

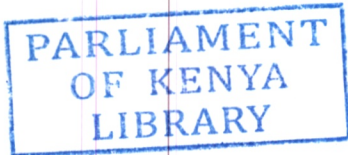
REPUBLIC OF KENYA



Paper laid by the
Chairperson on
Wednesday, 23/09/15.
Wani

THE SENATE

ELEVENTH PARLIAMENT



THE REPORT OF THE SELECT COMMITTEE OF THE SENATE ON
CONSTITUTIONAL AND LEGAL REVIEW

Rt Hon. Speaker

You may approve for
tabling.
23/09/15

Approved
~~Speaker~~
Speaker
23/9/15

Clerks Chambers
Parliament Buildings
NAIROBI

September, 2015

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PREFACE

Mr. Speaker Sir,

Honourable Senators will recall that pursuant to Article 124(1) of the Constitution and the Standing Orders of the Senate, at a Special Sitting of the Senate held on Monday, 15th June, 2015, the Senate resolved, to establish a Select Committee on Constitutional and Legal Review to inquire into legal issues arising following the re-allocation by the National Assembly of monies intended for key constitutional organs and institutions, including, the Judiciary, the Salaries and Remuneration Commission and the Senate; and

Mr. Speaker Sir,

On Monday, 15th June, 2015, the Senate Majority Leader, Sen. Kithure Kindiki, gave Notice of the following Motion which was subsequently passed by the Senate-

***THAT, WHEREAS** on 27th May, 2015, the Mediation Committee on the Division of Revenue Bill, 2015, appointed by the Speakers of the Senate and the National Assembly by letters dated 28th April, 2015 and 27th April, 2015, respectively, concluded its Report on the Division of Revenue Bill, which was subsequently adopted by the Senate at a Sitting held on the same day, 27th May, 2015, and by the National Assembly at a Special Sitting of 3rd June, 2015; and*

***WHEREAS** the Mediation Committee in its Report proposed an increase in the allocation to the Counties by a total of Kshs. 3.3025 billion, as follows-*

- (a) shareable Revenue – Kshs. 1.767 billion; and*
- (b) allocation for Level 5 Hospitals – Kshs. 1.536 billion;*

***AND FURTHER WHEREAS** at its Sitting of 3rd June, 2015, the National Assembly considered the Report of the Budget and Appropriations Committee on*



the Estimates of Revenue and Expenditure for the Financial Year 2015/2016 and resolved to re-allocate various monies intended for key constitutional organs and institutions, including-

- (a) Capital Allocations for the Judiciary – a reduction of Kshs. 800 million;*
- (b) Recurrent Allocations for the Salaries and Remuneration Commission – a reduction of Kshs. 200 million;*
- (c) Allocations for the Integrated Financial Management System – a reduction of 325 million; and*
- (d) Monies intended for monitoring and evaluation of national revenue allocated to the County Governments – a reduction of Kshs. 1 billion;*

NOTING that from their express pronouncements as broadcast on live national television and as appears in the Official Report (Hansard) of the proceedings of the National Assembly of that day, Members of the National Assembly were clear that their decisions on the re-allocations were motivated by bad faith and by a desire for revenge or punishment of the affected constitutional organs and institutions for actions or decisions taken by those organs and institutions in accordance with the Constitution and the law;

AND NOTING in particular, that in the case of the Judiciary, and despite the existence of formal and established channels to challenge decisions of the Courts, reference was made to the decision of the Courts in the Constituencies Development Fund matter as well as the Division of Revenue matter with aspersions being cast on the decisions delivered by the Court in those matters and on the independence of the Judiciary in the preparation and delivery of its rulings and judgments generally;

AND FURTHER NOTING that some of the reductions, particularly those directed at the Integrated Financial Management System and the Senate Oversight Kitty, targeted key oversight functions at both the national and county levels of Government;

AND NOTING that despite the express provisions of Article 218 of the Constitution and the Advisory Opinion of the Supreme Court in Supreme Court Reference No. 2 of 2013 on the processing of a Division of Revenue Bill, concern was raised by the National Assembly on the role of the Senate in the consideration and passage of a Division of Revenue Bill with erroneous arguments being made that the consideration of a Division of Revenue Bill is a function that resides solely with the National Assembly and that the Senate ought not to participate at all in the consideration and passage of such a Bill;

CONCERNED that the reductions as made are a threat to the independence and impartiality of the affected constitutional organs and institutions in the execution of their respective mandates;

FURTHER CONCERNED that going forward, as a result of these reductions and the basis on which they were made, constitutional organs and institutions may be compromised in their independence and impartiality in a bid to safeguard the allocation of monies made to them in subsequent financial years;

COGNIZANT that pursuant to Article 3 of the Constitution every person has an obligation to respect, uphold and defend the Constitution;

FURTHER COGNIZANT that pursuant to Article 221 of the Constitution, the National Assembly has the mandate of considering and approving the estimates of

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revenue and expenditure of the national Government for each financial year, which mandate is to be executed in accordance with Article 10 of the Constitution which provides for national values and principles of governance which, amongst others, include “patriotism”, “the rule of law” and “good governance”;

OBSERVING FURTHER that the mandate of the National Assembly under Article 221 should be executed within the confines of Article 259(1) of the Constitution which requires that the Constitution be interpreted in a manner that “promotes its purposes”, “advances the rule of law”, “permits the development of the law” and “contributes to good governance”;

NOW THEREFORE THE SENATE REITERATES AND RE-AFFIRMS the commitment of the Senate in terms of Article 3 of the Constitution, to respect, uphold and defend the Constitution;

FURTHER REITERATES AND RE-AFFIRMS the commitment of the Senate, despite the re-allocations effected and the adverse effects that the re-allocations are calculated to have on its operations, to zealously continue to discharge its mandate under Articles 94 and 96 of the Constitution and, in particular, to protect the interests of the counties and their Governments and to exercise oversight over the national government and the counties and their governments in the manner set out in the Constitution;

REITERATES AND RE-ASSURES the national government and the counties and their governments that the Senate shall never waver in the discharge of its role under Article 96 of the Constitution and shall always, in good faith, steadfastly, diligently and robustly prosecute that role and in so doing shall resist

any overt or covert measures or actions calculated to undermine, subvert or repudiate the Senate's constitutional role and devolution as a whole;

CALLS UPON *all constitutional organs and institutions adversely affected by the re-allocations to steadfastly continue to discharge their constitutional functions without fear or favour;*

REITERATES AND AFFIRMS *that in accordance with Article 160 of the Constitution, in the execution of its functions, the Judiciary is subject only to the Constitution and the law and shall not be subject to the control or direction of any person or authority, including the Legislature;*

REITERATES *the critical role of constitutional Commissions in our democracy and further reiterates that such Commissions are, in terms of Article 249 of the Constitution, independent and are not subject to the direction or control of any person or authority, including the Legislature;*

CALLS UPON *all constitutional organs and institutions to execute their respective constitutional mandates in utmost good faith and without vendetta, ill-will or bias and in accordance with the national values and principles set out in Article 10 of the Constitution, while observing Article 259(1) of the Constitution;*

FURTHER CALLS UPON *all organs and institutions, the National Assembly in the particular, and the people of Kenya at large, to abide by the Constitution and by its values and principles and to always respect, uphold and defend the Constitution.*

Mr. Speaker Sir,



On Monday, 23rd June, 2015, the Senate Majority Leader, Sen. Kithure Kindiki, also gave Notice of the following Motion which was subsequently passed by the Senate-

THAT, pursuant to Article 124 (1) of the Constitution, the Standing Orders of the Senate and the Resolution of the Senate during the Special Sitting of the Senate held on Monday, 15th June, 2015, the Senate approves the following Senators as Members of the Select Committee on Legal and Constitutional Review-

1. *Sen. Kipchumba Murkomen*
2. *Sen. Kiraitu Murungi*
3. *Sen. Naisula Lesuuda*
4. *Sen. (Eng.) Muriuki Karue*
5. *Sen. Billow Kerrow*
6. *Sen. James Orengo*
7. *Sen. (Dr.) Boni Khalwale*
8. *Sen. Mutula Kilonzo Junior*
9. *Sen. Halima Abdille*

Mr. Speaker Sir,

The Terms of Reference of the Committee were to-

- (a) *inquire into the design of the Legislature and in particular, the institutions set out in the Constitution with a view to protecting the interests of the counties and their governments and securing and safeguarding the system of devolved government established in the Constitution;*
- (b) *inquire into the role of the Senate as set out under the Constitution and make recommendations on the appropriate role to be played by the Senate in-*
 - (i) *the budget making process and revenue allocation;*
 - (ii) *the legislative process;*

- (iii) *oversight over the National Government; and*
 - (iv) *oversight over the County Governments;*
 - (c) *examine and make recommendations on the appropriate role to be played by the Senate in the approval of nominees for appointment to State office;*
 - (d) *examine and make recommendations on the appropriate interlinkage and interplay between –*
 - (i) *the Senate and the National Government;*
 - (ii) *the Senate and the National Assembly;*
 - (iii) *the Senate and the County Governments; and*
 - (iv) *the Senate and other constitutional offices and Commissions.*
 - (e) *recommend to the Senate such constitutional and legislative interventions as may be necessary to secure and safeguard the system of devolved government in the Constitution, including measures necessary to ensure the effective discharge by the Senate, of its legislative and oversight role under the Constitution; and*
 - (f) *examine and make recommendations on any other matter connected with or incidental to the foregoing.*

Mr. Speaker Sir,

The Select Committee held its first meeting on Thursday, 25th June, 2015, immediately following its establishment. Pursuant to standing order 183 of the Senate Standing Orders, at that meeting, the Committee conducted the election of its Chairman and Vice-Chairman. Sen. Kipchumba Murkomen and Sen. Mutula Kilonzo Junior were elected unopposed to the positions of Chairperson and Vice-Chairperson, respectively.

