the Intergovernmental Relations Act, 2012 provides that the Summit shall provide a platform for evaluating the performance of national or county governments and recommending appropriate action; and monitoring the implementation of national and county development plans and recommending appropriate action.

On the basis of its mandate in Section 12 (a), IGRTC, may, on the direction of the Summit, undertake monitoring and evaluation of the implementation of the transfer or delegation, and make recommendations to the National and County Government Co-ordinating Summit.

- (d) *Reporting* - Pursuant to the mandate of IGRTC stipulated in Section 12 (a) (i) and (ii) of the Intergovernmental Relations Act, 2012, the two levels of government should

report to the Summit on the status of implementation of the transfer or delegation, through IGRTC.

- (e) *Dispute Resolution* - In accordance with its mandate under Section 33 (2) of the Intergovernmental Relations Act, 2012 as read with Article 189 (3) and (4) of the Constitution, IGRTC is tasked with facilitation of amicable resolution of any intergovernmental dispute that may arise from the implementation of the deed of transfer, through mechanisms of Alternative Dispute Resolution.

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.0 OBSERVATIONS

25. The Committee made the following observations in line with the submissions from the different stakeholders –
- (1) **Clause 2 of the Bill- Amendment section 26(2) of the Intergovernmental Relations Act, 2012**
26. Clause 2 of the Bill seeks to amend section 26(2) of the Intergovernmental Relations Act, 2012 to insert additional requirements that must be contained in a transfer or delegation of powers, functions or competencies.
27. The Committee noted that the County Assemblies Forum proposed that section 26 of the Act be amended to provide that in case of exclusive functions, they can only be performed by another government only pursuant to an agreement. The Committee observed that this concern was already covered. Article 189(1)(a) of the Constitution provides that Government at either level shall perform its functions and exercise its powers in a manner that respects the functional and institutional integrity of government at the other level and respects the constitutional status and institutions of government at the other level and in the case of county government, within the county level.
28. The Committee further noted the concern raised by the Intergovernmental Relations Technical Committee that the Bill does not offer the legal instruments to be used in initiating the transfer or delegation of powers, functions or competencies and proposed a standard instrument be developed. However, the Committee observed that Section 26(1) of the Intergovernmental Relations Act, 2021 provides that the transfer shall be by a written agreement. Further, prescribing a legal instrument would be too prescriptive and should be left to relevant parties considering that the nature of transfer may vary.
29. The Committee deliberated on the submission by the Intergovernmental Relations Technical Committee that Clause 2 (j) of the Bill provides that the agreement for the transfer should provide for the challenges facing the implementation of the function, power or competency and the interventions necessary but fails to address how the challenges would be determined. The Committee observed that the nature of challenges and response will be dependent on the

level of government that intends to transfer a function and it may not be possible to anticipate every challenge that may arise. This process is expected to commence internally within the respective government before the actual transfer process.

(2) Clause 3 of the Bill- Approval Process by the County Assembly and the Senate

30. Clause 3 seeks to streamline the approval process of the transfer before a County Assembly. The proposed section 26A(3) provides that a County Assembly shall, in considering the transfer agreement, conduct public participation.
31. The Committee considered the view by the Intergovernmental Relations Technical Committee that the Clause did not envisage a situation where the public rejects the proposal to transfer or delegate a power, function or competency. However, the Committee observed that this concern was catered for in the proposed section 26A(2). The Bill provides that the County Assembly having conducted public participation, may resolve to either approve (with or without amendment) or reject the agreement.
32. The proposed section 26A(3) provides that the National or county government which transfers a power, function or competency shall appropriate such monies as are necessary for the execution of the transferred power, function or competency.
33. The Committee considered the concern by the Intergovernmental Relations Technical Committee that the Bill does not provide for approval by the National Assembly and the County Assembly to appropriate funds for the transferred powers. However, the Committee observed that provisions relating to appropriation of monies are covered in existing finance-related statutes at the both the national and county levels.

(3) Section 38 of the Intergovernmental Relations Act, 2012

34. Section 38 mandates the Cabinet Secretary to make regulations to aid in the implementation of the Intergovernmental Relations Act. The County Assemblies Forum proposed that this section be amended to specifically provide for specific areas for development of Regulations.
35. The Committee observed that this concern had already been taken care of under section 38 (2) (a) of the Intergovernmental Relations Act which provides that the Regulations may provide for the procedures for –
 - (a) the transfer or delegation of functions to either level of government;
 - (b) public participation under the Act;

- (c) dispute resolution mechanisms under the Act;
- (d) appointing the members of the Technical Committee; and
- (e) constituting intergovernmental forums.

(4) Strengthening of the Intergovernmental Relations Technical Committee (IGTRC)

36. The Intergovernmental Relations Technical Committee IGTRC is mandated with facilitating cooperation and consultation between the National and County Governments as provided under Articles 6 and 189 of the Constitution. In its deliberations, the Committee observed that IGTRC has the competency to play a significant role in strengthening intergovernmental relations and that it is well placed to perform additional roles in the transfer process as a neutral arbiter.
37. These roles may include, but are not limited to attestation of the deed of transfer as the secretariat to the two levels of government; to provide repository for the deed of transfer; to provide and inventory of assets and liabilities with respect to the transferred functions; monitoring and evaluation of the implementation of the transferred functions; reporting and dispute resolution. In this regard, IGTRCs institutional capacity should be strengthened.

(5) Provisions on Termination of the Transfer Agreement

38. The Committee observed that the Bill did not provide adequately for situations where one party to the agreement seek to terminate the agreement. The Committee agreed to propose an amendment under Clause 2 of the Bill to provide for the possibility.

3.1 RECOMMENDATIONS

39. Based on the public and stakeholder submissions and the observations made, the Committee therefore makes the following recommendations on the Bill -

- (1) Provisions on Termination of the Transfer Agreement** - That Clause 2 of the Bill be amended to include a provision on termination of the transfer agreement as an option to both parties.
- (2) Strengthening of the Intergovernmental Relations Technical Committee (IGTRC)**- That Clause 3 of the Bill be amended to assign roles to the Intergovernmental Relations Technical Committee. The IGTRC should be assigned the mandate to witness the execution of a transfer or delegation of a power, function or a competency; provide and inventory of assets and liabilities with respect to the transferred functions; and provide administrative support to the parties to the transfer agreement during the transfer process.

APPENDICES

- ANNEX 1:** MINUTES OF THE MEETINGS
- ANNEX 2:** PROPOSED AMENDMENTS
- ANNEX 3:** NEWSPAPER ADVERTISEMENT

Annex 1:
MINUTES



TWELFTH PARLIAMENT | FIFTH SESSION

MINUTES OF THE THIRTY-SECOND SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTER-GOVERNMENTAL RELATIONS HELD IN MOMBASA COUNTY AT THE SERENA HOTEL, ON SATURDAY 23RD OCTOBER 2021, AT 10.00 A.M.

