

PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-FOURTH SESSION

THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT
COMMITTEE

REPORT ON THE CONSIDERATION OF THE REFERENDUM BILL,
(NATIONAL ASSEMBLY BILLS NO 11), 2020

Directorate of Committee Services
The National Assembly,
Parliament Buildings,
NAIROBI

SEPTEMBER, 2020

PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-FOURTH SESSION

**THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT
COMMITTEE**

**REPORT ON THE CONSIDERATION OF THE REFERENDUM BILL,
(NATIONAL ASSEMBLY BILLS NO 11), 2020**

Directorate of Committee Services
The National Assembly,
Parliament Buildings,
NAIROBI

SEPTEMBER, 2020

TABLE OF CONTENTS

LIST OF ANNEXTURES.....	3
CHAIRPERSON'S FOREWORD.....	4
CHAPTER 1	5
1 PREFACE.....	5
1.1 Establishment and Mandate.....	5
1.2 Committee Membership.....	5
1.3 Committee Secretariat	7
1.4 Adoption of the Committee Report	7
CHAPTER 2	8
2.0 INTRODUCTION AND BACKGROUND	8
2.1 Background	8
CHAPTER 3	10
3 HIGHLIGHTS OF THE REFERENDUM BILL, (NATIONAL ASSEMBLY BILLS NO.11), 2020.....	10
3.1 PART I - PRELIMINARY	10
3.2 PART II – AMENDMENT OF THE CONSTITUTION BY POPULAR INITIATIVE Error! Bookmark not defined.	
3.3 PART III-CONDUCT OF A REFERENDUM	12
3.4 PART IV-MATTERS PRELIMINARY TO REFERENDUM	13
3.5 PART V – VOTING AND REFERENDUM RESULTS.....	14
3.6 PART VI – REFERENDUM PETITIONS	16
3.7 PART VII – MISCELLANEOUS	17
3.8 PART VIII – PROVISIONS ON DELEGATED POWERS.....	18
3.9 PART IX – CONSEQUENTIAL AMENDMENTS	18
CHAPTER 4	19
4 PUBLIC PARTICIPATION IN CONSIDERATION OF THE BILL	19
4.1 Legal framework	19
4.2 Analysis of Stakeholder Submissions by the Committee.....	20
CHAPTER 5	89
5 PROPOSED COMMITTEE STAGE AMENDMENTS	89

CHAPTER 1

1.0 PREFACE

1.1 Establishment and Mandate

1. The Constitutional Implementation Oversight Committee (CIOC) is a National Assembly Select Committee constituted under Section 4 of the Sixth Schedule to the Constitution of Kenya. The Committee is responsible for overseeing the implementation of the Constitution and among other things-
 - i. Receive regular reports from the Commission on the Implementation of the Constitution (CIC) on the implementation of the Constitution of Kenya, 2010 including reports concerning: -
 - (a) the preparation of the legislation required by the Constitution and any challenges in that regard;
 - (b) the process of establishing the new commissions;
 - (c) The process of establishing the infrastructure necessary for the proper operation of each county including progress on locating offices and assemblies and establishment and transfers of staff.
 - (d) The devolution of powers and functions to the counties under the legislation contemplated in section 15 of the sixth Schedule;
 - (e) Any impediments to the process of implementing this Constitution.
 - ii. Coordinate with the Attorney-General, the Commission on the Implementation of the Constitution and relevant Parliamentary committees to ensure the timely introduction and passage of the legislation required by the Constitution; and
 - iii. Take appropriate action on the reports including addressing any problems in the implementation of the Constitution.

1.2 Committee Membership

2. The Committee was constituted in December, 2017 and consists of the following Members:

Hon. Jeremiah Kioni, M.P (Chairperson)
Ndaragwa Constituency
Jubilee Party

Hon. George Opondo Kaluma (Vice Chairperson)
Homabay Town Constituency
Orange Democratic Movement Party

Hon. (Dr.) Naomi Shaban, MP
Taveta Constituency
Jubilee Party

Hon. Yusuf Hassan, MP
Kamukunji Constituency
Jubilee Party

Hon. Raphael B.S. Wanjala, MP
Budalangi Constituency
Orange Democratic Movement Party

Hon. Dr. Christine Ombaka, MP
Siaya County
Orange Democratic Movement Party

Hon. Charles Gimose, MP
MP for Hamisi Constituency
FORD Kenya Party

Hon. Tom J. Kajwang, MP
Ruaraka Constituency
Orange Democratic Movement Party

Hon. Purity Ngirici, MP
Kirinyaga County
Jubilee Party

Hon. Peris Tobiko, MP
Kajiado East Constituency
Jubilee Party

Hon. Anthony Oluoch, MP
Mathare Constituency
Orange Democratic Movement Party

Hon. Joash Nyamoko, MP
North Mugirango Constituency
Jubilee Party

Hon. Bernard Okoth, M.P.
Kibra Constituency

Orange Democratic Movement Party

Hon. Abdi Shurie, MP
Balambala County
Jubilee Party

Hon. (Col.) Geoffrey King'ang'i, MP
Mbeere South Constituency
Jubilee Party

Hon. Simon Ng'ang'a King'ara, MP
Ruiru Constituency
Jubilee Party

Hon. Catherine Wambilianga, M.P.
Bungoma County
FORD Kenya Party

Hon. Moses Kirima, MP
Central Imenti Constituency
Jubilee Party

Hon. Daniel Rono, M.P.
Keiyo South Constituency
Jubilee Party

Hon. Didmus Wekesa Barasa, MP
Kimilili Constituency
Jubilee Party

Hon. Japheth Mutai, MP
Bureti Constituency
Jubilee Party

Hon. Fabian Muli, MP
Kangundo Constituency
Muongano Party

Hon. Halima Mucheke, M.P.
Nominated Member
Jubilee Party

1.3 Committee Secretariat

3. The Committee's secretariat comprises of the following officers:-

Mr. Edward Libendi	Senior Legal Counsel & Clerk of the Committee
Ms. Christine Odhiambo	Legal Counsel I
Ms. Mary Luka Lemerelle	Clerk Assistant III
Mr. Allan Gituku	Commissionaire

1.4 Adoption of the Committee Report

4. We, the Members of the Constitutional Implementation Oversight Committee have, pursuant to Standing Order 199, adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached list (Annexure 3).

CHAPTER 2

2.0 INTRODUCTION AND BACKGROUND

2.1 Background

5. The Constitutional Implementation Oversight Committee is mandated by section 4 of the sixth schedule of the Constitution to prepare any legislation required to implement the Constitution and address any impediments to the process of implementation of the Constitution of Kenya.
6. The Committee in the execution of its mandate undertook the task of auditing the Constitution, statutes enacted to operationalize the Constitution and existing government policies to establish the status of implementation of the Constitution and any gaps existing in the Constitution that could be hampering implementation or impediments to full realization of the letter and spirit of the Constitution.
7. The Committee in auditing the status of implementation of the Constitution received and considered submissions from various actors involved in implementation of the Constitution and identified several gaps that needed constitutional amendments and various laws that needed to be enacted or amended to make them consistent with the Constitution or to bring into effect some articles of the Constitution.
8. The Committee noted that some of the proposed amendments to the Constitution related to matters contained in Article 255 of the Constitution that require to be approved by a Referendum, while there was no comprehensive law governing the process of conducting a referendum in Kenya other than the general provisions in Article 255(2) of the Constitution and a few provisions in the Elections Act, 2011.

9. The Committee also interacted with officials of the Thirdway Alliance Party of Kenya that had developed a Constitutional amendment Bill (popularly known as “Punguza Mzigo”), through a popular initiative, by collecting the required one million signatures. During this interaction, the Committee noted that the process of amending the Constitution by popular initiative as contained in Article 257 of the Constitution did not have elaborate provisions on verification by the IEBC of the signatures collected by the promoters; the procedure to be followed in consideration of the Bill by county assemblies including the threshold for voting, and what is communicated to the Speakers of Parliament after the County Assembly process the draft Bill and the legal timelines.
10. The Committee therefore in a bid to address the above issues among others, drafted the Referendum Bill, (National Assembly Bills No. 11), 2020 as a Committee Bill sponsored through its Chairperson, Hon. Jeremiah Kioni, M.P. The Bill was published in the Kenya Gazette on 8th May, 2020 as (National Assembly Bills No. 11 of 2020). It was introduced in the National Assembly through First Reading on 2nd June, 2020 and was subsequently committed to the CIOC for facilitation of public participation and reporting to the House, pursuant to provisions of Standing Order 127 (3) and (6).

CHAPTER 3

3.0. HIGHLIGHTS OF THE REFERENDUM BILL, (NATIONAL ASSEMBLY BILLS NO.11), 2020

11. The principal object of the Bill is to provide for the procedure of the approval of an amendment to the Constitution of Kenya by a referendum, the conduct of a referendum, referendum petitions and consequential amendments to the Elections Act, No. 24 of 2011 which currently provides for the conduct of a referendum. It further seeks to provide for the procedure for amendment of the Constitution by popular initiative as provided under Article 257 of the Constitution.

12. Below is a highlight of the provisions contained in the Bill:

3.1. PART I - PRELIMINARY

13. The objects of the Bill include,:

- (a) provide for the procedure for the approval of an amendment to the Constitution by a referendum;
- (b) provide for the procedure for amendment of the Constitution by popular initiative; and
- (c) provide for the mechanisms for challenging the conduct and results of a referendum through referendum petitions;

3.2. PART II – AMENDMENT OF THE CONSTITUTION BY POPULAR INITIATIVE

14. Article 257 of the Constitution provides a mechanism for the people of Kenya to initiate an amendment of the Constitution through a popular initiative by collecting at least one

million signatures in support of the amendment. This part provides in detail the process to be followed by promoters of the popular initiative drive, from the time of developing the draft Bill, collection and verification of signatures and processing of the Bill through county assemblies and Parliament.

15. The Independent Electoral and Boundaries Commission (IEBC) is charged with the responsibility of assisting the promoters in redrafting the Constitutional (amendment) Bill to meet the format required in law and in verification of the signatures of the registered voters who signed in support of the proposal within ninety days of receipt of the draft Bill.
16. The Independent Electoral and Boundaries Commission after verifying that the draft Bill and the accompanying signatures meet the requirements of Article 257 of the Constitution, it is required to submit the Constitutional (amendment) Bill to all the County Assemblies for consideration. The County Assemblies have a maximum of three months of receipt of the Bill to consider the draft Bill and communicate to Parliament their verdicts.
17. The County Assembly is required through the chairperson of the relevant committee, to introduce the draft Bill in the Assembly for consideration as a Motion. The County Assembly can only approve or reject the Bill as it is, and is not allowed to amend the draft Bill. The threshold for approval is by a simple majority of the Members of the County Assembly.
18. Where a County Assembly approves the draft Bill within the period specified above, the Speaker of the respective County Assembly is required to communicate to the Speakers of the two Houses of Parliament by delivering a copy of the draft Bill together with a certificate that the county assembly has approved the Bill

19. The Bill shall be introduced in the two Houses of Parliament for consideration if it has been approved by at least twenty four (a majority) county assemblies, within fourteen days of such approval. Once the draft Bill has been passed by a majority of the county assemblies, the said Constitutional Amendment Bill will be considered passed by Parliament when supported by a majority of the members of each House of Parliament. Such a Bill when rejected by either House of Parliament is required to be submitted to the people through a referendum and cannot lapse or be defeated in Parliament.
20. The Bill proposes that the chairperson of the relevant committee of each House of Parliament shall be the one to introduce the Bill in the respective House.

3.3. PART III-CONDUCT OF A REFERENDUM

21. The Bill proposes that the Independent Electoral and Boundaries Commission (IEBC) shall conduct a national referendum for approval of the Constitutional (amendment) Bill within ninety days of receipt of communication from the President to do so if the Bill relates to matters under Article 255(1) of the Constitution or one or both Houses of Parliament have failed to pass a Bill brought through a popular initiative under Article 257 (10) of the Constitution.
22. The IEBC is required to publish in the Kenya Gazette, the Referendum Question within seven days of receipt of the notice/request to conduct a referendum above, develop and assign symbols for each answer to a Question so developed.
23. The Bill proposes that the IEBC shall within fourteen days of publication of the Referendum Question, publish in the Kenya Gazette a notice of holding a referendum, which notice shall specify the following:
- a) The Question to be determined;

- b) The symbol assigned to each answer to the Referendum Question;
 - c) The day on which a Referendum is to be held and the polling times;
 - d) The deadline for registration of the Referendum Committees; and
 - e) The campaign period for those in support of and those opposed to the referendum.
24. The Bill proposes that the IEBC shall upon issuance of the referendum notice, suspend the registration of voters and it is further given the mandate of conducting voter and civic education.
25. The Bill proposes that the answer to the Referendum Question and which voters will be required to choose from shall either be “Yes” or “No”.

3.4. PART IV-MATTERS PRELIMINARY TO REFERENDUM

26. This Part provides for appointment of officers to assist the IEBC to conduct the Referendum, the persons entitled to vote at a Referendum and the identification documents to present during voting, the designation of polling areas, establishment of Referendum Committees and qualifications for registration and deregistration of the Referendum Committees and appointment of Agents of the Referendum Committees and their roles.
27. The Bill proposes that the IEBC shall appoint a returning officer for each constituency and other referendum officers as it may deem necessary. It further empowers the returning officers to appoint presiding and deputy presiding officers for each polling station.
28. The register of voters prepared for use at a General Election is the register that will be used during the referendum.

29. A person who wishes to vote at a referendum will be required to produce their identification card or valid Kenyan passport for identification purposes.
30. The IEBC is required to divide each constituency into polling areas, designate polling stations for each area, assign a distinguishing number or letter to each polling area and publish such information in the Gazette.
31. The Bill proposes that a person or persons intending to campaign for or against a Referendum Question shall apply to the IEBC to form one national referendum committee and one referendum committee in each constituency for each question to be determined during a referendum.
32. The IEBC shall register a referendum committee where the Commission is satisfied that the applicant adequately represents those campaigning for a particular outcome and the name of the committee does not resemble the name of another committee or a registered political party.
33. Each referendum committee is required to appoint a chief agent before being registered who will represent the candidate at the polling station and witness opening and closing of ballot boxes and the voting taking place at the polling stations.
34. Campaigns for or against the referendum question are required to be suspended twenty-four hours before the start of the voting.

3.5. PART V – VOTING AND REFERENDUM RESULTS

35. This part deals with the actual process of voting at the referendum, the method of voting to be applied, right to vote by Kenyan citizens out of the country, those with disabilities and those in prisons, accreditation as referendum observers and the roles of the observers,

declaration of constituency referendum results by the returning officers, transmission of results to the IEBC and tallying and declaration of results by the IEBC.

36. The Bill provides that voting at the national referendum shall be by secret ballot and that the ballot paper shall contain the referendum question stated in both English and Kiswahili.
37. The IEBC is required to make special provisions for Kenyan citizens who are not able to vote like the others e.g. those out of the country, those in hospitals, those in prisons, the disabled persons, expectant mothers and those leading nomadic life to vote.
38. Any person or group requiring to participate as referendum observers are required to apply for accreditation with the IEBC at least two months before the referendum date. The accredited observer is required to submit their observation report not later than six months after the date of announcement of the referendum results.
39. The Returning officer shall after receiving results from the polling stations in a constituency, verify the results and publicly declare to the persons present the results of the referendum and the side that has won in that constituency and thereafter transmit the same results to the IEBC.
40. The Commission after receiving results from all constituencies or if in the opinion of the Commission, the results that have not been received would not make a difference to the results of the referendum, may declare the results of the referendum.
41. The Commission is required within forty eight hours from the close of the final polling in the referendum, announce to the public the results of the referendum and declare whether or not the amendment to the Constitution has been ratified and publish in the Gazette a certificate declaring whether or not the amendment to the Constitution has been ratified.

3.6. PART VI – REFERENDUM PETITIONS

42. This part deals with the mechanisms with which persons aggrieved with the conduct, results and validity of the referendum can seek redress in the court, the duration of consideration of the petitions and the decisions the courts can make.
43. The Bill proposes that any of the following persons has *locus standi* and can file a petition against the referendum results:
- a) Any person who voted or had a right to vote in a constituency, If the petition concerns referendum results from that constituency;
 - b) Any person who voted or had a right to vote at the referendum, if the petition is to challenge the declared referendum results.
44. The referendum petition will be presented on any of the following grounds:
- a) On the result of the voting in all the constituencies or in any one constituency that there were corrupt practices in relation to the voting or there was an error or misconduct on the part of a referendum officer; and
 - b) In respect of the declared result of the referendum that there was an error in the counting or tallying of the votes cast.
45. The petition will be considered if it is filed within twenty one days of the publication of the referendum results in the Gazette and shall be heard and determined within six months from the date of presentation of a petition by a bench of three judges appointed by the Chief Justice.
46. The petitioner is required to serve all the respondents to the petition either personally or by advertisement in a newspaper with national circulation within seven days of filing.

47. Where there are more than one referendum petitions filed, the Registrar of the High Court is required to make a list of all the referendum petitions filed in the order in which they were filed and unless the High Court orders otherwise, they will be tried in the order in which they appear on the Registrars list
48. A petitioner is required to deposit one million shillings as security for costs of a petition within ten days of presenting the petition, failure to which the petition shall be struck out.
49. The High Court may order any person who appears to the court to be concerned or affected by the referendum petition to attend as a witness and be examined and may on its own motion or upon application by a petitioner during the hearing, order for a scrutiny of the votes.
50. The Bill further proposes that at the conclusion of the hearing of the referendum petition challenging the conduct or result of a referendum, the High Court may dismiss the petition, declare the referendum to be void following which the Commission shall conduct a fresh referendum within ninety days or uphold the petition in whole or in part.
51. After the verdict of the High Court, the Registrar of the High Court is required to submit to the IEBC a certificate under the Registrar's hand communicating the verdict of the court and the Commission shall thereafter declare and publish the result of the referendum in the Gazette, which declaration shall be final.

3.7. PART VII – MISCELLANEOUS

52. This part provides for offences committed by a referendum officer or any other person having a duty to perform a certain act and fails to so perform and prescribes the penalty for the offence to be imprisonment for a term not exceeding six months or a fine not exceeding two hundred thousand or to both.

3.8. PART VIII – PROVISIONS ON DELEGATED POWERS

53. This part gives the Independent Electoral and Boundaries Commission (IEBC) powers to make regulations touching on the following:
- a) Governing verification of registered voters and signatures;
 - b) Governing the composition and registration of referendum committees;; and
 - c) Generally for carrying out the provisions of this Act.

3.9. PART IX – CONSEQUENTIAL AMENDMENTS

54. This part contains certain provisions of the Elections Act, 2011 that addressed conduct of a national referendum but which were not comprehensive and have been incorporated in the Referendum Bill, 2020 and therefore are being proposed for deletion to avoid replication.

CHAPTER 4

4.0. PUBLIC PARTICIPATION IN CONSIDERATION OF THE BILL

4.1. Legal framework

55. Article 118 (1) (b) of the Constitution of Kenya provides as follows-

''Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees''.

