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THE SENATE

TWELFTH PARLIAMENT
FIFTH SESSION
2021

SENATE STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS

.....
REPORT ON COUNTY OVERSIGHT AND ACCOUNTABILITY BILL, SENATE
BILLS NO. 17 OF 2021
.....

PAPERS LAID	
DATE	21.12.2021
TABLED BY	Sen. Kajwangi
COMMITTEE	Devolution
CLERK AT THE TABLE	J. Mbaya

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

DECEMBER, 2021

Rt. Hon. Speaker
You may approve
for tabling.
20/12/21

Approved
21/12/2021

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

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PREFACE

Mr. Speaker,

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

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

The Committee is comprised of the following members -

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

Mr. Speaker,

The County Oversight and Accountability Bill, Senate Bills No. 17 Of 2021 seeks to give effect to the oversight role of the Senator as enunciated in Article 96(1) and (3) of the Constitution through enhancing public participation and public financial accountability in the counties as well as the development of infrastructure for public participation in the oversight process.

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

Acknowledgement

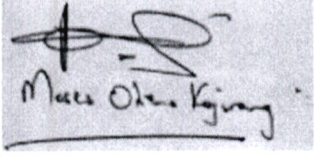
The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate as well as the Secretariat comprised of Ms. Sylvia Nasambu, Ms. Carolyn Cheruiyot, Ms. Clare Kidombo, Ms. Lucianne Limo and Mr. Simon Muinde for the support extended to it in the conduct of the public hearings and in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

Further, the Committee wishes to thank members of the public and stakeholders who sent written submissions including the Intergovernmental Relations Technical Committee (IGRTC); Council

of County Governors (CoG); County Assemblies Forum (CAF); Open Government Partnership and Mr. David Muriuki Kageenu.

Mr. Speaker,

It is now my pleasant duty, pursuant to standing order 143 of the Senate Standing Orders, to present the Report of the Standing Committee on Devolution and Intergovernmental Relations on the County Oversight and Accountability Bill, Senate Bills No. 17 of 2021.



Moses Oloo Kajwang

Signed.....

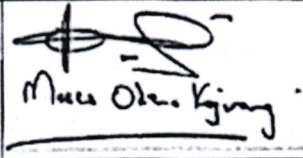
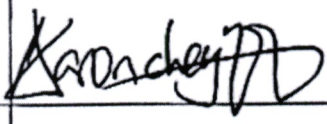
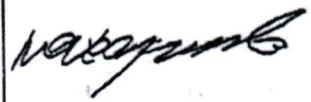


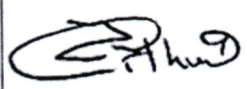
Date.....19TH NOVEMBER, 2021.....

SEN. MOSES KAJWANG', MP

CHAIRPERSON,
STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS ON THE ON THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL, SENATE BILLS NO. 17 OF 2021

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

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

CHAPTER ONE

INTRODUCTION

1.0 Background

1. The County Oversight and Accountability Bill, Senate Bills No. 17 of 2021 was sponsored by Sen. Ledama Olekina, M.P. Senator, Narok County. The Bill seeks to give effect to the oversight role of the Senator as enunciated in Article 96(1) and (3) of the Constitution through enhancing public participation and public financial accountability in the counties as well as the development of infrastructure for public participation in the oversight process.
2. The Bill was published on 22nd March, 2021, and read a First Time in the Senate on 6th July, 2021. Following the First Reading in the Senate, it stood committed, pursuant to standing order 140(1) of the Senate Standing Orders, to the Standing Committee on Standing Committee on Devolution and Intergovernmental Relations for facilitation of public participation. Subsequently, the Committee, pursuant to Article 118(1)(b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement on the Daily Nation and The Standard Newspapers on 9th July, 2021.

1.1 The Object of the Bill

3. The Constitution of Kenya ushered in a new system of governance that created devolution as a form of governance and with it, the bicameral Parliament. The Senate is the House of Parliament that is charged with the responsibility of representing the counties and serves to protect the interests of the counties and their governments.
4. The principal object of the Bill is to give effect to the oversight role of the Senator as enunciated in Article 96(1) and (3) of the Constitution through enhancing public participation and public financial accountability in the counties as well as the development of infrastructure for public participation in the oversight process.
5. Accordingly, the Bill seeks to enhance the oversight capacity of the elected members of the Senate. Through this, it seeks to set up a legal and institutional framework that enhances the concept of democracy, accountability and devolution as envisaged in the Constitution.

1.2 Overview of the Bill

6. The Bill provides for the following –

1.2.1 Guiding principles of oversight, accountability and citizen participation

7. Clauses 3 and 4 of the legislative proposal outline the objectives of the legislative proposal and its guiding principles. The Bill states that it aims to improve the efficiency, economy and effectiveness of county government operations by giving effect to Article 96(1) and (3) of the Constitution, enhancing public financial accountability in the counties, promoting accountability and transparency in acquisition and disposal of assets and liabilities and providing a framework for the development of infrastructure necessary to carry out public participation on financial matters within counties.
8. The Bill is guided by the principles of citizen participation, accountability, right to information, sustainable and inclusive decision making and the national values and principles under Article 10 of the Constitution.

1.2.2 Creation of facilities to carry out oversight and public participation

9. Part II of the Bill also envisions the creation of facilities constructed by the county governments in which the public shall carry out public participation and oversight. The Bill additionally sets out the criteria through which public participation facilities shall be constructed and maintained. This includes provisions relating to the assessment of the infrastructural needs, creation of infrastructure development plans, budgeting for the funds for infrastructure and approvals of the plans by the county assembly.
10. The infrastructural development plans shall be prepared by the county executive committee members, approved by the county executive committee and subsequently submitted to the County Assembly for approval. Section 10(2) of the Bill provides that the county government may upon the approval of the infrastructural development and renovation plan set aside such funds for carrying out infrastructural developments and renovations of the public participation facilities set out in the plan.

1.2.3 Oversight and public participation programmes

11. Part III of the Bill (erroneously indicated as Part II) makes provisions for the establishment of an oversight and public participation programme in each county. Clause 16 gives effect to the oversight role of the Senator of each county in line with the provisions of Article 96 of the Constitution.
12. Clause 17 establishes the oversight and public participation programmes for each county. Senators are obligated to facilitate public participation through public awareness programmes in each county. This facilitation includes –
 - (a) establishing public participation and oversight programmes for the respective county;
 - (b) holding public hearings on matters of public interest within the respective counties;
 - (c) ensuring access to information held by the county government;

- (d) engaging the communities and interest groups on the formulation of plans for the economic development of the county;
- (e) facilitating the participation of the communities in engagements with the county government on financial matters;
- (f) monitoring spending patterns of the county governments; and
- (g) monitoring compliance by the respective county with the Constitution and national legislation on public finance.

1.2.4 Feedback of oversight activities

13. The Bill also makes provision for the preparation of reports of the oversight activities carried out in the county. Clause 18 of the Bill establishes an Oversight Office which shall utilize not more than three officers who are to assist the Senator of each county in carrying out their oversight roles. These officers shall carry out monitoring and evaluation roles and prepare their findings in a report that shall be made ready for circulation within the county. The report shall also include input from the public.
14. The officers to be appointed by the Senator must be Kenyan citizens, have a university degree from an institution recognized in Kenya and have at least three years relevant experience in budget control, audit, monitoring and evaluation.

CHAPTER TWO

PUBLIC PARTICIPATION

2.0 Attendance by Stakeholders

15. The Committee, pursuant to Article 118 of the Constitution and standing order 140 (5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement on the Daily Nation and The Standard Newspapers on 9th July, 2021.
16. The Committee received written submissions from the —
 - (1) Intergovernmental Relations Technical Committee (IGRTC);
 - (2) Council of County Governors (CoG);
 - (3) County Assemblies Forum (CAF);
 - (4) Open Government Partnership; and
 - (5) Mr. David Muriuki Kageenu

2.1 Submissions from Stakeholders

Clause 3- Objects of the Act

17. The Intergovernmental Relations Technical Committee (IGRTC) submitted to the Committee that Clause 3(c) be amended. Clause 3 (c) provides that one of the objects of the Bill is promoting accountability and transparency in the acquisition and disposal of assets and incurring of liabilities by county governments.
18. The rationale for the proposed amendment was that the oversight office established by the Senator may consider working in consultation with IGRTC in verifying information pertaining to the assets and liabilities documented in the registers prepared by IGRTC and implementation of the liquidation options for purposes of settlement of liabilities.

PART II—PUBLIC PARTICIPATION FACILITIES

19. The Council of County Governors (CoG) submitted to the Committee that the entire Part II of the Bill which provides for construction of public participation facilities and renovation of existing facilities by county governments be deleted and moved to the Public Participation Bill. COG was of the view that there is already a Bill that addresses issues of public participation facilities and it will be prudent that that matters raised in this Bill be addressed under the Public Participation Bill.

20. The County Assemblies Forum (CAF) submitted to the Committee that Part II should be removed and inserted under the Public Participation Bill, 2018. CAF was of the view that it beats logic that the creation of the infrastructure for public participation forums should be under the proposed Bill while already there is a draft Public Participation Bill, 2018 which incorporates the views of the stakeholders. The Senate should legislate on these provisions through the Public Participation Bill, 2018.

Clause 5-County Public Participation Facilities

21. The Open Government Partnership submitted to the Committee that while Clause 5 which provides for county public participation facilities, it focuses on renovations of public participation facilities but there are other key public participation challenges that need to be addressed. This includes access to public participation forums, language used during the public participation sessions, times set for such sessions and difficulty in accessing legislative proposals prior to the public participation sessions.

Clause 8-Infrastructure development plan

22. Clause 8(1)(e) provides that where a county government intends to allocate funds for the carrying out of infrastructural development, renovation and maintenance of public participation facilities, the county executive committee member shall prepare an infrastructural development and renovation plan for the subsequent financial year setting out among others, the mechanisms for transparency in order to ensure maximum benefit and value for money.
23. Open Government Partnership submitted to the Committee that the mechanisms need to be further defined for purposes of legislative clarity. The Bill does not provide sufficient issues of disclosure beyond what exists in current policy documents. In their view, there should be a focus on strengthening oversight and disclosure to enhance transparency, accountability and the citizens' right to access information.