PRESENT

- | | |
|--------------------------------|---------------|
| 1. Sen. Moses Kajwang', MP | - Chairperson |
| 2. Sen. Rose Nyamunga, CBS MP | - Member |
| 3. Sen. Agnes Kavindu, MP | - Member |
| 4. Sen. Abdulkadir Haji, MP | - Member |
| 5. Sen. Isaac Ngugi Githua, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------------------|--------------------|
| 1. Sen. Anuar Loitiptip, MP | - Vice Chairperson |
| 2. Sen. Aaron Cheruiyot, MP | - Member |
| 3. Sen. Kipchumba Murkomen, EGH, MP | - Member |
| 4. Sen. Cleophas Malalah, MP | - Member |

IN ATTENDANCE

- | | |
|--|--|
| 1. Mr. John. N. Burugu | - Ag. Chairperson of the IGRTC |
| 2. Hon. Alfred Khangati, MP | - Member of the IGRTC |
| 3. Mrs. Linet M. Mosa | - Member of the IGRTC |
| 4. Mrs. Angeline Hongo, MBS | - Member of the IGRTC |
| 5. Mrs. Saadia A. Kontoma, OGW | - Member of the IGRTC |
| 6. Dr. Perminus N. Ndimitu | - Member of the IGRTC |
| 7. Mr. Peter Leley | - Chief Executive Officer of IGRTC |
| 8. Hon. David John Mbaya
(Speaker Tharaka Nithi) | - Eastern Cluster Representative, CAF |
| 9. Hon. Catherine Mukenyang
(Speaker West Pokot) | - North Rift Cluster Representative CAF |
| 10. Hon. Adamson Lonyasunya
(Member, Samburu County Assembly) | - Deputy Organizing Secretary |
| 11. Hon. Dr. Joseph Arimba | - Speaker of Meru County Assembly |
| 12. Hon. Kipruto Kimosop | - MCA, Baringo County Assembly |
| 13. Hon. John Agengo | - MCA, Kisumu County Assembly |
| 14. Judy Oduma Wangalwa | - Chief Executive Officer of CAF |
| 15. Mr. Austin Munene | - Legal Counsel, CAF. |
| 16. Dr. Brenda Ogembo | - Senior Clerk Assistant, Senate
Liaison Office |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Ms. Carole Cheruiyot | - Legal Counsel |
| 2. Ms. Clare Kidombo | - Research Officer |
| 3. Mr. Simon Muinde | - Audio Officer |
| 4. Ms. Sylvia Adera | - Clerk Assistant (Taking Minutes) |
| 5. Ms. Lucianne Limo | - Media Relations Officer |

DEV-IR. MIN. NO.222/2021 PRAYER

The sitting commenced at 10.30 am with a word of prayer led by the Chairperson.

DEV-IR. MIN. NO.223/2021 ADOPTION OF THE AGENDA

Noting that the rules of engagement still applied, the Committee adopted the programme of the retreat as the main agenda for the next two days, having been proposed by Sen. Rose Nyamunga, CBS, MP and seconded by Sen. Abdulkadir Haji, MP.

DEV-IR. MIN. NO.224 /2021 CONSIDERATION OF THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL, SENATE BILLS NO. 37 OF 2021

The Stakeholders then proceeded to give their views on the Intergovernmental Relations (Amendment) Bill, as indicated in the stakeholder matrix attached. The IGRTC Members had a real interest in the Bill, and really advocated for the establishment of IGRTC as an autonomous independent Commission.

DEV-IR. MIN. NO.225 /2021 ANY OTHER BUSINESS

Once consideration of the Intergovernmental Relations (Amendment) Bill was concluded, the Chairperson gave the IGRTC team an opportunity to justify why they should be established as an independent Commission and yet it is arguable that the Council of Governors is filling that gap.

The IGRTC team argued that they have faced numerous frustrations in fulfilling their role, and that this autonomy would empower them to do their work, whilst clearly demarcating the role of the Council of Governors vs the role of the IGRTC.

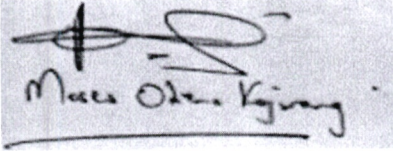
The Committee considered their arguments and resolved to look into making amendments that would help them realize their goals.

DEV-IR. MIN. NO.226/2021 DATE OF NEXT MEETING

The next meeting will be held on 23rd October 2021 at 2.00.pm.

DEV-IR. MIN. NO.227/2021 ADJOURNMENT

There being no other business, the meeting was adjourned the meeting at 1.35pm.



Mace Olan Kijang

SIGNED:

(CHAIRPERSON)

9TH DECEMBER, 2021

DATE:



TWELFTH PARLIAMENT | FIFTH SESSION

MINUTES OF THE THIRTY NINTH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTER-GOVERNMENTAL RELATIONS HELD ONLINE ON THE ZOOM MEETING PLATFORM ON THURSDAY 11TH NOVEMBER 2021, AT 11.30 A.M.

PRESENT

- | | |
|-------------------------------|------------------------------|
| 1. Sen. Rose Nyamunga, CBS MP | - Member (Chairing) |
| 2. Sen. Agnes Kavindu, MP | - Member |
| 3. Sen Isaac Ngugi Githua, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|------------------------------------|--------------------|
| 1. Sen. Anuar Loiptip, MP | - Vice Chairperson |
| 2. Sen. Moses Kajwang', MP | - Chairperson |
| 3. Sen. Aaron Cheruiyot,MP | - Member |
| 4. Sen. Cleophas Malalah, MP | - Member |
| 5. Sen. Kipchumba Murkomen,EGH, MP | - Member |
| 6. Sen. Abdulkadir Haji, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Ms. Carole Cheruiyot | - Legal Counsel |
| 2. Mr. Simon Muinde | - Audio Officer |
| 3. Ms. Sylvia Adera | - Clerk Assistant (Taking Minutes) |
| 4. Ms. Lucianne Limo | - Media Relations Officer |

DEV-IR. MIN. NO.283/2021 PRAYER

The sitting commenced at 11.53 am with a word of prayer led by the Chair.

