

Paper laid by
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KENYA NATIONAL ASSEMBLY

Phoebe DSWA

22/05/2012

TENTH PARLIAMENT

FOURTH SESSION (2011)



THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

REPORT

ON THE PUBLIC HEARINGS ON THE CONSTITUTION OF KENYA
(AMENDMENT) BILL, 2011

Clerk's Chambers
Parliament Buildings
NAIROBI

March, 2012

PREFACE

Mr. Speaker Sir,

The Constitutional Implementation Oversight Committee is established under Section 4 of the Sixth Schedule to the Constitution with the mandate of overseeing the implementation of the Constitution. The Constitution requires that the Committee shall:

- (a) receive regular reports from the Commission on the Implementation of the Constitution on the implementation of the Constitution including reports concerning –
 - (i) the preparation of the legislation required by the Constitution and any challenges in that regard;
 - (ii) the process of establishing the new commissions;
 - (iii) the process of establishing the infrastructure necessary for proper operation of each county including progress on locating offices and assemblies and establishment and transfers of staff;
 - (iv) the devolution of powers and functions to the counties under the legislation contemplated in section 15 of the Sixth Schedule to the Constitution; and
 - (v) any other impediments to the process of implementing this Constitution;
- (b) coordinate with the Attorney General, the Commission on the Implementation of the Constitution and relevant parliamentary committees to ensure the timely introduction and passage of the legislation required by the Constitution; and
- (c) take appropriate actions on the reports including addressing any problems in the implementation of the Constitution.

COMMITTEE MEMBERSHIP

The Committee was constituted by the House on 5th October, 2010 and it comprises the following members: -

1. The Hon. Hussein Mohammed Abdikadir, M.P. Chairperson
2. The Hon. Millie Odhiambo, M.P. Vice-Chairperson
3. The Hon. Beth Mugo, EGH, M.P.
4. The Hon. Chirau Ali Mwakwere, EGH, M.P.
5. The Hon. Martha Wangari Karua, EGH, M.P.
6. The Hon. Ekwee Ethuro, EBS, M.P.
7. The Hon. (Prof.) Phillip Kaloki, M.P.
8. The Hon. (Dr.) Kilemi Mwiria, M.P.
9. The Hon. (Dr.) Eseli Simiyu, M.P.
10. The Hon. (Dr.) Joyce Laboso, M.P.

11. The Hon. Charles Kilonzo, M.P.
12. The Hon. Cecily Mbarire, M.P.
13. The Hon. Moriasi Ombui, M.P.
14. The Hon. Amina Abdalla, M.P.
15. The Hon. David M. Ngugi, M.P.
16. The Hon. Ababu Namwamba, M.P.
17. The Hon. Danson Mwazo, M.P.
18. The Hon. Sophia Abdi, M.P.
19. The Hon. Joseph Kasaine Nkaiserry, M.P.
20. The Hon. Charles Onyancha, M.P.
21. The Hon. Alfred Khang'ati, M.P.
22. The Hon. John Mbadi, M.P.
23. The Hon. Elizabeth Ongoro, M.P.
24. The Hon. Rev. Julius Murgor, M.P.
25. The Hon. Lucas K. Chepkitony, M.P.
26. The Hon. Benedict Fondo Gunda, M.P.
27. The Hon. Rachel Shebesh, M.P.

Mr. Speaker Sir,

The Constitution of Kenya (Amendment) Bill, 2011 was published on 19th October, 2011 and it supersedes the Bill published on the 21st September, 2011 bearing the same title. The Bill was Read a First time in the House on Wednesday 23rd November, 2011.

Article 256 of the Constitution provides that:-

256 (1) A bill to amend the Constitution –

- (a) May be introduced in either House of Parliament;*
 - (b) May not address any other matter apart from consequential amendments to legislation arising from the Bill;*
 - (c) Shall not be called for second reading in either House within the ninety days after reading of the first reading of the Bill in that House;*
 - (d) Shall have been passed by Parliament when each House of Parliament has passed the Bill, in both its second and third readings, by not less than two-thirds of all the members of that House.*
- (2) Parliament shall publicise any Bill to amend this Constitution, and facilitate public discussion about the Bill.*

Mr. Speaker Sir,

The Constitution of Kenya (Amendment) Bill, 2011 seeks to address three (3) key issues namely:-

i). **The Date of the next General Elections and the end of the term of the current Parliament.** *(Clauses 6 – 11)*

The Bill proposes to amend Articles 101(1), 136(2) (a), 177(1) (a) and 180(1) of the Constitution by amending the date to clarify and settle all controversy surrounding the date for future general elections.

The Bill also proposes to amend sections 9(1) and 10 of the Sixth Schedule to the Constitution to clarify the date of the first elections under the Constitution.

ii). **Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate.** *(Clauses 3 – 5).*

The Bill aims at giving full effect to Articles 27(8) and 81(b) which provides that not more than two-thirds of the members of elective public bodies shall be of the same gender.

The Bill proposes to amend Article 97 on the composition of the National Assembly by inserting a new clause (1) (ba) and clauses (1A) and (1B) to provide for the realization of and implementation of Articles 27(8) and 81(b) of the Constitution.

The Bill also proposes to amend Article 98 on the composition of the Senate by inserting a new clause (1) (ba) and clauses (1A) and (1B) to provide for the number of special seat members necessary to ensure that not more than two-thirds of the membership of the Senate are of the same gender.

iii). **The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution.** *(Clauses 2 & 12)*

The Bill proposes to amend Article 89 (9) of the Constitution to clarify the date on which the names and details of the delimited boundaries come into effect.

The Bill also proposes to amend section 27 (3) of the Sixth Schedule to the Constitution to clarify the time when the delimitation of boundaries will take effect for purposes of the first general elections under the Constitution.

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

Mr. Speaker Sir,

The Committee held a joint sitting with the Departmental Committee on Justice and Legal Affairs on 14th February, 2012 and with advice from the Speaker of the National Assembly resolved to have Public Hearings held on 27th February, 2012 in Twenty Three (23) centres. A paid advertisement was put up in the local dailies informing the public to prepare and attend the hearings. The Committee also sought the assistance of Members of the Liaison Committee and other Members of Parliament. Members of the public also presented written memoranda on the Bill.

The twenty three (23) centres across the country where the public hearings were scheduled to take place are as follows:-

COUNTY	VENUE	DATE
Garissa	Garissa Municipal Hall	Monday 27 th February, 2012
Wajir and Mandera	Wajir Municipal Hall	Monday 27 th February, 2012
Lamu, Tana River and Kilifi	Malindi Municipal Hall	Monday 27 th February, 2012
Mombasa and Kwale	Mombasa Municipal Hall	Monday 27 th February, 2012
Taita/Taveta	Voi Municipal Hall	Monday 27 th February, 2012
Machakos, Makueni and Kitui	Machakos Municipal Hall	Monday 27 th February, 2012
Meru, Embu, Tharaka-Nithi and Isiolo	Meru Municipal Hall	Monday 27 th February, 2012
Marsabit	Marsabit Municipal Hall	Monday 27 th February, 2012
Nyeri and Kirinyaga	Nyeri Municipal Hall	Monday 27 th February, 2012
Kiambu and Murang'a	Thika Municipal Hall	Monday 27 th February, 2012
Nyandarua, Laikipia and Samburu	Nyahururu Municipal Hall	Monday 27 th February, 2012
Nakuru, and Baringo	Nakuru Municipal Hall	Monday 27 th February, 2012
West Pokot and Trans Nzoia	Kitale Municipal Hall	Monday 27 th February, 2012
Uasin Gishu, Elgeyo/Marakwet and Nandi	Eldoret Municipal Hall	Monday 27 th February, 2012
Narok and Kajiado	Narok Municipal Hall	Monday 27 th February, 2012

Turkana	Lodwar Municipal Hall	Monday 27 th February, 2012
Kericho and Bomet	Kericho Municipal Hall	Monday 27 th February, 2012
Kisumu and Siaya	Kisumu Municipal Hall	Monday 27 th February, 2012
Kisii and Nyamira	Kisii Municipal Hall	Monday 27 th February, 2012
Homa Bay and Migori	Homa Bay Municipal Hall	Monday 27 th February, 2012
Kakamega and Vihiga	Kakamega Municipal Hall	Monday 27 th February, 2012
Bungoma and Busia	Bungoma Municipal Hall	Monday 27 th February, 2012
Nairobi City	County Hall, Parliament Buildings	Monday 27 th February, 2012

Mr. Speaker Sir,

The Committee conducted hearings in all centres. However, due to last minute logistical challenges the hearings scheduled for Wajir did not take place. During the hearings, varied reasons were given by the Public in both oral and in written, in support and against the Bill.

Mr. Speaker Sir,

The following Members attended the public hearing in the designated centres:-

1. The Hon. Hussein Mohammed Abdikadir, M.P.
2. The Hon. Charles Onyancha, M.P.
3. The Hon. Moriasi Ombui, M.P.
4. The Hon. Lucas Chepkitony, M.P.
5. The Hon. David Koech, M.P.
6. The Hon. Cyprian Omollo, M.P.
7. The Hon. Elijah Lagat, M.P.
8. The Hon. Eseli Simiyu, MP
9. The Hon. Charles Keter, MP
10. The Hon. Joshua Kutuny, MP and
11. The Hon. Benjamin Washiali, MP
12. The Hon. Ekwee Ethuro, MP
13. The Hon. Mutava Musyimi, M.P.
14. The Hon. Mithika Linturi, M.P.
15. The Hon. Alex Mhuri Mwiru, M.P.
16. The Hon. Abdul Bahari Ali, M.P.