Clause 15-Annual Reports

24. Clause 15(1) provides that there shall be prepared an annual report on the status of public finances in the respective county setting out information relating to the procurement of services and works in relation to the projects in the county, among others.
25. Open Government Partnership submitted to the Committee that this should be narrowed down to specify whether it is in relation to all procurement works in the county or the

infrastructure projects for public participation outlined in the Bill. Further, existing reporting mechanisms should also be strengthened with stricter measures for reporting officers.

PART III—OVERSIGHT AND PUBLIC PARTICIPATION PROVISIONS

26. The Council of County Governors proposed an amendment to delete the entire Part III on Oversight and Public Participation. COG submitted to the Committee that Article 96(3) of the Constitution gives the Senate the mandate of exercising oversight over national revenue allocated counties. The oversight mandate is given to the Senate as a House of Parliament (collective role) and not to an individual Senator. In their view, the Constitution does not envision a situation where an individual Senator oversees their County. The Bill therefore goes against this provision of the Constitution.

Clause 17-Oversight and Public Participation Programmes

27. Clause 17 provides that each Senator shall facilitate public participation through public awareness campaigns in each ward within the respective county. Similarly, the County Assemblies Forum proposed that Clause 17 should be repealed to allow the County Governments facilitate public participation forums as mandated by the Constitution. This will enable the county governments to carry out its mandate by allowing the County Assemblies to oversight the County Executive as envisioned in the Constitution and the County Governments Act.
28. In their view, Article 96(1) of the Constitution which mandates the Senate to protect the interest of the Counties and their government places an impetus on the Senate to strengthen the structures of the County Governments. By duplicating the roles of County Assemblies, this clause serves to weaken and undermine the mandate of County Assemblies.

Clause 18- Oversight Office

29. Clause 18 provides that a Senator shall, in carrying out the oversight role over public participation and oversight role establish an oversight office in the county consisting of such persons as the Senator may consider necessary.
30. The Council of County Governors took issue with clause 18(6) which provides that the county executive committee member shall avail to the Senator all pertinent information necessary to carry out the oversight role under the Act. COG was of the view that As much as the Senators can establish administrative offices in the counties, that should not be tied to the oversight role of the Senate.

31. The County Assemblies Forum proposed that Clause 18 be should be amended to allow the oversight role of public participation on the collection, use and management of finances to be carried out by the County Assemblies. Further, this clause should be amended to provide that the financial implication of the creation of this office should be under the Senate and not the County Governments. CAF further submitted to the Committee that the clause inherently takes away the oversight role of County Assemblies under Article 185 of the Constitution of Kenya. In their view, the Senate is considered as an institution of the national government and thus the creation of these offices should be financed by the Senate itself.
32. Mr. David Muriuki Kageenu submitted various proposals to the Committee with respect to Clause 18. In his view, Clause 18(1) should include a provision that the Senator shall communicate to the public using available forms of media the persons employed to work in the proposed county oversight office.
33. With respect to Clause 18(4) which provides that a Senator shall carry out the required evaluation and *may* prepare for circulation within the county, a report on the public finances of the county and the participation of residents in the decision making process with respect to the public finances in the county, Mr. Kageenu was of the view that this should be mandatory and therefore the phrase, '*may*' should be replaced with, '*will be required to*'.
34. Article 18(5) provides that the Senator shall promote public awareness on the county public finance processes through the usage of available forms of media. Mr. Kageenu proposed a change in the drafting language that the phrase, '*shall*' should be replaced with, '*will be required to*'.

Clause 19- County Assembly

35. Clause 19(2) provides that the Clerk of the County Assembly may provide such logistical support as is necessary for the carrying out of a successful public participation and oversight exercise.
36. The County Assemblies Forum proposed that the Bill should clarify on the nature of the logistical support necessary for the carrying out of a successful public participation and oversight exercise. If the Bill has financial implications on the County Assembly, then the logistical support should come from the Senate itself through the office of the Senator. CAF was of the view that the funds provided for by County Assemblies will be overstretched if this Bill requires the County Assemblies to provide logistical support to the Senator.

GENERAL COMMENTS

37. The Council of County Governors submitted to the Committee that legislation being developed should respect the functional and institutional integrity of County Governments. The Bill goes against the provisions of the Constitution. Further, the Constitution and the Senate Standing Orders have provided the manner in which the Senate undertakes its oversight role including through the establishment of Committees. The mischief for which this Bill tried to cure does not exist at all. In conclusion, COG submitted that that it did not support the Bill and recommended that the Senate withdraws the Bill.

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.0 OBSERVATIONS

38. The Committee made the following observations in line with the submissions from the different stakeholders –

(1) Part II—Public Participation Facilities (Clauses 5-11)

39. With respect to Part II of the Bill which provides for construction of public participation facilities and renovation of existing facilities by county governments, the Committee observed that the principle of public participation rather than the physical spaces where it is conducted was the most pertinent issue. Based on the submissions from stakeholders, particularly, the Bill should be amended so that the construction of public participation facilities and renovation of existing facilities by county governments should not be mandatory.

40. The Committee further observed that a majority of stakeholders there are other public participation Bills at the national and county levels and as such the provisions on public participation facilities should be incorporated in those Bills to avoid duplication.

(2) Clause 8-Infrastructure development plan

41. The Committee observed that the Open Government Partnership proposed an amendment to Clause 8(1)(e) which would the county executive committee member shall prepare an infrastructural development and renovation plan with respect to infrastructure projects. Open Government Partnership submitted to the Committee that the mechanisms need to be further defined for purposes of legislative clarity and proposed the Bill provides sufficient provisions on issues of disclosure beyond what exists in current policy documents.

42. However, the Committee observed that proposed allocation of funds will be guided by the relevant financial statutes that provide for disclosure in all financial processes. Therefore, it was not necessary to amend Clause 8 (1) (e) and should be retained as it is.

(3) Clause 15-Annual Reports

43. The Committee noted the proposal by the Open Government Partnership that Clause 15(1) be narrowed down to specify whether it is in relation to all procurement works in the county or the infrastructure projects for public participation outlined in the Bill.

44. The Committee however observed that the Bill provides that the reports shall relate to all procurement works in the county and not limited to infrastructure projects for public participation. The clause should therefore be retained as it is.

(4) Part III—Oversight And Public Participation Provisions

45. The Committee noted the proposal by Council of County Governors to delete the entire Clause 16 and 17 of the Bill on the grounds that the oversight mandate is given to the Senate as a House of Parliament (collective role) and not to an individual Senator. In their view, the Constitution does not envision a situation where an individual Senator overlooks their County. The County Assemblies Forum further proposed that Clause 17 be deleted noting that by facilitating public participation, Senators would be infringing on the mandate of County Assemblies.

46. The Committee observed that with respect to Clause 16, Senators are democratically elected representatives and delegated sovereign power pursuant to Article 1 of the Constitution. The Committee observed further that the Senate and Senators had a constitutional oversight mandate.

47. The Committee further observed that with respect to Clause 17, the Senator will complement the oversight role of the Member of County Assembly at the county level and not infringe on it. The Committee observed that, in order to take into account the concerns by stakeholder, the clause be amended to give the Senator the option to facilitate public participation through public awareness campaigns in the respective county, however, the requirement that this be done at every ward be removed.

(5) Clause 19- Role of County Assemblies- Logistical Support

48. The Committee noted the concern raised by the County Assemblies Forum with respect to Clause 19(2) which provides that the Clerk of the County Assembly may provide such logistical support as is necessary for the carrying out of a successful public participation and oversight exercise.

49. The Committee observed that there was concern that the Bill would have financial implications on county assemblies and that the logistical support should come from the Senate itself through the office of the Senator. The Committee acceded to this proposal and noted that Clause 19 (2) may be amended to provide that the logistical support be from the Senate. CAF was of the view that the funds provided for by County Assemblies will be overstretched if this Bill requires the County Assemblies to provide logistical support to the Senator.

3.1 RECOMMENDATIONS

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

(1) Clause 5- County Public Participation Facilities- That Clause 5 (1) and Clause 5(2) of the Bill be amended by replacing the word 'shall' with 'may' in both sub-clauses.

Rationale: This will ensure that the construction of public participation facilities and renovation of existing facilities by county governments is not mandatory and that county governments are able to use other available forums to conduct public participation.

(2) Clause 17—Oversight and Public Participation Programmes- That Clause 17(1) of the Bill be amended by inserting a new subclause to read, "*A Senator may facilitate public participation through public awareness campaigns in the respective county.*"

Rationale: This will address concerns that the Senator would infringe on the role of county assemblies. The amendment will provide the Senator the option to facilitate public participation through public awareness campaigns in the respective county, however, the requirement that this be done at every ward is removed.

(3) Clause 19- Role of County Assemblies- Logistical Support- That the Bill be amended to with respect to Clause 19(2) to that the Senate, and not county assemblies would provide logistical support for the Senators to carry out a successful public participation and oversight exercise.

Rationale: The will address concerns that the Bill would have financial implications on county assemblies and provide that the logistical support for Senators to carry out a successful public participation and oversight exercise be provided by the Senate.

APPENDICES

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

Annex 1:
MINUTES



TWELFTH PARLIAMENT | FIFTH SESSION

MINUTES OF THE TWENTY SECOND SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTER-GOVERNMENTAL RELATIONS HELD ONLINE ON THE ZOOM MEETING PLATFORM ON THURSDAY 8TH JULY, 2021, AT 11.30 A.M.