56. Standing Order 127(3) as read together with Standing Order 127 (6)(a) requires the Select Committee to which a Bill is committed to facilitate public participation and in so doing to take into account the views and recommendations of the public when the Committee makes its report to the House.

57. In line with the Constitution and Standing Orders, the Constitutional Implementation Oversight Committee, in the local daily newspapers of 7th April, 2020, invited the public to make written submissions on the Bill. The Committee also invited certain specific institutional stakeholders it considered important in implementation of the Bill to send written submissions and appear and make oral clarifications on the Bill. The Committee did not undertake public hearings on the Bill because of the restrictions on public gatherings that were imposed by the Government in trying to manage COVID-19 pandemic.

58. Following the appeals, the Committee received written responses from various stakeholders and while observing social distancing guidelines issued by the Speaker of the National Assembly, also held physical meetings with representatives of the following organizations that had submitted written memoranda:

- a) The Kenya Law Reform Commission;
- b) The Independent Electoral and Boundaries Commission (IEBC);
- c) The Office of the Registrar of Political Parties;
- d) The National Gender and Equality Commission;
- e) The Commission on Administrative Justice;
- f) The Kenya National Commission on Human Rights (KNCHR).

59. In addition to the above organisations, the Committee also received written submissions on the Bill from the following organisations:

- a) The Political Parties Liaison Committee;
- b) The Law Society of Kenya;
- c) The National Treasury;
- d) The Centre for Multiparty democracy; and
- e) The Katiba Institute.

60. By the time of compiling this report, the Committee had however not received submissions from the Office of the Attorney General and Department of Justice and the Judiciary despite having sent invitations and reminders to the two institutions.

4.2. Analysis of Stakeholder Submissions by the Committee

61. The stakeholders who submitted memoranda on the Bill had divergent views on the Bill with various recommendations for amendments.

62. The table below presents in summary form the submissions received from the stakeholders above and an analysis of the submissions by the Committee:

ANALYSIS OF STAKEHOLDER SUBMISSIONS ON THE REFERENDUM BILL,
2020

Clause	Stakeholder	Proposed Amendment	Justification	Analysis
2	Office of the Registrar of Political Parties	• Delete the definition of “elector” and instead define “voter” • Delete definition of “elector’s card”	• The term used and defined in the Elections Act is “voter”	• There is need to amend the Bill so as to conform to the terms used in the Elections Act.
	Independent Electoral and Boundaries Commission	• Delete the definition of “elector” and instead define “voter” • Delete definition of “elector’s card” • Delete the words “polling area” and replace with “electoral area” • Delete “polling time” and replace with “voting period”	• Makes reference to wrong definitions • The term “elector’s card” has since been deleted from the Elections Act • Assign definitions contained in the Elections Act	• There is need to amend the Bill so as to conform to the terms used in the Elections Act.
	Centre for Multi-party Democracy	• Delete the definition of “elector” and instead define “voter”	To avoid confusion	• There is need to amend the Bill so as to conform to the terms used in the Elections Act.
	Katiba Institute	• Delete the definition of “elector” and instead define “voter”	• For clarity purposes • To avoid confusion	• There is need to amend the Bill so as to conform to the terms used in the Elections Act.
		• Definition of “polling station”- delete the word “electors”	To avoid confusion	• There is need to amend the Bill so

				as to conform to the terms used in the Elections Act.
	Kenya Law Reform Commission	- Expand the objects of the Bill to include the conduct of all forms of referenda - Provide for the procedure of conduct of county referenda	These provisions are not included in the Bill	There may be need to include the provisions in the Bill However, section 90 of the County Governments Act provides— <i>“(1) A county government may conduct a local referendum on among other local issues—</i> <i>(a) county laws and petitions;</i> <i>or</i> <i>(b) planning and investment decisions affecting the county for which a petition has been raised and duly signed by at least twenty five percent of the registered voters where the referendum</i>

				is to take place. (2) The Elections Act (No. 24 of 2011) shall apply, with necessary modifications, with regard to a referendum referred to under subsection (1). ”
Independent Electoral and Boundaries Commission	• Reword paragraphs (a) and (b)	• They have the same meaning		There may be need to delete one of the paragraphs since they both provide for the procedure and conduct of a referendum to amend the Constitution.
Katiba Institute	• 3(a) and (b) have the same meaning	• No difference between the 2 paragraphs		There may be need to delete one of the paragraphs since they both provide for the procedure and conduct of a referendum to amend the Constitution.
	• 3(c)- implies that only the process of conducting a referendum may be challenged • The conduct, result and validity of a referendum may be challenged by petition	• To ensure that parties have accurate information regarding the law governing referendum		Paragraph (c) may be amended to provide for “the procedure to challenge the conduct of a referendum or any matter that constitutes a referendum offence”
	• Clause 3 does not mention other referendums	• Include other referendums		The Committee may consider the inclusion of a provision relating

				to the conduct of a referendum on any matter other than the amendment of the Constitution. “Whenever it is necessary to hold a national referendum on any issue other than to amend the Constitution, the President may, by notice in the Gazette, direct the Commission to conduct a referendum within such period as may be specified in the Gazette.”
ar II	Kenya Law Reform Commission	The Part does not contain provisions on procedures to amend the Constitution by parliamentary initiative.	Articles 255-257 of the Constitution provides for two ways of amending the Constitution, that is parliamentary initiative and popular initiative.	The Referendum Bill, 2020 seeks to provide a legal framework for the conduct of referenda, specifically in regards to matters contemplated in Article 255(1) of the Constitution. In case of an amendment of the Constitution which does not require the conduct of a referendum, Article 256 expressly provides

				for the procedure to be followed.
Katiba Institute	Does not include public participation	Meaningful public participation should meet the threshold for general satisfaction and confidence in the process.	Article 88(4) of the Constitution mandates the IEBC to conduct voter education in conducting the election or referendum process. The IEBC is therefore mandated to conduct voter education before the conduct of a referendum. Further, clause 7(4) of the Bill provides that the Commission shall conduct voter and civic education on the question to be determined during a referendum. The amendment is therefore not necessary.	
Kenya Law Reform Commission	4(3)- There should be clear provisions on the steps to be followed in formulating the draft Bill.	-	Including provisions on the formulation of a Bill would amount to over-legislation. Further, Articles 10 and 118 of the Constitution adequately provide for the principle of public	

			participation.
Commission on Administrative Justice	• Change sequence of sub-clauses, sub-clause (1) to come after sub-clause (5).	• Development of Regulations should not come at the beginning of the provision.	• The current sub-clause (1) may be moved at the end of the clause.
	• Include express timeline for the development of the Regulations.	• To guard against any vacuum and ensure operationalization of the Act.	• Inclusion of express timelines for the development of the Regulations will ensure the operationalization of the Act.
Office of the Registrar of Political Parties	• 4(1)- Delete	• The power to make Regulations is provided in Clause 45 of the Bill	• There may be need to move this provision to Clause 45 of the Bill, under the matters in respect of which the Commission has power to make regulations.
	• 4(2)- Redraft the clause to start with “The Commission may redraft a Bill to amend the Constitution through Article 257 by popular initiative...”	• For structural drafting	• The proposed amendment is not necessary since the clause as drafted meets the drafting style requirements
	• 4(4)- Delete the reference to verifying signatures	• The IEBC has no way of ascertaining signatures	• Article 257(4) of the Constitution places an

			obligation on the IEBC to verify that a popular initiative is supported by at least one million registered voters. The verification is not tied to the verification of signatures but to the verification of registered voters. Therefore there may be need to amend the provision to provide that the IEBC shall verify that the initiative is supported by one million registered voters.
Political Parties Liaison Committee	4(1)- insert the words “in consultation with political parties” after the end of the sentence. ie. “The Commission shall make regulations to govern the verification of registered voters and signatures in consultation with political parties”	Political parties are key players in any democratic process eg referendums and should be involved in the formulation of regulations.	Section 5(1) of the Statutory Instruments Act, No. 23 of 2013 provides for the need for consultation before the making of any subsidiary legislation. This section provides—

				<i>“(1) Before a regulation-making authority makes a statutory instrument, and in particular where the proposed statutory instrument is likely to—</i> <i>have a direct, or a substantial indirect effect on business; or</i> <i>restrict competition;</i> <i>the regulation-making authority shall make appropriate consultations with persons who are likely to be affected by the proposed instrument.”</i> The proposed amendment is therefore not necessary.
		• 4(3)- Delete the word “Parliament” and substitute therefor the word “Kenya Law Reform Commission”	• The political class should not have a direct role in drafting referendum Bills. KLRC should be the entity mandated to draft all legislative Bills.	• The section may be amended for clarity, so as to provide that the Commission may consult with the offices of the

			Clerks of Parliament.
Independent Electoral and Boundaries Commission	Delete 4(2)	- The constitutional requirement is for the Commission to only verify signatures - Altering the Bill would be tantamount to introducing a Bill that the supporters have had no interaction with.	Clause 4(2) provides that the Commission may redraft the Bill for purposes of ensuring that it complies with the format and style of Parliament, without altering the substance of the Bill. The amendment is therefore not necessary.
Centre for Multi-party Democracy	Delete 4(2) and (3)	- Gives IEBC the role of redrafting the draft Bill, thus exposing the Bill to interference - Article 257 of the Constitution does not delegate this mandate to the IEBC.	Clause 4(2) provides that the Commission may redraft the Bill for purposes of ensuring that it complies with the format and style of Parliament, without altering the substance of the Bill. The amendment is therefore not necessary.
Katiba Institute	4(1)- The Bill should outline the precedents that the Commission would rely on in coming up with the regulations - The person who signs must not be a registered voter	To provide more qualifications for a person who can sign and the accompanying information	The Commission in making regulations must conduct public participation and engage all relevant stakeholders.

			The Bill cannot therefore dictate the contents of the regulations in the parent legislation. The amendment is therefore not necessary.
	• 4(2)- the drafting of the Bill should be for the Kenya Law Reform Commission in consultation with the promoters of the Bill • Remove reference to the Standing Orders	• Standing Orders do not deal with the form of Bills	Section 6 of the Kenya Law Reform Commission Act, No. 19 of 2013 provides that the functions of the Kenya Law Reform Commission includes preparing any legislation required to implement the Constitution, and to provide advice and technical assistance and information to the national and county governments with regard to the reform or amendment of law. The Committee may therefore consider the amendment to mandate the IEBC to submit the draft Bill to both Parliament and the KLRC for purposes of the technical and advisory assistance.

5	Kenya Law Reform Commission	• 5(1)- the notification should be done at the national level	• This is a national exercise which involves all the counties	This amendment is not necessary. The notification by the county assembly is to be done by each county assembly, since each county assembly may receive the Bill from the Commission at different times and may have different dates and guidelines for its consideration.
	Commission on Administrative Justice	• Sub-clauses (3) and (4) should come after sub-clause (8). • 5(11)- the communication by the Speaker of the county assembly should contain reasons for the failure to consider the Bill.	• Proper sequence • To address any mischief on the part of any county assembly that fails to consider the Bill.	This rearrangement is necessary for correct sequential flow. The amendment to include reasons for the failure by a county assembly to consider a Bill will ensure accountability on the part of county assemblies.
	National Gender and Equality Commission	• Amend the clause to include provisions on public participation	• To ensure effective and efficient public participation	Article 196(1)(b) of the Constitution provides that a county assembly shall facilitate public participation and involvement in the legislative and other

			business of the assembly and its committees. Further, clause 5(2) of the Bill provides for the submission by the public of views on a Bill to amend the Constitution. The amendment is therefore not necessary.
Kenya National Commission on Human Rights	• 5(7)- Include a definite percentage as the threshold for voting • 5(8)- Amend to allow county assemblies to make amendments to a draft Bill to amend the Constitution	• To ensure that the word “majority” is not selective	• This clause borrows from Article 122(1) of the Constitution which provides that any question proposed for decision in Parliament shall be determined by a majority of the members in that House, present and voting. The amendment is therefore not necessary. • A Bill to amend the Constitution cannot be subject to amendment, therefore it is not practical to allow

				county assemblies to make amendments to the Bill.
Office of the Registrar of Political Parties	5(1)- Consider assigning the role of publication to a different entity eg IEBC	It is not necessary for all 47 counties to publish the Bill in two local dailies	- Article 196 of the Constitution mandates the county assemblies to facilitate public participation in all their matters. - It is common legislative practice for a legislative body to notify the public of any matter under its consideration. Further, clause 5(2) provides additional matters to be contained in the notification, and this may differ from county to county. The proposal to have the IEBC make a publication on behalf of all the county assemblies is therefore not necessary.	
	5(7)- Clarify the threshold for voting 5(9)- delete the word “simple”	The simple majority threshold is not constitutional	This clause borrows from Article 122(1) of	

			the Constitution which provides that any question proposed for decision in Parliament shall be determined by a majority of the members in that House, present and voting. • The amendment is therefore not necessary.
	• 5(9)- Indicate who the Speaker of the county assembly writes to, ie the Speakers of Parliament	• The provision is incomplete	• There is need to indicate that the Speaker of the county assembly shall communicate to the Speakers of Parliament, for clarity purposes.
Independent Electoral and Boundaries Commission	• Delete 5(2)(b)	• Consideration of the Bill by county assemblies is for purposes of voting • It is not intended that the public will be involved at this juncture	Article 196(1)(b) of the Constitution provides that a county assembly shall facilitate public participation and involvement in the legislative and other business of the assembly and its committees. The amendment is

			therefore not necessary since public participation is a constitutional requirement.
	• Add a new provision— “For purposes of a referendum to amend the Constitution by popular initiative pursuant to Article 257 of the Constitution the promoters of the popular initiative shall collect not less than one million signatures of registered voters of whom— (a) not more than one third shall be from one county; and (b) voters in each of at least half of the counties shall be represented.”	• To affirm that a majority of citizens were engaged before an initiative can be considered • To demonstrate absolute majority in support of the initiative	The Committee may consider the amendment which seeks to promote participation of the people from a majority of the counties.
	• 5(3)- 5(12) Consider cross-reference to the County Governments Act	• General procedures for debate and voting in the county assemblies is exhaustively covered under the County Governments Act.	The procedure contained in clause 5 is specific only to the consideration of a Bill to amend the Constitution. A cross-reference to the County Governments Act is therefore not necessary.
	• 5(10)- Replace the word “introduced” with “submitted”	• The county assemblies merely submit the Bill and cannot be said to introduce the Bill	Sub-clauses (3), (9) and (11) provide for the obligation of the county assemblies to

				communicate the passage or failure of the Bill by the particular county assembly. Sub-clause (10) places an obligation on Parliament to introduce the Bill within 14 days of its approval by the county assemblies. The amendment is therefore not necessary.
		5(12)- provide timelines upon which Parliament is required to consider the Bill	The law is silent on timelines and poses a risk of indefinite deliberations	Sub-clause (10) provides that the Bill shall be introduced in Parliament within 14 days. The Bill does not however provide an express timeline within which Parliament shall consider the Bill. It may therefore be necessary to amend the Bill to provide for a timeline for the consideration of the Bill by Parliament.
Centre	for	5(12)- Add the words “and	The Constitution	It may be necessary to

Multi-party Democracy	approve it within three months after the introduction” at the end of the sentence	allocates three months for the Senate to consider the Bill, the same timeframe can be adopted for Parliament for consistency. • To ensure that Parliament delivers results on time.	amend the Bill to provide for an express timeline for the consideration of the Bill by Parliament.
Katiba Institute	• 5(1)- include the use of local radio stations and public notices at the offices of the County Commissioner, Chiefs and Assistant Chiefs	• To ensure the notice of the Bill reaches communities within each county	• The Committee may consider the amendment which serves to ensure that the notification of the Bill reaches those who may not have access to the Gazette or the newspapers
	• 5(7)- Replace “voting threshold” with “quorum”	• To change the language	• The amendment is not necessary since quorum and voting are two different aspects in the legislative process
Commission on Administrative Justice	• 6(3)- Split into two to provide- (i) The Commission may assign such symbol, logo, name and colour for each answer to a question to be	• To avert any confusion that may arise with the symbol, logo, name and colour used by a political party or a legally registered	• There may be need to allow for other forms of determination of answers to the referendum

	determined during a referendum as it may consider necessary. (ii) The Commission may consider any objections that may arise after publication of the notice.	organization or association. Public participation must be undertaken to allow any objections to the assigned symbol, logo, name or colour.	question. There is also need to ensure that any symbol, logo, name or colour which the IEBC assigns to the referendum question is not similar to any existing and common symbol or colour, so as to avoid confusion.
	6(4)- Refer to symbol, logo, name and colour as proposed in 6(3)	To avert confusion	This is a consequential amendment for proper flow if the amendment proposed in 6(3) is adopted.
Office of the Registrar of Political Parties	6(4)- Consider the effect of a symbol of an independent candidate	Independent candidate elections only exist during an election period. Reference to independent candidate symbols can only be made if elections and referenda are held at the same time.	It might not be practical to regulate independent candidate symbols when there is no election. The amendment may therefore be considered so as to avoid provisions that may lead to implementation

				challenges
	Independent Electoral and Boundaries Commission	6(2)- Delete “seven” and replace with “twenty-one”	Timeline of 7 days is too short as the Commission is required to refer the question or option to the relevant Houses for approval.	The Committee may consider the amendment having regard to the practicality and reasonableness of the timeline.
	Katiba Institute	6(2)- there is need to clarify whether the referendum is a set of questions or limited to one question	Limits the issues to be addressed in a referendum to a single question	There is need to amend sub-clause (2) to provide that the Commission shall publish a question or questions to determined during a referendum.
		6(3)- the symbol should be easily identifiable and understood across the populace	To help avoid confusion during the voting process	- Clause 7(4) of the Bill envisages voter and civic education on the part of the Commission which will educate the public on the referendum process. - The amendment is therefore not necessary
		• —	• —	• —
	Kenya Law Reform Commission	7(5)- It is not clear whether the “yes” and “no” answer will always work for purposes of	This may pose challenges where the amendment Bill	Clause 7(5) already provides that every question

	amending the Constitution	contains more than one matter and each matter needs to be voted separately	to be determined during a referendum shall require the voter to select an answer that is either “yes” or “no”. This therefore means that there may be more than one question in one referendum.
Commission on Administrative Justice	• 7(2)(f)- Replace “cease” with “close” • 7(3)- Require IEBC to publish the voter register on their website • 7(4)- Include provision that IEBC may partner with other stakeholders in conducting civic education. • 7(5)- Move to clause 6 and	• To ensure statutory harmony with the Elections Act. • To ensure transparency • To guarantee sufficient civic education • For proper sequence and coherence	• The amendment is not necessary as it restates the same thing. • This requirement is already provided in clause 7(1)- electronic media • This amendment is not necessary. Article 88(4)(g) of the Constitution provides that voter education is the mandate of the IEBC. It should therefore be left to the IEBC to determine whether to involve other stakeholders in voter education.

