REPUBLIC OF KENYA



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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON-

THE CONSIDERATION OF THE REPORT OF THE NATIONAL DIALOGUE COMMITTEE (NADCO) AND REPORT OF THE MULTI-SECTORAL WORKING GROUP (MSWG) ON THE REALIZATION OF THE TWO-THIRDS GENDER PRINCIPLE

THE NATIONAL ASSEMBLY
PAPERS LAID
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Hon. George Murugara, MP
Chairperson, Justice & Legal Affairs Committee
K. Tildei

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TABLE OF CONTENTS

LIST OF ABBREVIATIONS AND ACRONYMS ii
ANNEXURES iii
CHAIRPERSON'S FOREWORD iv
1 PREFACE 1
1.1 Establishment and Mandate of the Committee 1
1.2 Mandate of the Committee 1
1.3 Committee Membership 3
1.4 Committee Secretariat 4
2 OVERVIEW OF THE NATIONAL DIALOGUE REPORT 5
2.1 Background 5
2.2 Summary of the NADCO Recommendations 6
3 CONSIDERATION OF THE NATIONAL DIALOGUE REPORT 7
4 COMMITTEE OBSERVATIONS 9
4.1 The NADCO Proposed Constitution of Kenya (Amendment) Bill, 2024 9
4.2 The MSWG Proposed Constitution of Kenya (Amendment) Bill, 2024 16
5 COMMITTEE RECOMMENDATIONS 18

LIST OF ABBREVIATIONS AND ACRONYMS

CBS	Chief of the Order of the Burning Spear
CWR	County Women Representative
EBS	Elder of the Order of the Burning Spear
Hon.	Honourable
FORD	Forum for the Restoration of Democracy
MCCP	Maendeleo Chap Chap Party
MP	Member of Parliament
MSWG	Multi-Sectoral Working Group
ODM	Orange Democratic Movement
SC	Senior Counsel
NADCO	National Dialogue Committee
UDA	United Democratic Alliance
WDM	Wiper Democratic Movement

ANNEXURES

Annexure 1a	Communications of the Speaker of the National Assembly dated 5th March 2024
Annexure 1b	Communication of the Speaker of the Senate dated 5th March
Annexure 1c	Communication of the Speaker of the National Assembly dated 31st July 2024 and the JLAC Chairperson's letter
Annexure 2a	NADCO Proposed Constitution of Kenya (Amendment) Bill, 2024
Annexure 2b	Proposed Leader of Opposition Bill, 2024
Annexure 2c	Proposed National Government Coordination (Amendment) Bill, 2024
Annexure 3a	MSWG Proposed Constitution of Kenya (Amendment) Bill, 2024 with their Report and Speaker's communication
Annexure 3b	Proposed Political Parties (Amendment) Bill, 2024
Annexure 3c	Proposed Election (Amendment) Bill, 2024
Annexure 4a	IEBC (Amendment) Bill, 2024
Annexure 4b	Report of the Departmental Committee on Justice and Legal Affairs on its Consideration of the IEBC (Amendment) Bill tabled on 23rd April 2024
Annexure 4c	Report of the Departmental Committee on Justice and Legal Affairs on Senate Amendments to the IEBC (Amendment) Bill tabled on 19th June 2024
Annexure 5a	EACC (Amendment) Bill, 2024
Annexure 5b	Report of the Departmental Committee on Justice and Legal Affairs on its Consideration of the EACC (Amendment) Bill tabled on 6th August 2024
Annexure 6	Adoption Minutes and Schedule
Annexure 7	NADCO Report

CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on the consideration of the recommendations to amend the Constitution by National Dialogue Committee and Multi-Sectoral Working Group on the Realization of the Two-Thirds Gender Principle.

The National Assembly and the Senate established NADCO vide resolutions passed on 16th August 2023 and 29th August 2023, respectively to, among other things, *"facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reform on issues of concern to the people of Kenya, in line with the Constitution and the laws of the Republic of Kenya and respecting the functional and institutional integrity of state organs."*

To this end, NADCO submitted its report to Parliament with proposals to amend the Constitution and various statutes. The National Assembly and the Senate adopted the NADCO Report on 22nd and 21st February 2024, respectively. Following adoption of the NADCO Report by the two Houses, the Speakers and the Leaders of the Majority and Minority Parties of both Houses deliberated on the modalities for implementing the recommendations of the Report.

Consequently, by concurrent Communications issued on Tuesday, 5th March, 2024 and pursuant to the National Assembly Standing Order 202A and the Senate Standing Order 230, the Speakers of both Houses directed the Departmental Committee on Justice and Legal Affairs of the National Assembly and the Senate Standing Committee on Justice, Legal Affairs and Human Rights to hold joint sittings. The two Speakers further directed the two Committees to expeditiously consider the proposals to amend the Constitution and submit a report recommending the manner of actualizing the recommendations of the NADCO Report, within forty-five (45) days.

Due to unavailability of requisite quorum to commence the joint sittings, the Chairperson of the National Assembly Departmental Committee on Justice and Legal Affairs, on 23rd July 2024, requested the Speaker of the National Assembly to extend the time for consideration of the NADCO Report by another 45 days; and to authorize the National Assembly Committee to conduct sittings independent of the Senate Committee. The Rt. Honourable Speaker acceded to the request of the Committee for extension of time by another forty-five days (45). The Speaker also acceded to the Committee's request to hold sittings independently and report back to the National Assembly within the stipulated timelines.

The Committee held sittings on 19th and 24th September 2024 where they deliberated on the NADCO Report in detail, and considered the proposed Constitution of Kenya (Amendment) Bills by NADCO and MSWG. While considering the proposals, the Committee observed that—

(a) the procedure of amending the Constitution is provided under Chapter Sixteen of the Constitution. Article 255(1) provides that a proposed amendment to the Constitution, shall be enacted in accordance with Article 256 or 257 and approved by a referendum, if the amendment relates to matters such as the supremacy of the Constitution; the territory of Kenya; the sovereignty of the people; the national values and principles of governance; the functions of Parliament; and the objects, principles and structure of devolved governments, among others.

(b) Article 256 of the Constitution provides for amendments to the Constitution by parliamentary initiative. This process involves consideration and approval by Parliament through a vote endorsed by at least two-thirds of all members of each House at the second and third readings.
(c) Article 257 of the Constitution provides for amendment of the Constitution by popular initiative. This process involves collection of at least one million signatures from registered voters by the promoters; approval of the initiative by a majority of the county assemblies and passage of the Bill by a majority of the members of each House of Parliament.
(d) Based on the foregoing, the proposed amendments to the Constitution by NADCO and MSWG constitute amendment by parliamentary initiative and shall be guided by the provisions of Article 256.

The Committee thereafter adopted this Report on Tuesday, 1st October 2024.

I take this opportunity to thank and commend the Committee Members for their devotion and commitment to duty, the Speaker and the Clerk of the National Assembly for providing leadership and direction, and finally the Committee Secretariat for its technical and logistical support.

Hon. Speaker, on behalf of the Departmental Committee on Justice and Legal Affairs, it is my pleasant privilege and honor to present the Report of the Committee on its consideration and recommendations to the House on the manner of actualization of the Report of the National Dialogue Committee.

HON. GEORGE GITONGA MURUGARA, CBS, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

PART 1

1 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under Standing Order 216whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
    i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
    ii. To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;
    iii. To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
    iv. To study and review all legislation referred to it;
    v. To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
    vi. To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
    vii. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
    viii. To examine treaties, agreements and conventions;
    ix. To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;
    x. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
    xi. To examine any questions raised by Members on a matter within its mandate.

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters regarding: -
    a) The Judiciary;
    b) Tribunals;
    c) Access to Justice;
    d) Public prosecutions;
    e) Ethics, Integrity and Anti-corruption;
    f) Correctional services;
    g) Community service orders and witness protection;
    h) Constitutional Affairs;
    i) Sovereign immunity;
    j) Elections including referenda;
    k) Human rights;
    l) Political parties; and

m) The State Law Office, including insolvency, law reform, public trusteeship, marriages and legal education.

3. In executing its mandate, the Committee oversees the following Ministries/Departments:
   a) State Department of Correctional Services;
   b) State Law Office and Department of Justice;
   c) The Judiciary;
   d) Judicial Service Commission;
   e) Office of the Director of Public Prosecutions;
   f) Ethics and Anti-Corruption Commission;
   g) Independent Electoral and Boundaries Commission;
   h) Commission on Administrative Justice;
   i) Office of the Registrar of Political Parties;
   j) Witness Protection Agency;
   k) Kenya National Commission on Human Rights;
   l) Kenya Law Reform Commission; and
   m) Council of Legal Education.

1.3 Committee Membership

4. The Departmental Committee on Justice and Legal Affairs was constituted by the House on 27th October 2022 and comprises the following Members:

Chairperson
Hon. Murugara George Gitonga, CBS, MP
Tharaka Constituency
UDA Party

Vice-Chairperson
Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency
MCCP Party

Members

Hon. Maalim Farah, MP
Dadaab Constituency
WDM-Kenya

Hon. Francis Kajwang' Tom Joseph, MP
Ruaraka Constituency
ODM Party

Hon. Junet Mohamed, CBS, MP
Suna East Constituency
ODM Party

Hon. (Dr.) Otiende Amollo, SC, MP
Rarieda Constituency
ODM Party

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency
UDA Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency
UDA Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

Hon. Muriu Wakili Edward, MP
Gatanga Constituency
UDA Party

Hon. Maina Jane Njeri, MP
Kirinyaga (CWR)
UDA Party

Hon. Gichohi Kaguchia John Philip, MP
Mukurweini Constituency
UDA Party

Hon. Mogaka Stephen M, MP
West Mugirango Constituency
Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Siyad Amina Udgoon, MP
Garissa Township (CWR)
Jubilee Party

1.4 Committee Secretariat

5. The Committee is well-resourced and facilitated by the following staff:

Mr. Ahmed Salim Abdalla
Clerk Assistant I / Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Ms. Jael Ayiego
Clerk Assistant III

Mr. Omar Abdirahim
Fiscal Analyst II

Ms. Calvin Karungo
Media Relations Officer II

Ms. Mary Kamande
Public Communication Officer III

Mr. Abdikafar Abdi
Clerk Assistant III

Mr. Isaac Nabiswa
Legal Counsel II

Ms. Vivienne Ogega
Research Officer III

Mr. John Nduaci
Serjeant-At-Arms

Mr. Meldrick K. Sakani
Audio Officer III

PART 2

2 OVERVIEW OF THE NATIONAL DIALOGUE REPORT

2.1 Background

6. The National Assembly and the Senate established the National Dialogue Committee (NADCO) vide Resolutions passed on 16th August 2023 and 29th August 2023, respectively to, among other things, *"facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reform on issues of concern to the people of Kenya, in line with the Constitution and the laws of the Republic of Kenya and respecting the functional and institutional integrity of state organs."*

7. To this end, the NADCO submitted its report to Parliament and the leadership of the *Kenya Kwanza* and the *Azimio* One Kenya Coalition with proposals to amend the Constitution and various statutes. The National Assembly and the Senate adopted the NADCO Report on 22nd and 21st February 2024, respectively.

8. Following adoption of the NADCO Report by the two Houses, the Speakers and the Leaders of the Majority and Minority Parties of both Houses deliberated on the modalities for implementing the recommendations of the Report, and agreed as follows:

    a) To refer the proposals to amend the Constitution to the Departmental Committee on Justice and Legal Affairs of the National Assembly and the Senate Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

    b) To introduce the following legislative proposals in the National Assembly:
        i. The Independent Electoral and Boundaries Commission (Amendment) Bill, 2024;
        ii. The Ethics and Anti-Corruption Commission (Amendment) Bill, 2024;
        iii. The Leader of Opposition Bill, 2024; and
        iv. The National Government Coordination (Amendment) Bill, 2024.

    c) To introduce the following legislative proposals in the Senate:
        i. The Elections Offences (Amendment) Bill, 2024;
        ii. The Elections (Amendment) Bill, 2024;
        iii. The Statutory Instruments (Amendment) Bill, 2024; and
        iv. The Political Parties (Amendment) Bill, 2024.

    d) The Clerks of the Houses of Parliament to communicate to other entities, the recommendations that require action by the said entities.

9. Consequently, vide concurrent Communications issued on Tuesday, 5th March, 2024, the Speakers of both Houses directed that the Departmental Committee on Justice and Legal Affairs of the National Assembly and the Senate Standing Committee on Justice, Legal Affairs and Human Rights hold joint sittings to –
    a) expeditiously consider the proposals to amend the Constitution and recommend to the Houses the manner of actualizing the recommendations of the NADCO on amendment of the Constitution;

b) consider any proposed amendments to statutes or enactment of new statutes that may be consequential to the proposed amendments to the Constitution;
c) ensure strict adherence to the due process in considering the proposed amendments; and
d) submit a report within **forty-five (45) days** to the Houses recommending the manner of actualizing the recommendations of the NADCO.

10. Copies of the Communications issued by the Speaker of the National Assembly and the Speaker of the Senate are attached to this Report as ***Annexures 1a and 1b***, respectively. Copies of the Proposed NADCO Constitutional (Amendment) Bill, 2024, the Proposed Leader of Opposition Bill, 2024 and the Proposed National Government Coordination (Amendment) Bill, 2024 are attached to this Report as ***Annexures 2a, 2b and 2c,*** respectively.

11. The joint sittings of the two Committees were to be held in accordance with National Assembly Standing Order 202A and the Senate Standing Order 230.

12. While the framework for implementation of the two-thirds gender principle in Parliament was one of the issues that the National Dialogue Committee had been tasked to address, the Committee, in its report, recommended that the Multi-Sectoral Working Group (MSWG) on the Realization of the Two-Thirds Gender Principle to recommend to Parliament a framework for the implementation of the two-thirds gender principle.

13. The MSWG therefore submitted its Report to Parliament, including a proposed Bill to amend the Constitution as well as proposed amendments to the Political Parties Act, Cap7D and the Elections Act, Cap 7. Copies of these proposed Bills are attached to this Report as ***Annexures 3a, 3b and 3c,*** respectively.

14. The Committees were thereafter to consider the framework for implementation of the two-thirds gender principle and the legislative proposals submitted to Parliament by the MSWG, alongside the recommendations contained in the NADCO Report.

2.2 Summary of the NADCO Recommendations

15. The Recommendations contained in the Report of the National Dialogue Committee were categorized under six thematic areas, namely:
a) electoral justice and related matters;
b) outstanding constitutional matters;
c) fidelity to the law on multiparty democracy;
d) entrenching funds into the Constitution;
e) establishment and entrenchment of State offices; and
f) other issues that arose from public participation relating to devolution and the Judiciary.

PART 3

3 CONSIDERATION OF THE NATIONAL DIALOGUE REPORT

16. Vide the Communication made by the Speakers of the National Assembly and that of the Senate on Tuesday, 5th March 2024, the Committees were given forty-five (45) days to consider the proposals to amend the Constitution and recommend to the two Houses, the manner of actualizing the recommendations of the National Dialogue Committee.

17. Due to challenges associated with conducting joint meetings, the two Committees were unable to complete the task within the stipulated 45 days. This was despite the unswerving commitment and several attempts from both Committees of the two Houses regarding the task.

18. Consequently, the Chairperson of the Departmental Committee on Justice and Legal Affairs of the National Assembly vide letter dated 23rd July 2024 requested the Speaker of the National Assembly to extend the time for consideration of the NADCO Report by another 45 days; and to authorise the National Assembly Committee to conduct sittings independent of the Senate Committee. In his appeal to the Rt. Honourable Speaker, the Chairperson assured the Speaker that the Justice and Legal Affairs Committee was determined to expedite the process, hence the request to allow the Committees to sit independently of each other.

19. Vide Communication dated 31st July 2024, the Rt. Honourable Speaker acceded to the request of the Committee for an extension of time by another forty-five days (45). The Speaker also acceded to the Committee's request to hold sittings independently and report back to the National Assembly within forty-five (45) days. A copy of the Communication is attached to this Report as ***Annexure 1c.***

20. The National Assembly proceeded on recess from 16th August 2024 to 16th September 2024. Upon resumption of the sittings, the Committee held sittings on 19th and 24th September 2024, where they deliberated on the NADCO Report in detail and made a number of observations. The Committee thereafter adopted this Report on Tuesday, 1st October 2024.

21. The Committee noted that out of the four legislative proposals that were to be introduced through the National Assembly, namely:
    i. The Independent Electoral and Boundaries Commission (Amendment) Bill, 2024;
    ii. The Ethics and Anti-Corruption Commission (Amendment) Bill, 2024;
    iii. The Leader of Opposition Bill, 2024; and
    iv. The National Government Coordination (Amendment) Bill, 2024.

22. Out of the four, two proposals were published as Bills, read a first time and committed to the Departmental Committee on Justice and Legal Affairs for consideration. The Committee dispensed with the first two as enumerated in paragraph 23 and 24 of this Report.

The Independent Electoral and Boundaries Commission (Amendment) Bill, 2024

23. The Independent Electoral and Boundaries Commission (Amendment) Bill *(National Assembly Bill No. 10 of 2024)* was published on 4th April 2024 and read a First Time in the House on 5th March 2024. It was thereafter committed to the Committee in line with the provision of Standing Order 127 (3). The Committee considered the Bill and tabled its Reports on 23rd April 2024 and 19th June 2024 (Report on Senate Amendments). The Bill was passed by both Houses and subsequently assented to by the President on 9th July 2024. A copy of the Bill and Committee Reports are attached to this Report as ***Annexures 4a, 4b and 4c***.

The Ethics and Anti-Corruption Commission (Amendment) Bill, 2024

24. The Ethics and Anti-Corruption Commission (Amendment) Bill *(National Assembly Bill No. 11 of 2024)* was published on 4th March 2024 and read a First Time in the House on 25th June 2024. It was thereafter committed to the Committee in line with the provision of Standing Order 127 (3). The Committee considered the Bill and tabled its Report on 6th August 2024. A copy of the Bill and Committee Report are attached to this Report as ***Annexures 5a and 5b.***

The Leader of Opposition Bill, 2024

25. The Legislative Proposal on the Leader of Opposition Bill, 2024 is yet to be published because it would require a constitutional amendment to be effected. The Committee's views and observations regarding the proposal are contained in Part 4 of this Report.

The National Government Coordination (Amendment) Bill, 2024

26. The National Government Coordination (Amendment) Bill, 2024 is also yet to be published because it would require a constitutional amendment to be effected. The Committee's views and observations regarding the proposal are contained in Part 4 of this Report.

27. Observations of the Committee on the Proposed **Constitution of Kenya (Amendment) Bills** as contained in the NADCO Report and as proposed by the MSWG on the Realization of the Two-Thirds Gender Rule are contained in Part 4 of this Report.

28. The Committee, at the time of adopting this Report, was yet to receive feedback regarding the four Bills under consideration by the Senate.

PART 4

4 COMMITTEE OBSERVATIONS

4.1 The Proposed Constitution of Kenya (Amendment) Bill, 2024 by NADCO

29. The Proposed Constitution of Kenya (Amendment) Bill 2024 addresses three broad issues including elections, entrenchment of State offices and Funds into the Constitution, and other issues not touching on the three issues. On election issues, the proposal provides for delimitation of electoral boundaries, basic requirements for political parties, the election of Members of Parliament (term of the Senate), vacation of office by a member of Parliament and a member of a county assembly; declaration of presidential election results; and timelines for determination of a question as to the validity of presidential elections.

30. The Committee considered the Proposed Constitution of Kenya (Amendment) Bill 2024, clause by clause and made observations as follows:

Clause 2

31. **Clause 2** of the Bill seeks to amend Article 75 of the Constitution, which provides for the conduct of State officers, to oblige State officers and public officers to promptly obey and act in accordance with a court order and empower the court to impose sanctions on any officer who fails to obey a court order.

Committee Observations

32. The Committee observed that the proposal contradicts the doctrine of separation of powers as envisaged by the Committee of Experts on Constitutional Review when drafting the 2010 Constitution. The Committee was of the view that the proposal would interfere with the independence of the three arms of government including the Judiciary. Furthermore, willful disobedience of court orders is already provided for in section 4 of the Contempt of Court Act, Cap 8F.

Minority Opinion

33. The **Hon. Aden Daud, MP**, supported the proposal, noting that it seeks to ensure that State officers comply with court orders.

Clause 3

34. **Clause 3** of the Bill seeks to amend Article 88(4) of the Constitution by deleting paragraph (e) to remove the settlement of electoral disputes, including those related to nominations, from the mandate of the Independent Electoral and Boundaries Commission (IEBC).

Committee Observations

35. The Committee supported the proposal, stating that it seeks to streamline the settlement of disputes as a means of expediting the resolution of electoral disputes. Despite the IEBC promptly resolving electoral disputes on previous occasions, the Committee noted that the power to settle these disputes is sufficiently provided for in section 40 as read with section 41(2) of the Political Parties Act, Cap 7D. The provisions confer this power to the Political Parties Disputes Tribunal, allowing appeals to the High Court on points of law and facts and further appeals to the Court of Appeal on points of law, with decisions of the Court of Appeal being final.

Clause 4

36. **Clause 4** of the Bill seeks to amend Article 89 of the Constitution on the delimitation of electoral units to empower Parliament to extend the period of reviewing the names and boundaries of constituencies beyond the prescribed period. The extension is to be made through a resolution passed by a majority of all Members of the National Assembly and a majority of the county delegations in the Senate. Under Article 89(2) of the Constitution, IEBC is required to review the names and boundaries of constituencies at intervals of not less than eight years and not more than twelve years, but any review shall be completed at least twelve months before a general election of members of Parliament.

Committee Observations

37. Reiterating the importance of boundary delimitation in any election cycle, the Committee observed that empowering Parliament to extend the period of reviewing the names and boundaries of constituencies beyond the prescribed period will ensure flexibility, promote fair representation and accommodate unforeseen circumstances that may hinder the delimitation process.

Clause 5

38. **Clause 5** of the Bill seeks to amend Article 91 of the Constitution on basic requirements for political parties to strengthen party democracy, promote party discipline, through the deregistration of a person from a political party and the consequences of such deregistration, and adherence to the values and principles of the Constitution in the nomination of persons to appointive or elective.

Committee Observations

39. The Committee observed that political party discipline is an essential concept of constitutional and political frameworks. The proposal had considerable merit as it seeks to strengthen the structure and procedures within political parties.

Clauses 6 and 15

40. **Clause 6** of the Bill seeks to introduce a new Part 4 to Chapter Seven of the Constitution to establish the office of the Leader of the Opposition and two deputies. It provides for the person to occupy the office, funding of the office and further empowers Parliament to enact legislation. On its part, **Clause 15** of the Bill seeks to amend Article 137(3) of the Constitution on qualifications and disqualifications for election as President to exempt the Prime Minister, the Leader of the Opposition and the Deputy Leader of the Opposition from being disqualified from nomination as a presidential candidate

Committee Observations

41. The Committee observed that the proposal to entrench the Office of the Leader of Opposition in the Constitution fundamentally relates to the supremacy of the Constitution, the sovereignty of the people, the national values and principles of governance hence requires a referendum as prescribed in Article 255 of the Constitution. It was the Committee's view that must be subjected to a referendum for the following reasons:
    (a) There is no clear institutional framework for the Office of the Leader of Opposition. Further, it is not clearly provided whether the office will be a public or State office and in which arm of government it will be domiciled. The establishment of such an

office in Kenya's current system of government must be clearly defined in terms of its institutional framework and role.

(b) The proposal undermines the system of governance in Kenya having adopted the presidential system of government. The Constitution does not envisage a member of the Executive sitting in Parliament as implied in the proposed NADCO Leader of Opposition Bill. This will result in a change in the system of government, a decision reserved for the people.

(c) Article 108 of the Constitution provides for party leaders in the National Assembly to include the Leader of the Minority Party who is essentially the leader of the opposition in Parliament. Therefore, introducing the Office of the Leader of Opposition profoundly alters the functions of Parliament. Hence, the proposal must be subjected to a referendum in accordance with Article 255(1)(h) of the Constitution.

(d) To ensure inclusivity and cohesion after general elections and prevent political instability caused by the winner-takes-it-all system, Kenya should reconsider the presidential system. A parliamentary system is more inclusive as argued in the findings of the Committee of Experts as captured in the Report of the Committee of Experts on Constitutional Review.

Clauses 7, 8, 13, 14, 23 and 24

42. **Clauses 7 and 8** of the Bill seek to amend Articles 101 and 102 of the Constitution on the election of Members of Parliament and the term of Parliament, respectively, to increase the term of the Senate to seven years. **Clause 7** provides that a general election is to be held every second Tuesday of August in every fifth year in case of election to the National Assembly and every second Tuesday of August in every seventh year in case of election to the Senate. **Clause 8** provides for the expiry of the term of a House of Parliament upon general elections being held in the fifth year for the National Assembly and the seventh year for the Senate.

43. **Clause 13** of the Bill seeks to amend Article 132 of the Constitution on the functions of the President to provide that the President shall address the opening of each newly elected House of Parliament, separately, as the dates for the general election for each House will be different, as opposed to the current joint opening address. It also seeks to amend Article 132(2) to empower the President to appoint and dismiss the Prime Minister.

44. **Clause 14** of the Bill seeks to amend Article 136(2)(a) on the election of the President to provide that the election of the President is to be held on the same day as a general election of the members of the National Assembly.

45. **Clauses 23 and 24** of the Bill seeks to amend Articles 177(1) and 180(1) of the Constitution to provide that election of members of county assemblies and county governor shall be done on the same day as that of the members of the National Assembly.

Committee Observations

46. The Committee noted that the implementation of the proposal will create both legal, practical and administrative challenges for the following reasons:

(a) Kenya's general elections are among the world's most expensive. This is attributed to, among others, foreign printing of ballot papers and the high cost of administrative infrastructure. Conducting two general elections will double the cost

of elections and therefore, to ensure cost effectiveness, the elections should be conducted on one day.

(b) The Constitution envisages one general election as stipulated in Articles 90(3), 98(2) and 136(2) that provide for the allocation of political party list seats, election of Senators representing youth and persons with disabilities and election of the President, respectively. The proposal does not take this into account. Altering the term and date of election of members of the Senate would require a complete overhaul of the Constitution.

(c) Paying regard to Kenya's constitutional history, the Senate was established to protect devolution. However, fourteen years down the line, devolution is highly entrenched thus the need to reconsider the sustainability of two Houses of Parliament and whether there is a duplication of roles between the Senate and the National Assembly; and the Senate and County Assemblies.

Clauses 9, 25 and 26

47. **Clause 9** of the Bill seeks to amend Article 103 of the Constitution on vacation of office of a Member of Parliament to include resignation or deregistration from a political party as one of the circumstances through which the office of a member of Parliament may become vacant. It also deletes Article 103(3), which previously empowered Parliament to enact legislation to provide for the circumstances under which a person may be deemed to have resigned from a political party.

48. **Clauses 25 and 26** of the Bill seek to amend Articles 181(1) and 194 of the Constitution to provide for the removal of a county governor from office and vacation of office of a member of a county assembly if the governor or member of a county assembly, having being elected while a member of a political party, resigns from the party or is deregistered by the party.

49. Additionally, **Clause 26** deletes provisions which empowered Parliament to enact legislation to provide the circumstances under which a member of a county assembly is deemed to have resigned from a political party.

Committee Observations

50. The Committee observed that:

a) The proposal is an affront to democracy because political parties are not as democratic as envisaged by the framers of the Constitution. Considering that members of Parliament are elected by the people, the Committee was of the view that the proposal gives party leaders excessive powers prone to abuse. This would breed dictatorship and subvert the will of the people as the right of recall should only be exercised by the people and not political parties.

b) The current provisions adequately regulate political party discipline. Article 103 of the Constitution empowers Parliament to enact legislation to promote fidelity to political parties, procedures for registration and deregistration of members of political parties, and mechanisms of crossing over from one political party to another.

c) The proposal has no considerable merit.

Minority Opinion

51. The **Hon. (Dr.) Otiende Amollo, SC, MP** and **Hon. Francis Kajwang' Tom Joseph, MP** were of the opinion that:
    a) The term 'deemed' used in Article 103(1)(e)(i) of the Constitution has hindered realization of true party discipline as envisaged by drafters of the Constitution. As a result, the existing provisions of law have not adequately prevented Members from associating themselves with other parties after general elections thereby undermining the opposition and in turn weakening democracy. The proposal seeks to cure the high indiscipline within political parties enabling them to adhere to the values and principles of the party and conduct their affairs in a manner that promotes democracy.
    b) The proposal has considerable merit.

Clause 10

52. **Clause 10** of the Bill seeks to introduce a new Article 108A to empower Parliament to enact legislation to provide for the recognition and status of representatives in international legislative bodies of which Kenya is a member.

Committee Observations

53. The Committee observed that the Constitution does not explicitly define the terms 'international legislative bodies' used in the proposal. Furthermore, the Constitution does not provide for the specific recognition and status of other leaders. The proposal is therefore not feasible.

Clauses 11, 12, 18, 19, 29 and 30

54. **Clauses 11 and 12** of the Bill seek to amend Articles 130(1) and 131(1) of the Constitution on the national Executive and authority of the President, respectively, so as to include the Prime Minister as part of the national executive, and as one of the persons who assists the President in the exercise of the executive authority of the Republic.

55. **Clause 18** of the Bill seeks to introduce a new Article 151A which sought to establish the Office of the Prime Minister. The Prime Minister was to be nominated by the President and appointed by the President upon approval by the National Assembly.

56. **Clause 19** of the Bill seeks to amend Article 152 (Cabinet) of the Constitution to include the Prime Minister as a member of the Cabinet and the appointment of the Prime Minister shall require approval of the National Assembly.

57. **Clause 29** of the Bill seeks to amend Articles 240(2) and 260 of the Constitution to include the Prime Minister as a member of the National Security Council.

58. **Clause 30** of the Bill sought to amend the definition of the term "state officer" to include the Prime Minister.

Committee Observations

59. Noting that the proposal requires some amendments, the Committee recommended as follows:

(a) The functions prescribed for the office under the proposed new clause 151A(4) qualify the office as that of a Cabinet Secretary provided for in Article 152(1)(d). Furthermore, the term 'Minister' used in the proposal does not exist in the Constitution and should therefore, be substituted with 'Cabinet Secretary'.
(b) Further, the proposal should be domiciled in Article 152 instead of Article 151 of the Constitution.

Minority Opinion

60. **Hon. (Dr.) Otiende Amollo, SC, MP** and **Hon. John Makali, MP** recorded a dissenting opinion on the proposal citing as follows:
    (a) There is no need for the proposed Office of Prime Minister. The mischief the proposal seeks to cure is not clearly established. Furthermore, the Office of the Prime Minister does not fit the existing governance structure.
    (b) The Office of the Prime Minister will likely result in a conflict or clash with the Office of the Deputy President. It would also unnecessarily result in a bloated wage bill, a matter of concern to Kenyans.
    (c) The proposal seeks to introduce a parliamentary system into Kenya's presidential system. Seeking to change the system of government touches on Article 255(1)(c) and (d) of the Constitution and is a decision reserved for the people. The proposal, therefore, requires a referendum.

Clause 16

61. **Clause 16** of the Bill seeks to amend Article 138(10) of the Constitution on the procedure to be observed during presidential elections to provide that declaration of the results of a presidential election by the chairperson of IEBC is to be done after verification of the results by IEBC.

Committee Observations

62. Noting the distinction between an independent office and a commission, the Committee observed that the proposal is in line with the court's finding that decisions of a Commission must be made by the absolute majority and not individual members.

Clause 17

63. **Clause 17** of the Bill seeks to amend Article 140(2) of the Constitution on questions as to the validity of the presidential election to increase the timeline for hearing and determination of the presidential elections from 14 days to 21 days.

Committee Observations

64. The Committee observed that the proposal sought to increase the number of days to determine disputes arising from the presidential election by the Supreme Court, from 14 days to 21 days due to constraints imposed by the strict timelines. On several occasions the Court has delivered judgements and reserved reasons thereto. The Committee was in support of the proposal.

Clauses 20, 21 and 22

65. **Clauses 20 and 21** of the Bill seek to amend Articles 162 and 165 of the Constitution which provides for system of courts and the High Court, respectively, so as to make the Environment and Land Court and the Employment and Labour Relations Court part of the High Court.

66. **Clause 22** of the Bill seeks to amend Article 169(1)(d) of the Constitution to remove reference to the Employment and Labour Relations Court and Environment and Land Court.

Committee Observations

67. Taking into account the versatility of judges in Kenya's judicial changing landscape, the Committee noted that the proposal simply ensures an administratively tidier court system.

68. Additionally, the Committee observed that clauses 21 and 22 are consequential amendments to clause 20 and serve as a cleanup.

Clause 27

69. **Clause 27** of the Bill seeks to amend Article 203(2) of the Constitution to increase the minimum equitable share of national revenue allocated to county governments from fifteen percent to twenty per cent.

Committee Observations

70. The Committee agreed with the proposal.

Clause 28

71. **Clause 28** of the Bill seeks to introduce new Articles 204A, 204B and 204C which seek to entrench the National Government Constituency Development Fund, the Senate Oversight Fund and the National Government Affirmative Action Fund, respectively, in the Constitution.

Committee Observations

72. The Committee observed that the amendments do not relate to the matters outlined in Article 255 of the Constitution and would therefore not require to be approved at a referendum.

Minority Opinion

73. The **Hon. Francis Kajwang' Tom Joseph, MP** recorded a dissenting opinion relating to the establishment of the Senate Oversight Fund. In his view, Members of Parliament are facilitated by the Parliamentary Service Commission to discharge their oversight roles. Unlike the NGCDF which is administered by the National Government Constituencies Development Fund Board, the proposal seeks to establish a Senate Oversight Fund to finance an oversight role that is already catered for by the Parliamentary Service Commission. The Senate Oversight Fund would contravene the principles of public finance.

Clauses 31 and 32

74. **Clause 31** of the Bill provides that Parliament shall enact all legislation required to be enacted as a consequence of the amendment of the Constitution within six months of the coming into force of the Act.

75. **Clause 32** of the Bill provides transition in respect of any person serving as a judge of the Employment and Labour Relations Court and the Environment and Land Court to continue

serving as High Court judges without loss of benefits or status. This is as a consequence of the proposal to merge the two courts with the High Court.

Committee Observations

76. The Committee observed that clause 31 and 32 are transitional and consequential provisions whose implementation shall be under the Bill. It was the Committee's view that it would be untidy to amend the Fifth and Sixth Schedules to the Constitution.

Minority Opinion

77. The **Hon. (Dr.) Otiende Amollo, SC, MP** noted that the proposed amendments in Clause 31 relate directly to the Constitution and not the Bill. In his view, an Act of Parliament cannot instruct the Constitution, rather the Constitution instructs itself. As such, all relevant legislation requiring to be enacted as a consequence of the proposed amendments to the Constitution should be provided for in the Fifth Schedule to the Constitution. In addition, he noted that clause 32 was a transitional amendment and should be incorporated by amending the Sixth Schedule of the Constitution.

4.2 The Proposed Constitution of Kenya (Amendment) Bill, 2024 by MSWG

78. The Committee noted that as part of the NADCO recommendations, the Multi-Sectoral Working Group on the Realization of the Two-Thirds Gender Principle was to finalize its work and recommend a framework of implementation of the two-thirds gender principle and submit its report to Parliament for consideration. To this end, the MSWG submitted to Parliament a Proposed Constitution of Kenya (Amendment) Bill, 2024.

79. The principal object of the proposal is to amend the Constitution to implement the recommendations of the MSWG Report that Article 27(8) and 81(b) of the Constitution, in respect of Parliament, be implemented by way of gender top-up of party lists. Article 27(8) of the Constitution requires the State to take legislative and other measures to implement the principle that no more than two-thirds of members of elective or appointive shall be of the same gender. Article 81(b), on its part, provides that the electoral system shall comply with the principle that no more than two-thirds of members of elective public bodies shall be of the same gender.

80. The Committee considered the Proposed Constitution of Kenya (Amendment) Bill 2024, clause by clause and made its observations as follows:

Clauses 2, 3 and 4

81. **Clause 2** of the Bill seeks to amend Article 90 of the Constitution which provides for allocation of party list seats as a consequence of the amendment to Articles 97 and 98 of the Constitution. It also provides that members of a political party shall be democratically involved in preparation of the party list, and that the party list shall reflect the representation of the marginalized groups provided for under Article 100 of the Constitution. Further, it seeks to introduce a term limit of two years for persons nominated to Parliament by political parties.

82. **Clauses 3** and **4** of the Bill proposes to amend Articles 97 and 98 of the Constitution to ensure that no more than two-thirds of members of the National Assembly and the Senate are of the same gender. New clauses are inserted to provide that where after a general

election the two-thirds gender principle is not met in the National Assembly and the Senate, there shall be additional special seats to be filled by way of nominations.

Committee Observations

83. The Committee observed that the creation of gender-top up seats through party lists will guarantee the attainment of the two-thirds gender principle. The Committee added that the need to include a provision to require Parliament to enact legislation to give effect to the proposals.

84. Further, the Committee noted that the amendment of Articles 97 and 98 to accord with the two-thirds gender of the Constitution was already approved by Kenyans in promulgating the Constitution and was ideally meant to have been done through parliamentary initiative by the first Parliament under the Constitution. For that purpose, the amendments would not require to be approved at a referendum.

Minority Opinion

85. The **Hon. (Dr.) Otiende Amollo, SC, MP** noted the difficulty in striking a balance between the cost of representation and the realization of the two-thirds gender principle.

86. To prioritize realization of the two-thirds gender principle, he agreed with the proposal for the top-up method as the most viable. He, however, stated that the gender top-up method disadvantages women aspirants.

87. It was his view that pursuant to Article 255(1)(c) and (h) of the Constitution, the amendment must be subjected to a referendum as it relates to the sovereignty of the people and indirectly affects the functions of Parliament by enlarging the membership of the two Houses through top-up seats.

Clause 5

88. **Clause 5** of the Bill introduces a new Article 98A to provide for transition. It is proposed that within thirty days of the coming into force of the Act, IEBC shall require political parties to submit lists for purposes of filling the additional seats to comply with the principle.

Committee Observations

89. The Committee noted that the proposal was overly ambitious and would pose significant implementation challenges during the term of the current Parliament. It was the Committee's view that it would be neater to implement the proposals after the term of the current Parliament.

PART 5

5 COMMITTEE RECOMMENDATIONS

90. The Committee recommends to the House that—

(a) The proposed Constitution of Kenya (Amendment) Bill by NADCO be revised by deleting the following proposals—

(i) requirement of State and public officer to promptly obey court orders;

Justification: The proposal would interfere with the independence of the three arms of government.

(ii) the enlargement of the term of the Senate;

Justification: The proposal fails to take into account that the Constitution envisages one general election as stipulated in Articles 90(3), 98(2) and 136(2). Altering the term and date of election of members of the Senate would require a complete overhaul of the Constitution. Additionally, paying regard to Kenya's constitutional history, the Senate was established to protect devolution. However, fourteen years down the line, devolution is highly entrenched thus the need to reconsider the sustainability of two Houses of Parliament and whether there is a duplication of roles between the Senate and County Governments.

(iii) the entrenchment of the Office of Leader of Opposition;

Justification: The proposal undermines the system of governance in Kenya. The system of governance is a presidential system of government. Article 108 of the Constitution provides for party leaders in the National Assembly to include the Leader of the Minority Party who is essentially the leader of the opposition in Parliament.

(iv) The requirement for resignation and deregistration from a political party as a way in which the office of a member of Parliament, Senator, Governor or Member of County Assembly may become vacant;

Justification: The proposal is an affront to democracy because political parties are not as democratic as envisaged by the framers of the Constitution. Considering that members of Parliament are elected by the people; the proposal gives party leaders excessive powers prone to abuse. This would breed dictatorship and subvert the will of the people as the right of recall should only be exercised by the people and not political parties.

(v) the provision on the recognition and status of representatives in international legislative bodies of which Kenya is a member.

Justification: The Constitution does not expressly define the term 'international legislative bodies'. Furthermore, the Constitution does not provide for the specific recognition and status of other leaders. The proposal is therefore not feasible.

(b) The proposed Constitution of Kenya (Amendment) Bill by MSWG be revised by deleting clause 5;

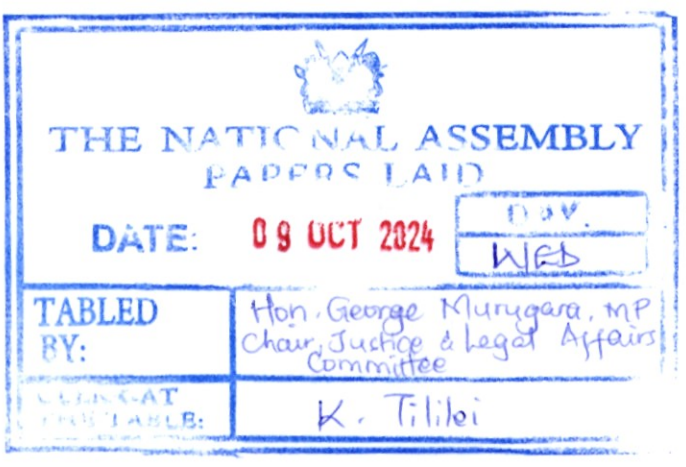
Justification: The proposal is too ambitious and cannot be implemented in the current Parliament. It would be neater to implement the proposals during the next general election.

(c) The revised Constitution of Kenya (Amendment) Bill by NADCO be published separately as one Bill noting that several of its proposals may require a referendum, if enacted; and

(d) The amended Constitution of Kenya (Amendment) Bill by MSWG be published separately noting that its proposals may not require approval at a referendum, if enacted.

SIGNED.....**DATE**2.10.024.....

HON. GEORGE GITONGA MURUGARA, CBS, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS



Annexure 1a

Communications of the Speaker of the National Assembly dated 5th March 2024

Report of the Departmental Committee on Justice and Legal Affairs on Consideration of the Report of the National Dialogue Committee (NADCO) and the Report of the Multi-Sectoral Working Group on the Realization of the Two-Thirds Gender Principle

THE NATIONAL ASSEMBLY
Directorate of Legislative & Procedural Services
THE TABLE OFFICE

INTERNAL MEMO

TO : **Director, Departmental Committees**

FROM : **Head of the Table Office Department**

DATE : **March 06, 2024** Salim Ahmed to facilitate LA W 6/3/24

SUBJECT : **COMMUNICATION FROM THE CHAIR**

The Honourable Speaker made the following Communication in the House on **Tuesday, 06 March 2024**: -

- **Actualization of the Recommendations of the National Dialogue Committee on Amendment of the Constitution.**

In the Communication, you may wish to note the directives given by the Honourable Speaker to the Departmental Committee on Justice and Legal Affairs.

Enclosed herewith, please find the said Communication for onward transmission to the relevant Committee.

WANJIRU NDINDIRI
(Encls).

Copy: Clerk of the National Assembly
Deputy Clerks
Director, Legislative & Procedural Services
Chief Librarian, Library & ICT Services

DIRECTOR
RECEIVED
04 MAR 2024
Departmental Committees

DIRECTOR
RECEIVED
06 MAR 2024
Directorate of Departmental Committees

04 MAR 2024

04 MAR 2024

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | THIRD SESSION
THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

(No. 006 of 2024)

ACTUALIZATION OF THE RECOMMENDATIONS OF THE NATIONAL DIALOGUE COMMITTEE ON AMENDMENT TO THE CONSTITUTION

Honourable Members,

1. As you are aware, the National Dialogue Committee was established by the National Assembly and the Senate vide Resolutions passed on 16th August 2023 and 29th August 2023, respectively. The Committee was established to, among other things, *"facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya, in line with the Constitution and the laws of the Republic of Kenya and respecting the functional and institutional integrity of state organs."*

2. The National Dialogue Committee was to submit its report to Parliament and the leadership of the *Kenya Kwanza* and *Azimio One Kenya* Coalition on constitutional, legal and policy reforms connected to the identified issues of concern to the people of Kenya. Upon conclusion of the national dialogue process, the Committee tabled its Report to Parliament for consideration.

3. **Honourable Members**, the Report, which contained various recommendations including proposals to amend the Constitution and various statutes, was adopted by the National Assembly on 22nd February 2024.

Similarly, the Senate adopted the NADCO report on 21st February 2024.

4. **Honourable Members,** at meetings held on Tuesday, 27th February 2024 and Thursday, 29th February 2024, the Speakers of the Houses of Parliament and the Leaders of the Majority and Minority Parties in both the National Assembly and the Senate deliberated on modalities for implementing the recommendations contained in the Report. The meetings agreed that –

   a) The proposals to amend the Constitution as contained in the NADCO Report be referred to the Departmental Committee on Justice and Legal Affairs of the National Assembly and the Senate Standing Committee on Justice, Legal Affairs and Human Rights for consideration;

   b) The following legislative proposals be introduced in the **National Assembly** –

      (i) The Independent Electoral and Boundaries Commission (Amendment) Bill, 2024;
      (ii) The Ethics and Anti-Corruption Commission (Amendment) Bill, 2024;
      (iii) The Leader of Opposition Bill, 2024; and
      (iv) The National Government Coordination (Amendment) Bill, 2024.

   c) The following legislative proposals be introduced in the **Senate** –

      (i) The Elections Offences (Amendment) Bill, 2024;
      (ii) The Elections (Amendment) Bill, 2024;
      (iii) The Statutory Instruments (Amendment) Bill, 2024; and
      (iv) The Political Parties (Amendment) Bill, 2024.

d) The Clerks of the Houses of Parliament to communicate to other entities, the recommendations that require action by the said entities.

5. **Honourable Members**, noting the clear roadmap adopted by the leadership of the Houses of Parliament, I take this opportunity to thank the Speaker of the Senate, and the Leaders of the Majority and Minority Parties in the National Assembly and the Senate, for their steadfast commitment and for providing a clear strategy to actualize the recommendations of the Report.

6. Having said that **Honourable Members**, it is noted that Article 256 of the Constitution requires that any proposed amendments to the Constitution shall be considered by both Houses of Parliament. In this regard and following consultation with the Speaker of the Senate, Leadership of the Houses of Parliament, the proposals to amend the Constitution and to various statutes as contained in the Report of the National Dialogue Committee now stand referred to the Departmental Committee on Justice and Legal Affairs.

7. **Honourable Members,** I direct the Departmental Committee on Justice and Legal Affairs of the National Assembly to hold joint sittings with the Senate Standing Committee on Justice, Legal Affairs and Human Rights, in accordance with the National Assembly Standing Order 202A and the Senate Standing Order 230. The two Committees are required to expeditiously consider the proposals to amend the Constitution and recommend to the Houses, the manner of actualizing the recommendations of the National Dialogue Committee.

8. **Honourable Members,** It is further noted that the proposals to amend the Constitution may necessitate further amendments to, or enactment of new statutes. In this regard, any proposed amendments to new statutes that are consequential to the proposals to amend the Constitution shall also stand referred to the two Committees.

9. **Honourable Members,** the need to ensure that due process in the enactment of legislation as provided in the law and the Standing Orders of both Houses of Parliament, cannot be gainsaid. The two Committees are therefore directed to ensure strict adherence to the due process in considering the proposed amendments during the joint sittings. Finally, this matter being one of immense importance and public interest, the Committees are directed to undertake the assignment expeditiously and to submit a report within forty-five (45) days from today.

I thank you!

THE RT. HON. (DR) MOSES F.M. WETANG'ULA, EGH, MP,
SPEAKER OF THE NATIONAL ASSEMBLY
Tuesday, 5th March 2024

Annexure 1b

Communication of the Speaker of the Senate dated 5th March

Report of the Departmental Committee on Justice and Legal Affairs on Consideration of the Report of the National Dialogue Committee (NADCO) and the Report of the Multi-Sectoral Working Group on the Realization of the Two-Thirds Gender Principle

URGENT

REPUBLIC OF KENYA

(2) Clerk
for your approval
5/3/24

DC(MA)
submitted for approval.
05.03.24

Rt. Hon. Speaker
You may approve/sign
J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC
Date: 05/03/24

05/3/24

THIRTEENTH PARLIAMENT | THIRD SESSION
THE SENATE

COMMUNICATION FROM THE CHAIR

|NO. 05 OF 2024|

ACTUALIZATION OF THE RECOMMENDATIONS OF THE THE NATIONAL DIALOGUE COMMITTEE FOR AMENDMENT TO THE CONSTITUTION

Honourable Senators,

1. As you are aware, the National Dialogue Committee was established by the National Assembly and the Senate vide a resolution passed on 16th August, 2023 and 29th August, 2023, respectively. The Committee was required to *"facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya, in line with the Constitution and the laws of the Republic of Kenya and respecting the functional and institutional integrity of state organs."*

2. The National Dialogue Committee was required to submit its report to Parliament and the leadership of the Kenya Kwanza and Azimio One Kenya Coalition on constitutional, legal and policy reforms on issues of concern to the people of Kenya. Upon conclusion of the national dialogue process, the Committee tabled its Report to Parliament for consideration.

3. On 21st February, 2024, the Senate adopted the Report of the Committee. Likewise, the National Assembly adopted the Report of the National Dialogue Committee on 22nd February, 2024. The Report contains various recommendations including recommendations proposing amendments of the Constitution and various statutes regarding several issues.

Honourable Senators,

4. At meetings held on Tuesday, 27th and Thursday, 29th February, 2024, the Speakers of the Houses of Parliament and the Leadership of both the Senate and the National Assembly deliberated on modalities for implementation of the recommendations contained in the Report of the National Dialogue Committee. The meeting agreed that –

    a. Proposals for amendment of the Constitution to implement the recommendations of the National Dialogue Committee be referred to the Senate Standing Committee on Justice, Legal Affairs and Human Rights and the Departmental Committee on Justice and Legal Affairs of the National Assembly for their joint consideration.

    b. The following legislative proposals recommended in the Report of the Committee be introduced in the National Assembly –

        i. The IEBC (Amendment) Bill, 2024;

        ii. The Ethics and Anti-Corruption Commission (Amendment) Bill, 2024;

        iii. The Leader of Opposition Bill, 2024; and

        iv. The National Government Coordination (Amendment) Bill, 2024.

c. The following legislative proposals recommended in the Report of the Committee be introduced in the Senate –

i. The Elections Offences (Amendment) Bill, 2024;

ii. The Elections (Amendment) Bill, 2024;

iii. The Statutory Instruments (Amendment) Bill, 2024; and

iv. The Political Parties (Amendment) Bill, 2024.

d. The Clerks of the Houses of Parliament to communicate to other entities, the recommendations that require action by the said entities.

5. I take this opportunity to thank the Speaker of the National Assembly, the Leadership of the Senate and the National Assembly, for providing a clear strategy for actualization of the recommendations of the Report of the National Dialogue Committee.

Honourable Senators,

6. Article 256 of the Constitution requires that any proposed amendments to the Constitution shall be considered by both Houses of Parliament. In this regard and following consultation with the Leadership of the two Houses of Parliament, the proposed amendments to the Constitution and to various statutes as contained in the Report of the National Dialogue Committee now stand referred to the Standing Committee on Justice, Legal Affairs and Human Rights.

7. The Standing Committee, working jointly with the Departmental Committee on Justice and Legal Affairs of the National Assembly in

accordance with Standing Order 230 of the Senate and Standing Order 202A of the National Assembly, shall consider the proposed amendments to the Constitution and recommend to the Houses of Parliament the manner of actualizing the recommendations of the National Dialogue Committee relating to the proposed amendments to the Constitution.

8. It is also notable that the proposed amendments to the Constitution may necessitate further amendments to or enactment of new statutes. In this regard, any proposed amendments to new statute that is consequential to the proposed amendments to the Constitution, also stand referred to the two Committees for consideration.

Honourable Senators,

9. The need to ensure that due process in the enactment of legislation, and as provided in the Standing Orders of both Houses of Parliament cannot be gainsaid. The two Committees are therefore directed to ensure that due process in the enactment of laws is adhered to in considering the proposed amendments during the joint sittings. This matter being one of immense importance and public interest, the Committees are directed to undertake the assignment expeditiously and to submit a report within forty five (45) days.

I thank you!

RT. HON. AMASON JEFFAH KINGI, EGH, MP,
SPEAKER OF THE SENATE.
5th March, 2024

Annexure 1c

Communication of the Speaker of the National Assembly dated 31st July 2024 and the JLAC Chairperson's letter

THE NATIONAL ASSEMBLY
Directorate of Legislative & Procedural Services
THE TABLE OFFICE

INTERNAL MEMO

TO : **Director, Departmental Committees**

FROM : **Head of the Table Office Department**

DATE : **31st July 2024**

SUBJECT: COMMUNICATIONS FROM THE CHAIR

The Honourable Speaker made the following Communications in the House on **Wednesday, 31st July 2024 (Afternoon Sitting)**: -

(i) **Extension of period for consideration of recommendations of the National Dialogue Committee on proposed amendments to the Constitution;** and

(ii) **Appointment of Members to a Mediation Committee on Conflict of Interest Bill (National Assembly No. 12 of 2023).**

(Please note that the Members will await the appointment of Senators to the Mediation Committee before commencing the mediation process.)

Enclosed herewith, please find the said Communications for onward transmission to the relevant Committees.

DIRECTOR
RECEIVED
01 AUG 2024
Directorate of Departmental Committees

WANJIRU NDINDIRI
(Encls).

Copy: Clerk of the National Assembly
Deputy Clerks
Director, Legislative & Procedural Services
Chief Librarian/Deputy Director, Information & Research Services

Mr. Ahmed Salim

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT - (THIRD SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

____ (No. 038 of 2024) ___

ON

EXTENSION OF PERIOD FOR CONSIDERATION OF RECOMMENDATIONS OF THE NATIONAL DIALOGUE COMMITTEE ON PROPOSED AMENDMENTS TO THE CONSTITUTION

Honourable Members,

1. As you will recall, in August 2023, the Houses of Parliament established the National Dialogue Committee (NADCO) to, among other things, facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya. The committee submitted its report to Parliament containing various recommendations in February 2024.

2. Thereafter, upon adoption of the NADCO report by the National Assembly and the Senate, the leadership of the two Houses met and adopted a clear roadmap to actualize the recommendations contained in the said Report. Consequently, in furtherance of the agreed roadmap by the leadership, I directed, *vide* Communication No. 06 of 2024 dated 5th March 2024, that the Departmental Committee on Justice and Legal Affairs of the National Assembly holds joint sittings with the Senate Standing Committee on Justice, Legal Affairs and Human Rights to consider recommendations of the report, relating to the proposals to amend the Constitution, within forty-five (45) days.

3. **Honourable Members,** the full implementation of the recommendations of the report especially with respect to proposed constitutional amendments is intended to ensure achievement of the aspirations of the people. However, it has come to my attention that the committees of the two Houses have not been able to meet as agreed in the implementation roadmap.

4. Indeed, I am in receipt of a letter dated 23rd July 2024 from the Chairperson of the Departmental Committee on Justice & Legal Affairs, the Hon. George Gitonga Murugara, CBS, MP, requesting for extension of time to consider the proposals arising out of the NADCO report. In the letter, the Chairperson also alludes to challenges in conducting joint sittings with the counterpart Senate Committee. This is especially with regard to availability of requisite quorum to commence sittings.

5. It is therefore the considered view of the Chairperson, on behalf of the Committee, that to ensure expeditious consideration of the proposals to amend the Constitution, the respective Committees be approved to sit independently and to thereafter report to the respective Houses.

6. **Honourable Members,** appreciating the immense public interest in the actualization of the recommendations and proposals of the National Dialogue Committee, and having extensively consulted the leadership of the House, I have acceded to the request by the Chairperson of the Departmental Committee on Justice and Legal and Affairs, and **DIRECT THAT**—

(i) The period for consideration of the proposals emanating from the Report of the National Dialogue Committee (NADCO) is hereby extended by forty-five (45) days from today, Wednesday, 31st July 2024; and

(ii) Notwithstanding the directive issued on 5th March 2024 regarding joint sittings of the two committees of the Houses of Parliament, the Departmental Committee on Justice and Legal Affairs is hereby authorised to hold its sittings independently and to report back to the National Assembly within the timelines stipulated above.

The House is accordingly guided.

I thank you!

Wetang'ula

THE RT. HON. (DR.) MOSES F.M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY
Wednesday, 31st July 2024

Hon. George Gitonga Murugara, CBS, M.P.

Tharaka Constituency

Chairperson of The Justice & Legal Affairs Committee

P. O. Box 41842 - 00100
Bunge Tower
Nairobi, Kenya

Telephone: +254 202 848 000
Mobile: +254 721 725 345
Email: tharakaconstituency013@gmail.com

23rd July, 2024

The Rt. Hon. (Dr) Moses M. Wetangula, EGH, MP
Speaker of the National Assembly
Parliament Buildings
P.O Box 41842-00100
NAIROBI

Honourable Speaker,

RE: REQUEST FOR EXTENSION OF TIME TO CONSIDER THE NATIONAL DIALOGUE COMMITTEE (NADCO) REPORT; AND REQUEST FOR THE COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SIT INDEPENDENT OF THE SENATE COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

We refer to your communication issued on 5th March 2024, regarding the National Dialogue Committee Report where, among others, you directed the Committee to:

1. Hold joint sittings with the Senate Committee on Justice, Legal Affairs and Human Rights; and
2. Consider and report to the House within 45 days.

Honourable Speaker, despite the dedication of the Committee to conclude the consideration within the timeframe and the manner you directed, it has been a serious challenge to conclude the exercise in 45days and, equally a challenge, to conduct the joint sittings with the Senate Committee.

On behalf of the Departmental Committee on Justice and Legal Affairs, we therefore write to request you, most graciously, to:

1. Extend the consideration of the report by, at least, another 45days; and
2. Authorize the Committee to conduct sittings independent of the Senate Committee.

Please be assured that the Committee is determined to expedite the process, hence the request to allow the Committees to sit independent of each other, as it has proved quite difficult to conduct joint sittings.

Please accept the assurances of our highest consideration.

Yours *Sincerely*

NATIONAL ASSEMBLY RECEIVED 24 JUL 2024

NATIONAL ASSEMBLY RECEIVED 23 JUL 2024

Annexure **2a**

NADCO Proposed Constitution of Kenya (Amendment) Bill, 2024

Report of the Departmental Committee on Justice and Legal Affairs on Consideration of the Report of the National Dialogue Committee (NADCO) and the Report of the Multi-Sectoral Working Group on the Realization of the Two-Thirds Gender Principle

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Constitution by parliamentary initiative.

ENACTED by the Parliament of Kenya, as follows—

Short title and commencement.

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2023, and shall come into operation or be deemed to have come into operation as follows—

(a) sections 7, 8, 13, 14, 23 and 24 of this Act immediately after the general elections held following the enactment of this Act; and

(b) all other sections, upon publication in the Gazette.

Amendment of Article 75 of the Constitution.

2. Article 75 of the Constitution is amended by inserting the following new clauses immediately after clause (3) —

(4) A State Officer or public officer as provided for under Article 80(c), shall promptly obey and act in accordance with a court order.

(5)A court may impose appropriate sanctions against any state or public officer who fails to comply with a court order.

Amendment of Article 88 of the Constitution.

3. Article 88(4) of the Constitution is amended by deleting paragraph (e).

Amendment of Article 89 of the Constitution.

4. Article 89 of the Constitution is amended by inserting the following new clause immediately after clause (2) —

(2A) Where for any reason the review of the names and boundaries of constituencies is not completed within the time stipulated under clause (2) or there are justifiable reasons for the extension of the period for review, Parliament may extend the period provided for under clause (2) by a resolution passed by —

(a) the National Assembly, with the support of a majority of all the Members of the Assembly; and

(b) the Senate, with the support of a majority of all the county delegations.

Amendment of Article 91 of the Constitution.

5. Article 91 of the Constitution is amended —

(a) in clause (1) —

(i) by inserting the following new paragraphs immediately after paragraph (d) —

(da) promote discipline within the party;

(db) conduct its affairs in a manner that promotes democracy and peaceful politics;

(dc) adhere to the values and principles of the Constitution in the nomination of persons to appointive or elective positions including Article 27, Article 54, Article 55, Article 56, Article 57 and Article 100 of the Constitution;

(ii) by inserting the words "and as such other code of conduct as may be prescribed by the Independent Electoral and Boundaries Commission" immediately after the words "political parties" appearing in paragraph (h)";

(b) by inserting the following new clauses immediately after clause (2) —

(3) A member of a political party shall—

(a) subscribe to the constitution, rules and regulations of the political party; and

(b) be bound by the policies, ideology, philosophy and manifesto of the party.

(4) A citizen shall not be a member of more than one political party at any given time.

(5) Subject to clause (11), a member once deregistered from a political party shall cease holding any appointive or elective position held by virtue of such membership including a position held as a Member of Parliament, a county governor or a member of a county assembly.

(6) For purposes of clause (5), the reasons for deregistration or resignation of a member from a political party shall be exclusively determined in accordance with the constitution or regulations of a political party, by the internal dispute resolution mechanism of the party.

(7) An appeal against the decision of the internal dispute resolution mechanism of the party under clause (6) may be made to the relevant statutory body responsible for determining such disputes.

(8) An appeal against the decision of the relevant statutory body under clause (7) shall be made to the High Court.

(9) All disputes relating to deregistration or resignation of a member of a political party shall be heard and determined within a period not exceeding ninety days from the date of filing the appeal.

(10) Subject to exhaustion of appeal mechanisms, the body responsible for regulation of political parties, Speakers of both Houses of Parliament and speakers of county assemblies shall give effect to the

decision of the political party or the courts, as the case may be.

(11) A party shall not deregister a member of a political party unless the procedures for deregistration adheres to—

(a) the freedom of expression set out in Article 33;
(b) the freedom of association set out in Article 36;
(c) the political rights set out in Article 38;
(d) the right of fair administrative action set out in Article 47; and
(e) the right to fair hearing set out in Article 50.

Insertion of a new Article 92A in the Constitution.

6. The Constitution is amended by inserting the following new Article immediately after Article 92—

Part 4—Office of the Leader of the Opposition

92A. Leader of the Opposition

(1) There is established the office of the Leader of the Opposition.

(2) The Leader of the Opposition shall be the person who is—

(a) the leader of the party or coalition of parties which garnered the second greatest number of votes in the immediately preceding presidential election; or
(b) the person designated to hold that office in accordance with a resolution of a party or coalition agreement.

(3) There shall be two Deputy Leaders of the Opposition who shall deputize the Leader of Opposition.

(4) The remuneration and benefits payable to the Leader of the Opposition and Deputy Leaders of the Opposition shall be a charge on the Consolidated Fund.

(5) Parliament shall enact legislation to give further effect to this Article.

Amendment of Article 101 of the Constitution.

7. Article 101 of the Constitution is amended by deleting clause (1) and substituting therefor the following new clause—

(1) A general election of members of Parliament shall be held on the second Tuesday in August in—

(a) every fifth year in the case of the National Assembly; and

(b) every seventh year in the case of the Senate.

Amendment of Article 102 of the Constitution.

8. Article 102 of the Constitution is amended by deleting clause (1) and substituting therefor the following new clause—

(1) The term of a House of Parliament expires—

(a) on the date of the next general election in every fifth year, in the case of the National Assembly; and

(b) on the seventh year from the date of the last election, in the case of the Senate.

Amendment of Article 103 of the Constitution.

9. Article 103 of the Constitution is amended —

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

(i) as a member of a political party, the member resigns or is deregistered from the party in accordance with this Constitution.

(b) by deleting clause (3).

Insertion of new Article 108A in the Constitution.

10. The Constitution is amended by inserting the following new Article immediately after Article 108 —

Recognition of international legislative bodies

108A. Parliament shall enact legislation to provide for the recognition and status of representatives in international legislative bodies of which Kenya is a member.

Amendment of Article 130 of the Constitution.

11. Article 130(1) of the Constitution is amended by inserting the words "the Prime Minister" immediately after the words "Deputy President".

Amendment of Article 131 of the Constitution.

12. Article 131(1) of the Constitution is amended in paragraph (b) by inserting the words "the Prime Minister" immediately after the words "the Deputy President".

Amendment of Article 132 of the Constitution.

13. Article 132 of the Constitution is amended—

(a) in clause (1) by inserting the words "House of" immediately after the words "newly elected" appearing in paragraph (a); and
(b) in clause (2) by inserting the words "Prime Minister and" immediately before the words "Cabinet Secretaries" appearing in paragraph (a).

Amendment of Article 136 of the Constitution.

14. Article 136(2) of the Constitution is amended in paragraph (a) by deleting the word "Parliament" and substituting therefor the words "the National Assembly".

Amendment of Article 137 of the Constitution.

15. Article 137(3) of the Constitution is amended by inserting the following new paragraphs immediately after paragraph (b) —

(ba) the Prime Minister;
(bb) the Leader of the Opposition;
(bc) a Deputy Leader of the Opposition;

Amendment of Article 138 of the Constitution.

16. Article 138(10) of the Constitution is amended by inserting the words "as verified by the Independent Electoral and Boundaries Commission under clause (3)(c)" immediately after the words "declare the result of the election" appearing in paragraph (a).

Amendment of Article 140 of the Constitution.

17. Article 140(2) of the Constitution is amended by deleting the word "fourteen" and substituting therefor the word "twenty-one".

Insertion of a new Article 151A in the Constitution.

18. The Constitution is amended by inserting the following new Article immediately after Article 151—

Office of the Prime Minister

151A. (1) There is established the office of the Prime Minister.

(2) The Prime Minister shall be nominated and, with the approval of the National Assembly, appointed by the President.

(3) The Prime Minister shall not be a Member of Parliament.

(4) The Prime Minister shall —

(a) assist the President and the Deputy President in the coordination, supervision and implementation of the national government policies, programmes and projects across all government ministries and state departments;

(b) coordinate the national government's legislative agenda across all ministries and state departments; and

(c) perform any other function as may be directed by the President.

(5) The provisions of Article 152(4), (5), (6), (7), (8), (9) and (10) and Article 153(2), (3) and (4) shall apply with the necessary modifications to the Prime Minister.

Amendment of Article 152 of the Constitution.

19. Article 152 of the Constitution is amended—

(a) in clause (1) by inserting the following new paragraph immediately after paragraph (b) —

(ba) the Prime Minister;

(b) in clause (2) by inserting the words "the Prime Minister and" immediately after the words "National Assembly appoint".

Amendment of Article 162 of the Constitution.

20. Article 162 of the Constitution is amended—

(a) in clause (1) by deleting the words "the High Court and the courts referred to in clause (2) and substituting therefor the words" and the High Court";

(b) by deleting clause (2); and

(c) by deleting clause (3).

Amendment of Article 165 of the Constitution.

21. Article 165(5) of the Constitution is amended by deleting paragraph (b).

Amendment of Article 169 of the Constitution.

22. Article 169(1) of the Constitution is amended in paragraph (d) by deleting the words "other than the courts established as required by Article 162(2)".

Amendment of Article 177 of the Constitution.

23. Article 177(1) of the Constitution is amended in paragraph (a) by deleting the word "Parliament" and substituting therefor the words "the National Assembly".

Amendment of Article 180 of the Constitution.

24. Article 180(1) of the Constitution is amended by deleting the word "Parliament" and substituting therefor the words "the National Assembly".

Amendment of Article 181 of the Constitution.

25. Article 181(1) of the Constitution is amended by inserting the following new paragraph immediately after paragraph (d) —

(e) having been elected as a governor as a member of a political party, the governor resigns or is deregistered from that political party;

Amendment of Article 194 of the Constitution.

26. Article 194 of the Constitution is amended —

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

(i) as a member of a political party, the member resigns or is deregistered from the party in accordance with this Constitution.

(b) by deleting clause (2).

Amendment of Article 203 of the Constitution.

27. Article 203(2) of the Constitution is amended by deleting the words "fifteen per cent" and substituting therefor the words "twenty per cent".

Insertion of new Articles 204A, 204B and 204C in the Constitution.

28. The Constitution is amended by inserting the following new Articles immediately after Article 204—

The National Government Constituencies Development Fund.

204A. (1) There is established the National Government Constituencies Development Fund which shall be a national government fund consisting of monies appropriated from the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution.

(2) All monies allocated under this Article shall be considered as funds allocated to constituencies pursuant to Article 206(2)(c) of the Constitution and is to be administered in accordance with the provisions of an Act of Parliament.

(3) Parliament shall enact legislation to make further provisions for the operation of this Article.

The Senate Oversight Fund

204B. (1) There is established the Senate Oversight Fund which shall be a national government fund consisting of monies appropriated from the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution.

(2) All monies allocated under this Article shall be considered as funds allocated to the Senate pursuant to Article 206(2)(c) of the Constitution and is to be administered in accordance with the provisions of an Act of Parliament.

(3) Parliament shall enact legislation to make further provisions for the operation of this Article.

The National Government Affirmative Action Fund.

204C. (1) There is established the National Government Affirmative Action Fund whose object and purpose shall be to complement the National Government programmes on affirmative action.

(2) The Fund shall be a national government fund consisting of monies appropriated from the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution.

(3) Parliament shall enact legislation to make further provisions for the operation of this Article.

Amendment of Article 240 of the Constitution.

29. Article 240(2) of the Constitution is amended by inserting the following new paragraph immediately after paragraph (b) —

(ba) the Prime Minister;

Amendment of Article 260 of the Constitution.

30. Article 260 of the Constitution is amended in the definition of a "State office" by inserting the following new paragraph immediately after paragraph (b) —

(ba) the Prime Minister;

Consequential legislation.

31. (1) Parliament shall enact any legislation required to be enacted under this Act within a period of six months of the coming into force of this Act.

(2) Parliament shall prepare the relevant Bills for tabling as soon as is reasonably practicable to enable enactment of the legislation within the prescribed time under sub-section (1).

Transition provision.

32. A person who immediately before the commencement of this Act was serving as a judge in a court established under Article 162(2) of the Constitution (now repealed) shall continue serving as a judge of the High Court established under Article 165 of the Constitution without loss of any benefits or status.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend the Constitution by parliamentary initiative in seeking to resolve issues of concern to the people of Kenya, promote national unity and inclusivity, enhance representative democracy, transparency, accountability and good governance and establish adequate checks and balances. The Bill seeks to give effect to the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 of the Bill sets out the short title of the Bill and provides for its commencement date.

Clause 2 of the Bill seeks to amend Article 75 of the Constitution to ensure compliance with court orders by state and public officers.

Clause 3 of the Bill proposes to amend Article 88 of the Constitution to review the framework for election dispute resolution. The Bill seeks to remove the role of settlement of electoral disputes, (including disputes relating to or arising from nominations) from the Independent Electoral and Boundaries Commission and confer the mandate to the Political Parties Disputes Tribunal established under the Political Parties Act, 2011.

Clause 4 of the Bill seeks to amend Article 89 of the Constitution to provide that where for any reason the review of the names and boundaries of constituencies by the Independent Electoral and Boundaries Commission is not completed within the time stipulated under Article 89(2) or where there are justifiable reasons for the extension of the period for review, Parliament may extend the period provided for under Article 89(2) of the Constitution by a resolution passed by the National Assembly, with the support of a majority of all the Members of the Assembly; and the Senate, with the support of a majority of all the county delegations.

As it is presently, the deadline for the review of the boundaries of constituencies is March, 2024. Cognizant of the fact that the Independent Electoral and Boundaries Commission is yet to be reconstituted, it is paramount to amend Article 89(2) of the Constitution and provide for for

the extension of the period for review of boundaries of constituencies by the Commission once reconstituted.

Clause 5 of the Bill seeks to amend Article 91 of the Constitution to include in the basic requirements of political parties that every political party shall promote discipline within the party; conduct its affairs in a manner that promotes democracy and peaceful politics; and adhere to the values and principles of the Constitution in the nomination of persons to appointive or elective positions including Article 27, Article 54, Article 55, Article 56, Article 57 and Article 100 of the Constitution. Further, the Bill seeks to amend Article 91 of the Constitution to promote multipartyism and fidelity to Political Parties by entrenching procedures for deregistration of members of political parties.

Clause 6 of the Bill proposes to insert a new Article 92A in the Constitution to provide for the establishment of the office of the Leader of the Opposition. The Leader of Opposition shall be deputized by two Deputy Leaders of Opposition. The clause further provides that Parliament shall enact legislation to give further effect to the new Article 92A of the Constitution. The Clause seeks to enhance national unity, inclusivity and good governance by ensuring that the views and interests of the opposition are represented.

Clauses 7 and 8 of the Bill seeks to amend Articles 101 and 102 of the Constitution to provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 9 of the Bill seeks to amend Article 103 of the Constitution to provide that where a member of a political party, who was elected to Parliament resigns or is deregistered from the party in accordance with the Constitution, the office of the member shall become vacant. This is intended to promote party discipline and fidelity to political parties by removing the apparently unenforceable deeming provisions provided for in Article 103 of the Constitution.

Clause 10 of the Bill proposes to amend the Constitution to insert new Article 108A to provide for recognition of representatives in international legislative bodies of which Kenya is a member.

Clauses 11, 12 and 13 of the Bill proposes to amend Articles 130, 131 and 132 of the Constitution to institutionalize the office of the Prime Minister

which is mandated to perform the key functions of coordination, supervision and implementation of national government policies, programmes and projects across all government ministries and state departments. Further, clause 13 of the Bill proposes to amend Article 132 of the Constitution to align with the proposed amendments to Articles 101 and 102 of the Constitution.

Clause 14 of the Bill seeks to amend Article 136(2) of the Constitution to to align with the proposed amendments to Articles 101 and 102 of the Constitution which provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 15 of the Bill proposes to amend Article 137(3) of the Constitution to provide that the disqualifications under Article 137(2) of the Constitution shall not apply to the Prime Minister, Leader of the Opposition and the Deputy Leaders of Opposition.

Clause 16 of the Bill proposes to amend Article 138(10) of the Constitution to provide clarity that the chairperson of the Independent Electoral and Boundaries Commission shall declare the result of the presidential election as verified by the Independent Electoral and Boundaries Commission in accordance with Article 138(3)(c) of the Constitution.

Clause 17 of the Bill proposes to amend Article 140(2) of the Constitution to increase the timelines within which the Supreme Court shall hear and determine the validity of presidential election from fourteen to twenty-one days.

Clauses 18 and 19 of the Bill proposes to insert a new Article 151A and amend Article 152 of the Constitution to institutionalize the office of the Prime Minister which is mandated to perform the key functions of coordination, supervision and implementation of the national government policies, programmes and projects across all government ministries and state departments.

Clause 20 of the Bill seeks to amend Article 162 of the Constitution to make the Environment and Land Court and the Employment and Labour Relations Court (ELRC) part of the High Court. This is intended to broaden the experience of judges within the High Court. Presently, a judge serving

in the two specialized courts cannot serve in the High Court or preside over a matter in the High Court.

Clause 21 of the Bill proposes to amend Article 165 of the Constitution to align with the proposed amendments to Article 162 of the Constitution.

Clause 22 of the Bill proposes to amend Article 169 of the Constitution to align with the proposed amendments to Article 162 of the Constitution.

Clause 23 of the Bill proposes to amend Article 177(1) of the Constitution to align with the proposed amendments to Articles 101 and 102 of the Constitution which provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 24 of the Bill proposes to amend Article 180(1) of the Constitution to align with the proposed amendments to Articles 101 and 102 of the Constitution which provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 25 of the Bill proposes to amend Article 181 of the Constitution to provide that a county governor may be removed from office where having been elected as a governor, as a member of a political party, the governor resigns or is deregistered from that political party.

Clause 26 of the Bill proposes to amend Article 194 of the Constitution to provide that where a member of a political party who was elected to a county assembly, resigns or is deregistered from the party in accordance with the Constitution, the office of the member shall become vacant. This is intended to promote party discipline and fidelity to political parties by removing the deeming provisions provided for in Article 194 of the Constitution.

Clause 27 of the Bill proposes to amend Article 203(2) of the Constitution to increase the equitable share of the revenue raised nationally that is allocated to county governments from not less than fifteen per cent of all revenue collected by the national government to not less than twenty per cent of all revenue collected by the national government.

Clause 28 of the Bill proposes to insert new Articles 204A, 204B and 204C in the Constitution to entrench the following Funds as Funds established in the Constitution—

(a) the National Government Constituencies Development Fund;
(b) the National Government Affirmative Action Fund; and
(c) the Senate Oversight Fund.

The entrenchment of the Funds in the Constitution seeks to ensure funding and implementation of national government projects in all parts of the Republic. The Senate Oversight Fund shall enhance the oversight role of the Senate as enshrined under Article 96 of the Constitution.

Clauses 29 of the Bill proposes to amend Article 240 of the Constitution to provide that the Prime Minister shall be a member of the National Security Council in light of the functions conferred to the office.

Clause 30 of the Bill proposes to amend Article 260 of the Constitution to provide that the office of the Prime Minister shall be a state office for purposes of Article 260 of the Constitution and for which the requirements under Chapter Six of the Constitution on leadership and integrity shall apply.

Clause 31 of the Bill provides for enactment by Parliament of any legislation required to be enacted under the Act within a period of six months.

Clause 32 of the Bill is the transition provision. The clause provides for a transition provision to the amendment to Article 162(2) of the Constitution in order to provide that a person who immediately before the commencement of the Act was serving as a judge in a court established under Article 162(2) of the Constitution (now repealed) shall continue serving as a judge of the High Court established under Article 165 of the Constitution without loss of any benefits or status.

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

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

Statement on whether the Bill concerns county governments
The Bill shall be considered and passed by both Houses of Parliament in terms of Article 256 of the Constitution.

Statement on the financial implications of the Bill
The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the ....., 2023

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of Minority Party.

Article 75 of the Constitution which it is proposed to amend—

75.Conduct of State officers

(1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—

(a) any conflict between personal interests and public or official duties;

(b) compromising any public or official interest in favour of a personal interest; or

(c) demeaning the office the officer holds.

(2)A person who contravenes clause (1), or Article 76, 77 or 78(2)—

(a) shall be subject to the applicable disciplinary procedure for the relevant office; and

(b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

(3)A person who has been dismissed or otherwise removed from office for a contravention of the provisions specified in clause (2) is disqualified from holding any other State office.

Article 88 of the Constitution which it is proposed to amend—

88. Independent Electoral and Boundaries Commission

(1) There is established the Independent Electoral and Boundaries Commission.

(2) A person is not eligible for appointment as a member of the Commission if the person—

(a) has, at any time within the preceding five years, held office, or stood for election as—

(i) a member of Parliament or of a county assembly; or

(ii) a member of the governing body of a political party; or

(b) holds any State office.

(3) A member of the Commission shall not hold another public office.

(4) The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution, and any other elections as prescribed by an Act of Parliament and, in particular, for—

(a) the continuous registration of citizens as voters;

(b) the regular revision of the voters' roll;

(c) the delimitation of constituencies and wards;

(d) the regulation of the process by which parties nominate candidates for elections;

(e) the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results;

(f) the registration of candidates for election;

(g) voter education;

(h) the facilitation of the observation, monitoring and evaluation of elections;

(i) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;

(j) the development of a code of conduct for candidates and parties contesting elections; and

(k)the monitoring of compliance with the legislation required by Article 82 (1) (b) relating to nomination of candidates by parties.

(5) The Commission shall exercise its powers and perform its functions in accordance with this Constitution and national legislation.

Article 89 of the Constitution which it is proposed to amend—

89. Delimitation of electoral units

(1) There shall be two hundred and ninety constituencies for the purposes of the election of the members of the National Assembly provided for in Article 97 (1) (a).

(2) The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years, but any review shall be completed at least twelve months before a general election of members of Parliament.

(3) The Commission shall review the number, names and boundaries of wards periodically.

(4) If a general election is to be held within twelve months after the completion of a review by the Commission, the new boundaries shall not take effect for purposes of that election.

(5) The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota, but the number of inhabitants of a constituency may be greater or lesser than the population quota in the manner specified in clause (6) to take account of—

(a) geographical features and urban centres;

(b) community of interest, historical, economic and cultural ties; and

(c) means of communication.

(6) The number of inhabitants of a constituency or ward may be greater or lesser than the population quota by a margin of not more than—

(a) forty per cent for cities and sparsely populated areas; and

(b) thirty per cent for the other areas.

(7) In reviewing constituency and ward boundaries the Commission shall—

(a) consult all interested parties; and

(b) progressively work towards ensuring that the number of inhabitants in each constituency and ward is, as nearly as possible, equal to the population quota.

(8) If necessary, the Commission shall alter the names and boundaries of constituencies, and the number, names and boundaries of wards.

(9) Subject to clauses (1), (2), (3) and (4), the names and details of the boundaries of constituencies and wards determined by the Commission

shall be published in the Gazette, and shall come into effect on the dissolution of Parliament first following their publication.

(10) A person may apply to the High Court for review of a decision of the Commission made under this Article.

(11) An application for the review of a decision made under this Article shall be filed within thirty days of the publication of the decision in the Gazette and shall be heard and determined within three months of the date on which it is filed.

(12) For the purposes of this Article, "population quota" means the number obtained by dividing the number of inhabitants of Kenya by the number of constituencies or wards, as applicable, into which Kenya is divided under this Article.

Article 91 of the Constitution which it is proposed to amend—

91. Basic requirements for political parties

(1) Every political party shall—

(a) have a national character as prescribed by an Act of Parliament;

(b) have a democratically elected governing body;

(c) promote and uphold national unity;

(d) abide by the democratic principles of good governance, promote and practise democracy through regular, fair and free elections within the party;

(e) respect the right of all persons to participate in the political process, including minorities and marginalized groups;

(f) respect and promote human rights and fundamental freedoms, and gender equality and equity;

(g) promote the objects and principles of this Constitution and the rule of law; and

(h) subscribe to and observe the code of conduct for political parties.

(2) A political party shall not—

(a) be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis;

(b) engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person;

(c) establish or maintain a paramilitary force, militia or similar organization;

(d) engage in bribery or other forms of corruption; or

(e) except as is provided under this Chapter or by an Act of Parliament, accept or use public resources to promote its interests or its candidates in elections.

Article 93 of the Constitution which it is proposed to amend—

93. Establishment of Parliament

(1) There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.

(2) The National Assembly and the Senate shall perform their respective functions in accordance with this Constitution.

Article 101 of the Constitution which it is proposed to amend—

101. Election of members of Parliament

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

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

(a) the Independent Electoral and Boundaries Commission; and

(b) the political party on whose party list the member was elected or nominated.

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

(4) Whenever a vacancy occurs in the office of a member of the National Assembly elected under Article 97 (1) (a) or (b), or of the Senate elected under Article 98 (1) (a)—

(a) the respective Speaker shall, within twenty-one days after the occurrence of the vacancy, give notice in writing of the vacancy to the Independent Electoral and Boundaries Commission; and

(b) a by-election shall be held within ninety days of the occurrence of the vacancy, subject to clause (5).

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

Article 102 of the Constitution which it is proposed to amend—

102. Term of Parliament

(1) The term of each House of Parliament expires on the date of the next general election.

(2) When Kenya is at war, Parliament may, by resolution supported in each House by at least two-thirds of all the members of the House, from time to time extend the term of Parliament by not more than six months at a time.

(3) The term of Parliament shall not be extended under clause (2) for a total of more than twelve months.

Article 103 of the Constitution which it is proposed to amend—

103. Vacation of office of member of Parliament

(1) The office of a member of Parliament becomes vacant—

(a) if the member dies;

(b) if, during any session of Parliament, the member is absent from eight sittings of the relevant House without permission, in writing, from the Speaker, and is unable to offer a satisfactory explanation for the absence to the relevant committee;

(c) if the member is otherwise removed from office under this Constitution or legislation enacted under Article 80;

(d) if the member resigns from Parliament in writing to the Speaker;

(e) if, having been elected to Parliament—

(i) as a member of a political party, the member resigns from that party or is deemed to have resigned from the party as determined in accordance with the legislation contemplated in clause (2); or

(ii) as an independent candidate, the member joins a political party;

(f) at the end of the term of the relevant House; or

(g)if the member becomes disqualified for election to Parliament under Article 99 (2) (d) to (h).

(3) Parliament shall enact legislation providing for the circumstances under which a member of a political party shall be deemed, for the purposes of clause (1) (e), to have resigned from the party.

Article 130 of the Constitution which it is proposed to amend—

130. The National Executive

(1) The national executive of the Republic comprises the President, the Deputy President and the rest of the Cabinet.

(2) The composition of the national executive shall reflect the regional and ethnic diversity of the people of Kenya.

Article 131 of the Constitution which it is proposed to amend—

131. Authority of the President

(1) The President—

(a) is the Head of State and Government;

(b) exercises the executive authority of the Republic, with the assistance of the Deputy President and Cabinet Secretaries;

(c)is the Commander-in-Chief of the Kenya Defence Forces;

(d) is the chairperson of the National Security Council; and

(e)is a symbol of national unity.

(2) The President shall—

(a)respect, uphold and safeguard this Constitution;

(b) safeguard the sovereignty of the Republic;

(c)promote and enhance the unity of the nation;

(d) promote respect for the diversity of the people and communities of Kenya; and

(e)ensure the protection of human rights and fundamental freedoms and the rule of law.

(3) The President shall not hold any other State or public office.

Article 132 of the Constitution which it is proposed to amend—

132. Functions of the President

(1) The President shall—

(a)address the opening of each newly elected Parliament;

(b) address a special sitting of Parliament once every year and may address Parliament at any other time; and

(c)once every year—

(i) report, in an address to the nation, on all the measures taken and the progress achieved in the realisation of the national values, referred to in Article 10;

(ii) publish in the Gazette the details of the measures and progress under sub-paragraph (i); and

(iii) submit a report for debate to the National Assembly on the progress made in fulfilling the international obligations of the Republic.

(2) The President shall nominate and, with the approval of the National Assembly, appoint, and may dismiss—

(a) the Cabinet Secretaries, in accordance with Article 152;

(b) the Attorney-General, in accordance with Article 156;

(c) the Secretary to the Cabinet in accordance with Article 154;

(d) Principal Secretaries in accordance with Article 155;

(e) high commissioners, ambassadors and diplomatic and consular representatives; and

(f) in accordance with this Constitution, any other State or public officer whom this Constitution requires or empowers the President to appoint or dismiss.

(3) The President shall—

(a) chair Cabinet meetings;

(b) direct and co-ordinate the functions of ministries and government departments; and

(c)by a decision published in the Gazette, assign responsibility for the implementation and administration of any Act of Parliament to a Cabinet Secretary, to the extent not inconsistent with any Act of Parliament.

(4) The President may—

(a)perform any other executive function provided for in this Constitution or in national legislation and, except as otherwise provided for in this Constitution, may establish an office in the public service in accordance with the recommendation of the Public Service Commission;

(b) receive foreign diplomatic and consular representatives;

(c)confer honours in the name of the people and the Republic;

(d) subject to Article 58, declare a state of emergency; and\

(e)with the approval of Parliament, declare war.

(5) The President shall ensure that the international obligations of the Republic are fulfilled through the actions of the relevant Cabinet Secretaries.

Article 136 of the Constitution which it is proposed to amend—

***136.* Election of the President**

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(1) The President shall be elected by registered voters in a national election conducted in accordance with this Constitution and any Act of Parliament regulating presidential elections.

(2) An election of the President shall be held—

(a)on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year; or

(b) in the circumstances contemplated in Article 146.

Article 137 of the Constitution which it is proposed to amend—

137. Qualifications and disqualifications for election as President

(1) A person qualifies for nomination as a presidential candidate if the person—

(a)is a citizen by birth;

(b) is qualified to stand for election as a member of Parliament;

(c)is nominated by a political party, or is an independent candidate; and

(d) is nominated by not fewer than two thousand voters from each of a majority of the counties.

(2) A person is not qualified for nomination as a presidential candidate if the person—

(a) owes allegiance to a foreign state; or

(b) is a public officer, or is acting in any State or other public office.

(3) Clause (2)(b) shall not apply to—

(a) the President;

(b) the Deputy President; or

(c)a member of Parliament.

Article 138 of the Constitution which it is proposed to amend—

138. Procedure at presidential election

(1) If only one candidate for President is nominated, that candidate shall be declared elected.

(2) If two or more candidates for President are nominated, an election shall be held in each constituency.

(3) In a presidential election—

(a)all persons registered as voters for the purposes of parliamentary elections are entitled to vote;

(b) the poll shall be taken by secret ballot on the day specified in Article 101 (1) at the time, in the places and in the manner prescribed under an Act of Parliament; and

(c) after counting the votes in the polling stations, the Independent Electoral and Boundaries Commission shall tally and verify the count and declare the result.

(4)A candidate shall be declared elected as President if the candidate receives—

(a)more than half of all the votes cast in the election; and

(b)at least twenty-five per cent of the votes cast in each of more than half of the counties.

(5)If no candidate is elected, a fresh election shall be held within thirty days after the previous election and in that fresh election the only candidates shall be—

(a)the candidate, or the candidates, who received the greatest number of votes; and

(b)the candidate, or the candidates, who received the second greatest number of votes.

(6)If more than one candidate receives the greatest number of votes, clause (5)(b) shall not apply and the only candidates in the fresh election shall be those contemplated in clause (5)(a).

(7)The candidate who receives the most votes in the fresh election shall be declared elected as President.

(8)A presidential election shall be cancelled and a new election held if—

(a)no person has been nominated as a candidate before the expiry of the period set for the delivery of nominations;

(b) a candidate for election as President or Deputy President dies on or before the scheduled election date; or

(c)a candidate who would have been entitled to be declared elected as President, dies before being declared elected as President.

(9) A new presidential election under clause (8) shall be held within sixty days after the date set for the previous presidential election.

(10) Within seven days after the presidential election, the chairperson of the Independent Electoral and Boundaries Commission shall—

(a)declare the result of the election; and

(b) deliver a written notification of the result to the Chief Justice and the incumbent President.

Article 140 of the Constitution which it is proposed to amend—

140. Questions as to validity of presidential election

(1) A person may file a petition in the Supreme Court to challenge the election of the President-elect within seven days after the date of the declaration of the results of the presidential election.

(2) Within fourteen days after the filing of a petition under clause (1), the Supreme Court shall hear and determine the petition and its decision shall be final.

(3) If the Supreme Court determines the election of the President-elect to be invalid, a fresh election shall be held within sixty days after the determination.

Article 152 of the Constitution which it is proposed to be amended—

152. Cabinet

(1) The Cabinet consists of—

(a) the President;

(b) the Deputy President;

(c)the Attorney-General; and

(d) not fewer than fourteen and not more than twenty-two Cabinet Secretaries.

(2) The President shall nominate and, with the approval of the National Assembly, appoint Cabinet Secretaries.

(3) A Cabinet Secretary shall not be a Member of Parliament.

(4) Each person appointed as a Cabinet Secretary—

(a)assumes office by swearing or affirming faithfulness to the people and the Republic of Kenya and obedience to this Constitution, before the President and in accordance with the Third Schedule; and

(b) may resign by delivering a written statement of resignation to the President.

(5) The President—

(a)may re-assign a Cabinet Secretary;

(b) may dismiss a Cabinet Secretary; and

(c)shall dismiss a Cabinet Secretary if required to do so by a resolution adopted under clauses (6) to (10).

(6) A member of the National Assembly, supported by at least one-quarter of all the members of the Assembly, may propose a motion requiring the President to dismiss a Cabinet Secretary—

(a)on the ground of a gross violation of a provision of this Constitution or of any other law;

(b) where there are serious reasons for believing that the Cabinet Secretary has committed a crime under national or international law; or

(c) for gross misconduct.

(7) If a motion under clause (6) is supported by at least one-third of the members of the National Assembly—

(a)the Assembly shall appoint a select committee comprising eleven of its members to investigate the matter; and

(b) the select committee shall, within ten days, report to the Assembly whether it finds the allegations against the Cabinet Secretary to be substantiated.

(8) The Cabinet Secretary has the right to appear and be represented before the select committee during its investigations.

(9) If the select committee reports that it finds the allegations—

(a)unsubstantiated, no further proceedings shall be taken; or

(b) substantiated, the National Assembly shall—

(i) afford the Cabinet Secretary an opportunity to be heard; and

(ii) vote whether to approve the resolution requiring the Cabinet Secretary to be dismissed.

(10) If a resolution under clause (9) (b) (ii) requiring the President to dismiss a Cabinet Secretary is supported by a majority of the members of the National Assembly—

(a) the Speaker shall promptly deliver the resolution to the President; and

(b) the President shall dismiss the Cabinet Secretary.

Article 162 of the Constitution which it is proposed to be amended—

162.System of courts

(1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).

(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

(a)employment and labour relations; and

(b) the environment and the use and occupation of, and title to, land.

(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

(4) The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.

Article 165 of the Constitution which it is proposed to be amended—

165. High Court

(1) There is established the High Court, which—

(a)shall consist of the number of judges prescribed by an Act of Parliament; and

(b) shall be organised and administered in the manner prescribed by an Act of Parliament.

(2) There shall be a Principal Judge of the High Court, who shall be elected by the judges of the High Court from among themselves.

(3) Subject to clause (5), the High Court shall have—

(a)unlimited original jurisdiction in criminal and civil matters;

(b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;

(c)jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;

(d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—

(i) the question whether any law is inconsistent with or in contravention of this Constitution;

(ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;

(iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and

(iv) a question relating to conflict of laws under Article 191; and

(e)any other jurisdiction, original or appellate, conferred on it by legislation.

(4) Any matter certified by the court as raising a substantial question of law under clause (3) (b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.

(5) The High Court shall not have jurisdiction in respect of matters—

(a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or

(b) falling within the jurisdiction of the courts contemplated in Article 162 (2).

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

Article 169 of the Constitution which it is proposed to be amended—

169. Subordinate courts

(1) The subordinate courts are—

(a)the Magistrates courts;

(b) the Kadhis' courts;

(c)the Courts Martial; and

(d) any other court or local tribunal as may be established by an Act of Parliament, other than the courts established as required by Article 162 (2).

(2) Parliament shall enact legislation conferring jurisdiction, functions and powers on the courts established under clause (1).

Article 177 of the Constitution which it is proposed to be amended—

177. Membership of county assembly

(1) A county assembly consists of—

(a)members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year;

(b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;

(c)the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and

(d) the Speaker, who is an ex officio member.

(2) The members contemplated in clause (1) (b) and (c) shall, in each case, be nominated by political parties in proportion to the seats received in that election in that county by each political party under paragraph (a) in accordance with Article 90.

(3) The filling of special seats under clause (1) (b) shall be determined after declaration of elected members from each ward.

(4) A county assembly is elected for a term of five years.

Article 180 of the Constitution which it is proposed to be amended—

180. Election of county governor and deputy county governor

(1) The county governor shall be directly elected by the voters registered in the county, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year.

(2) To be eligible for election as county governor, a person must be eligible for election as a member of the county assembly.

(3) If only one candidate for county governor is nominated, that candidate shall be declared elected.

(4) If two or more candidates are nominated, an election shall be held in the county and the candidate who receives the greatest number of votes shall be declared elected.

(5) Each candidate for election as county governor shall nominate a person who is qualified for nomination for election as county governor as a candidate for deputy governor.

(6) The Independent Electoral and Boundaries Commission shall not conduct a separate election for the deputy governor but shall declare the candidate nominated by the person who is elected county governor to have been elected as the deputy governor.

(7) A person shall not hold office—

(a)as a county governor for more than two terms; or

(b) as a deputy county governor for more than two terms.

(8) For the purposes of clause (7), a person who has assumed the office of county governor shall be deemed to have served a full term, subject only to Article 182 (3) (b).

Article 181 of the Constitution which it is proposed to be amended—

181. Removal of a county governor

(1) A county governor may be removed from office on any of the following grounds—

(a) gross violation of this Constitution or any other law;

(b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;

(c)abuse of office or gross misconduct; or

(d) physical or mental incapacity to perform the functions of office of county governor.

(2) Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds specified in clause (1).

Article 194 of the Constitution which it is proposed to be amended—

194. Vacation of office of member of county assembly

(1) The office of a member of a county assembly becomes vacant—

(a)if the member dies;

(b) if the member is absent from eight sittings of the assembly without permission, in writing, of the speaker of the assembly, and is unable to offer satisfactory explanation for the absence;

(c)if the member is removed from office under this Constitution or legislation enacted under Article 80;

(d) if the member resigns in writing addressed to the speaker of the assembly;

(e)if, having been elected to the assembly—

(i) as a member of a political party, the member resigns from the party, or is deemed to have resigned from the party as determined in accordance with the legislation contemplated in clause (2); or

(ii)as an independent candidate, the member joins a political party;

(f) at the end of the term of the assembly; or

(g) if the member becomes disqualified for election on grounds specified in Article 193 (2).

(2) Parliament shall enact legislation providing for the circumstances under which a member of a political party shall be deemed, for the purposes of clause (1)(e), to have resigned from the party.

Article 203 of the Constitution which it is proposed to amend—

203. Equitable share and other financial laws

(1) The following criteria shall be taken into account in determining the equitable shares provided for under Article 202 and in all national legislation concerning county government enacted in terms of this Chapter—

(a)the national interest;

(b) any provision that must be made in respect of the public debt and other national obligations;

(c)the needs of the national government, determined by objective criteria;

(d) the need to ensure that county governments are able to perform the functions allocated to them;

(e)the fiscal capacity and efficiency of county governments;

(f) developmental and other needs of counties;

(g) economic disparities within and among counties and the need to remedy them;

(h) the need for affirmative action in respect of disadvantaged areas and groups;

(i) the need for economic optimisation of each county and to provide incentives for each county to optimise its capacity to raise revenue;

(j) the desirability of stable and predictable allocations of revenue; and

(k) the need for flexibility in responding to emergencies and other temporary needs, based on similar objective criteria.

(2) For every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenue collected by the national government.

(3) The amount referred to in clause (2) shall be calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

Article 240 of the Constitution which it is proposed to amend—

240. Establishment of the National Security Council

(1) There is established a National Security Council.

(2) The Council consists of—

(a)the President;

(b) the Deputy President;

(c)the Cabinet Secretary responsible for defence;

(d) the Cabinet Secretary responsible for foreign affairs;

(e)the Cabinet Secretary responsible for internal security;

(f) the Attorney-General;

(g) the Chief of Kenya Defence Forces;

(h) the Director-General of the National Intelligence Service; and

(i) the Inspector-General of the National Police Service.

(3) The Council shall exercise supervisory control over national security organs and perform any other functions prescribed by national legislation.

(4) The President shall preside at meetings of the Council.

(5) The Council shall appoint its secretary.

(6) The Council shall—

(a)integrate the domestic, foreign and military policies relating to national security in order to enable the national security organs to co-operate and function effectively; and

(b) assess and appraise the objectives, commitments and risks to the Republic in respect of actual and potential national security capabilities.

(7) The Council shall report annually to Parliament on the state of the security of Kenya.

(8) The Council may, with the approval of Parliament—

(a)deploy national forces outside Kenya for—

(i) regional or international peace support operations; or

(ii) other support operations; and

(b) approve the deployment of foreign forces in Kenya.

Article 260 of the Constitution which it is proposed to amend—

260. **Interpretation**

In this Constitution, unless the context requires otherwise—

"adult" means an individual who has attained the age of eighteen years;

"affirmative action" includes any measure designed to overcome or ameliorate an inequity or the systemic denial or infringement of a right or fundamental freedom;

"child" means an individual who has not attained the age of eighteen years;

"contravene" includes fail to comply with;

"county legislation" means a law made by a county government or under authority conferred by a county Assembly;

"disability" includes any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day-to-day activities;

"document" includes—

(a) any publication, or any matter written, expressed, or inscribed on any substance by means of letters, figures or marks, or by more than one of those means, that is intended to be used or may be used for the purpose of recording that matter; and

(b) electronic files;

"effective date" means the date that this Constitution came into force;

"fail" includes refuse;

"financial year" means the period of twelve months ending on the thirtieth day of June or other day prescribed by national legislation, but the initial financial year of any entity is the period of time from its coming into existence until the immediately following thirtieth day of June, or other day prescribed by national legislation;

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

"guarantee" means any absolute or conditional promise, commitment or undertaking by the national government to partially or completely re-pay any loan to a county government or any person;

"judicial officer" means a registrar, deputy registrar, magistrate, Kadhi or the presiding officer of a court established under Article 169(1)(d);

"land" includes—

(a) the surface of the earth and the subsurface rock;

(b) any body of water on or under the surface;

(c) marine waters in the territorial sea and exclusive economic zone;

(d) natural resources completely contained on or under the surface; and

(e) the air space above the surface;

"legislation" includes—

(a) an Act of Parliament, or a law made under authority conferred by an Act of Parliament; or

(b) a law made by an assembly of a county government, or under authority conferred by such a law;

"loan" includes any form of borrowing, lending or deferred payment in respect of which money from a public fund may be used, or is required to be used, for payment or repayment;

"marginalised community" means—

(a) a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;

(b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;

(c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or

(d) pastoral persons and communities, whether they are—

(i) nomadic; or

(ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;

"marginalised group" means a group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4);

"national legislation" means an Act of Parliament, or a law made under authority conferred by an Act of Parliament;

"natural resources" means the physical non-human factors and components, whether renewable or non-renewable, including—

(a) sunlight;

(b) surface and groundwater;

(c) forests, biodiversity and genetic resources; and

(d) rocks, minerals, fossil fuels and other sources of energy;

"older member of society" means a person who has attained the age of sixty years;

"person" includes a company, association or other body of persons whether incorporated or unincorporated;

"political party" means an association contemplated in Part 3 of Chapter Seven;

"property" includes any vested or contingent right to, or interest in or arising from—

(a) land, or permanent fixtures on, or improvements to, land;

(b) goods or personal property;

(c) intellectual property; or

(d) money, choses in action or negotiable instruments;

"public officer" means—

(a) any State officer; or

(b) any person, other that a State Officer, who holds a public office;

"public office" means an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable

directly from the Consolidated Fund or directly out of money provided by Parliament;

"public service" means the collectivity of all individuals, other than State officers, performing a function within a State organ;

"Republic" means the Republic of Kenya;

"State", when used as a noun, means the collectivity of offices, organs and other entities comprising the government of the Republic under this Constitution;

"State office" means any of the following offices—

(a) President;

(b) Deputy President;

(c) Cabinet Secretary;

(d) Member of Parliament;

(e) Judges and Magistrates;

(f) member of a commission to which Chapter Fifteen applies;

(g) holder of an independent office to which Chapter Fifteen applies;

(h) member of a county assembly, governor or deputy governor of a county, or other member of the executive committee of a county government;

(i) Attorney-General;

(j) Director of Public Prosecutions;

(k) Secretary to the Cabinet;

(l) Principal Secretary;

(m) Chief of the Kenya Defence Forces;

(n) commander of a service of the Kenya Defence Forces;

(o) Director-General of the National Intelligence Service;

(p) Inspector-General, and the Deputy Inspectors-General, of the National Police Service; or

(q) an office established and designated as a State office by national legislation;

"State officer" means a person holding a State office;

"State organ" means a commission, office, agency or other body established under this Constitution;

"writing" includes printing, photography, lithography, typewriting, Braille, and any other means of representing or reproducing words in a visible form; and

"youth" means the collectivity of all individuals in the Republic who—

(a) have attained the age of eighteen years; but

(b) have not attained the age of thirty-five years.

Annexure 2b

Proposed Leader of Opposition Bill, 2024

Report of the Departmental Committee on Justice and Legal Affairs on Consideration of the Report of the National Dialogue Committee (NADCO) and the Report of the Multi-Sectoral Working Group on the Realization of the Two-Thirds Gender Principle

THE LEADER OF OPPOSITION BILL,

2023

THE LEADER OF THE OPPOSITION BILL, 2023

ARRANGEMENT OF CLAUSES

Clauses

1—Short title

2—Interpretation

3—Functions of the Leader of the Opposition.

4—Appointment, swearing in and removal of the Leader of the Opposition.

5—Facilitation of the Office of the Leader of the Opposition.

THE LEADER OF THE OPPOSITION BILL, 2023

A Bill for

AN ACT of Parliament to provide for the functions of the office of the Leader of the Opposition, procedure for appointment and tenure of the Leader of the Opposition; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Leader of the Opposition Act, 2023.

Interpretation

2. In this Act, unless the context otherwise requires—

"Deputy Leader of the Opposition" means the person who deputizes the Leader of the Opposition.

"Leader of the Opposition" means the person who is—

(a) the leader of the party or coalition of parties which garnered the second greatest number of votes in the immediately preceding presidential election; or

(b) the person designated to hold that office in accordance with a resolution of a party or coalition agreement.

"Parliament" means the National Assembly and the Senate.

Functions of the Leader of the Opposition.

3. (1) The Leader of the Opposition shall be responsible for—

(a) representing the interests of the opposition;

(b) providing an alternative policy agenda and constructive criticism of government policies;

(c) promoting transparency, accountability and good governance in public affairs;

(d) fostering cooperation and constructive engagement between the government and opposition in the pursuit of national interests;

(e) participating in state ceremonial functions and international parliamentary events on behalf of the Opposition; and

(f) promoting public awareness and understanding of the role of opposition in a democratic state.

(3)The two Deputy Leaders of the Opposition shall be the principal assistants to the Leader of the Opposition and shall deputize for the Leader of the Opposition in the execution of the functions of the Leader of the Opposition.

(4) The two Deputy Leaders of the Opposition shall perform the functions conferred by this Act and any other functions as the Leader of the Opposition may assign.

Appointment, swearing in and removal of the Leader of the Opposition.

4. (1) Within seven days of the swearing-in of the President after a general election, the Chief Justice shall, in accordance with Article 92A of the Constitution, swear in the Leader of the Opposition, as determined by the Independent Electoral and Boundaries Commission.

(2) The Chief Justice, or in the absence of the Chief Justice the Deputy Chief Justice, shall administer the oath of allegiance and the oath of office to the Leader of the Opposition, as provided for in the Schedule, affirming commitment to upholding the Constitution and serving the interests of the nation.

(3) In the event that the designated Leader of the Opposition, as determined by the Independent Electoral and Boundaries Commission, refuses or is unable to take the oath of office within the specified seven-day period, the Chief Justice shall proceed to swear in to office the person designated to hold that office in accordance with a resolution of a party or coalition agreement.

(4) The Leader of the Opposition shall assume the functions and responsibilities of the office upon the completion of the swearing-in ceremony.

(5) The Leader of the Opposition shall hold office until the next General Elections, at which time a new Leader of the Opposition shall be appointed following the same process as set out in subsection (1).

(6) The Leader of the Opposition may be removed from office —

(a) by a resolution of the party or coalition of parties which garnered the second greatest number of votes in the immediately preceding presidential election;
(b) if the person is sentenced for a term of imprisonment of at least six months and has exhausted all appeal or review relief available in relation to that case;
(c) if the person, is found in accordance with any law, to have misused or abused the office; or
(d) if the person is unable to perform the functions of the

(7) Upon the removal of the Leader of Opposition under subsection (6), the Chief Justice shall forthwith swear in to office the person designated to hold that office in accordance with a resolution of a party or coalition agreement.

(8) The provisions of this section shall apply with the necessary modifications, to a Deputy Leader of the Opposition.

Facilitation of the Office of the Leader of the Opposition.

5. (1) The remuneration and benefits payable to the Leader of the Opposition and the two Deputy Leaders of the Opposition shall be a charge on the Consolidated Fund.

(2) The Office of the Leader of the Opposition shall have access to necessary facilities, resources and staff required for the effective discharge of the functions under this Act.

SCHEDULE *(s.4)*

OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR THE LEADER OF THE OPPOSITION

I, ..., do swear/ solemnly affirm that I will always truly and diligently serve the people and the Republic of Kenya in the office of the Leader of the Opposition of the Republic of Kenya; that I will bear true faith and allegiance to the People and the Republic of Kenya; that I will diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I will obey, respect, uphold, preserve, protect and defend this Constitution of the Republic of Kenya; and that I will faithfully and conscientiously discharge the duties of the Leader of the Opposition (In the case of an oath— So help me God.)

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to provide for the functions of the office of the Leader of the Opposition, procedure for appointment and tenure of the Leader of the Opposition. The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 of the Bill sets out the short title of the Bill.

Clause 2 of the Bill provides for the definition of terms.

Clause 3 of the Bill defines the functions of the Leader of the Opposition which shall include representing the interests of the Opposition and providing an alternative policy agenda and constructive criticism of government policies. The clause also provides for the functions of the Deputy Leaders of the Opposition who shall be the principal assistants to the Leader of Opposition and shall deputize for the Leader of the Opposition in the execution of the functions of the Leader of the Opposition's functions.

Clause 4 of the Bill provides for the procedure of appointment, swearing in and removal of the Leader of the Opposition. The procedures shall apply with the necessary modifications to the Deputy Leader of the Opposition.

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

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

Statement that the Bill does not concern County Governments.

The Bill does not concern County Governments in terms of Article 110 (1)(a) of the Constitution and it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may not occasion additional expenditure of public funds.

Dated the ....., 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

Annexure 2c

Proposed National Government Coordination (Amendment) Bill, 2024

Report of the Departmental Committee on Justice and Legal Affairs on Consideration of the Report of the National Dialogue Committee (NADCO) and the Report of the Multi-Sectoral Working Group on the Realization of the Two-Thirds Gender Principle

THE NATIONAL GOVERNMENT CO-ORDINATION (AMENDMENT) BILL, 2023

THE NATIONAL GOVERNMENT CO-ORDINATION (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the National Government Co-ordination Act

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the National Government Co-ordination (Amendment) Act, 2023.

Insertion of a new section to No. 1 of 2013

2. The National Government Co-ordination Act, 2013 is amended by inserting the following new section immediately after section 8 —

Office of the Prime Minister.

8A. (1) Pursuant to Article 152 of the Constitution, the Prime Minister shall be an integral part of the national government coordination framework.

(2) The Prime Minister—

(a) shall assist the President and the Deputy President in the coordination and supervision of Government Ministries and State Departments;

(b) oversee the implementation of National Government policies, programmes, and projects and be responsible for the technical monitoring and evaluation of Government policies, programs, and projects;

(c) chair and co-ordinate the National Government's legislative agenda across all ministries and state departments;

(d) coordinate the national government agenda together with the Office of the President, the Cabinet, and the Cabinet Office; and

(e) perform any other function as may be assigned by the President.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend the National Government Coordination Act, 2013 to include the Office of the Prime Minister as an integral part of the national government coordination framework.The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 sets out the short title of the Bill.

Clause 2 the Bill seeks to introduce a new section 8A to the Act to provide the functions of the Prime Minister which shall be to assist the President and the Deputy President in the coordination and supervision of Government Ministries and State Departments. Further, the Bill provides that the office of the Prime Minister shall be mandated to perform the key function of overseeing the implementation of National Government policies, programmes, and projects. The Bill further provides that the Prime Minister shall be responsible for the technical monitoring and evaluation of Government policies, programs, and projects and shall chair and co-ordinate the National Government's legislative agenda.

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

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

Statement that the Bill does not concern County Governments.

The Bill does not concern County Governments in terms of Article 110 (1)(a) of the Constitution and it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may not occasion additional expenditure of public funds.

Dated the....., 2023.

KIMANI ICHUNG'WAH, **OPIYO WANDAYI,**

Annexure **3a**

MSWG Proposed Constitution of Kenya (Amendment) Bill, 2024

with their Report and Speaker's communication

Report of the Departmental Committee on Justice and Legal Affairs on Consideration of the Report of the National Dialogue Committee (NADCO) and the Report of the Multi-Sectoral Working Group on the Realization of the Two-Thirds Gender Principle

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2024

A Bill for

An Act of Parliament to amend the Constitution of Kenya, 2010 by Parliamentary initiative pursuant to Article 256 of the Constitution.

ENACTED by the Parliament of Kenya as follows—

Short title

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2024.

Amendment of Article 90 of the Constitution

2. Article 90 of the Constitution is amended by—

(a) in clause (1), by deleting the expression "Articles 97(1)(c) and 98(1)(b), (c) and (d)" and substituting therefor the expression "Articles 97(1)(c) and (1A) and 98(1)(b), (c), (d) and (1A) ;

(b) in clause (2) by inserting the following new paragraphs immediately after paragraph (c)—

"(d) members of a political party are democratically involved in the generation of the party list through a fair and competitive process as set out in the respective party constitution and nomination rules;

(e) each party list reflects the representation of the marginalised groups set out in Article 100 to the greatest extent possible taking into account the nature of the party list;

(c) inserting the following new clause immediately after clause (3)—

"(4) A person elected under clause (1) for a seat shall not hold such office for more than two terms in one elective body.

Amendment of Article 97 of the Constitution

3. Article 97 of the Constitution is amended by inserting the following new clauses immediately after clause (1))—

(1A) In the event that the membership of the National Assembly under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, there shall be nominated additional number of special seat members necessary to ensure that no more than two-thirds of the membership of the House are of the same gender.

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

Amendment of Article 98 of the Constitution

4. Article 98 of the Constitution is amended by inserting the following new clauses immediately after clause (I))—

(1A) In the event that the membership of the Senate under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, there shall be nominated additional number of special seat members necessary to ensure that no more than two-thirds of the membership of the House are of the same gender.

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

Insertion of Article 98A

5. The Constitution is amended by inserting the following new Article immediately after Article 98—

98A. Transitional Provision

(1) For the purposes of.ensuring that the current Parliament conforms to the requirements of Articles 27 (8) and 81(b), the Independent Electoral and Boundaries Commission shall—

(a) within thirty days after coming into force of this Act, publish a notice in the gazette—

(i) requiring parliamentary political parties to submit fresh party lists for the purposes of nominating additional special seat members to ensure that no more than two-thirds of the members of the National Assembly and the Senate are of the same gender;

(ii) specifying the day upon which political parties shall submit the party lists in accordance with Article 90 ;and

(iii) specifying the day for the nomination of candidates for the parliamentary election;

(b) within thirty days after the receipt of party lists, designate, from each qualifying list, the party representatives on the basis of proportional representation in accordance with Article 90.

(2) The procedures for handling nominations for party lists during a general elections under the law relating to elections shall apply with necessary modifications to nominations under this Article.

(3) For the purposes of Article 90(4), a person elected under this Article shall be deemed to have served a full term.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Constitution of Kenya through Parliamentary initiative by proposing amendments which do not constitute matters set out under Article 255(1) requiring approval through a referendum. The amendments relate to:

(a) Amending Article 90 to accommodate the proposals to amend Articles 97 and 98 accordingly;

(b) Amending Article 97 to provide for a formula to nominate additional special seat members of the National Assembly if, after declaration of results following a national election, the membership of the National Assembly does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender;

(c) Amending Article 98 to provide for a formula to nominate additional special seat members of the Senate if, after declaration of results following a national election, the membership of the Senate does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender;and

(d) Inserting a transitional Article 98A to enable the current Parliament to conform with the requirements of Article 81(b).

The structure of the Bill is as follows:

Clause 1 provides for the title of the Bill.

Clause 2 proposes to amend Article 90 to require that the election for the special seats to be added in the National Assembly and Senate shall be on the basis of proportional representation by use of party lists.

Clause 3 proposes to amend Article 97 to provide the number of special seat members necessary to ensure that no more than two-thirds of the membership of the National Assembly are of the same gender. The amendment is intended to take effect only in the event that the membership of the National Assembly does not conform to the constitutional principle, that no more than two-thirds of the members of the House are of the same gender.

Clause 4 proposes to amend Article 98 to provide the number of special seat members necessary to ensure that no more than two-thirds of the membership of the Senate are of the same gender The amendment is intended to take effect only in the event that the membership of the Senate does not conform to the constitutional principle, that no more than two-thirds of the members of the House are of the same gender.

Clause 5 proposes to insert a new Article 98A to enable parliamentary political parties to prepare fresh party lists for nomination of special seat members necessary to ensure that no more than two-thirds of the membership of the current Parliament are of the same gender.

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

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

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

Dated the ..... day February, 2024

.....

Chairperson, Justice and Legal Affairs Committee

Article 90 of the Constitution which it is proposed to amend

90. Allocation of party list seats

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

(2) The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for

under clause (1) and shall ensure that—

(e) each political party participating in a general election nominates and submits a list of all the persons who would stand elected if the party were to be entitled to all the seats provided for under clause (1), within the time prescribed by national legislation;

(f) except in the case of the seats provided for under Article 98(1) (b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed; and

(g) except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya.

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

Article 97 of the Constitution which it is proposed to amend

97. Membership of the National Assembly

(1) The National Assembly consists of—

(a) two hundred and ninety members, each elected by the registered voters of single member constituencies;

(b) forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency;

(c) twelve members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers; and

(d) the Speaker, who is an ex officio member.

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

Article 98 of the Constitution which it is proposed to amend

98. Membership of the Senate

(1) The Senate consists of—

(a) forty-seven members each elected by the registered voters of the counties, each county constituting a single member constituency;

(b) sixteen women members who shall be nominated by political parties according to their proportion of members of the Senate elected under clause (a) in accordance with Article 90;

(c) two members, being one man and one woman, representing the youth;

(d) two members, being one man and one woman, representing persons with disabilities; and

(e) the Speaker, who shall be an ex officio member.

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

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

POLITICAL PARTIES (AMENDMENT) BILL, 2024

A Bill for

An Act of Parliament to amend the Political Parties Act and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

Short title

1. This Act may be cited as the Political Parties (Amendment) Act, 2024.

Insertion of a new section to Cap 7D

2. The principal Act is amended by inserting the following new section immediately after section 29—

Women Inclusion and Political Participation Fund

29A. (1) There is established the Women Inclusion and Political Participation Fund which shall be administered by the Registrar separately from the Political Parties Fund.

(2) The sources of the Fund shall include—

(a) such funds not being less than fifteen percent of the Political Parties Fund as may be determined by the National Assembly; and

(b) contributions and donations to the Fund from any other lawful source.

(3) The Fund shall be used for purposes of financing education and training, mentorship and capacity building for women seeking elective positions.

(4) The Registrar may make Regulations for the better carrying into effect the provision of this section.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Political Parties Act, (Cap 7D) to establish the Women's Inclusion and Political Participation Fund as the institutional framework for equipping more women to successfully contest legislative seats in greater numbers. This initiative has the potential to eliminate the necessity for top-up nominations in the future. The Bill seeks to capture the proper spirit of affirmative action and promote the essence of the greater gender inclusion agenda.

It is expected that the framework will equip and promote more women to run for office which, in a few election cycles, will bring the number of women contesting and winning elections to at least the same level as men.

The structure of the Bill is as follows:

Clause 1 provides for the title of the Bill.

Clause 2 seeks to introduce a new section 29A to establish the Women Inclusion and Political Participation Fund to be administered by the Registrar separately from the Political Parties Fund. The Fund shall be used to finance education and training, mentorship and capacity building for women seeking elective positions. It shall comprise of an amount equivalent to not less that fifteen percent of the Political Parties Fund as the National Assembly may determine.

The Bill delegates the power to make Regulations on administration of the Fund to the Registrar of Political Parties and does not limit any fundamental rights and freedoms.

The Bill is a Bill concerning county governments. Itl contains provisions relating to the election of members of a county assemblies.

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

Dated the ..... day February, 2024

.....

Chairperson, Justice and Legal Affairs Committee

ELECTIONS (AMENDMENT) BILL, 2024

A Bill for

An Act of Parliament to amend the Elections Act and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

Short title

1. This Act may be cited as the Elections (Amendment) Act, 2024.

Amendment of section 31 of Cap 7

2. The Elections Act, in this Act referred to as "the principal Act", is amended in section 31 by inserting the following new sub-sections immediately after subsection (2F)—

"(2G) A political party shall ensure that the names of the party candidates submitted to the Commission under this section in a general election for parliamentary and county elections comply with the principle that not more than two-thirds shall be of the same gender.

(2H) The compliance under section 2G shall be determined—

(a) in the case of the Senate, at national level;

(b) in the case of the National Assembly, at county level; and

(c) in the case of county assemblies, at constituency level.

Amendment of section 35A of Cap 7

3. Section 35A of the principal Act is amended by—

(a) inserting the following new subsection immediately after subsection (1)—

"(1A) A party list submitted under subsection (1) (f) shall be accompanied by a certification from the National Council for Persons with Disabilities."

(b) deleting sub-section (3) and substituting therefor the following new sub-section—

"(3) Any dispute arising out of the certification of a party list under sub-section (2) shall be referred to the Commission Dispute Resolution Committee."

Amendment to section 36 of Cap 7

4. Section 36 of the principal Act is amended by—

(c) deleting sub-section (2) and substituting therefor the following new sub-section—

"(2) A party list submitted under section 1 (a), (c) (d) (e) and (f) shall commence with the name of a female candidate and alternate between male and female candidate in the priority in which they are listed."

(d) deleting sub-section (3) and substituting therefor the following new sub-section—

"(3) For purposes of Article 177(1)(c) of the Constitution, the Commission shall draw from the list under sub-section (1)(f) four special seats members in the priority given by the party in the following order—

(a) persons with disabilities
(b) youth;
(c) marginalized groups including ethnic and
(d) minorities."

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Elections Act (Cap 7) to pride that:

a) A political party shall ensure that the names of the party candidates submitted to the Commission under this section in a general election for parliamentary and county elections comply with the principle that not more than two-thirds shall be of the same gender.

i. A party list submitted for persons with disabilities shall be accompanied by a certification from the National Council for Persons with Disabilities.

b) Disputes on arising out of the certification of a party list shall be referred to the Commission Dispute Resolution Committee.

c) A party list for special seats under Section 36 shall commence with the name of a female candidate and alternate between male and female candidate in the priority in which they are listed.

d) The Independent Electoral and Boundaries Commission shall draw from the list four special seats members in the priority given by the party in the following order—

i. persons with disabilities
ii. youth;
iii. marginalized groups including ethnic and minorities.

The structure of the Bill is as follows:

Clause 1: Provides for the citation of the Bill.

Clause 2: Seeks to amend section 31 by inserting a new subsection after subsection (2F) requiring political parties to ensure that the names of the party candidates submitted to the Commission in a general election for parliamentary and county elections comply with the principle that not more than two-thirds shall be of the same gender.

Clause 3:Amends section 35A of the principal Act to provide for certification of persons with disabilities and to refer disputes arising from the certification process to the IEBC Committee in the first instance.

Clause 4: Amends section 36 of the Act to provide that special seat party lists commence with the name of a female candidate and alternate between male and female candidate in the priority in which they are listed. This Clause also provides that the Commission shall draw from the list four special seats members in the priority given persons with disabilities, youth, marginalized groups including ethnic and minorities.

The Bill does not delegate any legislative powers and does not limit any fundamental rights and freedoms.

The Bill is a Bill concerning County governments. It contain provisions relating to the election of members of county assemblies.

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

Dated the ..... day February, 2024

.....

Chairperson, Justice and Legal Affairs Committee

THE NATIONAL ASSEMBLY
Directorate of Legislative & Procedural Services
THE TABLE OFFICE

INTERNAL MEMO

Douglas Katho to facilitate consideration 28/2/24

TO : Director, Departmental Committees

FROM : Head of the Table Office Department

DATE : February 27, 2024

SUBJECT : COMMUNICATION FROM THE CHAIR

The Honourable Speaker made the following Communication in the House on **Tuesday, 27 February 2024**: -

- **Report of the multi-sectoral working group on the realization of the two-thirds gender Principle**

Enclosed herewith, please find the said Communication for onward transmission to the relevant Committee.

WANJIRU NDINDIRI
(Encls).

Copy: Clerk of the National Assembly
Deputy Clerks
Director, Legislative & Procedural Services
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REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT - (THIRD SESSION)
THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

(No. 003 of 2024)

ON

REPORT OF THE MULTI-SECTORAL WORKING GROUP ON THE REALISATION OF THE TWO-THIRDS GENDER PRINCIPLE

1. **Honourable Members**, I wish to notify you that I am in receipt of the Report of the Multi-Sectoral Working Group on the Realisation of the Two-Thirds Gender Principle as submitted by the Cabinet Secretary, Ministry of Gender, Culture, The Arts and Heritage, Hon. Aisha Jumwa. The Report is scheduled for tabling by the Hon. Majority Leader today.

2. As you are aware **Honourable Members,** the Multi-Sectoral Working Group was appointed by H.E The President to develop and recommend a framework for the implementation of the Two-Thirds Gender Principle as provided for in Articles 27(8) and 81(b) of the Constitution.

3. **Honourable Members,** I have had a chance to peruse the Report of the Multi-Sectoral Working Group and I have observed that the Report recommends constitutional amendments to provide for gender **top up** through party lists. This is akin to the practice obtaining in our county assemblies. The Multi-Sectoral Working Group has also recommended that the Elections Act, 2011 be amended to provide for submission of

party lists that comply with the Two-Thirds Gender Principle. Further, the Report recommends that the Political Parties Act, 2011 be amended to provide for establishment of the Women Inclusion and Political Participation Fund for purposes of financing education and training, mentorship and capacity building, including support for women seeking elective positions.

4. Additionally, **Honourable Members,** the Multi-Sectoral Working Group has recommended the enactment of Equality Law and legislation to implement Article 100 of the Constitution. Further, the Working Group has also made a raft of recommendations that require administrative action aimed at achieving gender equality and empowerment of women.

5. **Honourable Members**, it is notable that the Report of the Multi-Sectoral Working Group comes at an opportune time as you will recall that last week, this House adopted the Report of the National Dialogue Committee. On the issue of the Two-Thirds Gender Principle, the Committee recommended that **the Multi-Sectoral Working Group on the Realisation of the Two-Thirds Gender Principle does finalize its work, and recommend a framework of implementation of the Two-Thirds Gender Principle and submit its report to Parliament for consideration**.

6. Further, **Honourable Members,** as you may be aware, last week, the Leadership of both Houses of Parliament also held a meeting with the Cabinet Secretary, Ministry of Gender, Culture, the Arts and Heritage, and the Multi-Sectoral Working Group. During the meeting, the commitment of Parliament towards ensuring the implementation of the Two-Thirds Gender Principle was reiterated and reaffirmed. The

Rt. Hon. Speaker of the Senate and I also met the Cabinet Secretary and the Working Group, during which we advised the Working Group to expeditiously finalize its work and forward its report to Parliament for consideration. Subsequently, the Multi-Sectoral Working Group having concluded on its Report, the ball is now in the court of this House and the Senate to consider the Report.

7. **Honourable Members,** it is on this background that I now wish to bring to the attention of the House the Report together with the annexed legislative instruments. As I stated earlier, the Report is scheduled for tabling by the Leader of Majority Party today. Upon tabling, the Report shall stand committed to the Departmental Committee on Justice and Legal Affairs for consideration and appropriate action, at the earliest available opportunity. Additionally, noting the centrality of this Report towards ensuring the implementation of the Two-Thirds Gender Principle, I advise that the House Business Committee does prioritize the consideration of the Report.

8. The House is accordingly guided.

I thank you!

THE RT. HON. (DR.) MOSES F.M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY
Tuesday, 27th February, 2024

Multi-Sectoral Working Group
on the realisation of the not more than
two thirds gender principle

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THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 27 FEB 2024 TUESDAY
TABLED BY: Hon Naomi Waqo, MP Deputy majority Whip
CLERK-AT-THE-TABLE: Inzofu Mwale

ABRIDGED REPORT OF THE MULTI - SECTORAL WORKING GROUP ON THE REALIZATION OF THE NOT MORE THAN TWO - THIRDS GENDER PRINCIPLE

Presented to

HON. AISHA JUMWA K. KATANA
CABINET SECRETARY
GENDER, CULTURE, THE ARTS & HERITAGE

February, 2024
NAIROBI

Multi-Sectoral Working Group
on the realisation of the not more than
two thirds gender principle

February 22, 2024

Hon. Aisha Jumwa K. Katana
Cabinet Secretary
Ministry of Gender, Culture, the Arts and Heritage
Maktaba Kuu Building, Upper Hill
Nairobi

Dear Madam

RE: LETTER OF TRANSMITTAL

The Multi-Sectoral Working Group (MSWG) on the realisation of the **not more than two-thirds gender principle** was established by your office vide Gazette Notices No. 10848 and No. 11090 published on August 15 and August 25, 2023 respectively.