DEV-IR. MIN. NO.284/2021 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the thirty ninth sitting, having been proposed by Sen. Agnes Kavindu, MP and seconded by Sen Isaac Ngugi Githua, MP as follows:

1. Preliminaries
 - a) Prayer
 - b) Adoption of the Agenda
2. Update and final Consideration of:
 - a) The County Oversight and Accountability Bill, Senate Bills No. 17 of 2021;
 - b) The Intergovernmental Relations (Amendment) Bill, Senate Bills No. 37 of 2021;and
 - c) The County Government (Amendment) Bill, Senate Bills No. 38 of 2021.

- 3. Any other business.
- 4. Adjournment.

DEV-IR. MIN. NO.285/2021 INTRODUCTIONS

The members introduced themselves.

Clerk briefed the members on the main agenda which is to go through the public participation matrix for:

- a) The County Oversight and Accountability Bill, Senate Bills No. 17 of 2021;
- b) The Intergovernmental Relations (Amendment) Bill, Senate Bills No. 37 of 2021; and
- c) The County Government (Amendment) Bill, Senate Bills No. 38 of 2021.

The Clerk then invited the Legal Counsel to take the members through the matrix.

DEV-IR. MIN. NO. 286/2021 PUBLIC PARTICIPATION MATRIXES

The Legal Counsel took the committee through some of the proposed amendments of Bills as the members discussed the propositions and made resolutions. Attached to the minutes is the Matrix of the Three Bills.

DEV-IR. MIN. NO.287 /2021 ANY OTHER BUSINESS

The Clerk reminded the members of the Committee retreat that is scheduled for next week

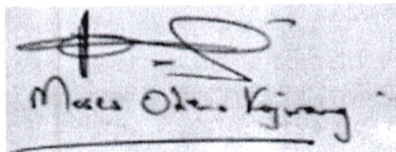
The Clerk also gave a brief progress on the plans for the Committee’s Trip to Dubai.

DEV-IR. MIN. NO.288/2021 DATE OF NEXT MEETING

The next meeting will be held on Wednesday 17th November 2021 at 11:30 am.

DEV-IR. MIN. NO.289/2021 ADJOURNMENT

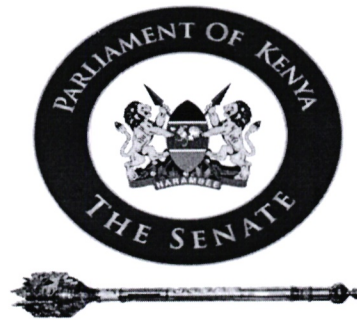
There being no other business, the meeting was adjourned the meeting at 12:25pm.



SIGNED:
(CHAIRPERSON)

9TH DECEMBER, 2021

DATE:



TWELFTH PARLIAMENT | FIFTH SESSION

MINUTES OF THE FORTY FIRST SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTER-GOVERNMENTAL RELATIONS HELD ON SATURDAY 20TH NOVEMBER, 2021, AT 11:30 A.M AT LAKE NAIVASHA SAWELA LODGE, NAKURU COUNTY.

PRESENT

- | | |
|------------------------------------|---------------------------------|
| 1. Sen. Moses Kajwang', MP | - Chairperson (Chairing) |
| 2. Sen. Kipchumba Murkomen,EGH, MP | - Member |
| 3. Sen. Aaron Cheruiyot,MP | - Member |
| 4. Sen. Abdulkadir Haji, MP | - Member |
| 5. Sen. Isaac Ngugi Githua | - Member |
| 6. Sen. Cleophas Malalah, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|------------------------------|--------------------|
| 1. Sen. Anuar Loitiptip, MP | - Vice Chairperson |
| 2. Sen. Agnes Kavindu | - Member |
| 3. Sen. Rose Nyamunga,CBS MP | - Member |

SECRETARIAT

- | | |
|------------------------|---|
| 1. Ms. Farhiya Ibrahim | - Principal, SAA |
| 2. Ms. Lucy Radoli | - Legal Counsel |
| 3. Ms. Clare Kidombo | - Research Officer 1 |
| 4. Mr. Simon Muinde | - Audio Officer |
| 5. Ms. Sylvia Adera | - Clerk Assistant (Taking Minutes) |
| 6. Ms. Alice Nanyama | - Secretary |
| 7. Ms. Rose Omboke | - Office Assistant |

DEV-IR. MIN. NO.296/2021 PRAYER

The sitting commenced at 11.55 am with a word of prayer led by Sen. Isaac Ngugi Githua.

DEV-IR. MIN. NO.297/2021 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the forty-first sitting, having been proposed by Sen. Kipchumba Murkomen,EGH, MP and seconded by Sen. Isaac Ngugi Githua as follows:

1. Preliminaries

- a) Prayer
- b) Adoption of the Agenda
- 2. Consideration of the Committee reports on :
 - a) The County Oversight and Accountability Bill, 2021
 - b) The County Governments (Amendment) Bill, 2021; and
 - c) The Intergovernmental Relations (Amendment) Bill, 2021.
- 3. Any other business.
- 4. Adjournment.

DEV-IR. MIN. NO. 298/2021 CONSIDERATION OF THE REPORTS

The Reports, which included earlier proposed amendments were adopted as follows:

- a) The Report on the County Oversight and Accountability Bill, 2021 was adopted, having been proposed by Sen. Aaron Cheruiyot, MP and seconded by Sen. Isaac Githua Ngugi, MP.
- b) The Report on the County Governments (Amendment) Bill, Senate Bill No. 38 of 2021, having been proposed by Sen. Aaron Cheruiyot, MP and seconded by Sen. Isaac Githua Ngugi, MP; and
- c) The Report on the Intergovernmental Relations (Amendment) Bill, Senate Bill No. 37 of 2021 having been proposed by Sen. Isaac Githua Ngugi, MP and seconded by Sen. Aaron Cheruiyot, MP.

DEV-IR. MIN. NO. 300/2021 ANY OTHER BUSINESS

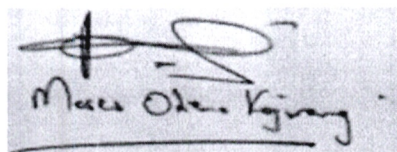
There was no AOB to be considered by the Committee.

DEV-IR. MIN. NO.301/2021 DATE OF NEXT MEETING

The next meeting will be held on notice

DEV-IR. MIN. NO.302/2021 ADJOURNMENT

There being no other business, the meeting was adjourned the meeting at 1:30pm



SIGNED:
(CHAIRPERSON)

9TH DECEMBER, 2021

DATE:

Annex 2:
PROPOSED
AMENDMENTS

**1. The
Intergovernmental
Relations
(Amendment) Bill,
2021**

SPECIAL ISSUE

Kenya Gazette Supplement No. 110 (Senate Bills No. 37)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2021

NAIROBI, 27th May, 2021

CONTENT

Bill for Introduction into the Senate—	PAGE
The Intergovernmental Relations (Amendment) Bill, 2021	1031

**THE INTERGOVERNMENTAL RELATIONS
(AMENDMENT) BILL, 2021**

A Bill for

AN ACT of Parliament to amend the Intergovernmental Relations Act to streamline the procedure for the transfer and delegation of powers, functions and competencies between the two levels of government and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Intergovernmental Relations (Amendment) Act, 2021.