Mr. Speaker Sir,

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The Committee wishes to thank the Offices of the Honourable Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the Select Committee, to present to the Senate this Report of the Select Committee on Constitutional and Legal Review.

SIGNED:

SEN. KIPCHUMBA MURKOMEN, M.P.

**(CHAIRPERSON, SELECT COMMITTEE ON CONSTITUTIONAL AND
LEGAL REVIEW)**

DATE:

23rd SEPTEMBER 2015

1.0 INTRODUCTION

Background

1. At a special sitting of the Senate held on Monday, 15th June, 2015, Sen. Kipchumba Murkomen gave notice of and thereafter moved the following Motion which was passed by the Senate-

THAT, WHEREAS on 27th May, 2015, the Mediation Committee on the Division of Revenue Bill, 2015, appointed by the Speakers of the Senate and the National Assembly by letters dated 28th April, 2015 and 27th April, 2015, respectively, concluded its Report on the Division of Revenue Bill, which was subsequently adopted by the Senate at a Sitting held on the same day, 27th May, 2015, and by the National Assembly at a Special Sitting of 3rd June, 2015; and

WHEREAS the Mediation Committee in its Report proposed an increase in the allocation to the Counties by a total of Kshs. 3.3025 billion, as follows-

- (a) Shareable Revenue – Kshs. 1.767 billion; and*
- (b) Allocation for Level 5 Hospitals – Kshs. 1.536 billion;*

AND FURTHER WHEREAS at its Sitting of 3rd June, 2015, the National Assembly considered the Report of the Budget and Appropriations Committee on the Estimates of Revenue and Expenditure for the Financial Year 2015/2016 and resolved to re-allocate various monies intended for key constitutional organs and institutions, including-

- (a) Capital Allocations for the Judiciary – a reduction of Kshs. 800 million;*
- (b) Recurrent Allocations for the Salaries and Remuneration Commission – a reduction of Kshs. 200 million;*

(c) *Allocations for the Integrated Financial Management System – a reduction of 325 million; and*

(d) *Monies intended for monitoring and evaluation of national revenue allocated to the County Governments – a reduction of Kshs. 1 billion;*

NOTING that from their express pronouncements as broadcast on live national television and as appears in the Official Report (Hansard) of the proceedings of the National Assembly of that day, Members of the National Assembly were clear that their decisions on the re-allocations were motivated by bad faith and by a desire for revenge or punishment of the affected constitutional organs and institutions for actions or decisions taken by those organs and institutions in accordance with the Constitution and the law;

AND NOTING in particular, that in the case of the Judiciary, and despite the existence of formal and established channels to challenge decisions of the Courts, reference was made to the decision of the Courts in the Constituencies Development Fund matter as well as the Division of Revenue matter with aspersions being cast on the decisions delivered by the Court in those matters and on the independence of the Judiciary in the preparation and delivery of its rulings and judgments generally;

AND FURTHER NOTING that some of the reductions, particularly those directed at the Integrated Financial Management System and the Senate Oversight Kitty, targeted key oversight functions at both the national and county levels of Government;

AND NOTING that despite the express provisions of Article 218 of the Constitution and the Advisory Opinion of the Supreme Court in Supreme Court

Reference No. 2 of 2013 on the processing of a Division of Revenue Bill, concern was raised by the National Assembly on the role of the Senate in the consideration and passage of a Division of Revenue Bill with erroneous arguments being made that the consideration of a Division of Revenue Bill is a function that resides solely with the National Assembly and that the Senate ought not to participate at all in the consideration and passage of such a Bill;

CONCERNED *that the reductions as made are a threat to the independence and impartiality of the affected constitutional organs and institutions in the execution of their respective mandates;*

FURTHER CONCERNED *that going forward, as a result of these reductions and the basis on which they were made, constitutional organs and institutions may be compromised in their independence and impartiality in a bid to safeguard the allocation of monies made to them in subsequent financial years;*

COGNIZANT *that pursuant to Article 3 of the Constitution every person has an obligation to respect, uphold and defend the Constitution;*

FURTHER COGNIZANT *that pursuant to Article 221 of the Constitution, the National Assembly has the mandate of considering and approving the estimates of revenue and expenditure of the national Government for each financial year, which mandate is to be executed in accordance with Article 10 of the Constitution which provides for national values and principles of governance which, amongst others, include “patriotism”, “the rule of law” and “good governance”;*

OBSERVING FURTHER *that the mandate of the National Assembly under Article 221 should be executed within the confines of Article 259(1) of the*

Constitution which requires that the Constitution be interpreted in a manner that “promotes its purposes”, “advances the rule of law”, “permits the development of the law” and “contributes to good governance”;

NOW THEREFORE THE SENATE REITERATES AND RE-AFFIRMS the commitment of the Senate in terms of Article 3 of the Constitution, to respect, uphold and defend the Constitution;

FURTHER REITERATES AND RE-AFFIRMS the commitment of the Senate, despite the re-allocations effected and the adverse effects that the re-allocations are calculated to have on its operations, to zealously continue to discharge its mandate under Articles 94 and 96 of the Constitution and, in particular, to protect the interests of the counties and their Governments and to exercise oversight over the national government and the counties and their governments in the manner set out in the Constitution;

REITERATES AND RE-ASSURES the national government and the counties and their governments that the Senate shall never waver in the discharge of its role under Article 96 of the Constitution and shall always, in good faith, steadfastly, diligently and robustly prosecute that role and in so doing shall resist any overt or covert measures or actions calculated to undermine, subvert or repudiate the Senate’s constitutional role and devolution as a whole;

CALLS UPON all constitutional organs and institutions adversely affected by the re-allocations to steadfastly continue to discharge their constitutional functions without fear or favour;

REITERATES AND AFFIRMS that in accordance with Article 160 of the Constitution, in the execution of its functions, the Judiciary is subject only to the Constitution and the law and shall not be subject to the control or direction of any person or authority, including the Legislature;

REITERATES the critical role of constitutional Commissions in our democracy and further reiterates that such Commissions are, in terms of Article 249 of the Constitution, independent and are not subject to the direction or control of any person or authority, including the Legislature;

CALLS UPON all constitutional organs and institutions to execute their respective constitutional mandates in utmost good faith and without vendetta, ill-will or bias and in accordance with the national values and principles set out in Article 10 of the Constitution, while observing Article 259(1) of the Constitution;

FURTHER CALLS UPON all organs and institutions, the National Assembly in the particular, and the people of Kenya at large, to abide by the Constitution and by its values and principles and to always respect, uphold and defend the Constitution.

2. The Order Paper and an extract of the Hansard Record of the special sitting held on Monday, 15th June, 2015 are attached as **Annex I**.
3. Following deliberation on the Motion on Monday, 23rd June, 2015, the Senate Majority Leader, Sen. Kithure Kindiki gave Notice of and thereafter moved the following Motion-



THAT, pursuant to Article 124 (1) of the Constitution, the Standing Orders of the Senate and the Resolution of the Senate during the Special Sitting of the Senate held on Monday, 15th June, 2015, the Senate approves the following Senators as Members of the Select Committee on Legal and Constitutional Review :-

1. *Sen. Kipchumba Murkomen*
2. *Sen. Kiraitu Murungi*
3. *Sen. Naisula Lesuuda*
4. *Sen. (Eng.) Muriuki Karue*
5. *Sen. Billow Kerrow*
6. *Sen. James Orengo*
7. *Sen. (Dr.) Boni Khalwale*
8. *Sen. Mutula Kilonzo Junior*
9. *Sen. Halima Abdille*

4. The Order Paper and an extract of the Hansard Record of the special sitting held on Monday, 23rd June, 2015 are attached as ***Annex 2***.

2.0 METHOD OF WORK

Terms of Reference of the Committee

5. At a Preparatory Workshop held between 9th and 11th July, 2015, the Committee considered and adopted its Terms of Reference which were to-

- (a) *inquire into the design and structure of the Legislature and in particular, the design of the Senate as set out in the Constitution with a view to protecting the interests of the counties and their governments and securing and safeguarding the system of devolved government established in the Constitution;*
- (b) *inquire into the role of the Senate as set out under the Constitution and make recommendations on the appropriate role to be played by the Senate in—*
 - (i) *the budget making and revenue allocation processes;*
 - (ii) *the legislative process;*
 - (iii) *oversight over the National Government and State organs; and*
 - (iv) *oversight over the County Governments;*
- (c) *examine and make recommendations on the appropriate role to be played by the Senate in the approval of nominees for appointment to State office;*
- (d) *examine and make recommendations on the appropriate interlinkage and interplay between –*
 - (i) *the Senate and the National Government;*
 - (ii) *the Senate and the National Assembly;*
 - (iii) *the Senate and the County Governments; and*
 - (iv) *the Senate and other State organs;*
- (e) *recommend to the Senate such constitutional and legislative interventions as may be necessary to secure and safeguard the system of devolved*

government in the Constitution, including measures necessary to ensure the effective discharge by the Senate, of its legislative and oversight role under the Constitution; and

(f) examine and make recommendations on any other matter connected with or incidental to the foregoing.