PRESENT

- | | |
|-------------------------------------|-----------------------------------|
| 1. Sen. Moses Kajwang', MP | - Chairperson (Chairing) |
| 2. Sen. Kipchumba Murkomen, EGH, MP | - Member |
| 3. Sen. Aaron Cheruiyot | - Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------------|--------------------|
| 1. Sen. Anuar Loiptip, MP | - Vice Chairperson |
| 2. Sen. Victor Prengei, MP | - Member |
| 3. Sen. Rose Nyamunga, CBS MP | - Member |
| 4. Sen. Isaac Mwaura, CBS, MP | - Member |
| 5. Sen. Cleophas Malalah, MP | - Member |

SECRETARIAT

- | | |
|------------------------|---|
| 1. Ms. Mary Chesire | - Deputy Director, Committee Services |
| 2. Ms. Carol Cheruiyot | - Legal Counsel |
| 3. Ms. Lucianne Limo | - Media relations officer |
| 4. Mr. Simon Muinde | - Audio Officer |
| 5. Ms. Sylvia Adera | - Clerk Assistant (taking minutes) |
| 6. Ms. Lepilal Risper | - Intern |

DEV-IR. MIN. NO.148/2021

PRAYER

The sitting commenced at 11.50 am with a word of prayer by the Sen, MP Kipchumba Murkomen.

DEV-IR. MIN. NO.149/2021

ADOPTION OF THE AGENDA

The Committee adopted the agenda of the twenty second sitting, having been proposed by Sen. Kipchumba Murkomen, EGH, MP and seconded by Sen. Aaron Cheruiyot, MP

DEV-IR. MIN. NO.150/2021

INTRODUCTIONS

The Chair-person convened the meeting and invited the Legal Counsel to take the committee through the Bill.

DEV-IR. MIN. NO. 151/2021 COUNTY OVERSIGHT AND ACCOUNTABILITY BILL, SENATE BILLS NO. 17 OF 2021.

This is an Ordinary Bill sponsored by Senator Ledama Ole Kina. The Bill was published on 22nd March 2021 and tabled to the House for first reading on 6th July 2021. The principal objective of the Bill is to give effect to the oversight role of the Senator as emancipated in Article 96(1) and (3) of the Constitution through enhancing public participation and public financial accountability in the counties as well as the development of infrastructure for public participation in the oversight process.

The Bill provides for:

- a) Guiding principles of oversight, accountability and citizen Participation
- b) Creation of facilities to carry out oversight and public participation
- c) Oversight and public participation programmes
- d) Feedback of oversight activities

DEV-IR. MIN. NO. 152/2021 DIRECTIVES FROM THE CHAIR AND MEMBERS OF THE COMMITTEE

The chair and members having being briefed on the Bill, proposed for a meeting with the Sponsor of the Bill on Wednesday, 14th 2021.

The clerk informed the committee that the Advertisement for public participation had been prepared for publication in the dailies in order to receive submissions and memoranda on the Bill.

DEV-IR. MIN. NO. 153 /2021 ANY OTHER BUSINESS

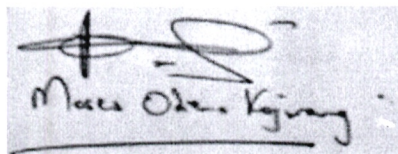
There Clerk reminded the Members on the planning for a meeting with the Bungoma Petitioners. She noted that the matter has been pending for 2 years now and it should be addressed urgently.

DATE OF NEXT MEETING

The next meeting will be held on Wednesday 14th July at 11:30am

DEV-IR. MIN. NO. 154/2021 ADJOURNMENT

There being no other business, the meeting was adjourned the meeting at 12: 20 pm.



Moses Oden Kijony

SIGNED:
(CHAIRPERSON)

22ND JULY, 2021

DATE:



TWELFTH PARLIAMENT | FIFTH SESSION

MINUTES OF THE TWENTY THIRD SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTER-GOVERNMENTAL RELATIONS HELD ONLINE ON THE ZOOM MEETING PLATFORM ON WEDNESDAY 14TH JULY, 2021, AT 11.30 A.M.

PRESENT

- | | |
|-------------------------------------|-----------------------------------|
| 1. Sen. Moses Kajwang', MP | - Chairperson (Chairing) |
| 2. Sen. Kipchumba Murkomen, EGH, MP | - Member |
| 3. Sen. Rose Nyamunga, CBS MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------------|--------------------|
| 1. Sen. Anuar Loitip, MP | - Vice Chairperson |
| 2. Sen. Victor Prengei, MP | - Member |
| 3. Sen. Isaac Mwaura, CBS, MP | - Member |
| 4. Sen. Cleophas Malalah, MP | - Member |
| 5. Sen. Aaron Cheruiyot | - Member |

IN ATTENDANCE

- | | |
|-------------------------|-------------------------|
| 1. Sen. Ledama Ole Kina | - Senator, Narok County |
|-------------------------|-------------------------|

SECRETARIAT

- | | |
|---------------------------------|------------------------------|
| 1. Ms. Mary Chesire
Services | - Deputy Director, Committee |
| 2. Ms. Carol Cheruiyot | - Legal Counsel |
| 3. Ms. Lucianne Limo | - Media relations officer |
| 4. Mr. Simon Muinde | - Audio Officer |
| 5. Ms. Sylvia Adera | - Clerk Assistant |
| 6. Ms. Lepilal Risper | - Intern |

DEV-IR. MIN. NO.155/2021 PRAYER

The sitting commenced at 11.48 am with a word of prayer by Sen, MP Rose Nyamunga, CBS,MP.

DEV-IR. MIN. NO.156/2021 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the twenty third sitting, having been proposed by Sen. Rose Nyamunga, EGH, MP and seconded by Sen. Kipchumba Murkomen

DEV-IR. MIN. NO.157/2021 INTRODUCTIONS

The Chair-person convened the meeting by first allowing all in attendance to introduce themselves. He then informed the committee the purpose of the meeting was for Senator Ledama Ole Kina, MP, the sponsor of the County Oversight and Accountability Bill, to take the committee through the Bill and to highlight the important aspects of the Bill.

The chair then invited Senator Ledama Ole Kina, MP to brief the committee on the Bill.

DEV-IR. MIN. NO. 158/2021 SUBMISSIONS BY SENATOR LEDAMA; THE SPONSOR FOR COUNTY OVERSIGHT AND ACCOUNTABILITY BILL, SENATE BILLS NO. 17 OF 2021.

Senator Ledama proceeded to inform the Committee that the Bill is designed to give citizens a role to play in the budgetary making process. It seeks to establish a mechanism whereby Senate can have a role to play in ensuring public participation in budget making process. It is meant to give effect to the oversight, accountability and public participation role of the Senate. He added that the bill provides for creation of facilities to carry out oversight and public participation and feedback of oversight activities

DEV-IR. MIN. NO. 159/2021 DIRECTIVES FROM THE CHAIR AND MEMBERS OF THE COMMITTEE

The chair having been briefed on the Bill, invited the members to make their remarks. The members agreed in unison that the Bill is a good one but it should have minor amendments to avoid overlapping of duties.

Sen. Kipchumba noted that the Bill should adhere to the principal of separation of power even as it carries out its oversight duties.

The chair invited the Clerk to inform the committee on the set public participation days. The clerk informed the committee that the advertisements for public participation was published on 9th July and Public participation is set to begin on 26th July 2021.

DEV-IR. MIN. NO. 160/2021 ANY OTHER BUSINESS

The Clerk informed the members that there is a scheduled meeting on Wednesday 21st July, 2021 to listen to the Bungoma petitioners. She noted that there is a challenge a getting contacts of the petitioners caused by a cross-petition as informed by the Directorate of Procedural services but the matter will be resolved on the next meeting and agree on the way forward.

She also informed the committee that the Kisii petitioner has Covid-19 and is requesting for (2) more weeks and for a physical meeting.

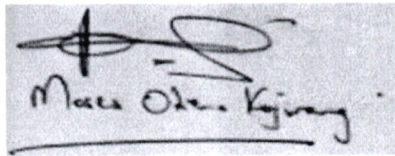
The Clerk also informed the committee that there was a Senate workshop on Thursday 15th July and the Agenda is: proposal for expediting consideration of Senate Bills pending before the House.

DATE OF NEXT MEETING

The next meeting will be held on Wednesday 21st July at 11:30am

DEV-IR. MIN. NO.161/2021 ADJOURNMENT

There being no other business, the meeting was adjourned the meeting at 12:31 pm.



Mace Oden Kojung

SIGNED:
(CHAIRPERSON)

22ND JULY, 2021

DATE:



TWELFTH PARLIAMENT | FIFTH SESSION

MINUTES OF THE TWENTY SEVENTH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTER-GOVERNMENTAL RELATIONS HELD ONLINE ON THE ZOOM MEETING PLATFORM ON TUESDAY 12TH OCTOBER 2021, AT 11.30 A.M.

PRESENT

- | | |
|------------------------------------|----------------------------|
| 1. Sen. Moses Kajwang', MP | - Chairperson |
| 2. Sen. Abdulkadir Haji, MP | - Member (Chairing) |
| 3. Sen. Kipchumba Murkomen,EGH, MP | - Member |
| 4. Sen. Rose Nyamunga,CBS MP | - Member |

ABSENT WITH APOLOGY

- | | |
|------------------------------|--------------------|
| 1. Sen. Anuar Loitiptip, MP | - Vice Chairperson |
| 2. Sen. Aaron Cheruiyot,MP | - Member |
| 3. Sen. Cleophas Malalah, MP | - Member |
| 4. Sen. Agnes Kavindu | - Member |
| 5. Sen Isaac Ngugi Githua | - Member |

SECRETARIAT

- | | |
|----------------------------|---|
| 1. Ms. Farhiya Ibrahim Ali | - Principal Sergeant-At-Arms |
| 2. Ms. Carole Cheruiyot | - Legal Counsel |
| 3. Ms. Clare Kidombo | - Research Officer I |
| 4. Mr. Simon Muinde | - Audio Officer |
| 5. Ms. Sylvia Adera | - Clerk Assistant (Taking Minutes) |
| 6. Ms. Lucianne Limo | - Media Relations Officer |

DEV-IR. MIN. NO.182/2021 PRAYER

The sitting commenced at 11.45 am with a word of prayer led by the Chair.

DEV-IR. MIN. NO.183/2021 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the twenty seventh sitting, having been proposed by Sen. Rose Nyamunga, CBS, MP and seconded by Sen, Kipchumba Murkomen, EGH MP.

DEV-IR. MIN. NO.184/2021 INTRODUCTIONS

The members introduced themselves and welcomed Sen. Abdulkadir Haji, a new member of the committee. He was then appointed to act as the meeting's chairperson due to the delay of the substantive chairperson.