Short title.

2. Section 26 of the Intergovernmental Relations Act, in this Act referred to as “the principal Act” is amended —

Amendment of section 26 of No. 2 of 2012.

- (a) in subsection (2) by inserting the following new paragraphs immediately after paragraph (i) —
 - (j) the challenges facing the implementation of the function, power or competency transferred or delegated and the interventions necessary to address the challenge;
 - (k) the roles and responsibilities of each level of government in implementing the function, power or competency transferred or delegated;
 - (l) the relevant human resources to be deployed or seconded from one level of a government to the other;
 - (m) the institutional framework for the execution of the transferred function, power or competency transferred or delegated;
 - (n) the duration of the agreement;
 - (o) the necessary instruments to facilitate the secondment or deployment of the necessary human resources;
 - (p) the priorities, aims and desired outcomes;
 - (q) indicators to measure the effective implementation of the function, power or competency transferred or delegated; and

(r) the oversight mechanisms and procedures for monitoring the effective implementation of the function, power or competency transferred or delegated.

(b) by deleting subsection (3);

(c) by deleting subsection (4); and

(d) by deleting subsection (5).

3. The principal Act is amended by inserting the following new sections immediately after section 26 —

Insertion of new section 26A in No. 2 of 2012.

Approval of county assembly.

26A (1) The county executive committee member shall submit an agreement under section 26 to the clerk of the respective county assembly for tabling before the county assembly.

(2) The county assembly shall, within a period of thirty days from the date of tabling under subsection (1), consider the agreement and may, by resolution supported by a majority of the members of the county assembly, approve, with or without amendment or reject the agreement.

(3) A county assembly shall, in considering the agreement, conduct public participation.

(4) Where a county assembly resolves to approve the Agreement the Speaker of the county assembly shall inform the Speaker of the Senate, in writing, of that resolution within seven days of the resolution.

(5) A county assembly shall exercise oversight over a power, function or competency transferred or delegated by a county government.

Role of the Senate.

26B (1) Within seven sitting days after receiving notice of a resolution under section 26A (4) from the Speaker of the county assembly, the Speaker of the Senate shall convene a meeting of the Senate to

consider the agreement together with the resolution.

(2) The Senate shall –

(a) consider the agreement within a period of thirty days from the date of receipt of the notice of resolution under subsection (1); and

(b) either approve, with or without amendment, or reject the agreement supported by a majority of the county delegations in the Senate.

(3) The Senate may in considering the agreement submitted to it under subsection (1), conduct public participation.

(4) The Speaker of the Senate shall notify the Speaker of the respective county assembly of the resolution of the Senate within a period of seven days of the resolution.

(5) The Senate shall exercise oversight over the implementation of the agreement by the National Government and the respective county government.

Role of the National Assembly.

26C (1) The Cabinet Secretary shall submit an agreement to transfer a power, function or competency of the National Government to a county government to the Speaker of the National Assembly for tabling before the Assembly.

(2) The National Assembly shall, within a period of thirty days of tabling before the Assembly, consider the agreement and may, by a resolution supported by a majority of the members of the Assembly approve, with or without amendment or reject the agreement.

(3) If the National Assembly passes a motion to transfer a national government

power, function or competency to a county government, the Speaker of the National Assembly shall inform the Speaker of the Senate, in writing, of that resolution within seven days.

(4) The Senate shall vote on a motion to transfer a National Government power, function or competency to a county government within thirty days of its introduction in the Senate.

(5) A resolution to transfer a national government's power, function or competency to a county government shall be supported by a majority of the county delegations in the Senate.

(6) Where one House fails to approve the agreement for the transfer of a national government's power, function or competency to a county government, the matter shall be referred for mediation under Article 113 of the Constitution, applied with the necessary modifications.

(7) Parliament shall facilitate public participation on a motion to transfer a national government power, function or competency to a county government.

(8) The National Assembly shall exercise oversight over a power, function or competency transferred or delegated by the national government to a county government.

Budget for a transferred power, function or competency.

26D. The National or county government which transfers a power, function or competency shall appropriate such monies as are necessary for the execution of the transferred power, function or competency.

Execution of a transfer agreement.

26E. An agreement under this Part shall be —

- (a) signed by an authorized person or officer; and

(b) published in the Kenya *Gazette* and the county *Gazette* in respect of the county to which it relates, at least fourteen days before the effective date of the transfer or delegation.

Expiry of a transfer agreement.

26F. An agreement entered into under this Part shall, notwithstanding the provisions of an agreement, lapse on the date of the next general election.

MEMORANDUM OF OBJECTS AND REASONS**Statement of the Objects and Reasons for the Bill**

The principal objective of this Bill is to amend the provisions of the Intergovernmental Relations Act, 2012 to provide a comprehensive framework on the transfer of powers, functions or competences by either National or County governments. The Bill seeks to address the following issues that are not provided for in the Intergovernmental Relations Act, 2012 —

- (a) the belated involvement of Parliament or the County Assemblies in the transfer of functions processes;
- (b) lack of an elaborate framework for public participation in the entire process of transfer of functions; and
- (c) lack of a clear process of costing of the transferred functions.

The Bill therefore proposes amendments on —

- (a) financing of the functions that have been transferred including the appropriation of funds;
- (b) the involvement of the Senate and the respective County Assembly in the transfer of functions of County Governments;
- (c) the involvement of the National Assembly in the transfer of functions of the National Government; and
- (d) the general conduct of public participation during the transfer of functions.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement of how the Bill concerns County Governments

The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution as it contains provisions that deal with the process of transfer or delegation of the functions and powers of either the National Government or a County Government.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 10th May, 2021.

MOSES OTIENO KAJWANG',
*Chairperson, Standing Committee on
Devolution and Intergovernmental Relations.*

Section 26 of No. 2 of 2012 which it is proposed to amend -

26. Agreements on transfer or delegation of powers, functions or competencies

(1) A transfer or delegation of powers, functions or competencies under this Part shall be by a written agreement.