The MSWG was tasked to develop and recommend a framework for the implementation of **the not more than two-thirds gender principle** as captured in Articles 27(6) and (7) as well as 81(b) of the Constitution of Kenya 2010.

The Terms of Reference for the MSWG were as follows;

i. To review and analyse previous proposals for the implementation of the two-thirds gender principle;
ii. To conduct comparative studies on best practices in other jurisdictions towards the achievement of gender equality;
iii. To engage such experts or institutions as may be necessary to achieve the objectives of the Working Group;
iv. To develop and recommend a framework for the implementation of the **not more than two-thirds gender principle**;
v. To conduct stakeholder engagement and undertake public participation on the proposed framework for the implementation of the **not more than two-thirds gender principle**;
vi. To mobilise resources towards the achievement of the objectives of the Working Group; and
vii. To perform such other function(s) as may be approved by the Cabinet Secretary for the achievement of the objectives of the Working Group.

The Working Group was mandated to complete its work and submit its final report to the Cabinet Secretary within six months from the date of its appointment. The Working Group's term was extended vide Gazette Notice No. 1770 dated February 8, 2024.

In the course of executing its mandate, the MSWG engaged the National Dialogue Committee (NADCO) and submitted preliminary proposals for their consideration since the **not more than two-thirds gender principle** was one of the issues to be addressed. In its final report, NADCO recognised the mandate of the MSWG and recommended the matter for to be addressed comprehensively by the MSWG and submit its report to Parliament for consideration and further action.

As cited in the NADCO report in paragraph 464, which states that 'There was general consensus by the Committee on the need to implement the **not more than two-thirds gender principle** and that the issue should be addressed in collaboration with the Multi-Sectoral Working Group on the Realisation of the Two-Thirds Gender Principle.'

Paragraph 518 also states that 'The Committee recommends that (a) The Multi-Sectoral Working Group on the Realisation of the Two-Thirds Gender Principle under the Ministry of Public Service, Gender and Affirmative Action to finalise its work, and recommend a framework of implementation of two-thirds gender principle and submit its report to Parliament for consideration.'

The MSWG has since fulfilled its mandate and developed a framework for the implementation of the not more than two thirds gender principle. Further, the MSWG has prepared a report detailing the considerations made in arriving at the proposed framework.

The Working Group is honoured to present this report with the proposed legislative instruments to the Cabinet Secretary, Ministry of Gender, Culture, the Arts and Heritage.

We are thankful for entrusting us with this noble assignment.

.....

Anne N. Wang'ombe - Chairperson

.....

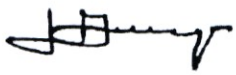
Daisy Amdany – Co-Chairperson

.....

Harriet Chiggai, Advisor, Women Rights

.....

Faith Nziku Kasiva – Member



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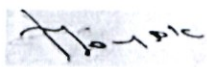
Anne Nderitu - Member



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Tecla Tum - Member



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Angela Wambugu - Member

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Mercy Jelimo – Member



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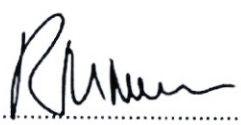
Beatrice Kamau - Member



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Rahab Muiu – Member



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Mitchelle Oyuga - Member

Lucy Mitei - Member

Sarah Muhoya - Member

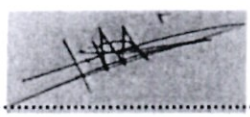
Ruth Makuthu – Member

Beth Michoma - Member

Stellah Chepkemboi Ruttoh - Member

Frankline Mukwanja - Member

Sophia Abdi Noor - Member



Sheikh Ibrahim Lethome Asmani - Member

Al-Haji Hassan Kirua ole Naado - Member



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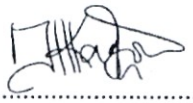
Kennedy Odhiambo Otina - Member



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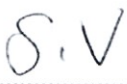
George Kombe Kagohu - Member



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Salim Vayani - Member



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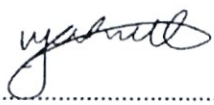
Adams Barasa - Member



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Ibrahim A. Yakub - Member



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Jackline N. Makokha - Joint Secretary



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Richard Miano - Joint Secretary



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Eva Mageto - Joint Secretary

Sylvester Mbithi - Joint Secretary

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Christabel Wekesa - Joint Secretary

Rhoda Misiko - Joint Secretary

WORKING GROUP MEMBERS

The table below shows the names of the members and the institutions represented.

Name	Designation	Institution
Anne N. Wang'ombe	Chairperson of the MSWG	Principal Secretary, State Department for Gender, and Affirmative Action
Daisy Amdany	Co-Chairperson	Community Advocacy and Awareness (CRAWN) Trust
Faith Nziku Kasiva	Member	Ministry of Gender, Culture, the Arts and Heritage
Anne Nderitu, CBS	Member	Office of the Registrar of Political Parties
Harriet Chiggai	Member	Advisor, Women Rights
Hon. Dr. Tecla Tum	Member	Executive Office of the President
Angela Wambugu	Member	United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)
Mercy Jelimo	Member	Center for Rights Education and Awareness (CREAW) Kenya
Beatrice Kamau	Member	Women in Leadership and Decision Group Committee of the Gender Sector Working Group
Rahab Muiu	Member	Maendeleo ya Wanawake Organisation
Mitchelle Oyuga	Member	FIDA Kenya
Lucy Mitei	Member	Kenya Private Sector Alliance (KEPSA)
Sarah Muhoya	Member	Echo Network Africa (ENA)
Ruth Makuthu	Member	Independent Electoral and Boundaries Commission (IEBC)
Beth Michoma	Member	Law Society of Kenya
Dr. Stellah Chepkemboi Ruttoh	Member	Former Country Woman Member to the National Assembly candidate
Frankline Mukwanja	Member	Center for Multiparty Democracy - Kenya
Hon. Sophia Abdi Noor	Member	Former Member of Parliament/National Council for Children Services (NCCS)

Sheikh Ibrahim Lethome Asmani	Member	Jamia Mosque
Al-Hajj Hassan Ole Naado	Member	Supreme Council of Kenya Muslims (SUPKEM)
Kennedy Odhiambo Otina	Member	Masculinity Institute
George Kombe Kagohu	Member	Kenya National Association of Social Workers
Salim Vayani	Member	National Muslim Leaders Forum (NAMLEF)
Adams Barasa	Member	Central Organisation of Trade Unions (COTU) – Kenya
Ibraham A. Yakub	Member	Pastoralist Professionals Association
Jackline N. Makokha	Joint Secretary	State Department for Gender and Affirmative Action
Richard Miano	Joint Secretary	Office of the Prime Cabinet Secretary/State Department for Parliamentary Affairs
Eva Mageto	Joint Secretary	Office of the Attorney General
Sylvester Mbithi	Joint Secretary	National Gender and Equality Commission (NGEC)
Christabel Wekesa	Joint Secretary	Kenya Law Reform Commission
Rhoda Misiko	Joint Secretary	State Department for Gender and Affirmative Action

TABLE OF CONTENTS

FOREWORD **Page 3**
ACKNOWLEDGEMENTS **Page 4**

ACRONYMS AND ABBREVIATIONS **Page 5**

CHAPTER ONE: INTRODUCTION **Page 6**
CHAPTER TWO: THE JOURNEY TOWARDS FINDING A FORMULA OF IMPLEMENTING THE NOT MORE **Page 8**

CHAPTER THREE: COMPARATIVE JURISDICTIONS IN AFRICA **Page 15**

CHAPTER FOUR: PUBLIC PARTICIPATION **Page 18**

CHAPTER FIVE: FRAMEWORK FOR THE IMPLEMENTATION OF THE NOT MORE THAN TWO-THIRDS GENDER PRINCIPLE **Page 23**

CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS **Page 70**

FOREWORD

The Multi-Sectoral Working Group (MSWG) on the realisation of the **not more than two-thirds gender principle** was established through Gazette Notices No. 10848 and No. 11090 published on August 15 and August 25, 2023 respectively by the Cabinet Secretary for Gender, Culture the Arts and Heritage, Hon Aisha Jumwa.

The MSWG was mandated to develop a framework to implement the outstanding constitutional requirements on the **not more than two-thirds gender principle** in elective and appointive public institutions. The Working Group comprised of members from State and non-State agencies representing diverse sectors.

The Constitution of Kenya 2010 commits the State to take legislative and other measures, including affirmative action programmes and policies, designed to redress any disadvantage suffered by individuals or groups arising from past discrimination. To effectively implement this constitutional requirement, it is necessary to formulate a comprehensive framework for the implementation of the **not more than two-thirds gender principle**.

The development of the proposed implementation framework was undertaken through a consultative approach that involved participation of a wide range of stakeholders. Further, a rigorous literature review was undertaken and a comparative analysis of gender quotas in other jurisdictions within the African continent conducted.

The MSWG proposes the implementation framework to facilitate the achievement of gender representation in elective and appointive positions. These are categorised into: Legislative proposals, policy interventions and administrative actions to actualise and accelerate the realisation of the **not more than two-thirds gender principle**.

ACKNOWLEDGEMENTS

The Multi-Sectoral Working Group (MSWG) on the realisation of the not more than two-thirds gender principle extends its deepest gratitude to all those who contributed to the successful execution of its mandate.

The MSWG particularly appreciates the Cabinet Secretary for Gender, Culture, the Arts and Heritage, Hon. Aisha Jumwa Katana, whose foresight and commitment to the promotion of gender equality and inclusion paved the way for the establishment of the Working Group. Her trust and support were instrumental in guiding the Group's endeavours.

Our special thanks go to the UN Women Kenya Country Office and Development Partners for their extensive support to the MSWG process. Notable appreciation goes to other partners that supported the process financially, including the Centre for Rights Education and Awareness (CREAW), ECHO Network Africa, Community Advocacy and Awareness Trust (CRAWN), the Federation of Women Lawyers in Kenya (FIDA Kenya), Maendeleo ya Wanawake Organisation (MYWO), the Electoral Law and Governance Institute for Africa (ELGIA) and the Centre for Multiparty Democracy (CMD).

The MSWG further appreciates the valuable technical support from Ms. Winfred Lichuma, the Lead Technical Consultant, Mr. Bjarte Tora of Oslo Centre, Mr. Peter Musyimi, HSC (KLRC), Mr. Mbugua Ng'ang'a and Ms. Saskia Brechnemacher of Carnegie Endowment for International Peace for their contribution.

We also extend our sincere thanks to the institutions and citizens who actively participated in stakeholder engagements and public forums. Their diverse perspectives, constructive feedback and impassioned advocacy were pivotal in shaping the outcomes of this report.

Finally, we acknowledge with deep appreciation the dedication and commitment of the Members and the Secretariat of the Multi-Sectoral Working Group under the able leadership of the Chairperson and Co-Chairperson whose tireless efforts brought this report to fruition.

Special recognition to everyone who continues to play a pivotal role in advancing gender equity, equality, constitutionalism, and the rule of rule.

Chairperson **Co-Chairperson**

ACRONYMS AND ABBREVIATIONS

ACHPR	African Charter on Human and People's Rights
BETA	Bottom-Up Economic Transformation Agenda
CAJ	Commission of Administrative Justice
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CGSWG	County Gender Sector Working Group
COK	Constitution of Kenya
CSOs	Civil Society Organisations
FBO	Faith Based Organisations
FPTP	First-Past the-Post
GBV	Gender-Based Violence
GEWE	Gender Equality and Women Empowerment
GOK	Government of Kenya
GRB	Gender Responsive Budgeting
IEBC	Independent Electoral and Boundaries Commission
KNBS	Kenya National Bureau of Statistics
MCA	Member of County Assembly
MP	Member of Parliament
MSWG	Multi Sectoral Working Group
MTP IV	Medium Term Plan IV
NADCO	National Dialogue Committee
NGEC	National Government Equality Commission
NGO	Non-Governmental Organisation
PR	Proportional Representation
PWD	Person with Disability
SDG5	Sustainable Development Goal 5
SGBV	Sexual and Gender-Based Violence
UN	United Nations
SDGAA	State Department for Gender and Affirmative Action
TORs	Terms of Reference
TWG	Technical Working Group

CHAPTER ONE

INTRODUCTION

The promulgation of the Constitution of Kenya (2010) ushered in a new dispensation for implementation of the **not more than two thirds gender principle** in elective and appointive positions.

Article 10 of the Constitution promotes national values and principles of governance that include equality and non-discrimination, inclusiveness, respect for human rights, equity, and protection of the marginalised and minorities. Gender equality is promoted in various Articles of the Constitution, and it is well stipulated in Chapter Four on the Bill of Rights, which anchors human rights as an integral part of Kenya's democratic State. It is the framework for social, economic, and cultural policies.

Article 27 promotes equal rights for men and women in public and private spheres. Further, the Constitution promotes fundamental freedoms for men and women, preserves their dignity and promotes the right to equal opportunities in political, economic, cultural, and social spheres.

The "**not more than two-thirds gender principle**" — hereinafter referred to as "**the gender principle**" — in the Constitution of Kenya is designed to ensure that neither gender occupies more than two-thirds of seats in elective or appointive positions in public institutions. The rationale behind this principle is to advance gender equality and address historical imbalances in representation. It is also the promotion of the rights of the most vulnerable and marginalised and recognition of women's rights as human rights.

By limiting the dominance of any single gender in decision-making bodies, the principle aims to create a more inclusive and diverse governance structure that reflects the composition of the population. This helps to ensure that the perspectives, experiences and interests of both men and women are considered in the formulation and implementation of laws and policies.

Additionally, promoting gender balance in leadership positions is crucial for achieving sustainable development and social progress. It enables both women and men to contribute their talents, skills and insights to address pressing issues, such as poverty alleviation, political participation, healthcare, education and environmental sustainability.

Overall, the *not more than two-thirds gender principle* is an important step towards advancing gender equality and building a more inclusive society where all individuals have an equal opportunity to participate and thrive.

ESTABLISHMENT OF MSWG

The Multi-Sectoral Working Group (MSWG) on the not more than two-thirds gender principle was established by the Cabinet Secretary for Gender, Culture, the Arts, and Heritage, the Hon Aisha Jumwa, *vide Gazette Notices No. 10848 dated August 15, 2023 and No. 11090 dated August 25, 2023* to develop and recommend a framework for the implementation of the not more than two- thirds gender principle as captured in Articles 27(6) and (7) and 81(b) of the Constitution of Kenya 2010. In addition, the MSWG was tasked with conducting stakeholder engagements, reviewing, and analysing earlier proposals for the implementation of the Gender Principle and soliciting public input on the suggested framework.

Its terms of Reference are outline in the main report.

METHODOLOGY

The MSWG used several approaches and strategies to execute its mandate. This included: Desk literature review, call for and receipt of memoranda, stakeholder engagement, public participation, engagements with technical experts, creation of sub-communities, analysis of submissions, report writing and development of periodic briefs to the Cabinet Secretary.

OPERATIONALISATION OF THE MSWG

To effectively discharge its function and mandate, the MSWG established sub-committees. Each sub-committee had a chairperson and was allocated specific TORs as described below.
These were; Strategy and Planning; Legal; Resource Mobilisation, Advocacy, Lobbying and Civic Education and Communication.

LIMITATIONS

During the period of public participation, some parts of the country were experiencing heavy rains, leading to flooding. The team took a proactive approach in compliance with the disaster risk management policy 2017, to ensure safety of the team members and participants in the affected regions. The Mandera forum was moved to Isiolo while the Kilifi one was moved from Kilifi town and to Malindi.

Despite the challenges and last-minute postponements and changes of venue for some public fora, public participation proceeded well without any exposure to danger or risk due to adverse climate conditions.

CHAPTER TWO

THE JOURNEY TOWARDS FINDING A FORMULA OF IMPLEMENTING THE NOT MORE THAN TWO-THIRDS GENDER PRINCIPLE

INTRODUCTION

The Not More than Two-Thirds Gender Principle has historically remained an elusive agenda in Kenya, having failed on many occasions in Parliament, and this has frustrated efforts to find a legal framework either through constitutional amendments or legislative proposals. The failure is attributable to various factors, including social, economic and political dynamics that have over time since the promulgation of the Constitution of Kenya 2010, impeded the realisation of a formula to give effect to the constitutional provision under Articles 27(6) and (8) as well as 81 (b).

This chapter outlines the historical context, including the many attempts made by various stakeholders to realise the constitutional imperative on the not more than two-thirds gender principle. It concludes with a fresh commitment by the current Government, through the memo by H.E. President Dr. William Ruto to Parliament dated December 9, 2022, to consider new proposals towards realisation of the Gender Principle in Parliament.

THE JOURNEY SO FAR

Since 2011, various Bills have been proposed for adoption in Parliament as part of the journey to realising the Gender Principle. The following section looks at what each of these Bills provided for and the specific reasons why each failed.

The Bills

Since 2011, there have twelve attempts at legislating on the not more than two-thirds gender principle, with most Bills seeking to entrench the principle in the Constitution. The Samuel Chepkong'a Bill sought to make the principle progressive while the Joe Mutambu Bill sought to scrap the principle altogether. The other Bills were;

i) Constitution of Kenya (Amendment) Bill, 2011

The Constitution of Kenya (Amendment) Bill 2011 was introduced to the National Assembly by the Hon. Mutula Kilonzo (now deceased). This Bill was introduced before the first elections under the newly promulgated Constitution.

It proposed to amend Articles 97 and 98 of the Constitution by lifting the provisions of Article 177(1)(b) to give full effect to Articles 27(8) and 81(b), which would have offered a lasting solution on the issue of gender parity in elective positions, more specifically in the National Assembly and Senate.

ii) The Constitution of Kenya (Amendment) Bill, 2014 (Joe Mutambu Bill)

This Bill sought to delete Article 81(b), which provides that the electoral system shall comply with the requirement that not more than two-thirds of the members of elective public bodies shall be of the same gender.

It also sought to reduce the number of constituencies from 290 to 140, do away with the 47 elected county woman representatives in the National Assembly, reduce the number of counties from 47 to 10, do away with the 16 nominative seats reserved for women in the Senate and instead, elect 20 senators, a man and a woman, from each of the proposed 10 counties, thus achieving gender parity in the Senate. It further proposed to remove reserved seats for youth and persons with disabilities in the Senate and introduce two new seats for minority communities. Finally, it sought to reduce the number of members of constitutional commissions from a maximum of nine to three.

The Bill was motivated by the public service wage bill debate. It was withdrawn before it could be debated by the National Assembly.

iii) Constitution of Kenya (Amendment) Bill, 2015 and the Two-Third Gender Rule Laws (Amendment) Bill, 2015

These Bills were introduced simultaneously in the National Assembly on April 30, 2015 by Hon. Samuel Chepkong'a. The Constitution of Kenya (Amendment) Bill, 2015 simply provided for amendment to Article 81(b) by inserting the words *"progressive implementation of legislation to ensure that."*

The amended Article 81(b) would thus have read as follows: *"The electoral system shall comply with the principle of progressive implementation of legislation to ensure that not more than two-thirds of members of elective public bodies shall be of the same gender."*

The Two-Third Gender Rule Laws (Amendment) Bill, 2015 was intended to amend the National Gender and Equality Commission Act, 2011; the Political Parties Act, 2011; the Elections Act, 2011; the Independent Boundaries and Electoral Commission Act, 2011 and the County Governments Act, 2012 by introducing various provisions seeking to promote representation, in Parliament, of special interest groups including women, persons with disabilities, youth, ethnic and other minorities and marginalised communities as envisaged in Article 100 of the Constitution.

The two Bills were not debated in the National Assembly and eventually lapsed upon the expiry of the 11th Parliament.

iv) Constitution of Kenya (Amendment) (No.4) Bill, 2015

Popularly known as **Duale I**, this Bill was published on July 24, 2015 by then Leader of the Majority, Hon. Aden Duale. It was introduced in Parliament following the 2012 Supreme Court Advisory Opinion, which required Parliament to enact legislation for the implementation of the Gender Principle by August 27, 2015. In terms of events that led up to this Bill, the history goes back to 2012, when the then Hon. Attorney General, Prof. Githu Muigai, moved the Supreme Court to render an Advisory Opinion as to whether Parliament should enact legislation giving effect to the Gender Principle before the first elections under the new Constitution, which were scheduled for March 2013.

The Supreme Court opined that the Gender Principle should be achieved progressively, hence Parliament did not have an obligation to enact the law giving effect to the Gender Principle before the 2013 General Elections. However, a deadline of August 27, 2015 was given. Pursuant to Article 261(2), the National Assembly on July 29, 2015 resolved to extend the deadline set by the Supreme Court by one more year to August 27, 2016.

The Duale I Bill proposed the lifting of the provisions of Article 177(1)(b) into Articles 97 and 98 and that a beneficiary of a special nominative seat would only be entitled to a maximum of two terms. It also provided that the affirmative action provisions creating the special seats in the National Assembly, Senate and County Assemblies would lapse 20 years after the first elections following enactment of the Bill.

This Bill was not passed after Parliament failed to raise the two-thirds majority required to pass the proposed constitutional amendment as provided for in Article 256(1) (d).

v) Constitution of Kenya (Amendment) Bill, 2015 (Judith Sijeny Bill)

The Bill was introduced in the Senate on August 21, 2015 by Hon. Senator Judith Sijeny, as a private member's Bill. The main variation between the Bill and the Duale I Bill was that the Sijeny Bill provided that Parliament would review the provisions on special seats after 20 years to determine whether the Gender Principle could be achieved without the special seats. The second variation was that the Sijeny Bill did not propose to amend Article 177 on County Assemblies. The Bill failed due to lack of the required quorum to vote on it.

vi) The Constitution of Kenya (Amendment) (No. 6) Bill, 2015 (Aden Duale II Bill)

Popularly known as the 'Compromise Bill', the Bill contained 'minor' variations from the Duale I on the affirmative action clause lifted from Article 177(1)(b). for the National Assembly, the revised clause read as follows;

"(ca) the number of special seat members necessary to ensure that no more than two-thirds of the members elected under clause (1)(a) are of the same gender;"

For the Senate, the revised clause read thus;

(da) the number of special seat members necessary to ensure that no more than two-thirds of the members elected under clause (1)(a) are of the same gender;"

Despite publication, the Bill was not debated and, therefore, lapsed with the expiry of the 11th Parliament.

vii) The Constitution of Kenya (Amendment) Bill, 2018 (Aden Duale Bill

This Bill was introduced to the National Assembly on February 12, 2018 by Hon. Aden Duale and had similar provisions with the Duale II Bill published on December 2, 2015.

Despite publication, the Bill was not debated and, therefore, lapsed with the expiry of the 12th Parliament.

viii) Constitution of Kenya (Amendment) Bill, 2019 (Gladys Boss Shollei Bill)

This Bill was introduced to the National Assembly on July 4, 2019 by Hon. Gladys Boss Shollei. It proposed to achieve the not more than two thirds gender principle in elective and appointive bodies as well ensure the membership of Parliament reflects the requirement of Article 54(2) of the Constitution that at least five per cent of the members in elective and appointive bodies be persons with disabilities.

Regarding the National Assembly, the Bill sought to amend Article 97 to increase the number of elected women members of the National Assembly from 47 to 136. This would be achieved by designating two adjacent constituencies in each county and three adjacent constituencies with the least number of constituencies in counties with odd number of constituencies. It further sought to delete Article 97(1)(c) and replace it with a provision for nomination of 22 persons with disabilities.

In the County Assemblies, the Bill sought to limit the number of representative wards to 1,450 and provide for the election of one woman for at least every two wards in a county for purposes of gender parity and to remove the provision for post-election gender top-up seats.

Despite publication, the Bill was not debated and lapsed with the expiry of the 12th Parliament.

ix) The Constitution of Kenya (Amendment) Bill, 2019 (Farhiya Ali Haji & Mutula Kilonzo Junior Bill)

This Bill, co-published by Hon Senators Farhiya Ali Haji and Mutula Kilonzo Junior sought to amend the Constitution to give effect to the two-thirds gender principle through the lifting of provisions of Article 177(1)(b) into Articles 97 and 98. It also sought to amend Article 81 by inserting a new clause that the State takes legislative, policy and other measures including the setting of standards to achieve the realization of the principle.

The Bill was not debated in the Senate and lapsed with the expiry of the 12th Parliament.

x) The Constitution of Kenya (Amendment) Bill, 2020 (The Building Bridges Initiative Bill)

The Building Bridges Initiative Bill (BBI Bill) was published by the promoters of the Building Bridges Initiative on November 25, 2020. Regarding the two thirds gender principle, the Bill provided the following;

a) Amendment to Article 82 of the Constitution, mandating Parliament to enact legislation which imposes sanctions on a political party that fails to ensure that its list of nominated candidates complies with the Gender Principle.

b) Amendment to Article 88 to mandate IEBC to ensure that not more than Two Third of the members of a political party are of the same gender.

c) Amendment to Article 89 to increase the number of constituencies from 290 to 366 with aim of promoting equitable representation in the National Assembly and, in tandem, Article 97 was to be amended to increase the number of elected members of the National Assembly from 290 to 366. The amendment to Article 97 also provided for special top-up seats necessary to ensure that the Gender Principle is actualised. Further, the Bill provided that in filling the special top-up seats, first priority in the nomination shall be given to candidates who contested for the constituency seats but were not elected. The provision on top-up seats was capped at 15 years.

d) Amendment to Article 98 so that Senate would comprise of 94 members, with each county represented by a man and a woman elected by the voters. This would have meant that each county would have two senators; a man and a woman, and the gender composition would, therefore, be 50:50.

e) Amendment to Article 90 on allocation of party list seats to align it with the amendments under Articles 97 and 98. The amendment proposed that nomination seats in the National and County Assemblies be allocated on the basis of the total

votes received as opposed to allocation based on the total number of seats won by a political party.

Although the BBI Bill had been passed by a Majority of the Counties, National Assembly and the Senate, it was challenged in the courts — from the High Court to the Supreme Court — and found to be unconstitutional for a number of reasons including that the President could not initiate constitutional amendments/changes through a popular initiative under Article 257. Judges also cited lack of public participation on the Second Schedule of the Bill that provided for 70 additional constituencies.

xi) The Constitution of Kenya (Amendment) Bill, 2023 (Beth Syengo Bill)

This Bill, published by Hon Senator Beth Syengo, on March 29, 2023, was a replica of the Hon Senators Farhiya Ali Haji and Mutula Kilonzo Junior Bill, 2019, except that it provided that a person was only eligible to be nominated once to the National Assembly, Senate and County Assemblies. The Bill is yet to be tabled for debate before the Senate and its mover agreed to await the outcome of the MSWG proposal.

Several Court Decisions have been reached on the subject matter since the promulgation of the Constitution 2010. These are examined in detail in the full report.

THE RENEWED COMMITMENT TO THE GENDER PRINCIPLE

The Kenya Kwanza Manifesto

The Kenya Kwanza Manifesto, also known as 'The Plan' noted that women remain largely excluded from participation and decision-making in governance and political institutions. To address this, the manifesto committed to ensuring the *realization of the two-thirds gender rule in elective and appointive positions in the public sector within 12 months* following election and ensuring that 50 per cent of Cabinet positions are held by women.

The Women Charter

The Kenya Kwanza Alliance further formalised its promise to the women's agenda through the Women's Charter by committing to addressing and championing women and girl rights. Notably, the charter affirmed Kenya Kwanza's commitment to the implementation of the not more than two thirds gender rule within the first three months of the administration and reserve half of its Cabinet positions for women.

The Presidential Memorandum to Parliament

In a memorandum dated December 9, 2022, addressed to the Speakers of Parliament, H.E. President Dr. William Ruto sought Parliament's consideration in addressing several issues, among them the enactment of a framework for implementing the Gender Principle.

A summary of what the President's Memo to Parliament entailed is to be found in the main report.

The Establishment of the MSWG

The Cabinet Secretary for Ministry of Gender, Culture, the Arts and Heritage, Hon. Aisha Jumwa Katana on June 15, 2023 inaugurated the Multi-Sectoral Working Group (MSWG), which was tasked with the role of developing an enabling framework for the implementation of the not more than two thirds gender principle. This was followed by gazettement of the MSWG through the *Kenya Gazette* published on August 15, 2023, for a period of six months and further, an extension for another six months vide Gazette No. 1770 dated February 8, 2024.

The formation of the MSWG preceded the formation of the National Dialogue Committee (NADCO), part of whose mandate was to recommend changes to the Constitution, including one to entrench the Gender Principle.

The tabling of the NADCO report in the National Assembly for debate in February 2024 necessitated the submission of the MSWG report so that the two could be debated in tandem.

CHAPTER THREE

COMPARATIVE JURISDICTIONS IN AFRICA

This chapter presents a comparative analysis of select jurisdictions in Africa to provide evidence-based insights and best practices on gender quotas mechanisms to promote equity in political and electoral processes. In majority of the case studies, African countries have adopted a first-past-the-post (FPTP) electoral system. Kenya has a Mixed Member Proportional Representation system.

Gender quotas have been adopted by countries globally to fast-track inclusion of women in political representation and decision making. Gender quotas break the cycle of male dominance in politics and address underlying biases and norms, thus giving women a fair chance to be visible and participate in public life.

i. Summary of the findings from the analysis

Eleven Sub-Saharan African countries were studied for best practices.
The select countries have used constitutional, legislative and/or voluntary quotas to increase the number of women in Parliament. Uganda and the United Republic of Tanzania, which have similar electoral systems as Kenya, have used constitutional provisions to reserve 30 per cent of seats for women. Tanzania, for instance, has reserved 118 seats for women, while Uganda has 112.
Rwanda, which is leading globally at 61.3 per cent of women in Parliament, combines both constitutional gender quotas with reserved seats. It has the Proportionate Representation (PR) administered in a one-party government system as opposed to Kenya's first-past-the-post system in a multi-party political environment.
Some countries apply sanctions as enforceable mechanisms to guarantee more women seats in Parliament. In Rwanda, the Senate holds accountable a political organisation that violates obligations under Article 10, which is the constitutional provisions reserving mandatory 30 per cent of seats in decision-making bodies to women.

Learning Points for Kenya from the analysis

Electoral gender quotas are the most effective measures to include women in politics as seen from the approaches various countries have used. The Kenya Constitution 2010 provides for constitutional gender quotas in terms of reserved seats (National Assembly and Senate and County Assemblies) and nominations for special categories through nominations for all levels including county governments.

The **not more than two thirds** gender principle is provided for in Article 27(6) and (8) as well as 81(b) of the Constitution. There is clarity in its implementation for county assemblies in terms of Article 177(1) (b) and (c). However, there is no implementation clarity provisions of Articles 97 and 98. Parliament is yet to enact the law envisaged under Article 100.

The search for the implementation of the **not more than two thirds** gender principle has remained elusive since promulgation of the Constitution in 2010. As evidenced by the analysis, there is a *lucuna* in the Constitution, specifically in Articles 97 and 97 that needs to be cured by a constitutional amendment.

Use of voluntary quotas for political parties has failed in Kenya because majority of political parties do not present female candidates especially in their strongholds.

Conclusion

The comparative analysis study demonstrates that countries with the First-Past-the-Post (FPTP) electoral system (Uganda and Tanzania) have achieved gender parity in representation through gender quotas in the constitution, enabling legislations, policy and administrative measures. Other additional measures, such as sanctions, have been used in enforcement and implementation tools to achieve gender quotas. Kenya must follow suit and get its constitutional gender quotas clear and support it with strengthening the Political Parties Act and the Election Act.

As a long-term measure, Kenya may consider adopting a pure Proportional Representation (PR) system. Its benefits would include the following:

- It is significantly much cheaper both for political parties and IEBC.
- It would involve less logistics for the political parties and IEBC.
- There will be no more of the current six party lists, depending on the design of the PR system.
- Most likely, there will be no need for boundary reviews. This will also avoid politics related to such review.
- Gender requirements will be achieved.
- Much higher likelihood to achieve the inclusion of SIGs.
- No major increase in the number of MPs. Number of members in county assemblies can be reduced as well.
- The winner takes it all mentality can change.
- All members elected will be equal.
- People will vote for parties and not for single individual candidates.
- It will be much easier for IEBC, ORPP and any other observers to monitor political party nominations and party lists.
- The PR system is much easier to understand as required in the Kenyan Constitution.

- It will reduce the cost of election for individual candidates (and the need to recover election costs once candidates are elected and financial losses for candidates not elected).
- There will be fewer disputes arising from allocation of seats from the party lists.

CHAPTER FOUR

PUBLIC PARTICIPATION

INTRODUCTION

This chapter presents analyses, findings and recommendations of public participation process undertaken by the MSWG. The public participation was conducted in compliance with provisions of Article 10 of the Constitution, which provides for national values and principles of governance that include patriotism, national unity, rule of law, democracy and participation of the people.

The MSWG initiated the public participation process through a call for written memoranda and oral submissions from stakeholders and a call for the public to participate. This was done by publishing public announcements in daily newspapers with nationwide circulation on October 9, 2023. The stakeholder engagement forums were held between November 14 and 17, 2023 at the Kenya National Library Service (Maktaba Kuu Building) in Nairobi. Written submissions were received by the secretariat throughout the period of public participation.

Stakeholders who presented their memoranda to the MSWG included representatives from diverse sectors; academia, women rights organisations, private sector, professional groups, civil societies organisations, political groups, organisations of/for persons of disabilities, religious organisations, trade unions, media and government institutions among others. These public engagements received wide coverage from national, community and social media.

The MSWG, through publications in the print media, radio talks, calls and online platforms, invited the public to give views on the implementation of the Gender Principle. The public participation was scheduled to run in various regions concurrently. Through the publication in the print media, the public was also given the opportunity to submit views through a designated email address – mswg@gender.go.ke or by delivering written submissions to the secretariat hosted at the State Department for Gender and Affirmative Action.

The clustered regions visited were: Kajiado, Uasin Gishu, Embu, Garissa, Isiolo, Kilifi, Machakos, Nakuru, Kakamega, Kisumu and Nyeri. Participants were invited from neighboring counties. The attendees included women leaders, men, persons with disabilities, government officers and representatives of marginalised groups among others. Written submissions were also received.

These fora served as crucial platforms for the public to articulate their perspectives on gender parity in the political leadership of the country, with representation from the youth, PWDs and marginalised communities.

Stakeholders presented three broad proposals *touching on constitutional amendments and amendments or enactment of legislative framework*

Legal changes proposed included;

i) Amending the Constitution

ii) Modifying electoral laws and other relevant statutes

iii) Amending party regulations to enforce compliance with the Gender Principle.

The proposed constitutional amendments are outlined below.

1. Constitutional Amendments

Lifting Article 177 (1) (b) and (c)

Proposals were received calling for amendments to the Constitution of Kenya 2020, particularly Articles 97 and 98 to include provisions similar to Article 177 (1) (b) and (c).

The purpose of such amendment is to anchor the Gender Principle within the constitutional framework, making it a fundamental and binding aspect of the country's governance. Consequential amendments to related constitutional articles, such as Article 90, were also proposed to ensure consistency.

2. Modifying Electoral Laws

Stakeholders also gave detailed proposals on the need to change the electoral system to align it with the Gender Principle. Specific changes proposed include;

- Amendments to Article 82 of the Constitution
- Introducing gender electoral units and
- Modifying the nomination process to ensure gender balance.

The goal is to eliminate barriers within the electoral system that hinder the realisation of the Gender Principle. Proposal to consider shifting from the first-past-the-post (FPTP) to Proportional Representation (PR).

The specific recommendations are examined in detailed in the main report.

In addition, there were proposals on the following

The Opposite Gender-Running Mates: For Governor and President elections. This proposal seeks to address gender imbalance in Executive leadership positions by mandating that running mates be of the opposite gender, fostering a more equitable distribution of power.

Making the Senate an equal house: Suggestions were made to make the Senate and equal House to the National Assembly by amending Article 98 of the Constitution to allow every county to elect one man and one woman and doing away with the current nomination seats reserved for women and PWDs.

Reducing Constituencies: Some participants advocated for the legislative reduction of the number of constituencies. The intention of this proposal is to streamline the electoral landscape, making it more manageable while concurrently fostering gender equality in representation.

Gender Quota Systems/Temporary Special Measures and Leadership Pathways to Achieve Affirmative Action

Participants presented seven proposals on how to achieve the Gender Principle through legislation. These are;

i) **Introduction of Gender Quotas/TSMs**): Participants recommended legislative interventions to introduce gender quotas in the political system.

ii) **Hard Sanctions for Non-Compliance**: Since an electoral gender quota is the most effective measure to address the unequal representation of women's numerical numbers in political decision-making spaces, the call was to introduce stiffer sanctions against political parties that fail to comply.

iii) ***Political Party Regulations:*** Participants called for amendments to the Political Parties Act to introduce stringent regulations ensuring compliance with the Gender Principle within political parties.

iv) **Eliminating Obstacles**: Calls were made for legislative measures aimed at eliminating structural and legal obstacles that impede fair representation for women.

v) **Reviewing tokenistic nature of representation at the County Assemblies level is a key concern**: The current use of party lists has witnessed its abuse by political parties. The women nominated owe allegiance to their nominating political parties. This concern indicated the need to go beyond mere numbers and empower women to engage in meaningful competitive constituency-based elections to avoid tokenism and do away with patronage.

vi) **Rotational System:** Participants emphasised a legislative proposal that focused on introducing a rotational system for constituencies to facilitate

the realisation of the Gender Principle in the National Assembly and Senate.

vii) **Legislating an active participatory process for affirmative action in nominating women candidates**. This may involve an administrative process of introducing specific legislation that mandates political parties to follow affirmative action measures in their nomination processes.

3. Proposals on how to make political parties implement internal mechanisms and comply with laws and regulations aimed at realising the Gender Principle are discussed in detail in the main report.

Establishing the most viable proposal from the Public Engagement

Findings from the public gearings highlight a collective concern for the effective implementation of the Gender Principle in Kenya's political landscape. The diverse proposals emphasise legislative, policy and administrative measures aimed at overcoming existing challenges, such as the patriarchal mindset, electoral system inadequacies and lack of political will. The proposals advocate for comprehensive legal reforms, electoral system reviews, affirmative action in nominations and the establishment of specific administrative structures to monitor and evaluate gender representation. Additionally, the importance of collaboration with civil society organisations, stakeholders and targeted support for marginalised communities, particularly indigenous women, emerges as pivotal for achieving meaningful gender equity in political decision-making.

These proposals collectively advocate for a holistic strategy involving legal reforms, policy implementation, awareness campaigns and collaborative efforts to ensure the realisation of the Gender Principle.

Below is a summary of some of the proposals.

a) Gender Top-Up Mechanism

Lift Article 177 (1) (b) and write it into Article 97 and 98 as a gender top-up mechanism to ensure compliance with the constitutional threshold on the Gender Principle. This will borrow from the county assemblies' model.

***b)* Avoidance of Referendum and Sunset Clauses**

Drawing from the proposals, participants cautioned against having a sunset clause. Further, they emphasised implementing the gender parity measures through legislative means without resorting to a referendum. Legislative amendments under Article 256 were proposed to expedite the process and avoid potential delays.

***c)* Electoral System Reforms**

Participants proposed changes to the electoral system, including adopting Proportional Representation systems as a means enforcing the two-thirds gender rule through nomination processes.

***d)* Gender Representation in Appointive Seats**

It is apparent that the gender principle has not been realised in appointive seats as well despite the constitutional provision. Political goodwill by the Executive is required to implement the Constitution fully.

***e)* The Opposite Gender Rule**

While the proposal is noble, is important to consider minimal amendments to the Constitution. The challenge has been the fewer numbers of women elected on constituency-based seats. In the immediate, it may be necessary to limit the amendments to Articles 97 and 98 only. This proposal could be considered as a long-term solution.

***f)* Proposal to Designate NGEC or women's rights organisations to oversee the gender nomination/elections**

The proposal goes against the principle of Kenya's democracy as provided for by the Constitution. In accordance with Article 90, the nomination and drawing of special seats party lists is the preserve of political parties.
This proposal is, therefore, not viable.

***g)* Legal Framework on Gender Equality:**

The call for a robust legal framework to enforce gender parity is a welcome move. The SDGAA, together with the Hon Attorney General's office, to consider proposing a gender equality law in the long term.

h) Proposal on Gender and Diversity Law

The law to activate Article 100 of the Constitution has not been enacted. Parliament as currently constituted is, therefore, unconstitutional. Parliament must be held to account for failure to enact the requisite legislation. By extension, this includes the legal framework on the Gender Principle. The leader of the majority should be notified to immediately commence the process of enacting the law.

Other proposed administrative measures are examined in detail in the main report.

CHAPTER FIVE

FRAMEWORK FOR THE IMPLEMENTATION OF THE NOT MORE THAN TWO-THIRDS GENDER PRINCIPLE

PROPOSALS RECEIVED BY MSWG

The findings from the engagements with experts and the public present a collective concern for the effective implementation of the **not more than two-thirds gender principle** in Kenya's political landscape. The diverse proposals emphasise **legislative, policy and administrative measures** aimed at overcoming existing challenges, such as the patriarchal mindset, electoral system inadequacies and the lack of political will.

The proposals advocate for comprehensive legal reforms, electoral system reviews, affirmative action in nominations and the establishment of specific administrative structures to monitor and evaluate gender representation.

Find in here below a summary of some of the proposals:

1. **Review of legal Framework/Constitutional Amendments:**

   Proposals called for amendments to the Constitution of Kenya 2010, particularly articles 97 and 98 to include provisions similar to Article 177 (1) (b) and (c). The purpose is to anchor the **not more than two-thirds gender principle** within the constitutional framework, making it a fundamental and binding aspect of the country's governance. Consequential amendments to related constitutional articles, such as Article 90, may be proposed to ensure consistency with the political party lists.

2. **Electoral System and Political Parties and Sanctions**

   Proposals advocated for a comprehensive review of the electoral system to align it with the Gender Principle.

   Among the specific changes proposed include amendments to Article 82 of the Constitution, introducing gender electoral units and modifying the nomination process to ensure gender balance. The goal is to eliminate barriers within the electoral system that hinder the realisation of the gender principle.

3. **Nomination and Affirmative Action**

   Proposals focused on legislating an active participatory process for nominating women candidates. This, the stakeholders, suggested could include introducing

amendments to the Political Parties Act to ensure candidates' party lists comply with the Gender Principle.

4. Sunset Clause:

Discussions on the absence of a sunset clause suggested considering legislative provisions that determine the temporal scope of the proposed changes. Some stakeholders considered that a sunset clause, if introduced, would specify whether the gender principal implementation measures are time-bound or continue indefinitely until gender balance is achieved. However, the majority were opposed to introducing a sunset clause. The compromising view was that that the law should consider putting a cap to term limits for beneficiaries of affirmative action to not more than two terms.

5. Administrative Processes

That there is consideration to have a gender related fund within the political party's fund or have the same provided for separately under the Political Parties Act to enable promotion of gender-related activities.

6. Appointive Seats Gender Considerations:

Proposals made included consideration for incorporating gender balance in appointive seats. This could entail amendments to laws regulating appointments in various sectors, ensuring that the principle extends beyond elective positions.
A further proposal made was to have legislation providing for 50:50 gender balance ratios in appointive positions. That the Gender Principle be implemented in all sectors, not just elective seats.

PREVIOUS PROPOSALS AS RECEIVED AND PROPOSED BY TWG

Since the promulgation of the Constitution in 2010, there have been various efforts aimed at establishing legal, policy and administrative frameworks for the implementation of the Gender Principle as envisaged under Article 27(8) and 81(b). However, none of these efforts have borne fruit. These proposals included:

i. Gender Top-up Through Party Lists
ii. Doubling the County Woman Member to the National Assembly seats
iii. Tripling the County Woman Member to the National Assembly seats
iv. Proportionate increase of the County Woman Member to the National Assembly seats
v. Gender quota for party strongholds

vi. Rotational seats for affirmative action

vii. Best runner-up

viii. Reconfiguration of constituencies

ix. Voting for a party ticket (twinning)

x. Gender incentives.

A detailed analysis of the proposals received over the last six months by the MSWG and those received under various initiatives in the past — including their merits and demerits — is to be found in the comprehensive report.

OTHER EMERGING PROPOSALS

The MSWG received a myriad of proposals on how to achieve the Gender Principle. Whilst some of the views proposed were not new, others were novel as summarised herein below;

a) That Political Parties be required to submit compliant party lists to the Independent Electoral and Boundaries Commission's (IEBC), failing which IEBC's mandate to review the said lists from political parties be expanded to not only reject in totality non-compliant list(s), but also issue sanctions to non-compliant political parties.

b) That there be a legislative provision of 50:50 ratios in appointive positions and provide legislative mechanisms to stipulate opposite gender variations for presidential and gubernatorial running mates.

c) That the Gender Principle be implemented in all sectors, not just elective seats.

d) That employment to consider a balance between men and women while considering special interest groups.

e) Integrating the Gender Principle in the education curriculum to promote equity from the formative years which will enhance the comprehension of gender parity issues.

f) That all party lists under Article 90 to commence with a woman nominee and not a man. This will create room that increases the number of women nominated to the assemblies through the party list and in the long run reduce the number of women needed to top up in the assembly for it to be compliant.

g) That the number of elective seats be recommended to be 50:50 at Senate (double (elect male and female) per county) and National Assembly. That the number of the Counties, Constituencies and County assemblies is high and there is need to review them downwards.

h) That the Office of the Registrar of Political Parties be given power to deregister parties that are not compliant with the gender principle while developing their rules, constitutions and generating their lists of nominees for elections.

i) The Gender Principle be implemented during recruitment and in career progression at various levels of government. This will give the government the moral authority to also demand for it from the private service.

j) That there is a need to have solid indicators to measure the progression of the gender principle in the public service reported within set timelines. There should be a reporting mechanism and a form of sanction(s) when not adhered to.

k) Need to enhance the budget of Ministries Departments and agencies (MDAs) to ensure Gender Responsiveness. A proposal that all MDAs should allocate at least two per cent of their budgets to gender related activities.

l) That there be consideration to have a gender related fund within the political party's fund or have the same provided separately under the political party's act to enable promotion of gender related activities.

PROPOSED LEGISLATIVE FRAMEWORK

From the foregoing analysis of previous and emerging proposals, the MSWG recommends the **GENDER TOP-UP THROUGH PARTY LISTS.**

After the General Election, the missing gender necessary to meet the Gender Principle in the National Assembly and Senate shall be topped up using the zebra party lists provided through Article 90 (1). Whereas currently, the missing gender has been women, it is necessary that the gender top up list be in zebra format so that should the missing gender in future be men, they get nominated accordingly using the same list.

For the special seats to meet the principle, we propose that Article 90 is amended to ensure that the nomination facilitates a candidate to go into an election competitive seat after two terms.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

RECOMMENDATIONS

CONSTITUTION AND LEGISLATIVE AMENDMENTS PROPOSED

a) Constitutional Amendment to provide for Gender top up

This recommendation guarantees attainment of the Gender Principle through allocating special seat members necessary to ensure that the Gender Principle is upheld. This will entail adopting and applying the framework in place at the County Assembly to the Senate and the National Assembly. The proposal is in the following terms that are reduced in a draft constitutional amendment as annexed.

- Amending Article 90 to accommodate proposals to amend Articles 97 and 98 accordingly;

- Amending Article 97 to provide for a formula to nominate additional special seat members of the National Assembly if, after declaration of results following a General Election, the membership of the National Assembly does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender;

- Amending Article 98 to provide for a formula to nominate additional special seat members of the Senate if, after declaration of results following a General Election, the membership of the Senate does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender; and

- Inserting a transitional clause in Article 98A to enable the current Parliament to conform with the requirements of Article 81(b).

The structure of the Bill is as follows:

Clause 1 provides for the title of the Bill.

Clause 2 proposes to amend Article 90 to require that the election for the special seats to be added in the National Assembly and Senate shall be on the basis of proportional representation by use of party lists.

Clause 3 proposes to amend Article 97 to provide the number of special seat members necessary to ensure that no more than two-thirds of the membership of the National Assembly are of the same gender. The amendment is intended to take

effect only if the membership of the National Assembly does not conform to the constitutional principle, that no more than two-thirds of the members of the House are of the same gender.

Clause 4 proposes to amend Article 98 to provide the number of special seat members necessary to ensure that no more than two-thirds of the membership of the Senate are of the same gender. The amendment is intended to take effect only if the membership of the Senate does not conform to the constitutional principle that no more than two-thirds of the members of the House are of the same gender.

Clause 5 proposes to insert a new Article 98A to enable parliamentary political parties to prepare fresh party lists for nomination of special seat members necessary to ensure that no more than two-thirds of the membership of the current Parliament are of the same gender.

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

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

b) Amendment to the Elections Act

The MSWG recommends specific amendment to the Election's Act specifically Sections 31, 35A and 36 in the terms annexed hereafter.

The principal object of this Bill is to amend the Elections Act (Cap 7) to provide that:

- A political party shall ensure that the names of the party candidates submitted to the Electoral Commission under this section in a General Election for parliamentary and county elections complies with the principle that not more than two-thirds shall be of the same gender.
- A party list submitted for persons with disabilities shall be accompanied by a certification from the National Council for Persons with Disabilities.
- Disputes arising out of the certification of a party list shall be referred to the Electoral Commission's Dispute Resolution Committee.
- A party list for special seats under Section 36 shall commence with the name of a female candidate and alternate between male and female candidates in the priority in which they are listed.
- The Independent Electoral and Boundaries Commission shall draw from the list four special seats members in the priority given by the party in the following order—

i. persons with disabilities
ii. youth;
iii. marginalised groups, including ethnic and minorities.

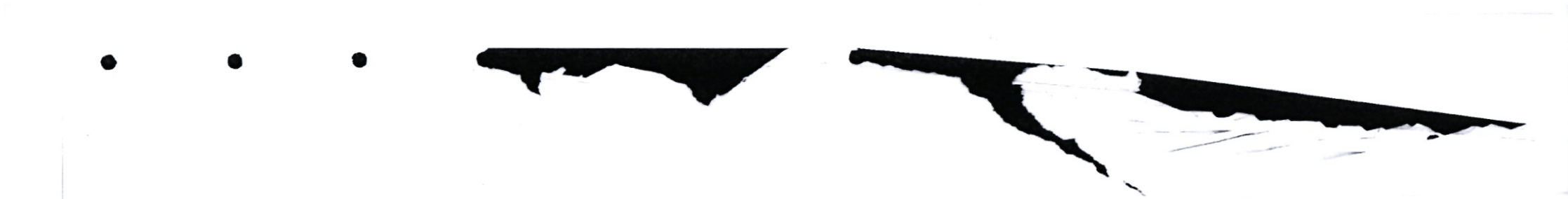
THE STRUCTURE OF THE BILL IS AS FOLLOWS:

Clause 1: Provides for the citation of the Bill.
Clause 2: Seeks to amend Section 31 by inserting a new sub-section after sub-section (2F) requiring political parties to ensure that the names of the party candidates submitted to the Electoral Commission in a General Election for parliamentary and county elections comply with the principle that not more than two-thirds shall be of the same gender.
Clause 3: Amends section 35A of the principal Act to provide for certification of persons with disabilities and to refer disputes arising from the certification process to the IEBC Committee in the first instance.
Clause 4: Amends section 36 of the Act to provide that special seat party lists commence with the name of a female candidate and alternate between male and female candidates in the priority in which they are listed. This Clause also provides that the Commission shall draw from the list four special seats members in the priority given to persons with disabilities, youth, marginalised groups including ethnic and minorities.
The Bill does not delegate any legislative powers and does not limit any fundamental rights and freedoms.
The Bill is a Bill concerning county governments. It contains provisions relating to the election of Members of County Assemblies.
The enactment of this Act may occasion additional expenditure of public funds, which shall be provided for in the estimates.

Amendment to the Political Parties Act

The MSWG recommends the amendment of the Political Parties Act to provide for establishment of Women Inclusion and Political Participation Fund for purposes of financing education and training, mentorship, and capacity building, including the support for women seeking elective positions.

The principal object of this Bill is to amend the Political Parties Act, (Cap 7D) to establish the Women's Inclusion and Political Participation Fund as the institutional framework for equipping more women to successfully contest legislative seats in greater numbers.
This initiative has the potential to eliminate the necessity for top-up nominations in future. The Bill seeks to capture the proper spirit of affirmative action and promote the essence of the greater gender inclusion agenda.
It is expected that the provisions of the funds will be an incentive to equip and promote more women to run for office which, in a few election cycles, ought to bring the number of women contesting and winning elections to at least the same level as



men. Notably, the Gender Principle is a mathematical ratio process. The more women get elected, the fewer requirement there will be for top-up seats.

The enactment of Equality Law

The MSWG recommends that as a long-term consideration, Parliament enacts a gender equality law that will holistically implement Article 27 of the Constitution.

Enact Article 100 Legislation

The Constitution require Parliament to enact legislation to promote representation of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities to Parliament. Within the transitional clause, the law was to be in place within five years after promulgation of the Constitution. To date, the law has not been put in place. It is an opportunity for Parliament to move with speed and enact the said law.

ADMINISTRATIVE RECOMMENDATIONS

The MSWG makes administrative recommendations aimed at achieving gender equality and empowerment of women and girls. Further, they aim at creating an enabling environment for women to actively engage in politics in Kenya at all levels. These include the following:

Combatting campaign-related Gender-Based Violence

Gender-Based Violence has been identified as a major barrier for women participation in politics. Based on this finding, the Working Group recommends development and enforcement of mechanisms to prevent and respond to gender-based violence. This policy will create a secure environment for women involved in politics.

Implementation of the Campaign Financing Law

It was noted that there was no gender parity in the political landscape with regard to financial equality during campaigns and elections.

The Working Group recommends full implementation of the legislative measures in place to ensure gender parity in campaign financing. This comprehensive approach includes regulations to promote financial equity during election campaigns.

a) Robust Reporting Framework

A framework is important to facilitate the monitoring and evaluation of progress in achieving gender balance and ensuring transparency and accountability in the implementation process.

The working group proposes the development of a robust reporting framework, providing gender statistics and data with regard to public offices and gender representation.

b) Gender-responsive Budgeting

The Working Group recommends allocation of resources with the intention of addressing disparities in gender representation. This proposal would include allocation of funds to gender specific programmes. This would, therefore, call for development of a policy on gender-responsive budgeting which takes into consideration gender-based imbalances in political processes and campaigns.

c) Strengthening County Gender Sector Working Groups (CGWGs)

The Working Group recommends enhancing the capacity and effectiveness of County Gender Sector Working Groups. This would involve providing sufficient resources and training to these groups and support them in actively promoting and the implementation of the Gender Principle at the county level.

d) Establishment of Gender Desks in Public Institutions

The Working Group recommends the administrative establishment of gender desks within public institutions to serve as focal points for addressing gender-related concerns, ensuring compliance with gender equality principles and facilitating the integration of gender perspectives into institutional policies and practices.

e) Sensitisation of gender equality in schools

Administrative actions were recommended to introduce sensitisation programmes on gender equality in educational institutions. This involves incorporating gender equality topics in school curricula, creating awareness among learners about the significance of balanced gender representation and challenging traditional gender norms from an early age. The administrative focus on education aims to instill values of inclusivity and equality among the younger generation.

***f)* Advocacy and Public Education Campaigns**

It is important to develop an advocacy campaign and use vernacular stations and social media to communicate with citizens to promote the gender agenda. This will include profiling success stories. Use the media once the implementation framework is agreed on to create awareness, highlight gender disparities and showcase successful stories as part of the process of promoting public education.

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2024

A Bill for

An Act of Parliament to amend the Constitution of Kenya, 2010 by Parliamentary initiative pursuant to Article 256 of the Constitution.

ENACTED by the Parliament of Kenya as follows—

Short title

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2024.

Amendment of Article 90 of the Constitution

2. Article 90 of the Constitution is amended by—

(a) in clause (1), by deleting the expression "Articles 97(1)(c) and 98(1)(b), (c) and (d)" and substituting therefor the expression "Articles 97(1)(c) and (1A) and 98(1)(b), (c), (d) and (1A) ;

(b) in clause (2) by inserting the following new paragraphs immediately after paragraph (c)—

"(d) members of a political party are democratically involved in the generation of the party list through a fair and competitive process as set out in the respective party constitution and nomination rules;

(e) each party list reflects the representation of the marginalised groups set out in Article 100 to the greatest extent possible taking into account the nature of the party list;

(c) inserting the following new clause immediately after clause (3)—

"(4) A person elected under clause (1) for a seat shall not hold such office for more than two terms in one elective body.

Amendment of Article 97 of the Constitution

3. Article 97 of the Constitution is amended by inserting the following new clauses immediately after clause (1))—

(1A) In the event that the membership of the National Assembly under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, there shall be nominated additional number of special seat members necessary to ensure that no more than two-thirds of the membership of the House are of the same gender.

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

Amendment of Article 98 of the Constitution

4. Article 98 of the Constitution is amended by inserting the following new clauses immediately after clause (I))—

(1A) In the event that the membership of the Senate under clause (1) does not conform to the principle that not more than two-thirds of the members are of the same gender, there shall be nominated additional number of special seat members necessary to ensure that no more than two-thirds of the membership of the House are of the same gender.

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

Insertion of Article 98A

5. The Constitution is amended by inserting the following new Article immediately after Article 98—

98A. Transitional Provision

(1) For the purposes of.ensuring that the current Parliament conforms to the requirements of Articles 27 (8) and 81(b), the Independent Electoral and Boundaries Commission shall—

(a) within thirty days after coming into force of this Act, publish a notice in the gazette—

(i) requiring parliamentary political parties to submit fresh party lists for the purposes of nominating additional special seat members to ensure that no more than two-thirds of the members of the National Assembly and the Senate are of the same gender;

(ii) specifying the day upon which political parties shall submit the party lists in accordance with Article 90 ;and

(iii) specifying the day for the nomination of candidates for the parliamentary election;

(b) within thirty days after the receipt of party lists, designate, from each qualifying list, the party representatives on the basis of proportional representation in accordance with Article 90.

(2) The procedures for handling nominations for party lists during a general elections under the law relating to elections shall apply with necessary modifications to nominations under this Article.

(3) For the purposes of Article 90(4), a person elected under this Article shall be deemed to have served a full term.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Constitution of Kenya through Parliamentary initiative by proposing amendments which do not constitute matters set out under Article 255(1) requiring approval through a referendum. The amendments relate to:

(a) Amending Article 90 to accommodate the proposals to amend Articles 97 and 98 accordingly;

(b) Amending Article 97 to provide for a formula to nominate additional special seat members of the National Assembly if, after declaration of results following a national election, the membership of the National Assembly does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender;

(c) Amending Article 98 to provide for a formula to nominate additional special seat members of the Senate if, after declaration of results following a national election, the membership of the Senate does not conform to the constitutional principle that not more than two-thirds of the members are of the same gender;and

(d) Inserting a transitional Article 98A to enable the current Parliament to conform with the requirements of Article 81(b).

The structure of the Bill is as follows:

Clause 1 provides for the title of the Bill.

Clause 2 proposes to amend Article 90 to require that the election for the special seats to be added in the National Assembly and Senate shall be on the basis of proportional representation by use of party lists.

Clause 3 proposes to amend Article 97 to provide the number of special seat members necessary to ensure that no more than two-thirds of the membership of the National Assembly are of the same gender. The amendment is intended to take effect only in the event that the membership of the National Assembly does not conform to the constitutional principle, that no more than two-thirds of the members of the House are of the same gender.

Clause 4 proposes to amend Article 98 to provide the number of special seat members necessary to ensure that no more than two-thirds of the membership of the Senate are of the same gender The amendment is intended to take effect only in the event that the membership of the Senate does not conform to the constitutional principle, that no more than two-thirds of the members of the House are of the same gender.

Clause 5 proposes to insert a new Article 98A to enable parliamentary political parties to prepare fresh party lists for nomination of special seat members necessary to ensure that no more than two-thirds of the membership of the current Parliament are of the same gender.

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

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

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

Dated the ..... day February, 2024

.....

Chairperson, Justice and Legal Affairs Committee

Article 90 of the Constitution which it is proposed to amend

90. Allocation of party list seats

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

(2) The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for

under clause (1) and shall ensure that—

(e) each political party participating in a general election nominates and submits a list of all the persons who would stand elected if the party were to be entitled to all the seats provided for under clause (1), within the time prescribed by national legislation;

(f) except in the case of the seats provided for under Article 98(1) (b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed; and

(g) except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya.

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

Article 97 of the Constitution which it is proposed to amend

97. Membership of the National Assembly

(1) The National Assembly consists of—

(a) two hundred and ninety members, each elected by the registered voters of single member constituencies;

(b) forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency;

(c) twelve members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers; and

(d) the Speaker, who is an ex officio member.

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

Article 98 of the Constitution which it is proposed to amend

98. Membership of the Senate

(1) The Senate consists of—

(a) forty-seven members each elected by the registered voters of the counties, each county constituting a single member constituency;

(b) sixteen women members who shall be nominated by political parties according to their proportion of members of the Senate elected under clause (a) in accordance with Article 90;

(c) two members, being one man and one woman, representing the youth;

(d) two members, being one man and one woman, representing persons with disabilities; and

(e) the Speaker, who shall be an ex officio member.

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

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

ELECTIONS (AMENDMENT) BILL, 2024

A Bill for

An Act of Parliament to amend the Elections Act and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

Short title

1. This Act may be cited as the Elections (Amendment) Act, 2024.

Amendment of section 31 of Cap 7

2. The Elections Act, in this Act referred to as "the principal Act", is amended in section 31 by inserting the following new sub-sections immediately after subsection (2F)—

"(2G) A political party shall ensure that the names of the party candidates submitted to the Commission under this section in a general election for parliamentary and county elections comply with the principle that not more than two-thirds shall be of the same gender.

(2H) The compliance under section 2G shall be determined—

(a) in the case of the Senate, at national level;

(b) in the case of the National Assembly, at county level; and

(c) in the case of county assemblies, at constituency level.

Amendment of section 35A of Cap 7

3. Section 35A of the principal Act is amended by—

(a) inserting the following new subsection immediately after subsection (1)—

"(1A) A party list submitted under subsection (1) (f) shall be accompanied by a certification from the National Council for Persons with Disabilities."

(b) deleting sub-section (3) and substituting therefor the following new sub-section—

"(3) Any dispute arising out of the certification of a party list under sub-section (2) shall be referred to the Commission Dispute Resolution Committee."

Amendment to section 36 of Cap 7

4. Section 36 of the principal Act is amended by—

(c) deleting sub-section (2) and substituting therefor the following new sub-section—

"(2) A party list submitted under section 1 (a), (c) (d) (e) and (f) shall commence with the name of a female candidate and alternate between male and female candidate in the priority in which they are listed."

(d) deleting sub-section (3) and substituting therefor the following new sub-section—

"(3) For purposes of Article 177(1)(c) of the Constitution, the Commission shall draw from the list under sub-section (1)(f) four special seats members in the priority given by the party in the following order—

(a) persons with disabilities
(b) youth;
(c) marginalized groups including ethnic and
(d) minorities."

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Elections Act (Cap 7) to pride that:

a) A political party shall ensure that the names of the party candidates submitted to the Commission under this section in a general election for parliamentary and county elections comply with the principle that not more than two-thirds shall be of the same gender.

i. A party list submitted for persons with disabilities shall be accompanied by a certification from the National Council for Persons with Disabilities.

b) Disputes on arising out of the certification of a party list shall be referred to the Commission Dispute Resolution Committee.

c) A party list for special seats under Section 36 shall commence with the name of a female candidate and alternate between male and female candidate in the priority in which they are listed.

d) The Independent Electoral and Boundaries Commission shall draw from the list four special seats members in the priority given by the party in the following order—

i. persons with disabilities
ii. youth;
iii. marginalized groups including ethnic and minorities.

The structure of the Bill is as follows:

Clause 1: Provides for the citation of the Bill.

Clause 2: Seeks to amend section 31 by inserting a new subsection after subsection (2F) requiring political parties to ensure that the names of the party candidates submitted to the Commission in a general election for parliamentary and county elections comply with the principle that not more than two-thirds shall be of the same gender.

Clause 3:Amends section 35A of the principal Act to provide for certification of persons with disabilities and to refer disputes arising from the certification process to the IEBC Committee in the first instance.

Clause 4: Amends section 36 of the Act to provide that special seat party lists commence with the name of a female candidate and alternate between male and female candidate in the priority in which they are listed. This Clause also provides that the Commission shall draw from the list four special seats members in the priority given persons with disabilities, youth, marginalized groups including ethnic and minorities.

The Bill does not delegate any legislative powers and does not limit any fundamental rights and freedoms.

The Bill is a Bill concerning County governments. It contain provisions relating to the election of members of county assemblies.

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

Dated the ..... day February, 2024

.....
Chairperson, Justice and Legal Affairs Committee

POLITICAL PARTIES (AMENDMENT) BILL, 2024

A Bill for

An Act of Parliament to amend the Political Parties Act and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

Short title

1. This Act may be cited as the Political Parties (Amendment) Act, 2024.

Insertion of a new section to Cap 7D

2. The principal Act is amended by inserting the following new section immediately after section 29—

Women Inclusion and Political Participation Fund

29A. (1) There is established the Women Inclusion and Political Participation Fund which shall be administered by the Registrar separately from the Political Parties Fund.

(2) The sources of the Fund shall include—

(a) such funds not being less than fifteen percent of the Political Parties Fund as may be determined by the National Assembly; and

(b) contributions and donations to the Fund from any other lawful source.

(3) The Fund shall be used for purposes of financing education and training, mentorship and capacity building for women seeking elective positions.

(4) The Registrar may make Regulations for the better carrying into effect the provision of this section.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Political Parties Act, (Cap 7D) to establish the Women's Inclusion and Political Participation Fund as the institutional framework for equipping more women to successfully contest legislative seats in greater numbers. This initiative has the potential to eliminate the necessity for top-up nominations in the future. The Bill seeks to capture the proper spirit of affirmative action and promote the essence of the greater gender inclusion agenda.

It is expected that the framework will equip and promote more women to run for office which, in a few election cycles, will bring the number of women contesting and winning elections to at least the same level as men.

The structure of the Bill is as follows:

Clause 1 provides for the title of the Bill.

Clause 2 seeks to introduce a new section 29A to establish the Women Inclusion and Political Participation Fund to be administered by the Registrar separately from the Political Parties Fund. The Fund shall be used to finance education and training, mentorship and capacity building for women seeking elective positions. It shall comprise of an amount equivalent to not less that fifteen percent of the Political Parties Fund as the National Assembly may determine.

The Bill delegates the power to make Regulations on administration of the Fund to the Registrar of Political Parties and does not limit any fundamental rights and freedoms.

The Bill is a Bill concerning county governments. Itl contains provisions relating to the election of members of a county assemblies.

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

Dated the ..... day February, 2024

.....
Chairperson, Justice and Legal Affairs Committee

Annexure 3b

Proposed Political Parties (Amendment) Bill, 2024

Report of the Departmental Committee on Justice and Legal Affairs on Consideration of the Report of the National Dialogue Committee (NADCO) and the Report of the Multi-Sectoral Working Group on the Realization of the Two-Thirds Gender Principle

THE POLITICAL PARTIES (AMENDMENT) BILL, 2023

THE POLITICAL PARTIES (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Political Parties Act, 2011

ENACTED by the Parliament of Kenya as follows—

Short title and commencement.

1. This Act may be cited as the Political Parties (Amendment) Act, 2023 and shall come into force upon publication in the Gazette.

Amendment of section 2 of No. 11 of 2011.

2. Section 2 of the Political Parties Act (hereinafter referred to as the "principal Act") is amended by—

(a) inserting the following new definition in proper alphabetical sequence—

"Commission" means the Independent Political Parties Regulatory Commission established under section 33A;

(b) by deleting the definition of the term "Registrar".

Amendment of No.11 of 2011.

3. The principal Act is amended—

(a) by deleting the word "Registrar" wherever it appears and substituting therefor the word "Commission"; and

(b) by deleting the words "Office of the Registrar of Political Parties" wherever they appear and substituting therefor the word "Commission".

Repeal of section 14A of No. 2 of 2011.

4. The principal Act is amended by repealing section 14A.

Repeal and replacement of section 33 of No.11 of 2011.

5. The principal Act is amended by repealing section 33 and substituting therefor the following new sections—

Establishment of the Independent Political Parties Regulatory Commission.

33A. (1) There is established the Independent Political Parties Regulatory Commission.

(2) The Commission shall be responsible for —

(a) the registration of political parties and their office holders;
(b) the management of the Political Parties' Fund established under this Act;
(c) ensuring the publication of audited annual accounts of political parties;
(d) the verification and make publicly available the list of all members of political parties;
(e) keeping and maintaining a register of members of registered political parties;
(f) maintaining a register of political parties and the symbols of the political parties
(g) ensuring and verifying that no person is a member of more than one political party and notifying the Independent Electoral and Boundaries Commission of its findings;
(h) certifying that an independent candidate in an election is not a member of any registered political party;
(i) certifying that the symbol intended to be used by an independent candidate in an election does not resemble the symbol of a registered political party;
(j) certifying that the names appearing in a party list are the names of members of

the political party; presenting the party list;

(k) regulating political party nominations in accordance with this Act;

(l) training political party election agents upon the request and financing by the political party;

(m) investigating complaints received under this Act;

(n) such other functions as may be conferred on the Commission by national legislation.

(3) The Commission, in the performance of its functions, shall be an independent office and shall not be under the direction or control of any person or authority.

Appointment of members of the Commission.

33B. (1) The Commission shall be comprised of five commissioners appointed by the President with the approval of the National Assembly.

(2) The Commission shall consist of —

(a) two members, one man and one woman, nominated by the majority party or coalition of parties in the National Assembly;

(b) two members, one man and one woman, nominated by the minority party or coalition of parties in the National Assembly;

(c) one member nominated by the Parliamentary Service Commission being a representative of non-

parliamentary registered political parties.

(3) The commissioners shall each hold office for a non-renewable term of six years.

(4) The members of the Commission shall elect a chairperson and vice-chairperson from among themselves—

(a) at the first sitting of the Commission; and

(b)whenever it is necessary to fill a vacancy in the office of the chairperson and vice-chairperson.

(5) The chairperson and vice-chairperson of the Commission shall not be of the same gender.

Powers of the Commission to appoint staff.

33C. The Commission shall have the power to appoint staff upon consultation with the Public Service Commission and the Salaries and Remuneration Commission.

Repeal of section 34 of No. 11 of 2011.

6. The principal Act is amended by repealing section 34.

Amendment of section 34C of No. 11 of 2011.

7. Section 34C(1) of the principal Act is amended by deleting the words "or is deemed to have resigned from the political party and the Registrar has been notified of the resignation" appearing in paragraph (c).

Saving provision.

8. A person who immediately before the commencement this Act was a member of staff of the Office of the Registrar of Political Parties shall be deemed to be a member of staff of the Commission and shall continue to serve under the same terms and conditions.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

The Bill seeks to amend the Political Parties Act, No. 11 of 2011 in order to replace the Office of Registrar of Political Parties with the Independent Political Parties Regulatory Commission.

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

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

Statement of how the Bill concerns county governments

The Bill contains provisions that affect the functions and powers of county governments in terms of Article 110 of the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the....., 2023.

KIMANI ICHUNG'WAH, **OPIYO WANDAYI,**

Leader of the Majority Party. ***Leader of Minority Party.***

Section 2 of No. 11 of 2011 which it is proposed to amend-

Interpretation

In this Act, unless the context otherwise requires—

"branch" means any devolved unit of a political party;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to elections;

"coalition" means an alliance of two or more political parties formed for the purpose of pursuing a common goal and is governed by a written agreement deposited with the Registrar;

"coalition political party" means a coalition that is registered by the Registrar as a political party;

"Commission" means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

"direct party nomination" means the process by which a political party, through its registered members, elect sits candidates for an election;

"election" means the act of selecting by vote, of a person or persons from among a number of candidates to fill an office or to membership of any political party and includes a presidential, parliamentary or county election;

"ethnic minorities" means a group that is not the dominant one in a given society;

"founding members of a political party" means the persons who form a political party and who have contributed or offered to contribute either in cash or in kind to the initial assets of the party in respect of the first year of its existence;

"Fund" means the Political Parties Fund established by section 23;

"Gazette" means the Kenya Gazette published by the authority of the national government, or a supplement of the Kenya Gazette;

"governing body" means the committee responsible for administering the affairs of a political party

"indirect party nomination" means the process by which a political party, through the use of delegates selected from registered members of the political party and interviews, selects its candidates for an election;

"marginalised community" has the meaning assigned to it under Article 260 of the Constitution;

"merger" means where two or more political parties consolidate their operations and combine all officers, structure, and other functions of the political parties;

"office holder" in relation to a political party means any person who is elected by the members of the political party to hold office and is registered with the Registrar of Political Parties;

"political party"—

(a) means an association of citizens with an identifiable ideology or

programme that is constituted for the purpose of influencing public policy of nominating candidates to contest elections; and

(b) includes a coalition political party;

"public officer" has the meaning assigned to it under Article 260 of the Constitution;

"Registrar" means the Registrar of political parties appointed under section 33;

"special interest groups" includes—

(a) women;

(b) persons with disabilities;

(c) youth;

(d) ethnic minorities; and

(e) marginalized communities.

"State" when used as a noun, means the collectivity of offices, organs and other entities comprising the government of the Republic under the Constitution;

"statement of ideology" means a statement setting out the doctrine, ethical ideals, and principles of the party;

"Tribunal" means the Political Parties Disputes Tribunal established under

section 39; and

"youth" has the meaning assigned to it under Article 260 of the Constitution.

Section 14A of No. 11 of 2011 which it is proposed to amend-

14A. When a member may be deemed to have resigned from a political party

(1) A person who, while being a member of a political party shall be deemed to have resigned from that party if that person—

(a) forms another political party;

(b) joins in the formation of another political party;

(c) another political party;

(d) in any way or manner, publicly advocates for the formation of another political party; or

(e) promotes the ideology, interests or policies of another political party.

(2) A political party shall, before deeming a member to have resigned under subsection (1)—

(a) notify the member that he or she has been deemed to have resigned from the political party and that the political party intends to remove his or her name from the list of its members; and

(b) afford the member a fair opportunity to be heard in accordance with the procedure set out in the constitution of the political party.

(3) A political party which deems a member to have resigned from the political party shall notify the Registrar in writing of the member's resignation and request the Registrar to remove that person's name from the register of members of that political party.

(4) Upon the notification under subsection (3), the Registry may, where the Registrar is satisfied that the political party has complied with the procedure under subsection (2), remove the member's name from the register of members of the political party within seven days of the notification and notify the member in writing that he or she has ceased to be a member of that political party.

(5) Where the Registrar is not satisfied in accordance with subsection (4), the Registrar shall refer the matter back to the concerned political party for reconsideration.

(6) Subsection (1) (c), (d) and (e) shall not apply to a member of a political party which enters or proposes to enter a merger or a coalition with another political party.

Section 33 of No. 11 of 2011 which it is proposed to repeal and replace-

33. Establishment of the Office of Registrar

(1) There is established the Office of the Registrar of Political Parties which shall be a body corporate with perpetual succession and a seal and which shall be capable of suing and being sued in its corporate name.

(2) The Registrar shall be deputised by three Assistant Registrars, not more than two of whom shall be of the same gender.

(3) The Office of the Registrar shall be a State office within the meaning of Article 260 of the Constitution

4) The Office of the Registrar may engage such staff, experts or consultants as are necessary for the proper and effective discharge of its functions under this Act and any other written law.

(5) The Office of Registrar shall be independent and shall not be subject to direction or control of any person or authority.

(6) A person shall be qualified for appointment as Registrar or as an Assistant Registrar if the person—

(a) holds a degree from a university recognised in Kenya;

(b) has proven knowledge and experience in any of the following fields—

(i) finance;

(ii) management;

(iii) political science;

(iv) law;

(v) governance; or

(vi) public administration;

(c) has, in the case of the Registrar, at least fifteen years post qualification experience in the relevant areas of expertise and, in the case of an Assistant Registrar, has at least ten years post qualification experience in the relevant area of expertise; and

(d) is a person of high moral character and integrity and has satisfied the requirements of Chapter Six of the Constitution.

(7) A person shall not be qualified for appointment as a Registrar or Assistant Registrar if the person has, at any time within the preceding five years, held office or stood for election as a member of Parliament or a county assembly or as a member of a governing body of a political party.

(8) The Registrar and Assistant Registrars shall, before assuming office, take

and subscribe to the oath or affirmation prescribed in the Fourth Schedule.

(9) The Registrar and Assistant Registrars shall serve for a non-renewable term of six years and shall not be eligible for re-appointment.

(10) A person who serves as a Registrar or Assistant Registrar shall not be eligible to contest for election as a member of Parliament or a county assembly, or

as a member of a governing body of a political party within five years of the person ceasing to be Registrar or Assistant Registrar.

Section 34 of No. 11 of 2011 which it is proposed to amend-

34. Functions of the Registrar

The functions of the Registrar shall be to—

(a) register, regulate, monitor, investigate and supervise political parties to ensure compliance with this Act;

(b) administer the Fund;

(c) ensure publication of audited annual accounts of political parties;

(d) verify and make publicly available the list of all members of political parties;

(da) keep and maintain a register of members of registered political parties;

(e) maintain a register of political parties and the symbols of the political parties;

(f) ensure and verify that no person is a member of more than one political party and notify the Commission of the findings;

(fa) certify that an independent candidate in an election is not a member of any registered political party;

(fb) certify that the symbol intended to be used by an independent candidate in an election does not resemble the symbol of a registered political party;

(fc) certify that the names appearing in a party list are the names of members of the political party presenting the party list;

(fd) regulate political party nominations in accordance with this Act;

(fe) train political party election agents upon the request and financing by the political party;

(g) investigate complaints received under this Act; and

(h) perform such other functions as may be conferred by this Act or any other written law.

Section 34C of No. 11 of 2011 which it is proposed to amend-

34C. Powers of the Registrar in respect of political party Records

(1) The Registrar may make changes to the records of political parties submitted to the Registrar under this Act where—

(a) the application by a provisionally registered political party for full registration has not been granted;

(b) a political party has been deregistered;

(c) a member of a political party resigns or is deemed to have resigned from the political party and the Registrar has been notified of the resignation;

(d) a member of a political party has been expelled from the political party and the Registrar has been notified of the expulsion;

(e) a member of a political party dies;

(f) a member of a political party has ceased to be a citizen of Kenya;

(g) a political party has merged with another political party;

(h) the constitution of a political party has been amended, changed or altered; or

(i) any other event that justifies the canges occurs.

(2) The changes contemplated under subsection (1) may include—

(a) amendment of the register of members of a political party;

(b) amendment, change or alteration of the constitution of a political party;

(c) addition or deletion of records;

(d) addition, deletion or alteration of names; and

(e) any other change that is consistent with the provisions of this Act.

(3) The Registrar shall notify the political party of any change made to its records under subsection (1).

(4) A political party that is dissatisfied by the decision of the Registrar under subsection (1) may appeal to the Tribunal.

[Act No. 2 of 2022, s. 23.]

Annexure 3c

Proposed Election (Amendment) Bill, 2024

Report of the Departmental Committee on Justice and Legal Affairs on Consideration of the Report of the National Dialogue Committee (NADCO) and the Report of the Multi-Sectoral Working Group on the Realization of the Two-Thirds Gender Principle

THE ELECTIONS (AMENDMENT) BILL, 2023

(c) in subsection (3) by inserting the word "valid" immediately before the words "Kenyan passport";

(d) by inserting the following new subsection immediately after subsection 3-

"(3A) A person who registers as a voter during the period when registration of voters is suspended for the purposes of a by-election as contemplated under subsection (1)(b) shall not be eligible to contest in the electoral area affected the by-election".

Amendment of section 6 of No. 24 of 2011.

4. Section 6 of the principal Act is amended—

(a) by deleting subsection (1) and substituting therefor the following new subsections-

(1) The Commission shall cause the Register of Voters to be opened for inspection by members of the public at all times.

(1A) The Commission shall rectify the particulars of voters at all times except-

(a) in the case of a general election or an election under Article 138(5) of the Constitution, during the sixty-day period before the date of the election;

(b) in the case of a by-election, between the date of the declaration of the vacancy of the seat concerned and the date of such election; or

(c) in the case of a referendum, between the date of the publication of the referendum question and the date of the referendum.

(b) by deleting subsection (2).

Amendment of section 8A of No. 24 of 2011.

5. Section 8A of the principal Act is amended—

(a) by deleting subsection (3); and

(b)in subsection (4), by deleting the expression " subsection (3)" and substituting therefor the expression "subsection (1)".

Amendment of section 14 of No. 24 of 2011.

6. Section 14 of the principal Act is amended in subsection (2)—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) the day or days for the registration of

candidates for the presidential election;

(b) by deleting the word "nomination" appearing in paragraph (b) and substituting therefor the words "registration of candidates".

Amendment of section 16 of No. 24 of 2011.

7. Section 16 of the principal Act is amended in subsection (2)—

(a) by deleting paragraph (b) and substituting therefor the following new paragraph—

(a) the day or days for registration of candidates for the parliamentary election;

(b) by deleting the word "nomination" appearing in paragraph (c) and substituting therefor the words "registration of candidates".

Amendment of section 17 of No. 24 of 2011.

8. Section 17 of the principal Act is amended in subsection (2)—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) the day or days for registration of candidates for the governor election;

(b) by deleting the word "nomination" appearing in paragraph (b) and substituting therefor the words "registration of candidates".

Amendment of section 19 of No. 24 of 2011.

9. Section 19 of the principal Act is amended in subsection (2)—

(a) by deleting paragraph (b) and substituting therefor the following new paragraph—•

(a)the day or days for registration of candidates for the county elections; and

(b) by deleting the word "nomination" appearing in paragraph (c) and substituting therefor the word "registration".

Amendment of section 22 of No. 24 of 2011.

10. Section 22 of the principal Act is amended-

(a) in the marginal note by deleting the word "nomination" and substituting therefor the word "registration";

(b) in subsection (1) by-

(i) deleting the word "nominated" appearing in the introductory phrase and substituting therefor the word "registered";

(ii) deleting paragraph (b); and

(c) in subsection (2), by deleting the word "nominated" and substituting therefor the word "registered".

Amendment of section 23 of No. 24 of 2011.

11. Section 23 of the principal Act is amended—

(a) in the marginal note, by deleting the word "nomination" and substituting therefor the word "registration";

(b) in the introductory phrase of subsection (1) by deleting the word "nomination" appearing immediately after the words "person qualifies" and substituting therefor the word "registration"; and

(c) in the introductory phrase of subsection (2) by deleting the word "nomination" appearing immediately after the words "not qualified for" and substituting therefor the word "registration".

Amendment of section 24 of No. 24 of 2011.

12. Section 24 of the principal Act is amended—

(a) in the marginal note by deleting the word "nomination" and substituting therefor the word "registration"; and

(b) in the introductory phrase of subsection (1) by deleting the word "nomination as a" and substituting therefor the words "registration as a candidate for election to the office of".

Amendment of section 25 of No. 24 of 2011.

13. Section 25 of the principal Act is amended—

(a) in the marginal note by deleting the word "nomination" and substituting therefor the word "registration";

(b) in the introductory phrase of subsection (1) by deleting the word "nomination as a" and substituting therefor the words "registration as a candidate for election to the office of";

Amendment of section 27 of No. 24 of 2011.

14. Section 27 of the principal Act is amended by inserting the following new subsection immediately after subsection (1A)—

(1B) Notwithstanding the provisions under subsection (1) a coalition political party shall, within fourteen days of registration, submit to the Commission a copy

of the coalition political party's nomination rules certified by the Registrar of Political Parties.

Amendment of section 31 of No. 24 of 2011.

15. Section 31of the principal Act is amended—

(a) by deleting subsection (2);

(b) by deleting subsection (2B);

(c) by deleting subsection (2C);

(d) by deleting subsection (2E); and

(e) by deleting subsection (2F).

Amendment of section 32 of No. 24 of 2011.

16. Section 32 of the principal Act is amended-

(a) in subsection (1) by deleting the words "nomination day" appearing immediately after the words "days before" and substituting therefor the words "the date for registration of candidates; and

(b) in subsection (lA) by deleting the word "nomination" appearing immediately after the words "days before" and substituting therefor the words "the date for registration of candidates".

Amendment of section 33 of No. 24 of 2011.

17. Section 33 of the principal Act is amended—

(a) in the marginal note by deleting the word "nomination" and substituting therefor the word "registration";

(b) in subsection (1)—

(i) by deleting the word "nominated" appearing in the introductory phrase and substituting therefor the word "registered";

(ii) by deleting the words "nomination paper" appearing in paragraph (b) and substituting therefor the words "registration of candidates Form";

(iii) by deleting the words "nomination day" appearing in paragraph (c) and substituting therefor with the words "date for registration of candidates";

(iv) by deleting paragraph (d); and

(c) by deleting subsection (2).

Insertion of new section 33A in

18. The principal Act is amended by inserting the following

No. 24 of 2011. new section immediately after section 33—

Publication of registered candidates.

33A. The Commission shall publish in the Gazette the names of political party candidates and independent candidates registered to contest in an election.

Amendment of section 34 of No. 24 of 2011.

19. Section 34 of the principal Act is amended-

(a) by inserting the following new subsections immediately after subsection 8—

(8A) A person shall not be nominated by a political party under subsection (4) unless the person is, on the date of submission of the party list by the political party, a registered voter in any of the wards in the county in which the person is nominated.

(8B) The nomination under subsection (4) by a political part shall ensure equitable representation from all wards comprising the respective county.

(b) by deleting subsection (9).

Insertion of new section 38A in No 24 of 2011.

20. The principal Act is amended by insetting the following new section immediately after section 38 –

Gazettement of polling station.

38A. (1) The Commission shall —

(a) appoint a place or places as a polling station or polling stations for each electoral area; and

(b) publish in the Gazette and publicise through electronic and print media of national circulation and other easily accessible medium, a notice specifying the polling stations established for each electoral area at least three months before the date of any election.

(2) No election shall be conducted in a place other than a place gazetted as a polling station under subsection (1).

Amendment of

21. Section 38A of the principal Act be amended by

section 38A of No. 24 of 2011.

renumbering it 38B.

Deletion and substitution of section 39 of No. 24 of 2011.

22. The principal Act is amended by deleting section 39 and substituting therefor the following new section—

Determination and declaration of results.

39.(1) The Commission shall determine, declare and publish the results of an election immediately after the close of polling and results declared at the polling station shall be final.

(2) The Commission shall appoint constituency returning officers to be responsible for-

(a) tallying, announcement and declaration, in the prescribed form, of the final results from each polling station in a constituency for the election of a member of the National Assembly and members of a county assembly;

(b) collating, announcing and declaring the results from each polling station in the constituency for the election of the President, county Governor, Senator and county women representative to the National Assembly; and

(c) submitting, in the prescribed form, the collated results for the election of the President to the national tallying centre and the collated results for the election of the county Governor, Senator and county women representative to the National Assembly to the respective county returning officer.

(3) The Commission shall appoint county returning officers to be responsible for tallying, announcement and declaration, in the prescribed form, of final results from constituencies in the county for purposes of the election of the county Governor, Senator and county women representative to the National Assembly.

(4) For purposes of a presidential election, the Commission shall—

(a) tally, announce and declare the presidential results before tallying, announcing and declaring results for the other elective positions;

(b) electronically transmit the results, within two hours of the declaration of the results, from a polling station to the constituency tallying centre, national tallying centre, the candidates or their agents and elections observers in the prescribed form;

(c) where the results are not transmitted in accordance with paragraph (b), provide reasons in a prescribed form;

(d) physically deliver the tabulated results from a polling station to the constituency tallying centre and thereafter to the national tallying centre;

(e) tally and verify the results received at the constituency tallying centre and the national tallying centre; and

(f) publish the polling results forms on an online public portal maintained by the Commission.

(5) The Commission shall verify that the results transmitted under this section are an accurate record of the results tallied, verified and declared at the respective polling stations.

(6) The Chairperson of the Commission shall declare the results of the election of the President in accordance with Article 138(10) of the Constitution.

(7) The Chairperson may declare a candidate elected as the President before all the constituencies have transmitted their results if the Commission is satisfied that the results that have not been received will not affect the result of the

election.

(8) The Commission shall announce the final results in the order in which the tallying and verification of the results is completed.

(9) The Commission shall, to facilitate public information, allow a candidate and their agent, observers and any other person authorised to access a polling station or tallying centre to record and document the tallying, announcement and declaration of results.

Amendment of section 44 of No. 24 of 2011.

23. Section 44 of the principal Act is amended by inserting the following new subsection immediately after subsection (4) –

(4A) In procuring the technology, the Commission shall ensure that –

(i) intellectual property rights to the technology vests in the Commission;

(ii) the supplier or their associates have not been found guilty of violating any procurement law, committed a crime, violated professional standards or been barred from participating in public procurement in any jurisdiction; and

No. 24 of 2019.

(iii) subject to the Constitution, this Act and the Data Protection Act, the technology is accessible and available for scrutiny by candidates, courts and such other persons as required under the law.

Amendment of section 44A of No. 24 of 2011.

24. Section 44A of the principal Act is amended-

(a) by renumbering the existing provision as subsection (1);

(b) by inserting the words "and transmission of election results" immediately after the words "identification of voters"; and

(c) by inserting the following new sub-section immediately after subsection (1)—

(2) The Commission shall make

Regulations for the better carrying into effect the provisions of this section.

Amendment of section 45 of No. 24 of 2011.

25. The principal Act is amended by deleting section 45.

Amendment of section 46 of No. 24 of 2011.

26. Section 46 of the principal Act is amended in subsection (1) by-

(a) deleting subparagraph (ii) appearing in paragraph (b); and

(b) deleting paragraph (c)

Amendment of section 48 of No. 24 of 2011.

27. The principal Act is amended by deleting section 48.

Repeal of section 74 of No. 24 of 2011.

28. The principal Act is amended by repealing section 74.

Amendment of section 75 of No. 24 of 2011.

29. Section 75 of the principal Act is amended –

(a) in subsection (4) by deleting the words "on matters of law only"; and

(b) by inserting the following subsection immediately after subsection (4)—

(5) The determination of the appeal under sub-section (4) by the High Court shall be final.

Amendment of section 82 of No. 24 of 2011.

30. Section 82 of the principal Act is amended by inserting the following subsection immediately after subsection (3) –

(4) An election court may extend a scrutiny of votes beyond the polling stations or areas mentioned in the pleadings.

Insertion of new section 82A in No. 24 of 2011.

31. The principal Act is amended by inserting the following new section immediately after section 82 –

Access to information.

No. 24 of 2019
No. 9 of 2011

82A. (1) The Commission shall ensure access to information including any technology used in the elections in accordance with the Constitution, the Data Protection Act and the Independent Electoral and Boundaries Commission Act.

(2) Where a request for access to information is made for the purposes of a court order for

scrutiny of votes, the Commission shall facilitate access–

(a) in the case of a presidential election, within three days of the date of the request; and

(b) in the case of any other elective position, within seven days of the date of the request.

(3) The Commission shall not charge fees where the information requested is provided in softcopy format.

4) Where information requested is to be provided in hardcopy format, the Commission may charge a prescribed fee for the provision of the information and the fee shall not exceed the actual costs of making copies of such information and if applicable, supplying them to the applicant.

Amendment of section 85A of No. 24 of 2011.

32. Section 85A of the principal Act is amended –

(a) in subsection (1) by deleting the words "on matters of law only"; and

(b) by inserting the following subsection immediately after subsection (2)—

(3) The determination of the appeal under section (2) by the Court of Appeal shall be final.

Insertion of new part in No. 24 of 2011.

33. The principal Act is amended by inserting the following new sub-part immediately after section 87-

Evaluation of electoral process

Evaluation of elections.

87A. (1) The Commission shall, pursuant to Article 88(4)(h) of the Constitution and within one year of a general election, facilitate evaluation of the electoral process.

(2) An evaluation under subsection (1) shall include-

(a) a review of the legal framework under which the general elections were conducted;

(b) an audit of the Register of Voters used during the election;

(c) a review of the role of media and civil society in the elections;

(d) a review of the voting procedures on election day;

(e) a review of the vote counting procedures on election day;

(f) a review of the elections information and communication technology deployed in the conduct of the general elections;

(g) a review of the human resource deployed for the conduct of the general elections;

(h) a review of the existing elections disputes resolution mechanisms; and

(i) a review of the cost of conducting the general elections including the procurement of the necessary goods and services.

Reports.

87B. A report on the evaluation of the electoral process undertaken in accordance with section 87A shall be published in the *Gazette* and submitted to Parliament.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons

The principal object of this Bill is to amend the Elections Act, 2011. The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 2 of the Bill proposes to amend section 2 of the Act by providing for new definitions for the terms nomination, political party and nomination day. Further, clause 2 proposes to insert the word "valid" immediately before the words "Kenyan passport" in the definition of "identification document and to insert in the interpretation section the definition of the term "registration of candidates "

Clause 3 of the Bill proposes to amend section 5 of the Act which provides for registration of voters by –

a) inserting the words "within the affected electoral area" immediately after the words "such by–election" in subsection (1)(b); (to clarify that suspension of voter registration and revision of the register of voters applies only to the electoral area affected by a by-election)

b) inserting the words "of the referendum question" immediately after the word "publication" in subsection (1)(ba);

c) inserting the word "valid" immediately before the words "Kenyan passport" in subsection (3); and

d) inserting a new subsection (3A) which provides that persons registered as voters during the period when registration of voters is suspended by reason of a by-election shall not be eligible to contest in the electoral area affected by the by-election.

Clause 4 of the Bill proposes to amend section 6 of the Act which provides for inspection of register of voters by deleting subsections (1) and (2) and substituting therefor with new subsections providing for the inspection of register of voters by members of the public and rectification of particulars of voters as well as the exceptions when the IEBC shall not be expected to rectify the particulars of voters.

Clause 5 of the Bill proposes to amend section 8A by deleting subsection (3) which provides for audit of the register of voters by a professional reputable firm for purposes of the first general election after commencement of the Act.

Clauses 6, 7, 8, 9, 10, 11, 12 and 13 of the Bill proposes to amend sections 14, 16, 17, 19, 22, 23, 24, and 25 by deleting the word "nominations" and substituting it with "registration of candidates" so as to differentiate the roles of IEBC and those of the Registrar of political parties. Additionally, clauses 7 and 9 deletes submission of party lists in respect of Parliament and County Assemblies to IEBC by political parties.

Further **clause 10** of the Bill proposes to delete section 22(1)(b) that set out the education requirements for Members of Parliament or County Assembly. These requirements were declared unconstitutional in *Wambui & 10 others v Speaker of the National Assembly & 6 others Constitutional Petition 28 of 2021 & Petition E549, E077, E037 & E065 of 2021 (Consolidated).*

Clause 14 of the Bill proposes to amend section 27 by inserting a new subsection (1B) to provide that a coalition party shall within 14 days of registration submit to IEBC a copy of its nomination rules certified by the Registrar of political parties.

Clause 15 of the Bill proposes to amend section 31 which provides for nomination of political party candidates by deleting subsection (2), (2B), (2C), (2E) and (2F) which provide for –

a) that IEBC shall upon request by a political party, conduct and supervise nomination of candidates by the political party for presidential, parliamentary, or county elections in accordance with article 88 of the constitution;
b) the submission to the IEBC of the names of the persons contesting party primary and the date of the party primary, and publication of these information in the Gazette by IEBC; and
c) the requirement that Parliament shall appropriate monies for the effective implementation of the section.

Clause 16 of the Bill proposes to amend section 32 which provides for approval of symbol for independent candidate by deleting the words "nomination day" and "nomination" and substituting them with the words "the date for registration"; and "registration" respectively.

Clause 17 of the Bill proposes to amend section 33 which provides for nomination of independent candidates –

a) in subsection (1) by deleting the word "nomination" and substituting therefor the word "registration";

b) in subsection (1) deleting the words "nomination paper" in paragraph (b) and substituting therefor the words "registration of candidates Form", and in paragraph (c) by deleting the words "nomination day" and substituting therefor the words "date gazetted for registration of candidates"; and
c) deleting subsection (2) which provide for the publication in the Gazette of the names of persons intending to contest in the election as independent candidates.

Clause 18 of the Bill proposes to amend the Act by inserting new section 33A to provide for publication in the Gazette of party candidates and independent candidates registered to contest in an election.

Clause 19 of the Bill proposes to amend section 34 which provide for nomination of party lists members by inserting new sections (8A) and (8B) to provide that a person can only be nominated as a member of a county assembly if such a person is a registered voter in a ward within a county the person is to be nominated, and the need to ensure equitable representation from all wards comprising the respective county as regards nominations.

Clause 20 of the Bill proposes to amend the Act by inserting a new section 38A to provide for the designation of polling stations by the IEBC and publishing them in the Gazette at least three months before the date of any election. Further, the new section provides that elections shall not be conducted in a place not designated as a polling station.

Clause 22 of the Bill proposes to repeal and replace section 39 which provides for determination and declaration of results and substitute it with a new section. The new section proposes that results at the polling station shall be final, and the presidential election shall be tallied, announced and declared and electronically transmitted before all other elective positions. Further, the new section has omitted provisions providing for –

a) where there is a discrepancy between the electronically transmitted and the physically delivered results the result which is an accurate record of the results tallied, verified and declared at the respective polling station shall prevail;
b) any failure to transmit or publish the election results in an electronic format shall not invalidate the result as announced and declared; and
c) the requirement for IEBC to establish a mechanism for the live-streaming of results as announced at polling stations to facilitate public information.

Clause 23 of the Bill proposes to amend section 44 which provides for technology to provide that the Commission shall ensure that intellectual property to the technology is vested in the Commission, a supplier of technology to be used shall not have been found guilty of violating any procurement law or committed a crime anywhere in the world. Additionally, the amendment seeks to provide for access accessible and available for scrutiny of the technology subject to the applicable laws.

Clause 24 of the Bill proposes to amend section 44A of the act which provides for complementary mechanism for identification of voters by inserting the words "and

transmission of election results" and mandating IEBC to make Regulations for better carrying into effect the provisions of section 44A.

Clause 25 of the Bill proposes to delete section 45 of the Act which provides for conditions under which a Member of Parliament may be recalled. These provisions were declared unconstitutional in *Katiba Institute & another v Attorney General & another Constitutional Petition No. 209 of 2016 [Formerly Kisumu Petition Number 9 of 2016]*

Clause 26 of the Bill proposes to delete the provisions of section 46(1)(b)(ii) and (c) that required that a petition to recall a member of parliament must be signed by a petitioner who was registered to vote in the election in respect of which the recall is sought and that the petition must be accompanied by an order of the High Court. These provisions were declared unconstitutional in *Katiba Institute & another v Attorney General & another Constitutional Petition No. 209 of 2016 [Formerly Kisumu Petition Number 9 of 2016]*

Clause 27 of the Bill proposes to delete section 48 of the Act which presently provides that a recall election shall be valid if the number of voters who concur in the recall election is at least fifty percent of the total number of registered voters in the affected county or constituency. This provision was declared unconstitutional in *Katiba Institute & another v Attorney General & another Constitutional Petition No. 209 of 2016 [Formerly Kisumu Petition Number 9 of 2016]*

Clause 28 of the Bill proposes to repeal section 74 of the Act which provides for settlement of certain electoral disputes by the IEBC since this mandate is now a function of the Political Parties Disputes Tribunal established under the Political Parties Act, 2011.

Clause 29 of the Bill proposes to amend section 75 which provides for county election disputes by deleting the requirement that appeals to the High Court shall be on matters of law only, and inserting a new subsection (5) to provide that the decision of the High Court on an appeal on the validity of election of a member of a county assembly shall be final.

Clause 30 of the Bill proposes to amend section 82 of the Act which provides for scrutiny of votes by providing that a court may extend a scrutiny of votes beyond the polling stations or areas mentioned in the pleadings.

Clause 31 of the Bill proposes to insert a new section 82A to provide for access to information held by the IEBC. Where such information is required for purposes of scrutiny of votes, the information shall be provided within three days in the case of a presidential election, and within seven days in the case of all other elective positions.

Clause 32 of the Bill proposes to amend section 85A which provides for appeals to the Court of Appeal in respect of membership of the National Assembly, Senate or the office of county governor by deleting the requirement that appeals shall be on matters of law only, and inserting a new subsection (5) to provide that the decision of the Court of Appeal shall be final.

Clause 33 of the Bill proposes to insert new sections 87A, 87B and 87C to provide for the appointment by Parliament of an independent firm to carry out an evaluation of the electoral

process after a general election. The evaluation shall include a review of the legal framework, processes and costs associated with the electoral process. The proposed new provisions require the preparation of a report for submission to Parliament within ninety days of the appointment of the independent firm.

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

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

Statement on whether the Bill concerns county governments

The Bill concerns county governments in terms of Article 110(1) of the Constitution as it contains provisions relating to the election of members of a county assembly and a county executive.

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

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

Dated the....., 2023.

KIMANI ICHUNG'WAH,

Leader of the Majority Party.

OPIYO WANDAYI,

Leader of Minority Party.

Section 2 of the Act which it is proposed to amend-

2. In this Act, unless the context otherwise requires—

"adult" has the meaning assigned to it in Article 260 of the Constitution;

"agent" means a person duly appointed by—

(a) a political party or an independent candidate for the purposes of an election under this Act; or

(b) a referendum committee for the purposes of a referendum under this Act, and includes a counting agent and a tallying agent;

"ballot box" means a transparent container with a slot on the top sufficient to accept a ballot paper in an election or in a referendum but which prevents access to the votes cast until the closing of the voting period;

"ballot paper" means a paper used to record the choice made by a voter and shall include an electronic version of a ballot paper or its equivalent for purposes of electronic voting;

"campaign period" means the period specified as such in the notice issued by the Commission in relation to an election;

"candidate" means a person contesting for an elective post;

"Commission" means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

"constituency" means one of the constituencies into which Kenya is divided under Article 89 of the Constitution;

"constituency register" means the register of voters compiled in respect of each constituency by the Commission;

"county" means the counties into which Kenya is divided under Article 6 (1) of the Constitution and specified in the First Schedule of the Constitution;

"county assembly" means a county assembly constituted in accordance with Article 177 of the Constitution;

"county election" means the election of a county governor or a member of a county assembly;

"disability" has the meaning assigned to it in Article 260 of the Constitution;

"election" means a presidential, parliamentary or county election and includes a by-election;

"electoral area" means a constituency, a county or a ward;

"election court" means the Supreme Court in exercise of the jurisdiction conferred upon it by Article 163 (3) (a) or the High Court in the exercise of the jurisdiction conferred upon it by Article 165 (3) (a) of the Constitution and the Resident Magistrate's Court designated by the Chief Justice in accordance with section 75 of this Act;

"election material" means ballot boxes, ballot papers, counterfoils, envelopes, packets statements and other documents used in connection with voting in an election and includes information technology equipment for voting, the voting compartments, instruments, seals and other materials and things required for the purpose of conducting an election;

"election material" means ballot boxes, ballot papers, counterfoils, envelopes, packets statements and other documents used in connection with voting in an election and includes information technology equipment for voting, the voting compartments, instruments, seals and other materials and things required for the purpose of conducting an election;

"election offence" means an offence under this Act;

"elections officer" means a person appointed by the Commission for the purposes of conducting an election under this Act;

"election period" means the period between the publication of a notice by the Commission for a presidential, parliamentary or county election under sections 14, 16, 17 and 19 and the Gazettement of the election results;

"election results" means the declared outcome of the casting of votes by voters at an election;

"harambee" means the public collection of monies or other property in aid or support of a cause or a project;

"identification document" means a Kenyan national identification card or a Kenyan passport;

"illegal practice" means an offence specified in Part VI;

"independent candidate" means a candidate for presidential, parliamentary or county elections who is not a member of a political party;

"nomination" means the submission to the Commission of the name of a candidate in accordance with the Constitution and this Act;

"nomination day" in respect of an election, means the day gazetted by the Commission as the day for the nomination of candidates for that election

"observer" means a person or an organisation accredited by the Commission to observe an election or a referendum;

"party list" means a party list prepared by a political party and submitted to the Commission pursuant to and in accordance with Article 90 of the Constitution and sections 28, 34, 35, 36 and 37;

"parliamentary election" means the election of one or more members of Parliament;
"petition" means an application to the election court under the Constitution or under this Act;

"political party" has the meaning assigned to it in Article 260 of the Constitution;

"polling station" means any room, place, vehicle or vessel set apart and equipped for the casting of votes by voters at an election;

"presidential election" means an election of a President in accordance with Articles 136, 139 (1) (b) and 146 (2) (b) of the Constitution;

"Principal Register of Voters" means a current register of persons entitled to vote at an election prepared in accordance with section 3 and includes a register that is compiled electronically;

"public officer" has the meaning assigned to it in Article 260 of the Constitution;

"public resources" include—
(a) any vehicle, or equipment owned by or in the possession; or (b) premises owned or occupied by, any government, state organ, statutory corporation ora company in which the Government owns a controlling interest;

"referendum" means a poll held under Part V;

"referendum committee" means a national or a parliamentary constituency committee comprising of persons intending to support or oppose a referendum question;

"referendum officer" means a person appointed by the Commission for the purpose of conducting a referendum;

"referendum question" means a question upon which voters shall vote in a referendum as specified in section 49;

"registration officer" means a person appointed by the Commission for the purpose of preparing a register of voters;

"returning officer" means a person appointed by the Commission for the purpose of conducting an election or a referendum under this Act;

"supporter" means a voter who supports the nomination of a candidate;

"vessel" includes any ship, boat or any other description of vessel used in navigation;

"voter" means a person whose name is included in a current register of voters;

"voting period" means the period specified as such in the notice issued by the Commission in relation to an election;

"ward' means an electoral area within a county delimited in accordance with Article 89 of the Constitution.

Section 5 of the Act which it is proposed to amend-

5. (1) Registration of voters and revision of the register of voters under this Act shall be carried out at all times except—

(a) in the case of a general election or an election under Article 138(5) of the Constitution, between the date of commencement of the sixty day period immediately before the election and the date of such election;
Provided that this applies to the first general election under this Act.

(c) in the case of a by-election, between the date of the declaration of the vacancy of the seat concerned and the date of such by-election; or

(d) in any other case, between the date of the declaration of the vacancy of the seat concerned and the date of such election.

(2) Notwithstanding subsection (1), where an election petition is filed in respect of an electoral area, between the date of the filing of the petition and the date of the by-election, where a court determines that a by-election is to be held, a voter shall not be allowed to transfer his or her vote to the affected electoral area.

(3) Any citizen of Kenya who has attained the age of eighteen years as evidenced by either a national identity card or a Kenyan passport and whose name is not in the register of voters shall be registered as a voter upon application, in the prescribed manner, to the Commission.

(3A) Despite subsection (3), a citizen who has attained the age of eighteen years and has registered for an identification card and is in the possession of an acknowledgement of registration certificate shall, upon application, be registered as a voter using the acknowledgement of registration certificate, but may only vote using an identification card.

(3B) For purposes of this section, an acknowledgment of registration certificate means a certificate issued by a registration officer under the Registration of Persons Act to a person who has applied for an identification card, pending the issuance of that card.

(4) All applicants for registration under this section shall be registered in the appropriate register by the registration officer or any other officer authorised by the Commission.

(5) The registration officer or any other authorised officer referred to in subsection (3) shall, at such times as the Commission may direct, transmit the information relating to the registration of the voter to the Commission for inclusion in the Principal Register of voters.

Section 6 of the Act which it is proposed to amend-

6. (1) The Commission shall cause the Principal Register of Voters to be opened for inspection by members of the public at all times for the purpose of rectifying the particulars therein, except for such period of time as the Commission may consider appropriate.

(2) The Commission shall, within sixty days from the date of the notice for a general election, open the Principal Register of Voters for inspection for a period of at least fourteen days or such period as the Commission may consider necessary.

(3) The Commission shall, upon expiry of the period for inspection specified under subsection (1), compile the amendments to the register of voters and as soon as practicable thereafter, at least fourteen days before an election—

(a) publish a notice in the Gazette to the effect that such compilation has been completed; and

(b) cause to be transmitted to every registration officer, a copy of the part of the Principal Register of Voters relating to the constituency for which the registration officer is responsible to be kept in safe custody.

(4) The Principal Register of Voters shall be kept at the headquarters of the Commission and copies of the part of the Principal Register of Voters relating to the constituency for which the registration officer is responsible shall be kept at all the constituency offices of the Commission.

Section 8A of the Act which it is proposed to amend-

8(1)The Commission may, at least six months before a general election, engage a professional reputable firm to conduct an audit of the Register of Voters for the purpose of—

(a) verifying the accuracy of the Register;

(b)recommending mechanisms of enhancing the accuracy of the Register; and

(c)updating the register.

(2)The Kenya Citizens and Foreign Nationals Management Service established under section 3 of the Kenya Citizens and Foreign Nationals Management Service Act (No. 3 of 2011) shall make available to the Commission the information held by it in the national population register for the purpose of the conduct of an audit under subsection (1).

(3)For purposes of the first general election after the commencement of this section, the Commission shall, within thirty days of the commencement of this section, engage a professional reputable firm to conduct an audit of the Register of Voters for the purpose of —
(a)verifying the accuracy of the Register;
(b)recommending mechanisms of enhancing the accuracy of the Register; and
(c)updating the register.

(4)The firm engaged under subsection (3) shall conduct the audit and report to the Commission within a period of thirty days from the date of engagement.

(5)The Commission shall, within fourteen days of receipt of the report under subsection (4), submit the report to the National Assembly and the Senate.

(6)The Commission shall implement the recommendations of the audit report within a period of thirty days of receipt of the report and submit its report to the National Assembly and the Senate.

Section 14 of the Act which it is proposed to amend-

14. (1) Whenever a presidential election is to be held, the Commission shall publish a notice of the holding of the election in the Gazette and in electronic and print media of national circulation—

(a) in the case of a general election, at least sixty days before the date of the election; or

(b) in the case of an election under Article 138(5) of the Constitution, at least twenty-one days before the date of the election;

(c) in any other case, upon the office of the President becoming vacant.

(2) The notice referred to in subsection (1) shall be in the prescribed form and shall specify—

(a) the nomination day for the presidential election; and

(b) the day or days on which the poll shall be taken for the presidential election, which shall not be less than twenty-one days after the day specified for nomination.

Section 16 of the Act which it is proposed to amend-

16. (1) Whenever a parliamentary election is to be held, the Commission shall publish a notice of the holding of the election in the Gazette and in the electronic and print media of national circulation—

(a) in the case of a general election, at least sixty days before the date of the general election; or

(b) in any other case, upon the office of a member of Parliament becoming vacant and on receipt of a notice issued by the respective Speaker under subsection (2).

(2) The notice referred to under subsection (1) shall be in the prescribed form and shall specify—

(a) the day upon which political parties shall submit a party list in accordance with Article 90 of the Constitution;

(b) the day for the nomination of candidates for the parliamentary election; and

(c) the day or days on which the poll shall be taken for the election, which shall not be less than twenty-one days after the day specified for nomination under paragraph (b).

(3) Whenever a vacancy occurs in the National Assembly or the Senate, the respective Speaker shall issue a notice in accordance with Article 101 of the Constitution.

(4) The Commission shall within twenty-one days of receipt of the notice issued under subsection (2), transmit the notice to the relevant returning officer.

Section 17 of the Act which it is proposed to amend-

17. Initiation of county governor election

(1) Whenever an election for a county governor is to be held, the Commission shall publish a notice of the holding of the election in the Gazette and in the electronic and print media of national circulation —
(a) in the case of a general election, at least sixty days before the date of the general election; or
(b) in any other case, upon the office of the county governor becoming vacant.
(2) The notice referred to in subsection (1) shall be in the prescribed form and shall specify—
(a) the day for the nomination of candidates for the county governor election; and
(b) the day or days on which the poll shall be taken for the county governor election, which shall not be less than twenty-one days after the day specified for nomination.

Section 19 of the Act which it is proposed to amend-

19. (1) Whenever a county assembly election is to be held, the Commission shall publish a notice of the holding of the election in the Gazette and in the electronic and print media of national circulation—

(a) in the case of a general election, at least sixty days before the date of general election; or

(b) in any other case, upon the office of a member of a county assembly becoming vacant.

(2) The notice referred to under subsection (1) shall be in the prescribed form and shall specify—

(a) the day upon which political parties shall submit a party list in accordance with Article 90 of the Constitution;

(b) the day for the nomination of candidates for county elections; and

(c) the day or days on which the poll shall be taken for the county election, which shall not be less than twenty-one days after the day specified for the nomination under paragraph (b).

(3) Whenever a vacancy occurs in a county assembly, the speaker of the county assembly shall within twenty-one days after the occurrence of the vacancy issue a notice to the Commission in the prescribed form.

(4) The Commission shall within twenty-one days of receipt of the notice issued under subsection (3), transmit the notice to the relevant returning officer.

Section 22 of the Act which it is proposed to amend-
22.Qualifications for nomination of candidates
(1)A person may be nominated as a candidate for an election under this Act only if that person—
(a)is qualified to be elected to that office under the Constitution and this Act; and
(b)holds—
(i)in the case of a Member of Parliament, a degree from a university recognized in Kenya; or

(ii)in the case of member of a county assembly, a degree from a university recognized in Kenya.

(1A)Notwithstanding subsection (1), this section shall come into force and shall apply to qualifications for candidates in the general elections to be held after the 2017 general elections.

(1B)The provisions of this section apply to qualifications to nomination for a party list member under section 34.

(2)Notwithstanding subsection (1)(b), a person may be nominated as a candidate for election as President, Deputy President, county Governor or deputy county Governor only if the person is a holder of a degree from a university recognised in Kenya.

(2A)For the purposes of the first elections under the Constitution, section 22 (1) (b) and section 24 (1) (b), save for the position of the President, the Deputy President, the Governor and the Deputy Governor, shall not apply for the elections of the offices of Parliament and county assembly representatives.

Section 23 of the Act which it is proposed to amend-

23. Qualifications and disqualifications for nomination as President
(1) A person qualifies for nomination as a presidential candidate if the person—
(a) is a citizen by birth;
(b) is qualified to stand for election as a member of Parliament;
(c) is nominated by a political party, or is an independent candidate; and
(d) is nominated by not fewer than two thousand voters from each of a majority of the counties.
(2) A person is not qualified for nomination as a presidential candidate if the person—
(a) owes allegiance to a foreign state; or
(b) is a public officer, or is acting in any State or other public office.
(3) Subsection (2) (b) shall not apply to—
(a) the President;
(b) the Deputy President; or
(c) a member of Parliament.

Section 24 of the Act which it is proposed to amend-

24. Qualifications and disqualifications for nomination as member of Parliament
(1) Unless disqualified under subsection (2), a person qualifies for nomination as a member of Parliament if the person—
(a) is registered as a voter;
(b) satisfies any educational, moral and ethical requirements prescribed by the Constitution and this Act; and
(c) is nominated by a political party, or is an independent candidate who is supported-
(i) in the case of election to the National Assembly, by at least one thousand registered voters in the constituency; or
(ii) in the case of election to the Senate, by at least two thousand registered voters in the county.
(2) A person is disqualified from being elected a member of Parliament if the person—
(a) is a State officer or other public officer, other than a member of Parliament;

(b) has, at any time within the five years immediately preceding the date of election, held office as a member of the Commission;
(c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
(d) is a member of a county assembly;
(e) is of unsound mind;
(f) is an undischarged bankrupt;
(g) is subject to a sentence of imprisonment of at least six months, as at the date of registration as a candidate, or at the date of election; or
(h) is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six of the Constitution.
(3) A person is not disqualified under subsection (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

Section 25 of the Act which it is proposed to amend-

25. Qualifications for nomination as member of county assembly
(1) Unless disqualified under subsection (2), a person qualifies for nomination as a member of a county assembly if the person—
(a) is registered as a voter;
(b) satisfies any educational, moral and ethical requirements prescribed the Constitution and this Act; and
(c) is either-
(i) nominated by a political party; or
(ii) an independent candidate supported by at least five hundred registered voters in the ward concerned.
(2) A person is disqualified from being elected a member of a county assembly if the person—
(a) is a State officer or other public officer, other than a member of the county assembly;
(b) has, at any time within the five years immediately before the date of election, held office as a member of the Commission;
(c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
(d) is of unsound mind;
(e) is an undischarged bankrupt;
(f) is serving a sentence of imprisonment of at least six months; or
(g) has been found, in accordance with any law, to have misused or abused a State office or public office or to have contravened Chapter Six of the Constitution.
(3) A person is not disqualified under subsection (2) unless all possibility of
appeal or review of the relevant sentence or decision has been exhausted.

Section 27 of the Act which it is proposed to amend-

27. Submission of party nomination rules
(1) A political party shall submit its nomination rules to the Commission at least six months before the nomination of its candidates.
(1A) The Registrar of Political Parties shall certify the nomination rules submitted under subsection (1).
(2) An amendment to the nomination rules shall only be effective ninety days after submission of the amendments to the Commission.

(2A) Upon receipt of the nomination rules from a political party under subsection (1), the Commission shall, within fourteen days, review the rules to ensure compliance with the prescribed regulations and —
(a) issue the political party with a certificate of compliance; or
(b) require the political party to amend the rules to ensure such compliance within fourteen days.
(2B) For purposes of subsection (2A), the Commission shall, by notice in the Gazette, issue Regulations prescribing guidelines to be complied with and the process by which political parties nominate candidates for nomination in accordance with Article 88 (4) (d) of the Constitution failing which the rules shall become void.

Section 31 of the Act which it is proposed to amend-

31. Nomination of political party candidates
(1) A person qualifies to be nominated by a political party for presidential, parliamentary and county elections for the purposes of Articles 97, 98, 137, 177 and 180 of the Constitution if that person—
(a) is selected in the manner provided for in the constitution or rules of the political party concerned relating to members of that party who wish to contest presidential, parliamentary and county elections; and
(b) subject to subsection (4), the party certifies the nomination to the Commission.
(2) The Commission shall, upon the request of a political party, conduct and supervise the nomination of candidates by the political party for presidential, parliamentary or county elections in accordance with Article 88 of the Constitution.
(2A) Every political party shall submit the names of the party candidates who have been selected to participate in the general elections under this Act at least sixty days before the elections.
(2B) A political party shall, at least twenty- one days before the nomination day, submit to the Commission the names of the persons contesting in its party primary and the date of its party primary.
(2C) The Commission shall publish, in the Gazette the names of the persons contesting in a party primary under subsection (1) and the date of the party primary within seven days of receipt of the names of party candidates.
(2D) A candidate for a presidential, parliamentary or county election shall be selected by persons who are members of the respective political parties and whose names appear on the party membership list as submitted to the Commission under section 28.
(2E) Where the Commission receives multiple requests under subsection (2), the Commission shall conduct and supervise the nomination of candidates for presidential, parliamentary or county elections for all the requesting political parties —
(a) on the same day;
(b) in the same polling centres; and
(c) in different polling streams for each participating political party.
(2F) Parliament shall appropriate monies for the effective implementation of this section.
(3) Every political party shall notify the Commission of the name of the person authorised by the party to certify to the Commission that a person has or persons have been selected by the party under subsection (1) and the person or persons so named shall deposit his or their specimen signature with the Commission in such manner as the Commission may require.
(4) The authorised person or persons referred to in subsection (4) shall, in writing, certify that a candidate has been nominated by the party.

Section 32 of the Act which it is proposed to amend-

32. Approval of symbol for independent candidate
(1) An independent candidate shall submit the symbol the candidate intends to use during an election to the Commission at least twenty-one days before nomination day.
(1A) Where there is a vacancy in the office of the Governor, an independent candidate shall submit to the Commission, the symbol that the person intends to use during an election at least seven days before nomination.
(2) The Commission shall, upon receipt of the symbol submitted to it under this section approve or reject the symbol.
(3) The Commission may refuse to approve the symbol of an independent candidate if the symbol—
(a) is obscene or offensive;
(b) is the symbol of another candidate or of a political party; or
(c) so nearly resembles the symbol of another candidate or political party or any other legal entity registered under any other written law.

Section 33 of the Act which it is proposed to amend-

33. Nomination of independent candidates
(1) A person qualifies to be nominated as an independent candidate for presidential, parliamentary and county elections for the purposes of Articles 97, 98, 137, 177, and 180 of the Constitution if that person—
(a) has not been a member of any political party for at least three months preceding the date of the election;
(b) has submitted to the Commission, at least sixty days before a general election, a duly filled nomination paper in such form as may be prescribed by the Commission;
(c) has, at least ninety days before the date of a general election or at least twenty one days before the date appointed by the Commission as the nomination day for a by–election, submitted to the Commission the name and symbol that the person intends to use during the election; and
(d) is selected in the manner provided for in the Constitution and by this Act.
(2) The Commission shall publish in the Gazette, the names of persons intending to contest in the election as independent candidates at least fourteen days before the nomination day.

Section 34 of the Act which it is proposed to amend-
34.(1)The election of members for the National Assembly, Senate and county assemblies for party list seats specified under Articles 97 (1) (c) and 98 (1) (b) (c) and (d) and Article 177 (1) (b) and (c) of the Constitution shall be on the basis of proportional representation and in accordance with Article 90 of the Constitution.

(2)A political party which nominates a candidate for election under Article 97 (1) (a) and (b) shall submit to the Commission a party list in accordance with Article 97 (1) (c) of the Constitution.

(3)A political party which nominates a candidate for election under Article 98 (1) (a) shall submit to the Commission a party list in accordance with Article 98 (1) (b) and (c) of the Constitution.

(4)A political party which nominates a candidate for election under Article 177 (1) (a) shall submit to the Commission a party list in accordance with Article 177 (1) (b) and (c) of the Constitution.

(4A)In the case of a person nominated pursuant to Article 177(1) (c) of the Constitution, the party list shall include a certification in the manner prescribed by the Commission.

(5)The party lists under subsection (2), (3) and (4) shall be submitted in order of priority.

(6)The party lists submitted to the Commission under this section shall be in accordance with the constitution or nomination rules of the political party concerned.

(6A)Upon receipt of the party list from a political party under subsection (1), the Commission shall review the list to ensure compliance with the prescribed regulations and —

(a)issue the political party with a certificate of compliance; or

(b)require the political party to amend the party list to ensure such compliance failing which the Commission shall reject the list.

(6B)For purposes of subsection (6A), the Commission may, by notice in the gazette, issue regulations prescribing guidelines to be complied with in preparation of party lists.

(7)The party lists submitted to the Commission shall be valid for the term of Parliament.

(8)A person who is nominated by a political party under subsection (2), (3) and (4) shall be a person who is a member of the political party on the date of submission of the party list by the political party.

(9)The party list shall not contain a name of a candidate nominated for an election.

(10)A party list submitted for purposes of subsection (2), (3), (4) and (5) shall not be amended during the term of Parliament or the county assembly, as the case may be, for which the candidates are elected.

Section 38A of the Act which it is proposed to amend-

38A. Number of voters per polling station
For the purposes of providing efficient and effective conduct of elections, the number of voters per polling station shall not exceed seven hundred.

Section 39 of the Act which it is proposed to amend-

Determination and declaration of results

39.(1)The Commission shall determine, declare and publish the results of an election immediately after close of polling.

(1A)The Commission shall appoint constituency returning officers to be responsible for—

(i)tallying, announcement and declaration, in the prescribed form, of the final results from each polling station in a constituency for the election of a member of the National Assembly and members of the county assembly;

(ii)collating and announcing the results from each polling station in the constituency for the election of the President, county Governor, Senator and county women representative to the National Assembly; and

(iii)submitting, in the prescribed form, the collated results for the election of the President to the national tallying centre and the collated results for the election of the county Governor, Senator and county women representative to the National Assembly to the respective county returning officer.

(1B)The Commission shall appoint county returning officers to be responsible for tallying, announcement and declaration, in the prescribed form, of final results from constituencies in the county for purposes of the election of the county Governor, Senator and county women representative to the National Assembly.

(1C)For purposes of a presidential election, the Commission shall —

(a)electronically transmit and physically deliver the tabulated results of an election for the President from a polling station to the constituency tallying centre and to the national tallying centre;

(b)tally and verify the results received at the constituency tallying centre and the national tallying centre; and

(c)publish the polling result forms on an online public portal maintained by the Commission.

(1D)The Commission shall verify that the results transmitted under this section are an accurate record of the results tallied, verified and declared at the respective polling stations.

(1E)Where there is a discrepancy between the electronically transmitted and the physically delivered results, the Commission shall verify the results and the result which is an accurate record of the results tallied, verified and declared at the respective polling station shall prevail.

(1F)Any failure to transmit or publish the election results in an electronic format shall not invalidate the result as announced and declared by the respective presiding and returning officers at the polling station and constituency tallying centre, respectively.

(1G)The Commission shall, to facilitate public information, establish a mechanism for the live-streaming of results as announced at polling stations, and the results so streamed shall be for purposes of public information only and shall not be the basis for a declaration by the Commission.

(1H)The chairperson of the Commission shall declare the results of the election of the President in accordance with Article 138(10) of the Constitution.

(2)The Chairperson may declare a candidate elected as the President before all the constituencies have transmitted their results if the Commission is satisfied the results that have not been received will not affect the result of the election.

(3)The Commission shall announce the final results in the order in which the tallying of the results is completed.

Section 44 of the Act which it is proposed to amend

44. Use of technology
(1) Subject to this section, there is established an integrated electronic electoral system that enables biometric voter registration, electronic voter identification and electronic transmission of results.
(2) The Commission shall, for purposes of subsection(1), develop a policy on the progressive use of technology in the electoral process.
(3) The Commission shall ensure that the technology in use under subsection (1) is simple, accurate, verifiable, secure, accountable and transparent.
(4) The Commission shall, in an open and transparent manner —
(a) procure and put in place the technology necessary for the conduct of a general election at least one hundred and twenty days before such elections; and
(b) test, verify and deploy such technology at least sixty days before a general election.
(5) The Commission shall, in consultation with the relevant agencies, institutions and stakeholders, make regulations for the better carrying into effect the provisions of this section.

Section 44A of the Act which it is proposed to amend

44A. Complementary mechanism for identification of voters.
Notwithstanding the provisions of section 44, the Commission shall put in place a complementary mechanism for identification of voters that is simple, accurate, verifiable, secure, accountable and transparent to ensure that the Commission complies with the provisions of Article 38 of the Constitution.

Section 45 of the Act which it is proposed to amend
45.(1)The electorate in a county or constituency may recall their member of Parliament before the end of the term of the relevant House of Parliament on any of the grounds specified in subsection (2).

(2)A member of Parliament may be recalled where the member—

(a)is found, after due process of the law, to have violated the provisions of Chapter Six of the Constitution;

(b)is found, after due process of the law, to have mismanaged public resources;

(c)is convicted of an offence under this Act.

(3)A recall of a member of Parliament under subsection (1) shall only be initiated upon a judgement or finding by the High Court confirming the grounds specified in subsection (2).

(4)A recall under subsection (1) shall only be initiated twenty-four months after the election of the member of Parliament and not later than twelve months immediately preceding the next general election.

(5)A recall petition shall not be filed against a member of Parliament more than once during the term of that member in Parliament.

(6)A person who unsuccessfully contested an election under this Act shall not be eligible, directly or indirectly, to initiate a petition under this section.

Section 46 of the Act which it proposed to amend

46.(1)A recall under section 45 shall be initiated by a petition which shall be filed with the Commission and which shall be—

(a)in writing;

(b)signed by a petitioner who—

(i)is a voter in the constituency or county in respect of which the recall is sought; and

(ii)was registered to vote in the election in respect of which the recall is sought;

(c)accompanied by an order of the High Court issued in terms of section 45(3).