17. The Hon. Silas Muriuki Ruteere, M.P
18. The Hon. Dr. Nuh Nassir, MP
19. The Hon. Gideon Mung'aro, MP
20. The Hon. Ababu Namwamba, M.P
21. The Hon. Alfred Khangati, M.P
22. The Hon. Fred Kapondi, M.P
23. The Hon. Bifwoli Wakoli, M.P
24. The Hon. Chachu Ganya, MP
25. The Hon. Joseph Lekuton, M.P.
26. The Hon. David Ngugi, M.P.
27. The Hon. Raphael Letimalo, M.P.
28. The Hon. Danson Mwazo, M.P.
29. The Hon. Thomas Mwadeghu, MP.
30. The Hon. J. Nkaissery, M.P.
31. The Hon. Nkoidila ole Lankas, M.P.
32. The Hon. George Nyamweya, M.P.
33. The Hon. Jeremiah Kioni, M.P.
34. The Hon. Alfred Odhiambo, M.P.
35. The Hon. Kabando wa Kabando, M.P.
36. The Hon. Andrew C. Mwatela, M.P.
37. The Hon. (Eng.) James Rege, M.P.
38. The Hon. Hassan Joho, M.P.
39. The Hon. Eugene Wamalwa, M.P
40. The Hon. Boaz Kaino, M.P
41. The Hon. Justus Kizito, M.P
42. The Hon. David Were, M.P.
43. The Hon. Alfred Sambu, M.P.
44. The Hon. Amina Abdalla, M.P.
45. The Hon. Charles Kilonzo, M.P.
46. The Hon. Aden Keynan, M.P.
47. The Hon. John Mututho, M.P.
48. The Hon. (Dr.) K. Munyaka, M.P.
49. The Hon. Nemesyus Warugongo, M.P.
50. The Hon. Joseph Magwanga, M.P
51. The Hon. John Pesa, M.P

Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly and his Staff for the support extended to it in the execution of its mandate. The Committee also thanks members of the public who made submissions, both orally and in writing.

Mr. Speaker Sir,

It is my pleasant duty and privilege, on behalf of Constitutional Implementation Oversight Committee and the Departmental Committee on Justice and Legal Affairs to present this report on the public hearings on the Constitution of Kenya (Amendment) Bill, 2011.

SIGNED


HON. HUSSEIN MOHAMMED ABDIKADIR, M.P.
(CHAIRPERSON)

DATE.....

15/5/2012

2.0 PUBLIC HEARINGS ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2012

2.1.0 KISII AND NYAMIRA COUNTIES

The public gave their views on the three key issues as below:-

2.1.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

The public supported the amendment citing the following reasons:

- i. Delimitation of boundaries is a thorny issue that cannot be completed before August, 2012.
- ii. Independent Electoral and Boundaries Commission would not be ready with voter register by August, 2012.
- iii. Independent Electoral and Boundaries Commission needed more time to do thorough civic education on forthcoming general election.
- iv. Independent Electoral and Boundaries Commission has assured Kenyans that elections will be in December.
- v. The Constitution is clear on the term of the current Parliament.
- vi. Elections held in August would affect harvesting season and other agricultural activities.
- vii. Education in schools, colleges and universities and, Tourism especially the migration of the Wild Beasts from the Maasai Mara to the Serengeti will be affected if elections are held in August.
- viii. Elections in August or March would also affect the regional cooperation among the East African Member Countries in terms of Budget reading.
- ix. Traditionally, general elections have been held in December and not August or March.

However, a few of the members of the public were of the opinion that elections be held in March, 2013 in compliance with the Court Ruling on the same.

2.1.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

The public supported the amendment arguing that if enacted it will create more chances for the Women of Kenya in leadership. However, they cited a major challenge in implementing the proposed amendment of gender representation in elective positions since the positions would be elective and not selective.

2.1.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

The public supported the amendment citing the following reasons:

- i). It will ensure marginalized and populous areas are well represented
- ii). It will also ensure that equitable distribution of resources and devolution are well achieved

2.2.0 UASIN GISHU, ELGEYO/MARAKWET AND NANDI COUNTIES

The public hearing in Eldoret was attended by one hundred and forty (140) members of the public. Four (4) groups submitted a written memoranda and a total of twenty five (25) members of the public gave their views on the proposed amendments to the Constitution.

The public gave their views on the three key issues as follows:-

2.2.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

The public supported the amendment citing the following reasons:

- i. It will end the anxiety among the electorate over the uncertainty on the Elections date
- i. That December is a vacation holiday and August is a rainy season therefore elections should be held in December.
- ii. The Independent Electoral and Boundaries Commission have assured Kenyans that they are and will be ready for a December 2012 election. They assured Kenyans that a December election shall allow them enough time to make the necessary preparations which include demarcation of the new boundaries which is at an advanced stage, registration of voters and provision of intensive civic education for voters to ensure that they participate in the elections from an informed position.
- iii. December general election date is in line with the tradition of holding the General Elections in the month of December and celebrating the New Year with the new government in place.
- iv. Education, learning and other school activities will not be interrupted if elections were to be held in December. This is considering that most of school premises are used as polling stations during elections and the campaigns period will interfere with the smooth running of schools as teachers are usually actively involved either as polling clerks, returning officers or presiding officers.

- v. If elections were to be held in December, Harvesting, ploughing and other activities in the agricultural sector will not be interrupted. The harvest season of the best quality tea and horticulture produce is in August and therefore elections should be held in December in the interest of the country's economy and to protect the farmer's income.

2.2.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. (Clauses 3 – 5).

The public supported the amendment citing the following reasons:

- i. The amendment will entrench the mechanism for implementation of the principle of affirmative action which women and other marginalized groups have struggled for more than twenty years and which the Constitution now guarantees in Articles 27 (8) and 81 (b) among other provisions.
- ii. It is in line with Kenyans' wishes since they voted overwhelmingly in support of the Constitution referendum aware that there was an affirmative action to address problems of representation of marginalized groups and women.
- iii. This will avert the potential composition of the two Houses of Parliament being declared unconstitutionally constituted after the next general election if they fail to comply with the two-thirds Constitutional gender rule. The amendment therefore will avert the possibility of a Constitutional crisis, petitions and other court battles after the elections since not more than two-thirds Constitutional provision shall have been complied with.
- iv. The implementation of the affirmative action principle will transform the traditional perceptions towards women's leadership resulting in an increased number of women being directly voted into the elective constituency and senate seats.
- v. To meet this requirement, party nominations should be considered directly for women.

However, they cited a challenge in that the number of Senators and Members of the National Assembly will never be definite at any given time and it is likely that counties/politicians will encourage women to be given special seats rather than vie making the number of members high and expensive for the tax payers. They demanded that a definite solution be provided in establishing the exact number of special seats and the modalities on selection of the women.

2.2.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

The public supported the amendment arguing that the new boundaries to be effective in the 2012 election for the citizens to benefit from wider representation. However, issues arising out of the current delimitation of boundaries should be urgently addressed to facilitate fair elections in 2012.

General Observations

- i. The public hearings was called within a very short notice, therefore did not give members of the public adequate time to prepare.
- ii. The advertisement for Public hearings should be done through the local radio stations, television and local dailies so as to reach a wider coverage.

2.3.0 KAKAMEGA AND VIHIGA COUNTIES

2.3.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

The public supported the amendment citing the following reasons:

- i. The people of the former Western province normally conduct the circumcision ceremony in August of every year and if elections are held in August, it would deny many people the chance of participating in the elections.
- ii. That in August, students would still be in school for the 2nd term and holding elections at that time would disrupt learning.
- iii. That Members of Parliament currently serving should be allowed to complete their terms as MPs as they were elected in December and holding elections in August would deprive them of earnings of almost five months.
- iv. Elections should not be held in March of next year as this would mean paying the Members of Parliament salaries which they are not entitled to further adding a strain on the budget.

However, one of the participants though supporting the need to hold elections in December, vehemently opposed the proposal to amend the constitution, arguing that opening up the Constitution for amendments this early would lead to several amendments whenever Members disagreed with a provision of the constitution, thus mutilating the document like was done to the Independent constitution.

2.3.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

Most of the participants opposed the proposed amendment citing the following reasons:

- i. That after the Beijing conference which discussed Women Empowerment, the women of Kenya demanded equality with the men and requested that they be considered so and therefore should not be given favours but be left to compete on an equal footing with the men including in elective political positions.
- ii. That allowing the Senate and National Assembly to nominate a number of Members that is not certain in each election year would lead to unnecessary strain on the national budget which would necessitate more taxation. It would also lead to challenges on the budgeting process and on planning by the National Assembly because the number of Members of the two Houses would only be determined after the General Elections.
- iii. That setting aside some positions for either gender would destroy the democratic ideals and principles as enshrined in the Constitution which require Kenyans to choose their preferred political leaders freely.

However, one of the participants supported the proposed amendment citing the following reasons:

- i. Women had faced discrimination by society over the years which had denied them the opportunity and capacity to compete on an equal footing with the men. There was therefore need to provide an avenue for the women to participate in decision making organs of the government.
- ii. There is need for the third principle to be observed for elective positions and for all public bodies because the Constitution had so provided. The public bodies specified included the Land Control Boards where the women present stated that the majority membership was men yet land issues also concerned women.

2.3.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

The public supported the amendment citing the following reasons:

- i. That the Constitution created 290 constituencies which are expected to be in place before the next general election for effective representation of the people.

- ii. That the people of Kakamega and Vihiga counties gave their views to the IEBC on the delimitation of boundaries and the constituencies and wards they wanted and that they expected this to be reflected during the upcoming general elections.
- iii. That the new boundaries were necessary for equitable resource distribution under the new Constitutional dispensation and it would not be proper to go to the next elections without the new constituencies and wards.

2.4.0 TURKANA COUNTY

2.4.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

Most Members (65%) of the public supported the amendment citing the following reasons:

- i. The five (5) year term of Parliament expires in December 2011 so elections cannot be held before then.
- ii. To allow IEBC to prepare for elections.
- iii. December is the month when most people are on leave or holidays;
- iv. Traditionally many people are used to a December election.