(2) The agreement for the transfer or delegation under subsection (1) shall include —

- (a) the function, power or competency transferred or delegated;
- (b) the specific legal provisions supporting the transfer or delegation;
- (c) the reasons for the transfer or delegation;
- (d) the performance standards and frameworks in respect of the transfer or delegation;
- (e) the capacity of the receiving entity to exercise or perform the powers, function, or competency transferred or delegated;
- (f) the capacity building framework for enhancing any deficits identified in the entity to which the transfer or delegation has been effected;
- (g) the method of resolving any dispute that may arise under the agreement; and
- (h) the terms and conditions for the exercise or performance of the power, function or competency including the time frame.

(3) The agreement shall be —

- (a) signed by an authorized person or officer; and
- (b) published in the *Kenya Gazette* and the county *Gazette* in respect of the county to which it relates, at least fourteen days before the effective date of the transfer or delegation.

(4) The National Assembly shall be notified of the decision to transfer a national government power, function or competency.

(5) A county assembly shall be notified of the decision to transfer a county government power, function or competency.

2. The Stakeholder Views Matrix

THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

STAKEHOLDER VIEWS ON THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL, 2021
(SENATE BILLS NO. 37 OF 2021)

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL, SENATE BILLS NO. 37 OF 2021				
	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE RESOLUTION
1.	Clause 2	County Assemblies Forum (CAF)	<ul style="list-style-type: none"> • Clause 2 of the Bill seeks to amend section 26(2) of the Intergovernmental Relations Act, 2012 to insert additional requirements that must be contained in a transfer or delegation of powers, functions or competencies. • CAF proposes that section 26 of the Act be amended to provide that in case of exclusive functions, they can only be performed by another government only pursuant to an agreement. • Rationale: This will fast track the transfer of functions to the counties especially on the mandates still being performed by various national government departments. The uptake of functions at both levels of governments has certainly not been seamless. There are some functions which are exclusive functions to the counties but the national government is still performing them. 	
2.	Clause 3	CAF	<ul style="list-style-type: none"> • Clause 3 seeks to streamline the approval process of the transfer before a County Assembly. 	

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL, SENATE BILLS NO. 37 OF 2021

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE RESOLUTION
			<ul style="list-style-type: none"> CAF has no amendment; it appreciates the Senate in recognition of the important role played by the County Assemblies in approving transfer of powers, functions and competency Agreements. 	
3.	Clause 4	The Intergovernmental Relations Technical Committee (IGRTC)	<ul style="list-style-type: none"> Clause 4 of the Bill provides for the establishment of the County Leaders Forum. In furtherance of intergovernmental relations, which are the corner stone of the devolved system of governance, IGRTC applauds the proposal to establish the County Leaders Forum. IGRTC recommends that the resolutions of the forum be tabled at the Summit for its information through IGRTC which serves as the secretariat to the Summit. Rationale: Noting the proposed functions of the County Leaders Forum, it is important to ensure that the resolutions of this forum are shared with the National and County Government Co-ordinating Summit, which is the apex body for intergovernmental relations. 	
4.	Section 38 of the Intergovernmental Relations Act, 2012	CAF	<ul style="list-style-type: none"> Section 38 mandates the Cabinet Secretary to make regulations to aid in the implementation of the Act. CAF proposes that this section be amended to specifically provide for specific areas for development of Regulations. There is no requirement for regulations 	

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL, SENATE BILLS NO. 37 OF 2021

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE RESOLUTION
			to provide the procedures for transfer or delegation of functions to either level of government, public participation under the Act, dispute resolution mechanisms under this Act, among others.	

**2. Submissions by
County Assemblies
Forum (CAF)**



COUNTY ASSEMBLIES FORUM (CAF)

Flamingo Towers, 5th Floor Wing B, Mara Road, Upper Hill P.o Box 73552- 00200 Nairobi Kenya Tel: 0701 046 933
Email:communication@countyassembliesforum.org www.countyassembliesforum.org

MEMORANDUM ON THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL (SENATE BILL N.O. 37 OF 2021)

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

FROM: The County Assemblies Forum.

DATE: 22nd October 2021.

SUBJECT: CAF Memorandum on the Intergovernmental Relations (Amendment) Bill,2021 (Senate Bill N.O 37 of 2021)

1.0. INTRODUCTION

- 1.1. The County Assemblies Forum (CAF) is the coordinating body of the 47 County Assemblies in Kenya. The primary mandate of CAF is to promote networking and synergy among the 47 County Assemblies, coordinate intergovernmental relations and enhance good practice in legislative development. Our Mission is to provide effective leadership and coordination of the 47 County Assemblies and through policy and legislative action, promote a conducive working environment for all its members, and in that way deliver quality services to the people.
- 1.2. As one of the pillars of the devolved government system CAF is committed to engage in processes that lead to the further streamlining the procedure for the transfer and delegation of powers, functions and competencies between the two levels of government

2.0. BACKGROUND

- 2.1. The principal objective of this Bill is to amend the provisions of the Intergovernmental Relations Act, 2012 to provide a comprehensive framework on the transfer of powers, functions or competences by either National or County governments. The Bill seeks to address the following issues that are not provided for in the Intergovernmental Relations Act, 2012 —
- (a) the belated involvement of Parliament or the County Assemblies in the transfer of functions processes;
 - (b) lack of an elaborate framework for public participation in the entire process of transfer of functions; and
 - (c) lack of a clear process of costing of the transferred functions.

The Bill therefore proposes amendments on —

- (a) financing of the functions that have been transferred including the appropriation of funds;



- (b) the involvement of the Senate and the respective County Assembly in the transfer of functions of County Governments;
- (c) the involvement of the National Assembly in the transfer of functions of the National Government; and
- (d) the general conduct of public participation during the transfer of functions.

2.2. It is in this context that the principal object of the Bill is to give effect to the Fourth Schedule to the Constitution. The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution as it contains provisions that deal with the process of transfer or delegation of the functions and powers of either the National Government or a County Government.