(2)The petition referred to in subsection (1) shall—

(a)specify the grounds for the recall as specified under section 45 (2);

(b)contain a list of such number of names of voters in the constituency or county which shall represent at least thirty percent of the registered voters; and

(c)be accompanied by the fee prescribed for an election petition.

(3)The list of names referred to in subsection (2) (b) shall contain the names, address, voter card number, national identity card or passport number and signature or thumb prints of the voters supporting the petition and shall contain names of at least fifteen percent of the voters in more than half of the wards in the county or the constituency, as appropriate.

(4)The voters supporting a petition under subsection (3) shall represent the diversity of the people in the county or the constituency as the case may be.

(5)The petitioner shall collect and submit to the Commission the list of names under subsection (2) (b) within a period of thirty days after filing the petition.

(6)The Commission shall verify the list of names within a period of thirty days of receipt of that list.

(7)The Commission, if satisfied that the requirements of this section are met, shall within fifteen days after the verification, issue a notice of the recall to the Speaker of the relevant House.

(8)The Commission shall conduct a recall election within the relevant constituency or county within ninety days of the publication of the question.

Section 48 of the Act which it is proposed to amend

48.A recall election shall be valid if the number of voters who concur in the recall election is at least fifty percent of the total number of registered voters in the affected county or constituency.

Section 74 of the Act which it is proposed to repeal-

74. Settlement of certain disputes
(1) Pursuant to Article 88 (4) (e) of the Constitution, the Commission shall be responsible for the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results.
(2) An electoral dispute under subsection (1) shall be determined within ten days of the lodging of the dispute with the Commission.
(3) Notwithstanding subsection (2), where a dispute under subsection (1) relates to a prospective nomination or election, the dispute shall be determined before the date of the nomination or election, whichever is applicable.

Section 75 of the Act which it is proposed to amend-

75. County election petitions
(1) A question as to validity of a election of a county governor shall be determined by High Court within the county or nearest to the county.
(1A) A question as to the validity of the election of a member of county assembly shall be heard and determined by the Resident Magistrate's Court designated by the Chief Justice.
(2) A question under subsection (1) shall be heard and determined within six months of the date of lodging the petition.
(3) In any proceeding brought under this section, a court may grant appropriate relief, including—
(a) a declaration of whether or not the candidate whose election is questioned was validly elected;
(b) a declaration of which candidate was validly elected; or
(c) an order as to whether a fresh election will be held or not.
(4) An appeal under subsection (1A) shall lie to the High Court on matters of law only and shall be -
(a) filed within thirty days of the decision of the Magistrate's Court; and
(b) heard and determined within six months from the date of filing of the appeal.

Section 82 of the Act which it is proposed to amend-

82. Scrutiny of votes
(1)An election court may, on its own motion or on application by any party to the petition, during the hearing of an election petition, order for a scrutiny of votes to be carried out in such manner as the election court may determine.\
(2)Where the votes at the trial of an election petition are scrutinized, only the following votes shall be struck off—
(a)the vote of a person whose name was not on the register or list of voters assigned to the polling station at which the vote was recorded or who had not been authorised to vote at that station;
(b)the vote of a person whose vote was procured by bribery, treating or undue influence;
(c)the vote of a person who committed or procured the commission of personation at the election;
(d)the vote of a person proved to have voted in more than one constituency;
(e)the vote of a person, who by reason of conviction for an election offence or by reason of the report of the election court, was disqualified from voting at the election; or

(f)the vote cast for a disqualified candidate by a voter knowing that the candidate was disqualified or the facts causing the disqualification, or after sufficient public notice of the disqualification or when the facts causing it were notorious.

(3)The vote of a voter shall not, except in the case specified in subsection (1) (e), be struck off under subsection (1) by reason only of the voter not having been or not being qualified to have the voter's name entered on the register of voters.

Section 85A of the Act which it is proposed to amend-

85A.Appeals to the Court of Appeal

(1)An appeal from the High Court in an election petition concerning membership of the National Assembly, Senate or the office of county governor shall lie to the Court of Appeal on matters of law only shall be -

(a)filed within thirty days of the decision of the High Court; and

(b)heard and determined within six months of the filing of the appeal.

(2)An appeal under subsection (1) shall act as a stay of the certificate of the election court certifying the results of an election until the appeal is heard and determined.

Annexure **4a**

IEBC (Amendment) Bill, 2024

Report of the Departmental Committee on Justice and Legal Affairs on Consideration of the Report of the National Dialogue Committee (NADCO) and the Report of the Multi-Sectoral Working Group on the Realization of the Two-Thirds Gender Principle

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2023

(b) by deleting sub-section (5);
(c) by deleting sub-section (6).

Amendment of section 10 of No. 9 of 2011.

5. Section 10 of the principal Act is amended by deleting sub-section (4) and substituting therefor the following new sub-section-

(4) The secretary shall hold office for a term of three years and may be eligible for re-appointment for one further term of three years.

Amendment of section 12 of No. 9 of 2011.

6. Section 12 of the principal Act is amended by inserting the following new sub-sections immediately after sub-section (2)-

(3) The Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent and accountable.

(4) The review shall be completed within one year after every general election and the Commission shall publish the report in the *Gazette* and submit the report to Parliament.

Amendment of section 36 of No. 9 of 2011.

7. Section 36 of the principal Act is amended by inserting the following new sub-section immediately after sub-section (11)-

(12) Subject to this section, the provisions set out in the Fifth Schedule shall apply during the process of delimitation of electoral units.

Amendment of the First Schedule to No. 9 of 2011.

8. The First Schedule to the principal Act is amended—

(a) in paragraph 1—
(i) by deleting sub-paragraph (2) and substituting therefor the following new sub-paragraph—

(2) The selection panel shall consist of—

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Independent Electoral and Boundaries Commission Act, 2011 and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title and commencement.

1. This Act may be cited as the Independent Electoral and Boundaries Commission (Amendment) Act, 2023 and shall come into force upon publication in the Gazette.

Amendment of section 2 of No.9 of 2011.

2. Section 2 of the Independent Electoral and Boundaries Commission Act, 2011 (hereinafter referred to as "the principal Act") is amended-

(a) in the definition of the word "chairperson" by deleting the words "or the vice-chairperson or a member of the Commission when discharging the functions of the chairperson" appearing immediately after the word "Constitution;

(b) by deleting the definition of the expression "first review";

(c) by deleting the definition of the expression "former Boundaries Commission";

(d) by deleting the definition of the expression "former Constitution";

(e) by deleting the definition of the expression "issues arising".

Amendment of section 6 of No.9 of 2011.

3. Section 6 of the principal Act is amended in subsection (2)(c) by inserting the following new sub-paragraphs immediately after sub-paragraph (vi) —

(vii) information and communication technology;

(viii) accounting.

Amendment of section 7A of No.9 of 2011.

4. Section 7A of the principal Act is amended-

(a) by deleting sub-section (4);

(b) by deleting paragraph 6 and substituting therefor the following new paragraph-

Dissolution of Selection Panel

6.(1)The selection panel shall finalize the recruitment exercise within ninety days of its appointment and forward the names of the nominees to the President and shall thereafter stand dissolved.

(2) Despite sub-paragraph (1), Parliament may, by resolution passed in both the National Assembly and the Senate, extend the tenure of the selection panel for a specified period.

Amendment of the Second Schedule to No. 9 of 2011.

9. The Second Schedule to the principal Act is amended-

(a) by deleting paragraph 5 and substituting therefore the following new paragraph-

"5. The quorum for the conduct of business at a meeting of the Commission shall be at least five members of the Commission."

(b) by deleting paragraph 7 and substituting therefor the following new paragraph-

"(7) Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by the concurrence of a majority of all the members of the Commission."

10. The principal Act is amended by deleting the Fifth Schedule and substituting therefor the following new Schedule-

FIFTH SCHEDULE (s.36)

PROCEDURES FOR THE DELIMITATION OF ELECTORAL UNITS

1. Notice of delimitation of electoral units

(1) Whenever it is necessary to review the names and boundaries of electoral units in accordance with Article 89(2)

(a) two persons nominated by the Parliamentary Service Commission, representing the majority party or coalition of parties and the minority party or coalition of parties;
(b) three persons nominated by the Political Parties Liaison Committee of whom-
  (i) one shall be from a party other than a parliamentary party or coalition of parties;
  (ii) one shall be from a parliamentary party or coalition of parties forming the national government;
  (iii) one shall be from a parliamentary party or coalition of parties not forming the national government;
(c) one person nominated by the Law Society of Kenya;
(d) one person nominated by the Institute of Certified Public Accountants of Kenya; and
(e) two persons nominated by the Inter-religious Council of Kenya.

(ii) by inserting the following new sub-paragraphs immediately after sub-paragraph (2A)—

(2B) The respective nominating bodies shall select the nominees for appointment through a competitive and transparent process.

(2C) In nominating, the persons under subparagraph (2)(a), (b) and (e), the respective nominating bodies shall ensure that not more than two-thirds of the nominees are of the same gender.

(iii) in sub-paragraph (3), by deleting the words "sub-paragraphs (2)(b) and (c)" and substituting therefor the words "sub-paragraphs (2)(b), (c), (d) and (e)";

(a) the reports of County Boundary Review Panels; or
(b) other relevant data.

(3) The County Boundary Review Panels shall conduct their business as the Commission may, by guidelines determine.

4. Ascertainment of the inhabitants of Kenya

(1) For purposes of determining the population quota, the Commission shall ascertain the number of the inhabitants of Kenya from the figures contained in the latest official national population census report.

(2) Despite sub-paragraph (1), the Commission shall, subject to the timelines set out under Article 89(2) of the Constitution, conduct the delimitation exercise after the national population census.

(3) The Kenya National Bureau of Statistics, shall, as soon as possible after the completion of every national census, submit a copy of the report in the prescribed format to the Commission.

5. Publicization of the preliminary report

(1) The Commission shall—

(a) publicize the preliminary report in its website and in at least two newspapers of nationwide circulation;
(b) invite the public to make representations on the proposals contained in the report; and
(c) put in place administrative mechanisms for receiving representations from the public.

(2) The period set aside for receiving representations from the public on the proposals contained in the report under this paragraph shall be as determined by the Commission.

6. Public sensitization

(1) The Commission shall, upon notification of the public of the intended delimitation of boundaries under paragraph 1 of this Schedule, provide the framework for sensitization and participation of the public.

and (3) of the Constitution, the Commission shall notify the public of—

(a) the intended review;
(b) invite representations from interested parties; and
(c) specify the period within which the Commission shall publish the preliminary report.

(2) A notice under sub-paragraph (1) shall be accompanied by a preliminary report containing the particulars set out under paragraph 2.

2. Preliminary report

The preliminary report shall contain the following particulars—

(a) the proposed delimitation of boundaries for constituencies and wards including the actual proposed names of every constituency and ward; and

(b) description of the proposed boundaries showing the specific geographical and demographical details relating to such delimitation including—

(i) the population quota for constituencies and wards;
(ii) the number of inhabitants in every constituency and ward;
(iii) a classification in relation to each electoral area indicating whether it is a city, a sparsely populated area or other area; and
(iv) an indication of the proposed margin of change from the population quota.

3. Reference materials

(1) The Commission shall, use as its primary reference material—

(a) the final report of the last Electoral and Boundaries Commission on the review of electoral units; and
(b) the latest official population census report.

(2) The Commission may use as its secondary reference material-

(1) Pursuant to Article 89(10) of the Constitution, a person may apply to the High Court for review of a decision of the Commission on the delimitation of electoral boundaries.

(2) An application for the review under this paragraph shall be made within thirty days of the publication of the decision in the Gazette as required under Article 89(9) of the Constitution and shall be heard and determined within three months of the date on which it is filed.

11. Maintenance of records

The Commission shall ensure that all documents, materials, publications, reports and recommendations arising from the delimitation process are maintained in a form that is accessible and usable by members of the public.

12. Duty of certain officers to co-operate with the Commission

It shall be the duty of every state officer or public officer serving in the relevant government ministry, department or agency including the ministry for the time being responsible for Interior and National Administration, Director of Surveys, Director-General of the Kenya National Bureau of Statistics and every other public officer whose services are required by the Commission for purposes of the delimitation of electoral units to provide the necessary information and technical support.

Transition provision.

11. The selection panel existing immediately at the commencement date of this Act ceases to exist but a person who served as a member of that selection panel may be nominated to serve as a member of a selection panel appointed under this Act.

(2) The Commission may engage the media, avail equipment and prepare materials for effective public education and engagement.

7. Public hearings

(1) The Commission shall conduct boundaries review hearings in every county and may constitute constituencies and wards boundaries review panels in each county for the purposes of facilitating public hearings.

(2) Before engaging in the county boundaries review hearings, the Commission shall notify the public of date, time and place of such hearings.

(3) Representations to the Commission may be made orally or in writing.

(4) The proceedings of all boundary review public hearings shall be recorded, translated and transcribed.

8. Preparation of revised report

(1) Upon completion of the public hearings, the Commission shall review the proposed delimitation of boundaries and submit the report to Parliament.

(2) The revised report shall be based on the feedback received during the public consultative process, subject to the relevant provisions of the law.

9. Preparation and dissemination of maps

(1) The Commission shall prepare and publish maps in its website—

(a) for all the electoral units in accordance with the final boundary dissemination delimitation report;
(b) for the respective constituencies in every county; and
(c) for wards in every constituency.

(2) Despite sub-paragraph (1), the Commission shall provide physical copies of the maps to Parliament.

10. Review of the decisions of the Commission

Clause 2 of the Bill seeks to amend section 2 of the Bill by aligning the definition of the chairperson of the Commission to the Judgment of the High Court and by deleting obsolete provisions in the section.

Clause 3 of the Bill seeks to amend section 6(2)(c) of the Act to include information and communications technology and one of the relevant professional areas to be taken into account when nominating persons to be appointed as members of the Commission.

Clause 4 of the Bill seeks to amend section 7A of the Act and delete subsections (4), (5) and (6) that were held to be unconstitutional by the High Court.

Clause 5 of the Bill seeks to amend section 10 of the principal Act to provide that the term of the secretary to the Commission shall be three years, renewable once.

Clause 6 of the Bill seeks to amend section 12 of the principal Act and provide that the Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent and accountable.

Clause 7 of the Bill provides for the amendment of section 36 of the Act to anchor the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units.

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Clause 8 of the Bill seeks to amend the First Schedule to the Act to increase the number of members of the selection panel from seven to nine in order to accommodate a wide spectrum of stakeholders and interest groups.

Clause 9 of the Bill seeks to amend the Second Schedule to the Act and provide for the quorum of the Commission.

Clause 10 of the Bill provides for the deletion and substitution of the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

The Bill seeks to amend the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 to clean up the Act by deleting obsolete provisions. The Bill further seeks to make some consequential amendments intended to align the Act to the Judgment of the High Court in *Katiba Institute & 3 Others v Attorney-General & 2 Others [2018]eKLR* wherein the High Court held that certain provisions of the Act were unconstitutional.

The Bill also seeks to amend section 6 of the Act and include experience in accounting or information and communication technology as additional professional qualifications for appointment as a member of the Independent Electoral and Boundaries Commission.

The Bill further seeks to amend the First Schedule to the Independent Electoral and Boundaries Commission No. 9 of 2011 to increase the number of members of the selection panel from seven to nine in order to accommodate a wide spectrum of stakeholders and interest groups.

The Bill further seeks to replace the current Fifth Schedule with a new and updated Schedule.

Clause 1 of the Bill sets out the short title of the Bill and provides for its commencement date.

"first review" means the review conducted by the former Boundaries Commission taking into account any outstanding work of that Commission and issues arising from that review;

"former Boundaries Commission" means the Interim Independent Boundaries Review Commission established under section 41 B of the former Constitution;

"former Constitution" means the Constitution in force immediately before the 27th of August, 2010;

"Fund" means the Independent Electoral and Boundaries Commission Fund established by section 18;

"issues arising" means the issues specified in paragraph 1 of the Fifth Schedule;

"member" means a member of the Commission and includes the chairperson;

"Parliamentary Committee" means the relevant Departmental Committee of the National Assembly responsible for matters relating to the Commission;

"principal office" means the headquarters of the Commission;
"Registrar of Persons" means the office in charge of identification, registration and issuance of identity cards to all Kenyan citizens;

"Salaries and Remuneration Commission" means the Salaries and Remuneration Commission established under Article 230(1) of the Constitution;

"secretary" means the secretary to the Commission appointed under Article 250(12) of the Constitution;

"vice-chairperson" means the vice-chairperson of the Commission elected under Article 250(10) of the Constitution.

Clause 11 of the Bill sets out the transitional provisions relating to the selection panel for the appointment of members of the Commission.

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

The Bill does not delegate legislative powers and it does not also contain provisions limiting fundamental rights and freedoms.

Statement on whether the Bill concerns county governments

The Bill concerns county governments in terms of Article 110(1) of the Constitution as it contains provisions relating to the election of a county assembly and a county executive.

Statement on the financial implications of the Bill

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the....., 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

Section 2 of No. 9 of 2011 which it is proposed to amend—

Interpretation

(1) In this Act, unless the context otherwise requires-

"Cabinet Secretary" means the Cabinet Secretary appointed under Article 152 of the Constitution;

"chairperson" means the chairperson of the Commission appointed in accordance with Article 250(2) of the Constitution or the vice-chairperson or a member of the Commission when discharging the functions of the chairperson;

"Commission" means the Independent Electoral and Boundaries Commission established by Article 88 of the Constitution;

new chairperson or member, under this Act, shall commence immediately after the declaration of the vacancy by the President under subsection (2).

(4) Whenever a vacancy occurs in the office of the chairperson, the vice-chairperson shall act as the chairperson and exercise the powers and responsibilities of the chairperson until such a time as the chairperson is appointed.

(5) Where the positions of chairperson and vice-chairperson are vacant, a member elected by members of the Commission shall act as the chairperson and exercise the powers and responsibilities of the chairperson until such a time as the chairperson is appointed.

(6) The provisions of section 6(1) shall not apply to the vice-chairperson or a member acting as chairperson under this section.
[Act No. 36 of 2016, s. 33, Act No. 34 of 2017, s. 3.]

Section 10 of No. 9 of 2011 which it is proposed to amend—
Secretary to the Commission
(1) The Commission shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be thesecretary to the Commission.
(2) A person shall be qualified for appointment as the secretary if the person-

(a) is a citizen of Kenya;
(b) possesses a degree from a recognized university;
(c) has had at least five years' proven experience at management level:
(d) has proven relevant experience in either-
(i) electoral matters;
(ii) management;
(iii) finance;
(iv) governance;
(v) public administration;
(vi) law; or
(vii) political science, and

(e) meets the requirements of Chapter Six of the Constitution.

(3) The secretary shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Third Schedule.

(2) Despite subsection (1), until after the first election under the Constitution, references in this Act to the expression "Cabinet Secretary" shall be construed to mean "Minister".

Section 6 of No. 9 of 2011 which it is proposed to amend—

Qualification for appointments as chairperson or member of the Commission

6.(1)The chairperson of the Commission shall be a person who is qualified to hold the office of judge of the Supreme Court under the Constitution.

(2) A person is qualified for appointment as a member of the Commission if such person-

(a) deleted by Act No. 36 of 2016, s. 32;

(b) holds a degree from a recognized university;

(c) has proven relevant experience in any the following fields-

(i) electoral matters;
(ii) management;
(iii) finance;
(iv) governance;
(v) public administration;
(vi) law; and

(d) meets the requirements or Chapter Six of the Constitution.

Section 7A of No. 9 of 2011 which it is proposed to amend—

7A. Vacancy in the office of chairperson and members

(1) The office of the chairperson or a member of the Commission shall become vacant if the holder—

(a) dies;
(b) resigns from office by notice in writing addressed to the President; or
(c) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.

(2) The President shall publish a notice of a vacancy in the Gazette within seven days of the occurrence of such vacancy.

(3) Whenever a vacancy arises under subsection (1), the recruitment of a

(2) Subject to the Constitution, matters to be addressed in the delimitation of electoral boundaries are —

(a) review of the names and boundaries of constituencies;
(b) review of the number, names and boundaries of wards;
(c) re-distribution of wards affected by any changes in the boundaries of constituencies; and
(d) ensuring that the number of inhabitants in each constituency and ward is as nearly as possible, equal to the population quota as provided for by Article 89(5) of the Constitution and that such a process —

(i) allows for variation of margin of not more than the limits provided under Article 89 (6) of the Constitution in relation to cities, sparsely populated areas and other areas;

(ii) takes into account the provisions of Article 89 (7) (b) of the Constitution that provides for the progressive realization of the requirement that the number of inhabitants in each constituency and ward to be as nearly as possible, equal to the population quota for the purposes of the each review;

(iii) is subject to the use of enumerated national census figures.

(3) The Commission shall prepare and publish a preliminary report outlining —

(a) the proposed delimitation of boundaries for constituencies and wards; and
(b) the specific geographical; and
(c) demographical details relating to such delimitation.

(4) The Commission shall ensure that the preliminary report is made available to the public for a period of thirty days and invite representations from the public on the proposals contained in the report during that period.

(5) Upon the expiry of the period provided in subsection (4), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received and submit the revised preliminary report to the Parliamentary Committee.

(4) The secretary shall hold office for a term of five years but shall be eligible for re-appointment for one further term of five years.

(5) Where the Commission does not intend to reappoint the secretary, the Commission shall notify the secretary and shall cause the vacancy to be advertised at least three months before the expiry of the incumbent's term.

(6) The secretary shall, in the performance of the functions and duties of office,be responsible, answerable and report to the Commission.

(7) The secretary shall be-
(a) the chief executive officer of the Commission;
(b) head or the secretariat;
(c) the accounting officer of the Commission;
(d) custodian of all Commission's records;
(e) responsible for-
(i) executing decisions of the Commission;
(ii) assignment of duties and supervision of all employees of the Commission;
(iii) facilitating, co-ordinating and ensuring execution or Commission's mandate;
(iv) ensuring staff compliance with public ethics and values; and
(v) the performance or such other duties as may be assigned by the law and Commission.

(8) The secretary may only be removed from office by the Commission on grounds of-
(a) inability to perform functions of the office arising out of physical or mental incapacity;
(b) gross misconduct;
(c) bankruptcy; or
(d) incompetence.

(9) Before removal under subsection (8), the secretary shall be -
(a) informed in writing of the reasons for the intended removal;
(b) given an opportunity to put in a defence against any such allegations, either in person or through an advocate.

Section 36 of No. 9 of 2011 which it is proposed to amend—

Procedure for delimitation of electoral boundaries

(1) The Commission shall discharge its mandate of the delimitation of boundaries of constituencies and wards in accordance with the Constitution, this Act and any other law.

Constitution or this Act, the President shall appoint a selection panel consisting of seven persons for the purposes of appointment of the chairperson or member of the Commission.

(2) The selection panel shall consist of—

(a) one man and one woman, nominated by the Parliamentary Service Commission;

(b) one person nominated by the Public Service Commission;

(c) one person nominated by the Political Parties Liaison Committee;

(d) one person nominated by the Law Society of Kenya; and

(e) two persons nominated by the Inter-religious Council of Kenya.

(2A) A person is qualified for appointment as a member of the selection panel if such person —

(a) is a citizen of Kenya;

(b) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution; and

(c) holds a degree from a university recognized in Kenya.

(3) The respective nominating bodies under sub-paragraphs (2)(b) and (c) shall, within seven days of the declaration of a vacancy in the office of the chairperson or member of the Commission, submit the names of their nominees to the Parliamentary Service Commission for transmission to the President for appointment.

(4) The selection panel shall, at its first sitting, elect a chairperson and vice-chairperson from amongst its number.

(5) Subject to the provisions of this Schedule, the selection panel shall determine its own procedure.

(6) The Parliamentary Service Commission shall provide the secretariat services and facilities required by the selection panel in the performance of its functions.

2. Oath or affirmation of office

(6) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report, table the report in the National Assembly together with its recommendations.

(7) The National Assembly shall, within fourteen days of the tabling of the revised preliminary report, consider the report and forward its recommendations to the Commission.

(8) Within fourteen days of the expiry of the period provided for in subsection (7), the Commission shall upon receipt and considerations of the National Assembly and representations from the public, prepare the final report for publication in the Gazette.

(9) Where the National Assembly fails to make recommendations within the period specified in subsection (7), the Commission shall publish its report in accordance with subsection (8).

(10) A person who, being responsible for the publication in the Gazette of the final report submitted under this subsection fails to publish the report within the time required by the Commission after the report has been submitted to that person, commits an offence and is liable to imprisonment for a term of one year.

(11) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subsection (9) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the Gazette. [Act No. 1 of 2017, s. 30]

The First Schedule to No. 9 of 2011 which it is proposed to amend—

FIRST SCHEDULE

PROCEDURE FOR APPOINTMENT OF CHAIRPERSON AND MEMBERS OF THE COMMISSION

1.(1) At least six months before the lapse of the term of the chairperson or member of the Commission or within fourteen days of the declaration of a vacancy in the office of the chairperson or member of the Commission under the

The selection panel shall stand dissolved upon the requisite appointments being made under paragraph 4.

The Second Schedule to No. 9 of 2011 which it is proposed to amend—

SECOND SCHEDULE[s. 8]

PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE COMMISSION

1. The Commission shall meet as often as may be necessary for the carrying out of its business but it shall meet at least once every calendar month.
2. A meeting of the Commission shall be held on such date and at such time as the chairperson shall decide.
3. The chairperson shall, on the written application of one-third of the members,convene a special meeting of the Commission.
4. Unless the majority of the total membership or the Commission otherwise agree, at least fourteen days' written notice of every meeting of the Commission shall be given to every member of the Commission.
5. The quorum for the conduct of business at a meeting of the Commission shall beat least half of the existing members of the Commission, provided that the quorum shall not be less than three members;

6. The chairperson shall preside at every meeting of the Commission at which he is present and in the absence of the chairperson at a meeting, the vice-chairperson, shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number who shall, with respect to the meeting and the business transacted there at have all the powers of the chairperson.
7. Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of the members present and voting.
8. Subject to paragraph 5, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.

The chairperson and members of the selection panel shall, before assuming office, make and subscribe the oath or affirmation of office prescribed in the Third Schedule.

3. Selection of nominees

(1) The selection panel shall, within seven days of its appointment, invite applications from qualified persons and publish the names of all applicants and their qualifications in the *Gazette*, two newspapers of national circulation and on the website of the Parliamentary Service Commission.

(2) The selection panel shall consider the applications, shortlist and interview the applicants.

(3) The interviews under subparagraph (2) shall be conducted in public.

(4) After conducting interviews under subparagraph (2), the selection panel shall select two persons qualified to be appointed as chairperson and nine persons qualified to be appointed as members of the Commission and shall forward the names to the President for nomination of one person for appointment as the chairperson and six persons for appointment as members.

(5) The President shall, within seven days of receipt of the names under sub-paragraph (4), forward the list of nominees to the National Assembly for approval in accordance with the Public Appointments (Parliamentary Approval) Act (Cap. 7F).

4. Appointment by the President

The President shall, within seven days of receipt of the names approved by the National Assembly, by notice in the *Gazette*, appoint the Chairperson and the members of the Commission.

5. Gender equity and regional balance

In short listing, nominating or appointing persons as chairperson and members of the Commission, the selection panel, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender and shall ensure regional balance.

6. Dissolution of Selection Panel

(1) The Commission shall, in addressing the issues arising out of the first review-

(a) use as its primary material the report of the former Boundaries Commission on the first review as adopted by the National Assembly; and

(b) use as its secondary reference material the report of the Parliamentary Committee on the report of the former Boundaries Commission on the first review.

(2) The issues arising out of the first review are -

(a) re-distribution of such wards or administrative units in the affected constituencies as may be appropriate;

(b) subject to the Constitution, addressing issues of new constituencies falling outside the population quota as provided for by Article 89(6) of the Constitution but at the same time ensuring that such a process shall -

(i) take into account the provisions of Article 89(7)(b) of the Constitution that requires progressive efforts and not instant demographic equality of all towards attaining the population quota in each constituency and ward for the purposes of the first review;

(ii) not be subject to new definitions of cities, urban areas and sparsely populated areas or to new population figures;

(iii) be subject to the use of enumerated national census figures and not projected figures.

(c) addressing the issue of progressively advancing towards the population quota in protected constituencies in relation to neighbouring constituencies where appropriate.

3. Delimitation of electoral units

9. (1) The secretary shall be the secretary at all meetings of the Commission.
(2) The Commission shall, subject to subparagraph (3), establish a committee for liaison with political parties and may establish committees of its members for any other purpose.

10. The Commission shall cause minutes of all proceedings of meetings of the Commission to be entered in books for that purpose.

11. Except as provided by this Schedule, the Commission may regulate its own procedure.

12.(1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.
(2) A disclosure or interest made under subsection (1) shall be recorded in the minutes or the meeting at which it is made.
(3) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.
(4) A member or employee of the Commission shall not transact any business or trade with the Commission.

The Fifth Schedule to No. 9 of 2011 which it is proposed to replace—

FIFTH SCHEDULE
[s. 2]
PROVISIONS RELATING TO THE FIRST REVIEW
[Act No. 12 of 2012, Sch.]

1. Resolution of issues arising from the first review
The Commission shall resolve all issues arising from the first review relating to the delimitation of boundaries or constituencies and wards and publish its final report within a period of four months or the date or its appointment under this Act.

2. Reference materials

submitted to that person, commits an offence and is liable to imprisonment for a term of one year.

(9) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subparagraph (6) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the *Gazette*.

4. Review of decision of Commission
A person may apply to the High Court for review of a decision of the Commission made under the Constitution and this Act.

5. Application for review
An application for the review of the decision made under paragraph 4 shall be made within thirty days of the publication of the decision in the *Gazette* and shall be heard and determined within three months of the date on which it is filed.

6. Sensitization on the proposed boundaries
The Commission shall, upon publication of the boundaries referred to in paragraph 3 facilitate sensitization of the public on the boundaries for a period of thirty days.

7. Maintenance of records
The Commission shall ensure that all documents, materials, publications, reports and recommendations arising from the delimitation process are maintained in a form that is accessible and usable by members of the public.

(1) The Commission shall prepare and publish a preliminary report outlining -

(a) the proposed delimitation of boundaries for constituencies and wards; and

(b) the specific geographical and demographical details relating to such delimitation.

(2) The Commission shall ensure that the preliminary report is made available to the public for a period of twenty-one days and invite representations from the public on the proposals contained in the report during that period.

(3) Upon the expiry of the period provided in sub-paragraph (2), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received under that sub-paragraph and submit the revised preliminary report of proposed boundaries to the Parliamentary Committee.

(4) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report under sub-paragraph (3), table the revised preliminary report to the National Assembly together with its recommendations.

(5) The National Assembly shall, within seven days of the tabling of the revised preliminary report, consider the revised report and forward its resolutions to the Commission.

(6) Within fourteen days of the expiry of the period provided for in sub-paragraph (5), the Commission shall, taking into account the resolutions of the National Assembly under subparagraph (5), prepare and submit its final report outlining the matters set out in sub-paragraph (1)(a) for publication in the *Gazette*.

(7) Where the National Assembly fails to make a resolution within the period specified in subparagraph (5), the Commission shall proceed to publish its report in accordance with subparagraph (6).

(8) Any person who, being responsible for the publication in the *Gazette* of the final report submitted under this paragraph fails to publish the report within the time required by the Commission after the report has been

Annexure 4b

Report of the Departmental Committee on Justice and Legal Affairs on its Consideration of the IEBC (Amendment) Bill tabled on 23rd April 2024

REPUBLIC OF KENYA

Approved SNA 23/4/24

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

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REPORT ON THE CONSIDERATION OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024

(NATIONAL ASSEMBLY BILL NO. 10 OF 2024)

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 23 APR 2024
DAY: TUE
TABLED BY: Hon. Gitonga Murugara, MP
Chairperson, D.C on Justice and Legal Affairs
THE TABLE: Anne Shibuko

NATIONAL ASSEMBLY
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DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

APRIL 2024

TABLE OF CASES

Isaiah Biwott Kangwony v IEBC & Another [2018] eKLR

Katiba Institute and 3 Others v the Attorney General and 2 Others [2018] eKLR

LIST OF ABBREVIATIONS AND ACRONYMS

ELGIA	-	Electoral Law Governance Institute for Africa
ELOG	-	Elections Observation Group
FORD	-	Forum of the Restoration of Democracy
IEBC	-	Independent Electoral and Boundaries Commission
IRCK	-	Inter-Religious Council of Kenya
KLRC	-	Kenya Law Reform Commission
MCCP	-	Maendeleo Chap Chap Party
OAG	-	Office of the Attorney-General
ODM	-	Orange Democratic Movement
ORPP	-	Office of the Registrar of Political Parties
PPLC	-	Political Parties Liaison Committee
UDA	-	United Democratic Alliance
WDM	-	Wiper Democratic Movement

ANNEXURES

Annexure 1: Adoption Schedule
Annexure 2: Minutes
Annexure 3: The Independent Electoral and Boundaries Commission (Amendment) Bill, 2024
Annexure 4: Advertisement inviting the public to submit memoranda on the Bill
Annexure 5: Letter from the Clerk of the National Assembly inviting stakeholders to submit memoranda on the Bill
Annexure 6: Letter from the Clerk of the National Assembly inviting stakeholders to attend the public participation forum
Annexure 7: Memoranda by Stakeholders

CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Independent Electoral and Boundaries Commission (Amendment) Bill *(National Assembly Bill No. 10 of 2024)* which was published on 4th April 2024.

The Bill seeks to give effect to some of the recommendations and views of the public as submitted to the **National Dialogue Committee (NADCO)** on the Issues of *Electoral Justice and Related Matters*; *Outstanding Constitutional Matters*; *Fidelity to Political Parties/Coalitions and the law on multiparty democracy*; *Entrenchment of the National Government Constituencies Development Fund*; *the Senate Oversight Fund and the National Government Affirmative Action Fund* and *Establishment and Entrenchment of State Offices*. The Bill aims to amend the IEBC Act (Cap 7C) to delete obsolete provisions and make consequential amendments to align the Act to the judgement of the High Court in ***Katiba Institute and 3 Others v the Attorney General and 2 Others [2018] eKLR*** where it was held that certain provisions of the Act are unconstitutional.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on Friday 8th March 2024 inviting the public to submit memoranda by way of written statements on the Bill.

In addition, the Committee vide letter Ref. No. *NA/DDC/JLAC/2024/60* dated 11th April 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on Thursday 18th April 2024. The memoranda were to be received on or before Thursday 21st March 2024 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received nine memoranda.

The OAG, IEBC, IEBC Selection Panel, IRCK, Judiciary, KLRC, ORPP, PPLC and the ELGIA gave their views on the Bill which the Committee e considered in the preparation of this report.

While considering the Bill, the Committee observed that the Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the NADCO which was established to facilitate dialogue and consensus building thereafter recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya framed by NADCO. One of the recommendations on the issue of electoral justice was the proposed amendments to the IEBC Act (Cap. 7C) as provided in the Bill.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank the OAG, IEBC, IEBC Selection Panel, IRCK, Judiciary, KLRC, ORPP, PPLC and the ELGIA for submitting views on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Independent Electoral and Boundaries Commission (Amendment) Bill *(National Assembly Bill No. 10 of 2024)* and have the honour to report back to the National Assembly with the recommendation that the House approves the Bill with amendments.

Hon. Murugara George Gitonga, MP
Chairperson, Departmental Committee on Justice and Legal Affairs

CHAPTER ONE

1 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:

    i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*

    ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*

    iii. *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*

    iv. *To study and review all legislation referred to it;*

    v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*

    vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*

    vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*

    viii. *To examine treaties, agreements and conventions;*

    ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*

    x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*

    xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider[1]:-

[1] National Assembly Standing Orders, 6th Edition.

a) The Judiciary;

b) Tribunals;

c) Access to Justice;

d) Public prosecutions;

e) Ethics, Integrity and Anti-corruption;

f) Correctional services;

g) Community service orders and witness protection;

h) Constitutional Affairs;

i) Sovereign immunity;

j) Elections including referenda;

k) Human rights;

l) Political parties; and

m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.

3. In executing its mandate, the Committee oversights the following Ministries, Departments and Agencies:

a) State Department of Correctional Services;

b) State Law Office and Department of Justice;

c) The Judiciary;

d) Judicial Service Commission;

e) Office of the Director of Public Prosecutions;

f) Ethics and Anti-Corruption Commission;

g) Independent Electoral and Boundaries Commission;

h) Commission on Administrative Justice;

i) Office of the Registrar of Political Parties;

j) Witness Protection Agency;

k) Kenya National Commission on Human Rights;

l) Kenya Law Reform Commission; and

m) Council of Legal Education.

1.3 Committee Membership

4. The Committee was constituted by the House on 27th October 2022 and comprises the following Members:

Chairperson
Hon. Murugara George Gitonga, MP
Tharaka Constituency
UDA Party

Vice-Chairperson
Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency
MCCP Party

Members

Hon. Maalim Farah, MP
Dadaab Constituency
WDM-Kenya

Hon. Francis Kajwang' Tom Joseph, MP
Ruaraka Constituency
ODM Party

Hon. Junet Mohamed, CBS, MP
Suna East Constituency
ODM Party

Hon. (Dr.) Otiende Amollo, SC, MP
Rarieda Constituency
ODM Party

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency
UDA Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency
UDA Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

Hon. Muriu Wakili Edward, MP
Gatanga Constituency
UDA Party

Hon. Maina Jane Njeri, MP
Kirinyaga (CWR)
UDA Party

Hon. Gichohi Kaguchia John Philip, MP
Mukurweini Constituency
UDA Party

Hon. Mogaka Stephen M, MP
West Mugirango Constituency
Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Siyad Amina Udgoon, MP
Garissa Township (CWR)
Jubilee Party

1.4 Committee Secretariat

5. The Committee is well-resourced and facilitated by the following staff:

Mr. Ahmed Salim Abdalla
Clerk Assistant I /Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Ms. Jael Ayiego
Clerk Assistant III

Mr. Abdikafar Abdi
Clerk Assistant III

Mr. Omar Abdirahim
Fiscal Analyst II

Mr. Isaac Nabiswa
Legal Counsel II

Mr. Silas Opanga
Hansard Reporter III

Ms. Vivienne Ogega
Research Officer III

Ms. Mary Kamande
Public Communications Officer III

Mr. John Nduaci
Serjeant-At-Arms

Mr. Calvin Karung'o
Media Relations Officer III

Mr. Peter Mutethia
Audio Officer III

CHAPTER TWO

2 OVERVIEW OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL *(NATIONAL ASSEMBLY BILL NO. 10 OF 2024)*

2.1 Background

6. The Bill is co-sponsored by the Leader of the Majority Party and the Leader of the Minority Party. The Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the **National Dialogue Committee (NADCO)** on the Issues of *Electoral Justice and Related Matters*; *Outstanding Constitutional Matters*; *Fidelity to Political Parties/Coalitions and the law on multiparty democracy*; *Entrenchment of the National Government Constituencies Development Fund*; *the Senate Oversight Fund and the National Government Affirmative Action Fund* and *Establishment and Entrenchment of State Offices*.
7. The Bill was published on 4th April 2024 and read a First Time in the House on 5th March 2024. It was thereafter committed to the Committee in line with the provision of Standing Order 127 (3).

2.2 Summary of Legal Provisions

8. The Bill seeks to amend the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 to clean up the Act by deleting obsolete provisions. The Bill further seeks to make consequential amendments intended to align the Act to the Judgment of the High Court in ***Katiba Institute & 3 Others v Attorney-General & 2 Others*** **[2018] eKLR** where the High Court held that certain provisions of the Act were unconstitutional.
9. The Bill further seeks to amend section 6 of the Act and include experience in accounting or information and communication technology as additional professional qualifications for appointment as a member of the Independent Electoral and Boundaries Commission.
10. Additionally, the Bill seeks to amend the First Schedule to the Independent Electoral and Boundaries Commission No. 9 of 2011 to increase the number of members of the selection panel from seven to nine in order to accommodate a wide spectrum of stakeholders and interest groups. The Bill also proposes to replace the current Fifth Schedule of the Act with a new and updated Schedule.
11. In particular, —

(a) **Clause 1 of the Bill** sets out the short title of the Bill and provides for its commencement upon publication in the *Gazette*;

(b) **Clause 2 of the Bill** amends section 2 of the Bill by aligning the definition of the chairperson of the Commission to the Judgment of the High Court and by deleting obsolete provisions in the section;

(c) **Clause 3 of the Bill** amends section 6(2)(c) of the Act to include information and communications technology and accounting as some of the relevant professional qualifications to be taken into account when nominating persons to be appointed as members of the Commission;

(d) **Clause 4 of the Bill** amends section 7A of the Act and delete subsections (4), (5), and (6), which the High Court held unconstitutional;

(e) **Clause 5 of the Bill** amends section 10 of the principal Act to reduce the term of the secretary to the Commission to three years, renewable once;

(f) **Clause 6 of the Bill** amends section 12 of the principal Act to provide that the Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent, and accountable;

(g) **Clause 7 of the Bill** amends section 36 of the Act to anchor the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units;

(h) **Clause 8 of the Bill** amends the First Schedule to the Act to increase the number of members of the selection panel from seven to nine to accommodate a wide spectrum of stakeholders and interest groups;

(i) **Clause 9 of the Bill** amends the Second Schedule to the Act to provide for the quorum of the Commission as five (5) members;

(j) **Clause 10 of the Bill** deletes and substitutes the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units;

(k) **Clause 11 of the Bill** sets out the transitional provisions relating to the selection panel for the appointment of members of the Commission. Under the provision, the current selection panel shall cease to exist after the Bill is passed, but a person who served as a member of that selection panel may be nominated to serve as a member of a selection panel appointed after the provisions of the Bill commence.

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

1. Article 118 (1)(b) of the Constitution provides that:

   "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees."

2. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

   "(3) The Departmental Committee to which a Bill is committed shall ***facilitate public participation on the Bill*** *through an appropriate mechanism including-*

   (a) inviting submission of memoranda;

   (b) holding public hearings;

   (c) consulting relevant stakeholders in a sector; and

   (d) consulting experts on technical subjects.

   (3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."

3.2 Memoranda Received on the Bill

3. Pursuant to the aforementioned provisions of law, the Committee placed an advertisement in the print media on Friday, 8th March 2024 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee vide letter Ref. No. *NA/DDC/JLAC2024/60* dated 11th April 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on Thursday 18th April 2024.
4. To this end, the Committee received nine (9) memoranda. The memoranda are annexed to this report as ***Annexure 7***.
5. The memoranda from the OAG, IEBC, IEBC Selection Panel, IRCK, Judiciary, KLRC, ORPP, PPLC, ELOG and the ELGIA which were largely in agreement with the Bill save for a few reservations which they submitted to the Committee as follows:

Clause 2

6. The **OAG** and the **IEBC** noted that in line with the proposed deletion of obsolete provisions and harmonisation of the Bill with the Act, sections 32, 33 and 34 of the Act be deleted.

7. The **ORPP** noted the need for clarity on the meaning of a parliamentary party since the Standing Orders cannot be used to interpret statutory terms. Hence, it proposed the introduction of a definition of 'parliamentary party' used in clause 8 with respect to the selection panel. It also proposed the inclusion of the definition of 'electoral unit' used in clause 10 of the Bill.
8. The **KLRC** submitted that while the proposed amendments are in line with the ruling in ***Katiba Institute & 3 Others v AG & 2 Others,*** they raise two fundamental issues. One, how IEBC should conduct its business in circumstances where the Chairperson is unable to attend proceedings of the Commission. Two, that when read together with Section 7A and paragraphs 5 and 7 of the Second Schedule of the Act, the amendments shall have the implication that the Chairperson cannot designate a member as a temporary Chairperson. In addition, that in the event that the membership of the Commission drops to below five, no business can be transacted by the Commission.
9. The IRCK proposed amending the clause to provide that the Vice Chairperson can act as the Chairperson in the latter's absence to avoid a lacuna in the event of a vacancy in the office of the Chairperson.

Committee Observation

10. The Committee observed that section 32, 33 and 34 are part of the savings and transitional provisions of the Act. Transitional provisions make rules to ensure transition from the prior law to the new law which may include provisions to retain an existing right or authority that would otherwise be affected by the new law. Therefore, a blind deletion of sections 32, 33 and 34 would result in losing material information, including the legislative history of the Act.
11. The Committee noted that the term "parliamentary party" is substantively used in the Bill but is not defined. It is therefore important to define the words to accord with their definition in the National Assembly. Standing Orders. However, the Committee was of the view that the term "electoral unit" is clear enough and does not warrant a definition.

Clause 3

12. The **IEBC** proposed merging "accounting and finance" under Section 6(2)(iii) of the IEBC Act as the two disciplines deal with matters relating to financial management. Moreover, it

submitted that the nature of election matters is legal and quasi-judicial, and therefore, it proposed that the Bill be amended to provide that one member, besides the Chairperson, be an Advocate of the High Court of Kenya.

13. The IEBC also proposed amending the clause to provide for the appointment of the Commission to consider the two-thirds gender principle.
14. The **IRCK** noted that the proposed additional qualifications are not essential for the Commission to execute its mandate and should not be a preserve of certain professional cadres but represent a broad spectrum. It added that the qualifications proposed to be added should only be an added advantage and not the core requirements for the role of a Commissioner.
15. The **PPLC** submitted that additional qualifications can be acquired through training and support from the Secretariat, which is composed of technical personnel. Consequently, it proposed an amendment to only provide for degrees from a recognised university.

Committee Observation

16. The Committee noted that section 6 of the Act specifies that for a person to qualify for appointment as a member of the Commission, the person needs to prove relevant experience in certain fields which are necessary considering the nature of the function of the committee. Therefore, the proposed additional experience in information and communication technology and accounting accords with the various functions of the Commission that include the use of technology in elections and the prudent procurement of goods and services related to the conduct of an election.

Clause 5

17. The **IEBC** and the **ORPP** were of the view that the term of the Commission Secretary should be increased to five years or in the alternative, reviewed to a single term of six years. They noted that on account of the complexity of the functions of the Commission, including elections, boundary delimitation, and referendum, it takes one or two years for any Secretary to be conversant with electoral processes. Consequently, their proposal would enhance the security of tenure and independence of the Secretary.

18. It was **ELOG**'s submission that the term of the Secretary be aligned with that of the Commissioners to prevent an overlap with a new Commission and provide a smooth transition and operational continuity.

Committee Observation

19. The Committee observed that a reduction in the term of office of the Secretary from the current five years to three years would jeopardize the performance of the functions of the office as any person appointed as Secretary would require at least one to two years to be well conversant with the electoral processes. In this regard, the Committee noted that it may be necessary to increase the term of the Secretary to a non-renewable term of six years to ensure that the Secretary understands all that is expected in the performance of his or her functions and enhance their competence and independence in the role. It was their further view that the amendments in the Bill ought to provide that the current Secretary of the Commission serve for the remainder of their unexpired term.

Clause 6

20. The **IEBC** proposed the increase of the period in which the Commission is required to review its operations after every general election from one year to eighteen months. This will enable the Commission to have more time to conduct the review and identify areas for reform taking into account the time it takes for settlement of disputes after an election. It was their contention that the decisions of the courts, which may take longer than a year to be rendered, usually inform any legal and operational reforms to the conduct of elections.

21. Furthermore, **IEBC** recommended that the proposal be a new stand-alone Section instead of being subsumed under section 12 as there is not link between the proposal and the current content of section 12.

22. The **ELGIA** submitted that the role of Parliament ought to be clearly stated since some changes may require statutory reforms. Consequently, it proposed amending the Bill to clearly state the role of Parliament in the review process and the timelines for the review process by both Houses of Parliament.

23. The **PPLC** proposed that the proposal be amended to provide that the audit be carried out by a reputable entity appointed by the Commission.

Committee Observation

24. The Committee observed that a review of the conduct of a general election is a sensitive evaluation process. Such a process points out what worked and what did not work and draws lessons learned for improvement of the conduct of future general elections. The Committee also noted that the resolution of disputes is part of the process of a general election. Therefore, there is need to increase the time required for the completion of the review process. Further, the Committee agreed with the view that the proposal under clause 6 should be provided for in a separate stand-alone for purposes of legislative clarity. It was of the further view that the Commission should not be unduly restricted in terms of the manner of carrying out the review. As an independent constitutional body, the Commission ought to the left at liberty to choose between either an external or internal review.

Clause 7

25. The **IEBC** and the **KLRC** noted that the proposed contents of the Fifth Schedule on the procedure of delimitation of electoral units should not be contained in the saving and transition part but should be a substantive stand-alone part. Thus, it proposed the deletion of the proposal to amend Section 36 which provides that the electoral units shall be set out in the Fifth Schedule and incorporation of the procedure immediately after Section 16 as a new Part III.

26. The **KLRC** further noted that the Fifth Schedule lapsed upon publication of the final report of the first delimitation of electoral boundaries.

27. **ELGIA** submitted that the proposal be deleted and amended to repeal Section 36 of the Act because the section was originally intended for the first boundaries review. Additionally, it stated that Part V of the Act is no longer operational since the transitional provisions in the statute became spent upon its enactment.

Committee Observation

28. The Committee noted that the provisions under section 36 of the Act on the procedure for delimitation of electoral boundaries are wrongly placed in the Act under the savings and transition. It was therefore of the view that section 36 of the Act together with the proposed amendments to the section be moved to a new and distinct part of the Act for purposes of legislative coherence and logical flow of the Act. The Committee noted that the Fifth

Schedule should be retained as proposed in the Bill and anchored in the relocated provisions on delimitation.

Clause 8

29. The **IEBC** submitted that the Selection Panel needs to be inclusive of all key stakeholders who will give additional value to the process. According to them, the proposal as drafted gives priority to political parties.

30. The **ORPP** proposed redrafting the proposed sub-paragraph (2)(a) and (2)(e) to provide that the respective nominating bodies should nominate one man and one woman to achieve gender equity contemplated by the proposed paragraph 2C.

31. In addition, the ORPP recommended redrafting the proposed sub-paragraph (2)(b) to clarify that the persons nominated shall be political parties within the PPLC which is comprised of the ORPP, IEBC and political parties.

32. **ELOG** recommended the reconsideration of the composition of the Selection Panel since the representation of parliamentary parties and coalitions may introduce biases, conflict of interest, deadlock and potentially undermine the integrity and independence of the selection process. Consequently, submitted that the provision should prioritise merit-based selection.

Committee Observation

33. The Committee observed that the revision of the membership of the selection panel to give the Political Parties Liaison Committee extra slots for the persons they should nominate is due to the fact that a general election is a political process.

34. Further, the Committee noted that the current subparagraph 1(2C) of the First Schedule ensures that the bodies nominating more than one person to the selection panel must ensure that gender equity is achieved.

35. In line with the proposed increase in the panel's membership from 7 to 9 members, the Committee noted that it is necessary to amend paragraph 1(1) of the First Schedule to amend the reference to seven members.

Clause 9

36. The **IEBC** noted the need to ensure conformity with the High Court decision in ***Isaiah Biwott Kangwony v IEBC & Another [2018] eKLR*** which provided that the quorum of the Commission be dependent on the number of Commisioners in office. To this end, the IEBC proposed amending the proposal to include a provision that the quorum for conduct of business at a meeting of the Commission shall, where the membership is not less than five, not be less than fifty percent of the number of members in office.

37. The **PPLC** also proposed amending the proposal to provide that the members of the Commission shall endeavour to be guided by the principles of transparency and accountability in the conduct of their business.

Committee Observation

38. The Committee did not agree with the views on quorum. It noted that for decision-making purposes, the quorum ought to be an odd number and that three members would be too low of a requirement. The proposed quorum of five members was therefore ideal.

Clause 10

39. The **IEBC** and **ELGIA** were of the opinion that the procedure for delimitation of electoral units should not be contained in the saving and transition part but should be a substantive stand-alone part. Consequently, the IEBC and ELGIA recommended the deletion of the clause and instead, place the provisions as a separate Part in the Bill. The IEBC specified that the new Part be introduced after Section 16 by amending Section 36 as follows:

"Procedure for delimitation of electoral boundaries

(1) The Commission shall discharge its mandate of the delimitation of boundaries of constituencies and wards in accordance with the Constitution, this Act any other law.

(2) The procedure for delimitation of electoral units shall be set out under the Fifth Schedule."

40. The **OAG** noted that the Act or any other existing legislation does not provide for the establishment, membership, mandate, and relationship between the County Boundary Review Panels and the Commission and thus recommended that this be clarified in the Bill.

41. The **ORPP** proposed the amendment of paragraph 7 of the proposed Fifth Schedule to make provisions for persons with disabilities with a focus on sign language and access to the

venues of public hearings. In addition, it also proposed amending paragraph 8(2) of the proposed Fifth Schedule be amended to provide for the requirement of the Commission to illustrate how the views of the public have been considered in the revised report. Another proposal was to amend paragraph 10(1) of the proposed Fifth Schedule to limit any challenge of the delimitation exercise to interested parties that were consulted under paragraph 1(b) of the proposed Fifth Schedule.

Committee Observation

42. The Committee observed that a Schedule is a substantive provision in an Act of Parliament, and therefore, the proposals to shift the proposed Fifth Schedule into the main body of the Act were misconceived.

43. The Committee further noted that paragraph 3(2)(a) and paragraph 3(3) of the proposed Fifth Schedule make reference to County Boundary Review Panels which are entities not recognised in any law. Therefore, there is a need to anchor the County Boundary Review Panels in the Act. However, the Committee noted that matters of composition of the panels may be left to the Commission to decide.

Clause 11

44. The **IEBC** submitted that the clause is misplaced and proposed its deletion and relocation to the First Schedule which makes provisions on the Selection Panel.

45. The **ORPP** noted that the Bill seeks to revise the secretary's term from five to three years, and therefore, it is important to clarify what will happen to the current Secretary. They proposed amending the proposal to include a saving or transition provision for the current Secretary.

46. The **IEBC Selection Panel** proposed to amend the provision to provide that all members of the Selection Panel existing immediately after the commencement of the Act shall be compensated fully for the work, they performed from the commencement of the Selection Panel to the dissolution of the Selection Panel by way of enactment of this Act in respect to recruiting members of the Commission.

47. The **IRCK** also submitted that the work done by the current Selection Panel should not be discarded and, in the spirit of prudent use of public funds, the Selection Panel should be allowed to execute its mandate or, if need be, have its mandate renewed with additional panel

members. To this end, the IRCK proposed amending the proposal to either allow the existing Selection Panel to finalize and hand-over its work to a subsequent panel or to retain the current members of the Panel and appoint the additional two members of the Panel proposed in the Bill.

Committee Observation

48. The Committee observed that clause 11 is a transitional clause and does not form part of the proposed Fifth Schedule. The provision shall be retained in the Bill upon enactment as it does not propose any amendment to the Act.

49. The Committee noted that the clause only deals with the dissolution of the current selection panel. It noted a needfor expanding the Clause to provide the manner of activating the appoiuntment of a new selection panel after passage of the Bill in light already existing vacancies in the membership of the Commission.

General

12. The **Judiciary** noted that the Bill does not address the separate policy and administrative remit of the electoral Commission, nor does it make any proposals on the clarity of the roles of the Chairperson, Commissioners, CEO and staff of the Commission as recommended by the Supreme Court. It therefore, recommended that Parliament develops further legislative reform proposals in line with the observations and recommendations of the Supreme Court in the case of ***Katiba Institute & 3 Others v Attorney General & 2 Others [2018] eKLR*** which noted that the evidence before the court pointed to a serious malaise in the governance of the IEBC, an institution entrusted with one of the monumental tasks of midwifing our democracy.

Committee Observation

50. The Committee noted that the submissions by the Judiciary were general in nature and did not touch on any specific clause of the Bill or the Act. It further noted that a number of proposals in the Bill and the recommendations made by the Committee in relation to the composition of the selection panel, the additional qualifications for appointment as commissioners, and the term of the Secretary address some of the issues highlighted by the Supreme Court.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

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

a) The Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the National Dialogue Committee (NADCO) which was established to facilitate dialogue and consensus building, and thereafter recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya framed by NADCO. One of the recommendations on the issue of electoral justice was the proposed amendments to the IEBC Act (Cap. 7C) as provided in the Bill;

b) Despite the fact that the Bill is a politically negotiated document, pursuant to the mandate of the Committee and the requirements of Article 118 of the Constitution and Standing Order 127(3), the Committee is at liberty to propose necessary amendments to the Bill in its report to the House. This is informed by the Communication from the Chair (No. 006 of 2024) which directed the respective committees to ensure strict adherence to the due process in the enactment of legislation; and

c) To the extent that the Bill only seeks to effect change to the IEBC Act to remedy issues identified by NADCO, it constitutes a piecemeal approach to the review of the Act and other legislation relating to elections. Parliament should consider a comprehensive review of electoral laws to address political, operational and institutional challenges affecting the electoral process in a wholistic manner. At present, there is a high likelihood that the legislative coherence of electoral laws shall be affected through the piecemeal amendments proposed in the Bill.

CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS

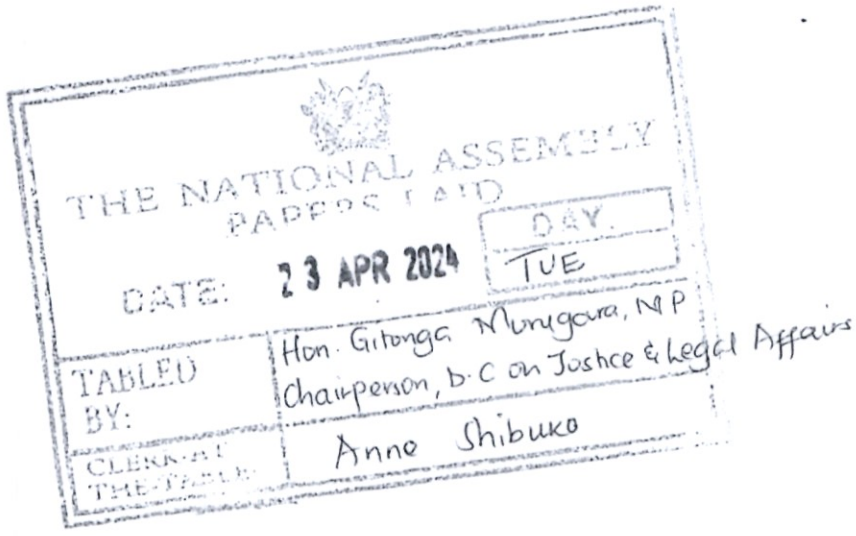
52. The Committee, having considered the Independent Electoral and Boundaries Commission (Amendment) Bill *(National Assembly No. 10 of 2024)* recommends that the House approves the Bill with the amendments contained in the SCHEDULE OF AMENDMENTS forming CHAPTER SIX of this report.

SIGNED..... **DATE**.....23-04-2024.....

HON. GEORGE GITONGA MURUGARA, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS



CHAPTER SIX

6 SCHEDULE OF AMENDMENTS

53. In view of the observations made, the Committee proposed the following amendments to the Bill—

54. CLAUSE 2

THAT, Clause 2 of the Bill be amended by inserting the following new paragraph immediately after paragraph (e)—

"(f) by inserting the following new definition in proper alphabetical sequence—

"parliamentary party" means a party or coalition of parties consisting of not less than five percent of the membership of the National Assembly;

Rationale: To define the term "parliamentary party".

55. CLAUSE 5

THAT, Clause 5 of the Bill be amended by deleting the proposed new subsection (4) and substituting therefor the following subsection—

"(4) The secretary shall hold office for a single term of six years and shall not be eligible for re-appointment."

Rationale: To revise the term of office of the Secretary to single 6 year term.

56. CLAUSE 6

THAT, the Bill be amended by deleting Clause 6 and substituting therefor the following new Clause—

Insertion of a new s. 24A in Cap. 7C.	**6.** The principal Act is amended by inserting the following new section immediately after section 24—	
	Review of conduct of general election.	**24A.**(1) The Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent and accountable.
		(2) The review shall be completed within eighteen months after every general election and the Commission shall publish the report in the Gazette and submit the report to Parliament.

Rationale: To provide for the review of the conduct of a general election under a separate substantive provision.

57. CLAUSE 7

THAT, the Bill be amended by deleting Clause 7 and substituting therefor the following new Clause—

Insertion of a new PART IIIA in Cap. 7C.	**8.** The principal Act is amended by inserting the following new Part immediately after section 24—	
	PART IIIA—DELIMITATION OF ELECTORAL UNITS	
	Procedure for delimitation of electoral boundaries.	**24B.** (1) The Commission shall discharge its mandate of the delimitation of boundaries of constituencies and wards in accordance with the Constitution, this Act and any other law.
		(2) Subject to the Constitution, matters to be addressed in the delimitation of electoral boundaries are—
		(a) review of the names and boundaries of constituencies;
		(b) review of the number, names and boundaries of wards;
		(c) re-distribution of wards affected by any changes in the boundaries of constituencies; and
		(d) ensuring that the number of inhabitants in each constituency and ward is as nearly as possible, equal to the population quota as provided for by Article 89(5) of the Constitution and that such a process—
		(i) allows for variation of margin of not more than the limits provided under Article 89(6) of the Constitution in relation to cities, sparsely populated areas and other areas;
		(ii) takes into account the provisions of Article 89(7)(b) of the Constitution that provides for the progressive realization of the requirement that the number of inhabitants in each constituency and ward to be as nearly as possible, equal to the

		population quota for the purposes of the each review;
		(iii) is subject to the use of enumerated national census figures.
		(3) The Commission shall prepare and publish a preliminary report outlining—
		(a) the proposed delimitation of boundaries for constituencies and wards; and
		(b) the specific geographical; and
		(c) demographical details relating to such delimitation.
		(4) The Commission shall ensure that the preliminary report is made available to the public for a period of thirty days and invite representations from the public on the proposals contained in the report during that period.
		(5) Upon the expiry of the period provided in subsection (4), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received and submit the revised preliminary report to the Parliamentary Committee.
		(6) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report, table the report in the National Assembly together with its recommendations.
		(7) The National Assembly shall, within fourteen days of the tabling of the revised preliminary report, consider the report and forward its recommendations to the Commission.
		(8) Within fourteen days of the expiry of the period provided for in subsection (7), the Commission shall upon receipt and considerations of the National Assembly and representations from the public, prepare the final report for publication in the Gazette.
		(9) Where the National Assembly fails to make recommendations within the period specified in subsection (7), the Commission shall publish its report in accordance with subsection (8).
		(10) A person who, being responsible for the publication in the Gazette of the final report submitted under this subsection fails to publish the report within the time required by the Commission after the report has been submitted to that person, commits an offence and is liable to imprisonment for a term of one year.

		(11) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subsection (9) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the Gazette.
		(12) Subject to this section, the provisions set out in the Fifth Schedule shall apply during the process of delimitation of electoral units.

Rationale: To include all provisions on delimitation of electoral units under a substantive Part of the Act.

58. CLAUSE 8

THAT, Clause 8 of the Bill be amended by—

(a) deleting paragraph (a) and substituting therefor the following new paragraph—
"(a) in paragraph 1—

(i) by deleting the word "seven" appearing immediately after the words "consisting of" appearing in sub-paragraph (1) and substituting therefor the word "nine";

(ii) by deleting sub-paragraph (2) and substituting therefor the following new sub-paragraph—
"(2) The selection panel shall consist of—

(a) two persons nominated by the Parliamentary Service Commission, representing the majority party or coalition of parties and the minority party or coalition of parties;
(b) three persons nominated by the Political Parties Liaison Committee of whom—
(i) one shall be from a party other than a parliamentary party or coalition of parties;
(ii) one shall be from a parliamentary party or coalition of parties forming the national government;
(iii) one shall be from a parliamentary party or coalition of parties not forming the national government;
(c) one person nominated by the Law Society of Kenya;
(d) one person nominated by the Institute of Certified Public Accountants of Kenya; and
(e) two persons nominated by the Inter-religious Council of Kenya.

(iii) by inserting the following new sub-paragraphs immediately after sub-paragraph (2A)—

"(2B) The respective nominating bodies shall select the nominees for appointment through a competitive and transparent process.

(2C) In nominating, the persons under subparagraph (2)(a), (b) and (e), the respective nominating bodies shall ensure that not more than two-thirds of the nominees are of the same gender."

(iv) in sub-paragraph (3), by deleting the words "sub-paragraphs (2)(b) and (c)" and substituting therefor the words "sub-paragraphs (2)(b), (c), (d) and (e)";

(v) by inserting the following new subparagraph immediately after subparagraph (6)—

"(7) The Parliamentary Service Commission shall provide for and meet the expenditure of the selection panel."

Rationale: (1)To align the number of members of the Selection Panel in paragraph 1(1) with the the nine proposed under paragraph 1(2);

(2) To provide that the expenses of the selection Panel are a charge on the budget of the Parliamentary Service Commission.

59. CLAUSE 11

THAT, the Bill be amended by deleting Clause 11 and substituting therefor the following new Clause—

Saving and transition.	**11.** Upon the commencement of this Act—
Cap. 7C.	(a) The respective nominating bodies under paragraph 1(2)(b), (c), (d) and (e) of the First Schedule to the Independent Electoral and Boundaries Commission Act shall submit the names of their noominees to the Parliamentary Service Commission for transmission to the President for appointment to the selection panel under the Act;
	(b) the selection panel existing immediately before the commencement of this Act shall stand dissolved but the members of the panel may be nominated to serve in any subsequent panel panel;
Cap. 7C.	(c) the President shall, within seven days of receipt of the names of the nominees under paragraph 1(2) of the First Shchedule to the Independent Electoral and Boundaries Commission Act from the Parliamentary Service Commission, appoint a selection panel for the purpose of appointment of the chairperson and members of the Commission; and

	(d) a person holding the office of the secretary of the Independent Electoral and Boundaries Commission shall continue in office for the remainder of the unexpired period of their term.

Rationale: (1) To provide a mechanism that activates the appointment of a selection panel in light of already existing vacancies in the Commission. Nominating bodies under the Act shall be required to submit names of their nominees within fourteen days of the commencement of the Act and the President is required to appoint a selection panel within seven days of receipt of the names.

(2) To save the unexpired term of office of the Secretary of the Commission define the term "parliamentary party".

ANNEXURES

Annexure 1: Adoption Schedule

THE NATIONAL ASSEMBLY
13TH PARLIAMENT – THIRD SESSION - 2024
JUSTICE AND LEGAL AFFAIRS COMMITTEE

ADOPTION SCHEDULE

AGENDA: **Adoption of the Report of the Independent Electoral Boundaries Commission (Amendment) Bill, 2024 co-sponsored by Hon. Kimani Ichung'wah, EGH, MP and Hon. Opiyo Wandayi, MGH, CBS, MP**

No.	HON MEMBER	SIGNATURE
1.	HON. MURUGARA GEORGE GITONGA, CBS, MP – ***Chairperson***	
2.	HON. MUTUSE ECKOMAS MWENGI, OGW, MP – ***Vice Chairperson***	
3.	HON. MAALIM FARAH, MP	
4.	HON. FRANCIS KAJWANG' TOM JOSEPH, MP	
5.	HON. JUNET MOHAMED, CBS, MP	
6.	HON. ONYIEGO SILVANUS OSORO, CBS, MP	
7.	HON. (DR.) OTIENDE AMOLLO, SC, MP	
8.	HON. MUCHIRA MICHAEL MWANGI, MP	
9.	HON. MAKALI JOHN OKWISIA, MP	
10.	HON. MURIU WAKILI EDWARD, MP	
11.	HON. MAINA JANE NJERI, MP	
12.	HON. GICHOHI KAGUCHIA JOHN PHILIP, MP	
13.	HON. MOGAKA STEPHEN M, MP	
14.	HON. ADEN DAUD, EBS, MP	
15.	HON. SIYAD AMINA UDGOON, MP	

Annexure 4C

Report of the Departmental Committee on Justice and Legal Affairs on Senate Amendments to the IEBC (Amendment) Bill tabled on 19th June 2024

REPUBLIC OF KENYA

Approved SNA 19/6/24

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

PARLIAMENT OF KENYA LIBRARY

REPORT ON-

THE SENATE AMENDMENTS TO THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL

(NATIONAL ASSEMBLY BILL NO. 10 OF 2024)

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 19 JUN 2024 DAY: WEDNESDAY
TABLED BY: CHAIRPERSON, JLAC HON. GEORGIE MURUGARA
CLERK AT THE TABLE: E. NGINYO

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

JUNE 2024

TABLE OF CONTENTS

ANNEXURES 2

CHAIRPERSON'S FOREWORD 3

CHAPTER ONE 4

1 PREFACE 4

1.1 Establishment of the Committee 4

1.2 Mandate of the Committee 4

1.3 Committee Membership 6

1.4 Committee Secretariat 7

CHAPTER TWO 8

2 SENATE AMENDMENTS TO THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL *(NATIONAL ASSEMBLY BILL NO. 10 OF 2024)* 8

2.1 Introduction 8

2.2 Amendments proposed by the Senate 8

CHAPTER THREE 10

3 COMMITTEE OBSERVATIONS 10

CHAPTER FOUR 11

4 COMMITTEE RECOMMENDATION 11

ANNEXURES

Annexure 1: Adoption Schedule
Annexure 2: Speaker's Communication
Annexure 3: Senate's Schedule of Amendments
Annexure 4: The Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 as passed by the National Assembly on 2nd May 2024
Annexure 5: Minutes

CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Senate Amendments to the Independent Electoral and Boundaries Commission (Amendment) Bill *(National Assembly Bill No. 10 of 2024)* which was passed by the National Assembly on 2nd May 2024 and submitted to the Senate pursuant to the provisions of Standing Order 142 of the National Assembly Standing Orders. The Senate considered and passed the Bill with amendments on 11th June, 2024.

The Senate amendments to the Bill were referred to the Departmental Committee on Justice and Legal Affairs for consideration on 18th June 2024. The Speaker directed the Committee to table it on Thursday, 20th June, 2024.

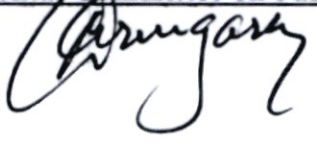
The Committee held a meeting on Wednesday 19th June, 2024 to consider the Senate Amendments to the Independent Electoral and Boundaries Commission (Amendment) Bill *(National Assembly Bill No. 10 of 2024).* The Committee agreed with the amendments proposed by the Senate to Clauses 2, 3 and 7 of the Bill because of various reasons that are provided in Chapter Three of this report.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee also thanks the Senate for their input into the Bill.
Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of Senate Amendments to the Independent Electoral and Boundaries Commission (Amendment) Bill *(National Assembly Bill No. 10 of 2024).*

It is my pleasure to report that the Committee has considered the Senate Amendments to the Independent Electoral and Boundaries Commission (Amendment) Bill *(National Assembly Bill No. 10 of 2024)* and have the honour to report back to the National Assembly with the recommendation that the House adopts the Committee's recommendation on the Senate Amendments.

Hon. Murugara George Gitonga, CBS, MP
Chairperson, Departmental Committee on Justice and Legal Affairs



CHAPTER ONE

1 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:

    i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
    ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
    iii. *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
    iv. *To study and review all legislation referred to it;*
    v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
    vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
    vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
    viii. *To examine treaties, agreements and conventions;*
    ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
    x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
    xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider: -
    a) The Judiciary;
    b) Tribunals;
    c) Access to Justice;
    d) Public prosecutions;
    e) Ethics, Integrity and Anti-corruption;
    f) Correctional services;
    g) Community service orders and witness protection;
    h) Constitutional Affairs;
    i) Sovereign immunity;
    j) Elections including referenda;
    k) Human rights;
    l) Political parties; and

m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.

3. In executing its mandate, the Committee oversights the following Ministries, Departments and Agencies:

a) State Department of Correctional Services;
b) State Law Office and Department of Justice;
c) The Judiciary;
d) Judicial Service Commission;
e) Office of the Director of Public Prosecutions;
f) Ethics and Anti-Corruption Commission;
g) Independent Electoral and Boundaries Commission;
h) Commission on Administrative Justice;
i) Office of the Registrar of Political Parties;
j) Witness Protection Agency;
k) Kenya National Commission on Human Rights;
l) Kenya Law Reform Commission; and
m) Council of Legal Education.

1.3 Committee Membership

4. The Committee was constituted by the House on 27th October 2022 and comprises the following Honourable Members:

Chairperson
Hon. Murugara George Gitonga, CBS, MP
Tharaka Constituency
UDA Party

Vice-Chairperson
Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency
MCCP Party

Members

Hon. Maalim Farah, MP
Dadaab Constituency
WDM-Kenya

Hon. Francis Kajwang' Tom Joseph, MP
Ruaraka Constituency
ODM Party

Hon. Junet Mohamed, CBS, MP
Suna East Constituency
ODM Party

Hon. (Dr.) Otiende Amollo, SC, MP
Rarieda Constituency
ODM Party

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency
UDA Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency
UDA Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

Hon. Muriu Wakili Edward, MP
Gatanga Constituency
UDA Party

Hon. Maina Jane Njeri, MP
Kirinyaga (CWR)
UDA Party

Hon. Gichohi Kaguchia John Philip, MP
Mukurweini Constituency
UDA Party

Hon. Mogaka Stephen M, MP
West Mugirango Constituency
Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Siyad Amina Udgoon, MP
Garissa Township (CWR)
Jubilee Party

1.4 Committee Secretariat

5. The Committee is well-resourced and facilitated by the following staff:

Mr. Ahmed Salim Abdalla
Clerk Assistant I / Head of Secretariat

Mr. Ronald M. Walala
Senior Legal Counsel

Ms. Jael Ayiego
Clerk Assistant III

Mr. Omar Abdirahim
Fiscal Analyst II

Ms. Mary Kamande
Public Communications Officer III

Mr. Silas Opanga
Hansard Reporter III

Mr. John Nduaci
Serjeant-At-Arms

Mr. Abdikafar Abdi
Clerk Assistant III

Mr. Isaac Nabiswa
Legal Counsel II

Ms. Vivienne Ogega
Research Officer III

Mr. Calvin Karung'o
Media Relations Officer III

Mr. Dennis Kamau
Audio Officer

CHAPTER TWO

2 SENATE AMENDMENTS TO THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL *(NATIONAL ASSEMBLY BILL NO. 10 OF 2024)*

2.1 Introduction

6. The Bill is co-sponsored by the Leader of the Majority Party and the Leader of the Minority Party. The Bill sought to give effect to some of the recommendations and views of the public that were submitted to the National Dialogue Committee (NADCO) on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

7. The Bill was published on 4th April 2024 and read a First Time in the House on 5th March 2024 was considered and passed with amendments by the National Assembly on 2nd May 2024. The Bill, being a Bill concerning counties was forwarded to the Senate for consideration pursuant to Standing Order 142 of the National Assembly Standing Orders.

8. The Bill sought to—

   (1) Amend the Independent Electoral and Boundaries Commission Act (Cap. 7C) to clean up the Act by deleting obsolete provisions;
   (2) Make consequential amendments intended to align the Act to the Judgment of the High Court in ***Katiba Institute & 3 Others v Attorney-General & 2 Others*** **[2018] eKLR** where the High Court held that certain provisions of the Act were unconstitutional;
   (3) Amend section 6 of the Act and include experience in accounting or information and communication technology as additional professional qualifications for appointment as a member of the Independent Electoral and Boundaries Commission;
   (4) Amend the First Schedule to the Independent Electoral and Boundaries Commission Act (Cap. 7C) to increase the number of members of the selection panel from seven to nine in order to accommodate a wide spectrum of stakeholders and interest groups; and
   (5) Replace the current Fifth Schedule of the Act with a new and updated Schedule.

9. The Senate considered and passed the Bill with amendments on 11th June, 2024 and transmitted the amendments to the National Assembly seeking concurrence. The amendments were subsequently referred to the Departmental Committee on Justice and Legal Affairs for consideration, on 18th June 2024.

2.2 Amendments proposed by the Senate

The Senate proposed amendments to clauses 2, 3 and 7.

Senate Amendment to Clause 2

10. Clause 2 amended—
    (a) by inserting the following new paragraph immediately after paragraph (e)
        (g) in the definition of the word "parliamentary committee" by inserting the words "and Senate" immediately after the words "the National Assembly"; and
    (b) In paragraph (f) in the proposed new definition of the word "parliamentary party" by inserting the words "and Senate" immediately after the words "the National Assembly".

Senate Amendment to Clause 3

11. Clause 3 of the Bill be amended by deleting the clause and substituting therefor the following new clause—
    Section 6 of the principal Act amended in subsection 2(c) —
    (a) by deleting the introductory clause and substituting therefore the following new clause—
        (c) has proven knowledge and at least ten years' experience in any of the following fields—
    (b) by inserting the following new subparagraphs immediately after subparagraph (vi) —
        (vii) information and communication technology; and
        (viii) accounting.

Senate Amendment to Clause 7

12. Clause 7 amended in new section 24(B)-
    (a) section 24(B)(5) by inserting the words "in each House of Parliament" immediately after the words "Parliamentary Committee";
    (b) section 24(B)(6) —
        i. by inserting the words "in each House of Parliament" immediately after the words "Parliamentary Committee"; and
        ii. by deleting the words "the National Assembly" appearing immediately after the words "the report in" and substituted therefor the words "the respective House of Parliament";
    (c) section 24(B)(7) by inserting the words "and the Senate" immediately after the words "the National Assembly";
    (d) section 24(B)(8) by inserting the words "and the Senate" immediately after the words "the National Assembly"; and
    (e) section 24(B)(9) by inserting the words "and the Senate" immediately after the words "the National Assembly".

CHAPTER THREE

3 COMMITTEE OBSERVATIONS

13. The Committee having considered the Senate amendments to the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 observed that:

    a) The amendments seek to include the Senate in the definition of the terms "Parliamentary Party" and "Parliamentary Committee"; and

    b) The proposal to include at least ten years' experience for one to qualify for appointment as a member of the Commission shall enhance the quality and competence of the members of the Commission.

CHAPTER FOUR

4 COMMITTEE RECOMMENDATION

14. Having considered the Senate amendments to the Independent Electoral and Boundaries Commission (Amendment) Bill, *(National Assembly Bill No. 10 Of 2024)* the Committee recommends that the House approves the Senate amendments to Clauses 2, 3 and 7 of the Bill.

SIGNED.....Murugara..... **DATE**.....19. 6. 024.....

HON. GEORGE GITONGA MURUGARA, CBS, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 19 JUN 2024 WEDNESDAY
TABLED BY: CHAIRPERSON, JLAC
HON. GEORGE MURUGARA
CLERK-AT-THE-TABLE: E. NGINYO

Annexure 1:

Adoption Schedule

THE NATIONAL ASSEMBLY
13TH PARLIAMENT – THIRD SESSION - 2024
JUSTICE AND LEGAL AFFAIRS COMMITTEE

ADOPTION SCHEDULE

AGENDA: **Adoption of the Report on the Senate amendments to the Independent Electoral Boundaries Commission (Amendment) Bill, 2024 co-sponsored by Hon. Kimani Ichung'wah, EGH, MP and Hon. Opiyo Wandayi, MGH, CBS, MP**

No.	HON MEMBER	SIGNATURE
1.	HON. MURUGARA GEORGE GITONGA, CBS, MP – ***Chairperson***	
2.	HON. MUTUSE ECKOMAS MWENGI, OGW, MP – ***Vice Chairperson***	
3.	HON. MAALIM FARAH, MP	
4.	HON. FRANCIS KAJWANG' TOM JOSEPH, MP	
5.	HON. JUNET MOHAMED, CBS, MP	
6.	HON. ONYIEGO SILVANUS OSORO, CBS, MP	
7.	HON. (DR.) OTIENDE AMOLLO, SC, MP	
8.	HON. MUCHIRA MICHAEL MWANGI, MP	
9.	HON. MAKALI JOHN OKWISIA, MP	
10.	HON. MURIU WAKILI EDWARD, MP	
11.	HON. MAINA JANE NJERI, MP	
12.	HON. GICHOHI KAGUCHIA JOHN PHILIP, MP	
13.	HON. MOGAKA STEPHEN M, MP	
14.	HON. ADEN DAUD, EBS, MP	
15.	HON. SIYAD AMINA UDGOON, MP	

Annexure 2:

Speaker's Communication

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - (THIRD SESSION)

MESSAGES

MESSAGES FROM THE SENATE

(No. 015 of 2024)

ON PASSAGE OF THREE SENATE BILLS AND TWO NATIONAL ASSEMBLY BILLS

1. **Honourable Members,** pursuant to the provision of Standing Order 41(4), I wish to report to the House that I have received five (5) Messages from the Senate regarding passage of three Senate Bills and two National Assembly Bills.

2. **Honourable Members,** the **first Message** conveys that on 11th June 2024, the Senate considered and **agreed** to the National Assembly amendments to the County Licensing (Uniform Procedures) (Senate Bill No. 9 of 2022). You will recall that on 2nd May 2024, this House passed the said Bill **with amendments**, following which I referred the Schedule of National Assembly amendments to the Senate for consideration in accordance with Article 110(4) of the Constitution.

3. **Honourable Members,** the concurrence of the Senate with the National Assembly on the Bill therefore concludes the bicameral consideration of the Bill under Article 110 of the Constitution.

4. **Honourable Members,** the **second Message** conveys that, on 11th June 2024, the Senate considered and passed the County Governments Additional Allocations Bill (Senate Bill No. 19 of 2024), **with amendments**

5. The said Bill seeks to provide for additional allocations to county governments for the financial year 2024/2025 and the responsibilities of National Government and county governments pursuant to such allocations.

6. **Honourable Members,** the **third Message** conveys that, on 11th June 2024, the Senate passed the County Allocation of Revenue Bill (Senate Bill No. 25 of 2024), **with amendments**. This annual Bill seeks to provide for the equitable allocation of revenue raised nationally among the county governments for the financial year 2024/2025 and the responsibilities of national and county governments.

7. **Honourable Members,** having passed the two (2) Senate Bills, the Senate now seeks the concurrence of the National Assembly pursuant to the provisions of Article 110(4) of the Constitution.

8. **Honourable Members,** the centrality of the said Bills in the budget process and the prescribed statutory timelines call for their expedited passage. In this regard, you will notice that I have directed the Clerk to list the two Bills for First Reading under Order Nos. 11 and 12 in the Supplementary Order Paper for today, Tuesday, 18th June, 2024.

9. Thereafter, both Bills will stand committed to the **Budget and Appropriations Committee** for consideration. I urge the Committee to prioritize the Bills and report to the House as soon as is practicable to enable the House to proceed with the next stages of the Bills.

10. **Honourable Members,** the **fourth and fifth Messages** convey that, on 11th June 2024, the Senate considered and passed the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 2 of 2023) and the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 10 of 2024) **with amendments**.

11. The Senate has now referred the two Bills back to the National Assembly for reconsideration pursuant to Article 112(1)(b) of the Constitution.

12. **Honourable Members**, this House is therefore required to consider Senate amendments to the two Bills. In this regard, I direct the Clerk to circulate the schedule of the Senate amendments to the two Bills to all Members. Thereafter, the Senate amendments to the Statutory Instruments (Amendment) Bill, 2023 will stand referred to the **Committee on Delegated Legislation,** while the Senate amendments to the Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 will stand referred to the **Departmental Committee on Justice and Legal Affairs.**

13. The two Committees are expected to expedite consideration of the Senate amendments to the respective Bills and submit their reports to the House. Aware of the nature of the Independent Electoral and Boundaries Commission (Amendment) Bill, I direct that the **Departmental Committee on Justice and Legal Affairs** should table its report on Thursday, 20th June, 2024 during the Morning Sitting.

14. The House is accordingly guided.

I thank you!

Wetangula

THE RT. HON. (DR.) MOSES F. M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY
Tuesday, 18th June 2024

Annexure 3:

Senate's Schedule of Amendments

REPUBLIC OF KENYA

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Telephone 2848003
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E-mail: clerk.senate@parliament.go.ke

Clerk's Chambers
The Senate
Parliament Buildings
P. O. Box 41842 – 00100
Nairobi, Kenya

PARLIAMENT OF KENYA
OFFICE OF THE CLERK OF THE SENATE

SENATE AMENDMENTS TO THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 10 OF 2024)

The Senate, on Tuesday, 11th June 2024, considered and passed **the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bills No. 10 of 2024) with amendments** as follows –

CLAUSE 2

Clause 2 amended—

(a) by inserting the following new paragraph immediately after paragraph (e)

(g) in the definition of the word "Parliamentary Committee" by inserting the words "and Senate" immediately after the words "the National Assembly"; and

(b) in paragraph (f) in the proposed new definition of the word "parliamentary party" by inserting the words "and Senate" immediately after the words "the National Assembly".

CLAUSE 3

Clause 3 amended by deleting the clause and substituting therefor the following new clause —

3. Section 6 of the principal Act amended in subsection 2(c)—

(a) by deleting the introductory clause and substituting therefor the following new clause —

(c) has proven knowledge and at least ten years' experience in any of the following fields –

(b) by inserting the following new subparagraphs immediately after subparagraph (vi)—

Signature _____

(vii) information and communication technology; and

(viii) accounting.

CLAUSE 7

Clause 7 amended in new section 24(B)-

(a) section 24(B)(5) by inserting the words "in each House of Parliament" immediately after the words "Parliamentary Committee";

(b) section 24(B)(6)—

(i) by inserting the words "in each House of Parliament" immediately after the words "Parliamentary Committee"; and

(ii) by deleting the words "the National Assembly" appearing immediately after the words "the report in" and substituted therefor the words "the respective House of Parliament";

(c) section 24B (7) by inserting the words "and the Senate" immediately after the words "the National Assembly";

(d) section 24B (8) by inserting the words "and the Senate" immediately after the words "the National Assembly"; and

(e) section 24B (9) by inserting he words "or the Senate" immediately after the words "the National Assembly".

Signature

Annexure 4:

The Independent Electoral and Boundaries Commission (Amendment) Bill, 2024 as passed by the National Assembly on 2nd May 2024



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(Bill No. 10 of 2024)

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024

(A Bill published in the Kenya Gazette Supplement No. 46 of 2024 and passed by the National Assembly, with amendments, on May 2nd, 2024)

N.A./B/No. 10/2024

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024

A Bill for

AN ACT of Parliament to amend the Independent Electoral and Boundaries Commission Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title and commencement

1. This Act may be cited as the Independent Electoral and Boundaries Commission (Amendment) Act, 2024 and shall come into force upon publication in the *Gazette*.

Amendment of section 2 of Cap. 7C

2. Section 2 of the Independent Electoral and Boundaries Commission Act (hereinafter referred to as "the principal Act") is amended—

(a) in the definition of the word "chairperson" by deleting the words "or the vice-chairperson or a member of the Commission when discharging the functions of the chairperson" appearing immediately after the word "Constitution;

(b) by deleting the definition of the expression "first review";

(c) by deleting the definition of the expression "former Boundaries Commission";

(d) by deleting the definition of the expression "former Constitution";

(e) by deleting the definition of the expression "issues arising";

(f) by inserting the following new definition in proper alphabetical sequence—

"parliamentary party" means a party or coalition of parties consisting of not less than five percent of the membership of the National Assembly;

Amendment of section 6 of Cap. 7C

3. Section 6 of the principal Act is amended in subsection (2)(c) by inserting the following new sub-paragraphs immediately after sub-paragraph (vi)—

(vii) information and communication technology;

(viii) accounting.

Amendment of section 7A of Cap. 7C.

4. Section 7A of the principal Act is amended—

(a) by deleting sub-section (4);

(b) by deleting sub-section (5);

(c) by deleting sub-section (6).

Amendment of section 10 of Cap. 7C.

5. Section 10 of the principal Act is amended by deleting sub-section (4) and substituting therefor the following new sub-section—

(4) The secretary shall hold office for a term of four years and is eligible for re-appointment for one further term of four years.

Insertion of a new section 24A in Cap. 7C.

6. The principal Act is amended by inserting the following new section immediately after section 24—

Review of conduct of general election

24A. (1) The Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent and accountable.

(2) The review shall be completed within eighteen months after every general election and the Commission shall publish the report in the *Gazette* and submit the report to Parliament.

Insertion of a new PART IIIA in Cap. 7C.

7. The principal Act is amended by inserting the following new Part immediately after section 24A—

PART IIIA—DELIMITATION OF ELECTORAL UNITS

Procedure for delimitation of electoral boundaries.

24B. (1) The Commission shall discharge its mandate of the delimitation of boundaries of constituencies and wards in accordance with the Constitution, this Act and any other law.

(2) Subject to the Constitution, matters to be addressed in the delimitation of electoral boundaries are—

(a) review of the names and boundaries of constituencies;

(b) review of the number, names and boundaries of wards;

(c) re-distribution of wards affected by any changes in the boundaries of constituencies; and

(d) ensuring that the number of inhabitants in each constituency and ward is as nearly as possible, equal to the population quota as provided for by Article 89(5) of the Constitution and that such a process—

(i) allows for variation of margin of not more than the limits provided under Article 89(6) of the Constitution in relation to cities, sparsely populated areas and other areas;

(ii) takes into account the provisions of Article 89(7)(b) of the Constitution that provides for the progressive realization of the requirement that the number of inhabitants in each constituency and ward to be as nearly as possible, equal to the population quota for the purposes of the each review;

(iii) is subject to the use of enumerated national census figures.

(3) The Commission shall prepare and publish a preliminary report outlining—

(a) the proposed delimitation of boundaries for constituencies and wards; and

(b) the specific geographical demographical details relating to such delimitation; and

(4) The Commission shall ensure that the preliminary report is made available to the public for a period of thirty days and invite representations from the public on the proposals contained in the report during that period.

(5) Upon the expiry of the period provided in subsection (4), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received and submit the revised preliminary report to the Parliamentary Committee.

(6) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report, table the report in the National Assembly together with its recommendations.

(7) The National Assembly shall, within fourteen days of the tabling of the revised preliminary report, consider the report and forward its recommendations to the Commission.

(8) Within fourteen days of the expiry of the period provided for in subsection (7), the Commission shall upon receipt and considerations of the National Assembly and representations from the public, prepare the final report for publication in the *Gazette*.

(9) Where the National Assembly fails to make recommendations within the period specified in subsection (7), the Commission shall publish its report in accordance with subsection (8).

(10) A person who, being responsible for the publication in the *Gazette* of the final report submitted under this subsection fails to publish the report within the time required by the Commission after the report has been submitted to that person, commits an offence and is liable to imprisonment for a term of one year.

(11) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subsection (9) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the *Gazette*.

(12) Subject to this section, the provisions set out in the Fifth Schedule shall apply during the process of delimitation of electoral units.

Repeal of section 36 of Cap 7C

8. The principal Act is amended by repealing section 36.

Amendment of the First Schedule to Cap 7C

9. The First Schedule to the principal Act is amended—

(a) in paragraph 1—

(i) by deleting the word "seven" appearing immediately after the words "consisting of" appearing in sub-paragraph (1) and substituting therefor the word "nine";

(ii) by deleting sub-paragraph (2) and substituting therefor the following new sub-paragraph—

"(2) The selection panel shall consist of—

(a) two persons nominated by the Parliamentary Service Commission, representing the majority party or coalition of parties and the minority party or coalition of parties;

(b) three persons nominated by the Political Parties Liaison Committee of whom—

(i) one shall be from a party other than a parliamentary party or coalition of parties;

(ii) one shall be from the majority party or coalition of parties;

(iii) one shall be from the minority party or coalition of parties;

(c) one person nominated by the Law Society of Kenya;

(d) one person nominated by the Institute of Certified Public Accountants of Kenya; and

(e) two persons nominated by the Inter-religious Council of Kenya."

(iii) by inserting the following new sub-paragraphs immediately after sub-paragraph (2A)—

"(2B) The respective nominating bodies shall select the nominees for appointment through a competitive and transparent process.

(2C) In nominating, the persons under subparagraph (2)(a), (b) and (e), the respective nominating bodies shall ensure that not more than two-thirds

of the nominees are of the same gender."

(iv) in sub-paragraph (3), by deleting the words "sub-paragraphs (2)(b) and (c)" and substituting therefor the words "sub-paragraphs (2)(b), (c), (d) and (e)";

(v) by inserting the following new subparagraph immediately after subparagraph (6)—

"(7) The Parliamentary Service Commission shall provide for and meet the expenditure of the selection panel."

(b) by deleting paragraph 6 and substituting therefor the following new paragraph—

"Dissolution of Selection Panel

6. (1) The selection panel shall finalize the recruitment exercise within ninety days of its appointment and forward the names of the nominees to the President and shall thereafter stand dissolved.

(2) Despite sub-paragraph (1), Parliament may, by resolution passed in both the National Assembly and the Senate, extend the tenure of the selection panel for a specified period."

Amendment of the Second Schedule to Cap 7C

10. The Second Schedule to the principal Act is amended—

(a) by deleting paragraph 5 and substituting therefor the following new paragraph—

"5. The quorum for the conduct of business at a meeting of the Commission shall be at least five members of the Commission."

(b) by deleting paragraph 7 and substituting therefor the following new paragraph—

"(7) Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by the concurrence of a majority of all the members of the Commission."

Repeal and replacement of the Fifth Schedule to Cap. 7C.

11. The principal Act is amended by deleting the Fifth Schedule and substituting therefor the following new Schedule—

FIFTH SCHEDULE (s.24B(12))
PROCEDURES FOR THE DELIMITATION OF ELECTORAL UNITS

1. Notice of delimitation of electoral units

(1) Whenever it is necessary to review the names and boundaries of electoral units in accordance with Article 89(2) and (3) of the Constitution, the Commission shall notify the public of—

(a) the intended review;

(b) invite representations from interested parties; and

(c) specify the period within which the Commission shall publish the preliminary report.

(2) A notice under sub-paragraph (1) shall be accompanied by a preliminary report containing the particulars set out under paragraph 2.

2. Preliminary report

The preliminary report shall contain the following particulars—

(a) the proposed delimitation of boundaries for constituencies and wards including the actual proposed names of every constituency and ward; and

(b) description of the proposed boundaries showing the specific geographical and demographical details relating to such delimitation including—

(i) the population quota for constituencies and wards;

(ii) the number of inhabitants in every constituency and ward;

(iii) a classification in relation to each electoral area indicating whether it is a city, a sparsely populated area or other area; and

(iv) an indication of the proposed margin of change from the population quota.

3. Reference materials

(1) The Commission shall, use as its primary reference material—

(a) the final report of the last Electoral and Boundaries Commission on the review of electoral units; and

(b) the latest official population census report.

(2) The Commission may use as its secondary reference material—

(a) the reports of County Boundary Review Panels; or

(b) other relevant data.

(3) The County Boundary Review Panels shall conduct their business as the Commission may, by guidelines determine.

4. Ascertainment of the inhabitants of Kenya

(1) For purposes of determining the population quota, the Commission shall ascertain the number of the inhabitants of Kenya from the figures contained in the latest official national population census report.

(2) Despite sub-paragraph (1), the Commission shall, subject to the timelines set out under Article 89(2) of the Constitution, conduct the delimitation exercise after the national population census.

(3) The Kenya National Bureau of Statistics, shall, as soon as possible after the completion of every national census, submit a copy of the report in the prescribed format to the Commission.

5. Publicization of the preliminary report

(1) The Commission shall—

(a) publicize the preliminary report in its website and in at least two newspapers of nationwide circulation;

(b) invite the public to make representations on the proposals contained in the report; and

(c) put in place administrative mechanisms for receiving representations from the public.

(2) The period set aside for receiving representations from the public on the proposals contained in the report under this paragraph shall be as determined by the Commission.

6. Public sensitization

(1) The Commission shall, upon notification of the public of the intended delimitation of boundaries under paragraph 1 of this Schedule, provide the framework for sensitization and participation of the public.

(2) The Commission may engage the media, avail equipment and prepare materials for effective public education and engagement.

7. Public hearings

(1) The Commission shall conduct boundaries review hearings in every county and may constitute constituencies and wards boundaries review panels in each county for the purposes of facilitating public hearings.

(2) Before engaging in the county boundaries review hearings, the Commission shall notify the public of date, time and place of such hearings.

(3) Representations to the Commission may be made orally or in writing.

(4) The proceedings of all boundary review public hearings shall be recorded, translated and transcribed.

8. Preparation of revised report

(1) Upon completion of the public hearings, the Commission shall review the proposed delimitation of boundaries and submit the report to Parliament.

(2) The revised report shall be based on the feedback received during the public consultative process, subject to the relevant provisions of the law.

9. Preparation and dissemination of maps

(1) The Commission shall prepare and publish maps in its website—

(a) for all the electoral units in accordance with the final boundary dissemination delimitation report;

(b) for the respective constituencies in every county; and

(c) for wards in every constituency.

(2) Despite sub-paragraph (1), the Commission shall provide physical copies of the maps to Parliament.

10. Review of the decisions of the Commission

(1) Pursuant to Article 89(10) of the Constitution, a person may apply to the High Court for review of a decision of the Commission on the delimitation of electoral boundaries.

(2) An application for the review under this paragraph shall be made within thirty days of the publication of the decision in the *Gazette* as required under Article 89(9) of the Constitution and shall be heard and determined within three months of the date on which it is filed.

11. Maintenance of records

The Commission shall ensure that all documents, materials, publications, reports and recommendations arising from the delimitation process are maintained in a form that is accessible and usable by members of the public.

12. Duty of certain officers to co-operate with the Commission

It shall be the duty of every state officer or public officer serving in the relevant government ministry, department or agency including the ministry for the time being responsible for Interior and National Administration, Director of Surveys, Director-General of the Kenya National Bureau of Statistics and every other public officer whose services are required by the Commission for purposes of the delimitation of electoral units to provide the necessary information and technical support.

Saving and transition

12. Upon the commencement of this Act—

(a) the selection panel existing immediately before the commencement of this Act shall stand dissolved but—

(i) the members of that panel may be nominated to serve in any subsequent panel; and

(ii) nothing done by that panel for purposes of executing its functions shall, if done in good faith, render any member of that panel personally liable for any action, claim or demand;

(b) the respective nominating bodies under paragraph 1(2)(b), (c), (d) and (e) of the First Schedule to the principal Act shall within fourteen days from the date of commencement of this Act submit the names of their nominees to the Parliamentary Service Commission for transmission to the President for appointment to the selection panel under the Act;

(c) the President shall, within seven days of receipt of the names of the nominees under paragraph 1(2) of the First Schedule to the principal Act from the Parliamentary Service Commission, appoint a selection panel for the purpose of

appointment of the chairperson and members of the Commission; and

(d) a person holding the office of the secretary of the Independent Electoral and Boundaries Commission shall continue in office for the remainder of the unexpired period of their term.

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on Thursday, 2nd May, 2024.

Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly.

Speaker of the National Assembly

PRINTED BY THE CLERK OF THE NATIONAL ASSEMBLY



Annexure 5:

Minutes

MINUTES OF THE (44TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY, 19TH JUNE 2024 AT 10:00 AM IN ROOM 26, 5TH FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. Murugara George Gitonga, CBS, MP - *Chairperson*
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - *Vice- Chairperson*
3. Hon. Francis Kajwang' Tom Joseph, MP
4. Hon. Onyiego Silavnus Osoro, CBS, MP
5. Hon. Gichohi Kaguchia John Philip, MP
6. Hon. Mogaka Stephen M, MP
7. Hon. Makali John Okwisia, MP
8. Hon. Muchira Michael Mwangi, MP - *Virtually*

MEMBERS ABSENT WITH APOLOGIES

1. Hon. Maalim Farah, MP
2. Hon. Junet Mohamed, CBS, MP
3. Hon. (Dr.) Otiende Amollo, SC, MP
4. Hon. Muriu Wakili Edward, MP
5. Hon. Aden Daud, EBS, MP
6. Hon. Maina Jane Njeri, MP
7. Hon. Siyad Amina Udgoon, MP

SECRETARIAT

1.	Mr. Ahmed Salim Abdalla	-	Clerk Assistant I
2.	Mr. Ronald M. Walala	-	Ag. Deputy Director, Legal Services
3.	Ms. Jael Ayiego Kilaka	-	Clerk Assistant III
4.	Mr. Abdikafar Abdi	-	Clerk Assistant III
5.	Mr. Isaac Nabiswa	-	Legal Counsel II
6.	Mr. Omar Abdirahim	-	Fiscal Analyst II
7.	Mr. Calvin Karungo	-	Media Relations Officer
8.	Mr. Dennis Kamau	-	Audio Officer
9.	Mr. John Nduaci	-	Serjeant-at-Arms

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of the previous minutes
4. Consideration and Adoption of the Report of the Senate Amendments to the Independent Electoral Boundaries Commission (Amendment) Bill, 2024 Co-sponsored by the Hon. Kimani Ichung'wah, EGH, MP and Hon. Opiyo J. Wandayi, MGH, MP
5. Any Other Business
6. Adjournment/ Date of the Next Meeting

MIN. NO. JLAC 220/2024: **PRELIMINARIES**

The meeting was called to order at twenty-five minutes past ten o'clock by the Chairperson followed by a word of prayer from the Chairperson and introductions. The agenda was adopted having been proposed by Hon. Mutuse Eckomas Mwengi, OGW, MP and seconded by Hon. Makali John Okwisia, MP

MIN. NO. JLAC 221/2024: **CONFIRMATION OF MINUTES**

The agenda was deferred.

MIN. NO. JLAC 222/2024: **CONSIDERATION OF THE SENATE AMENDMENTS TO THE INDEPENDENT ELECTORAL BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024 CO-SPONSORED BY THE HON. KIMANI ICHUNG'WAH, EGH, MP AND HON. OPIYO J. WANDAYI, MGH, MP**

The Committee considered the Senate amendments to the Independent Electoral Boundaries Commission (Amendment) Bill, 2024; co-sponsored by the Hon. Kimani Ichung'wah, EGH, MP and the Hon. Opiyo J. Wandayi, MGH, MP. The Committee noted that the Senate amendments proposed as follows: -

(1) Amendment of Clause 2 of the Bill to include the Senate in the definition of "Parliamentary Party" and "Parliamentary Committee". The import of the amendments is that under the IEBC Act —
   (a) a parliamentary party shall consist of at least five percent of the Members of the National Assembly and the Senate; and
   (b) the IEBC Report on the review of boundaries shall be tabled before the relevant Committees of the National Assembly and the Senate responsible for the IEBC;

(2) Amendment of Clause 3 of the Bill to increase the qualifications for appointment as a commissioner. For a person to qualify for appointment as a member of the IEBC, they now must have *proven knowledge and at least ten years' experience in electoral matters, management, finance, governance, public administration, law, information and communication technology, or accounting*. In the current section 6, there is no prescribed number of the years of experience required; and

(3) Amendment of Clause 7 to include the relevant Parliamentary Committee of the Senate in the consideration of the IEBC Report on boundaries review. The Act currently defines "Parliamentary Committee" as the relevant Committee of the National Assembly responsible for the IEBC.

Upon deliberations, and having considered the Senate's amendments together with the legal brief by the National Assembly's Directorate of Legal Services, the Committee observed that:

1) The amendments sought to include the Senate in the definition of the terms "Parliamentary Party" and "Parliamentary Committee"; and

2) The proposal to include at least ten years' experience for one to qualify for appointment as a Commission shall enhance the quality and competence of the members of the Commission.

MIN. NO. JLAC 223/2024: **ADOPTION OF THE REPORT ON CONSIDERATION OF THE SENATE AMENDMENTS TO THE INDEPENDENT ELECTORAL BOUNDARIES COMMISSION (AMENDMENT) BILL, 2024 CO-SPONSORED BY THE HON. KIMANI ICHUNG'WAH, EGH, MP AND HON. OPIYO J. WANDAYI, MGH, MP**

Committee Observations

Upon reviewing the Senate amendments, the Committee made the following observations:

a) The amendments sought to include the Senate in the definition of the terms "Parliamentary Party" and "Parliamentary Committee"; and

b) The proposal to include at least ten years' experience for one to qualify for appointment as a Commission shall enhance the quality and competence of the members of the Commission.

Committee Recommendations

The Committee, having considered the Senate amendments to the Independent Electoral and Boundaries Commission (Amendment) Bill, *(National Assembly Bill No. 10 Of 2024)* the Committees resolved to recommend that the House approves the Senate amendments to Clauses 2, 3 and 7 of the Bill.

Adoption of the Report

The report was therefore adopted, having been proposed by Hon. Mutuse Eckomas Mwengi, OGW, MP and seconded by Hon. Makali John Okwisia, MP.

MIN. NO. JLAC 224/2024: **ANY OTHER BUSINESS**

i. The Committee took note of the request from *Kenyans in the Diaspora Technical Working Group* for a virtual meeting. The Committee resolved that the Technical Working Group should send written submissions before engaging the Committee; and

ii. The Committee took note of a letter and a questionnaire from the Commission on Administrative Justice, requesting for feedback as the Commission embarks on the end term evaluation of the Commission on Administrative Justice Strategic Plan (2019-2023).

MIN. NO. JLAC 225/2024: **ADJOURNMENT**

There being no other business, the meeting was adjourned at thirty minutes past eleven o'clock. The next meeting shall be held on notice.

SIGNED: ..... **DATE:** 19.6.024

(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, CBS, MP)

Annexure **5a**

EACC (Amendment) Bill, 2024

Report of the Departmental Committee on Justice and Legal Affairs on Consideration of the Report of the National Dialogue Committee (NADCO) and the Report of the Multi-Sectoral Working Group on the Realization of the Two-Thirds Gender Principle

THE ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL, 2023

THE ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Ethics and Anti-Corruption Commission Act

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Ethics and Anti-Corruption Commission (Amendment) Act, 2023.

Amendment of section 5 of No. 22 of 2011.

2. Section 5 of the Ethics and Anti-Corruption Commission Act, 2011 (in this Act referred to as the "principal Act") is amended by deleting sub-section (1) and substituting therefor the following new subsection—

"(1) The chairperson of the Commission shall be a person who is qualified to hold the office of a judge of the High Court under the Constitution."

Saving provision.

3. Sections 2 of this Act shall not apply to a person who immediately before the commencement of this Act was serving as a Chairperson of the Commission.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend the Ethics and Anti-Corruption Commission Act No. 22 of 2011 to prescribe the qualifications for appointment of a Chairperson of the Commission. The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 of the Bill sets out the short title of the Bill.

Clause 2 of the Bill amends section 5 of the Act to prescribe the qualifications for appointment of a Chairperson of the Commission. The clause provides that the Chairperson of the Commission shall be a person who is qualified to hold the office of judge of the High Court under the Constitution.

Clause 4 of the Bill is a saving provision and provides that the Act shall not apply to a person who immediately before the commencement of the Act was serving as a Chairperson of the Commission.

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

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

Statement that the Bill does not concern County Governments.

The Bill does not concern County Governments in terms of Article 110 (1)(a) of the Constitution and it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may not occasion additional expenditure of public funds.

Dated the....., 2023.

KIMANI ICHUNG'WAH, **OPIYO WANDAYI,**

Section 5 of No. 22 of 2011 which it is proposed to be amend—

5. **Qualifications for appointment as chairperson or member**

(1) A person shall be qualified for appointment as the chairperson if that person—

(a) meets the requirements of Chapter Six of the Constitution;

(b) holds a degree from a university recognised in Kenya;

(c) has knowledge and experience of not less than fifteen years in any of the following fields—

(i) ethics and governance;
(ii) law;
(iii) public administration;
(iv) leadership;
(v) economics;
(vi) social studies;
(vii) audit;
(viii) accounting;
(ix) fraud investigation;
(x) public relations and media; or
(xi) religious studies or philosophy; and

(d) has had a distinguished career in their respective field.

(2) A person shall be qualified for appointment as a member of the Commission if that person—

(a) meets the requirements of Chapter Six of the Constitution.

(b) holds a degree from a University recognized in Kenya;

(c) has knowledge and experience of not less than ten years in any of the following fields—

(i) ethics and governance;
(ii) law;
(iii) public administration;
(iv) leadership;
(v) economics;
(vi) social studies;
(vii) audit;
(viii) accounting;
(ix) fraud investigation;
(x) public relations and media; or
(xi) religious studies or philosophy; and

(d) has had a distinguished career in their respective field.

(3) A person shall not be qualified for appointment as a chairperson or as

(b) is an undischarged bankrupt;

(c) has been convicted of a felony; or

(d) has been removed from public office for contravening the provisions of the Constitution or any other law.

(4) Subsection (3)(a) shall cease to apply to a person after two general elections have been held since the person ceased to hold such office.

Annexure 5b

Report of the Departmental Committee on Justice and Legal Affairs on its Consideration of the EACC (Amendment) Bill tabled on 6th August 2024

REPUBLIC OF KENYA

Approved
SNA
6/8/24

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 06 AUG 2024 DAY: TUESDAY
TABLED BY: HON. GITONGA MURUGARA (CHAIRPERSON)
CLERK-AT-THE-TABLE: IHZOFU MWALE

REPORT ON:

THE CONSIDERATION OF THE ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL, 2024
(NATIONAL ASSEMBLY BILL NO. 11 OF 2024)

NATIONAL ASSEMBLY
RECEIVED
06 AUG 2024
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NAIROBI

AUGUST 2024

Table of Contents

Table of Contents i
List of Abbreviations and Acronyms ii
Annexures iii
Chairperson's Foreword iv

CHAPTER ONE 1
1 Preface 1
1.1 Establishment of the Committee 1
1.2 Mandate of the Committee 1
1.3 Committee Membership 3
1.4 Committee Secretariat 4

CHAPTER TWO 5
2 Overview of the Ethics and Anti-Corruption Commission (Amendment) Bill *(National Assembly Bill No. 11 of 2024)* 5
2.1 Background 5
2.2 Summary of Legal Provisions 5

CHAPTER THREE 6
3 Public Participation and Stakeholder Engagement on the Bill 6
3.1 Legal Framework on Public Participation 6
3.2 Memoranda Received on the Bill 6

CHAPTER FOUR 8
4 Determination on whether or not to amend the Bill 8

CHAPTER FIVE 9
5 Committee Recommendations 9

CHAPTER SIX 10
6 Schedule of Amendments 10

List of Abbreviations and Acronyms

EACC	-	Ethics and Anti-Corruption Commission
FORD	-	Forum for the Restoration of Democracy
KLRC	-	Kenya Law Reform Commission
LSK	-	Law Society of Kenya
MCCP	-	Maendeleo Chap Chap Party
NADCO	-	National Dialogue Committee
ODPP	-	Office of the Director of Public Prosecutions
ODM	-	Orange Democratic Movement
UDA	-	United Democratic Alliance
WDM	-	Wiper Democratic Movement

Annexures

Annexure 1: Adoption Schedule
Annexure 2: Adoption Minutes
Annexure 3: Ethics and Anti-Corruption Commission (Amendment) Bill, 2024
Annexure 4: Advertisement inviting the public to submit memoranda on the Bill
Annexure 5: Letter from the Clerk of the National Assembly inviting stakeholders to attend the public participation forums
Annexure 6: Memoranda by Stakeholders

Chairperson's Foreword

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Ethics and Anti-Corruption Commission (Amendment) Bill *(National Assembly Bill No. 11 of 2024)* which was published on 4th March 2024.

The Bill seeks to seeks to give effect to some of the recommendations and views of the public as submitted to the National Dialogue Committee (NADCO) on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices. The Bill aims to amend the EACC Act (Cap 7H) to prescribe the qualifications for appointment of a Chairperson of the Commission. Under the amendment, the Chairperson of the Commission is proposed to be a person qualified for appointment as a judge of the High Court.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on Friday 5th July 2024 inviting the public to submit memoranda by way of written statements on the Bill. In addition, the Committee vide letter Ref. No. NA/DDC/JLAC/2024/065 dated Wednesday 19th July 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on Wednesday 31st July 2024. The memoranda were to be received on or before Friday 26th July 2024 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received seven (7) memoranda. The EACC, ODPP, LSK, KLRC, County Governance Watch, Levine K. Njau and Antony Mulili gave their views on the Bill which the Committee considered in the preparation of this report.

While considering the Bill, the Committee observed that the Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the NADCO which was established to facilitate dialogue and consensus building and thereafter recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya as framed by NADCO. One of the recommendations by NADCO was to enhance the capacity of the Commission to fight corruption.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank the EACC, ODPP, LSK, KLRC, County Governance Watch, Levine K. Njau and Antony Mulili for submitting memoranda on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its Consideration of the Ethics and Anti-Corruption Commission (Amendment) Bill *(National Assembly Bill No. 11 of 2024)*.

It is my pleasure to report that the Committee has considered the Ethics and Anti-Corruption Commission (Amendment) Bill *(National Assembly Bill No. 11 of 2024)* and have the honour to report back to the National Assembly with the recommendation that **the House approves the Bill** with amendments.

Hon. Murugara George Gitonga, MP
Chairperson, Departmental Committee on Justice and Legal Affairs

CHAPTER ONE

1 Preface

1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
    i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
    ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
    iii. *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
    iv. *To study and review all legislation referred to it;*
    v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
    vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
    vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
    viii. *To examine treaties, agreements and conventions;*
    ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
    x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
    xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider: -
    a) The Judiciary;
    b) Tribunals;
    c) Access to Justice;
    d) Public prosecutions;
    e) Ethics, Integrity and Anti-corruption;
    f) Correctional services;
    g) Community service orders and witness protection;
    h) Constitutional Affairs;
    i) Sovereign immunity;
    j) Elections including referenda;
    k) Human rights;
    l) Political parties; and
    m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.

3. In executing its mandate, the Committee oversights the following Ministries, Departments and Agencies:
    a) State Department of Correctional Services;
    b) State Law Office and Department of Justice;
    c) The Judiciary;
    d) Judicial Service Commission;
    e) Office of the Director of Public Prosecutions;
    f) Ethics and Anti-Corruption Commission;
    g) Independent Electoral and Boundaries Commission;
    h) Commission on Administrative Justice;
    i) Office of the Registrar of Political Parties;
    j) Witness Protection Agency;
    k) Kenya National Commission on Human Rights;
    l) Kenya Law Reform Commission; and
    m) Council of Legal Education.

1.3 Committee Membership

4. The Committee was constituted by the House on 27th October 2022 and comprises the following Members:

Chairperson
Hon. Murugara George Gitonga, MP
Tharaka Constituency
UDA Party

Vice-Chairperson
Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency
MCCP Party

Members

Hon. Maalim Farah, MP
Dadaab Constituency
WDM-Kenya

Hon. Francis Kajwang' Tom Joseph, MP
Ruaraka Constituency
ODM Party

Hon. Junet Mohamed, CBS, MP
Suna East Constituency
ODM Party

Hon. (Dr.) Otiende Amollo, SC, MP
Rarieda Constituency
ODM Party

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency
UDA Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency
UDA Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

Hon. Muriu Wakili Edward, MP
Gatanga Constituency
UDA Party

Hon. Maina Jane Njeri, MP
Kirinyaga (CWR)
UDA Party

Hon. Gichohi Kaguchia John Philip, MP
Mukurweini Constituency
UDA Party

Hon. Mogaka Stephen M, MP
West Mugirango Constituency
Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Siyad Amina Udgoon, MP
Garissa Township (CWR)
Jubilee Party

1.4 Committee Secretariat

5. The Committee is well-resourced and facilitated by the following staff:

Mr. Ahmed Salim Abdalla
Clerk Assistant I / Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Mr. Abdikafar Abdi
Clerk Assistant III

Ms. Jael Ayiego
Clerk Assistant III

Mr. Isaac Nabiswa
Legal Counsel II

Mr. Omar Abdirahim
Fiscal Analyst II

Ms. Vivienne Ogega
Research Officer III

Mr. John Nduaci
Serjeant-At-Arms

Mr. Peter Mutethia
Audio Officer III

Ms. Mary Kamande
Public Communications Officer III

Mr. Calvin Karung'o
Media Relations Officer III

Mr. Silas Opanga
Hansard Reporter III

CHAPTER TWO

2 Overview of the Ethics and Anti-Corruption Commission (Amendment) Bill *(National Assembly Bill No. 11 of 2024)*

2.1 Background

6. The Bill is co-sponsored by the Leader of the Majority Party and the Leader of the Minority Party. The Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the **National Dialogue Committee (NADCO)** on the Issues of *Electoral Justice and Related Matters*; *Outstanding Constitutional Matters*; *Fidelity to Political Parties/Coalitions and the law on multiparty democracy*; *Entrenchment of the National Government Constituencies Development Fund*; *the Senate Oversight Fund and the National Government Affirmative Action Fund* and *Establishment and Entrenchment of State Offices*.

7. The Bill was published on 4th March 2024 and read a First Time in the House on 25th June 2024. It was thereafter committed to the Committee in line with the provision of Standing Order 127 (3).

2.2 Summary of Legal Provisions

8. The Bill seeks to amend the Ethics and Anti-Corruption Commission Act, Cap. 7H to amend the qualifications for appointment of a Chairperson of the Commission. Under the amendment, the Chairperson of the Commission is proposed to be a person qualified for appointment as a Judge of the High Court.

9. In particular, —
   (a) **Clause 1 of the Bill** provides for the short title of the Act;
   (b) **Clause 2 of the Bill** provides for an amendment to section 5(1) of the Act on the qualifications for appointment of the chairperson of the Commission to be a person who is qualified to be a Judge of the High Court of Kenya; and
   (c) **Clause 3 of the Bill** provides for a saving provision where the change in qualifications for appointment shall not apply to the chairperson appointed before the commencement of the Act.

CHAPTER THREE

3 Public Participation and Stakeholder Engagement on the Bill

3.1 Legal Framework on Public Participation

10. Article 118 (1)(b) of the Constitution provides that:
"Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees."

11. The National Assembly Standing Order 127 (3) and (3A) stipulates that:
"(3) The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism including-
(a) inviting submission of memoranda;
(b) holding public hearings;
(c) consulting relevant stakeholders in a sector; and
(d) consulting experts on technical subjects.
(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."

3.2 Memoranda Received on the Bill

12. Pursuant to the aforementioned provisions of the law, the Committee placed an advertisement in the print media on Friday, 5th July, 2024 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee vide letter Ref. No. NA/DDC/JLAC/2024/065 dated Wednesday, 19th July 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on Friday, 31st July 2024.

13. To this end, the Committee received seven (7) memoranda from the EACC, ODPP, LSK, KLRC, County Governance Watch, Levine K. Njau and Antony Mulili. The memoranda are annexed to this report as *Annexure 6.*

14. The Committee received memoranda from the **EACC** opposing the Bill on the following grounds—
    (a) the Commission has a fully established Directorate of Legal Services with some of its officers' holding qualifications of a Judge of a superior court. The function of the Directorate includes reviewing evidence in the course of investigations to ascertain that it meets the legal threshold.
    (b) restricting the role to the legal profession may limit diversity in the leadership of the Commission which could result in a lack of diverse competencies and expertise;
    (c) candidates from non-legal background may bring in fresh ideas and diverse skill sets; and
    (d) legal professionals may possess strong legal expertise but may lack skills and experience in leadership other areas relevant to anti-corruption work, such as investigation techniques, financial analysis, corruption prevention and advocacy.

15. **ODPP** submitted that the proposed amendment will ensure competence and familiarity with legal matters. It is prudent that the Chairperson appreciates the workings of the Kenya Legal System which can only be realized by someone who has undergone the Kenya Legal Education System. They noted that the proposal raises the perceived quality of the decisions made by the EACC thereby adding to the legitimacy of the decisions thereof.

16. **LSK** submitted that the Law Society of Kenya had no objection to the Ethic and Anti-Corruption Commission (Amendment) Bill as published.

17. **KLRC** proposed amending clause 2 of the Bill to provide that the qualifications for appointment of the chairperson of the Commission to be a person who qualifies to be appointed as a judge of the High Court. The Committee however noted that the effect of the proposed amendment by KLRC was same as the published text.

18. **The County Governance Watch** submitted memorandum in support of the proposed amendment stating that, if implemented, it would significantly enhance the effectiveness and credibility of the Ethic and Anti-Corruption Commission.

19. **Levine K Njau** via levinenjau@gmail.com was of the opinion that while the proposed amendments present a significant opportunity to strengthen Kenya's fight against corruption, the Bill ought to have addressed strengthen oversight mechanisms, develop a comprehensive implementation plan, enhance public engagement and clarify legal provisions and incorporate the recommended changes.

20. **Anthony Mulili** via mulilianthony@gmail.com was of the opinion that while the Chairperson of the Commission is proposed to be a person qualified for appointment as a judge of the High Court, the Commission be granted power to prosecute.

CHAPTER FOUR

4 Determination on whether or not to amend the Bill

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

    (1) The Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the National Dialogue Committee (NADCO) which was established to facilitate dialogue and consensus building, and thereafter recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya framed by NADCO. One of the recommendations on the issue was the proposed amendments to the EACC Act (Cap. 7H) as provided in the Bill;

    (2) Despite the fact that the Bill is a politically negotiated document, pursuant to the mandate of the Committee and the requirements of Article 118 of the Constitution and Standing Order 127(3), the Committee is at liberty to propose necessary amendments to the Bill in its report to the House. This is informed by the Communication from the Chair (No. 006 of 2024) which directed the respective committees to ensure strict adherence to the due process in the enactment of legislation; and

    (3) The Bill is a timely and suitable amendment as the need for the Chairperson of the EACC to have a background in law provides the much needed and essential knowledge and understanding of the intricate legal frameworks in dealing with corruption and economic crimes.

22. In light of the foregoing, the Committee resolved to recommend to the House to approve the Bill.

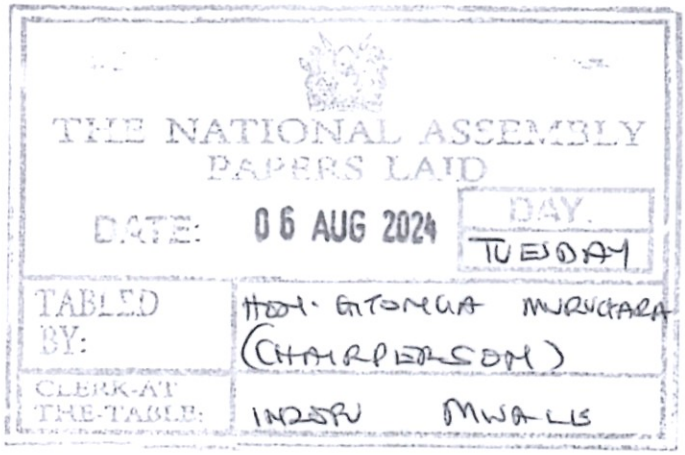
CHAPTER FIVE

5 Committee Recommendations

23. The Committee, having considered the Ethics and Anti-Corruption Commission (Amendment) Bill *(National Assembly No. 11 of 2024)* recommends that **the House approves the Bill** with the amendments contained in the SCHEDULE OF AMENDMENTS forming CHAPTER SIX of this report.

SIGNED..... **DATE**..6.8.024.....

HON. GEORGE GITONGA MURUGARA, CBS, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS



CHAPTER SIX

6 Schedule of Amendments

24. In view of the observations made, the Committee proposed the following amendment to the Bill:

CLAUSE 3
THAT Clause 3 of the Bill be deleted.

Rationale: There is need to ensure that, after the commencement of the Act, the Commission benefits immediately from a Chairperson, who is a person qualified to be a judge of the High Court.

Annexure 6

Adoption Schedule & Minutes

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ADOPTION OF THE COMMITTEE REPORT ON ITS CONSIDERATION OF THE REPORT OF THE NATIONAL DIALOGUE COMMITTEE (NADCO) AND REPORT OF THE MULTI-SECTORAL WORKING GROUP (MSWG) ON THE REALIZATION OF THE TWO-THIRDS GENDER PRINCIPLE

We, the Members of the Departmental Committee on Justice and Legal Affairs have, pursuant to Standing Order 199, adopted this Report of the Committee on its Consideration of the Report of The National Dialogue Committee (NADCO) **and** Report of The Multi-Sectoral Working Group (MSWG) on the Realization of The Two-Thirds Gender Principle and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson .....
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chair .....
3. Hon. Maalim Farah, EGH, MP .....
4. Hon. Francis Kajwang' Tom Joseph, MP .....
5. Hon. Junet Mohamed, CBS, MP .....
6. Hon. Onyiego Silvanus Osoro, CBS, MP .....
7. Hon. (Dr.) Otiende Amollo, SC, MP .....
8. Hon. Muchira Michael Mwangi, MP .....
9. Hon. Makali John Okwisia, MP .....
10. Hon. Muriu Wakili Edward, MP .....
11. Hon. Maina Jane Njeri, MP .....
12. Hon. Gichohi Kaguchia John Philip, MP .....
13. Hon. Mogaka Stephen M., MP .....
14. Hon. Aden Daud, EBS, MP .....
15. Hon. Siyad Amina Udgoon, MP .....

MINUTES OF THE 53RD SITTING FOR THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 1ST OCTOBER 2024 AT 10:00 AM IN ROOM 20, 3RD FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. Murugara George Gitonga, CBS, MP - *Chairperson*
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - *Vice Chairperson - virtually*
3. Hon. Maalim Farah, EGH, MP
4. Hon. Francis Kajwang' Tom Joseph, MP
5. Hon. Onyiego Silvanus Osoro, CBS, MP
6. Hon. (Dr.) Otiende Amollo, SC, MP
7. Hon. Gichohi Kaguchia John Philip, MP
8. Hon. Muchira Michael Mwangi, MP - *virtually*
9. Hon. Muriu Wakili Edward, MP
10. Hon. Maina Jane Njeri, MP
11. Hon. Mogaka Stephen M, MP
12. Hon. Aden Daud, EBS, MP - *virtually*

MEMBERS ABSENT WITH APOLOGIES

1. Hon. Junet Mohamed, CBS, MP
2. Hon. Makali John Okwisia, MP
3. Hon. Siyad Amina Udgoon, MP

SECRETARIAT

1.	Mr. Ahmed Salim	-	Clerk Assistant I / Lead Clerk
2.	Mr. Walala Ronald	-	Ag. D/Director, Legal Services
3.	Ms. Jael Ayiego Kilaka	-	Clerk Assistant III
4.	Mr. Abdikafar Abdi	-	Clerk Assistant III
5.	Mr. Isaac Nabiswa	-	Legal Counsel II
6.	Ms. Vivienne Ogega	-	Research Officer III
7.	Mr. Calvin Karungo	-	Media Relations Officer
8.	Mr. Meldrick K. Sakani	-	Audio Officer
9.	Ms. Mary Kamande	-	Public Communications Officer
10.	Mr. John Nduaci	-	Serjeant-at-Arms

IN ATTENDANCE

1.	Mr. Bon. Makolwel	-	Legal Counsel, ELGIA
2.	Ms. Elizabeth Ndwiga	-	Legal Counsel, ORPP
3.	Ms. Geraldine Mukele	-	Legal Counsel, ORPP
4.	Mr. Abdirahman Ismail	-	Executive Director, IRCK
5.	Mr. JP Manjwa-Masai	-	Executive Committee, IRCK
6.	Ms. Sujatha K.	-	Executive Committee, IRCK
7.	Mr. Rolex Mwamba	-	Governance, IRCK
8.	Mr. Chrispine Owiye	-	Legal Counsel, IEBC
9.	Mr. Karim Martin	-	Legal Counsel, IEBC
10.	Mr. Samson D. Maunda	-	Principal State Counsel, DOJ

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of the previous minutes
4. Consideration and Adoption of the Report of the Consideration of the Report of the National Dialogue Committee (NADCO) and Report of the Multi-Sectoral Working Group (MSWG) on the Realization of the Two-Thirds Gender Principle
5. Meeting with Stakeholders on the Consideration of the Independent Electoral and Boundaries Commission (Amendment) Bill sponsored by Hon. Mwangi Kiunjuri, MP
6. Any Other Business
7. Adjournment / Date of the Next Meeting

MIN. NO/DDC/JLAC/271/2024/: PRELIMINARIES

The meeting was called to order at twenty-five minutes past ten o'clock by the Chairperson followed by a word of prayer from the Chairperson and thereafter Members of the Committee introduced themselves. The agenda was adopted having been proposed by Hon. (Dr.) Otiende Amollo, SC, MP and seconded by Hon. Mogaka Stephen M, MP.