		insert after sub-clause (4)		• The amendment may be necessary for proper sequential flow, since clause 6 deals with matters relating to the content of the referendum.
National Gender and Equality Commission	• Introduce a new sub-clause providing for the limit of questions that may be included in the referendum	• To ensure that a referendum ballot is not crowded	• There may be need to include a limit on the number of questions that may be in one referendum so as to ensure that the electorate is not overwhelmed or confused at the time of voting.	
Kenya National Commission on Human Rights	• 7(2)(d)- the provision on voting time is unnecessary • 7(4)- amend to include provision for IEBC to collaborate with other credible state and non-state institutions	• It is repetitive and therefore unnecessary • To lift part of the load from IEBC and benefit from the synergy	• Clause 7(2) of the Bill contains matters that will be contained in the notice published by the IEBC in respect of holding a referendum. It is therefore necessary to retain the clause as it is. • Article 88(4)(g) of the Constitution	

	in providing civic education		provides that voter education is the mandate of the IEBC. It should therefore be left to the IEBC to determine whether to involve other stakeholders in voter education.
Office of the Registrar of Political Parties	7(4)- Remove civic education as a role of the IEBC	The mandate of IEBC under Article 88 of the Constitution is voter education and not civic education	Article 88(4)(g) of the Constitution provides that voter education is the mandate of the IEBC. The provision may therefore be amended to delete civic education as the role of the IEBC.
Independent Electoral and Boundaries Commission	7(2)- Add a new paragraph—“(g) the nature of the referendum”	Requirements provided are not exhaustive	The Committee may consider the amendment which serves to provide additional information to the public regarding the details of the referendum.
	7(5)- Reword to read—“A referendum question shall be so worded that each voter may express an opinion on the	Framing of referendum question cannot be restricted to a “yes” or “no” answer whereas	The Committee may consider the proposed amendment in

	question or option by making a mark after the word “yes” or “no” on the ballot paper. • Insert new sub-clause— “(6) Where there are two or more Bills, a referendum option shall be so worded that each voter may express an opinion on the option by making a mark after the option ballot paper.”	there is possibility of the need for different wording based on the nature of the referendum.	light of the fact that some referendum questions might require other answers other than “yes” or “no”.
Katiba Institute	• 7(1)- include other forms of publication	• To enable citizens to fully participate in the referendum process	• The Committee may consider an amendment to provide for notification through other forms to ensure accessibility to all persons and communities.
	• 7(4)- provide that voter and civic education should be evenly and equally distributed across counties, constituencies, wards and within the marginalized communities.	• To ensure compliance with the Constitution in terms of adequate public participation	• The IEBC as a constitutional commission is bound by the provisions of Article 10 of the Constitution which provides for the national values and principles of governance. • These values include among others, participation of the

				people, inclusiveness, equality and protection of the marginalized. It is therefore not necessary to restate it.
Je y ect on	Commission on Administrative Justice	Introduce a new clause after clause 7- “There shall be a referendum committee registered by the Commission with a name, address, telephone number, three officials and chief agents at the national and county level.	Registration of a referendum committee is crucial not only during the preliminary stages but also during the actual conduct of the referendum.	This amendment is not necessary since the proposed new clause provides for matters already provided in clause 15(2).
ar IV	Office of the Registrar of Political Parties	8, 15- Provide timelines for appointment of the referendum officials and registration committees	-	There may be need to provide for the timelines
	National Gender and Equality Commission	- Amend to include provision that the appointment of returning officers, deputy returning officers, presiding officers, deputy presiding officers and other referendum officers should meet the two thirds gender rule and fair representation of special interest groups.	To ensure representation and participation of special interest groups in the affairs of the referenda.	The amendment may be necessary to give effect to the provisions of Articles 27(6) and (8) of the Constitution which mandate the State to take legislative and affirmative action programmes to redress past discrimination, and to comply with the two thirds gender

				principle.
Kenya National Commission on Human Rights	8(1)- delete the word “may” and replace with “shall”	To ensure that the deputy presiding officers are hired uniformly	The amendment may be necessary so as to ensure certainty in the appointment of deputy presiding officers	
Office of the Registrar of Political Parties	8(2)- Restructure the substance of the clause 8(4)- The clause is incomplete	Returning and Presiding Officer positions are temporary positions designated during elections	- A deletion of sub-clause (2) may be necessary to ensure clarity. Further, it may be necessary to amend sub-clause (1) to provide that the Commission shall appoint returning officers, deputy returning officers, presiding officers and all other referendum officers as may be necessary for the conduct of the referendum - There is need to delete the	

				word “under” appearing at the end of sub-clause (4).
	Independent Electoral and Boundaries Commission	• Clauses 8-13 • Reword to provide a provision that makes reference to the application of the Elections Act to mitigate against wrong reference to processes	• Administrative processes that govern the conduct of an election apply to a referendum “mutatis mutandis”	• There may be need to insert a clause providing that the provisions of the Elections Act providing for the appointment of election officers shall, with the necessary modifications, apply to the appointment of referendum officers.
		•	•	•
	Katiba Institute	• 9(1)- Provide specific duties and powers of the additional referendum officers	• For clarity purposes	• The clause seeks to give the Commission the power to employ such other officers as may be necessary to carry out the referendum process, as the need may arise.

				The amendment is therefore not necessary.
		•	•	•
11	Kenya National Commission on Human Rights	• Include prisons as designated voting regions	• To ensure that prisoners do not lose their right to vote	• Clause 23 makes provision for voting under special circumstances, and prisoners are included in this list as persons in lawful custody. The amendment is therefore not necessary.
	Political Parties Liaison Committee	• 11(2)- Delete the words “and elector’s card”	• With the incorporation of technology in the electoral system, there is no longer need to produce an elector’s card.	Section 10 of the Elections Act, No. 24 of 2011 provides for the eligibility to vote. Subsection (1) provides– <i>“(1) A person whose name and biometric data are entered in a register of voters in a</i>

			<i>particular polling station, and who produces an identification document shall be eligible to vote in that polling station. "</i> The amendment is therefore necessary since an elector's card is not a requirement for eligibility to vote.
Office of the Registrar of Political Parties	• 11(2)- Delete the words "valid" and "elector's card" • Delete the reference to the Registration of Persons Act	• The role of the passport is to identify the voter and an expired passport is still good for purposes of identification. • Reference to the Registration of Persons Act adds no value	• The Elections Act makes reference to a Kenyan passport without stating that the passport must be valid. The Committee may therefore consider whether to delete the word "valid". • Section 9(1) of the Registration of Persons Act,

		• Provide that the document and biometrics for identification when applying for a ballot paper shall be the same as those used at the registration of voters	• For ease of confirming the voter's identification. Additionally, the Kenyan electoral system has adopted technology including the capturing of biometrics	Cap. 107 mandates a registration officer to issue an identity card to any person registered under the Act. The reference to the Registration of Persons Act therefore serves the purpose of providing clarity in regard to the identity card referred to in the Bill. • The amendment is not necessary. Clause 10 of the Bill provides that the register of voters prepared under the Elections Act shall be the register of
--	--	--	---	---

				voters for the purposes of the referendum.
	Centre for Multi-party Democracy	11(2)- Delete the words “and the elector’s card issued by the Commission”	The IEBC no longer uses voter’s cards	The amendment is necessary since voter’s cards are no longer provided for in the Elections Act
		•	•	•
2	Kenya National Commission on Human Rights	12(a)- remove the possibility of having a constituency as a single polling station	This may deny some voters the right to participate in the referendum due to geographical distances	Section 38A of the Elections Act provides for the number of voters in each polling station. This section provides– <i>“For the purposes of providing efficient and effective conduct of elections, the number of voters per polling station shall not exceed seven hundred.”</i>

				Clause 12(1)(a) should therefore be amended to remove the possibility of having a constituency as a single polling station.
	Office of the Registrar of Political Parties	12(b)- Consider redrafting to “a number or a letter or a combination of numbers and letters”	Typographical error	The amendment may be necessary for purposes of correcting a grammatical error
		•	•	•
13	Kenya National Commission on Human Rights	13(1)- Add provision that will ensure rights of children are safeguarded where schools are used as polling stations	Section is not conclusive to govern children’s rights where schools are used as polling stations	Article 53 of the Constitution provides for the rights of the child, which are of paramount importance in any matter concerning the child. It is therefore clear that children’s rights are safeguarded by the Constitution, and there is no need to restate it in the Bill.

		•	•	•
5	Commission on Administrative Justice	• 15(2)- Application for registration should be signed by the chairperson and secretary of the referendum committee ○ 15(2)(ii)- Should include the full name, address and telephone number of the chairperson, deputy chairperson and secretary. ○ 15(2)(v)- Provide for the appointment of two chief agents at the national and county level • 15(3)- Provide for the issuance of a certificate of registration signed by the chairperson of the IEBC. • 15(3)(b)- Rejection of registration should be notified to all signatories of the application.	• To guard against monopoly and infighting within the committee • To guard against infighting within the committee. • To guard against confusion.	• This amendment is not necessary. Sub-clause (2) already provides that an application shall be signed by the leader of the referendum committee. It is therefore not necessary to compel the leader of the committee to be known as a chairperson. • The requirement of a certificate of registration may be necessary to serve as proof of registration of the referendum committee. However it would

	15(5)- Include the symbol, logo, name and colour of political party or independent candidate		suffice if the IEBC sent a notice of rejection of the registration to the leader of the referendum committee as listed during the application. This is a consequential amendment for proper flow if the amendment proposed in 6(3) is adopted.
National Gender and Equality Commission	Include a new sub-clause- “The Commission shall not register a referendum committee unless its composition complies with the two thirds gender principle and the fair inclusion of special interest groups.”	To ensure participation of special interest groups in the formation and activities of the referendum committee.	The amendment may not be practical. Clause 15(1) provides that a referendum committee shall be composed of persons intending to campaign for or against a referendum question. It may therefore not be practical to ensure that the persons from the special interest

			groups are among the group that intend to campaign for or against a referendum question.
Office of the Registrar of Political Parties	15(1)– • Redraft too start with “The Commission shall consider applications of referendum committees” • Replace “one committee each in every constituency” with “one referendum committee in each constituency” • Replace the word “form” with “register”	• Drafting issue	• The clause should be amended to delete the word “each” for grammatical purposes. • However the rest of the proposed amendments are not necessary as sub-clause (1) meets the House drafting style requirements.
	• 15(4)- delete (c)	• The reasons for refusal to register in paragraphs (a) and (b) are sufficient, and the discretion in (c) may be subject to abuse.	• The Committee may consider deleting paragraph (c) as it may be subject to subjective and ambiguous interpretation.
	• 15(6)- Qualify the party to “fully registered political party”	• To avoid confusion or false association with fully registered	• Sections 6 and 7 of the Political

			political parties	Parties Act, No. 11 of 2011 provide for provisional registration and full registration of political parties. The Committee may therefore consider this amendment to provide clarity.
		15- Consider splitting the clause into 2- registration of referendum committees and requirements for referendum committees.	The clause is bulky	The amendment is not necessary since the clause contains provisions relating to the coming into existence of referendum committees.
Independent Electoral and Boundaries Commission		Add new sub-clause— “An application to register a referendum committee shall be accompanied by information showing that the applicant adequately represents persons campaigning for or against the referendum question or option.”	To affirm declaration to associate and to satisfy the principle of ownership.	- The proposed amendment is ambiguous as it does not clearly set out the information required. - The Committee may instead consider having a sworn statement on oath by the

				persons intending to register a referendum committee.
	Katiba Institute	• 15(1) & 16(1)- provide for the registration timelines • Certain individuals/ groups may not have the capacity to establish referendum committees in every constituency and thus may be left out	• It is a violation of the right to freedom of expression to provide that anyone who wants to campaign must form a referendum committee	• The Committee may consider the practicality and the need or otherwise of the referendum committees
		•	•	•
7	Commission on Administrative Justice	• 17(1)- Require appointment of two chief agents at the national and county level	• To ensure statutory harmony with the Elections Act	• This amendment is not necessary. The Elections Act provides for the appointment of agents for each polling station, and not at the national and county level.
		•	•	•
8	Office of the Registrar of Political Parties	• 18(1)- Delete “polling area” and substitute with “polling station”	• Agents serve as a check to the poll officials and protect their position’s interests.	• The amendment is necessary to bring the clause into conformity with section 30 of the Elections Act

			which provides that a political party may appoint one agent for its candidates at each polling station.
Katiba Institute	18 & 19- include a clause that requires election agents to make an oath of confidentiality and secrecy	Referendum Code of Conduct requires secrecy and confidentiality	Clause 18(3) provides that every agent shall take such oath of office as the Commission may specify. However a clause may be inserted similar to, or a cross-reference made to section 55A of the Elections Act which provides— <i>“Every elections officer, candidate or agent authorized to take part in any proceedings relating to the issue or receipt of ballot papers or to attend at a polling station or at the counting of the votes shall, before</i>

				<i>so attending, make an oath of secrecy prescribed in the Third Schedule."</i>
		•	•	•
9	Office of the Registrar of Political Parties	• 19(c)- Replace "elector's register" with "voters register"	• The term used in the Constitution is "voter" and not "elector"	• The amendment is necessary to bring the Bill into conformity with the Constitution and the Elections Act
		• 19(2)- Delete "shall" • 19(2)- rework the numbering	• The word is repeated • Sub-clause (2) is repeated	• The amendment is necessary to avoid repetition
		• 19(2)- Reconsider the powers of the deputy presiding officer	• Contradicts clause 8(5)	• An amendment to clause 19(2) is necessary to ensure that it does not contradict clause 8(5). There may be need to delete the words "deputy presiding officer".

		19(2)- Replace the word “place” with “polling station”	-	The amendment is necessary to avoid ambiguity and to bring the clause into conformity with the Elections Act which provides for the appointment of agents to polling stations.
		Generally clause 19 is too long and could be split into 2 clauses	-	The amendment is not necessary since clause 19 provides for matters relating to the rights and duties of agents during a referendum.
	Centre for Multi-party Democracy	19(1)(c)- Replace “electors’ registers” with “register of voters”	- The word electors register is not defined in the Bill - Causes confusion	There is need to amend the Bill to use the term “register of voters” as provided in the Elections Act
0	Office of the Registrar of	Provide a timeline for the campaign period, to interlink	To address unending campaigns	An amendment to

	Political Parties	with clause 7		this clause is necessary to ensure conformity with clause 7. Sub-clause (1) may therefore be amended by inserting the words “subject to the campaign period specified in the notice in section 7(2)” at the end of the sentence
		•	•	•
1	Office of the Registrar of Political Parties	21(2)- Replace the word “elector” with “voter”	The term used in the Constitution is “voter”	The amendment is necessary to bring the Bill into conformity with the Constitution and the Elections Act.
	Katiba Institute	21(2)- Delete	If the voters register is electronic it should not be necessary to vote only where one is registered	Section 10 of the Elections Act provides that a person shall be eligible to vote in the polling station in which he or she registers as a

				voter. The law on referendum should not therefore contradict the provisions of the Elections Act. The amendment is therefore not necessary.
		•	•	•
12	Commission on Administrative Justice	22(c)- Insert the word “serial” before “number	To ensure statutory harmony with the Elections Act	The amendment is not necessary. The Elections Act does not make reference to serial number. Further, the clause is clear that every ballot paper shall have a number printed on it.
		•	•	•
3	Kenya National Commission on Human Rights	Remove the possibility of staggering voting dates	To eradicate the possibility of manipulation of the voting process and to ensure that results are	There is currently no law in place in Kenya allowing for voting on different dates.

			transmitted uniformly.	Clause 23 may therefore be amended to provide for special polling areas to be designated under special circumstances, but the voting should be on the same day.
Political Parties Liaison Committee	• Insert a clause providing that the Commission comes up with regulations to guide this provision.	• To prevent this clause from abuse by the political class, the Commission should be guided by regulations.	Clause 45 of the Bill gives the IEBC the powers to make regulations on any matter required under the Bill for the better carrying into effect the provisions of the Bill once enacted. The Committee may however consider introducing a new paragraph under sub-clause (2) which provides for the specific matters in respect of which the Commission may make regulations. The new paragraph may provide for the voting in a referendum under	

				special circumstances.
	Katiba Institute	Replace “The Commission may” with “The Commission shall”	Make it an obligation because everyone has the right to vote	The Committee may consider the amendment so as to provide certainty in regards to voting under special circumstances.
		•	•	•
24	Commission on Administrative Justice	24(6)- An observer should be granted an opportunity to be heard before his/ her accreditation is revoked. - Gross violation of the referendum law should be included as one of the grounds for revocation.	- To ensure compliance with the right to fair administrative action. - Gross violation of referendum law should be a ground for revocation.	- Article 47(1) grants every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The amendment may therefore be necessary to ensure compliance with the constitutional principle. - Gross violation of referendum law

				may be included as a ground for the revocation of the accreditation of an observer.
Kenya National Commission on Human Rights	24(7)- reduce the period of submission of reports from 6 months to 3 months	To shorten the period since the reports may be useful to establish an overall analysis on the credibility of the vote	The amendment may be necessary to ensure that the referendum observers' reports are submitted in an expedient manner	
Office of the Registrar of Political Parties	Merge 24(1) and (3) into one sub-clause	Drafting issue	The amendment may be necessary since sub-clauses (1) and (3) provide for the accreditation of referendum observers.	
	24(2)- Delete	A repetition of 24(1)	The deletion of sub-clause (2) is not necessary since it provides a prohibition against acting as a referendum observer unless one is accredited by the	

			Commission. The sub-clause may however be redrafted for purposes of proper grammatical flow— <i>“A person or an official of an association, organization or institution shall not act as a referendum observer unless such person or official is accredited by the Commission under section (1)”.</i>
	24(3)- Delete the words “manifestly non-partisan”	The Bill has not developed a measure of partisanship	The amendment is necessary since the words “manifestly non-partisan” are subjective and may be subjected to an ambiguous interpretation.
Katiba Institute	24(1)- incorporate provisions which state what kinds of organizations or institutions shall be eligible for	- Need for clarification - No Kenyan can be neutral in the sense of having no view	There may be need to provide a specific timeline

		- accreditation 24(4)- include a timeline for the accreditation guidelines		within which the Commission shall issue guidelines relating to referendum observers
		•	•	•
5	Office of the Registrar of Political Parties	25(e)- Replace the word “deliver” with “submit”	Voting may be either manual or electronic	The amendment may be necessary since manual or electronic voting would both require submission of the results
	Independent Electoral and Boundaries Commission	Clauses 25- 27 Provide for an application of the Elections Act on the provisions relating to voting.	Replicates provisions for voting under the Elections Act which apply to a referendum “mutatis mutandis”.	There may be need to introduce a clause providing that the provisions in the Elections Act relating to voting and submission and relaying of results shall, with the necessary modifications, apply to a referendum.