The acting chair welcomed the Clerk to brief the members on the main agenda which is to go through the public participation matrix for the County Oversight and Accountability Bill. The Clerk then invited the Legal Counsel to take the members through the matrix.

DEV-IR. MIN. NO. 185/2021 PUBLIC PARTICIPATION MATRIX FOR THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL

The Legal Counsel took the committee through some of the proposed amendments of Bill as the members discussed the propositions and made resolutions as follows:

1. The Council of Governors proposed amendments on Part II – Public Participation Facilities Clauses 5 to 11 that:

Part II of the Bill which provides for construction of public participation facilities should be deleted and moved to the Public Participation Bill. The rationale is that; there is already a Bill that addresses issues of public participation facilities and it will be prudent that that matters raised in this Bill be addressed under the Public Participation Bill.

The committee adopted the proposed amendment that the part of the Bills should be deleted and moved to the Public participation Bill. The Committee also noted the need to harmonize Bills in Senate and in Parliament at large.

2. Open Government Partnership proposed amendments on Part II – Public Participation Facilities Clauses 5 to 11 that:

Part II of the Bill focuses on public participation with provisions on public participation facilities, assessment of infrastructural needs, infrastructure development plans and allocation of funds. However, there are other public participation Bills at the national and county levels and as such the provisions on public participation facilities should be incorporated in those Bills to avoid duplication.

The committee resolved that it is important to capture the concept of public participation but it is not necessary to have physical structures for meetings. The committee also noted that there are no clear guidelines on how to fund the facilities.

In conclusion, the members embraced the idea of merging this Bill with the County Public participation Bill. The members noted that however much the Bill needs a lot of amending, it cannot be done away with as it was already passed in the House the best the committee can do was to have clear amendments of the Bill.

The members proposed that the legal counsel should go through the Bill and make draft amendments and a draft report based on the amendments made by the committee and the ideas of members on the floor of the house during the second reading.

DEV-IR. MIN. NO. 186/2021 ANY OTHER BUSINESS

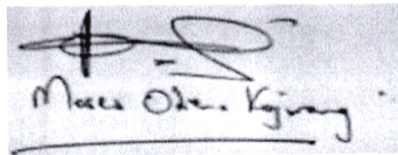
The Clerk requested for a confirmation of the date and time the members wish to travel for the purposed of ticket confirmation.

DEV-IR. MIN. NO.187/2021 DATE OF NEXT MEETING

The next meeting will be held on 13th October 2021 at 11:30 am.

DEV-IR. MIN. NO.188/2021 ADJOURNMENT

There being no other business, the meeting was adjourned the meeting at 12:30pm.

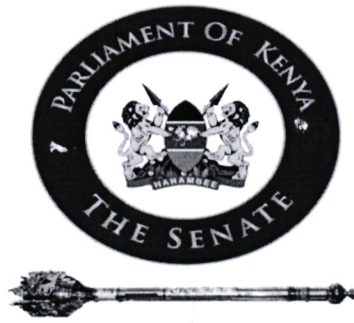


Moses Odu. Kijony

SIGNED:
(CHAIRPERSON)

9TH DECEMBER, 2021

DATE:



TWELFTH PARLIAMENT | FIFTH SESSION

MINUTES OF THE THIRTIETH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTER-GOVERNMENTAL RELATIONS HELD IN MOMBASA COUNTY AT THE SERENA HOTEL, ON FRIDAY 22ND OCTOBER 2021, AT 10.00 A.M.

PRESENT

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

ABSENT WITH APOLOGY

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

IN ATTENDANCE

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

SECRETARIAT

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

DEV-IR. MIN. NO.209/2021 PRAYER

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

DEV-IR. MIN. NO.210/2021 ADOPTION OF THE AGENDA

The adopted the programme of the retreat as the main agenda for the next two days, having been proposed by Sen. Rose Nyamunga, CBS, MP and seconded by Sen. Abdulkadir Haji, MP.

DEV-IR MIN. NO. 211/2021 INTRODUCTIONS

The Chairperson welcomed all stakeholders and initiated a round of introductions. All who were present are captured in the above in-attendance list. He noted that the Council of Governors had also been invited to attend the retreat. However they registered their apologies via a response to the invitation.

Thereafter, the Committee deliberated and resolved that the stakeholder engagement meeting shall be conducted as follows:

1. That the Committee shall receive submissions from the Stakeholders on each Bill;
2. That the Committee shall follow the order of the Bills as listed in the retreat programme, that being:
 - a) The County Oversight and Accountability Bill, 2021;
 - b) The County Government (Amendment) Bill, 2021; and
 - c) The Intergovernmental Relations (Amendment) Bill, 2021;
3. That the Committee shall consider each Bill on its own, before proceeding to receive views on the next Bill;
4. That each Stake holder had a maximum of twenty-five (25) minutes to highlight their submissions; and
5. That at the end of receiving submissions on the substantive Bills, each Stakeholder shall be given an opportunity to close their submissions and be allowed to include any additional observations.

DEV-IR. MIN. NO.212 /2021 CONSIDERATION OF THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL

The Stakeholders then proceeded to give their views on the County Oversight and Accountability Bill, as indicated in the stakeholder matrix attached.

DEV-IR. MIN. NO.213 /2021 ANY OTHER BUSINESS

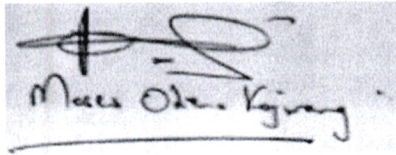
Once consideration of the County Oversight and Accountability Bill concluded, the meeting was adjourned for Lunch. The Chair person noted that Consideration of the County Government (Amendment) Bill would proceed upon commencement of the next meeting.

DEV-IR. MIN. NO.214/2021 DATE OF NEXT MEETING

The next meeting will be held on 22nd October 2021 at 2.00.pm.

DEV-IR. MIN. NO.215/2021 ADJOURNMENT

There being no other business, the meeting was adjourned the meeting at 12.55pm.



Mace Oke. Kijung

SIGNED:

(CHAIRPERSON)

9TH DECEMBER, 2021

DATE:



TWELFTH PARLIAMENT | FIFTH SESSION

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

PRESENT

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

ABSENT WITH APOLOGY

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

SECRETARIAT

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

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

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

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

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

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

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

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

The members introduced themselves.

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

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

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

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

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

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

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

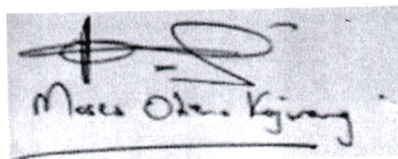
The Clerk also gave a brief progress on the plans for the Committee's Trip to Dubai.

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

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

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

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



Moses Oloo Kijony

SIGNED:
(CHAIRPERSON)

9TH DECEMBER, 2021

DATE:



TWELFTH PARLIAMENT | FIFTH SESSION

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

PRESENT

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

ABSENT WITH APOLOGY

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

SECRETARIAT

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

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

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

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

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

1. Preliminaries

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

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

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

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

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

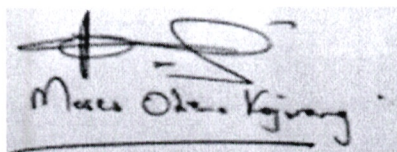
There was no AOB to be considered by the Committee.

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

The next meeting will be held on notice

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

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



Moses Oden Kijony

SIGNED:
(CHAIRPERSON)

9TH DECEMBER, 2021

DATE:

Annex 2:
PROPOSED
AMENDMENTS

***1. The County
Oversight and
Accountability
Bill, 2021***

SPECIAL ISSUE

Kenya Gazette Supplement No. 39 (Senate Bills No. 17)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2021

NAIROBI, 22nd March, 2021

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**THE COUNTY OVERSIGHT AND
ACCOUNTABILITY BILL, 2021
ARRANGEMENT OF CLAUSES**

Clauses

PART I—PRELIMINARY PROVISIONS

- 1—Short Title.
- 2—Interpretation.
- 3—Objects of the Act.
- 4—Guiding principles.

PART II—PUBLIC PARTICIPATION FACILITIES

- 5—County Public Participation Facilities.
- 6—Criteria for the infrastructural development of public participation facilities.
- 7—Assessment of infrastructural needs.
- 8—Infrastructure development plan.
- 9—Approval of plan by county assembly.
- 10—Setting aside and capping of funds.
- 11—Allocation of funds.
- 12—Previously approved projects.
- 13—Reports on the implementation of works by a public institution.
- 14—Unspent funds.
- 15—Annual Reports.

**PART III—OVERSIGHT AND PUBLIC
PARTICIPATION PROVISIONS**

- 16—Oversight of County Revenue Allocation by the National Government.
- 17—Oversight and Public Participation Programmes.
- 18—Oversight Office.
- 19—County Assembly.

PART IV—MISCELLANEOUS PROVISIONS

- 20—Regulations.

**THE COUNTY OVERSIGHT AND
ACCOUNTABILITY BILL, 2021**

A Bill for

AN ACT of Parliament to give effect to Articles 96(1) and (3) of the Constitution; to enhance public financial accountability by the county governments; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY PROVISIONS

1. This Act may be cited as the County Oversight and Accountability Act, 2021.

Short Title.

2. In this Act—

Interpretation.

“county executive committee” has the meaning assigned to it in the County Governments Act;

No. 17 of 2012.

“county executive committee member” means the county executive committee member responsible for matters relating to finance in the respective county;

“effectiveness” means the extent to which a programme intervention has attained, or is expected to attain, its objectives efficiently in a sustainable manner;

“efficiency” means a measure of how economically resources or inputs, including fund, expertise and time, are converted to results;

“officer” means any person employed to work under the oversight office established under section 18; and

“public money” has the meaning assigned to it under section 2 of the Public Finance Management Act.

No. 18 of 2012

3. The object of this Act is to improve the efficiency, economy and effectiveness of county government operations by—

Object of the Act.