MIN.NO/DDC/JLAC/272/2024: CONFIRMATION OF MINUTES

The agenda was deferred.

MIN.NO/DDC/JLAC/273/2024: CONSIDERATION AND ADOPTION OF THE REPORT OF THE CONSIDERATION OF THE REPORT OF THE NATIONAL DIALOGUE COMMITTEE (NADCO) AND REPORT OF THE MULTI-SECTORAL WORKING GROUP (MSWG) ON THE REALIZATION OF THE TWO-THIRDS GENDER PRINCIPLE

The Committee, having considered the NADCO Report, resolved to recommend to the House that—

(a) The proposed Constitution of Kenya (Amendment) Bill by NADCO be revised by deleting the following proposals—

(i) requirement of State and public officer to promptly obey court orders;

Justification: The proposal would interfere with the independence of the three arms of government.

(ii) the enlargement of the term of the Senate;

Justification: The proposal fails to take into account that the Constitution envisages one general election as stipulated in Articles 90(3), 98(2) and 136(2). Altering the term and date of election of members of the Senate would require a complete overhaul of the Constitution. Additionally, paying regard to Kenya's constitutional history, the Senate was established to protect devolution. However, fourteen years down the line, devolution is highly entrenched thus the need to reconsider the sustainability of two Houses of Parliament and whether there is a duplication of roles between the Senate and County Governments.

(iii)the entrenchment of the Office of Leader of Opposition;

Justification: The proposal undermines the system of governance in Kenya. The system of governance is a presidential system of government. Article 108 of the Constitution provides for party leaders in the National Assembly to include the Leader of the Minority Party who is essentially the leader of the opposition in Parliament.

(iv) The requirement for resignation and deregistration from a political party as a way in which the office of a member of Parliament, Senator, Governor or Member of County Assembly may become vacant.

Justification: The proposal is an affront to democracy because political parties are not as democratic as envisaged by the framers of the Constitution. Considering that members of Parliament are elected by the people; the proposal gives party leaders excessive powers prone to abuse. This would breed dictatorship and subvert the will of the people as the right of recall should only be exercised by the people and not political parties.

(v) the provision on the recognition and status of representatives in international legislative bodies of which Kenya is a member

Justification: The Constitution does not expressly define the term 'international legislative bodies'. Furthermore, the Constitution does not provide for the specific recognition and status of other leaders. The proposal is therefore not feasible.

(b) The proposed Constitution of Kenya (Amendment) Bill by MSWG be revised by deleting clause 5.

Justification: The proposal is too ambitious and cannot be implemented in the current Parliament. It would be neater to implement the proposals during the next general election.

(c) The revised Constitution of Kenya (Amendment) Bill by NADCO be published separately as one Bill noting that several of its proposals may require a referendum, if enacted; and

(d) The amended Constitution of Kenya (Amendment) Bill by MSWG be published separately noting that its proposals may not require approval at a referendum, if enacted.

Adoption of the Report

The report was therefore adopted, having been proposed by Hon. (Dr.) Otiende Amollo, SC, MP and seconded by Hon. Mogaka Stephen M, MP.

MIN.NO/DDC/JLAC/274/2024: MEETING WITH STAKEHOLDERS ON THE CONSIDERATION OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL SPONSORED BY HON. MWANGI KIUNJURI, MP

1) Electoral Law and Governance Institute for Africa (ELGIA)

The Electoral Law and Governance Institute of Africa appeared before the Committee and made submissions as follows: -

a) That Clause 2 of the Bill on the definition of the "population quota" already exists in the Constitution. However, importing the same to the statute providing the legal framework for the electoral boundaries' delimitation is agreeable.
b) That the proposal in clause 3 of the Bill, fit well because it expands the main purpose and object of the Act by expanding its scope to include the provision on the legal framework on the delimitation of Electoral Units the framework of which is now provided for under Part IIIA of the Amendment Act.
c) That clause 4 of the Bill to amend section 36 of the Act, the proposed section is already repealed hence spent since the Act has been enacted into law.

2) Office of the Registrar of Political Parties (ORPP)

The Office of the Registrar of Political Parties appeared before the Committee and made submissions as follows: -

a) That the proposed clause 2 of the Bill on the definition of population quota mirrors that of the Constitution under Article 89. The office was in agreement with the proposal.
b) That the proposal in clause 3 of the Bill further reinforces the function of IEBC stipulated under section 24B of the Act as introduced through the IEBC (Amendment) Act, 2024 being the procedure for delimitation of electoral boundaries. The office agreed with the proposal.
c) That the proposed section 36 for repeal under clause 4 of the Bill does not exist since the IEBC (Amendment) Bill, 2024 repealed section 36 of the IEBC Act, Cap 7C in its entirety.

3) Independent Electoral and Boundaries Commission (IEBC)

The Independent Electoral and Boundaries Commission appeared before the Committee and made submissions as follows: -

a) That on clause 3 of the Bill, the commission had an established framework which is established in the Rules and they requested that the same be considered and enacted.
b) That on clause 4(a)(b) of the Bill, the process was already prescribed in the Constitution and outlined in the proposed Rules. The commission notes that the working principle is established in the Constitution and expanded in the proposed Rules which they urged Parliament to consider and adopt.
c) That on clause 4c) of the Bill, there was an established procedure and reporting structure which has been expanded in the proposed rules. The commission proposed that this procedure be left to the commission to determine as may be necessary.
d) That on clause 4(d) of the Bill, the commission is bound by the stipulations of Article 89 of the Constitution regarding the population quota. Therefore, a proposal that is against the said principles as provided under Article 89 of the Constitution regarding the population quota will be self-defeating and shall not be considered by the commission.
e) The commission proposed that the said Bill be considered together with the commission's submitted draft bill and the delimitation of electoral units procedures. The rules comprehensively and expansively cover some of the salient proposals to be reviewed by the proposed Bill.

4) Inter-Religious Council of Kenya

The Inter-Religious Council of Kenya appeared before the Committee and made submissions as follows: -

a) That the council supported the inclusion of the definition of population quota as it aligns with Article 89(12) of the Constitution and provides a clear basis for determining constituency and wards boundaries.
b) That the council agreed with the proposal to include a framework for delimitation in the objects of the Act as it will provide a clearer guidance for the IEBC's crucial role in the process.
c) That the use of the most recent census data will ensure that boundary delimitation reflects current demographic realities.
d) The council was opposed to the emphasis on population quota at the expense of other important factors such as land mass/size as it is a key imperative for delimitation.
e) That the proposed variations of 40% for cities/sparsely populated arears and 30% for others provide necessary flexibility. However, clear guidelines on when and how the variations should be applied.

5) Office of the Attorney-General

The Office of the Attorney-General appeared before the Committee and made submissions as follows: -

a) That the proposed section 36 for repeal under clause 4 of the Bill was repealed by the IEBC (Amendment) Bill, 2024 in its entirety and should be omitted from the Bill.
b) That Parliament should consider to withdraw the Bill.

Committee Observations

The Committee, having considered the proposals by the agencies, made the following observations: -

a) That on 28th and 29th October, 2023 the IEBC with the support of ELGIA held a consultative engagement between the Committee together with relevant stakeholders including the sponsor of the bill in Mombasa County to deliberate on the Bill and the draft bill by IEBC which sought to amend the IEBC Act on areas dealing with the delimitation of electoral boundaries (constituencies and wards).
b) That the proposed repeal of section 36 of the principle act in clause 4 of the Bill was repealed by the IEBC (Amendment) Bill, 2024 in its entirety and the act was enacted into law.

MIN.NO/DDC/JLAC/275/2024: ANY OTHER BUSINESS

The Committee took note of the request from the Members of the Constitutional Electoral Review and Women Affairs Committees of the National Assembly of Nigeria for a meeting. The Committee resolved to meet with the delegation at 12:30pm, Main Parliament Buildings on the same day on 1st October 2024.

MIN.NO/DDC/JLAC/276/2024: ADJOURNMENT

There being no other business, the meeting was adjourned at ten minutes past noon. The next meeting shall be held on notice.

SIGNED: ..... **DATE:** 2.10.024

(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, CBS, MP)

MINUTES OF THE FIFTY SECOND (52ND) SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY 24TH SEPTEMBER 2024 AT 10:00 AM IN ROOM 21, 5TH FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. Murugara George Gitonga, CBS, MP - *Chairperson*
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - *Vice Chairperson*
3. Hon. Francis Kajwang' Tom Joseph, MP
4. Hon. (Dr.) Otiende Amollo, SC, MP
5. Hon. Muchira Michael Mwangi, MP - *virtually*
6. Hon. Makali John Okwisia, MP
7. Hon. Muriu Wakili Edward, MP
8. Hon. Gichohi Kaguchia John Philip, MP
9. Hon. Mogaka Stephen M., MP
10. Hon. Esther Passaris, MP - *sponsor of a proposal*

MEMBERS ABSENT WITH APOLOGIES

1. Hon. Junet Mohamed, CBS, MP
2. Hon. Maalim Farah, EGH, MP
3. Hon. Onyiego Silvanus Osoro, CBS, MP
4. Hon. Maina Jane Njeri, MP
5. Hon. Aden Daud, EBS, MP
6. Hon. Siyad Amina Udgoon, MP

SECRETARIAT

1.	Mr. Ahmed Salim Abdalla	-	Clerk Assistant I / Lead Clerk
2.	Mr. Abdikafar Abdi	-	Clerk Assistant III
3.	Ms. Jael Ayiego	-	Clerk Assistant III
4.	Mr. Walala Ronald	-	Ag. Deputy Director, Legal Services
5.	Ms. Vivienne Ogega	-	Research Officer III
6.	Mr. Calvin Karungo	-	Media Relations Officer
7.	Ms. Mary Kamande	-	Public Communication Officer
8.	Mr. Meldrick Sakani	-	Audio Officer

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of the previous minutes
4. Consideration of the Penal Code (Amendment) Bill, 2024 sponsored by the Member for Nairobi County, Hon. Esther Passaris, MP.
5. Clause by Clause consideration of the Constitution of Kenya (amendment) Bill by National Dialogue Committee (NADCO) and the Multi-Sectoral Working Group (MSWG).
6. Any Other Business
7. Adjournment / Date of the Next Meeting

MIN. NO/DDC/JLAC/266/2024: PRELIMINARIES

The meeting was called to order at fifteen minutes past ten o'clock by the session chairperson followed by a word of prayer and thereafter Members introduced themselves. The agenda of the meeting was adopted, having been proposed by Hon. (Dr.) Otiende Amollo, SC, MP and seconded by Hon. Mogaka Stephen M., MP.

MIN.NO/DDC/JLAC/267/2024: **CONFIRMATION OF MINUTES**

The agenda was deferred.

MIN.NO/DDC/JLAC/268/2024: **CONSIDERATION OF THE PENAL CODE (AMENDMENT) BILL, 2024 SPONSORED BY HON. ESTHER PASSARIS, MP**

Hon. Esther Passaris, MP appeared before the Committee and made the following submissions: THAT

a) The Bill sought to amend the Penal Code (Cap. 63) to provide for the offence of ***sextortion*** which is defined as an act of intentionally demanding sexual intercourse or other sexual activities in exchange for goods, services or any other thing of value in the demanding persons' power to give or withhold.
b) The offence of sextortion shall attract a penalty of imprisonment for a term not exceeding fifteen years or a fine not exceeding one million shillings or both. The proposal will allow a victim of sextortion to apply to court for an order for compensation.
c) The Hon. Member submitted that sextortion was a critical concern in sexual exploitation and must clearly be addressed in law.
d) She explained that sextortion is coercion, not choice; and that abuse of power and blackmail are the components of the vice.
e) She explained that sexual demands are made in all spheres of life including in sports, educational institutions and villages where people have to give in to get basic commodities like water.

Committee Observation

a) The Committee observed that the proposed amendment may not necessary because sexual offences relating to the abuse of a position of power or authority are provided for under section 23 and 24 of the Sexual Offences Act, although Hon. Passaris submitted that sextortion was not clearly defined in law.
b) The Committee noted that more research needed to be done before the Committee made its final recommendation on whether the Bill may be published or not.

MIN.NO/DDC/JLAC/269/2024: **CLAUSE BY CLAUSE CONSIDERATION OF THE CONSTITUITON OF KENYA (AMENDMENT) BILL BY THE NADCO & MSWG**

a) Constitution of Kenya (Amendment) Bill by the National Dialogue Committee

The Committee noted that it considered the Constitution of Kenya (Amendment) Bill in the previous meeting held on Thursday 19th September 2024 and that the current sitting was a continuation of the consideration of the bill from Clause 18 to Clause 32. The Committee noted that:

1. **Clause 18** of the Bill seeks to introduce a new Article 151A which sought to establish the Office of the Prime Minister. The Prime Minister was to be nominated by the President and appointed by the President upon approval by the National Assembly.

2. **Clause 19** of the Bill seeks to amend Article 152 (Cabinet) of the Constitution to include the Prime Minister as a member of the Cabinet and the appointment of the Prime Minister shall require approval of the National Assembly.

3. The Committee had reservations on the clause and observed that the opinion of the Committee regarding Clause 18 and 19 was same as that provided for under Clause 6; as deliberated upon in the previous meeting held on 19th September 2024.

4. **Clauses 20 and 21** of the Bill seek to amend Articles 162 and 165 of the Constitution which provides for system of courts and the High Court, respectively, so as to make the Environment and Land Court and the Employment and Labour Relations Court part of the High Court.

5. **Clause 22** of the Bill seeks to amend Article 169(1)(d) of the Constitution to remove reference to the Employment and Labour Relations Court and Environment and Land Court.

6. Taking into account the versatility of judges in Kenya's judicial changing landscape, the Committee noted that the proposal simply ensures an administratively tidier court system. Additionally, the Committee observed that clauses 21 and 22 are consequential amendments to clause 20 and serve as a cleanup.

7. **Clauses 23 and 24** of the Bill seeks to amend Articles 177(1) and 180(1) of the Constitution to provide that election of members of county assemblies and county governor shall be done on the same day as that of the members of the National Assembly.

   The Committee noted that the implementation of the proposal will create both legal, practical and administrative challenges for the following reasons:
   (a) Kenya's general elections are among the world's most expensive. This is attributed to, among others, foreign printing of ballot papers and the high cost of administrative infrastructure. Conducting two general elections will double the cost of elections and therefore, to ensure cost effectiveness, the elections should be conducted on one day.
   (b) The Constitution envisages one general election as stipulated in Articles 90(3), 98(2) and 136(2) that provide for the allocation of political party list seats, election of Senators representing youth and persons with disabilities and election of the President, respectively. The proposal does not take this into account. Altering the term and date of election of members of the Senate would require a complete overhaul of the Constitution.
   (c) Paying regard to Kenya's constitutional history, the Senate was established to protect devolution. However, fourteen years down the line, devolution is highly entrenched thus the need to reconsider the sustainability of two Houses of Parliament and whether there is a duplication of roles between the Senate and the National Assembly; and the Senate and County Assemblies.

8. **Clauses 25 and 26** of the Bill seek to amend Articles 181(1) and 194 of the Constitution to provide for the removal of a county governor from office and vacation of office of a member of a county assembly if the governor or member of a county assembly, having being elected while a member of a political party, resigns from the party or is deregistered by the party. Additionally, **Clause 26** deletes provisions which empowered Parliament to enact legislation to provide the circumstances under which a member of a county assembly is deemed to have resigned from a political party.

9. The Committee observed that:
   a) The proposal is an affront to democracy because political parties are not as democratic as envisaged by the framers of the Constitution. Considering that

members of Parliament are elected by the people, the Committee was of the view that the proposal gives party leaders excessive powers prone to abuse. This would breed dictatorship and subvert the will of the people as the right of recall should only be exercised by the people and not political parties.

b) The current provisions adequately regulate political party discipline. Article 103 of the Constitution empowers Parliament to enact legislation to promote fidelity to political parties, procedures for registration and deregistration of members of political parties, and mechanisms of crossing over from one political party to another.

c) The proposal has no considerable merit.

10. The Hon. (Dr.) Otiende Amollo, SC, MP and Hon. Francis Kajwang' Tom Joseph, MP dissented, and were of the opinion that:

a) The term 'deemed' used in Article 103(1)(e)(i) of the Constitution has hindered realization of true party discipline as envisaged by drafters of the Constitution. As a result, the existing provisions of law have not adequately prevented Members from associating themselves with other parties after general elections thereby undermining the opposition and in turn weakening democracy. The proposal seeks to cure the high indiscipline within political parties enabling them to adhere to the values and principles of the party and conduct their affairs in a manner that promotes democracy.

b) The proposal has considerable merit.

11. **Clause 27** of the Bill seeks to amend Article 203(2) of the Constitution to increase the minimum equitable share of national revenue allocated to county governments from fifteen percent to twenty per cent. The Committee agreed with the proposal.

12. **Clause 28** of the Bill seeks to introduce new Articles 204A, 204B and 204C which seek to entrench the National Government Constituency Development Fund, the Senate Oversight Fund and the National Government Affirmative Action Fund, respectively, in the Constitution. The Committee observed that the amendments did not relate to the matters outlined in Article 255 of the Constitution and would therefore not require to be approved at a referendum.

13. The Hon. Francis Kajwang' Tom Joseph, MP recorded a dissenting opinion relating to the establishment of the Senate Oversight Fund. In his view, Members of Parliament are facilitated by the Parliamentary Service Commission to discharge their oversight roles. Unlike the NGCDF which is administered by the National Government Constituencies Development Fund Board, the proposal seeks to establish a Senate Oversight Fund to finance an oversight role that is already catered for by the Parliamentary Service Commission. The Senate Oversight Fund would contravene the principles of public finance.

14. **Clause 29** of the Bill seeks to amend Articles 240(2) and 260 of the Constitution to include the Prime Minister as a member of the National Security Council while **Clause 30** of the Bill sought to amend the definition of the term "state officer" to include the Prime Minister.

15. The Committee observed that the opinion of the Committee regarding Clause 29 and 30 was same as that provided earlier on matters regarding the office of the Prime Minister.

16. **Clause 31** of the Bill provides that Parliament shall enact all legislation required to be enacted as a consequence of the amendment of the Constitution within six months of the

coming into force of the Act. **Clause 32** of the Bill provides transition in respect of any person serving as a judge of the Employment and Labour Relations Court and the Environment and Land Court to continue serving as High Court judges without loss of benefits or status. This is as a consequence of the proposal to merge the two courts with the High Court.

17. The Committee observed that clause **31 and 32** are transitional and consequential provisions whose implementation shall be under the Bill. It was the Committee's view that it would be untidy to amend the Fifth and Sixth Schedules to the Constitution.

18. While dissenting, the Hon. (Dr.) Otiende Amollo, SC, MP noted that the proposed amendments in **Clause 31** relate directly to the Constitution and not the Bill. In his view, an Act of Parliament cannot instruct the Constitution, rather the Constitution instructs itself. As such, all relevant legislation requiring to be enacted as a consequence of the proposed amendments to the Constitution should be provided for in the Fifth Schedule to the Constitution. In addition, he noted that clause 32 is a transitional amendment and should be incorporated by amending the Sixth Schedule of the Constitution.

b) <u>Constitution of Kenya (amendment) Bill by the Multi-Sectoral Working Group (MSWG)</u>

1. The principal object of the Bill is to amend the Constitution to implement the recommendations of the MSWG Report that Article 27(8) and 81(b) of the Constitution, in respect of Parliament, be implemented by way of gender top-up through of party lists. Article 27(8) of the Constitution requires the State to take legislative and other measures to implement the principle that no more than two-thirds of members of elective or appointive shall be of the same gender. Article 81(b) on its part provides that the electoral system shall comply with the principle that no more than two-thirds of members of elective public bodies shall be of the same gender.
2. The Legal Counsel took the Members through the Bill clause by clause and stated as follows:
    i. **Clause 2** of the Bill sought to amend Article 90 of the Constitution which provides for allocation of party list seats as a consequence of the amendment to Articles 97 and 98 of the Constitution. It also provides that members of a political party shall be democratically involved in preparation of the party list, and that the party list shall reflect the representation of the marginalized groups provided for under Article 100 of the Constitution. Further, it seeks to introduce a term limit of two years for persons nominated to Parliament by political parties.
    ii. **Clauses 3 and 4** of the Bill proposed to amend Articles 97 and 98 of the Constitution to ensure that no more than two-thirds of members of the National Assembly and the Senate are of the same gender. New clauses are inserted to provide that where after a general election the two-thirds gender principle is not met in the National Assembly and the Senate, there shall be additional special seats to be filled by way of nominations.
    iii. **Clause 5** of the Bill introduced a new Article 98A to provide for transition. It is proposed that within thirty days of the coming into force of the Act, IEBC shall require political parties to submit lists for purposes of filling the additional seats to comply with the principle.

<u>Committee Observations</u>

i. The Committee observed that the creation of gender-top up seats through party lists will guarantee the attainment of the two-thirds gender principle.

Minority Opinion

Hon. Otiende Amollo, MP informed the Committee that this proposal indirectly affects the functions of Parliament, as the gender top up issue goes to the foundation of the sovereignty of the people, therefore, this decision calls for a referendum.

MIN.NO/DDC/JLAC/270/2024: ADJOURNMENT

The meeting was adjourned at thirty-eight minutes past twelve o'clock. The next meeting to be held on notice.

SIGNED.....**DATE**.....2.10.024.....

(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, CBS, MP)

MINUTES OF THE FIFTY FIRST (51ST) SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 19TH SEPTEMBER 2024 AT 10:00AM IN ROOM 24, 5TH FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS

MEMBERS PRESENT

1. Hon. Murugara George Gitonga, CBS, MP - *Chairperson*
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - *Vice Chairperson*
3. Hon. Maalim Farah, EGH, MP
4. Hon. Francis Kajwang' Tom Joseph, MP
5. Hon. Onyiego Silvanus Osoro, CBS, MP - *virtually*
6. Hon. (Dr.) Otiende Amollo, SC, MP
7. Hon. Muchira Michael Mwangi, MP - *virtually*
8. Hon. Makali John Okwisia, MP
9. Hon. Mogaka Stephen M, MP
10. Hon. Aden Daud, EBS, MP - *virtually*
11. Hon. Siyad Amina Udgoon, MP

MEMBERS ABSENT WITH APOLOGIES

1. Hon. Junet Mohamed, CBS, MP
2. Hon. Muriu Wakili Edward, MP
3. Hon. Maina Jane Njeri, MP
4. Hon. Gichohi Kaguchia John Philip, MP

SECRETARIAT

1.	Mr. Ahmed Salim Abdalla	-	Clerk Assistant I / Lead Clerk
2.	Mr. Walala Ronald	-	Ag. D/Director, Legal Services
3.	Mr. Isaac Nabiswa	-	Legal Counsel II
4.	Mr. Abdikafar Abdi	-	Clerk Assistant III
5.	Ms. Jael Ayiego	-	Clerk Assistant III
6.	Ms. Vivienne Ogega	-	Research Officer III
7.	Mr. Calvin Karungo	-	Media Relations Officer
8.	Ms. Mary Kamande	-	Public Communication Officer
9.	Mr. Peter Mutethia	-	Audio Officer

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of the previous minutes
4. Consideration of the recommendations of the National Dialogue Committee (NADCO Report) and the manner of actualizing the proposed Amendments to the Constitution of Kenya 2010
5. Any Other Business
6. Adjournment/ Date of the Next Meeting

MIN. NO/DDC/JLAC/262/2024: PRELIMINARIES

The meeting was called to order at fifteen minutes past ten o'clock by the Chairperson followed by a word of prayer from the Chairperson and thereafter Members introduced themselves. The agenda of the meeting was adopted having been proposed by Hon. Farah Maalim, EGH, MP and seconded by Hon. Aden Daud, EBS, MP.

MIN.NO/DDC/JLAC/263/2024: **CONFIRMATION OF MINUTES**

The agenda was deferred.

MIN.NO/DDC/JLAC/264/2024: **CONSIDERATION OF THE RECOMMENDATIONS OF THE NATIONAL DIALOGUE COMMITTEE (NADCO) REPORT AND THE MANNER OF ACTUALIZING THE PROPOSED AMENDMENTS TO THE CONSTITUTION OF KENYA 2010**

The Committee noted that the NADCO Report was tabled in the National Assembly on 7th December 2023 and committed to the Justice and Legal Affairs Committee for joint consideration with the Senate Justice Committee. Noting that it was a challenge to consider the report jointly with the Senate, the Honourable Speaker on 31st July 2024 directed the committee to consider the report independently and table its report within 45 days. The Committee noted that out of the four bill to originate from the National Assembly, the Committee considered two bills (IEBC and EACC Bills) and tabled its reports. Pending were the Constitution of Kenya (Amendment) Bill, 2024 and the Leader of Official Opposition Bill, 2024. The Committee therefore resolved to consider the proposed Constitution (Amendment) Bill, 2024 and noted as follows:

1. **Clause 2** of the Bill seeks to amend Article 75 of the Constitution, which provides for the conduct of State officers, to oblige State officers and public officers to promptly obey and act in accordance with a court order and empower the court to impose sanctions on any officer who fails to obey a court order.

Committee Observations

The Committee observed that the proposal contradicts the doctrine of separation of powers as envisaged by the Committee of Experts on Constitutional Review when drafting the 2010 Constitution. The Committee was of the view that the proposal would interfere with the independence of the three arms of government including the Judiciary. Furthermore, willful disobedience of court orders is already provided for in section 4 of the Contempt of Court Act, Cap 8F. While dissenting with the majority view, the Hon. Aden Daud, MP, supported the proposal, noting that it seeks to ensure that State officers comply with court orders.

2. **Clause 3** of the Bill seeks to amend Article 88(4) of the Constitution by deleting paragraph (e) to remove the settlement of electoral disputes, including those related to nominations, from the mandate of the Independent Electoral and Boundaries Commission (IEBC).

Committee Observations

The Committee observed that: -

a) Depending on the type of issue, different institutions have a role to play in election dispute resolution.
b) The Political Parties Act, 2011 mandates the Political Parties Dispute Tribunal the role of settlement of electoral disputes including disputes relation to or arising from nominations. This a duplication of roles.
c) On many occasions IEBC has been criticized for failing to effectively settle electoral disputes related to nominations which end up being escalated to the PPDT or the courts.
d) The proposal had considerable merit.

3. **Clause 4** of the Bill seeks to amend Article 89 of the Constitution on the delimitation of electoral units to empower Parliament to extend the period of reviewing the names and boundaries of constituencies beyond the prescribed period. The extension is to be made

through a resolution passed by a majority of all Members of the National Assembly and a majority of the county delegations in the Senate. Under Article 89(2) of the Constitution, IEBC is required to review the names and boundaries of constituencies at intervals of not less than eight years and not more than twelve years, but any review shall be completed at least twelve months before a general election of members of Parliament.

Committee Observations
The Committee observed that empowering Parliament to extend the period of reviewing the names and boundaries of constituencies beyond the prescribed period will ensure flexibility, promote fair representation and accommodate unforeseen circumstances that may hinder the delimitation process.

4. **Clause 5** of the Bill seeks to amend Article 91 of the Constitution on basic requirements for political parties to strengthen party democracy, promote party discipline, including through the deregistration of a person from a political party and the consequences of such deregistration, and adherence to the values and principles of the Constitution in the nomination of persons to appointive or elective.

Committee Observations
The committee observed that political party discipline is an essential concept of constitutional and political frameworks. The proposal had considerable merit.

5. **Clause 6** of the Bill seeks to introduce a new Part, Part 4, to Chapter Seven of the Constitution to establish the office of the Leader of the Opposition and two deputies. It provides for the person to occupy the office, funding the office and further empowers Parliament to enact legislation.

Committee Observations
The Committee observed that; -

a) The Republic of Kenya by virtue of the basic structure of the Constitution of Kenya 2010 is governed by a Presidential system of governance. The opposition is represented in Parliament by the Leader of the Minority Party. The creation of the Office to be domiciled in Parliament would contradict Article 108(1) of the Constitution, affect the role of the Leader of the Minority Party and functions of Parliament and undermine the structure of government;
b) The creation of the Office to be domiciled in the Executive would contradict Article 255 of the Constitution;
c) The leader of opposition was neither a state officer or a prime minister; and
d) The committee did not to support the proposal but was of the view that a new provision be created to replace the winner-take-all system.

6. **Clauses 7 and 8** of the Bill seek to amend Articles 101 and 102 of the Constitution on the election of members of Parliament and the term of Parliament, respectively, to increase the term of the Senate to seven years. **Clause 7** provides that a general election is to be held every second Tuesday of August in every fifth year in case of election to the National Assembly and every second Tuesday of August in every seventh year in case of election to the Senate. **Clause 8** provides for the expiry of the term of a House of Parliament upon general elections being held in the fifth year for the National Assembly and the seventh year for the Senate.

Committee Observations
Rejection.
The Committee observed that: -

a) The conduct and efficient supervision of elections has proven to be a challenge due to its financial costs. Conducting two general elections will drive up and double the high cost of elections due to structural and logistical factors;
b) By virtue of the architecture of the Constitution, conducting two general elections will contradict with the provisions of the Article 90(3) and Article 136(2)(a);
c) The functions of the Senate and the County Assemblies could be seen as duplicative with the devolved system of governance and recommends to the House to reconsider on whether the two Houses of Parliament are needed or if one House is sufficient; and
d) The proposal had no considerable merit

7. **Clause 9** of the Bill seeks to amend Article 103 of the Constitution on vacation of office of a member of Parliament to add resignation or deregistration from a political party as one of the circumstances through which the office of a member of Parliament may become vacant. It also deletes Article 103(3), which previously empowered Parliament to enact legislation to provide for the circumstances under which a person may be deemed to have resigned from a political party.

Committee Observations

The Committee observed that: -

a) A member of Parliament is elected by the people and is a representative of the people in Parliament.
b) It is the discretion of the Speaker to offer a satisfactory explanation for the deregistration of a member of Parliament from a political party.
c) Parliament should enact legislation to promote fidelity to political parties, procedures for registration and deregistration of members of political parties and mechanisms of crossing over from one political party to another.
d) That the proposal was only targeting members of Parliament and not other elective positions.
e) The proposal had no considerable merit.

Minority Opinion

Hon. (Dr.) Otiende Amollo, SC, MP and Hon. TJ Kajwang, MP, were of the opinion that: -

a) The current provision of the constitution was not working.
b) The proposal would promote political party discipline within the party and conduct its affairs in a manner that promotes democracy and peaceful politics and adheres to the values and principles of the party.
c) The proposal had considerable merit.

8. **Clause 10** of the Bill seeks to introduce a new Article 108A to empower Parliament to enact legislation to provide for the recognition and status of representatives in international legislative bodies of which Kenya is a member.

Committee Observations

The Committee observed that the proposal does not explicitly define international legislative bodies to be included in the constitution. The Constitution also does not provide for the specific recognition of statuses for legislative bodies. The proposal is therefore not feasible.

9. **Clauses 11 and 12** of the Bill seek to amend Articles 130(1) and 131(1) of the Constitution on the national Executive and authority of the President, respectively, so as to include the Prime Minister as part of the national executive, and as one of the persons who assists the President in the exercise of the executive authority of the Republic.

Committee Observations
The Committee observed that the functions prescribed for the office under the proposed new clause 151A(4) qualify the office as that of a Cabinet Secretary provided for in Article 152(1)(d). Furthermore, the term 'Minister' used in the proposal does not exist in the Constitution and should therefore, be substituted with 'Cabinet Secretary'. The Committee also observed that the proposal should be domiciled in Article 152 instead of Article 151 of the Constitution.

Hon. (Dr.) Otiende Amollo, SC, MP and Hon. John Makali, MP observed that there was no need for the proposed Office of Prime Minister because the mischief the proposal seeks to cure is not clearly established. Furthermore, the Office of the Prime Minister does not fit the existing governance structure. The two Members also noted that the proposal sought to introduce a parliamentary system into Kenya's presidential system. Seeking to change the system of government touches on Article 255(1)(c) and (d) of the Constitution and is a decision reserved for the people. The proposal, therefore, requires a referendum.

10. **Clause 13** of the Bill seeks to amend Article 132 of the Constitution on the functions of the President to provide that the President shall address the opening of each newly elected House of Parliament, separately as the dates for the general election for each House will be different, as opposed to the current joint opening address. It also seeks to amend Article 132(2) to empower the President to appoint and dismiss the Prime Minister.

Committee Observations
The Committee observed that clause 13 was consequential to clause 7. The proposal had no considerable merit.

11. **Clause 14** of the Bill seeks to amend Article 136(2)(a) on the election of the President to provide that the election of the President is to be held on the same day as a general election of the members of the National Assembly.

Committee Observations
The Committee observed that clause 14 was consequential to clause 7. The proposal had no considerable merit.

12. **Clause 15** of the Bill seeks to amend Article 137(3) of the Constitution on qualifications and disqualifications for election as President to exempt the Prime Minister, the Leader of the Opposition and the Deputy Leader of the Opposition from being disqualified from nomination as a presidential candidate

Committee Observations
The Committee had reservations on the clause and observed that the opinion of the Committee regarding Clause 15 was same as that provided for under Clause 6.

13. **Clause 16** of the Bill seeks to amend Article 138(10) of the Constitution on procedure at presidential election to provide that declaration of the results of a presidential election by the chairperson of IEBC is to be done after verification of the results by IEBC.

Committee Observations
The Committee observed that the provisions of Article 138(10) ensure transparency and accountability in the final declaration of presidential election results. The Chairperson formally

declaring the outcome of the presidential election serves as the official spokesperson for the commission.

Minority Opinion

Hon. (Dr.) Otiende Amollo, SC, MP, was of the opinion that: -

a) There is a need to delineate the distinction between an independent office and an independent commission. A commission consists of commissioners and a decision is made by the majority and not individual opinions.
b) The proposal had considerable merit.

14. **Clause 17** of the Bill seeks to amend article 140(2) of the Constitution on questions as to validity of presidential election to increase the timeline for hearing and determination of the presidential elections from 14 days to 21 days.

Committee Observations

The Committee observed that the proposal sought to increase the number of days to determine disputes arising from the presidential election by the Supreme Court, from 14 days to 21 days due to constrains imposed by the strict timelines. On several occasions the Court has delivered judgements and reserved reasons thereto. The Committee was in support of the proposal.

MIN.NO/DDC/JLAC/265/2024: **ADJOURNMENT**

The meeting was adjourned at one o'clock. The next meeting shall be held on notice.

SIGNED.....**DATE**2. 10. 024.

(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, CBS, MP)

Annexure 7

NADCO Report

Report of the Departmental Committee on Justice and Legal Affairs on Consideration of the Report of the National Dialogue Committee (NADCO) and the Report of the Multi-Sectoral Working Group on the Realization of the Two-Thirds Gender Principle

HON. TJ KAJWANG'

Approved
D/SNA
7/12/2023

National Dialogue Committee
NADCO

REPORT OF THE NATIONAL DIALOGUE COMMITTEE

25 NOVEMBER 2023

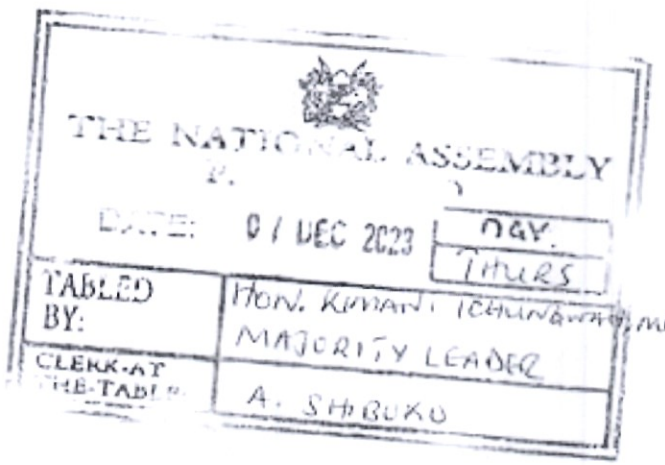


TABLE OF CONTENTS

ACRONYMS AND ABBREVIATIONS x

LIST OF STATUTES AND REGULATIONS XIV

EXECUTIVE SUMMARY XV

PREFACE XXII

CHAPTER ONE: INTRODUCTION 1

Background and Context 1

Method of Work 5

Framework Agreement 5

Statement of Issues 5

Interim measures 6

Public Participation and Call for Memoranda 7

Meetings of the Committee 9

CHAPTER TWO: ELECTORAL JUSTICE AND RELATED MATTERS 8

Restructuring and Reconstitution of the IEBC 8

Background and Context 8

Summary of Submissions by the Public 9

Committee Observations 28

Committee Recommendations 31

Boundaries Delimitation 33

Background and Context 33

Summary of Submissions by the Public 33

Committee Observations 56

Committee Recommendations 58
Audit of the 2022 Presidential Election 59
Background and Context 59
Summary of Submissions by the Public 59
Committee Observations 72
Committee Recommendations 73
Related Matters 73
Electoral Legal Reforms 73
Summary of Submissions by the Public 74
Committee Observations 75
Committee Recommendations 76
Time for Resolution of Presidential Election Petitions 76
Summary of Submissions by the Public 77
Committee Observations 78
Committee Recommendations 79
Funding of the IEBC 79
Summary of Submissions by the Public 79
Committee Observations 80
Committee Recommendations 80
Holding Elections on Different Dates 81
Summary of Submissions by the Public 81
Committee Observations 82
Committee Recommendations 82

Security of Election Officials and Related Challenges 82
Summary of Submissions by the Public 82
Committee Observations 83
Committee Recommendations 83
Voter Registration and Maintenance of the Voters Register 83
Summary of Submissions by the Public 84
Committee Observations 84
Committee Recommendations 84
Campaign Financing 85
Summary of Submissions by the Public 85
Committee Observations 85
Committee Recommendations 86
CHAPTER THREE: OUTSTANDING CONSTITUTIONAL MATTERS 87
Article 43 Rights: Cost of Living and Related Issues 87
Background and Context 87
Summary of Submissions by the Public 88
Committee Observations 135
Committee Recommendations 141
Implementation of the "Two-Thirds Gender Rule" 146
Background and Context 146
Summary of Submissions by the Public 147
Committee Observations 165
Committee Recommendations 167

Governance Issues: National Unity/Inclusivity in Public Appointments 167
Background and Context 167
Summary of Submissions by the Public 168
Committee Observations 177
Committee Recommendations 177
Related Matters 177
Impeachment of Governors 177
Summary of Submissions by the Public 178
Committee Observations 179
Committee Recommendations 179
Retirement Benefits for the Auditor General 179
Summary of Submissions by the Public 180
Committee Observations 180
Committee Recommendations 180
Adequate Checks and Balances 180
Background and Context 180
Summary of Submissions by the Public 181
Committee Observations 184
Committee Recommendations 185
Related Matters 186
Balance of Legislative Powers of Parliament 186
Summary of Submissions by the Public 186
Committee Observations 186

Committee Recommendations 188
Recognition of Members of Regional Assemblies in Parliament 188
Summary of Submissions by the Public 188
Committee Observations 189
Committee Recommendations 189
CHAPTER FOUR: FIDELITY TO THE LAW ON MULTIPARTY DEMOCRACY 190
Background and Context 190
Summary of Submissions by the Public 191
Committee Observations 204
Committee Recommendations 205
Related Matter 206
Electoral Dispute Resolution (EDR) 206
Summary of Submissions by the Public 206
Committee Observations 207
Committee Recommendations 207
CHAPTER FIVE: ENTRENCHING FUNDS INTO THE CONSTITUTION 208
NGCDF, NGAAF and Senate Oversight Funds 208
Background and Context 208
Summary of Submissions by the Public 209
Committee Observations 220
Committee Recommendations 221
Other Proposed Funds 222
Ward Development Fund 222

Summary of Submission by the Public 222
Committee Observations 222
Committee Recommendations 222
CHAPTER SIX: ESTABLISHMENT AND ENTRENCHMENT OF STATE OFFICES 223
Background and Context 223
The Office of the Leader of the Official Opposition 223
Summary of Submissions by the Public 224
Committee Observations 230
Committee Recommendations 231
The Office of the Prime Cabinet Secretary 232
Summary of Submissions by the Public 233
Committee Observations 238
Committee Recommendations 239
CHAPTER SEVEN: ISSUES THAT AROSE FROM PUBLIC PARTICIPATION 241
Issues related to the Judiciary 241
Committee recommendations 242
Devolution Related matters 243
Committee recommendations 243
CHAPTER EIGHT: LIST OF COMMITTEE RECOMMENDATIONS 245
Electoral Justice and Related matters 245
Restructuring and reconstitution of the IEBC 245
Boundaries delimitation 247
Audit of the 2022 presidential election 248

Related Matters 249
Electoral Legal Reforms 249
Time for Resolution of Presidential Election Petitions 249
Funding of the IEBC 249
Holding Elections on Different Dates 249
Security of Election Officials and Related Challenges 249
Voter Registration and Maintenance of the Voters Register 250
Campaign Financing 250
Outstanding Constitutional Matters 250
Article 43 of the Constitution, the Cost of Living and related issues 250
Implementation of the "two-thirds gender rule" 255
Governance issues: National unity/inclusivity in public appointments 256
Related Matters 256
Impeachment of Governors 256
Retirement Benefits for the Auditor General 256
Adequate checks and balances 256
Related Matters 257
Balance of Legislative Powers of Parliament 257
Recognition of Members of Regional Assemblies Parliament 257
Fidelity to the law on multiparty democracy 258
Related Matter 259
Electoral Dispute Resolution (EDR) 259
Entrenching Funds into the Constitution 259

NGCDF, NGAAF and Senate Oversight Funds 259
Other Proposed Funds 260
Ward Development Fund 260
Establishment and Entrenchment of State Offices 260
The Office of the Leader of the Official Opposition 260
The office of the Prime Cabinet Secretary 261
Transition and implementation of the Report 262
Issues That Arose from Public Participation 262
Judiciary 262
Devolution Related matters 263
Issues to be referred to the Principals 263
Establishment of a Commission of Inquiry 263
Consultation prior to appointment of Commissioners 266
Former Commissioners of the IEBC 267
LIST OF ANNEXES 268

Acronyms and Abbreviations

AFC	Agricultural Finance Corporation.
AfCFTA	African Continental Free Trade Area.
AG	Attorney-General.
AU	African Union.
BBI	Building Bridges Initiative.
BETA	Bottom-Up Economic Transformation Agenda.
BPS	Budget Policy Statement.
CAF	County Assemblies Forum.
CAJ	Commission on Administrative Justice.
CBS	Chief of the Order of the Burning Spear.
CEO	Chief Executive Officer.
CFS	Consolidated Fund Services.
CMD	Centre for Multi-Party Democracy.
CoG	Council of Governors.
COTU	Central Organisation of Trade Unions.
COVID-19	Coronavirus Disease of 2019.
CSOs	Civil Society Organisations.
CS-RG	Civil Society Reference Group.
DCI	Directorate of Criminal Investigation.
EAC	East African Community.
EACC	Ethics and Anti-Corruption Commission.
EGH	Elder of the Order of the Golden Heart.

ELC	Environment and Land Court.
ELGIA	Electoral Law and Governance Institute for Africa.
ELOG	Elections Observation Group.
ELRC	Employment and Labour Relations Court.
EPRA	Energy and Petroleum Regulatory Authority.
FCPA	Fellow of the Institute of Certified Public Accountants.
FY	Financial Year.
GEMA	Gikuyu, Embu and Meru Association.
G-to-G	Government-to-Government.
HELB	Higher Education Loans Board.
Hon.	Honourable.
HSC	Head of State Commendation.
IBPK	International Budget Partnership Kenya.
ICJ	International Commission of Jurists.
ICPAK	Institute of Certified Public Accountants of Kenya.
ICT	Information and Communications Technology.
IEBC	Independent Electoral and Boundaries Commission.
IPOA	Independent Policing Oversight Authority.
IPP	Independent Power Producer.
IPPG	Inter-Parties Parliamentary Group.
IRCK	Inter-Religious Council of Kenya
IREC	Independent Review Commission.
KCCB	Kenya Conference of Catholic Bishops.

KEBS	Kenya Bureau of Standards.
KenGen	Kenya Electricity Generating Company.
KEPSA	Kenya Private Sector Alliance.
KEWOPA	Kenya Women Parliamentarians Association.
KIEMS	Kenya Integrated Election Management System.
KIPPRA	Kenya Institute of Public Policy Research and Analysis.
KLRC	Kenya Law Reform Commission.
KMRC	Kenya Mortgage Refinance Company.
KNBS	Kenya National Bureau of Statistics.
KNCCI	Kenya National Chamber of Commerce and Industry.
KNCHR	Kenya National Commission on Human Rights.
KNTC	Kenya National Trading Corporation.
KPLC	Kenya Power and Lighting Company.
KQ	Kenya Airways.
KRA	Kenya Revenue Authority.
LN	Legal Notice.
LSK	Law Society of Kenya.
MBS	Moran of the Order of the Burning Spear.
MDA	Ministry Department and Agency.
MoU	Memorandum of Understanding.
MP	Member of Parliament.
MSF	Multi-Sectoral Forum.
NADCO	National Dialogue Committee.

NCCK	National Council of Churches of Kenya.
NCIC	National Cohesion and Integration Commission.
NCPWD	National Council for Persons with Disability.
NGEC	National Gender and Equality Commission.
NHIF	National Hospital Insurance Fund.
NYC	National Youth Council.
ODPP	Office of the Director of Public Prosecutions.
OPEC	Organisation of the Petroleum Exporting Countries.
ORPP	Office of the Registrar of Political Parties.
PAC	Public Accounts Committee.
PDL	Petroleum Development Levy.
PEE	Post-Election Evaluation.
PIN	Personal Identification Number.
PPA	Power Purchase Agreement.
PPDT	Political Parties Disputes Tribunal.
PPLC	Political Parties Liaison Committee.
PSC	Public Service Commission.
Sen.	Senator.
SME	Small and Medium-sized Enterprises.
SOE	State-Owned Enterprise.
UHC	Universal Health Care.
USD	United States Dollar.
VAT	Value Added Tax.

LIST OF STATUTES AND REGULATIONS

The Constitution of Kenya, 2010.

The District and Provinces Act, 1992.

The Elections (General) Regulations, 2012.

The Elections Act, 2011.

The Elections Campaign Financing Act, 2013.

The Elections Voter Registration Regulations, 2012.

The Employment Act, 2007.

The Finance Act, 2023.

The Independent Electoral and Boundaries Commission Act.

The Kenya Information and Communication Act, 1998.

The Media Council Act, 2013.

The Penal Code.

The Political Parties Act, 2011.

The Public Collections Act.

The Public Officer Ethics Act, 2003.

The Public Order Act.

The Public Procurement and Asset Disposal Act, 2015.

The Publication of Electoral Opinion Polls, 2012.

The Registration of Persons Act.

The Societies Act.

EXECUTIVE SUMMARY

This report is a culmination of the deliberations of the National Dialogue Committee which was established to facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya.

The rising cost of living, 2022 election outcomes and, allegations of malpractices, and concerns about policies implemented by the government led to protests and demonstrations in several counties. The protests caused widespread disruptions and, in some cases, violent confrontations between police and protesters. The first attempt to address the concerns raised by Kenyans and to arrive at an amicable solution was through the formation of a Bi-Partisan Talks Committee. The Committee was established through a Joint notification, No. 001 of 2023, dated 19th May 2023, from the Speakers of the two Houses of Parliament. The Bi-Partisan Talks Committee comprised Members of the Majority and Minority sides of both Houses of Parliament. The Committee sought to build consensus to resolve identified issues through bi-partisan engagement. However, the Bipartisan Talks stalled causing a resumption of the protests.

In an effort to address the issues related to the protests and to find lasting solutions, the Kenya Kwanza Alliance and the *Azimio la Umoja* One Kenya Coalition, through the guidance of their Party Leaders, agreed to form a joint committee that comprised four members from each side. The majority and minority leaders from the National Assembly and the majority leader from the Senate delve into the issues. Consequently, the National Dialogue Committee was established through a resolution adopted by the National Assembly and the Senate on Wednesday, 16 August 2023, and Tuesday, 29 August 2023.

The mandate of the Committee was to facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya.

This report documents the Statement of Issues as they were negotiated, consideration of submissions from the public, stakeholders, and experts, as well as deliberations by the National Dialogue Committee on issues of concern to the people of Kenya. The Report also includes observations and recommendations of the Committee on the issues identified for dialogue. The issues as framed were:

(a) Electoral Justice and Related Matters:

(i) Restructuring and reconstitution of the Independent Electoral and Boundaries Commission ("the IEBC").

(ii) Boundaries delimitation.

(iii) Audit of the 2022 presidential election.

(b) Outstanding Constitutional Matters:

(i) Article 43 of the Constitution, the Cost of Living and related issues.

(ii) Implementation of the "two-thirds gender rule".

(iii) Governance issues, including promoting national unity and inclusivity in public appointments.

(iv) Adequate checks and balances.

(c) Fidelity to Political Parties/Coalitions and the law on multiparty democracy:

Preventing interference with political parties/coalitions

(d) Entrenching Funds into the Constitution:

(i) The National Government Constituencies Development Fund.

(ii) The National Government Affirmative Action Fund.

(iii) The Senate Oversight Fund.

(e) Establishment and Entrenchment of State Offices:

(i) The office of the Leader of the Official Opposition.

(ii) The office of the Prime Cabinet Secretary.

Chapter one of the report sets out the introduction to the report. It provides an outline of the background and context for the work of the Committee, its method of work, the framework agreement, and the conduct of Public Participation pursuant to Article 10 of the Constitution.

The Committee received 258 written Memoranda from members of the public and other stakeholders. The Committee also received oral submissions from 60 stakeholders, with 704 persons drawn from the stakeholders attending the public hearing session by the Committee. In undertaking its mandate, the Committee received views from experts, members of the public, the business community, civil society, religious groups, political parties, and county governments. Persons living with disability, youth, women, marginalised communities, civil society organisations, as well as representatives of workers and employers.

Chapters two to six of the report deal with each of the Framed Issues, setting out a summary of submissions made during stakeholder engagements as well as memoranda received. The observations and recommendations of the National Dialogue Committee on each issue are also presented.

Chapter two deals with the issue of Electoral Justice and Related Matters including restructuring and reconstitution of the Independent Electoral and Boundaries Commission ("the IEBC"), boundaries delimitation and audit of the 2022 presidential election as well as other related matters.

Chapter three sets out the Committee's consideration of Outstanding Constitutional Matters. They include implementation of Article 43 of the Constitution: the Cost of Living and related issues, Implementation of the "two-thirds gender rule", governance issues (promoting national unity and inclusivity in public appointments), as well as adequate checks and balances and related matters.

Chapter four is on Fidelity to Political Parties/Coalitions and the law on multiparty democracy.

Chapter five presents the Committee's deliberations on Entrenching of the National Government Constituencies Development Fund, the National Government Affirmative Action Fund and the Senate Oversight Fund in the Constitution.

Chapter six deals with the Establishment and Entrenchment of the office of the Leader of the Official Opposition and the office of the Prime Cabinet Secretary.

Chapter seven is on the Committee's consideration of other issues that arose from the public participation that fell outside the Framed Issues.

Chapter eight sets out the Committee Recommendations based on the Thematic Areas identified by the Committee as well as proposals from the public participation that fell outside the framed issues.

Some of the salient recommendations include—

(a) **Restructuring and Reconstitution of the IEBC-** the Committee recommended the reconstitution of the IEBC Selection Panel comprising nine members.

(b) **Boundaries Delimitation-** the Committee recommended the intervals within which the review of boundaries may be done with the resolution of Parliament, investigation of the claims of marginalisation by the relevant body and made provision for fast-tracking enactment of a legislative framework for review of the County boundaries as provided for under Article 188 of the Constitution.

(c) **Audit of the 2022 Presidential Election-** the Committee recommended the appointment of a panel of experts who would evaluate the 2022 electoral process and a mechanism for evaluating future elections.

(d) **Outstanding Constitutional Matters-** the Committee made several recommendations which centered on providing relief to Kenyans with

regard to the cost of living, rationalising government expenditure, reviewing the national tax policy, developing national policies to enhance agricultural production and local manufacturing while reducing overdependence on imports, expanding the scope of social protection, and supporting devolution.

(e) **Implementation of the "Two-Thirds Gender Principle"**- the Committee took cognisance of the work of the Multi-Sectoral Working Group on the Realisation of the Two-Thirds Gender Principle under the Ministry of Public Service, Gender and Affirmative Action and recommended two options for its consideration.

(f) **Governance issues, including promoting national unity and inclusivity in public appointments-** the Committee recommended legislative interventions to guide the process of impeachment of Governors and providing retirement benefits to Auditor Generals.

(g) **Adequate Checks and Balances-** the Committee recommended-

(i) compliance with court orders by state and public officers, maintenance of a register of persons convicted of corruption and other economic crimes, and adherence to statutory timelines in the making of regulations necessary for the operationalisation of legislation; and

(ii) harmonising bicameral relations between the Houses of Parliament as integral to advancing the constitutional principle of separation of powers.

(h) **Fidelity to Political Parties/ Coalitions and the law on multiparty democracy**- The Committee recommended the review of the framework for election dispute resolution to align and confer the role of settlement of electoral disputes to the Political Parties Dispute Tribunal.

(i) **Entrenching Funds into the Constitution**- the Committee recommended the establishment and entrenchment of the NG-CDF, NG-AAF and Senate Oversight Fund in the Constitution. In addition, the Committee recommended the establishment of the Ward Development Fund by statute in accordance with Article 207(4) (b) of the Constitution.

(j) **Establishment and Entrenchment of State Offices**- the Committee recommended the establishment and entrenchment of the Office of the Leader of the Official Opposition in the Constitution in recognition of the value and legitimacy of opposition parties as part of a country's political system. In addition, the Committee recommended the establishment and entrenchment of the Office of the Prime Minister in the Constitution as a means of improving governance and coordination of functions of the executive arm of government.

(k) **'Other issues'**- The Committee recommended where appropriate for legal, administrative, and policy interventions by the relevant government agency or institution.

Annexed to the report are the following legislative instruments giving effect to the committee recommendations—

(a) The Constitution of Kenya (Amendment) Bill, 2023.

(b) The Independent Electoral and Boundaries Commission (Amendment) Bill, 2023.

(c) The Elections (Amendment) Bill, 2023.

(d) The Election Offences (Amendment) Bill, 2023.

(e) The Ethics and Anti-Corruption Commission (Amendment) Bill, 2023.

(f) The Statutory Instruments (Amendment) Bill, 2023.

(g) The Political Parties (Amendment) Bill, 2023.

(h) The National Government Coordination (Amendment) Bill, 2023.

(i) The Leader of Opposition Bill, 2023.

The Committee also recommends that all the legislative instruments above be introduced for consideration in Parliament within thirty days of the adoption of this report.

PREFACE

On Wednesday, 16th August 2023, and Tuesday, 29th August 2023, the National Assembly and the Senate, respectively, approved a Motion that established the National Dialogue Committee for negotiations on issues of concern to the people of Kenya. The mandate of the Committee, as stated in the Motion, was to facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya. The issues for consideration were framed by the National Dialogue Committee in line with the Constitution and relevant legislation whilst respecting the functional and institutional integrity of state organs.

In undertaking this mandate, the Committee received views from experts, members of the public, the business community, civil society, religious groups, political parties, and county governments.

The membership of the Committee was as follows:

Kenya Kwanza Alliance	**Azimio Coalition**
Hon. Kimani Ichung'wah, MGH, MP	H. E. Stephen Kalonzo Musyoka, EGH, SC.
H. E. Hon. Cecily Mbarire, MGH.	Hon. Opiyo Wandayi, MGH, MP.
Sen. Aaron Cheruiyot, MGH, MP.	Hon. Eugene Wamalwa, EGH.
Hon. Hassan Omar Hassan.	Hon. Amina Mnyazi, MP.
Hon. Catherine Wambilianga, M.P.	Sen. Okong'o Mogeni, SC, MP.

The Technical Teams supporting the Committee comprised:

Kenya Kwanza Alliance	**Azimio Coalition**
Dr. Muthomi Thiankolu	Hon. Jeremiah Kioni
Dr. Linda Musumba	Prof. Adams Oloo

Dr. Duncan Ojwang	Abubakar Zein Abubakar
Nick Biketi.	Lynn Ngugi.

Following its establishment, the Parties of the Dialogue Committee formulated and presented various issues for discussion and resolution. At a meeting held on Wednesday, 30th August 2023, the Committee adopted a Framework Agreement to guide the bi-partisan talks on five thematic areas that were agreed upon based on the Memoranda presented by the Parties. The Committee also considered and adopted its rules of procedure and a work plan, identified stakeholders for engagement with the Committee and prepared a framework for public hearings.

The Committee prioritised the following issues for dialogue—

(a) Electoral Justice and Related Matters:

(i) Restructuring and reconstitution of the Independent Electoral and Boundaries Commission ("the IEBC");

(ii) Boundaries delimitation; and

(iii) Audit of the 2022 presidential election.

(b) Outstanding Constitutional Matters:

(i) Article 43 of the Constitution, the Cost of Living and related issues;

(ii) Implementation of the "two-thirds gender rule";

(iii) Governance issues, including promoting national unity and inclusivity in public appointments; and

(iv) Adequate checks and balances.

(c) Fidelity to Political Parties/Coalitions and the law on multiparty democracy:

(i) Preventing interference with political parties/coalitions

(d) Entrenching Funds into the Constitution:

(i) The National Government Constituencies Development Fund;

(ii) The National Government Affirmative Action Fund; and

(iii) The Senate Oversight Fund.

(e) Establishment and Entrenchment of State Offices:

(i) The office of the Leader of the Official Opposition; and

(ii) The office of the Prime Cabinet Secretary.

In fulfilment of its mandate and pursuant to Article 10 of the Constitution, the Committee invited the public, through adverts in two local dailies on Friday, 1st September 2023, to submit their views on the five (5) issues as framed by the National Dialogue Committee.

The Committee held public hearings from 22nd September to 3rd October 2023. By the close of the stakeholder engagements period, the Committee had received two hundred and fifty-eight (258) written Memoranda from members of the public and other stakeholders. The Committee also received oral submissions from sixty (60) stakeholders, and seven hundred and four (704) persons drawn from the stakeholders appeared before the Committee.

The Committee thereafter proceeded for a working retreat, which provided the opportunity to consider the submissions of the public and stakeholders and negotiate on the Issues. The Committee also engaged relevant ministries: National Treasury, Ministry of Energy and Petroleum, State Department for Housing and Economics, and experts on Article 43 provisions, cost of living, and related issues. After that, the Committee retreated for report writing. The Report of the Committee contains a number of recommendations based on the thematic areas identified by the Committee as well as other issues of concern to Kenyans as submitted by the stakeholders. The Report further includes draft legislative instruments for consideration and adoption by Parliament.

Acknowledgement

The National Dialogue Committee wishes to thank the Party Leaders of the Kenya Kwanza Alliance and *Azimio La Umoja* One Kenya Coalition for their exceptional display of patriotism and statesmanship that established the National Dialogue Committee with the objective of addressing issues of concern to the people of Kenya. The Committee also expresses its gratitude to the Speaker of the National Assembly and the Speaker of the Senate, as well as the Offices of the Clerk of the National Assembly and the Clerk of the Senate, for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the Electoral Governance Institute for Africa (ELGIA) for the support accorded to the Committee. The Committee also acknowledges the members of the public and the various institutions and organisations that appeared before the Committee or submitted Memoranda. Their submissions played a significant role in shaping the deliberations and the recommendations of this Committee.

The Committee also benefited immensely from the Technical Teams from both Parties to the Dialogue Committee as well as the Secretariat from the Parliamentary Service Commission, who worked tirelessly with the Committee throughout the process. The Committee wishes to acknowledge members of the public who have continued to keenly follow the proceedings of the Committee and the Media who ensured that the country remained updated at all times.

It is now our pleasant duty and privilege, on behalf of the National Dialogue Committee, to present the Report of the Committee.

Hon. Kimani Ichung'wah, MGH, MP **(Delegation Leader)**	Hon. Stephen Kalonzo Musyoka, EGH, SC **(Delegation Leader)**

Adoption of the Report of the National Dialogue Committee

We, the undersigned members of the National Dialogue Committee, do hereby append our signatures to adopt this Report.

Hon. Kimani Ichung'wah, MGH, MP **(Delegation Leader)**	Hon. Stephen Kalonzo Musyoka, EGH, SC **(Delegation Leader)**
H.E. Hon. Cecily Mbarire, MGH **(Dep. Delegation Leader)**	Hon. Opiyo Wandayi, MGH, MP **(Dep. Delegation Leader)**
Hon. Sen. Aaron Cheruiyot, MGH, MP **(Member)**	Hon. Eugene Wamalwa, EGH **(Member)**
Hon. Hassan Omar Hassan **(Member)**	Hon. Sen. Okong'o Mogeni, SC, MP **(Member)**
Hon. Catherine Wambilianga, MP **(Member)**	Hon. Mnyazi Amina Laura, MP **(Member)**

CHAPTER ONE: INTRODUCTION

Background and Context

1 Electoral cycles in Kenya have been riddled with conflicts and protests since the reintroduction of multiparty politics in 1992, save for the 2002 elections. Following the general elections of August 2022, coupled with the high cost of living, protests erupted in March 2023 that caused widespread disruption and, in some cases, violent confrontations between police and protesters, which resulted in deaths and loss of property. Regrettably, the Kenyan citizens bore the effect of the adverse outcomes of these events.

2 The first attempt to address the demands of the protestors and arrive at an amicable solution was through a Bi-Partisan Talks Committee which was established through a Joint notification, No. 001 of 2023, dated 19th May 2023 from the Speakers of the two Houses of Parliament. The Bi-Partisan Committee comprised Members of the Majority and Minority sides of both Houses of Parliament. The Committee sought to build consensus to resolve identified issues through a bi-partisan engagement. However, the Bipartisan Talks stalled, and the protests resumed.

3 Determined to resolve issues of concern to the people, the Kenya Kwanza Alliance and the *Azimio la Umoja* One Kenya Coalition, through the guidance of their principals, agreed to form a joint committee that comprised four members from each side to delve into the issues.

4 On Wednesday, 16th August 2023, and Tuesday, 29th August 2023, the National Assembly and the Senate, respectively, by Resolution (Annex 1) established the National Dialogue Committee. The Resolution stated as follows—

> ***AWARE THAT*** *Article 1 (1) of the Constitution provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution;*
>
> ***FURTHER AWARE*** *that Article 1 (2) of the Constitution provides that the people of Kenya may exercise their sovereign power either directly or through their democratically elected representatives;*

CONSCIOUS *that Article 10 of the Constitution espouses the national values and principles of governance, which include the rule of law, democracy and participation of the people;*

FURTHER CONSCIOUS *that Article 94 of the Constitution provides that Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty;*

RECOGNISING *that there is a need to embrace consultation, dialogue and consensus building as a way of resolving issues of concern to the people of Kenya;*

COGNIZANT *that despite the constitutional and legal reforms on the electoral processes and the electoral laws, after every election cycle, there has been mistrust of electoral outcomes, leaving the country divided;*

FURTHER COGNIZANT *that efforts to enhance constitutionalism, the rule of law and respect for human rights need to be promoted;*

AWARE *that there have been previous calls and attempts at building consensus on issues of concern to the people of Kenya through bi-partisan engagements in Parliament;*

APPRECIATING *the need to establish an inclusive forum for dialogue, consultation and consensus building in seeking to promote the peace, stability and prosperity of the country;*

ACKNOWLEDGING THAT *the Majority Party in Parliament and the Minority Party in Parliament have agreed to embrace dialogue through the establishment of a National Dialogue Committee to recommend a way forward on issues of concern to the people of Kenya;*

NOW, THEREFORE, *the Houses of Parliament RESOLVE AS FOLLOWS: -*

1. **THAT** *the two Houses of Parliament establish a National Dialogue Committee consisting of ten (10) Members to represent the Kenya Kwanza Alliance ("**Kenya Kwanza**"), a coalition constituting the Majority Party of the Parliament of the Republic of Kenya and Azimio La Umoja One Kenya Coalition Party ("**Azimio**"), a coalition forming the Minority Party of the Parliament of the Republic of Kenya;*

2. **THAT** *each Coalition shall appoint five (5) Members to the National Dialogue Committee;*

3. **THAT** *the membership of the National Dialogue Committee shall be drawn from Parliament and outside Parliament;*

4. **THAT** *the National Dialogue Committee shall comprise the following Members to represent Kenya Kwanza:*

1) Hon. Kimani Ichung'wah **(Delegation Leader)**;

2) Gov. Cecily Mbarire (Deputy Delegation Leader);

3) Hon. Sen. Aaron Cheruiyot;

4) Hon. Omar Hassan Omar; and

5) Hon. Catherine Wambilianga.

5. THAT the National Dialogue Committee shall comprise the following Members to represent Azimio:

1) H. E. Stephen Kalonzo Musyoka **(Delegation Leader)**;

2) Hon. Opiyo Wandayi (Deputy Delegation Leader);

3) Hon. Amina Mnyazi;

4) Hon. Eugene Wamalwa; and

5) Hon. Sen. Okong'o Mogeni.

6. THAT the mandate of the National Dialogue Committee shall be to facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya, to be framed by the National Dialogue Committee, in line with the Constitution and the laws of the Republic of Kenya and respecting the functional and institutional integrity of state organs.

THE HOUSES OF PARLIAMENT NOTE: -

7. THAT the Technical Teams representing Kenya Kwanza and Azimio shall support the National Dialogue Committee.

8. THAT the Technical Team representing Kenya Kwanza shall comprise the following persons:

1) Dr. Muthomi Thiankolu;

2) Dr. Linda Musumba;

3) Dr. Duncan Ojwang; and

4) Nick Biketi.

9. THAT the Technical Team representing Azimio shall comprise the following persons:

1) Hon. Jeremiah Kioni;

2) Prof. Adams Oloo;

3) Abubakar Zein Abubakar; and

4) Lynn Ngugi.

***10. THAT** further, the National Dialogue Committee shall be assisted by two (2) Officers designated as Communication Secretaries, one (1) of whom shall be appointed by the Leader of Majority Party and the other by the Leader of Minority Party.*

THE HOUSES OF PARLIAMENT FURTHER RESOLVE: -

***11. THAT** the National Dialogue Committee shall formulate and adopt a Framework Agreement to guide the bi-partisan talks.*

***12. THAT** the National Dialogue Committee shall report to the Leadership of Kenya Kwanza and Azimio Coalitions within sixty (60) days and, after that, submit its report to Parliament.*

***13. THAT** in the execution of its mandate, the National Dialogue Committee may invite, engage with and consider submissions from stakeholders, collate views from the public and engage experts, professionals and other technical resource persons as necessary.*

***14. THAT** the National Dialogue Committee shall determine its own rules of procedure.*

***15. THAT** the Speakers and Clerks of both Houses of Parliament shall provide secretariat and any other necessary support to facilitate the work of the National Dialogue Committee.*

5 The mandate of the Committee was to facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya as framed by the Committee in line with the Constitution and the laws of Kenya and respecting the functional and institutional integrity of state organs. The Committee was gazetted vide Gazette Notice No. 207 dated 15 September 2023 (Annex 2).

6 As per the Resolution, the Committee was granted sixty (60) days to report to the Leadership of Kenya Kwanza Alliance and *Azimio la Umoja* One Kenya Coalition, and thereafter, to submit its report to Parliament. However, due to the magnitude of the assignment and the need to engage as many stakeholders as reasonably possible, the Committee sought an extension of its tenure. On Tuesday, 17th October 2023 and Wednesday, 18th October 2023, the National Assembly and the Senate resolved to extend the mandate of the National Dialogue Committee by a further thirty (30) days (Annex 3). Consequently, the Committee was required to submit its report to the

Leadership of the Kenya Kwanza Alliance and *Azimio la Umoja* One Kenya Coalition on or before 26th November 2023.

Method of Work

Framework Agreement

7 The Parties to the National Dialogue formulated and presented specific issues for discussion and resolution by the Committee. The specific matters were considered and harmonised into a Statement of Issues, which formed the agenda of the Dialogue.

8 The Committee, during its sitting held on Wednesday, 30th August 2023, formulated and adopted a Framework Agreement (Annex 4) to guide the Dialogue.

Statement of Issues

9 The Committee framed and prioritised the following Issues (Annex 5) for negotiation and dialogue—

(a) Electoral Justice and Related Matters:

(i) Restructuring and reconstitution of the Independent Electoral and Boundaries Commission ("the IEBC").

(ii) Boundaries delimitation.

(iii) Audit of the 2022 presidential election.

(b) Outstanding Constitutional Matters:

(i) Article 43 of the Constitution, the Cost of Living and related issues.

(ii) Implementation of the "two-thirds gender rule".

(iii) Governance issues, including promoting national unity and inclusivity in public appointments.

(iv) Adequate checks and balances.

(c) Fidelity to Political Parties/Coalitions and the law on multiparty democracy:

(i) Preventing interference with political parties/coalitions

(d) Entrenching Funds into the Constitution:

(i) The National Government Constituencies Development Fund.

(ii) The National Government Affirmative Action Fund.

(iii) The Senate Oversight Fund.

(e) Establishment and Entrenchment of State Offices:

(i) The office of the Leader of the Official Opposition.

(ii) The office of the Prime Cabinet Secretary.

Interim measures

10 In accordance with section 35(b) of the Framework Agreement that provides for the identification and processing of interim measures, the *Azimio la Umoja* One Kenya Coalition tabled the following Interim Measures for consideration—

(a) Commitment to observe the Constitution of Kenya and restore civil liberties in accordance with the Constitution of Kenya.

(b) The publication by the relevant authorities and concerned parties of particulars of persons who have been arrested, detained, facing prosecutions, injured, killed and reported to be missing.

(c) The waiving of all medical and other charges of those who suffered during the exercising of their democratic and constitutional rights.

(d) To consider establishing a credible mechanism to investigate the violence and violation of rights before, during and after demonstrations.

(e) To consider compensation and other remedial measures for those who suffered during the demonstration in line with the recommendation of the mechanism referred to in (d).

(f) Lowering the cost of living by interim reduction of cost of essential items.

(g) Preservation of the IEBC 2022 Presidential records and returns, including the election servers.

(h) Suspension of the IEBC replacement of commissioners' Selection process.

(i) To address the limitation of rights of the Azimio Coalition in Parliament through administrative actions, including the right to choose its officials in parliament and assign members to parliamentary committees and parliamentary functions and activities.

(j) Cessation of invasion of Azimio Coalition Parties, principally the Jubilee Party, including to address the violations of the rights of Jubilee/Azimio, such as the obstruction of recording the resolutions of the Jubilee National Delegates Congress.

(k) The continued withholding of Azimio's share from the Political Parties Fund must come to an end. The Coalition demanded full compliance with the Political Parties Fund and the allocation of shares in accordance with the law.

(l) To terminate all politically motivated prosecutions and other illegal actions directed at all Kenyans during the exercise of rights under the Constitution of Kenya.

(m) To operationalise the Public Benefit Organisations (PBO) Act of 2013.

(n) To stop harassment of leaders of the coalition, persons and regions perceived to support *Azimio La Umoja* – One Kenya Coalition Party.

(o) To restore the rights and privileges enjoyed by Coalition leaders by law, including the provision of security.

Public Participation and Call for Memoranda

11 In fulfilment of its mandate and pursuant to Article 10 of the Constitution, the Committee notified and invited the public, through an advert in two local

dailies on Friday, 1st September 2023 *(Annex 6)*, to submit their views on the Statement of Issues for negotiation by the National Dialogue Committee.

12 The Committee held stakeholder engagements from 22nd September to 3rd October 2023. By the close of the stakeholder engagement period, the Committee had received 258 written Memoranda from members of the public and other stakeholders. The list of stakeholders who submitted memoranda is annexed to this report (Annex 7). The Committee also received oral submissions from 60 stakeholders, with 704 persons drawn from the stakeholders appearing before the Committee (Annex 8).

13 The Committee received representations from an inclusive group of Kenyans drawn from diverse backgrounds, including Persons living with disability, youth, women, marginalised communities, civil society organisations, representatives of workers and employers, and public and private sector experts. The submissions were from individual citizens, institutions and groups based on their common interests and experiences. Detailed memoranda and submissions made during stakeholder engagements are attached to this report as **Volume II.**

14 At its sittings held on 12th and 23rd October 2023, the Committee resolved to engage experts, professionals and other technical resource persons on the sub-issues of – the cost of living and related issues, implementation of the "two-thirds gender principle", establishment and entrenchment of state offices in the Constitution, and fidelity to political parties/ coalitions and the law on multiparty democracy. The engagements were intended to guide the Committee adequately to deliberate on these critical and complex matters and come up with recommendations on how to address them in the short, medium and long term. The list of stakeholders invited for further consultations is annexed to this Report as Annex 9.

Meetings of the Committee

15 The Committee held forty-two meetings during which it formulated and adopted the Framework Agreement and Statement of Issues, considered memoranda, held stakeholder engagements, negotiated on the Issues, and prepared its report and legislative proposals.

16 This report presents the views of the public and stakeholders, as well as observations and recommendations of the Committee, including legislative proposals for further action.

CHAPTER TWO: ELECTORAL JUSTICE AND RELATED MATTERS

17 Kenya's democracy has made enormous progress since the reintroduction of multiparty democracy in 1992. The key achievements of the second liberation movement were legal and constitutional reforms, the highlight of which was the promulgation of the 2010 Constitution ("the Constitution").

18 However, four interrelated challenges have remained intractable. The first relates to disputed (presidential) electoral outcomes. Secondly, candidates for elective office have tended to rely on ethnic identity rather than ideology as the primary basis of political mobilisation. Thirdly, the country has experienced violence (sometimes with ethnic identity dimensions) in all but one election cycle since the reintroduction of multiparty democracy in 1992. Lastly, the electoral management body (i.e., the Independent Electoral and Boundaries Commission) has not enjoyed universal confidence in the conduct and management of presidential elections.

19 The challenges alluded to in the preceding paragraph, among others, provide the factual background and context in which electoral justice and related matters became one of the agenda items for NADCO.

Restructuring and Reconstitution of the IEBC

Background and Context

20 The Independent Electoral and Boundaries Commission (IEBC) is established pursuant to Article 88 (1) of the Constitution. Article 88 (4) stipulates that the mandate of the Commission entails conducting and supervising referenda and elections to any elective body or office established by the Constitution or an Act of Parliament.

21 Article 250 further provides for the composition of the Commission. It states the *Commission shall consist of at least three, but not more than nine, members.*

22 Section 6 of the Independent Electoral Boundaries Commission Act provides for qualifications for appointment as chairperson or member of the Commission. Section 6 (1) states that *the chairperson of the Commission*

shall be a person who is qualified to hold the office of judge of the Supreme Court under the Constitution.

23 Section 6 (2) states that a person is qualified for appointment as a member of the Commission if the candidate is a Kenyan citizen with a university degree and proven relevant experience in electoral matters, management, finance, governance, public administration, and law.

24 Section 7 (1) stipulates the tenure of the Commission. It states that the members of the Commission shall be appointed for a single term of six years and shall not be eligible for re-appointment.

25 At the time of the establishment of the National Dialogue Committee, the offices of chairperson and members of the commission were vacant as the tenure of the chairperson and two other commissioners had ended in January 2023; three other commissioners had resigned while one commissioner was removed from Office pursuant to Article 251 of the Constitution. The vacancies at the Commission had affected the implementation of several activities of the Commission, including by-elections, boundary delimitation, and consideration of several policy documents.

26 Whereas there was a consensus on the urgent need to have a functional electoral body, deliberations on the structure and reconstitution of the IEBC brought forth a number of issues, including how to fill the vacancies in the offices and overall review of the constitutional, legal, policy and administrative framework that governs the electoral process.

Summary of Submissions by the Public

27 The public, through memoranda, made proposals on restructuring and reconstitution of the Independent Electoral and Boundaries Commission. These included—

(i) appoint commissioners using the Inter-Parties Parliamentary Group (IPPG) formula;

(ii) prompt recruitment and appointment of members of the Commission using the expert model recommended by the Kriegler Commission;

(iii) in the interim period, before the IEBC is duly constituted, a Commission should be put in place as a representative commission nominated by the two political sides, with the chairperson being appointed by the Judicial Service Commission and approved by the Joint Committee nominated by the leadership of the two coalitions;

(iv) amend the Elections Act to establish a people-centered Elections Council. The Council shall consist of two eminent individuals meeting constitutional requirements for electing Commissioners, nominated by each county assembly to the Council. The 94 Council members shall select seven to nine members to form the Election Commission. Each council member shall present a list of seven potential commissioners, with the most popular six selected. An additional one to three members shall be included to meet the two-thirds gender rule. The members shall elect the Commission's chair and deputy;

(v) Political parties and the Executive should not be allowed to participate in the appointment of IEBC commissioners;

(vi) the IEBC Selection Panel proceeds with picking new commissioners;

(vii) amend the Independent Electoral and Boundaries Commission Act to provide for an acceptable selection process;

(viii) stagger appointment of Commissioners, such that no more than one-third should retire at the same time;

(ix) appointment of new commissioners should be undertaken at least two years before a general election;

(x) set up a system that can guarantee results regardless of the IEBC Chair and Members;

(xi) enact Elections cyber security laws;

(xii) enact a clear standard of evidence to invalidate an election;

(xiii) The Kenya Diaspora should have a commissioner who deals only with diaspora elections for president and related matters.

28 During the stakeholder engagements, several persons and institutions made submissions.

29 **Central Organisation of Trade Unions-Kenya** (COTU (K)) submitted that elections are crucial events that impact the well-being of all citizens. COTU (K) emphasised the importance of electoral justice, particularly for vulnerable groups like workers, women and children. It was their submission that the impartiality of the IEBC is vital for free, fair and verifiable elections.

30 COTU (K) proposed that there should be comprehensive electoral reforms to address the root causes of electoral injustice and violence. As such, the selection of IEBC Commissioners must be above board so that all parties to the elections are not disgruntled before and after the elections. COTU (K) also proposed that the IEBC Secretariat must immediately commence civic education programs to inform citizens, particularly workers, women, and children, about their rights, responsibilities, and the importance of peaceful participation in electoral processes.

31 **The Independent Electoral and Boundaries Commission (IEBC) Secretariat** was of the view that its current structure had delivered successfully on its mandate. They stated that they periodically reviewed the structure, systems, and processes of the Commission to address changes in the internal and external environment. The Commission used the Post-Election Evaluation (PEE) exercise, which was primarily stakeholder-driven, to understand what worked in the previous general elections and what did not work well and inform the necessary changes. The Commission systematically used the PEE report to inform the development of its strategic and operational plans, which were initiated and approved by the Commissioners.

32 The IEBC Secretariat observed that the challenges inhibiting restructuring and reconstitution of IEBC included delayed reconstitution of the Commission and the absence of Commissioners to drive necessary changes in its structure, systems, and processes.

33 They proposed that there should be prompt recruitment and appointment of members of the Commission using the expert model recommended by the Kriegler Commission as soon as the vacancies arose to ensure seamless implementation of their responsibilities as stipulated in Section 11A (a) of the IEBC Act.

34 Further, they proposed that the composition of the Commission should be in accordance with Article 250 (4) of the Constitution and Section 6 of the IEBC Act, 2011.

35 On the constitution of the Commissioners, the IEBC secretariat submitted that due to the changes in the environment and the fact that elections were technology-driven, the Committee might consider having at least one member with technical expertise in the information and communication technology (ICT) sector. In addition, the IEBC Secretariat proposed an additional Commissioner, an advocate qualified to be a High Court Judge, to preside over legal-related matters such as the Electoral Code of Conduct Enforcement Committee and pre-election dispute resolution.

36 On the structure of the Secretariat, they proposed that the current practice of hiring and retaining core professional and permanent staff to enhance institutional memory, as recommended by the Independent Review Commission (IREC/Kriegler Commission), should be maintained.

37 **The Inter-religious Council of Kenya** proposed that the IEBC Selection Panel should proceed with the process of picking new IEBC Commissioners as envisioned in the Gazette Notice No. 2641 of 2023. IREC further proposed an amendment of the First Schedule of the IEBC Act, 2011, to expand the Selection Panel to include one representative each from the two leading political coalitions in Parliament so as to create an excellent working atmosphere for the Selection Panel.

38 **The National Gender and Equality Commission (NGEC)** observed that Paragraphs 1 (1) and (2) of the First Schedule of the IEBC Act on the composition of the IEBC commissioners did not include representation of persons with disability. It only considered regional and gender equity. They, therefore, proposed that the Independent Electoral and Boundaries Commission Act be amended to include representation of Persons with Disabilities in both the Selection Panel and the Commission.

39 **The Kenya Women Parliamentarians Association (KEWOPA)** submitted that the IEBC remains constituted in line with Article 88 and Chapter 15 of the Constitution and the IEBC Act, respectively. They observed that the more significant challenge in the elections lay in the winner-take-all system, which left the losing first-runner party/coalition disgruntled. The other challenge they identified was the poor management of affirmative action by IEBC and the Registrar of Political Parties.

40 **The National Council for Persons with Disabilities (NCPWD), in their submission**, highlighted the matter of inclusivity of Persons with Disability in the IEBC Commission and its Secretariat. They were of the view that their inclusion would provide the much-needed voice on disability issues during decision-making on electoral processes.

41 On the issue of the election of candidates with disabilities, the NCPWD observed that the candidates went through a myriad of challenges as they sought the electorate's nod. For instance, in the 2022 General Elections, about 586 candidates with disabilities ran for different positions. Seven of them were successful. NCPWD, therefore, proposed that IEBC should undertake continuous sensitisation to debunk stereotypes on the ability of persons with disability to lead and ensure that the candidates enjoyed a political environment that was free from violence, discrimination and intimidation.

42 **The Political Parties Liaison Committee (PPLC)** was of the view that the corporate governance matrix within the IEBC needed to be streamlined, as cited by the Supreme Court of Kenya during the presidential election

petition of 2022. They noted that there should be clarity of roles and responsibilities between different players within the IEBC. Further, it was their opinion that the Secretariat and the Electoral Commission should work in harmony with the Commission providing the policies and oversight to the Secretariat. At the same time, the Secretariat would implement the policies and answers to the Commission. It was the submission of the PPLC that the critical functions of an election should be handled by the permanent and pensionable employees of the IEBC to ensure accountability.

43 On the number of Commissioners, the PPLC proposed that the number should be maintained at nine (9) to be appointed by all fully registered political parties under the umbrella of the PPLC since restricting this role to parliamentary parties would defeat the very principle of inclusivity, as elections took place both at national and county levels.

44 PPLC also proposed that for inclusivity, the formula to appoint the IEBC Selection Panel to be used to appoint Commissioners such that instead of the bodies appointing a panellist, they would appoint a commissioner, with those that had two slots being required to appoint commissioners of opposite genders. In addition, they proposed that the slots allocated to PPLC be increased to two.

45 To enhance confidence in election results, the PPLC submitted that tabulation, transmission and announcement of results should leave no doubt as to who the winner or loser of an electoral contest is. Thus, the election must be transparent and verifiable. PPLC further proposed that results announced at the polling stations should be scanned and sent simultaneously to all participating political parties, accredited media houses, a public portal and the tallying centres at the national, constituency and county levels for all six elections.

46 **The Sabaot Community** observed that the IEBC played a vital role in ensuring fair and transparent elections, a cornerstone of any democratic society. They further noted that it was imperative to periodically assess and reform IEBC to maintain its effectiveness and public trust. They proposed the

reconstitution and restructuring of IEBC to enhance its efficiency, independence and credibility, including establishing an independent panel for selecting IEBC Commissioners. They also proposed strengthening oversight over the Commission by establishing an oversight committee comprising representatives from various sectors (civil society, academia, and the Judiciary) to monitor IEBC activities to ensure transparency and conduct post-election audits and reports to be made public.

47 On the final certification of election results, the Sabaot Community noted that the 2022 Presidential election results were controversial, with commissioners differing over the outcome. They were of the view that the disagreement pointed to a challenge in the selection criteria of IEBC commissioners who tended to affiliate themselves with parties and presidential candidates. In the interest of the Commission's independence, they proposed that political parties should not be part of the Selection Panel for the IEBC commissioners.

48 **The Elections Observer Group (ELOG)** proposed that a proper legislative infrastructure should be put in place to clearly define the role of the Commission and the Secretariat to avoid discord between the Commissioners and the Secretariat as had been witnessed before.

49 On the structure of IEBC, ELOG proposed that the country should maintain a professional model of its Election Management Body (EMB) as currently established within the confines of Article 88 of the Constitution of Kenya. Further, it was their opinion that the IEBC Selection Panel should be obligated to expressly submit six names for the position of member of the commission and one name for the chairperson of the commission.

50 Further, to forestall a situation where there were no Commissioners in office, ELOG proposed that the IEBC Act, 2011, should be amended to provide a minimum period by which a vacancy for member and chair must be filled. Further, they called on the Committee to consider staggering the appointment of commissioners.

51 **The Centre for Multiparty Democracy Kenya (CMD –Kenya)** observed that IEBC suffers from a perception of lack of independence and a trust deficit. To address the perception of a lack of independence, CMD-Kenya proposed the creation of a protected fund for IEBC akin to the Judiciary Fund. They noted that timely and predictable funding may enable the commission to adequately prepare and execute its mandate, thus improving public confidence in its processes and public perceptions.

52 To address the trust deficit, CMD- Kenya proposed that there was a need to improve the governance structure of IEBC by developing an improved organisational structure to increase efficiency and accountability that holds commissioners and staff accountable for results in specific areas of responsibility laid out in the Elections Operation Plan, with delegated authorities to oversee each other at the secretariat level. Further, CMD-Kenya noted that there should be clarity on the roles of committees specified in the Terms of Reference, including division of roles, responsibilities, authority, and accountability between commissioners and staff.

53 On the nomination of Commissioners, CMD-Kenya proposed that commissioners be recommended from and represent political parties. The criteria should be pegged on the strength of a political party based on the percentage of the national votes garnered in the previous general elections. Fellow commissioners should elect the Chairperson. They opined that the starting point should be with the 2022 General Elections. In their opinion, the formula had worked well in the nomination of the Commission of Revenue Allocation Commissioners and could be replicated with IEBC.

54 CMD-Kenya further proposed that IEBC Commissioners be elected to office twelve months after elections and should hold office for only one term.

55 It was the submission of the **Institute of Certified Public Accountants of Kenya (ICPAK)** that there was a need to amend the provision on qualifications for appointment of the chairperson to the IEBC as the current provisions ring-fenced the position of Chairman to legal professionals, leaving out other

competent Kenyans and professionals. It was their position that the role of the Chairman was a management and leadership role and not a judicial role, and thus, the qualification requirements for the Chairmanship needed to be reviewed. They noted that the current requirement was discriminatory and precluded other Kenyan professionals who could have the competence to discharge the functions of the office of the chairman. They proposed that the IEBC Act 2011 be amended by deleting Section 6 and replacing it as follows:

> *"(1) A person shall be qualified for appointment as the chairperson of the Commission if the person—*
>
> *(a) holds a degree from a recognised university in public administration, public finance, governance, electoral management, social science, or law;*
>
> *(b) has proven experience in any of the fields specified in paragraph (a) of not less than fifteen years;*
>
> *(c) meets the Constitutional requirements of leadership and Integrity.*

56 ICPAK noted that Article 86 (b) of the Constitution provides that the votes cast should be counted and tabulated and the results announced promptly by the presiding officer at each polling station. Thus, it was their view that the composition of the Commission should ensure that at least one member of the committee had relevant qualifications and expertise in audit, financial management or accounting with experience and knowledge in risk management and is a member of a professional body in good standing. In addition, the Commission should co-opt other members with relevant expertise, such as Information Technology, as and when the need arises. They, therefore, proposed an amendment to the First Schedule of the Independent Electoral and Boundaries Commission Act in paragraph 3 (4) to add the words "one of whom shall be a member of the institute of certified public accountants" after the words "six persons for appointment as members."

57 ICPAK observed that there was a lack of succession planning at the Commission since the terms of all the members lapsed at the same time. To address succession planning, ICPAK proposed that Commissioners' appointment and tenure be staggered to ensure a phased transition and limited to not more than two terms of three years and that the recruitment process of commissioners should be initiated at least three months before the end of the tenure, for a seamless transition. To achieve this, ICPAK proposed amendment to the First Schedule of the Independent Electoral and Boundaries Commission Act by deleting paragraph (4) (i) (e) that states that *"The President shall, within seven days of receipt of the names approved by the National Assembly, by notice in the Gazette, appoint the Chairperson and the members of the Commission"* and replace it thereof with *"The President shall, within seven days of receipt of the names approved by the National Assembly, by notice in the Gazette, appoint the Chairperson and the three members of the Commission and two other members after six months and one member after another six months"*

58 On the process of recruitment of commissioners, ICPAK opined that their appointments must be made competitively, and a private independent firm does shortlist and interviews with experience in executive recruitment. This will ensure the IEBC is independent, impartial and accountable. To realise this, ICPAK proposed that the First schedule of the Independent Electoral and Boundaries Commission Act be amended to remove the selection committee and replace it with a private independent firm with experience in executive recruitment.

59 **The Kenya National Chamber of Commerce and Industry (KNCCI)** informed the Committee that the business community bore the brunt of the chaos of a compromised or presumably compromised commission and election. They noted that the electoral commission must not only be above board but must also be seen by the electorate to be above board. As such, they were of the view that the Commission should not be left to the

determination of politicians alone but must also engage the citizens and the business class.

60 KNCCI stated that the electoral process could be improved by ensuring the process of appointment of commissioners was open, inclusion in the nomination of commissioners, civic education on electoral processes, politicians taking a back seat in the appointment of commissioners and introducing civic education as a course in college, university and secondary schools.

61 ***Mkenya Daima***, a civil society organisation, was of the view that IEBC had been paralysed by the failure to appoint new commissioners as essential functions such as boundary delineation and elections could not be held in the absence of Commissioners. While noting the urgency of appointing commissioners, they called on political players to allow the legal and court-sanctioned processes for the appointment of Commissioners to proceed.

62 **The International Commission of Jurists (ICJ)**, like the Centre for Multiparty Democracy, cited that the IEBC significantly lacks public trust and confidence, owing to the systemic crippling of the Institution. This has been demonstrated through politically motivated removal of Commissioners, failure to appoint competent commissioners, and failure to appoint Commissioners on time. Other challenges they observed include failure to adequately resource the IEBC with the requisite funds to undertake its processes, among others.

63 The ICJ also noted that there was a need for increased accountability and transparency in the IEBC's activities, particularly concerning electoral processes and decision-making. They, therefore, proposed that there should be meaningful engagement between IEBC and various stakeholders, including political parties, civil society organisations and citizens, to ensure that IEBC is inclusive and representative of diverse interests.

64 The ICJ also proposed that the appointment of commissioners should be made at least two years before the General Election and that the

recruitment of commissioners be staggered to facilitate knowledge transfer and institutional memory. They further proposed the establishment of clear roles between commissioners and the chairperson of the commission and that the current structure of hiring core professional and permanent secretariat staff for efficient, transparent and credible elections be maintained.

65 On the Selection Panel, ICJ was of the view that the Panel should be reconstituted and civil society should be represented in the Selection Panel.

66 **The Law Society of Kenya (LSK)** noted that the IEBC Selection Panel had been unable to undertake its mandate partly because of the ongoing dialogue. He submitted that there was an urgent need to reconstitute the Commission as there are urgent issues that need to be addressed. He noted that the main challenge facing the process is one of confidence in the Selection Panel, given the time and the circumstances under which the panel came into place. There was, therefore, a need to create a balance between the question of legitimate political confidence in the process leading to the formation of the IEBC Selection Panel and the legal framework.

67 ***Maendeleo Ya Wanawake* Organisation (MYWO)** supported the proposed restructuring and reconstitution of the IEBC to address identified gaps. In regard to the IEBC Secretariat, MYWO proposed that they should undergo capacity building given the sensitivity of their job. They averred that the Secretariat needed to win public confidence that it was professional, inclusive and impartial. In addition, they stated that all players should agree upon the IEBC Selection Panel and should be inclusive and transparent with the selection process. They further stated that the selection panel commits to selecting highly competent commissioners that Kenyans have confidence in.

68 **The Turkana Professionals Association (TPA)**, in their submission to the Committee, noted that delayed recruitment of Commissioners of IEBC was a disservice to the country on matters of policy, strategy, oversight and

representation. TPA also believed that IEBC restructuring should focus on retaining the current permanent, professional and experienced Secretariat as recommended by the Kriegler Report.

69 The Turkana Professionals Association recommended that an independent panel appointed by the President should interview and recommend for appointment members of the Commission to the President. The recruited commissioners should be persons with experience in election management and democracy and should serve for six (6) years. They also recommended increasing the number of Commissioners to nine, one of whom should be from the Turkana Community since they were under-represented in public service employment. TPA further recommended that Parliament should strengthen legal frameworks governing the conduct of elections and boundary delimitation in Kenya.

70 ***GEMA WATHO*** called on the Committee to consider the criteria for the appointment of IEBC Commissioners and whether they should be appointed in the same way as members of other independent Constitutional Commissions.

71 **The Office of the Registrar of Political Parties (ORPP)** called for fast-tracking of the reconstitution of IEBC in order to avert a possible constitutional crisis as well as address critical outstanding processes.

72 **Professor Githu Muigai,** Attorney General *emeritus*, stated that there was an urgent need to reconstitute the IEBC. During the recruitment process, he submitted that there was a need to have a robust process so as to create an IEBC that had public confidence. He supported the use of a fully professionalised model of recruitment rather than the IPPG process.

73 The Attorney General *Emeritus* was also of the view that there was a need to address the inherent state of instability of institutions that had become a common occurrence. Like ICPAK, he agreed with the proposal that the Chair of the Commission does not need to be a lawyer since the position of chairperson was a management position.

74 **The IEBC Selection Panel** informed the Committee that they had paused the recruitment exercise for chairperson and members of the Commission due to litigations in court and partly to give an opportunity to the outcomes of the National Dialogue Committee. They proposed that the Selection Panel be allowed to continue with the process of recruitment and that political actors engage at the level of selection of names to be forwarded to parliament from the list of nominees competently chosen and forwarded to the President by the Panel.

75 **The Public Service Commission (PSC)** proposed that for purposes of objectivity and independent identification of members of IEBC, the framework and process of restructuring and reconstitution of IEBC as an independent Commission should be defined in a manner that would not be subject to interference or influence by various quarters of society including political parties. They further stated that the process should be shielded from political party interests that ultimately cast aspersions on the results of the election.

76 The PSC also recommended that the process of appointment of persons as chairpersons and members should be competitive, objective and fair and should safeguard the interest of the major stakeholders, particularly the people of Kenya, rather than a select few segments of the society.

77 **The National Council of Churches of Kenya (NCCK)** recommended that political parties should not play a role in the process of appointment of IEBC commissioners as it had not been successful in the past. They observed that expansion of the existing Selection Panel by adding new members nominated by political parties would form a panel similar to the 2016 one that nominated the last Commission. They also noted that if the Selection Panel was reconstituted and some members were removed while others were retained, it would create a Panel that would be considered overly political, with the implication that retained members were those who agreed to follow some political leaning. The NCCK averred that in the event that the Selection Panel was facilitated to complete its work, the prevailing

discontent would persist. It was their recommendation, therefore, that the Selection Panel should be reconstituted as per law to facilitate a mutually agreed upon process. Further, NCCK proposed that the IEBC Act be amended to provide that in future processes, the Selection Panel would present only one name for the chairperson nominee and six nominees for the position of Commissioners.

78 **Mt. Kenya Jurists** proposed that the IEBC Act be amended to provide that the Presidential election results would only be announced after the same had been verified and collated by the majority of the commissioners sitting and upon attestation by not less than five (5) commissioners. They also proposed an amendment of the IEBC Act 2011 to provide that the entire IT infrastructure system be procured through total participation of all political parties fielding a presidential candidate and that there shall be no IT election materials that shall be hosted and secured outside the country. Further, the IEBC shall hold and own the exclusive copyright to the said IT materials.

79 ***Kenya Kwanza* Alliance** noted that there was an urgent need to reconstitute the IEBC to undertake delimitation and conduct seven pending by-elections. They, therefore, proposed that the process of recruitment of the Commission by the Selection Panel should be left to continue. Further, parliament and the executive should allocate IEBC an adequate budget to be able to undertake the delimitation exercise.

80 ***Azimio la Umoja* One Kenya Coalition** noted that the issues identified with the 2022 Presidential Elections included failure to release logs and publish the last presidential election results from all the constituencies as required by Article 138 of the Constitution. It was their view that the biggest threat to independence of the Commission appeared to be Chairperson and CEO and the legislation that gave powers to the two offices. They noted that due to the pending urgent matters to be undertaken by IEBC including by-elections in Banisa Constituency and several wards and outstanding electoral assignments and audit, there was need to establish an Interim

IEBC. It was their proposal that the Interim Commission should have clear mandates and timelines. They however noted that their proposal to establish an interim IEBC was not possible in light of Article 250 of the Constitution.

81 On reconstitution of the IEBC, the *Azimio* Coalition submitted that there was need to carry out a comprehensive reform of the Commission including cleaning-up of the secretariat and returning officers. They therefore proposed partial reconstitution of the Commission for the purpose of by-elections. Since quorum of IEBC was three, NADCO could recommend partial commission of 3 or since by-elections were a replica of general elections, IEBC Secretariat could perform that function in the immediate term.

82 *The Azimio* Coalition also proposed that Article 138 of the Constitution be amended from tally and verify the count to tally and declare the votes at the Constituency level. Amending Article 86 would provide for result declaration in addition to tallying and announcement while Article 138 should be amended to read IEBC instead of chairperson.

83 As short-term measures the *Azimio* Coalition proposed review of IEBC Act in preparation for the appointment of the seven (7) commissioners such that three (3) Commissioners would be recruited and be charged with boundaries delimitation and alteration in accordance with Article 89 and 188 of the Constitution while three (3) other Commissioners would be recruited to handle electoral issues including elections and facilitation of audit of the 2022 elections. The two groups of commissioners to be housed separately. However, the whole commission would approve the matters for compliance purposes. Further that IEBC should be full time and Commissioners should elect one of their own to be chairperson. The chairperson appointed should be a person of integrity and with extensive management and leadership experience.

84 The Coalition also recommended that the Commission should hire new staff of very high integrity to work under the Commission including a new CEO as per Article 250 (2) of the Constitution.

85 On appointment, the *Azimio* Coalition proposed that government and opposition parties should give names in the ratio of 50:50 who would be subjected to constitutional processes for hiring state officers. Side "A" proposed commissioners to fill in positions of two commissioners, both to be in the boundaries Committee and side B to fill in four positions of commissioners, one for boundaries and three for elections.

86 Like ICPAK, the *Azimio Coalition* also proposed that requirements for chairperson to be a lawyer should be reviewed as it was not a legal position and encouraged discrimination against other professionals.

87 They also proposed that Presiding Officers and Returning Officers should announce results at polling stations and constituency headquarters and pin them up. The results should remain pinned up for at least six days. Further, they proposed that the law should prescribe very serious penalties for IEBC officers who commit offences, especially relating to changing the will of the voters.

88 *The Azimio* Coalition also proposed that there should be a requirement that elections be financed by Kenyan taxpayers' monies only.

89 **Kenya Conference of Catholic Bishops (KCCB)** noted that the main challenges that faced IEBC include perceived conflict of interest by the President in appointing the chairman and the commissioners, perceived partisanship of the Commission and compromise of the secretariat and lack of clarity on the roles of the chairman, the commissioners and the secretariat. Thus, to address these challenges, KCCB proposed that Articles 88 and 250 of the Constitution and IEBC Act be amended to provide for an independent body to appoint the chairman and commissioners through a fair, transparent and acceptable process. Further that the selection process should involve all the major stakeholders and not only the political parties.

90 In addition, KCCB proposed amendment to the IEBC act to provide for vetting of IEBC Secretariat staff and that the field staff shall be hired on a need basis.

91 **Hon. Amos Wako,** Attorney General *Emeritus* was of the view that the country had experimented with three ways of appointing commissioners in the past. The models include a government controlled commission, IPPG and Expert model, all which had produced different results.

92 He proposed that the country could adopt a mixed system of IPPG and expert model in appointing commissioners, whereby some commissioners were nominated by political parties while others appointed through a selection panel. He proposed that the top two/three political parties should each nominate one person and the rest of the political parties jointly nominate one person for direct appointments to the IEBC. He stated that the Political Parties Liaison Committee (PPLC) established under Section 38 of the Political Parties Act could play a role in nominating the representatives of political parties to the Commission. The persons to be appointed should be persons of integrity with well-known reputation.

93 **Electoral Law Governance Institute for Africa (ELGIA)** stated that in designing electoral model, Kenya has experimented with various designs of the electoral management bodies, tinkered with the law, adjusted regulations and changed personnel all with mixed fortunes. ELGIA stated that reforming IEBC and developing an institutional Management Design should take an in-depth assessment of the election management framework. In particular, the design should review the constitutional provision regarding the establishment of the IEBC; protection of independence; appointment of commissioners; security of tenure and procedure for removal; financial and operational independence; establishment of secretariat and its relationship with the Commission; employees of the Commission and funding of the Commission.

94 Therefore, to reform IEBC, ELGIA proposed that there should be increased clarity in the relations between the secretariat and the commission in line

with Sec 11A of IEBC Act. The Terms of Reference of commissioners and senior management should be clear (modelled around the Ghana Electoral Commission). ELGIA also proposed use of IPPG model of appointing commissioners involving a combination of experts and nominees by political parties.

95 **Homa Bay Interface Community Health Desk** were of the view that there was a need to abolish the National Tallying Centre as that was where the electoral problems happened. They proposed establishment of Polling Station Tallying Centres and embracing electoral colleges in voting.

96 **The Trans Nzoia County Communities Council delegation** was of the view that electoral justice could be achieved through transparency and accountability as stipulated in Article 86 of the Constitution. They therefore called for transparency and accountability in conducting elections.

97 **ICT Association of Kenya** was of the view that the current process of recruitment of commissioners was an inquisitive process as it was done by persons appointed by entities from across the country represented by the Parliamentary Service Commission, the Inter-Religious Council, the Public Service Commission and the Law Society of Kenya. Thus, as contextualised in the Constitution, IEBC was properly formulated. They therefore proposed the selection panel model as a more favourable method for purposes of getting a professional Commission than IPPG.

98 **The Council of Governors** supported the Panel model of recruitment of IEBC Commissioners.

99 **The Kenya National Commission on Human Rights (KNCHR)** observed that the Constitution provided firm bedrock for the establishment of an Election Management System that would facilitate the exercise of political rights under Article 38 of the Constitution. The system comprised the laws, policies, key and auxiliary institutions that were charged with the responsibility of conducting elections. KNCHR informed the Committee that to safeguard the political rights of Kenyans as provided for under Article 38 of the Constitution, the Commission undertook monitoring of the electoral process

to ensure that human rights principles and standards were promoted and protected during elections, focusing on scrutinising legislative review to ensure that the rights of voters and candidates were guaranteed throughout the process. KNCHR stated that restructuring and reconstitution of IEBC was crucial and an imperative that should proceed with haste. The Commission noted with concern the frequent amendments to the law on the composition of the Selection Panel at every turn. It was their view that that did not augur well and contributed to feelings of suspicion and mistrust.

100 KNCHR proposed an inclusive and diverse selection panel of between 9-12 people; minimal or no participation by political parties and entrenching into law that amendments to the composition of the panel do not take effect if the panel was to be reconstituted within 12 months of the amendment. KNCHR further averred that for inclusivity there was need to take into consideration PWD, gender, civil society, academicians, professional societies, private sector, religious groups, ethnic diversity and youth.

Committee Observations

101 The Committee observed that—

(a) Electoral frameworks, including the choice of electoral system and the design of electoral administration determine both the outcome of the elections and the credibility of electoral processes. It is therefore crucial to have an electoral body that builds trust, enjoys public confidence and is broadly acceptable by all political players.

(b) Various models of recruitment of IEBC Commissioners were proposed by stakeholders including selection panel; recruitment by an independent firm; recruitment by parliamentary political parties; and a mixed method approach comprising IPPG and selection panel among others. However, the majority of stakeholders preferred the recruitment of Commissioners by a Selection Panel with various proposals on the composition of the panel.

(c) The public proposed to have a broad base of stakeholders' representation that enhances inclusivity and builds confidence in the recruitment process.

(d) The process of recruiting the members of the Selection Panel should promote the national values and principles of governance provided for in Article 10 and values and principles of the Public Service as espoused in Article 232 of the Constitution.

(e) Electoral processes are largely technology driven. As such, there was need to include knowledge and experience in information, communication and technology (ICT) as one of the recognized qualifications for appointment as a member of the IEBC.

(f) There was need for proper succession management at the IEBC to facilitate smooth transition as well as reduce interruptions in the execution of the mandate of the Commission.

(g) Section 6 (1) of the Independent Electoral and Boundaries Commission Act, 2011 requires that the chairperson of the Commission shall be a person who is qualified to hold the office of judge of the Supreme Court. The public deemed this requirement as discriminatory based on the fact that the position of chairperson is largely a management and leadership role.

(h) The governance structure of the IEBC has brought about numerous organisational and management challenges over time including conflicts between the secretariat and the Commission and among the Commissioners.

(i) The following are the Commissioners of the Independent Electoral and Boundaries Commission (IEBC) who were in office during the general elections of 2022 and who managed the said elections: -

(i) Mr. Wafula Chebukati – Chairperson

(ii) Ms. Juliana Cherera – Vice Chairperson

(iii) Prof. Abdi Guliye – Commissioner

(iv) Mr. Boya Molu – Commissioner

(v) Mr. Justus Nyang'aya – Commissioner

(vi) Ms. Irene Masit – Commissioner

(vii) Mr. Francis Wanderi – Commissioner

(j) It is a matter of public notoriety that, arising from the differences over the management of 2022 presidential elections results, the Commissioners split into two camps, comprising of the Chairman Mr. Wafula Chebukati, Prof. Abdi Guliye and Mr. Boya Molu in one camp, and Ms. Juliana Cherera, Mr. Justus Nyang'aya, Ms. Irene Masit and Mr. Francis Wanderi in the second camp.

(k) The Chairperson Mr. Chebukati and two other Commissioners Prof Guliye and Mr. Molu left upon their respective terms of office coming to an end, on 18th January 2023. The other Commissioners that is Ms. Juliana Cherera, Mr. Justus Nyang'aya and Mr. Francis Wanderi resigned on 5th December 2022, 3rd December 2022, and 7th December 2022 respectively. Ms. Irene Masit, on the other hand, was removed from office on 27th February 2023 through a Tribunal that was established pursuant to Article 251(1) and (6) of the Constitution of Kenya. Ms. Irene Masit had since appealed the decision at the High Court, but the matter had not been determined at the time of the drafting of this report.

(l) The NADCO invited the seven IEBC Commissioners to appear and give evidence before it on 28th September, 2023. Whereas Commissioners Ms. Cherera, Mr. Nyang'aya, Ms. Masit and Mr. Wanderi honoured the invitation by NADCO, Mr. Chebukati, Prof. Guliye and Mr. Molu declined and went further, in their replying letter, to question the jurisdiction of NADCO in the interrogation of the issues that were placed before it. As a result, the three forfeited the opportunity to be heard.

(m) In their submission to NADCO, Ms. Cherera, Mr. Nyang'aya and Mr. Wanderi complained of, among other things, external pressure that culminated in their 'forced' resignation from the IEBC. Similarly, Ms.

Masit lamented about sustained intimidation to which she had been subjected to over her stance on the presidential election results. As a matter of fact, both Ms. Cherera and Ms. Masit tendered their evidence virtually from an unknown location outside the country and alleged that they had been forced to flee the country since their lives were in danger.

Committee Recommendations

102 The Committee recommends that—

(a) The First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 be amended to establish a Selection Panel consisting of the following persons —

(i) two persons nominated by the Parliamentary Service Commission, representing the Majority party or coalition of parties and minority party or coalition of parties;

(ii) three persons nominated by the Political Parties Liaison Committee of whom —

(1) one shall be from a party other than a parliamentary party or coalition of parties;
(2) one shall be from a parliamentary party or coalition of parties forming national government; and
(3) one shall be from a parliamentary party or coalition of parties not forming national government.

(iii) one person nominated by the Law Society of Kenya;

(iv) one person nominated by the Institute of Certified Public Accountants of Kenya; and

(v) two persons nominated by the Inter-religious Council of Kenya.

(b) The Independent Electoral and Boundaries Commission Act, 2011 be amended to provide that the respective nominating bodies shall select the nominees for appointment through a competitive and transparent process and ensure that no more than two-thirds of the nominees are of the same gender.

(c) The Independent Electoral and Boundaries Commission Act, 2011 be amended to provide that in nominating, the persons to the Selection Panel, the respective nominating bodies shall ensure that no more than two-thirds of the nominees are of the same gender.

(d) The Independent Electoral and Boundaries Commission Act, 2011 be amended to provide that the Selection Panel shall within ninety days of appointment finalize the recruitment and forward the names of nominees to the President. The tenure of the selection panel may be extended by a resolution of Parliament.

(e) Section 6 of the Independent Electoral and Boundaries Commission Act, 2011 be amended to include experience in information and communication technology and accounting as professional qualifications for appointment as a member of the IEBC.

(f) The Independent Electoral and Boundaries Commission Act, 2011 be amended to provide that the secretary of the IEBC shall hold office for a term of three years and may be eligible for re-appointment for one further term of three years.

(g) The IEBC shall after every general election review its operations and make the necessary changes required to makes its operations more efficient, effective, transparent and accountable.

(h) The IEBC shall within three months of its reconstitution develop internal guidelines delineating the administrative and policy responsibilities of the Chairperson and Commissioners and institutional guidelines on administrative and policy functions.

(i) Article 138 of the Constitution be amended to provide for the role of the commissioners of the Independent Electoral and Boundaries Commission to verify the count of the presidential election results before declaration of results by the Chairperson of the Independent Electoral and Boundaries Commission.

(j) Amend the Elections Act, 2011 to provide for processing and declaration of results.

(k) In order to foster national cohesion, reconciliation and hasten healing over the 2022 presidential elections dispute, notwithstanding the veracity of the various claims made by Ms. Cherera, Mr. Nyang'aya, Ms. Masit and Mr. Wanderi, their matter should be referred to H.E. President William Ruto and Rt. Hon. Raila Odinga for an amicable settlement, preferably out of Court.

Boundaries Delimitation

Background and Context

103 The Independent Review Commission on the General Election of 2007 recommended that the basic principle for the delimitation of constituencies should be equality of the vote. The report further noted that criteria such as density of population, population trends, means of communication, geographical features and community of interest should be retained, but they should interfere minimally with the basic principle of equality of voting strength (IREC Report, 2009).

104 Article 88 (4) (c) of the Constitution mandates the IEBC to conduct delimitation of constituencies and wards.

105 That the last boundaries delimitation was conducted 2012 resulting in creation of 290 constituencies as contemplated under Article 89 (1) of the Constitution. Further, Article 89 (2) provides for the intervals of conducting boundaries delimitation which shall be between eight and twelve years and that such review shall be completed at least twelve months before a general election of members of parliament. Based on this premise, it is expected that the exercise should be completed by March 2024.

106 The Committee received a number of submissions on boundaries delimitation as summarized below.

Summary of Submissions by the Public

107 The following proposals were submitted with respect to boundaries delimitation —

(a) the IEBC should undertake the boundaries delimitation exercise in accordance with Article 89 of the Constitution;

(b) creation of additional counties, constituencies and wards;

(c) reduction of the number of counties and constituencies;

(d) remove the mandate of boundaries delimitation from IEBC and provide for a framework established under an Act of Parliament with multi-stakeholder representation that is set up every 8 to 10 years to do boundaries review. Others proposed establishing an Independent Commission on County Boundaries;

(e) amend Article 89 of the Constitution to provide for a more just formula in delimitation of Constituencies and Wards;

(f) need for a stand-alone legislation on boundary delimitation to guide the process;

(g) expedite enactment of the County Boundaries Bill, 2023;

(h) constituencies whose population fall below the population quota be protected;

(i) create an additional constituency in Isiolo County;

(j) number of counties to be maintained at 47 and constituencies at 290. However, Wards should be increased for constituencies which qualify for additional wards based on increased population and other factors to be considered in delimitation;

(k) there should be no creation of new constituencies before the next comprehensive review of the Constitution;

(l) amend the Constitution to introduce the diaspora as the 48th County;

(m) limit number of voters in a constituency to no more than 50,000 and not less than 20,000;

(n) creation of new counties based on tribal inclinations, specifically as requested by the Sabaot Community Leaders from Bungoma, should be avoided, since such action was dangerous to national unity;

(o) A Thika County should be Created to be hived off partly from Kiambu County and partly from Murang'a County

(p) More counties should be created in crowded areas; and

(q) Public participation should be undertaken in splitting Nakuru City County.

108 **The Central Organisation of Trade Unions, Kenya (COTU (K))** submitted that the boundary delimitation exercise should be suspended until electoral reforms are conducted. Further, COTU averred that in undertaking the delimitation exercise, IEBC must seek to maintain the already existing constituencies to avoid political upheavals in various parts of the country that might feel robbed.

109 **The Independent Electoral and Boundaries Commission (IEBC) Secretariat** submitted that Articles 88 (4) (c) and 89 of the Constitution and Section 4 of the IEBC Act, 2011 mandated the IEBC to conduct review of constituencies and Wards' boundaries. Thus, by dint of Sections 2, 4 (c), 36 and the Fifth Schedule of the IEBC Act, 2011, the Commission resolved all issues and completed the first review of electoral boundaries in 2012. There were 27 constituencies that were protected in the first review.

110 IEBC Secretariat further submitted that the delimitation exercise relies on the Constitution of Kenya 2010, the IEBC Act, 2011, the County Government Act, 2012, the Urban Areas and Cities Act, 2011, the Survey Act, 1961 (Rev 2020) and Statistics Act, 2006. The Commission Secretariat submitted that they had commenced the delimitation exercise and expected to conclude by 5th March 2024.

111 The Commission Secretariat averred that they had experienced a number of challenges in undertaking boundaries delimitation including policy, strategy and operational uncertainties arising from delayed recruitment of chairperson and members of the Commission, and as such, it was unlikely that the IEBC would complete the exercise on time i.e., March 2024. Other challenges they cited included gaps and ambiguities in the law (Section 36 *vis-à-vis* the Fifth Schedule which was already spent); emerging variation in

population and areas; conflicting memoranda by various parties from same region, budgetary gaps, possibility of protracted litigation and risk of acrimony and violence during public hearings.

112 IEBC Secretariat proposed fast-tracking the recruitment of IEBC chairperson and members of the Commission; review of the statutory framework for delimitation of boundaries by providing exhaustive framework of the procedure for actual delimitation in the Fifth Schedule of the IEBC Act as reviewed in the IEBC Amendment Bill, 2021; that the Commission be given at least 18 months to complete the boundaries delimitation exercise from the date of appointment of the Chairperson and members of the Commission and allocation of sufficient funds to complete the process.

113 **Kenya Women Parliamentarians Association (KEWOPA)** observed that the process of boundary delimitation was a function of the IEBC to be undertaken periodically as provided in Article 89 (3) of the Constitution. They further observed that the delimitation of boundaries had not been carried out since promulgation of the Constitution and was therefore long overdue.

114 **The Inter-Religious Council of Kenya (IRC)** observed that boundary delimitation was an emotive and political issue that attracted a lot of public interest. They observed that delimitation called for full and meaningful participation of all concerned communities including women and other vulnerable groups as key stakeholders.

115 IRC recommended the removal of boundaries delimitation function from the IEBC and assigning it to a new boundaries body. The function should be located in a framework established by an Act of Parliament with multi-stakeholder representation set up every 8-10 years to do boundary review as is the case in the United States of American and South Africa. That will enable IEBC to deal with election matters and shield the important process of boundary delimitation from electoral politics.

116 **The Political Parties Liaison Committee (PPLC)** submitted that IEBC should review boundaries and that PPLC be involved. They proposed that PPLC be allocated a minimum of two slots in each of IEBC's task forces and working committees on the review of boundaries.

117 **The Elections Observer Group (ELOG)** stated that there was a need for stand-alone legislation on the boundary delimitation to guide the process.

118 **The International Commission of Jurists (ICJ)** proposed that Parliament should establish a framework as per Article 188 of the Constitution so as to address disputes related to county boundaries and to provide a structured process for resolution of disputes. They also recommended that Parliament should address the representation of marginalised groups in line with Article 100 of the Constitution, through a legislation that actively promotes the representation of ethnic minorities and marginalised communities in both Parliament and County Assemblies.

119 **The Centre for Multiparty Democracy Kenya (CMD-Kenya)** submitted that IEBC should be enabled to expedite implementation of Articles 81 (d) and 89 (7) (b) of the Constitution to ensure adherence to the rule of law and fair representation. Additionally, they proposed that the delimitation of boundaries should start by protecting the 290 constituencies and 47 counties in perpetuity. The focus should be placed on overpopulated constituencies based on the population quota through creation of new constituencies or additional MPs.

120 **Institute for Certified Public Accountants of Kenya (ICPAK)** observed that there was a need to establish a clear and transparent process for boundary delimitation and that IEBC should be facilitated and allowed to undertake this exercise well in time for smooth preparations of the 2027 elections on the basis of new electoral Units.

121 ICPAK further proposed that IEBC should be guided by strict adherence to the provisions of Article 89 of the Constitution and should ensure that no region gets more seats in parliament than others.

122 **Kenya National Chamber of Commerce and Industry (KNCCI)** recommended that for boundaries delimitation to be objective, IEBC must adhere to Article 188 (2) of the Constitution.

123 ***Mkenya Daima*** submitted that boundaries delineation was a legal requirement that needed to be undertaken expeditiously. They proposed that the appointment of Commissioners should be done urgently.

124 They also submitted that in undertaking the delineation, there was need to remain cognizant of the economic pressures on the country, and thus the exercise should not create a large tax burden on the citizens by creating more elective posts. They were of the view that increasing elective posts was not necessarily equivalent to the voice of the citizens being heard but will further increase the cost of living.

125 **The Law Society of Kenya (LSK)** submitted that there was an urgent need to reconstitute the Commission to be able to undertake boundaries delimitation. They further noted that boundaries delimitation was tied to the question of the political legitimacy of the selection process of the IEBC commissioners. After reconstitution of the IEBC, it should begin the process of delimitation pursuant to the Constitutional requirements.

126 ***Maendeleo Ya Wanawake* Organisation (MYWO)** recommended that the boundaries delimitation exercise should be carried out as per the Constitution, taking other aspects such as population, ethnicity, geographical size, common interests and history of marginalisation into consideration.

127 **Gema Watho Association** observed that boundaries were crucial in fair distribution of resources. According to the Association, it was important to ensure that the constituencies with high population get resources fair to the people. They proposed that boundary reviews should consider the aspect of one man one shilling. To cushion the areas that have historically had economic disparities, they suggested that the government should utilize the equalisation fund to bridge the gap.

128 GEMA WATHO Association also observed that Kenya was divided in three broad ways namely 47 counties (First Schedule), 290 constituencies (Art 89) and 1450 wards (by dint of Gazette Notice published under Article 89). They noted that however, from the administrative standpoint, Kenya was divided into regions, sub-counties, divisions, locations and sub-locations. These administrative units were determined by the National Government and their boundaries were not precise as the exercise took place continuously and was not governed by any national statute, rules or regulations. The foregoing notwithstanding, such administrative units were crucial in the delimitation of constituencies and wards for the purpose of delimitation of electoral areas, sub-locations are used as the smallest units for carrying out the exercise.

129 The Association informed the Committee that following the last delimitation exercise and the publication of the final report and the National Assembly and County Assembly Wards Order, 2012, a number of complaints were raised regarding the manner in which 80 constituencies and 1450 wards were created, their distribution, their names, boundaries and areas of allocation. The matter was filed in Court.

130 In *Republic v Independent Electoral and Boundaries Commission & another Ex-Parte Councilor Eliot Lidubwi Kihusa & 5 other* [2012] eKLR, the High Court made recommendations for implementation prior to the second boundaries review process. They included that Parliament should develop a legal framework for the creation and determination of sub-locations, failure to which it will open doors to gerrymandering by those who have influence to create sub-locations to suit their tastes. Further that the process adopted to determine sub-locations must consider the obligation of IEBC to progressively achieve population parity.

131 The High Court also recommended that Parliament must address the issue of county boundaries, as in some instances there were conflicting or inaccurate information as to the counties where certain sub-locations were located.

132 GEMA WATHO further observed that the absence of IEBC Commissioners was a major challenge facing the delimitation exercise, as it is a function of the Commission as stipulated in Article 88 (4) (c) of the Constitution. The Association recommended that Parliament should fast-track the enactment of a law to govern creation and determination of sub-locations and other administrative units in compliance with the High Court decision and address the issue of county boundaries and creation of new counties. They further recommended that a clear legal framework to determine the boundaries of cities, municipalities and any other major urban cities be developed.

133 The fate of the 27 constituencies that were secured through Section 27 (4) of the Sixth Schedule was another matter which in the view of the Association could pose a challenge to the National Dialogue Committee.

134 **The Independent Policing Oversight Authority (IPOA)** submitted that boundaries delimitation was associated with inter-communal conflicts and security concerns. They therefore called on the Committee to consider the matter with the sensitivity it deserved.

135 **The National Cohesion and Integration Commission (NCIC)** informed the Committee that from their work, they had noted that 33 out of the 47 counties had boundary disputes. They recommended that delimitation of boundaries should be done by IEBC and in such a way that it would not exacerbate the existing boundary disputes or deepen structural inequalities or lead to violent conflicts among communities.

136 The NCIC also called for implementation of the Truth Justice and Reconciliation Commission (TJRC) Report for national unity and cohesion in the country.

137 On ethnic balkanisation, NCIC was of the view that the naming of counties in Kenya was one of the factors that contributed to ethnic profiling and conflicts as it created an impression that the county belonged to a certain ethnic group. They therefore proposed renaming some counties to move away from ethnic identities. The NCIC was also concerned that out of the

290 constituencies, approximately 70% were still divided within ethnic and clan lines. They proposed that during delineation, they should be redrawn so ensure inclusivity in all counties.

138 **Professor Githu Muigai,** Attorney General *Emeritus* submitted that there were already too many constituencies and counties that were created by the Constitution. He proposed that the constituencies should be reduced to about 100, and each of them be represented by two members, a man and a woman elected through universal suffrage. This in his opinion would also address the challenge of not more than two thirds gender principle.

139 **The Council of Governors** noted that the process of review of boundaries was due and should be finalized by March 2024, which was the 12-year outer limit required by Article 89 (2) of the Constitution. It was their submission that the continued delay in the reconstitution of the IEBC, the body mandated under the Constitution to review the boundaries of the electoral units, was unfortunate. The COG called upon the Committee, leaders and political actors to give a chance to the Selection Panel to complete the exercise of selection of IEBC commissioners within the stipulated timelines to undertake this important exercise.

140 The COG further urged Parliament to fast-track the enactment of the County Boundaries Bill to provide for the legal framework for review of the County boundaries as provided for under Article 188 of the Constitution. They noted that the bill would address the continued disputes between County Governments on boundaries and shared resources.

141 **The National Council of Churches of Kenya (NCCK)** was of the view that the extent of delimitation in accordance with Article 89 at constituency level entails change of boundaries to balance population quota and change of name. With respect to wards, they noted that it will entail change of boundaries, creating new wards/ removing existing wards and change of name. They therefore proposed that NADCO should not consider any discussion that would result in any changes on number or boundaries of counties, or the number of constituencies.

142 NCCK recommended that the National Dialogue Committee should facilitate selection of new IEBC commissioners in the soonest manner possible.

143 **FCPA Edward Ouko, former Auditor General** was of the view that presidential power had been used through successive regimes to exclude and marginalize people on the basis of ethno-graphic considerations. He was of the view that state resources and opportunities had been disproportionately directed to the favoured regions of successive Presidents (in what he referred to as *"rigged development"*).

144 **Hon. Amos Wako,** Attorney General *Emeritus* informed the Committee that during the 2010 Constitutional review, the Attorney General provided the list of districts which had been recognised in law in the Provincial and District Boundaries Act adopted in Parliament in 1992 to guide delimitation of counties. This was because there was no consensus by stakeholders on the number of counties to be established. This led to the current 47 counties as specified in the First Schedule of the Constitution. It was his view that NADCO has a very limited timeline to be able to consider the proposals for creation/ reduction of counties. He proposed that if NADCO sees merit in either adding or reducing counties, it can recommend that the matter to be separately handled in depth by another body to look into it more carefully.

145 The **Coast Parliamentary Group (CPG)** proposed that all the 290 constituencies as currently established under the COK should not be interfered with, unless there is need to add new constituencies justified by population increase. They also proposed that the exercise of boundaries delimitation be undertaken by IEBC devoid of political interference, in recognition of communities' natural boundaries and relations.

146 Additionally, CPG stated that Colonial Coast region boundaries (Coast Province) should not be changed and that a permanent settlement on encroachment from other counties of Garissa, Makueni, Kitui and Kajiado be pursued.

147 **Electoral Law Governance Institute for Africa (ELGIA)** submitted to the Committee that the second delimitation review exercise that the country was expected to undertake in accordance with Article 89 was expected to have commenced after eight years in 2020 and concluded by March of 2024. Further, it was their submission that full implementation of Article 89 implied that there would be no protected constituencies during the second review.

148 ELGIA proposed that Parliament or the Judiciary should consider increasing the timeframe for the second boundaries delimitation exercise (18 months requested by IEBC). They also proposed that a legal framework be developed on boundaries delimitation; guidelines on the application of the criteria, methodology and procedure for boundaries delimitation; effective public consultation on regulations for the conduct for the delimitation; development and publication of detailed administrative procedures and guidelines for the conduct of boundaries delimitation, including civic education and public participation, resolution of complaints/ disputes and publication of the Boundaries Delimitation Report Final Order.

149 The **Kenya Conference of Catholic Bishops (KCCB)** presented that the delimitation of most districts, which were transformed into counties during Constitutional review in 2010 was conducted during the colonial regime and were not based on population while the other districts created after independence (and were made counties) were created politically. Thus, the previous delimitation of constituencies and the wards was conducted in a manner that did not take the factor of population seriously. This had been the cause of disagreements between regions. KCCB therefore proposed that Article 6 of the Constitution be amended to correct the disparity and provide for a formula for delimitation of counties as well as Article 89 to provide for a more just formula in the delimitation of constituencies and wards.

150 **Trans Nzoia County Communities Council delegation** was of the view that boundaries delimitation was outside the mandate of NADCO and was a mandate of IEBC though the office was vacant. They called on the Committee to fast track the County Boundaries Bill, 2023 pending before the Senate.

151 The **ICT Association of Kenya** was of the view that as per the Constitution, the number of constituencies was prescribed and could not be altered. What could only be altered were boundaries and names of the constituencies. However, boundaries and number of wards could change. The Association recommended that the number of constituencies should not be altered, including retaining those that were perceived to be below population quota.

152 **Mt. Kenya Jurists** observed that boundaries were crucial in the distribution of resources. However, there were several challenges facing the delimitation of electoral areas including a moribund commission, yet delimitation was the mandate of the IEBC; determination of number of constituencies which would require amendment of Article 89 (1) of the Constitution and determination as to whether the 2023 General Election would be based on the existing 290 constituencies and 1450 wards whose names and boundaries the Commission was enjoined by Article 89 (2) to start reviewing by March 2024.