6. The Terms of Reference also gave the Committee the mandate to-

(a) hold such number of meetings in such places and at such times as the Select Committee shall consider necessary for the proper discharge of its mandate;

(b) conduct public hearings and open forums and receive oral or written submissions from any person with relevant information, and for this purpose, may conduct county visits;

(c) hold consultative forums with such stakeholders, experts or institutions as it shall consider necessary for the consideration of the matters before the Select Committee;

(d) carry out or cause to be carried out such studies, researches and evaluations concerning the Constitution and other constitutions and constitutional systems as may inform the Select Committee in the execution of its mandate;

(e) summon any public officer to appear before the Select Committee and produce any document or information required by the Select Committee in the execution of its mandate; and

(f) do such other things as are incidental to or necessary for the attainment of the objectives of the Select Committee.

7. The Committee was required to prepare and table its report in the Senate within a period of three months from the date of its establishment, that is, by 23rd September, 2015.

Meetings of the Committee

8. In the execution of its mandate, the Committee held a number of meetings. Following its establishment on 23rd June, 2015, the Committee held its first meeting on Thursday, 25th June, 2015. Pursuant to standing order 183, the Clerk of the Senate conducted the election of the Chairperson and Vice-Chairperson of the Committee. Sen. Kipchumba Murkomen was elected, unopposed, as the Chairman while Sen. Mutula Kilonzo Junior was elected as Vice-Chairman of the Committee.
9. The Committee held a total of eighteen meetings, the minutes of which are annexed at *Annex 3*. These meetings included the following workshops and consultative meetings-
- (1) A Preparatory Workshop held between 9th and 11th July, 2015 at Windsor Golf Hotel and Country Club to consider and adopt the Terms of Reference of the Committee;
 - (2) A Senate Workshop held on 27th August, 2015 at the Sarova Stanley Hotel to consider the Draft Constitution of Kenya (Amendment) Bill, 2015 by the Select Committee;
 - (3) A Consultative Meeting with the Council of Governors at Parliament Buildings held on 21st September, 2015;
 - (4) A Consultative Meeting with various Independent Commissions and Offices at Parliament Buildings held on 21st September, 2015; and
 - (5) A Consultative Meeting with the County Assemblies Forum at Parliament Buildings held on 22nd September, 2015.



3.0 ISSUES CONSIDERED BY THE SELECT COMMITTEE

10. In the course of the execution of its mandate, the Committee considered the following issues-

(1) THE ROLE OF PARLIAMENT

11. The Constitution establishes a Parliament comprising of the Senate and the National Assembly. In this regard, Article 93 of the Constitution provides as follows-

- (1) There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.*
- (2) The National Assembly and the Senate shall perform their respective functions in accordance with this Constitution.*

12. Article 94 of the Constitution provides for the role of Parliament as follows-

- (1) The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament.*
- (2) Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty.*
- (3) Parliament may consider and pass amendments to this Constitution, and alter county boundaries as provided for in this Constitution.*
- (4) Parliament shall protect this Constitution and promote the democratic governance of the Republic.*
- (5) No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation.*
- (6) An Act of Parliament, or legislation of a county, that confers on any State organ, State officer or person the authority to make provision having the force of law in Kenya, as contemplated in clause (5), shall expressly specify the purpose and objectives for which that authority is conferred, the limits of the authority, the nature and scope of the law that may be made, and the principles and standards applicable to the law made under the authority.*

13. The role of the National Assembly is stipulated in Article 95 as follows—

- (1) *The National Assembly represents the people of the constituencies and special interests in the National Assembly.*
- (2) *The National Assembly deliberates on and resolves issues of concern to the people.*
- (3) *The National Assembly enacts legislation in accordance with Part 4 of this Chapter.*
- (4) *The National Assembly—*
 - (a) *determines the allocation of national revenue between the levels of government, as provided in Part 4 of Chapter Twelve;*
 - (b) *appropriates funds for expenditure by the national government and other national State organs; and*
 - (c) *exercises oversight over national revenue and its expenditure.*
- (5) *The National Assembly—*
 - (a) *reviews the conduct in office of the President, the Deputy President and other State officers and initiates the process of removing them from office; and*
 - (b) *exercises oversight of State organs.*
- (6) *The National Assembly approves declarations of war and extensions of states of emergency.*

14. The role of the Senate is stipulated in Article 96 as follows—

- (1) *The Senate represents the counties, and serves to protect the interests of the counties and their governments.*
- (2) *The Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113.*
- (3) *The Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments.*
- (4) *The Senate participates in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with Article 145.*

Observations of the Committee

15. The Committee observed that while Article 94 of the Constitution provided for the role of Parliament, both the National Assembly and the Senate, Articles 95 and 96 of the Constitution set out the specific roles of the respective Houses of Parliament. The Committee further observed that the roles of the National

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Assembly and the Senate as set out in these Articles had often led to multiple and differing interpretations of the roles of the two Houses of Parliament particularly with regard to the oversight and legislative role of the Senate.

16. The Committee therefore observed that there was need to provide clarity on the shared role of both Houses of Parliament and on the special and specific role of each House of Parliament.

Recommendations of the Committee

17. The Committee recommended that Articles 94, 95 and 96 be reviewed so as to clearly set out the shared role of both Houses of Parliament, namely legislation, oversight and representation and to also provide for the special roles to be assigned to each of the respective Houses of Parliament. In the case of the National Assembly, the special role extends to representing the people of the constituencies. For the Senate, the special role is that of representing the counties, serving to protect the interests of the counties and their governments and exercising oversight over revenue allocated to, raised by or otherwise received by the county governments and the expenditure of such revenue.

(2) THE LEGISLATIVE MANDATE OF PARLIAMENT

18. The legislative mandate of Parliament is provided for under Part 4 of Chapter Eight of the Constitution. In particular, Article 109 of the Constitution provides as follows on the exercise of legislative powers-

- (1) Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the President.*
- (2) Any Bill may originate in the National Assembly.*
- (3) A Bill not concerning county government is considered only in the National Assembly, and passed in accordance with Article 122 and the Standing Orders of the Assembly.*

- (4) *A Bill concerning county government may originate in the National Assembly or the Senate, and is passed in accordance with Articles 110 to 113, Articles 122 and 123 and the Standing Orders of the Houses.*
- (5) *A Bill may be introduced by any member or committee of the relevant House of Parliament, but a money Bill may be introduced only in the National Assembly in accordance with Article 114.*

19. Article 110 of the Constitution goes ahead to define Bills concerning county governments as follows—

- (1) *In this Constitution, “a Bill concerning county government” means—*
 - (a) *a Bill containing provisions affecting the functions and powers of the county governments set out in the Fourth Schedule;*
 - (b) *a Bill relating to the election of members of a county assembly or a county executive; and*
 - (c) *a Bill referred to in Chapter Twelve affecting the finances of county governments.*
- (2) *A Bill concerning county governments is—*
 - (a) *a special Bill, which shall be considered under Article 111, if it—*
 - (i) *relates to the election of members of a county assembly or a county executive; or*
 - (ii) *is the annual County Allocation of Revenue Bill mentioned in Article 218; or*
 - (b) *an ordinary Bill, which shall be considered under Article 112, in any other case.*

20. Article 114 of the Constitution defines money Bills as follows—

- (1) *A money Bill may not deal with any matter other than those listed in the definition of “a money Bill” in clause (3).*
- (2) *If, in the opinion of the Speaker of the National Assembly, a motion makes provision for a matter listed in the definition of “a money Bill”, the Assembly may proceed only in accordance with the recommendation of the relevant Committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance.*
- (3) *In this Constitution, “a money Bill” means a Bill, other than a Bill specified in Article 218, that contains provisions dealing with—*
 - (a) *taxes;*
 - (b) *the imposition of charges on a public fund or the variation or repeal of any of those charges;*
 - (c) *the appropriation, receipt, custody, investment or issue of public money;*

- (d) the raising or guaranteeing of any loan or its repayment; or
(e) matters incidental to any of those matters.
- (4) In clause (3), “tax”, “public money”, and “loan” do not include any tax, public money or loan raised by a county.