3.0. **GENERAL COMMENTS.**

- 3.1. CAF appreciates parliament in developing this bill which will streamline the procedure for the transfer and delegation of powers, functions and competencies between the two levels of government.
- 3.2. CAF appreciates the opportunity to contribute to this Bill and on the basis of the foregoing proposes the following amendments:

4.0 SUMMARY MATRIX OF THE PROPOSED AMENDMENTS

THE PROPOSED AMENDMENTS TO

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL (SENATE BILL N.O. 37 OF 2021)

NO.	Section	Proposed Amendments	Justification
1.	<p>Clause 2</p> <p>Section 26 (2)</p> <p>Section 26 of the Intergovernmental Relations Act, in this Act referred to as “the principal Act” is amended —</p> <p>(a) in subsection (2) by inserting the following new paragraphs immediately after paragraph (i) —</p> <p>(j) the challenges facing the implementation of the function, power or competency transferred or delegated and the interventions necessary to address the challenge:</p>	<p>Amend Section 26 of the Act to provide that in case of exclusive functions, they can only be performed by another government only pursuant to an agreement.</p> <p>This will fast track the transfer of functions to the counties especially on the mandates still being performed by various national government departments.</p>	<p>The uptake of functions at both levels of governments has certainly not been seamless. There are some functions which are exclusive to the counties but the national government is still performing them. Further, the exact levels of responsibility and</p>



	<p>(k) the roles and responsibilities of each level of government in implementing the function, power or competency transferred or delegated;</p> <p>(l) the relevant human resources to be deployed or seconded from one level of a government to the other;</p> <p>(m) the institutional framework for the execution of the transferred function, power or competency transferred or delegated;</p> <p>(n) the duration of the agreement;</p> <p>(o) the necessary instruments to facilitate the secondment or deployment of the necessary human resources;</p> <p>(p) the priorities, aims and desired outcomes;</p> <p>(q) indicators to measure the effective</p>		<p>accountability of each level of government with respect to most of the concurrent functions remains unclear. For instance, the National government continues to perform functions that are constitutionally allocated to County governments through State Corporations and Ministries, Departments,</p>
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CAF Memorandum on the IGR (Amendment) Bill, 2020

	<p>implementation of the function, power</p>	<p>Agencies. The functions of these state corporations largely remain unbundled to date and the process is a necessary precursor to transferring any component of their functions that should be performed by County governments.</p>
<p>2.</p>	<p>Clause 3 Section 26 A 1) The county executive committee member shall submit an</p>	<p>No Amendment CAF appreciates the Senate in recognition of the important role played by the County Assemblies in</p>



	<p>agreement under section 26 to the clerk of the respective county assembly for tabling before the county assembly.</p> <p>(2) The county assembly shall, within a period of thirty days from the date of tabling under subsection (1), consider the agreement and may, by resolution supported by a majority of the members of the county assembly, approve, with or without amendment or reject the agreement.</p> <p>(3) A county assembly shall, in considering the agreement, conduct public participation.</p> <p>(4) Where a county assembly resolves to approve the Agreement the Speaker of the county assembly shall</p>	<p>approving transfer of powers, functions and competency Agreements.</p>
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HP LaserJet MFP M426dw

Job Storage

Job Storage Description

Job Storage allows you to send the print job to the printer and have it stored there until you print it from the printer's control panel. Some Job Storage jobs allow an optional PIN to be associated with the job for extra security.

Job Storage USB Installation

To enable Job Storage, you must first insert a dedicated USB storage device (with at least 16GB of memory) in the rear USB slot. This USB storage device will hold the Job Storage jobs sent to the printer. If this USB storage device is removed, Job Storage will be disabled on the printer.

Insert the USB drive in the rear USB slot and follow the instructions on the control panel. This USB drive will be dedicated to Job Storage. The front USB slot will not work for Job Storage.

1. The USB cover may need to be removed to reveal the USB slot on some printer models. If there is a cover, remove it.
2. Insert a USB drive with at least 16GB of memory.
3. Follow the Control Panel messages to format the USB drive for Job Storage.

You may need to update your printer driver if you do not find the "Job Storage" tab after enabling the feature in the printer. Go to the following URL for instructions on how to update the printer driver.

<http://www.hp.com/support/jobstorage>



CAF Memorandum on the IGR (Amendment) Bill, 2020

<p>47 County Assemblies established under Article 176 of the Constitution of Kenya, 2010.</p>	<p>with County Assemblies; and undertaking research and policy advocacy.</p> <p><u>Operational independence</u> Appropriate operational independence from both the national and county executives, as is necessary to facilitate effective and efficient oversight capacities in County Assemblies. It is paramount that NCCL is constituted as an independent body for County Assemblies, to ensure its functional and institutional integrity as an inter-governmental entity.</p> <p><u>Funding</u> Sufficient funding arrangements that enable NCCL to draw resources from the exchequer to undertake its functions and responsibilities, while maintaining the subscription-based membership structure NCCL currently has. This will ensure continued fealty to the</p>	<p>between the National Government and the 47 County Assemblies. The entrenching of CAF into law will give institution the much-needed recognition as the official body to represent all the 47 county assemblies in all matters of importance at the National Level.</p>
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CAF Memorandum on the IGR (Amendment) Bill, 2020

<p>devolved legislatures and to the principles of devolution.</p>	<p><u>Accountability framework</u></p> <p>MCCL to be Independently audited by the Auditor General to ensure accountability and adherence to the principles of Public Finance Management (PFM). Further, NCCL should undertake periodical reporting to the 47 County Assemblies on its operations and performance of its functions.</p> <p><u>Secretariat</u></p> <p>The Secretariat of NCCL, answerable to the structures of the Forum (constituted by the 47 County Assemblies) should be provided for in the statute. This will serve to continuously attract skilled and competent public servants to support the functions of NCCL and provide technical and capacity support to County Assemblies.</p>
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CAF Memorandum on the IGR (Amendment) Bill, 2020

<p>4.</p>	<p>35. Judicial proceedings (and ADR) Where all efforts of resolving a dispute under this Act fail, a party to the dispute may submit the matter for arbitration or institute judicial proceedings.</p>	<p>Amend the section to include mediation and negotiation as other alternative dispute resolutions mechanisms that may be applied before resorting to judicial proceedings</p>	<p>Section 35 lists arbitration as the only alternative dispute resolution (ADR) mechanism to resolve a dispute fails. However, Article 189 (4) of the Constitution states that ADR that shall be applied include mediation, negotiation and arbitration</p>
<p>5.</p>	<p>(1) Section 38 The Cabinet Secretary may, in consultation with the Summit, make regulations</p>	<p>Amend the section to specifically provide for specific areas for development of Regulations</p>	<p>There is no requirement for regulations to provide the procedures transfer</p>



CAF Memorandum on the IGR (Amendment) Bill, 2020

	<p>for the better carrying out of the provisions of this Act.</p> <p>Without prejudice to the generality of subsection (1), the regulations may provide the procedures for—</p> <p>(a) the transfer or delegation of functions to either level of government;</p> <p>(b) public participation under this Act;</p> <p>(c) dispute resolution mechanisms under this Act;</p> <p>(d) appointing the members of the Technical Committee under section 11; and</p> <p>(e) constituting intergovernmental forums.</p>	<p>or delegation of functions to either level of government; public participation under this Act; dispute resolution mechanisms under this Act; among others.</p>
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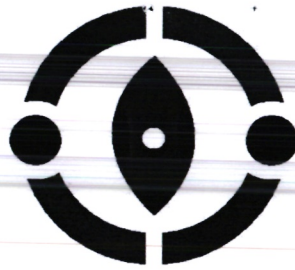
	<p>(3) The Cabinet Secretary shall cause a draft of the regulations under subsection (1) to be laid before the Senate for approval before publication in the Kenya Gazette.</p>		
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Thank you.