153 Further, they observed that although Kenya was divided in three broad categories into counties, constituencies and wards, from an administrative standpoint, the country was divided into regions, sub-counties, divisions, locations and sub-locations, determined by the National Government and their boundaries were not precise as their delimitation was not governed by any statute, rules or regulations. They proposed that Parliament should fast-track enactment of a law to govern the creation and determination of sub-locations and other administrative units in compliance with the decision of the High Court in *Republic v Independent Electoral and Boundaries Commission & another Ex-Parte Councilor Eliot Lidubwi Kihusa & 5 others*

[2012] eKLR. They also proposed that Parliament should address the issue of county boundaries, let alone the creation of new counties. In determining the boundaries of counties and administrative units, Parliament should ensure that there was a clear legal framework to determine the boundaries of cities, municipalities and any other major urban centres taking into consideration Article 89 (5) of the Constitution and preventing the political oppression and disenfranchisement of urban residents living in non-cosmopolitan counties and constituencies.

154 It was also their view that the NADCO would have to grapple with the fate of the 27 constituencies that were secured by Section 27 (4) of the Sixth Schedule. The process of appointment of commissioners, and whether they should be appointed the same way as other independent Constitutional Commissions should also be resolved quickly.

155 **Kenya National Commission on Human Rights (KNCHR)** noted that the Constitution attached importance to fair representation and provides that the IEBC must work progressively towards ensuring the number of inhabitants in each constituency was, as nearly as possible, the same. The Commission observed that international standards on boundary delimitation called for a process that abided by the rule of law, consistency with human rights standards and principles, and effective citizen participation. KNCHR proposed that IEBC should adhere to the legal framework regulating boundary delimitation including the times lines for boundary delimitation; the framework for the public participation process; and the resolution of disputes as provided for under Article 188 of the Constitution. Further, that boundaries delimitation exercise should factor issues regarding the representation of marginalized groups and ensure conformity with the principles of representation as envisaged under Article 100 by enacting legislation that promotes the representation of ethnic minorities and marginalized communities in Parliament and County Assemblies.

156 KNCHR stressed on the urgent need for boundaries review to redress cross-border disputes/ conflicts over markets and resources by adopting a Human Rights Based Approach to the exercise.

Creation of New Counties, Constituencies and Wards

157 **The Sabaot Community** submitted that the current counties and their boundaries were the districts that existed up to 1992 having been established by the colonialists hence forming a foundation of historical injustices suffered by the Sabaot Community that lives in parts of Bungoma and Trans-Nzoia counties. Others had also settled in Uganda.

158 In 1993, the government made Mt Elgon constituency a district to give the community some level of autonomy. This together with others brought the number of districts to 74 at the time of the promulgation of the new constitution in 2010. However, the present Constitution promulgated in 2010, established 47 counties. Mt. Elgon was not one of the counties established; hence reversing the administrative gains that some communities such as the Sabaots had gained with the 74 districts.

159 Presently, approximately 400,000 Sabaot people lived within the slopes of Mt. Elgon and were concentrated mainly, but not solely, in Mt. Elgon, Saboti and Endebess Constituencies. The remainder of the Sabaot were scattered in West Pokot Counties, Uasin Gishu County, and Maasai Land while others could be traced to Uganda, Sudan, Ethiopia and Tanzania where they were dispersed by the colonialists to those areas as documented in the Carter Land Commission of 1932 and Kenyan census population documents of 2009 and 2019).

160 The Community noted that Article 174 of the Constitution expressly gave privilege of self-governance to the people and enhanced participation of the people in governance. It equally recognized the right of communities to manage their own affairs in order to further their development. Further, it sought to protect and promote interest and rights of the minority and marginalized communities. It was against the aforementioned Constitutional underpinning that the Sabaot Community proposed an

amendment of the Constitution to increase the number of Counties and curve one for the Sabaot in Mt. Elgon.

161 They further stated that Article 188 of the Constitution provides for parameters of alteration of County boundaries. Those parameters were not applied in establishing the current County Boundaries and therefore they proposed a review of the current County Boundaries to conform to Article 188 of the Constitution.

162 They observed that the Sabaot Community had met all the above Constitutional requirements. They further submitted that the proposed county would amalgamate the current Mt. Elgon, Saboti and Endebess Constituencies. Alternatively, Mt. Elgon constituency could be retained as an independent county.

163 They also proposed that in the event it was not possible to create another county, then the Committee could consider recommending alteration of Bungoma and Trans Nzoia County Boundaries to have Mt Elgon Constituency moved from Bungoma County to Trans Nzoia County for governance reasons. It was their view that that option would not require a Constitutional amendment as it required only boundary alteration as envisaged in Article 188 of the Constitution.

164 They further proposed that in the event of a referendum to alter boundaries, it should be done only by electorate of the specific area of the proposed change as this would ensure that matters affecting minorities and marginalized communities were not subjected to majoritarian decisions.

165 On delineation of constituencies, the Sabaot Community was of the view that Mt. Elgon Constituency had remained to be among very few constituencies in Kenya that had never been sub-divided since independence, despite their size and population. The Constituency covered three sub-counties. They therefore proposed that the constituency be sub-divided into two (Mt Elgon East and Mt Elgon West), and additional Wards be created.

166 On delineation of wards in Mt. Elgon Constituency, they stated that, the following wards existed in the constituency: Cheptais, Chesikaki, Kapkateny, Chepyuk, Elgon and Kaptama wards. They proposed that to address the recommendation by the Parliamentary Report of the proposed Boundaries and Constituencies and wards by the IEBC (2012), eight wards be established in Mt. Elgon and named as follows: Chepkube, Sasur, Emmia, Chengeywo, Nomorio, Chemoge, Kaboywo and Chepkitale Wards. In Trans-Nzoia, the following eight wards be established; Chepchoina, Kaptegaa, Kisawai, Kinyoro, Kiboroa, Saboti, Grasslands and Matisi Wards.

167 Additionally, they proposed the delineation of Lwandanyi Ward into three wards. The rationale for this was that the Ward was the largest in Bungoma County with a population of about 27, 000 people. Due to its vastness, residents were not adequately receiving services such as bursaries, farm inputs and other social amenities. Residents of Malakisi and Lwandanyi locations had to travel long distances to access the ward office. They proposed sub-division of the Ward for proper distribution of the population and hence services delivery.

168 **Trans Nzoia County Communities' Council of Elders** opposed creation of Mt. Elgon County proposed by the Sabaot Community stating that the creation of the county went against the *Mabanga* Accord that sought to promote peace, unity, cohesion and equity in the larger western region. It was their view that establishing the county would make the other communities living in Trans Nzoia and Bungoma feel endangered and would affect national cohesion and threaten to ignite ethnic clashes. It was also their submission that claims of marginalisation of the Sabaot Community were not justified as they occupied various positions in the counties.

169 Trans Nzoia County Communities' Council of Elders however prayed for creation of three (3) additional constituencies from sub-division of Cherangany, Kiminini and Saboti constituencies. They also proposed additional wards to realize the essence of devolution.

170 **Wajir South leaders and elders** presented a memorandum to the Committee on creation of a County. They made a proposal to amend the First Schedule of the Constitution to introduce Wajir South County, which would be carved out of the larger Wajir County. The Wajir Leaders and Elders informed the Committee that Wajir South had a total land mass of 21,595 square Kilometers which translated to 38.69% of the total Wajir County land mass. Further, they stated that Wajir South was the second largest constituency in the country, with a population of 290,948 according to the 2019 census, constituting about 39.77% of the population of Wajir County. The Constituency had seven wards out of the total 30 wards in Wajir County.

171 In their justification, they cited that the people of Wajir South have suffered inequality, under-representation and attendant economic consequences thereby falling short of the aspirations of devolution. Further they averred that as constituted, the expansive nature of Wajir County had posed great challenges in bringing decision making to the grassroots and ensuring adequate representation of all communities living in Wajir County. They also stated that the current leadership of Wajir County had marginalized the residents of Wajir South in terms of employment, allocation of revenue and services provision. They disclosed that out of the total workforce of Wajir County Government of about 4750 employees, only 199 (4.19%) were from Wajir South region. Further, that in terms of equitable share of revenue, from the period 2013/2014 to 2021/2022, Wajir County had received about KShs.90.474 billion. Out of this amount, Wajir South had received about 5.33% of the sum total of the annual development allocations.

172 In terms of viability of the proposed Wajir South County, they stated that the region boasts of largest livestock markets and source across the northern region (including Somalia) that has remained stable over time. They stated that the constituency bordered with Somalia which presented an opportunity for cross border trade. They also stated that the region had large tracts of arable land that had the potential for national breadbasket

since the area had considerable amount of fertile soil, plenty of underground water and seasonal rivers and Lorian Swamp which drew water from (Ewaso Nyiro) which was largely underutilized.

173 Their prayer to the Committee therefore was creation of Wajir South County and that Wajir South Constituency be delimitated to create two additional constituencies (to make a total of three). They also prayed for eight (8) additional wards (to make a total of 15), noting that before devolution, Wajir South had a total of fourteen (14) wards.

174 **Senator Enoch Kiio Wambua**, MP Senator, Kitui County and Senate Deputy Minority Leader submitted a proposal to the Committee for creation of Mwingi County to be hived off from the current Kitui County. In his justification, he explained that creation of Mwingi County would bring resources and services closer to the people by splitting the expansive Kitui County into two counties and would ensure effective administration and management of the affairs of the vast county. It was also his view that the people of the greater Mwingi region lost out on county status in 2010 on a technicality as Mwingi District was not gazetted immediately after its creation.

175 He further submitted that as currently constituted, Mwingi region had three constituencies that is Mwingi Central, Mwingi North and Mwingi West with a cumulative population of 435,325 people according to the 2019 national census report spread in fifteen (15) wards.

176 Sen. Wambua further submitted that the proposals to establish Mt. Elgon County, Mwingi County and Wajir South County were backed up by a Parliamentary Caucus of 27 members of Parliament.

177 **National Parliamentary Caucus for additional counties (27 MPs)** submitted that during the drafting of the 2010 Constitution, the current delineation of counties adopted districts delineated in 1992 as the 47 proposed counties as those were the lawfully recognized administrative units under the District and Provinces Act as a compromised position following contentions by various factions on the optimum number of counties. Further, that despite

the initial intent of devolution to counteract marginalisation, various forms of exclusion persisted. Economic marginalisation was evident as smaller populations within counties faced restricted access to resources and opportunities, leading to poverty and inadequate services. Social marginalisation stemmed from exclusion from community activities and networks, contributing to discrimination and isolation. Moreover, political marginalisation was experienced by groups with limited representation, leading to unequal access to political processes and decision-making.

178 The Members of Parliament were of the view that the boundaries that existed, which provisionally adopted districts as counties, had inadvertently led to economic, social, and political marginalisation. As Kenya was composed of diverse nations and communities, lumping groups with different identities into the same administrative units had perpetuated unequal resource allocation and representation.

179 The members therefore proposed delineation of ten additional counties to address the historical marginalisation and for realisation of objects of devolution as per Article 174. The proposed counties included: Kuria, Teso, Mount Elgon, East Pokot, Mwingi, Gucha, Suba, Ijara, Nakuru West and Wajr South.

180 **The Turkana Professionals Association (TPA)** also presented a memorandum to the Committee on boundaries delimitation. The stated that Turkana County had six (6) Constituencies with 30 wards. The county covered 77,000 square km representing 13% of Kenya's landmass. As a region, the county was delineated into 15 territorial sections (geographical areas) and 27 grazing areas.

181 The Turkana territorial sections were divided into three major grazing units namely:

(a) Turkana North from Todonyang, Kibish, Lokitaung, Lokichogio, up to Kakuma

(b) Turkana Central covering Loima, Lodwar, up to Kalokol;

(c) Turkana South covering Lokichar, Kainuk, Lokori, Loriu, Parkati up to Kaapedo.

182 Those territorial sections and grazing areas were managed through an elaborate clan-based governance structure as referenced in *The Republic of Kenya: Turkana District Range Management Handbook, Vol. iii 9, 1994.*

183 It was their proposal that those three expansive territorial sections and grazing units informed the rationale for Turkana County to be delimited into three (3) counties, twelve (12) constituencies and sixty (60) County Assembly Wards (CAWs). That would accelerate social-economic, political and cultural growth and enhance sustainable development of the Turkana people.

184 TPA also stated that the massive landmass posed both logistical and administrative constraints for quick delivery of services to the residents. In addition, they stated that Turkana County has three international borders that require closer administrative units for effective and timely management of cross-border resource-based conflict.

185 In terms of viability, TPA stated that Turkana County was endowed with a wealth of natural resources that when well tapped could support not only the new proposed electoral and administrative units, but the current and the future Kenyan economy beside having the capacity to become a regional economic and commercial hub for Uganda, South Sudan and Ethiopia. The said resources included livestock sector, oil and gas, ground water resources, geothermal, solar and wind energy, mineral resources and labour.

186 TPA therefore proposed the creation of Turkana North, Turkana Central and Turkana South Counties. They also proposed six (6) additional constituencies and 30 more County Assembly Wards.

187 In addition to the delimitation of the county, they recommended review of Turkana County administrative boundaries and Gazettement of official place names in the maps to curb duplication of place names and land encroachment. They also proposed that the electoral boundary units in

Turkana County be aligned with administrative boundary units. For instance, some parts of Nakalale Ward were administratively in Turkana West Sub-County while it fell under Turkana North Constituency and some parts of Turkwel ward in Loima report administratively to Turkana Central Constituency.

188 **The Ilchamus Community** from Baringo County submitted to the Committee their quest for adequate representation in Parliament and in government. They stated that they were a community with a population of about 33, 000 and occupied two (2) wards in Baringo county namely Ilchamus and Mukutani Wards. The community had only two representatives (MCAs) representing the Community at the county level. They did not have representatives in Parliament.

189 They called on the Committee to consider Articles 100 and 89 in making proposals for creation of a Constituency for the Ilchamus Community. Article 100 provides for the promotion of representation of marginalised groups. Article 89 on the other hand recognizes the need for equitable representation and stipulates the criteria for constituency delimitation. It was their submission that the Ilchamus Community met the criteria and should be granted a constituency to ensure that their voice was heard, and their needs addressed.

190 Further, they informed the Committee of orders of the Court in Miscellaneous Application No. 305 of 2004 where the Court directed the then Electoral Commission of Kenya (ECK) or any other incoming body to create by an act or any other review being undertaken a constituency for the Ilchamus Community.

191 **The Coast Parliamentary Group** proposed creation of the following additional constituencies in the Coast regions: three (3) constituencies in Mombasa County; three (3) constituencies in Kilifi County; two (2) constituencies in Kwale County and one (1) additional constituency in Lamu County due to its uniqueness.

192 **The Kiambu County Leaders Forum** proposed that due to the population of Kiambu County which stood at 2,417,735 as per the 2019 KPHS, the county should be sub-divided into three counties as follows::

(a) Thika County – comprising of Thika, Juja, and Ruiru sub-counties. All these were highly urbanized constituencies with a total population of Thika East 38,966, Thika West 245,820, Juja 300,948 and Ruiru 371,111.

(b) Kiambu East County- comprising of existing Kiambaa with a population of 236, 400, Kiambu 145, 903, Githunguri 165,232, Gatundu South 122,103 and Gatundu North 109,870 sub-counties. It consisted of rural, urban and peri-urban areas.

(c) Kiambu West County- comprising of the existing Kikuyu with a population of 187,122, Kabete 199,653, Limuru 159,314 and Lari 135,303 sub counties. It consisted of rural, urban and peri-urban areas.

193 The Kiambu County Leaders Forum further stated that an analysis of the 2019 census based on the population of 475 million divided among 47 counties, indicated that the average number of people per county was 1,010,638. A number of counties had a population of above one million, whereas a number were below. They therefore proposed that no new county should be established in a county whose population was below the average per county and that the first priority in creation of new counties should be given to the eleven counties whose populations were above double the population average per county.

194 The Kiambu County Leaders Forum further proposed creation of seven (7) new constituencies in Kiambu as follows: Thika County three (3) new constituencies; Kiambu East County two (2) new constituencies; and Kiambu West County two (2) new constituencies. It was their submission that the creation of the proposed seven (7) constituencies in Kiambu County would help to address the economic injustice that its people had suffered since the promulgation of the 2010 Constitution.

195 **Mt. Kenya Jurists** also supported the creation of three counties in Kiambu County (Thika County, Kiambu West and Kiambu East) as presented by the Kiambu County Leaders Forum. Further, they proposed sub-division of Murang'a County into two counties as follows:

(a) Maragwa County- comprising of the existing Gatanga with a population of 187,989, Kandara 175,098 and Maragwa sub-counties.

(b) Murang'a County – comprising of Kangema with a population of 80,477, Mathioya 92,814, Kigumo 136,921 and Kiharu 88,193 sub-counties.

196 Mt. Kenya Jurists also proposed that Embu County be sub-divided into Embu and Mbeere Counties by curving Mbeere County as follows: from Embu County

(a) Embu county comprising of Manyatta and Runyenjes constituencies.

(b) Mbeere County consisting of the Mbeere North and Mbeere south constituencies.

197 Mt. Kenya jurists proposed a new county to be known as Kieni County be established consisting of Kieni East and Kieni West sub-counties of Nyeri County and Laikipia East Constituency of Laikipia County. Further that a new county to be known as Embakasi County comprising of the following constituencies should be curved out of the existing Nairobi and Machakos Counties:

(a) Embakasi East, Embakasi North, Embakasi South, Embakasi West, Embakasi Central with a population of 988,808 and Kasarani sub-county with a population of 780,656 of Nairobi County

(b) Athi River with a population of 322, 499 and Matungulu 161,557 sub counties of Machakos county

198 As a result of the creation of Embakasi City County as set out above, Mt. Kenya Jurists submitted that the boundaries of Nairobi City County should be altered as follows: to comprise the following constituencies:

(a) Westlands, Dagoretti North, Dagoretti South, Langata, Kibra, Roysambu, Ruaraka, Makadara, Kamukunji, Starehe and Mathare

(b) Kajiado North Constituency of Kajiado County

199 Mt. Kenya jurists also proposed that Nakuru County be split into two counties to create a new county to be known as Molo County to be curved out of Nakuru County comprising of the existing Molo, Njoro, Rongai, Kuresoi North and Kuresoi South Constituencies. Subsequently, Nakuru County shall comprise Naivasha, Gilgil, Bahati, Subukia, Nakuru Town East and Nakuru Town West. It was their considered view that the proposal to split Nakuru town among two counties was impractical and would disrupt the natural growth and best interests of the residents of Nakuru City.

200 **The Homa Bay Interface Community Health Desk** was of the view that Suba Community and Homa Bay Constituency had met population quota. They therefore proposed creation of Suba County and sub-division of Homa Bay Constituency into Homa Bay and Kanyanda Constituencies.

Committee Observations

201 The Committee observed that—

(a) Article 88 of the Constitution mandates the IEBC to undertake delimitation of boundaries of constituencies and wards. Further, Article 188 places the responsibility of alteration of boundaries of counties on Parliament.

(b) The Fifth Schedule to the Independent Electoral and Boundaries Commission Act, 2011 provides for the procedure for the first review of boundaries which was completed in 2012. In this regard there is need to amend the Independent Electoral and Boundaries Commission Act, 2011 to provide for procedure for subsequent delimitation of boundaries.

(c) The County Boundaries Bill, 2023 was under consideration in Parliament. The Bill seeks to provide for county boundaries, a mechanism for resolution of county boundary disputes. Enactment of the Bill will give effect to Article 188 of the Constitution by providing for the procedure for alteration of county boundaries and provide for the establishment of an independent county boundaries commission.

(d) There were proposals for creation of the following counties: Wajir South, Sabaot, Mwingi, Kuria, Teso, Mount Elgon, East Pokot, Gucha, Suba, Ijara, Nakuru West, Turkana North, Turkana Central and Turkana South, Thika, Kiambu East, Kiambu West, Maragwa, Mbeere, Kieni, Molo, Suba and Embakasi City counties.

(e) Most of the appeals for creation of new counties were based on claims of marginalisation and discrimination of minority communities in some counties in terms of development, resource allocation, services delivery, employment opportunities and county leadership among other reasons.

(f) Establishment of counties along ethnic groupings poses a risk of ethnic balkanisation and further polarisation of the country. Further, Article 188 of the Constitution stipulates the criteria for alteration of county boundaries.

(g) Article 89 of the Constitution provides that the IEBC shall review the names and boundaries of constituencies at intervals of not less than eight years and not more than twelve years. Considering that the last boundaries delimitation exercise was done in 2012, the Commission is expected to complete the next delimitation by March 2024. There was therefore a need to fast track establishment of the IEBC.

(h) Article 6 (1) of the Constitution provides that the territory of Kenya is divided into counties specified in the First Schedule to the Constitution. The creation of additional counties affects the territory

of Kenya which is a matter falling under Article 255 which calls for a referendum.

Committee Recommendations

202 The Committee recommends that—

(a) Article 89 of the Constitution be amended to provide that where for any reason the review of the names and boundaries of constituencies by the Independent Electoral and Boundaries Commission is not completed within the time stipulated under Article 89(2) or where there are justifiable reasons for the extension of the period for review, Parliament may extend the period provided for under Article 89(2) of the Constitution by a resolution passed by the National Assembly, with the support of a majority of all the Members of the Assembly; and the Senate, with the support of a majority of all the county delegations.

(b) The procedure for delimitation of the boundaries be provided for in the Independent Electoral and Boundaries Commission Act, 2011.

(c) Parliament shall within six months of the adoption of this report enact the County Boundaries Bill, 2023 to provide a legislative framework for review of the County boundaries as provided for under Article 188 of the Constitution.

(d) The IEBC to undertake boundaries delimitation of constituencies and wards as provided for under Article 89 of the Constitution.

(e) The National Cohesion and Integration Commission investigates the claims of perceived marginalisation and discrimination by Sabaot Community living in Bungoma and Trans Nzoia Counties; residents of Wajir South Constituency, Tiaty Constituency and Teso, Kuria and Suba Communities, with the objective of ascertaining the claims and extent of the marginalisation and discrimination and make proposals for promoting inclusivity and peaceful coexistence amongst different communities.

Audit of the 2022 Presidential Election

Background and Context

203 The country held its General Election on 9th August 2022. The results of the Presidential elections were publicly announced on 15th August 2023. However, prior to the announcements, there was a disagreement among the Commissioners over tallying and verification of the Presidential Election Results. The difference led four Commissioners to disassociate themselves from the results announced by the Chairman and two other Commissioners.

204 A number of petitions were filed in the Supreme Court of Kenya in accordance with Article 140 of the Constitution following the declaration of results. The Supreme Court upheld the results of the Presidential Elections.

205 The Committee received a number of submissions on audit of presidential election as summarized below:

Summary of Submissions by the Public

206 The proposals on the audit of the elections include—

(a) Establishment of an independent and multi-stakeholder taskforce to audit the electoral process to identify all loopholes and weaknesses.

(b) The servers should be opened, and a forensic audit done to ensure transparency and accountability.

(c) Consider a judicial commission similar to Kriegler Commission to carry out the audit.

(d) Audit of the elections as per the items that the Supreme Court flagged out.

(e) Audit to focus on legal, policy, data management, administrative frameworks, and assessment of security arrangements for both personnel and leadership of IEBC. Other issues proposed for audit include software and final certification among other things.

(f) Implement the recommendations of the Kriegler report.

(g) The IEBC be compelled through legislation to hand over all electoral materials for audit. Similarly, another stakeholder proposed that through legislation, auditing election material and infrastructure should be a mandatory requirement.

(h) Petition for presidential candidate should be extended to 3 months and swearing-in held earliest in November, to give room to exhaust any doubts.

(i) The loser in an election can do their own internal audit of the elections.

(j) Servers be opened by external experts appointed by both groups before the wrangling parties or their trusted agents.

207 **The Central Organisation of Trade Unions (COTU (K))** submitted that focus should be on electoral reforms rather than seeking an audit of the 2022 elections.

208 **The Independent Electoral and Boundaries and Commission (IEBC) Secretariat** submitted that Articles 101,136 and 180 of the Constitution prescribed that the elections of Members of Parliament, President, County Governor and Members of County Assemblies shall be held on the Second Tuesday of August in every fifth year in a single general election. Thus, the Commission conducted six elections through the same process on the same day and using the same officials, translating to 1,882 elected persons. Further, that disputes arising from election of the six elective positions were subjected to due judicial processes. The outcome of the judicial process for the presidential election was supposed to be binding and final to the Commission and the petitioners.

209 The IEBC secretariat was of the view that the suggested audit of the Presidential Elections inevitably delved into the entire framework of the dispute resolution arising from the presidential election. They further stated that according to Regulation 11 of the Elections (Technology) Regulations 2017, an audit of the entire election's technology was conducted by a reputable independent technology security firm in compliance with the

law. Additionally, an audit of the Voter Register was also carried out by an independent firm pursuant to Section 8A of the Elections Act, 2011. They further stated that all results from the polling stations were openly counted, collated, verified and promptly announced by the presiding/ returning officers at various levels in the presence of media, observers, political parties and candidates' agents.

210 The IEBC Secretariat stated that thorough verification of the presidential election was done at the Bomas of Kenya Tallying Centre for six (6) days with chief agents in the presence of media and observers, and in accordance with the result management framework shared with presidential candidates. IEBC detailed that the Results Transmission System successfully transmitted a total of 46,201 presidential results forms from the polling stations translating to a 99.94% attainment rate.

211 The Secretariat also stated that 14,239,862 voters were identified electronically for the 2022 General Elections, which translated to about 99.95% of voters who turned out to vote. The Commission also provided a public portal for access of the presidential results, which was accessed over 380 million times. The Supreme Court also in their determination of the presidential election petition carried out ICT scrutiny and inspection, tallying and recount of sampled presidential election results. The Supreme Court returned a verdict that the election was conducted in accordance with the principles set out in the Constitution and election laws and that the Commission attained the Constitutional threshold set out in Article 138 (4) of the Constitution.

212 The Secretariat submitted that the Commission complied with all the relevant laws in the conduct of the 2022 General Election.

213 IEBC Secretariat observed the following limitations on audit of 2022 presidential elections: the process of scrutiny of election technology had not been fully defined in law; absence of a legal framework for handling presidential election disputes after determination by the Supreme Court of Kenya; absence of Commissioners to carry out audit of the presidential

election in the event the audit was required and high likelihood of polarisation and division in the country.

214 IEBC secretariat therefore recommended development of a legislative framework to guide the process of scrutiny of presidential election results before the decision of the Supreme Court and that recruitment of chairperson and members of the Commission be expedited.

215 **The Sabaot Community** submitted that the Elections Software including voter registration databases and vote transmission systems required audit. However, they observed that there was no mechanism to audit presidential results transmission software. They also noted that despite claims of unauthorized access to election systems, there were no mechanisms for ascertaining such claims.

216 Further, they stated that there were no clear mechanisms of conducting post-election audits. As such, it was not clear if it should entail manual recount of a random sample of ballots to verify the accuracy of the reported results, and giving public report or if it could take any other form.

217 **Kenya Women Parliamentary Association (KEWOPA)** on their part called for enhancing transparency and fairness of representation to give effect to the principles set out in Articles 81 (d) and 89 (7) (b) to promote electoral competition based on ideologies and values and to ensure that every vote cast by citizens counts.

218 **The Inter-Religious Council of Kenya** proposed the establishment of an independent and multi-sectoral task force to audit the electoral process to identify all the loopholes and weaknesses of the electoral process and elections in Kenya. The goals of the audit should include proposals for: cutting the costs of conducting elections significantly; the role of election technology (in line with the Supreme Court Recommendation); regulating corruption and campaign spending; making the operations of the Commission more transparent and independent; and ensuring that all electoral processes are transparent and predictable.

219 **The Political Parties Liaison Committee (PPLC)** submitted that audit of the 2022 presidential elections should be done with a view of establishing and addressing any gaps experienced during the 2022 electoral cycle.

220 **The Elections Observers Group (ELOG)** was of the view that Kenyans needed to dialogue, review, rationalize and re-evaluate the electoral system and infrastructure, including the Elections Management Board model in Kenya with a view to identifying a system and infrastructure that best suited the political dynamics and nuances in Kenya. Further ELOG submitted that there was need to address the cost of elections by adopting simple and appropriate electoral technology and eliminate administrative and legal hurdles that occasion last-minute procurement of strategic election-related materials.

221 Additionally, ELOG proposed that IEBC could consider simplifying and restructuring Form 34A and include a column that accounted for stray ballots. In addition, it could consider having only one section for total valid votes.

222 On election monitoring, ELOG proposed that IEBC grants observers access to back-room server operations on the processing of results forms.

223 **ICPAK** submitted that pre-, during and post-election audit of systems, finances, process and outcomes should be conducted not only for the 2022 election but also for future presidential elections. They further proposed that audit should be undertaken in a multi-disciplinary approach by reputable firms in the different sectors including voting system, forensic and financial audits among others.

224 ICPAK proposed amendment to Article 86 (d) of the Constitution by inserting the words "*and conducting a post-election audit of systems, finances, process and outcomes*" after the words "*election materials*".

225 **The Kenya National Chamber of Commerce and Industry** submitted that they stood with the ruling of the Supreme Court of Kenya on the last presidential election petition and the matter stood closed. However, they proposed that to forestall disputes over election results in future, there

should be a mechanism to conduct an audit of the election system/servers so as to allow all parties to interact with the servers. Further, that there should be a system to allow electoral audit, maybe within six months of the election.

226 ***Mkenya Daima*** was of the view that audits of elections could not be aimed at re-assessing results but should be focused on process improvement. They proposed that there should be audit of all elections on a periodic basis to assess areas of improvement, and cost and efficiency savings.

227 **The Media Council of Kenya** submitted on the crucial role of the media in electoral justice and related matters. They informed the Committee that in the past elections, the media encountered significant challenges accessing information in the various stages of the electoral cycle. Thus, to address this issue and promote transparency, they recommended the establishment of media centres dedicated to managing dissemination of information during elections. The proposed centre would assist in access to credible and timely information on electoral issues thus preventing misinformation/disinformation.

228 The Council of Kenya urged the committee to support the inclusion of mandatory debates, development of guidelines and ensuring equitable access to all candidates. The media should also be involved in this exercise in monitoring, reporting and coordination of the debates to ensure fairness, transparency and adherence to ethical standards.

229 **The Law Society of Kenya (LSK)** called on the Committee to consider proposing enactment of a legal framework for auditing an entire election that would entrench technology into elections and establish a proper audit framework so that as the elections go on, there is enough testing of integrity, audit trails and all the necessary legal infrastructures. Further, the legislative framework should require that immediately after an election, there is legal obligation on the part of the IEBC to conduct an audit.

230 LSK averred that there should be a robust electoral mechanism that ensures ongoing audit of the processes and continuous audit of the

election transmission system with a view of infusing greater transparency and efficiency and gaining more credibility on the part of the IEBC.

231 ***Maendeleo Ya Wanawake* Organisation (MYWO)** submitted that in future elections, audit of the elections should be carried out within 2-3 months after inauguration for the country to move on and allow the elected administration to work.

232 **The Turkana Professionals Association (TPA)** averred that they respected the institutional independence of the Supreme Court and its exclusive jurisdiction to hear and determine disputes relating to the election to the office of president as provided in Article 163 (3) (a) and arising from Article 140 of CoK 2010. They stated that they respected the opinions of the majority of Kenyans with regard to audit of the 2022 presidential election results.

233 **The Independent Policing Oversight Authority (IPOA)** informed the Committee that there have been perceptions of police being partisan during electoral cycles. IPOA ensured that delivery of service to the public was non-partisan and thus they are observers during elections. During election cycles, police officers are part of the electoral system to some extent under the IEBC, but as far as their conduct and relationship with the members of the public was concerned, they were under the directive of the Inspector General of Police.

234 IPOA also submitted that following the 2022 General Election, they had received 237 complaints involving 359 complainants from Kisumu, Nakuru, Nairobi, Mombasa and Kakamega. IPOA data captured 57 deaths during the periods of demonstrations. In terms of distribution, Kisumu had 33, Nakuru 2, Nairobi 20 and Kakamega 2. The cases were under active investigations while some were at the tail end of conclusion.

235 IPOA stated that besides the Police Officers, security operations during elections are usually done by other agencies including the National Youth Service (NYS) and Kenya Prisons Service who are not under their purview. There were also other multi-agency operations which involved other

services apart from National Police Service that were not under the purview of IPOA and were not governed by proper structures. This could lead to perpetuation of atrocities. They therefore proposed expansion of their mandate constitutionally or by statute to incorporate other agencies/services that dealt with internal security for proper oversight.

236 IPOA proposed expansion of electoral courts to allow handling of matters that relate to police officers and members of other services during the electoral period or any other time to avoid delays that cause untold suffering to members of the public.

237 It was also their submission that during elections and in accordance with Section 105 of the Election Act, 2011 police officers or any other officers offering service were considered an election official. In that case, there could be a gap considering that those are persons under the control of the IEBC. IPOA therefore requested that the express provision should also cover other oversight bodies allowed to oversee the service.

238 IPOA also called for a review of the process of appointment of the Inspector General of Police and the Deputy Inspector General of Police to promote independence of the office.

239 **Professor Githu Muigai**, Attorney General *Emeritus* submitted that he did not support audit of the 2022 election results since the election petitions were resolved with finality by the judiciary. He submitted that revisiting the election results could erode the confidence of the public in the Judiciary and could create a permanent state of electoral instability. It was also his proposition that the standard of the Supreme Court of Kenya was not to declare that elections did not have any hitches, but to determine if there was a hitch of such substantial nature that it affected the results of the election. He supported audit of the election process with a view to identify areas of improvement in the next election cycles.

240 **Former IEBC Commissioners** Ms. Juliana Cherera, Mr. Justus Nyangaya, Mr. Francis Wanderi and Ms. Irene Masit submitted that by operation of Section 39 of the Elections Act, 2011 the Commission was required to electronically

transmit tabulated results and an image of the result declaration form confirming the authenticity of the polling station results. It was their position that the Chairperson unilaterally took the decision to deny the country the benefit of a running tally based on tabulated results as a countercheck of the transmitted images and the results declared in the Constituency Tallying Centres and the National Tallying Centre.

241 The effect of the violations, willful omission and ad hoc decisions by the chairperson ensured that the investment in the KIEMS was not used to achieve the objectives of transparency, determinacy and accountability of presidential election results. It effectively resulted in keeping the country in the dark for too long, giving undue power to the chairperson in collusion with his preferred selection of commissioners and unaccountable staff, in total alienation of the other four commissioners. Thus, it was their view that the results management framework of the 2022 Presidential Elections effectively mirrored the 2007 Presidential Declaration and derogated the gains of the Constitution of Kenya 2010, 2016 amendments to the Elections Act, Maina Kiai decision and immense investment in technology.

242 They opined that the results of the 2022 Presidential Elections were indeterminate as they were neither tabulated nor verified by the Commissioners in accordance with the process contemplated under Article 138.

243 The former Commissioners also informed the Committee that there were a number of occasions where they raised concerns and dissent, but which remained unresolved or simply ignored or alienated by the Chairperson and the two other Commissioners. They recommended that there should be procedures for resolution of disputes among Commissioners. Some of those instances when there were disagreements in the Commission included in the procurement of KIEMS Technology provider *Smartmatic*, ballot papers and other election materials, unilateral transfer of Returning Officers and unilateral assignment of roles to commissioners and staff at the National Tallying Centre among others.

244 They recommended that decisions of the Commission in plenary should be final and critical decisions which were not subjected to the Commission's consideration should be null and void. Further, that disputes among commissioners on critical issues should be resolved by a mediation Committee appointed by the Commission on Administration of Justice headed by a person qualified to sit as a Supreme Court Judge.

245 They also called for the restoration of Technology Reference/Advisory Committee considering the determination by the Court on unconstitutionality.

246 In order to safeguard the finality of polling station results, they recommended that electronic transmission and tabulation should be complimented with verification, collation and declaration at the lowest level in the constituency. This should be followed with transparent county tallying and tabulation.

247 Additionally, they recommended that there should be clear regulations and administrative procedures for National Tallying Centre (NTC) considering the role of commissioners. It should be clear that the officials with NTC roles exercise delegated authority of commissioners and must be under direct supervision. In addition, Commissioners should resolve any complaints and disputes before final verification and announcement by the chairperson.

248 On election management, the former Commissioners recommended fresh registration of voters before 2027 General Elections to resolve the issues raised on the Voter Registration Audit of 2022. Further, that election technology should be locally owned to avoid invocation of copyright infringement risks; full integration of technology for the other elections; ballot papers to be printed locally; cancellation of the current framework contracts and fresh procurement undertaken.

249 The commissioners also called for full technology audit of the 2022 Presidential Election Results.

250 **The National Council of Churches of Kenya (NCCK)** submitted that audit process should be done cautiously so as not to weaken trust in the function of institutions. They proposed enactment of legislation to establish a Judicial Commission to carry out the audit to ensure the process promotes peace, stability and national cohesion.

251 **Mt Kenya Jurists** proposed changes to determination of presidential election petitions. They were of the view that upon declaration of presidential election results by the Commission, a special court of seven members recruited from judges of the High Court, Court of Appeal and Supreme Court should be established to hear and determine the presidential petitions. In the composition of the bench, none of the members should belong to the same communities as the candidates for president and deputy president who have garnered the highest and second highest votes. Additionally, none of the judges should hail from the same county as the said four candidates. The proposals call for amendment of the Constitution as they touch on the exclusive jurisdiction of the Supreme Court of Kenya.

252 **Hon. Amos Wako,** Attorney-General *Emeritus* stated that the Supreme Court had exclusive jurisdiction to hear and determine disputes relating to the elections to the Office of the President and its decision was final under Article 163 (3) (a) of the Constitution. However, audit cannot change or reverse the decision of the Supreme Court through a constitutional and legal process. He stated that many experts had observed that the main challenge in the electoral processes lay in tallying, tabulation and declaration of results. The former Attorney General proposed that an audit could be done to identify shortcomings, weakness and shortfalls to be rectified before the next elections and to improve electoral processes. Further, he called for enactment of a law that required that servers be automatically opened and made accessible to anyone as soon as the presidential elections are declared. To avoid conflicts over intellectual

rights, it should be made clear to IT service providers that the servers would be opened after elections.

253 **Kenya Kwanza Alliance** was of the view that the Supreme Court pronounced itself on the 2022 Presidential Election Petitions and called for respect for legal structure provided for in law to adjudicate on political issues. They agreed on an audit of the process to inform where there was need for improvement.

254 ***Azimio la Umoja* One Kenya Coalition** was of the view that Article 88 (4) (h) required IEBC to facilitate the observation, monitoring and evaluation of elections. That was very different from the evaluation done by IEBC. The Coalition therefore called for audit of the 2022 Presidential Election Results to demonstrate the fidelity of those elections and remove any doubts that they were bungled by the IEBC. They proposed a systems and forensic audit:

(a) **Systems Audit** to evaluate, review and examine all the systems that feed into and relate to the electoral system. This would unearth deliberate acts and omissions by both the commission and secretariat with the view of bungling elections.

(b) **Forensic Audit** which entails the examination, investigation and verification of the whole electoral system with the servers as the core entry point to establish if any wrong was done.

255 **Electoral Law and Governance Institute for Africa (ELGIA)** noted that in the 2022 elections, IEBC decided to transmit the image of the results electronically and the returning officers to transport the Statutory Form 34A to Nairobi. They were of the view that the results management system was improved by introduction of KIEMS kits. In the elections, the Supreme Court took the view that no major irregularities were noted and that the elections met the credibility threshold. As an accountability measure to improve Results Management Chain, they noted that there was need for affirmation that the results transmitted electronically have the same weight as the results contained in the Statutory Declaration Form 34A.

256 ELGIA proposed operationalisation of the Kenya Integrated Election Management System (KIEMS) kits integrating biometric voter registration, candidates' registration, voter identification, results management and results display system. Further they called for interpretation of Article 138 of the Constitution on the role of the Commission in the results management chain as per Supreme Court ruling and that IEBC should abolish backroom collation centres as it raised the question of transparency and accountability.

257 **Kenya Conference of Catholic Bishops (KCCB)** observed that doubts about the electoral process and the results had been cause of conflicts. They therefore proposed that Article 88 (4) (h) of the Constitution be amended to remove evaluation function from IEBC and to provide for an independent audit within a year after the election.

258 **The ICT Association of Kenya** noted that elections audit is for confirmation of results and that election went well. The Association proposed that elections systems should be audited prior to elections. Political Parties Liaison Committee (PPLC) should come up with a system that political parties themselves will audit prior to the elections and see how figures progress from a polling station up to the tallying centre. Subsequently, there should be another audit just to confirm. Further, it was their proposal that if an audit of 2022 presidential election was to be done, it should not rely on the system only. It should be benchmarked alongside the declaration forms in the ballot boxes (i.e., servers and ballot boxes).

259 ICT Association of Kenya recommended that going forward; IEBC should make use of local ICT systems and embrace use of technology in elections including electronic voting.

260 **The Kenya National Commission on Human Rights (KNCHR)** submitted that audit of the 2022 Presidential Election should be solely for the purpose of improving systems and not for re-opening of the result. In the 2022 Elections, the Commission monitored the entire electoral cycle, pre, during and after the General Election and documented its observations and

recommendations in its 2022 KNCHR elections monitoring reports. The Commission noted that there was a substantial drop of human rights violations in the 2022 Elections as compared to that of 2017.

261 KNCHR proposed a number of areas of improvement as captured in its Election Monitoring Report. They include investment in technology in elections including biometric to make it easy to vote from any location; accessibility of PWDs including ramps and technology for the deaf, dumb and blind; improving registration of voters; public awareness to increase voter turnout; improving court processes and tackling election offences and malpractices more decisively. They also proposed improving court processes as too many tribunals cause confusion. Other proposals they made include shortening time for the release of results since it causes anxiety during the waiting period, managing the media, including social media, hate speech, intimidation and fake news.

Committee Observations

262 The Committee observed that—

(a) Evaluation of elections are important in ensuring that voting systems operate accurately, that election officials comply with laws, regulations and internal policies, identifying weaknesses and set benchmarks for future performance. In addition, it helps build confidence in the election administration process and credibility of the results and the electoral management body.

(b) While Article 88 (4) (h) provides that IEBC shall facilitate observation, monitoring and evaluation of elections, there is no clarity on who conducts the evaluation, the objectives of an evaluation, initiation of evaluation and the role of the IEBC in facilitating the process.

(c) As the Committee deliberations progressed, it was noted that the provisions relating to the evaluation of the electoral processes required further exposition as a means to improve electoral processes.

Committee Recommendations

263 The Committee recommends that—

(a) With respect to evaluation of the 2022 electoral process —

(i) Within twenty-one days of the adoption of this report by Parliament, the leadership of the majority and minority coalitions shall appoint a panel to evaluate the 2022 electoral process.

(ii) The Panel shall consist of six experts. The majority and minority parties or coalition of parties shall each nominate three experts.

(iii) The Panel shall jointly appoint a reputable firm or a consortium of firms to undertake the evaluation. If there is no agreement on the joint appointment of a firm, each side of the panel shall appoint a reputable firm to undertake the evaluation. The two firms shall coordinate the evaluation process.

(iv) After the conduct of the evaluation process, the Panel shall harmonize the findings of the two firms and submit the harmonized report to Parliament.

(b) With respect to evaluation of the electoral process under Article 88(4) (h) after a general election, the Elections Act, 2011 be amended to provide for the scope of the evaluation, financing, and reporting.

Related Matters

Electoral Legal Reforms

264 Elections in Kenya are governed by various laws and regulations. The Constitution of Kenya lays the foundation for the laws governing elections in Kenya. Article 82 stipulates that Parliament shall enact legislation to provide for the conduct of elections to the office of the President, the National Assembly, the Senate, County Governor and County Assembly; the conduct of referenda; election dispute resolution; and for connected purposes. Pursuant to these provisions, legislations including the Independent Electoral and Boundaries Commission Act, 2011, the Elections

Act, 2011, the Election Offences Act, 2016; and the Election Campaign Financing Act, 2013 have since been enacted.

265 There are also a number of subsidiary legislations that govern elections including; Elections (Registration of Voters) Regulations; Elections (General) Regulations; Rules of Procedure on Settlement of Disputes; Elections (Technology) Regulations; Elections (Party Primaries and Party Lists) Regulations; Elections (Voter Education) Regulations and Elections (Parliamentary and County Elections) Petitions Rules.

266 These laws have undergone several amendments over the years to conform to emerging practices as well as fill gaps in law that have been identified.

267 The following views were submitted to the Committee during stakeholder engagements: -

Summary of Submissions by the Public

268 **IEBC Secretariat** submitted that in the aftermath of elections, the Commission conducts Post-Election Evaluation to determine what worked, what did not work well and draw recommendations to inform the conduct of future elections. Some of the recommendations informed legal reform to address the identified gaps in law.

269 The Secretariat stated that in the last election cycle, they submitted The Election Laws (Amendment) Bill 2020; Draft Independent Electoral and Boundaries Commission (Amendment) Bill 2020; Draft Election Campaign Financing Regulations 2020; Draft Referendum Bill, 2020 and Rules and Procedure on Delimitation of Boundaries, 2021 for consideration by Parliament. However, the draft bills and regulations were never enacted into law.

270 The IEBC Secretariat was of the view that late enactment of the electoral laws too close to the general elections and inaction by Parliament in passing the proposed laws posed challenges to electoral legal reforms.

271 They therefore recommended that the draft amendments to electoral laws be fast-tracked in line with IREC's recommendation of two years before an election.

272 They further recommended that Parliament should enact the proposals on electoral reform in time, operationalisation of IEBC fund, actualisation of special voting for poll officials and essential service providers and enactment of a robust framework to facilitate citizens living outside Kenya to participate in electoral processes.

273 As observed by IEBC, the **Election Observer Group (ELOG)** also noted that passing election laws too close to an election posed a challenge to the implementing agencies. They therefore proposed that the Constitution and Elections Act be amended to restrict amendments to the electoral laws at least 12 months before elections. In the alternative, the law to provide that any amendments enacted 6 months before an election shall take effect in the next general election. It was also their proposal that the Statutory Instruments Act (2013) be amended so that Parliament does not have a role in approving secondary rules or procedures developed by the IEBC and the Judiciary and that the Constitution be amended to transfer the mandate of election disputes related to party nomination from IEBC to Political Parties Dispute Tribunal (PPDT).

274 **Kenya National Chamber of Commerce and Industries (KNCCI)** held the view that there should be no amendments to electoral laws 12 months to a General Election.

275 ***Azimio la Umoja* One Kenya Coalition** proposed that to change laws related to general elections within six months of the election, Parliament should have at least two thirds (⅔) of all MPs agreeing to the change.

Committee Observations

276 The Committee observed that—

(a) Enactment of electoral laws close to General elections posed challenges to the Commission's preparedness for elections and could cast doubts on the credibility of elections. There is therefore

needed to restrict electoral law amendments too close to an election through legislative interventions prescribing the period when such changes in law can be made and the threshold for such amendments.

(b) The Independent Review Commission of the 2007 General Elections proposed that electoral laws should be enacted at least two years before elections.

(c) In *Katiba Institute & 3 others v. Attorney General & 2 others Constitutional Petition No. 548 of 2017; [2018] eKLR*, the High Court gave a judgement on the constitutionality of provisions of the Election Laws (Amendment) Act No. 34 of 2017 which had amended the Elections Act, 2011, the Independent Election and Boundaries Commission Act 2011, and the Elections Offences Act, 2016. The Court found a number of the amendments to be unconstitutional.

Committee Recommendations

277 The Committee recommends that—

(a) Electoral laws should be enacted at least eighteen months to a general election.

(b) Parliament amends the Elections Act, 2011 and the Independent Election and Boundaries Commission Act 2011 to repeal the various provisions of the Acts that were declared unconstitutional by the court.

Time for Resolution of Presidential Election Petitions

278 Article 140 of the Constitution provides for the procedure for questions as to the validity of presidential election. A person can file a petition in the Supreme Court to Challenge the election of the President-elect within seven days of declaration of the results. The Supreme Court has fourteen days after the filling of the petition to hear and determine the petition.

279 The Supreme Court's jurisdiction in a presidential election is original and exclusive as no court other than the Supreme Court has the jurisdiction to hear and determine disputes relating to an election for the office of the President.

280 Since the establishment of the Supreme Court of Kenya in 2011, it has determined several petitions challenging the declaration of presidential election results. In these instances, the Court has delivered a judgement and reserved reasons due to the stringent timelines.

Summary of Submissions by the Public

281 **The Independent Electoral and Boundaries Commission (IEBC)** proposed an amendment to the legal framework to expand the period of hearing and determination of Presidential Election petitions by the Supreme Court from fourteen days to thirty days.

282 **The Elections Observation Group** also proposed that the Constitution be amended to increase the timelines for filing, hearing and determination of presidential election petition.

283 **Kenya National Chamber of Commerce and Industry (KNCCI)** was of the view that timelines for filing, hearing and determination of presidential election petitions be increased and that the Presidential Petition should commence at the High Court as the court of original jurisdiction and be subject to one appeal before the Supreme Court with a time limit of sixty days for the entire process.

284 **The Kenya Women Parliamentary Association (KEWOPA)** observed that the time allowed for dispute resolution i.e., the Supreme Court intervention for Presidential Election to validate the results may be too short for any meaningful involvement. They therefore proposed an amendment to the Constitution to extend the time for resolving Presidential Election petitions.

285 **The International Commission of Jurists Kenya** proposed that the Committee could consider recommending extension of period for hearing and determination of Presidential Petitions from 14 days to 28 days. Upon

further consultation with the Committee, they were amenable to the 30 days proposed by the other stakeholders.

286 **The Supreme Court of Kenya** submitted that in the three elections post the promulgation of the Constitution, hearing and determination of Presidential Election petitions within 14 days as stipulated under Article 140 (2) of the Constitution had proved to be difficult to fulfill. The time was limited and strenuous to the Court. In an attempt to achieve the same, the Court had delivered verdicts and reserved reasons only to be accused of lack of accountability from the public. The Court averred that it was necessary to have ample time to hear and determine such petitions without deferring reasons for its decision.

287 The Supreme Court therefore recommended that Article 140 (2) of the Constitution be amended to extend the timeline for hearing and determining a presidential election petition from 14 to 30 days to enable the Court give reasoned decisions.

288 **Professor Githu Muigai**, Attorney General *Emeritus*, submitted that the timelines for hearing and determination of presidential elections petitions were not enough. He called on the Committee to consider increasing the timelines.

289 **Hon. Peter Kaluma, M.P.** by memoranda proposed amending Article 140 (2) of the Constitution to extend the time for determination of Presidential Election petition by the Supreme Court from 14 to 28 days.

Committee Observations

290 The Committee observed that—

(a) In the past three General Elections (2013, 2017 and 2022) the Supreme Court determined disputes arising from presidential election petitions and issued judgements while reserving reasons to a later date due to constraints imposed by the strict timelines (14 days) stipulated in the Constitution.

(b) Stakeholders proposed extension of the timelines provided under Article 140 (2) of the Constitution for hearing and determination of a petition challenging the election of a president elect.

Committee Recommendations

291 The Committee recommends that Article 140 (2) of the Constitution be amended to increase the timelines within which the Supreme Court shall hear and determine a petition challenging the validity of presidential election from fourteen (14) days to twenty-one (21) days.

Funding of the IEBC

292 Article 249 (3) of the Constitution requires Parliament to allocate each Constitutional Commission adequate funds to perform its functions. Further, Section 17 of the IEBC Act provides for the funds of the Commission which shall include monies allocated by Parliament, grants, gifts, donations or other endowments and funds that may vest in or accrue to the Commission in the performance of its functions.

Summary of Submissions by the Public

293 The **Inter-Religious Council of Kenya** submitted that the IEBC should be made financially and administratively independent. They proposed that the IEBC should be adequately funded and that the Funds be disbursed timeously.

294 **Political Parties Liaison Committee (PPLC)** proposed the establishment of an Elections Fund to cater for payment of election agents. They were of the view that an Elections Fund would open the political space for youth, women and the marginalized who are not traditional holders of capital.

295 **The Centre for Multiparty Democracy Kenya (CMD –Kenya)** proposed creation of a protected fund for IEBC akin to the Judiciary Fund. They noted that predictable funding would enable the Commission to adequately prepare and execute its mandate thus building public confidence in its processes.

296 **The Sabaot Community** called for enhanced funding mechanism for the electoral body by creating a stable and independent source of funding for IEBC. They submitted that IEBC should have adequate resources to conduct elections without reliance on the government.

297 ***Mkenya Daima*** in their submission averred that the IEBC needed adequate funding to carry out its mandate and build its internal structures in between election cycle.

298 **The Council of Governors (COG)** called on Parliament to provide the required budgetary allocation to IEBC to avoid delays in the preparation and undertaking of the delimitation of boundaries exercise.

299 ***Maendeleo Ya Wanawake* (MYWO)** proposed that IEBC be funded sufficiently and in a timely manner to be able to undertake civic education on the election process. They observed that civic education had not been adequately undertaken in the last two election cycles.

300 **Electoral Law Governance Institute (ELGIA)** proposed enhanced financial planning and accountability of IEBC; funding mechanism including the establishment of IEBC Fund and the development of revised regulations on the management of the fund and development. ELGIA further proposed that consideration and approval of the Commission's budget be prioritized to improve institutional governance of IEBC.

Committee Observations

301 The Committee observed that Article 249 (3) of the Constitution provides that —

> *Parliament shall allocate adequate funds to enable each commission and independent office to perform its functions and the budget of each commission and independent office shall be a separate vote.*

Committee Recommendations

302 The Committee recommends that Parliament shall ensure that the IEBC is adequately funded to perform its functions with respect to the holding of

elections as well as other functions related to the continuous management of the electoral process under Article 88 (4).

Holding Elections on Different Dates

303 Articles 101, 136, 177 and 180 provide that a general election of members of Parliament, President, Members of the County Assembly and the County Governor respectively shall be held on the second Tuesday in August in every fifth year. This therefore translates to six (6) elections on the same day.

304 According to the Independent Electoral and Boundaries Commission, one thousand eight hundred and eighty-two (1882) persons were elected to various positions following the elections held on 9th August 2022.

Summary of Submissions by the Public

The following was submitted via memoranda from the public:

305 **Kenya Diaspora** through memoranda submitted that elections should be administered in two levels on separate dates rather than six elections on the same day.

306 **Mr. Simon Karanja** proposed that the terms of office of Senators and Governors and MCAs to be staggered not to coincide with President and National Assembly.

307 **Mr. Dickson Karani Mwaniki** was of the view that presidential elections should be held on separate dates from other elective seats.

308 Further, during stakeholder engagements, the following submission were made regarding separating the dates of elections for different elective positions:

309 **IEBC and LSK** were of the view that conducting six (6) elections at the same time was extremely difficult. LSK averred that there was considerable merit in holding elections in phases.

310 **FCPA Edward Ouko**, former Auditor General, averred that staggering elections would be costlier than the current system. He proposed improving on the current system by applying lessons learnt, as well as devolving IEBC.

He also proposed that Governors should not be elected on one man one vote.

Committee Observations

311 The Committee observed that the conduct, regulation and efficient supervision of six elections on the same day has proven to be a challenge for the IEBC.

Committee Recommendations

312 The Committee recommends that the IEBC conducts a comprehensive review of the past three general elections with a view to recommending to Parliament the viability of staggering the elections.

Security of Election Officials and Related Challenges

Summary of Submissions by the Public

313 **The Independent Electoral and Boundaries Commission (IEBC)** secretariat submitted that in every election year, the Chairperson, Members of the Commission, staff and service providers were subjected to adverse security threats. During the preparation for the 2022 General Election, a number of the Commissioners, staff and election officials countrywide were subjected to abduction, intimidation, harassment, maiming, profiling, or murder.

314 They stated that the climax of the insecurities was manifested on 15th August 2022 during the declaration of the presidential election results where the Chairperson, Commissioners, Commission Secretary/CEO and Staff were assaulted in the full glare of law enforcement officers, media, observers and the general public. They noted that to date, no one had been held accountable for the transgressions.

315 The IEBC submitted that to mitigate security challenges, there should be a public inquiry into the abduction, maiming, profiling, loss of life and attacks on Commissioners and staff. They also recommended acquisition of a Commission-owned headquarters (Uchaguzi Centre) to provide a secure and conducive work environment to enhance security of election officials and commission installations. Further, they recommended provision of

special allowance for the members of the commission and staff to compensate them for risk of exposure during elections and enhancing security for members of the Commission and staff before, during and after elections.

316 The Independent Policing Oversight Authority (IPOA) informed the Committee that they were investigating reports where IEBC officers were allegedly assaulted by police officers. They stated that they were handling the case of the IEBC officer in Wajir who was assaulted. They submitted that the investigation on the matter was at an advanced stage and was nearing conclusion.

Committee Observations

317 The Committee observed that there were allegations of breach of security of IEBC Commissioners and staff which had not been investigated by the relevant bodies.

Committee Recommendations

318 The Committee recommends that the security of election officials should be guaranteed before, during and after elections.

Voter Registration and Maintenance of the Voters Register

319 Voter registration is an important basis to ensure equal and universal participation of eligible voters in a given election. In addition, based on the number of registered voters, important decisions are taken during an election process, such as determining the number of and location of polling stations, the number of ballots and election materials to be printed and allocated to polling stations, and the calculation of voter turnout after the elections.

320 A transparent, accurate and inclusive voter registration process allows eligible voters to exercise their right to vote, while acting as a safeguard against attempts to manipulate the elections.

Summary of Submissions by the Public

321 **Electoral Law and Governance Institute for Africa (ELGIA)** informed the Committee that an Audit of voter register conducted by KPMG in 2017 revealed a number of problems with voter register bordering on inconsistency of the register, inaccuracy, data vulnerability and comprehensiveness. They stated that international best practices required that a voter register should exist for 10 years. However, the current voter register held by IEBC was completed in 2012, thus it has been over 10 years since its completion. ELGIA proposed a complete overhaul of the voters register after the Boundaries Delimitation. The overhaul should be preceded by streamlining the progress made in the legal framework through clear administrative procedures, and clarity in complimentary institutional roles.

322 **Former IEBC Commissioners** Ms. Juliana Cherera, Mr. Justus Nyangaya, Mr. Francis Wanderi and Ms. Irene Masit recommended fresh registration of voters before 2027 General Elections to resolve the issues raised on the Voter Registration Audit of 2022.

323 **Kenya Diaspora** submitted that polling stations in the diaspora should be increased from 12 to 72.

324 **The Inter-Religious Council of Kenya** proposed that an independent audit and cleaning up of voters' registers be done by the end of the second year after every General Election.

Committee Observations

325 The Committee observed that—

(a) A voter register must be comprehensive, inclusive, accurate and up to date. The process of voter registration must be fully transparent.

(b) There is need to undertake revision of the Voter Register to update it as well as eliminate any inconsistencies.

Committee Recommendations

326 The Committee recommends that —

(a) The IEBC shall within six months upon reconstitution undertake a comprehensive audit of voters register and publicise the results as per law.

(b) The Elections Act, 2011 be amended to align the terminology in the Act and the provisions of Article 88(4) (f) of the Constitution in relation to the responsibility of IEBC to register candidates for election.

Campaign Financing

Summary of Submissions by the Public

327 **The Ethics and Anti-Corruption Commission (EACC)** submitted that from the Annual Corruption Perception Survey, it was noted there were increased incidences of corruption during the election years in the form of embezzlement, fraud, bribery, misuse of public resources among others. They further submitted that increased incidences of corruption could be attributed to campaign financing. In addition, public resources such as motor vehicles and staff have also been used irregularly to support aspirants serving in public positions. The Commission recommended operationalisation of the Election Campaign Financing Act, 2013 to streamline campaign financing.

328 According to **IEBC Secretariat**, the Draft Election Campaign Financing Regulations 2020 was one of the legislations submitted to Parliament in the last election cycle but was not enacted. They therefore called for fast-tracking enactment of the regulation in addition to the other legislations submitted.

Committee Observations

329 The Committee observed that —

(a) Section 1A of the Election Campaign Financing Act, 2013 suspended the operation of the Act until immediately after the 2017 general elections. However, to date, the Act had not been operationalized.

(b) There was a delay by the IEBC in submitting to Parliament regulations to operationalize the Election Campaign Financing Act, 2013.

Committee Recommendations

330 The Committee recommends that the IEBC shall within one year of its reconstitution submit to Parliament the Election Campaign Financing Regulations.

CHAPTER THREE: OUTSTANDING CONSTITUTIONAL MATTERS

Article 43 Rights: Cost of Living and Related Issues

Background and Context

331 The International Covenant on Economic, Social and Cultural Rights, which Kenya is a signatory to, provides that all human beings are entitled to economic, social and cultural rights. Chapter Four on the Bill of Rights in the Constitution of Kenya, 2010, affirms that the rights and fundamental freedoms belong to every Kenyan and are not granted by the State. The State is required to take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43.

332 The Economic and Social rights provided for under Article 43 are as follows—

> *(1) Every person has the right-*
>
> *(a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;*
>
> *(b) to accessible and adequate housing, and to reasonable standards of sanitation;*
>
> *(c) to be free from hunger, and to have adequate food of acceptable quality;*
>
> *(d) to clean and safe water in adequate quantities;*
>
> *(e) to social security; and*
>
> *(f) to education.*
>
> *(2) A person shall not be denied emergency medical treatment.*
>
> *(3) The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.*

333 The Committee received several submissions on the issue of Article 43, the cost of living and related issues with majority of the stakeholders pointing out that the economic and social rights of Kenyans guaranteed under Article 43 had not been adequately provided for.

334 The Committee agreed in principle on the need to address the cost of living, and the realisation of Article 43 rights. The measures should focus on increasing the incomes of Kenyans, noting that the prices of commodities were impacted by among other factors, the prevailing global economic situation.

Summary of Submissions by the Public

335 The Committee received submissions from the public through memoranda proposing various solutions to the sub-issue on Article 43 of the Constitution, the Cost of Living and related matters, including—

(a) the government should address corruption, taxation, the debt strategy, cost of doing business and prices of petroleum products as a first step towards reducing the cost of living;

(b) Parliament should repeal the Finance Act, 2023 or review the entire taxation regime and policies. This should include reviewing the current taxes in the Finance Act to charge housing levy and the proposed NHIF deduction on basic salary, and adjusting tax policies to provide relief to struggling businesses and individuals;

(c) the government should introduce subsidies on essential commodities, electricity, and petroleum products. Also, the government should exempt petroleum products from the 16% VAT;

(d) the government should implement interventions that will increase agricultural productivity and increase healthy food production to help lower cost of living;

(e) government initiatives to support vulnerable groups like *Inua Jamii* should have a special fund where resources are allocated from the consolidated fund for timely disbursement. In addition, the government should re-introduce the *Kazi kwa Vijana* programme;

(f) amend the provisions under Article 43 to include explicit mechanisms for enforcement and prioritisation. Further the public proposed

increasing the budgetary allocation towards achievement of these rights and establishment of a Constitutional Commission to monitor their implementation. Further, that there should be a requirement for the government to submit regular reports to Parliament on fulfilment of Article 43 obligations: and

(g) create a Health Service Commission to facilitate achievement of the right to the highest attainable standard of health.

336 During the stakeholder engagements several persons and institutions made submissions on implementation of Article 43, the cost of living and related matters.

337 **The Kenya Institute for Public Policy Research and Analysis (KIPPRA)** submitted that, while the government had put in place interventions to enhance food production such as provision of fertiliser subsidies, review of minimum wage regulations, investments in irrigations and access to credit, among others, there were outstanding gaps. These included- high food manufacturing costs due to dependence on imported agricultural inputs, compliance and enforcement gaps in implementation of a legislated minimum wage; and food inflation. They, therefore, proposed that the government should promote diversification of crops; establish local fertilizer plants; review, recommend and strengthen wage alignment and enforcement; and strengthen safety net programs to protect vulnerable groups from food price shocks.

338 On social security, KIPPRA noted that the government had put in place measures such as reforming social security programmes mainly NSSF, Retirement Benefits and NHIF, school feeding programmes, and affirmative funds to cushion the vulnerable population. However, there were outstanding gaps such as- social protection remains a low investment priority at about 1.5% of the overall budget; and relatively high poverty rates among children with about 4 out of every 10 children living in a monetarily poor household. The Institute, therefore, proposed the establishment of a comprehensive social

protection system beyond minimum wages; expansion of coverage of ongoing nutritious school meals programs; and addressing social mobility across all counties.

339 On health and nutrition, KIPPRA submitted that the government had prioritised Universal Health Care (UHC) including reforming NHIF; creating the Primary Healthcare Fund, Social Health Insurance Fund and Emergency, Chronic and Critical Illness Fund; expanding partnerships in healthcare; hiring community health promoters, among others. However, there was high out-of-pocket spending; health expenditure not matching the health outcomes; stock-outs of medical supplies and commodities; and inadequate human resources for Health. Therefore, they recommended expanding the provision of quality health service and increasing financial protection for the households; improving health sector budgetary allocation and utilisation; and continuing the increased redistribution of the health workforce to achieve equity and efficiency.

340 On Housing, KIPPRA noted that the government had put in place interventions such as subsidised housing programs, mortgage financing, housing schemes, construction of affordable housing units, land use regulations, among others. However, there were gaps in the regulatory framework for evolving markets and a significant shortage of affordable and decent housing. The Institute therefore proposed the exploration of effective land use planning and management policies and provision of adequate Housing.

341 On clean and safe water, KIPPRA submitted that the government had prioritised access to safe clean water through investment in the water sector, promoting water harvesting at the household level, adoption of climate smart agriculture technologies, and investment in water infrastructure such as water dams. However, there was still a challenge in access to clean water particularly in rural and informal settlements. The Institute therefore

recommended enhanced investments and capacity development in rural areas and informal settlements in urban areas and expanding and improving wastewater treatment infrastructure.

342 On education, KIPPRA noted that, while the government had put in place interventions such as comprehensive reforms in the education system, enhanced digital education, and expanded human resources, there were outstanding gaps. These included unequal access to affordable education and reliable internet connectivity, concerns on child online safety, and low net secondary school enrolment at 53.2 per cent. To this end, the Institute proposed addressing inequalities in access to quality education at all levels, ensuring affordable and reliable connectivity, developing and enforcing regulations to safeguard students while harnessing the internet's educational potential, and further improving school infrastructure, increasing community awareness on importance of schooling, and addressing socio-cultural barriers to schooling such as teenage pregnancies.

343 **The Institute of Certified Public Accountants of Kenya (ICPAK)** submitted that cushioning the population is an important element towards the realisation of Article 43 on Economic and Social Rights. In that regard, they proposed amendment to Article 201 (b) of the Constitution to include a new paragraph before paragraph (a) to read "*taxation shall not impose an undue burden on the citizenry including cost of living.*" To deal with food inflation and agriculture, ICPAK proposed provision of high quality inputs and knowledge on the effects of climate change; improved access to agricultural financing; use of the untapped opportunities in the export market such as African Continental Free Trade Area (ACFTA); continuous training and research in the field of agriculture; diversification of agricultural production; specialisation in areas of comparative and competitive advantage; improving rural infrastructure; and optimum development and exploitation of the livestock sector. Further, the Institute proposed that the government should improve the efficiency of the

domestic refineries; build new oil refineries to reduce the fiscal burden of the energy sector; and reduce fuel taxes and charges. On mitigating the continued depreciation of the shilling, ICPAK proposed streamlining interbank trading by removing any restrictions on the rate to be traded in order to improve liquidity and flow of forex exchange; building an export driven economy; debt composition rebalancing by reducing commercial loans which attract high interest rates; and formulating diaspora friendly policies.

344 **The National Gender and Equality Commission (NGEC)** was of the opinion that the full transfer of all functions under the Fourth Schedule of the Constitution to the county governments would address the gaps in the provision of the economic and social rights. That, coupled with the strengthening of intercounty collaboration and partnership would effectively and efficiently deliver the provisions of Article 43. The Commission further recommended the scaling up and implementation of national strategic interventions to fast-track progressive realisation of provisions under Article 43 including access to housing, access to quality drinking water, electricity and other clean energy solutions, access to subsidized farm inputs to address food security, access to nutritious food among others. Such interventions could be funded by the National government and implemented by the county governments under a specific framework of agreement.

345 On the Right to the highest attainable standard of health, which includes the right to health care services, NGEC noted that there was inadequate attention to health issues and welfare of older members of society, inadequate funding allocated to the mental health sector, the exclusion and discrimination of women with disabilities in reproductive health services and inadequate access to medical treatment information for patients willing to pursue cases of medical negligence. They proposed the introduction of gerontology and geriatric studies in the curriculum of health sector training and equipping health facilities with health personnel trained in Geriatrics to serve older

members of society. Further, NGEC noted that there was a need to introduce compulsory and immediate provision of medical records to patients. They also proposed an increase in funding to improve the facilities and services necessary for mental health care; development of comprehensive guidelines on reproductive health services for women with disabilities by the Ministry of Health and supervision of their implementation at County level and in the National referral facilities; and inclusion of persons with disabilities who were unable to take care of themselves, vulnerable families on the streets and full-time caregivers in the Social Protection Policy. It was their opinion that there was a need to hasten the repeal of the Persons with Disabilities Act, 2003 to align it with the Constitution of Kenya, 2010 and the Convention on the Rights of Persons with Disabilities (CRPD).

346 On the Right to social security, NGEC opined that there was need for full time support to be provided for persons with severe disabilities, among other vulnerable groups and cash transfer programs, be extended to caregivers who could not work since they provided 24 hours of caregiving services. The programs would target parents of children with severe disabilities, caregivers of persons with severe disabilities and caregivers of frail older persons. The Commission noted that the Social Assistance Act, which had been assented to in 2013, should be operationalized to expand the bracket of beneficiaries to include youth without employment, widows and widowers and all persons with disabilities among others.

347 On the Right to education NGEC submitted that there was inadequate funding for education of learners with special needs. As such, the government needed to fast track the enactment of the Learners with Special Needs Education Bill into law. They noted that Article 24 of the Convention on the Rights of Persons with Disabilities stipulates that countries must take steps to ensure that persons with disabilities access an inclusive, quality and free basic education on an equal basis with others in the communities in which they live.

They offered that Educational Assessment Resource Centers (EARC's) should be established at all levels of administrative units and be funded and equipped so that children with disabilities and learning difficulties be placed appropriately. It was their opinion that a law should be enacted providing for all categories of learners with disabilities to access free and quality education from Early Childhood Development (ECDE) to higher levels. Further, it was their submission that the County TVETs should be properly funded, equipped and adequately staffed to offer services to diverse groups of learners including those with learning difficulties. In addition, there was a need to establish at least one model special boarding school per County that can accommodate this category of learners or even better implement the integration of such learners in pre-existing schools.

348 **The Political Parties Liaison Committee (PPLC)** stated that socio-economic rights as provided for in Article 43, had not been adequately provided for. They proposed that Parliament reviews the relevant laws and taxes, especially the 16 taxable items on fuel and fuel products. Further, to ensure food security, the PPLC proposed that the government needed to invest in agriculture to increase productivity. On the matters of health, the PPLC proposed that the government establish and implement Universal Healthcare Coverage.

349 **The Sabaot Community** stated that as a minority community in Bungoma and Trans Nzoia counties, they were marginalized in accessing facilities that would grant them the economic and social rights envisioned in Article 43 of the Constitution. At the national level they had identified several key contributors to social and economic well-being that impacted the cost of living in Kenya, including food security, education, health (medical expenses), electricity, water, and other utilities, taxes and levies. On food security, they proposed that the government continue supporting farmers through subsidies on fertilizers, herbicides, chemicals and other farm inputs; revive agro-processing industries to add value to produce and reduce imports; increase the area

under production of food; put more resources toward irrigation; give more credit to farmers with low interest and guaranteed minimum returns through the Agricultural Finance Corporation (AFC); implements the Abuja declaration that 10% of the national budget should go to Agriculture which should be implemented as an allocation to counties since Agriculture is a devolved function; and establishes government industries to complement agriculture for economic growth which can be done through collaboration between the County and National Government with each County having at least one industry. On education, the Association proposed standard subsidising of school fees and education materials and increased investments in tertiary institutions.

350 On electricity, the Sabaot Community proposed that the government should improve the reliability of the grid; expand access to clean and affordable alternative energy sources; promote energy efficiency measures; and provision of government financial assistance programs or subsidies for low-income households to help in ensuring electricity connectivity to low-income populations and improving overall cost of living.

351 On taxes and levies, the Community proposed that the tax burden be shifted towards consumption-based taxes, such as value-added tax (VAT), rather than taxing essential goods and services heavily but exempt or reduce VAT on basic necessities like food, medicine, and education. In addition, tax revenues should be used to fund targeted social programs, such as subsidies for housing, healthcare, and education, to directly assist individuals and families struggling with the high cost of living. Further, it was their opinion that the government should offer tax incentives for businesses and industries that create jobs and stimulate economic growth and offer tax relief or exemptions to individuals and families with lower incomes to help them cope with the high cost of living by reducing their tax burden.

352 **The Kenya Women Parliamentary Association (KEWOPA)** submitted that Kenya had not put in place enabling laws, policies and standards to effectively implement Article 43 of the Constitution. KEWOPA, therefore, proposed that gender responsiveness be adopted when making budgetary allocations towards activities aimed at realisation of Article 43 of the Constitution and resources be allocated to facilitate county governments to give effect to the implementation of the economic and social rights. It was their opinion that implementation of ECOSOC rights would facilitate and enhance equitable distribution of resources in the country and guarantee services down to the grassroots level. The government therefore needed to urgently develop standards to guide the implementation of Article 43 of the Constitution. In order to strengthen the right to health service provision and standardisation, KEWOPA proposed that the health human resource function be removed from the county governments and returned to the National Government for ease of management, setting standards and ethical practices or a Health Commission be established to be responsible for the management of the human resources function on behalf of the county governments.

353 Other proposals by KEWOPA included—the government puts in place better regulation of betting laws and policies to protect the youth; review the process of people accessing affordable credit that would not sink them in debts and increase levels of poverty; ensure 30% of opportunities in the country are reserved for youth, women, PWDs, and minorities; provide meaningful job opportunities to the youth in the country; and put in place mechanisms to support older persons especially older women.

354 The **Central Organisation of Trade Unions (COTU)** acknowledged the challenges of rising cost of living and suggested continued social dialogue between tripartite partners before effecting policy changes that would affect workers' welfare. In addition, COTU (K) proposed that the President of Kenya

orders a general wage increase and also extend concessions to companies operating under the Export Processing Zone (EPZ).

355 The **National Council for Persons with Disabilities (NCPWD)** proposed that Disability be considered as a critical agenda or indicator for the full realisation of Article 43. This would include adequate budgetary allocation to the NCPWD as an institution responsible for promoting equalisation of opportunities for PWDs and their empowerment and transforming the NCPWD to an authority to ensure enforcement and realisation of the rights of PWDs. On the health subsector, it was NCPWD's submission that according to KIPPRA Special Paper No. 3 of 2022, about 80 percent of persons with disability do not access quality medical services compared to 50 per cent of the general population that lack the capacity to access health services. Further, only 11.6 percent of persons with disabilities had access to some form of health insurance relative to 15.5 percent of the rest of the population. In view of this, the NCPWD proposed universal registration of persons with disabilities to the National Medical Insurance and preferential insurance premiums in private insurance schemes; conduct assessment in categorisation of persons with disabilities based on the International Classification of Functioning, Disability and Health (ICF) classification; keep records of clients; acquire conducive and accessible assessment premises; acquire, avail and ensure proper use of all the necessary tools and equipment; review NHIF to provide medical cover for specialised services for persons with disabilities including provisions of diapers and physiotherapy for those with severe disability among other essential services; and refer clients for appropriate intervention where necessary.

356 On housing, NCPWD proposed a housing law to incorporate its role as a key stakeholder in approving public buildings to ensure their accessibility in realisation of 5 per cent reservation of government affordable housing to persons with disabilities across the board. On education, they proposed review of the education law for enforcement of enhanced capitation grants with

adjustment depending on the different needs of children with special needs; establishment and strengthening of education assessment resource centres in all counties and sub counties; and continued curriculum implementation and review to accommodate the emerging needs of persons with disabilities.

357 The **National Youth Council (NYC)** acknowledged that the high cost of living was a global phenomenon and recommended that the government offer the youth tax relief to enable them start businesses so that they can be able to employ other youth to reduce the number of unemployed youth in the country. In addition, they proposed putting in place social protective measures to cushion the youth from the ravages of a high cost of living.

358 The **Inter- Religious Council of Kenya (IRCK)** submitted that borrowing for infrastructure projects which had led to large portions of national revenue going to debt servicing should be reviewed. They proposed a transparent audit of Kenya's national debt, availing of funds to the business community including the micro and small enterprises, for creation of more employment opportunities; and reduction of the cost of power for the development of the economy.

359 The **Kenya National Chamber of Commerce and Industry (KNCCI)** supported the implementation of the Housing Fund as it would open up the construction industry and contribute to creation of employment. They proposed social insurance for all Kenyans and provision of accessible financing to businesses to allow them rebuild businesses affected by emergencies, political violence and natural disasters. Further, KNCCI proposed the institution of tax interventions to cushion businesspeople especially during economic strife; reengineering of Women Fund and Youth Fund with the aim of making them more accessible, transparent and user friendly in order to mitigate the high cost of living; and creating a production buffer for the nation.

360 The KNCCI further proposed that the government work with SACCOs in the phase 2 of the Hustler Fund that targets persons in groups/chamas and

appealed for the government to support the KNCCI with a special fund to support businesses through capacity development, financing, competitiveness and market access. On education KNCCI, urged the government to adopt the report on the CBC form of basic education and listen to the people on the issue of the new university funding system to ensure all children have access to university and college education. In addition, due to an increase in the cost of basic commodities, it was their opinion that the government should review its capitation for primary and secondary schools and ensure that all children have access to food while in school. On social welfare, the KNCCI proposed that a massive campaign be conducted to enroll more beneficiaries.

361 The **Turkana Professionals Association** proposed that the national government should enhance the school feeding program and increase boarding schools for students from pastoralist areas to improve access to education and retention at schools; allocate a special fund to support pastoralist communities against harmful climatic changes; and operationalize the one-stop international border points in Kibish, Todonyang, Nadapal and Lokiriama to ease movement of goods and services in order to bring down the cost of doing business in Turkana.

362 The **Centre for Multi-party Democracy (CMD- Kenya)** proposed the amendment of Article 132 of the Constitution to require the President to report, as part of the State of the Nation Address, on fulfilling the obligations of the State under Article 43; taxation should be carried out with careful consideration of their impact on different segments of our society; and expansion and diversification of the tax base to unlock new sources of revenue that can be used to improve the lives of all Kenyans. As such, the CMD- Kenya proposed that the Constitution be amended to bring about the inclusivity, clarity and incentives for streamlined tax administration.

363 **Mkenya Daima,** submitted that there was a need for a holistic approach to resolve the issues under consideration by the Committee and noted that the cost of living crisis was driven by taxation which was in turn driven by the size of government. There was a need, therefore, to address the size and cost of government; increase productivity; wisely allocate scarce resources; deal with corruption and waste at the national, county and parastatal level; and engage all sectors of society so as to generate fresh ideas and get their buy-in.

364 **The Media Council of Kenya** proposed the strengthening of enforcement of Article 43 of the Constitution through robust policies, effective implementation mechanisms and regular monitoring and evaluation.

365 ***Maendeleo ya Wanawake* Organisation** proposed that the matters to do with the cost of living be separated from politics because the high cost of living had been caused by external factors such as prolonged drought and the Ukraine war. Further, they recommended that the County Governments should spearhead job creation as this was the intention of devolving resources- to be used in poverty alleviation.

366 **The International Commission of Jurists (ICJ)** submitted that ensuring social and economic rights is a moral imperative as these are the cornerstone of human rights. It was their opinion that Kenya had not realised these rights because of the government's refusal to devolve certain rights leading to confusion and waste of public resources. As such, they proposed that combating corruption, implementing responsible borrowing practices, and improving fiscal management would allow Kenya to allocate resources more efficiently, reduce inequality, and create an environment conducive to economic growth and social progress.

367 The **Homabay Interface Community Health Desk** submitted that Parliament should pass legislation to reduce the cost of living through addressing the cost

of fuel. They noted that the cost of fuel in Kenya was higher than in neighbouring countries in East Africa.

368 **Hon Amos Wako,** Attorney General Emeritus proposed that the provisions of Article 43 were similar to the International Covenant on Economic and Social rights, as such, the primary responsibility in the provision of these rights lay in the democratically elected government. He submitted that while the attainment of these rights could not be immediate, and therefore proposed that the government commit to providing these rights progressively. It was his opinion that the cost of living could only be addressed by the country collectively through a national consultation composed of political, religious, business and other leaders, which should deal with the national economic crisis and come up with ways of ameliorating the situation and inform Kenyans on the difficult measures that would be employed to mitigate the effects of the high cost of living. In addition, he recommended creation of a poverty alleviation fund to assist vulnerable people who were not catered for by the Equalisation Fund provided for under Article 204 of the Constitution.

369 **Professor Githu Muigai,** Attorney General *Emeritus* submitted that there is need for the economy to function effectively for wealth to be created for distribution to achieve the socio-economic rights provided for in Article 43. In his opinion, a key aspect would be providing three meals in schools to ensure that pupils/ students remain in school. There was therefore a need to progressively enforce socio-economic rights starting with the communities that most need it. He also offered that tax policies should be stable to encourage investment; taxation should be equitable; and the government should consider taxing large estates e.g., worth over KShs.20 billion, as another way of raising revenue.

370 **Former Governor of Kiambu County, Hon. Ferdinand Waititu** focused on the issue of education and offered that the distribution of Bursaries should not be the duty of the NGCDF. He was of the opinion that distribution of Bursaries had

been used to settle political scores through the children and therefore there was a need to establish a National Institution that would be mandated to distribute bursaries. He further proposed that students across the country should be allocated a similar bursary amount because education needs were comparable throughout the county.

371 The **Former Auditor General, FCPA Edward Ouko** submitted that the cost of living issue could be addressed by capping the cost of running government for the next three years. This would allow the Kenyan economy to recover, enabling the government to meet its obligations under Article 43 of the Constitution.

372 The **Mt. Kenya Jurists** noted that, while citizens were obligated to pay taxes, the government needed to ensure their economic and social rights to allow them to have a dignified life. They recommended that the cumulative taxes for citizens should not exceed thirty percent.

373 The **Civil Society Reference Group** submitted that there was a need to involve the citizens in all aspects of governance. They observed that the government had gone against the wishes of the citizens who opposed the implementation of the Finance Act, 2023, particularly on the issue of taxes. They proposed that the government should be responsive to the demands of the people of Kenya.

374 **Shining Hope for Communities (SHOFCO)** submitted that Agriculture is the largest contributor to Kenya's GDP, as such, boosting the agriculture sector would address the high cost of living, alleviate poverty, relieve hunger and tackle unemployment. SHOFCO proposed that the National Assembly amend the Irrigation Act (No. 14 of 2019), the Kenya Roads Board Act (No. 7 of 1999), the Road Maintenance Levy Fund Act (No. 9 of 1993) and all other relevant laws to- Change the 'Road Maintenance Levy Fund' to the 'Infrastructure Development Maintenance Levy'. This would enable the agricultural sector to benefit from the Road Maintenance Levy Fund to develop irrigation infrastructure in all parts of the country; have the National Irrigation Authority

become a beneficiary of the Fund; and have the Authority share the funds equally in all the 290 constituencies using the same structure that the Kenya Rural Roads Authority uses for sharing funds for maintenance of roads in all the 290 constituencies.

375 **Kiambu County Leadership Forum** proposed the inclusion of Kiambu County among the beneficiaries of the Equalisation Fund. They stated that there were about 500,000 people in Kiambu County who were living in abject poverty, noting that not all of Kiambu had arable land. They proposed that there should be a variation on the criteria used to select areas to benefit from the Equalisation Fund.

376 **CPF Financial Services** submitted that there was need for Tax reforms which would do away with personal taxes such as Pay as You Earn (PAYE) and have citizens pay taxes only when they consume, a Single transaction tax to be known as Pay as You Spend (PAYS). They further proposed a Consolidated Social Security Fund which would be entrenched in the Constitution and would be funded partly by taxes and partly by contributions. The government would then dispense with all the other funds and use the Consolidated Social Security Fund to provide for Kenyans' social and economic rights.

377 The **Kenya Kwanza Coalition** submitted that the government had put in place various measures to ensure Kenyans' economic rights. There were also plans underway to address the cost-of-living issue such as raising agricultural production through providing subsidies to farmers for farm inputs; long-term housing finance schemes to guarantee offtake of Houses by developers; and giving incentives to developers. The government was also working on enhancing revenue collection through automation of VAT systems.

378 The **Kenya Conference of Catholic Bishops (KCCB)** submitted that the current framing of Articles 43 and 26 (4) of the Constitution still promoted the issues of reproductive health's rights in terms of abortions. They also stated that the cost of health was very high, some areas of the country lacked health facilities,

there was inadequate equipment in health facilities, a lot of jurisdictional conflict between the national and county government health sectors and especially, the hospitals, frequent strikes by the medical personnel, conflict of interest by public officers who were allowed to open their private clinics, and corruption and the stealing of drugs and equipment. They therefore proposed the amendment of Article 43 (1) (a) and Article 26 (4), to clearly state that abortion is outlawed in Kenya; relooking at the National Insurance Model to make it affordable for the poor, amendment of Article 186 and the Fourth Schedule to the Constitution to provide that the functions of the Level IV, V and VI Hospitals be assigned to the National Government to ensure that there is proper administration of these hospitals; amendment of the Health Act to restrain public officers from opening and running private clinics; and amendment of the NHIF Act and any other Health Laws to have an emergency fund to cater for any emergency issues from patients.

379 On the issue of accessible and adequate housing and reasonable standards of sanitation, KCCB was of the opinion that the Government's Housing Programs had failed in the past and therefore the Government should only concentrate on creating an enabling environment and developing good policies for the Housing sector. The KCCB therefore, recommended that the Finance Act be amended to remove the Housing Tax Levy.

380 On the issue of freedom from hunger and adequate accessible food of good quality the KCCB was of the opinion that there was a lot of food that went to waste due to inadequate storage facilities and lack of accessible markets. They proposed the enactment of a Food Security Act, implementation of measures to promote food production in Kenya, carrying out measures to promote Agricultural production, giving farmers priority when it comes to giving out food and buying of food by the Government, putting in place measures to prevent interference with food safety, and developing a program to provide food to the people who could not afford.

381 On the issue of adequate clean and safe water the KCCB proposed that the Environmental Management and Coordination Act be enforced to ensure that the water is protected, measures be put in place to clean up the rivers, more dams be built especially in areas that flood so that when there are floods, the waters can be stored, and the water supply system be improved.

382 On the issue of social security, the KCCB submitted that they had received reports of corruption in the social security schemes and that there were delays in the release of retiree's pensions. They proposed the streamlining of the social security schemes, stopping corruption in the retirement benefit schemes, and timely release of pensions to the retirees.

383 On the issue of provision of appropriate social security to persons who are unable to support themselves and their dependents, the KCCB recommended investigations and stopping any corruption in the Cash Transfer System. They proposed that the Government should ensure that anyone who qualified for assistance and was eligible, was enrolled for the same and that the cash should be released in a timely manner.

384 On the issue of education, the KCCB noted that there were inadequate education facilities, limited funding, lack of transparency in the university financial model and lack of jobs for graduates. They therefore proposed the streamlining of the education system, building adequate education facilities, improving transparency in the University Education Financial Model especially, the HELB system, and developing policies that would create jobs for the graduates.

385 The **Kenya National Commission on Human Rights (KNCHR)** submitted that the Constitution protects Economic and Social (ECOSOC) rights under Article 43 and provided for dignity and security of the person. It was their opinion that the High cost of living had impacted the security, dignity of the Person, Health and Nutrition/food/ hunger. The Commission submitted that the Kenya Economic Survey of 2023, had indicated that the inflation rate for the year

2022 was 9.6% which had a negative effect on low-income households due to increased cost of living, bearing in mind that 77% of workers earned less than the minimum wage, which covered approximately half of living costs. It was their opinion that the Cost of living had skyrocketed and that the State needed to cushion vulnerable Kenyans against the vagaries of the economy. In this regard, the government was obligated to take all the measures necessary to combat illicit financial flows and tax avoidance with a view to raising national revenues and increasing reliance on domestic resources, to ensure the progressive realisation of economic, social, and cultural rights, particularly the rights to housing, water and sanitation, social security, health and education.

386 The Commission further recommended the following measures to the government to address the current high cost of living—

(i) Strengthen the investigation of cases of corruption and the prosecution of those involved in corruption by enhancing the investigative capacity of public prosecutors and ensuring the independent functioning of the Ethics and Anti-Corruption Commission.

(ii) The Ministry of Agriculture should ensure that there are adequate food reserves to cushion Kenyans against the ever-increasing droughts and other natural calamities due to climate change.

(iii) Ensure adherence to the Abuja Declaration by setting aside 15% of their (national and county governments) respective budgets to health and have a zero-retention policy for patients' bodies that are often detained for non-payment of hospital dues.

(iv) NHIF should enhance the recruitment of more beneficiaries to lessen out-of-pocket expenses that the underprivileged majority of the Kenyan population can ill afford.

(v) The billing for services at public hospitals should be reconsidered. Related ailments can for instance attract a standard charge.

(vi) Enhance accountability in service delivery and the use of public funds to ensure that funds meant for the fulfilment of Article 43 are not misappropriated.

(vii) Taxation especially on basic commodities and critical factors of production such as fuel be reconsidered.

(viii) Effective public participation on laws affecting cost of living.

387 The **Federation of Kenya Employers** while acknowledging the high cost of living and its impact on employers and workers, made the following recommendations to address the issue- Promote value addition, value chain development, market access and supply chain development; enhance and simplify access to finance, quality information and modern technology; enhance efficiency and transparency in provision of government services; remove red-tape and barriers to business operations and growth; establish County Competitiveness index and MDAs scorecard on adherence to Service Delivery Charters; and fully implement the EAC common Market protocol, AfCFTA, AU Treaties and full commitment to the AU Agenda 2063.

388 The **National Council of Churches in Kenya** proposed that the Finance Act 2023 be reviewed to reduce the tax burden imposed on the people. This would provide incentives to micro and macro investments which are the core drivers of economic recovery of the nation. Further, the Council recommended a forensic audit of the national debt to ensure that Kenyans paid back only those debts that were legitimately taken and used for the benefit of the people of Kenya.

389 The **Public Service Commission (PSC)** submitted that the rising cost of living had continuously impacted negatively on Public Officers, which had resulted in low morale, poor performance and poor social welfare of officers some of whom were depression for, amongst other reasons, the inability to meet their financial obligations as and when they fell due. The Commission offered that Data held by the State Department for Public Service showed that 12,532

public officers had sought psycho-social support in the Financial Year 2022/23 as compared to 6,616 in the financial year 2018/ 19 representing an increase 84%. Further, majority of public officers were servicing mortgages either through the Civil Servants Housing Scheme or other Non-Public Schemes. This affected their disposable income and in essence their quality of life. Public officers were unable to maintain the 1/3 of net salary requirements thereby causing pecuniary embarrassment to the officers. The Commission had access to the public service payroll management system which showed that out of 79,253 public officers in the civil service, 17,132 (21.62%) earned less than 1/3 of their basic salary. Additionally, out of 31,892 officers in the prisons service, 13,661 (42.83%) earned less than 1/3 of their basic salary. In the disciplined services, out of 106,667 officers, 51,784 (48.55%) earned less than 1/3 of their basic salary.

390 It was the PSC's submission that this data painted a grim picture of the situation that public officers were faced with as and when additional taxes and levies were introduced in their paycheck. The Commission therefore recommended that either the taxation regime be reviewed, or a considered wage increase be mooted or public officers who are servicing mortgages be exempted from additional and similar levies/ taxes so as to give relief to public officers and boost performance and delivery of services. The Commission also recommended that implementation of the housing levy should be staggered and possibly the Government should consider basing the levy on the basic salary rather than the gross salary in the similar manner the NSSF contributions were reformed. This would cushion employees from the adverse effects of the all-round increase in taxes and ensure that all employees were, in as much as possible, within the 1/3 of net salary requirement. The Commission also recommended the review of the number of levies and the VAT imposed on fuel so as to reduce the cost of fuel that had a ripple effect on the cost of living.

391 The ***Azimio la Umoja* One Kenya Coalition** expressed grave concern about the current high cost of living crisis in Kenya. The Coalition submitted that the current level of cost of living was not only driven by higher transport costs, and energy and food prices but also for the creation of budget deficits through public borrowing domestically and externally. Azimio was particularly concerned about the impact of the Appropriation Act, 2023 and Finance Act, 2023 on the current high cost of living. It was the view of the Coalition that these two instruments undermined the fundamental rights of Kenyans guaranteed by the Constitution, particularly the social and economic rights contained in Article 43 of the Constitution.

392 While recognising that the current high cost of living crisis was as a result of a combination of challenging global and domestic factors, at the domestic level, the Government and the people of Kenya have the responsibility and capacity to address and neutralize the crisis through decisive administrative, policy and legislative interventions. Azimio submitted that unless immediate measures were taken to reverse the situation, the crisis would continue to worsen as the cost of doing business becomes unsustainable, investors shy away from the Kenyan market and risks of social unrest and civil disorder increase.

393 Azimio thus held the view that in order to address the cost of living crisis in the medium to long term, the planning and budgeting processes must be rights based and people-centric, demonstrating prudent and responsible resource use and promoting economic and social equity. Azimio la Umoja One Kenya Alliance Coalition, therefore recommended the following immediate measures:

a) **Administrative Measures:** Take immediate steps to decisively deal with the scourge of corruption. Some of the measures include, but are not limited to: comprehensive audit of the national budget to ensure that it aligns with constitutional requirements and public officials recusing

themselves from decisions where conflicts may arise.This would require legislation prohibiting public officers from engaging in private business while in service; a comprehensive system of rewards, incentives, and penalties; making information on asset declarations and public procurement processes easily accessible to allow journalists and researchers to scrutinize vulnerable sectors and data that may be prone to corruption; sealing international loopholes for facilitating illicit flow of proceeds of corruption; and putting in place measures that improve the purchasing power of citizens and the cash flow in enterprises. This should specifically target reviewing of taxes that have adverse impact on individuals, families and businesses.

b) **Policy Measures:** Reduction in the budget for local and international travel by public servants by 30 per cent; reduction of wastage, inefficiency and uneconomic use of taxpayers' monies; and the decongestion of prisons by reducing the prison population from 66,000 to 32,000 to bring Kenya in line with international standards and **save not less than KShs 18 billion annually**.

c) **Legislative Measures:**

(i) **Review the Appropriation Act, 2023 with a view to:**

- Reducing allocation to Travel (domestic and international) by 30%. This will lead to a saving of **KShs 230 billion**.
- Reducing allocation to State Department for Correctional Services by **KShs.18 billion** by reducing the number of inmates from 66,000 to 32,000.
- Reducing allocations to Office and General Supplies Services by 25%. A saving of not less than **KShs.60 billion** will be made.

(ii) Review the Finance Act, 2023 with a view to:

- Reducing VAT on petroleum products by 50% from the current 16% to 8%.
- Reducing Road Maintenance Levy by KShs.5.00 per litre, from the current KShs.18.00 to KShs.13.00.
- Reducing Petroleum Development Levy by 50%, from the current KShs.5.40 per litre to KShs.2.70.
- Zero-rating VAT on basic food items.
- Removing excise duties on locally published books and educational materials.
- Scrapping the Affordable Housing Levy.
- Revert the turnover tax to levels in the Finance Act, 2022.
- Zero rating content creation.
- Reinstating 16% VAT on transfer of business as a going concern.
- Reinstating 16% VAT on helicopters, helicopter parts and accessories.

394 Azimio held that the foregoing measures would lead to substantial savings in the recurrent expenditure which should cushion the people of Kenya from negative impact of excessive taxation. The proposed administrative, policy and legislative recommendations for immediate intervention would also address the critical fiscal and financial areas with the aim of fostering fiscal responsibility, optimising resource allocation, and stimulating economic growth. The proposed reforms in both Appropriation and Finance Acts are crucial steps toward ensuring a more efficient and sustainable financial framework.

395 Azimio further recommended the following measures in the medium to long term:

(a) establish the National Treasury as an independent institution as contemplated by the Constitution to effectively serve both levels of government independently;

(b) reinstate the National Economic and Social Council;

(c) adopt a rights, function and zero-Based Budgeting approach to ensure realisation of Article 43 social and economic rights, eliminate the mismatch between functions and resources and to tame corruption and wastage of public funds and ever-spiraling expenditure in government;

(d) review the Public Finance Management Act, 2012 and review/repeal the International Monetary Fund Act and the Bretton Woods Agreements Act, 1963 to align with the public finance principles and processes in Chapter 12 of the Constitution and to promote the actualisation of rights guaranteed under Article 43;

(e) amend Article 203 (2) to increase the minimum allocation of shareable revenue to counties from 15% to a minimum of 35%;

(f) amend Article 223 to limit supplementary appropriation to emergencies if the monies in the contingencies fund is insufficient to meet such demand;

(g) amend Article 225 to empower the National Treasury to suspend the transfer of funds to a state organ, public entity or county government where there are serious and persistent breaches to set financial controls, and to table such action to the relevant house of Parliament for approval.

Further Engagements on the Cost of Living

396 At its sitting held on 23rd October 2023 the Committee, in line with the Parliamentary resolution that outlines its mandate, resolved to engage experts, professionals and other technical resource persons on the sub-issue of cost of living and related matters. The engagements were intended to ensure that the

Committee adequately deliberated on the important and complex issue of the cost of living and came up with recommendations of how to address the issue in the short, medium and long term. In this regard, the Committee invited the following institutions and offices to a roundtable meeting -

(i) The National Treasury and Economic Planning
(ii) The Ministry of Energy and Petroleum
(iii) The State Department for Housing and Urban Development
(iv) The Office of the Controller of Budget
(v) The Parliamentary Budget Office
(vi) The Institute of Economic Affairs
(vii) The Society for International Development
(viii) The International Budget Partnership- Kenya
(ix) FCPA Hon. Billow Kerrow

397 **The National Treasury** submitted that the Cost of living in Kenya was measured by Consumer Price Index (CPI) reported by the Kenya National Bureau of Statistics. The CPI measures inflation by tracking the changes in prices paid by consumers for a basket of goods and services over time. It was the Ministry's submission that inflation rate remained above the government target range of 5± 2.5 percent from June 2022 to June 2023 indicating that the cost of living was high during the period. This was a result of increase in commodity prices particularly food and fuel due to multiple shocks that impacted the economy. The shocks included:

(i) Lingering effects of COVID-19 pandemic, especially in China that resulted to supply chain disruptions;
(ii) The Russia- Ukraine conflict and subsequent sanctions that disrupted world markets, most notably through sharply raising global commodity prices; and
(iii) Climate change that affected agricultural productivity through the impact of the prolonged drought that led to higher food prices and

exacerbating food insecurity in vulnerable regions such as the arid and semi-arid regions.

398 It was the National Treasury's submission that the rising cost of living was due to a combination of the ongoing tightening of monetary policies by the advanced economies to address inflationary pressures, specifically the headwind for a strengthening dollar, the depreciation of the Kenya shillings, fuel price increases internationally, and elevated commodity prices. The rising cost of living was also a result of ineffective or inadequate policy interventions such as subsiding consumption of goods instead of production, gaps in food supply chains that contributed to import dependency and post-harvest losses.

399 The National Treasury submitted that the Government had put in place several measures to reduce the cost of living through the implementation of the Bottom-Up Economic Transformation Agenda. The Government's development agenda recognized the importance of managing the cost of living though well-functioning markets to enhance productivity, availability and affordability of goods and services for all citizens. Focus was on increasing employment, more equitable distribution of income, social security while also expanding the tax revenue base and increased foreign exchange earnings. The Government had also taken a long-term sustainable approach of subsidising production of goods instead of consumption to respond to the rising cost of living. Such measures include fertiliser subsidy program and waiver of duty for importation of key food products to bridge the food stocks deficit as well as lower and stabilised food prices and animal feeds. The Government continued to preserve macroeconomic stability by ensuring inflation remained within target range through adopting timely and adequate monetary policy interventions. There was still pressure on inflation from food and fuel but not core inflation.

400 The National Treasury stated that Government interventions were required to correct market failures which occurred due to abuse of market power,

information asymmetry and negative market externalities. In this regard, the Government had established the Financial Inclusion Fund (Hustler Fund) to provide access to affordable credit to individuals and MSMEs and encourage savings and reviewed the policy in the energy sector with the aim of developing and diversifying this market further by improving sourcing and supply of cooking gas that inevitably had resulted in high costs that also drove domestic inflation costs. As part of Drought Mitigation measures and climate adaptation programme, the Government had initiated a National Tree Planting Campaign that sought to enhance national tree cover and initiated new dam constructions to address drought concerns and ensure Kenya had enough harvested water to facilitate a water management strategy for irrigation for food production.

401 The National Treasury stated that they had fostered stabilisation of the foreign exchange market enabled by the government-to-government petroleum supply arrangement that had enabled Kenya to extend the credit period for petroleum imports from 30 days to 180 days.

402 On the implementation of the Finance Act 2023, the Ministry noted that the tax measures in the Finance Act 2023 in addition to raising revenue to finance the Government agenda also aimed at bringing equity and fairness to taxation and reducing the cost of living. Over the years, petroleum products had received preferential tax treatment gradually transitioning from exempt status in 2013-2018 to 8 % from 2019-2023. The continued practice by the government to subsidise the cost of fuel by levying a preferential rate of 8% was distorting the market, yet the economy should be operating on principles of demand and supply. In this respect, the National Assembly amended the VAT Act to remove the preferential rate on petroleum products so that the product would be subject to the standard VAT rate of 16 percent. Other measures included in the Finance Act, 2023 aimed at bringing equity and fairness to taxation include:

(i) Introduction of withholding tax on digital content monetisation at 5% for residents;

(ii) Introduction of withholding tax on sales promotion, marketing, advertising services at the rate of 5% of the gross amount

(iii) Increasing the rate of turnover tax from 1% to 3%

(iv) Introduction of digital assets tax at 3% of the value of the asset

(v) Introduction of two additional PAYE bands of 32.5% for annual income of KShs.3, 600,000 above the 30% tax band and 35% for incomes above KShs.9, 600,000 per annum. This was meant to enhance progressivity of taxation of personal income and share the tax burden.

403 It was their submission that the Finance Act 2023 also aimed to protect local industries from competition from imported goods, introduced the Affordable Housing Levy that would facilitate construction of Affordable Housing Units expected that it would create new jobs, both direct and indirect among the professionals, youth and MSMEs in general, along the production value chain. It would also provide a market for suppliers of raw materials for the construction of the housing units, among other benefits to the economy.

404 The National Treasury made a submission on the implication of removal of any taxes, levies or charges to cushion Kenyans against the high cost of living and the attendant effects on the economy. They averred that considering all the above measures had been factored in the revenue projections that informed the FY 2023/24 budget, the removal would result in a revenue shortfall hence negatively affecting the implementation of the FY 2023/24 budget. The government would again have no revenues or flexibility to cushion Kenyans. Further, it would result in more borrowing and worsen the country's economic situation considering that it was already negatively impacted on account of existing loans due to currency depreciation. On the overall, it would negatively impact implementation of Bottom-Up Economic Transformation Agenda (BETA) of the government and the development discourse of the economy. It

was their view that the current cost of living debate was a resultant factor on past policy mistakes that had been costly to the economy though creating distortions and the adjustments would thus be costly in the short term.

405 **The Ministry of Energy and Petroleum** submitted that they had been spearheading the implementation of various projects and initiatives to ensure adequate and reliable energy services, while at the same time seeking to reduce the cost of electricity and petroleum products in order to make Kenya a competitive investment destination.

406 The Ministry submitted that it had put in place measures to reduce the cost of petroleum products by renegotiating Freight and Premium (F&P) under the Government-to-Government arrangement in September 2023 which had reduced the monthly demand for USD and hence alleviated the depreciation of the KES for a net positive effect on petroleum pump prices; and pump price stabilisation under the Petroleum Development Levy Order, 2020 to cushion consumers.

407 With regard to the cost of electricity, the Ministry informed the Committee that the cost of electricity to end-user comprised- energy cost rates that were primarily dependent on the power purchase and the transmission and distribution costs (58%), taxes and levies (16%) and pass through costs of fuel cost charge, forex and inflation adjustments costs (26%).

408 In addition, the Ministry submitted that all electricity tariffs in the country were set and regulated by the Energy and Petroleum Regulatory Authority (EPRA) as per Section 11 (c) of the Energy Act, 2019. The policy objectives of any Electricity Tariff Review included:

(i) Economic Policy (achieve efficient resource allocation)

(ii) Financial Policy (ensure short- and long-term financial viability of sector utilities)

(iii) Social Policy (cross subsidisation amongst consumers)- Domestic and small Commercial Lifeline Category

409 The Ministry stated that the two macroeconomic factors that had contributed to the increase of electricity cost were the rapid depreciation of the Kenya Shilling against major foreign currencies and inflation pressure that had pushed up operational costs.

410 In order to reduce the cost of power, the Ministry submitted that they had focused on addressing the power purchase costs. This was expected to have the highest impact on the cost to the end user as it accounts for sixty-five per cent (65%) of the end user cost of electricity even as other cost reduction measures were pursued. There were other initiatives that the Energy sector led by the Ministry of Energy and Petroleum was pursuing to achieve reduction in Power Purchase costs including-

(i) Renegotiation of the existing operational Power Purchase Agreements (PPAs) of KenGen and Independent Power Producers (IPPs) with a total power purchase cost of KShs.143 billion (June 2023). The renegotiations were in progress;

(ii) Non-renewal of the expiring expensive Power Purchase Agreements (PPAs);

(iii) Exploring use of Battery Energy Storage System (BESS) as a means of storing "excess power" during off-peak periods and utilising it during peak hours thus avoiding the use of thermal power plants which were expensive to run. This would contribute to efficient utilisation of the available installed capacity;

(iv) Operationalisation of the energy auction framework for new renewable energy generation projects to benefit from competition in order to drive down power generation costs hence lower tariffs. The Ministry had already developed a Draft Renewable Energy Auction Policy (REAP) while Regulations to operationalise this were under development by EPRA;

(v) Adoption of Regional power trade in order for the country to benefit from the lower cost of supply, enhance system stability and reduce capacity payment costs associated with new generation procured using the current power purchase model. The rollout was expected in the medium term;

(vi) Hybridisation of off-grid thermal stations to reduce diesel fuel costs was ongoing with four projects (Merti, Habasweni, Eldas and Elwak) targeted for completion by December 2024. Additionally, a project to connect Lodwar to the grid had been proposed;

(vii) Acceleration of geothermal exploration in Menengai and Baringo (Silali and Paka) and development as the power base load. This would reduce dependence on thermal generators as a base load and further reduce costs of power;

(viii) Ensuring that all future Variable Renewable Energy (VREs) Generation plants were installed with battery storage to ensure the need to dispatch other more expensive generation to bridge the gap created by variability which further increases the cost of power;

(ix) The Ministry was exploring ways to standardise the Country's Heavy Fuel Oil (HFO) specifications in order to allow for bulk importation of HFO to benefit from economies of scale;

(x) The Ministry was working together with relevant security agencies to eliminate transformers, transmission line steel towers and other power infrastructure theft and vandalism that increased the operational costs that further increased the cost of power. Already the Energy Police Unit (EPU) was formed and operational to address security challenges within the sector;

(xi) Promote the offtake of off-peak tariffs, clean cooking and e-mobility to further drive demand which reduced the overall costs per unit of electricity;

(xii) Completion of critical generation, transmission lines and substations to enhance the stability of power thus increasing the demand and uptake of power;

(xiii) Switch to renewable energy sources such as solar or wind power, which could offer low prices while also reducing their carbon footprint;

(xiv) The Ministry continued to take advantage of innovative financing such as the Green Climate Fund which were cheaper sources of finances to fund programmes and projects thus contributing to lower cost of projects in the long run; and

(xv) Improving transparency and accountability in power procurements through standardised PPA and strict adherence to the relevant laws and regulations.

411 **The State Department for Housing and Urban development** submitted that the Government of Kenya had a goal to deliver housing on ownership terms for the Kenyan citizens with an ambition to move from 30,000 mortgages to 1,000,000 mortgages with favourable ownership terms that have monthly payments as low as KShs. 5,000. The Government also aimed to bridge the annual gap of 250,000 homes by activating projects across the nation. It was their submission that this ambitious program could be achieved by- focusing on the pipeline to launch ready projects on both national and county level; promoting economic recovery by linking MSMEs and Jua Kali sector to these projects; and making provisions in legislation for cheap and stable financing that will underwrite projects *en masse*.

412 The Department of Housing opined that in a contracting economy, the primary target should be not to get into recession. Failing to act was not an option for developing economies which had critical development needs, many of which were exposed during economic downturns including- limited resilience in the economy, lack of social safety nets, and impact on quality of life due to disrupted supply chains. In addition, they submitted that an

economic recession would create a perfect storm triggered by high debt in hard currency, currency devaluation, high inflation, rising interest rates, uncertainty, and limited revenue collection due to decreased spending. It was their submission that Kenya also faced high unemployment rates, youth bulge, contracting manufacturing, prolonged drought, impact of COVID 19 economic slowdown, impact of Russia-Ukraine crisis, and impact of US government increasing interest rates (capital flight).

413 The State Department was of the opinion that several strategies could stem a recession under these conditions- Creating consumptive demand, encouraging spending, and creating jobs in industries with multiplier effects. It was their opinion that investments in infrastructure most often hit these three points. They further submitted that investments in housing projects would help the Government to issue a "stimulus check" which would make the required investment in housing which in turn would expand enterprise and create jobs for the benefit of citizens. It was their position that this would only be possible if investments were at scale, and therefore the Housing Levy would be a critical part of the financing solution for resolving systemic challenges in provision of housing.

414 It was their opinion that the Housing Fund would mobilise capital, offer certainty of sales in the form of an off-take undertaking to developers, and provide accessible finance for home buyers through a National Tenant Purchase Scheme.

415 **The Office of the Controller of Budget (OCOB)** observed that the high cost of living in Kenya was caused by factors related to operations within the National and County government. These include— pending bills, misuse of Article 223 of the Constitution on supplementary appropriation, huge public debt, poor prediction of revenue and expenditure, unexpected shocks to the Budget within a fiscal year, under-performance of own-source revenue collections by

the counties, high expenditure on Personnel Emoluments by Counties, and borrowing to fund salaries and operations, among other factors.

416 The Controller of Budget proposed the following interventions to address the cost of living—

(i) review of the existing tax structure to ensure that it did not unduly burden low-income households. In addition, pursue an optimal tax rate that maximises government revenue without discouraging economic activity;

(ii) implement stringent measures to eliminate corruption and ensure proper utilisation of public funds for the benefit of the citizens;

(iii) strengthen Social Safety Nets to assist vulnerable populations, such as the elderly, disabled, and low-income families;

(iv) encourage partnerships between the public and private sectors to invest in crucial infrastructure projects;

(v) implement strict fiscal discipline measures to ensure prudent use of public funds;

(vi) invest in Agriculture to boost agricultural productivity, reduce food imports, and stabilise food prices in the market;

(vii) foster the growth of local industries by providing incentives, subsidies, and infrastructure support;

(viii) encourage the manufacturing sector to produce goods locally, reducing reliance on imports and subsequently lowering consumer prices; and

(ix) improve on the quality and accessibility of education and healthcare services to reduce the burden of private spending on these essential services.

417 The **Institute of Economic Affairs (IEA)** submitted that some sectors of the Kenyan economy had not recovered from the impact of Covid-19 pandemic. The Institute noted that the economic stimulus provided by the National

Treasury should be proportionate to the economic effects of the pandemic. They noted that the resources allocated for economic stimulus covered productive and service sectors that included agriculture, health, education, drought response, policy, infrastructure, financial inclusion, energy and environment conservations. The economic stimulus was therefore insufficient.

418 The Institute noted that the poor performance of the economy could be attributed to debt distress, historical policy missteps on foreign exchange, global economic conditions and a constrained fiscal space.

419 Regarding the tax regime, IEA noted that Kenya's tax system faced challenges including incoherence of tax policy; unfairness and lack of inclusion; complexity of tax policy and lack of transparency. Further, the structure of the economy, including the existence of hard to tax sectors such as agriculture and large informal sectors complicated the tax system.

420 IEA proposed a number of policies to contain high cost of living including fiscal response such as tax relief, VAT exemptions, expenditure on subsidies on essential commodities and social protection; tightening of the monetary policy; anchoring all social protections in a statute among others.

421 The Institute proposed the following reforms for establishing an efficient tax system:

(i) *National tax policy* – an efficient and fair tax system that promotes equity in tax administration and predictable tax environment for businesses to operate. The objective should be to expand the tax base so as to enhance fairness and equity in tax system.

(ii) *Medium Term Revenue Strategy*- provide a comprehensive approach of undertaking effective tax system reforms for boosting tax revenues and improving the tax system over the medium term.

422 The **Parliamentary Budget Office (PBO)**, made a presentation on the state of the economy, proposing review of taxes, levies and charges to cushion Kenyans against the high cost of living, and performance of the Housing Levy

Fund. The Office submitted that the decline in growth rate of the economy could be attributed to-adverse weather conditions, the COVID-19 pandemic, the Spill-over effects of Russia-Ukraine War, and Global inflation. In addition, the trend in the Purchasing Managers Index (PMI) indicated deteriorating business conditions and a decline in business activity for the better part of 2023. The PBO submitted that other risks to economic growth included- input cost pressures due to high inflationary pressures arising from fuel bills; currency depreciation; declining domestic demand/purchasing activity; reduction in development expenditure; commodity price volatility; and continued tightening of global financial markets.

423 The Office proposed that the government should continue pursuing the key drivers of economic growth such as- recovery of the agriculture sector, a resilient services sector, ongoing public sector investments, in priority value chains and the construction sector due to rollout of the affordable housing programme, robust private sector investment due to easing of global commodity prices and supply chain constraints and enhancing domestic demand. In addition, PBO proposed that the government should work on revitalisation of exports, rationalising imports, scaling down on external borrowing, and the CBK developing mechanisms to address speculation.

424 On the Housing Levy Fund, the PBO submitted that in the 2023/24 approved budget estimates, the expected collection from the National Housing Development Fund was KShs.63.22 billion. However, there was no clear framework in place for the release of funds from the National Housing Development Fund to be used in implementing the Housing programme. Further, there was a need for a review of the Income Tax Act to ensure that levies such as the Housing levy were deducted from basic pay.

425 The Parliamentary Budget Office further proposed several tax interventions to reduce the cost of living in the medium term to long term - maintaining a progressive tax system, lowering duties and taxes rates for sensitive products

such as petroleum and basic foods, reducing the Petroleum Development Levy Railway Development Levy & Import Declaration Fee to help contain the escalation of fuel prices; phasing out custom exemptions; and reviewing all levies to have them based on basic pay and not consolidated/gross pay. This would help to contain the effects of such levies on consumers and businesses.

426 With regard to options to reduce the cost of running government, the Parliamentary Budget Office proposed that the government should merge MDAs with similar and overlapping mandates; fully hand over devolved functions being funded in the National Government budget; curtail enactment of new legislation establishing State Corporations; and privatize or fold non-performing State-Owned Enterprises; and improve the efficiency of public investments.

427 The **Society for International Development** submitted that taxation was a crucial aspect of the social contract between citizens and the state. It represented citizens' obligation to contribute financially to fund public services and infrastructure, ensuring the collective well-being of society. In return, the state would provide essential services, maintain order, and promote its citizens' overall welfare and development. Citizens also expected that their funds would be managed and disbursed prudently.

428 The Society further submitted that the 2010 Constitution of Kenya outlined the social contract between the government and its citizens by establishing the principles of governance, ensuring fundamental rights and freedoms, and defining the roles and responsibilities of different branches of government through various provisions, including the Bill of Rights, Chapter Eleven on Devolved Government, Chapter Six on Leadership and Integrity, and the principles of public participation and access to information. However, when citizens believed that the benefits of taxation were not commensurate with their sacrifices, it could signal a breach of the social contract, leading to social and political tensions. This depended on factors such as the overall tax burden,

the perceived fairness of the tax system, the quality of public services provided, and the level of citizen participation in governance.

429 In their view, the tax increases on petroleum and its derivative products would inevitably have a domino effect on the prices of all other goods and services that Kenyans enjoyed, given the centrality of petroleum products, particularly in the transportation sector thus impacting on the lives and livelihoods of Kenyans and, more so, those who are vulnerable.

430 The SID noted that Kenyan economy was yet to recover from the negative impact of the COVID-19 pandemic. The economic downturn had led to job losses, reduced incomes, and higher prices for food and other essential goods making it difficult for many Kenyans to make ends meet. The SID was of the opinion that the food insecurity and food poverty situation in Kenya would worsen in the coming months as the impact of tax increases rippled outward in the economy – and combined with the impact of poor rains on harvests (and consequently food prices).

431 In response to the economic decline, the SID submitted that there would be challenges in adopting austerity measures and tax increases to address the cost of living issue. They offered that austerity measures which involved reducing government spending to reduce budget deficits, typically proved counterproductive, as it could lead to reduced economic growth and exacerbate the fiscal challenges it aimed to solve. Austerity also had a disproportionate impact on the poor and vulnerable because the government frequently cut spending on essential services such as healthcare, education, and social welfare. This could lead to a decrease in the quality of life for those who relied on these services.

432 The Society also submitted that tax increases, especially when they disproportionately affected lower- and middle-income individuals, could stifle economic growth and discourage investment and innovation. Further, high taxes could lead to capital flight and hinder entrepreneurial activities.

433 It was the opinion of the Society that interventions should be designed to stimulate the economy rather than contract it. By increasing government spending and tax cuts, governments could increase demand for goods and services, which created jobs and boosted economic growth. Several vital ingredients had contributed to their efficacy:

(i) *Flexibility*: Policymakers needed to be flexible and adapt to the unique economic circumstances of their country.

(ii) *Investment in Key Sectors*: Targeted infrastructure, education, and technology investments could stimulate economic growth and job creation.

(iii) *Progressive Taxation*: If tax increases are necessary, progressive taxation that places a higher burden on high-income individuals and corporations could minimize adverse economic impacts.

(iv) *Transparency and Accountability*: Open, transparent governance and accountability measures were essential to maintaining public trust and preventing corruption.

(v) *Safeguarding Social Welfare*: Protecting essential social services, such as healthcare and education, was vital to ensuring the well-being of citizens.

(vi) *Innovative Solutions*: Creative and unconventional policies could lead to economic success, as seen in Iceland's approach to the 2008 crisis.

434 In addition, to ensure economic growth and recovery the Society for International Development recommended that the government should prioritise investment in education and innovation, encourage entrepreneurship and small business growth; promote sustainable environmental and technological investments, shift to labour intensive manufacturing for the local economy, prioritise food system transformation; and implement progressive taxation and social welfare safeguards.

435 **The International Budget Partnership Kenya** noted that the poverty rates in Kenya had been going up to just under 40% in 2021. As such, the impact and solutions to the debate on the cost of living would be best measured by what happened to the livelihoods of the poor and vulnerable households. IBPK stated that the central force behind the cost-of-living crisis was the high levels of debt servicing and taxation. The growth in public expenditure financed by public debt had become unsustainable, prompting revenue mobilisation efforts that had seen the prices of food, fuel and electricity rise in 2023.

436 The IBPK stated that according to the Kenya National Bureau of Statistics, in 2021, the poverty rate in Kenya stood at 38.6%, which translated to approximately 19.1 million Kenyans living below the poverty line. Significantly, this figure marked an increase from the poverty rate in 2019, which was 33.6%. In just two years, the economic repercussions of COVID-19 had pushed an additional 3.3 million Kenyans into poverty. This surge in poverty rates affected 40 out of Kenya's 47 counties. The economic challenges were further exacerbated by the severe drought that impacted Kenya's agriculture-dependent economy, and exchange rate fluctuations.

437 In their presentation, IBPK noted that the three main defining aspects of the state of the economy are the high cost of living, slow growth in incomes, and depreciating exchange rate against the dollar. They noted as follows: -

(i) **High cost of Living:** The cost of living had been on the rise in Kenya over the past five years or so and had been steeper in the past year. The Finance Act in 2018 started a process that increased taxes on fuel and started to reduce tax exemption to basic commodities. The COVID-19 pandemic in 2020 and the economic lockdowns that followed affected businesses and supply chains that led to an increase in prices of basic commodities including those imported from outside the country. The Finance Acts have year on year continued to adjust taxes and tax rates on zero-rated products and cut exemptions that often benefit the poor

and vulnerable households. The recent drive by the government to increase tax revenue had mainly been driven by the government's shrinking fiscal space and ongoing fiscal consolidation program. It was their opinion that any sudden increase in taxes, especially those related to consumption, heavily affected poor and vulnerable households whose choices on what they could afford shrank especially in scenarios where incomes are not growing as fast.

(ii) **Slow Growth in Incomes**: While the cost of living had risen quite fast over the past few years, incomes had not kept pace. Since 2020 the minimum wage and other earnings had actually shrunk when adjusted for inflation. Therefore, as the cost of living had accelerated, households had less income to cushion themselves. As the government had done away with tax breaks on basic commodities and removed subsidy programmes especially those that benefit the poor, their ability to accommodate the costs at household level was limited. This also meant that the government's fiscal consolidation goal to increase revenue collection by increasing taxes may not materialise when the trend in incomes was not growing. Therefore, it was not surprising that the latest reports on revenue collections are indicating missed targets.

(iii) **Depreciating Exchange Rate against the dollar**: Kenya remained a net importer of many commodities whose prices were then affected by the exchange rate. As taxes had increased over time, the exchange rate had compounded and been a key contributor to the cost of living especially when driven by key commodities such as fuel.

438 The IBPK noted that the key drivers of the high cost of living seemed to be a mix of high debt servicing that left limited fiscal space for service delivery; high taxation that drove the cost of key inputs like energy high; and non-priority spending through State Owned Enterprises.

(i) **Public Debt & Debt servicing**: The IBPK submitted that Kenya's public debt growth had been occasioned by larger than anticipated fiscal deficits each year and had a root cause in imprudent expenditure and inconsistent revenue collection. This meant that the amount of borrowing needed to fill the physical gap was going to increase (more debt). The trend was indicative of a problem with the fiscal policy and raised concerns about Kenya's budget credibility. It was their submission that the rising debt service expenditure left less tax revenue available to the government to spend on other essential priorities: health, education, social protection, and the equitable share of counties. Debt repayment was the largest consumer of domestic taxes. In the face of the impending debt crisis, the IBPK stated that the government should prioritise the efficacy of public spending, and the reduction of the fiscal deficit.

(ii) **High Taxation**: As opposed to facing the reality of unsustainable public expenditure, the IBPK noted that the government had chosen to rally its efforts around revenue mobilisation with introduction of a number of aggressive tax measures as seen in the Finance Act 2023, National Tax Policy and National Medium Revenue Strategy. Tax rates had soared; however, this had not resulted in higher revenue for the government. Fundamentally, the problem stemmed from a lack of growth in incomes that would realise high tax revenues upon higher tax rates. The IBPK further submitted that a big driver of the cost of living today had been the cost of fuel and electricity. In the face of this, the IBPK was of the opinion that the easiest win for the government in the battle against the cost of living was to rationalise some of the 9 taxes and levies on fuel. They also noted that part of high electricity prices was the use of IPPs; which not only predominately used diesel fuel (price of fuel risk) but were also paid in dollars (Foreign exchange risk).

(iii) **State Corporation reform as key to cutting cost of government:** State Corporations formed a key part of government expenditure. On average they had accounted for 25% of total MDAs expenditure over the past three years between 2020/21 and 2022/23. There were over 200 hundred state owned entities in Kenya and over the years the government had made efforts to reform these SOEs in a bid to increase efficiency and reduce the administrative costs. The reforms were also an important step to align the SOE functions with the county government after devolution. The IBPK submitted that the Parliamentary Budget Office had estimated that the government could generate KShs.30 billion annually from the strategic privatisation of some of the 248 State Corporations in Kenya.

439 **FCPA Hon. Billow Kerrow**, submitted that the Kenyan economy was unstable with a decline in macro-economic indicators, increased interest rates, the shilling was on a free-fall, and inflation, driven by non-food items, had increased. In addition, the trade imbalance trend was largely negative as imports had exceeded exports by three times and demand for goods and services was subdued as purchasing power had been eroded. Unemployment was the highest in the region as businesses continued to shed jobs.

440 It was his submission that the public debt was driving the State's high taxes policy, enhanced exchange rate risks and the high interest rates. Global increases in prices of raw materials, including oil, disruption of the food supply chain and high inflation mitigation measures had exacerbated the situation. The high cost of energy and high taxes had all contributed significantly to the worsening business environment in the country which together with other constants, such as corruption and poor governance, had eroded the country's competitiveness in the region.

441 On the issue of taxes, levies and charges, Hon. Kerrow stated that the Kenya Kwanza administration had placed tax collections as its priority, arguing that it

would have more money to repay the public debt, and invest more in development. He offered that a cardinal rule during an economic decline was to not raise taxes because employers struggled to keep their business in operation and pay their employees, and individuals were concerned about loss of income. More taxes would only increase the cost of living and worsen the poor business environment. In addition, the increase in taxes would spur increased spending in Government in anticipation of increased revenue. However, revenue shortfalls would then inevitably lead to more borrowing. Moreover, tax predictability was now a major concern to investors that were finding it difficult to plan appropriately.

442 Hon. Kerrow averred that besides the taxes, there were numerous levies collected by the Government which in reality are taxes. It was his submission that there was a need to review some of the taxes downwards especially those affecting food, fuel, industrial raw materials and inputs, including the construction industry. Recent reports had indicated that revenue collections had declined as Kenyans reduced consumption. In addition, the 16% VAT on fuel had had a profound effect on the cost of living, reducing Kenya's competitiveness and reducing revenue collection. It was his proposal that VAT should be removed. Further, the 17.5% export and investment promotion levy on steel and clinker would not boost local production, let alone exports, and shouldn't have been introduced. Moreover, the many direct taxes, including the Housing Levy, would reduce the disposable incomes of employees, reduce purchasing power, and erode the profits of businesses. He submitted that there was an urgent need to review hundreds of levies charged by both levels of Government and eliminate those that were an unnecessary burden on the economy. It was his proposal that every policy and regulatory proposal must be reviewed in terms of its impact on the cost of living before Cabinet and Parliament approval is sought.

443 On the Cost of running government, Hon Kerrow submitted that rationalisation of public expenditure was critical in containing the deficit and borrowing. It was his opinion that fidelity to budget appropriations as approved by Parliament in Exchequer releases was a critical matter that the Controller of Budget should take seriously.

444 With regard to public debt Hon. Kerrow submitted that given Kenya's fragile economy and the rising poverty, it was necessary that the Government focus the attention of Kenyans to the real possibility of default on public debt which would send the country into a financial abyss. There was therefore a need for a national conversation about debt with the Government being transparent with the public on borrowing. It was his assertion that Parliament had the singular mandate to demand that it must approve all loans prior to Treasury signing on to them as required by the Constitution and hold to account those who committed the State to loans not meant for development.