		•	•	•
Par : V	Commission on Administrative Justice	Counting of votes and announcement of results at the polling stations is missing	It is important to provide for counting and announcement of results at the polling station before providing for the constituency.	- The requirement for the counting of votes may be included in clause 45, to allow the IEBC to make regulations prescribing the procedure to be followed in the counting of votes and the circumstances in which votes may be rejected by a referendum officer as being invalid. This is as contained in section 109(1)(p) of the Elections Act. - An amendment may be made to the Bill to include a provision similar to that in section 39(1A) of the Elections Act which provides- “(1A) The

				<i>Commission shall appoint constituency returning officers to be responsible for—</i> <i>(i) tallying, announcement and declaration, in the prescribed form, of the final results from each polling station in a constituency for the election of a member of the National Assembly and members of the county assembly;”</i>
		•	•	•
6	Kenya National Commission on Human Rights	• 26(1)- specify the mode of transmission of results as electronic	• To hasten the counting and tallying of the results and to avoid manipulation	• The amendment may be necessary so as to avoid any ambiguities that may arise in regard to transmission of results

Office of the Registrar of Political Parties	26(1)- Redraft “for ward” to “forward”	Typographical error	The amendment is necessary to correct a typographical error
	26(2)- Redraft subclause (2)- “The Commission shall receive results from every constituency before declaring referendum results”	Drafting issue	The sub-clause may be redrafted– <i>“The Commission shall declare the referendum results once it receives the constituency referendum results from every constituency”</i>
	26(3)- Adopt the procedure for the Presidential election	Logical flow of activities	Sub-clause (3) may be amended to be similar to section 39(1H)(2) which provides– <i>“The Chairperson may declare a candidate elected as the President before all the constituencies have transmitted</i>

				<i>their results if the Commission is satisfied the results that have not been received will not affect the result of the election."</i>
	Centre for Multi-party Democracy	• 26(1)- Redraft "for ward" to "forward"	• The word is misspelled in the Bill	• The amendment is necessary to correct a typographical error
		•	•	•
7	Office of the Registrar of Political Parties	• 27(1)(a)- Replace "or" with "and"	• Transparency purposes	• The amendment is not necessary since the Commission is mandated to publicize the total number of votes The amendment would cause a grammatical disconnection to the paragraph if adopted
	Independent Electoral and Boundaries Commission	• 27(1)- Delete "forty eight hours" and replace with "seven days"	• A referendum is equal to the magnitude of a Presidential election thus 7 days aligns with	• Article 138(10) of the constitution provides that the

			the timeline under Article 138(10) of the Constitution.	Commission shall declare the result of a presidential election within 7 days. • The amendment is therefore necessary to align the provision with the Constitutional requirement of the timeline for the declaration of election results.
28	Commission on Administrative Justice	• 28(3)- The grounds for a referendum petition should include issues relating to the referendum campaigns.	• The grounds for a referendum petition are not broad enough and only focus on offences by IEBC officials.	• The amendment may be necessary so as to include all acts or omissions done in respect of the referendum by any person. Paragraph (a) may therefore be amended to provide for acts or omissions done by a referendum officer or by any other person.

National Gender and Equality Commission	28(3)- Amend the clause to include grounds beyond the results of the referendum	The 2 grounds provided in the Bill are insufficient, narrow and restrictive	The clause may be amended to include the commission of any of the offences under the Election Offences Act as a ground for a referendum petition. Clause 41(2) provides that the High Court may declare a referendum void on the grounds that the Constitution, the Act or the regulations made under the Act were contravened during the referendum.
Independent Electoral and Boundaries Commission	28(2)(d)- Delete “twenty one” and replace with “twenty eight”	21 days is not sufficient - Article 87(2) of the Constitution provides for 28 days	Article 28(2) of the Constitution provides that petitions concerning an election, other than a presidential election, shall be filed within twenty-eight days

				after the declaration of the election results by the Independent Electoral and Boundaries Commission. The amendment is therefore necessary to ensure the compliance of the Bill to the Constitution.
	Katiba Institute	• Incorporate a section requiring that all information and documents created throughout the referendum will be made available to the public upon request.	• To ensure adequate access to information to facilitate filing of petitions	• The Committee may consider the inclusion or cross-reference to the provisions relating to access of information.
9	Independent Electoral and Boundaries Commission	• Add— “An appeal from the High Court in a referendum petition shall lie to the Court of Appeal on matters of law only.”	• To ensure that we safeguard the right for review of possible wrong decisions	• There is need to introduce a provision dealing with appeal in respect of a referendum.
0	Commission on Administrative Justice	• 30(2)(a)- The necessity of this sub-clause should be considered	• The provision negates the reason for petitioning the High Court since it has the potential of making the petition nugatory.	• The provisions of clause 30(2)(a) relate to clause 30 and not to the whole idea of

				filing a referendum petition. This paragraph therefore applies only where a referendum petition is not filed in the High Court within 21 days, as provided in clause 28(2)(d).
Katiba Institute	• 30(1)(b)- Delete	• The result is not final because there may be a petition	• Clause 30(1) provides for the effect of a referendum where a referendum petition is not presented to the High Court within the specified time. The amendment is therefore not necessary.	
	• 30(2)(b)- Redraft	• It is incomprehensible	• There may be need to redraft the paragraph for simplicity and coherence	

		•	•	•
31	National Gender and Equality Commission	Expand the clause to include all adult citizens and non-juridical persons such as organizations	The clause restricts the legitimate challenge of the referendum process or results	The Committee may reconsider clause 31(1) having regard to Article 22(1) and (2) of the Constitution which gives every person a right to institute court proceedings, on their own behalf or in public interest, claiming the infringement of a right or fundamental freedom in the Bill of Rights. Political rights are included in the Bill of Rights under Article 38.
	Katiba Institute	31(1)- limits the persons who can challenge a referendum before the High Court	It is unconstitutional and locks out organisations from challenging the referendum process	The Committee may reconsider clause 31(1) having regard to Article 22(1) and (2) of the Constitution which gives every person a right to institute court proceedings, on their own behalf or in public interest,

				claiming the infringement of a right or fundamental freedom in the Bill of Rights. Political rights are included in the Bill of Rights under Article 38.
3	Office of the Registrar of Political Parties	33(1)- Persons authorized to sign the petition should include a person or persons authorized by the petitioners	The Elections (Parliamentary and County Elections) Rules, 2017 under regulation 8(4)(a) stipulate that the petition shall be signed by the petitioner or by a person authorized by the petitioner. The same should be applied to referendum petitions.	The amendment may be necessary to ensure uniform application of petition rules in both elections and referenda.
Par VI	Commission on Administrative Justice	Appeal process is missing	There is need to state whether the decision of the High Court is final or is subject to appeal at the Court of Appeal. This is necessary for legal certainty.	Article 164(3) of the Constitution provides- <i>"The Court of Appeal has jurisdiction to hear appeals from—</i> <i>(a) the High Court; and</i> <i>(b) any other</i>

				<i>court or tribunal as prescribed by an Act of Parliament.”</i> There is therefore need to provide for the appeal process.
	Katiba Institute	Give clear provisions on whether the petition before the High Court is final or can be subject to appeal.	Challenges may arise in protracted litigation on jurisdictional questions.	There may be need to amend the Bill to make provision for appeal on referendum petitions
		•	•	•
37	National Gender and Equality Commission	37(1)(a)- Reduce the period of determination of the referendum petition from 6 months to 2 months	The 6 months period is too long	2 months may be too short especially where the matter may be subject to appellate litigation.
	Office of the Registrar of Political Parties	37(1)(a)- Reduce the timeline for determination of the petition from 6 months to 60 days	The 6 months is long	The Committee may consider an appropriate timeline for the determination of the petition having regard to the entire litigation

				procedure including appeal.
	37- Make provision for an appeal process	The stakes at hand require comprehensive avenues for aggrieved parties to seek justice.	There is need to include a provision allowing appeal to the High Court, so as to bring the Bill into conformity with Article 164(3) of the Constitution.	
Katiba Institute	37(3)- withdrawal of referendum petition should be with the permission of court.	It should not be so easy to withdraw if it is a public interest action	- If the court's permission is made a mandatory requirement, it might not be practical to compel a person to proceed with a referendum which he or she no longer wishes to proceed with. - The amendment is therefore not necessary since a notice of intention to withdraw to the High Court and to	

				the other parties will suffice.
38	Katiba Institute	What is the punishment for the referendum offences	Need for clarity	The Election Offences Act, No. 37 of 2016 provides for the various election offences as well as the penalties for the offences. Clause 14 of the Bill makes a cross-reference to the effect that the Elections Offences Act shall apply in respect of referendum offences. The amendment is therefore not necessary.
40	Office of the Registrar of Political Parties	- Provide that the Commission shall have custody of ballot boxes and forms - Examination of votes ought to happen at the Commission's warehouse as opposed to	Preservation of records and integrity of the election materials.	Regulation 86 of the Elections (General) Regulations, 2012 provides that the

	ferrying ballot boxes to the court.		returning officer shall have custody of the election materials for such period as may be required by Regulations. The Committee may therefore consider the introduction of a sub-clause to provide— <i>“The High Court shall make a determination on the manner of scrutiny of votes under subsection (1) in consultation with the Commission.”</i>
Independent Electoral and Boundaries Commission	40(2)- Reword and cross-reference applicable grounds to the Elections Act in relation to elections petitions.	The grounds in the Bill are not exhaustive as contained in section 82 of the Elections Act	The amendment is not necessary since all the matters provided in clause 40(2) are contained in section 82 of the Elections Act. The only provision missing in the Bill

				is section 82(2)(f) which provides for votes cast for a disqualified candidate. A referendum is unlikely to have any candidates hence the need to omit this paragraph from the Bill.
11	National Gender and Equality Commission	There is need for clarity on whether the decision of the High Court is final or may be subject to appeal.	Parties to the referendum petition should be allowed to appeal to the highest court.	There may be need to amend the clause to allow for appeals to superior courts
	Political Parties Liaison Committee	Delete 41(5)	There is need to allow the right of appeal to the Court of Appeal since this is critical in ensuring public confidence in the process and growth of jurisprudence in the electoral and referendum process.	There may be need to amend the clause to allow for appeals to superior courts
	Independent Electoral and Boundaries Commission	41(3)- Add the words “within seven days” between the words “court” and “shall”	There is need to provide clarity on when the Registrar of the High Court shall deliver the decision on the referendum petition.	There may be need to introduce a timeline within which the decision of the court on the referendum

				petition shall be delivered to the Commission.
	Centre for Multi-party Democracy	Add new clause to provide for the procedure of appeals of decisions from the High Court	To promote justice and to give petitioners an avenue to appeal the High Court decisions	There may be need to amend the clause to allow for appeals to superior courts
2	Katiba Institute	42(1)- the grounds for vexatious claims are not outlined in the Bill	-	- The Vexatious Proceedings Act, Cap. 41 gives the High Court, on the application of the Attorney-General, the power to make orders on the declaration of a vexatious litigant. - Section 2(1) of the Act provides— <i>“If, on an application made by the Attorney-General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious proceedings, whether civil or criminal, and whether in the High</i>

				<i>Court or in any subordinate court, and whether against the same person or against different persons, the Court may, after hearing that person or giving him an opportunity of being heard, make an order declaring such person to be a vexatious litigant."</i> The amendment is therefore not necessary.
14	Independent Electoral and Boundaries Commission	Delete	Clause 44 is not necessary as provisions relating to offences is dealt with in clause 14 which makes a cross-reference to the Election Offences Act.	- Clause 14 of the Bill provides that all election offences under the Elections Offences Act shall apply in respect of a referendum. - Clause 44 of the Bill may therefore be deleted.
	Katiba Institute	Review the clause in consideration of the Election Offences Act	Further clarity required on penalties	Clause 14 of the Bill provides that the Election Offences Act shall apply in respect to

				referendum offences. • Clause 44 of the Bill may therefore be deleted to avoid conflict between the Act and the Bill.
General	Kenya Law Reform Commission	• Insert a provision requiring the provisions of the Elections Act relating to the following matters to apply to referenda with necessary modifications– (a) eligibility to vote; (b) registration of voters; (c) compilation and maintenance of registers; (d) inspection of register; (e) updating of register; (f) transfer of registration; (g) determination of questions as to registration; (h) making and determining claims to be registered and objections to registration; (i) appointment of officers to preside at polling stations; (j) designation of polling stations; (k) place and manner in which votes may be cast; (l) design and handling of ballot papers; (m) grounds for postponement of elections;	• Conduct of a referendum is similar to conduct of a general election and are both conducted by the same body.	• There may be need to include a provision in the Bill providing that all matters relating to an election, as provided in the Elections Act and the Election Campaign Financing Act, shall apply with the necessary modifications.

		(n) conduct of campaigns; and (o) election offences. • There should be a provision prohibiting more than one referendum in 5 years • The one million signatures should come from a majority of the counties • Funding of referenda should be regulated under the Election Campaign Financing Act • A referendum should prohibit certain forms of referenda		
	Office of the Registrar of Political Parties	• Consider making a provision for exit polls as is in Paragraph 14(b) of the Second Schedule to the Elections Act, as long as those conducting exit polls do not publish their results during polling time.	• Builds up transparency and one of the ways of determining voting behavior/ demographics	• The Second Schedule provides for the Electoral Code of Conduct • Paragraph 14 provides— <i>“Every media house and its representative shall—</i> <i>(a) adhere to the media professional ethics in its coverage of public meetings, campaign rallies and</i>

			<i>demonstrations</i> ; <i>(b) during the prescribed hours of polling, not publish or distribute the result of an exit poll taken in that election or referendum;</i> <i>(c) adhere to any media regulations issued by the Commission; and</i> <i>(d) abide by the provisions of this Act."</i> There is therefore need for more clarity in regard to exit polls.
Independent Electoral and Boundaries Commission	• Add general provisions in relation to— (i) Retention and inspection of documents (ii) Duty to co-operate (iii) Powers of arrest and prosecution.	• Necessary in respect to management of the referendum process	• There may be need to provide that the general provisions contained in the Elections Act shall apply with the necessary modifications to a

				referendum.
		•	•	•
SC HE DU LE	Kenya National Commission on Human Rights	• 5(d)- Include social events including weddings • 10(1)- Add a provision that the peace committees will be grounded by the national values and principles in Article 10 of the Constitution • 10(3)(b)- Provide that the mediation process by constituency peace committees shall only be for non-criminal matters	• To ensure that campaign events are transparent • To ensure inclusivity and reduce conflict, abuse and bias • To eradicate possibilities and situations where criminal cases are mediated	• The provision may be amended to include other social events • Article 10(1) of the Constitution already provides that the national values and principles of governance bind all State organs, State officers, public officers and all persons. It is therefore not necessary to restate it. • The amendment might be useful so as to provide matters which may be mediated upon

	Katiba Institute	• 8(1)- Provide for maximum number of the committee members • Provide for the selection process	• For clarity	• There may be need to amend paragraph 8(1) of the Schedule so as to expressly provide for the number of members of the Code of Conduct Enforcement Committee.
		•	•	•

CHAPTER 5

5.0. PROPOSED COMMITTEE STAGE AMENDMENTS TO THE REFERENDUM BILL, (NATIONAL ASSEMBLY BILLS NO. 11), 2020

63. The Committee met and considered the Bill and the proposals submitted by members of the public and stakeholders that met with the Committee and made the following recommendations to be incorporated in the Bill at the Committee of the Whole House stage:

LONG TITLE

THAT, the Bill be amended by deleting the Long title and substituting therefor the following new Long title—

“AN ACT of Parliament to give effect to Chapter Sixteen of the Constitution; provide for the procedure of the approval of an amendment to the Constitution by a referendum, the conduct of a referendum and referendum petitions; and for connected purposes”

Justification

The amendment seeks to ensure that the Long Title of the Bill makes reference to Chapter Sixteen of the Constitution which provides for the amendment of the Constitution by parliamentary or popular initiative.

CLAUSE 2

THAT, the Bill be amended by deleting clause 2 and inserting the following new clause—

Interpretation. 2. In this Act, unless the context otherwise provides—

“agent” means a person duly appointed by a promoter of a popular initiative for the purposes of a referendum under this Act;

“Commission” means the Independent Electoral and Boundaries Commission established by Article 88 of the Constitution;

“electoral area” means one of the areas into which a constituency is divided under section 12 of this Act, or, if the Commission has declared a constituency to be a single electoral area, that constituency;

“oppose” in respect of a referendum question means voting not to approve the referendum question specified in section 6 of the Act;

“polling station” means any room, place, vehicle or vessel set apart and equipped for the casting of votes by voters at a referendum;

“polling time” means the period between seven o’clock in the morning and five o’clock in the afternoon of the polling day and includes the time taken to vote by voters who were present in a polling station by five o’clock;

“presiding officer” means a person appointed under section 8

of this Act to preside at a polling station;

“promoter of a popular initiative” or “promoter of a draft Bill” means a person or a group of persons that formulates a general suggestion or a draft Bill to amend the Constitution under Article 257(2) of the Constitution;

“referendum” means a poll held under this Act;

“referendum officer” means a returning officer, presiding officer and any other person appointed by the Commission to perform referendum duties under this Act;

“referendum period” means the period beginning on the day on which the text of the referendum question is published and ending on polling day of the referendum;

“referendum question” means the question upon which the people shall vote in the referendum as specified in section 6 of the Act;

“returning officer” means a person appointed under section 8 of this Act for the purpose of conducting the referendum in a constituency;

“support” in respect of referendum question, means voting to approve the referendum question specified in section 6 of the Act; and

“voter” in relation to the referendum, means a person whose name is included in the current register of voters.

Justification

The amendment seeks to ensure conformity with the terms used in the Elections Act.

CLAUSE 3

THAT, clause 3 of the Bill be amended—

(a) by deleting paragraph (a) and inserting the following new paragraph—

“(a) the procedure for the conduct and approval of an amendment to the Constitution by a referendum;”

(b) by deleting paragraph (b);

(c) by deleting paragraph (c) and inserting the following new paragraph—

“(c) the procedure to challenge the conduct, result or validity of a referendum”

Justification

The amendment seeks to eliminate the repetition in paragraphs (a) and (b) which both provide for the procedure and conduct of a referendum to amend the Constitution.

The amendment also seeks to ensure that not only the process of conducting a referendum may be challenged, but also the conduct, result or validity of a referendum.

CLAUSE 4

THAT, the Bill be amended by deleting clause 4 and inserting the following new clause—

Procedure 4. (1) The promoters of a popular initiative shall submit a draft Bill under popular under Article 257 to the Commission. initiative.

(2) The Commission shall, within ninety days of receipt of the

Bill, verify that the draft Bill under subsection (1) is supported by at least one million registered voters of whom—

(a) not more than one third shall be from one county; and

(b) the voters in each of at least half of the counties shall be represented.

(3) In determining whether the initiative meets the requirements of Article 257 of the Constitution, the Commission shall, within seven days of receipt of the draft Bill, submit the draft Bill to the Kenya Law Reform Commission and the offices of the Clerks of Parliament.

(4) The Kenya Law Reform Commission and the offices of the Clerks of Parliament may, within thirty days of receipt of the Bill, redraft the draft Bill submitted under subsection (3) to conform with the Constitution and the format and style prescribed in the standing orders of Parliament without altering the substance of the Bill.

(5) If the Commission is satisfied that the initiative meets the requirements of the Constitution and this section, the Commission shall submit the draft Bill to each county assembly for consideration.

Justification

The amendment is necessary for purposes of proper sequential flow in the clause.

Further, the amendment seeks to provide for the specific timelines within which a draft Bill shall be considered and submitted to the various players.

The amendment also seeks to ensure that a majority of citizens are engaged before a popular initiative to amend the Constitution can be considered.

CLAUSE 5

THAT, the Bill be amended by deleting clause 5 and inserting the following new clause—

Procedure in county
assembly.