Few Members (25%), of the public opposed the amendment citing the following reasons:

- i. IEBC will not be adequately prepared for elections in either August or December 2012.
- ii. There is need to respect the constitutional thus elections should be held in August.

2.4.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

Most Members of the public opposed the amendment citing that in a democracy all candidates must compete for elective posts while affirmative action should be applicable on appointments and nomination positions. However, many participants expressed the need to empower and encourage women to seek elective posts during the elections.

2.4.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

The public opposed the amendment arguing that the delimited boundaries should come into effect one year before the elections. This was because boundary review issues were rooted on historical, cultural, and traditional dynamics. This necessitates the need for adequate time after the boundary review to allow for arbitration and dispute resolution where disputes may arise.

2.4.4 Challenges

- i. The contents of the constitutional of Kenya (amendment) Bill, 2011 were technical and required specialized skills and close scrutiny. There was need for sensitization of the public on the contents of the Bill prior to public hearings. The public also required a Kiswahili translation of the constitutional amendment to facilitate more beneficial contributions and participation.
- ii. There was low turnout hence there is need to in future publicize the public hearings through the local Radio Stations and public Barazas as opposed to the newspapers due to remoteness of the area

2.5.0 HOMA BAY AND MIGORI COUNTIES

2.5.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

The public supported the amendment citing the following reasons:

- i. Holding general elections in August 2012 did not seem feasible as the time left to prepare adequately was too short;
- ii. The proposed December date ensured that general elections would not coincide with the preparation and taking of national examinations by students in primary and secondary schools;
- iii. The proposed December date had not been challenged by the Independent Electoral and Boundaries Commission.

2.5.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. (Clauses 3 – 5).

Most Members of the public opposed the amendment citing the following reason:

- i. That majority of women had failed to take initiative to come out and articulate their leadership capabilities.
- ii. Women were yet to show by action that that they were capable leaders beyond verbally saying that 'they can'.
- iii. Women needed to fight for seats in equal measure with their male counterparts.
- iv. The creation of special seats essentially meant that it was not possible to have a predetermined number for members of the National Assembly and Senate stipulated in the Constitution.

Acknowledging that gender parity and equity were requirements stipulated in the Constitution some participants proposed the following:

- i. That only women be cleared to vie in the 80 additional constituencies;
- ii. That special seat members be nominated from among those who had shown initiative by vying for elective posts;
- iii. That the rule that no more than two-thirds of members be of the same gender applicable only to public appointment and not elective positions.

However, a few of the participants present supported the amendment as proposed in the Bill.

2.5.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. (Clauses 2 & 12)

The participants were unanimous in support of the proposed amendment on the time when delimitation of boundaries will take effect for purposes of the first general elections.

2.5.4 Challenges

- i. It was noted that the majority of those present at the public hearing represented Homa Bay County. Only two out of the total ninety-seven participants in attendance represented Migori County. This imbalance, therefore, resulted in under representation of views of the inhabitants of Migori County.

- ii. Participants raised concerns regarding the use of print media by Parliament to carry the advertisements calling on members of the public to attend the public hearings. They indicated that the majority did not have access to newspapers. Hence they recommended that subsequent advertisements by Parliament inviting the public to attend such hearings be carried mainly on broadcast (radio) media to enhance public outreach.

2.6.0 MERU, EMBU, THARAKA-NITHI AND ISIOLO COUNTIES

The public hearing in Meru was attended by ninety nine (99) members of the public. A total of twenty five (25) members of the public gave their views on the proposed amendments to the Constitution.

2.6.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

Majority of the Members of public supported the amendment but only for the first election under the new Constitution citing the following reasons:

- i. Need for intensive civic education for voters - Kenyans will vote for six candidates in a day; the president, Member of Parliament, Governor, Senator, Women Representative and County Representatives. Therefore there is need for enough time for civic education.
- ii. The new constituencies' boundaries - The Independent Electoral and Boundaries Commission (IEBC) need time to deal with the new constituencies boundaries whose report is before the House.
- iii. Time for voter registration - The time frame for voter registration is a challenge since it must end ninety days before elections and voters should have thirty days to inspect the register and confirm their details.
- iv. Economic parameter - The economic parameter is one of the pillars of vision 2030 and therefore it cannot be taken for granted if growth for the country is to be achieved. Among the key sectors that have been given priority in acting as key broad drivers in the journey to Vision 2030 is the tourist industry and agricultural sector which are among the major foreign exchange earners for the country.
- v. Budgetary implication and regional cooperation - The financial year runs from July 1st to June 30th of the following year and the Budget preparation and reading coincides with and is tied to the other Member States of the East African Community. If the elections will be held in August, Kenya will need to talk with the

other community members thus causing unnecessary inconvenience to the other partner States.

- vi. Education and Training - Considering that most of the polling stations are schools, there will be interruption of learning and other school activities.

Few of the Members of public opposed the amendment claiming that the amendment is a fundamental alteration to the Constitution which is an attempt to distort the views of Kenyans as given in the Constitution. Thus the election date should remain as August as there was a reason as to why the Committee of Experts put it in August and further considering that schools are usually on holiday and there are no rains.

2.6.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. (Clauses 3 – 5).

The public supported the amendment citing the following reasons:

- i. The amendment is progressive as it will entrench the mechanism for implementation of the principle of affirmative action which women and other marginalized groups have struggled for more than twenty years and which the Constitution now guarantees in Articles 27 (8) and 81 (b) among other provisions.
- ii. The amendment is line with Kenyans wishes since they voted overwhelmingly in support of the Constitution referendum aware that there was an affirmative action to address problems of representation of marginalized groups and women.
- iii. The implementation of the affirmative action principle will transform the traditional perceptions towards women's leadership resulting in an increased number of women being directly voted into the elective constituency and senate seats.
- iv. This amendment will avert the potential composition of the two Houses of Parliament being declared unconstitutionally constituted after the next general election if they fail to comply with the two third Constitutional gender rule. The amendment therefore will avert the possibility of a Constitutional crisis, petitions and other court battles after the elections since not more than two thirds Constitutional provision shall have been complied with.
- v. To meet one third gender requirement, direct party nominations should be considered for women.

2.6.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

The public opposed the amendment citing the following reasons:

- i. There is a big conflict with the boundaries. People's submissions should be taken into account before the delimited boundaries come into effect.
- ii. The issue of delimiting the boundaries should be open and transparent.
- iii. IEBC did not capture the citizens views on boundaries hence citizens are losing trust in IEBC.
- iv. That the issue of delimitation of boundaries is a source of conflict if it is not resolved before elections.

2.6.4 Challenges

- i. The public hearings was called within a very short notice, therefore did not give members of the public adequate time to prepare.
- ii. The advertisement for Public hearings did not reach a majority of Kenyans hence in future they should be done through the local radio stations, television and local dailies so as to reach a wider coverage.

2.7.0 KERICHO AND BOMET COUNTIES

2.7.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

Majority of the Members of public supported the amendment citing the following reasons:

i. Ample time for civic education

If the election were to be held in August 2012 as contained in the Constitution, there would not be ample time for the civic education to be undertaken considering the high number of elective posts available in the county/constituency. A December election is therefore more appropriate.

The IEBC needs more time to effectively prepare the voter registers and for other preparations in readiness for elections. An August date is too near and the IEBC might not be fully ready for the elections then. A December date is ideal.

ii. **Delimitation of new boundaries**

The IEBC needs time to deal with new constituency boundaries. Already its preliminary report has elicited a heated debate and it also needs time to plan the necessary logistics.

iii. **Time for voter registration**

Voter registration must end 90 days before the elections and voters needed to verify their details 30 days thereafter. For this reason, an August date is not viable.

iv. **Five year term for Members of Parliament**

A December election will ensure that the current MPs will serve their full term and all future parliaments will serve their full terms without need for future amendments to the Constitution.

v. **Interference with the school calendar**

Schools will be closed in December thus the elections will not interfere with the students learning. In August, many schools resume for holiday tuition in preparation for the national exams. Holding elections in August will adversely affect the learning process.

Further, a number of polling stations are in schools and December is ideal since most schools will be closed for Christmas holidays and national exams will have been completed.

vi. **Cultural Practices**

Initiation ceremonies for many communities both in the region and the country at large fall in early December. However, by 3rd Monday of December, the initiation ceremonies will not have been completed. Some residents proposed 27th December as has been the tradition so as not to affect these initiation ceremonies. The constituents also took into consideration the plight of their neighboring communities that hold their initiation ceremonies in August saying that an August election would severely affect the ceremony. There is need to take into consideration the cultural aspects of each community.

vii. **Budget Calendar**

The government's financial year starts on 1st July and the Budget is read in June. This might be a setback for the August elections since Parliament has to be dissolved two months before the elections. This would mean immediately after the budget is read.

This will severely affect the budget making process and also might render the elections unfeasible when the budgetary issues are not cleared before Parliament is dissolved.

Kenya is also a member of the East African Community. The June budget reading is tied to the other partner states. An August election might cause inconveniences to the Community.

viii. **Agriculture Practices**

The Kericho and Bomet Counties are predominantly farming regions and August is very important in the agricultural calendar since most tea farmers have their peak season in July-August and residents will be busy trying to maximize their yields for tea bonuses in November. Campaigns and elections during this period will disrupt the harvest season and lead to loss of income.