445 Hon. Kerrow submitted that Kenya was vulnerable to misplaced priorities in Government spending such as building houses when schools required over 10,000 classrooms for the Competency Based Curriculum (CBC), or when HELB could not finance university students, or when the Education ministry cannot find money for schools' capitation. If Government expenditure was not prudently managed, it would continue to impoverish Kenyans with debt and high taxes. It was his opinion that the decision to tax Kenyans to fund construction of housing was misplaced and that the Government would not efficiently absorb the over KShs 300 billion the fund would raise over the next three years. Government should have used policy to incentivise the private sector to build the houses, including guarantees to banks to lend at concessionary rates, tax remissions etc. In addition, there were nearly 250 state corporations; about 50 were of commercial nature while many were an unnecessary burden on the exchequer. Rationalisation of state corporations was critical. He also offered that the numerous attempts to change policy and

legislative framework in various sectors in the short-term was proving to be an economic burden to the taxpayers and cost of living. This included the Housing Fund, NHIF restructuring, CBC, the Hustler Fund, Maisha Number, new HELB funding structure, G-G petroleum deal, coffee sector reforms etc. It would have been better to introduce them over the medium to long term.

446 On devolution, it was Hon. Kerrow's submission that the total budgetary allocations to devolved county governments and Independent Offices and commissions was less than 10% of the current total budgeted expenditure. The Independent Offices and commissions were necessary for good governance and provided relevant checks and balances that were necessary for accountability. It was his opinion that if the national government devolved all functions as provided for in the Constitution, and ensured that resources followed functions, a huge amount of funds would be saved by the Treasury. There were still many functions held irregularly by the national government which created inefficiencies, duplication and wastage of public resources.

447 Hon. Kerrow made submissions on improving the business environment to grow the economy stating that the Government should call for a national convention on the economy that would bring together all key stakeholders in the economy, particularly the business community through the key professional and business forums and organisations. This would give the Government an opportunity to listen to industry, farmers, investors, SMEs etc. and craft a new vision on how to revive the economy. He submitted that the Government should address the key challenges affecting cost of production that had rendered the country uncompetitive in the region in order to stem the exodus of investors. Foremost being the cost of power. He proposed that the government should implement the 2021 report on the Presidential Taskforce on the Review of Power Purchase Agreements. In addition, he proposed that the Government should prioritise constructive engagements

with the manufacturing sector, the informal sector and SMEs to address growth barriers as key economic enablers for creation of jobs.

Committee Observations

448 The Committee observed that—

(a) Stakeholders made a number of proposals on addressing the cost of living including reviewing economic policies, improving food and agricultural production, enhancing social protection programs, reviewing the tax policy, promotion of local production and business, providing subsidy programmes, and reducing government expenditure.

(b) The high cost of living was a result of many factors including the prolonged effects of the COVID-19 pandemic, debt distress, international conflicts, prolonged droughts, continued tightening of global financial markets, climate change, the depreciation of the value of the Kenyan shilling relative to US Dollar, increased taxation, slow growth of incomes, among other factors.

(c) Kenya being a net importer, the appreciation of the dollar relative to the Kenya shilling had made imports more expensive contributing to the high cost of living.

(d) Improved food and agricultural production including providing subsidized farm inputs and extension services, crops diversification, enhanced irrigation, value addition and access to agricultural financing would help address food shortage in the country as well as reduce overreliance on food imports which had immensely contributed to the high cost of living.

(e) There was no legislative framework to guide implementation of the rights guaranteed under Article 43 of the Constitution. However, Parliament was in the process of considering the Economic and Social

Rights Bill, 2022 aimed at implementing provisions of Article 43 of the Constitution.

(f) There was need to constitute a multisector consultative body to provide timely, accurate and independent expert advice to the Government and report to Parliament on economic and social matters, national debt and its management, and implementation of Vision 2030 and other long-term national development initiatives. The body should periodically convene national forums to facilitate Kenyans to have a discourse on economic and social matters.

(g) To reduce recurrent expenditure of the government, there is need to strategically privatize State Corporations which account for approximately 40% of total government recurrent expenditure, yet their returns were not commensurate. Further, there is need to streamline the functions of Commissions to eliminate duplication and ensure efficiency.

(h) There had been frequent changes in tax structures and laws causing unpredictability and inefficiency in tax administration which complicates revenue collection, encourages tax evasion and leads to tax exhaustion among citizens, hence underperformance in revenue collection.

(i) Following the enactment of the Finance Act, 2023 the Affordable Housing Levy was imposed as a tax charged at 1.5% of the employee's gross monthly salary for the employee and a similar amount for the employer. Whereas the purpose of the Levy is to provide funds for the development of affordable housing and associated social and physical infrastructure as well as the provision of affordable home financing to Kenyans, there was no clear framework for its utilisation.

(j) Provision of affordable energy is a critical driver for industrialisation and food production. However, the cost of electricity in the country was

significantly high. That was attributed to numerous taxes and levies, high cost of production of electricity, unfavorable contracts between KPLC and Independent Power Producers among other factors.

(k) Petroleum pump prices in Kenya determined by the landing cost, storage & distribution costs, taxes &levies, and allowed margins, among other factors, had been steadily increasing in the recent past.

(l) Fuel is a major contributor to the cost of production in Kenya. Thus, a rise in fuel prices leads to increased production costs for agricultural and manufactured products which is in turn passed on to consumers.

(m) Conflict of interest in the public sector undermines an officer's integrity, decision- making and proper conduct in the execution of their official duties. Managing conflicts of interest in the public sector is a critical aspect of preventing corruption which is a major hindrance to the process of economic development.

(n) Reports by the Auditor General and Controller of Budget revealed that County governments had consistently breached paragraph 25 of the Public Finance Management (County Governments) Regulations, 2015 which requires that the wages and benefits for public officers should not exceed 35 % of the county government's total revenue. The high wage bill was a threat to the objects of devolution as provided for under Article 174 of the Constitution.

(o) The National Government Budget Implementation Review Reports of August 2023 (FY 2022/23) by the Office of the Controller of Budget revealed that the total outstanding pending bills for both National and County Governments as of 30th June 2023 stood at KShs.727.74 billion compared to KShs.685.62 billion reported on 30th June 2022. That comprised KShs.123.91 billion (17 per cent), KShs.443.60 billion (61 per cent) and KShs.16 billion (22 per cent) for MDA's, State Corporations

and County governments respectively. Delays in payment of pending bills had caused liquidity inadequacies for suppliers.

Azimio la Umoja One Kenya Coalition Observations on the Cost of Living

449 Further to the Committee observations above, the Azimio la Umoja One Kenya Coalition made the following observations, that —

(a) The current level of cost of living is punitive, unsustainable, untenable and thus an affront to our collective dignity as a nation.

(b) The key threats to abatement of the high cost of living and the realisation of Article 43 social and economic rights and wellbeing of all Kenyans, which must be immediately addressed, are:

(i) corruption and waste, inefficiency, odious debt and excessive taxes;

(ii) the inappropriate and old fashioned market based economic and historical, and program based budgeting approaches, which are misaligned with the Constitution;

(iii) the incomplete transfer of the Fourth Schedule and Article 43 related functions and resources from the national to county governments and the continuing threats to devolution through national legislation; and

(iv) the mismatch between Article 43 rights and the Fourth Schedule related functions and the funds/resources with the national government continuing to control most of the resources required to implement county functions hence undermining the principles and values of devolution (Article 10) and objects devolved system of government (Article 174).

(c) *Azimio* totally disagrees with the *Kenya Kwanza* regime's diagnosis of the cost of living crisis in Kenya and its prescriptions, which can only result in more sufferings for Kenyans. *Azimio* in particular disagrees with the government's assertion that the rising cost of living is a result of

ineffective or inadequate policy interventions such as subsiding consumption of goods instead of production. This position was supported by the roundtable participants on the cost of living including the Institute of Economic Affairs, FCPA Hon. Billow Kerrow, Controller of Budget and International Budget Partnership Kenya, among others.

(d) Azimio disagrees with the government position that the solutions to the current high cost of living lie only in long term macro-economic solutions through:

(i) well-functioning markets to enhance productivity, availability and affordability of goods and services for all citizens;

(ii) long-term sustainable approach of subsidising production of goods instead of consumption to respond to the rising cost of living;

(iii) correcting market failures which occurred due to abuse of market power, information asymmetry and negative market externalities;

(iv) using Hustler Fund to provide access to affordable credit to individuals and MSMEs and encourage savings;

(v) reviewing the policy in the energy sector to develop and diversify the market and improve sourcing and supply of cooking gas;

(vi) government-to-government petroleum supply arrangement to extend the credit period for petroleum imports from 30 days to 180 days;

(vii) tax measures in the Finance Act 2023 to raise revenue ostensibly to bring equity and fairness in taxation in order to reduce the cost of living; and

(viii) removal of the preferential rate on petroleum products so that the product would be subject to the standard VAT rate of 16 percent.

(e) The government's continued blame on past policy mistakes as the cause of the current high cost of living is unacceptable and does not inspire confidence under any circumstances.

Kenya Kwanza's Position on Certain Aspects of the Issue of the High Cost of Living

450 Kenya Kwanza disagreed with Azimio on the real causes to the high cost of living. As submitted by economic experts and other stakeholders who appeared before the Committee (e.g., KIPPRA, SID and the National Treasury, there are many factors contributing to the current high cost of living. These factors include the COVID-19 pandemic and its attendant disruptions to global supply chains, slow global economic recovery from the COVID-19 pandemic, the disruptive effects of the wars in Ukraine and Palestine and other places (including Sudan), grave economic missteps on macroeconomic policy in the five years preceding the 2022 general election, past state capture of the economy and general economic mismanagement in the five years preceding the 2022 general election. Further, the Kenya Kwanza team was of the view that the expensive consumption subsidies in the last two months preceding the 2022 general election were costly to a fledgling economy like Kenya's that was still struggling to recover from COVID-19.

451 The Kenya Kwanza team agreed with economic experts from the National Treasury, SID and other stakeholders who submitted to the Committee that what the economy needs is proper long-term sustainable macroeconomic policies. Relevant long-term sustainable macroeconomic policies include but are not limited to massive targeted, deliberate investment in infrastructural projects like housing (which will create wealth, create jobs and spur sustainable growth for the manufacturing sector), investments in production subsidies that will ensure sustainable agricultural production, investment in agro-processing (which will guarantee food security, job creation and lower the cost of living sustainably). Specifically, the Kenya Kwanza team was loathe to politically expedient half-measures.

452 It was also the position of Kenya Kwanza that the savings envisioned by *Azimio*'s proposed expenditure cuts were unrealistic to the extent that empirical data and budgetary allocations did not support them.

453 On the Cost of Fuel, it was the position of the Kenya Kwanza team that the reduction of VAT on fuel by 8% would significantly alter the macroeconomic framework, sink the country into more onerous public debt and negate economic recovery.

454 On the housing levy, the Kenya Kwanza team was of the view that this program is a critical infrastructural investment in the economy to create hundreds of thousands of jobs. Abandoning the housing agenda would immediately render close to three hundred thousand Kenyans jobless, negate growth in the manufacturing sector, and consequently reverse any meaningful economic recovery. It was thus the position of the Kenya Kwanza team (as supported by economic experts from the National Treasury, SID, and other stakeholders that appeared before the Committee) that massive infrastructural investments like housing help economies recover. Kenya Kwanza was, therefore, of the view that the housing agenda ought to continue and must never be abandoned.

Committee Recommendations

455 *Azimio la Umoja One* Kenya Coalition strongly recommends—

(a) Reduction of VAT on petroleum products by 50% from the current 16% to 8%.

(b) The scrapping of the Affordable Housing Levy.

456 The Azimio proposals were supported by the roundtable participants on the cost of living including the Institute of Economic Affairs, FCPA Hon. Billow Kerrow, Controller of Budget and International Budget Partnership Kenya, among others.

457 The *Kenya Kwanza* Alliance strongly disagrees with *Azimio*'s recommendations on reduction of VAT on petroleum products by 50% from the current 16% and the scrapping of the Affordable Housing Levy, citing the

advice from the Cabinet Secretary of the National Treasury and the current state of economy.

458 Having noted the recommendations of the *Azimio la Umoja One* Kenya Coalition and the *Kenya Kwanza* Alliance, the Committee recommends that —

(a) The National and County Governments shall rationalize their expenditure for the next three years to allow the economy to recover as follows—

(i) The National Executive, Parliament, Judiciary, County Executives, County Assemblies, Constitutional Commissions and Independent Offices should reduce their travel budget by fifty percent (50%).

(ii) SRC to review the Daily Subsistence Allowances (per diem) for State and Public officers with a view to reducing by thirty- percent (30%).

(iii) All State and Public officers to travel in economy class for flights of not more than four (4) hours.

(iv) Fully implement the government circular (Reference No. OP/CA8.304/018 dated June 29, 2023) on the size of government delegations.

(v) Reduce allocations to hospitality and office general supplies by fifty percent (50%).

(b) Parliament shall fast track consideration and enactment of legislation relating to the war on corruption and enhancing integrity among public officers.

(c) Parliament shall amend Article 203 (2) to provide that, for every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall not be less than twenty percent of all revenue collected by the national government.

(d) The National and County Governments shall adopt the Zero-Based Budgeting approach to enhance accountability, rapidly reduce wastage of public funds and address the challenge of incremental budgeting.

(e) The Advisory Committee on the Power of Mercy shall advice the President on interventions that will facilitate decongestion of prisons as a criminal justice reform issue as well as a cost cutting measure. In addition, Parliament shall review criminal justice laws and enact legislation to provide for non- custodial sentences including community service and probation where appropriate.

(f) The Pending Bills Verification Committee shall fast-track review of pending bills and facilitate the settlement of genuine bills.

(g) The Ministry of Interior & National Administration shall operationalize the Public Benefit Organisations Act, 2013 within ninety days of adoption of this Report with a view to enabling Civil Society Organisations (CSOs) to mobilise resources to cater for social programmes within the community.

(h) The National Government shall review and develop national policies relevant to enhancement of agricultural production and manufacturing capacity to reduce overreliance on imports that has drained the foreign exchange reserves.

(i) The Ministry of Labour and Social Protection shall —

(i) expand the scope of the Social Protection Fund to include all legitimate beneficiaries such as indigents, persons with severe disabilities and older persons;

(ii) in consultation with the Nation Council for Persons with Disabilities collect and collate up to date data on persons living with disabilities;

(iii) adopt the use of technology to ensure that recipients of monies from the Social Protection Fund are legitimate beneficiaries; and

(iv) in consultation and concurrence with the National Treasury, review upwards the allocation to all beneficiaries under the Older Persons Cash Transfer (OPCT) programme. The National Treasury to consider reallocating the savings made from the reduced government expenditure on Daily Subsistence Allowance for state and public officers by 30% towards an increase of allocations under the OPCT.

(j) The National and County Governments shall provide food to schools and invest in boarding schools in arid and semi-arid regions to enhance student retention and promote education.

(k) The National and County Governments shall freeze establishment of new State Corporations.

(l) The National Government shall within three months of the adoption of this report undertake audit of the operational and financial efficiency, viability and sustainability of State-Owned Enterprises.

(m) The Ministry of Energy and Petroleum in liaison with the National Treasury shall reduce the Road Maintenance Levy and the Anti-adulteration Levy as tabulated below—

Cost Item	**Current Levy (KShs/litre)**	**Reduction (KShs/litre)**	**New Levy (KShs/litre)**
Road Maintenance Levy	18.00	5	13.00
Anti-adulteration Levy	18.00	3	15.00

(n) The National Government shall finalize transfer of all devolved functions specified under the Fourth Schedule to the Constitution and provide for concomitant resources to the County governments within six months of the adoption of this report. These include functions relating to water, agriculture health, roads, tourism and wildlife that are

still being undertaken by the national government. In addition, Legislations that impede devolution should be reviewed.

(o) Parliament shall enact legislation to establish the National Economic and Social Council (currently established vide Executive Order No. 2 of 2023) as a multisector consultative body and in so doing consider, whether to merge the functions of the Council with those of the Vision 2030 secretariat. This process will be undertaken within the context of the review of SAGAs and SOCs with a view to ensuring the objectives of the Council to transcend different administrations.

(p) The National Government, in consultation with the County Governments shall finalize classification of all roads with a view to align the attendant budget to the respective governments.

(q) The constituting Acts of Regional Development Authorities (RDAs) shall be amended to provide for the representation of county governments in the Boards of RDAs operating in the Counties.

(r) County governments shall strictly adhere to the provision of section 107 (2) (b) of the Public Finance Management Act, 2012 which requires that over the medium term a minimum of thirty percent of the county government's budget shall be allocated to the development expenditure; and paragraph 25 (1) (b) of the Public Finance Management Act (county government) Regulations, 2015 which requires that the wages and benefits for public officers should not exceed 35% of the county government's total revenue.

(s) The National Government shall develop a Policy on productivity, wealth creation and shared prosperity to foster and ensure a conducive policy environment for industrial development and productivity through incentives for building and promoting local manufacturing, reduction in the cost of energy, improved

infrastructure, ease of doing business including simple, clear, fair, and user friendly tax system, among others.

(t) The National Treasury shall by February 2024 undertake and complete a comprehensive review of the national tax policy and taxation regime with the objective of evaluating all tax instruments, enhancing tax revenue, expanding the tax base, lowering tax burden on Kenyans, improving revenue collection, with a view to make Kenya a competitive investment destination.

(u) Parliament shall fast-track the passage of the Economic and Social Rights Bill, Senate Bills No. 7 of 2023 for the purpose of enabling citizens to access socio-economic rights guaranteed under Article 43 of the Constitution.

(v) The National Government shall invest in modern water harvesting technologies to enhance irrigation agriculture to mitigate against effects of climate change on rain fed agriculture.

Implementation of the "Two-Thirds Gender Rule"

Background and Context

459 There are various constitutional provisions that form the basis of the "two-thirds gender rule". These include— Article 27 (1) which states that, *"Every person is equal before the law and has the right to equal protection and equal benefit of the law."* Further, Article 27 (3) provides that, *"Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres."* Additionally, Article 27 (6) states that, *"To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination."*, and Article 27 (8) provides that *"In addition to the measures contemplated in clause (6), the*

State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender."

460 Article 81 (b) requires that the electoral system shall comply with the principle that not more than two-thirds of the members of elective public bodies shall be of the same gender;

461 Article 177 (1) (b) provides that the Membership of County Assemblies shall include "the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender".

462 In line with these provisions, Article 100 mandates Parliament to enact legislation to promote the representation in Parliament of marginalised groups which include women.

463 Currently, the 13th Parliament has 81 female Members of Parliament in the National Assembly, representing 23% of its membership, composed of 47 Women Representatives, 28 elected by single member constituencies and 6 nominated women members. There are 21 female Senators, representing 31% of the Senate membership, composed of 3 elected and 18 nominated Senators.

464 There was general consensus by the Committee on the need to implement the not more than two-thirds gender principle and that the issue should be addressed in collaboration with the Multi-Sectoral Working Group on the Realisation of the Two-Thirds Gender Principle.

Summary of Submissions by the Public

465 The public, through memoranda proposed various solutions to the issue including-

(i) Parliament, within six months, should enact legislation and a road map for achieving the "two thirds gender principle".

(ii) Remove the position of county woman representative and put in place mechanisms for nominating members to achieve the principle in the National Assembly;

(iii) The Political Parties Act and the Elections Act be amended to comply with the Constitutional principle. In addition, party lists and proportional representation should be used to achieve the principle. Further, amend the Independent Electoral and Boundaries Commission Act to enhance the powers of IEBC in implementing the principle through party lists.

(iv) Amend Articles 97 and 98 to reflect the provisions of Article 177 (1) (b) and (c) so as to ensure that the gender principle is implemented. Further, amend Articles 97 and 98 to reduce the size of Parliament to reduce the cost burden.

(v) Remove the National Assembly and expand the Senate to 120 members, each county voting for one male and one female and 26 Senators be nominated to represent special interest groups.

(vi) Amend the Constitution to have the woman representatives be members in the Senate.

(vii) Enact a formula under Article 97 to guide the computation of the gender ratio. For instance, the two-thirds rule can be computed on the basis of the 290 elective seats.

(viii) Every constituency should have a male and female representative to the National Assembly.

466 Further, the following was submitted during stakeholder engagements:

467 **The National Gender and Equality Commission (NGEC)** stated that it supported implementation of the not more than two thirds gender principle. To this end, the Commission had documented lessons learned in the previous attempts of enactment of this law titled "The Journey towards Realisation of the Two-Thirds Gender Framework". Further, the Commission had developed and shared with the Ministry of Public Service, Gender and Affirmative Action

(MPSGAA), a draft "Constitution of Kenya (Amendment) Bill, 2023" for consideration by the Multi-Sectoral Working Group on the Realisation of the Two-Thirds Gender Principle gazetted by the Cabinet Secretary MPSGAA on August 15, 2023. (Gazette Notice No. 10848).

468 The Commission noted that the absence of a framework to implement the inclusivity principle in elective and appointive positions, compliance with the not more than two-thirds gender principle and a lack of enforcement mechanisms had hampered compliance with the two-thirds gender principle. The Commission, therefore proposed that there was a need to enact a law to operationalize Articles 27 (6) and 100 of the Constitution of Kenya, 2010. In addition, the Commission proposed that the Constitution should be amended to expressly state that the membership in elective and appointive offices established under Chapters 8, 9, 10, 11, 13, 14 and 15 of the Constitution on the Legislature, Executive, Judiciary, Devolved Government, Public Service, National Security, and Commissions and Independent Offices, observe the two thirds gender principal and allocate at least 5% of positions to persons with disability as an immediate obligation. Further, NGEC submitted that there was need to amend Article 225 (3) of the Constitution to include provisions on non-compliance with the two-thirds gender principle and 225 (7) to include a provision to require the National Gender and Equality Commission to present a Report to Parliament on the matter of compliance with the two-thirds gender principle contained in the Constitution and any other Laws.

469 **The Political Parties Liaison Committee (PPLC)** submitted that to achieve the two thirds gender rule, the position of Woman Representative was to be maintained and the shortfall be topped up after elections. The provisions of Article 177 of the Constitution would be applied to the Senate and the National Assembly to guide the implementation.

470 **The Multi-Sectoral Working Group on the Implementation of the Two-Thirds Gender Principle (the Multi-Sectoral Working Group)** observed that since the

promulgation of the Constitution there had been several unsuccessful attempts to implement the "not more than two-thirds principle" as envisaged under Articles 27 (8) and 81 (b) of the Constitution. The mechanisms previously considered were either pre-election or post-election. With regard to the pre-election mechanisms, the following mechanisms had been considered –

a) *Gender quotas for party strongholds*- This would entail reserving seats for women in 'party strongholds.' It would require amending Article 97 (2) of the Constitution and the Elections Act. However, noting that it would be difficult to determine a party stronghold, the option may not guarantee the achievement of the two-thirds gender principle and it may be challenged as being unconstitutional.

b) *Rotational constituency seats*- The option assumes the worst-case scenario, that no woman is elected in the 290 constituencies or 47 counties. Gender equality may be achieved by clustering the 290 constituencies or 47 counties into 4. One of the four constituencies or counties would be selected, randomly or using objective criteria, to elect a woman in an election and the process would be repeated in four electoral cycles. The option would require constitutional as well as statutory amendments. This option raised issues as to who would be responsible for selecting the electoral unit to elect the woman (Parliament, IEBC or Registrar of Political Parties), and which criterion would be used to cluster the constituencies or counties.

c) *Reconfiguration of constituencies*- The proposal would do away with the 290 constituencies and use the counties as a single-member constituency where two MPs (a man and a woman) per county are elected, and six members nominated to represent special interest groups. This proposal would reduce the size of Parliament by 100 members, guarantee 50% representation of both genders, and the Senate and National Assembly would use counties as the electoral unit.

The second proposal under this option was to reduce the constituencies from 290 to 150 and elect 2 MPs (a man and a woman) per constituency and nominate 20 members to represent special interest groups. This proposal would reduce the size of the National Assembly to 320 from 349 and would not affect the Senate.

The two options would require amending Article 89 (1) of the Constitution on boundaries.

d) *Doubling forty-seven county women seats in the National Assembly*- This option proposed doubling county women representatives and retaining the 290 elected and 12 nominated members. This mechanism would not guarantee the two-third threshold. The shortage could be addressed by introducing the gender top-up list. In the Senate, it was proposed that the number of nominated women be increased from 16 to 23 women. To avoid the potential of a high number of nominations, the tripling of county women representatives could be considered.

e) *Proportionate county women seats in the National Assembly*- The proposal would increase the number of county women members in the National Assembly from 47 to 144. The additional 97 seats would be proportionate to the number of constituencies in the respective counties. The additional 97 women members in the National Assembly would be achieved through—

   i. Party lists proportionate to the seats won by a political party or votes garnered by a political party; or
   ii. Elections either through a party ticket or subdivision of the counties into the number of county women members of the National Assembly; or
   iii. Picking the candidates with the highest votes in order of priority according to the number of women county members per county.

This method would guarantee the achievement of the two-thirds gender principle and the increase in the number of women would be proportional to the constituencies in the respective counties and therefore reflect the density of the population. However, it would result in an increase in the wage bill as well as raise issues regarding the criteria for the allocation of the number of seats to the respective counties.

471 On the other hand, the post-election mechanisms proposals included –

a) *Gender top-up through party lists*-The method would require constitutional amendments to make Articles 97 and 98 of the Constitution similar to Article 177 of the Constitution on county assemblies. Whereas it would guarantee the attainment of the two-thirds gender principle, the method would considerably increase the size of Parliament together with attendant costs and interfere with planning of the welfare of MPs since the number would be unknown. (In the worst-case scenario, the Senate membership would increase by 7 members while the National Assembly would increase by 104 members).

b) *The best runner-up*- This would be applied upon the conclusion of an election where IEBC determines the number of women required to meet the two-thirds gender threshold. Women candidates with the strongest support/mandate would replace the male winners in selected constituencies until the threshold is achieved. Whereas the option guaranteed the attainment of the two-thirds gender principle, it risked changing the political composition in Parliament as the replacements would come from a different party, and it may not be attractive to political parties.

c) *The party ticket (twinning)*: Under this mechanism, parties would be required to determine the preferred (No. 1) and the alternate (No. 2) candidates during primaries and during an election, voters would vote for party tickets as opposed to individual candidates. If a ticket wins, No. 1

would be the *prima facie* winner, but IEBC would determine the number of members necessary to meet the two-thirds threshold. Where the threshold is not met, some No. 2s of the winning ticket would replace the prima facie winner. This was the most preferred proposal and would not occasion an increase in the size of Parliament.

472 Having analysed both the pre-election and post-election mechanisms, the Multi-Sectoral Working Group submitted that they had made a preliminary finding that gender top-up through party lists was the most viable option. This was because the mechanisms were self-regulating and had been successfully implemented in county assemblies as provided for under Article 177 (1) (b) of the Constitution. It was further submitted that if the proposal was implemented, it would- guarantee the implementation of the not more than two-thirds gender principle in Parliament; apply to either gender as it was gender neutral; be simple and direct to implement; and afford women an opportunity to enhance their participation in elective politics.

473 **The Sabaot Community** submitted that political parties should foster the two-thirds gender rule during political party primaries with the runners-up in elections filling the one-third shortfall.

474 **The Kenya Women Parliamentary Association (KEWOPA)** submitted that although Kenya had made great progress in harnessing the gains of women and other vulnerable groups through the development of legislative, administrative and procedural aspects, there were glaring challenges in implementation. For example, the continued violation of the not more than-two third gender principle in both appointive and elective positions as provided in Article 27 (8) of the Constitution. Political parties had not embraced the gender and inclusive principles as guided by the Constitution and the Political Parties Act. KEWOPA, therefore, proposed the amendment of Articles 97 and 98 of the Constitution in line with Article 177 (1) (b) and (c) to provide for a top-up of seats necessary to attain the two-thirds gender

principle, and seats for the representation of marginalised groups including persons with disabilities and the youth. The mechanism would be self-executing and only come into force if one-third of either gender was not realised during a single-member constituency election.

475 KEWOPA further proposed that political parties practice equity by nominating women as candidates in their areas of popularity to encourage women to actively engage and participate in party politics in a meaningful way. In addition, the Association offered that political parties should be compelled through Political Parties Act 2011 to comply with the not more than two-thirds gender rule and inclusion of other constitutional measures and accountability should be enforced for political parties with heavy penalties for non-compliance with party lists. It was their opinion that nomination through parties list should be undertaken in an open transparent process governed by political parties and overseen by the Registrar of Political Parties and IEBC. Further, the IEBC should be required to strictly enforce the Code of Conduct for candidates and parties with regard to gender-based discrimination and violence. It was their submission that IEBC should also consider lowering nomination fees for marginalised groups to participate in elections.

476 KEWOPA also proposed amendment of the Constitution to allow for the Governor and the Deputy Governor to be of the opposite gender.

477 **The Central Organisation of Trade Unions (COTU-K)** proposed that Parliament immediately develop legislation to require political parties to nominate women, especially in their strongholds or adopt provisions under Article 177 (b) to apply to Parliament, just like in the county assemblies. In addition, the Organisation was of the position that each political party should meet the gender principle within its ranks to be able to benefit from the political party's fund.

478 **The Independent Electoral and Boundaries Commission (IEBC)** noted that in the execution of its mandate, it had implemented the judgement of the High

Court on *Katiba Institute vs IEBC (2017) eKLR* in which the court directed political parties to comply with Articles 10,19,20,27,28,56 and 91 (1) of the Constitution. Further, the Commission had made strides to implement the directive of the court by devising administrative mechanisms to ensure realisation of the two-thirds gender principle during the nomination process. The Commission, therefore, proposed the enactment of legislation to give effect to the two-thirds gender representation rule provided for in Article 81 of the Constitution.

479 **The National Council for Persons with Disabilities (NCPWD)** presented that the execution of the two-thirds gender principle usually discriminated against PWDs from the minority group. They proposed that a 5 per cent quota of appointive or elective slots for PWDs be entrenched into the rule.

480 **The National Youth Council** submitted that youth form 75% of the population of Kenya, as such a third of the two-thirds positions of those in decision-making should be reserved for the youth. This would ensure that their opinions are taken into consideration whenever decisions are being made.

481 **The Inter- Religious Council of Kenya** proposed that political parties should be strengthened, and the two-thirds gender rule be applied at the political party primary nomination stage. The Council further recommended that the 2/3 gender rule be enforced in all appointive positions and in the committees and departments of the Counties to entrench inclusion and diversity including regional, ethnic and religious balance as envisioned in Article 177 (b) and (c) of the Constitution.

482 **The Kenya National Chamber of Commerce and Industry (KNCCI)** proposed that deliberate steps be taken towards enforcement of the two third gender rule including coming up with legislation that supports gender equity, de-personalising the two third gender principle- it's not a women vs men challenge, promoting public awareness on the importance of implementation of the 2/3 gender rule, empowering women in business through finances and

capacity building, and political reforms to allow for equal gender representation (one man and woman representing each constituency or county) in Parliament. This would ensure that women politicians have equal access to NG- CDF.

483 **The Elections Observation Group (ELOG)** submitted that all considerations to amend the Constitution and introduce legislation aimed at enhancing the participation of women in elective and appointive positions were in line with the principles set out in Article 10 of the Constitution. In this regard, the Group suggested consideration of removing the cap on the size of the National Assembly as currently provided for and apply Article 177 (3) accordingly to address the noncompliance of the 2/3 gender principle that had plagued the country for the last three elections. In addition, they proposed that the Constitution of Kenya (Amendment) Bill 2023 by Senator Beth Syengo and the Constitution of Kenya Amendment Bill, 2023 by Hon Kimani Ichung'wah and other such legislative proposals on the 2/3 principle be considered and enacted. Further, it was proposed that the Political Parties Act (2011) and Elections Act (2011) be aligned with Article 81 (b) of the Constitution to compel political parties to have 2/3 of their candidates for elective positions to be of either gender. Further, it was their opinion that the Elections Act should be amended to compel the IEBC to enforce the gender provisions when clearing candidates for elections.

484 **The Institute of Certified Public Accountants of Kenya (ICPAK)** submitted that the two-thirds gender rule should be enforced through legislation and affirmative action measures. The Institute proposed that the formula used for nomination at County Assemblies under Article 177 (1) (b) be applied for all other elective positions in Kenya. Further, the Institute urged that all Corporates, Ministries, Departments, and Agencies adopt the two-thirds gender rule, but appointments be done competitively. They further proposed

deletion of Article 100 of the Constitution and substituting with the following provision:

> *(1) Not more than two-thirds of the members of any national assembly or senate shall be of the same gender.*
>
> *(2) Parliament shall enact legislation to promote the representation in Parliament of—*
>
> (a) *women;*
> (b) *persons with disabilities;*
> (c) *youth;*
> (d) *ethnic and other minorities; and*
> (e) *marginalised communities*
>
> *(3) where legislation to promote representation in Parliament is not enacted, political parties shall nominate in proportion to their representation, such numbers of persons in paragraph (2) to achieve the requirements of this article.*

485 **The Law Society of Kenya (LSK)** submitted that in implementing the provisions of Article 27 (8) of the Constitution there was a need to ensure that the cost of representation does not take away the resources that would have been set aside for development. The Society proposed a gender top-up list to ensure that Parliament complies with the two-thirds gender principle. The list would be composed of the best runners-up in the election to encourage active political participation.

486 **The CMD-Kenya** proposed the adoption of the Mixed Member Proportional Representation (MMPR) system as a long-term measure to address the not more than two-thirds gender principle specifically and affirmative action in general. They also suggested importing the mechanism set out in Article 177 (1) (b) of the Constitution where members are proportionately nominated from qualifying political parties to meet the principle. They recommended the introduction of Party Electoral Colleges for Women, Youth and Persons with Disability to elect the names to go into the Party Lists for the Senate, National Assembly and County Assemblies. In addition, they proposed that Article 97 (1) (c) be amended to provide that 50% of the nomination seats go to women

to further address the two-thirds gender rule. Each party list would use the Zebra style, starting with the name of a woman.

487 **Professor Githu Muigai,** Attorney General *Emeritus* in his submission, noted that there was a need for more civic education on the importance of empowering women. He proposed that the Woman Representative seat be abolished, constituencies be reduced from 290 to 100 and have a man and woman represent each of the 100 constituencies.

488 **Mkenya Daima** submitted that they supported the implementation of this progressive tenet of the Constitution. However, they were opposed to any proposals to create additional positions that would result in additional costs to the electorate. It was their opinion that proportional representation systems would work well to resolve the issue and also strengthen political parties.

489 **The Media Council of Kenya** advocated for the full implementation of the two-thirds gender rule across all levels of government and public institutions. It was their opinion that this could be achieved through legislative measures, affirmative action, and awareness campaigns to promote gender equality and representation.

490 **The International Commission of Jurists** observed that the National Assembly was required to enact legislation on the two-thirds gender rule that catered for both elective and appointive positions. They proposed that political parties should prioritise elective and nominative criteria to ensure compliance with the not more than two-thirds gender principle.

491 **The Office of the Registrar of Political Parties (ORPP)** submitted that the ORPP had successfully enforced compliance with the two-third gender rule in the governance of political parties. Therefore, they proposed the entrenchment of the two-thirds gender rule in the list of candidates for election for its enforcement.

492 **Hon Amos Wako,** Attorney General Emeritus, proposed that the provisions of Article 177 (1) (b) be applied to the National Assembly and Senate. In addition,

Political Parties should be required to nominate women to run for office in their stronghold areas so as to reduce the number of women to be nominated to meet the threshold.

493 **The Council of Governors (COG)** proposed the amendment of Constitutional provisions for both levels of Government and the three arms of government to entrench the two-thirds gender rule, as follows: - Amend Article 148 (1) to provide that each candidate in a presidential election shall nominate a person of the opposite gender who is qualified for nomination for election as President, as a candidate for Deputy President.

494 The Council also proposed for creation of the position of deputy Cabinet Secretaries who should be of the opposite gender. The Council further proposed addition of a clause stating that the appointment of Cabinet Secretaries, Deputy Cabinet Secretaries, Principal Secretaries, High Commissioners, Diplomatic and Consular Representatives, Commissions, Boards and Task Force appointments shall meet the not more than two-thirds gender principle. With regard to the County Executive, the Council proposed that Article 179 be amended to include a Clause stating that the appointment of county executive committee members shall meet the two thirds gender rule.

495 In addition, the Council proposed restructuring of the National Legislature through amendment to Article 89 to provide for a Mixed-Member Proportional Representation (MMPR) system to ensure that a certain number of seats in the legislature are set aside for constituency representatives while another set are reserved for individual parties. They further recommended the reduction of electoral units by 50% under Article 89 (1). The balance of 50% of the electoral units would be filled through party lists comprising the names of candidates based on 50:50 gender representation. It was their opinion that political parties should use a competitive, transparent, and verifiable method, free from manipulation to arrive at the party list. The Council also proposed that the

party list be presented to the IEBC before the general election date and once the election results were known, the targeted seats be allocated to the parties and filled in proportion to the number of seats garnered. As an alternative to amending Article 89, the Council proposed additional Clauses to Articles 90, 97 and 98 of the Constitution in order to achieve the two-thirds gender rule in the membership of the Senate and the National Assembly.

496 The Council also recommended that Articles 107 and 108 of the Constitution be amended to provide that the Speaker/Deputy Speaker and the Leaders of the Majority/Minority parties and their deputies shall be of opposite genders respectively.

497 They further proposed a legislative review of the Political Parties Act, 2011 to ensure that only political parties that had complied with the two-thirds gender rule in their membership, candidates and party lists received funds from the Political Parties Fund. They submitted that the Registrar of Political Parties ought to be empowered to enforce compliance by political parties.

498 **The National Council of Churches in Kenya** stated that, having considered the measures and proposals made for attainment of the two-thirds gender rule over the past 13 years, the Government should prepare a comprehensive report detailing measures taken to comply with the provisions in Article 81. The report should show laws, policies and strategies developed and implemented as well as reporting on actions taken where state bodies, organs and committees had failed to adhere to the rule.

499 **The Federation of Kenya Employers**, while supporting the implementation of the two thirds gender rule, cautioned against imposing additional taxes and levies on the citizens. They proposed that any cost implications of implementing the not more than two-thirds gender rule be funded from the Consolidated Fund.

500 ***Azimio la Umoja* One Kenya Coalition (Women Leaders of Kenya)** stated that the implementation of the not more than two thirds gender rule must strive to

find a formula to implement the principle as a constitutional provision and as international and regional level obligation and commitment in SDGs and other related gender equality instruments.

501 The Coalition proposed that Senators, being representatives of counties, should be elected by every county as one male and one female senator making 94 Senators with 50:50 gender representation thus ending the discriminatory practice of delegation voting. They proposed retention of the four seats for youth and Persons with Disability in the Senate to be filed through party electoral colleges to enhance representation and connection with the constituency of the special interest groups. They averred that persons with Disability have particularly requested to be allowed to elect their representatives.

502 *Azimio* Coalition proposed that in the National Assembly, the best option for attainment of gender parity was Proportional Representation Electoral System with a zebra list of male female names thus 145 men and 145 women; (50:50)

503 *They* also proposed adoption of Mixed Member Proportional Representation (MMPR) with Party List positions to cover the populous high-density counties that are currently underrepresented. Applying the population quota from the recent census, the density seats could be 63 to 80. To achieve the two-thirds gender rule such seats could be reserved for women. Further, they proposed that for the youth, every fifth name on the party list should be a youth and every tenth name a person with disability.

504 *Azimio also* submitted that for the full implementation of the not more than two-thirds gender rule in the National Assembly by importing in Article 97 on the National Assembly the constitutional formula in Article 177 (1) (b).

505 *Azimio* also proposed that there should be constitutional requirement for all parties to submit lists of candidates that comply with the two-thirds gender rule. The list of party candidates for gubernatorial, parliamentary and county assemblies should be compliant with the not more than two thirds gender rule.

Further, the IEBC should not accept a list of party candidates that is not compliant.

506 In the Executive, *Azimio la Umoja* proposed that proposed expansion of the executive structure to comprise President who is the Head of State and Government, a Deputy President and Prime Minister. They proposed amendment to Article 130(1) of the Constitution to state –

> *(1) The National Executive of the Republic comprises the President, Deputy President, Prime Minister and the rest of cabinet.*
>
> *(2) The composition of the national executive shall comply with the not more than two-thirds gender rule.*

507 Azimio Coalition further proposed the implementation of the opposite gender rule in all arms of government including---

> *Article 166 (c) where the Chief Justice and the Deputy Chief Justice should be of opposite gender.*
>
> *Article 106 speakers and Deputy Speakers of Parliament*
>
> *Article 124 committees and Standing Orders*

508 **The Civil Society Reference Group** submitted that only a Parliamentary system of government could accommodate implementation of the two-thirds gender principle.

509 **The Public Service Commission (PSC)** submitted that an affirmative action framework in the form of legislation should be developed and implemented to comply with the two-thirds gender rule for appointive positions across the entire public service. With regard to elective positions in Parliament, a provision similar to Article 177 (b) of the Constitution be adopted to fill up any gender shortfalls in both the National Assembly and the Senate, respectively.

510 Following the stakeholder engagement, the Committee, at its sitting held on 12th October 2023, resolved to invite the Parliamentary Service Commission to make submissions on the status of compliance to the two-thirds gender principle and budgetary implication if the principle was to be fully complied

with. In addition, the Committee invited the IEBC to deliberate on the implementation of the two-thirds gender principle in county assemblies in line with Article 177 of the Constitution.

511 **The Parliamentary Service Commission** made submissions on the status of compliance to the two-thirds gender principle in Parliament and budgetary implications if the principle was to be full complied with. They submitted that the composition of the two Chambers of Parliament, as provided for in Articles 97 and 98 of the Constitution, did not abide by the principle set out at Article 81. The Commission submitted that there had been several legislative initiatives aimed at the achievement of the two-thirds gender principle by the 11th, and 12th Parliaments. In addition, in the current Parliament (13th) nominated Senator Beth Syengo, had sponsored the Constitution of Kenya (Amendment) Bill, 2023 which at the time of the presentation was due for debate and second reading. The Bill seeks to add a second clause under Article 81 to compel the government to take legislative, policy and other measures- including the setting of standards- to realise the principle. The new clause would require the election, through party lists, of the number of special seat members necessary to ensure that no more than two- thirds of the membership of the National Assembly and the Senate is of the same gender. The Bill also proposes that the number of special seats under clause (1) shall be determined after the declaration of the results of a General Election.

512 The Commission submitted that in the current Parliament, the National Assembly had eighty-one (81) female Members of Parliament (elected and nominated) translating to 23.2%. It was their submission that the National Assembly should have had at least 117 Members of one gender for it to be compliant with the constitutional requirement of the two-thirds gender principle. Further, the Senate had twenty-one (21) female Members of Parliament (elected and nominated) translating to 32.3% of the total membership of the Senate. For the Senate to have been compliant with the

two-thirds gender principle, it required 23 Senators to be of one gender. It was their opinion that with the current composition of the National Assembly, it would require an additional fifty-four (54) female Members of Parliament. This would in turn increase the total number of members of the National Assembly to 404. On the other hand, with the current composition of the Senate, it would require three (3) more female Senators, thus increasing the total number of senators to seventy-one (71).

513 With regard to the financial implication of the nomination of the additional Members of Parliament to meet the two-thirds gender principle, the Commission submitted that the total annual cost of sustaining a Member of Parliament was approximately KShs.40 million which translates to KShs.200 million for the term of a member. This approximation considered the different mileage reimbursement rates and differences in facilitating the county/ constituency offices for elected members of Parliament vis-a-vis nominated Members of Parliament who have no county/ constituency offices.

514 **The Independent Electoral and Boundaries Commission Secretariat** made a presentation on the implementation of the two-thirds gender principle in county assemblies in line with Article 177 of the Constitution. The Commission submitted that Section 34 of the Elections Act, 2011 requires political parties submitting their party lists to the Commission to do so in accordance with the provisions of the Constitution. This includes ensuring that the marginalized lists contain the persons mentioned in Article 177 (1) (c) of the Constitution. This is further reiterated in Section 36 (1) (f) of the Elections Act, 2011 that requires parties to include at least two youth, two PWDs and two persons representing marginalized groups in the 8 nominees submitted in the marginalized list.

515 The Commission submitted that section 36 (8) of the Elections Act, 2011 requires the Commission to allocate four (4) special seat members in the order given by the party to each of the County Assemblies pursuant to Article 177 (1) (c) of the Constitution of Kenya. This is popularly known as the 'Marginalized

List'. Section 36 (7) of the Elections Act, 2011 requires, for purposes of Article 177 (1) (b) of the Constitution, the Commission to draw from the list under subsection (1) (e), such number of special seat members in the order given by the party, necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender. This is popularly known as the 'Gender Top up List.' Section 36 (4) of the Elections Act mandates the Commission to allocate Party List seats in the County Assemblies within thirty days after the declaration of the election results. It is required to designate from each qualifying list, the party representatives on the basis of proportional representation. The Allocation of the special seats was therefore informed by the gazetted elected members of County Assemblies.

516 The Commission further stated that the allocation of the seats was as per the formula provided under Regulation 56 (2) of the Election (General) Regulations, 2012 and allocating the seats starts with the allocation of seats under the Marginalised Lists and thereafter allocation of seats under the Gender Top up Lists pursuant to the principles under Paragraph 15. The Commission informed the Committee that they were members of the multi-sectoral working group on the realisation of not more than two-thirds gender principle.

Committee Observations

517 The Committee observed that—

(a) During the Eleventh and the Twelfth Parliament, twelve bills on implementation of the two-thirds gender principle were considered. The Bills made several proposals including- the filling of special seats to be determined after the declaration of elected members from each constituency, the progressive implementation of the rule, the creation of special seats for a period of twenty years, the imposing of sanctions and reward system for political parties in order to motivate them to

meet the threshold, the strengthening of the institutional framework for monitoring the implementation of the equality principles of the Constitution. Other proposals made include the expansion of the mandate of the IEBC in operationalising the provisions of Article 100, increasing the number of elected women members in the National Assembly and the election of two members of Senate of each gender by the electorate in the counties.

(b) A Multi-Sectoral Working Group was established on 15th August 2023 vide Kenya Gazette Vol. CXXV No. 182 by the Cabinet Secretary for Public Service, Gender and Affirmative Action to develop and recommend a framework of implementation of two thirds gender principle among other issues.

(c) The Supreme Court Advisory Opinion No. 2 of 2012, in the Matter of the Principle of Gender Representation in the National Assembly and the Senate, had provided for the progressive implementation of the two-thirds gender rule.

(d) In 2020, the Chief Justice advised the President to dissolve Parliament in line with Article 261 (7) for failing to enact legislation required to implement the two thirds gender rule.

(e) Various proposals were made by the Public on how to achieve the two-thirds gender principle in Parliament. They include replicating the provisions of Article 177 of the Constitution; political parties to be compelled to present party lists that meet the principle and using Mixed-Member Proportional Representation (MMPR) system among other models.

(f) There were concerns that the proposals to nominate or create special seats to comply with the two-thirds gender principle would occasion a substantial increase in the wage bill.

Committee Recommendations

518 The Committee recommends that—

(a) The Multi-Sectoral Working Group on the Realisation of the Two-Thirds Gender Principle under the Ministry of Public Service, Gender and Affirmative Action to finalize its work, and recommend a framework of implementation of two-thirds gender principle and submit its report to Parliament for consideration.

(b) The Working group considers the following two proposals as they engage with stakeholders on the matter.

Option 1

Adopt the principle under Article 177 as follows —

(a) on the basis of proportional representation by use of party lists as provided for under Article 90;

(b) comprise candidates who stood for election with precedence being given to candidates who received the greatest number of votes.

Option 2

Double the number of women seats from the counties to the National Assembly from forty-seven (47) to ninety-four (94) while retaining the 290 elected from the constituencies and the twelve (12) nominate from the party lists. Use the top-up list to address any shortage in the number of women in the National Assembly that may arise by application of the formula.

Governance Issues: National Unity/Inclusivity in Public Appointments

519 The issue was framed as governance issues, including promoting national unity and inclusivity in public appointments.

Background and Context

520 Article 10 of the Constitution provides for national values and principles of governance that bind all State organs, State officers, public officers and all persons whenever any of them—

(a) applies or interprets this Constitution;

(b) enacts, applies or interprets any law; or

(c) makes or implements public policy decisions.

521 The national values and principles of governance include—

(a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;

(b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;

(c) good governance, integrity, transparency and accountability; and

(d) sustainable development.

522 The values and principles of public service, as provided for in Article 232 of the Constitution include involvement of the people in the process of policy making; accountability for administrative acts; transparency and provision to the public of timely, accurate information; fair competition and merit as the basis of appointments and promotions; representation of Kenya's diverse communities; and affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of men and women; the members of all ethnic groups; and persons with disabilities.

523 There was general consensus by the Committee on the need to adhere to the national values and principles of governance as provided for in the Constitution.

Summary of Submissions by the Public

524 The public, through memoranda, proposed various solutions to the issue including—

(i) adherence to Article 10 of the Constitution;

(ii) amend the relevant provisions of the Constitution to require that all levels of public service reflect the face of Kenya based on ethnic proportions.

In addition, professional recruiting firms should be used to undertake professional searches for candidates from under-represented areas.

(iii) review term limits for various state offices;

(iv) introduce rotational presidency;

(v) enhance the role of Public Service Commission in public appointments;

(vi) strengthen national, intergovernmental and county systems for effective, transparent and accountable implementation of devolution as contemplated by the Constitution and relevant legislations;

(vii) legislative authority should be vested in Parliament with Senate being the upper House;

(viii) outlaw discrimination in terms of appointments, development and allocation of resources and put in place robust mechanisms for holding institutions accountable for non-adherence to the principles and values of public service be established;

(ix) the representation of the Ogiek community should be included in national and county government representation through nominations to the National Assembly, the Senate and county assemblies; and

(x) the representation of the Ogiek community should be increased in appointive positions and other job opportunities.

525 Further, the following was submitted during stakeholder engagements: -

526 The **Political Parties Liaison Committee (PPLC)** stated that it was a useful body for the promotion of good governance, national unity and inclusion. It played a crucial part in the democratic process and ensured the interests of all registered political parties who participated in the electoral processes. Political parties bridged divides and promoted a sense of unity by representing different groups within society. As such, it was their submission that it should be entrenched in law as an independent body with an autonomous secretariat.

527 The Kenya Women Parliamentary Association (KEWOPA) made the following proposals–

(i) in order to promote national unity, inclusivity and diversity, implement the existing Kenya National Policy Guide on Unity and Diversity that already promotes inclusion of gender to promote gender mainstreaming, inclusion and diversity on intersectionality issues touching on women with disabilities, young women and women from minority communities;

(ii) the Ministry of Education through Kenya Institute of Curriculum Development to undertake curriculum review and the curricula to introduce and integrate teachings of national unity and cohesion from early years, as a long-term solution;

(iii) review education policies to promote social integration such as guidelines on recruitment of teachers;

(iv) the Public Service Commission created under Article 233 of the Constitution, in undertaking its duties and responsibilities is mandated under Article 234 of the Constitution to ensure effectiveness and efficiency of public service by enforcing the requirement of adequate and equal opportunities in appointments, training and advancement of men and women, members of ethnic groups and persons with disabilities; and

(v) minimum requirement of adequate and equal opportunities in appointments, training and advancement of men and women, members of ethnic groups and persons with disabilities be extended to public offices not currently covered including all State offices, appointment of high commissioners, ambassadors and other diplomatic or consular representatives, and all Constitutional Commissions and Independent Offices established in Chapter 15 of the Constitution.

528 The **National Gender and Equality Commission (NGEC)** submitted that Article 27 (3) provides that women and men have the right to equal treatment,

including the right to equal opportunities in political, economic, cultural and social spheres and Article 27 (4) provides that the State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. Further, the State Corporations Act has not been repealed or amended to align to the Constitution of Kenya, 2010 to ensure compliance with two thirds gender rule, inclusion of PWDs, and the minority and marginalized groups. As such, they proposed the amendment of the State Corporations Act to align with the Constitution of Kenya, 2010 and the Mwongozo code of governance.

529 NGEC proposed that the provisions of Section 32 of Public Service Commission Regulations 2020 be entrenched by way of amendment to Part VI of the Public Service Commission Act, 2017 on appointments, confirmation of appointments, and transfers.

530 The Commission also proposed that the National and County governments should ensure inclusion of persons with disabilities in senior appointive positions such as cabinet, constitutional offices and other senior, middle and entry level positions.

531 With regard to Article 54 (2) which provides that the State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities, the Commission lauded this affirmative action aimed at ensuring persons with disabilities get opportunities to earn and make a living. This provision would not only help eliminate discrimination against PWDs but also help address issues of prejudice against PWDs, promote equality and dignity of persons with disabilities. However, the fact that the obligation is progressive in nature and not mandatory, has led to its violation. The Commission proposed the amendment Article 54 (2) by deleting the phrase "Progressive". *The State shall ensure the progressive implementation of the principle that at least five*

percent of the members of the public in elective and appointive bodies are persons with disabilities.

532 **The Sabaot Community** submitted that inclusivity challenges in Kenya stemmed from a combination of historical, social, and political factors resulting in a lack of inclusivity in the sharing of government appointments e.g., Ministerial appointments, Ambassadorial, Heads of Parastatals et.al in both national and County governments. The Sabaot community, for example, had not had a Minister or a Cabinet Secretary since independence. They therefore proposed that appointments to public service be done on a quota system that also considers poverty levels, special interest groups, affirmative action and representation of each ethnic group at all levels. The government should also facilitate dialogue and reconciliation efforts in areas with a history of conflicts or discrimination and recognize peace accords and negotiated democracy by entrenching them into law, especially where sharing of positions is part of the agreement.

533 **The National Council for Persons with Disabilities (NCPWD)** submitted that governance issues and inclusivity in public appointments, and the implementation of the 5 per cent rule had for a long time been elusive. According to the 2021/2022 Status Report of Compliance with Values and Principles in Articles 10 and 232 of the Constitution by the Public Service Commission, PWDs accounted for 1.4 per cent in the FY 2021/2022, way below the 5 per cent constitutional threshold. The Council further submitted that there was need for more advocacy and stricter regulation to realise the 5 per cent threshold away from the difficult to measure the progressive implementation. This could only be attained by deleting from the Constitution the word, "progressive" on the 5 per cent requirement and make it mandatory.

534 **The National Youth Council** proposed the development and adoption of a Youth Inclusion Bill which would ensure the inclusion of youth and representation in all the decision making bodies. Further, they proposed that

the Bill provide for the role of nominating the youth to be domiciled at the NYC to ensure fairness and regional balance in the recruitment process.

535 **The Inter- Religious Council of Kenya** recommended that, to ensure inclusivity, equal opportunity and balance, members of board of a public agency, commission or task force should not come from the same ethnic group.

536 **The Kenya National Chamber of Commerce and Industry (KNCCI)** proposed that national unity be promoted in Kenya through strengthening vital institutions for cohesion and integration such as the National Cohesion and Integration Commission, addressing socio-economic inequalities, management of ethnic and socio-cultural diversity, and conflict prevention, management and reconciliation.

537 **The Turkana Professionals Association** submitted that the vetting of Turkana people for National Identification documents (IDs and Passports) should cease as this aggrieved the entitlement of Kenyan citizens as enshrined in Article 12 of the Constitution of Kenya, 2010. Further, to ensure inclusivity in public appointments, the Association recommended that a mechanism be put in place to ensure appointment of marginalized professionals in high ranking positions in public service and Independent Offices and Commissions. In addition, a legal framework be enacted by Parliament to address and institute affirmative action on employment of marginalized groups similar to the Equalisation Fund.

538 **ICPAK** submitted that employment in the Public Service did not reflect the ethnic, religious, regional and cultural face of Kenya. As such they proposed that the Public Service Commission and County Governments should be empowered to undertake professional search and development for minority candidates to increase their chances of qualifying for the positions. Further, there should be checks on employment to ensure compliance to section 7 of the National Cohesion and Integration Act, 2008 that provides that public establishments shall seek to represent the diversity of the people of Kenya in

the employment of staff and no public establishment shall have more than one third of its staff from the same ethnic community. Further, it was their opinion that a multi-agency collaborative approach should be designed to bring together EACC, ODPP and DCI to deal with economic crimes; entrench the Mwongozo Code of Governance for state corporations into the Public Service; develop and implement enforcement mechanisms for the Leadership and Integrity Act to act on breaches; enforce strict laws to protect whistle-blowers on matters of corruption; continue civic education to citizens; keep out those who have records of fraud and corruption from vying; reward whistleblowing and assessments of performance; prosecute and determine corruption cases within 90 days (3 months); and repossess corruptly obtained wealth immediately.

539 **The CMD-Kenya** submitted that Article 88 (4) (i) of the Constitution mandates IEBC to regulate the amount of money that may be spent by or on behalf of a candidate or party in respect of any election. The IEBC should therefore regulate campaign financing. This would help in ensuring accountability, inclusion and levelling of the playing field in democratic and governance processes in Kenya.

540 **Mkenya Daima** submitted that, contrary to the recommendations of the Report of the Presidential Taskforce on Parastatal Reforms 2013, there had been too many appointments in non- critical institutions made through or by the Executive. They recommended that the Public Service Commission should guide public appointments and an independent body should be established to appoint boards and CEOs of income earning government entities based on experience, expertise and performance. The body would also be mandated to monitor the performance of the boards and the entities to take corrective action where necessary.

541 **Maendeleo ya Wanawake Organisation** proposed that the government should facilitate civic programmes that raise public awareness about the

importance of good governance, rule of law, and accountability; national values should be incorporated and entrenched in school curricula; institutions should practice inclusivity; and governance and politics should be separated.

542 **The International Commission of Jurists (ICJ)** submitted that there was need to ensure that all facets of Kenyan society are represented in appointive leadership at all levels of government. ICJ recommended strengthening enforcement mechanisms and institutions like the NCIC to prioritise diversity and inclusivity in public appointments; embedding inclusivity as part of performance contracting key performance indicators; encouraging political parties and leaders to embrace inclusivity; conducting a national audit of ethnic and regional composition of public offices; and holding to account the Public Service Commission for selection processes that violate public service values of inclusion, competitiveness and merit.

543 **The National Council of Churches in Kenya** recommended that appointing authorities should ensure the face of Kenya and ethnic balance is respected and seen to be done. Constitutional Commissions should be accorded genuine financial and operational freedom and that their decisions be respected and adhered to.

544 **The EACC** submitted that the constitutional threshold for appointment of persons to state and public offices is based on the guiding principle of leadership and integrity under Article 73 (2).

545 The EACC informed the Committee that they had observed that persons with integrity issues had been cleared to run for elections or appointed to state or public offices, contrary to the provisions of Chapter Six of the Constitution. This had become one of the main factors that contributed to corruption, impunity and poor governance. The Commission proposed an enhancement of procedures and mechanisms for vetting of persons for election and appointment to both state and public offices through amendment of the Leadership and Integrity Act, 2012 for the effective administration of Chapter

Six of the Constitution. This would ensure selection on the basis of competence, suitability and personal integrity.

546 Further, EACC recommended that the Constitution be amended in articles 99 and 193 so that a person who had been convicted remained disqualified from vying for electoral office until the conviction is set aside by an appellate court. This would be resolving the current situation where state and public officials implicated in corruption and unethical conduct continued to hold office until all possibilities of appeal or review had been exhausted.

547 The EACC further submitted that the unique operations of constitutional agencies within the criminal justice sector demanded that budgetary allocation and disbursement should be guaranteed without undue interference and bureaucracy. The Commission, therefore, proposed legislative amendments to guarantee operational independence by ensuring adequate budgetary allocation and timely disbursement for effective discharge of its Constitutional and statutory mandates. This should be accompanied by the strengthening of the capacity, in terms of financial and human resource, to enable the actors in the criminal justice sector to effectively and efficiently address the various election issues of concern which are within their respective mandates. In addition, the EACC proposed that there was need for a review of the statutory mandates for agencies on corruption, economic crimes and unethical conduct (EACC/ DCI/ ARA) to avoid duplication of roles.

548 **The Public Service Commission (PSC)** proposed that Parliament should oversight compliance with Constitutional Statutory safeguards that provide for inclusivity, by all appointing authorities. This could be done through receipt of an Annual Recruitment Report that is in the nature of the PSC Human Resource Audit Report for all appointing authorities. This would enable Parliament to impose sanctions for non-compliance.

Committee Observations

549 The Committee observed that —

(a) Article 10 of the Constitution outlines the national values and principles of governance including inclusivity, equity, non-discrimination and protection of the marginalized among others. However, public and state appointments did not reflect these values and principles.

(b) There is need to develop a mechanism for enforcement of compliance to Article 10 of the Constitution.

Committee Recommendations

550 The Committee recommends that —

(a) The Kenya National Human Rights and Equality Commission to be established following the merger of KNCHR, NGEC and NCIC should deal with the issue of inclusivity, equality, ethnic diversity and national cohesion.

(b) While undertaking its oversight mandate through vetting of State and public appointments, Parliament shall ensure compliance with the constitutional requirements provided for under Article 10 and 232 of the Constitution including ethnic diversity and inclusiveness.

Related Matters

Impeachment of Governors

551 Article 181 of the Constitution provides the grounds for removal from office of a county governor including gross violation of the Constitution; where there are serious reasons for believing that the county governor has committed a crime under national and international law; abuse of office or gross misconduct and physical or mental incapacity to perform the functions of the office.

552 Further, Article 181 (2) provides that Parliament shall enact legislation providing for the procedure for removal of a county governor on any of the grounds specified.

553 Section 33 of the County Governments Act, 2013 provides a legislative framework for the impeachment of county governors. The impeachment process starts at the county assembly. The resolution of the county assembly to impeach the governor is then submitted to the Senate for determination.

554 However, there have been concerns raised by county governors, county assemblies and the public about legal as well as procedural gaps in the impeachment process. There have also been calls for a standalone legislation on impeachment to provide a comprehensive legal framework to guide the process. To this end, the following submissions were made by stakeholders on the issue.

Summary of Submissions by the Public

555 The **Council of Governors** proposed changes to the process of impeachment of County Governors to prohibit any impeachments within a period of 24 months after their election into office and 12 months towards the next general election. This would mirror the petition for recall of the Members of Parliament as provided for under section 45 of the Elections Act and enable sufficient time for Governors to set up their administration for purposes of service delivery.

556 **Former Governor of Kiambu County Hon. Ferdinand Waititu** submitted that the impeachment process was being used to settle political differences contrary to the Constitution's intention to check a governor's excesses. It was his submission that the repercussions of impeachment should be based on the period during which one was elected and should not be carried into the next political cycle. Further, the process should be safeguarded from political interference.

557 **Dickson Karani Mwaniki** submitted that the impeachment procedures of the Governor and Deputy Governors to require that the grounds be verified by an

independent judicial body before any proceedings commence should be enhanced.

Committee Observations

558 The Committee observed that—

(a) There was need to further regulate the process of removal from office of county governors and deputy county governors by impeachment through a comprehensive legislative framework.

(b) Section 33 of the County Government Act, 2012, and the Senate Standing Orders should be reviewed to improve the procedure for impeachment of Governors.

Committee Recommendations

559 The Committee recommends that Parliament shall fast track enactment of a legislation to give a comprehensive guide to the impeachment process.

Retirement Benefits for the Auditor General

560 The Constitution of Kenya establishes the Office of the Auditor General as an independent office to protect the sovereignty of the people, secure observance of democratic values and principles and promote constitutionalism.

561 The office of the Auditor General plays a key role in promoting accountability, transparency and good governance by providing independently derived information on management and utilisation of public funds. The holder of the Office of the Auditor General has responsibility for auditing on an annual basis the accounts of all government and other state institutions, publishing an annual report and submitting it to parliament for scrutiny and debate. Thus, the officeholder is the key constitutional figure in overseeing the proper use of public resources and, if necessary, of publicly exposing any abuse of public funds. According to Article 251 (3), the Auditor-General holds office for a term

of eight years and shall not be eligible for re-appointment. In view of this, protecting the integrity of the office holder, during their tenure and after retirement is paramount for effective performance of their functions.

Summary of Submissions by the Public

562 Former **Auditor General, FCPA Edward Ouko** submitted that the independence of the Office of the Auditor General should be secured given the endemic nature of corruption in many African countries including Kenya. The proper functioning of the OAG depended on the holder of the Office. As such it was important for Parliament to ensure that the post-retirement benefits to the Auditor General, such as security, pension, and medical benefits are provided in law as is the case in other countries.

Committee Observations

563 It was important to accord a retired Auditor General retirement benefits similar to those enjoyed by other state officers under the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015. Currently, after serving for eight years in office, the Auditor General leaves office without any retirement benefits, a situation that could compromise the independence of the office, hence accountability and good governance in the public sector.

Committee Recommendations

564 The Committee recommends that Parliament amends the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 to include retired Auditor Generals among the persons entitled to the benefits conferred by the Act.

Adequate Checks and Balances

Background and Context

565 The concept of checks and balances can be traced to Montesquieu who proposed the separation of governmental powers into three distinct branches:

the executive, legislature, and the judiciary. He advanced that each arm should have distinct powers in order to avoid the concentration of power in one arm.

566 The chief purpose of checks and balances is to protect against abuse of power by any arm of government and to safeguard a balance of power that upholds accountability, equity, and good governance; generally, one that upholds the rule of law. Centrally, the concept of checks and balances prevents the concentration of power on any one arm of government and advances mutual oversight between the different arms.

567 The provisions of the 2010 constitution have advanced the ideals of checks and balances in the governance of the nation. However, it cannot be said that Kenya has achieved the ideal balance of powers required. Undoubtedly, the executive arm still holds considerable powers through a presidency bequeathed with extensive oversight in the affairs of the other arms and constitutional and Independent Offices. Importantly, the executive and the legislature hold the bulk of powers on budgetary allocation at the expense of the judiciary.

568 There was general consensus by the Committee that the Constitution makes sufficient provisions to ensure adequate checks and balances in government. It was imperative that these provisions are implemented to promote good governance.

Summary of Submissions by the Public

569 The public, through memoranda proposed various solutions to the issue including —

(i) Amend the Constitution to provide for the financial independence of Parliament to protect state officers serving in Parliament from manipulation by the Executive.

(ii) Operationalize the Judiciary Fund as provided for in Article 173 of the Constitution. This will accord the Judiciary autonomy in budgetary

allocations allowing for the hiring of more judges and building of more courts.

(iii) A Judicial Ombudsman should be appointed to monitor and evaluate corruption cases.

(iv) Uphold the provisions of Article 259 of the Constitution requiring the national government to adequately fund commissions and Independent Offices and implementation be done by Parliament. The funding should be according to their mandates and not the whims of the Executive and Parliament.

(v) Amend the relevant provisions of the Constitution to institute the Parliamentary system of government in place of the current presidential system since a Parliamentary system will be more responsive, accountable and cheaper than the current presidential system.

(vi) Increase the funding to counties to 40% of the national revenue.

(vii) Professionals and civil society should be consulted and play their part in checking government without hindrance.

(viii) Strengthen the Ombudsman office.

(ix) There should be a full audit of the Constitution to check on duplicated roles e.g., role of county commissioners and regional commissioners.

(x) Institutions, such as the OAG, EACC and NCIC, mandated to check excesses, should be strengthened through increased budgetary allocation and clarification of mandates.

570 **The National Gender and Equality Commission** submitted that there was a lack of robust framework of checks and balances. They submitted that it was important for the country to institutionalise a robust framework for checks and balances to ensure the Government is held to account. In addition, special

interest groups should be accorded an opportunity to hold the Government and public sector to account at all levels.

571 **KEWOPA** proposed that all laws on anti-corruption be reviewed to enhance penalties for corrupt practices by public officers and the private entities concerned; the Judiciary to strengthen its internal mechanisms to enhance speedy trials of cases; more resources be allocated to enhance digitalisation as one way of fighting corruption; and the Public Procurement and Disposal Act be enforced especially on affirmative action that require 30% of the public entity resource allocation to be given to the marginalized categories (women, youth, Persons with disabilities).

572 **The KNCCI** submitted that Kenya boasted a robust legal and regulatory framework in all arms of the government on checks and balances but lacked the good will for implementation. They proposed the empowerment of the EACC with prosecutorial powers to address the rampant corruption and abuse of office by state officers.

573 **ICPAK** proposed that, to ensure accountability and prevent the abuse of power there needed to be a robust system of checks and balances. This entailed empowering the Judiciary, Parliament, Commissions, and Independent Offices and strict compliance to the provisions of Chapter 15 of the Constitution, in particular Article 249 guaranteeing financial independence of all Commissions and Independent Offices by having their budget estimates approved by Parliament.

574 **Mkenya Daima** submitted that institutions such as Parliament, the Judiciary, County Assemblies, EACC, various other independent institutions including a free and fair press were crucial to strengthening democracy and providing checks and balances. It would be important to fortify their independence and enable their internal accountability structures to function.

575 **The Media Council of Kenya** offered that the government should be at the forefront in ensuring protection and freedom of expression, freedom of media,

the promotion of responsible journalism and access to information as envisaged in Articles 33,34, and 35 of the Constitution. They recommended the strengthening of the role of the Council as an independent media regulatory body independent of government, political and commercial interests.

576 **The International Commission of Jurists** submitted that the Constitutional and legal frameworks on checks and balances were adequate, as such it was up to each arm of government, State and public office to abide by their Constitutional authority, function and obligation.

577 **The National Council of Churches in Kenya** recommended that the Executive and Parliament should obey court orders and desist from disparaging the Judiciary. Further, recognising that the future wellbeing of Kenya is predicated on constitutionalism and the rule of law, the Council strongly recommended that reading of the Constitution of Kenya be included as a unit in the basic and tertiary education curricula.

Committee Observations

578 The Committee observed that —

(a) Article 249 (3) of the Constitution provides that all Constitutional Commissions and Independent Offices should be adequately funded to perform their functions and that the budget of each commission and independent office should be a separate vote.

(b) Constitutional Commissions and Independent Offices currently present their budgets to Parliament through the relevant parliamentary Committees, except the Judiciary and Parliamentary Service Commission (Article 221).

(c) Developing innovative corruption prevention and punishment mechanisms is important for a sustained fight against corruption.

(d) Several cases of contempt of court have been witnessed over time indicating lack of due regard for the rule of law.

Committee Recommendations

579 The Committee recommends that—

(a) The Constitution be amended to ensure compliance with court orders by state and public officers by providing that a state or public officer shall promptly comply with a court order and where there is non-compliance the court shall impose appropriate sanctions.

(b) The Ethics and Anti-Corruption Commission Act, 2011 be amended to review the qualifications and experience required for appointment as Chairperson of the Commission to enhance the capacity of the Commission to fight corruption.

(c) Parliament amends the Anti-Corruption and Economic Crimes Act, 2003 to provide that the Chief Registrar of the Judiciary shall maintain a register of all persons convicted of corruption, bribery and other economic crimes.

(d) The Statutory Instruments Act, 2013 be amended to compel regulation-making authorities to adhere to the statutory timelines within which they are required to develop and publish statutory instruments and to set out sanctions for non-compliance. Further, where the relevant authority has failed to make the required subsidiary legislation or any statutory instrument any person may petition Parliament with a proposal or draft of those instruments.

(e) Within one year of the adoption of this report, the National Cohesion and Integration Commission (NCIC), National Gender and Equality Commission (NGEC) and Kenya National Commission on Human Rights (KNCHR) be merged, and their mandates be undertaken by the Kenya National Human Rights and Equality Commission as established under Article 59 of the Constitution.

Related Matters

Balance of Legislative Powers of Parliament

580 Article 93 of the Constitution establishes the Parliament of Kenya, consisting of the National Assembly and the Senate. The overall roles of Parliament include legislation, oversight and representation.

581 The role of the National Assembly is provided for under Article 95 of the Constitution while Article 96 makes provision for the role of the Senate.

Summary of Submissions by the Public

582 During the stakeholder engagement, the **Council of Governors,** while noting that the Senate represented the counties and served to protect the interests of the counties and their Governments under Article 96 (1) of the Constitution, proposed the expansion of the mandate of the Senate in considering, debating and approving Bills concerning counties beyond the provisions of Article 110 (1). It was their opinion that all the Bills that were passed by Parliament concerned the County Governments.

583 **Senator Tom Ojienda** proposed that Articles 94, 95 and 96 of the Constitution and the law making process in Chapter 8 be amended to acknowledge and reinforce the superior legislative place and power of the Senate.

584 In a memorandum submitted to the Committee, **Hon. Peter Kaluma, M.P.** proposed amendment of the Constitution to provide for the financial independence of Parliament in the terms of Article 160 (4) or Article 250 (8) of the Constitution to protect state officers serving in Parliament from manipulation by the Executive.

Committee Observations

585 The Committee observed that—

(a) The Senate and the National Assembly have been engaged in several litigations with regard to the extent of their respective legislative

functions and particularly application of Article 110 on the procedure for processing Bills concerning counties and money bills. In the eleventh Parliament, the Speaker of the Senate sought the opinion of the Supreme Court on the import of Article 110 (3) of the Constitution. In the Advisory Opinion, the Supreme Court held that the consideration of Bills to be passed by Parliament is not a unilateral exercise exclusive to either of the two Houses, rather, the Speakers of both houses have to engage and consult.

(b) In 2019, the Senate lodged a petition in the High Court (Petition No. 284 of 2019) to challenge the unilateral passage of 23 bills by the National Assembly contrary to Article 110 (3) of the Constitution.

(c) The Constitutions makes provision for the National Assembly to originate any bill, including a bill concerning county government and money bills. The Senate on the other hand may only originate bills concerning county governments.

(d) Parliament had drafted legislative proposals with the aim of harmonising bicameral relations between the Houses. The Houses of Parliament (Bicameral Relations) Bill, 2023 (National Assembly Bills No. 44 of 2023) was one such bill which was under consideration in Parliament. The principal object of the Bill is to give effect to Articles 109, 110, 113, 114 and 118 of the Constitution. It seeks to foster the bicameral relations of the Houses by prescribing procedures for ensuring seamless consideration of the legislative business of both Houses.

(e) In other bicameral legislative jurisdictions, such as the United States of America, the Philippines, and Australia, the Senate has a longer tenure than the House of Representatives. This is to reduce the turnover in the legislature, make Senators responsible for legislative measures over time and enhance their independence in decision- making.

Committee Recommendations

586 The Committee recommends that —

(a) Parliament should fast track enactment of legislation to harmonise bicameral relations between the Houses.

(b) The Constitution be amended to provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Recognition of Members of Regional Assemblies in Parliament

587 Article 93 of the Constitution establishes the Parliament of Kenya consisting of the National Assembly and the Senate. The overall roles of Parliament include legislation, oversight and representation.

588 Article 2 (6) states that any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution. Kenya ratified the Treaty for the Establishment of the East African Community thus becoming a member of the Community in 2000 when the Treaty entered into force.

589 Article 9 (1) of the Treaty establishes the East African Legislative Assembly (EALA) as the legislative organ of the Community. Article 48 stipulates that the Membership of the Community shall comprise nine members elected by each Partner State whereas Article 50 provides that the National Assembly of each Partner State shall elect, not from among its members, nine members of the Assembly. Article 50 (2) (b) requires that the person to be elected as a member of the Assembly be, among others, qualified to be elected a member of the National Assembly of that Partner State under its Constitution.

Summary of Submissions by the Public

590 Through a memorandum, **Hon. Kennedy Musyoka Kalonzo**, a Member of the East African Legislative Assembly submitted that there was need to amend Article 93 (1) to read that the Parliament of Kenya shall consist of the National Assembly, the Senate, EALA, the Pan African Parliament and any future regional assembly as the case may be. He also proposed that the Standing

Orders of the National Assembly be amended to establish the Committee on Regional Integration as a departmental committee. Further, it was his submission that the Parliamentary Service Act should be amended to include in the definition of the term member to include members of EALA and Pan African Parliament. It was also his opinion that the annual budget of EALA as contributed by Kenya should be included in the budget of the National Assembly and be remitted directly to the EALA assembly.

Committee Observations

591 While members of EALA represent Kenya at the regional assembly they are not accorded the same stature as members of Parliament in Kenya.

Committee Recommendations

592 The Committee recommends that the Constitution be amended to provide for recognition of representatives in international legislative bodies of which Kenya is a member.

CHAPTER FOUR: FIDELITY TO THE LAW ON MULTIPARTY DEMOCRACY

593 The issue as framed under this theme was Fidelity to Political Parties/ Coalitions and the law on multiparty democracy.

Background and Context

594 Political party formation and management is anchored on Articles 91 and 92 of the Constitution that provide for the basic principles and legislation for political parties. The individual right to form, join and seek public office in a political party is anchored on Article 38 of the Constitution.

595 The place of political party discipline as a constitutional and political concept in Kenya can be traced to the repealed parliamentary oriented constitutional framework which found clear expression under the Political Parties Act 2007, and the concept as it evolved into the current dispensation. Political party discipline as expressed in different phrases as anti-defection; anti-floor crossing (particularly in parliamentary systems); or any party hopping is a principle of wide application which derives from the constitutional principle of multi-party democracy and governance.

596 Against this background - political party discipline is an essential concept of Kenya's constitutional and political framework. This assertion arises from the fact that the Constitution places significant premise on political parties as critical governance institutions. In the pre-election phase, they are channels of recruitment of political leadership and for the decisive capture of political power while in the post-election period, they provide the channels for democratic dialogue and underpin the necessity of meaningful democratic participation. Whereas they draw the lines of faction in the competitive pre-election period, they temper the drastic consequence of majority dominance by reinforcing the necessity of political dialogue in governance. Political Party discipline is essential to the concept of multi-partyism which is the foundation upon which the constitutional freedoms are built.

Summary of Submissions by the Public

597 The proposals from the public include—

(i) amend relevant Acts to strengthen political parties' internal democracy and governance;

(ii) legislate mechanisms preventing undue interference in party activities and decision-making processes by external entities;

(iii) enforce the provisions of the Election Act, 2011 that require a by election to be held whenever a member defects to another party.

(iv) the capacity and independence of the RPP, PPDT, Internal Party Tribunals and the Judiciary should be enhanced;

(v) amend section 14 of the Political Parties Act, 2011 to provide clarity;

(vi) amend the Political Parties Act, 2011 to provide clear provisions on "a coalition party";

(vii) develop regulations to enhance enforcement of Political Parties Act, 2011

(viii) delink IEBC from conducting party nominations and determining petitions arising from party primaries;

(ix) legislate mechanisms preventing undue interference in party activities and decision-making processes by external entities; and

(x) amend the Political Parties Act, 2011 to provide for post-election coalitions and how they can be entered into without antagonising the existing coalitions.

598 Further, during stakeholder engagements, it was submitted that:

599 **The Central Organisation of Trade Union (COTU)** supported strengthening political parties and proposed that there should be a direct nomination of a workers' representative in Parliament by COTU (K) to ensure alignment with workers' interests, independence and accountability.

600 **The Independent Electoral and Boundaries Commission (IEBC) secretariat** maintained that the Constitution embodied principles and values that sought

to institutionalise political parties. Article 91 of the Constitution provides for basic requirements for a political party and includes; a political party must have a national character; respect and promote gender equality; equity; practice democracy through regular, free and fair elections within the party. The Political Parties Act, 2011 operationalized articles 91 and 92 of the Constitution.

601 IEBC secretariat posited that the primary democratic function of political parties was to link the citizenry with the representatives and governance. Political parties play a central role in selection. Political Parties nominated candidates who participated in elections and defined the set of politicians from which voters could choose. Candidate selection was a fundamental process of a political party's engagement with its membership and the wider electorate. Further, they were of the opinion that intra-party democracy was essential for the creation and growth of well-functioning and sustainable democratic institutions. Those political party primaries had been epitome of challenges laced with strong undertones of nepotism, favouritism, discrimination and corruption; contrary to the democratic intention to exercise. As such, political party primaries could not be analysed without looking at the characteristics of the political parties themselves. For instance, the chaotic nature of party primaries was an outcome of the organisation of the political parties, which had revolved around personalities identified with ethno-regional interests rather than institutionalism.

602 It was their opinion that there was a need to review the manner of enforcing the Electoral Code of Conduct, including coordination and communication with relevant government agencies, including ODPP and the NPS, among others.

603 **The Kenya Women Parliamentary Association (KEWOPA)** position was that fidelity to the sponsoring party was mandatory as per the Political Parties Act. It further noted that Article 38 of the Constitution promoted several political

rights. These included the right to form political parties, recruit members and to campaign. On the other hand, citizens have rights to free, fair and regular elections based on universal suffrage. It also noted that there was a need to establish what was meant by fidelity.

604 KEWOPA made the following proposals:

(a) There appeared to be a lacuna in article 103 of the Constitution and section 14 of the Political Parties Act.

(b) It was important to draw clarity in terms of when a member of Parliament was deemed to have resigned from his/her political party (See Article 103 (1) (ilia) and 103 (3) for the enabling legislation.

(c) A balance should be drawn in terms of the role of an elected leader in opposition working on a development agenda with the government of the day, and when they defy the party stand.

(d) Proposed to amend the political parties Act in section 14 to provide for the clarity.

(e) There was a need to strengthen political parties to grow strong with ideologies for their members to subscribe and always support the party position on issues.

(f) Political parties should adopt clear and fair administrative procedures to deal with the members when they cross the line.

605 The **Sabaot Community** was of the view that fidelity political party in Kenya was influenced by a range of factors, including the country's political culture, legal framework, and the behaviour of individual politicians. They proposed enforcement of the existing laws and regulations governing political parties and promotion of internal democracy within parties, including transparent and fair internal elections. They also encouraged political parties to adopt clear and principled ideologies to enhance transparency in campaign financing and address corruption in politics. This would foster a culture of accountability among political leaders and party members, promote national unity and

discourage ethnically based politics in addition to encouraging public participation in politics.

606 **The Centre for Multi-Party Democracy (CMD-Kenya)** observed that in order to prevent interference with political parties/ coalitions, there was a need to review the regulatory framework for parties. It further observed that there existed a significant number of inactive parties that hardly participated in elections and that the best practice was parties should be formed and registered to participate in elections. Therefore, there was a need for a legal mechanism to provide for the regular review of the performance of parties with a view to deregistering the inactive ones when they fail to participate in elections. The CMD- Kenya noted that, whereas the party constitutions created the formal structures and processes, in reality they were not effectively used to manage the internal party affairs. Thus, it was imperative that the party structures and processes were made to work seamlessly. In this regard, the regulatory framework should be reviewed to provide for an administrative mechanism to ensure routine monitoring and supervision of party officials, in particular, and parties generally, to ensure adherence to the law, party constitutions, rules and procedures.

607 **The Kenya National Chamber of Commerce and Industry (KNCCI)** in their submissions were convinced that the law in place was adequate to address the matter of preventing interference with political parties/coalitions and that adequate disciplinary measures against members who go against their party have lately been seen at play with ODM acting against its members. Any person wishing to leave their political party or support another party should resign and seek fresh mandate from the electorate. Moving forward, KNCCI believed in political parties built on ideologies but not ethnic balkanisation.

608 **The National Council for Persons with Disabilities (NCPWD)** submitted that the Candidates with disabilities went through a myriad of challenges as they sought the electorate's nod and in the 2022 General Elections, about 586

candidates with disabilities ran for different positions but seven of them were successful.

609 NCPWD noted that the IEBC could sustain continuous sensitisation to debunk stereotypes on persons with disabilities' ability to lead and endeavour to ensure candidates with disabilities enjoyed political environments that were free of violence and intimidation. Further, in line with Part 2 Section 4 (d) of the IEBC Act 2011 on IEBC's role in regulating the process by which parties nominate candidates for elections, there was great need to relook the processes by which parties carried out nominations. In addition, the Council noted that, as at the time of the presentation, 21 counties did not have a single nominated MCA with disability and to solve that, it proposed an amendment to County Governments Act to ensure that a county assembly ONLY qualifies as fully constituted if they had nominated MCAs representing persons with disabilities.

610 **The Political Parties Liaison Committee (PPLC)** in its submission posited that the Political Parties Act in its current form made it difficult for parties to discipline errant members; especially the elected. Therefore, there should be clear mechanisms on how to discipline and deal with representatives who had defected from the parties that sponsored them both at the county assemblies and national assemblies.

611 PPLC maintained that a political party must be enabled through appropriate legislation to enforce party discipline and political sanity; clear timelines on party disciplinary hearings and proceedings should be enacted into law; and the Judiciary must have deadlines on hearing and determining suits emanating from defections just as with election petitions. Past suits of this nature had dragged on beyond the next general elections.

612 It was PPLC's submission that those political parties under the umbrella of the PPLC played very crucial roles in promoting national cohesion, peace, dialogue and unity in Kenya. By representing different groups within society and facilitating communication and engagement, PPLC helped to ensure

that all voices were heard, and that government policies reflected the needs and priorities of citizens. Through continuous dialogue, consultation and compromise, PPLC endeavoured to work towards common goals and promoted a sense of national unity.

613 **The Turkana Professional Association (TPA)** noted that Kenya was a multi-party democracy in which multiple political parties across the political spectrum run for national elections as provided for under the Political Parties Act No. 11 of 2011 and thus strong political parties were vehicles for a deeper democracy in a country.

614 The TPA was of the conviction that fidelity to the intents and purposes of the Political Parties Act No. 11 of 2011 specifically Section 14 (4) and (5) (a) to (e) on resignation from a political party where a member of a political party was presumed to have resigned by promoting the ideology, interests, or policies of another political party or coalition.

615 **Dr. Wilfred Mutubwa,** an advocate of the High Court of Kenya and a scholar, submitted that Article 85 of the Constitution allowed for one to move from a political party to an independent candidate within the stipulated timeline of 90 days.

616 He submitted that the Independent Electoral and Boundaries Commission (IEBC) had proposed to reduce the timeline for independent candidates to submit their nomination papers from 20 days to 7 days and was in line with the Elections (Amendment) Act, 2022, which was passed by Parliament in April 2022. This, he said, was in IEBC's argument that the reduction in the timeline was necessary to prevent politicians from using the independent candidate route as a way to circumvent party primaries. He reasoned that party hopping weakened political parties, circumvented democratic processes and fragmented the vote.

617 Dr. Mutubwa, however, averred that IEBC was incapable of settling nomination disputes because it had a wide array of functions that have been

accorded to it in the constitution. He maintained that the PPDT as established was well suited for this function given that nomination disputes and majority of pre-election disputes fall within its jurisdiction, furthermore, it has enough remedies at its disposal to dispose of nomination disputes. He proposed the Constitutional amendment to repeal Article 88 (4) (e) and entrench the PPDT in the Constitution with similar function.

618 The **Institute of Certified Public Accountants of Kenya (ICPAK)** submitted that any politicians elected on a particular political party ticket should be committed to the ideologies of the party that sponsored them to their respective positions of power during elections. However, as provided in the Political Parties Act, anyone who wished to change political party affiliation must seek fresh mandate using the new political party; he/she has shifted allegiance (Section 5.4.3 of the Political Parties Act, 2011 highlights the Deeming Provisions). These provisions should therefore underpin the management and membership of political parties.

619 ICPAK believed that this was to ensure that democracy was enhanced, and the politicians elected on different party tickets were able to deliver to the people based on the ideologies that they sold to the people prior to their election. In addition, it would also ensure that the ruling party does not weaken the opposition thereby interfering with the mandate of providing oversight to check the government excesses.

620 ICPAK was of the view that there was a need to enforce laws that protected the independence of political parties and coalitions from interference. That there should be no interference by the executive in elected leaders from different parties and the need to implement Kriegler Report; among other things.

621 It also advocated for an automatic pre- and post-election audit that comes immediately before and after election and to establish a scheme of penalty that covers a wide bracket of people who offend the provisions of the Political

Parties Act. For instance, the individual hopping and the party that they join should be penalised to discourage party hopping. That would ensure the protection of the integrity of political parties and coalitions that are essential for a functioning democracy and Party hoppers should be dealt with as per the law.

622 ICPAK further submitted that the Office of Registrar of Political Parties should be strengthened, to make it independent so that it became the custodian of political party fidelity and averred that Parties should focus more on ideology. That would help in establishing a political philosophy that would stand irrespective of any amount of persuasion to decamp to other political formations.

623 ICPAK maintained that political parties should have equal opportunities to access funding. Currently, the lion's share went to the large parties leaving others without funding. The architecture of funding for political parties should be reviewed to consider this.

624 **The Election Observation Group (ELOG)** submitted that a legal regime was required to govern political parties' nominations such as the proposed Political Parties Bill 2020. In the alternative, that could also be addressed through amending existing regimes like the election of party primaries and party regulations of 2017. One of the issues that were not covered was the issue of party lists for the MCAs and ELOG recommended that it needed to follow the same principles and processes of public participation, elections and vetting such as the one of the nominees of the National Assembly and the Senate.

625 ELOG also felt that if IEBC should be delinked from conducting party nominations and hearing petitions arising from the same and that mandate be vested to the Political Parties Disputes Tribunal (PPDT), it would allow the IEBC to be part of the monitoring and management of coalitions and coalition political parties.

626 ELOG further averred that the Office of the Registrar of Political Parties (ORPP) needed to be anchored under Chapter 15 of the Constitution as one of the Independent Offices. It believed that the political agency of the country was critical. ELOG further submitted that the ORPP had given figures indicating that they had more registered members in political parties than even the Independent Electoral and Boundaries Commission (IEBC) and it had declared that it has 24 million registered members while the IEBC has 22 million.

627 **The Inter Religious Council of Kenya (IRC)** proposed entrenching mechanisms for effective operationalisation of the Election Offences Act, and the Election Campaign Financing Act. Further, IRC proposed that IEBC should conduct a campaign financing audit within eight months after an election, to make public the nature of sources of campaign funds, and accountable utilisation of funds. It was also the submission of IRC that political parties should clearly develop and articulate party ideologies within the premise of the Political Parties (Amendment) Act 2022.

628 To guard against political mischief for selective beneficial interests, the Council proposed that a constitutional provision be made to forbid any amendments to the election-related laws eight months before a General Election.

629 For party discipline and growing political parties as institutions, IRC proposed amendment to Sections 14 A, B, and C of the Political Parties Act to provide that a by-election must be held where a member defects or is removed by deeming him to have joined another party. To cure mischief, the amendment should provide a six-month timeline for appeals and administrative justice.

630 ***Maendeleo Ya Wanawake* Organisation** recommended that there was a need to enforce transparency and accountability measures for elected officials, political parties by requiring them to disclose their funding sources, expenditures, and their activities to the public.

631 **The Office of the Registrar of Political Parties (ORPP)** submitted that the Political Parties Act obligated political parties to observe and subscribe to a Code of Conduct, but its implementation has been hindered by lack of specific sanctions to be imposed on political parties/party members that infringe the Code. It proposed that the sanctions be included in the Code and the Registrar empowered to enforce sanctions on both parties and individual party members. That would facilitate enforcement and ensure that there was effectiveness in compliance.

632 **Professor Githu Muigai,** Attorney-General *Emeritus* similarly opined that a Member of Parliament was obligated to remain loyal to the party that sponsored him/ her for the full term of the House. If one disassociated from the party, then he/she would be required to seek a fresh mandate from the people.

633 The **Trans-Nzoia County Communities' Council** submitted that they were totally opposed to party hopping.

634 The **National Council of Churches of Kenya (NCCK)** observed that there were concerns that had been raised with regard to interference with opposition political parties by the government, and recommended implementation of the processes and procedures provided for in the constitutions of the political parties as well as the Political Parties Act 2011.

635 The **Information Communication Technology Association of Kenya** (ICTAK) submitted that political choices must not be muzzled and that one was at liberty to join a political party of choice.

636 The **Kenya National Commission on Human Rights** observed that political parties were the fulcrum for democracy in the country. The Commission however, observed that political parties had weak internal structures and that there was a need for them to uphold good governance by abiding by provisions of Article 91 of the Constitution and Political Parties Act.

637 **Mt. Kenya Jurists** asserted that all efforts should be put in place to safeguard multiparty democracy in Kenya and proposed that the Political Parties Act be amended to provide that any member who has been removed from being a member of a political party pursuant to the Political Parties Act can only appeal at the PPDT with a final appeal lying at the High Court and that the matter must be heard and determined by the PPDT within six (6)months of his removal and the appeal to the High Court heard and determined within three (3) months. It was their submission that removal of an elected member from a political party was akin to an election petition as it dealt with a question of representation.

638 ***Azimio la Umoja* One Kenya Coalition** noted that determination of the majority and minority political party/coalition was by the citizen's votes at the conclusion of a General Election. The move by a section of elected/nominated leaders to disobey party rules by purporting to unilaterally collaborate with competing political parties without consent/permission from their parties had adversely affected party discipline and national character of political parties.

639 They further noted that though it was a constitutional right of any person to join any party, such a person must not be allowed to benefit from a sponsoring party while promoting interests of a competing party.

640 The *Azimio* Coalition proposed the introduction of express provisions in relevant statutes that compelled elected/nominated members who crossed over to another party to seek fresh mandate from the people by amending Article 130 of the Constitution and Section 14 of Political Parties Act. It also proposed to have specific timelines in legislations such as limiting court processes to 60 days and amending the Constitution to compel/obligate the Speakers of Parliament/County Assemblies to implement the decision of a political party expelling an elected/nominated member without leeway within 14 days from the date of receipt of the request by the party unless the decision

was successfully challenged by an aggrieved member in the appropriate judicial process.

641 The *Azimio* Coalition also proposed the introduction of a constitutional cap on timelines for determination of party disputes and disciplinary processes, for instance at 60 days to limit the discretion of the Judiciary.

642 **Electoral Law and Governance Institute for Africa (ELGIA)** submitted that institutionalisation of political parties and development of strong vibrant political parties in Kenya was yet to be fully realized. They observed that the challenges facing the political party's system in Kenya include internal party democracy, strong party structures, regular and periodic party elections, democratic nominations, mainstreaming of women and marginalized groups among others.

643 ELGIA proposed that to strengthen the political parties there should be clarity on the law on deeming and floor crossing to reinforce party discipline. Further that the law on political parties should be streamlined with Elections Act to ensure consistency and coherence of recent amendments to the two legislations. This should include the enhanced role of the Office of the Registrar of Political Parties in the nomination process by political parties.

644 Other proposals made by ELGIA include development of regulations under the Political Parties Act; clarity on the role of Political Parties Liaison Committee to enhance coordination with the Office of the Registrar of Political Parties and that there should be a distinction between liaison and coordination under IEBC Act and Elections Act, which should be convened by IEBC. Further that the Political Parties Act should be reviewed to ensure implementation of the recent court decisions on the Political Parties Fund and enactment of regulations to ensure effective management of the fund.

645 The **Kenya Conference of Catholic Bishops (KCCB)** observed in its submission that the culture of political defections and poaching of members from rival camps undermined the spirit and principles of multiparty democracy. In

addition, it prompted the passage of bad legislation and approval of bad policies hence weakening the oversight role of the legislature, encouraging corruption and culture of betrayal as well as impunity.

646 KCCB proposed amendment to section 14A, B and C of the Political Parties Act to provide that a by-election must be held when a member defects from the sponsoring political party.

647 The **Homa Bay Interface Community Health Desk** submitted that section 5 (4) (3) of the Political Parties Act already had mechanisms of preventing interference with political parties/coalitions as the provision laid grounds for the management and membership of political parties. The justification was that the democracy was enhanced both by the Ruling Party and the Opposition, and not weakened in the delivery and oversight from both parties.

648 **Hon. Amos Wako,** Attorney-General *Emeritus* observed that multiparty democracy in Kenya should be promoted. In this regard, if an elected representative advances the interests of another party, he/ she shall be deemed to have resigned from the party that sponsored him/her and should therefore seek a fresh mandate from the electorate.

649 The **National Parliamentary Caucus for Additional Counties (27 Members of Parliament)** observed that any persons or organs that engaged in any actions that offend the democratic nature of the republic or persons who changed or were deemed to have changed the party that nominated them for any position, should lose that position. They recommended implementation of the processes and procedures provided for in the constitutions of political parties as well as the Political Parties Act 2011 to address concerns that have been raised with regard to interference with opposition political parties by government.

650 **Kenya *Kwanza* Alliance** stated that individual political parties should be strengthened as key pillars for strong coalitions in Kenya. Secondly, it maintained that multipartyism was a critical tool to the growth of democracy

in Kenya. It was their submission that the choice to belong to any political party was enshrined in Article 38 of the Constitution and must be respected.

651 It proposed strengthening of political parties through enhancing internal structures, improving internal dispute resolution mechanisms, and educating members on their rights and responsibilities.

652 **Civil Society Reference Group** advocated for the people to vote for the party but not individuals as that were the surest way of ensuring inclusivity of all cadres of public opinion and ethnic representation.

653 **Representatives of the Nubian Community** submitted that they advocated for direct nomination of marginalised communities as they had not benefited from political parties over the years. They submitted that they could not win elective positions because of their relatively small population.

Committee Observations

654 The Committee observed that—

(a) Article 91 of the Constitution provides for the basic requirements for political parties, their institutionalisation and the development to be strong vibrant entities. However, this was yet to be fully realized due to challenges relating to internal party democracy, party structures, party elections, nominations and inclusivity amongst others.

(b) It is a constitutional right for any person to join a political party. However, the culture of political defections has undermined the spirit and principles of multiparty democracy.

(c) The Political Parties Act, 2011 obligates political parties to observe and subscribe to a Code of Conduct but its implementation has been hindered by lack of specific sanctions to be imposed on political parties/party members that infringe the Code by the Registrar of Political Parties.

(d) Most Political Parties do not participate in the general or by-elections, yet they are instruments of democracy and political representation. Failure to participate in elections implies that the party will not have representatives in elective positions to advance the ideals of a party or their members. Further, they cannot benefit from the Political Parties Fund.

(e) Members of the Political Parties Dispute Tribunal serve on a part-time basis. This could compromise their independence in carrying out their mandate.

Committee Recommendations

655 The Committee recommends that—

(a) The Constitution be amended to promote multipartyism and fidelity to Political Parties by entrenching procedures for resignation and deregistration of members of political parties in seeking to ensure party discipline.

(b) The Constitution be amended to include, in the basic requirements of political parties, that every political party shall promote discipline within the party, conduct its affairs in a manner that promotes democracy and peaceful politics, and adheres to the values and principles of the Constitution in the nomination of persons to appointive or elective positions including Articles 27, 54, 55, 56, 57 and 100 of the Constitution.

(c) The Political Parties Act, 2011 be amended to establish the Independent Political Parties Regulatory Commission as an independent body that shall be responsible for the registration of political parties and their office holders; the management of political parties' fund; and such other functions as may be conferred on the Commission by the Constitution.

(d) The Constitution be amended to provide that once a person is deregistered from a political party that person shall cease holding any appointive or elective position held by virtue of such membership including positions as a Member of Parliament, a county governor or a member of a county assembly provided that —

(i) the procedures for deregistration shall adhere to the freedom of expression set out in Article 33; the freedom of association set out in Article 36; the political rights set out in Article 38; the right of fair administrative action set out in Article 47; and the right to fair hearing set out in Article 50 of the Constitution; and.

(ii) the appeal mechanisms provided for have been exhausted.

(e) Article 181 of the Constitution be amended to include being deregistered from a political party as one of the grounds for removal of a county governor.

(f) Articles 103 (1) (e) and 193 (1) (e) of the Constitution be amended to provide that where a member of parliament or a county assembly resigns or is deregistered from that party as determined in accordance with the Constitution, the office of the member shall become vacant.

Related Matter

Electoral Dispute Resolution (EDR)

Summary of Submissions by the Public

656 **Electoral Law and Governance Institute for Africa (ELGIA)** proposed review of the complimentary framework for Election Dispute Resolution among the key institutions including the Judiciary, Political Parties Dispute Tribunal (PPDT) and IEBC. Further they proposed a review of the legal and regulatory framework for the conduct of EDR including aligning it to the elections calendar and consolidating legal provisions on EDR for the main elements of Election Administration including voter registration, boundaries delimitation,

nomination and registration of candidates, campaign financing regulation, conduct of election officials, the electoral code of conduct, mitigation of election violence and election operations.

Committee Observations

657 The Committee observed that —

(a) There was need to streamline settlement of electoral disputes as a means of expediting their resolution.

(b) There was need to review the framework for election dispute resolution relating to the role of settlement of electoral disputes to IEBC as provided for under Article 88 (4) (e) of the Constitution vis-a-vis those of the Political Parties Disputes Tribunal under Section 40 of the Political Parties Act, 2011.

Committee Recommendations

658 The Committee recommends that Article 88 (4) (e) of the Constitution be amended to review the framework for election dispute resolution by removing the role of settlement of electoral disputes, (including disputes relating to or arising from nominations) from the Independent Electoral and Boundaries Commission and conferring the mandate to the Political Parties Disputes Tribunal established under the Political Parties Act, 2011.

CHAPTER FIVE: ENTRENCHING FUNDS INTO THE CONSTITUTION

NGCDF, NGAAF and Senate Oversight Funds

Background and Context

659 The Constitution provides for mechanisms for the management of public finances and sets out principles that guide all aspects of public finance in the Republic. Additionally, Article 202 provides that Revenue raised nationally shall be shared equitably among the national and county governments and that County governments may be given additional allocations from the national government's share of the revenue, either conditionally or unconditionally. Further, Article 203 provides for equitable sharing of revenue outlining the criteria in determining equitable shares.

660 The National Government Constituencies Development Fund is established pursuant to section 4 (1) of the National Government Constituencies Development Fund Act, 2015. However, the fund has been the subject of a number of litigations in Court. This is because the operationalisation of the fund has been viewed to be in violation of the principle of separation of powers.

661 The National Government Affirmative Action Fund (NGAAF) was enacted through Legal Notice No. 24 of the Public Finance Management Act, 2012 published on 13th February 2015. The Fund is governed by the Public Finance Management Act, 2012, and Public Finance Management (National Government Affirmative Action Development Fund), Regulations 2016. The Fund is intended to address the plight of vulnerable groups through enhanced access to financial facilities for socio-economic empowerment among women, youth, Persons with Disabilities, needy children and elderly persons in the country.

662 The Senate Oversight Fund is one of the funds proposed to be entrenched in the Constitution. His Excellency the President in a memorandum to Parliament dated 9th December 2022 requested Parliament to consider establishing and

entrenching the Senate Oversight Fund in the Constitution alongside the NGCDF and NGAAF. Additionally, a legislative proposal co-sponsored by the Member of Parliament for Matungulu Constituency, Hon. Stephen Mule and the Member for Gichugu Constituency, Hon. Githinji Gichimu was before the National Assembly seeking to establish the Funds.

Summary of Submissions by the Public

663 The proposals received on the National Government Constituencies Development Fund (NGCDF) include—

(i) entrench the Fund in the Constitution;

(ii) establish guidelines on selection of committee. Other stakeholders proposed that the Committee should be recruited competitively;

(iii) Members of the National Assembly should have an oversight fund instead of NG-CDF;

(iv) Article 96 (3) of the Constitution be amended to allow the Senate the role of allocation and oversight of CDF Funds;

(v) there were various proposals on allocation to the fund as a proportion of the national government revenue including 5%, 2.5% and 4.5%;

(vi) projects to be funded must undergo public participation;

(vii) delink the fund from Members of the National Assembly. Further, that the fund to be managed by the national government executive;

(viii) some members of the public were of the view that the fund should be abolished, and the earmarked resources reallocated to counties.

664 The proposals received on the National Government Affirmative Action Fund (NGAAF) include—

(i) a group should benefit for ten years and then withdraw for others to benefit;

(ii) the Fund should be merged with NG-CDF and delinked from Members of the National Assembly;

(iii) Fund administration should be under the Executive arm of Government;

(iv) Funds should be taken to the counties;

(v) Fund should not focus on women only;

(vi) there should be a committee elected by virtue of capability and public representation; and

(vii) some members of the public were of the view that the Fund was unnecessary.

665 The proposals received on the Senate Oversight Fund include—

(i) entrenchment of the fund in the Constitution to enable senators offer proper oversight;

(ii) enhancing the budget of the Senate to improve oversight as opposed to establishing the Fund;

(iii) the Fund to be allocated more money and have its own staff and offices within counties. Further, that the fund be made functional through the necessary constitutional arrangements;

(iv) the Fund should be managed by the County Government Ward Development Fund Board at the county level. The Fund Committees should be at the ward level and project management committees at the community level; and

(v) some members of the public were of the view that the Fund was unnecessary, whereas others proposed that Ward Development Fund be created instead, and ring fenced at 5% of county budget. The Ward Development Fund should be delinked from management by MCAs.

666 The following is a summary of submissions made during stakeholders' engagement—

667 **The County Assemblies Forum (CAF)** supported the entrenchment of the Funds in the Constitution.

668 **The Sabaot Community** supported entrenchment of the National Constituency Development Fund, the National Government Affirmative Action Fund (NGAAF) and the Senate Oversight Fund (SOF) into the Constitution in its

submission. Distributing Funds equitably to subsidiary levels of government or local communities can have several benefits which include reduced regional disparities, hence reduced regional inequalities. They maintained that Constituencies were good avenues for directing resources to areas that may have been historically marginalized or underserved.

669 **The Kenya Women Parliamentary Association (KEWOPA)** supported entrenchment of the National Government Constituencies Development Fund, National Government Affirmative Action Fund and the Senate Oversight Fund. It also proposed that the funds be made available through a constitutional framework. In addition to this, KEWOPA further proposed–

(a) Nominated members in all the three legislative bodies to be allocated at least not less than 10% of the amounts allocated to the elected members to support activities in line with the constituency they represent mainly women, PWDs, youth and marginalized communities: and

(b) The resources should be directed towards realisation of Article 43 rights.

670 **The Centre for Multi-Party Democracy (CMD-Kenya)** submitted that although the funds were declared unconstitutional by Courts, there was need to amend the relevant legislation to make them compliant to the court's decisions i.e., ensure separation of powers to ensure proper oversight.

671 CMD also submitted that the Funds were important to foster devolved functions of the Counties and proposed that relevant legislations should be amended to ensure that Members of Parliament only play the oversight role in regard to the administration of the Funds.

672 **The Kenya National Chamber of Commerce and Industry (KNCCI)** also maintained that the three Funds should be entrenched in the Constitution as a matter of priority. The Senate Oversight Fund was long overdue as the role of a senator to oversight was curtailed by lack of Funds. It proposed that the

oversight funds for senators and women representatives should be substantial owing to the larger area of operation as compared to the constituency.

673 **The Media Council of Kenya** noted in its submission the importance of transparency and accountability mechanisms in the utilisation of the Funds by establishing clear reporting structures and independent audits to ensure that Funds were used effectively and efficiently.

674 It advocated for safeguards to protect journalists, media practitioners and media enterprises from undue influence or harassment when investigating and reporting on fund-related matters.

675 It further proposed provisions that enable media access to information related to these Funds, allowing them to inform the public and hold accountable those responsible for managing the Funds.

676 **The Turkana Professional Association (TPA)** recommended the entrenchment of the NG-CDF and NGAAF into the Constitution to help Turkana benefit from the principal objects and purposes for which the Funds were established under Section 3 (a)-(p) of the NG-CDF Act No. 30 of 2015 and under Regulation 1 & 2 (a) to (h) of the Public Finance Management (National Government Affirmative Action Fund), Regulations 2016 respectively. TPA stated that Funds served to promote the national values of human dignity, social justice, inclusiveness, equality, human rights, equity, non-discrimination, and protection of the marginalized pursuant to Article 10 (2) (b) of the Constitution.

677 For effective service delivery, TPA proposed that NGCDF allocation be increased from the current 2.5% to 5% of the National Annual Budget. TPA also recommended the entrenchment of the Senate Oversight Fund into the Constitution. The Senate has the triple responsibility of representing, allocating resources, and oversighting state officers including county governance and administration for the benefit of the people as per Article 98 (1) to (4) of the Constitution.

678 TPA further submitted that entrenching the Funds would empower the Senate to deliver its mandate independently and without undue influence, determine its oversight program of action, hold the executive accountable, and remain effective champions to the objects of devolution as provided under Article 11 of the Constitution. TPA also submitted that more functions held by the National government should be devolved so that funds follow functions at the counties as enshrined in law.

679 ***The Maendeleo Ya Wanawake* Organisation** also supported the entrenchment of the NGCDF, NGAAF and the Senate Oversight Funds in the Constitution recommended incorporation of women leaders from the ward, Sub County and County level and that the fund should be used to address issues such as teenage pregnancies, orphans, as well as drugs and substance abuse. It maintained that the Senate Oversight fund should not only be used to fulfil its oversight duties, but its impact/results must be felt at the grassroots level.

680 **Independent Police Oversight Authority (IPOA)** recommended the entrenchment of funds into the Constitution. It appreciated what the National Government Constituencies Development Fund (NG-CDF) had done and the National Government Affirmative Action Fund (NGAAF).

681 **The Institute of Certified Public Accountants of Kenya (ICPAK)** was of the view that the Supreme Court had pronounced itself on the matter and therefore should be deemed settled. The National Government Affirmative Action and the Senate Oversight Fund have similar structures and design as CDF; therefore, their entrenchment could only be expedited within the context of the Supreme Court's verdict.

682 **Wajir South Leaders Forum community** submitted that they had been side-lined and that they had not felt the impact of NGCDF, NGAAF among other devolved Funds.

683 **The Law Society of Kenya (LSK)** averred that the Funds did enjoy popular public support in terms of the work and impact within the communities and constituencies, the challenge it faced was the various court decisions made against the NGCDF.

684 They also submitted that the entrenchment of the Funds was facing the question of whether the Funds would conform to the constitutional architecture. There have been concerns on how to manage and meet the constitutional principles that required the equitable sharing of revenue between the counties and the National Government. There have also been concerns about the vertical division of revenue and how those Funds would be provided for within Article 202 to Article 206 of the Constitution.

685 It noted that although the proposed entrenchment of the funds into the Constitution was well meaning and intended, there were several insurmountable constitutional challenges to the establishment of any of such funds under the Constitution and felt that there was a need to look at how to achieve the very noble objectives that were intended to be realised by the funds without necessarily going to or resulting in amending the Constitution vis-à-vis the provisions of Article 95 of the Constitution on the role of Parliament; representation and oversight.

686 **Mkenya Daima** in their submission opposed the entrenchment of NGCDF, NGAAF and Senate Oversight Funds in the Constitution.

687 **The International Court of Jurists-Kenya (ICJ)** on their part submitted that they were guided by the Supreme Court ruling that found that the NGCDF was unconstitutional because it entangled the Legislature into expenditure of Funds that were not contemplated under the structure of the Government as at the moment. Funds for local development should be channeled through the national government directly or through the county governments. Bursaries at the constituency level might be earmarked at the county level.

688 The ICJ further submitted that the National Government Affirmative Action Fund (NGAAF) and the Senate Oversight Fund also interfered with the separation of powers.

689 **Professor Githu Muigai,** Attorney-General *Emeritus*, informed the Committee that there was no justification for entrenchment of any Fund (NG-CDF, NGAAF and the Senate Oversight Fund) in the Constitution. He further informed the Committee that the National Government fund was in the National Treasury and the Cabinet Secretary was its custodian, while at the county level the County governor was the custodian and that any other fund had no place in the constitutional architecture.

690 **Hon. Amos Wako,** Attorney-General Emeritus expressed reservations on the entrenchment of Funds in the Constitutions and noted that it would not augur well with the separation of powers as envisioned in the Constitution. He opined that Parliament could not appropriate the Funds and executed the same. He noted that there would be a serious conflict of interest.

691 The **National Council of Churches of Kenya (NCCK)** in its submission recommended that the three Funds should not be established, and that the existing Constituency Development Fund should be terminated altogether, as it was in contravention of the Constitution. They averred that entrenchment of the Funds would allocate a mandate to the Members of the National Assembly and Senate that was not allocated by the Constitution, and which was inimical to the principle of separation of powers whereby the implementer could not oversight the same task with integrity.

692 The **Kenya National Commission on Human Rights** expressed its views and maintained that it agreed with the decision of the Supreme Court with regards to the entrenchment of the Funds.

693 **Kenya Kwanza Alliance** fully supported the entrenchment of the NGCDF for the following reasons-

(a) Keeps legislators in touch with the pulse of their constituencies and a forum for continuous engagement on critical issues and mobilisation to solve the problems in the spirit of collective action; and

(b) The Funds have been instrumental in improving service delivery, infrastructure, and livelihoods at the grassroots level.

694 They also submitted that the entrenchment of NGAAF and Senate Funds in the Constitution would bring about continuity and sustainability of the funds regardless of the changes in the political leadership or priorities and enhance accountability and transparency since the Funds would be subject to constitutional provisions and oversight mechanisms.

695 Kenya Kwanza further submitted that entrenchment of the Funds would lead to increased resources available for the Funds, as they would be allocated a fixed percentage of the national revenue rather than being dependent on the annual budgetary process. The Funds would improve the service delivery, infrastructure and livelihoods of the beneficiaries such as women, youth, and persons with disabilities, children, and the elderly and county governments.

696 **The Kenya Conference of Catholic Bishops (KCCB)** was of the view that the management of the Funds violated the principles of separation of powers and checks and balances and that the Senate Oversight Fund was not necessary as the Senate committees were already catered for by the Parliamentary Service Commission.

697 The KCCB recommended the amendment of the respective fund's Acts to provide that Funds be managed by the executive branch of the counties or the local National Government Administration.

698 **The *Azimio la Umoja* One Kenya Coalition** noted that the Legislature's involvement in the Funds went against the principles of separation of powers, checks and balances, conflict of interest, Article 10 on accountability and good governance.

699 The Alliance recommended that amendments to the Constitution be made to provide that there were only two levels of government and that the Funds could be shared vertically and horizontally.

700 **The Coast Parliamentary Group (CPG)** observed that NG-CDF and NGAAF played a crucial role in development at the grassroots. They recommended that the Funds be entrenched into the Constitution.

701 **The Homa Bay Interface Community Health Desk** opposed the entrenchment of Funds in the Constitution noting that the role of Parliament was restricted to oversight, representation, appropriation and legislation.

702 **The Civil Society Reference Group** observed that the entrenchment of Funds may call for change in the governance system from presidential to Parliamentary.

703 **The Inter-Religious Council of Kenya** noted that the constitutionality and legality of the NG-CDF, and NGAAF had been challenged in court. IRC opined that the Senate Fund should not be entrenched in the Constitution. The Supreme Court Judgement in Senate verses Council of County Governors and 6 others (Petition 24 and 27 of 2019 (Consolidated)) [2022] KESC 57 (KLR) (7th October 2022) (Judgement) held that County Assemblies were first-tier institutions in oversight of counties, and the Senate was the second-tier institution. IRC observed that if a Senate Fund was created and entrenched for oversight purposes, the County Assemblies would also demand for an Oversight Fund too. They submitted that all these aforementioned Funds were not necessary.

704 IRC further submitted that the budget allocation of the Senate should be enhanced to improve oversight as opposed to establishing Funds to be allocated to individual senators. Equally, there was a need to review the functionality and effectiveness of all existing Funds.

705 **The National Gender and Equality Commission (**NGEC) made submissions in support of entrenching NGCDF and NGAAF in the Constitution with an

accountability framework to reduce duplication while expanding opportunities for equity.

706 The Commission noted that the Constitution obligated the State to establish mechanisms for the implementation of affirmative actions and programs focused on among others; the Special Interest Groups (SIGs) including women, youth, PWDs, minority and marginalized groups, as well as promote equitable development and distribution of resources and opportunities to the historically disadvantaged areas. This required the establishment of a dedicated fund for affirmative actions.

707 On the Senate Oversight Fund (SOF), NGEC supported the proposal on establishment of the Fund to facilitate the Senate to exercise its core mandate of representing the interests of counties and their governments and making laws that are informed by experiences and needs of the counties and their governments.

708 **The National Council for Persons with Disabilities (NCPWD)** submitted that the recent report by the Public Service Commission showed that persons with disabilities were largely under-supported by government's empowerment Funds. It noted that over the years, the number of persons with disabilities benefiting from such Funds had been very minimal. In view of that, it proposed the review of the NGCDF, NGAAF and the Senate Oversight Fund even as they get entrenched into the Constitution. NCPWD also proposed that the laws establishing the Funds be amended to require that 5% of the Funds be set aside for persons with disabilities and projects or services targeting persons with disabilities.

709 **Members of the National Assembly Hon. Otiende Amolo, the Hon. Samwel Kiprono Chepkonga and the Hon. Murugara George Gitonga** submitted that the current legislative action to entrench funds in the Constitution began with a co-sponsored legislative proposal by Hon. Stephen M. Mule, MP and Hon. Robert G, Githinji. In response to the proposal by the two members of the

National Assembly, the Parliamentary Joint Ad Hoc Committee on a legislative proposal to amend the Constitution to Entrench Certain Specialised Funds was established by concurrent resolutions of the National Assembly and the Senate as adopted on 24th November 2022. Pursuant to resolutions, the Ad Hoc Committee was mandated to-

(i) Facilitate collation of views from Members of Parliament during debate on the proposal and invite Members with similar or related proposals to make submissions before the Committee;

(ii) Invite, engage with and consider submissions from stakeholders and relevant constitutional and statutory bodies with a law reform mandate, including the Attorney –General; and the commissions and Independent Offices established under Chapter Fifteen of the Constitution;

(iii) In consultation with sponsors, attempt to develop and recommend a harmonised version of the proposal arising from the submissions received; and

(iv) Report to the Houses of Parliament within ninety (90) days to enable the speakers to decide and give direction on whether the legislative proposal is to be published into a Bill or not to be proceeded with.

710 The committee was expected to table its report to the Houses within ninety (90) days. The National Assembly resolved to extend the timeline for the consideration of the proposal by a period of ninety (90) days from Tuesday, 11th April 2023. However, there was no concurrent resolution by the Senate to extend the time for consideration of the Legislative Proposal, which made it technically impractical for the Joint Ad Hoc Committee to discharge its mandate. The tenure of the Committee lapsed on 11th July 2023.

711 As at this date, members of the National Assembly to the Joint Ad Hoc Committee had developed a harmonized version of the proposal for consideration by the Joint Ad Hoc Committee. However, the mandate of the

Joint Committee lapsed before the legislative proposal was considered as resolved by both Houses. The principal object of the Bill was to amend the Constitution to entrench the following special fund into the Constitution -

(i) the Constituency Development Fund;

(ii) the Parliamentary Oversight Fund;

(iii) the Affirmative Action Fund; and

(iv) the Economic Stimulus and Empowerment Fund.

712 The Bill intended to amend the Constitution by introducing a new Article 204A that proposed the establishment of the Constituencies Development Fund, the Parliamentary Oversight Fund, the Affirmative Action Fund and the Economic Stimulus and Enterprise Fund which should consist of monies allocated from the national government's share of revenue as divided by the annual Division of Revenue Act pursuant to article of the Constitution.

Committee Observations

713 The Committee observed that —

(a) The NGCDF enjoyed popular public support in terms of the work and impact within the communities at the grassroots level.

(b) The State is obligated under Article 27 (6) of the Constitution to take legislative and other measures including affirmative action programmes and policies to redress any disadvantage suffered by individuals or groups because of historical injustices.

(c) The promotion of an equitable society is one of the principles of public finance as provided for under Article 201 of the Constitution.

(d) The programmes implemented through the Funds focused on among others- Special Interest Groups (SIGs) including women, youth, PWDs, minority and marginalized groups, as well as promoting equitable development and distribution of resources and opportunities to the historically disadvantaged areas.

(e) In this regard, NGCDF and NGAAF are instrumental in implementation of projects aimed at creating an equitable society through decentralisation of funds.

(f) The entrenchment of these decentralized Funds in the Constitution would ensure that the critical role they play in promoting national development and empowerment of the vulnerable persons was safeguarded. Further, this would guarantee avenues for facilitation and implementation of the national government's functions in all parts of the Republic pursuant to Article 6 (3) of the Constitution.

(g) The establishment of the Senate Oversight Fund in the Constitution would ensure that Senate was adequately resourced to perform its oversight functions as stipulated under Articles 94 and 96 of the Constitution.

(h) The National Government Constituencies Development Fund Act, 2015 and the National Government Constituencies Development Fund (Amendment) Act 2016 aimed at addressing the constitutional principle of separation of powers where it had been found by the court that the Fund was unconstitutional as it conferred on a member of parliament the roles of implementation of projects (Executive roles) as well as oversight.

(i) There was a need to establish clear demarcation and accountability mechanisms on how the Funds can be utilized so as to avoid duplication and overlap of the functions with ministries, departments and agencies of the national government as well as county governments.

Committee Recommendations

714 The Committee recommends that—

(a) The following Funds be entrenched in the Constitution—

(i) the National Government Constituencies Development Fund;

(ii) the National Government Affirmative Action Fund; and

(iii) the Senate Oversight Fund.

(b) Parliament should enact legislation to provide clarity on the purpose of the Funds being exclusive national government functions under part one of the fourth schedule to the Constitution.

Other Proposed Funds

Ward Development Fund

715 In addition to the three Funds under the consideration by the Committee, the Ward Development Fund was proposed by stakeholders for entrenchment in the Constitution.

Summary of Submission by the Public

716 The **County Assemblies Forum (CAF)** proposed the establishment and entrenchment of the Ward Equitable Development Fund in the Constitution. According to CAF, the Fund would take a form similar to the National Government Constituency Development Fund and would seek to promote the decentralisation of development within the counties by identifying projects that were beneficial to the residents of the respective wards and the county generally and provide a framework for the implementation of such projects.

Committee Observations

717 The Committee observed that Article 207 (4) (b) of the Constitution provides for enactment of legislation for establishment of funds by counties and the management of such funds.

Committee Recommendations

718 The Committee recommends the Ward Development Fund be established by statute in accordance with Article 207(4) (b) of the Constitution.

CHAPTER SIX: ESTABLISHMENT AND ENTRENCHMENT OF STATE OFFICES

Background and Context

719 Kenya has since independence experienced three generic prototypes of constitutional political systems. The pure parliamentary system was in place between June 1963 and December 1964 when the first amendment to the Kenyan constitution was enacted that transformed Kenya into a Republic

720 The first amendment ushered Kenya into a semi-presidential system where the president doubled up as both the Head of State and Head of Government. The system lasted from 1964 until 2007 when the Presidential elections were disputed.

721 A hybrid system was adopted in 2008 as a peaceful solution to post-election violence and was anchored on an amendment to the constitution that created a National Accord of Power Sharing between the Party of National Unity (PNU) and the Orange Democratic Movement (ODM) thus facilitating inclusivity. The Hybrid government lasted until the March 2013 elections.

722 Kenya adopted a "Pure-Presidential" constitution in 2010. This part of the constitution was however suspended until after the 2013 elections.

723 Having experienced the three models of political systems, the country should take stock and relook at the structure of governance with a view to adopt one that upholds the national values and principles of governance as espoused under Article 10 of the Constitution.

The Office of the Leader of the Official Opposition

724 The Constitution of Kenya 2010 abolished the Office of the Leader of Official Opposition in Kenya. Thus, the opposition is represented in Parliament albeit as minority party or coalition of parties.

725 Article 108 (1) provides that there shall be a leader of the majority party and a leader of the minority party. Sub-Article 3 further provides that the leader of

the minority party shall be the person who is the leader in the National Assembly of the second largest party or coalition of parties.

726 His Excellency the President, in a memorandum to Parliament dated 9th December 2022, proposed that Parliament amends Chapter 9 Part IV of the Constitution to establish the Office of the Leader of Official Opposition.

727 Following discussions by both parties to the National Dialogue Committee, there was a general agreement on the need to entrench this office in the Constitution.

728 Following call for memoranda, the Committee received a number of submissions on the sub-issue as summarised below:

Summary of Submissions by the Public

729 The following proposals were advanced by the public:

(i) the office be established and that the runners-up in a presidential occupies the office;

(ii) that the office of deputy leader of opposition be established alongside that of official opposition;

(iii) the office be entrenched in the Constitution or established through an Act of Parliament;

(iv) the office holder to sit in the National Assembly or Senate. Further, that the deputy opposition leaders should sit in the National Assembly or Senate;

(v) the holder of the office to be in charge of and appoint persons to institutions that offer oversight such as Auditor-General; and

(vi) such an office should also be established in counties.

(vii) those who opposed the establishment of the office submitted that oversight could still be performed without an office or by strengthening political parties, and that the establishment of the office would change the structure of governance.

730 During stakeholder engagements, the following was submitted to the Committee:

731 **KEWOPA, the Sabaot Community** and **Professor Githu Muigai**, Attorney General *Emeritus* proposed that the office be established with a shadow cabinet. KEWOPA was of a further view that the number of shadow cabinet be capped and should have adequate technical and financial support.

732 **The Centre for Multi-Party Democracy-Kenya** recommended that the leader of the opposition be reserved for the candidate with the second-greatest number of votes in a presidential election. He/she should represent a coalition with at least 20 percent of Parliamentary seats. The running mate should be the deputy leader of the opposition. Both leaders should be domiciled in the National Assembly since the Senate is concerned with devolution.

733 **The Institute of Certified Public Accountants of Kenya (ICPAK)** was of the view that the occupant of the office should be the second-best candidate after the election. ICPAK further submitted that alternatively, the office can be created as a state office by inserting a new article 92 (A) the Leader of Official Opposition to read as follows—

> *There shall be a Leader of Official opposition who shall be a state officer.*
>
> *The Leader of Official Opposition shall be the person—*
>
> *i. who received the second greatest number of votes in a presidential election; and*
>
> *ii. Whose political party or coalition of parties has at least twenty-five percent of all the members of the National Assembly.*

734 ICPAK noted that the office would create a robust and balanced political system in the country and resolve the situation of exclusivity created by winner-takes-all.

735 **The Kenya National Chamber of Commerce (KNCCI)** observed that the Office of the Leader of the Official Opposition would be one way of creating national cohesion and will cure the conflicts that arise after elections by

catering for the large constituency of election losers who often feel unrepresented after elections.

736 KNCCI proposed that the Leader of Official Opposition should be sworn in on the day after the president's swearing-in, at a colorful ceremony. Furthermore, they proposed that should the first runner-up fail or refuse to be sworn in as required by law; the seat should automatically be taken over by the next in line (second runners-up).

737 **The Sabaot Community** in supporting creation of the office proposed that the office should undertake the following responsibilities: scrutiny and accountability, alternative policy development, representing dissenting views, oversight and investigation, public engagement, question time and leader of shadow cabinet.

738 **The Media Council of Kenya** recognized the vital role played by the proposed office and noted that the media would play a crucial role in providing information, ensuring transparency, balanced reporting, and holding those in power accountable.

739 **The Turkana Professionals Association (TPA)** stated that entrenchment of this office would resolve the legal void created by the 2010 Constitution that denied the second-best presidential candidate in a General Election a chance to play a role in the country's governance. In addition to enhancing oversight, they stated that it would address the recurrent post-election violence and entrench inclusivity in governance.

740 ***Maendeleo Ya Wanawake* Organisation (MYWO)** supported the establishment and entrenchment of the Office of the Leader of Official Opposition for enhanced political stability and oversight over the government.

741 **The Office of the Registrar of Political Parties (ORPP)**, whilst supporting the establishment of the office proposed that the Leader of Official Opposition sits in Parliament. They also proposed that the office should be held by the

presidential candidate of the party or coalition that garners the second-highest number of votes.

742 **The Independent Policing Oversight Authority (IPOA)** observed that the creation of the Office of Official Opposition was necessary to address public order situations that arise following each election and loss of lives as a result of riots. It was their position that the office was a critical structure within the country's democratic space.

743 **The National Council of Churches of Kenya (NCCK)** observed that there was a need to take measures to provide for dignified opposition, and thus the proposal for creation of the Office of the Leader of Official Opposition was a step in the right direction. They recommended that Kenyans should be allowed to have a discourse on the proposed position to determine its scope, mandate, and sustainability.

744 **Kenya Conference of Catholic Bishops (KCCB)** noted that the Constitution created an uncomfortable situation where the leader of the opposition does not get to Parliament. This in their view was one of the factors that caused conflicts after every election. They therefore proposed an amendment to the Constitution to provide for the Office of the Leader of Opposition.

745 **The Coast Parliamentary Group (CPG)** supported the creation of the office and proposed that the leader sits in the National Assembly while the deputy leader of the opposition sits in the Senate.