Observations of the Committee

21. The Committee observed that as presently rendered in the Constitution the provisions on the legislative mandate had led to different interpretations as to the legislative mandate of the Senate particularly in the context of the definition of “Bills concerning county government” under Article 110(1)(a) of the Constitution. Owing to the different interpretations of Article 110(1)(a), legislation that concerned county governments had often been considered and concluded by the National Assembly without reference to the Senate. As a result, the Senate’s role of representing the counties and protecting the interests of counties and their governments had often been undermined.
22. The Committee recalled and observed that the question of what constituted a Bill concerning county governments was one of the questions before the Supreme Court in Advisory Opinion Reference No. 2 of 2013. The Supreme Court settled this question as follows-

[102] The Court’s observation in Re the Matter of the Interim Independent Electoral Commission is borne out in an official publication, Final Report of the Task Force on Devolved Government Vol. 1: A Report on the Implementation of Devolved Government in Kenya [page. 18]:

“The extent of the legislative role of the Senate can only be fully appreciated if the meaning of the phrase ‘concerning counties’ is examined. Article 110 of the Constitution defines bills concerning counties as being bills which contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule; bills which relate to the election of members of the county assembly or county executive; and bills referred to in Chapter Twelve as affecting finances of the county governments. This is a very broad definition which creates room for the Senate to participate in the passing of bills in the exclusive functional areas of

the national government, for as long as it can be shown that such bills have provisions affecting the functional areas of the county governments. For instance, it may be argued that although security and policing are national functions, how security and policing services are provided affects how county governments discharge their agricultural functions. As such, a bill on security and policing would be a bill concerning counties....With a good Speaker, the Senate should be able to find something that affects the functions of the counties in almost every bill that comes to Parliament, making it a bill that must be considered and passed by both Houses."

23. The Committee noted that despite the Advisory Opinion, the question of whether a Bill concerned or did not concern county governments continued to arise and often impeded the smooth processing of the legislative business of Parliament.
24. A survey of the legislative mandate of the second chambers in comparative jurisdictions indicated that in virtually all jurisdictions, the legislative mandate of the second chambers was not restricted. Both Houses were required to approve all Bills separately in order for them to become law. The only restriction common to all such jurisdictions related to money Bills, in that money Bills originated in the equivalent of the National Assembly. This was the case, as examples, in the United States Congress, the Philippines Congress and the Parliaments of India, Canada, Australia and Nigeria.
25. However, the Committee noted that the legislative mandate of the respective Houses of Parliament of South Africa was largely similar to the legislative mandate provided for in the Constitution of Kenya, 2010. In the case of the second chamber of the Parliament of South Africa, the National Council of Provinces, the legislative mandate was restricted to Bills affecting provinces in a manner that was very similar to the restriction of the legislative mandate of the Senate of the Republic of Kenya.



26. The Committee further observed that previous drafts of the Constitution of Kenya published in the processes leading to the promulgation of the Constitution of Kenya, 2010 had different provisions with regard to the legislative mandate of the Senate.
27. In the Report of the Constitution of Kenya Review Commission, 2002 (The Ghai Draft), The Draft Constitution of Kenya, 2004 (The Bomas Draft) and the Harmonized Draft, 2009, the legislative mandate of the Senate was not restricted. Any Bill could originate in either of the two Houses of Parliament and a Bill could only become law after it had been passed by both Houses.
28. However, the Revised Harmonized Draft, 2010 and the Report by the Parliamentary Select Committee on the Review of the Constitution on the Reviewed Harmonized Draft Constitution, 2010 provided for a Senate with a restricted mandate, limited to matters concerning devolved government. In the case of money Bills, all the Drafts were consistent, in that money Bills could only originate in the National Assembly.

Recommendations of the Committee

29. In order to address the challenges noted and taking into account the legislative processes of comparative jurisdictions, the Committee proposes to amend the Constitution to confer full legislative mandate on the Senate and the National Assembly. In this regard, the Bill –
 - (a) provides for the passage of all Bills by both Houses of Parliament and as a result, does away with the definition of “*a Bill concerning county government*” under Article 110(1)(a) of the Constitution and the distinction of special and ordinary Bills;

(b) makes specific provision for the passage, including the thresholds required for such passage, of the Division of Revenue Bill which is to originate in the National Assembly, the County Allocation of Revenue Bill which is to originate in the Senate and the Appropriation and Supplementary Appropriation Bills which are both to originate in the National Assembly; and

(c) provides for the referral of Bills for Presidential assent jointly by the Speaker of the Senate and the Speaker of the National Assembly.

(3) **APPROVAL OF NOMINEES FOR APPOINTMENT TO STATE OFFICE**

30. The Constitution requires the approval of the National Assembly prior to appointment of persons nominated for appointment to the following State offices-

- (1) Clerk of the National Assembly (*Article 128 of the Constitution*);
- (2) High Commissioners, Ambassadors, diplomatic and consular representatives and any other State or public officer (*Article 132 of the Constitution*);
- (3) Cabinet Secretaries (*Article 152(2) of the Constitution*);
- (4) Secretary to the Cabinet (*Article 154(2)(a) of the Constitution*);
- (5) Principal Secretary (*Article 155(3)(b) of the Constitution*);
- (6) Attorney General (*Article 156(2) of the Constitution*);
- (7) Director of Public Prosecutions (*Article 157(2) of the Constitution*);
- (8) Chief Justice (*Article 166(1) of the Constitution*);
- (9) One woman and one man representing the public in the Judicial Service Commission (*Article 171(2)(h) of the Constitution*);



- (10) Chairperson of the Commission on Revenue Allocation (*Article 215(2)(a) of the Constitution*);
 - (11) Controller of Budget (*Article 228(1) of the Constitution*);
 - (12) Auditor General (*Article 229(1) of the Constitution*);
 - (13) Chairperson, Vice Chairperson and seven other Members of the Public Service Commission; (*Article 233(2) of the Constitution*); and
 - (14) Members of a Commission (*Article 250(2) of the Constitution*).
31. The Senate is required to approve the appointment of the Clerk of the Senate (*Article 128 of the Constitution*). In the case of the appointment of the Inspector-General, the Constitution requires the approval of both Houses of Parliament (*Article 245(2) of the Constitution*).

Observations of the Committee

32. The Committee observed that in most comparative jurisdictions, in order to ensure equity in the appointment of persons nominated to serve in State offices, the second chambers of such jurisdictions had a critical role to play in the approval of officers nominated to serve in State offices.
33. In the United States, for example, the Committee observed that the Senate of the United States Congress was required to approve the appointment of various State officers, including Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose appointments were not otherwise provided for and which were established by law.
34. Similarly, in Nigeria, the Constitution of Nigeria required the approval of the Senate in the appointment of the following State officers-
- (1) the Auditor General (*Article 86(1) of the Constitution*);
 - (2) Ministers (*Article 147 of the Constitution*);

(3) the Chairman and Members of Commissions (*Article 154(1) of the Constitution*); and

(4) the Chief Justice (*Article 231(1) of the Constitution*).

35. The House of Representatives of Nigeria had no role in the approval for appointment of State officers.
36. In the Philippines, the Committee observed that both the Senate and House of Representatives play a role that is almost equal, in the vetting and approval of State officers through the Commission on Appointments which comprised an equal number of members from both Houses and was chaired by the President of the Senate.
37. The Committee further analyzed provisions in previous drafts of the Constitution published prior to the promulgation of the Constitution of Kenya, 2010 on the approval of nominees to State office. The Ghai Draft apportioned the responsibility for approval for appointment of State officers to the National Assembly and the National Council, the two chambers established in the draft. The Senate's role in the case of the Ghai Draft extended to the approval for appointment of the judges, the Attorney-General, the Director of Public Prosecutions and the Public Defender. Both Houses of Parliament had the mandate to approve the appointment of the Commissioner of Police, the Director of the Kenya Correctional Services and the Chairperson and Members of Constitutional Commissions.
38. In the Bomas Draft, the Senate was required to approve the Members of the Cabinet and the Deputy Ministers. The Bomas Draft further mandated both Houses of Parliament to approve the appointment of Members of Constitutional

Commissions. In the Harmonized Draft and the Revised Harmonized Draft the Senate's role was in the approval of Members of Constitutional Commissions.

Recommendations of the Committee

39. The Committee recommended as follows-

- (1) that all approvals of nominees for appointment to State Offices relating to the formation of Government or which have a direct bearing on the performance of the Government of the day to be approved by the National Assembly; and
- (2) that all approvals of nominees for appointments to State Offices not directly related to the formation of Government and which enjoy security of tenure be approved by the Senate.

40. The Committee therefore recommended as follows-

- (1) that the National Assembly approves nominees proposed for appointment to the following offices-
 - (a) Cabinet Secretaries;
 - (b) Attorney-General;
 - (c) Secretary to the Cabinet;
 - (d) Principal Secretaries; and
 - (e) High Commissioners, Ambassadors and Diplomatic and Consular Representatives; and
- (2) that the Senate approves nominees proposed for appointment to the following offices-
 - (a) Director of Public Prosecutions;
 - (b) Chairs and Members of Constitutional Commissions (Chapter 15 Commissions;

- (c) Chief Justice;
- (d) Deputy Chief Justice;
- (e) Auditor-General;
- (f) Controller of Budget; and
- (g) Inspector General of the National Police Service

(4) ENSURING THE ALLOCATION OF ADEQUATE FINANCES TO SUPPORT THE SYSTEM OF DEVOLVED GOVERNMENT

41. Article 202 of the Constitution calls for equitable sharing of national revenue as follows-

- (1) Revenue raised nationally shall be shared equitably among the national and county governments.*
- (2) County governments may be given additional allocations from the national government's share of the revenue, either conditionally or unconditionally.*

42. Article 203(2) and (3) of the Constitution further provides that-

- (1) For every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenue collected by the national government.*
- (2) The national government may use the Equalisation Fund—*
 - (a) only to the extent that the expenditure of those funds has been approved in an Appropriation Bill enacted by Parliament; and*
 - (b) either directly, or indirectly through conditional grants to counties in which marginalised communities exist.*

Observations of the Committee

43. The Committee observed that in order to ensure the success of the system of devolved governance, it was necessary to ensure that adequate funds were allocated to the county governments.