5. (1) Upon receipt of a Bill submitted to a county assembly under section 4, the county assembly shall notify the public of the Bill by—

- (a) notice in the *Gazette*;
- (b) two newspapers of national circulation; and
- (c) public notices in the offices of the County Commissioner, Chiefs and Assistant Chiefs.

(2) The notification in subsection (1) shall contain all relevant details including—

- (a) a summary of the proposed amendments to the Constitution;
- (b) the timelines within which the public may submit views on the Bill; and
- (c) the timelines within which the county assembly shall consider the Bill.

(3) A county assembly shall not amend a draft Bill under its consideration.

(4) If a county assembly approves the draft Bill within three months after the date it was submitted by the Commission, the speaker of the county assembly shall deliver

a copy of the draft Bill jointly to the Speakers of the two Houses of Parliament, with a certificate that the county assembly has approved the draft Bill.

(5) The Speakers of the two Houses of Parliament may designate officers to whom the speaker of a county assembly shall deliver a copy of the draft Bill jointly.

(6) A draft Bill referred to a county assembly under Article 257(5) of the Constitution shall be introduced for consideration by the county assembly by the chairperson of the relevant committee as a motion.

(7) The motion shall be debated and approved or rejected by a county assembly within three months after the date it was submitted by the Commission under section 4(5).

(8) A draft Bill in a county assembly shall be passed by a majority of the members of the county assembly, present and voting.

(9) Where a county assembly fails to obtain a majority to pass the draft Bill, the draft Bill shall fail and the Speaker of the county assembly shall communicate the failure to obtain a simple majority in writing to the Speakers of Parliament.

(10) A draft Bill approved by at least twenty four county assemblies shall be introduced in the two Houses of Parliament within fourteen days of receipt of the certificate of

approval from the county assemblies.

(11) Where a county assembly fails to consider a draft Bill under this section, the draft Bill shall fail and the Speaker of the county assembly shall communicate the failure to consider the draft Bill in writing to the Speakers of Parliament giving reasons for the failure to consider the draft Bill.

(12) A Bill referred to Parliament under Article 257(7) of the Constitution shall be introduced in Parliament by the chairperson of the relevant committee of each House of Parliament.

(13) A draft Bill introduced in Parliament under subsection (12) shall be considered within six months from the date of introduction of the draft Bill.

Justification

The amendment rearranges the clause for correct sequential flow.

The amendment also seeks to provide a clear threshold for voting to pass a draft Bill in the county assemblies, as well as to provide for other means of notification of the Bill to ensure accessibility of information.

The amendment to include reasons for the failure by a county assembly to consider a Bill will ensure accountability on the part of county assemblies.

The amendment also seeks to provide the timeline for the consideration of a draft Bill by Parliament.

CLAUSE 6

THAT, clause 6 of the Bill be amended—

- (a) in sub-clause (2) by deleting the word “seven” and substituting therefor the words “twenty one”;
- (b) in sub-clause (3) by deleting the word “may” appearing immediately after the word “Commission” and substituting therefor the word “shall”;
- (c) by deleting sub-clause (4) and inserting the following new sub-clause—

“(4) A symbol assigned under subsection (3) shall not resemble that of a political party or that used by an independent candidate in the preceding general election.”

Justification

The amendment seeks to change the timeline for publication of a referendum question from 7 to 21 days, since the 7 days period may be too short as the Commission is required to refer the question or option to the relevant Houses for approval.

The amendment also seeks to provide that in respect of a symbol used by an independent candidate, only the symbols used at a preceding election shall be considered.

CLAUSE 7

THAT, clause 7 of the Bill be amended—

- (a) in sub-clause (1) by inserting the words “and in any other form that may be accessible to the special interest groups” after the words “national circulation”;
- (b) in sub-clause (2)–

- (i) by inserting the words “or questions” immediately after the word “question” appearing in paragraph (a);
 - (ii) by deleting paragraph (e);
 - (iii) by inserting the following new paragraph immediately after paragraph (f)–
“(g) any other matter as the Commission shall deem necessary to be included in the notice.”
- (c) in sub-clause (4) by deleting the words “and civic” appearing immediately after the words “conduct voter”;

Justification

The amendment seeks to ensure that information on the publication of a referendum question is made accessible to persons categorized within the special interest groups.

The amendment also seeks to ensure that the notice by the Commission may contain any other information that the Commission may find necessary to be included in the notice.

The amendment also seeks to ensure conformity with Article 88(4)(g) of the Constitution which mandates the Commission to conduct voter education and not civic education.

CLAUSE 8

THAT, the Bill be amended by deleting clause 8.

Justification

The deletion of this clause is necessary to allow the provisions of the Elections Act in regards to the appointment of officers to apply with the necessary modifications.

CLAUSE 9

THAT, the Bill be amended by deleting clause 9.

Justification

The deletion of this clause is necessary to allow the provisions of the Elections Act in regards to the appointment of officers to apply with the necessary modifications.

CLAUSE 11

THAT, clause 11 of the Bill be amended in sub-clause (2) by deleting the words “and the elector’s card issued by the Commission”.

Justification

The amendment seeks to eliminate the requirement of a voter’s card which is no longer a requirement in law.

CLAUSE 12

THAT, the Bill be amended by deleting clause 12 and inserting the following new clause—

Electoral areas and **12.** (1) The Commission shall—
polling stations.

- (a) divide each constituency in which the referendum is to be held into electoral areas;
- (b) assign to each electoral area a distinguishing number or letter or a combination of numbers and letters;
- (c) appoint a place or places or designate a vehicle or vehicles or a vessel or vessels at which the polling station or stations for each electoral area shall be established; and
- (d) publish in the *Gazette* a notice specifying—
 - (i) the electoral areas established for each constituency, which may be done by specifying

the registration units which they respectively comprise;

(ii) the distinguishing number or letter, or a combination of numbers and letters, assigned to each electoral area; and

(iii) the place or places appointed or the vehicle or vehicles, vessel or vessels designated for the establishment of a polling station or stations for each electoral area.

(2) In determining the boundaries of any electoral area, the Commission shall have regard to geographical considerations and any other factors affecting the facility of communication between various places within the electoral area.

(3) Subject to subsection (2), the Commission may alter a division, an assignment or an appointment made under subsection (1) and shall thereupon publish a notice in the *Gazette* specifying the alteration.

(4) The Commission may, if it considers it desirable, appoint a single polling station for two or more electoral areas.

Justification

The amendment seeks to align the clause with the term “electoral area” as used in the Bill.

The amendment also seeks to remove the possibility of having a constituency as a single polling station.

CLAUSE 14

THAT, clause 14 of the Bill be amended by deleting the word “the” appearing immediately after the words “with respect to” and substituting therefor the word “a”.

Justification

The amendment is necessary for purposes of proper grammatical flow.

CLAUSE 15

THAT, the Bill be amended by deleting clause 15.

Justification

The deletion of clause 15 removes the obligation of the formation and registering of referendum committees. This will ensure that persons may freely campaign for or against a question to be determined at a referendum without having to form one national referendum committee and other referendum committees in each of the constituencies.

CLAUSE 16

THAT, the Bill be amended by deleting clause 16.

Justification

The deletion of clause 16 is a consequential amendment which follows from the deletion of referendum committees in clause 15.

CLAUSE 17

THAT, the Bill be amended by deleting clause 17.

Justification

The deletion of clause 17 is a consequential amendment which follows from the deletion of referendum committees in clause 15.

CLAUSE 18

THAT, clause 18 of the Bill be amended by deleting sub-clause (1) and inserting the following new sub-clause—

“(1) The promoters of a popular initiative may appoint not more than two agents to be present at each polling station during voting.”

Justification

The amendment is necessary to bring the clause into conformity with section 30 of the Elections Act which provides that a political party may appoint one agent for its candidates at each polling station.

The amendment also seeks to place the obligation to appoint agents on the promoters of a draft Bill.

CLAUSE 19

THAT, the Bill be amended by deleting clause 19 and inserting the following new clause—

Rights and duties of agents. **19.** (1) An agent appointed under section 18 shall, when present, be entitled to—

- (a) witness the opening and closing procedures and processes of a polling station;
- (b) examine the serial numbers of the ballot boxes before the

commencement of the polling and after the close of the polling;

- (c) examine the voters' registers;
- (d) verify whether a person who has applied for a ballot paper to vote is qualified to vote at a polling station;
- (e) be furnished with the names of the election officials at a polling station and constituency tallying centre;
- (f) put a security seal on the ballot box;
- (g) object, to the presence of any person, other than a person lawfully present at the polling station or tallying centre;
- (h) take note of all the activities taking place in a polling station including the conduct of the poll, the observance of prescribed polling regulations, the conduct of the count of the votes and the observance of the prescribed counting regulations and in that connection the agent shall be entitled to take notes, object to the relevant referendum officers preferably in writing, when the agent considers that to be appropriate; and
- (i) perform any other function or carry out any other responsibility conferred on an agent by the Act.

(2) An agent shall—

- (a) submit to the authority of the presiding officer and deputy presiding officer at the polling station and the returning officer and deputy returning officer at the constituency tallying centre;
- (b) comply with lawful orders given by the returning officer, deputy returning officer, presiding officer and deputy presiding officer;
- (c) not communicate with any voter in the polling station except as authorised by this Act;
- (d) not interfere with the poll or counting process in any manner which is not authorised by this Act and
- (e) not willfully damage, destroy or in any way endanger any document or other property of the Commission which comes into the agent's possession or which the agent is entitled to use, examine or handle.

(3) The returning officer, deputy returning officer or presiding officer may suspend for a period of time or expel completely an agent from the polling station the agent is attached to perform the agent's functions if the agent repeatedly flouts this Act in a manner which threatens to interfere or actually interferes with the voting process at that place.

(4) Despite subsection (3), a referendum officer shall alert the agent of a breach every time it occurs and offer the agent an

opportunity to defend such conduct.

(5) Where a referendum officer suspends or expels an agent under this section, the referendum officer shall serve the agent with a written order to that effect and inform the promoters of the draft Bill of the action taken.

Justification

The amendment seeks to bring the Bill into conformity with the Constitution and the Elections Act in regards to the use of the terms “voter” and “register of voters”.

The amendment also removes the repetition of the word “shall”.

CLAUSE 20

THAT, clause 20 of the Bill be amended by deleting sub-clause (1) and inserting the following new sub-clause—

“(1) Any person supporting or opposing the referendum question may carry out campaigns to support or oppose the referendum question within the referendum period subject to the campaign period as shall be specified in the notice in section 7(2)(f)”.

Justification

The amendment seeks to ensure conformity with clause 7 in regards to the timelines for referendum campaigns.

The amendment also deletes the reference to a referendum committee.

CLAUSE 21

THAT, clause 21 of the Bill be amended in sub-clause (2) by deleting the words “an elector” and substituting therefor the words “a voter”.

Justification

The amendment is necessary to bring the Bill into conformity with the Constitution and the Elections Act in regards to the term “voter”.

CLAUSE 23

THAT, the Bill be amended by deleting clause 23 and inserting the following new clause—

Voting under **23.** The Commission may establish special polling stations to make special provision for voters who are unable to vote in the polling stations in circumstances. which they were registered as voters where special and unavoidable circumstances exist for the voters’ inability to vote at his or her registered polling station.

Justification

The amendment seeks to provide for special polling areas to be designated under special circumstances, but the voting to be done on the same day as the date of the referendum.

CLAUSE 24

THAT, clause 24 of the Bill be amended—

(a) by deleting sub-clause (1) and inserting the following new sub-clause—

“(1) An individual or officials of an association, organisation or institution which intends to act as a referendum observer shall, not later than one month before the date of a referendum, apply to the Commission for accreditation.”

(b) by deleting sub-clause (2) and inserting the following new sub-clause—

“(2) A person or an official of an association, organization or institution shall not act as a referendum observer unless such person or association, organization or institution is accredited by the Commission under subsection (1).”

(c) by deleting sub-clause (3);

(d) in sub-clause (4) by inserting the words “not later than thirty days before the date of the referendum” immediately after the words “The Commission shall”;

(e) by deleting sub-clause (6) and inserting the following new sub-clause—

“(6) The Commission may, after affording a referendum observer the right to be heard, revoke the accreditation granted to the referendum observer where the Commission is satisfied that the referendum observer—

(a) is partisan; or

(b) grossly violated the guidelines for referendum observers issued by the Commission.”

(f) in sub-clause (7) by deleting the word “six” appearing immediately after the words “not later than” and substituting therefor the words “three”

Justification

The amendment reduces the period for application of referendum observers from two months to one month, so as to avoid locking out any persons or institutions who may be interested in applying for accreditation as referendum observers.

Article 47(1) grants every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The amendment may therefore be necessary to ensure compliance with the constitutional principle.

The amendment also provides for gross violation of the observer guidelines as a ground for the revocation of accreditation of a referendum observer.

CLAUSE 25

THAT, clause 25 of the Bill be amended in sub-clause (1)–

(a) by deleting the words “of referendum committees” appearing in the opening sentence;

(b) by deleting paragraph (e) and inserting the following new paragraph–

“(e) sign and date the results in the prescribed form and–

(i) furnish a copy of the form to the agents; and

(ii) submit the original form to the Commission.”

Justification

The amendment is necessary since manual or electronic voting would both require submission of the results.

The amendment also removes the reference to referendum committees which was deleted in clause 15.

CLAUSE 26

THAT, the Bill be amended by deleting clause 26 and inserting the following new clause–

Return of **26.** (1) A returning officer shall, immediately after close of polling, referendum. transmit the results of the referendum within the constituency to the Commission in the prescribed form.

(2) The Commission shall declare the referendum results upon receipt of the constituency referendum results from every constituency.

(3) Despite subsection (2), the Chairperson may declare the referendum results before all the constituencies have transmitted their results if the Commission is satisfied that the results that have not been

received will not affect the result of the referendum.

Justification

The amendment may be necessary so as to avoid any ambiguities that may arise in regard to transmission of results.

The amendment also seeks to correct typographical errors.

CLAUSE 27

THAT, clause 27 of the Bill be amended in sub-clause (1) by deleting the words “forty eight hours” and substituting therefor the words “seven days”.

Justification

Article 138(10) of the constitution provides that the Commission shall declare the result of a presidential election within 7 days.

The amendment therefore seeks to align the provision with the Constitutional requirement of the timeline for the declaration of election results.

CLAUSE 28

THAT, clause 28 of the Bill be amended—

(a) In sub-clause (2) by deleting the words “twenty-one” appearing in paragraph (d) and substituting therefor the words “twenty eight”;

(b) in sub-clause (3)—

(i) by inserting the words “or by any other person” immediately after the words “referendum officer” appearing in paragraph (a);

(ii) by inserting the following new paragraph immediately after paragraph (b)—

“(c) that there was a violation of any law relating to a referendum or a commission of any of the offences under the Election Offences Act.”

Justification

The amendment is necessary so as to include all acts or omissions done in respect of the referendum by any person.

The amendment is also necessary to ensure the compliance of the Bill to Article 87(2) of the Constitution in regards to timelines for the filing of petitions.

CLAUSE 30

THAT, clause 30 of the Bill be amended in sub-clause (2) by deleting paragraph (b) and inserting the following new paragraph–

“(b) the issues raised by the petitioner do not challenge the vote requirement for a referendum as provided in section 27(1)(b).”

Justification

The amendment is necessary for purposes of simplicity and coherence.

CLAUSE 31

THAT, the Bill be amended by deleting clause 31.

Justification

The deletion is necessary so as to allow for the application of the provisions of Article 22(1) and (2) of the Constitution which gives every person a right to institute court proceedings, on their own behalf or in public interest, claiming the infringement of a right or fundamental freedom in the Bill of Rights.

CLAUSE 33

THAT, clause 33 of the Bill be amended by deleting sub-clause (1) and inserting the following new sub-clause—

“(1) A referendum petition shall—

- (a) be signed by the petitioner or by a person duly authorized by the petitioner;
- (b) be supported by an affidavit by the petitioner containing the grounds on which relief is sought and setting out the facts relied on by the petitioner; and
- (c) be in number of copies as would be sufficient for the court and all respondents named in the petition.”

Justification

The amendment may be necessary to ensure uniform application of petition rules in both elections and referenda.

The Elections (Parliamentary and County Elections) Rules, 2017 under regulation 8(4)(a) stipulate that the petition shall be signed by the petitioner or by a person authorized by the petitioner.

CLAUSE 37

THAT, clause 37 of the Bill be amended in sub-clause (1) by deleting the words “six months” appearing in paragraph (a) and substituting therefor the words “sixty days”

Justification

The amendment seeks to reduce the time within which a referendum petition may be heard and determined from 6 months to 60 days. This will ensure that a referendum petition, being a matter of national importance, will be heard and determined within a short and reasonable time.

CLAUSE 40

THAT, clause 40 of the Bill be amended in sub-clause (2) by deleting the word “election” appearing in the opening sentence and substituting therefor the word “referendum”

Justification

The amendment is necessary for proper referencing to a referendum and not an election.

CLAUSE 41

THAT, clause 41 of the Bill be amended in sub-clause (3) by inserting the words “within forty eight hours of the decision” immediately after the words “under subsection (1)”.

Justification

The amendment introduces a timeline within which the decision of the court on the referendum petition shall be delivered to the Commission.

CLAUSE 44

THAT, Bill be amended by deleting clause 44.

Justification

The deletion of clause 44 is necessary to allow for the application of clause 14 which provides that all election offences under the Elections Offences Act shall apply in respect of a referendum.

CLAUSE 45

THAT, clause 45 of the Bill be amended by deleting sub-clause (2) and inserting the following new sub-clause—

“(2) The Commission may, without prejudice to the generality of the foregoing, make regulations providing for—

- (a) the verification of registered voters and signatures;
- (b) the conduct of a referendum;
- (c) the circumstances for the establishment of special polling stations;
- (d) the associations, organizations and institutions eligible for accreditation as referendum observers;
- (e) the guidelines for referendum observers; and
- (f) any other matter generally for carrying out the provisions of this Act.”

Justification

The amendment seeks to introduce additional matters in respect of which the Commission may make regulations so as to ensure the full operationalization of the Act.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 26–

Validity of **26A**. A referendum shall be valid if–
referendum.

- (a) at least twenty per cent of the registered voters in each of at least half of the counties vote in the referendum;
and
- (b) the amendment is supported by a simple majority of the citizens voting in the referendum.

Justification

The amendment seeks to provide for the circumstances under which a referendum will be deemed to be a valid referendum, as provided in Article 255(2) of the Constitution.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 44–

Application of the Elections Act No. 24 of 2011. **44A.** Except as may be expressly provided in this Act, the provisions of the Elections Act and the regulations made thereunder shall apply, with the necessary modifications, to a referendum.

Justification

The inclusion of the new clause will ensure that all matters relating to the specified categories as contained in the Elections Act shall also apply in respect to a referendum.

SCHEDULE

THAT, the Bill be amended by deleting the Schedule.

Justification

The deletion of the Schedule is necessary to allow for the application of the Electoral Code of Conduct as provided in the Elections Act.

This will ensure consistency in the application of the law relating to elections and referendum.



HON. JEREMIAH KIONI, MP,

Chairperson of the Constitutional Implementation Oversight Committee.