Yours sincerely,

JUDY ODUMA WANGALWA
CHIEF EXECUTIVE OFFICER

***3. Submissions by
Intergovernmental
Relations Technical
Committee
(IGRTC)***



IGRTC
INTERGOVERNMENTAL
RELATIONS TECHNICAL
COMMITTEE

Consultation, Cooperation & Coordination in Devolution

**LEGISLATIVE MEMORANDUM ON THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL,
2021**

TO

**THE SENATE
STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS**

FROM

THE INTERGOVERNMENTAL RELATIONS TECHNICAL COMMITTEE

22ND OCTOBER, 2021

1. Introduction

The Intergovernmental Relations Technical Committee (IGRTC) is established under Section 11 of the Intergovernmental Relations Act, 2012, as an intergovernmental structure whose objectives include *inter alia*, to facilitate cooperation and consultation between the National and County Governments and amongst County Governments as provided under Articles 6 and 189 of the Constitution. The functions of the Technical Committee are provided for in Sections 12, 13 and 33 of the Act.

2. Background

The Bill proposes to amend the Intergovernmental Relations Act, 2012 to streamline the procedure for the transfer and delegation of powers, functions and competencies between the two levels of government; and for connected purposes. In particular, the Bill seeks to amend Section 26 of the Act which currently provides for agreements on transfer or delegation of powers, functions or competencies.

3.0 OBSERVATIONS AND SUBMISSIONS BY IGRTC

CLAUSE OF THE BILL	PROVISION OF CLAUSE OF THE BILL	OBSERVATIONS BY IGRTC	SUBMISSIONS BY IGRTC
<p>Section 2-AMENDMENT OF SECTION 26 OF THE IGR ACT, 2012-PARA. J- R</p>	<p>This section provides for additional issues for consideration in the development of agreements on transfer or delegation of powers, functions or competencies.</p>	<p>IGRTC notes that the Bill outlines very important aspects of the process of transfer of powers, functions or competencies. However, there are some crucial aspects that are left out which the Bill should make provisions for. They are outlined in the recommendations section of this memorandum.</p>	<p>(a) There is need to determine how the process of transfer is initiated, and parties that may initiate the process. IGRTC recommends that the process may be initiated by:</p>

CLAUSE OF THE BILL	PROVISION OF CLAUSE OF THE BILL	OBSERVATIONS BY IGRTC	SUBMISSIONS BY IGRTC
			<ul style="list-style-type: none"> i. the level of government responsible for that function ii. by the Ministry responsible for matters relating to intergovernmental relations iii. by a member of public
		<p>The Bill does not offer the legal instruments to be used in initiating the transfer or delegation of powers, functions or competencies.</p>	<p>It is recommended that a standard instrument be developed to initiate the process of transfer, e.g. a petition. Through subsequent regulations, the details of the transfer may be provided.</p>
		<p>Part 2 (j) of the Bill states that the agreement for the transfer or delegation of powers, functions or competencies should provide for the challenges facing the implementation of the function, power or competency and the interventions necessary to address the challenge. However, it fails</p>	<p>Our considered view is that the Bill should provide for self or independent assessment to be conducted against the performance standards for the particular power, function or competency, to determine the challenges faced by the relevant level of government.</p>

CLAUSE OF THE BILL	PROVISION OF CLAUSE OF THE BILL	OBSERVATIONS BY IGRTC	SUBMISSIONS BY IGRTC
		to address how the challenges would be determined.	<p>This assessment report should be shared with County Assembly in the case of a county government and the National Assembly in the case of the national government.</p> <p>Pursuant to the assessment report, the relevant legislative arm should proceed to determine whether the challenges warrant a transfer, upon which such decision shall be communicated to the Senate in writing.</p> <p>In consideration of the proposal to conduct an assessment, it is important to determine which party shall conduct the independent assessment.</p> <p>The assessment report should also determine the exact gaps leading to the challenges faced by the relevant level of government.</p>
SECTION 26 A (3)	A county assembly shall, in considering the agreement, conduct public participation.	The Bill does not envisage a situation where the public rejects the proposal to transfer or delegate a power, function or competency	It is recommended that the Bill makes provisions for what happens in the event that the public through public

CLAUSE OF THE BILL	PROVISION OF CLAUSE OF THE BILL	OBSERVATIONS BY IGRTC	SUBMISSIONS BY IGRTC
			participation rejects the proposal to transfer or delegate a power, function or competency.
SECTION 26 D-BUDGET FOR A TRANSFERRED POWER, FUNCTION OR COMPETENCY	The national or county government which transfers a power, function or competency shall appropriate such monies as are necessary for the execution of the transferred power, function or competency	The Bill does not provide for approval by the National Assembly and the County Assembly.	It is recommended that the allocations for budgets for transferred powers, functions or competencies be included in the budget estimates of both the County and national government and should be submitted to Parliament and County assembly for approval

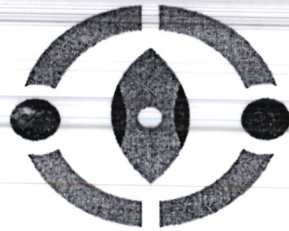
OTHER RECOMMENDATIONS:

It is important to consider the role of IGRTC in the transfer or delegation of powers, functions or competencies. Given that IGRTC is mandated with facilitating cooperation and consultation between the National and County Governments as provided under Articles 6 and 189 of the Constitution, the role of IGRTC in the process of transfer or delegation of powers, functions or competencies cannot be overstated. In this regard, IGRTC should be involved in the following functions:

- (a) Attestation of the deed of transfer - As the secretariat to the two levels of government, IGRTC is mandated to attest to the execution of the deed of transfer
- (b) Repository function- As the secretariat to the two levels of government and on the basis of its unique role as the neutral body between the two levels of government, IGRTC should provide the repository for the deed of transfer
- (c) Monitoring and Evaluation of the Implementation of the transferred or delegated power, function or competency- Section 8 (f) and (h) of the Intergovernmental Relations Act, 2012 provides that the Summit shall provide a platform for evaluating the performance of national or county governments and recommending appropriate action; and monitoring the implementation of national and county development plans and recommending appropriate action.