- (a) giving effect to Article 96(1) and (3) of the Constitution;
- (b) enhancing public financial accountability in the counties;
- (c) promoting accountability and transparency in the acquisition and disposal of assets and incurring of liabilities by county governments; and

- (d) providing a framework for the development of the infrastructure necessary to carry out public participation on financial matters within the counties.

4. All persons shall, in the performance of their functions under this Act, be guided by the following principles —

Guiding principles.

- (a) the principles of citizen participation under section 87 of the County Governments Act;
- (b) proper and prudent use of public finance by county governments;
- (c) the right of the residents, communities and organisations in a county to be affected by decisions on the finances of the respective county to be consulted and involved in the decision making process;
- (d) provision of an effective mechanism for the involvement of citizens that would be affected by or that would be interested in decisions made by the county government;
- (e) access to the information by residents of a county to enable them participate in a meaningful manner in the decision making processes in the respective county;
- (f) public views shall be taken into consideration in decision making;
- (g) the national values and principles under Article 10 of the Constitution; and
- (h) promotion of sustainable decisions recognising the needs and interests of all participants, including decision makers.

No. 17 of 2012.

PART II—PUBLIC PARTICIPATION FACILITIES

5. (1) Pursuant to Article 174 of the Constitution, each county government shall carry out infrastructural development programmes for the development of public participation facilities within the respective county.

County public participation facilities.

(2) A county government shall, for the purpose of subsection (1), appropriate funds for the construction and renovation of existing public participation facilities within the county.

6. (1) The infrastructural development and renovation programmes undertaken pursuant to section 5 by a county government shall extend only to the following—

Criteria for the infrastructural development of public participation facilities.

- (a) subject to subsection (2), the construction of public halls in wards where no public halls exist or where the halls are inadequate to carry out public participation;
- (b) the renovation, remodelling, maintenance and repair of public halls and other related facilities in wards that are in urgent need of such renovation or repair;
- (c) upgrading and capital maintenance to address urgent maintenance needs in existing public halls; and
- (d) the conversion of a building that was originally constructed or used for purposes other than a public participation facility.

(2) In determining whether an infrastructural development or renovation programme should be undertaken in relation to a public participation facility, the following criteria shall be taken into account—

- (a) the number of public participation facilities in the respective wards;
- (b) repairs to, or replacement of, the facilities is required within a reasonably short period;
- (c) the state of the facility and the need for maintenance or repairs be undertaken to avoid endangering the welfare of persons using the facility;
- (d) the facilities or building infrastructure requires urgent repair in order to make them fit for use or to avoid incurring higher costs in carrying out the repairs in the future;
- (e) the repairs are not so extensive as to require an overhaul of the existing buildings or facilities;
- (f) the cost of the repairs—
 - (i) are within the financial limits set by the respective county executive committee member; and

(ii) the county government is able to set aside the funds required for the infrastructural repair and maintenance programme; and

(g) the ratio of public participation facilities to the number of residents in the respective county.

7. (1) The county executive committee member shall, for the purpose of determining the public participation facilities that require urgent renovation within the county and prior to setting aside funds for the purpose of funding the infrastructural development and renovation programmes—

Assessment of infrastructural needs.

(a) undertake an assessment of the gaps of the public participation facilities needs within the county that have been identified as requiring urgent intervention;

(b) undertake a costing and technical support assessment in relation to each public participation facility in order to ensure that the proposed programmes are within the scope of the budget projected by the county government;

(c) prepare standards and guidelines for the upgrade and funding of the infrastructure development, repair and maintenance programmes undertaken pursuant to this Act; and

(d) prepare a public participation facility infrastructure development plan for the subsequent financial year which shall be published in the county gazette and in at least one newspaper of wide circulation within the county.

(2) In undertaking an assessment under subsection (1)(a), the county executive committee member—

(a) shall consider proposals that may be submitted to the committee member by residents within the county for the repair, renovation or development of public participation facilities; and

(b) shall set out a list of public participation facilities that have been identified as requiring urgent intervention in order of priority.

(3) The county executive committee member shall, for the purposes of subsection (2), prescribe—

- (a) the timeframe for the submission of a proposal by a resident under subsection (2)(a);
- (b) the information required to be submitted in a proposal under subsection (2)(a) including the nature of the works required to be undertaken;
- (c) the process of costing of the works to be undertaken in relation to each public participation facility that is identified under subsection (1)(b) as requiring urgent intervention;
- (d) the process of implementation of the works to be undertaken in relation to public participation facilities under this Act; and
- (e) the process of engagement with the residents of the county under this Act.

8. (1) Where a county government intends to allocate funds for the carrying out of infrastructural development, renovation and maintenance of public participation facilities that meet the criteria under section 6, the county executive committee member shall prepare an infrastructural development and renovation plan for the subsequent financial year setting out —

Infrastructure
development plan.

- (a) the funds required to be set aside for the purpose of carrying out the infrastructural development and maintenance programmes;
- (b) the public participation facilities and areas identified by the county government as requiring urgent intervention for the development and maintenance;
- (c) the funds required in relation to each identified public participation facility and the works to be carried out with respect to the facility;
- (d) mechanisms for monitoring and evaluation, accountability and the conduct of an audit in relation to each project;
- (e) mechanisms for transparency in order to ensure maximum benefit and value for money; and
- (f) the process of engagement by the county government institutions that have been identified as requiring funding for the development of public

participation facilities and implementation of public participation programmes.

(2) The county executive committee member shall, in preparing the infrastructural development and renovation plan, take into account the recommendations of the officer set out in a report prepared under section (15)(2) assessments that may be carried out pursuant to the provisions of this Act.

(3) The county executive committee member shall submit the infrastructural development and renovation plan to the county executive committee for approval.

9. (1) The county executive committee member shall, upon the approval of the infrastructural development and renovation plan by the county executive committee under section 8(4) submit the plan to the county assembly for approval.

Approval of plan by county assembly.

(2) The county assembly may approve with or without amendment or reject the development plan submitted to it by the county executive committee member under subsection (1).

10. (1) The county executive committee shall with the approval of the county assembly, determine—

Setting aside and capping of funds.

- (a) the maximum amount of monies that may be set aside for the implementation of the infrastructural development and renovation plan;
- (b) the monies that may be set aside in relation to each public participation facility identified as requiring intervention under this Act; and
- (c) the conditions that are required to be met in the implementation of the development and maintenance plan in relation to a public participation facility.

(2) The county government may, upon the approval of the infrastructural development and renovation plan, set aside such funds as it shall consider necessary for the carrying out of the infrastructural developments and renovations of the public participation facilities set out in the plan.

(3) The provisions of the Public Finance Management Act shall apply with respect to funds set aside under

subsection (1) for the carrying out of an infrastructural development and renovation under this Act.

No. 18 of 2012.

(4) The Public Procurement and Asset Disposal Act shall apply to the procurement of services and works for the implementations of the project under this Act.

No. 33 of 2015.

11. The funds allocated by a county assembly to a specific public participation facility, shall remain allocated to that facility and shall not be utilised for any other purpose other than the purpose for which they were allocated.

Allocation of funds.

12. (1) The allocation of additional funds with respect to a public participation facility that received funds during the previous financial year shall have priority over a public participation facility which was not included in the infrastructural development, repair and maintenance plan under section 10 during the previous financial year where—

Previously approved projects.

- (a) it is determined that the monies allocated for the carrying out of the works are not adequate owing to factors beyond the control of the county executive committee member;
- (b) there is demonstrable actual work in progress in relation to the public participation facility;
- (c) there an existing contract for the implementation of the project in the current financial year including the potential of significant penalties for the cancellation or delay in implementation of the contract; or
- (d) there is in place a cost sharing agreement with the national government that the national government contributes at least forty nine percent of the total value of the project.

(2) A previously approved funding for infrastructure repair or maintenance of facilities shall not include—

- (a) a political statement, commitment or promise;
- (b) a project identified in the strategic plans or infrastructural development and renovation plan of the county government;
- (c) pre-feasibility planning, study or design work;

- (d) an architectural or engineering design work that is not part of the proposed construction or erection work;
- (e) a negotiated contract; or
- (f) a potential commitment to a cost shared project with the national government that contributes less than forty nine percent of the total value of the project.

(3) Where—

- (a) an infrastructural repair and maintenance plan is to be prepared and carried out for a period of more than one financial year; and
- (b) the financial obligations relating to the project exist for the subsequent year,
the county executive committee member shall seek the approval of the county assembly for the appropriation of monies in any subsequent financial year during which the development is to be undertaken for the completion of the development.

(4) The county executive committee and the county assembly shall not approve the allocation or appropriation of funds under subsections (1) and (3) unless —

- (a) a contract or financial commitment exists in relation to the project; and
- (b) substantial work has commenced on the project and it cannot be completed within the planned time frame.

13. The county executive committee member shall prepare a report on the status of the implementation of works with respect to a public participation facility setting out information relating to the works including —

- (a) information relating to the procurement of services and works in relation to the project;
- (b) a schedule of the works required to be undertaken and status of the implementation of the project;
- (c) the timelines for completion of specific phases of the works;
- (d) the manner in which the funds have been utilised in relation to the project; and

Reports on the implementation of works by a public institution.

- (e) the monies disbursed and any balance of unspent funds.

14. Where there are unspent funds upon completion of works with respect to a public participation facility, the unspent funds shall be re-allocated to the implementation of a project identified under this Act in such a manner as the county executive committee member shall, with the approval of the county assembly, determine.

Unspent funds.

15. (1) The officers shall prepare an annual report on the status of public finances in the respective county set out the following information—

Annual Reports.

- (a) information relating to the procurement of services and works in relation to the projects in the county;
- (b) a schedule of the works required to be undertaken and status of the implementation of the project;
- (c) the timelines for completion of specific phases of the works;
- (d) a description of the assets acquired and the liabilities incurred in the respective financial year;
- (e) a description of the progress made by the County Government on the projects and programmes initiated with the use of public money allocated by the National Government;
- (f) the views of the citizens of the county on the effectiveness of the projects and programmes initiated by the County Government;
- (g) an assessment of the economy, efficiency and effectiveness of the use of public money allocated to the County Government;
- (h) a description of any complaints made against the institution in respect of public participation, the action taken and the period within which the complaint was addressed; and
- (i) any other information that may be considered as relevant.