Kipkelion residents harvest short season crops like bean and potatoes in August. So an August election might be a setback for the people of this region, while a December one would be more ideal since little or no farming is done during this month.

ix. **Religious Practices**

Most religious organizations, especially churches (e.g the Seventh Day Adventist) have camps during the month of August and an election then might disrupt their calendars. Having it in the third week of December will also be ideal since it will not interfere with the Christmas Holidays.

x. **Weather patterns**

During the month of August and March, there is a lot of rain and this would render some places in the region impassable. The campaigning individuals might not be able to reach each part of the county. The IEBC will also find it difficult to deliver ballot boxes due to impassable roads. The weather in December is fairly good and this would favour both campaigns and elections.

2.7.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

Majority of the Members of public supported the amendment citing the following reasons:

- i. The amendment is in line with Kenyan's wishes since the constitution was voted for overwhelmingly in the referendum aware that it entrenched affirmative action to address problems of representation of marginalized groups and women.
- ii. The amendments will facilitate the realization of Kenya's wishes enshrined in Articles 27(8) and 81(b) in the national parliament for entrenchment of mechanisms to ensure equitable representation of women and marginalized groups.

- iii. Implementation of affirmative action principle will transform the traditional perceptions towards women's leadership resulting in an increased number of women being directly voted into elective national assembly and senate seats.
- iv. The amendment averts the potential situation of the two houses of parliament being declared unconstitutionally constituted after the next general election if they fail to comply with the not more than two-thirds same gender constitutional principle.
- v. The amendment will avert the possibility of a constitutional crisis, petitions and other court battles after the elections since the not more than two-thirds constitutional provision shall have been complied with.
- vi. In addition, it enhances equal participation for either gender in the national assembly and the senate.
- vii. There is need for proper mechanisms to be put in place to ensure adherence of the constitutional requirement of gender equity especially in the National Assembly and in the Senate.

Few Members of the public opposed the amendment claiming that the appointments and nominations should not apply in elective positions as an election is democratic process and should not favour any gender over the other.

2.7.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

Majority of the Members of the public supported the amendment citing the following reasons:

- i. The delimitation of boundaries should take effect before the next general election 2012 elections since a lot of taxpayers' funds have been spent in carrying out the exercise and it's only natural that they take effect at the earliest opportunity.
- ii. The delimitation of boundaries should take effect for purposes of the first general elections under the constitution since a postponement of the exercise may occasion extra spending of taxpayers' money in the future due to a repeat of the exercise.

However, a few Members of the public opposed the amendment claiming that the delimitation of the boundaries should take effect in 2017 to give time for various conflicting opinions on the new boundaries to be resolved so as to avoid any conflict that may arise should IEBC rush to gazette the new constituencies.

2.8.0 MACHAKOS, MAKUENI AND KITUI COUNTIES

The Public hearing did not kick off but the public resolved as follows:

- i. That, the meeting was not truly representative and it would be a disservice to proceed with the hearing without representation especially from Kitui County where in the recent past citizens had demonstrated over the issue of boundaries. Therefore, the public hearings should not proceed since, in the absence of representation from all the three counties and the seventeen constituencies. As such, the day's hearing would not generate a collective position of the three counties.
- ii. That, constitution amendment is an important exercise and therefore Parliament should adequately use the various media to publicize and inform the citizens of the dates of hearings. Moreover, there is no wide reach of the daily newspapers in the rural areas.
- iii. That, Parliament should consider extending the time leading to the Second Reading of the Bill to ensure that civic education is carried out on the amendments the Bill seeks to bring, and also give more time for local leaders to mobilize public participation on the issues.
- iv. That, the Members of Parliament from the three counties should avail themselves at the public hearings and be more proactive particularly in ensuring that civic education is carried out prior to such public hearings, and also ensure wards and constituencies sent representatives.
- v. That, an appropriate future date be set for the public hearing.

2.9.0 LAMU, TANA RIVER AND KILIFI COUNTIES

A total of 127 members of public attended the hearings out of which a total of 65 spoke. No written submissions were received. There was only 1 person each from Tana River and Lamu Counties. The rest of were from Kilifi County, mainly Malindi Constituency.

2.9.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

Most of the Members of the public (88%) opposed the amendment citing the following reasons:

- i. The Committee of Experts had reasons for providing for elections to be held on the Second Tuesday in August 2012 in every fifth year.
- ii. The National Assembly approved the draft constitution without amendments
- iii. The public overwhelmingly voted for the Constitution in 2010.
- iv. It was too early to subject the Constitution to amendments.
- v. The Budgetary process should be amended to conform to the provisions of the Constitution and not vice versa.

50% of the Members of the public said that date of the first elections should be held on the Second Tuesday in August 2012 added that in the event that IEBC was not able to conduct the elections in August 2012 due to time constraints, then the elections should be held not later than December 2012.

Few Members of the public (10%) supported the amendment citing the following reasons:

- i. The amendment provide for a definite date for elections.
- ii. There is need to give IEBC time to prepare for the election and August date may not give the Commission time to prepare.
- iii. A December date has been the practice and it would also be difficult for people working in towns and registered to vote in their rural homes to get leave to vote.

Few Members of the public (2%) opposed the amendment saying that the date of the first election after the dissolution of the National Assembly should in March 2012

2.9.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

Most of the Members of the public supported the amendment citing the following reasons:

- i. The amendment would ensure not more than two-thirds of the membership of the National Assembly as well as Senate were of the same gender.
- ii. The two-third gender rule does not apply to women alone but to both genders, therefore will benefit both men and women.
- iii. The proposed amendment is line with the commonwealth practices of affirmative action.
- iv. Women play an important role in both elective and appointive bodies.

However, a few of the Members of the public opposed the amendment citing that the Constitution already provides reserved seats for women. Two-third rule can be achieved through nomination in case elections do not achieve the requisite numbers.

2.9.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

Majority of the Members of the public (80) opposed the amendment citing the following reasons:

- i. The proposed new electoral units are contentious and need to be harmonized first before they can take effect.
- ii. IEBC did not take into consideration the public views.

For future elections, 100 percent of speakers were of the view that if the general election is held within twelve months after the completion of a review by the IEBC, the new boundaries should not take effect for that purpose.

2.9.4 Challenges faced during the hearings

- i. Low public turnout, only 127 members of the public attended the hearings. This was attributed to the fact that very few people access local dailies that were used to invite the public to give their views.
- ii. Poor counties' representation: Only 1 person each from Tana River and Lamu Counties attended the hearings. The rest were from Kilifi County, mainly Malindi Constituency. **The views given cannot therefore be said to also represent those of Tana River and Lamu Counties.**
- iii. Poor understanding of the Constitution.
- iv. Poor understanding of the proposed amendment Bill.
- v. Public perception that the exercise, just like many others held in the past was just a formality whereby their views are never taken into account. E.g. the recent case of public hearings by IEBC on report on delimitation of boundaries.

2.10.0 BUNGOMA AND BUSIA COUNTIES

The public hearing in Bungoma was attended by Two hundred and twenty (220) members of the public. One (1) group submitted a written memoranda and a total of forty eight (48) members of the public gave their views on the proposed amendments to the Constitution.

2.10.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

The majority of members of the public supported the amendment citing the following reasons:

- i. Enactment of the Constitution of Kenya (Amendment) bill, 2011 will ensure general elections are held in December thus allowing room for effective preparations for a free and fair election.
- ii. That December has always been an election month and any switch to August may interfere with their way of life especially cultural activities such as circumcision.
- iii. The Independent Electoral and Boundaries Commission (IEBC) have assured Kenyans that they are and will be ready for a December 2012 election. They assured Kenyans that a December election shall allow them enough time to make the necessary preparations which include demarcation of the new boundaries which is at an advanced stage, registration of voters and provision of intensive civic education for voters to ensure that they participate in the elections from an informed position.
- iv. December general election date is in line with the tradition of holding the General Elections in the month of December and celebrating the New Year with the new government in place ready to work is important for the country.
- v. Education, learning and other school activities will not be interrupted if elections were to be held in December. This is considering that most of school premises are used as polling stations during elections and the campaigns period will interfere with the smooth running of schools as teachers are usually actively involved either as polling clerks, returning officers or presiding officers.

However, a few members of the public were of the view that elections be held in March, 2013 in line with a Court ruling on the matter, while others were of the view that elections be held in August, 2012 as provided by the Constitution which was voted for by a majority of Kenyans.

2.10.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

The majority of members of the public supported the amendment citing the following reasons but critical challenges highlighted:

- i. The amendment will realize implementation of the principle of affirmative action which women and other groups have been agitating for more than twenty years and which the Constitution now guarantees in Articles 27 (8) and 81 (b) among other provisions.
- ii. It is line with Kenyans wishes since they voted overwhelmingly in support of the Constitution referendum aware that there was an affirmative action to address problems of representation of marginalized groups and women.

- iii. This will avert the potential composition of the two Houses of Parliament being declared unconstitutionally constituted after the next general election if they fail to comply with the two third Constitutional gender rule. The amendment therefore will avert the possibility of a Constitutional crisis, petitions and other court battles after the elections since not more than two thirds Constitutional provision shall have been complied with.
- iv. The implementation of the affirmative action principle will transform the traditional perceptions towards women's leadership resulting in an increased number of women being directly voted into the elective constituency and senate seats.
- v. To meet this requirement, party nominations should be considered directly for women.

However it was cited that this amendment if enacted would bring challenges in that the number of Senators and members of the National Assembly will never be definite at any given time and it is likely that Counties will encourage women to be given special seat rather than elective seat therefore the large number will be expensive for the tax payers. In addition, that women have had too many (enough) special seats and it is high time they contested for elective seats.

2.10.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

The public supported the amendment citing the following reasons:

- i. Citizens want to benefit from wider representation.
- ii. The conflicts surrounding boundaries should be resolved urgently to facilitate the December 2012 elections.
- iii. The new boundaries will enable citizens to access more representation and government facilitation as provided for by the new Constitution.

General Observations

- i. The public hearings was called within a very short notice, therefore did not give members of the public adequate time to prepare.
- ii. The advertisement for Public hearings should be done through the local vernacular radio stations, television and local dailies so as to reach a wider coverage.