On the basis of its mandate in Section 12 (a), IGRTC, may, on the direction of the Summit, undertake monitoring and evaluation of the implementation of the transfer or delegation, and make recommendations to the Summit

- (d) Reporting- Pursuant to the mandate of IGRTC stipulated in Section 12 (a) (i) and (ii) of the Intergovernmental Relations Act, 2012, the two levels of government should report to the Summit on the status of implementation of the transfer or delegation, through IGRTC.
- (e) Dispute Resolution- In accordance with its mandate under Section 33 (2) of the Intergovernmental Relations Act, 2012 as read with Article 189 (3) and (4) of the Constitution, IGRTC is tasked with facilitation of amicable resolution of any intergovernmental dispute that may arise from the implementation of the deed of transfer, through mechanisms of Alternative Dispute Resolution.



IGRTC
INTERGOVERNMENTAL
RELATIONS TECHNICAL
COMMITTEE

Consultation, Cooperation & Coordination in Devolution

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL, 2021

No.	Section of the Act	Clause in the Bill	Proposed Amendment
1.	Section 3; Objects and Purpose of the Act	4(g)	provide mechanisms for the performance of concurrent functions.
2.	8- Functions of the Summit	6 (a) (i)	(i) considering matters relating to intergovernmental relations referred to the Summit by a member of the public and recommending measures to be undertaken by the respective level of government;
3.	11- Establishment and composition of the Technical Committee	7- Establishment and composition of the Intergovernmental Relations Commission	1) There is established a body to be known as the Intergovernmental Relations Commission. (2) The Commission shall comprise— (a) a chairperson who shall be competitively recruited and appointed by the Summit;

No.	Section of the Act	Clause in the Bill	Proposed Amendment
			<p>(b) not more than seven members who shall be competitively recruited and appointed by the Summit;</p> <p>(c) the Principal Secretary of the State Department for the time being responsible for matters relating to intergovernmental relations; and</p> <p>(d) a representative of the Council.</p> <p>(3) The Commission shall be a body corporate with perpetual succession and a common seal and, in its corporate name, be capable of—</p> <p>(a) suing and being sued;</p> <p>(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;</p> <p>(c) entering into contracts; and doing such other legal acts</p> <p>The Commission is designated as a State Office in accordance with Article 260 (q) of the Constitution.</p>

No.	Section of the Act	Clause in the Bill	Proposed Amendment
7.	12- Functions of IGRTC	8- Functions of the Commission	<p>1) The Commission shall be responsible for the day-to-day administration of the activities of the Summit.</p> <p>(2) Without prejudice to the generality of subsection (1), the Commission shall—</p> <ul style="list-style-type: none"> (a) facilitate the performance of the functions of the Summit; (b) implement the decisions of the Summit; (c) receive and transmit to the Summit, reports from sectoral forums, joint committees and any other intergovernmental structures or mechanisms established under this Act; (d) oversee the implementation of the decisions of intergovernmental institutions, structures or mechanisms established under this Act or any other legislation; (e) develop the agenda of the Summit in accordance with the Guidelines enacted pursuant to section 6A (b) of this Act; (f) resolve or facilitate the resolution of intergovernmental disputes;

No.	Section of the Act	Clause in the Bill	Proposed Amendment
			<p>(g) provide technical assistance in the transfer or delegation of functions, powers or competencies from or to either level of government;</p> <p>(h) provide guidance to either level of government on the performance of concurrent functions contemplated under Article 186 of the Constitution in respect of—</p> <p style="padding-left: 40px;">(i) unbundling of concurrent functions;</p> <p style="padding-left: 40px;">(ii) delineation of concurrent functions;</p> <p style="padding-left: 40px;">(iii) assignment of concurrent functions; and</p> <p>(i) undertake research on intergovernmental matters;</p> <p>(j) establish and maintain a repository of information and knowledge on intergovernmental matters; and</p> <p>(k) perform any other functions as may be conferred on it by the Summit, under this Act or any other legislation.</p>

No.	Section of the Act	Clause in the Bill	Proposed Amendment
			(2) The Commission may establish committees for the better carrying out of its functions.
8.	New Section	12 A- Powers of the Commission	<p>The Commission shall have all the powers necessary for the performance of its functions under this Act and, in particular, shall have the power to—</p> <ul style="list-style-type: none"> (a) recommend to any intergovernmental structures on the effective performance of their mandate under the Act and Regulations thereto; (b) recommend to either level of government on their obligations in the performance of concurrent functions; and (c) requisition reports, records, documents or any information from any person or entity for the furtherance of its functions. (d) subject to paragraph (c) make recommendations on any necessary action to be taken by any person or public entity; (e) cooperate with other public entities in the enhancement of good

No.	Section of the Act	Clause in the Bill	Proposed Amendment
			<p>intergovernmental relations within the public service; and</p> <p>(f) compel the production of any information required for the performance of its functions as and when necessary;</p> <p>(g) hold inquiries and investigations for the purposes of performing its functions under this Act; and</p> <p>(h) issue directions with respect to intergovernmental disputes under this Act</p>
9.	33(2)- IGR structures tasked with resolution of IGR disputes through ADR	18 (2)	Where the negotiations under subsection (1) fail, a party to the dispute may formally declare a dispute by referring the matter to the Summit, the Council, the Commission or any other intergovernmental structure established under this Act, as may be appropriate.
11.		36 A- funds of the Commission	<p>The funds of the Commission shall consist of—</p> <p>(a) monies allocated by Parliament for the purposes of the Commission;</p>

No.	Section of the Act	Clause in the Bill	Proposed Amendment
			<ul style="list-style-type: none"> <li data-bbox="1301 323 1910 427">(b) any grants, gifts, donations or other endowments given to the Commission; and <li data-bbox="1301 440 1910 619">(c) such monies or assets as may accrue to the Commission in the exercise of its powers, or the performance of its functions under this Act or any other written law.

Annex 3:

NEWSPAPER ADVERTISEMENT

REPUBLIC OF KENYA



TWELFTH PARLIAMENT | FIFTH SESSION THE SENATE

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Wednesday 14th July, 2021, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

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

The Memoranda may be sent **by email** on the address: cSenate@parliament.go.ke and copied to the respective Committee email addresses indicated at the fourth column below, to be received on or before **Friday, 6th August, 2021 at 5.00 p.m.**

	Bill	Committee Referred To	Email Address
a)	The Lifestyle Audit Bill (Senate Bills No. 36 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlahrc@parliament.go.ke
b)	The Intergovernmental Relations (Amendment) Bill (Senate Bills No. 37 of 2021)	Standing Committee on Devolution and Intergovernmental Relations	senatedevolution@gmail.com
c)	The County Governments (Amendment) Bill (Senate Bills No. 38 of 2021)	Standing Committee on Devolution and Intergovernmental Relations	senatedevolution@gmail.com

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

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