(2) The respective Senator shall cause the annual report to be published and publicized in such other manner as the Senator may determine.

PART II—OVERSIGHT AND PUBLIC PARTICIPATION PROGRAMMES

16. (1) The Senate shall, pursuant to its oversight role conferred on it under Article 96 of the Constitution, exercise an oversight role over the national government revenue allocated to the County Governments.

Oversight of the County Revenue allocation by the National Government.

(2) Each Senator shall exercise power of oversight over their respective County.

(3) There shall be openness and accountability over the county budget oversight process and the use of public money which shall include public participation.

17. (1) Each Senator shall facilitate public participation through public awareness campaigns in each ward within the respective county.

Oversight and Public Participation Programmes.

(2) For the purpose of subsection (1), the Senator shall—

- (a) establish public participation and oversight programmes for the respective county;
- (b) hold public hearings on matters of public interest within the respective counties;
- (c) facilitate access to information held by the county government;
- (d) engage the communities and interest groups on the formulation of plans for the economic development of the county;
- (e) facilitate the participation of the communities in the engagement with the departments and the county government on financial matters;
- (f) monitor spending patterns of public entities within the county; and
- (g) monitor compliance by the respective county with the Constitution and national legislation on public finance.

18. (1) A Senator shall, in carrying out the oversight role over public participation and oversight role over the collection, use and management of finances in the respective county, establish an oversight office in the county consisting of such persons as the Senator may consider necessary.

Oversight Office.

(2) The Senator may employ such officers not exceeding three officers for the purpose of assisting the Senator in carrying out their oversight role in the county.

(3) The Senator shall not employ a person under subsection (3) unless such person—

- (a) is a Kenyan citizen;
- (b) has a university degree from an institution recognized in Kenya; and
- (c) has at least three years relevant experience in budget control, audit, monitoring and evaluation.

(4) The Senator shall carry out the required evaluation and may prepare for circulation within the county, a report on the public finances of the county and the participation of residents in the decision making process with respect to the public finances in the county.

(5) The Senator shall promote public awareness on the county public finance processes through the usage of available forms of media.

(6) The county executive committee member shall avail to the Senator with all pertinent information necessary to carry out the oversight role under this Act.

19. (1) The county executive committee member and the Clerk of the respective county assembly shall keep and maintain the information relevant to the allocation of monies, collection of revenue and such other information on the finances of the respective county and shall upon request avail the information to a member of the public.

Role of the
County Assembly.

(2) The Clerk of the County Assembly may provide such logistical support as is necessary for the carrying out of a successful public participation and oversight exercise.

PART III—MISCELLANEOUS PROVISIONS

20. (1) The county executive committee member, with the approval of the county assembly, shall make regulations generally for the better carrying out of the provisions of this Act.

Regulations.

(2) Notwithstanding the generality of subsection (1), the county executive committee member may make Regulations—

- (a) processes related to the management and implementation of the project in relation to a public participation facility;
- (b) management of the finances allocated with respect to a public participation facility including the receipt and disbursement of funds and the accountability of funds received pursuant to this Act; and
- (c) maintenance of adequate and accurate records including a system of internal accounts with respect to the process of accountability and the conduct of audits in relation to the funds received under this Act.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to provide a framework for effective oversight over the county government by the Senate.

The Constitution of Kenya 2010, created a bicameral parliament to replace the existing unicameral parliament. Accordingly, the Senate was tasked with oversight over national revenue allocated to the county governments. Moreover, under the constitutional concept of devolution and the principles of public finance, the input of the public is required in all executive decision making processes.

This Bill therefore proposes to provide a mechanism on how oversight over the County budgets can be carried out. The Bill therefore gives effect to the Constitutional provisions on oversight, public participation and participatory democracy as enunciated in Articles 96, 174 and 201 of the Constitution respectively.

The Bill provides for preliminary matters including the short title, objects of the Act and the guiding principles that guide Senatorial oversight. The Bill also designates the roles of the responsible bodies and officers in the oversight and public participation processes.

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

Clause 20 of the Bill empowers the county executive committee member to make Regulations for the better carrying into effect of the provisions of the legislative proposal. However, the Bill does not limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill seeks to provide a national framework for Senatorial oversight in national government allocations to county governments. The Bill therefore concerns county governments in terms of Article 110(1)(a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

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

This is a framework legislation. Any cost relating to Senatorial oversight is already provided for in the institutional budgets and therefore there are no new structures that are set to be established. The Bill is therefore not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 16th February, 2021.

LEDAMA OLEKINA,
Senator.

2. The Stakeholder Views Matrix

THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

STAKEHOLDER VIEWS ON THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL, 2021
(SENATE BILLS NO. 17 OF 2021)

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL, SENATE BILLS NO. 17 OF 2021				
	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE RESOLUTION
1.	Clause 3(c)	The Intergovernmental Relations Technical Committee (IGRTC)	<ul style="list-style-type: none"> Section 3 (c) provides that one of the objects of the Bill is promoting accountability and transparency in the acquisition and disposal of assets and incurring of liabilities by county governments. Rationale: The oversight office established by the Senator may consider working in consultation with IGRTC in verifying information pertaining to the assets and liabilities documented in the registers prepared by IGRTC and implementation of the liquidation options for purposes of settlement of liabilities. 	
2.	Part II – Public Participation Facilities Clauses 5 to 11	Council of County Governors (CoG)	<ul style="list-style-type: none"> Part II of the Bill provides for construction of public participation facilities and renovation of existing facilities by county governments. The entire Part of the Bill should be deleted and moved to the Public Participation Bill. Rationale: There is already a Bill that addresses issues of public participation facilities and it will be prudent that that matters raised in this Bill be addressed under the Public Participation Bill. 	

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL, SENATE BILLS NO. 17 OF 2021

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE RESOLUTION
3.	Part II – Public Participation Facilities Clauses 5 to 11	County Assemblies Forum (CAF)	<ul style="list-style-type: none"> • Part II of the Bill provides for construction of public participation facilities and renovation of existing facilities by county governments. • This Part should be removed and inserted under the Public Participation Bill, 2018. • Rationale: It beats logic that the creation of the infrastructure for public participation forums should be under this bill while already there is a draft Public Participation Bill, 2018 which incorporates the views of the stakeholders. The Senate can legislate on this through the Public Participation Bill, 2018. 	
4.	Part II – Public Participation Facilities Clauses 5 to 11	Open Government Partnership	<ul style="list-style-type: none"> • Part II of the Bill focuses on public participation with provisions on public participation facilities, assessment of infrastructural needs, infrastructure development plans and allocation of funds. • However, there are other public participation Bills at the national and county levels and as such the provisions on public participation facilities should be incorporated in those Bills to avoid duplication. 	
5.	Clause 5	Open Government Partnership	<ul style="list-style-type: none"> • Clause 5 provides for county public participation facilities. • The Bill focuses on renovations of public participation facilities but there are other key public participation challenges that need to be addressed including access to 	

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL, SENATE BILLS NO. 17 OF 2021

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE RESOLUTION
			public participation forums, language used during the public participation sessions, times set for such sessions and difficulty in accessing legislative proposals prior to the public participation sessions.	
6.	Clause 8(1)(e)	Open Government Partnership	<ul style="list-style-type: none"> • Clause 8(1)(e) provides that where a county government intends to allocate funds for the carrying out of infrastructural development, renovation and maintenance of public participation facilities, the county executive committee member shall prepare an infrastructural development and renovation plan for the subsequent financial year setting out among others, the mechanisms for transparency in order to ensure maximum benefit and value for money. • The mechanisms need to be further defined for purposes of legislative clarity. The Bill does not provide sufficient issues of disclosure beyond what exists in current policy documents. • Rationale: There should be a focus on strengthening oversight and disclosure to enhance transparency, accountability and the citizens' right to access information. 	
7.	Clause 15(1)	Open Government Partnership	<ul style="list-style-type: none"> • Clause 15(1) provides that there shall be prepared an annual report on the status of public finances in the respective county setting out information relating to the procurement of services and works in relation to the 	

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL, SENATE BILLS NO. 17 OF 2021

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE RESOLUTION
			<p>projects in the county, among others.</p> <ul style="list-style-type: none"> • This should be narrowed down to specify whether it is in relation to all procurement works in the county or the infrastructure projects for public participation outlined in the Bill. • Further, existing reporting mechanisms should also be strengthened with stricter measures for reporting officers. 	
8.	Part III – Oversight and Public Participation Clauses 16 and 17	Council of County Governors	<ul style="list-style-type: none"> • Delete the entire Part III on Oversight and Public Participation. • Rationale: Article 96(3) of the Constitution gives the Senate the mandate of exercising oversight over national revenue allocated counties. The oversight mandate is given to the Senate as a House of Parliament (collective role) and not to an individual Senator. • The Constitution does not envision a situation where an individual Senator overlooks their County. The Bill therefore goes against this provision of the Constitution. 	
9.	Clause 17	County Assemblies Forum	<ul style="list-style-type: none"> • Clause 17 provides that each Senator shall facilitate public participation through public awareness campaigns in each ward within the respective county. • This Clause should be repealed to allow the County 	

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL, SENATE BILLS NO. 17 OF 2021

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE RESOLUTION
			<p>Governments facilitate public participation forums as mandated by the Constitution. This will enable the county governments to carry out its mandate by allowing the County Assemblies to oversight the County Executive as envisioned in the Constitution and the County Governments Act.</p> <ul style="list-style-type: none"> • Rationale: Article 96(1) of the Constitution which mandates the Senate to protect the interest of the Counties and their government places an impetus on the Senate to strengthen the structures of the County Governments. By duplicating the roles of County Assemblies, this clause serves to weaken and undermine the mandate of County Assemblies. 	
10.	Clause 18	Council of County Governors	<ul style="list-style-type: none"> • Clause 18 provides that a Senator shall, in carrying out the oversight role over public participation and oversight role establish an oversight office in the county consisting of such persons as the Senator may consider necessary. • The Bill in clause 18(6) provides that the county executive committee member shall avail to the Senator all pertinent information necessary to carry out the oversight role under the Act. • Rationale: As much as the Senators can establish administrative offices in the counties, that should not be tied to the oversight role of the Senate. 	