Annexture 1:

Copy of newspaper advert inviting the public to submit written memorandum on the Bill.

TAXATION >

MPs must reject regressive tax proposals

More than two-thirds of the population live in rural areas, with 80 per cent of them engaged in food production systems. It's these attributes that make agriculture the backbone of our economy and are the reason its mention is synonymous with development. Besides its economic value, food and its production is important to everyone.

As the Covid-19 pandemic evolves, making it difficult to determine its eventual impact with certainty, allowing avoidable disruptions to the livelihoods of our rural folk would place us at fate's mercy. We would not only be creating extreme vulnerability but also jeopardising our ability to respond to the pandemic or manage its effects.

For the long-term health of our economy, our laws and policies must protect agriculture and farmers, and so should the 2020 Finance Bill, which is due for debate this month. We must do everything in our power to protect the capacity of farmers to produce food by providing a financial safety net that protects them from the unique challenges of farming during a pandemic. The rural economy faces

a triple threat. First, severe flooding across western Kenya has displaced entire families and communities and resulted in massive crop losses. Secondly, the desert locust invasion could prevail at least well into next month, which the Food and Agriculture Organization of the UN predicts could result in substantial crop losses. Lastly, Covid-19 has disrupted supply chains, severely limiting farmers' access to high-quality farm inputs, which directly threatens their work. What is more, rural markets are closed to stave off coronavirus infections and various off-farm businesses have become less profitable.

We are in dire straits. First, the bill seeks to impose value-added tax (VAT) on certain key utilities, which will subsequently increase the cost of farming, at a time when it is critical to ensure increased food production. Agriculture is the largest sector in the economy and an important contributor to gross domestic product.

At a time when the coronavirus has put food systems under immense strain, the decision to impose VAT on tractor imports is detrimental to continued food production. Now more than ever, the government should be stepping up interventions to increase investment in farming, including by making it more affordable. Increasing the cost of tractors would make

MICHELLE KAGARI
& AMY AZANIA

The decision to impose VAT on tractor imports is detrimental to continued food production.

First, the bill seeks to impose value-added tax (VAT) on certain key utilities, which will subsequently increase the cost of farming, at a time when it is critical to ensure increased food production. Agriculture is the largest sector in the economy and an important contributor to gross domestic product.

At a time when the coronavirus has put food systems under immense strain, the decision to impose VAT on tractor imports is detrimental to continued food production. Now more than ever, the government should be stepping up interventions to increase investment in farming, including by making it more affordable. Increasing the cost of tractors would make

First, the bill seeks to impose value-added tax (VAT) on certain key utilities, which will subsequently increase the cost of farming, at a time when it is critical to ensure increased food production. Agriculture is the largest sector in the economy and an important contributor to gross domestic product.

agricultural mechanisation much more difficult, undermining realisation of the key pillar of food security in the President's 'Big Four agenda'.

Secondly, the bill proposes to introduce a 14 per cent VAT on solar products.

About 600 million people in sub-Saharan Africa live without electricity. The known limitations — most notably cost and capacity — of on-grid sources make stand alone systems like solar a reliable option.

These clean energy alternatives support the government's plan to achieve universal access to electricity as outlined in the Kenya National Electrification Strategy.

Taxation on solar products will significantly increase their cost. This will only serve to deepen the exclusion of rural populations from the grid, defeating the purpose for which the tax was removed in the first place. It also undermines the push for clean energy.

Rural families are already struggling to access quality farm inputs — and this is just one facet of what they are grappling with. At a time when they are doing all they can to make ends meet, the

move would add to their burden by cutting them off from the grid as well.

Thirdly, the bill further proposes to charge VAT on clean cookstoves, therefore placing them out of reach for the families that most need them. Parliament must reject this bid, both because it's impractical and as an environmental and socioeconomic statement.

Cookstoves offer three significant benefits: improved health and time savings for households; preservation of forests and associated ecosystems; and low emissions, which contribute to global climate conservation. They are a sustainable and renewable energy alternative.

To protect the long-term health of the Kenyan economy, we must implement interventions that address more of our rural and informal segments.

Lawmakers must show their commitment to their constituents by rejecting these insensitive proposals contained in the bill.

Ms Kagari is the global director for government relations and policy at One Acre Fund. Ms Azania is a government relations and policy adviser, One Acre Fund; @oneacrefund

EDUCATION >

The safety of learners comes first

Our education authorities should not even be talking about reopening primary and secondary colleges and universities from the March Covid-19 shutdown any time soon, when the entire world is still battling the coronavirus pandemic.

There is a need for teachers' unions, school heads and Education ministry officials to first come up with a viable strategy for social distancing or keeping students within small groups in schools, attending school at different times or days to limit the spread of the infection among learners and their teachers.

We should learn from England, where schools have been reopened to a small number of vulnerable pupils and the children of key workers since they closed at the end of March. The plans for a cautious, phased return of some children is based on the best scientific and medical advice available, even insisting that the department (ministry) should be engaging closely with a range of organisations, including the teachers' unions, for everything being planned when it comes to education.

The unions and headteachers have expressed the safety gaps and practicalities in many schools, saying the current safety measures are not feasible. Despite scientific evidence of the limited spread of the virus by children, reopening schools without a plan could lead to a second spike in Covid-19. Reopen schools when it is safe to.

KIMANI WA NJUGUNA, Kiambu

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - FOURTH SESSION

In the matters of consideration by the National Assembly:-

1. The Referendum Bill (National Assembly Bills No. 11 of 2020)
2. The Kenya National Commission on Human Rights (Amendment) Bill (National Assembly Bills No.1 of 2020)

SUBMISSION OF MEMORANDA

Article 118(1)(a) of the Constitution provides that, 'Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees'. Further, the National Assembly Standing Order 127(3) requires the 'Select Committee to, when a Bill is committed to facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House'.

The Referendum Bill (National Assembly Bill No. 11 of 2020) seeks among others to provide for the procedure of the approval of an amendment to the Constitution of Kenya by referendum, the conduct of a referendum, referendum petitions and corresponding amendments to the Electoral Act, No. 24 of 2011 which currently provide for the conduct of a referendum. It further seeks to provide for the procedure for amendment of the Constitution by Popular Initiative as provided under Article 257 of the Constitution.

The Kenya National Commission on Human Rights (Amendment) Bill (National Assembly Bill No. 1 of 2020) seeks to amend the Kenya National Commission on Human Rights Act, No. 14 of 2011, in order to merge both the Kenya National Commission on Human Rights and the National Gender and Equality Commission in order to retain the Kenya National Human Rights and Equality Commission as established under Article 56(1) of the Constitution.

The above mentioned Bills have undergone first reading pursuant to Standing Order 127 and are now committed to the Constitutional Implementation Oversight Committee for consideration and thereafter report to the House.

Pursuant to the provision of Article 118(1)(a) of the Constitution and Standing Order 127(3), the Committee invites interested members of the public to submit any representations they may have on the said Bills. Copies of the Bills can be accessed from the parliamentary website at www.parliament.go.ke/the-national-assembly/house-business/bills.

The representations or written submissions may be submitted to the Clerk of the National Assembly, P.O. Box 41842, 00100, Nairobi, hand delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi, or emailed to clerk@parliament.go.ke; to be received on or before Thursday, 18th June, 2020 at 5.00 pm.

MICHAEL R. SIALALBS

REPUBLIC OF KENYA COUNTY GOVERNMENT OF KAKAMEGA



COUNTY PUBLIC SERVICE BOARD

DECLARATION OF VACANCIES

Pursuant to the Constitution of Kenya (2010) and the County Governments Act No. 17 of 2012, the County Government of Kakamega invites applications from suitably qualified persons to fill the following vacant positions:

OPEN TO THE GOVERNMENT EMPLOYEES ONLY			
S/No.	Position	Job Group	No. of Posts
1	Director, Internal Audit	CPSR 01	1
2	Deputy Director, Internal Audit	CPSR 04	1
3	Assistant Director, Internal Audit	CPSR 05	1
4	Principal Internal Auditor	CPSR 06	2
5	Senior Internal Auditor	CPSR 07	3
6	Internal Auditor / Audit Assistant	CPSR 08	5

OPEN TO THE GOVERNMENT EMPLOYEES AND NON-EMPLOYEES			
S/No.	Position	Job Group	No. of Posts
7	Director of Finance	CPSR 03	1

How to Apply

Details of duties and requirements can be found on our website www.kakamega.go.ke and in all Sub-County Headquarters.

All applicants should click on the Job Offers option on the County Website and fill the application form and submit.

H/B: No hard copy applications will be received.

All applications should reach this office on or before 19th June 2020 at 5.00 pm.

PLEASE NOTE: Kakamega County Public Service Board does not charge ANY FEE at any stage of the recruitment and selection process. Our official communication channels are email address cpb@kakamega.go.ke and phone number 0711852373 ONLY.

Only Shortlisted candidates will be contacted.

Order to use SGR only puts Macharia on hot seat

Senators ask why directive was not optional saying standard gauge railway may not be cheaper as claimed

ALLAN KISIA: Transport Cabinet Secretary James Macharia came under fire on Thursday for ordering mandatory use of the standard gauge railway for imported goods destined for neighbouring countries.

Senators asked why public participation was not conducted before the directive was issued requiring imported cargo to be transported by the SGR from Mombasa to Naivasha.

They questioned why the directive was not optional and said using the SGR may not be cheaper as the government claims.

Appearing before the Senate Roads and Transport Committee, Macharia defended the move, saying the Covid-19 pandemic made it impossible for the government to conduct public participation.

He added the trucking business has been identified as a key transmitter of the coronavirus from one area to another.

"Whether it is from Namanga to Nairobi or Mombasa to Kampala, the trucking business has greatly contributed to the spread of the virus," Macharia said.

So the government had to act unilaterally based on its best public health information and the best interests of the people, he said.

Macharia said using the SGR is more efficient and would also reduce damage to roads by heavy trucks.

"The decision was anchored in the fact that we have a pandemic to deal with and also because rail transport will reduce damage to the road and is cheaper and efficient," he added.

Mombasa Senator Mohamed Fakl

said Covid-19 is currently spreading faster in the shuns than among truck drivers. "The problem is that we have delays in clearance of trucks and that is causing an increase in the spread of the disease among drivers. We should establish more testing centres," he said.

Fakl criticised the CS for not stating whether any measures are in place to mitigate losses in the trucking business. "We should not destroy the trucking business for the sake of SGR," he said.

The Kenya Railways Corporation has launched direct SGR freight services for all transit cargo to be ferried directly from Mombasa port to the Naivasha Inland Container Depot (ICD) where trucks will pick them for onward transportation.

Officials said freight from the Port of Mombasa to Naivasha costs \$600 (Sh63,648) for a 20-foot container, \$850 for a 40-foot container weighing as much as 20 tonnes and \$910 for the same sized container weighing more than 21 tonnes.

The directive to ferry goods directly from Mombasa to the Naivasha ICD, which took effect on June 1, was agreed at a virtual meeting attended by President Uhuru Kenyatta and the presidents of Uganda, Rwanda and South Sudan.

It was intended to cut the time taken from Mombasa to the Uganda border to reduce transmission of Covid-19 by truck drivers along the transport corridor.

Truck drivers have also resisted the Naivasha ICD order, citing massive investment and job losses.



Transport CS James Macharia (centre) during the inspection tour of the Naivasha Inland Container Terminal on Tuesday /COURTESY

REPUBLIC OF KENYA



NATIONAL ASSEMBLY TWELFTH PARLIAMENT - FOURTH SESSION

In the matters of consideration by the National Assembly:-

1. The Referendum Bill (National Assembly Bills No. 11 of 2020)
2. The Kenya National Commission on Human Rights (Amendment) Bill (National Assembly Bills No.1 of 2020)

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, the National Assembly Standing Order 127(3) requires the Select Committee to which a Bill is committed to facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House.

The Referendum Bill (National Assembly Bill No. 11 of 2020) seeks among others to provide for the procedure of the approval of an amendment to the Constitution of Kenya by a referendum, the conduct of a referendum, referendum petitions and consequential amendments to the Elections Act, No. 24 of 2011 which currently provide for the conduct of a referendum. It further seeks to provide for the procedure for amendment of the Constitution by Popular Initiative as provided under Article 257 of the Constitution.

The Kenya National Commission on Human Rights (Amendment) Bill (National Assembly Bill No. 1 of 2020) seeks to amend the Kenya National Commission on Human Rights Act, (No. 14 of 2011), in order to merge both the Kenya National Commission on Human Rights and the National Gender and Equality Commission in order to retain the Kenya National Human Rights and Equality Commission as established under Article 59(1) of the Constitution.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127 and are now committed to the Constitutional Implementation Oversight Committee for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee invites interested members of the public to submit any representations they may have on the said Bills. Copies of the Bills can be accessed from the parliamentary website at www.parliament.go.ke/the-national-assembly/house-business/bills.

The representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Thursday, 18th June, 2020 at 5.00 pm.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

THE COUNTY GOVERNMENT OF LAMU



TENDER NOTICE

The County Government of Lamu invites eligible bidders to submit bids for the below tenders;

NO.	TENDER NO.	DESCRIPTION	CLOSING DATE AND TIME	ELIGIBILITY
1.	CG/L/PROJ/ ELINFRA/022/2019-2020	CONSTRUCTION OF SIYU SEAWALL (RE - TENDERED)	Friday, 19th June, 2020 at 11:00 a.m.	OPEN TO ALL
2.	CG/L/BORE HOLES/ONT/ WATER/043/2019-2020	DRILLING, DEVELOPMENT, TEST PUMPING & EQUIPPING OF 5 NO. BOREHOLES (ZEBRA, BOPWE, MURUJI, MOCUMUONI, AND HESHIKIA) IN HONGWE WARD, LAMU COUNTY	Friday, 19th June, 2020 at 11:00 a.m.	OPEN TO YOUTHS
3.	CG/L/BORE HOLES/ONT/ WATER/044/2019-2020	DRILLING, DEVELOPMENT, TEST PUMPING & EQUIPPING OF 2 NO. BOREHOLES (MWAHAKAZA, AND MINYALLET) IN HONGWE WARD, LAMU COUNTY	Friday, 19th June, 2020 at 11:00 a.m.	OPEN TO YOUTHS
4.	CG/L/XIANGWE WATER PAN/ONT/045/2019-2020	CONSTRUCTION OF 15,000M3 XIANGWE WATER PAN	Friday, 19th June, 2020 at 11:00 a.m.	OPEN TO ALL

Interested and eligible firms may obtain further information and inspect tender documents from Supply Chain Management Offices, at LAMU TREASURY, Lamu Island during normal working hours. Tender documents may be viewed and downloaded free of charge from Treasury IFMS Portal: <http://supplytreasury.go.ke>.

Completed tender document should be submitted online through the IFMS platform on or before the closing date and time as it is indicated above. The system will automatically lock out after the deadline for submission of tenders.

DIRECTOR, SUPPLY CHAIN MANAGEMENT SERVICES,
FOUR COUNTY SECRETARY,
COUNTY GOVERNMENT OF LAMU.

Annexure 2:

Signed list of the Members who attended the sitting that considered and adopted the report on the Bill.

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FOURTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

ATTENDANCE REGISTER

Date: 15.09.2020.....

Venue: COMMITTEE ROOM 4 1st FLOOR 10-JANUARY HOUSE

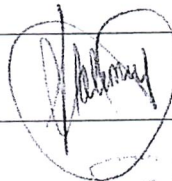
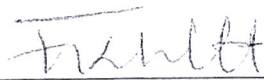
Time in: 10:20 am.....

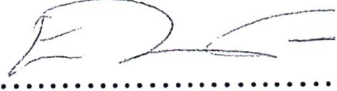
Time Out: 12:35 pm.....

	HON. MEMBER	SIGNATURE
1.	Hon. Jeremiah Kioni, M.P. (Chairman)	
2.	Hon. Peter Kaluma, M.P. (Vice-Chairman)	
3.	Hon. (Dr.) Naomi Shaban, M.P.	
4.	Hon. (Dr.) Christine Ombaka, M.P.	
5.	Hon. T.J Kajwang, M.P.	
6.	Hon. Charles Gimose, M.P.	
7.	Hon. Yusuf Abdi, M.P.	
8.	Hon. Abdi Shurie, M.P.	
9.	Hon. Anthony Oluoch, M.P.	
10.	Hon. (Col.) Geoffrey Kingangi, M.P.	
11.	Hon. Raphael B. S. Wanjala, M.P.	
12.	Hon. Simon Nganga Kingara, M.P.	

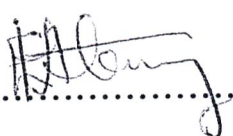
ZOOM

ZOOM

	HON. MEMBER	SIGNATURE
13.	Hon. Japheth Mutai, M.P.	
14.	Hon. Peris Tobiko, M.P.	
15.	Hon. Halima Mucheke, M.P.	
16.	Hon. Daniel Rono, M.P.	
17.	Hon. Fabian K. Muli, M.P.	
18.	Hon. Benard Okoth, M.P.	
19.	Hon. Joash Nyamoko, M.P.	
20.	Hon. Moses Kirima, M.P.	
21.	Hon. Didmus Barasa, M.P.	
22.	Hon. Purity Ngirici, M.P.	
23.	Hon. Catherine Wambilianga, M.P.	

Name: Edward Libendi Signature: 

Committee Clerk

Name:  Signature: 19/9/2020

Director, Committees

REPUBLIC OF KENYA



TWELFTH PARLIAMENT - (FOURTH SESSION)

THE NATIONAL ASSEMBLY

CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE

ADOPTION LIST REFERENDUM Bill, 2020

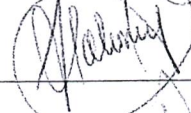
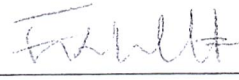
Time in: 15:30:00

Venue: (Kenya) National Assembly, 1st Floor, Constitution Hill, Nairobi

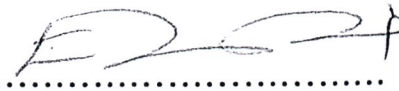
Time in: 10:20am

Time Out: 12:35pm

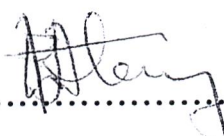
HON. MEMBER	SIGNATURE
Hon. Jeremiah Kioni, M.P. (Chairman)	
Hon. Peter Kaluma, M.P. (Vice-Chairman)	
Hon. (Dr.) Naomi Shaban, M.P.	
Hon. (Dr.) Christine Ombaka, M.P.	
Hon. T.J Kajwang, M.P.	
Hon. Charles Gimose, M.P.	
Hon. Yusuf Abdi, M.P.	
Hon. Abdi Shurie, M.P.	
Hon. Anthony Oluoch, M.P.	
Hon. (Col.) Geoffrey Kingangi, M.P.	
Hon. Raphael B. S. Wanjala, M.P.	
Hon. Simon Nganga Kingara, M.P.	
Hon. Japheth Mutai, M.P.	