2.11.0 MARSABIT COUNTY

The public hearing in Marsabit was attended by 288 members of the public. A total of 30 members of the public gave their views on the Constitutional Amendment Bill, 2011.

2.11.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

The public supported the amendment citing the following reasons:

- i. In the past General Elections have been held in December after every five years. This practice has worked well for Kenyans particularly those working and is able to get their annual leave in December and can therefore vote at their rural constituencies.
- ii. The General Elections should be held in December since most schools serve as polling stations and this is the period when schools are closed.
- iii. Holding elections in August as is contained in Article 101 will bring confusion and inconvenience to many Kenyan's particularly those who cast their votes in far flung and remote parts of the country.
- iv. The General Elections should be held in December to allow the Government to allocate funds in the budget which is normally read in June every year.
- v. The Independent Electoral and Boundaries Commission (IEBC) has not undertaken voter registration and it is important for this exercise to be done way before elections are held and therefore the august election date might not be viable.
- vi. With the new constitutional dispensation it is important for comprehensive civic education to be undertaken by the relevant bodies before elections are held. The December election date will be most ideal to allow civic education to be carried out across the country.
- vii. The General elections should be held in March in line with the High Court ruling.
- viii. No gender should enjoy 2/3 majority in Parliament. Nominations after elections should address gender parity and equity.

2.11.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

The public supported the amendment citing the following reasons:

- i. Gender parity and equity is important in all elective posts. The nomination of members of Parliament should be undertaken after the General Election results have been released.

- ii. Each political party must nominate members of Parliament to address gender equity.
- iii. Political parties should endeavour to achieve gender parity and equity during party nominations
- iv. Nominations by political parties after General Elections should be accorded to women in pastoralist communities as the community favours men during elections for political positions and women lack the necessary financial resources needed to win elections.
- v. Political parties should be encouraged to support women for elective posts rather than nominations but in the event that women fail to be elected they should be considered for nominations.
- vi. The youth and the disabled have been marginalized and should therefore be considered for nominations after the General Elections.

2.11.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

Majority of the members of public opposed the amendment citing the following reasons:

- i. The new electoral units should come into effect after the first General Election under the Constitution.
- ii. The delimited boundaries and electoral units should not be used in the coming General Elections since the people of Marsabit have been short changed in the delimitation of boundaries.
- iii. The new electoral units should come into effect after the General Elections when equity in their distribution has been realized.

However, a few members of public supported the amendment saying that the new electoral boundaries units should be included in the next election irrespective of the time the delimitation will be completed.

2.11.4. Challenges

- i. The public hearing was called within a very short notice, therefore did not give members of the public in the wider and vast Marsabit County adequate time to travel and prepare.
- ii. In future public hearings be publicized in locally available media.
- iii. Lack of in-depth understanding of the constitution and the contents of the Bill.

2.11.5 Findings of the Marsabit public hearing

From the public hearings, it is the view of the majority of the people of Marsabit County that:-

- i. The General Elections be held in December.
- ii. Nominations should be held after the general elections to address issues of gender parity and equity.
- iii. The new electoral units should take effect after the General Elections and should therefore not be used for purposes of the first General Election.

2.12.0 NYANDARUA, LAIKIPIA AND SAMBURU COUNTIES

2.12.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

The public supported the amendment citing the following reasons:

- i. The amendment will provide for a definite date for elections and burry any doubts on the date.
- ii. The August date as provided for in the Constitution would not be ideal as the month is the start of the peak season of the tourism industry and when farmers are busy preparing and planting their crops.
- iii. Others felt there was need to prepare well for election and thus the August date was too soon.
- iv. Others felt the current term of President and Members of Parliament will end in 31st December 2012.
- v. Others felt that August is a dry spell for the pastoralist community in which they move in search for water and pastures and therefore the December date would be the most appropriate for the pastoralist communities.
- vi. There are those who strongly felt that the August date would tremendously interfere with the national budget cycle.

2.12.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

Majority of the members of public supported the amendment citing the following reasons:

- i. The two-third gender rule does not apply to women alone but to both gender therefore will benefit both gender.
- ii. It provides a platform for women participation in politics.

- iii. The proposed amendment is line with the commonwealth practices of affirmative action.
- iv. Women have been successful in promotion of peace and harmony.

Few of the members of public opposed the amendment citing the following reasons:

- i. The Constitution already provides for the specific seats in the 47 Counties for women and therefore they can compete with their opposite gender for balance to meet the two-third principal.
- ii. There is need for both genders to compete for whichever position.
- iii. Democracy would only thrive if both genders are given a level playing field with tending to favour either of the gender.

2.12.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

Majority of the members of public opposed the amendment citing the following reasons:

- i) The proposed new electoral units are contentious and needs to be harmonized first.
- ii) The proposed boundaries were still new and require time for sensitization of the voters.
- iii) IEBC did not take into consideration the public views and there were still contentious issues that ought to be sorted out first.
- iv) Others felt that this amendment was untimely as the contentious issue of boundaries was far from being sorted out.

Few of the members of public supported the amendment citing the following reasons:

- i. This should be allowed to take effect this year as proposed in the amendment in order to conclusively address the injustices of underrepresentation and marginalization of some communities.
- ii. The amendment will go a long way in enhancing peaceful coexistence amongst communities.

2.13.0 MOMBASA AND KWALE COUNTIES

2.13.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

Majority of the members of public supported the amendment citing the following reasons:

- i. That, the December date of elections was appropriate to provide for adequate time for intensive civic education of voters in the face numerous positions to be voted for including election of the President, Member of the National Assembly and the Senate, Woman and County Representatives.
- ii. That, the Independent Electoral and Boundaries Commission (IEBC) would have time to address issues regarding boundaries of new constituencies whose report was still being debated.
- iii. That, this would allow for time for voter registration which must be completed 90 days before the General elections and that the voters must be provided with 30 days to inspect the register and confirm the details.
- iv. That, the December date would guarantee the five year term of Parliament which the bill seeks to entrench for the current Parliament and all future Parliaments without any other amendment being made in the future.
- v. That, tourism activity at the Coast peaks in the July-August season and this would be drastically disrupted if elections were to be held in August noting the chaotic scenes which have characterized past General elections in Kenya. Consequently, the livelihoods of the coastal people and the foreign exchange in the country would fall.
- vi. That, the tea production, which is now leading foreign exchange earner, would experience decline during its good harvest period in the month of July since people would be engaged in campaigns and other disruptive effects of elections.
- vii. That, the education sector would be most affected since polling stations have traditionally been the schools and that the period preceding elections is the time students are preparing most for the mocks and final examinations.
- viii. Furthermore, teachers may opt to participate in elections through resignations early in the year. Consequently all this work to disrupt learning and teaching, and ultimately the performance of the candidates that year.
- ix. That, the December date is consistent with Article 142 regarding the term of the President. His Excellency the Hon. Mwai Kibaki, EGH, MP, was sworn in on 31st December, 2007, and his term expires on 31st December, 2012, when he ceases being constitutionally in office. Therefore December date being proposed in the bill is agreeable.

- x. That, the December General elections coincides with traditions of holidays for most people and impending celebrations for the New Year. Therefore, this works well for elections and celebrations of new Government.
- xi. That, the Holy Month of Ramadan falls in August and Muslims, especially in the majority residents of the Coast province would not effectively participate in the campaigns and General elections.

Only one member of the public was opposed to the any amendment of the Constitution on grounds that it should not be amended before being fully implemented.

2.13.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

The public supported the amendment citing the following reasons:

- i. That, the proposals being made were consistent with the affirmative action principle on gender empowerment.
- ii. That, amendments explains details on how the two Houses of Parliament shall achieve the provision of not more than two-thirds of either gender in each House.
- iii. That, the amendments build on the long struggle to achieve equitable representation of the marginalized groups, especially women, in political and appointive positions and in decision making.
- iv. That, the amendments would avert the potential composition of the two Houses of Parliament from being declared unconstitutional after a General election if it fails to comply with the 2/3 gender rule.
- v. That, the provision of special seat members was necessary to work towards achieving the constitutional requirement of 2/3 gender representation given the unpredictability of elections in Kenya. For, example women may lose out in competitive elections.
- vi. That, the amendments being proposed would guarantee the right of gender to be represented in each House of Parliament.
- vii. That, the amendments were in order to give full effect of the gender representation and to come to rescue of the marginalized women leadership.
- viii. That, in all, the provisions in the Amendment Bill was acceptable and needed to be supported in total.

2.13.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

No attempt was made to discuss this agenda in detail by the public who had opportunity to make contributions during the public hearing. A perusal of the written memoranda also reveals the same. However, one participant, while not elaborating, stated that the matter be left to the IEBC which has a role in matters of boundaries and elections.

2.14.0 NAKURU AND BARINGO COUNTIES

2.14.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

Majority of the members of public supported the amendment citing the following reasons:

- i. The December elections should be held after the Jamuhuri Day celebrations, but before Christmas.
- ii. It has been a tradition for the general elections to be held in December and there is not enough reason to shift the exercise to August or any other period;
- iii. That, normally, December marks the end of the year for them while January marks the being of a new calendar cycle. It would also be symbolic to end the term of a parliament and that of government at this time and start the next year under the new regime;
- iv. That, since December has the longest schools holidays, it therefore follows that the December period will offer ample time for the campaign and electioneering processes, without interrupting the schools. In addition, the holidays will allow the IEBC to use the schools, which, ordinarily, provide most polling stations;
- v. That, they wish to enjoy the Christmas day having known the results of polls, particularly the presidential ones;
- vi. That, in the event of a runoff, the December period is long enough to provide a window for the second round. If need be, the school holidays may be extended, by say a week or two flowing into the second week of January;
- vii. That, in their view, the life of the current parliament should not go beyond December, 2012.
- viii. That, their views hold for the next and future general elections.