44. The Committee took into account various proposals and the trend in the allocation of resources to the County level of Government in previous years.

Recommendations of the Committee

45. The Committee recommends the amendment of Article 203(2) of the Constitution to provide for the enhancement of the equitable share of revenue raised nationally that is to be allocated to County Governments from a minimum of fifteen per cent to a minimum of forty per cent.
46. The Committee further recommends the amendment of Article 203(3) of the Constitution so as to provide that the amount of the equitable share of revenue raised nationally that is to be allocated to County Governments be calculated on the basis of the most recent audited accounts of revenue received.

(5) THE ROLE OF THE SENATE IN THE BUDGET-MAKING PROCESS

47. The budget making process is provided for under Part 5 in Chapter Twelve of the Constitution. On the whole, budget making is the responsibility of the National Assembly. Article 221 provides for the consideration and approval of the budget estimates and appropriation Bills follows-
- (1) At least two months before the end of each financial year, the Cabinet Secretary responsible for finance shall submit to the National Assembly estimates of the revenue and expenditure of the national government for the next financial year to be tabled in the National Assembly.*
- (2) The estimates referred to in clause (1) shall—*
- (a) include estimates for expenditure from the Equalisation Fund;*
and
(b) be in the form, and according to the procedure, prescribed by an Act of Parliament.
- (3) The National Assembly shall consider the estimates submitted under clause (1) together with the estimates submitted by the Parliamentary Service Commission and the Chief Registrar of the Judiciary under Articles 127 and 173 respectively.*
- (4) Before the National Assembly considers the estimates of revenue and expenditure, a committee of the Assembly shall discuss and review the estimates and make recommendations to the Assembly.*

(5) *In discussing and reviewing the estimates, the committee shall seek representations from the public and the recommendations shall be taken into account when the committee makes its recommendations to the National Assembly.*

(6) *When the estimates of national government expenditure, and the estimates of expenditure for the Judiciary and Parliament have been approved by the National Assembly, they shall be included in an Appropriation Bill, which shall be introduced into the National Assembly to authorise the withdrawal from the Consolidated Fund of the money needed for the expenditure, and for the appropriation of that money for the purposes mentioned in the Bill.*

(7) *The Appropriation Bill mentioned in clause (6) shall not include expenditures that are charged on the Consolidated Fund by this Constitution or an Act of Parliament.*

48. Article 223 of the Constitution further provides for Supplementary Appropriation as follows-

(1) *Subject to clauses (2) to (4), the national government may spend money that has not been appropriated if—*

(a) *the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or*

(b) *money has been withdrawn from the Contingencies Fund.*

(2) *The approval of Parliament for any spending under this Article shall be sought within two months after the first withdrawal of the money, subject to clause (3).*

(3) *If Parliament is not sitting during the time contemplated in clause (2), or is sitting but adjourns before the approval has been sought, the approval shall be sought within two weeks after it next sits.*

(4) *When the National Assembly has approved spending under clause (2), an appropriation Bill shall be introduced for the appropriation of the money spent.*

(5) *In any particular financial year, the national government may not spend under this Article more than ten per cent of the sum appropriated by Parliament for that financial year unless, in special circumstances, Parliament has approved a higher percentage.*

Observations of the Committee

49. From the above cited provisions of the Constitution, the Committee observed that the Senate had virtually no role in the budget making process of the national Government. Yet the Senate, as mandated under Article 96 of the Constitution, was required to represent the counties and to protect their interests and those of their Governments. This was a responsibility that extended to the manner in which the resources at the national level were allocated and utilized and whether such allocation and utilization accorded with the national values and principles of governance which, among other things, included sharing and devolution of power, inclusiveness, equity, non-discrimination, protection of the marginalized and sustainable development.
50. The Committee noted that in comparative bicameral Legislatures the budget was presented by the Executive to both Houses of Parliament for consideration by the Houses. This was the case in the United States, Germany, Philippines and Nigeria. The budget was passed only after it was approved by both Houses. In the United States and in Germany, if the two Houses did not agree on the budget, the matter was referred to the equivalent of our mediation committee for development of a consensus.

Recommendations of the Committee

51. The Committee recommended that for the Senate to effectively discharge its mandate under the Constitution, particularly the role of representing the counties and serving the interest of counties and their governments, it was imperative that the Senate be involved in the budget making process.
52. The Committee recommended that Chapter Twelve of the Constitution be amended so as to entrench the role of the Senate in the budget making process.

(6) **ENTRENCHING THE PROVISIONS FOR THE REMOVAL FROM OFFICE OF COUNTY GOVERNOR IN THE CONSTITUTION**

53. Article 181 of the Constitution provides for the removal of a Governor. It states as follows-

- (1) *A county governor may be removed from office on any of the following grounds—*
 - (a) *gross violation of this Constitution or any other law;*
 - (b) *where there are serious reasons for believing that the county governor has committed a crime under national or international law;*
 - (c) *abuse of office or gross misconduct; or*
 - (d) *physical or mental incapacity to perform the functions of office of county governor.*
- (2) *Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds specified in clause (1).*

Observations of the Committee

54. The Committee observed that in accordance with Article 181(2) of the Constitution, the detailed procedure for the removal of a Governor was provided under the County Governments Act, No. 12 of 2012.

55. Section 33 of the County Governments Act provides as follows-

- (1) *A member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a motion for the removal of the governor under Article 181 of the Constitution.*
- (2) *If a motion under subsection (1) is supported by at least two-thirds of all the members of the county assembly—*
 - (a) *the speaker of the county assembly shall inform the Speaker of the Senate of that resolution within two days; and*
 - (b) *the governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section.*
- (3) *Within seven days after receiving notice of a resolution from the speaker of the county assembly—*
 - (a) *the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor; and*
 - (b) *the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.*
- (4) *A special committee appointed under subsection (3)(b) shall—*

- (a) investigate the matter; and
 - (b) report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated.
- (5) The governor shall have the right to appear and be represented before the special committee during its investigations.
- (6) If the special committee reports that the particulars of any allegation against the governor—
- (a) have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or
 - (b) have been substantiated, the Senate shall, after according the governor an opportunity to be heard, vote on the impeachment charges.
- (7) If a majority of all the members of the Senate vote to uphold any impeachment charge, the governor shall cease to hold office.
- (8) If a vote in the Senate fails to result in the removal of the governor, the Speaker of the Senate shall notify the speaker of the concerned county assembly accordingly and the motion by the assembly for the removal of the governor on the same charges may only be re-introduced to the Senate on the expiry of three months from the date of such vote.
- (9) The procedure for the removal of the President on grounds of incapacity under Article 144 of the Constitution shall apply, with necessary modifications, to the removal of a governor.
- (10) A vacancy in the office of the governor or deputy governor arising under this section shall be filled in the manner provided for by Article 182 of the Constitution.

56. The Committee noted that there was a variance in the procedure for the removal from office of a President and the procedure for removal from office of a Governor. While section 33 of the County Governments Act, 2012 stipulated a majority vote of members of the Senate for the removal of a Governor, Article 145 provided for a threshold of two-thirds of the Members of the Senate for the removal from office of the President. Article 145 provides as follows-

- (1) A member of the National Assembly, supported by at least a third of all the members, may move a motion for the impeachment of the President—
 - (a) on the ground of a gross violation of a provision of this Constitution or of any other law;
 - (b) where there are serious reasons for believing that the President has committed a crime under national or international law; or

- (c) for gross misconduct.
- (2) If a motion under clause (1) is supported by at least two-thirds of all the members of the National Assembly—
- (a) the Speaker shall inform the Speaker of the Senate of that resolution within two days; and
 - (b) the President shall continue to perform the functions of the office pending the outcome of the proceedings required by this Article.
- (3) Within seven days after receiving notice of a resolution from the Speaker of the National Assembly—
- (a) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the President; and
 - (b) the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.
- (4) A special committee appointed under clause (3) (b) shall—
- (a) investigate the matter; and
 - (b) report to the Senate within ten days whether it finds the particulars of the allegations against the President to have been substantiated.
- (5) The President shall have the right to appear and be represented before the special committee during its investigations.
- (6) If the special committee reports that the particulars of any allegation against the President—
- (a) have not been substantiated, further proceedings shall not be taken under this Article in respect of that allegation; or
 - (b) have been substantiated, the Senate shall, after according the President an opportunity to be heard, vote on the impeachment charges.
- (7) If at least two-thirds of all the members of the Senate vote to uphold any impeachment charge, the President shall cease to hold office.

57. It was further noted that it was necessary to entrench the provisions for the removal of a Governor in the Constitution.

Recommendations of the Committee

58. The Committee therefore recommended that the provisions for the removal from office of a Governor be entrenched in the Constitution and that the threshold for a vote for removal from office of a Governor be reviewed to match that for the removal from office of the President.