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL, SENATE BILLS NO. 17 OF 2021

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE RESOLUTION
11.	Clause 18	County Assemblies Forum	<ul style="list-style-type: none"> • Clause 18(1) provides that a Senator shall, in carrying out the oversight role over public participation and oversight role establish an oversight office in the county consisting of such persons as the Senator may consider necessary. • The Bill should be amended to allow the oversight role of public participation on the collection, use and management of finances to be carried out by the County Assemblies. This clause should be amended to provide that the financial implication of the creation of this office should be under the Senate and not the County Governments. • Rationale: This clause inherently takes away the oversight role of County Assemblies under Article 185 of the Constitution of Kenya. The Senate is considered as an institution of the national government and thus the creation of these offices should be financed by the Senate itself. 	
12.	Clause 18(1)	David Muriuki Kageenu	<ul style="list-style-type: none"> • Clause 18(1) provides that a Senator shall, in carrying out the oversight role over public participation and oversight role establish an oversight office in the county consisting of such persons as the Senator may consider necessary. • Include a provision that the Senator shall communicate to the public using available forms of media the persons 	

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL, SENATE BILLS NO. 17 OF 2021

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE RESOLUTION
			employed to work in the said office.	
13.	Clause 18(4)	David Muriuki Kageenu	<ul style="list-style-type: none"> • Clause 18(4) provides that a Senator shall carry out the required evaluation and may prepare for circulation within the county, a report on the public finances of the county and the participation of residents in the decision making process with respect to the public finances in the county. • The phrase, 'may' should be replaced with, 'will be required to'. 	
14.	Clause 18(5)	David Muriuki Kageenu	<ul style="list-style-type: none"> • Article 18(5) provides that the Senator shall promote public awareness on the county public finance processes through the usage of available forms of media. • The phrase, 'shall' should be replaced with, 'will be required to'. 	
15.	Clause 19(2)	County Assemblies Forum	<ul style="list-style-type: none"> • Clause 19(2) provides that the Clerk of the County Assembly may provide such logistical support as is necessary for the carrying out of a successful public participation and oversight exercise. • The Bill should clarify on the nature of the logistical support. If the Bill has financial implications on the County Assembly, then the logistical support should come from the Senate itself through the office of the Senator. 	

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL, SENATE BILLS NO. 17 OF 2021

	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE RESOLUTION
			<ul style="list-style-type: none"> • Rationale: The funds provided for by County Assemblies will be overstretched if this Bill requires the County Assemblies to provide logistical support to the Senator. 	
16.	General comments on the Bill	Council of County Governors	<ul style="list-style-type: none"> • Legislation being developed should respect the functional and institutional integrity of County Governments. The Bill goes against the provisions of the Constitution. • Further, the Constitution and the Senate Standing Orders have provided the manner in which the Senate undertakes its oversight role including through the establishment of Committees. The mischief for which this Bill tried to cure does not exist at all. • We do not support the Bill and recommend that the Senate withdraws the Bill. 	

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

REPUBLIC OF KENYA



COUNTY ASSEMBLIES FORUM (CAF)

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

CAF MEMORANDUM ON THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL,2021 (SENATE BILL N.O 17 OF 2021)

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

FROM: The County Assemblies Forum.

DATE: 22nd October 2021.

SUBJECT: CAF Memorandum on the County Oversight and Accountability Bill,2021 (Senate Bill N.O
17 of 2021)



1.0. INTRODUCTION

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

2.0. BACKGROUND

- 2.1. The County Oversight and Accountability Bill, 2018 was published on 21st September, 2018 but due to statutory limitation on the timelines it was reintroduced as the County Oversight and Accountability Bill, 2021 under the senate standing Committee on Intergovernmental Relations and Devolution. The principal object of the Bill is to provide a framework for effective oversight over the county government by the Senate. The Constitution of Kenya 2010, created a bicameral parliament to replace the existing unicameral parliament. Accordingly, the Senate was tasked with oversight over national revenue allocated to the county governments. Moreover, under the constitutional concept of devolution and the principles of public finance, the input of the public is required in all executive decision-making processes. This Bill therefore proposes to provide a mechanism on how oversight over the County budgets can be carried out. The Bill therefore gives effect to the Constitutional provisions on oversight, public participation and participatory democracy as enunciated in Articles 96, 174 and 201 of the Constitution respectively.
- 2.2. The Bill seeks to provide a national framework for Senatorial oversight in national government allocations to county governments. The Bill therefore concerns county governments in terms of Article 110(1)(a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.
- 2.3. The Bill's rationale is to enhance public financial accountability, an issue that is constitutionally mandatory as part of the country's governance framework. Senate has a role in that process. However, CAF is concerned that the Bill encroaches on the mandate county institutions and puts the Senate in conflict with county assemblies. It is consequently unconstitutional and should not be enacted in its current form and structure.



3.0. **GENERAL COMMENTS.**

- 3.1. The Bill's rationale is to enhance public financial accountability, an issue that is constitutionally mandatory as part of the country's governance framework. Senate has a role in that process. However, CAF is concerned that the Bill encroaches on the mandate county institutions and puts the Senate in conflict with county assemblies. It is consequently unconstitutional and should not be enacted in its current form and structure.
- 3.2. The true intention of this bill is noble the County Oversight and Accountability Bill is unconstitutional and not necessary. County Assemblies are the de facto institutions that are supposed to oversight the County Government.
- 3.3. The Court in its judgement of Petition 381 of 2014 as consolidated with Petition 430 of 2014 declared that: -

".....it is important to bear in mind the constitutional provisions with regard to the exercise of power by state organs. In particular, we are cognisant of the provisions of Article 10 with respect to the national values and principles that govern the exercise of state power. Among these principles is the cardinal principle of the rule of law, which requires that only powers given under the Constitution or the law is exercised by anybody or person. In this regard, Article 2(2) of the Constitution provides that "no person may claim or exercise State authority except as authorised under this Constitution". The effect of this is that if a certain power is granted to a specific organ, body or level of government, then no other entity can lawfully exercise that power.

1. *With respect to the Senate, the Constitution provides at Article 96 as follows:*

96. (1) The Senate represents the counties, and serves to protect the interests of the counties and their governments.

(2) The Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113.

(3) The Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments.



(4) The Senate participates in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with Article 145."

In reference to this judgement, the intention of proposed bill is repugnant with Article 96 of the constitution as it gives powers that were not envisioned by the constitution.

The senate should strengthen the institutions at county level to perform constitutional roles, therefore not undermine these functions through duplication. The senate may have to play different roles other than envisaged by this bill such as conducting the oversight through audit reports. CAF recognizes the Auditor General report is often late thus making it had to deal with accountability issues in real time. But this issue can be focused by building the capacity of the Auditor General Office rather than taking the measures provided in this bill.

The Whole of Part (ii) of this bill has tremendous political implications at the County level as the role of County Executive and the County Assemblies will be undermined by the Office of the Senator. One of the roles of the Member of the County Assembly

3.4. CAF appreciates the opportunity to contribute to this Bill and on the basis of the foregoing proposes the following amendments:



4.0 SUMMARY MATRIX OF THE PROPOSED AMENDMENTS

THE PROPOSED AMENDMENTS TO			
THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL, 2021 (SENATE BILL N.O 17 OF 2021)			
NO.	Section	Proposed Amendments	Justification
1.	The whole of "PART II- PUBLIC PARTICIPATION FACILITIES"	This part should be removed and inserted under the draft Public Participation Bill, 2018	It beats logic that the creation of the infrastructure for public participation forums should be under this bill while already there is a draft Public Participation Bill, 2018 which incorporates the views of the stakeholders. The Senate can legislate on this through the Public Participation Bill, 2018 which is currently before it.
2.	<p>Clause 17</p> <p>17. (1) Each Senator shall facilitate public participation through public awareness campaigns in each ward within the respective county.</p> <p>(2) For the purpose of subsection (1), the Senator shall—</p>	<ul style="list-style-type: none"> This Clause should be repealed and replaced to allow the County Governments facilitate public participation forums as mandated by the Constitution. This will enable the county government to carry out its mandate by allowing the County Assemblies to oversight the County Executive as envisioned in the constitution and the County Government ACT. 	Article 96(1) of the Constitution which mandates the senate to protect the interest of the Counties and their government places and impetus on the senate to strengthen the structures of the County Government. By duplicating the roles of County Assemblies this clause serves to weaken and undermines the mandates of County Assemblies



	<p>(a) establish public participation and oversight programmes for the respective county;</p> <p>(b) hold public hearings on matters of public interest within the respective counties;</p> <p>(c) facilitate access to information held by the county government;</p> <p>(d) engage the communities and interest groups on the formulation of plans for the economic development of the county;</p> <p>(e) facilitate the participation of the communities in the engagement with the departments and the county government on financial matters;</p> <p>(f) monitor spending patterns of public entities within the county; and</p> <p>(g) monitor compliance by the respective county with</p>	
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	<p>(3) The Senator shall not employ a person under subsection (3) unless such person—</p> <p>(a) is a Kenyan citizen;</p> <p>(b) has a university degree from an institution recognized in Kenya; and</p> <p>(c) has at least three years relevant experience in budget control, audit, monitoring and evaluation.</p> <p>(4) The Senator shall carry out the required evaluation and may prepare for circulation within the county, a report on the public finances of the county and the participation of residents in the decision-making process with respect to the public finances in the county.</p> <p>(5) The Senator shall promote public awareness on the county public finance processes through the usage of</p>	
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	<p>available forms of media.</p> <p>(6) The county executive committee member shall avail to the Senator with all pertinent information necessary to carry out the oversight role under this Act.</p>		
4.	<p>19(2) The Clerk of the County Assembly may provide such logistical support as is necessary for the carrying out of a successful public participation and oversight exercise.</p>	<p>Clarify on the nature of the logistical support. Does it have financial implications on the County Assembly? If so, the logistical support should come from the Senate itself through the office of the Senator</p>	<p>The funds provided for County Assemblies will be overstretched if this bill requires the county Assembly to provide Logistical Support to the Senator</p>

Thank you.