2.14.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

50% of the Members of public supported the amendment citing the following reasons:

- i. The environment during general elections has been unfair to women for a long time. It would therefore be fair to give female candidates reasonable advantage so as to encourage them to run for elective posts;
- ii. The competitive advantage that is to be given to that gender should not only be for a fixed period of time, say three to five consecutive elections, after which they should be allowed to compete without the quota or special seats advantage.

50% of the members of public opposed the amendment arguing that people should be allowed to choose who they want, without being restricted as to the gender of such a leader. They also argued that, given the bill as drafted, it would be impossible to determine the size of a parliament before elections. This may have negative impacts on planning and resource allocation.

2.14.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

Majority of the members of public supported the amendment citing the following reasons:

- i. Part of the respondents said that, in their view, there was not controversy on the date on which the names and details of the delimited boundaries shall come into effect, citing section 27 (3) of the Sixth Schedule to the Constitution. Their view was that the new electoral areas will be part of the next elections by virtue of the said section of the Constitution.
- ii. A majority of the respondents however supported the clauses (2 and 12) of the bill, arguing that, if there any doubt as to the date on which the names and details of the delimited boundaries shall come into effect, the new electoral areas should be part of the next general elections.

Few of the members of public opposed the amendment citing the following reason that in view of the contentions currently being shared by people in various regions, the new electoral areas should not be part of the next general elections, until the issues raised by the people have been resolved to avert future crisis.

2.15.0 NAROK AND KAJIADO COUNTIES

The public hearing was attended by 66 (sixty six) participants, who included resident of Kajiado and Narok Counties.

2.15.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

Majority of the members of public supported the amendment citing the following reasons:

- i. An August date will not be favorable because it will affect– Tourism, Agriculture and Education sub sector;
- ii. An August date may interfere with the national budget cycle.
- iii. The time left to the August date may not be sufficient for both voter education and registration.
- iv. Boundaries have not been delimited as yet.

2.15.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

Majority of the members of public supported the amendment and urged that the special seats be reserved for women, youth and the disabled; and further that:-

- i. Allocation of women to vie for county representatives may derail the achievement of the 2/3 gender party as women has no access to resources to campaign in big counties;
- ii. Special seats be allocated to women through protected or parallel constituencies; and
- iii. Special seats should go to youth as they are the majority.

2.15.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

The public supported the amendment and asked that IEBC approves and gazettes the new boundaries which should apply immediately in the next general elections in 2012.

Other views include: -

- i. The boundaries need to be clarified and completed first before giving their views.
- ii. The boundaries take effect after 10 years following gazettelement.

- iii. The IEBC to first tract the boundaries review.
- iv. The boundaries review be completed before the next general election.
- v. The boundaries finalized before December, 2012 and that they be in use in the general election.
- vi. Results on the boundaries review be released immediately.

2.16.0 KIAMBU AND MURANGA COUNTIES

2.16.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

Majority of the members of public supported the amendment citing the following reasons:

- i. **Civic and Voter Education;** The Country may not be prepared to conduct fair and transparent elections owing to the fact that civic education on the Constitution is yet to be rolled out. It appears that majority of the Kenyans are not well informed of both the content and the expectations of the Constitution. Voter education has also not been done to assist the public in understanding the changes in the voting system, the various new electoral posts created and their functions.
- ii. **Education calendar;** Particular reference was made to the impact of an August election date on the education sector, given that during this time, most candidates sitting for their final exams at both secondary and primary schools are preparing for the same. Campaign mode at this time of the year may be counterproductive.
- iii. Additionally, schools make up a majority of the polling stations, while many returning officers are usually teachers; thus, elections held in August would disrupt the learning process.
- iv. **Voter registration and ID Card issuance;** Other logistical activities necessary to facilitate any kind of General Elections are behind schedule, key among them voter registration which was indicated may be equally hampered by inability by eligible voters to acquire national identity cards. The voter register is also not complete and has to be inspected by the voters, election and voting materials need to be prepared and printed, and security forces need to be mobilized and deployed to various centers.
- v. Laborious requirements by the Government were identified as hindrances to acquisition of Identity Cards by eligible voters, especially those in the rural areas, the youth and eligible women who marry while still young.
- vi. **Delimitation of Boundaries;** Give time to the Independent Electoral and Boundaries Commission (IEBC) to complete its work on delimitation of boundaries of the constituencies and wards.

- vii. **Legislation;** Elections in August will mean that the life of Parliament ends three months prior to these, thereby hampering legislation of pending crucial Constitutional bills.
- viii. **Economic implications;** Harvesting of tea and other crops takes place in August while tourism also peaks in the same month. As such, an August election may disrupt or hinder operations in the Agriculture and Tourism sectors thus reducing their profitability.
- ix. **The Budget Cycle;** this will be affected, as there will be regional conflicts related to the reading of the budget as it has recently been synchronized with other East African Community member states.
- x. Further submission indicated the public preferred that elections be held early in the month of December, preferably the first week or any time before 17th of December. This would allow for the festive season to go on uninterrupted by any chaos preceding and even following elections, and also take into account the fact that many people usually travel at around this time, which could affect voter turnout.

2.16.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

Majority of the members of public supported the amendment citing the following reasons:

- i. The amendment is in line with the spirit and letter of the Constitution which was overwhelmingly passed by majority of Kenyans in 2010 and which attempts to address past injustices against gender and special groups.
- ii. Implementation of the Affirmative Action principle will ensure either gender is equally represented in political leadership and elective posts.
- iii. The Amendment would be the best avenue to avert a potential constitutional crisis in the coming year in case the composition of both the National Assembly and the Senate is declared unconditionally constituted; that is, if the minimum threshold in gender representation is not achieved.

Few of the members of public opposed the amendment citing the following reasons:

- i. Submissions in opposition raised issue with the entire provision of the one third representation of either gender, indicating that such provision is likely to be abused and risky in the long term. They expressed radical propositions like having the entire provision expunged from the Constitution to allow for competition among gender for elective posts. The questions raised included:

- ii. The argument that the Constitution in its Amended form does not define the criteria to nominate the special seat Members. There were fears that incompetent and undeserving individuals are likely to abuse this platform.

Submission as presented therefore recommended that clear criteria be designed to nominate members through these special seats to avert a scenario where the nominated members have questionable credentials, among them integrity issues. Further, the Members of the Public proposed that the nomination of special seats be accomplished through the political parties during nominations or nominate those who take the runners' up positions in the elective posts. This would ensure that those nominated are known to the public and not totally new people.

- i. A number of verbal submissions expressed concern about the budgetary implications Members nominated through special seats are likely to have on the financial standing of the Country given that the Amendment as it is, provides for special seats for either gender to meet its Constitutional threshold. This, in addition to the Members elected.
- ii. An opposing view given also suggested that instead of gender parity, this amendment should address age parity and equity, and aim to ensure adequate youth representation as they comprise approximately seventy (70) percent of the population and make up a large percentage of the voting bloc.
- iii. Lastly, the key concern for these skeptics is that even though women form a large percentage of the voters according to the statistics of the last General Elections, women representation continues to be elusive; a case most participants attributed to the defeating attitude of majority of the women to their fellow women.

2.16.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

Majority of the members of public supported the amendment citing that this will give ample time to the Members of the public to internalize the implications of the changes and how this affects their future choices of leaders.

2.16.4 Findings and Way Forward

- i. There exist gaps in information relating to the provisions of the Constitution which can be addressed through intensive Civic Education. The Ministry of Justice, National Cohesion and Constitutional Affairs to adequately engage to ensure public participation in providing such education.

- ii. Amending of the Constitution should be a last resort and instead, amending of supportive legislation should be used as a mechanism to address gaps in the law.
- iii. Lack of Civic and Voter Education (by the IEBC) may hinder the implementation of the Constitution.
- iv. Voter registration and Identity Card issuance form key activities in ensuring fair and democratic elections and need to be concluded urgently.
- v. Delimitation of Boundaries needs to be resolved as soon as possible so as to clarify electoral areas and allow for other election processes to continue.
- vi. Nomination of special seats Members should be accomplished through the Political Parties.

2.16.5 Challenge

For future public hearings, it may be of note to publicize these hearings on local radio stations and other means better able to reach a wide majority of people in the remote areas. It emerged that advertisements as posted by the Kenya National Assembly could only reach a few including the District Commissioner. This led to a lower turnout than expected.

2.17.0 TAITA TAVETA COUNTIES

About 200 people attended the hearings with 21 persons giving their oral views on the Constitution of Kenya (Amendment) Bill, 2011.

2.17.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

Majority of the members of public supported the amendment citing the following reasons:

- i. **School programme**
Noting that most polling stations are situated in schools, the August election would disrupt the normal school programme.
- ii. **Tourism**
August is the peak season for tourists and going by the previous experiences of tensions in the country, having elections in August would deter the tourists from visiting the country.
- iii. **Start of the Financial year Vis-a viz East African Community Integration process**
The financial year starts in June in line with the East African Community Integration process. Therefore the August election worked against the spirit of integration.

Further, the budgetary allocation for this year's general election would only be provided for in the Financial Year 2012/13.

iv. Voter registration and civic education

Further, the need to have ample time for voter registration in the proposed constituencies was also supporting a December election. Noting the number of elective posts, it was important for the public guided through civic education hence an August election was not plausible.

On the end of the term of the current Parliament, most people were of the view that parliament ought to be dissolved at least two months before elections, preferably in October to avoid giving undue advantage to the incumbent Members during the campaign period.

2.17.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. (Clauses 3 – 5).

Majority of the members of public opposed the amendment and urged that necessary mechanism be put in place to fulfill the conditions set out by the Constitution of Kenya with regards to the two-thirds rule for gender representation without increasing the number of Members of Parliament. There were suggestions to have special seats and further that they be rotational.