(7) THE PARLIAMENTARY SERVICE COMMISSION

59. Article 127 of the Constitution establishes the Parliamentary Service Commission.

The Commission consists of—

- (a) the Speaker of the National Assembly, as chairperson;*
 - (b) a vice-chairperson elected by the Commission from the members appointed under paragraph (c);*
- I seven members appointed by Parliament from among its members of whom—*

- (i) four shall be nominated equally from both Houses by the party or coalition of parties forming the national government, of whom at least two shall be women; and*
 - (ii) three shall be nominated by the parties not forming the national government, at least one of whom shall be nominated from each House and at least one of whom shall be a woman; and*
- (3) one man and one woman appointed by Parliament from among persons who are experienced in public affairs, but are not members of Parliament.*

60. The Parliamentary Service Commission is responsible for—

- (a) providing services and facilities to ensure the efficient and effective functioning of Parliament;*
 - (b) constituting offices in the parliamentary service, and appointing and supervising office holders;*
 - I preparing annual estimates of expenditure of the parliamentary service and submitting them to the National Assembly for approval, and exercising budgetary control over the service;*
 - (d) undertaking, singly or jointly with other relevant organisations, programmes to promote the ideals of parliamentary democracy; and*
- I performing other functions—*
- (i) necessary for the well-being of the members and staff of Parliament;*
- or*
- (ii) prescribed by national legislation.*

61. The Parliamentary Service Commission provides these services to both the National Assembly and the Senate.

Observations of the Committee

62. The Committee observed that in most bicameral jurisdictions each House was responsible for its own administration, including provision of services and facilities to its members and staff. In such jurisdictions, only a few of the functions were jointly managed, for instance, library services, security and common premises.

Recommendations of the Committee

63. The Committee recommended that the provisions relating to the Parliamentary Service Commission be reviewed so as to provide for a National Assembly Service Commission and a Senate Service Commission responsible for provision of services and facilities to the membership and staff of the respective Houses.

(8) LEADERSHIP OF THE HOUSES OF PARLIAMENT

64. Article 108 of the Constitution provides as follows-

- (1) *There shall be a leader of the majority party and a leader of the minority party.*
- (2) *The leader of the majority party shall be the person who is the leader in the National Assembly of the largest party or coalition of parties.*
- (3) *The leader of the minority party shall be the person who is the leader in the National Assembly of the second largest party or coalition of parties.*
- (4) *The following order of precedence shall be observed in the National Assembly—*
 - (a) *the Speaker of the National Assembly;*
 - (b) *the leader of the majority party; and*
 - (c) *the leader of the minority party.*

Observations of the Committee

65. The Committee observed that Article 108 of the Constitution set out the leadership in the National Assembly but did not make similar provision for the leadership in the Senate.

Recommendations of the Committee

66. The Committee recommended that the leadership of the Senate be entrenched in the Constitution by making specific provision for the Leader of the Majority Party and the Leader of the Minority Party of the Senate and by further providing for the order of precedence in the Senate.

(9) Publication of County Bills

67. Article 199 of the Constitution provides as follows-

- (1) *County legislation does not take effect unless published in the Gazette.*
(2) *National and county legislation may prescribe additional requirements in respect of the publication of county legislation.*

68. Article 260 of the Constitution defines the word *Gazette* as follows-

“Gazette” means the Kenya Gazette published by authority of the national government, or a supplement to the Kenya Gazette;

69. The County Governments Act defines a county Gazette in section 2 as follows-

“county Gazette” means a gazette published by the authority of the county government or a supplement of such gazette;

70. On the publication of a Bill, section 23 of the County Governments Act, 2012 provides as follows-

A Bill shall be published by including the Bill as a supplement in the county Gazette and the Kenya Gazette.

Observations of the Committee

71. The Committee observed that there was need to provide clarity on publication of county legislation and in particular if such legislation was to take effect when published in the *Kenya Gazette* or in the respective county *gazette*.

Recommendations of the Committee

72. The Committee recommended a review of the definition of the word ‘*Gazette*’ under Article 260 of the Constitution so as to provide that county legislation takes effect once published in the respective county *Gazette*.

(10) INDEPENDENCE OF COUNTY ASSEMBLIES

73. The Committee observed that there was need to ensure the separation and independence of the County Assemblies *vis-à-vis* the County Assemblies. The Committee further observed that this was necessary so as to ensure effective oversight over the County Executives by the County Assemblies.

Recommendations of the Committee

74. The Committee recommended that County Assembly Service Boards and the County Public Service Boards be entrenched in the Constitution and that provision be made to provide for the financial independence and autonomy of the County Assemblies.

(11) THE ROLE OF THE SENATE IN INTERNATIONAL ISSUES AND TREATIES

75. Article 2(6) of the Constitution provides as follows-

Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

Observations of the Committee

76. The Committee observed that there were a host of treaties and conventions that impacted and directly affected the county governments yet such treaties and conventions continued to be ratified without reference to the Senate. The Committee further observed that it was necessary for the Senate, in the discharge

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of its mandate relating to the county governments, to scrutinize all treaties and conventions before they formed part of the law of Kenya.

Recommendations of the Committee

77. The Committee recommended that Article 2(6) of the Constitution be amended to require the approval of both the National Assembly and the Senate before any treaty or convention ratified by Kenya forms part of the law of Kenya.

(12) STATE OF EMERGENCY AND DEPLOYMENT OF DEFENCE FORCES IN KENYA

78. Article 58 of the Constitution provides as follows on a state of emergency-

(1) A state of emergency may be declared only under Article 132 (4)(d) and only when—

(a) the State is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and

(b) the declaration is necessary to meet the circumstances for which the emergency is declared.

(2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of the declaration, shall be effective only—

(a) prospectively; and

(b) for not longer than fourteen days from the date of the declaration, unless the National Assembly resolves to extend the declaration.

(3) The National Assembly may extend a declaration of a state of emergency—

(a) by resolution adopted—

(i) following a public debate in the National Assembly; and

(ii) by the majorities specified in clause (4); and

(b) for not longer than two months at a time.

(4) The first extension of the declaration of a state of emergency requires a supporting vote of at least two-thirds of all the members of the National Assembly and any subsequent extension requires a supporting vote of at least three-quarters of all the members of the National Assembly.

- (5) *The Supreme Court may decide on the validity of—*
- (a) *a declaration of a state of emergency;*
 - (b) *any extension of a declaration of a state of emergency; and*
 - (c) *any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.*
- (6) *Any legislation enacted in consequence of a declaration of a state of emergency—*
- (a) *may limit a right or fundamental freedom in the Bill of Rights only to the extent that—*
 - (i) *the limitation is strictly required by the emergency; and*
 - (ii) *the legislation is consistent with the Republic's obligations under international law applicable to a state of emergency; and*
 - (b) *shall not take effect until it is published in the Gazette.*
- (7) *A declaration of a state of emergency, or legislation enacted or other action taken in consequence of any declaration, may not permit or authorise the indemnification of the State, or of any person, in respect of any unlawful act or omission.*

79. Further, relating to deployment of the Defence Forces within Kenya, Article 241(3)(c) of the Constitution provides that “*the Defence Forces may be deployed to restore peace in any part of Kenya affected by unrest or instability with the approval of the National Assembly*”.

Observations of the Committee

80. The Committee observed that both these matters of security concerned and affected the counties and the county governments and that it was therefore necessary that the Senate participates in the consideration of these matters.

Recommendations of the Committee

81. The Committee recommended that both Houses of Parliament should be involved in the process of the extension of a declaration of a state of emergency under

Article 58 of the Constitution and also in the approval of the deployment of the Defence Forces within Kenya under Article 241 of the Constitution.

4.0 **A SYNOPSIS OF THE GENERAL SUGGESTION FOR THE DRAFT CONSTITUTION OF KENYA (AMENDMENT) BILL, 2015**

82. The Committee proposed various amendments to the Constitution of Kenya, 2010 as set out in the general suggestion for the draft Constitution of Kenya (Amendment) Bill, 2015, which is attached as *Annex 4*. The Bill provides for the following clauses-

(1) Clause 1 – Short Title

This is the short title to the Bill.

(2) Clause 2 – Proposed amendment of Article 2 of the Constitution (Supremacy of the Constitution)

Rationale: The proposed amendment is to Article 2(6) of the Constitution and it is intended to ensure that any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution only after the approval of both Houses of Parliament.

(3) Clause 3 – Proposed amendment of Article 58 of the Constitution (State of Emergency)

Rationale: The proposed amendment is to Article 58(2), (3) and (4) of the Constitution and it would require the approval of both Houses of Parliament for an extension of a declaration of a state of emergency.

(4) Clause 4 – Proposed amendment of Article 94 of the Constitution (Role of Parliament)

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Rationale: The proposed amendment introduces three new clauses to Article 94: clauses (2A), (2B) and (2C), which provide clarity on the roles of both Houses of Parliament relating to legislation, oversight and representation, respectively.

(5) Clause 5 - Proposed amendment of Article 95 of the Constitution (Role of the National Assembly)

Rationale: The proposed amendment repeals the existing Article 95 of the Constitution and instead provides for the special roles of each of the two Houses of Parliament. It provides that the National Assembly represents the people of the constituencies while the Senate represents the counties and serves to protect the interests of the counties and their governments. The Senate is also to exercise oversight over revenue allocated to, raised by, or otherwise received by the county governments and its expenditure.

(6) Clause 6 - Proposed repeal of Article 96 of the Constitution (Role of the Senate)

Rationale: The repeal of Article 96 of the Constitution is a consequential amendment to the proposed amendments to Articles 94 and 95 of the Constitution.