	HON. MEMBER	SIGNATURE
14.	Hon. Peris Tobiko, M.P.	
15.	Hon. Halima Mucheke, M.P.	
16.	Hon. Daniel Rono, M.P.	
17.	Hon. Fabian K. Muli, M.P.	
18.	Hon. Benard Okoth, M.P.	
19.	Hon. Joash Nyamoko, M.P	
20.	Hon. Moses Kirima, M.P	
21.	Hon. Didmus Barasa, M.P	
22.	Hon. Purity Ngirici, M.P	
23.	Hon. Catherine Wambilianga, M.P	

Name: Edward Libendi

Signature: 

Committee Clerk

Name: 

Signature: 15/9/2020

Director, Committees

Annexure 3:

Minutes of the Committee sitting on consideration of the Bill and adoption of the Report.

**MINUTES OF THE TWENTY FIFTH SITTING (FOURTH SESSION) OF THE
CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE HELD ON
MONDAY, 15TH SEPTEMBER, 2020 IN COMMITTEE ROOM ON 4TH FLOOR,
CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00A.M.**

PRESENT

- | | | |
|---|---|----------------|
| 1. The Hon. Jeremiah Kioni, M.P. | - | Chairman |
| 2. The Hon. Peter Kaluma, M.P. | - | Vice- Chairman |
| 3. The Hon. T.J Kajwang', M.P. | | |
| 4. The Hon. Yusuf Abdi, M.P. | | |
| 5. The Hon. Raphael B. S. Wanjala, M.P. | | |
| 6. The Hon. Japheth Mutai, M.P. | | |
| 7. The Hon. Abdi Shurie, M.P. | | |
| 8. The Hon. Fabian K. Muli, M.P. | | |
| 9. The Hon. Halima Mucheke, M.P. | | |
| 10. The Hon. (Col.) Geoffrey Kingangi, M.P. | | |
| 11. The Hon. Simon Ng'ang'a King'ara, M.P. | | |
| 12. The Hon. Daniel Rono, M.P. | | |
| 13. The Hon. Anthony Oluoch, M.P. | | |
| 14. The Hon. Catherine Wambilianga, M.P. | | |
| 15. The Hon. Benard Okoth, M.P. | | |
| 16. The Hon. Didmus Barasa, M.P | | |

APOLOGIES

1. The Hon. (Dr.) Naomi Shaban, M.P.
2. The Hon. (Dr.) Christine Ombaka, M.P.
3. The Hon. Charles Gimose, M.P.
4. The Hon. Moses Kirima, M.P
5. The Hon. Peris Tobiko, M.P.
6. The Hon. Purity Ngirici, M.P
7. The Hon. Joash Nyamoko, M.P

SECRETARIAT

- | | |
|---------------------------|-----------------------------------|
| 1. Mr. Edward Libendi | - Senior Legal Counsel/CIOC Clerk |
| 2. Ms. Mary Lemerelle | - Clerk Assistant III |
| 3. Ms. Christine Odhiambo | - Legal Counsel I |
| 4. Mr. Vitus Owino | - Research Officer I |

MIN.NO.CIOC/2020/241

PRELIMINARIES

The Chairman called the meeting to order at twenty minutes past ten O'clock (10.20 a.m.) and commenced with a word of prayer. The Chairman stated that the Committee had made adequate deliberations on the proposals from stakeholders on the Referendum Bill, 2020 and had agreed to adopt some of the proposed amendments. He informed Members that a draft report had been prepared and requested them to review the report to ascertain if the proposals captured therein reflected the Committee's resolutions.

MIN.NO.CIOC/2020/242

CONFIRMATION OF MINUTES

Confirmation of minutes of the previous sittings was differed.

MIN.NO.CIOC/2020/243

**CONSIDERATION OF THE REPORT ON THE
REFERENDUM BILL, 2020**

The Chairman requested the Legal Counsel to take Members through the draft report with specific focus on the proposed amendments so that Members could make a decision on them.

The legal counsel took the meeting through the proposed Committee Stage amendments and Members agreed as follows: That:

- (i). **Long title**-That further amendments be made to the Long title to capture the provisions of Chapter 16 of the Constitution.
- (ii). **Clause 5 (c) be deleted**- the Committee was of the opinion that if retained, it would lead to confusion to county assemblies in selecting which local radio stations to use for advertisement due to the high number of available radio stations.
- (iii). **Clause 14 be reworded for clarity**. Members were of the opinion that the clause on application of offences in the Election Offences Act to a referendum were ambiguous and agreed that the clause be redrafted.
- (iv). **Clause 15 to 18** - The Committee resolved that the clauses be deleted so as to remove the Referendum Committees from the Bill and allow any person who was interested in campaigning for or against the Bill to do so.
- (v). **Clause 20 (1)** - be amended by deleting the words "or referendum committee" after the words "any person" so as to give liberty to any person interested in supporting or opposing a referendum to do so within the confines of the law.
- (vi). **Clause 24**- **The period within which any person wishing to apply for accreditation as an observer be reduced from two months to one month as two months was too long.**

- (vii). **Clause 26 (1) on time for transmission of referendum results by returning officer –** Members agreed that the term ‘as soon as practicable’ is ambiguous and that the same timelines and wording “Immediately after the close of polling” as used in the Elections Act be used in this Act.
- (viii). **Clause 40 on power to order scrutiny of votes-** It was noted that the amendment ‘in consultation with the Commission’ was not necessary as the order for scrutiny of votes is usually given against the Commission and this action would also interfere with the independence of the Judiciary.
- (ix). **Clause 41 on notification period in communicating the decision of the court-** Members agreed that 7 days period for the Registrar of the High Court to communicate to the Commission the decision of the court was too long and resolved to reduce the period to 48 hours.
- (x). **The new clause 7A be deleted-** Members deliberated and agreed that a referendum was only allowed by the Constitution in Kenya when seeking to amend the Constitution and therefore introducing referendum on other issues outside the Constitution would have no proper legal backing.
- (xi). **New Clause 44A-** That the clause be drafted in such a manner as to allow application of provisions of the Elections Act as well as Regulations to a Referendum conducted under the Act.
- (xii). **Schedule regarding the referendum code of conduct be deleted-** Members proposed that the Schedule be deleted and that the provisions be captured in clause that sought to apply provisions of the Elections Act to a referendum.

MIN.NO.CIOC/2020/244 ADOPTION OF THE REPORT ON REFERENDUM BILL, 2020

Members present unanimously adopted the report after being proposed and seconded by Hon. Japheth Mutai, M.P. and Hon. Simon. King’ara, M.P. respectively.

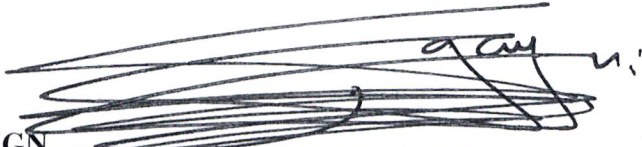
MIN.NO.CIOC/2020/245 ANY OTHER BUSINESS

The Chairman informed Members that the Committee had planned a retreat scheduled to take place in Mombasa from 24th to 28th September, 2020 to consider several Bills that were pending

before the Committee. He requested the Members who would be available to participate in the retreat to register with the secretariat for planning purposes.

MIN.NO.CIOC/2020/246 ADJOURNMENT

There being no other business the meeting was adjourned at twenty five minutes to one O'clock (12.35 p.m).


SIGN.....
THE HON. JEREMIAH KIONI, M.P.

DATE 16/09/2020
CHAIRPERSON

Annexure 4:

Written submissions received from stakeholders



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

ADVISORY ON THE REFERENDUM BILL, 2020

TO

**THE NATIONAL ASSEMBLY CONSTITUTIONAL IMPLEMENTATION
OVERSIGHT COMMITTEE THROUGH
THE CLERK OF THE NATIONAL ASSEMBLY**

DATED: 6th JUNE 2019

Kenya National Commission on Human Rights (KNCHR)
CVS Plaza 1st Floor, Kasuku Lane, Off Lenana Road,
P.O. Box: 74359-00200 Nairobi, Kenya
Landline: +254-020-3969000
Mobile: 0733 78 00 00 /0726 610 159
Whats App: 0798 849 871
General Enquiries: haki@knchr.org
Complaints: complaint@knchr.org
SMS: 22359
Twitter: @hakiKNCHR

A. Background

1. The Kenya National Commission on Human Rights (KNCHR), is an independent National Human Rights Institution established under Article 59 of the Constitution; with a broad mandate to promote a culture of respect of human rights in Kenya. The operations of the National Human Rights Commission are guided by the United Nations Paris Principles on the establishment and functioning of Independent National Human Rights Institutions commonly referred to as the Paris Principles.
2. The KNCHR under Article 249 of the Constitution is mandated to secure observance of all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to ensure they uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the constitution. One of the strategies pursued by the Commission to secure observance of all state organs of democratic values and principles is through the review of bills, new laws and subsequent issuance of advisories. It is in this regard, that the National Commission issues this advisory on the Advisory on the Referendum Bill, 2020.

B. Introduction

3. Kenyans have travelled a long and strenuous journey to obtain the 2010 Constitution. Tribute and homage should be paid to those who lost their lives, means of livelihoods and property in the struggle for attaining a new Constitution. We celebrate everyone that participated in the processes towards the enactment of the new Constitution.
4. The KNCHR acknowledges that the drafters of our Constitution envisaged scenarios that may require amendments of the Constitution and further putting in place safeguards under Article 255(1) on matters that may only be changed through a referendum. As such, the KNCHR recognises the importance of this bill in giving light to Chapter 16 of the Constitution.
5. The Commission reiterates the national values and principles of governance as espoused under Article 10 of the Constitution which binds all state organs and all persons whenever they apply or interpret the Constitution among them being national unity, rule of law, democracy, participation of the people, human rights, equity, social justice, inclusiveness, non-discrimination, protection of the marginalised, integrity, transparency and accountability and which shall form the basis of our submissions.

C. KNCHR's general observation and proposals

6. KNCHR welcomes the public participation and commends the drafting of this bill as a means to respond to the challenges that Kenyans have had to experience in previous referendum processes due to lack of a comprehensive legislative framework. It is hoped that this Bill in addition to the proposed input by KNCHR and other actors, will cure the shortcomings of previous referendum processes and subsequently strengthen the institutional and administrative processes. This is imperative as failure to do so may lead to a referendum process that replays the same situation and scenarios that took place in the 2005 referendum that resulted to deep divisions, suspicion, cynicism and apathy witnessed in the 2007- 2008 post-election violence.
7. KNCHR wishes to make the following submissions from which it seeks that issues and useful suggestions will be considered and incorporated into this bill.

I. Civic Education

8. With reference to **Clause 7 (4) of the bill**, KNCHR observes that this provision will require clarity to ensure adequate and sufficient civic education is guaranteed to stimulate public discussion and awareness of the constitutional issues prior to the referendum period. Sufficient time should be accorded for the conduct of civic education for the voters to make informed decisions regarding their self-determination. The civic education should enable Kenyans understand the referendum process, relevant timeliness and also provide education on the specific referendum questions and subject.
9. Suffice to note, that civic education should not be left to one body as in so doing, it will overwhelm the institution and limit wider reach to the public in all corners of this country. The incorporation of other institutions such as Independent Commissions, Civil Society Organisations, Faith Based Organisations and Non-Governmental Organisations with wide community outreach would ease challenges that may ensue due to; logistical, resource constraints among others. Further, KNCHR proposes that the Bill should stipulate the need for guidelines that will ensure that actors are not given tasks before they have the capacity to implement them as this might be setting them up for failure.¹
10. Additionally, it is imperative that resources are allocated and budgeted for distribution and the dissemination of the proposed draft questions and other related material in the Gazetted version and popular version in the official languages and braille. It cannot be assumed that information will reach all the

¹ Page 152 para 11.5 of the Final Committee of Experts Report on Constitutional Review Process. See < https://katibaculturalrights.files.wordpress.com/2016/04/coe_final_report-2.pdf > accessed on 6th June, 2020.

corners of the country and that Kenyans would know how to vote on a particular issue of the referendum.

11. Comprehensive civic education would depoliticise the referendum process and enable the voters freely express their will. Care should be given to guard against partisanship in the conduct of civic education. It is our opinion that the civic education conducted should be non-partisan achieve a delicate balance which recognizes the diverse and often conflicting views of all Kenyans.

II. Verification and publication of the voter register as a preliminary to the referendum

12. The KNCHR proposes inclusion of provisions that provide for the scrutiny, verification and publication of the voter register within set timelines after the IEBC suspends the registration of voters under Clause 7(3) as part of the preliminaries to a referendum. The opening up of the voter register for scrutiny should also be electronically available and accessible to all Kenyans to enhance transparency, accuracy and accountability in the referendum exercise.

III. Recruitment and Appointment of Returning Officers and other referendum staff

13. The KNCHR proposes inclusion of statutory timelines upon which the recruitment envisaged under Clauses 8 and 9 of the bill shall take place to avoid last minute recruitments. Timely recruitment will also ensure that officers are in place in ample time before the referendum polling process and well acquainted with the technology to be used in the exercise. This recruitment should also adhere to the national values and principles of governance of transparency, integrity and inclusion to build confidence among the populace.

IV. Inclusion and accessibility considerations for Persons with Disabilities

14. KNCHR proposes that **Clause 22** of the bill that provides for the requirements for ballot papers should be amended to make provision for braille to cater for persons with visual impairment. Additionally, while the IEBC is at liberty to use public institutions as polling stations under **Clause 13** of the bill, KNCHR proposes that the Clause be amended so as to make provisions for due care and considerations to geographical location of the polling stations and polling areas be made to guarantee the efficient participation by persons with disabilities at every polling station and elderly in determining the actual polling station.
15. The KNCHR welcomes the establishment of **peace committees** in the schedule of this bill, Clause 10 of the Referendum Code of conduct, as a mechanism be addressing the broad divisions in the society occasioned by the referendum. KNCHR proposes that the establishment of these committees

must be grounded on National values principles outlined in Article 10 of the Constitution. These committees further, provide local avenues for dispute resolutions and tailor-made solutions towards reuniting warring parties.

V. Protection from Discrimination on grounds stipulated in Article 27 of the Constitution.

16. The KNCHR welcomes the proposals of voting under special circumstances envisaged under Clause 23 of the bill as a safeguard to ensuring inclusion of groups that are often marginalised during such political process. However, the Commission proposes that the clause be coined in a mandatory phrase to ensure full compliance with the spirit and letter of Article 27 of the Constitution.
17. Indeed, in the case of prisoners, the courts in Constitutional Petition 574 of 2013 held that prisoners are, subject to **Article 83 (1)** of the Constitution entitled to be registered as voters and have the right to vote under **Article 38(3)(a) and (b)** of the Constitution. The IEBC should hence be mandated to put in place measures to ensure that prisoners are registered as voters and that they are able to vote on the referendum day.
18. The KNCHR welcomes the provision in this bill that seeks to provide protection of every Kenyan against acts that breach the code of conduct and the Election Offences Act such as, discrimination, incitement to violence, hate speech, intimidation, sexual and gender-based violence, destruction of property among others.
19. It is notable that the Bill, must envision the vulnerable groups such as the Intersex persons are often discriminated on the ground of sex and Birth. These vulnerable group of Kenyans continue to hold registration documents that conflict with their actual physical appearances due to having been born with ambiguous genitalia, chromosomes, hormones and gonads. These is a crucial group of Kenyans (according to intersex taskforce report²), who continue to be left behind and face systemic violation in exercise of their civil political rights, key among them the right to access proper legal registration documents including elector's cards, denial of their civil right to vote among others.
20. Kenya's 2019 Population and Housing Census enumerated 1,524³ Intersex persons, these were a few who stood up to counter the societal stigma that demands their lives to be lived in secrecy. However, guided by the United Nations' Free and Equal campaign, it estimated that about 0.05 to 1.7% of new born babies are born intersex worldwide. This means that in Kenya alone, actual estimated numbers of Intersex persons is between 23,500 and 799,000 calculated against the Kenya's 47 million population. Therefore, there is need

² Intersex Taskforce report. See <<http://www.klrc.go.ke/images/TASKFORCE-REPORT-on-INTERSEX-PERSONS-IN-KENYA.pdf>> accessed on 6th June, 2020

³ Report reveals there are over 1,000 Kenyans who are intersex, 5th Nov, 2019 Article. See <<https://www.standardmedia.co.ke/article/2001348079/report-reveals-there-are-over-1-000-kenyans-who-are-intersex>> accessed on 6th June, 2020.

to ensure that the registration processes envisioned in this Bill, must be intentional to avoid perpetuating inequality and human rights violations. Further, those processes and systems established must be in compliance with Article 260 of the Constitution which defines a person comprehensively in a way that safeguards everyone from discrimination in line with Article 27 of the Constitution.

VI. Measures to protect Children

21. To this end, the KNCHR submits that there must be intentional measures to protect children against any violations of their human rights during referendum processes. KNCHR, proposes a need for a sub section under **Clause 13 of the bill** that will ban the participation of children in referendum campaigns or processes. Often times schools are used as public places with free access for use as stipulated in this section. Further, there should be no disruption of learning in schools for purposes of hosting campaigns or use of school grounds at the expense of the safety and welfare of the children. In the past referendum processes and elections, KNCHR observed numerous violations of children rights due to lack of comprehensive guidelines on how to safeguard children during such processes. Therefore, the IEBC in partnership with relevant actors should develop campaign guidelines that seek to uphold the rights, security and welfare of all children in Kenya during the referendum process and especially in view of the blanket permission on use of schools as polling stations or campaign grounds.

VII. Measures to safeguard the Sanctity of a referendum

22. It is important that there are provisions to guard against the use of the referendum process as an avenue for settling scores or through the use of violence. An example is the 2005 referendum from which the Committee of Experts on the Constitutional review process took note as follows:

“The referendum became the perfect forum for the political elite to air long standing grievances. Each group resorted to distortion and incitement based on ethnicity and tribal affiliation, and raised hostility and animosity to levels that exacerbated the divides in Kenya. It was apparent that a process of reconciliation was needed but no efforts were made to institute a process of national healing. This laid the ground for the catastrophic consequences of the 2007 elections”.⁴

23. The IEBC should therefore be strengthened in order to reign in on persons that breach the referendum code of conduct and the Election offences Act. Further,

⁴ Page 21 para 2.3.6 of the Final Committee of Experts Report on Constitutional Review Process. See < https://katibaculturalrights.files.wordpress.com/2016/04/coe_final_report-2.pdf> accessed on 6th June, 2020.

acts that are criminal in nature should be prosecuted by the Office of the Director of Public prosecution in collaboration with the mainstream criminal justice actors. KNCHR proposes that collaboration between the two independent bodies (IEBC, ODPP) should be enhanced so as to tackle impunity and improve on the handling of criminal cases related to political and referendum contests.

VIII. Inclusion of the Campaign Financing Act

24. The KNCHR proposes that **Clause 16 (1) of the bill** be amended to include the operationalization of the Campaign Financing Act provisions so as to regulate the utilisation of funds by referendum committees. The suspension of the Act persisting should not go without mention and Parliament should seek to amend, repeal or otherwise operationalize it, as it deems fit.

IX. Anchoring on Information Communication Technology in the referendum process

25. The KNCHR notes that there is a glaring gap in terms of anchoring on the gains we have made as a country in embracing technology in the electoral processes as provided for under the Elections Act, and as one of the safeguards against electoral malpractices. As such we propose incorporating such provisions that shall incorporate technology in the entire referendum cycle from the civic education, voter registration and inspection of the register, voter identification during the polling process and transmission of results as captured in the Elections Act and more specifically Section 44 of the act thereof.