746 ***Kenya Kwanza* Alliance** submitted that the Constitution fell short of providing similar clarity on the full post-election fate of the minority side. They noted that the Office was important in promoting inclusivity, strengthening oversight, deepening democracy, and alleviating perennial problems experienced in every electoral cycle. They proposed that Parliament consider a legislative establishment of the office of the leader of the official opposition who will sit in the National Assembly so that they can oversight government.

747 **Homa Bay Interface Community Health Desk** proposed that the office should be created in Parliament, with clear roles, through legislation.

748 **The Kenya National Commission on Human Rights (KNCHR)** noted that although the proposal to establish the office could address the winner- takes-all scenario, it needed to be subjected to a referendum to be properly entrenched in the Constitution. The Commission therefore proposed that any envisaged changes must strictly follow the Constitutional path; must involve elaborate and effective public participation and have financial evaluation to assure Kenyans that the amendment would not have a negative economic impact on the cost of living and the economy.

749 The **International Commission of Jurists (ICJ)** stated that the Constitution of Kenya does not envision a Leader of Official Opposition.

750 **The Law Society of Kenya** did not support the establishment of the Office of Leader of Official Opposition, unless it is established in such a manner that conforms to the Constitution and done in a manner that will promote the achievements of the objects of the Constitution. LSK also submitted that the establishment of the office will require the country to make a distinction of whether to go the pure Presidential or Parliamentary route or a hybrid of the two systems. In addition, the creation of such an office would require an entire overhaul of the system of governance and would raise the questions of the basic structure of the Constitution as was the case in Building Bridges Initiative (BBI). In their view, this was not the route the country was prepared to go in light of the challenges it was seeking to address at this particular point in time and could create more disharmony.

751 **Mkenya Daima** was of the view that in the current structure, the opposition was largely congregated and represented in the National Assembly. It was therefore not automatic that the loser(s) of a presidential election represents or leads the opposition. It would therefore be legally fraught to identify the

"leader of the Opposition" in some instances. They therefore proposed strengthening of political parties' accountability and funding.

752 ***The Azimio la Umoja* One Kenya coalition** was of the view that the traditional understanding of the Office of the Leader of Official Opposition was that it could be domiciled in Parliament (Westminster Parliamentary system of government). Thus, creation of such an office would require a referendum as per Article 255 of the Constitution.

753 *Azimio* Coalition position on entrenchment of state offices is based on the necessity of transforming our governance system and particularly in creating an executive that reflects Kenyan realities.

754 *Azimio* proposed the replacement of the current system led by a powerful presidency with the national consensus arrived at the national constitution conference popularly known as the *Bomas* draft and further developed in the harmonized draft by the Committee of experts.

755 Azimio submitted that they supported a mixed executive system that shares power between an elected president and a prime minister located in parliament. The president who will be elected by universal suffrage will be the head of State, symbol of national unity and promotes constitutionalism and the rule of law. The prime minister will be the head of government, responsible for policy and day to day running of government. The Prime minister will be the person with the majority support in the National Assembly and accountable to the people of Kenya through Parliament.

756 Azimio also submitted that the National Assembly will also have the leader of opposition to provide checks and balances and also alternative policies.

757 Azimio further submitted that the proposed system will replace the winner-take-all system. Azimio averred that the proposed system will require a constitutional amendment through a referendum, and acknowledging the current difficult economic times, the Coalition was willing to wait for an

opportune moment, when the economic situation in country permits, for such a referendum to be held.

758 On entrenchment of state offices, the **Kenya Kwanza** was of the considered view that the current economic status of the country, right after a general election, cannot justify the economic costs and disruptions of holding a referendum. Moreover, the Kenya Kwanza team considered any call for a referendum a disingenuous scheme to resume the failed BBI constitutional amendment initiative. The Kenya Kwanza team thus felt the country was not ready for another round of BBI or expenditure on a referendum while most Kenyans were struggling with a global recession.

Committee Observations

759 The Committee observed that —

(a) The Constitution of Kenya, 2010 shifted the country's governance structure from a Parliamentary to a presidential system. In a presidential system, the position of Leader of the Official Opposition is not provided for, thus the second runner-up in the presidential election does not hold a substantive position after the elections.

(b) Recognising the opposition asserts the value and legitimacy of opposition parties as part of a country's political system. It therefore inhibits any attempts to establish a one-party regime and prevents governments and incumbent majorities from suppressing opposition voices or evading scrutiny.

(c) The establishment and entrenchment of the office of the Leader of the Official Opposition is important in enhancing inclusivity, strengthening oversight, and deepening democracy in accordance with Article 10 (2) (b) of the Constitution. This will ultimately improve the governance structures in the country.

Committee Recommendations

760 The Committee recommends that the Constitution be amended to —

(a) establish the office of the Leader of the Opposition who shall be the person —

(i) who is the leader of the largest party/coalition of political parties which garnered the second greatest number of votes in the immediately preceding presidential election; or

(ii) the person designated to hold that office in accordance with a coalition agreement

(b) Provide for two deputies to the Leader of Official Opposition.

(c) Further, provide that the remuneration and benefits payable to the Leader of the Opposition and Deputy Leaders of the Opposition shall be a charge on the Consolidated Fund.

(d) Additionally, provide that Parliament shall enact legislation to give further effect to amendments to the Constitution.

761 The Committee further recommends that Parliament does enact legislation to provide for —

(a) the functions of the Leader of Opposition which shall be to—

(i) represent the interests of the Opposition;

(ii) provide an alternative policy agenda and constructive criticism of government policies;

(iii) promote transparency, accountability and good governance in public affairs;

(iv) foster cooperation and constructive engagement between the government and opposition in the pursuit of national interests;

(v) participate in state ceremonial functions and international parliamentary events on behalf of the Opposition; and

(vi) promote public awareness and understanding of the role of opposition in a democratic state.

(b) Further, the legislation does provide for the procedure for appointment, swearing in and removal of the Leader of the Opposition and Deputy Leaders of Opposition and for facilitation of the Office of the Leader of the Opposition including through access to necessary facilities, resources and staff required for the effective discharge of the functions.

(c) The Leader of Opposition shall nominate core cadre of staff of the Office of the Leader of Opposition for recruitment by the Public Service Commission.

(d) Operations and administration of the office shall be prescribed in an Act of Parliament.

762 The *Azimio la Umoja* One Kenya Coalition recommends that, in a time to be determined, a referendum be held to amend the Constitution with a view to adopting a mixed system of governance that it proposed.

The Office of the Prime Cabinet Secretary

763 The Government through Executive Order No. 1 of 2023 created the Office of the Prime Cabinet Secretary to assist the President and the Deputy President in the co-ordination and supervision of Government Ministries and State Departments. The Office further co-ordinates the National Government legislative agenda across all ministries and state departments in consultation with and for transmission to the Party/Coalition Leaders in Parliament.

764 The Committee agreed on the need to establish and entrench the office of Prime Cabinet Secretary/Prime Minister in the Constitution.

765 Following call for memoranda, the Committee received submissions from the public as summarized below:

Summary of Submissions by the Public

766 The following proposals were made with regard to the establishment of the office of the Prime Cabinet Secretary—

(i) the office be entrenched in the Constitution or established through an Act of Parliament;

(ii) Establish the office of one or two deputies.

(iii) Establish the office of a Prime Cabinet Secretary (head of government and Cabinet) nominated by Parliament based on majority representation in the National Assembly or by a Coalition with the majority.

(iv) The President, Deputy President, Prime Cabinet Secretary and deputy should all run on the same ticket and be announced beforehand.

(v) The Prime CS to be the fourth in seniority after President, Deputy President and Speaker, National Assembly and with supervisory authority.

(vi) The office should be a non-partisan office filled through a competitive process by the Public Service Commission.

(vii) The office holder should be appointed from a marginalized community or special interest group and ensure compliance with the two-thirds principle.

(viii) Create office of the Prime Cabinet Secretary and two Deputy Prime Cabinet Secretary's as proposed in the BBI.

(ix) Those who opposed the establishment of the office stated various reasons including it is within the prerogative of the President to delegate executive roles; creation of the office will change the structure of governance; functions of the office could be performed by the Deputy President or a Cabinet Secretary; there should instead be a chair coordinator of National and County Governments Committee.

767 During stakeholder engagements, the following was submitted to the Committee:

768 **COTU (K)** supported the establishment and entrenchment of the office of Prime Cabinet Secretary in the Constitution for effective service delivery and governance.

769 **Professor Githu Muigai,** Attorney General *Emeritus*, supported the establishment and entrenchment of the Prime Cabinet Secretary as a way of organising the Cabinet.

770 **ICPAK** submitted that the Office of the Prime Cabinet Secretary can be entrenched as part of the Cabinet positions envisaged under Article 152 (1) (d) of the Constitution (not fewer than 14 and not more than 22 cabinet secretaries) that the President has leeway to appoint. ICPAK proposed that the prime cabinet secretary may be mandated to appear before Parliament to explain Governments' policy positions.

771 **The Sabaot Community** proposed the following roles for the office: coordinator for government operations, crisis management, policy implementation, interagency coordination, advisory role, accountability and international relations.

772 **KEWOPA** supported the establishment of the Office of the Prime Cabinet Secretary. However, they proposed that enabling legislation must provide for its roles and functions to avoid conflicts with the office of the Deputy President. They further suggested that the creation of the offices should take into consideration the two-thirds gender principle.

773 **The Centre for Multiparty Democracy Kenya** recommended that the Prime Cabinet Secretary should head the government business and be accountable to parliament. The office once established would foster greater inclusivity and cooperation among political parties thus promoting national unity and stability since it will reduce the winner-takes-all nature of presidential contest. Further,

they noted that the creation of the office would be useful to create two Deputies Prime Cabinet Secretaries for purposes of inclusion.

774 The **KNCCI** submitted that the creation of the Office would expand representation at national level to different ethnic groups and enhance nationalism and cohesion.

775 ***Mkenya Daima*** observed that the President had elected to structure his Cabinet with the position of a Prime Cabinet Secretary. They opined that this should not be permanent and/ or constitutionally required. They proposed that the President of the day should remain mandated to delegate executive roles as he/she pleases.

776 **The International Commission of Jurists (ICJ)** stated that the Constitution of Kenya does not envision the position of Prime Cabinet Secretary. They stated that if such an office was to exist beyond an executive order, the same must be well established within the Constitution.

777 **The Law Society of Kenya (LSK)** opposed the establishment of the office of Prime Cabinet Secretary for the same reasons as that of the leader of official opposition. The LSK President referred to the decision rendered by the courts on the Chief Administrative Secretaries' (CASs) case. The LSK pointed out that when enacting the Constitution Kenyans were keen on having a lean government, hence the creation of a maximum of 22 cabinet secretaries. Additionally, they stated that creation of the office would bring out the question of what functions it will be assigned, does it meet the constitutional threshold in terms of the various court decisions on the issue, among other issues. The Society averred that establishment of the office would be an experiment that could create more divisions in the country.

778 **Dr. Wilfred Mutubwa**, an advocate of the High Court of Kenya and a scholar, submitted that Article 152 of the Constitution explicitly outlines the composition of the Cabinet. It includes the President, Deputy President, and a specific range of Cabinet Secretaries, which is "not fewer than fourteen and not more

than twenty-two Cabinet Secretaries. He pointed out that the appointment of the office of the Prime Cabinet Secretary fell well within this constitutional limit which underscored the legality of this office.

779 He was of the opinion that the title "prime" did not grant any special consideration to the cabinet secretary appointed. He noted that Kenya was a pure presidential system with the President as both the head of state and government and changing the same required a constitutional amendment. The role and responsibilities of the Prime Cabinet Secretary did not transform the position into that of a Prime Cabinet Secretary, as the Prime Cabinet Secretary's role primarily involved coordinating government functions. He noted that the Office of the Prime Cabinet Secretary in Kenya can serve as a valuable mechanism for enhancing coordination, efficiency, and effectiveness in government operations.

780 As to whether there was a need to entrench the office in the constitution or rather establish an Act of Parliament, Dr. Mutubwa submitted that the office was created by an executive order which was a relatively weak form of law, and thus could be easily abolished by a future president. In order to give the office more permanence and stability, it should be included either in the constitution or a law enacted to govern and protect the office.

781 He stated that entrenching the office in the constitution would give it more permanence and stability, and therefore it would be very difficult for a future president to abolish the office without a constitutional amendment. This would help to ensure that the office was not used for political purposes and protect it from arbitrary changes. However, the disadvantage of entrenching the office constitutionally is that it would become more difficult to amend the Constitution than to pass an act of Parliament which implies that it would be more difficult to make changes to the office when necessary and to hold the office holder accountable.

782 He further stated that the main advantage of establishing an Act of Parliament is that it would be easier to amend than the Constitution. This means that it would be easier to make changes to the office of the Prime Cabinet Secretary if necessary. Additionally, establishing the office by an Act of Parliament would make it easier to hold the office-holder accountable, as the Act of Parliament could be repealed or amended more easily than the Constitution. The disadvantage however is that it would not give the office the same level of permanence and stability as entrenching it in the Constitution, and thus can be easily repealed.

783 To enhance checks and balances of the office, Dr. Mutubwa proposed that the office should not be so powerful that it overshadows the office of the president, but it should also have enough power to be effective. One way to achieve this balance would be to give the Prime Cabinet Secretary the power to advise the president on policy matters, but not the power to veto presidential decisions. The Prime Cabinet Secretary should also be accountable to Parliament, which could hold the officeholder to account for any wrongdoing. The office holder should also have security of tenure. This can be accomplished through giving the president the power to dismiss the Prime Cabinet Secretary with the approval of Parliament.

784 Other factors such as duties of the office bearer in relation to other branches of the government, relation with the president, responsibilities and powers of the office should also be carefully crafted.

785 **The National Council of Churches of Kenya (NCCK)** observed that there was appointed a holder of the office, yet the position did not exist in the Constitution. Thus, the proposed establishment of the office was a move to legalize what already existed. They recommended that Kenyans should be allowed to have a discourse on the proposed position to determine its scope, mandate and sustainability.

786 **The Kenya Conference of Catholic Bishops (KCCB)** observed that the title and the position of Prime Cabinet Secretary were confusing. It was their considered opinion that the position was not necessary, and that Article 152 of the Constitution should be observed.

787 ***The Azimio la Umoja* One Kenya Coalition** was of the view that the position as it stood was not constitutional and therefore not recognized. They stated that the President had no power to create a cabinet other than the one provided for in the Constitution of Kenya, thus creating the position of Prime Cabinet Secretary would require amendment to Articles 130, 132, 152 and 153 among others for the office to be tenable.

788 **The Kenya National Commission on Human Rights (KNCHR)** noted that the proposal to establish the office needed to be subjected to a referendum to be properly entrenched in the Constitution. The Commission therefore proposed that any envisaged changes must strictly follow the Constitutional path; must involve elaborate and effective public participation and have financial evaluation to assure Kenyans that the amendment would not have a negative economic impact on the cost of living and the economy.

789 KNCHR proposed that any constitutional amendment should strive to maintain a certain character or basic structure of the 2010 Constitution.

Committee Observations

790 The Committee observed that—

(a) Article 152 of the Constitution outlines the composition of the Cabinet which shall not be fewer than fourteen and not more than twenty-two Cabinet Secretaries. The office of the Prime Cabinet Secretary is one such office established pursuant to this provision.

(b) The Office of the Prime Cabinet Secretary was established vide Executive Order No. 1 of 2023. The functions of the Office are to assist the President and the Deputy President in the coordination and

supervision of Government Ministries and State Departments; oversee the implementation of National Government policies, programmes and projects; coordinate national government legislative agenda across all ministries for transmission to Parliament and supervise technical monitoring and evaluation of government policies, programs and projects among other duties.

(c) The establishment and entrenchment of the Office will promote inclusivity and diversity in leadership in accordance with Article 10 (2) (b) of the Constitution.

(d) As the deliberations on the establishment of the office of the Prime Cabinet Secretary progressed, the Committee noted that it would be more appropriate to establish the same as the office of the Prime Minister.

Committee Recommendations

791 The Committee recommends that —

(a) The Constitution be amended to establish the office of the Prime Minister. The Prime Minister shall be nominated and, with the approval of the National Assembly, appointed by the President.

(b) The Prime Minister shall —

(i) assist the President and the Deputy President in the coordination, supervision, implementation and supervision of national government policies, programmes and projects across all government ministries and state departments;

(ii) coordinate the national government's legislative agenda across all ministries and state departments; and

(iii) perform any other function as may be directed by the President.

792 The *Azimio la Umoja* One Kenya Coalition recommends that, in a time to be determined, a referendum be held to amend the Constitution with a view to

adopting a hybrid/ parliamentary system that includes the establishment of the Office of Prime Minister in the National Assembly.

CHAPTER SEVEN: ISSUES THAT AROSE FROM PUBLIC PARTICIPATION

793 This chapter sets out proposals from the public that fall outside the Framed Issues. The detailed memoranda are contained in Volume II of this Report.

Issues related to the Judiciary

794 Amend the Constitution and relevant laws to make the Environment and Land Court (ELC) and the Employment and Labour Relations Court (ELRC) part of the High Court.

795 Amend Article 168 (1) of the Constitution to allow the Judicial Service Commission to respond to minor infractions that may not require a recommendation for the establishment of a tribunal.

796 Formalise the procedure for disciplining Judges through an amendment to the Judicial Service Act.

797 The existing office of the Judiciary Ombudsman should be restructured or entrenched in the Judicial Service Act.

798 Increase the minimum experience required of a Judge of the Supreme Court from fifteen (15) years to twenty (20) years.

799 Increase the minimum experience required of a Judge of the Court of Appeal from ten (10) years to fifteen (15) years.

800 Amend the Constitution and relevant statutes to provide for specific duties of the Deputy Chief Justice.

801 Amend the Constitution or relevant statutes to provide clarity on who chairs the Judicial Service Commission meetings during a vacancy in the office of the Chief Justice.

802 Increase the number of Supreme Court Judges from seven (7) to eleven (11).

803 Include retired Judges as members of the Judicial Service Commission.

804 Amend Article 173 of the Constitution to allow the Supreme Court to have its budget.

805 The Judiciary Fund should be at least 3.5% of the annual national budget and entrenched in the Constitution.

806 Amend the Constitution and Judiciary Fund Act to make the Judicial Service Commission one of the beneficiaries of the Judicial Fund, with Judicial Service Commission being entitled to some percentage of the amount paid to the Judiciary Fund.

807 The Chief Registrar of the Judiciary (CRJ) should be responsible for managing the funds from the Judiciary Fund without seeking further approval from the Controller of Budget.

808 Delink the office of the Chief Registrar of the Judiciary from the office of the Secretary of the Judicial Service Commission. The Secretary should be appointed by the Judicial Service Commission and serve as its CEO and Accounting officer.

Committee recommendations

809 The Committee recommends that—

(a) The Constitution be amended to provide that the Environment and Land Court (ELC) and the Employment and Labour Relations Court (ELRC) shall be part of the High Court.

(b) The High Court shall establish divisions to handle employment and labour relations matters.

(c) The JSC submits a legislative proposal to Parliament for consideration on the procedure for disciplining Judges.

(d) The Kenya Law Reform Commission review the Constitution and relevant statutes and propose amendments for consideration by Parliament.

Devolution Related matters

810 The National Treasury should be established as an independent institution separate from the Ministry of Finance to serve both levels of government effectively.

811 The approval of withdrawals from the County Revenue Fund by the Controller of Budget (CoB) should be at the county or regional CoB offices/level and not the national office/level.

812 The Committee recommends that the Controller of Budget shall consider decentralising its functions to the counties.

813 Anchor the National and County Government Co-ordinating Summit in the Constitution.

814 Anchor the Council of County Governors Secretariat in the Constitution and secure its financing.

815 Amend Article 240 of the Constitution to provide for the representation of county governments, through one of the governors, in the National Security Council.

816 The national government should release funds to counties to support the county policing authorities, which are critical structures in the counties on matters of security.

817 Laws allowing counties to borrow and raise external debt should be reviewed.

818 50% of the previous year's audited budgets should be allocated to devolved functions.

819 County Executive Committee members should be required to appear and answer questions on the floor of the county assemblies.

Committee recommendations

820 The Committee recommends that—

(a) The Controller of Budget shall digitize requisitions and approval of withdrawals from the County Revenue Fund to improve efficiency.

(b) Parliament shall enact legislation to entrench the Council of Governors Secretariat in law.

(c) County Assemblies may consider having County Executive Committee members answer questions on the floor of the county assemblies.

CHAPTER EIGHT: LIST OF COMMITTEE RECOMMENDATIONS

Electoral Justice and Related matters

Restructuring and reconstitution of the IEBC

821 The Committee recommends that—

(a) The First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 be amended to establish a Selection Panel consisting of the following persons —

(i) two persons nominated by the Parliamentary Service Commission, representing the Majority party or coalition of parties and minority party or coalition of parties;

(ii) three persons nominated by the Political Parties Liaison Committee of whom —

(1) one shall be from a party other than a parliamentary party or coalition of parties;

(2) one shall be from a parliamentary party or coalition of parties forming national government; and

(3) one shall be from a parliamentary party or coalition of parties not forming national government.

(iii) one person nominated by the Law Society of Kenya;

(iv) one person nominated by the Institute of Certified Public Accountants of Kenya; and

(v) two persons nominated by the Inter-religious Council of Kenya.

(b) The Independent Electoral and Boundaries Commission Act, 2011 be amended to provide that the respective nominating bodies shall select the nominees for appointment through a competitive and transparent process and ensure that no more than two-thirds of the nominees are of the same gender.

(c) The Independent Electoral and Boundaries Commission Act, 2011 be amended to provide that in nominating, the persons to the Selection Panel the respective nominating bodies shall ensure that no more than two-thirds of the nominees are of the same gender.

(d) The Independent Electoral and Boundaries Commission Act, 2011 be amended to provide that the Selection Panel shall within ninety days of appointment finalize the recruitment and forward the names of nominees to the President. The tenure of the selection panel may be extended by a resolution of Parliament.

(e) Section 6 of the Independent Electoral and Boundaries Commission Act, 2011 be amended to include experience in information and communication technology and accounting as professional qualifications for appointment as a member of the IEBC.

(f) The Independent Electoral and Boundaries Commission Act, 2011 be amended to provide that the secretary of the IEBC shall hold office for a term of three years and may be eligible for re-appointment for one further term of three years.

(g) The IEBC shall after every general election review its operations and make the necessary changes required to makes its operations more efficient, effective, transparent and accountable.

(h) The IEBC shall within three months of its reconstitution develop internal guidelines delineating the administrative and policy responsibilities of the Chairperson and Commissioners and institutional guidelines on administrative and policy functions.

(i) Article 138 of the Constitution be amended to provide for the role of the commissioners of the Independent Electoral and Boundaries Commission to verify the count of the presidential election results before declaration of results by the Chairperson of the Independent Electoral and Boundaries Commission.

(j) Amend the Elections Act, 2011 to provide for processing and declaration of results.

(k) In order to foster national cohesion, reconciliation and hasten healing over the 2022 presidential elections dispute, notwithstanding the veracity of the various claims made by Ms. Cherera, Mr. Nyang'aya, Ms. Masit and Mr. Wanderi, their matter should be referred to H.E. the President William Ruto and Rt. Hon. Raila Odinga for an amicable settlement, preferably out of Court.

Boundaries delimitation

822 The Committee recommends that—

(a) Article 89 of the Constitution be amended to provide that where for any reason the review of the names and boundaries of constituencies by the Independent Electoral and Boundaries Commission is not completed within the time stipulated under Article 89(2) or where there are justifiable reasons for the extension of the period for review, Parliament may extend the period provided for under Article 89(2) of the Constitution by a resolution passed by the National Assembly, with the support of a majority of all the Members of the Assembly; and the Senate, with the support of a majority of all the county delegations.

(b) The procedure for delimitation of the boundaries be provided for in the Independent Electoral and Boundaries Commission Act, 2011.

(c) Parliament shall within six months of the adoption of this report enact the County Boundaries Bill, 2023 to provide a legislative framework for review of the County boundaries as provided for under Article 188 of the Constitution.

(d) The IEBC to undertake boundaries delimitation of constituencies and wards as provided for under Article 89 of the Constitution.

(e) The National Cohesion and Integration Commission investigates the claims of perceived marginalisation and discrimination by Sabaot Community living in Bungoma and Trans Nzoia Counties; residents of Wajir South Constituency, Tiaty Constituency and Teso, Kuria and Suba Communities, with the objective of ascertaining the claims and extent of the marginalisation and discrimination and make proposals for promoting inclusivity and peaceful coexistence amongst different communities.

Audit of the 2022 presidential election

823 The Committee recommends that—

(a) With respect to evaluation of the 2022 electoral process —

(i) Within twenty-one days of the adoption of this report by Parliament, the leadership of the majority and minority coalitions shall appoint a panel to evaluate the 2022 electoral process.

(ii) The Panel shall consist of six experts. The majority and minority parties or coalition of parties shall each nominate three experts.

(iii) The Panel shall jointly appoint a reputable firm or a consortium of firms to undertake the evaluation. If there is no agreement on the joint appointment of a firm, each side of the panel shall appoint a reputable firm to undertake the evaluation. The two firms shall coordinate the evaluation process.

(iv) After the conduct of the evaluation process, the Panel shall harmonize the findings of the two firms and submit the harmonized report to Parliament.

(b) With respect to evaluation of the electoral process under Article 88(4) (h) after a general election, the Elections Act, 2011 be amended to provide for the scope of the evaluation, financing, and reporting.

Related Matters

Electoral Legal Reforms

824 The Committee recommends that—

(a) Electoral laws should be enacted at least eighteen months to a general election.

(b) Parliament amends the Elections Act, 2011 and the Independent Election and Boundaries Commission Act 2011 to repeal the various provisions of the Acts that were declared unconstitutional by the court.

Time for Resolution of Presidential Election Petitions

825 The Committee recommends that Article 140 (2) of the Constitution be amended to increase the timelines within which the Supreme Court shall hear and determine a petition challenging the validity of presidential election from fourteen (14) days to twenty-one (21) days.

Funding of the IEBC

826 The Committee recommends that Parliament shall ensure that the IEBC is adequately funded to perform its functions with respect to the holding of general elections as well as other functions related to the continuous management of the electoral process under Article 88 (4).

Holding Elections on Different Dates

827 The Committee recommends that the IEBC conducts a comprehensive review of the past three general elections with a view to recommending to Parliament the viability of staggering the elections.

Security of Election Officials and Related Challenges

828 The Committee recommends that the security of election officials should be guaranteed before, during and after elections.

Voter Registration and Maintenance of the Voters Register

829 The Committee recommends that —

(a) The IEBC shall within six months upon reconstitution undertake a comprehensive audit of voters register and publicise the results as per law.

(b) The Elections Act, 2011 be amended to align the terminology in the Act and the provisions of Article 88(4) (f) of the Constitution in relation to the responsibility of IEBC to register candidates for election.

Campaign Financing

830 The Committee recommends that the IEBC shall within one year of its reconstitution submit to Parliament the Election Campaign Financing Regulations.

Outstanding Constitutional Matters

Article 43 of the Constitution, the Cost of Living and related issues

831 Azimio la Umoja One Kenya Coalition strongly recommends—

(a) Reduction of VAT on petroleum products by 50% from the current 16% to 8%.

(b) The scrapping of the Affordable Housing Levy.

832 The Kenya Kwanza Alliance strongly disagrees with Azimio's recommendations on reduction of VAT on petroleum products by 50% from the current 16% and the scrapping of the Affordable Housing Levy, citing the advice from the Cabinet Secretary of the National Treasury and the current state of economy.

833 Having noted the recommendations of the *Azimio la Umoja One* Kenya Coalition and the *Kenya Kwanza* Alliance, the Committee recommends that —

(a) The National and County Governments shall rationalize their expenditure for the next three years to allow the economy to recover as follows—

(i) The National Executive, Parliament, Judiciary, County Executives, County Assemblies, Constitutional Commissions and Independent Offices should reduce their travel budget by fifty percent (50%).

(ii) SRC to review the Daily Subsistence Allowances (per diem) for State and Public officers with a view to reducing by thirty- percent (30%).

(iii) All State and Public officers to travel in economy class for flights of not more than four (4) hours.

(iv) Fully implement the government circular (Reference No. OP/CAB.304/018 dated June 29, 2023) on the size of government delegations.

(v) Reduce allocations to hospitality and office general supplies by fifty percent (50%).

(b) Parliament shall fast track consideration and enactment of legislation relating to the war on corruption and enhancing integrity among public officers.

(c) Parliament shall amend Article 203 (2) to provide that, for every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall not be less than twenty percent of all revenue collected by the national government.

(d) The National and County Governments shall adopt the Zero-Based Budgeting approach to enhance accountability, rapidly reduce wastage of public funds and address the challenge of incremental budgeting.

(e) The Advisory Committee on the Power of Mercy shall advice the President on interventions that will facilitate decongestion of prisons as a criminal justice reform issue as well as a cost cutting measure. In

addition, Parliament shall review criminal justice laws and enact legislation to provide for non- custodial sentences including community service and probation where appropriate.

(f) The Pending Bills Verification Committee shall fast-track review of pending bills and facilitate the settlement of genuine bills.

(g) The Ministry of Interior & National Administration shall operationalize the Public Benefit Organisations Act, 2013 within ninety days of adoption of this Report with a view to enabling Civil Society Organisations (CSOs) to mobilise resources to cater for social programmes within the community.

(h) The National Government shall review and develop national policies relevant to enhancement of agricultural production and manufacturing capacity to reduce overreliance on imports that has drained the foreign exchange reserves.

(i) The Ministry of Labour and Social Protection shall —

(i) expand the scope of the Social Protection Fund to include all legitimate beneficiaries such as indigents, persons with severe disabilities and older persons;

(ii) in consultation with the Nation Council for Persons with Disabilities collect and collate up to date data on persons living with disabilities;

(iii) adopt the use of technology to ensure that recipients of monies from the Social Protection Fund are legitimate beneficiaries; and

(iv) in consultation and concurrence with the National Treasury, review upwards the allocation to all beneficiaries under the Older Persons Cash Transfer (OPCT) programme. The National Treasury to consider reallocating the savings made from the reduced government expenditure on Daily Subsistence Allowance for state and public officers by 30% towards an increase of allocations under the OPCT.

(j) The National and County Governments shall provide food to schools and invest in boarding schools in arid and semi-arid regions to enhance student retention and promote education.

(k) The National and County Governments shall freeze establishment of new State Corporations.

(l) The National Government shall within three months of the adoption of this report undertake audit of the operational and financial efficiency, viability and sustainability of State-Owned Enterprises.

(m) The Ministry of Energy and Petroleum in liaison with the National Treasury shall reduce the Road Maintenance Levy and the Anti-adulteration Levy as tabulated below—

Cost Item	**Current Levy (KShs/litre)**	**Reduction (KShs/litre)**	**New Levy (KShs/litre)**
Road Maintenance Levy	18.00	5	13.00
Anti-adulteration Levy	18.00	3	15.00

(n) The National Government shall finalize transfer of all devolved functions specified under the Fourth Schedule to the Constitution and provide for concomitant resources to the County governments within six months of the adoption of this report. These include functions relating to water, agriculture health, roads, tourism and wildlife that are still being undertaken by the national government. In addition, Legislations that impede devolution should be reviewed.

(o) Parliament shall enact legislation to establish the National Economic and Social Council (currently established vide Executive Order No. 2 of 2023) as a multisector consultative body and in so doing consider,

whether to merge the functions of the Council with those of the Vision 2030 secretariat. This process will be undertaken within the context of the review of SAGAs and SOCs with a view to ensuring the objectives of the Council to transcend different administrations.

(p) The National Government, in consultation with the county governments shall finalize classification of all roads with a view to align the attendant budget to the respective governments.

(q) The constituting Acts of Regional Development Authorities (RDAs) shall be amended to provide for the representation of county governments in the Boards of RDAs operating in the Counties.

(r) County governments shall strictly adhere to the provision of section 107 (2) (b) of the Public Finance Management Act, 2012 which requires that over the medium term a minimum of thirty percent of the county government's budget shall be allocated to the development expenditure; and paragraph 25 (1) (b) of the Public Finance Management Act (county government) Regulations, 2015 which requires that the wages and benefits for public officers should not exceed 35% of the county government's total revenue.

(s) The National Government shall develop a Policy on productivity, wealth creation and shared prosperity to foster and ensure a conducive policy environment for industrial development and productivity through incentives for building and promoting local manufacturing, reduction in the cost of energy, improved infrastructure, ease of doing business including simple, clear, fair, and user friendly tax system, among others.

(t) The National Treasury shall by February 2024 undertake and complete a comprehensive review of the national tax policy and taxation regime with the objective of evaluating all tax instruments, enhancing tax revenue, expanding the tax base, lowering tax burden on Kenyans,

improving revenue collection, with a view to make Kenya a competitive investment destination.

(u) Parliament shall fast-track the passage of the Economic and Social Rights Bill, Senate Bills No. 7 of 2023 for the purpose of enabling citizens to access socio-economic rights guaranteed under Article 43 of the Constitution.

(v) The National and County Governments shall invest in modern water harvesting technologies to enhance irrigation agriculture to mitigate against effects of climate change on rain fed agriculture.

Implementation of the "two-thirds gender rule"

834 The Committee recommends that-

(a) The Multi-Sectoral Working Group on the Realisation of the Two-Thirds Gender Principle under the Ministry of Public Service, Gender and Affirmative Action to finalize its work, and recommend a framework of implementation of two-thirds gender principle and submit its report to Parliament for consideration.

(b) The Working group considers the following two proposals as they engage with stakeholders on the matter.

Option 1

Adopt the principle under Article 177 as follows —

(a) on the basis of proportional representation by use of party lists as provided for under Article 90;

(b)comprise candidates who stood for election with precedence being given to candidates who received the greatest number of votes.

Option 2

Double the number of women seats from the counties to the National Assembly from forty-seven (47) to ninety-four (94) while retaining the 290 elected from the constituencies and the twelve (12) nominate from the party lists. Use the top-up list to address any shortage in

the number of women in the National Assembly that may arise by application of the formula.

Governance issues: National unity/inclusivity in public appointments

835 The Committee recommends that —

(a) The Kenya National Human Rights and Equality Commission to be established following the merger of KNCHR, NGEC and NCIC should deal with the issue of inclusivity, equality, ethnic diversity and national cohesion.

(b) While undertaking its oversight mandate through vetting of state and public appointments, Parliament shall ensure compliance with the constitutional requirements provided for under Articles 10 and 232 of the Constitution including ethnic diversity and inclusiveness.

Related Matters

Impeachment of Governors

836 The Committee recommends that Parliament shall fast track enactment of a legislation to give a comprehensive guide to the impeachment process.

Retirement Benefits for the Auditor General

837 The Committee recommends that Parliament amends the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 to include retired Auditor Generals among the persons entitled to the benefits conferred by the Act.

Adequate checks and balances

838 The Committee recommends that—

(a) The Constitution be amended to ensure compliance with court orders by state and public officers by providing that a state or public officer shall promptly comply with a court order and where there is non-compliance the court shall impose appropriate sanctions.

(b) The Ethics and Anti-Corruption Commission Act, 2011 be amended to review the qualifications and experience required for appointment as Chairperson of the Commission to enhance the capacity of the Commission to fight corruption.

(c) Parliament amends the Anti-Corruption and Economic Crimes Act, 2003 to provide that the Chief Registrar of the Judiciary shall maintain a register of all persons convicted of corruption, bribery and other economic crimes.

(d) The Statutory Instruments Act, 2013 be amended to compel regulation-making authorities to adhere to the statutory timelines within which they are required to develop and publish statutory instruments and to set out sanctions for non-compliance. Further, where the relevant authority has failed to make the required subsidiary legislation or any statutory instrument any person may petition Parliament with a proposal or draft of those instruments.

Related Matters

Balance of Legislative Powers of Parliament

839 The Committee recommends that —

(a) Parliament should fast track enactment of legislation to harmonise bicameral relations between the Houses.

(b) The Constitution be amended to provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Recognition of Members of Regional Assemblies Parliament

840 The Committee recommends that the Constitution be amended to provide for recognition of representatives in international legislative bodies of which Kenya is a member.

Fidelity to the law on multiparty democracy

841 The Committee recommends that—

(a) The Constitution be amended to promote multipartyism and fidelity to Political Parties by entrenching procedures for resignation and deregistration of members of political parties in seeking to ensure party discipline.

(b) The Constitution be amended to include, in the basic requirements of political parties, that every political party shall promote discipline within the party, conduct its affairs in a manner that promotes democracy and peaceful politics, and adheres to the values and principles of the Constitution in the nomination of persons to appointive or elective positions including Articles 27, 54, 55, 56, 57 and 100 of the Constitution.

(c) The Political Parties Act, 2011 be amended to establish the Independent Political Parties Regulatory Commission as an independent body that shall be responsible for the registration of political parties and their office holders; the management of political parties' fund; and such other functions as may be conferred on the Commission by the Constitution.

(d) The Constitution be amended to provide that once a person is deregistered from a political party that person shall cease holding any appointive or elective position held by virtue of such membership including positions as a Member of Parliament, a county governor or a member of a county assembly provided that:

(i)the procedures for deregistration shall adhere to the freedom of expression set out in Article 33; the freedom of association set out in Article 36; the political rights set out in Article 38; the right of fair administrative action set out in Article 47; and the right to fair hearing set out in Article 50 of the Constitution; and

(ii) the appeal mechanisms provided for have been exhausted.

(e) Article 181 of the Constitution be amended to include being deregistered from a political party as one of the grounds for removal of a county governor.

(f) Articles 103 (1) (e) and 193 (1) (e) of the Constitution be amended to provide that where a member of parliament or a county assembly resigns or is deregistered from that party as determined in accordance with the Constitution, the office of the member shall become vacant.

Related Matter

Electoral Dispute Resolution (EDR)

842 The Committee recommends that Article 88 (4) (e) of the Constitution be amended to review the framework for election dispute resolution by removing the role of settlement of electoral disputes, (including disputes relating to or arising from nominations) from the Independent Electoral and Boundaries Commission and conferring the mandate to the Political Parties Disputes Tribunal established under the Political Parties Act, 2011.

Entrenching Funds into the Constitution

NGCDF, NGAAF and Senate Oversight Funds

843 The Committee recommends that—

(a) The following Funds be entrenched in the Constitution—

(i) the National Government Constituencies Development Fund;
(ii) the National Government Affirmative Action Fund; and
(iii) the Senate Oversight Fund.

(b) Parliament shall enact legislation to provide clarity on the purpose of the Funds being exclusive national government functions under part one of the fourth schedule to the Constitution.

Other Proposed Funds

Ward Development Fund

844 The Committee recommends the Ward Development Fund be established by statute in accordance with Article 207(4) (b) of the Constitution.

Establishment and Entrenchment of State Offices

The Office of the Leader of the Official Opposition

845 The Committee recommends that the Constitution be amended to —

(a) establish the office of the Leader of the Opposition who shall be the person —

(i) who is the leader of the largest party/coalition of political parties which garnered the second greatest number of votes in the immediately preceding presidential election; or

(ii) the person designated to hold that office in accordance with a coalition agreement .

(b) To provide for two deputies to the Leader of Official Opposition.

(c) Further, provide that the remuneration and benefits payable to the Leader of the Opposition and Deputy Leaders of the Opposition shall be a charge on the Consolidated Fund.

(d) Additionally, provide that Parliament shall enact legislation to give further effect to amendments to the Constitution.

846 The Committee further recommends that Parliament does enact legislation to provide for —

(a) the functions of the Leader of Opposition which shall be to —

(i) represent the interests of the Opposition;

(ii) provide an alternative policy agenda and constructive criticism of government policies;

(iii) promote transparency, accountability and good governance in public affairs;

(iv) foster cooperation and constructive engagement between the government and opposition in the pursuit of national interests;

(v) participate in state ceremonial functions and international parliamentary events on behalf of the Opposition; and

(vi) promote public awareness and understanding of the role of opposition in a democratic state.

(b) Further, the legislation does provide for the procedure for appointment, swearing in and removal of the Leader of the Opposition and Deputy Leaders of Opposition and for facilitation of the Office of the Leader of the Opposition including through access to necessary facilities, resources and staff required for the effective discharge of the functions.

(c) The Leader of Opposition shall nominate core cadre of staff of the Office of the Leader of Opposition for recruitment by the Public Service Commission.

(d) Operations and administration of the office shall be prescribed in an Act of Parliament.

847 The Azimio la Umoja One Kenya Coalition recommends that, in a time to be determined, a referendum be held to amend the Constitution with a view to adopting a hybrid/ parliamentary system that includes the establishment of the Office of Prime Minister in the National Assembly.

The office of the Prime Cabinet Secretary

848 The Committee recommends that —

(a) The Constitution be amended to establish the office of the Prime Minister. The Prime Minister shall be nominated and, with the approval of the National Assembly, appointed by the President.

(b) The Prime Minister shall —

(i) assist the President and the Deputy President in the coordination, supervision, implementation and supervision of national government policies, programmes and projects across all government ministries and state departments;

(ii) coordinate the national government's legislative agenda across all ministries and state departments; and

(iii) perform any other function as may be directed by the President.

849 The Azimio la Umoja One Kenya Coalition recommends that, in a time to be determined, a referendum be held to amend the Constitution with a view to adopting a mixed system of governance that it proposed.

Transition and implementation of the Report

850 The Principals should consider re-establishing NADCO or establishing a similar bipartisan team to oversee the implementation of the report.

Issues That Arose from Public Participation

Judiciary

851 The Committee recommends that—

(a) The Constitution be amended to provide that the Environment and Land Court (ELC) and the Employment and Labour Relations Court (ELRC) shall be part of the High Court.

(b) The High Court shall establish divisions to handle employment and labour relations matters.

(c) The JSC submits a legislative proposal to Parliament for consideration on the procedure for disciplining Judges.

(d) The Kenya Law Reform Commission review the Constitution and relevant statutes and propose amendments for consideration by Parliament.

Devolution Related matters

852 The Committee recommends that—

(a) The Controller of Budget shall digitize requisitions and approval of withdrawals from the County Revenue Fund to improve efficiency.

(b) Parliament shall enact legislation to entrench the Council of Governors Secretariat in law.

(c) County Assemblies may consider having County Executive Committee members answer questions on the floor of the county assemblies.

Issues to be referred to the Principals

Establishment of a Commission of Inquiry

853 The Committee recommends that the Leadership of the Coalitions consider establishing a Commission of inquiry (with defined terms of reference and reporting timelines) to investigate —

(a) The role played by state and non-state actors in the violation of human rights, violence and police brutality following country-wide demonstrations on the cost of living.

(b) State capture.

(c) Article 37 Rights.

(d) Events on 15th August 2022 at the *Bomas* of Kenya during the declaration of the 2022 Presidential election results.

854 *Azimio la Umoja*'s position is that the right given in Article 37 was violated with impunity as statutory notices to the police were ignored and instead the police barricaded citizens within their neighbourhoods and in many instances lobbed teargas into the slums where children, women, and school going youths not

only suffered from teargas fumes but also on occasions were brutally clobbered. In Kisumu's Nyalenda area the police, unprovoked, entered houses and acted brutally on innocent citizens as evidenced by the annex in the *Azimio* Report to NADCO.

855 The following is the *Kenya Kwanza* observation on picketing, *Bomas* election chaos and the issue of state capture. The primary concern of *Kenya Kwanza* on *Maandamano* is as follows-

(a) In the opinion of *Kenya Kwanza*, the right to assembly, demonstration, picketing and petition in Article 37 of the Kenya Constitution has led to a series of unfortunate secondary effects. Negative "secondary effects" (economic externalities) justify Parliament limiting the right, passing legislation to enable for zoning, and otherwise regulating the exercise of the right in a way that is in tandem with a democratic and open society, to combat its abuse. One example of a secondary effect, is that the Ministry of Education had to close schools in some parts of the country during the *Azimio* demonstration because of imminent danger to the children both in their schools, their way to schools and even in their neighbourhoods.

(b) It is therefore critical to regulate closely the how, when and where of the demonstrations to assure protection of property and life. This is to ensure that negative political competitions are not clothed as the right to Pickett. Cited in some cases in Kenya high courts were the negative effects some of the unregulated demonstrations have on more vulnerable neighbourhoods like Kibera and Mathare where the demonstrations caused the police to use tear-gas in these neighborhoods in an attempt to guarantee the right to property and life of all the residents. This is not good because the demonstrations expose these informal neighbourhoods to unprecedented suffering with women and children exposed to more harm and trauma.

(c) In no less than a half of the famous *Maandamano* days some parts of cities and towns were closed for business with disastrous impact to the country's economy. Empirical evidence that the Azimio demonstrations do, in fact, have a negative effect on the economy and neighborhoods exists. To the extent that rarely can Kenyans remember any peaceful protest organized by political parties that do not turn out to be an attack on police, looting sprees, harm to non-participating Kenyans and cause of economic turmoil.

(d) Demonstrations as carried out, have raised serious questions on their ability to be used as part of apparatus for settlement and resolutions of political conflict. *Kenya Kwanza* observes that NADCO is a superior tool for conflict management, reconstruction and resolution. Dialogue should be at the epicentre in approaching and resolving political conflict and yielding peace and cooperation.

(e) The primary concern of *Kenya Kwanza* is that it is important to investigate a series of unfortunate transactions and events of the state capture. State capture is a form of invisible violence perpetrated on Kenyans by perverting and extorting governance and public institutions as supported by some distinct private institutions as a network for personal gain.

856 The following are the Key Elements to Investigate —

(a) the allocation and distribution of state power and resources, directed not for the public good but for private and corrupt advantage;

(b) a network of persons outside and inside government acting illegally and unethically in furtherance of state capture;

(c) improper influence over appointments and removals;

(d) the manipulation of the rules and procedures of decision-making in government in order to facilitate corrupt advantage;

(e) a deliberate effort to undermine or render ineffectual oversight bodies and to exploit regulatory weaknesses so as to avoid accountability for wrongdoing;

(f) a deliberate effort to subvert and weaken law enforcement and intelligence agencies at the commanding levels so as to shield and sustain illicit activities, avoid accountability and to disempower opponents;

(g) support acquiescence by powerful actors in the political sphere, including members of the ruling party;

(h) the assistance of professional service providers in the private sphere, such advisers, auditors, legal and consulting firms, in masking the corrupt nature of the project and protecting and even supporting illicit gains. The Commission's reports on specific state entities reveal distinct patterns. Those that were part of a network organising to improperly benefit from state contracts were placed in strategic positions in the state, while governance rules and structures were changed to centralise power in their hands and bypass checks and balances intended to ensure fair process.

857 The various unfortunate events around August 15th in *Bomas* if not dealt with will render critical institutions like IEBC to fail Kenyans at crucial juncture. Therefore Kenya Kwanza considers the series of attacks by state officials and private individuals on election officials and Kenyans a subject that needs to be investigated with a goal to bring perpetrators to justice.

Consultation prior to appointment of Commissioners

858 The Kenya Kwanza and Azimio Coalitions had different approaches to appointing a chairperson and members of the IEBC.

859 The Kenya Kwanza wanted to retain the current formulation that gives discretion to the president to appoint the chairperson and members from a pool of names.

860 Azimio wanted the power of appointment to be limited to the exact number of names identified by the panel.

861 In order to build confidence in the IEBC, it was felt that a recommendation be made to the leadership of the two coalitions to cater for a window for consultations and concurrence before the appointment process.

Recommendation

862 *Kenya Kwanza* and *Azimio* coalitions shall request the leadership of the two coalitions to consider the need for consultation and concurrence before the president exercises the power of appointment of the Chairperson and members of IEBC.

Former Commissioners of the IEBC

863 The Committee recommends that, in order to foster national cohesion, reconciliation and hasten healing over the 2022 presidential elections dispute, notwithstanding the veracity of the various claims made by Ms. Cherera, Mr. Nyang'aya, Ms. Masit and Mr. Wanderi, their matter should be referred to H.E. President, William Ruto and Rt. Hon. Raila Odinga for an amicable settlement, preferably out of Court.

List of Annexes

Annex 1: Resolutions Establishing the Committee.

Annex 2: Gazette Notice on Establishment of the Committee.

Annex 3: Resolutions Extending the Term of the Committee

Annex 4: Framework Agreement.

Annex 5: Statement of Issues.

Annex 6: Advertisements on Public Participation.

Annex 7: List of Stakeholders who Submitted Memoranda.

Annex 8: List of Stakeholders who Made Oral Presentations

Annex 9: List of Stakeholders Invited for Further Consultations.

Annex 10: Constitutional Amendment Bill.

Annex 11: Statutory Amendment Bills.

ANNEX 1:

RESOLUTIONS ESTABLISHING THE COMMITTEE

THE NATIONAL ASSEMBLY

—

THIRTEENTH PARLIAMENT (SECOND SESSION)

RESOLUTION: ESTABLISHMENT OF THE NATIONAL DIALOGUE COMMITTEE

AWARE THAT Article 1(1) of the Constitution provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution;

FURTHER AWARE that Article 1(2) of the Constitution provides that the people of Kenya may exercise their sovereign power either directly or through their democratically elected representatives;

CONSCIOUS that Article 10 of the Constitution espouses the national values and principles of governance, which include the rule of law, democracy and participation of the people;

FURTHER CONSCIOUS that Article 94 of the Constitution provides that Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty;

RECOGNISING that there is a need to embrace consultation, dialogue and consensus building as a way of resolving issues of concern to the people of Kenya;

COGNIZANT that despite the constitutional and legal reforms on the electoral processes and the electoral laws, after every election cycle there has been mistrust of electoral outcomes, leaving the country divided;

FURTHER COGNIZANT that efforts to enhance constitutionalism, the rule of law and respect for human rights need to be promoted;

AWARE that there have been previous calls and attempts at building consensus on issues of concern to the people of Kenya through bi-partisan engagements in Parliament;

APPRECIATING the need to establish an inclusive forum for dialogue, consultation and consensus building in seeking to promote the peace, stability and prosperity of the country;

ACKNOWLEDGING THAT the Majority Party in Parliament and the Minority Party in Parliament have agreed to embrace dialogue through the establishment of a *National Dialogue Committee* to recommend a way forward on issues of concern to the people of Kenya;

NOW, THEREFORE, the Houses of Parliament **RESOLVE AS FOLLOWS:-**

1. **THAT** the two Houses of Parliament establish a *National Dialogue Committee* consisting of ten (10) Members to represent the Kenya Kwanza Alliance ("**Kenya Kwanza**"), a coalition constituting the Majority Party of the Parliament of the Republic of Kenya and Azimio La Umoja One Kenya Coalition Party ("**Azimio**"), a coalition forming the Minority Party of the Parliament of the Republic of Kenya;

2. **THAT** each Coalition shall appoint five (5) Members to the *National Dialogue Committee;*

3. **THAT** the membership of the *National Dialogue Committee* shall be drawn from Parliament and outside Parliament;

4. **THAT** the *National Dialogue Committee* shall comprise the following Members to represent Kenya Kwanza:

    1) Hon. Kimani Ichungw'ah **(Delegation Leader)**;
    2) Gov. Cecily Mbarire **(Deputy Delegation Leader)**;
    3) Hon. Sen. Aaron Cheruiyot;
    4) Hon. Omar Hassan Omar; and
    5) Hon. Catherine Wambilianga.

5. **THAT** the *National Dialogue Committee* shall comprise the following Members to represent Azimio:

    1) H. E. Stephen Kalonzo Musyoka **(Delegation Leader)**;
    2) Hon. Opiyo Wandayi **(Deputy Delegation Leader)**;
    3) Hon. Amina Mnyazi;
    4) Hon. Eugene Wamalwa; and
    5) Hon. Sen. Okong'o Mogeni.

6. **THAT** the mandate of the *National Dialogue Committee* shall be to facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya, to be framed by the *National Dialogue Committee*, in line with the Constitution and the laws of the Republic of Kenya and respecting the functional and institutional integrity of state organs.

THE HOUSES OF PARLIAMENT NOTES:-

7. **THAT** the Technical Teams representing Kenya Kwanza and Azimio shall support the *National Dialogue Committee.*

8. **THAT** the Technical Team representing Kenya Kwanza shall comprise the following persons:

   (1) Dr. Muthomi Thiankolu;
   (2) Dr. Linda Musumba;
   (3) Dr Duncan Ojwang; and
   (4) Nick Biketi.

9. **THAT** the Technical Team representing Azimio shall comprise the following persons:

   (1) Hon. Jeremiah Kioni;
   (2) Prof. Adams Oloo;
   (3) Abubakar Zein Abubakar; and
   (4) Lynn Ngugi.

10. **THAT** further the *National Dialogue Committee* shall be assisted by two (2) Officers designated as Communication Secretaries, one (1) of whom shall be appointed by the Leader of Majority Party and the other by the Leader of Minority Party.

THE HOUSES OF PARLIAMENT FURTHER RESOLVE:-

11. **THAT** the *National Dialogue Committee* shall formulate and adopt a Framework Agreement to guide the bi-partisan talks

12. **THAT** the *National Dialogue Committee* shall report to the Leadership of Kenya Kwanza and Azimio Coalitions within sixty (60) days and after that, submit its report to Parliament.

13. **THAT** in the execution of its mandate, the *National Dialogue Committee* may invite, engage with and consider submissions from stakeholders, collate views from the public and engage experts, professionals and other technical resource persons as necessary.

14. **THAT** the *National Dialogue Committee* shall determine its own rules of procedure.

15. **THAT** the Speakers and Clerks of both Houses of Parliament shall provide secretariat and any other necessary support to facilitate the work of the *National Dialogue Committee*.

I certify that this printed impression is a true copy of the Resolution as passed by the National Assembly on Wednesday 16th August 2023.

Clerk of the National Assembly
17.8.2023

Endorsed for presentation to the Senate.

Speaker of the National Assembly
17/08/2023

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (SECOND SESSION)

THE SENATE

MESSAGES

MESSAGE TO THE NATIONAL ASSEMBLY

No. 018 of 2023

SUBJECT: ESTABLISHMENT OF THE NATIONAL DIALOGUE COMMITTEE

PURSUANT to the provisions of Standing Order 46 (1) of the Standing Orders of the Senate, I hereby convey the following Message from the Senate –

WHEREAS, the National Assembly, on Wednesday, 16th August, 2023, considered and passed a resolution on the Establishment of the National Dialogue Committee, to facilitate dialogue and consensus building and to recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya.;

AND WHEREAS, the National Assembly, vide *Message No. 007 of 2023* dated Thursday, 17th August, 2023, sought for the consideration of the said Motion by the Senate;

AND WHEREAS, the Senate considered and **APPROVED** the said Motion, on Tuesday, 29th August, 2023 **without amendments**;

NOW THEREFORE, in accordance with the provisions of Standing Order 46 (1) of the Standing Orders of the Senate, I hereby convey the said decision of the Senate.

RT. HON. AMASON J. KINGI, EGH, MP
SPEAKER OF THE SENATE
30th August, 2023

ANNEX 2:

GAZETTE NOTICE ON ESTABLISHMENT OF THE COMMITTEE

SPECIAL ISSUE

THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. CXXV—No. 207 NAIROBI, 15th September, 2023 Price Sh. 60

GAZETTE NOTICE NO. 12619

THE CONSTITUTION OF KENYA

PARLIAMENT OF KENYA

ESTABLISHMENT OF THE NATIONAL DIALOGUE COMMITTEE

IT IS notified for the information of the general public that the National Assembly on the 16th August, 2023 and the Senate on the 29th August, 2023, approved the following motion for the establishment of the National Dialogue Committee—

AWARE THAT Article 1 (1) of the Constitution provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution;

FURTHER AWARE that Article 1 (2) of the Constitution provides that the people of Kenya may exercise their sovereign power either directly or through their democratically elected representatives;

CONSCIOUS that Article 10 of the Constitution espouses the national values and principles of governance, which include the rule of law, democracy and participation of the people;

FURTHER CONSCIOUS that Article 94 of the Constitution provides that Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty;

RECOGNIZING that there is need to embrace consultation, dialogue and consensus building as a way of resolving issues of concern to the people of Kenya;

COGNIZANT that despite the constitutional and legal reforms on the electoral processes and the electoral laws, after every election cycle there has been mistrust of electoral outcomes leaving the country divided;

FURTHER COGNIZANT that efforts to enhance constitutionalism, the rule of law and respect for human rights need to be promoted;

AWARE that there have been previous calls and attempts at building consensus on issues of concern to the people of Kenya through bi-partisan engagements in Parliament;

APPRECIATING the need to establish an inclusive forum for dialogue, consultation and consensus building in seeking to promote the peace, stability and prosperity of the country;

ACKNOWLEDGING THAT the Majority Party in Parliament and the Minority Party in Parliament have agreed to embrace dialogue through the establishment of a National Dialogue Committee to recommend a way forward on issues of concern to the people of Kenya;

Now, therefore, the Houses of Parliament resolve as follows—

1. THAT the two Houses of Parliament establish a National Dialogue Committee consisting of ten (10) Members to represent the Kenya Kwanza Alliance Party ("Kenya Kwanza"), a coalition constituting the Majority Party of the Parliament of the Republic of Kenya and Azimio La Umoja One Kenya Coalition Party ("Azimio"), a coalition forming the Minority Party of the Parliament of the Republic of Kenya;

2. THAT each Coalition shall appoint five (5) Members to the National Dialogue Committee;

3. THAT the membership of the National Dialogue Committee shall be drawn from Parliament and outside Parliament;

4. THAT the National Dialogue Committee shall comprise the following Members to represent Kenya Kwanza:

Kimani Ichungw'ah (Delegation Leader);
Gov. Cecily Mbarire (Deputy Delegation Leader);
Aaron Cheruiyot,
Hassan Omar Hassan; and
Catherine Wambilianga.

5. THAT the National Dialogue Committee shall comprise the following Members to represent Azimio:

Stephen Kalonzo Musyoka (Delegation Leader);
Opiyo Wandayi (Deputy Delegation Leader);
Amina Mnyazi;
Eugene Wamalwa; and
Sen. Okong'o Mogeni

6. THAT the mandate of the National Dialogue Committee shall be to facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya, to be framed by the National Dialogue Committee, in line with the Constitution and the laws of the Republic of Kenya and respecting the functional and institutional integrity of state organs.

The Houses of Parliament note—

7. That the Technical Teams representing Kenya Kwanza and Azimio shall support the National Dialogue Committee.

8. That the Technical Team representing Kenya Kwanza shall comprise the following persons:

Muthomi Thiankolu (Dr.);
Linda Musumba (Dr.);
Duncan Ojwang (Dr.); and
Nick Biketi.

9. That the Technical Team representing Azimio shall comprise the following persons:

Jeremiah Kioni;
Adams Oloo (Prof.);
Abubakar Zein Abubakar; and
Lynn Ngugi.

10. THAT further the National Dialogue Committee shall be assisted by two (2) Officers designated as Communication Secretaries, one (1) of whom shall be appointed by the Leader of Majority Party and the other by the Leader of Minority Party.

The Houses of Parliament Further Resolve—

11. That the National Dialogue Committee shall formulate and adopt a Framework Agreement to guide the bi-partisan talks.

12. That the National Dialogue Committee shall report to the Leadership of Kenya Kwanza and Azimio Coalitions within sixty (60) days and after that, submit its report to Parliament.

13. That in the execution of its mandate, the National Dialogue Committee may invite, engage with and consider submissions from stakeholders, collate views from the public and engage experts, professionals and other technical resource persons as necessary.

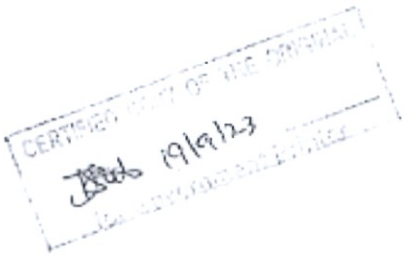
14. That the National Dialogue Committee shall determine its own rules of procedure.

15. That the Speakers and Clerks of both Houses of Parliament shall provide secretariat and any other necessary support to facilitate the work of the National Dialogue Committee.

Dated the 14th September, 2023.

MOSES M. WETANG'ULA,
Speaker of the National Assembly

AMASON JEFFAH KINGI,
Speaker of the Senate



PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

ANNEX 3:

RESOLUTIONS EXTENDING THE TERM OF THE COMMITTEE

REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - (SECOND SESSION)
THE NATIONAL ASSEMBLY

MESSAGES

MESSAGES TO THE SENATE

(No. 018 of 2023)

RESOLUTION: EXTENSION OF THE MANDATE OF THE NATIONAL DIALOGUE COMMITTEE

PURSUANT to the provisions of Standing Order 41(1) of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly—

WHEREAS, the National Assembly and the Senate considered and passed a resolution on the *Establishment of a National Dialogue Committee* on 16th August 2023 and 29th August 2023, respectively;

AND WHEREAS, the National Dialogue Committee (NADCO) was mandated to, amongst other roles, facilitate dialogue, build consensus, and recommend appropriate constitutional, legal, and policy reforms on issues of concern to the people of Kenya and to report to the Leadership of the Kenya Kwanza and Azimio Coalitions, and to Parliament within sixty (60) days from 29th August 2023;

FURTHER WHEREAS, on Tuesday, 17th October 2023 following a request from NADCO, the National Assembly considered and passed a Resolution on the *Extension of the Mandate of the National Dialogue Committee* by a further thirty (30) days from 28th October 2023;

NOW THEREFORE, in accordance with the provisions of Standing Orders 41(1) of the National Assembly Standing Orders, I hereby **convey** the said Resolution of the National Assembly to the Senate for consideration.

Wetang'ula

THE RT. HON. (DR.) MOSES F. M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY
Wednesday, 18th October 2023

MOTION – EXTENSION OF THE MANDATE OF THE NATIONAL DIALOGUE COMMITTEE

AWARE THAT the National Dialogue Committee was established by Parliament through a Resolution passed by the National Assembly and Senate on 16th August 2023 and 29th August 2023 respectively;

FURTHER AWARE that the Resolution outlines the mandate of the Committee which includes to facilitate dialogue, consensus building and recommend appropriate constitutional, legal, and policy reforms on issues of concern to the people of Kenya;

ACKNOWLEDGING THAT since its establishment, the Committee has made tremendous progress in exercise of its mandate and has achieved the following milestones: formulated and adopted the framework agreement; framed and adopted the statement of Issues; unbundled the issues and agreed on prioritization of Issues; harmonized the unbundled issues; conducted public participation and stakeholder engagements in line with the requirements of Article 10 of the Constitution; and examined and analyzed the memoranda that were received from the public and stakeholder submissions;

FURTHER COGNIZANT that the Committee is presently in the process of considering the issues for negotiations and recommending appropriate constitutional, legal and policy reforms on each of the framed issues which are electoral justice and related matters: outstanding constitutional matters: fidelity to political parties/coalitions and the law on multiparty democracy: entrenching the National Government Constituencies Development Fund, National Government Affirmative Action Fund, and the Senate Oversight Fund into the Constitution and Establishment and Entrenchment of State Offices;

CONSCIOUS that the Resolution as made by both Houses of Parliament required the Committee to report to the Leadership of Kenya Kwanza and Azimio Coalitions within sixty (60) days, from 29th August 2023;

RECOGNIZING the need for the Committee to conclude the consideration of the issues for negotiations, the process of making the appropriate constitutional, legal and policy reforms on each of the issues as framed by the Committee and preparation of a Report for submission to the Leadership of Kenya Kwanza and Azimio Coalitions and thereafter, to Parliament;

NOW THEREFORE, the Houses of Parliament **RESOLVE** to extend the mandate of the National Dialogue Committee by a further thirty (30) days from 28th October 2023 consequent to which, the Committee shall report to the Leadership of Kenya Kwanza and Azimio Coalitions, **on or before 26th November 2023 and thereafter submit its Report to Parliament.**

Sponsors:	Leader of the Majority Party & Leader of the Minority Party
Motion Passed:	17th October 2023

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Telephone 2848003
Fax: 2243694
E-mail:clerk.senate@parliament.go.ke

PARLIAMENT

Clerk's Chambers
The Senate
Parliament Buildings
P. O. Box 41842 –00100
Nairobi, Kenya

OFFICE OF THE CLERK OF THE SENATE

REF: SEN/RESOLS/25/2023(01)

19th October, 2023.

Sen. Aaron Cheruiyot, MGH, MP,
Senate Majority Leader and Member,
National Dialogue Committee,
Parliament Buildings,
NAIROBI.

Sen. Erick Okong'o Mogeni, SC, MP,
Member,
National Dialogue Committee,
Parliament Buildings,
NAIROBI.

Dear Hon. Senator,

RE: EXTENSION OF THE MANDATE OF THE NATIONAL DIALOGUE COMMITTEE

At its Sitting held on Wednesday, 18th October, 2023, the Senate considered the Motion on the above subject matter and resolved as follows;

"AWARE THAT the National Dialogue Committee was established by Parliament through a Resolution passed by the National Assembly and Senate on 16th August 2023 and 29th August 2023 respectively:

FURTHER AWARE that the Resolution outlines the mandate of the Committee which includes to facilitate dialogue, consensus building and recommend appropriate constitutional, legal, and policy reforms on issues of concern to the people of Kenya:

ACKNOWLEDGING THAT since its establishment, the Committee has made tremendous progress in exercise of its mandate and has achieved the following milestones: Formulated and adopted the Framework Agreement; Framed and adopted the Statement of Issues; Unbundled the Issues and agreed on prioritization of Issues;

While replying please quote our reference.

Harmonized the unbundled Issues; Conducted public participation and stakeholder engagements in line with the requirements of Article 10 of the Constitution; and Examined and analyzed the memoranda that were received from the public and stakeholder submissions;

FURTHER COGNIZANT *that the Committee is presently in the process of considering the issues for negotiations and recommending appropriate constitutional, legal and policy reforms on each of the framed issues which are Electoral Justice and Related Matters; Outstanding Constitutional Matters: Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenching the National Government Constituencies Development Fund, National Government Affirmative Action Fund, and the Senate Oversight Fund into the Constitution and Establishment and Entrenchment of State Offices;*

CONSCIOUS *that the Resolution as passed by both Houses of Parliament, required the Committee to report to the Leadership of Kenya Kwanza and Azimio Coalitions within sixty (60) days, from 29th August 2023;*

RECOGNIZING *the need for the Committee to conclude the consideration of the issues for negotiations, the process of making the appropriate constitutional, legal and policy reforms on each of the issues as framed by the Committee and preparation of a Report for submission to the Leadership of Kenya Kwanza and Azimio Coalitions and thereafter, to Parliament;*

NOW, THEREFORE, *the Houses of Parliament* ***RESOLVE*** *to extend the mandate of the National Dialogue Committee by a further thirty (30) days from 28th October 2023 and consequently, the Committee shall be required to report to the Leadership of Kenya Kwanza and Azimio Coalitions, on or before 26th November 2023 and after that submit its Report, to Parliament."*

This is to bring to your attention the foregoing resolution for your information and further action.

Attached is an extract of the Hansard report for Wednesday, 18th October, 2023 for information.

Yours truly,

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

Encls.

Copies to:-

Rt. Hon. Amason Jeffah Kingi, EGH, MP,
Speaker of the Senate,
Parliament Buildings,
NAIROBI.

While replying please quote our reference.

Sen. Justice (Rtd.) Stewart Madzayo, CBS, MP,
Senate Minority Leader,
Parliament Buildings,
NAIROBI.

While replying please quote our reference.

ANNEX 4:

FRAMEWORK AGREEMENT

National Dialogue Committee
NADCO

DATED THIS DAY OF 2023

FRAMEWORK AGREEMENT

(AN AGREEMENT TO ESTABLISH A STRUCTURED FRAMEWORK FOR NATIONAL DIALOGUE AND NEGOTIATIONS ON MATTERS RELATING TO THE NATION OF KENYA)

-BETWEEN-

THE KENYA KWANZA ALLIANCE
(KENYA KWANZA)

-AND-

AZIMIO LA UMOJA ONE KENYA COALITION
(AZIMIO)

FRAMEWORK AGREEMENT

INDEX:

PREAMBLE 3

ESTABLISHMENT OF THE COMMITTEE 5

MANDATE OF THE COMMITTEE 5

COMPOSITION OF THE COMMITTEE 5

SUB-COMMITTEES AND PANELS OF THE COMMITTEE 6

TECHNICAL TEAMS AND SECRETARIAT 7

TECHNICAL TEAMS 7

THE SECRETARIAT 7

STATEMENTS OF ISSUES 8

PUBLIC PARTICIPATION 8

THE SEAT OF NEGOTIATION AND PAYMENT OF COSTS 9

FORMALISATION 9

DISPUTE RESOLUTION 10

DELIVERABLES AND TIMEFRAME 10

PROTECTION OF CONSENSUS 10

RULES OF PROCEDURE 11

ADJOURNMENT OF PROCEEDINGS AND DISSOLUTION OF THE NATIONAL DIALOGUE COMMITTEE 13

LANGUAGE 14

MEDIA AND BROADCASTING 14

RECORD KEEPING AND ARCHIVING 14

This Framework Agreement is made the.....day of.....**2023**

BETWEEN:

1 The Kenya Kwanza Alliance Party, a coalition constituting the Majority Party of the Parliament of the Republic of Kenya (from now on referred to as "**Kenya Kwanza,**" which expression shall where the context so admits include its successors and assigns) on the one part.

AND

2 The Azimio La Umoja One Kenya Coalition Party, a coalition constituting the Minority Party of the Parliament of the Republic of Kenya (from now on referred to as "**Azimio,**" which expression shall where the context so admits include its successors and assigns) on the other part.

PREAMBLE

AWARE THAT Article 1(1) of the Constitution provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution;

FURTHER AWARE that Article 1(2) of the Constitution provides that the people of Kenya may exercise their sovereign power either directly or through their democratically elected representatives;

CONSCIOUS that Article 10 of the Constitution espouses the national values and principles of governance, which include the rule of law, democracy and participation of the people;

FURTHER CONSCIOUS that Article 94 of the Constitution provides that Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty;

RECOGNISING that there is a need to embrace consultation, dialogue and consensus building as a way of resolving Issues of concern to the people of Kenya;

COGNIZANT that despite the constitutional and legal reforms on the electoral processes and the electoral laws, after every election cycle there has been mistrust of electoral outcomes, leaving the country divided;

FURTHER COGNIZANT that efforts to enhance constitutionalism, the rule of law and respect for human rights need to be promoted;

AWARE that there have been previous calls and attempts at building consensus on Issues of concern to the people of Kenya through bi-partisan engagements in Parliament;

APPRECIATING the need to establish an inclusive forum for dialogue, consultation and consensus building in seeking to promote the peace, stability and prosperity of the country;

ACKNOWLEDGING THAT the Majority Party in Parliament and the Minority Party in Parliament have agreed to embrace dialogue through the establishment of a *National Dialogue Committee* to recommend a way forward on Issues of concern to the people of Kenya;

The Parties agree as follows:

ESTABLISHMENT OF THE COMMITTEE

1 A National Dialogue Committee ("**the Committee**") is established with the mandate set out in Clauses 3 and 20 to 23 of this Agreement.

2 The Committee shall have ten (10) Members to represent the Parties, with each Party nominating five (5) Members. The Membership of the Committee shall be drawn from Parliament and outside Parliament.

MANDATE OF THE COMMITTEE

3 The mandate of the National Dialogue Committee shall be to facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya, to be framed by the National Dialogue Committee, in line with the Constitution and the laws of the Republic of Kenya and respecting the functional and institutional integrity of state organs.

COMPOSITION OF THE COMMITTEE

4 The Committee shall comprise the following Members to represent Kenya Kwanza—

(a) Hon. Kimani Ichung'wah (**Delegation Leader**);
(b) H.E. Hon. Cecily Mbarire (Deputy Delegation Leader);
(c) Hon. Sen. Aaron Cheruiyot;
(d) Hon. Hassan Omar Hassan; and
(e) Hon. Catherine Wambilianga.

5 The Committee shall comprise the following Members to represent Azimio—

(a) H. E. Stephen Kalonzo Musyoka (**Delegation Leader**);

(b) Hon. Opiyo Wandayi (Deputy Delegation Leader);

(c) Hon. Amina Mnyazi;

(d) Hon. Eugene Wamalwa; and

(e) Hon. Sen. Okong'o Mogeni.

6 Each Delegation Leader shall be their nominating Party's authorised representative.

7 Each Delegation Leader shall have the power and authority to speak and sign documents for and on behalf of their nominating Party.

8 The Leaders of Delegations shall be the Delegation Leaders of the meetings of the Committee. Where a Delegation Leader is absent from a meeting of the Committee, the relevant Deputy Delegation Leader or other Member of the Committee chosen by the relevant Party shall act as the Delegation Leader.

9 A Party may replace a Member of the Committee. Such replacement shall be in writing under the hand of the Delegation Leader or the Leader of the Party making the replacement.

SUB-COMMITTEES AND PANELS OF THE COMMITTEE

10 The Committee may form sub-committees or panels and delegate to them the crafting of Proposals on the resolution of specific Issues or the exercise of the Committee's mandate.

11 All sub-committees and panels of the Committee shall report to the Committee.

TECHNICAL TEAMS AND SECRETARIAT

Technical Teams

12 Each Party shall nominate four (4) members to the Technical Teams to provide the necessary technical support and advice to the Committee.

13 The Technical Team representing Kenya Kwanza shall comprise the following persons:

(a) Dr. Muthomi Thiankolu;

(b) Dr. Linda Musumba;

(c) Nick Biketi; and

(d) Dr. Duncan Ojwang.

14 The Technical Team representing Azimio shall comprise the following persons:

(a) Hon. Jeremiah Kioni;

(b) Professor Adams Oloo;

(c) Abubakar Zein Abubakar; and

(d) Lynn Ngugi.

15 Each Party may replace a member of its Technical Team. Such replacement shall be in writing under the hand of the Delegation Leader or the Leader of the Party making the replacement.

16 Each Party may designate a member of its Technical Team as a Co-Rapporteur.

The Secretariat

17 The Committee shall have a Secretariat comprising persons seconded from the staff of Parliament. The Secretariat may

include researchers, drafters, secretaries, stenographers, copy typists and such other cadres of professionals as the Committee may from time to time require.

18 The Secretariat shall be responsible for the hospitality, logistical, hansard and other administrative requirements of the Committee.

19 The Secretariat shall work under the direction of the Delegation Leaders.

STATEMENTS OF ISSUES

20 Each Team shall formulate specific Issues for discussion and resolution by the Committee. The Statement of Issues, once adopted and signed by the Members of the Committee, shall be deemed to be part of this Agreement.

21 The Teams shall engage in good faith on the Issues identified by each Party and work towards finding common ground and developing mutually acceptable solutions.

22 The Issues for discussion and resolution proposed by either Team shall be harmonised and adopted by consensus or by a majority of all Committee Members.

23 The Committee may consider and adopt such other Issues as may be communicated to it by the public and any person for discussion.

PUBLIC PARTICIPATION

24 The Committee shall facilitate public participation in the National Dialogue and Negotiations.

25 The Committee may invite, engage with and consider submissions from stakeholders, collate views from the public

and engage experts, professionals and other technical resource persons as necessary.

THE SEAT OF NEGOTIATION AND PAYMENT OF COSTS

26 The seat of negotiations shall be such place or places as the Committee may determine from time to time.

27 The Committee shall determine its expenditure needs and limits and adopt the same by consensus.

28 The Committee may receive financial support from the exchequer, partners and well-wishers.

29 The Committee may receive financial support from partners and well-wishers subject to the following conditions—

(a) the source of funding shall be disclosed; and

(b) no partner or well-wisher shall influence or attempt to influence the agenda, deliberations or decisions of the Committee.

30 The Committee shall use its best efforts to adopt such measures and policies as necessary to secure prudent utilisation of resources.

FORMALISATION

31 This Agreement shall commence, and stand adopted, upon—

(a) the passing of the Resolution of Parliament; and

(b) the execution of this Agreement by the Members of the Committee.

32 The Parties shall take all necessary steps to ensure the effective implementation of this Agreement, including allocating

resources and establishing mechanisms for monitoring and reporting on progress.

DISPUTE RESOLUTION

33 Any disputes arising under or in connection with this Agreement shall be resolved through consultation and negotiation in good faith between the Parties.

34 The Parties may amend this Agreement at any time by mutual Agreement, provided that any such amendment is in writing and is signed by Members of the Committee.

DELIVERABLES AND TIMEFRAME

35 The time-frame for the Committee to conclude the National Dialogue and Negotiations shall be sixty (60) days.

Provided that:

(a) the Committee shall determine the urgent matters within thirty (30) days; and

(b) the Committee may at any time agree on Interim Measures necessary for the resolution of the Issues that form the focus of the National Dialogue and Negotiations.

36 If there are outstanding Issues after sixty (60) days, the Committee may request the Parties and Parliament to extend the time.

PROTECTION OF CONSENSUS

37 Where the Committee reaches a consensus on an Issue in consultation with the coalition structures, the relevant part of

the Final Report and Proposals shall be ringfenced from amendment.

38 The Final Report and Proposals of the Committee shall contain a List of Agreed Issues and those not agreed upon.

39 The Final Report and Proposals of the Committee shall be presented to the respective Coalition Leaders. In addition, the Final Report and Proposals of the Committee shall be submitted to the Leader of the Majority Party and the Leader of the Minority Party of each House of Parliament.

40 Upon presentation of the Final Report and Proposals of the Committee, the Leader of the Majority Party and the Leader of the Minority Party of each House of Parliament shall table them and ensure that any proposed reform is introduced in Parliament.

41 Any solutions agreed by consensus that require changes in public policy shall be recommended and effected by the State as appropriate, in accordance with the Constitution and the relevant laws and regulations.

RULES OF PROCEDURE

42 The Committee may make and adopt such Rules of Procedure as it deems necessary to regulate its affairs. The Rules of Procedure may cover any relevant procedural matter, including the process for voting, the transmission of documents to and from the Committee, transcription of proceedings, time of sittings and nature of sittings. The Committee may amend its rules of procedure.

43 Unless otherwise provided for by the Committee, the Rules of Procedure for the Committee shall be as follows—

(a) The quorum of the Committee shall be three (3) members from each Team.

(b) If there is no quorum within 30 minutes of the agreed time for any meeting, the meeting shall be adjourned to a date and time determined by the Delegation Leaders.

(c) The Committee shall make its decisions by discussion and consensus.

(d) If the Committee cannot reach a consensus on any Issue, the dispute resolution mechanism shall apply.

(e) The Committee may generate Lists of Agreed Issues and those not agreed upon.

(f) The Committee shall conduct its meetings and deliberations in good order, decorum, etiquette and civility based on the directions of the Delegation Leaders. The dignity of all participants in the national dialogue process shall be respected.

(g) Any Member of the Committee may object at any time during the speech of another Member stating that they object to any Issue or question under discussion.

(h) A Member who objects to the speech of another Member may, with the leave of the Delegation Leaders, speak on the objection.

(i) The Delegation Leaders shall either give a decision on the objection forthwith or announce that the decision is deferred for consideration, after which the Member who was speaking when the objection was raised may continue to talk.

(j) No Member shall anticipate debate on an Issue or question for discussion unless the same is demonstrably connected to an Issue active discussion when the objection is raised.

(k) The Delegation Leaders shall determine the procedure and time allocations for debate and presentation of Issues.

(l) The Committee shall determine the procedures dealing with any emerging or unforeseen Issues.

(m) The Committee shall agree on the design and contents of its logo, letterhead and other stationery.

(n) The Delegation Leaders shall be the joint spokespersons of the Committee.

(o) All communications by and on behalf of the Committee shall be under the hand of the Delegation Leaders and on the official letterhead of the Committee.

(p) The Co-Rapporteurs in consultation with the Delegation Leaders shall prepare the agenda and notices of meetings with the support of the Secretariat.

ADJOURNMENT OF PROCEEDINGS AND DISSOLUTION OF THE NATIONAL DIALOGUE COMMITTEE

44 The Committee shall stand dissolved—

(a) upon presentation of the Final Report; or

(b) by mutual consent of the Parties.

45 The Committee may adjourn its proceedings for a period not exceeding three (3) days to build consensus on any Issue. If there are irreconcilable differences on any such Issue at the end of the adjournment period, the matter shall be referred to the Coalition Leaders for directions and resolution.

LANGUAGE

46 The languages of the Committee and its subcommittees or panels shall be Kiswahili, English and Kenya sign language.

MEDIA AND BROADCASTING

47 The media shall cover and broadcast the proceedings of the Committee as may be approved by the Delegation Leaders.

48 The Committee shall, from time to time, brief the public and the media on its deliberations.

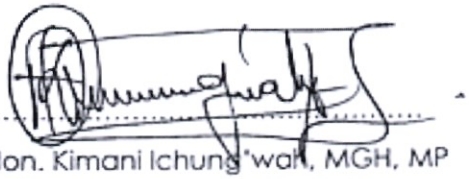
49 The Delegation Leaders shall agree on the information to be disseminated to the public regarding the National Dialogue and Negotiations.

50 The Committee may, where it deems appropriate, conduct its proceedings in camera.

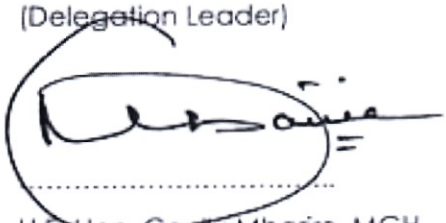
RECORD KEEPING AND ARCHIVING

51 The Committee shall ensure its records are delivered and stored at Parliament, at the National Archives and other appropriate forums and places.

ADOPTED BY RESOLUTION of the Committee at its meeting held at .....on..... the.....day of.....**2023**.



Hon. Kimani Ichung'wah, MGH, MP
(Delegation Leader)



H.E. Hon. Cecily Mbarire, MGH
(Deputy Delegation Leader)



Hon. Sen. Aaron Cheruiyot, MGH, MP
(Member)



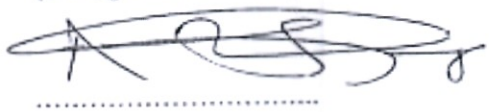
Hon. Hassan Omar Hassan
(Member)



Hon. Catherine Wambilianga, MP
(Member)



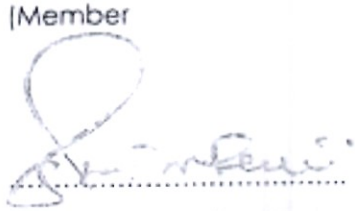
Hon. Stephen Kalonzo Musyoka,
EGH, SC
(Delegation Leader)



Hon. Opiyo Wandayi, MGH, MP
(Deputy Delegation Leader)



Hon. Eugene Wamalwa, EGH
(Member



Hon. Sen. Okon'go Mogeni, SC,
MP
(Member)



Hon. Mnyazi Amina Laura, MP
(Member)

ANNEX 5: STATEMENT OF ISSUES

National Dialogue Committee
NADCO

STATEMENT OF ISSUES FOR NEGOTIATION BY THE NATIONAL DIALOGUE COMMITTEE
(IN NO PARTICULAR ORDER)

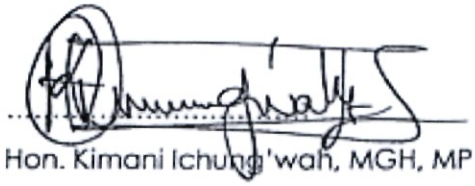
1. **Outstanding Constitutional Matters:**
   (a). Article 43 of the Constitution, the Cost of Living and related issues;
   (b). implementation of the "two-thirds gender rule";
   (c). governance issues, including promoting national unity and inclusivity in public appointments; and
   (d). adequate checks and balances.

2. **Electoral Justice and Related Matters:**
   (a). restructuring and reconstitution of the Independent Electoral and Boundaries Commission ("**the IEBC**");
   (b). boundaries delimitation; and
   (c). audit of the 2022 presidential election.

3. **Entrenching Funds into the Constitution:**
   (a). the National Government Constituencies Development Fund;
   (b). the National Government Affirmative Action Fund; and
   (c). the Senate Oversight Fund.

4. **Establishment and Entrenchment of State Offices:**
   (a). the office of the Leader of the Official Opposition; and
   (b). the office of the Prime Cabinet Secretary.

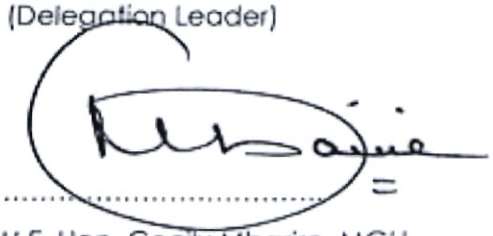
5. **Fidelity to Political Parties/Coalitions and the law on multiparty democracy:**
   Preventing interference with political parties/coalitions.



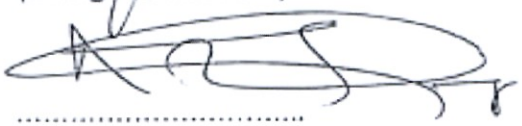
Hon. Kimani Ichung'wah, MGH, MP
(Delegation Leader)



Hon. Stephen Kalonzo Musyoka, EGH, SC
(Delegation Leader)



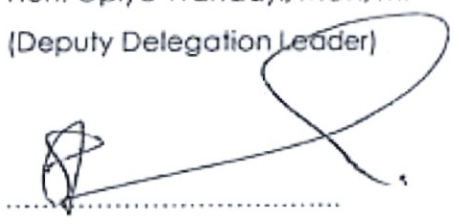
H.E. Hon. Cecily Mbarire, MGH
(Deputy Delegation Leader)



Hon. Opiyo Wandayi, MGH, MP
(Deputy Delegation Leader)



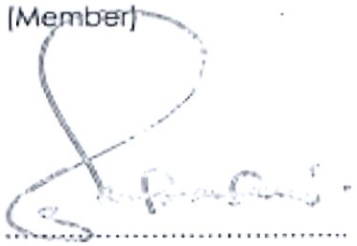
Hon. Sen. Aaron Cheruiyot, MGH, MP
(Member)



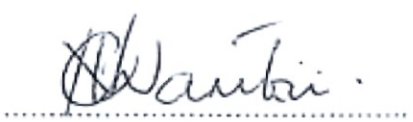
Hon. Eugene Wamalwa, EGH
(Member)



Hon. Hassan Omar Hassan
(Member)



Hon. Sen. Okon'go Mogeni, SC, MP
(Member)



Hon. Catherine Wambilianga, MP
(Member)



Hon. Mnyazi Amina Laura, MP
(Member)

ANNEX 6:

ADVERTISEMENTS ON PUBLIC PARTICIPATION

National Dialogue Committee
NADCO

Parliament Buildings, P.O. BOX 41842-00100 Nairobi.
TEL: (020) 2221291, Email: nationaldialoguecommittee@parliament.go.ke

PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA BY THE PUBLIC TO THE NATIONAL DIALOGUE COMMITTEE ON ISSUES OF CONCERN TO THE PEOPLE OF KENYA

A. *ESTABLISHMENT AND MANDATE OF THE NATIONAL DIALOGUE COMMITTEE*

On Wednesday, 16th August, 2023 and Tuesday, 29th August, 2023, the National Assembly and the Senate, respectively, established the National Dialogue Committee. The mandate of the Committee is to facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya, as framed by the National Dialogue Committee, in line with the Constitution and the laws of the Republic of Kenya and respecting the functional and institutional integrity of state organs.

B. *ISSUES OF CONCERN TO THE PEOPLE OF KENYA AS FRAMED BY THE NATIONAL DIALOGUE COMMITTEE*

The National Dialogue Committee has framed the following five (5) issues of concern to the people of Kenya:

ISSUE 1-Outstanding Constitutional Matters:

(a) Article 43 of the Constitution, the Cost of Living and related issues;
(b) implementation of the "two-thirds gender rule";
(c) governance issues, including promoting national unity and inclusivity in public appointments; and
(d) adequate checks and balances.

ISSUE 2- Electoral Justice and Related Matters:

(a) restructuring and reconstitution of the Independent Electoral and Boundaries Commission ("the IEBC");
(b) boundaries delimitation; and
(c) audit of the 2022 presidential election.

ISSUE 3-Entrenching Funds into the Constitution:

(a) the National Government Constituencies Development Fund;
(b) the National Government Affirmative Action Fund; and
(c) the Senate Oversight Fund.

ISSUE 4- Establishment and Entrenchment of State Offices:

(a) the office of the Leader of the Official Opposition; and
(b) the office of the Prime Cabinet Secretary.

ISSUE 5- Fidelity to Political Parties/Coalitions and the law on multiparty democracy: Preventing interference with political parties/coalitions.

C. *SUBMISSION OF MEMORANDA BY THE PUBLIC*

Article 10 of the Constitution espouses the national values and principles of governance, which include participation of the people. Pursuant to Article 10 of the Constitution, the Committee is required to engage with and consider submissions from stakeholders, collate views from the public and engage experts, professionals and other technical resource persons as necessary.

In accordance with its mandate, the Committee now invites members of the public and stakeholders to **make representations on any or all of the five (5) issues as framed by the National Dialogue Committee.**

The representations may be made in the following manner—

(1) Written memoranda addressed to the **Clerk of the National Assembly or the Clerk of the Senate, P.O. Box 41842-00100, Nairobi (clearly marked "Memorandum to the National Dialogue Committee")**; hand-delivered **to the Secretariat, National Dialogue Committee, CPA Room, Ground Floor, Parliament Buildings;** or emailed to: nationaldialoguecommittee@parliament.go.ke, to be received **on or before 8th September, 2023 at 5.00 p.m.**

(2) **Submission of oral representations at the Public Hearings to be held at a date to be communicated by the National Dialogue Committee.**

HON. KIMANI ICHUNG'WAH, MGH, MP.
DELEGATION LEADER

H.E DR. STEPHEN KALONZO MUSYOKA, EGH, SC
DELEGATION LEADER

ANNEX 7: LIST OF STAKEHOLDERS WHO SUBMITTED MEMORANDA

National Dialogue Committee
N A D C O

LIST OF STAKEHOLDERS THAT SUBMITTED WRITTEN MEMORANDA

HAND DELIVERY AT PARLIAMENT BUILDINGS

The following submitted memoranda by hand-delivery at Parliament Buildings- **31**

INDIVIDUALS

1. Dominic Khobocha Lepartingat
2. Hon. Caroli Omondi
3. Hon. Musili Mawathe
4. James Muriithi Ndwiga
5. Otieno Okanja
6. Peter Ouko Moreka
7. Sen. Ledama Olekina
8. Shadrack Agaki

GROUPS/INSTITUTIONS

9. Amnesty International
10. Association of Members of County Assemblies
11. Community Advocacy and Awareness Trust (CRAWN Trust)
12. Constitution and Reform Education Consortium
13. CPF Financial Services
14. Football Kenya Federation
15. Former Commissioners of IEBC (J. Cherera, J. Nyangaya, F. Wanderi and I. Masit)
16. Hon. Marwa Kitayama Maisori, MP, Kuria East Constituency and 26 other Members of Parliament
17. Independent Electoral and Boundaries Commission
18. Inter-Religious Council of Kenya
19. Kenya Women Parliamentary Association (KEWOPA)
20. Mau Mau War Veterans Association

21. Mkenya Daima
22. Mt. Elgon Ogiek Ndorobo Council of Elders through Chepkitale Indigenous People's Development Project
23. National Gender and Equality Commission
24. Political Parties Liaison Committee
25. Sabaot Community
26. Slums Outreach Programme
27. Stakeholders from Lambwe Valley Settlement Scheme
28. Trans Nzoia Sabaot Professional Association
29. Turkana Professionals Association
30. Wajir South Leaders Caucus
31. Women with Disabilities

HAND DEVIVERYAT BOMAS

The following submitted memoranda by hand-delivery at BOMAS-**48**

INDIVIDUALS

1. Abel Rotich Lokwete
2. Sen. Enoch Kiio Wambua
3. Ambassador Jack B. Tumwa
4. John Kebaso Onchwari
5. Bruce Namachanja
6. Hon. D.W.A Mutumbwa
7. Titus Mwandikwa
8. Hon. Peter Kaluma
9. Joshua Omolo
10. Sen. Cherargei Kiprotich
11. Komrade Bush
12. Edwin Oiko
13. Ferdinand Waititu
14. Joshua Juma
15. Bishop Raymond Mutama
16. Hon. Boniface G. Gatobu on behalf of Shining Hope Community
17. Reverend Teresia Njoki
18. Hon. Antony Tom Oluoch, MP.

19. Hon. Alice W. Ng'anga, MP. on behalf of The Mlima Parliamentary Caucus.

GROUPS/INSTITUTIONS

20. Electoral Law and Governance Institute for Africa (ELGIA)
21. Justice and Freedom Party
22. Operation Linda Jamii
23. Mt. Kenya Youth Impact Group
24. Inter-Party Youth Forum
25. United Karanja Fort Traders
26. Labwe Valley Settlement Scheme
27. Azimio Coalition
28. Ethnic Minorities and Marginalized Communities
29. Health Sector Unions Societies and Associations
30. Trans Nzoia County Community Council of Elders
31. Kenya Vision 2030
32. Mbeere County Pioneers
33. Inter-Religious Council of Kenya
34. Parklands Action Network
35. Jubilee Party
36. Torobeek Community
37. Ichamus Community
38. NARC Kenya Disability League
39. Ufungamano Joint Forum of Religious Organizations
40. Cheragany Council of Elders
41. Nubian Constitutional Review Forum
42. Corner Tribe of Mandera County
43. The Ogiek People of South, West Mau, Nakuru County
44. Thika County Stakeholder Forum
45. National IDPs Network
46. The Sabaot Community
47. The Kenya Conference of Catholic Bishops
48. The ANC Party

SUBMISSIONS VIA EMAIL

The following submitted memoranda via email-**181**

INDIVIDUALS

1. Abner Agutu
2. Allan Akivanga
3. Allan Odhiambo Muthiga
4. Alloys Nyakwara
5. Amb. Jack B. Tumwa
6. Ambrose Oroda
7. Antony Kirori
8. Bernard Adongo
9. Bertha Odawa
10. Boaz Waruku
11. Boniface Mumo Mue
12. Boniface Mutungi
13. Boniface Mwai Gachunga
14. Camlus Oloo
15. Charles Arap Kese
16. Charles Mwangi
17. Christine Munene
18. Col. (Rtd) Cherotwei Simotwo
19. Collins Miruka
20. Collins Owiti
21. Constant Sabwami
22. Cyprian Nyamwamu
23. Daniel Dean Kathurima
24. David Biwott
25. David Muthui Muthui
26. Dickson Karani Mwaniki
27. Dr. Edward Kabuthi
28. Edwinenn602gmail.com (No name indicated)
29. Elder Dr. Kabugi Abraham Ronnie
30. Elly Owiny Kotieno

31. Emmanuel Magoba
32. Evans Mogendi Canoti
33. Evans Njenga Njogu
34. Festus Kazungu Masha
35. George Omari
36. Gerishom Majanja
37. Godfrey Omurabi-ACPN
38. Hannah Kiarie
39. Henry K. Memusi
40. Herman Manyara
41. Hezron Mutugi Kinyua
42. Hon. Kennedy Musyoka Kalonzo
43. Isabel Nyambura Mwangi
44. Isaiah Kithaka Karimi
45. J.A.Akali
46. Jacobsamante2yahoo.com- No name indicated
47. James Muriithi Ndwiga
48. James Mwangi Njiiri
49. James Ogachi Bange
50. Jesse Abisheck
51. Joash Gisore
52. John Kabatha
53. John Kariuki
54. John Kariuki MD
55. John Maina (FCPA-KCAU)
56. John Mweha Kariuki
57. John Otieno Adino
58. John Ouma
59. Joram Godhard Ondere
60. Joseck Ogeta
61. Juma Hemedi
62. Kelvin Ambrose Opiy
63. Kelvin Kosgei

64. Kevin Kiarie
65. Lenah Muthoni Mwendwa
66. Lucas Gisiri
67. Maalik Athman Shekue
68. Macmillan Nyange
69. Maina Munuhe
70. Mark Wairuri Kiarie
71. Martin Ochieng Deya
72. Maurice Anyanga
73. Mbute Mbiyu
74. Mercy Chacha
75. Michael M. Waititu
76. Michael Nganju Nyore
77. Moses Mugambi Mugendi
78. Motonu Nyaega
79. Mutembei Ntongai
80. Muthoni Kihara
81. Mwaniki Githaiga
82. Ngure Joy Nyambura
83. Njoroge Waweru
84. Nurdin Hassan
85. Otieno Okanja
86. Patrick Gichohi
87. Patrick Wangai Muiga
88. Patrick Wangai Muiga
89. Paul Chanzu
90. Peter K. Kinyunye
91. Peter Kibet
92. Petronilla Were
93. Prof. Tom Ojienda
94. Rachel Njoki Muema
95. Raphael Ondeko Ndengu
96. Robert Khaemba

97. Sam Ndungu Mburu
98. Samuel Kariuki Kiragu
99. Samuel Mungai
100. Sarah Kamau
101. Sen. Fatuma Dullo
102. Sen. Ledama Ole Kina
103. Silas Aluku
104. Silvanus Ndemo Nyamora
105. Simon Karanja Mote
106. Somoe Sheile
107. Stephen Cheregony
108. Steve Misango
109. Titus Kaloki
110. Victor Kipyegon
111. Victor Mwangi
112. Vincent Museywa
113. Waiganjo Sammie Mwaniki
114. Wandabwa Ngaira
115. Yahya Mohamed
116. Zaddock(No second Name)
117. CEO Laxcom Media
118. Kelly Matayian
119. Academically and Financially Challenged People in Kenya (AFCPK)
120. Africa Women Leaders Network
121. Amnesty International Kenya Section
122. Association of Members of County Assemblies
123. Association of Small-Scale Traders
124. Centre for Accountability Reform and Democracy
125. Centre for Multiparty Democracy Kenya
126. Constitution and Reform Education Consortium
127. County Assemblies Forum
128. Daraja CIF
129. David Calleb Otieno

130. Democracy Trust Fund
131. Dr. Sylvester Odhiambo Obong'o
132. Larger East Pokot-Tiaty Constituency
133. East Pokot Professional Forum
134. Echo Network Africa
135. Eintreten Association, Alkeblun Group & Perseguir Group
136. Elections Observation Group
137. Governance Re-imagined
138. Hon. Wanja Maina-PWDs
139. Hustler Nation Youth Charter
140. Institute for Democratic Governance
141. Inter Religious Council of Kenya
142. Joseph Kibet, Boniface Momanyi & Grace Warii
143. Jua-Kali Sector
144. Jubilee Party
145. Kenya Bora Tuitakayo
146. Kenya Devolution Civil Society Organizations Working Group
147. Kenya Diaspora
148. Kenya National Interface Team
149. Kenya Women Parliamentarians (KEWOPA)
150. Mercy Jelimo
151. Mkenya Daima Steering Committee
152. Mwonge Residents Association
153. Mt. Kenya Colleges and Universities Students Association (M-CUSA)
154. National Liberal Party
155. National Muslim Leaders Forum (NAMLEF)
156. Nakuru Women
157. Nakuru Youth
158. Nakuru Leaders
159. Nakuru Citizens Accountability and Development Association
160. Nguzo Africa
161. Pamoja Self Help Group, Makueni
162. Pastoralist Community Professional Association

163. Peace and Development Network
164. Peter Wanyama- Manyonge, Wanyama & Associates
165. Prisca Adomeyan and 7 others
166. Pwani Professionals
167. Royal Luo Republic
168. Robotics Society of Kenya
169. Rusinga Island Council of Elders
170. Sabaot Community Forum
171. Slums Outreach Programme
172. Taireni Association and Mijikenda
173. Tana River Council of Elders and Professionals
174. The Elders, Bureti, Konoin and Sotik
175. The Service Party
176. Trans Nzoia Sabaot Professionals Association
177. Turkana Professionals Association
178. Voters and Residents of Meru County
179. We Care Community based Organization
180. Association of Small-Scale Traders
181. Kenya Meteorological Department

ANNEX 8: LIST OF STAKEHOLDERS WHO MADE ORAL PRESENTATIONS

National Dialogue Committee
N A D C O

LIST OF STAKEHOLDERS THAT MADE ORAL PRESENTATIONS

1. The Independent Electoral and Boundaries Commission Secretariat
2. County Assemblies Forum (CAF)
3. Central Organization of Trade Unions (COTU-K)
4. Kenya Women Parliamentarians (KEWOPA)
5. Multi-Sectoral Working Group on the 2/3 Gender Principle
6. National Gender and Equality Commission (NGEC)
7. Political Parties Liaison Committee (PPLC)
8. Trans Nzoia Sabaot Professionals Association
9. National Council for Persons with Disabilities
10. National Youth Council
11. Inter-Religious Council of Kenya
12. Law Society of Kenya
13. Election Observation Group (ELOG)
14. Institute of Certified Public Accountants Kenya (ICPAK)
15. Centre for Multiparty Democracy
16. KEPSA-Mkenya Daima
17. Kenya National Chamber of Commerce (KNCCI)
18. Media Council of Kenya
19. Wajir South Leaders Forum
20. Independent Policing Oversight Authority (IPOA)
21. Maendeleo ya Wananwake
22. National Cohesion and Integration Commission (NCIC)
23. Dr. Mutubwa
24. Turkana Professionals Association
25. Judicial Service Commission (JSC)
26. International Commission of Jurists (ICJ)

27. GEMA Watho Association
28. Office of the Registrar of Political Parties
29. Amnesty International
30. Former Attorney General - Prof. Githu Muigai
31. Former IEBC Commissioners
    - Juliana Cherera
    - Francis Wanderi
    - Irene Masit
    - Justus Nyagaya
32. IEBC Selection Panel
33. Homabay Interface Community Health Desk
34. Former Attorney General - Hon. Amos Wako
35. Kenya Institute for Public Policy Research Analysis (KIPPRA)
36. Sen. Enoch Wambua
37. Sen. Tom Ojienda
38. Public Service Commission
39. Trans Nzoia County Communities' Council
40. Information Communication Technology Association of Kenya (ICTAK)
41. Council of Governors
42. Illchamus Community
43. National Parliamentary Caucus for additional Counties (27 MPs)
44. National Council of Churches Kenya (NCCK)
45. Kenya Conference of Catholic Bishops
46. Electoral Law Governance Institute for Africa
47. Ethics and Anti-Corruption Commission (EACC)
48. Former immediate Auditor General - Edward Ouko
49. Kenya Kwanza Alliance
50. Federation of Kenya Employers
51. Hon. Waititu Ferdinand
52. Kenya National Human Rights Commission
53. Azimio la Umoja One Kenya Coalition

54. Coast Parliamentary Group
55. Mt. Kenya Jurists
56. Civil Society Reference Group
57. CPF Financial Services
58. Shining Hope for Communities (SHOFCO)
59. Kiambu Leaders Forum
60. Nubian Community

ANNEX 9:

LIST OF STAKEHOLDERS INVITED FOR FURTHER CONSULTATIONS

National Dialogue Committee
N A D C O

LIST OF STAKEHOLDERS INVITED FOR FURTHER CONSULTATIONS

1. The Parliamentary Service Commission
2. The Multisectoral Working Group on the Realization of the Two Thirds Gender Principle
3. Centre for Multiparty Democracy
4. The Office of the Controller of Budget
5. The Institute of Economic Affairs
6. Parliamentary Budget Office
7. Society for International Development
8. The National Treasury and Economic Planning
9. The Ministry of Energy and Petroleum
10. The Ministry of Lands, Public Works, Housing and Urban Development
11. International Budget Partnership
12. Hon. Billow Kerrow – Former Senator, Mandera County
13. The Parliamentary Caucus on the National Government Constitutencies Development Fund.

ANNEX 10:

CONSTITUTIONAL AMENDMENT BILL

(2A) Where for any reason the review of the names and boundaries of constituencies is not completed within the time stipulated under clause (2) or there are justifiable reasons for the extension of the period for review, Parliament may extend the period provided for under clause (2) by a resolution passed by —

(a) the National Assembly, with the support of a majority of all the Members of the Assembly; and

(b) the Senate, with the support of a majority of all the county delegations.

Amendment of Article 91 of the Constitution.

5. Article 91 of the Constitution is amended —

(a) in clause (1) —

(i) by inserting the following new paragraphs immediately after paragraph (d) —

(da) promote discipline within the party;

(db) conduct its affairs in a manner that promotes democracy and peaceful politics;

(dc) adhere to the values and principles of the Constitution in the nomination of persons to appointive or elective positions including Article 27, Article 54, Article 55, Article 56, Article 57 and Article 100 of the Constitution;

(ii) by inserting the words "and as such other code of conduct as may be prescribed by the Independent Electoral and Boundaries Commission" immediately after the words "political parties" appearing in paragraph (h)";

(b) by inserting the following new clauses immediately after clause (2) —

(3) A member of a political party shall—

(a) subscribe to the constitution, rules and regulations of the political party; and

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Constitution by parliamentary initiative.

ENACTED by the Parliament of Kenya, as follows—

Short title and commencement.

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2023, and shall come into operation or be deemed to have come into operation as follows—

(a) sections 7, 8, 13, 14, 23 and 24 of this Act immediately after the general elections held following the enactment of this Act; and

(b) all other sections, upon publication in the Gazette.

Amendment of Article 75 of the Constitution.

2. Article 75 of the Constitution is amended by inserting the following new clauses immediately after clause (3) —

(4) A State Officer or public officer as provided for under Article 80(c), shall promptly obey and act in accordance with a court order.

(5)A court may impose appropriate sanctions against any state or public officer who fails to comply with a court order.

Amendment of Article 88 of the Constitution.

3. Article 88(4) of the Constitution is amended by deleting paragraph (e).

Amendment of Article 89 of the Constitution.

4. Article 89 of the Constitution is amended by inserting the following new clause immediately after clause (2) —

decision of the political party or the courts, as the case may be.

(11) A party shall not deregister a member of a political party unless the procedures for deregistration adheres to—

(a) the freedom of expression set out in Article 33;
(b) the freedom of association set out in Article 36;
(c) the political rights set out in Article 38;
(d) the right of fair administrative action set out in Article 47; and
(e) the right to fair hearing set out in Article 50.

Insertion of a new Article 92A in the Constitution.

6. The Constitution is amended by inserting the following new Article immediately after Article 92—

Part 4—Office of the Leader of the Opposition

92A. Leader of the Opposition

(1) There is established the office of the Leader of the Opposition.

(2) The Leader of the Opposition shall be the person who is—

(a) the leader of the party or coalition of parties which garnered the second greatest number of votes in the immediately preceding presidential election; or
(b) the person designated to hold that office in accordance with a resolution of a party or coalition agreement.

(3) There shall be two Deputy Leaders of the Opposition who shall deputize the Leader of Opposition.

(b) be bound by the policies, ideology, philosophy and manifesto of the party.

(4) A citizen shall not be a member of more than one political party at any given time.

(5) Subject to clause (11), a member once deregistered from a political party shall cease holding any appointive or elective position held by virtue of such membership including a position held as a Member of Parliament, a county governor or a member of a county assembly.

(6) For purposes of clause (5), the reasons for deregistration or resignation of a member from a political party shall be exclusively determined in accordance with the constitution or regulations of a political party, by the internal dispute resolution mechanism of the party.

(7) An appeal against the decision of the internal dispute resolution mechanism of the party under clause (6) may be made to the relevant statutory body responsible for determining such disputes.

(8) An appeal against the decision of the relevant statutory body under clause (7) shall be made to the High Court.

(9) All disputes relating to deregistration or resignation of a member of a political party shall be heard and determined within a period not exceeding ninety days from the date of filing the appeal.

(10) Subject to exhaustion of appeal mechanisms, the body responsible for regulation of political parties, Speakers of both Houses of Parliament and speakers of county assemblies shall give effect to the

(b) by deleting clause (3).

Insertion of new Article 108A in the Constitution.

10. The Constitution is amended by inserting the following new Article immediately after Article 108 —

Recognition of international legislative bodies

108A. Parliament shall enact legislation to provide for the recognition and status of representatives in international legislative bodies of which Kenya is a member.

Amendment of Article 130 of the Constitution.

11. Article 130(1) of the Constitution is amended by inserting the words "the Prime Minister" immediately after the words "Deputy President".

Amendment of Article 131 of the Constitution.

12. Article 131(1) of the Constitution is amended in paragraph (b) by inserting the words "the Prime Minister" immediately after the words "the Deputy President".

Amendment of Article 132 of the Constitution.

13. Article 132 of the Constitution is amended—

(a) in clause (1) by inserting the words "House of" immediately after the words "newly elected" appearing in paragraph (a); and
(b) in clause (2) by inserting the words "Prime Minister and" immediately before the words "Cabinet Secretaries" appearing in paragraph (a).

Amendment of Article 136 of the Constitution.

14. Article 136(2) of the Constitution is amended in paragraph (a) by deleting the word "Parliament" and substituting therefor the words "the National Assembly".

Amendment of Article 137 of the Constitution.

15. Article 137(3) of the Constitution is amended by inserting the following new paragraphs immediately after paragraph (b) —

(ba) the Prime Minister;
(bb) the Leader of the Opposition;
(bc) a Deputy Leader of the Opposition;

(4) The remuneration and benefits payable to the Leader of the Opposition and Deputy Leaders of the Opposition shall be a charge on the Consolidated Fund.

(5) Parliament shall enact legislation to give further effect to this Article.

Amendment of Article 101 of the Constitution.

7. Article 101 of the Constitution is amended by deleting clause (1) and substituting therefor the following new clause—

(1) A general election of members of Parliament shall be held on the second Tuesday in August in—

(a) every fifth year in the case of the National Assembly; and

(b) every seventh year in the case of the Senate.

Amendment of Article 102 of the Constitution.

8. Article 102 of the Constitution is amended by deleting clause (1) and substituting therefor the following new clause—

(1) The term of a House of Parliament expires—

(a) on the date of the next general election in every fifth year, in the case of the National Assembly; and

(b) on the seventh year from the date of the last election, in the case of the Senate.

Amendment of Article 103 of the Constitution.

9. Article 103 of the Constitution is amended —

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

(i) as a member of a political party, the member resigns or is deregistered from the party in accordance with this Constitution.

Amendment of Article 152 of the Constitution.

19. Article 152 of the Constitution is amended—

(a) in clause (1) by inserting the following new paragraph immediately after paragraph (b) —

(ba) the Prime Minister;

(b) in clause (2) by inserting the words "the Prime Minister and" immediately after the words "National Assembly appoint".

Amendment of Article 162 of the Constitution.

20. Article 162 of the Constitution is amended—

(a) in clause (1) by deleting the words "the High Court and the courts referred to in clause (2) and substituting therefor the words" and the High Court";

(b) by deleting clause (2); and

(c) by deleting clause (3).

Amendment of Article 165 of the Constitution.

21. Article 165(5) of the Constitution is amended by deleting paragraph (b).

Amendment of Article 169 of the Constitution.

22. Article 169(1) of the Constitution is amended in paragraph (d) by deleting the words "other than the courts established as required by Article 162(2)".

Amendment of Article 177 of the Constitution.

23. Article 177(1) of the Constitution is amended in paragraph (a) by deleting the word "Parliament" and substituting therefor the words "the National Assembly".

Amendment of Article 180 of the Constitution.

24. Article 180(1) of the Constitution is amended by deleting the word "Parliament" and substituting therefor the words "the National Assembly".

Amendment of Article 181 of the Constitution.

25. Article 181(1) of the Constitution is amended by inserting the following new paragraph immediately after paragraph (d) —

Amendment of Article 138 of the Constitution.

16. Article 138(10) of the Constitution is amended by inserting the words "as verified by the Independent Electoral and Boundaries Commission under clause (3)(c)" immediately after the words "declare the result of the election" appearing in paragraph (a).

Amendment of Article 140 of the Constitution.

17. Article 140(2) of the Constitution is amended by deleting the word "fourteen" and substituting therefor the word "twenty-one".

Insertion of a new Article 151A in the Constitution.

18. The Constitution is amended by inserting the following new Article immediately after Article 151—

Office of the Prime Minister

151A. (1) There is established the office of the Prime Minister.

(2) The Prime Minister shall be nominated and, with the approval of the National Assembly, appointed by the President.

(3) The Prime Minister shall not be a Member of Parliament.

(4) The Prime Minister shall —

(a) assist the President and the Deputy President in the coordination, supervision and implementation of the national government policies, programmes and projects across all government ministries and state departments;

(b) coordinate the national government's legislative agenda across all ministries and state departments; and

(c) perform any other function as may be directed by the President.

(5) The provisions of Article 152(4), (5), (6), (7), (8), (9) and (10) and Article 153(2), (3) and (4) shall apply with the necessary modifications to the Prime Minister.

The Senate Oversight Fund

204B. (1) There is established the Senate Oversight Fund which shall be a national government fund consisting of monies appropriated from the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution.

(2) All monies allocated under this Article shall be considered as funds allocated to the Senate pursuant to Article 206(2)(c) of the Constitution and is to be administered in accordance with the provisions of an Act of Parliament.

(3) Parliament shall enact legislation to make further provisions for the operation of this Article.

The National Government Affirmative Action Fund.

204C. (1) There is established the National Government Affirmative Action Fund whose object and purpose shall be to complement the National Government programmes on affirmative action.

(2) The Fund shall be a national government fund consisting of monies appropriated from the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution.

(3) Parliament shall enact legislation to make further provisions for the operation of this Article.

Amendment of Article 240 of the Constitution.

29. Article 240(2) of the Constitution is amended by inserting the following new paragraph immediately after paragraph (b) —

(ba) the Prime Minister;

Amendment of Article 260 of the Constitution.

30. Article 260 of the Constitution is amended in the definition of a "State office" by inserting the following new paragraph immediately after paragraph (b) —

(ba) the Prime Minister;

(e) having been elected as a governor as a member of a political party, the governor resigns or is deregistered from that political party;

Amendment of Article 194 of the Constitution.

26. Article 194 of the Constitution is amended —

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

(i) as a member of a political party, the member resigns or is deregistered from the party in accordance with this Constitution.

(b) by deleting clause (2).

Amendment of Article 203 of the Constitution.

27. Article 203(2) of the Constitution is amended by deleting the words "fifteen per cent" and substituting therefor the words "twenty per cent".

Insertion of new Articles 204A, 204B and 204C in the Constitution.

28. The Constitution is amended by inserting the following new Articles immediately after Article 204—

The National Government Constituencies Development Fund.

204A. (1) There is established the National Government Constituencies Development Fund which shall be a national government fund consisting of monies appropriated from the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution.

(2) All monies allocated under this Article shall be considered as funds allocated to constituencies pursuant to Article 206(2)(c) of the Constitution and is to be administered in accordance with the provisions of an Act of Parliament.

(3) Parliament shall enact legislation to make further provisions for the operation of this Article.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend the Constitution by parliamentary initiative in seeking to resolve issues of concern to the people of Kenya, promote national unity and inclusivity, enhance representative democracy, transparency, accountability and good governance and establish adequate checks and balances. The Bill seeks to give effect to the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 of the Bill sets out the short title of the Bill and provides for its commencement date.

Clause 2 of the Bill seeks to amend Article 75 of the Constitution to ensure compliance with court orders by state and public officers.

Clause 3 of the Bill proposes to amend Article 88 of the Constitution to review the framework for election dispute resolution. The Bill seeks to remove the role of settlement of electoral disputes, (including disputes relating to or arising from nominations) from the Independent Electoral and Boundaries Commission and confer the mandate to the Political Parties Disputes Tribunal established under the Political Parties Act, 2011.

Clause 4 of the Bill seeks to amend Article 89 of the Constitution to provide that where for any reason the review of the names and boundaries of constituencies by the Independent Electoral and Boundaries Commission is not completed within the time stipulated under Article 89(2) or where there are justifiable reasons for the extension of the period for review, Parliament may extend the period provided for under Article 89(2) of the Constitution by a resolution passed by the National Assembly, with the support of a majority of all the Members of the Assembly; and the Senate, with the support of a majority of all the county delegations.

As it is presently, the deadline for the review of the boundaries of constituencies is March, 2024. Cognizant of the fact that the Independent Electoral and Boundaries Commission is yet to be reconstituted, it is paramount to amend Article 89(2) of the Constitution and provide for for

Consequential legislation.

31. (1) Parliament shall enact any legislation required to be enacted under this Act within a period of six months of the coming into force of this Act.

(2) Parliament shall prepare the relevant Bills for tabling as soon as is reasonably practicable to enable enactment of the legislation within the prescribed time under sub-section (1).

Transition provision.

32. A person who immediately before the commencement of this Act was serving as a judge in a court established under Article 162(2) of the Constitution (now repealed) shall continue serving as a judge of the High Court established under Article 165 of the Constitution without loss of any benefits or status.

which is mandated to perform the key functions of coordination, supervision and implementation of national government policies, programmes and projects across all government ministries and state departments. Further, clause 13 of the Bill proposes to amend Article 132 of the Constitution to align with the proposed amendments to Articles 101 and 102 of the Constitution.

Clause 14 of the Bill seeks to amend Article 136(2) of the Constitution to to align with the proposed amendments to Articles 101 and 102 of the Constitution which provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 15 of the Bill proposes to amend Article 137(3) of the Constitution to provide that the disqualifications under Article 137(2) of the Constitution shall not apply to the Prime Minister, Leader of the Opposition and the Deputy Leaders of Opposition.

Clause 16 of the Bill proposes to amend Article 138(10) of the Constitution to provide clarity that the chairperson of the Independent Electoral and Boundaries Commission shall declare the result of the presidential election as verified by the Independent Electoral and Boundaries Commission in accordance with Article 138(3)(c) of the Constitution.

Clause 17 of the Bill proposes to amend Article 140(2) of the Constitution to increase the timelines within which the Supreme Court shall hear and determine the validity of presidential election from fourteen to twenty-one days.

Clauses 18 and 19 of the Bill proposes to insert a new Article 151A and amend Article 152 of the Constitution to institutionalize the office of the Prime Minister which is mandated to perform the key functions of coordination, supervision and implementation of the national government policies, programmes and projects across all government ministries and state departments.

Clause 20 of the Bill seeks to amend Article 162 of the Constitution to make the Environment and Land Court and the Employment and Labour Relations Court (ELRC) part of the High Court. This is intended to broaden the experience of judges within the High Court. Presently, a judge serving

the extension of the period for review of boundaries of constituencies by the Commission once reconstituted.

Clause 5 of the Bill seeks to amend Article 91 of the Constitution to include in the basic requirements of political parties that every political party shall promote discipline within the party; conduct its affairs in a manner that promotes democracy and peaceful politics; and adhere to the values and principles of the Constitution in the nomination of persons to appointive or elective positions including Article 27, Article 54, Article 55, Article 56, Article 57 and Article 100 of the Constitution. Further, the Bill seeks to amend Article 91 of the Constitution to promote multipartyism and fidelity to Political Parties by entrenching procedures for deregistration of members of political parties.

Clause 6 of the Bill proposes to insert a new Article 92A in the Constitution to provide for the establishment of the office of the Leader of the Opposition. The Leader of Opposition shall be deputized by two Deputy Leaders of Opposition. The clause further provides that Parliament shall enact legislation to give further effect to the new Article 92A of the Constitution. The Clause seeks to enhance national unity, inclusivity and good governance by ensuring that the views and interests of the opposition are represented.

Clauses 7 and 8 of the Bill seeks to amend Articles 101 and 102 of the Constitution to provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 9 of the Bill seeks to amend Article 103 of the Constitution to provide that where a member of a political party, who was elected to Parliament resigns or is deregistered from the party in accordance with the Constitution, the office of the member shall become vacant. This is intended to promote party discipline and fidelity to political parties by removing the apparently unenforceable deeming provisions provided for in Article 103 of the Constitution.

Clause 10 of the Bill proposes to amend the Constitution to insert new Article 108A to provide for recognition of representatives in international legislative bodies of which Kenya is a member.

Clauses 11, 12 and 13 of the Bill proposes to amend Articles 130, 131 and 132 of the Constitution to institutionalize the office of the Prime Minister

Clause 28 of the Bill proposes to insert new Articles 204A, 204B and 204C in the Constitution to entrench the following Funds as Funds established in the Constitution—

(a) the National Government Constituencies Development Fund;
(b) the National Government Affirmative Action Fund; and
(c) the Senate Oversight Fund.

The entrenchment of the Funds in the Constitution seeks to ensure funding and implementation of national government projects in all parts of the Republic. The Senate Oversight Fund shall enhance the oversight role of the Senate as enshrined under Article 96 of the Constitution.

Clauses 29 of the Bill proposes to amend Article 240 of the Constitution to provide that the Prime Minister shall be a member of the National Security Council in light of the functions conferred to the office.

Clause 30 of the Bill proposes to amend Article 260 of the Constitution to provide that the office of the Prime Minister shall be a state office for purposes of Article 260 of the Constitution and for which the requirements under Chapter Six of the Constitution on leadership and integrity shall apply.

Clause 31 of the Bill provides for enactment by Parliament of any legislation required to be enacted under the Act within a period of six months.

Clause 32 of the Bill is the transition provision. The clause provides for a transition provision to the amendment to Article 162(2) of the Constitution in order to provide that a person who immediately before the commencement of the Act was serving as a judge in a court established under Article 162(2) of the Constitution (now repealed) shall continue serving as a judge of the High Court established under Article 165 of the Constitution without loss of any benefits or status.

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

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

in the two specialized courts cannot serve in the High Court or preside over a matter in the High Court.

Clause 21 of the Bill proposes to amend Article 165 of the Constitution to align with the proposed amendments to Article 162 of the Constitution.

Clause 22 of the Bill proposes to amend Article 169 of the Constitution to align with the proposed amendments to Article 162 of the Constitution.

Clause 23 of the Bill proposes to amend Article 177(1) of the Constitution to align with the proposed amendments to Articles 101 and 102 of the Constitution which provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 24 of the Bill proposes to amend Article 180(1) of the Constitution to align with the proposed amendments to Articles 101 and 102 of the Constitution which provide that the term of the Senate shall expire on the seventh year from the date of the last election.

Clause 25 of the Bill proposes to amend Article 181 of the Constitution to provide that a county governor may be removed from office where having been elected as a governor, as a member of a political party, the governor resigns or is deregistered from that political party.

Clause 26 of the Bill proposes to amend Article 194 of the Constitution to provide that where a member of a political party who was elected to a county assembly, resigns or is deregistered from the party in accordance with the Constitution, the office of the member shall become vacant. This is intended to promote party discipline and fidelity to political parties by removing the deeming provisions provided for in Article 194 of the Constitution.

Clause 27 of the Bill proposes to amend Article 203(2) of the Constitution to increase the equitable share of the revenue raised nationally that is allocated to county governments from not less than fifteen per cent of all revenue collected by the national government to not less than twenty per cent of all revenue collected by the national government.

(b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

(3)A person who has been dismissed or otherwise removed from office for a contravention of the provisions specified in clause (2) is disqualified from holding any other State office.

Article 88 of the Constitution which it is proposed to amend—

88. Independent Electoral and Boundaries Commission

(1) There is established the Independent Electoral and Boundaries Commission.

(2) A person is not eligible for appointment as a member of the Commission if the person—

(a) has, at any time within the preceding five years, held office, or stood for election as—

(i) a member of Parliament or of a county assembly; or

(ii) a member of the governing body of a political party; or

(b) holds any State office.

(3) A member of the Commission shall not hold another public office.

(4) The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution, and any other elections as prescribed by an Act of Parliament and, in particular, for—

(a) the continuous registration of citizens as voters;

(b) the regular revision of the voters' roll;

(c) the delimitation of constituencies and wards;

(d) the regulation of the process by which parties nominate candidates for elections;

Statement on whether the Bill concerns county governments
The Bill shall be considered and passed by both Houses of Parliament in terms of Article 256 of the Constitution.

Statement on the financial implications of the Bill
The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the ....., 2023

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of Minority Party.

Article 75 of the Constitution which it is proposed to amend—

75.Conduct of State officers

(1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—

(a) any conflict between personal interests and public or official duties;

(b) compromising any public or official interest in favour of a personal interest; or

(c) demeaning the office the officer holds.

(2)A person who contravenes clause (1), or Article 76, 77 or 78(2)—

(a) shall be subject to the applicable disciplinary procedure for the relevant office; and

(4) If a general election is to be held within twelve months after the completion of a review by the Commission, the new boundaries shall not take effect for purposes of that election.

(5) The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota, but the number of inhabitants of a constituency may be greater or lesser than the population quota in the manner specified in clause (6) to take account of—

(a) geographical features and urban centres;

(b) community of interest, historical, economic and cultural ties; and

(c) means of communication.

(6) The number of inhabitants of a constituency or ward may be greater or lesser than the population quota by a margin of not more than—

(a) forty per cent for cities and sparsely populated areas; and

(b) thirty per cent for the other areas.

(7) In reviewing constituency and ward boundaries the Commission shall—

(a) consult all interested parties; and

(b) progressively work towards ensuring that the number of inhabitants in each constituency and ward is, as nearly as possible, equal to the population quota.

(8) If necessary, the Commission shall alter the names and boundaries of constituencies, and the number, names and boundaries of wards.

(9) Subject to clauses (1), (2), (3) and (4), the names and details of the boundaries of constituencies and wards determined by the Commission

(e) the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results;

(f) the registration of candidates for election;

(g) voter education;

(h) the facilitation of the observation, monitoring and evaluation of elections;

(i) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;

(j) the development of a code of conduct for candidates and parties contesting elections; and

(k)the monitoring of compliance with the legislation required by Article 82 (1) (b) relating to nomination of candidates by parties.

(5) The Commission shall exercise its powers and perform its functions in accordance with this Constitution and national legislation.

Article 89 of the Constitution which it is proposed to amend—

89. Delimitation of electoral units

(1) There shall be two hundred and ninety constituencies for the purposes of the election of the members of the National Assembly provided for in Article 97 (1) (a).

(2) The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years, and not more than twelve years, but any review shall be completed at least twelve months before a general election of members of Parliament.

(3) The Commission shall review the number, names and boundaries of wards periodically.

(g) promote the objects and principles of this Constitution and the rule of law; and

(h) subscribe to and observe the code of conduct for political parties.

(2) A political party shall not—

(a) be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis;

(b) engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person;

(c) establish or maintain a paramilitary force, militia or similar organization;

(d) engage in bribery or other forms of corruption; or

(e) except as is provided under this Chapter or by an Act of Parliament, accept or use public resources to promote its interests or its candidates in elections.

Article 93 of the Constitution which it is proposed to amend—

93. Establishment of Parliament

(1) There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.

(2) The National Assembly and the Senate shall perform their respective functions in accordance with this Constitution.

Article 101 of the Constitution which it is proposed to amend—

101. Election of members of Parliament

shall be published in the Gazette, and shall come into effect on the dissolution of Parliament first following their publication.

(10) A person may apply to the High Court for review of a decision of the Commission made under this Article.

(11) An application for the review of a decision made under this Article shall be filed within thirty days of the publication of the decision in the Gazette and shall be heard and determined within three months of the date on which it is filed.

(12) For the purposes of this Article, "population quota" means the number obtained by dividing the number of inhabitants of Kenya by the number of constituencies or wards, as applicable, into which Kenya is divided under this Article.

Article 91 of the Constitution which it is proposed to amend—

91. Basic requirements for political parties

(1) Every political party shall—

(a) have a national character as prescribed by an Act of Parliament;

(b) have a democratically elected governing body;

(c) promote and uphold national unity;

(d) abide by the democratic principles of good governance, promote and practise democracy through regular, fair and free elections within the party;

(e) respect the right of all persons to participate in the political process, including minorities and marginalized groups;

(f) respect and promote human rights and fundamental freedoms, and gender equality and equity;

(2) When Kenya is at war, Parliament may, by resolution supported in each House by at least two-thirds of all the members of the House, from time to time extend the term of Parliament by not more than six months at a time.

(3) The term of Parliament shall not be extended under clause (2) for a total of more than twelve months.