(7) Clause 7- Proposed amendment of Article 108 of the Constitution (Party leaders)

Rationale: The proposed amendment is to clauses (1), (2), (3) and (4) of Article 108 and is intended to provide for the leadership and the order of precedence in both Houses. Article 108 presently provides for the leadership and the order of precedence in the National Assembly. There are no similar provisions in the Constitution on the Senate.

(8) Clause 8 - Proposed amendment to Article 109 of the Constitution (Exercise of legislative power)

Rationale: The proposed amendment is to clauses (2), (3), (4) and (5) of Article 109 and is intended to give full legislative mandate to the Senate as a House of Parliament as is the case in comparative bicameral jurisdictions.

(9) Clause 9 – Proposed repeal of Article 110 of the Constitution (Bills concerning county government)

Rationale: This is a consequential amendment to the amendment proposed to Article 109 of the Constitution. In light of that amendment, the distinction between Bills that concern or do not concern county governments would not be necessary.

(10) Clause 10 - Proposed amendment to Article 111 of the Constitution (Special Bills concerning county governments)

Rationale: The proposed amendment is intended to delete the present provision on special Bills and to instead provide for the procedure for the consideration of a County Allocation of Revenue Bill by both Houses of Parliament.

(11) Clause 11 – Proposed insertion of a new Article 111A (Procedure for consideration of an Appropriation Bill and a Supplementary Appropriation Bill)

Rationale: The proposed new Article 111A would set out the procedure for the consideration and approval of an Appropriation Bill and a Supplementary Appropriation Bill by both Houses of Parliament.

(12) Clause 12 - Proposed amendment to Article 112 of the Constitution (Ordinary Bills concerning county governments)

Rationale: The proposed amendment is consequential to the amendment proposed to Article 109 of the Constitution. The amendment is intended to provide for the procedure for consideration of Bills by both Houses.

**(13) Clause 13 - Proposed amendment to Article 113 of the Constitution
(Mediation committee)**

Rationale: The proposed amendment is consequential to the amendments to Articles 109 and 111 and the proposed new Article 111A. The amendment extends to clauses (3) and (5) and relates to referral of a Bill for assent after the mediation process and further excludes a County Allocation of Revenue Bill, an Appropriation Bill and a Supplementary Appropriation Bill from the mediation process.

**(14) Clause 14 - Proposed amendment of Article 114 of the Constitution
(Money Bills)**

Rationale: The proposed amendment seeks to provide clarity on the procedure for consideration of money Bills by the respective Houses of Parliament.

**(15) Clause 15 - Proposed amendment of Article 115 of the Constitution
(Presidential assent and referral)**

Rationale: The proposed amendment is consequential to the amendment proposed to Article 109 of the Constitution.

**(16) Clause 16 - Proposed amendment of Article 123 of the Constitution
(Decisions of Senate)**

Rationale: The proposed amendment is to clause (4) of Article 123 and is consequential to the amendment proposed to Article 109 of the Constitution.

(17) **Clause 17 - Proposed amendment of Article 127 of the Constitution
(Parliamentary Service Commission)**

Rationale: The proposed amendment establishes two Service Commissions of Parliament in place of the Parliamentary Service Commission: a National Assembly Service Commission for the National Assembly and a Senate Service Commission for the Senate. The amendment further sets out the composition of the Service Commissions and their functions.

(18) **Clause 18 - Proposed amendment of Article 128 of the Constitution
(Clerks and staff of Parliament)**

Rationale: The proposed amendment is consequential to the amendment proposed to Article 127.

(19) **Clause 19 - Insertion of new clause 128A (National Assembly and Senate Fund)**

Rationale: The proposed amendment establishes a National Assembly Fund and a Senate Fund to be administered by the respective Clerks.

(20) **Clause 20 - Proposed amendment of Article 132 of the Constitution
(Functions of the President)**

Rationale: The proposed amendment makes provision for debate by the two Houses of Parliament of a report on the progress made in fulfilling international obligations of the Republic.

(21) **Clause 21 - Proposed insertion on new Article 145A (Questions as to validity of removal of President)**

Rationale: The proposed new Article 145A seeks to provide for the procedure and timelines for the filing, consideration and determination of a question as to

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the validity of the removal from office of a President under Article 144(10) of the Constitution (removal of President on grounds of incapacity) and Article 145(7) of the Constitution (removal of President by impeachment).

(22) Clause 22 - Proposed amendment of Article 157 of the Constitution (Director of Public Prosecutions)

Rationale: The proposed amendment extends to clause (2) and would require the approval of the Senate prior to the appointment of a nominee to the position of Director of Public Prosecutions.

In respect of approvals of nominees for appointment to State offices, the Committee resolved that all nominations to constitutional offices that have security of tenure would be approved by the Senate while all nominations that have a bearing on the formation of Government would be approved by the National Assembly.

(23) Clause 23 - Proposed amendment of Article 163 of the Constitution (Supreme Court)

Rationale: The proposed amendment is a consequential amendment to the proposed new Articles 145A and the Article 181A. The amendment extends the jurisdiction of the Supreme Court to cover questions as to the validity of the removal from office of a President or a Governor.

(24) Clause 24 - Proposed amendment of Article 166 of the Constitution (Appointment of Chief Justice, Deputy Chief Justice and other judges)

Rationale: The proposed amendment extends to clause (1)(a) of Article 166 and would require the approval of the Senate prior to the appointment to office of a Chief Justice or a Deputy Chief Justice.

**(25) Clause 25 - Proposed amendment of Article 168 of the Constitution
(Removal from office)**

Rationale: The proposed amendment extends to clause (5)(a)(i) of Article 168 and is a consequential amendment to the proposed Article 166 of the Constitution. It proposes that a tribunal set up to consider a petition for the removal of a Chief Justice be chaired by the Speaker of the Senate.

**(26) Clause 26 - Proposed amendment of Article 171 of the Constitution
(Establishment of the Judicial Service Commission)**


Rationale: The proposed amendment extends to clause (2)(h) of Article 171 and would require the approval of the Senate prior to the appointment to the Judicial Service Commission of the persons nominated to represent the public.

**(27) Clause 27 - Proposed amendment of Article 173 of the Constitution
(Judiciary Fund)**

Rationale: The proposed amendment extends to clauses (3) and (4) and is consequential to the amendment proposed to Article 221 of the Constitution. It would require the approval of estimates by both the National Assembly and the Senate.

**(28) Clause 28 - Proposed amendment to Article 181 of the Constitution
(Removal of a county governor)**

Rationale: The proposed amendment seeks to entrench the procedure for the removal of a county governor in the Constitution and further provides a procedure similar to that for the removal of a President.



(29) **Clause 29 – Proposed insertion of a new Article 181A (Questions as to validity of removal of governor)**

Rationale: The proposed new Article 181A would provide for the procedure and timelines for the filing, consideration and determination of a question as to the validity of the removal from office of a governor.

(30) **Clause 30 - Proposed amendment of Article 189 of the Constitution (Cooperation between national and county governments)**

Rationale: The proposed amendment seeks to provide that Parliament shall enact legislation to provide a framework for cooperation between the national and county levels of government. It further provides for procedures for settling of both inter-governmental and intra-governmental disputes.

(31) **Clause 31- Proposed amendment of Article 199 of the Constitution (Publication of county legislation)**

Rationale: The proposed amendment provides that county legislation does not take effect unless published in a County *Gazette*.

(32) **Clause 32 - Proposed insertion of new Articles 199A and 199B (County Assembly Service Board and County Assembly Fund)**

Rationale: The proposed new clauses seek to establish a County Assembly Service Board and a County Assembly Fund for each County.

(33) **Clause 33 - Proposed amendment of Article 203 of the Constitution (Equitable share and other financial laws)**

Rationale: The amendment proposes to enhance the equitable share of revenue raised nationally that is to be allocated to County Governments from a minimum of fifteen per cent to a minimum of forty per cent.

**(34) Clause 34 - Proposed amendment of Article 205 of the Constitution
(Consultation on financial legislation affecting counties)**

Rationale: The amendment proposes to delete clause (2) of Article 205 so as to provide clarity on the consideration of recommendations by the Commission of Revenue Allocation by the National Assembly and the Senate.

**(35) Clause 35 - Proposed amendment of Article 215 of the Constitution
(Commission on Revenue Allocation)**

Rationale: The proposed amendment on the membership of the Commission on Revenue Allocation will require that the two persons nominated by political parties be represented in the Senate and not the National Assembly.

**(36) Clause 36 - Proposed amendment of Article 218 of the Constitution
(Annual Division and Allocation of Revenue Bills)**

Rationale: The proposed amendment makes provision for the procedure for the introduction and enactment of a Division of Revenue Bill and a County Allocation of Revenue Bill and the timelines attendant to the respective processes.

**(37) Clause 37 - Proposed amendment of Article 221 of the Constitution
(Budget estimates and annual appropriation Bill)**

Rationale: The proposed amendment seeks to provide for the procedure for the submission and consideration of estimates of revenue and expenditure and an annual Appropriation Bill.

**(38) Clause 38- Proposed amendment of Article 222 of the Constitution
(Expenditure before annual budget is passed)**

Rationale: The proposed amendment is to clause (2)(b) of Article 222 and is consequential to the amendment proposed to Article 221 of the Constitution.