Yours sincerely,

JUDY ODUMA WANGALWA
CHIEF EXECUTIVE OFFICER

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



IGRTC
INTERGOVERNMENTAL
RELATIONS TECHNICAL
COMMITTEE

Consultation, Cooperation & Coordination in Devolution

LEGISLATIVE MEMORANDUM ON THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL, 2021

TO

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

FROM

THE INTERGOVERNMENTAL RELATIONS TECHNICAL COMMITTEE

22ND OCTOBER, 2021

1. Introduction

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

2. Background

The Bill proposes to give effect to Articles 96(1) and (3) of the Constitution, to enhance public financial accountability by the county governments, as well as make provisions for public participation among other issues. Article 96 (1) of the COK provides that the Senate represents the counties, and serves to protect the interests of the counties and their governments, while Article 96 (3) provides that the Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments. This Bill therefore seeks to enhance the role of the Senate as an oversight organ, while promoting the role of the citizenry in decision making processes through public participation.

3.0 OBSERVATIONS AND SUBMISSIONS BY IGRTC

CLAUSE OF THE BILL	OF	PROVISION OF CLAUSE OF THE BILL	OBSERVATIONS BY IGRTC	SUBMISSIONS BY IGRTC
PART OBJECTS OF THE BILL	I- OF	Section 3 (c) provides that one of the objects of the Bill is promoting accountability and transparency in the acquisition and disposal of assets and	In accordance with Section 12 (b) of the Intergovernmental Relations Act, 2012 as read with Section 7 (2) (e) of the (<i>now lapsed</i>) Transition to Devolved Government Act, 2012,	The oversight office established by the Senator may consider working in consultation with IGRTC in verifying information pertaining to the assets and liabilities

CLAUSE OF THE BILL	PROVISION OF CLAUSE OF THE BILL	OBSERVATIONS BY IGRTC	SUBMISSIONS BY IGRTC
	<p>incurring of liabilities by county governments</p>	<p>IGRTC is mandated with the preparation of inventories of all existing assets and liabilities of government, other public entities and local authorities.</p> <p>In this regard, IGRTC has already undertaken the identification, verification and validation of assets and liabilities of the defunct local authorities and those of national government relating to devolved functions, for the period up to 27th March 2013. IGRTC has also prepared liquidation options for the settlement of the identified liabilities.</p>	<p>documented in the registers prepared by IGRTC; and implementation of the liquidation options for purposes of settlement of liabilities.</p>
<p>PART II— PUBLIC PARTICIPATION FACILITIES</p>	<p>Clauses 5- 7 of the Bill provide for matters relating to county public participation facilities, criteria for infrastructural development of public participation facilities and assessment of infrastructural needs for the public participation facilities.</p>	<p>The Bill does not make provisions for accessibility of the physical venues to persons living with disabilities.</p>	<p>Section 21 of the Persons with Disability Act provides that: Persons with disabilities are entitled to a barrier- free and disability friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility.</p> <p>Section 22(1) of the same Act provides that: A proprietor of a</p>

CLAUSE OF THE BILL	PROVISION OF CLAUSE OF THE BILL	OBSERVATIONS BY IGRTC	SUBMISSIONS BY IGRTC
			<p>public building shall adapt it to suit persons with disabilities in such manner as may be specified by the Council.</p> <p>In this regard, there is need to ensure that the venues are conducive for persons with disabilities.</p>
	<p>The Bill lays emphasis on the importance of the development of infrastructure for public participation, which has the overall effect of improving access for the citizenry.</p>	<p>It is also important to ensure that the citizens are not only able to access but also to understand the information that is passed to them through these public participation forums.</p>	<p>There is therefore need to ensure that in facilitating public awareness, the Senate devices mechanisms to ensure that information is presented in a manner and language understood by citizens, for effective decision making. This may include cascading to the national broadcasting stations or of widely listened vernacular stations.</p> <p>Additionally, in accordance with Article 7 (3) (b) of the Constitution, which provides that the State shall promote the development and use of indigenous languages, Kenyan Sign language, Braille and</p>

CLAUSE OF THE BILL	PROVISION OF CLAUSE OF THE BILL	OBSERVATIONS BY IGRTC	SUBMISSIONS BY IGRTC
			<p>other communication formats and technologies accessible to persons with disabilities, it is important for the Senate to ensure that participants including persons with disabilities get equitable access to the information they need to participate in a meaningful manner.</p>

***3. Submissions by
Mr. David Kageenu***

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21st July 2021

Standing Committee on Devolution and Intergovernmental Relations

The Senate of The Republic Of Kenya

Nairobi, Kenya

Hon. Senators,

**RE: REPRESENTATIONS ON THE COUNTY OVERSIGHT & ACCOUNTABILITY
BILL (SENATE BIL NO 17 OF 2021)**

Pursuant to the invitation for public participation and submission of memoranda against The County Oversight & Accountability Bill (Senate Bill No. 17 of 2021) that was introduced to the Senate by way of First Reading, I hereby submit my amendments for your consideration as per the provisions of Article 119 of the Constitution.

I have also submitted my arguments supporting the proposed amendments.

Best regards,

David Muriuki Kageenu

Private Citizen

PART 2 – OVERSIGHT AND PUBLIC PARTICIPATION PROGRAMMES

1. Amendment of article 18 subsection 1

Article 18 subsection 1 of The County Oversight and Accountability Bill (Senate Bills No, 17 of 2021) currently reads...

“A Senator shall, in carrying out the oversight role over public participation and oversight role over the collection, use and management of finances in the respective county, establish an oversight office in the county consisting of such persons as the Senator may consider necessary.”

An addition to subsection 1 for the bill to read...

“18. (1) A Senator shall, in carrying out the oversight role over public participation and oversight role over the collection, use and management of finances in the respective county-

- a. establish an oversight office in the county consisting of such persons as the Senator may consider necessary
- b. Communicate to the public using available forms of media the persons employed to work in the office under subsection (1)”

2. Amendment of article 18 subsection 4

Article 18 subsection 4 of The County Oversight and Accountability Bill (Senate Bills No, 17 of 2021) currently reads...

“The Senator shall carry out the required evaluation and may prepare for circulation within the county, a report on the public finances of the county and the participation of residents in the decision-making process with respect to the public finances in the county”

The word “*must*” should be omitted and replace with the phrase “*will be required to*”. The amended bill will read...

“The Senator shall carry out the required evaluation and will be required to prepare for circulation within the county, a report on the public finances of the county and the participation of residents in the decision-making process with respect to the public finances in the county.”

3. Amendment of article 18 subsection 5

Article 18 of subsection 4 of The County Oversight and Accountability Bill (Senate Bills No. 17 of 2021) currently reads...

“The Senator shall promote public awareness on the county public finance processes through the usage of available forms of media”

The word “*shall*” should be omitted and replace with the phrase “*will be required to*”. The amended bill will read...

“The Senator will be required to promote public awareness on the county public finance processes through the usage of available forms of media”.

VALIDATION BEHIND THE PROPOSED AMENDMENTS

PART 2 – OVERSIGHT AND PUBLIC PARTICIPATION PROGRAMMES

1. Amendment of article 18 subsection 1

I strongly believe that the public should be made aware on persons employed in the oversight office within the county. This will enable the public to provide their views directly to members of the office on issues that they may have. The public will also be able to keep the leader and his team accountable in the oversight role. The end goal is to make this office easily accessible to the public. Lastly, all funding being directed to this office is taxpayer money and therefore transparency is required.

2. Amendment of article 18 subsection 4

Seeing as this office will be employing up to 3 people qualified in budget control, audit, monitoring and evaluation, this team should be capable of developing a report. Therefore, it should be a mandatory expected output from this office and this should be explicitly mentioned in the bill. This report is what the Kenyan citizens will be using to keep their county governments accountable. From this report they will also see how their county government is performing therefore it is a key report that should be publicized to the citizens.

3. Amendment of article 18 subsection 5

I believe one of the reasons we have poor accountability is that leaders themselves sometimes do not take it seriously. Therefore, making it mandatory that a senator communicates to the people on public participation matters means that accountability will increase. The public will then be able to clearly judge for themselves those leaders that are truly working for them and those that are not.

Annex 3:

NEWSPAPER ADVERTISEMENT

REPUBLIC OF KENYA



TWELFTH PARLIAMENT | FIFTH SESSION THE SENATE

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Tuesday, 6th July, 2021, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

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

The Memoranda may be sent **by email** on the address: cSenate@parliament.go.ke and copied to the respective Committee email addresses indicated at the fourth column below, to be received on or before **Friday, 23rd July, 2021 at 5.00pm**.

	Bill	Committee Referred To	Email Address
a)	The County Oversight and Accountability Bill (Senate Bills No. 17 of 2021)	Standing Committee on Devolution and Intergovernmental Relations	senatedevolution@gmail.com
b)	The National Cohesion and Peace Building Bill (Senate Bills No. 19 of 2021)	Standing Committee on National Cohesion, Equal Opportunity and Regional Integration	nationalcohesionc@gmail.com
c)	The County Boundaries Bill (Senate Bills No. 20 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlahrc@parliament.go.ke
d)	The Preservation of Human Dignity and Protection of Economic and Social Rights Bill (Senate Bills No. 21 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlahrc@parliament.go.ke
e)	The Heritage and Museums Bill (Senate Bills No. 22 of 2021)	Standing Committee on Labour and Social Welfare	senatecommittee.labour@parliament.go.ke
f)	The Coconut Industry Development Bill (Senate Bills No. 24 of 2021)	Standing Committee on Tourism, Trade and Industrialization	senatetourismandtrade@gmail.com
g)	The Kenya Citizenship and Immigration (Amendment) Bill (Senate Bills No. 33 of 2021)	Standing Committee on National Security, Defence and Foreign Relations	scnsdfr2021@gmail.com
h)	The Alternative Dispute Resolution Bill (Senate Bills No. 34 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlahrc@parliament.go.ke
i)	The County Governments Grants Bill (Senate Bills No. 35 of 2021)	Standing Committee on Finance and Budget	scfinanceandbudget@gmail.com

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

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