However, some members of the public were of the view that the issue of gender parity is too important to be lumped together with other issues in the bill. They suggested that a separate bill be drafted to address the issue of gender only.

2.17.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. (Clauses 2 & 12)

On issues of the boundaries, majority of the people expressed disappointment with the manner in which the boundaries have been delimited. The public urged the IEBC to resolve issues arising out of the delimitation of external boundaries of Taita Taveta County specifically the placement of Mtito Andei, Railway Station, Macknon Road and Rombo which have been hived off to other counties.

Majority of the people suggested that the issues arising out of the delimitation of boundaries be addressed before the new boundaries can be used in a general election so as to avoid intra/inter tribal conflicts.

2.17.4 General Concerns

Cross sections of people were of the view that:-

- i. The amendments to the new constitution have been done too soon and that if this will be the way to resolve issues, then there is a likelihood of the entire Constitution being amended just like the former constitution.
- ii. There was need to conduct intensive civic education on the contents of the Bill so that the public can participate effectively.
- iii. A clause guiding the handing over (after elections) be inserted in the Bill to ensure a smooth transition.

2.18.0 GARISSA COUNTY

2.18.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

The public supported the amendment citing the following reason that the rains are expected in December 2012 and the culture of Nomadic pastoralist in the vast province makes it hard for elections at the time of drought (August) because of the movement of nomads from one place to another in search of pasture and water.

2.18.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

Majority of the members of public (all men who spoke) opposed the amendment citing the following reasons:

- i). Women make 52% of the country and the male gender sees competition as the only parameter on who will be elected
- ii). Women to participate party democracy aggressively to ascertain their positions in elections and even standing a chance for nomination
- iii). Some women leaders in Garissa County are optimistic of beating their male counterparts in elective posts in the coming general elections

2.18.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

- i. Some members of public supported the amendment.
- ii. One member of public opposed the amendment stating that the 80 new constituencies cannot take part in the coming general elections due to the twelve months period required by the Constitution and that IEBC should be asked to do a fresh work.

2.19.0 WEST POKOT AND TRANZOIA COUNTIES

The public hearing in Kitale was attended by seventy nine (79) members of the public from West Pokot and Trans Nzoia Counties. They included farmers, former civic leaders, CSO representatives, NGO representatives, Government officers, other leaders, from both sexes. A total of Sixteen (16) members of the public gave their views on the proposed amendments to the Constitution.

2.19.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

Majority of the members of public supported the amendment citing the following reasons:

i. Preparing the citizens for a democratic free and fair elections

For Kenyans to have a free and fair election in line with the new Constitutional dispensation, it is important to take into consideration the following;

ii. Need for intensive civic education for voters

Kenyans will vote for six candidates in a day; the president, Member of Parliament, governor, senator, women representative and county representatives. Therefore there is need for enough time for civic education.

iii. The new constituencies' boundaries

The Independent Electoral and Boundaries Commission (IEBC) need time to deal with the new constituencies boundaries whose report is before the House.

iv. Time for voter registration

The time frame for voter registration is a challenge since it must end ninety days before elections and voters should have thirty days to inspect the register and confirm their details.

v. Budgetary implication and regional cooperation

The financial year runs from July 1st to June 30th of the following year and the Budget preparation and reading coincides with and is tied to the other Member States of the East African Community. If the elections will be held in August, Kenya will need to talk with the other community members thus causing unnecessary inconvenience to the other partner States.

vi. Education and Training

Considering that most of the polling stations are schools, there will be interruption of learning and other school activities.

Few members of public opposed the amendment citing the following reasons:

- i). The first election under the new Constitution should be held in December in year 2012 so as to give IEBC adequate time to plan, however the subsequent elections should be held in August as provided for in the Constitution.
- ii). The amendment is a fundamental alteration to the Constitution which is an attempt to distort the views of Kenyans as given in the Constitution. Thus the election date should remain as August as there was a reason as to why the Committee of Experts put it in August and further considering that schools are usually on holiday and there are no rains.

2.19.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

The Members of the public in the two counties had no problem with the proposals provided in the bill and urged political parties to consider nominating many women candidates to meet the one third gender rule.

2.19.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

The public supported the amendment as proposed in the bill.

2.19.4 General observations

The Committee observed the following:-

- i). The public hearings was called within a very short notice, therefore did not give members of the public adequate time to prepare.
- ii). The advertisement for Public hearings did not reach a majority of Kenyans hence in future they should be done through the local radio stations.

2.20.0 KISUMU AND SIAYA COUNTIES

2.20.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

Some of the members of public supported the amendment and others opposed the amendment.

2.20.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

Majority of the members of public opposed the amendment citing the following reasons:-

- i. In a democracy all candidates must compete for elective posts while affirmative action should be applicable on appointments and nomination positions.
- ii. Political parties should endeavour to achieve gender parity and equity during party nominations.

Many participants expressed the need to empower and encourage women to seek elective posts during the elections.

There was a proposal by a participant that counties that failed to have women representatives to be punished through scaling down of their resource allocation.

2.20.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

Majority of the members of public supported the amendment claiming that this will conclusively address the injustices of under representation and marginalization of some communities.

Few of the members of public opposed the amendment citing the following reasons:

- i. The proposed new electoral units are contentious and needs to be harmonized first.
- ii. The proposed boundaries were still new and requires time for civic education.
- iii. IEBC did not take into consideration the public views and there were still contentious issues that ought to be sorted out first.

2.21.0 NYERI AND KIRINYAGA COUNTIES

2.21.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

Majority of the members of public supported the amendment citing the following reasons:

- i. Guaranteed five year term of the 10th and subsequent Parliaments for posterity without the need for future amendments.
- ii. Clarity on the date of elections will reduce anxiety currently being experienced in the Country.
- iii. A December date will give the Independent Electoral and Boundaries Commission adequate time to make preparations of demarcating boundaries for the proposed constituencies, registration of voters and civic education for voters who will be expected to elect six candidates in a single day.
- iv. A December general election is in line with the tradition, a tradition observed since independence.
- v. Education, learning and other school activities would not be interrupted since the schools will be on the long holidays. Furthermore schools are usually used as polling stations while teachers serve as returning officers in elections.
- vi. Harvesting, ploughing and other activities in the Agricultural Sector would not be interrupted if elections are held in December since the harvest period of the best quality tea is done from the month of July and an August election would disrupt the harvesting season.
- vii. The Tourism Sector is at its peak in July and August and elections in August would negatively impact on the sector as a foreign exchange earner.

2.21.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. *(Clauses 3 – 5).*

Majority of the members of public opposed the amendment citing the following reasons:

- i. The boy child in the region had been neglected and the amendment would disadvantage the boy further.
- ii. The family institution was under threat and precaution should be taken when implementing the affirmative action.

However, some of the members of public supported the amendment citing the following reasons:

- i). The amendment was progressive as it would entrench the mechanism for the implementation of the principle of affirmative action for posterity to protect the right of either gender.
- ii). It was in line with wishes of Kenyans who voted overwhelmingly in support of the Constitution.
- iii). Implementation of the affirmative action principle will transform the traditional perceptions towards women leadership.
- iv). The amendment would ensure that there was no constitutional crisis.

2.21.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

The public supported the amendment.

2.21.4 Other Observations

Gender parity

- i. Most of the participants argued that the African Culture should not be discarded when applying the provisions of the Constitution relating to affirmative action.
- ii. There was an urgent need to educate the electorate on gender issues and the new electoral units.

Electoral Units

Many of the participants lamented that the region did not get new constituencies even when it was clear that areas like Kieni deserved to be divided into two based on other criteria besides population.

Budgetary and Regional Co-operation

Most of the participants favoured an election date that would not upset the protocol of the East African Community. As a country, the anticipated economic gains should be safeguarded at all costs.

2.22.0 NAIROBI COUNTY

2.22.1 The Date of the next General Elections and the end of the term of the current Parliament. *(Clauses 6 – 11)*

Majority of the members of public supported the amendment citing the following reasons:

- i. The December date will not cause interruptions to learning and school functioning;
- ii. Holding elections either in March or August is inadvisable because in any unfortunate eventuality of clashes, students who would have registered for exams might be displaced or be unable to transfer to other schools.
- iii. The Independent Electoral and Boundaries Commission have assured Kenyans that they will be ready for a December 2012 general elections in terms of delimitation of new boundaries (which are at an advanced stage), registration of voters and provision of mass civic education to prepare the electorate and ensure they participate in the elections from an informed position;
- iv. The Government has the responsibility and the mandate of giving direction to the citizens in case of uncertainties. The proposed constitutional amendments are part of this obligation to comprehensively address this matter both for the next and all future General Elections;
- v. The Bill entrenches the election date that guarantees a five-year term for the current Parliament and all future parliaments for posterity without the need for future amendments. This will guarantee that the elections date will never again be used as a weapon by those in power to their advantage.
- vi. The term of the current president, H.E. Hon Mwai Kibaki expires on 31st December, 2012. After this date, Hon Mwai Kibaki will cease to be the President of the Republic of Kenya. Therefore, he would not be officially in office according to this article if General Elections would be held in the month of March 2013, as per the court ruling regarding the next elections date. This would be unconstitutional and would require amending the constitution in line with 255 (1) (f) so as to extend the term of office of the President.
- vii. December General Elections date is in line with the tradition of holding the General Elections in the month of December and celebrating the New Year with the new Government in place since independence.
- viii. For the past 48 years, Kenyans have always held the general elections in December. Therefore, General Elections in December is in line with this tradition and all candidates for the KCPE, KCSE and colleges would be home waiting for their exam results.
- ix. The August election date will greatly hamper the peak season of the tourism industry sector
- x. The August election date will affect the agricultural sector
- xi. The August election date will inconvenience the budgetary preparation and reading of the country and those of the other member states of the East African Community

However, two members of the public opposed the proposed amendment arguing that it was too early to amend the constitution that was enacted by an overwhelming majority of Kenyans.