**(39) Clause 39 - Proposed amendment of Article 223 of the Constitution
(Supplementary appropriation)**

Rationale: The proposed amendment is to clause (4) of Article 223 and is consequential amendment to the amendment proposed to Article 221 of the Constitution.

**(40) Clause 40 - Proposed amendment of Article 224 of the Constitution
(County appropriation Bills)**

Rationale: The proposed amendment seeks to clarify that the basis for the preparation of budgets by county Governments is a County Allocation of Revenue Bill.

**(41) Clause 41- Proposed amendment of Article 225 of the Constitution
(Financial control)**

Rationale: The proposed amendment provides further clarity on the procedure for stoppage of funds to a State organ or public entity and the role of the respective Houses in the processes.

**(42) Clause 42 - Proposed amendment of Article 226 of the Constitution
(Accounts and audit of public entities)**

Rationale: The proposed amendment provides clarity on the accountability and audit of the accounting officers of State organs and national public entities, county governments and the accounting officers of county public entities.

**(43) Clause 43 - Proposed amendment of Article 228 of the Constitution
(Controller of Budget)**

Rationale: The proposed amendment would require the approval of the Senate prior to the appointment of a nominee to the position of Controller of Budget.

**(44) Clause 44 - Proposed amendment of Article 229 of the Constitution
(Auditor-General)**

Rationale: The proposed amendment extends to clause (1) and would require the approval of the Senate prior to the appointment of a nominee to the position of Controller of Budget. The proposed amendment further introduces a new clause (8) which provides for the submission of the annual estimates of expenditure for the office of the Auditor General to Parliament for approval.

**(45) Clause 45 - Proposed amendment of Article 233 of the Constitution
(The Public Service Commission)**

Rationale: The proposed amendment is to clause (2) of Article 233 and would require the approval of the Senate prior to the appointment of a nominee to the position of chairperson, vice-chairperson or member of the Public Service Commission.

**(46) Clause 46 - Proposed amendment of Article 235 of the Constitution
(Staffing of county governments)**

Rationale: The proposed amendment extends to clause (1) and establishes a County Public Service Board for each county.

**(47) Clause 47 - Proposed amendment of Article 241 of the Constitution
(Establishment of Defence Forces and Defence Council)**



Rationale: The proposed amendment is to clause (3) of Article 241 and would require the approval of both Houses of Parliament before the deployment of the Kenya Defence Forces in any part of Kenya.

**(48) Clause 48 - Proposed amendment to Article 245 of the Constitution
(Command of the National Police Service)**

Rationale: The proposed amendment would require the approval of the Senate prior to the appointment of a nominee to the position Inspector-General of the National Police Service.

**(49) Clause 49 - Proposed amendment of Article 248 of the Constitution
(Application of Chapter)**

Rationale: The proposed amendment is a consequential to the amendment proposed to Article 127 which proposes to establish a National Assembly Service Commission and a Senate Service Commission.

**(50) Clause 50 - Proposed amendment to Article 250 of the Constitution
(Composition, appointment and terms of office)**

Rationale: The proposed amendment is to clause (2)(b) of Article 250 and would require the approval of the Senate prior to the appointment of a nominee to the position of member of a constitutional commission.

**(51) Clause 51- Proposed amendment to Article 251 of the Constitution
(Removal from office)**

Rationale: The proposed amendment is consequential to the amendment proposed to Article 250(2)(b) of the Constitution.

(52) **Clause 52 - Proposed amendment to Article 260 of the Constitution (Interpretation)**

Rationale: The proposed amendment to the interpretation of the word “*Gazette*” is consequential to the amendment proposed to Article 199. The amendment further provides for the interpretation of the term “public entity” which is used in the Constitution.

(53) **Clause 53 - Proposed Transitional and savings provisions**

Rationale: The proposed amendment seeks to provide for transition and savings in respect of the existing Parliamentary Service Commission and the Parliamentary Service.

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5.0 WAY FORWARD

83. The Committee deliberated on the options available for the processing of the general suggestion for the draft Constitution of Kenya (Amendment) Bill, 2015 developed by the Committee. The Committee observed that the Constitution of Kenya, 2010 provided for two mechanisms for amendment of the Constitution-

- (1) Amendment by parliamentary initiative, set out under Article 256 of the Constitution; and
- (2) Amendment by popular initiative, which is set out under Article 257 of the Constitution.

84. The Committee resolved to recommend to the Senate that the general suggestion for the draft Constitution of Kenya (Amendment) Bill, 2015 be processed by way of a popular initiative in terms of Article 257 of the Constitution. In this regard, the Committee observed that there was need for the Senate to establish a Select Committee to spearhead the processing of the draft Bill through the popular initiative process.

85. The Committee further observed that the popular initiative would entail the following processes-

	Activity	Reference Provision	Possible Timelines
1.	Signing of amendment Bill by at least one million voters.	<p>Article 257(1) - <i>An amendment to this Constitution may be proposed by a popular initiative signed by at least one million registered voters.</i></p> <p>Article 257(2) - <i>A popular initiative for an amendment to this Constitution may be in the form of a general suggestion or a formulated draft Bill.</i></p>	2 months (October – November, 2015)

	Activity	Reference Provision	Possible Timelines
		Article 257(3) – <i>If a popular initiative is in the form of a general suggestion, the promoters of that Bill shall formulate it into a draft Bill.</i>	
2.	Delivery of draft Bill to the Independent Electoral and Boundaries Commission to verify the supporting signatures.	Article 257(4) - <i>The promoters of a popular initiative shall deliver the draft Bill and the supporting signatures to the Independent Electoral and Boundaries Commission, which shall verify that the initiative is supported by at least one million registered voters.</i>	December 2015 - January, 2016
3.	Submission of draft Bill to each of the forty-seven County Assemblies.	Article 257(5) - <i>If the Independent Electoral and Boundaries Commission is satisfied that the initiative meets the requirements of this Article, the Commission shall submit the draft Bill to each county assembly for consideration within three months after the date it was submitted by the Commission.</i>	February, 2016
4.	Consideration of draft Bill by the County Assemblies.	Article 257(6) - <i>If a county assembly approves the draft Bill within three months after the date it was submitted by the Commission, the speaker of the county assembly shall deliver a copy of the draft Bill jointly to the Speakers of the two Houses of Parliament, with a certificate that the county assembly has approved it.</i>	February – May, 2016
5.	Introduction of draft Bill in Parliament.	Article 257(7) - <i>If a draft Bill has been approved by a majority of the county assemblies, it shall be introduced in Parliament without delay.</i>	June, 2016
6.	First Reading, Second Reading, Third Reading	Article 257(8) - <i>A Bill under this Article is passed by Parliament if</i>	June – September, 2016

	Activity	Reference Provision	Possible Timelines
	and Passage in the Senate	<i>supported by a majority of the members of each House.</i>	
7.	First Reading, Second Reading, Third Reading and Passage in the National Assembly.	Article 257(8) - <i>A Bill under this Article is passed by Parliament if supported by a majority of the members of each House.</i>	September – December, 2016
8.	Assent when passed by Parliament.	Article 257(9) – <i>If Parliament passes the Bill, it shall be submitted to the President for assent in accordance with Articles 256(4) and (5).</i>	
9.	Failure by either House to pass the draft Bill.	Article 257(10) - <i>If either House of Parliament fails to pass the Bill, or the Bill relates to a matter specified in 255(1), the proposed amendment shall be submitted to the people in a referendum.</i>	
10.	Independent Electoral and Boundaries Commission to conduct referendum.	<p>Article 257(10) – <i>If either House of Parliament fails to pass the Bill, or the Bill relates to a matter specified in Article 255(1), the proposed amendment shall be submitted to the people in a referendum.</i></p> <p>Article 257(11) – <i>Article 255(2) applies, with necessary modifications, to a referendum under clause (10).</i></p> <p>Article 255(2) - <i>A proposed amendment shall be approved by a referendum under clause (1) if-</i></p> <p>(a) <i>at least twenty per cent of the registered voters in each of at least half of the counties vote in the referendum; and</i></p> <p>(b) <i>the amendment is supported by a simple majority of the citizens voting in the referendum.</i></p>	January, 2017 (or at the same time as the General Elections of 2017)
11.	Assent and publication.	Article 256(5)(b) - <i>Within thirty days after the chairperson of the Independent Electoral and</i>	

	Activity	Reference Provision	Possible Timelines
		<i>Boundaries Commission has certified to the President that the Bill has been approved in accordance with Article 255(2), the President shall assent to the Bill and cause it to be published.</i>	

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6.0 RECOMMENDATIONS OF THE COMMITTEE

86. The Select Committee of the Senate on Constitutional and Legal Review recommends to the Senate as follows-

- (1) That the Senate adopts the Report of the Committee;**
- (2) That the Senate adopts the General Suggestion for the Draft Constitution of Kenya (Amendment) Bill, 2015 contained in the Report of the Committee and approves its publication as the general suggestion contemplated in Article 257(2) of the Constitution;**
- (3) That that the Senate approves the processing of the General Suggestion for the Draft Constitution of Kenya (Amendment) Bill, 2015 by way of a popular initiative in terms of Article 257 of the Constitution;**
- (4) That the Senate approves the appointment of a Select Committee to spearhead the processing of the General Suggestion for the Draft Constitution of Kenya (Amendment) Bill, 2015 through popular initiative in terms of Article 257 of the Constitution.**