Article 103 of the Constitution which it is proposed to amend—

103. Vacation of office of member of Parliament

(1) The office of a member of Parliament becomes vacant—

(a) if the member dies;

(b) if, during any session of Parliament, the member is absent from eight sittings of the relevant House without permission, in writing, from the Speaker, and is unable to offer a satisfactory explanation for the absence to the relevant committee;

(c) if the member is otherwise removed from office under this Constitution or legislation enacted under Article 80;

(d) if the member resigns from Parliament in writing to the Speaker;

(e) if, having been elected to Parliament—

(i) as a member of a political party, the member resigns from that party or is deemed to have resigned from the party as determined in accordance with the legislation contemplated in clause (2); or

(ii) as an independent candidate, the member joins a political party;

(f) at the end of the term of the relevant House; or

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

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

(a) the Independent Electoral and Boundaries Commission; and

(b) the political party on whose party list the member was elected or nominated.

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

(4) Whenever a vacancy occurs in the office of a member of the National Assembly elected under Article 97 (1) (a) or (b), or of the Senate elected under Article 98 (1) (a)—

(a) the respective Speaker shall, within twenty-one days after the occurrence of the vacancy, give notice in writing of the vacancy to the Independent Electoral and Boundaries Commission; and

(b) a by-election shall be held within ninety days of the occurrence of the vacancy, subject to clause (5).

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

Article 102 of the Constitution which it is proposed to amend—

102. Term of Parliament

(1) The term of each House of Parliament expires on the date of the next general election.

(d) promote respect for the diversity of the people and communities of Kenya; and

(e)ensure the protection of human rights and fundamental freedoms and the rule of law.

(3) The President shall not hold any other State or public office.

Article 132 of the Constitution which it is proposed to amend—

132. Functions of the President

(1) The President shall—

(a)address the opening of each newly elected Parliament;

(b) address a special sitting of Parliament once every year and may address Parliament at any other time; and

(c)once every year—

(i) report, in an address to the nation, on all the measures taken and the progress achieved in the realisation of the national values, referred to in Article 10;

(ii) publish in the Gazette the details of the measures and progress under sub-paragraph (i); and

(iii) submit a report for debate to the National Assembly on the progress made in fulfilling the international obligations of the Republic.

(2) The President shall nominate and, with the approval of the National Assembly, appoint, and may dismiss—

(a) the Cabinet Secretaries, in accordance with Article 152;

(b) the Attorney-General, in accordance with Article 156;

(c) the Secretary to the Cabinet in accordance with Article 154;

(d) Principal Secretaries in accordance with Article 155;

(g)if the member becomes disqualified for election to Parliament under Article 99 (2) (d) to (h).

(3) Parliament shall enact legislation providing for the circumstances under which a member of a political party shall be deemed, for the purposes of clause (1) (e), to have resigned from the party.

Article 130 of the Constitution which it is proposed to amend—

130. The National Executive

(1) The national executive of the Republic comprises the President, the Deputy President and the rest of the Cabinet.

(2) The composition of the national executive shall reflect the regional and ethnic diversity of the people of Kenya.

Article 131 of the Constitution which it is proposed to amend—

131. Authority of the President

(1) The President—

(a) is the Head of State and Government;

(b) exercises the executive authority of the Republic, with the assistance of the Deputy President and Cabinet Secretaries;

(c)is the Commander-in-Chief of the Kenya Defence Forces;

(d) is the chairperson of the National Security Council; and

(e)is a symbol of national unity.

(2) The President shall—

(a)respect, uphold and safeguard this Constitution;

(b) safeguard the sovereignty of the Republic;

(c)promote and enhance the unity of the nation;

(1) The President shall be elected by registered voters in a national election conducted in accordance with this Constitution and any Act of Parliament regulating presidential elections.

(2) An election of the President shall be held—

(a)on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year; or

(b) in the circumstances contemplated in Article 146.

Article 137 of the Constitution which it is proposed to amend—

137. Qualifications and disqualifications for election as President

(1) A person qualifies for nomination as a presidential candidate if the person—

(a)is a citizen by birth;

(b) is qualified to stand for election as a member of Parliament;

(c)is nominated by a political party, or is an independent candidate; and

(d) is nominated by not fewer than two thousand voters from each of a majority of the counties.

(2) A person is not qualified for nomination as a presidential candidate if the person—

(a) owes allegiance to a foreign state; or

(b) is a public officer, or is acting in any State or other public office.

(3) Clause (2)(b) shall not apply to—

(a) the President;

(b) the Deputy President; or

(c)a member of Parliament.

Article 138 of the Constitution which it is proposed to amend—

(e) high commissioners, ambassadors and diplomatic and consular representatives; and

(f) in accordance with this Constitution, any other State or public officer whom this Constitution requires or empowers the President to appoint or dismiss.

(3) The President shall—

(a) chair Cabinet meetings;

(b) direct and co-ordinate the functions of ministries and government departments; and

(c)by a decision published in the Gazette, assign responsibility for the implementation and administration of any Act of Parliament to a Cabinet Secretary, to the extent not inconsistent with any Act of Parliament.

(4) The President may—

(a)perform any other executive function provided for in this Constitution or in national legislation and, except as otherwise provided for in this Constitution, may establish an office in the public service in accordance with the recommendation of the Public Service Commission;

(b) receive foreign diplomatic and consular representatives;

(c)confer honours in the name of the people and the Republic;

(d) subject to Article 58, declare a state of emergency; and\

(e)with the approval of Parliament, declare war.

(5) The President shall ensure that the international obligations of the Republic are fulfilled through the actions of the relevant Cabinet Secretaries.

Article 136 of the Constitution which it is proposed to amend—

***136.* Election of the President**

(7)The candidate who receives the most votes in the fresh election shall be declared elected as President.

(8)A presidential election shall be cancelled and a new election held if—

(a)no person has been nominated as a candidate before the expiry of the period set for the delivery of nominations;

(b) a candidate for election as President or Deputy President dies on or before the scheduled election date; or

(c)a candidate who would have been entitled to be declared elected as President, dies before being declared elected as President.

(9) A new presidential election under clause (8) shall be held within sixty days after the date set for the previous presidential election.

(10) Within seven days after the presidential election, the chairperson of the Independent Electoral and Boundaries Commission shall—

(a)declare the result of the election; and

(b) deliver a written notification of the result to the Chief Justice and the incumbent President.

Article 140 of the Constitution which it is proposed to amend—

140. Questions as to validity of presidential election

(1) A person may file a petition in the Supreme Court to challenge the election of the President-elect within seven days after the date of the declaration of the results of the presidential election.

(2) Within fourteen days after the filing of a petition under clause (1), the Supreme Court shall hear and determine the petition and its decision shall be final.

(3) If the Supreme Court determines the election of the President-elect to be invalid, a fresh election shall be held within sixty days after the determination.

138. Procedure at presidential election

(1) If only one candidate for President is nominated, that candidate shall be declared elected.

(2) If two or more candidates for President are nominated, an election shall be held in each constituency.

(3) In a presidential election—

(a)all persons registered as voters for the purposes of parliamentary elections are entitled to vote;

(b) the poll shall be taken by secret ballot on the day specified in Article 101 (1) at the time, in the places and in the manner prescribed under an Act of Parliament; and

(c) after counting the votes in the polling stations, the Independent Electoral and Boundaries Commission shall tally and verify the count and declare the result.

(4)A candidate shall be declared elected as President if the candidate receives—

(a)more than half of all the votes cast in the election; and

(b)at least twenty-five per cent of the votes cast in each of more than half of the counties.

(5)If no candidate is elected, a fresh election shall be held within thirty days after the previous election and in that fresh election the only candidates shall be—

(a)the candidate, or the candidates, who received the greatest number of votes; and

(b)the candidate, or the candidates, who received the second greatest number of votes.

(6)If more than one candidate receives the greatest number of votes, clause (5)(b) shall not apply and the only candidates in the fresh election shall be those contemplated in clause (5)(a).

(b) where there are serious reasons for believing that the Cabinet Secretary has committed a crime under national or international law; or

(c) for gross misconduct.

(7) If a motion under clause (6) is supported by at least one-third of the members of the National Assembly—

(a)the Assembly shall appoint a select committee comprising eleven of its members to investigate the matter; and

(b) the select committee shall, within ten days, report to the Assembly whether it finds the allegations against the Cabinet Secretary to be substantiated.

(8) The Cabinet Secretary has the right to appear and be represented before the select committee during its investigations.

(9) If the select committee reports that it finds the allegations—

(a)unsubstantiated, no further proceedings shall be taken; or

(b) substantiated, the National Assembly shall—

(i) afford the Cabinet Secretary an opportunity to be heard; and

(ii) vote whether to approve the resolution requiring the Cabinet Secretary to be dismissed.

(10) If a resolution under clause (9) (b) (ii) requiring the President to dismiss a Cabinet Secretary is supported by a majority of the members of the National Assembly—

(a) the Speaker shall promptly deliver the resolution to the President; and

(b) the President shall dismiss the Cabinet Secretary.

Article 162 of the Constitution which it is proposed to be amended—

162.System of courts

(1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).

Article 152 of the Constitution which it is proposed to be amended—

152. Cabinet

(1) The Cabinet consists of—

(a) the President;

(b) the Deputy President;

(c)the Attorney-General; and

(d) not fewer than fourteen and not more than twenty-two Cabinet Secretaries.

(2) The President shall nominate and, with the approval of the National Assembly, appoint Cabinet Secretaries.

(3) A Cabinet Secretary shall not be a Member of Parliament.

(4) Each person appointed as a Cabinet Secretary—

(a)assumes office by swearing or affirming faithfulness to the people and the Republic of Kenya and obedience to this Constitution, before the President and in accordance with the Third Schedule; and

(b) may resign by delivering a written statement of resignation to the President.

(5) The President—

(a)may re-assign a Cabinet Secretary;

(b) may dismiss a Cabinet Secretary; and

(c)shall dismiss a Cabinet Secretary if required to do so by a resolution adopted under clauses (6) to (10).

(6) A member of the National Assembly, supported by at least one-quarter of all the members of the Assembly, may propose a motion requiring the President to dismiss a Cabinet Secretary—

(a)on the ground of a gross violation of a provision of this Constitution or of any other law;

(i) the question whether any law is inconsistent with or in contravention of this Constitution;

(ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;

(iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and

(iv) a question relating to conflict of laws under Article 191; and

(e)any other jurisdiction, original or appellate, conferred on it by legislation.

(4) Any matter certified by the court as raising a substantial question of law under clause (3) (b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.

(5) The High Court shall not have jurisdiction in respect of matters—

(a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or

(b) falling within the jurisdiction of the courts contemplated in Article 162 (2).

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

Article 169 of the Constitution which it is proposed to be amended—

169. Subordinate courts

(1) The subordinate courts are—

(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

(a)employment and labour relations; and

(b) the environment and the use and occupation of, and title to, land.

(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

(4) The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.

Article 165 of the Constitution which it is proposed to be amended—

165. High Court

(1) There is established the High Court, which—

(a)shall consist of the number of judges prescribed by an Act of Parliament; and

(b) shall be organised and administered in the manner prescribed by an Act of Parliament.

(2) There shall be a Principal Judge of the High Court, who shall be elected by the judges of the High Court from among themselves.

(3) Subject to clause (5), the High Court shall have—

(a)unlimited original jurisdiction in criminal and civil matters;

(b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;

(c)jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;

(d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—

Article 180 of the Constitution which it is proposed to be amended—

180. Election of county governor and deputy county governor

(1) The county governor shall be directly elected by the voters registered in the county, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year.

(2) To be eligible for election as county governor, a person must be eligible for election as a member of the county assembly.

(3) If only one candidate for county governor is nominated, that candidate shall be declared elected.

(4) If two or more candidates are nominated, an election shall be held in the county and the candidate who receives the greatest number of votes shall be declared elected.

(5) Each candidate for election as county governor shall nominate a person who is qualified for nomination for election as county governor as a candidate for deputy governor.

(6) The Independent Electoral and Boundaries Commission shall not conduct a separate election for the deputy governor but shall declare the candidate nominated by the person who is elected county governor to have been elected as the deputy governor.

(7) A person shall not hold office—

(a)as a county governor for more than two terms; or

(b) as a deputy county governor for more than two terms.

(8) For the purposes of clause (7), a person who has assumed the office of county governor shall be deemed to have served a full term, subject only to Article 182 (3) (b).

Article 181 of the Constitution which it is proposed to be amended—

181. Removal of a county governor

(a)the Magistrates courts;

(b) the Kadhis' courts;

(c)the Courts Martial; and

(d) any other court or local tribunal as may be established by an Act of Parliament, other than the courts established as required by Article 162 (2).

(2) Parliament shall enact legislation conferring jurisdiction, functions and powers on the courts established under clause (1).

Article 177 of the Constitution which it is proposed to be amended—

177. Membership of county assembly

(1) A county assembly consists of—

(a)members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year;

(b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;

(c)the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and

(d) the Speaker, who is an ex officio member.

(2) The members contemplated in clause (1) (b) and (c) shall, in each case, be nominated by political parties in proportion to the seats received in that election in that county by each political party under paragraph (a) in accordance with Article 90.

(3) The filling of special seats under clause (1) (b) shall be determined after declaration of elected members from each ward.

(4) A county assembly is elected for a term of five years.

(g) if the member becomes disqualified for election on grounds specified in Article 193 (2).

(2) Parliament shall enact legislation providing for the circumstances under which a member of a political party shall be deemed, for the purposes of clause (1)(e), to have resigned from the party.

Article 203 of the Constitution which it is proposed to amend—

203. Equitable share and other financial laws

(1) The following criteria shall be taken into account in determining the equitable shares provided for under Article 202 and in all national legislation concerning county government enacted in terms of this Chapter—

(a)the national interest;

(b) any provision that must be made in respect of the public debt and other national obligations;

(c)the needs of the national government, determined by objective criteria;

(d) the need to ensure that county governments are able to perform the functions allocated to them;

(e)the fiscal capacity and efficiency of county governments;

(f) developmental and other needs of counties;

(g) economic disparities within and among counties and the need to remedy them;

(h) the need for affirmative action in respect of disadvantaged areas and groups;

(i) the need for economic optimisation of each county and to provide incentives for each county to optimise its capacity to raise revenue;

(j) the desirability of stable and predictable allocations of revenue; and

(1) A county governor may be removed from office on any of the following grounds—

(a) gross violation of this Constitution or any other law;

(b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;

(c)abuse of office or gross misconduct; or

(d) physical or mental incapacity to perform the functions of office of county governor.

(2) Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds specified in clause (1).

Article 194 of the Constitution which it is proposed to be amended—

194. Vacation of office of member of county assembly

(1) The office of a member of a county assembly becomes vacant—

(a)if the member dies;

(b) if the member is absent from eight sittings of the assembly without permission, in writing, of the speaker of the assembly, and is unable to offer satisfactory explanation for the absence;

(c)if the member is removed from office under this Constitution or legislation enacted under Article 80;

(d) if the member resigns in writing addressed to the speaker of the assembly;

(e)if, having been elected to the assembly—

(i) as a member of a political party, the member resigns from the party, or is deemed to have resigned from the party as determined in accordance with the legislation contemplated in clause (2); or

(ii)as an independent candidate, the member joins a political party;

(f) at the end of the term of the assembly; or

(5) The Council shall appoint its secretary.

(6) The Council shall—

(a)integrate the domestic, foreign and military policies relating to national security in order to enable the national security organs to co-operate and function effectively; and

(b) assess and appraise the objectives, commitments and risks to the Republic in respect of actual and potential national security capabilities.

(7) The Council shall report annually to Parliament on the state of the security of Kenya.

(8) The Council may, with the approval of Parliament—

(a)deploy national forces outside Kenya for—

(i) regional or international peace support operations; or

(ii) other support operations; and

(b) approve the deployment of foreign forces in Kenya.

Article 260 of the Constitution which it is proposed to amend—

260. **Interpretation**

In this Constitution, unless the context requires otherwise—

"adult" means an individual who has attained the age of eighteen years;

"affirmative action" includes any measure designed to overcome or ameliorate an inequity or the systemic denial or infringement of a right or fundamental freedom;

"child" means an individual who has not attained the age of eighteen years;

"contravene" includes fail to comply with;

"county legislation" means a law made by a county government or under authority conferred by a county Assembly;

(k) the need for flexibility in responding to emergencies and other temporary needs, based on similar objective criteria.

(2) For every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenue collected by the national government.

(3) The amount referred to in clause (2) shall be calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

Article 240 of the Constitution which it is proposed to amend—

240. Establishment of the National Security Council

(1) There is established a National Security Council.

(2) The Council consists of—

(a)the President;

(b) the Deputy President;

(c)the Cabinet Secretary responsible for defence;

(d) the Cabinet Secretary responsible for foreign affairs;

(e)the Cabinet Secretary responsible for internal security;

(f) the Attorney-General;

(g) the Chief of Kenya Defence Forces;

(h) the Director-General of the National Intelligence Service; and

(i) the Inspector-General of the National Police Service.

(3) The Council shall exercise supervisory control over national security organs and perform any other functions prescribed by national legislation.

(4) The President shall preside at meetings of the Council.

(d) natural resources completely contained on or under the surface; and

(e) the air space above the surface;

"legislation" includes—

(a) an Act of Parliament, or a law made under authority conferred by an Act of Parliament; or

(b) a law made by an assembly of a county government, or under authority conferred by such a law;

"loan" includes any form of borrowing, lending or deferred payment in respect of which money from a public fund may be used, or is required to be used, for payment or repayment;

"marginalised community" means—

(a) a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;

(b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;

(c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or

(d) pastoral persons and communities, whether they are—

(i) nomadic; or

(ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;

"marginalised group" means a group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4);

"disability" includes any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day-to-day activities;

"document" includes—

(a) any publication, or any matter written, expressed, or inscribed on any substance by means of letters, figures or marks, or by more than one of those means, that is intended to be used or may be used for the purpose of recording that matter; and

(b) electronic files;

"effective date" means the date that this Constitution came into force;

"fail" includes refuse;

"financial year" means the period of twelve months ending on the thirtieth day of June or other day prescribed by national legislation, but the initial financial year of any entity is the period of time from its coming into existence until the immediately following thirtieth day of June, or other day prescribed by national legislation;

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

"guarantee" means any absolute or conditional promise, commitment or undertaking by the national government to partially or completely re-pay any loan to a county government or any person;

"judicial officer" means a registrar, deputy registrar, magistrate, Kadhi or the presiding officer of a court established under Article 169(1)(d);

"land" includes—

(a) the surface of the earth and the subsurface rock;

(b) any body of water on or under the surface;

(c) marine waters in the territorial sea and exclusive economic zone;

directly from the Consolidated Fund or directly out of money provided by Parliament;

"public service" means the collectivity of all individuals, other than State officers, performing a function within a State organ;

"Republic" means the Republic of Kenya;

"State", when used as a noun, means the collectivity of offices, organs and other entities comprising the government of the Republic under this Constitution;

"State office" means any of the following offices—

(a) President;

(b) Deputy President;

(c) Cabinet Secretary;

(d) Member of Parliament;

(e) Judges and Magistrates;

(f) member of a commission to which Chapter Fifteen applies;

(g) holder of an independent office to which Chapter Fifteen applies;

(h) member of a county assembly, governor or deputy governor of a county, or other member of the executive committee of a county government;

(i) Attorney-General;

(j) Director of Public Prosecutions;

(k) Secretary to the Cabinet;

(l) Principal Secretary;

(m) Chief of the Kenya Defence Forces;

(n) commander of a service of the Kenya Defence Forces;

(o) Director-General of the National Intelligence Service;

"national legislation" means an Act of Parliament, or a law made under authority conferred by an Act of Parliament;

"natural resources" means the physical non-human factors and components, whether renewable or non-renewable, including—

(a) sunlight;

(b) surface and groundwater;

(c) forests, biodiversity and genetic resources; and

(d) rocks, minerals, fossil fuels and other sources of energy;

"older member of society" means a person who has attained the age of sixty years;

"person" includes a company, association or other body of persons whether incorporated or unincorporated;

"political party" means an association contemplated in Part 3 of Chapter Seven;

"property" includes any vested or contingent right to, or interest in or arising from—

(a) land, or permanent fixtures on, or improvements to, land;

(b) goods or personal property;

(c) intellectual property; or

(d) money, choses in action or negotiable instruments;

"public officer" means—

(a) any State officer; or

(b) any person, other that a State Officer, who holds a public office;

"public office" means an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable

(p) Inspector-General, and the Deputy Inspectors-General, of the National Police Service; or

(q) an office established and designated as a State office by national legislation;

"State officer" means a person holding a State office;

"State organ" means a commission, office, agency or other body established under this Constitution;

"writing" includes printing, photography, lithography, typewriting, Braille, and any other means of representing or reproducing words in a visible form; and

"youth" means the collectivity of all individuals in the Republic who—

(a) have attained the age of eighteen years; but

(b) have not attained the age of thirty-five years.

ANNEX 11:

STATUTORY AMENDMENT BILLS

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2023

(b) by deleting sub-section (5);
(c) by deleting sub-section (6).

Amendment of section 10 of No. 9 of 2011.

5. Section 10 of the principal Act is amended by deleting sub-section (4) and substituting therefor the following new sub-section-

(4) The secretary shall hold office for a term of three years and may be eligible for re-appointment for one further term of three years.

Amendment of section 12 of No. 9 of 2011.

6. Section 12 of the principal Act is amended by inserting the following new sub-sections immediately after sub-section (2)-

(3) The Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent and accountable.

(4) The review shall be completed within one year after every general election and the Commission shall publish the report in the *Gazette* and submit the report to Parliament.

Amendment of section 36 of No. 9 of 2011.

7. Section 36 of the principal Act is amended by inserting the following new sub-section immediately after sub-section (11)-

(12) Subject to this section, the provisions set out in the Fifth Schedule shall apply during the process of delimitation of electoral units.

Amendment of the First Schedule to No. 9 of 2011.

8. The First Schedule to the principal Act is amended—

(a) in paragraph 1—
(i) by deleting sub-paragraph (2) and substituting therefor the following new sub-paragraph—

(2) The selection panel shall consist of—

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Independent Electoral and Boundaries Commission Act, 2011 and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title and commencement.

1. This Act may be cited as the Independent Electoral and Boundaries Commission (Amendment) Act, 2023 and shall come into force upon publication in the Gazette.

Amendment of section 2 of No.9 of 2011.

2. Section 2 of the Independent Electoral and Boundaries Commission Act, 2011 (hereinafter referred to as "the principal Act") is amended-

(a) in the definition of the word "chairperson" by deleting the words "or the vice-chairperson or a member of the Commission when discharging the functions of the chairperson" appearing immediately after the word "Constitution;

(b) by deleting the definition of the expression "first review";

(c) by deleting the definition of the expression "former Boundaries Commission";

(d) by deleting the definition of the expression "former Constitution";

(e) by deleting the definition of the expression "issues arising".

Amendment of section 6 of No.9 of 2011.

3. Section 6 of the principal Act is amended in subsection (2)(c) by inserting the following new sub-paragraphs immediately after sub-paragraph (vi) —

(vii) information and communication technology;

(viii) accounting.

Amendment of section 7A of No.9 of 2011.

4. Section 7A of the principal Act is amended-

(a) by deleting sub-section (4);

(b) by deleting paragraph 6 and substituting therefor the following new paragraph-

Dissolution of Selection Panel

6.(1)The selection panel shall finalize the recruitment exercise within ninety days of its appointment and forward the names of the nominees to the President and shall thereafter stand dissolved.

(2) Despite sub-paragraph (1), Parliament may, by resolution passed in both the National Assembly and the Senate, extend the tenure of the selection panel for a specified period.

Amendment of the Second Schedule to No. 9 of 2011.

9. The Second Schedule to the principal Act is amended-

(a) by deleting paragraph 5 and substituting therefore the following new paragraph-

"5. The quorum for the conduct of business at a meeting of the Commission shall be at least five members of the Commission."

(b) by deleting paragraph 7 and substituting therefor the following new paragraph-

"(7) Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by the concurrence of a majority of all the members of the Commission."

10. The principal Act is amended by deleting the Fifth Schedule and substituting therefor the following new Schedule-

FIFTH SCHEDULE (s.36)

PROCEDURES FOR THE DELIMITATION OF ELECTORAL UNITS

1. Notice of delimitation of electoral units

(1) Whenever it is necessary to review the names and boundaries of electoral units in accordance with Article 89(2)

(a) two persons nominated by the Parliamentary Service Commission, representing the majority party or coalition of parties and the minority party or coalition of parties;
(b) three persons nominated by the Political Parties Liaison Committee of whom-
  (i) one shall be from a party other than a parliamentary party or coalition of parties;
  (ii) one shall be from a parliamentary party or coalition of parties forming the national government;
  (iii) one shall be from a parliamentary party or coalition of parties not forming the national government;
(c) one person nominated by the Law Society of Kenya;
(d) one person nominated by the Institute of Certified Public Accountants of Kenya; and
(e) two persons nominated by the Inter-religious Council of Kenya.

(ii) by inserting the following new sub-paragraphs immediately after sub-paragraph (2A)—

(2B) The respective nominating bodies shall select the nominees for appointment through a competitive and transparent process.

(2C) In nominating, the persons under subparagraph (2)(a), (b) and (e), the respective nominating bodies shall ensure that not more than two-thirds of the nominees are of the same gender.

(iii) in sub-paragraph (3), by deleting the words "sub-paragraphs (2)(b) and (c)" and substituting therefor the words "sub-paragraphs (2)(b), (c), (d) and (e)";

(a) the reports of County Boundary Review Panels; or
(b) other relevant data.

(3) The County Boundary Review Panels shall conduct their business as the Commission may, by guidelines determine.

4. Ascertainment of the inhabitants of Kenya

(1) For purposes of determining the population quota, the Commission shall ascertain the number of the inhabitants of Kenya from the figures contained in the latest official national population census report.

(2) Despite sub-paragraph (1), the Commission shall, subject to the timelines set out under Article 89(2) of the Constitution, conduct the delimitation exercise after the national population census.

(3) The Kenya National Bureau of Statistics, shall, as soon as possible after the completion of every national census, submit a copy of the report in the prescribed format to the Commission.

5. Publicization of the preliminary report

(1) The Commission shall—

(a) publicize the preliminary report in its website and in at least two newspapers of nationwide circulation;
(b) invite the public to make representations on the proposals contained in the report; and
(c) put in place administrative mechanisms for receiving representations from the public.

(2) The period set aside for receiving representations from the public on the proposals contained in the report under this paragraph shall be as determined by the Commission.

6. Public sensitization

(1) The Commission shall, upon notification of the public of the intended delimitation of boundaries under paragraph 1 of this Schedule, provide the framework for sensitization and participation of the public.

and (3) of the Constitution, the Commission shall notify the public of—

(a) the intended review;
(b) invite representations from interested parties; and
(c) specify the period within which the Commission shall publish the preliminary report.

(2) A notice under sub-paragraph (1) shall be accompanied by a preliminary report containing the particulars set out under paragraph 2.

2. Preliminary report

The preliminary report shall contain the following particulars—

(a) the proposed delimitation of boundaries for constituencies and wards including the actual proposed names of every constituency and ward; and

(b) description of the proposed boundaries showing the specific geographical and demographical details relating to such delimitation including—

(i) the population quota for constituencies and wards;
(ii) the number of inhabitants in every constituency and ward;
(iii) a classification in relation to each electoral area indicating whether it is a city, a sparsely populated area or other area; and
(iv) an indication of the proposed margin of change from the population quota.

3. Reference materials

(1) The Commission shall, use as its primary reference material—

(a) the final report of the last Electoral and Boundaries Commission on the review of electoral units; and
(b) the latest official population census report.

(2) The Commission may use as its secondary reference material-

(1) Pursuant to Article 89(10) of the Constitution, a person may apply to the High Court for review of a decision of the Commission on the delimitation of electoral boundaries.

(2) An application for the review under this paragraph shall be made within thirty days of the publication of the decision in the Gazette as required under Article 89(9) of the Constitution and shall be heard and determined within three months of the date on which it is filed.

11. Maintenance of records

The Commission shall ensure that all documents, materials, publications, reports and recommendations arising from the delimitation process are maintained in a form that is accessible and usable by members of the public.

12. Duty of certain officers to co-operate with the Commission

It shall be the duty of every state officer or public officer serving in the relevant government ministry, department or agency including the ministry for the time being responsible for Interior and National Administration, Director of Surveys, Director-General of the Kenya National Bureau of Statistics and every other public officer whose services are required by the Commission for purposes of the delimitation of electoral units to provide the necessary information and technical support.

Transition provision.

11. The selection panel existing immediately at the commencement date of this Act ceases to exist but a person who served as a member of that selection panel may be nominated to serve as a member of a selection panel appointed under this Act.

(2) The Commission may engage the media, avail equipment and prepare materials for effective public education and engagement.

7. Public hearings

(1) The Commission shall conduct boundaries review hearings in every county and may constitute constituencies and wards boundaries review panels in each county for the purposes of facilitating public hearings.

(2) Before engaging in the county boundaries review hearings, the Commission shall notify the public of date, time and place of such hearings.

(3) Representations to the Commission may be made orally or in writing.

(4) The proceedings of all boundary review public hearings shall be recorded, translated and transcribed.

8. Preparation of revised report

(1) Upon completion of the public hearings, the Commission shall review the proposed delimitation of boundaries and submit the report to Parliament.

(2) The revised report shall be based on the feedback received during the public consultative process, subject to the relevant provisions of the law.

9. Preparation and dissemination of maps

(1) The Commission shall prepare and publish maps in its website—

(a) for all the electoral units in accordance with the final boundary dissemination delimitation report;
(b) for the respective constituencies in every county; and
(c) for wards in every constituency.

(2) Despite sub-paragraph (1), the Commission shall provide physical copies of the maps to Parliament.

10. Review of the decisions of the Commission

Clause 2 of the Bill seeks to amend section 2 of the Bill by aligning the definition of the chairperson of the Commission to the Judgment of the High Court and by deleting obsolete provisions in the section.

Clause 3 of the Bill seeks to amend section 6(2)(c) of the Act to include information and communications technology and one of the relevant professional areas to be taken into account when nominating persons to be appointed as members of the Commission.

Clause 4 of the Bill seeks to amend section 7A of the Act and delete subsections (4), (5) and (6) that were held to be unconstitutional by the High Court.

Clause 5 of the Bill seeks to amend section 10 of the principal Act to provide that the term of the secretary to the Commission shall be three years, renewable once.

Clause 6 of the Bill seeks to amend section 12 of the principal Act and provide that the Commission shall, after every general election, review its operations and make the necessary changes required to make its operations more efficient, effective, transparent and accountable.

Clause 7 of the Bill provides for the amendment of section 36 of the Act to anchor the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units.

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Clause 8 of the Bill seeks to amend the First Schedule to the Act to increase the number of members of the selection panel from seven to nine in order to accommodate a wide spectrum of stakeholders and interest groups.

Clause 9 of the Bill seeks to amend the Second Schedule to the Act and provide for the quorum of the Commission.

Clause 10 of the Bill provides for the deletion and substitution of the Fifth Schedule to the Act which relates to the procedure for delimitation of electoral units.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

The Bill seeks to amend the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 to clean up the Act by deleting obsolete provisions. The Bill further seeks to make some consequential amendments intended to align the Act to the Judgment of the High Court in *Katiba Institute & 3 Others v Attorney-General & 2 Others [2018]eKLR* wherein the High Court held that certain provisions of the Act were unconstitutional.

The Bill also seeks to amend section 6 of the Act and include experience in accounting or information and communication technology as additional professional qualifications for appointment as a member of the Independent Electoral and Boundaries Commission.

The Bill further seeks to amend the First Schedule to the Independent Electoral and Boundaries Commission No. 9 of 2011 to increase the number of members of the selection panel from seven to nine in order to accommodate a wide spectrum of stakeholders and interest groups.

The Bill further seeks to replace the current Fifth Schedule with a new and updated Schedule.

Clause 1 of the Bill sets out the short title of the Bill and provides for its commencement date.

"first review" means the review conducted by the former Boundaries Commission taking into account any outstanding work of that Commission and issues arising from that review;

"former Boundaries Commission" means the Interim Independent Boundaries Review Commission established under section 41 B of the former Constitution;

"former Constitution" means the Constitution in force immediately before the 27th of August, 2010;

"Fund" means the Independent Electoral and Boundaries Commission Fund established by section 18;

"issues arising" means the issues specified in paragraph 1 of the Fifth Schedule;

"member" means a member of the Commission and includes the chairperson;

"Parliamentary Committee" means the relevant Departmental Committee of the National Assembly responsible for matters relating to the Commission;

"principal office" means the headquarters of the Commission;
"Registrar of Persons" means the office in charge of identification, registration and issuance of identity cards to all Kenyan citizens;

"Salaries and Remuneration Commission" means the Salaries and Remuneration Commission established under Article 230(1) of the Constitution;

"secretary" means the secretary to the Commission appointed under Article 250(12) of the Constitution;

"vice-chairperson" means the vice-chairperson of the Commission elected under Article 250(10) of the Constitution.

Clause 11 of the Bill sets out the transitional provisions relating to the selection panel for the appointment of members of the Commission.

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

The Bill does not delegate legislative powers and it does not also contain provisions limiting fundamental rights and freedoms.

Statement on whether the Bill concerns county governments

The Bill concerns county governments in terms of Article 110(1) of the Constitution as it contains provisions relating to the election of a county assembly and a county executive.

Statement on the financial implications of the Bill

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the....., 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

Section 2 of No. 9 of 2011 which it is proposed to amend—

Interpretation

(1) In this Act, unless the context otherwise requires-

"Cabinet Secretary" means the Cabinet Secretary appointed under Article 152 of the Constitution;

"**chairperson**" means the chairperson of the Commission appointed in accordance with Article 250(2) of the Constitution or the vice-chairperson or a member of the Commission when discharging the functions of the chairperson;

"Commission" means the Independent Electoral and Boundaries Commission established by Article 88 of the Constitution;

new chairperson or member, under this Act, shall commence immediately after the declaration of the vacancy by the President under subsection (2).

(4) Whenever a vacancy occurs in the office of the chairperson, the vice-chairperson shall act as the chairperson and exercise the powers and responsibilities of the chairperson until such a time as the chairperson is appointed.

(5) Where the positions of chairperson and vice-chairperson are vacant, a member elected by members of the Commission shall act as the chairperson and exercise the powers and responsibilities of the chairperson until such a time as the chairperson is appointed.

(6) The provisions of section 6(1) shall not apply to the vice-chairperson or a member acting as chairperson under this section.
[Act No. 36 of 2016, s. 33, Act No. 34 of 2017, s. 3.]

Section 10 of No. 9 of 2011 which it is proposed to amend—
Secretary to the Commission
(1) The Commission shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be thesecretary to the Commission.
(2) A person shall be qualified for appointment as the secretary if the person-

(a) is a citizen of Kenya;
(b) possesses a degree from a recognized university;
(c) has had at least five years' proven experience at management level:
(d) has proven relevant experience in either-
(i) electoral matters;
(ii) management;
(iii) finance;
(iv) governance;
(v) public administration;
(vi) law; or
(vii) political science, and

(e) meets the requirements of Chapter Six of the Constitution.

(3) The secretary shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Third Schedule.

(2) Despite subsection (1), until after the first election under the Constitution, references in this Act to the expression "Cabinet Secretary" shall be construed to mean "Minister".

Section 6 of No. 9 of 2011 which it is proposed to amend—

Qualification for appointments as chairperson or member of the Commission

6.(1)The chairperson of the Commission shall be a person who is qualified to hold the office of judge of the Supreme Court under the Constitution.

(2) A person is qualified for appointment as a member of the Commission if such person-

(a) deleted by Act No. 36 of 2016, s. 32;

(b) holds a degree from a recognized university;

(c) has proven relevant experience in any the following fields-

(i) electoral matters;
(ii) management;
(iii) finance;
(iv) governance;
(v) public administration;
(vi) law; and

(d) meets the requirements or Chapter Six of the Constitution.

Section 7A of No. 9 of 2011 which it is proposed to amend—

7A. Vacancy in the office of chairperson and members

(1) The office of the chairperson or a member of the Commission shall become vacant if the holder—

(a) dies;
(b) resigns from office by notice in writing addressed to the President; or
(c) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.

(2) The President shall publish a notice of a vacancy in the Gazette within seven days of the occurrence of such vacancy.

(3) Whenever a vacancy arises under subsection (1), the recruitment of a

(2) Subject to the Constitution, matters to be addressed in the delimitation of electoral boundaries are —

(a) review of the names and boundaries of constituencies;
(b) review of the number, names and boundaries of wards;
(c) re-distribution of wards affected by any changes in the boundaries of constituencies; and
(d) ensuring that the number of inhabitants in each constituency and ward is as nearly as possible, equal to the population quota as provided for by Article 89(5) of the Constitution and that such a process —

(i) allows for variation of margin of not more than the limits provided under Article 89 (6) of the Constitution in relation to cities, sparsely populated areas and other areas;

(ii) takes into account the provisions of Article 89 (7) (b) of the Constitution that provides for the progressive realization of the requirement that the number of inhabitants in each constituency and ward to be as nearly as possible, equal to the population quota for the purposes of the each review;

(iii) is subject to the use of enumerated national census figures.

(3) The Commission shall prepare and publish a preliminary report outlining —

(a) the proposed delimitation of boundaries for constituencies and wards; and
(b) the specific geographical; and
(c) demographical details relating to such delimitation.

(4) The Commission shall ensure that the preliminary report is made available to the public for a period of thirty days and invite representations from the public on the proposals contained in the report during that period.

(5) Upon the expiry of the period provided in subsection (4), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received and submit the revised preliminary report to the Parliamentary Committee.

(4) The secretary shall hold office for a term of five years but shall be eligible for re-appointment for one further term of five years.

(5) Where the Commission does not intend to reappoint the secretary, the Commission shall notify the secretary and shall cause the vacancy to be advertised at least three months before the expiry of the incumbent's term.

(6) The secretary shall, in the performance of the functions and duties of office,be responsible, answerable and report to the Commission.

(7) The secretary shall be-
(a) the chief executive officer of the Commission;
(b) head or the secretariat;
(c) the accounting officer of the Commission;
(d) custodian of all Commission's records;
(e) responsible for-
(i) executing decisions of the Commission;
(ii) assignment of duties and supervision of all employees of the Commission;
(iii) facilitating, co-ordinating and ensuring execution or Commission's mandate;
(iv) ensuring staff compliance with public ethics and values; and
(v) the performance or such other duties as may be assigned by the law and Commission.

(8) The secretary may only be removed from office by the Commission on grounds of-
(a) inability to perform functions of the office arising out of physical or mental incapacity;
(b) gross misconduct;
(c) bankruptcy; or
(d) incompetence.

(9) Before removal under subsection (8), the secretary shall be -
(a) informed in writing of the reasons for the intended removal;
(b) given an opportunity to put in a defence against any such allegations, either in person or through an advocate.

Section 36 of No. 9 of 2011 which it is proposed to amend—

Procedure for delimitation of electoral boundaries

(1) The Commission shall discharge its mandate of the delimitation of boundaries of constituencies and wards in accordance with the Constitution, this Act and any other law.

Constitution or this Act, the President shall appoint a selection panel consisting of seven persons for the purposes of appointment of the chairperson or member of the Commission.

(2) The selection panel shall consist of—

(a) one man and one woman, nominated by the Parliamentary Service Commission;

(b) one person nominated by the Public Service Commission;

(c) one person nominated by the Political Parties Liaison Committee;

(d) one person nominated by the Law Society of Kenya; and

(e) two persons nominated by the Inter-religious Council of Kenya.

(2A) A person is qualified for appointment as a member of the selection panel if such person —

(a) is a citizen of Kenya;

(b) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution; and

(c) holds a degree from a university recognized in Kenya.

(3) The respective nominating bodies under sub-paragraphs (2)(b) and (c) shall, within seven days of the declaration of a vacancy in the office of the chairperson or member of the Commission, submit the names of their nominees to the Parliamentary Service Commission for transmission to the President for appointment.

(4) The selection panel shall, at its first sitting, elect a chairperson and vice-chairperson from amongst its number.

(5) Subject to the provisions of this Schedule, the selection panel shall determine its own procedure.

(6) The Parliamentary Service Commission shall provide the secretariat services and facilities required by the selection panel in the performance of its functions.

2. Oath or affirmation of office

(6) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report, table the report in the National Assembly together with its recommendations.

(7) The National Assembly shall, within fourteen days of the tabling of the revised preliminary report, consider the report and forward its recommendations to the Commission.

(8) Within fourteen days of the expiry of the period provided for in subsection (7), the Commission shall upon receipt and considerations of the National Assembly and representations from the public, prepare the final report for publication in the Gazette.

(9) Where the National Assembly fails to make recommendations within the period specified in subsection (7), the Commission shall publish its report in accordance with subsection (8).

(10) A person who, being responsible for the publication in the Gazette of the final report submitted under this subsection fails to publish the report within the time required by the Commission after the report has been submitted to that person, commits an offence and is liable to imprisonment for a term of one year.

(11) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subsection (9) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the Gazette. [Act No. 1 of 2017, s. 30]

The First Schedule to No. 9 of 2011 which it is proposed to amend—

FIRST SCHEDULE

PROCEDURE FOR APPOINTMENT OF CHAIRPERSON AND MEMBERS OF THE COMMISSION

1.(1) At least six months before the lapse of the term of the chairperson or member of the Commission or within fourteen days of the declaration of a vacancy in the office of the chairperson or member of the Commission under the

The selection panel shall stand dissolved upon the requisite appointments being made under paragraph 4.

The Second Schedule to No. 9 of 2011 which it is proposed to amend—

SECOND SCHEDULE[s. 8]

PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE COMMISSION

1. The Commission shall meet as often as may be necessary for the carrying out of its business but it shall meet at least once every calendar month.
2. A meeting of the Commission shall be held on such date and at such time as the chairperson shall decide.
3. The chairperson shall, on the written application of one-third of the members,convene a special meeting of the Commission.
4. Unless the majority of the total membership or the Commission otherwise agree, at least fourteen days' written notice of every meeting of the Commission shall be given to every member of the Commission.
5. The quorum for the conduct of business at a meeting of the Commission shall beat least half of the existing members of the Commission, provided that the quorum shall not be less than three members;

6. The chairperson shall preside at every meeting of the Commission at which he is present and in the absence of the chairperson at a meeting, the vice-chairperson, shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number who shall, with respect to the meeting and the business transacted there at have all the powers of the chairperson.
7. Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of the members present and voting.
8. Subject to paragraph 5, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.

The chairperson and members of the selection panel shall, before assuming office, make and subscribe the oath or affirmation of office prescribed in the Third Schedule.

3. Selection of nominees

(1) The selection panel shall, within seven days of its appointment, invite applications from qualified persons and publish the names of all applicants and their qualifications in the *Gazette*, two newspapers of national circulation and on the website of the Parliamentary Service Commission.

(2) The selection panel shall consider the applications, shortlist and interview the applicants.

(3) The interviews under subparagraph (2) shall be conducted in public.

(4) After conducting interviews under subparagraph (2), the selection panel shall select two persons qualified to be appointed as chairperson and nine persons qualified to be appointed as members of the Commission and shall forward the names to the President for nomination of one person for appointment as the chairperson and six persons for appointment as members.

(5) The President shall, within seven days of receipt of the names under sub-paragraph (4), forward the list of nominees to the National Assembly for approval in accordance with the Public Appointments (Parliamentary Approval) Act (Cap. 7F).

4. Appointment by the President

The President shall, within seven days of receipt of the names approved by the National Assembly, by notice in the *Gazette*, appoint the Chairperson and the members of the Commission.

5. Gender equity and regional balance

In short listing, nominating or appointing persons as chairperson and members of the Commission, the selection panel, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender and shall ensure regional balance.

6. Dissolution of Selection Panel

(1) The Commission shall, in addressing the issues arising out of the first review-

(a) use as its primary material the report of the former Boundaries Commission on the first review as adopted by the National Assembly; and

(b) use as its secondary reference material the report of the Parliamentary Committee on the report of the former Boundaries Commission on the first review.

(2) The issues arising out of the first review are -

(a) re-distribution of such wards or administrative units in the affected constituencies as may be appropriate;

(b) subject to the Constitution, addressing issues of new constituencies falling outside the population quota as provided for by Article 89(6) of the Constitution but at the same time ensuring that such a process shall -

(i) take into account the provisions of Article 89(7)(b) of the Constitution that requires progressive efforts and not instant demographic equality of all towards attaining the population quota in each constituency and ward for the purposes of the first review;

(ii) not be subject to new definitions of cities, urban areas and sparsely populated areas or to new population figures;

(iii) be subject to the use of enumerated national census figures and not projected figures.

(c) addressing the issue of progressively advancing towards the population quota in protected constituencies in relation to neighbouring constituencies where appropriate.

3. Delimitation of electoral units

9. (1) The secretary shall be the secretary at all meetings of the Commission.
(2) The Commission shall, subject to subparagraph (3), establish a committee for liaison with political parties and may establish committees of its members for any other purpose.

10. The Commission shall cause minutes of all proceedings of meetings of the Commission to be entered in books for that purpose.

11. Except as provided by this Schedule, the Commission may regulate its own procedure.

12.(1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.
(2) A disclosure or interest made under subsection (1) shall be recorded in the minutes or the meeting at which it is made.
(3) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.
(4) A member or employee of the Commission shall not transact any business or trade with the Commission.

The Fifth Schedule to No. 9 of 2011 which it is proposed to replace—

FIFTH SCHEDULE
[s. 2]
PROVISIONS RELATING TO THE FIRST REVIEW
[Act No. 12 of 2012, Sch.]

1. Resolution of issues arising from the first review
The Commission shall resolve all issues arising from the first review relating to the delimitation of boundaries or constituencies and wards and publish its final report within a period of four months or the date or its appointment under this Act.

2. Reference materials

submitted to that person, commits an offence and is liable to imprisonment for a term of one year.

(9) Notwithstanding any other written law, where the final report is not published in accordance with the provisions of subparagraph (6) the Commission shall, within seven days of the submission of the said report, cause the report to be published in at least two dailies of national circulation and such publication shall have effect as if it were done in the *Gazette*.

4. Review of decision of Commission
A person may apply to the High Court for review of a decision of the Commission made under the Constitution and this Act.

5. Application for review
An application for the review of the decision made under paragraph 4 shall be made within thirty days of the publication of the decision in the *Gazette* and shall be heard and determined within three months of the date on which it is filed.

6. Sensitization on the proposed boundaries
The Commission shall, upon publication of the boundaries referred to in paragraph 3 facilitate sensitization of the public on the boundaries for a period of thirty days.

7. Maintenance of records
The Commission shall ensure that all documents, materials, publications, reports and recommendations arising from the delimitation process are maintained in a form that is accessible and usable by members of the public.

(1) The Commission shall prepare and publish a preliminary report outlining -

(a) the proposed delimitation of boundaries for constituencies and wards; and

(b) the specific geographical and demographical details relating to such delimitation.

(2) The Commission shall ensure that the preliminary report is made available to the public for a period of twenty-one days and invite representations from the public on the proposals contained in the report during that period.

(3) Upon the expiry of the period provided in sub-paragraph (2), the Commission shall, within fourteen days, review the proposed delimitation of boundaries considering the views received under that sub-paragraph and submit the revised preliminary report of proposed boundaries to the Parliamentary Committee.

(4) The Parliamentary Committee shall, within fourteen days of receipt of the revised preliminary report under sub-paragraph (3), table the revised preliminary report to the National Assembly together with its recommendations.

(5) The National Assembly shall, within seven days of the tabling of the revised preliminary report, consider the revised report and forward its resolutions to the Commission.

(6) Within fourteen days of the expiry of the period provided for in sub-paragraph (5), the Commission shall, taking into account the resolutions of the National Assembly under subparagraph (5), prepare and submit its final report outlining the matters set out in sub-paragraph (1)(a) for publication in the *Gazette*.

(7) Where the National Assembly fails to make a resolution within the period specified in subparagraph (5), the Commission shall proceed to publish its report in accordance with subparagraph (6).

(8) Any person who, being responsible for the publication in the *Gazette* of the final report submitted under this paragraph fails to publish the report within the time required by the Commission after the report has been

THE ELECTIONS (AMENDMENT) BILL, 2023

(c) in subsection (3) by inserting the word "valid" immediately before the words "Kenyan passport";

(d) by inserting the following new subsection immediately after subsection 3-

"(3A) A person who registers as a voter during the period when registration of voters is suspended for the purposes of a by-election as contemplated under subsection (1)(b) shall not be eligible to contest in the electoral area affected the by-election".

Amendment of section 6 of No. 24 of 2011.

4. Section 6 of the principal Act is amended—

(a) by deleting subsection (1) and substituting therefor the following new subsections-

(1) The Commission shall cause the Register of Voters to be opened for inspection by members of the public at all times.

(1A) The Commission shall rectify the particulars of voters at all times except-

(a) in the case of a general election or an election under Article 138(5) of the Constitution, during the sixty-day period before the date of the election;

(b) in the case of a by-election, between the date of the declaration of the vacancy of the seat concerned and the date of such election; or

(c) in the case of a referendum, between the date of the publication of the referendum question and the date of the referendum.

(b) by deleting subsection (2).

Amendment of section 8A of No. 24 of 2011.

5. Section 8A of the principal Act is amended—

(a) by deleting subsection (3); and

(b)in subsection (4), by deleting the expression " subsection (3)" and substituting therefor the expression "subsection (1)".

Amendment of section 14 of No. 24 of 2011.

6. Section 14 of the principal Act is amended in subsection (2)—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) the day or days for the registration of

candidates for the presidential election;

(b) by deleting the word "nomination" appearing in paragraph (b) and substituting therefor the words "registration of candidates".

Amendment of section 16 of No. 24 of 2011.

7. Section 16 of the principal Act is amended in subsection (2)—

(a) by deleting paragraph (b) and substituting therefor the following new paragraph—

(a) the day or days for registration of candidates for the parliamentary election;

(b) by deleting the word "nomination" appearing in paragraph (c) and substituting therefor the words "registration of candidates".

Amendment of section 17 of No. 24 of 2011.

8. Section 17 of the principal Act is amended in subsection (2)—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) the day or days for registration of candidates for the governor election;

(b) by deleting the word "nomination" appearing in paragraph (b) and substituting therefor the words "registration of candidates".

Amendment of section 19 of No. 24 of 2011.

9. Section 19 of the principal Act is amended in subsection (2)—

(a) by deleting paragraph (b) and substituting therefor the following new paragraph—•

(a)the day or days for registration of candidates for the county elections; and

(b) by deleting the word "nomination" appearing in paragraph (c) and substituting therefor the word "registration".

Amendment of section 22 of No. 24 of 2011.

10. Section 22 of the principal Act is amended-

(a) in the marginal note by deleting the word "nomination" and substituting therefor the word "registration";

(b) in subsection (1) by-

(i) deleting the word "nominated" appearing in the introductory phrase and substituting therefor the word "registered";

(ii) deleting paragraph (b); and

(c) in subsection (2), by deleting the word "nominated" and substituting therefor the word "registered".

Amendment of section 23 of No. 24 of 2011.

11. Section 23 of the principal Act is amended—

(a) in the marginal note, by deleting the word "nomination" and substituting therefor the word "registration";

(b) in the introductory phrase of subsection (1) by deleting the word "nomination" appearing immediately after the words "person qualifies" and substituting therefor the word "registration"; and

(c) in the introductory phrase of subsection (2) by deleting the word "nomination" appearing immediately after the words "not qualified for" and substituting therefor the word "registration".

Amendment of section 24 of No. 24 of 2011.

12. Section 24 of the principal Act is amended—

(a) in the marginal note by deleting the word "nomination" and substituting therefor the word "registration"; and

(b) in the introductory phrase of subsection (1) by deleting the word "nomination as a" and substituting therefor the words "registration as a candidate for election to the office of".

Amendment of section 25 of No. 24 of 2011.

13. Section 25 of the principal Act is amended—

(a) in the marginal note by deleting the word "nomination" and substituting therefor the word "registration";

(b) in the introductory phrase of subsection (1) by deleting the word "nomination as a" and substituting therefor the words "registration as a candidate for election to the office of";

Amendment of section 27 of No. 24 of 2011.

14. Section 27 of the principal Act is amended by inserting the following new subsection immediately after subsection (1A)—

(1B) Notwithstanding the provisions under subsection (1) a coalition political party shall, within fourteen days of registration, submit to the Commission a copy

of the coalition political party's nomination rules certified by the Registrar of Political Parties.

Amendment of section 31 of No. 24 of 2011.

15. Section 31of the principal Act is amended—

(a) by deleting subsection (2);

(b) by deleting subsection (2B);

(c) by deleting subsection (2C);

(d) by deleting subsection (2E); and

(e) by deleting subsection (2F).

Amendment of section 32 of No. 24 of 2011.

16. Section 32 of the principal Act is amended-

(a) in subsection (1) by deleting the words "nomination day" appearing immediately after the words "days before" and substituting therefor the words "the date for registration of candidates; and

(b) in subsection (lA) by deleting the word "nomination" appearing immediately after the words "days before" and substituting therefor the words "the date for registration of candidates".

Amendment of section 33 of No. 24 of 2011.

17. Section 33 of the principal Act is amended—

(a) in the marginal note by deleting the word "nomination" and substituting therefor the word "registration";

(b) in subsection (1)—

(i) by deleting the word "nominated" appearing in the introductory phrase and substituting therefor the word "registered";

(ii) by deleting the words "nomination paper" appearing in paragraph (b) and substituting therefor the words "registration of candidates Form";

(iii) by deleting the words "nomination day" appearing in paragraph (c) and substituting therefor with the words "date for registration of candidates";

(iv) by deleting paragraph (d); and

(c) by deleting subsection (2).

Insertion of new section 33A in

18. The principal Act is amended by inserting the following

No. 24 of 2011. new section immediately after section 33—

Publication of registered candidates.

33A. The Commission shall publish in the Gazette the names of political party candidates and independent candidates registered to contest in an election.

Amendment of section 34 of No. 24 of 2011.

19. Section 34 of the principal Act is amended-

(a) by inserting the following new subsections immediately after subsection 8—

(8A) A person shall not be nominated by a political party under subsection (4) unless the person is, on the date of submission of the party list by the political party, a registered voter in any of the wards in the county in which the person is nominated.

(8B) The nomination under subsection (4) by a political part shall ensure equitable representation from all wards comprising the respective county.

(b) by deleting subsection (9).

Insertion of new section 38A in No 24 of 2011.

20. The principal Act is amended by insetting the following new section immediately after section 38 –

Gazettement of polling station.

38A. (1) The Commission shall —

(a) appoint a place or places as a polling station or polling stations for each electoral area; and

(b) publish in the Gazette and publicise through electronic and print media of national circulation and other easily accessible medium, a notice specifying the polling stations established for each electoral area at least three months before the date of any election.

(2) No election shall be conducted in a place other than a place gazetted as a polling station under subsection (1).

Amendment of

21. Section 38A of the principal Act be amended by

section 38A of No. 24 of 2011.

renumbering it 38B.

Deletion and substitution of section 39 of No. 24 of 2011.

22. The principal Act is amended by deleting section 39 and substituting therefor the following new section—

Determination and declaration of results.

39.(1) The Commission shall determine, declare and publish the results of an election immediately after the close of polling and results declared at the polling station shall be final.

(2) The Commission shall appoint constituency returning officers to be responsible for-

(a) tallying, announcement and declaration, in the prescribed form, of the final results from each polling station in a constituency for the election of a member of the National Assembly and members of a county assembly;

(b) collating, announcing and declaring the results from each polling station in the constituency for the election of the President, county Governor, Senator and county women representative to the National Assembly; and

(c) submitting, in the prescribed form, the collated results for the election of the President to the national tallying centre and the collated results for the election of the county Governor, Senator and county women representative to the National Assembly to the respective county returning officer.

(3) The Commission shall appoint county returning officers to be responsible for tallying, announcement and declaration, in the prescribed form, of final results from constituencies in the county for purposes of the election of the county Governor, Senator and county women representative to the National Assembly.

(4) For purposes of a presidential election, the Commission shall—

(a) tally, announce and declare the presidential results before tallying, announcing and declaring results for the other elective positions;

(b) electronically transmit the results, within two hours of the declaration of the results, from a polling station to the constituency tallying centre, national tallying centre, the candidates or their agents and elections observers in the prescribed form;

(c) where the results are not transmitted in accordance with paragraph (b), provide reasons in a prescribed form;

(d) physically deliver the tabulated results from a polling station to the constituency tallying centre and thereafter to the national tallying centre;

(e) tally and verify the results received at the constituency tallying centre and the national tallying centre; and

(f) publish the polling results forms on an online public portal maintained by the Commission.

(5) The Commission shall verify that the results transmitted under this section are an accurate record of the results tallied, verified and declared at the respective polling stations.

(6) The Chairperson of the Commission shall declare the results of the election of the President in accordance with Article 138(10) of the Constitution.

(7) The Chairperson may declare a candidate elected as the President before all the constituencies have transmitted their results if the Commission is satisfied that the results that have not been received will not affect the result of the

election.

(8) The Commission shall announce the final results in the order in which the tallying and verification of the results is completed.

(9) The Commission shall, to facilitate public information, allow a candidate and their agent, observers and any other person authorised to access a polling station or tallying centre to record and document the tallying, announcement and declaration of results.

Amendment of section 44 of No. 24 of 2011.

23. Section 44 of the principal Act is amended by inserting the following new subsection immediately after subsection (4) –

(4A) In procuring the technology, the Commission shall ensure that –

(i) intellectual property rights to the technology vests in the Commission;

(ii) the supplier or their associates have not been found guilty of violating any procurement law, committed a crime, violated professional standards or been barred from participating in public procurement in any jurisdiction; and

No. 24 of 2019.

(iii) subject to the Constitution, this Act and the Data Protection Act, the technology is accessible and available for scrutiny by candidates, courts and such other persons as required under the law.

Amendment of section 44A of No. 24 of 2011.

24. Section 44A of the principal Act is amended-

(a) by renumbering the existing provision as subsection (1);

(b) by inserting the words "and transmission of election results" immediately after the words "identification of voters"; and

(c) by inserting the following new sub-section immediately after subsection (1)—

(2) The Commission shall make

Regulations for the better carrying into effect the provisions of this section.

Amendment of section 45 of No. 24 of 2011.

25. The principal Act is amended by deleting section 45.

Amendment of section 46 of No. 24 of 2011.

26. Section 46 of the principal Act is amended in subsection (1) by-

(a) deleting subparagraph (ii) appearing in paragraph (b); and

(b) deleting paragraph (c)

Amendment of section 48 of No. 24 of 2011.

27. The principal Act is amended by deleting section 48.

Repeal of section 74 of No. 24 of 2011.

28. The principal Act is amended by repealing section 74.

Amendment of section 75 of No. 24 of 2011.

29. Section 75 of the principal Act is amended –

(a) in subsection (4) by deleting the words "on matters of law only"; and

(b) by inserting the following subsection immediately after subsection (4)—

(5) The determination of the appeal under sub-section (4) by the High Court shall be final.

Amendment of section 82 of No. 24 of 2011.

30. Section 82 of the principal Act is amended by inserting the following subsection immediately after subsection (3) –

(4) An election court may extend a scrutiny of votes beyond the polling stations or areas mentioned in the pleadings.

Insertion of new section 82A in No. 24 of 2011.

31. The principal Act is amended by inserting the following new section immediately after section 82 –

Access to information.

No. 24 of 2019
No. 9 of 2011

82A. (1) The Commission shall ensure access to information including any technology used in the elections in accordance with the Constitution, the Data Protection Act and the Independent Electoral and Boundaries Commission Act.

(2) Where a request for access to information is made for the purposes of a court order for

scrutiny of votes, the Commission shall facilitate access–

(a) in the case of a presidential election, within three days of the date of the request; and

(b) in the case of any other elective position, within seven days of the date of the request.

(3) The Commission shall not charge fees where the information requested is provided in softcopy format.

4) Where information requested is to be provided in hardcopy format, the Commission may charge a prescribed fee for the provision of the information and the fee shall not exceed the actual costs of making copies of such information and if applicable, supplying them to the applicant.

Amendment of section 85A of No. 24 of 2011.

32. Section 85A of the principal Act is amended –

(a) in subsection (1) by deleting the words "on matters of law only"; and

(b) by inserting the following subsection immediately after subsection (2)—

(3) The determination of the appeal under section (2) by the Court of Appeal shall be final.

Insertion of new part in No. 24 of 2011.

33. The principal Act is amended by inserting the following new sub-part immediately after section 87-

Evaluation of electoral process

Evaluation of elections.

87A. (1) The Commission shall, pursuant to Article 88(4)(h) of the Constitution and within one year of a general election, facilitate evaluation of the electoral process.

(2) An evaluation under subsection (1) shall include-

(a) a review of the legal framework under which the general elections were conducted;

(b) an audit of the Register of Voters used during the election;

(c) a review of the role of media and civil society in the elections;

(d) a review of the voting procedures on election day;

(e) a review of the vote counting procedures on election day;

(f) a review of the elections information and communication technology deployed in the conduct of the general elections;

(g) a review of the human resource deployed for the conduct of the general elections;

(h) a review of the existing elections disputes resolution mechanisms; and

(i) a review of the cost of conducting the general elections including the procurement of the necessary goods and services.

Reports.

87B. A report on the evaluation of the electoral process undertaken in accordance with section 87A shall be published in the *Gazette* and submitted to Parliament.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons

The principal object of this Bill is to amend the Elections Act, 2011. The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 2 of the Bill proposes to amend section 2 of the Act by providing for new definitions for the terms nomination, political party and nomination day. Further, clause 2 proposes to insert the word "valid" immediately before the words "Kenyan passport" in the definition of "identification document and to insert in the interpretation section the definition of the term "registration of candidates "

Clause 3 of the Bill proposes to amend section 5 of the Act which provides for registration of voters by –

a) inserting the words "within the affected electoral area" immediately after the words "such by–election" in subsection (1)(b); (to clarify that suspension of voter registration and revision of the register of voters applies only to the electoral area affected by a by-election)

b) inserting the words "of the referendum question" immediately after the word "publication" in subsection (1)(ba);

c) inserting the word "valid" immediately before the words "Kenyan passport" in subsection (3); and

d) inserting a new subsection (3A) which provides that persons registered as voters during the period when registration of voters is suspended by reason of a by-election shall not be eligible to contest in the electoral area affected by the by-election.

Clause 4 of the Bill proposes to amend section 6 of the Act which provides for inspection of register of voters by deleting subsections (1) and (2) and substituting therefor with new subsections providing for the inspection of register of voters by members of the public and rectification of particulars of voters as well as the exceptions when the IEBC shall not be expected to rectify the particulars of voters.

Clause 5 of the Bill proposes to amend section 8A by deleting subsection (3) which provides for audit of the register of voters by a professional reputable firm for purposes of the first general election after commencement of the Act.

Clauses 6, 7, 8, 9, 10, 11, 12 and 13 of the Bill proposes to amend sections 14, 16, 17, 19, 22, 23, 24, and 25 by deleting the word "nominations" and substituting it with "registration of candidates" so as to differentiate the roles of IEBC and those of the Registrar of political parties. Additionally, clauses 7 and 9 deletes submission of party lists in respect of Parliament and County Assemblies to IEBC by political parties.

Further **clause 10** of the Bill proposes to delete section 22(1)(b) that set out the education requirements for Members of Parliament or County Assembly. These requirements were declared unconstitutional in *Wambui & 10 others v Speaker of the National Assembly & 6 others Constitutional Petition 28 of 2021 & Petition E549, E077, E037 & E065 of 2021 (Consolidated).*

Clause 14 of the Bill proposes to amend section 27 by inserting a new subsection (1B) to provide that a coalition party shall within 14 days of registration submit to IEBC a copy of its nomination rules certified by the Registrar of political parties.

Clause 15 of the Bill proposes to amend section 31 which provides for nomination of political party candidates by deleting subsection (2), (2B), (2C), (2E) and (2F) which provide for –

a) that IEBC shall upon request by a political party, conduct and supervise nomination of candidates by the political party for presidential, parliamentary, or county elections in accordance with article 88 of the constitution;
b) the submission to the IEBC of the names of the persons contesting party primary and the date of the party primary, and publication of these information in the Gazette by IEBC; and
c) the requirement that Parliament shall appropriate monies for the effective implementation of the section.

Clause 16 of the Bill proposes to amend section 32 which provides for approval of symbol for independent candidate by deleting the words "nomination day" and "nomination" and substituting them with the words "the date for registration"; and "registration" respectively.

Clause 17 of the Bill proposes to amend section 33 which provides for nomination of independent candidates –

a) in subsection (1) by deleting the word "nomination" and substituting therefor the word "registration";

b) in subsection (1) deleting the words "nomination paper" in paragraph (b) and substituting therefor the words "registration of candidates Form", and in paragraph (c) by deleting the words "nomination day" and substituting therefor the words "date gazetted for registration of candidates"; and
c) deleting subsection (2) which provide for the publication in the Gazette of the names of persons intending to contest in the election as independent candidates.

Clause 18 of the Bill proposes to amend the Act by inserting new section 33A to provide for publication in the Gazette of party candidates and independent candidates registered to contest in an election.

Clause 19 of the Bill proposes to amend section 34 which provide for nomination of party lists members by inserting new sections (8A) and (8B) to provide that a person can only be nominated as a member of a county assembly if such a person is a registered voter in a ward within a county the person is to be nominated, and the need to ensure equitable representation from all wards comprising the respective county as regards nominations.

Clause 20 of the Bill proposes to amend the Act by inserting a new section 38A to provide for the designation of polling stations by the IEBC and publishing them in the Gazette at least three months before the date of any election. Further, the new section provides that elections shall not be conducted in a place not designated as a polling station.

Clause 22 of the Bill proposes to repeal and replace section 39 which provides for determination and declaration of results and substitute it with a new section. The new section proposes that results at the polling station shall be final, and the presidential election shall be tallied, announced and declared and electronically transmitted before all other elective positions. Further, the new section has omitted provisions providing for –

a) where there is a discrepancy between the electronically transmitted and the physically delivered results the result which is an accurate record of the results tallied, verified and declared at the respective polling station shall prevail;
b) any failure to transmit or publish the election results in an electronic format shall not invalidate the result as announced and declared; and
c) the requirement for IEBC to establish a mechanism for the live-streaming of results as announced at polling stations to facilitate public information.

Clause 23 of the Bill proposes to amend section 44 which provides for technology to provide that the Commission shall ensure that intellectual property to the technology is vested in the Commission, a supplier of technology to be used shall not have been found guilty of violating any procurement law or committed a crime anywhere in the world. Additionally, the amendment seeks to provide for access accessible and available for scrutiny of the technology subject to the applicable laws.

Clause 24 of the Bill proposes to amend section 44A of the act which provides for complementary mechanism for identification of voters by inserting the words "and

transmission of election results" and mandating IEBC to make Regulations for better carrying into effect the provisions of section 44A.

Clause 25 of the Bill proposes to delete section 45 of the Act which provides for conditions under which a Member of Parliament may be recalled. These provisions were declared unconstitutional in *Katiba Institute & another v Attorney General & another Constitutional Petition No. 209 of 2016 [Formerly Kisumu Petition Number 9 of 2016]*

Clause 26 of the Bill proposes to delete the provisions of section 46(1)(b)(ii) and (c) that required that a petition to recall a member of parliament must be signed by a petitioner who was registered to vote in the election in respect of which the recall is sought and that the petition must be accompanied by an order of the High Court. These provisions were declared unconstitutional in *Katiba Institute & another v Attorney General & another Constitutional Petition No. 209 of 2016 [Formerly Kisumu Petition Number 9 of 2016]*

Clause 27 of the Bill proposes to delete section 48 of the Act which presently provides that a recall election shall be valid if the number of voters who concur in the recall election is at least fifty percent of the total number of registered voters in the affected county or constituency. This provision was declared unconstitutional in *Katiba Institute & another v Attorney General & another Constitutional Petition No. 209 of 2016 [Formerly Kisumu Petition Number 9 of 2016]*

Clause 28 of the Bill proposes to repeal section 74 of the Act which provides for settlement of certain electoral disputes by the IEBC since this mandate is now a function of the Political Parties Disputes Tribunal established under the Political Parties Act, 2011.

Clause 29 of the Bill proposes to amend section 75 which provides for county election disputes by deleting the requirement that appeals to the High Court shall be on matters of law only, and inserting a new subsection (5) to provide that the decision of the High Court on an appeal on the validity of election of a member of a county assembly shall be final.

Clause 30 of the Bill proposes to amend section 82 of the Act which provides for scrutiny of votes by providing that a court may extend a scrutiny of votes beyond the polling stations or areas mentioned in the pleadings.

Clause 31 of the Bill proposes to insert a new section 82A to provide for access to information held by the IEBC. Where such information is required for purposes of scrutiny of votes, the information shall be provided within three days in the case of a presidential election, and within seven days in the case of all other elective positions.

Clause 32 of the Bill proposes to amend section 85A which provides for appeals to the Court of Appeal in respect of membership of the National Assembly, Senate or the office of county governor by deleting the requirement that appeals shall be on matters of law only, and inserting a new subsection (5) to provide that the decision of the Court of Appeal shall be final.

Clause 33 of the Bill proposes to insert new sections 87A, 87B and 87C to provide for the appointment by Parliament of an independent firm to carry out an evaluation of the electoral

process after a general election. The evaluation shall include a review of the legal framework, processes and costs associated with the electoral process. The proposed new provisions require the preparation of a report for submission to Parliament within ninety days of the appointment of the independent firm.

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

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

Statement on whether the Bill concerns county governments

The Bill concerns county governments in terms of Article 110(1) of the Constitution as it contains provisions relating to the election of members of a county assembly and a county executive.

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

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

Dated the....., 2023.

KIMANI ICHUNG'WAH,

Leader of the Majority Party.

OPIYO WANDAYI,

Leader of Minority Party.

Section 2 of the Act which it is proposed to amend-

2. In this Act, unless the context otherwise requires—

"adult" has the meaning assigned to it in Article 260 of the Constitution;

"agent" means a person duly appointed by—

(a) a political party or an independent candidate for the purposes of an election under this Act; or

(b) a referendum committee for the purposes of a referendum under this Act, and includes a counting agent and a tallying agent;

"ballot box" means a transparent container with a slot on the top sufficient to accept a ballot paper in an election or in a referendum but which prevents access to the votes cast until the closing of the voting period;

"ballot paper" means a paper used to record the choice made by a voter and shall include an electronic version of a ballot paper or its equivalent for purposes of electronic voting;

"campaign period" means the period specified as such in the notice issued by the Commission in relation to an election;

"candidate" means a person contesting for an elective post;

"Commission" means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

"constituency" means one of the constituencies into which Kenya is divided under Article 89 of the Constitution;

"constituency register" means the register of voters compiled in respect of each constituency by the Commission;

"county" means the counties into which Kenya is divided under Article 6 (1) of the Constitution and specified in the First Schedule of the Constitution;

"county assembly" means a county assembly constituted in accordance with Article 177 of the Constitution;

"county election" means the election of a county governor or a member of a county assembly;

"disability" has the meaning assigned to it in Article 260 of the Constitution;

"election" means a presidential, parliamentary or county election and includes a by-election;

"electoral area" means a constituency, a county or a ward;

"election court" means the Supreme Court in exercise of the jurisdiction conferred upon it by Article 163 (3) (a) or the High Court in the exercise of the jurisdiction conferred upon it by Article 165 (3) (a) of the Constitution and the Resident Magistrate's Court designated by the Chief Justice in accordance with section 75 of this Act;

"election material" means ballot boxes, ballot papers, counterfoils, envelopes, packets statements and other documents used in connection with voting in an election and includes information technology equipment for voting, the voting compartments, instruments, seals and other materials and things required for the purpose of conducting an election;

"election material" means ballot boxes, ballot papers, counterfoils, envelopes, packets statements and other documents used in connection with voting in an election and includes information technology equipment for voting, the voting compartments, instruments, seals and other materials and things required for the purpose of conducting an election;

"election offence" means an offence under this Act;

"elections officer" means a person appointed by the Commission for the purposes of conducting an election under this Act;

"election period" means the period between the publication of a notice by the Commission for a presidential, parliamentary or county election under sections 14, 16, 17 and 19 and the Gazettement of the election results;

"election results" means the declared outcome of the casting of votes by voters at an election;

"harambee" means the public collection of monies or other property in aid or support of a cause or a project;

"identification document" means a Kenyan national identification card or a Kenyan passport;

"illegal practice" means an offence specified in Part VI;

"independent candidate" means a candidate for presidential, parliamentary or county elections who is not a member of a political party;

"nomination" means the submission to the Commission of the name of a candidate in accordance with the Constitution and this Act;

"nomination day" in respect of an election, means the day gazetted by the Commission as the day for the nomination of candidates for that election

"observer" means a person or an organisation accredited by the Commission to observe an election or a referendum;

"party list" means a party list prepared by a political party and submitted to the Commission pursuant to and in accordance with Article 90 of the Constitution and sections 28, 34, 35, 36 and 37;

"parliamentary election" means the election of one or more members of Parliament;
"petition" means an application to the election court under the Constitution or under this Act;

"political party" has the meaning assigned to it in Article 260 of the Constitution;

"polling station" means any room, place, vehicle or vessel set apart and equipped for the casting of votes by voters at an election;

"presidential election" means an election of a President in accordance with Articles 136, 139 (1) (b) and 146 (2) (b) of the Constitution;

"Principal Register of Voters" means a current register of persons entitled to vote at an election prepared in accordance with section 3 and includes a register that is compiled electronically;

"public officer" has the meaning assigned to it in Article 260 of the Constitution;

"public resources" include—
(a) any vehicle, or equipment owned by or in the possession; or (b) premises owned or occupied by, any government, state organ, statutory corporation ora company in which the Government owns a controlling interest;

"referendum" means a poll held under Part V;

"referendum committee" means a national or a parliamentary constituency committee comprising of persons intending to support or oppose a referendum question;

"referendum officer" means a person appointed by the Commission for the purpose of conducting a referendum;

"referendum question" means a question upon which voters shall vote in a referendum as specified in section 49;

"registration officer" means a person appointed by the Commission for the purpose of preparing a register of voters;

"returning officer" means a person appointed by the Commission for the purpose of conducting an election or a referendum under this Act;

"supporter" means a voter who supports the nomination of a candidate;

"vessel" includes any ship, boat or any other description of vessel used in navigation;

"voter" means a person whose name is included in a current register of voters;

"voting period" means the period specified as such in the notice issued by the Commission in relation to an election;

"ward' means an electoral area within a county delimited in accordance with Article 89 of the Constitution.

Section 5 of the Act which it is proposed to amend-

5. (1) Registration of voters and revision of the register of voters under this Act shall be carried out at all times except—

(a) in the case of a general election or an election under Article 138(5) of the Constitution, between the date of commencement of the sixty day period immediately before the election and the date of such election;
Provided that this applies to the first general election under this Act.

(c) in the case of a by-election, between the date of the declaration of the vacancy of the seat concerned and the date of such by-election; or

(d) in any other case, between the date of the declaration of the vacancy of the seat concerned and the date of such election.

(2) Notwithstanding subsection (1), where an election petition is filed in respect of an electoral area, between the date of the filing of the petition and the date of the by-election, where a court determines that a by-election is to be held, a voter shall not be allowed to transfer his or her vote to the affected electoral area.

(3) Any citizen of Kenya who has attained the age of eighteen years as evidenced by either a national identity card or a Kenyan passport and whose name is not in the register of voters shall be registered as a voter upon application, in the prescribed manner, to the Commission.

(3A) Despite subsection (3), a citizen who has attained the age of eighteen years and has registered for an identification card and is in the possession of an acknowledgement of registration certificate shall, upon application, be registered as a voter using the acknowledgement of registration certificate, but may only vote using an identification card.

(3B) For purposes of this section, an acknowledgment of registration certificate means a certificate issued by a registration officer under the Registration of Persons Act to a person who has applied for an identification card, pending the issuance of that card.

(4) All applicants for registration under this section shall be registered in the appropriate register by the registration officer or any other officer authorised by the Commission.

(5) The registration officer or any other authorised officer referred to in subsection (3) shall, at such times as the Commission may direct, transmit the information relating to the registration of the voter to the Commission for inclusion in the Principal Register of voters.

Section 6 of the Act which it is proposed to amend-

6. (1) The Commission shall cause the Principal Register of Voters to be opened for inspection by members of the public at all times for the purpose of rectifying the particulars therein, except for such period of time as the Commission may consider appropriate.

(2) The Commission shall, within sixty days from the date of the notice for a general election, open the Principal Register of Voters for inspection for a period of at least fourteen days or such period as the Commission may consider necessary.

(3) The Commission shall, upon expiry of the period for inspection specified under subsection (1), compile the amendments to the register of voters and as soon as practicable thereafter, at least fourteen days before an election—

(a) publish a notice in the Gazette to the effect that such compilation has been completed; and

(b) cause to be transmitted to every registration officer, a copy of the part of the Principal Register of Voters relating to the constituency for which the registration officer is responsible to be kept in safe custody.

(4) The Principal Register of Voters shall be kept at the headquarters of the Commission and copies of the part of the Principal Register of Voters relating to the constituency for which the registration officer is responsible shall be kept at all the constituency offices of the Commission.

Section 8A of the Act which it is proposed to amend-

8(1)The Commission may, at least six months before a general election, engage a professional reputable firm to conduct an audit of the Register of Voters for the purpose of—

(a) verifying the accuracy of the Register;

(b)recommending mechanisms of enhancing the accuracy of the Register; and

(c)updating the register.

(2)The Kenya Citizens and Foreign Nationals Management Service established under section 3 of the Kenya Citizens and Foreign Nationals Management Service Act (No. 3 of 2011) shall make available to the Commission the information held by it in the national population register for the purpose of the conduct of an audit under subsection (1).

(3)For purposes of the first general election after the commencement of this section, the Commission shall, within thirty days of the commencement of this section, engage a professional reputable firm to conduct an audit of the Register of Voters for the purpose of —
(a)verifying the accuracy of the Register;
(b)recommending mechanisms of enhancing the accuracy of the Register; and
(c)updating the register.

(4)The firm engaged under subsection (3) shall conduct the audit and report to the Commission within a period of thirty days from the date of engagement.

(5)The Commission shall, within fourteen days of receipt of the report under subsection (4), submit the report to the National Assembly and the Senate.

(6)The Commission shall implement the recommendations of the audit report within a period of thirty days of receipt of the report and submit its report to the National Assembly and the Senate.

Section 14 of the Act which it is proposed to amend-

14. (1) Whenever a presidential election is to be held, the Commission shall publish a notice of the holding of the election in the Gazette and in electronic and print media of national circulation—

(a) in the case of a general election, at least sixty days before the date of the election; or

(b) in the case of an election under Article 138(5) of the Constitution, at least twenty-one days before the date of the election;

(c) in any other case, upon the office of the President becoming vacant.

(2) The notice referred to in subsection (1) shall be in the prescribed form and shall specify—

(a) the nomination day for the presidential election; and

(b) the day or days on which the poll shall be taken for the presidential election, which shall not be less than twenty-one days after the day specified for nomination.

Section 16 of the Act which it is proposed to amend-

16. (1) Whenever a parliamentary election is to be held, the Commission shall publish a notice of the holding of the election in the Gazette and in the electronic and print media of national circulation—

(a) in the case of a general election, at least sixty days before the date of the general election; or

(b) in any other case, upon the office of a member of Parliament becoming vacant and on receipt of a notice issued by the respective Speaker under subsection (2).

(2) The notice referred to under subsection (1) shall be in the prescribed form and shall specify—

(a) the day upon which political parties shall submit a party list in accordance with Article 90 of the Constitution;

(b) the day for the nomination of candidates for the parliamentary election; and

(c) the day or days on which the poll shall be taken for the election, which shall not be less than twenty-one days after the day specified for nomination under paragraph (b).

(3) Whenever a vacancy occurs in the National Assembly or the Senate, the respective Speaker shall issue a notice in accordance with Article 101 of the Constitution.

(4) The Commission shall within twenty-one days of receipt of the notice issued under subsection (2), transmit the notice to the relevant returning officer.

Section 17 of the Act which it is proposed to amend-

17. Initiation of county governor election

(1) Whenever an election for a county governor is to be held, the Commission shall publish a notice of the holding of the election in the Gazette and in the electronic and print media of national circulation —
(a) in the case of a general election, at least sixty days before the date of the general election; or
(b) in any other case, upon the office of the county governor becoming vacant.
(2) The notice referred to in subsection (1) shall be in the prescribed form and shall specify—
(a) the day for the nomination of candidates for the county governor election; and
(b) the day or days on which the poll shall be taken for the county governor election, which shall not be less than twenty-one days after the day specified for nomination.

Section 19 of the Act which it is proposed to amend-

19. (1) Whenever a county assembly election is to be held, the Commission shall publish a notice of the holding of the election in the Gazette and in the electronic and print media of national circulation—

(a) in the case of a general election, at least sixty days before the date of general election; or

(b) in any other case, upon the office of a member of a county assembly becoming vacant.

(2) The notice referred to under subsection (1) shall be in the prescribed form and shall specify—

(a) the day upon which political parties shall submit a party list in accordance with Article 90 of the Constitution;

(b) the day for the nomination of candidates for county elections; and

(c) the day or days on which the poll shall be taken for the county election, which shall not be less than twenty-one days after the day specified for the nomination under paragraph (b).

(3) Whenever a vacancy occurs in a county assembly, the speaker of the county assembly shall within twenty-one days after the occurrence of the vacancy issue a notice to the Commission in the prescribed form.

(4) The Commission shall within twenty-one days of receipt of the notice issued under subsection (3), transmit the notice to the relevant returning officer.

Section 22 of the Act which it is proposed to amend-
22.Qualifications for nomination of candidates
(1)A person may be nominated as a candidate for an election under this Act only if that person—
(a)is qualified to be elected to that office under the Constitution and this Act; and
(b)holds—
(i)in the case of a Member of Parliament, a degree from a university recognized in Kenya; or

(ii)in the case of member of a county assembly, a degree from a university recognized in Kenya.

(1A)Notwithstanding subsection (1), this section shall come into force and shall apply to qualifications for candidates in the general elections to be held after the 2017 general elections.

(1B)The provisions of this section apply to qualifications to nomination for a party list member under section 34.

(2)Notwithstanding subsection (1)(b), a person may be nominated as a candidate for election as President, Deputy President, county Governor or deputy county Governor only if the person is a holder of a degree from a university recognised in Kenya.

(2A)For the purposes of the first elections under the Constitution, section 22 (1) (b) and section 24 (1) (b), save for the position of the President, the Deputy President, the Governor and the Deputy Governor, shall not apply for the elections of the offices of Parliament and county assembly representatives.

Section 23 of the Act which it is proposed to amend-

23. Qualifications and disqualifications for nomination as President
(1) A person qualifies for nomination as a presidential candidate if the person—
(a) is a citizen by birth;
(b) is qualified to stand for election as a member of Parliament;
(c) is nominated by a political party, or is an independent candidate; and
(d) is nominated by not fewer than two thousand voters from each of a majority of the counties.
(2) A person is not qualified for nomination as a presidential candidate if the person—
(a) owes allegiance to a foreign state; or
(b) is a public officer, or is acting in any State or other public office.
(3) Subsection (2) (b) shall not apply to—
(a) the President;
(b) the Deputy President; or
(c) a member of Parliament.

Section 24 of the Act which it is proposed to amend-

24. Qualifications and disqualifications for nomination as member of Parliament
(1) Unless disqualified under subsection (2), a person qualifies for nomination as a member of Parliament if the person—
(a) is registered as a voter;
(b) satisfies any educational, moral and ethical requirements prescribed by the Constitution and this Act; and
(c) is nominated by a political party, or is an independent candidate who is supported-
(i) in the case of election to the National Assembly, by at least one thousand registered voters in the constituency; or
(ii) in the case of election to the Senate, by at least two thousand registered voters in the county.
(2) A person is disqualified from being elected a member of Parliament if the person—
(a) is a State officer or other public officer, other than a member of Parliament;

(b) has, at any time within the five years immediately preceding the date of election, held office as a member of the Commission;
(c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
(d) is a member of a county assembly;
(e) is of unsound mind;
(f) is an undischarged bankrupt;
(g) is subject to a sentence of imprisonment of at least six months, as at the date of registration as a candidate, or at the date of election; or
(h) is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six of the Constitution.
(3) A person is not disqualified under subsection (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

Section 25 of the Act which it is proposed to amend-

25. Qualifications for nomination as member of county assembly
(1) Unless disqualified under subsection (2), a person qualifies for nomination as a member of a county assembly if the person—
(a) is registered as a voter;
(b) satisfies any educational, moral and ethical requirements prescribed the Constitution and this Act; and
(c) is either-
(i) nominated by a political party; or
(ii) an independent candidate supported by at least five hundred registered voters in the ward concerned.
(2) A person is disqualified from being elected a member of a county assembly if the person—
(a) is a State officer or other public officer, other than a member of the county assembly;
(b) has, at any time within the five years immediately before the date of election, held office as a member of the Commission;
(c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
(d) is of unsound mind;
(e) is an undischarged bankrupt;
(f) is serving a sentence of imprisonment of at least six months; or
(g) has been found, in accordance with any law, to have misused or abused a State office or public office or to have contravened Chapter Six of the Constitution.
(3) A person is not disqualified under subsection (2) unless all possibility of
appeal or review of the relevant sentence or decision has been exhausted.

Section 27 of the Act which it is proposed to amend-

27. Submission of party nomination rules
(1) A political party shall submit its nomination rules to the Commission at least six months before the nomination of its candidates.
(1A) The Registrar of Political Parties shall certify the nomination rules submitted under subsection (1).
(2) An amendment to the nomination rules shall only be effective ninety days after submission of the amendments to the Commission.

(2A) Upon receipt of the nomination rules from a political party under subsection (1), the Commission shall, within fourteen days, review the rules to ensure compliance with the prescribed regulations and —
(a) issue the political party with a certificate of compliance; or
(b) require the political party to amend the rules to ensure such compliance within fourteen days.
(2B) For purposes of subsection (2A), the Commission shall, by notice in the Gazette, issue Regulations prescribing guidelines to be complied with and the process by which political parties nominate candidates for nomination in accordance with Article 88 (4) (d) of the Constitution failing which the rules shall become void.

Section 31 of the Act which it is proposed to amend-

31. Nomination of political party candidates
(1) A person qualifies to be nominated by a political party for presidential, parliamentary and county elections for the purposes of Articles 97, 98, 137, 177 and 180 of the Constitution if that person—
(a) is selected in the manner provided for in the constitution or rules of the political party concerned relating to members of that party who wish to contest presidential, parliamentary and county elections; and
(b) subject to subsection (4), the party certifies the nomination to the Commission.
(2) The Commission shall, upon the request of a political party, conduct and supervise the nomination of candidates by the political party for presidential, parliamentary or county elections in accordance with Article 88 of the Constitution.
(2A) Every political party shall submit the names of the party candidates who have been selected to participate in the general elections under this Act at least sixty days before the elections.
(2B) A political party shall, at least twenty- one days before the nomination day, submit to the Commission the names of the persons contesting in its party primary and the date of its party primary.
(2C) The Commission shall publish, in the Gazette the names of the persons contesting in a party primary under subsection (1) and the date of the party primary within seven days of receipt of the names of party candidates.
(2D) A candidate for a presidential, parliamentary or county election shall be selected by persons who are members of the respective political parties and whose names appear on the party membership list as submitted to the Commission under section 28.
(2E) Where the Commission receives multiple requests under subsection (2), the Commission shall conduct and supervise the nomination of candidates for presidential, parliamentary or county elections for all the requesting political parties —
(a) on the same day;
(b) in the same polling centres; and
(c) in different polling streams for each participating political party.
(2F) Parliament shall appropriate monies for the effective implementation of this section.
(3) Every political party shall notify the Commission of the name of the person authorised by the party to certify to the Commission that a person has or persons have been selected by the party under subsection (1) and the person or persons so named shall deposit his or their specimen signature with the Commission in such manner as the Commission may require.
(4) The authorised person or persons referred to in subsection (4) shall, in writing, certify that a candidate has been nominated by the party.

Section 32 of the Act which it is proposed to amend-

32. Approval of symbol for independent candidate
(1) An independent candidate shall submit the symbol the candidate intends to use during an election to the Commission at least twenty-one days before nomination day.
(1A) Where there is a vacancy in the office of the Governor, an independent candidate shall submit to the Commission, the symbol that the person intends to use during an election at least seven days before nomination.
(2) The Commission shall, upon receipt of the symbol submitted to it under this section approve or reject the symbol.
(3) The Commission may refuse to approve the symbol of an independent candidate if the symbol—
(a) is obscene or offensive;
(b) is the symbol of another candidate or of a political party; or
(c) so nearly resembles the symbol of another candidate or political party or any other legal entity registered under any other written law.

Section 33 of the Act which it is proposed to amend-

33. Nomination of independent candidates
(1) A person qualifies to be nominated as an independent candidate for presidential, parliamentary and county elections for the purposes of Articles 97, 98, 137, 177, and 180 of the Constitution if that person—
(a) has not been a member of any political party for at least three months preceding the date of the election;
(b) has submitted to the Commission, at least sixty days before a general election, a duly filled nomination paper in such form as may be prescribed by the Commission;
(c) has, at least ninety days before the date of a general election or at least twenty one days before the date appointed by the Commission as the nomination day for a by–election, submitted to the Commission the name and symbol that the person intends to use during the election; and
(d) is selected in the manner provided for in the Constitution and by this Act.
(2) The Commission shall publish in the Gazette, the names of persons intending to contest in the election as independent candidates at least fourteen days before the nomination day.

Section 34 of the Act which it is proposed to amend-
34.(1)The election of members for the National Assembly, Senate and county assemblies for party list seats specified under Articles 97 (1) (c) and 98 (1) (b) (c) and (d) and Article 177 (1) (b) and (c) of the Constitution shall be on the basis of proportional representation and in accordance with Article 90 of the Constitution.

(2)A political party which nominates a candidate for election under Article 97 (1) (a) and (b) shall submit to the Commission a party list in accordance with Article 97 (1) (c) of the Constitution.

(3)A political party which nominates a candidate for election under Article 98 (1) (a) shall submit to the Commission a party list in accordance with Article 98 (1) (b) and (c) of the Constitution.

(4)A political party which nominates a candidate for election under Article 177 (1) (a) shall submit to the Commission a party list in accordance with Article 177 (1) (b) and (c) of the Constitution.

(4A)In the case of a person nominated pursuant to Article 177(1) (c) of the Constitution, the party list shall include a certification in the manner prescribed by the Commission.

(5)The party lists under subsection (2), (3) and (4) shall be submitted in order of priority.

(6)The party lists submitted to the Commission under this section shall be in accordance with the constitution or nomination rules of the political party concerned.

(6A)Upon receipt of the party list from a political party under subsection (1), the Commission shall review the list to ensure compliance with the prescribed regulations and —

(a)issue the political party with a certificate of compliance; or

(b)require the political party to amend the party list to ensure such compliance failing which the Commission shall reject the list.

(6B)For purposes of subsection (6A), the Commission may, by notice in the gazette, issue regulations prescribing guidelines to be complied with in preparation of party lists.

(7)The party lists submitted to the Commission shall be valid for the term of Parliament.

(8)A person who is nominated by a political party under subsection (2), (3) and (4) shall be a person who is a member of the political party on the date of submission of the party list by the political party.

(9)The party list shall not contain a name of a candidate nominated for an election.

(10)A party list submitted for purposes of subsection (2), (3), (4) and (5) shall not be amended during the term of Parliament or the county assembly, as the case may be, for which the candidates are elected.

Section 38A of the Act which it is proposed to amend-

38A. Number of voters per polling station

For the purposes of providing efficient and effective conduct of elections, the number of voters per polling station shall not exceed seven hundred.

Section 39 of the Act which it is proposed to amend-

Determination and declaration of results

39.(1)The Commission shall determine, declare and publish the results of an election immediately after close of polling.

(1A)The Commission shall appoint constituency returning officers to be responsible for—

(i)tallying, announcement and declaration, in the prescribed form, of the final results from each polling station in a constituency for the election of a member of the National Assembly and members of the county assembly;

(ii)collating and announcing the results from each polling station in the constituency for the election of the President, county Governor, Senator and county women representative to the National Assembly; and

(iii)submitting, in the prescribed form, the collated results for the election of the President to the national tallying centre and the collated results for the election of the county Governor, Senator and county women representative to the National Assembly to the respective county returning officer.

(1B)The Commission shall appoint county returning officers to be responsible for tallying, announcement and declaration, in the prescribed form, of final results from constituencies in the county for purposes of the election of the county Governor, Senator and county women representative to the National Assembly.

(1C)For purposes of a presidential election, the Commission shall —

(a)electronically transmit and physically deliver the tabulated results of an election for the President from a polling station to the constituency tallying centre and to the national tallying centre;

(b)tally and verify the results received at the constituency tallying centre and the national tallying centre; and

(c)publish the polling result forms on an online public portal maintained by the Commission.

(1D)The Commission shall verify that the results transmitted under this section are an accurate record of the results tallied, verified and declared at the respective polling stations.

(1E)Where there is a discrepancy between the electronically transmitted and the physically delivered results, the Commission shall verify the results and the result which is an accurate record of the results tallied, verified and declared at the respective polling station shall prevail.

(1F)Any failure to transmit or publish the election results in an electronic format shall not invalidate the result as announced and declared by the respective presiding and returning officers at the polling station and constituency tallying centre, respectively.

(1G)The Commission shall, to facilitate public information, establish a mechanism for the live-streaming of results as announced at polling stations, and the results so streamed shall be for purposes of public information only and shall not be the basis for a declaration by the Commission.

(1H)The chairperson of the Commission shall declare the results of the election of the President in accordance with Article 138(10) of the Constitution.

(2)The Chairperson may declare a candidate elected as the President before all the constituencies have transmitted their results if the Commission is satisfied the results that have not been received will not affect the result of the election.

(3)The Commission shall announce the final results in the order in which the tallying of the results is completed.

Section 44 of the Act which it is proposed to amend

44. Use of technology
(1) Subject to this section, there is established an integrated electronic electoral system that enables biometric voter registration, electronic voter identification and electronic transmission of results.
(2) The Commission shall, for purposes of subsection(1), develop a policy on the progressive use of technology in the electoral process.
(3) The Commission shall ensure that the technology in use under subsection (1) is simple, accurate, verifiable, secure, accountable and transparent.
(4) The Commission shall, in an open and transparent manner —
(a) procure and put in place the technology necessary for the conduct of a general election at least one hundred and twenty days before such elections; and
(b) test, verify and deploy such technology at least sixty days before a general election.
(5) The Commission shall, in consultation with the relevant agencies, institutions and stakeholders, make regulations for the better carrying into effect the provisions of this section.

Section 44A of the Act which it is proposed to amend

44A. Complementary mechanism for identification of voters.
Notwithstanding the provisions of section 44, the Commission shall put in place a complementary mechanism for identification of voters that is simple, accurate, verifiable, secure, accountable and transparent to ensure that the Commission complies with the provisions of Article 38 of the Constitution.

Section 45 of the Act which it is proposed to amend
45.(1)The electorate in a county or constituency may recall their member of Parliament before the end of the term of the relevant House of Parliament on any of the grounds specified in subsection (2).

(2)A member of Parliament may be recalled where the member—

(a)is found, after due process of the law, to have violated the provisions of Chapter Six of the Constitution;

(b)is found, after due process of the law, to have mismanaged public resources;

(c)is convicted of an offence under this Act.

(3)A recall of a member of Parliament under subsection (1) shall only be initiated upon a judgement or finding by the High Court confirming the grounds specified in subsection (2).

(4)A recall under subsection (1) shall only be initiated twenty-four months after the election of the member of Parliament and not later than twelve months immediately preceding the next general election.

(5)A recall petition shall not be filed against a member of Parliament more than once during the term of that member in Parliament.

(6)A person who unsuccessfully contested an election under this Act shall not be eligible, directly or indirectly, to initiate a petition under this section.

Section 46 of the Act which it proposed to amend

46.(1)A recall under section 45 shall be initiated by a petition which shall be filed with the Commission and which shall be—

(a)in writing;

(b)signed by a petitioner who—

(i)is a voter in the constituency or county in respect of which the recall is sought; and

(ii)was registered to vote in the election in respect of which the recall is sought;

(c)accompanied by an order of the High Court issued in terms of section 45(3).

(2)The petition referred to in subsection (1) shall—

(a)specify the grounds for the recall as specified under section 45 (2);

(b)contain a list of such number of names of voters in the constituency or county which shall represent at least thirty percent of the registered voters; and

(c)be accompanied by the fee prescribed for an election petition.

(3)The list of names referred to in subsection (2) (b) shall contain the names, address, voter card number, national identity card or passport number and signature or thumb prints of the voters supporting the petition and shall contain names of at least fifteen percent of the voters in more than half of the wards in the county or the constituency, as appropriate.

(4)The voters supporting a petition under subsection (3) shall represent the diversity of the people in the county or the constituency as the case may be.

(5)The petitioner shall collect and submit to the Commission the list of names under subsection (2) (b) within a period of thirty days after filing the petition.

(6)The Commission shall verify the list of names within a period of thirty days of receipt of that list.

(7)The Commission, if satisfied that the requirements of this section are met, shall within fifteen days after the verification, issue a notice of the recall to the Speaker of the relevant House.

(8)The Commission shall conduct a recall election within the relevant constituency or county within ninety days of the publication of the question.

Section 48 of the Act which it is proposed to amend

48.A recall election shall be valid if the number of voters who concur in the recall election is at least fifty percent of the total number of registered voters in the affected county or constituency.

Section 74 of the Act which it is proposed to repeal-

74. Settlement of certain disputes
(1) Pursuant to Article 88 (4) (e) of the Constitution, the Commission shall be responsible for the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results.
(2) An electoral dispute under subsection (1) shall be determined within ten days of the lodging of the dispute with the Commission.
(3) Notwithstanding subsection (2), where a dispute under subsection (1) relates to a prospective nomination or election, the dispute shall be determined before the date of the nomination or election, whichever is applicable.

Section 75 of the Act which it is proposed to amend-

75. County election petitions
(1) A question as to validity of a election of a county governor shall be determined by High Court within the county or nearest to the county.
(1A) A question as to the validity of the election of a member of county assembly shall be heard and determined by the Resident Magistrate's Court designated by the Chief Justice.
(2) A question under subsection (1) shall be heard and determined within six months of the date of lodging the petition.
(3) In any proceeding brought under this section, a court may grant appropriate relief, including—
(a) a declaration of whether or not the candidate whose election is questioned was validly elected;
(b) a declaration of which candidate was validly elected; or
(c) an order as to whether a fresh election will be held or not.
(4) An appeal under subsection (1A) shall lie to the High Court on matters of law only and shall be -
(a) filed within thirty days of the decision of the Magistrate's Court; and
(b) heard and determined within six months from the date of filing of the appeal.

Section 82 of the Act which it is proposed to amend-

82. Scrutiny of votes
(1)An election court may, on its own motion or on application by any party to the petition, during the hearing of an election petition, order for a scrutiny of votes to be carried out in such manner as the election court may determine.\
(2)Where the votes at the trial of an election petition are scrutinized, only the following votes shall be struck off—
(a)the vote of a person whose name was not on the register or list of voters assigned to the polling station at which the vote was recorded or who had not been authorised to vote at that station;
(b)the vote of a person whose vote was procured by bribery, treating or undue influence;
(c)the vote of a person who committed or procured the commission of personation at the election;
(d)the vote of a person proved to have voted in more than one constituency;
(e)the vote of a person, who by reason of conviction for an election offence or by reason of the report of the election court, was disqualified from voting at the election; or

(f)the vote cast for a disqualified candidate by a voter knowing that the candidate was disqualified or the facts causing the disqualification, or after sufficient public notice of the disqualification or when the facts causing it were notorious.

(3)The vote of a voter shall not, except in the case specified in subsection (1) (e), be struck off under subsection (1) by reason only of the voter not having been or not being qualified to have the voter's name entered on the register of voters.

Section 85A of the Act which it is proposed to amend-

85A.Appeals to the Court of Appeal

(1)An appeal from the High Court in an election petition concerning membership of the National Assembly, Senate or the office of county governor shall lie to the Court of Appeal on matters of law only shall be -

(a)filed within thirty days of the decision of the High Court; and

(b)heard and determined within six months of the filing of the appeal.

(2)An appeal under subsection (1) shall act as a stay of the certificate of the election court certifying the results of an election until the appeal is heard and determined.

THE ELECTIONS OFFENCES (AMENDMENT) BILL, 2023

THE ELECTION OFFENCES (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Election Offences Act

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Election Offences (Amendment) Act, 2023.

Amendment of section 6 of No. 37 of 2016.

2. Section 6 of the Election Offences Act, 2016 is amended—

(a) in paragraph (h), by inserting the words "or unreasonably delays" immediately after the word "fails."

(b) in paragraph (k), by inserting the words "and any other person" immediately after the word "candidate."

(c) by inserting the following new paragraphs immediately after paragraph m—

(n) conducts or holds an election in an ungazzetted polling station;

(o) knowingly or intentionally interferes, alters or knowingly or intentionally causes another person to interfere or alter declared results;

Dated the....., 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

The Election Offences (Amendment) Bill, 2023

MEMORANDUM ON OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend section 6 of the Election Offences Act. 2016.The Bill seeks to give effect to recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 sets out the short title of the Bill.

Clause 2 of the Bill amend section 6 of the Act to provide that it shall be an offence for members and staff of the Independent Election and Boundaries Commission to conduct or hold an election in ungazzetted polling station. Further, the Clause creates offences for members and staff of the Commission who unreasonably delay in declaring elections results or knowingly alter declared election results

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

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

Statement that the Bill concerns county governments

This is a Bill concerning county governments in terms of Article 110(1) of the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

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

Dated the ....., 2023.

KIMANI ICHUNG'WAH
Leader of the Majority Party.

OPIYO WANDAYI
Leader of the Minority Party.

Section 6 of No.37 of 2016 which it is proposed to be amended-

6. Offences by members and staff of the Commission

A member of the Commission, staff or other person having any duty to perform pursuant to any written law relating to any election who—

(a) makes, in any record, return or other document which they are required to keep or make under such written law, an entry which they know or have reasonable cause to believe to be false, or do not believe to be true;

(b) permits any person whom they know or have reasonable cause to believe to be able to read or write to vote in the manner provided for persons unable to read or write;

(c) permits any person whom they know or have reasonable cause to believe not to be visually impaired or a person with disability to vote in the manner provided for persons who are visually impaired or persons with disability, as the case may be;

(d) wilfully prevents any person from voting at the polling station at which they know or have reasonable cause to believe such person is entitled to vote;

(e) wilfully rejects or refuses to count any ballot paper which they know or have reasonable cause to believe is validly cast for any candidate in accordance with the provisions of such written law;

(f) wilfully counts any ballot paper as being cast for any candidate which they know or have reasonable cause to believe was not validly cast for that candidate;

(g) interferes with a voter in the casting of his vote in secret;

(h) where required under the Elections Act (No. 24 of 2011) or any other law to declare the result of an election, fails to declare the results of an election;

(i) except in the case of a member, officer or person authorised to do so, purports to make a formal declaration or formal announcement of an election result;

(j) without reasonable cause does or omits to do anything in breach of his official duty;

(k) colludes with any political party or candidate for purposes of giving an undue advantage to the political party or candidate;

(l) wilfully contravenes the law to give undue advantage to a candidate or a political party on partisan, ethnic, religious, gender or any other unlawful considerations; or

(m) fails to prevent or report to the Commission or any other relevant authority, the commission of an electoral offence committed under this Act,

commits an offence and is liable on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years or to both.

THE ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL, 2023

THE ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Ethics and Anti-Corruption Commission Act

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Ethics and Anti-Corruption Commission (Amendment) Act, 2023.

Amendment of section 5 of No. 22 of 2011.

2. Section 5 of the Ethics and Anti-Corruption Commission Act, 2011 (in this Act referred to as the "principal Act") is amended by deleting sub-section (1) and substituting therefor the following new subsection—

"(1) The chairperson of the Commission shall be a person who is qualified to hold the office of a judge of the High Court under the Constitution."

Saving provision.

3. Sections 2 of this Act shall not apply to a person who immediately before the commencement of this Act was serving as a Chairperson of the Commission.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend the Ethics and Anti-Corruption Commission Act No. 22 of 2011 to prescribe the qualifications for appointment of a Chairperson of the Commission. The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 of the Bill sets out the short title of the Bill.

Clause 2 of the Bill amends section 5 of the Act to prescribe the qualifications for appointment of a Chairperson of the Commission. The clause provides that the Chairperson of the Commission shall be a person who is qualified to hold the office of judge of the High Court under the Constitution.

Clause 4 of the Bill is a saving provision and provides that the Act shall not apply to a person who immediately before the commencement of the Act was serving as a Chairperson of the Commission.

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

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

Statement that the Bill does not concern County Governments.

The Bill does not concern County Governments in terms of Article 110 (1)(a) of the Constitution and it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may not occasion additional expenditure of public funds.

Dated the....., 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

Section 5 of No. 22 of 2011 which it is proposed to be amend—

5. **Qualifications for appointment as chairperson or member**

(1) A person shall be qualified for appointment as the chairperson if that person—

(a) meets the requirements of Chapter Six of the Constitution;

(b) holds a degree from a university recognised in Kenya;

(c) has knowledge and experience of not less than fifteen years in any of the following fields—

(i) ethics and governance;
(ii) law;
(iii) public administration;
(iv) leadership;
(v) economics;
(vi) social studies;
(vii) audit;
(viii) accounting;
(ix) fraud investigation;
(x) public relations and media; or
(xi) religious studies or philosophy; and

(d) has had a distinguished career in their respective field.

(2) A person shall be qualified for appointment as a member of the Commission if that person—

(a) meets the requirements of Chapter Six of the Constitution.

(b) holds a degree from a University recognized in Kenya;

(c) has knowledge and experience of not less than ten years in any of the following fields—

(i) ethics and governance;
(ii) law;
(iii) public administration;
(iv) leadership;
(v) economics;
(vi) social studies;
(vii) audit;
(viii) accounting;
(ix) fraud investigation;
(x) public relations and media; or
(xi) religious studies or philosophy; and

(d) has had a distinguished career in their respective field.

(3) A person shall not be qualified for appointment as a chairperson or as a member if the person—

(a) is a member of a governing body of a political party;

(b) is an undischarged bankrupt;

(c) has been convicted of a felony; or

(d) has been removed from public office for contravening the provisions of the Constitution or any other law.

(4) Subsection (3)(a) shall cease to apply to a person after two general elections have been held since the person ceased to hold such office.

THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2023

THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Statutory Instruments Act to provide for the timelines within which statutory instruments shall be made; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Statutory Instruments (Amendment) Act, 2023.

Insertion of new section 24A to No. 23 of 2023.

2. The Statutory Instruments Act is amended by inserting the following new section immediately after section 24 –

Timelines for making of statutory instrument.

24A. (1) A regulatory-making authority shall make a statutory instrument within the period provided for under the enabling legislation.

(2) If the enabling legislation does not provide the timelines within which a statutory instrument is to be made, the regulatory-making authority shall make the statutory instrument within twelve months from the date of commencement of the enabling legislation.

(3) If a regulatory-making authority fails to make a statutory instrument within the specified time, any person may petition Parliament and where possible together with a draft of the statutory instrument for consideration.

(4) A person who without a reasonable cause fails to make a statutory instrument within the required timelines commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings.

(5) A person liable for an offence under subsection (4) shall be personally liable for the fine and public funds shall not be used to pay such a fine.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

The Bill seeks to amend the Statutory Instruments Act, 2013 to provide the timelines for the making of regulations to ensure implementation of laws passed by Parliament. The Bill proposes to insert a new section 24A in the Statutory Instruments Act to require a person responsible for the making of regulations to make the regulations within twelve months, where the enabling legislation has not set of the timelines for the making of regulations. Where a person fails to make regulations within the required timelines, the person commits an offence punishable with a fine of five hundred thousand shillings.

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

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

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

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

Dated the....., 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

THE POLITICAL PARTIES (AMENDMENT) BILL, 2023

THE POLITICAL PARTIES (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Political Parties Act, 2011

ENACTED by the Parliament of Kenya as follows—

Short title and commencement.

1. This Act may be cited as the Political Parties (Amendment) Act, 2023 and shall come into force upon publication in the Gazette.

Amendment of section 2 of No. 11 of 2011.

2. Section 2 of the Political Parties Act (hereinafter referred to as the "principal Act") is amended by—

(a) inserting the following new definition in proper alphabetical sequence—

"Commission" means the Independent Political Parties Regulatory Commission established under section 33A;

(b) by deleting the definition of the term "Registrar".

Amendment of No.11 of 2011.

3. The principal Act is amended—

(a) by deleting the word "Registrar" wherever it appears and substituting therefor the word "Commission"; and

(b) by deleting the words "Office of the Registrar of Political Parties" wherever they appear and substituting therefor the word "Commission".

Repeal of section 14A of No. 2 of 2011.

4. The principal Act is amended by repealing section 14A.

Repeal and replacement of section 33 of No.11 of 2011.

5. The principal Act is amended by repealing section 33 and substituting therefor the following new sections—

Establishment of the Independent Political Parties Regulatory Commission.

33A. (1) There is established the Independent Political Parties Regulatory Commission.

(2) The Commission shall be responsible for —

(a) the registration of political parties and their office holders;

(b) the management of the Political Parties' Fund established under this Act,

(c) ensuring the publication of audited annual accounts of political parties;

(d) the verification and make publicly available the list of all members of political parties;

(e) keeping and maintaining a register of members of registered political parties;

(f) maintaining a register of political parties and the symbols of the political parties

(g) ensuring and verifying that no person is a member of more than one political party and notifying the Independent Electoral and Boundaries Commission of its findings;

(h) certifying that an independent candidate in an election is not a member of any registered political party;

(i) certifying that the symbol intended to be used by an independent candidate in an election does not resemble the symbol of a registered political party;

(j) certifying that the names appearing in a party list are the names of members of

the political party; presenting the party list;

(k) regulating political party nominations in accordance with this Act;

(l) training political party election agents upon the request and financing by the political party;

(m) investigating complaints received under this Act;

(n) such other functions as may be conferred on the Commission by national legislation.

(3) The Commission, in the performance of its functions, shall be an independent office and shall not be under the direction or control of any person or authority.

Appointment of members of the Commission.

33B. (1) The Commission shall be comprised of five commissioners appointed by the President with the approval of the National Assembly.

(2) The Commission shall consist of —

(a) two members, one man and one woman, nominated by the majority party or coalition of parties in the National Assembly;

(b) two members, one man and one woman, nominated by the minority party or coalition of parties in the National Assembly;

(c) one member nominated by the Parliamentary Service Commission being a representative of non-

parliamentary registered political parties.

(3) The commissioners shall each hold office for a non-renewable term of six years.

(4) The members of the Commission shall elect a chairperson and vice-chairperson from among themselves—

(a) at the first sitting of the Commission; and

(b)whenever it is necessary to fill a vacancy in the office of the chairperson and vice-chairperson.

(5) The chairperson and vice-chairperson of the Commission shall not be of the same gender.

Powers of the Commission to appoint staff.

33C. The Commission shall have the power to appoint staff upon consultation with the Public Service Commission and the Salaries and Remuneration Commission.

Repeal of section 34 of No. 11 of 2011

6. The principal Act is amended by repealing section 34.

Amendment of section 34C of No. 11 of 2011.

7. Section 34C(1) of the principal Act is amended by deleting the words "or is deemed to have resigned from the political party and the Registrar has been notified of the resignation" appearing in paragraph (c).

Saving provision.

8. A person who immediately before the commencement this Act was a member of staff of the Office of the Registrar of Political Parties shall be deemed to be a member of staff of the Commission and shall continue to serve under the same terms and conditions.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

The Bill seeks to amend the Political Parties Act, No. 11 of 2011 in order to replace the Office of Registrar of Political Parties with the Independent Political Parties Regulatory Commission.

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

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

Statement of how the Bill concerns county governments

The Bill contains provisions that affect the functions and powers of county governments in terms of Article 110 of the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the....., 2023.

KIMANI ICHUNG'WAH, **OPIYO WANDAYI,**

Leader of the Majority Party. ***Leader of Minority Party.***

Section 2 of No. 11 of 2011 which it is proposed to amend-

Interpretation

In this Act, unless the context otherwise requires—

"branch" means any devolved unit of a political party;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to elections;

"coalition" means an alliance of two or more political parties formed for the purpose of pursuing a common goal and is governed by a written agreement deposited with the Registrar;

"coalition political party" means a coalition that is registered by the Registrar as a political party;

"Commission" means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

"direct party nomination" means the process by which a political party, through its registered members, elect sits candidates for an election;

"election" means the act of selecting by vote, of a person or persons from among a number of candidates to fill an office or to membership of any political party and includes a presidential, parliamentary or county election;

"ethnic minorities" means a group that is not the dominant one in a given society;

"founding members of a political party" means the persons who form a political party and who have contributed or offered to contribute either in cash or in kind to the initial assets of the party in respect of the first year of its existence;

"Fund" means the Political Parties Fund established by section 23;

"Gazette" means the Kenya Gazette published by the authority of the national government, or a supplement of the Kenya Gazette;

"governing body" means the committee responsible for administering the affairs of a political party

"indirect party nomination" means the process by which a political party, through the use of delegates selected from registered members of the political party and interviews, selects its candidates for an election;

"marginalised community" has the meaning assigned to it under Article 260 of the Constitution;

"merger" means where two or more political parties consolidate their operations and combine all officers, structure, and other functions of the political parties;

"office holder" in relation to a political party means any person who is elected by the members of the political party to hold office and is registered with the Registrar of Political Parties;

"political party"—

(a) means an association of citizens with an identifiable ideology or

programme that is constituted for the purpose of influencing public policy of nominating candidates to contest elections; and

(b) includes a coalition political party;

"public officer" has the meaning assigned to it under Article 260 of the Constitution;

"Registrar" means the Registrar of political parties appointed under section 33;

"special interest groups" includes—

(a) women;

(b) persons with disabilities;

(c) youth;

(d) ethnic minorities; and

(e) marginalized communities.

"State" when used as a noun, means the collectivity of offices, organs and other entities comprising the government of the Republic under the Constitution;

"statement of ideology" means a statement setting out the doctrine, ethical ideals, and principles of the party;

"Tribunal" means the Political Parties Disputes Tribunal established under

section 39; and

"youth" has the meaning assigned to it under Article 260 of the Constitution.

Section 14A of No. 11 of 2011 which it is proposed to amend-

14A. When a member may be deemed to have resigned from a political party

(1) A person who, while being a member of a political party shall be deemed to have resigned from that party if that person—

(a) forms another political party;

(b) joins in the formation of another political party;

(c) another political party;

(d) in any way or manner, publicly advocates for the formation of another political party; or

(e) promotes the ideology, interests or policies of another political party.

(2) A political party shall, before deeming a member to have resigned under subsection (1)—

(a) notify the member that he or she has been deemed to have resigned from the political party and that the political party intends to remove his or her name from the list of its members; and

(b) afford the member a fair opportunity to be heard in accordance with the procedure set out in the constitution of the political party.

(3) A political party which deems a member to have resigned from the political party shall notify the Registrar in writing of the member's resignation and request the Registrar to remove that person's name from the register of members of that political party.

(4) Upon the notification under subsection (3), the Registry may, where the Registrar is satisfied that the political party has complied with the procedure under subsection (2), remove the member's name from the register of members of the political party within seven days of the notification and notify the member in writing that he or she has ceased to be a member of that political party.

(5) Where the Registrar is not satisfied in accordance with subsection (4), the Registrar shall refer the matter back to the concerned political party for reconsideration.

(6) Subsection (1) (c), (d) and (e) shall not apply to a member of a political party which enters or proposes to enter a merger or a coalition with another political party.

Section 33 of No. 11 of 2011 which it is proposed to repeal and replace-

33. Establishment of the Office of Registrar

(1) There is established the Office of the Registrar of Political Parties which shall be a body corporate with perpetual succession and a seal and which shall be capable of suing and being sued in its corporate name.

(2) The Registrar shall be deputised by three Assistant Registrars, not more than two of whom shall be of the same gender.

(3) The Office of the Registrar shall be a State office within the meaning of Article 260 of the Constitution

4) The Office of the Registrar may engage such staff, experts or consultants as are necessary for the proper and effective discharge of its functions under this Act and any other written law.

(5) The Office of Registrar shall be independent and shall not be subject to direction or control of any person or authority.

(6) A person shall be qualified for appointment as Registrar or as an Assistant Registrar if the person—

(a) holds a degree from a university recognised in Kenya;

(b) has proven knowledge and experience in any of the following fields—

(i) finance;

(ii) management;

(iii) political science;

(iv) law;

(v) governance; or

(vi) public administration;

(c) has, in the case of the Registrar, at least fifteen years post qualification experience in the relevant areas of expertise and, in the case of an Assistant Registrar, has at least ten years post qualification experience in the relevant area of expertise; and

(d) is a person of high moral character and integrity and has satisfied the requirements of Chapter Six of the Constitution.

(7) A person shall not be qualified for appointment as a Registrar or Assistant Registrar if the person has, at any time within the preceding five years, held office or stood for election as a member of Parliament or a county assembly or as a member of a governing body of a political party.

(8) The Registrar and Assistant Registrars shall, before assuming office, take

and subscribe to the oath or affirmation prescribed in the Fourth Schedule.

(9) The Registrar and Assistant Registrars shall serve for a non-renewable term of six years and shall not be eligible for re-appointment.

(10) A person who serves as a Registrar or Assistant Registrar shall not be eligible to contest for election as a member of Parliament or a county assembly, or

as a member of a governing body of a political party within five years of the person ceasing to be Registrar or Assistant Registrar.

Section 34 of No. 11 of 2011 which it is proposed to amend-

34. Functions of the Registrar

The functions of the Registrar shall be to—

(a) register, regulate, monitor, investigate and supervise political parties to ensure compliance with this Act;

(b) administer the Fund;

(c) ensure publication of audited annual accounts of political parties;

(d) verify and make publicly available the list of all members of political parties;

(da) keep and maintain a register of members of registered political parties;

(e) maintain a register of political parties and the symbols of the political parties;

(f) ensure and verify that no person is a member of more than one political party and notify the Commission of the findings;

(fa) certify that an independent candidate in an election is not a member of any registered political party;

(fb) certify that the symbol intended to be used by an independent candidate in an election does not resemble the symbol of a registered political party;

(fc) certify that the names appearing in a party list are the names of members of the political party presenting the party list;

(fd) regulate political party nominations in accordance with this Act;

(fe) train political party election agents upon the request and financing by the political party;

(g) investigate complaints received under this Act; and

(h) perform such other functions as may be conferred by this Act or any other written law.

Section 34C of No. 11 of 2011 which it is proposed to amend-

34C. Powers of the Registrar in respect of political party Records

(1) The Registrar may make changes to the records of political parties submitted to the Registrar under this Act where—

(a) the application by a provisionally registered political party for full registration has not been granted;

(b) a political party has been deregistered;

(c) a member of a political party resigns or is deemed to have resigned from the political party and the Registrar has been notified of the resignation;

(d) a member of a political party has been expelled from the political party and the Registrar has been notified of the expulsion;

(e) a member of a political party dies;

(f) a member of a political party has ceased to be a citizen of Kenya;

(g) a political party has merged with another political party;

(h) the constitution of a political party has been amended, changed or altered; or

(i) any other event that justifies the canges occurs.

(2) The changes contemplated under subsection (1) may include—

(a) amendment of the register of members of a political party;

(b) amendment, change or alteration of the constitution of a political party;

(c) addition or deletion of records;

(d) addition, deletion or alteration of names; and

(e) any other change that is consistent with the provisions of this Act.

(3) The Registrar shall notify the political party of any change made to its records under subsection (1).

(4) A political party that is dissatisfied by the decision of the Registrar under subsection (1) may appeal to the Tribunal.

[Act No. 2 of 2022, s. 23.]

THE NATIONAL GOVERNMENT CO-ORDINATION (AMENDMENT) BILL, 2023

THE NATIONAL GOVERNMENT CO-ORDINATION (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the National Government Co-ordination Act

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the National Government Co-ordination (Amendment) Act, 2023.

Insertion of a new section to No. 1 of 2013

2. The National Government Co-ordination Act, 2013 is amended by inserting the following new section immediately after section 8 —

Office of the Prime Minister.

8A. (1) Pursuant to Article 152 of the Constitution, the Prime Minister shall be an integral part of the national government coordination framework.

(2) The Prime Minister—

(a) shall assist the President and the Deputy President in the coordination and supervision of Government Ministries and State Departments;

(b) oversee the implementation of National Government policies, programmes, and projects and be responsible for the technical monitoring and evaluation of Government policies, programs, and projects;

(c) chair and co-ordinate the National Government's legislative agenda across all ministries and state departments;

(d) coordinate the national government agenda together with the Office of the President, the Cabinet, and the Cabinet Office; and

(e) perform any other function as may be assigned by the President.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend the National Government Coordination Act, 2013 to include the Office of the Prime Minister as an integral part of the national government coordination framework.The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 sets out the short title of the Bill.

Clause 2 the Bill seeks to introduce a new section 8A to the Act to provide the functions of the Prime Minister which shall be to assist the President and the Deputy President in the coordination and supervision of Government Ministries and State Departments. Further, the Bill provides that the office of the Prime Minister shall be mandated to perform the key function of overseeing the implementation of National Government policies, programmes, and projects. The Bill further provides that the Prime Minister shall be responsible for the technical monitoring and evaluation of Government policies, programs, and projects and shall chair and co-ordinate the National Government's legislative agenda.

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

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

Statement that the Bill does not concern County Governments.

The Bill does not concern County Governments in terms of Article 110 (1)(a) of the Constitution and it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may not occasion additional expenditure of public funds.

Dated the....., 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

THE LEADER OF OPPOSITION BILL, 2023

THE LEADER OF THE OPPOSITION BILL, 2023

ARRANGEMENT OF CLAUSES

Clauses

1—Short title

2—Interpretation

3—Functions of the Leader of the Opposition.

4—Appointment, swearing in and removal of the Leader of the Opposition.

5—Facilitation of the Office of the Leader of the Opposition.

THE LEADER OF THE OPPOSITION BILL, 2023

A Bill for

AN ACT of Parliament to provide for the functions of the office of the Leader of the Opposition, procedure for appointment and tenure of the Leader of the Opposition; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Leader of the Opposition Act, 2023.

Interpretation.

2. In this Act, unless the context otherwise requires—

"Deputy Leader of the Opposition" means the person who deputizes the Leader of the Opposition.

"Leader of the Opposition" means the person who is—

(a) the leader of the party or coalition of parties which garnered the second greatest number of votes in the immediately preceding presidential election; or

(b) the person designated to hold that office in accordance with a resolution of a party or coalition agreement.

"Parliament" means the National Assembly and the Senate.

Functions of the Leader of the Opposition.

3. (1) The Leader of the Opposition shall be responsible for—

(a) representing the interests of the opposition;

(b) providing an alternative policy agenda and constructive criticism of government policies;

(c) promoting transparency, accountability and good governance in public affairs;

(d) fostering cooperation and constructive engagement between the government and opposition in the pursuit of national interests;

(e) participating in state ceremonial functions and international parliamentary events on behalf of the Opposition; and

(f) promoting public awareness and understanding of the role of opposition in a democratic state.

(2) There shall be two Deputy Leaders of the Opposition who shall deputize the Leader of the Opposition.

(3)The two Deputy Leaders of the Opposition shall be the principal assistants to the Leader of the Opposition and shall deputize for the Leader of the Opposition in the execution of the functions of the Leader of the Opposition.

(4) The two Deputy Leaders of the Opposition shall perform the functions conferred by this Act and any other functions as the Leader of the Opposition may assign.

Appointment, swearing in and removal of the Leader of the Opposition.

4. (1) Within seven days of the swearing-in of the President after a general election, the Chief Justice shall, in accordance with Article 92A of the Constitution, swear in the Leader of the Opposition, as determined by the Independent Electoral and Boundaries Commission.

(2) The Chief Justice, or in the absence of the Chief Justice the Deputy Chief Justice, shall administer the oath of allegiance and the oath of office to the Leader of the Opposition, as provided for in the Schedule, affirming commitment to upholding the Constitution and serving the interests of the nation.

(3) In the event that the designated Leader of the Opposition, as determined by the Independent Electoral and Boundaries Commission, refuses or is unable to take the oath of office within the specified seven-day period, the Chief Justice shall proceed to swear in to office the person designated to hold that office in accordance with a resolution of a party or coalition agreement.

(4) The Leader of the Opposition shall assume the functions and responsibilities of the office upon the completion of the swearing-in ceremony.

(5) The Leader of the Opposition shall hold office until the next General Elections, at which time a new Leader of the Opposition shall be appointed following the same process as set out in subsection (1).

(6) The Leader of the Opposition may be removed from office —

(a) by a resolution of the party or coalition of parties which garnered the second greatest number of votes in the immediately preceding presidential election;
(b) if the person is sentenced for a term of imprisonment of at least six months and has exhausted all appeal or review relief available in relation to that case;
(c) if the person, is found in accordance with any law, to have misused or abused the office; or
(d) if the person is unable to perform the functions of the office arising from mental or physical incapacity.

(7) Upon the removal of the Leader of Opposition under subsection (6), the Chief Justice shall forthwith swear in to office the person designated to hold that office in accordance with a resolution of a party or coalition agreement.

(8) The provisions of this section shall apply with the necessary modifications, to a Deputy Leader of the Opposition.

Facilitation of the Office of the Leader of the Opposition.

5. (1) The remuneration and benefits payable to the Leader of the Opposition and the two Deputy Leaders of the Opposition shall be a charge on the Consolidated Fund.

(2) The Office of the Leader of the Opposition shall have access to necessary facilities, resources and staff required for the effective discharge of the functions under this Act.

SCHEDULE *(s.4)*

OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR THE LEADER OF THE OPPOSITION

I, ... , do swear/ solemnly affirm that I will always truly and diligently serve the people and the Republic of Kenya in the office of the Leader of the Opposition of the Republic of Kenya; that I will bear true faith and allegiance to the People and the Republic of Kenya; that I will diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I will obey, respect, uphold, preserve, protect and defend this Constitution of the Republic of Kenya; and that I will faithfully and conscientiously discharge the duties of the Leader of the Opposition (In the case of an oath— So help me God.)

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to provide for the functions of the office of the Leader of the Opposition, procedure for appointment and tenure of the Leader of the Opposition. The Bill seeks to give effect to some of the recommendations and views of the public that were submitted during the national dialogue discourse on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.

Clause 1 of the Bill sets out the short title of the Bill.

Clause 2 of the Bill provides for the definition of terms.

Clause 3 of the Bill defines the functions of the Leader of the Opposition which shall include representing the interests of the Opposition and providing an alternative policy agenda and constructive criticism of government policies. The clause also provides for the functions of the Deputy Leaders of the Opposition who shall be the principal assistants to the Leader of Opposition and shall deputize for the Leader of the Opposition in the execution of the functions of the Leader of the Opposition's functions.

Clause 4 of the Bill provides for the procedure of appointment, swearing in and removal of the Leader of the Opposition. The procedures shall apply with the necessary modifications to the Deputy Leader of the Opposition.

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

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

Statement that the Bill does not concern County Governments.

The Bill does not concern County Governments in terms of Article 110 (1)(a) of the Constitution and it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may not occasion additional expenditure of public funds.

Dated the ....., 2023.

KIMANI ICHUNG'WAH,
Leader of the Majority Party.

OPIYO WANDAYI,
Leader of the Minority Party.

END