2.22.2 Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate. (Clauses 3 – 5).

Majority of the members of public supported the amendment citing the following reasons:

- i. The Elections Act 2011 failed to provide a mechanism to implement Article 27(8) of the constitution.
- ii. To avoid a possible constitutional crisis.
- iii. The amendment to implement affirmative action is a progressive one as it had been fought for more than twenty years; it will also avert the potential situation of the two houses of parliament being declared unconstitutionally constituted after the next General Elections if they fail to comply with the not more than two thirds same gender constitutional principle.

2.22.3 The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. (Clauses 2 & 12)

Most of the members of public supported the amendment.

SUMMARY OF WRITTEN MEMORANDA SUBMITTED TO THE COMMITTEE

The Committee received Four (4) written memoranda submitted through the Committee's email address constitution@parliament.go.ke which was opened for the purpose of receiving views on the Bill. The submissions are summarized as follows:

No.	NAME	ISSUES
1.	Simon Njeeh	<p><u>Against the Amendment affecting the date of elections:</u></p> <ol style="list-style-type: none"> i. It violates the rights of 'we the people of Kenya' as defined in Article 47 (1) of the Constitution of Kenya. ii. Parliament has no powers to fix the date of elections iii. IEBC has the mandate to fix the date of elections as provided for in Article 259 (1), (3) (a) iv. It is an administrative failure to fix the date of elections and a proposed amendment can only be through a referendum Article 255 (1) (a) (c) (d) (e)

2.	Foundation for Women Rights in Kenya	<p><u>Supports the Amendment:</u></p> <ul style="list-style-type: none"> i. It will end the current anxiety among the electorate over the uncertainty on the elections date ii. It will ensure general elections are held in December thus allowing room for effective preparations for a free and fair election iii. It will ensure education, learning and other school activities are not interfered with or interrupted iv. It will ensure harvesting, ploughing and other agricultural activities are not interrupted v. It provides a mechanism for the realization of the not more than 2/3 constitutional gender rule and full implementation of the affirmative action
3.	KUPPET Meru County	<p><u>Against the Amendment:</u></p> <ul style="list-style-type: none"> i. The Amendment of the Constitution has to be subjected to the electorate through a referendum ii. The Court ruled that the Two Coalition partners should determine the date of the first elections under this Constitution iii. The Bill should address only one item and not three as it is iv. The gender parity issue where a third must be of either gender is likely to bloat the National Assembly and the Senate with a further effect on the national budget.
4.	Franklin Manduku	<p><u>Supports the Amendment on the date next General Elections:</u></p> <ul style="list-style-type: none"> i. The August or March election will affect the economy as a whole. <p><u>Against the Amendment on Gender parity and Elective positions in the National Assembly and the Senate:</u></p> <ul style="list-style-type: none"> i. The Amendment will have a spiral effect on the nomination of numbers of Members of the National Assembly and the Senate which the Country cannot afford ii. It will cause disharmony in Parties where men or women who will have worked very hard for the Party will expect to be 'rewarded' iii. The article has the potential of causing debate and misunderstanding for all public appointments.

3.0 SUMMARY OF FINDINGS

On the basis of the submissions made, the Committee draws the following findings on the three key issues in the Bill:-

i). **The Date of the next General Elections and the end of the term of the current Parliament.** *(Clauses 6 – 11)*

A majority of members of the public in all centres support the proposed amendment seeking to have general elections be held on the third Monday of December.

However, a few members of the public were of the view that general elections be held on the second Tuesday of August as provided for in the Constitution since this was what was voted for by a majority of Kenyans during the referendum and that it is too early to amend the Constitution.

Other members of the public who opposed the amendment were of the view that general elections be held in March, 2013 in line with a court ruling on the same.

On the end of the term of the current Parliament, most people were of the view that parliament ought to be dissolved at least two months before elections so that the incumbent Members do not have undue advantage during the campaign period.

ii). **Gender parity and equity in elective positions and more specifically in the National Assembly and the Senate.** *(Clauses 3 – 5).*

This proposed amendment split members of the public in the middle. Those who support the amendment were of the view that the amendment, if enacted, was the best way to achieve gender parity and equity as enshrined in the Constitution.

Those who opposed the amendment were of the view that setting aside some positions for either gender would destroy the democratic ideals and principles as enshrined in the Constitution which require Kenyans to choose their preferred political leaders freely. In addition, the amendment, if enacted, will bring uncertainty in the number of Members of Parliament bring along financial and logistical challenges.

However, most members of the public expressed the need to empower and encourage women to seek elective positions during elections. In addition, political parties were urged to ensure nomination of many women candidates.

iii). The time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. *(Clauses 2 & 12)*

A majority of members of the public in all centres support the proposed amendment aimed at clarifying the time when delimitation of boundaries will take effect for purposes of the first general elections under the Constitution. Their views were that the delimited boundaries take effect immediately and for the purposes of the first general elections under the Constitution.

However, a few members of the public who opposed the amendment were of the view that the delimitation of the boundaries should take effect during the next general elections (2017) so as to give time for the resolution of issues arising out of the current delimitation of boundaries by the IEBC.

4.0 RECOMMENDATION

The Committee recommends that in considering the Constitution of Kenya (Amendment) Bill, 2011, this House notes the views of members of the public on the three constitutional issues as contained in the Bill.

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MINUTES OF THE FIFTY EIGHTH SITTING OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD IN THE MAIN COMMITTEE ROOM COUNTY HALL, PARLIAMENT BUILDINGS ON TUESDAY, 15TH MAY, 2012 AT 12.15 P.M.

PRESENT

1. The Hon. Hussein Mohammed Abdikadir, M.P. - **Chairperson**
2. The Hon. Martha Wangari Karua, EGH, M.P.
3. The Hon. Moriasi Ombui, M.P.
4. The Hon. Ababu Namwamba, M.P.
5. The Hon. Joseph Kasaine Nkaiserry, M.P.
6. The Hon. David Ngugi, M.P.
7. The Hon. Lucas K. Chepkitony, M.P.
8. The Hon. Alfred Khang'ati, M.P.
9. The Hon. John Mbadi, M.P.
10. The Hon. Rachel Shebesh, M.P.
11. The Hon. Charles Onyancha, M.P.
12. The Hon. Benedict Fondo Gunda, M.P.
13. The Hon. (Dr.) Joyce Laboso, M.P.
14. The Hon. Amina Abdalla, M.P.
15. The Hon. Charles Kilonzo, M.P.
16. The Hon. (Dr.) Kilemi Mwiria, M.P.
17. The Hon. (Prof.) Phillip Kaloki, M.P.
18. The Hon. Sophia Abdi, M.P.

ABSENT WITH APOLOGY

1. The Hon. Millie Odhiambo, M.P. - **Vice-Chairperson**
2. The Hon. Chirau Ali Mwakwere, EGH, M.P.
3. The Hon. Beth Mugo, EGH, M.P.

ABSENT

1. The Hon. Elizabeth Ongoro, M.P.
2. The Hon. (Dr.) Eseli Simiyu, M.P.
3. The Hon. Ekwee Ethuro, M.P.
4. The Hon. Rev. Julius Murgor, M.P.
5. The Hon. Danson Mwazo, M.P.
6. The Hon. Cecily Mbarire, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

- | | | |
|---------------------------|---|------------------------|
| 1. Ms. Eunice Gichangi | - | Senior Legal Counsel |
| 2. Ms. Rebecca Tonkei | - | Research Officer I |
| 3. Mr. Zakayo Mogere | - | Second Clerk Assistant |
| 4. Mr. Oscar Namulanda | - | Third Clerk Assistant |
| 5. Ms. Caroline K. Kinyua | - | Third Clerk Assistant |
| 6. Ms. Lynette Otieno | - | Parliamentary Intern |



MIN. NO. 035/2012:

ADOPTION OF THE REPORT ON PUBLIC
HEARINGS ON THE CONSTITUTION OF
KENYA (AMENDMENT) BILL, 2011

The Committee deliberated and adopted its report on the public hearings on the Constitution of Kenya (Amendment) Bill, 2011. The adoption was proposed by Hon. John Mbadi, MP and seconded by Hon. Martha Karua, MP.

MIN. NO. 036/2012: ANY OTHER BUSINESS

Appointment of 47 County Commissioners by H.E the President

The Committee deliberated on the recent appointments of 47 County Commissioners and noted that:-

- i). The appointments did not follow the constitutional provisions of public participation either through a policy paper or legislation;
- ii). The appointments are not in line with the values and principles of public service as contained in Article 232 of the Constitution specifically on ‘... fair competition and merit as the basis of appointments and promotions’;
- iii). The appointments undermine the principle of devolution which is a key pillar in the Constitution;
- iv). Restructuring (of the provincial administration) is a process and these appointments did not follow any process; and
- v). The issue of appointments is covered in the County Governments Bill currently before the House and the President should have waited for the bill to be passed.

It was resolved that as an oversight Committee, the Committee needs to look at the provisions in the Constitution, the role of the Public Service Commission and the restructuring process in relation to these appointments. Consequently, the Committee further resolved to have a meeting with the Minister of State for Provincial Administration, the Minister for Justice, National Cohesion and Constitutional Affairs and the Attorney General to deliberate of these appointments. The meeting is to be held on Tuesday 22nd May, 2012 at 10.00 a.m.

MIN. NO. 037/2012: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Thirty Five minutes past Twelve O'clock until Tuesday 22nd May, 2012 at 10.00 a.m.

SIGNED.....

(CHAIRPERSON)

DATE..... 16/5/2012