26. Referendum processes in Emergency situations/pandemics

27. The COVID-19 pandemic is a lesson to all in the world, on the need to put in place measures to address functionality of key processes in emergencies. The referendum is one of the said critical processes to Kenya's exercise of Constitutionalism. The KNCHR proposes that this bill, must have considerations on how to undertake the referendum in pandemics and necessary safeguards that all actors should put in place to safeguard human rights for all in Kenya during the referendum processes.

28. The following table contains additional proposals for consideration, based on the specific sections.

PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
<u>PART II</u>		

3. KNCHR takes note of Clause 5 (7) which provides for a blanket threshold of majority of members of the county assembly.	KNCHR proposes inclusion of a definite percentage (such as over 50 %.) This should also be reflected in clause 9 under this part.	This is to ensure that the word "majority" is not selective
<u>PART III</u>		
6. KNCHR suggests amendment of Clause 7(4) under this part to enhance collaboration to provide civic and voter education.	Include the provision of IEBC to collaborate with other credible state and non-state institutions for the purposes of providing civic and voter education.	Conducting polling processes is a mega project. This will lift part of the load from IEBC and benefit from the synergy.
<u>PART IV</u>		
7. Clause 8 (i) provides for the appointment of deputy returning officers but giving a possibility of them not to be appointed	KNCHR therefore proposes the removal of the word MAY and replace it with SHALL as contained in this clause. The deputy returning officers should be appointed at the same time with the returning officers.	This shall ensure that the deputies are hired uniformly.
8. Clause 11 under this part is specific about constituency and may therefore lock out people in places of detention.	KNCHR proposes inclusion of prisons as designated voting regions under clause 11.	This will ensure that prisoners don't lose their right to vote.
9. Clause 12(a), gives a possibility of having a whole constituency declared as a single polling station	KNCHR proposes amendment to the clause and remove the provision of a possibility of having a constituency as a single polling station. KNCHR further proposes capping the number of voters per polling stations to 700.	This may deny some voters the right to participate in the referendum due geographical distances. This will increase the efficiency and effectiveness especially in terms of monitoring the

		transparency of the voting exercise and reducing the congestion that results to agitated voters.
<u>PART V</u>		
10. Clause 23 under this part gives an opportunity to stagger voting dates.	KNCHR proposes an amendment under Clause 23 to have a single day for the referendum and remove the possibility of staggering the dates for whatever reason.	This will eradicate the possibility of manipulation of the voting process and also ensure that results are transmitted uniformly.
Clause 23 further lists one of the groups requiring voting under special circumstances as physically disabled persons	KNCHR proposes changing the naming to persons with disabilities	The term " <i>disabled persons</i> " is derogatory and not in compliance with human rights standards
11. Under clause 24 (7), the time for submission of observers' reports is 6 months	KNCHR proposes that the time for submission of observers' reports be shortened from 6 months to 3 months so as to have the matters to be discussed and concluded.	This will shorten the period and the reports can be useful to establish an overall analysis on the credibility of the vote.
12. Under clause 26 under this part, the mode of transmission of results is not specified	KNCHR proposes to have the mode of transmission of results be specified as electronic.	This will hasten the counting and tallying of the results, increase transparency and avoid manipulation of the same.
13. Provides for use of public facilities as polling stations.	Add a sub section that will ensure rights of children are safeguarded where schools are used as polling station or campaigns.	This clause is not conclusive to govern children rights where schools are used as polling station or campaigns grounds, the provision should go beyond the structural damage to the amenities to actual

		safeguarding of the rights and welfare of the children as schools are their environment.
SCHEDULE 10. Clause 10, provides for establishment of peace committees. 13. Clause 5 (m), provides for restraining and punishment of officials. 14. Clause 5 (d), specifies burials and places of worship as the only two events where campaigns cannot be done 15. Clause 10 (3) (d), gives powers to constituency peace committees to conduct mediation but the powers are broad.	KNCHR proposes the need to add a sub section and clarity that will ensure these committees are established and grounded by the national values principles in Article 10 of the Constitution. KNCHR proposes to have the terms, mode and effecting of punishment to referendum officials be specified and pegged on written law and the various election law including the Elections Offences Act. KNCHR proposes to have social events, including weddings be included alongside places of worship and burials. KNCHR proposes that the mediation process by constituency peace committees be for only non-criminal matters	This will ensure inclusivity and reduce conflict, abuse and bias in appointment and operations of these committees. This will help to avoid unwarranted victimization and to also make the process uniform. This will ensure that the campaign events are transparent and avoid clandestine meetings which may be not easy to monitor. This will eradicate possibilities and situations where criminal cases are mediated

**KENYA LAW REFORM COMMISSION'S SUBMISSIONS ON THE REFENDUM
BILL, 2020**

PROVISION IN THE BILL	KLRC PROPOSAL	RATIONALE
THE REFERENDUM ACT, 2020		
Part I- Preliminary Scope of the Bill Long title: AN Act of Parliament to provide for the procedure of the approval of an amendment to the Constitution by a referendum, the conduct of a referendum, referendum petitions and for connected purposes	KLRC makes the following proposals relating to the scope and objects of the Bill: (i) There is need to expand the scope of the Bill to include provisions on conduct of all forms of referenda. A national referendum to amend the Constitution is one form of referendum. Referenda can be conducted on any matter of national importance and such matter may not necessarily relate to the matters specified under Article 255 (1) of the Constitution. Some countries have held referenda on abortion laws, immigration laws, primary health care and even international cooperation (e.g. Brexit in the UK) (i) Provide for the procedure of conduct of county referenda. The County Governments Act at section 90 provides for matters to be subjected to local referenda. The Bill does not provide for county referenda. Countries with devolved governance structures provide for national and regional referenda. (ii) If the intension of the Bill is only to facilitate the amendment of the Constitution, the title should be changed accordingly. However given that the Bill proposes to repeal the Referendum provisions under the Elections Act, it must set out a comprehensive framework	The scope of the Bill as captured in the long title, the objects clause and the contents of the entire Bill is limited to referendum to amend the Constitution. There are no provisions on other forms of referendum which do not necessarily involve constitutional changes e.g. public interest Bills, membership of regional bodies like EAC, etc. Switzerland is known for its direct democracy system which involves conduct of frequent referendums concerning changes in its constitution and other laws.

	for referenda in Kenya.	
Part II- Amendment of the Constitution by Popular Initiative	This part does not contain provisions on the procedures to amend the Constitution by Parliamentary initiative. This is a gap which should be addressed. It is a constitutional requirement that if the Bill relates to a matter specified under Article 255 (1), it shall be subjected to a national referendum before assent by the President.	Chapter 16 (Articles 255 to 257) of the Constitution provides for the two ways of amending the Constitution, namely, Parliamentary initiative and Popular initiative.
Section 4(5) of the Bill provides that the Commission may consult the Attorney-General to redraft the Bill prepared by the promoters of the popular initiative.	This section needs to be redrafted to align it to Article 257 (3) of the Constitution which requires the promoters of the popular initiative should formulate the general suggestions into a draft Bill. There should be concrete provisions on the steps to be followed in formulating the draft Bill including inclusiveness and public participation.	
Section 5 requires a county assembly notify the public of the receipt of the Bill by notice in the Gazette and in two newspapers of national circulation.	It is proposed that since this is a national exercise which involves all the counties, the notification should be done at the national level.	
Part III- Conduct of Referendum Section 7 requires that every question to be determined during a referendum shall require the voter to select an answer that is either “yes” or “no”	It is not clear whether this proposal will always work for purposes of amending the Constitution. A law of this nature should take into account the unique requirements of Chapter 16 of the Constitution, Specifically the fact that referendum to amend the Constitution must be based on a draft Bill should be given full effect by making detailed provisions on the process of formulating the Bill for purposes of inclusiveness and public participation. It should regulate the form of the Bill in terms of	What happens in a case where the amendment Bill contains more than one matters and each matter needs to be voted separately? What happens if there are more than one Bills containing opposing matters? Consider providing for different scenarios including: (i) Yes and No for draft Bill (ii) Different questions for different provisions in the draft Bill (This is bound to be complex) (iii) Options or different Bills

	content and size. It should anticipate a situation where several Bills are formulated and subjected to the electorate in a single referendum	sponsored by different promoters
Part IV -Matters preliminary to a referendum Part V-Voting and Referendum results Part VI -Referendum petitions Part VII -Miscellaneous	It is recommended that there is need to insert a provision requiring the provisions of the Election Act relating to the following matters to apply to referenda with necessary modification: (a) eligibility to vote; (b) registration of voters; (c) compilation and maintenance of registers; (d) inspection of the register; (e) updating of the register; (f) transfer of registration; (g) determination of questions as to registration; (h) making and determining claims to be registered and objections to registration; (i) appointment of officers to preside at polling stations; (j) designation of polling stations; (k) place and manner in which votes may be cast; (l) design and handling of ballot papers; (m) grounds for postponement of elections; (n) conduct of campaigns; and (o) election offences,	Conduct of referendum is largely similar to conduct of a general election. The two exercises are conducted by one body and relate to the same electorate. Most of the general provisions of the Elections Act can apply with necessary modifications. The Electoral Code of Conduct can also be applied with necessary modifications
Other gaps identified	It is further recommended that the following new provisions should be considered for inclusion in the Bill: (i) Given that a referendum, like a general election, is an expensive exercise, there should be a provision prohibiting more than one national referendum in, say five years. (ii) To avoid abuse, the one million signatures in support of an amendment	There is a possibility of abuse of referendum law where too many referenda could be brought up to the detriment of the economy.

	by popular initiative should not be drawn from one county or region, they should come from a majority of the counties. (iii) Verification of the signatures should be properly provided for. (iv) Funding of referenda should be regulated under the Election Campaign Financing Act (v) A referendum Bill should also prohibit certain forms of referenda including those that may be offensive to any religion or those with secessionist agenda.	
THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (AMENDMENT) BILL, 2020		
Section 1 of the principal Act	Needs to be amended to change the title to the Act	Consider whether to name the Act as the “Kenya Human Rights and Equality Commission” or to use the exact name provided under Article 59 of the Constitution, namely, the “Kenya National Human Rights and Equality Commission”
Definition of the term Commission	Consider whether to name the Act as the “Kenya Human Rights and Equality Commission” or to use the exact name provided under Article 59 of the Constitution, namely, the “Kenya National Human Rights and Equality Commission”	
General Comment The Bill seeks to merge the KNHRC and NGEC into one Commission to be known as the Kenya National Human Rights and Equality Commission and to repeal the National Gender and Equality Commission Act, 2011.	If it is the policy position to merge the two Commissions, it may be necessary to first amend the Constitution by deleting clauses (4) and (5) of Article 59 before repealing the NGEC Act. The relevant clauses under Article 59 provide as follows: <i>(4) Parliament shall enact legislation to give full effect to</i>	Both the Kenya National Commission of Human Rights and the Gender and Equality Commission derive their existence and mandate from Article 59 of the Constitution. Having been established the two Commissions have the status of Chapter 15 Commissions and therefore amending legislation relating to the independence of either of the two must also

	<i>this Part, and any such legislation may restructure the Commission into two or more separate commissions.</i> <i>(5) If Parliament enacts legislation restructuring the Commission under clause (4)—</i> <i>(a) that legislation shall assign each function of the Commission mentioned in this Article to one or the other of the successor commissions;</i> <i>(b) each of the successor commissions shall have powers equivalent to the powers of the Commission under this Article; and</i> <i>(c) each successor commission shall be a commission within the meaning of Chapter Fifteen, and shall have the status and powers of a commission under that chapter.</i>	conform to Article 255 (1) (g) of the Constitution (Subject to referendum).
--	--	--

NGEC/OC/.....

15th June, 2020

Mr. Michael Sialai, EBS
The Clerk of the National Assembly
Clerk's Chambers
Parliament Building
P.O. Box 41842-00100
NAIROBI.

clerk@parliament.go.ke

[CC. libendiedward@yahoo.com](mailto:CC.libendiedward@yahoo.com)

Dear

STAKEHOLDER SUBMISSION ON THE REFERENDUM BILL, (NATIONAL ASSEMBLY BILLS NO. 11), 2020

The Commission has reviewed the Referendum Bill, 2020 and wishes to submit the following comments for your consideration.

At the onset the Commission notes that the bill seeks to repeal sections of the Elections Act, No. 24 of 2011 relevant on referenda and re-enact them, with some improvements, into a separate and exclusive law on Referenda (see Part IX of the Bill on “**consequential amendments**”). It is also clear that many of the provisions of the proposed referendum Bill 2020 are lifted from the Elections Act, 2011.

No	Clause	Proposal	Rationale
1.	Clause 5 on procedure in a county assembly	the Clause should be amended to include more elaborate provisions on public participation at the county level. The feedback of this public participation should be reduced into a report by the relevant committee of the County Assembly and taken into account when debating to approve or reject the Referendum Bill.	This will ensure effective and efficient public participation at the county level.
2.	Clause 7 on the Notice of Holding Referendum	The Clause should be amended to include a sub-clause (after clause 7 (5)) clarifying the limit of questions that may be included in a referendum.	This will ensure a referendum ballot is not crowded.
3.	Clauses 8 & 9 on appointment of	The Commission should ensure that the appointment of Returning	This will ensure representation and

	Referendum Officers.	Officers, Deputy Returning Officers, Presiding Officers, and other Referendum Officers meet the not more than two thirds gender principle and fair representation of Special Interest Groups. This can be achieved by putting an additional clause after 9, or sub-clauses in clauses 8 and 9.	participation of Special Interest Groups in the affairs of referenda.
4.	Clause 15 on Referendum Committees.	Amend by adding a sub clause providing that <i>'The commission shall not register referendum committee unless its composition complies with the not more than two-thirds gender principle and fair inclusion of Special Interest Groups;'</i>	This will ensure participation of Special Interest Groups in the formation and activities of a referendum committee.
5.	Clause 28 (3) on the grounds Referendum Petitions	The Clause should be amended to include grounds beyond the results of a referendum (qualitative challenge), such as to whether it complied with the law and the Constitution.	The 2 grounds provided are insufficient, narrow and restrictive.
6.	Clause 31 on who may present a referendum petition	The Clause should be expanded to include all adult citizens and nonjuridical persons such as organisations.	By restricting locus to bring a petition to a voter either in constituency or at the referendum, the clause unnecessarily and unduly restricts legitimate challenge of the referendum process or results.
7.	Clause 37 (1) (a) on the period of hearing a referendum petition.	The Clause should be amended to reduce the period from six months to 2 months including appellate litigation.	The 6 months to determine a referendum petition is such a long time especially owing to the sensitivity and anxiety that may be there among members of the public.
8.	Clause 41 on whether the decision regarding a referendum petition shall be	There should be clarity on whether the decision of High Court is final or whether appeals to the Court of Appeal and Supreme Court should be preferred. We propose that appeals in the normal manner be allowed subject	Being an important question of law leading to the amendment of the Constitution, the determination of the legality should not be

	final.	to time limitation proposed above and the clause amended accordingly.	left to the 3-judge bench of the High Court. Parties to the petition should be allowed to appeal all the way to the highest court of the land.
--	---------------	---	--

Yours

Betty Sungura-Nyabuto **(MBS)**

Commission Secretary/CEO



POLITICAL PARTIES LIAISON COMMITTEE (PPLC)

C/o Office of the Registrar of Political Parties, Lions Place, 1st Floor
Karuna Close, Waiyaki Way, Westlands
P.O Box 1131-00606, Sarit Centre, Nairobi, Kenya.

June 8th, 2020

Hon. Jeremiah Kioni,
Chairperson,
Constitutional Implementation and Oversight Committee (CIOC),
Clerk's Chamber, Parliament Buildings,
P.O. Box 41842-00100,
Nairobi, Kenya.

Dear Sir,

RE: STAKEHOLDER SUBMISSIONS ON THE CONSTITUTION OF KENYA (AMENDMENT)(NO.5) BILL, 2019, THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (AMENDMENT) BILL, 2019 AND THE REFERENDUM BILL, 2020

Political Parties Liaison Committee (PPLC) wishes to thank you for your letter REF: KNA/DCS/CIOC/2019(09) inviting us to make submissions on the subject bills.

Attached is our submission as per your letter and we look forward to your incorporation of our comments into the bills. We are also available should there be need for further engagement on the bills.

Yours faithfully,

MR. ARUNGU NYAKERA, CBS
CHAIRPERSON, PPLC STEERING COMMITTEE

POLITICAL PARTIES LIAISON COMMITTEE PROPOSALS ON THE REFERENDUM BILL, 2020; THE CONSTITUTION OF KENYA (AMENDMENT NO. 5) BILL OF 2019; AND KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (AMENDMENT) BILL, 2020

REFERENDUM BILL, 2020		
PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
PART II Section 4 (1): The Commission shall make regulations to govern the verification of registered voters and signatures.	Add after signatures..."in consultation with Political Parties."	Political parties being key players in any democratic process such as referendums should be involved in the formulation of the regulations. Public Participation is critical.
PART II Section 4 (3) The Commission may consult with the Attorney General or Parliament in the redrafting of a draft Bill under subsection (2).	The PPLC proposes deletion of the word 'Parliament' and replacing the same with Kenya Law Reform Commission (KLCR)	The political class should not have a direct role in drafting referendum bills. Indeed, the KLRC should be the entity mandated to draft all legislative bills.
PART IV Section 11 (2): A presiding officer shall require a person applying for a ballot paper to produce the person's identity card issued under the Registration of Persons Act or a valid Kenyan passport and the elector's card issued by the Commission.	Delete "and the elector's card" To read... "A presiding officer shall require a person applying for a ballot paper to produce the person's identity card issued under the Registration of Persons Act or a valid Kenyan passport.	With the incorporation of technology in our electoral system, there is no longer need to produce an elector's card.
PART V Section 23: The Commission may make special provisions for Kenyan citizens who are out of the country or who would not be able to vote on the voting day because of essential duties, patients in hospitals, persons admitted in sanatoria or homes for the aged and similar institutions, persons who lead nomadic life on account of vagaries of climate, physically disabled persons, expectant mothers and persons in lawful custody.	The PPLC proposes that the Commission comes up with regulations to guide this provision.	Though a reasonable and critical provision, it is equally important to prevent it from being abused by the political class. The Commission should therefore be well guided by regulations in determining who these special citizens shall be.
PART VII Section 41 (5): A declaration made by the Commission under subsection (4) shall be final, shall not be challenged in any court, and shall be conclusive evidence of the voting at the referendum to which	Deletion of Section 41(5) to allow the right of Appeal of any aggrieved parties in the petition to seek redress in the Court of Appeal.	There is need to incorporate wholly judicial authority on the referendum process. Allowing the right of appeal to the Court of Appeal will be critical in ensuring public confidence in the process and growth of

it relates and of the result of such referendum.		jurisprudence in the electoral and referendum process.
THE CONSTITUTION OF KENYA (AMENDMENT NO. 5) BILL OF 2019		
Amendment of Article 90 (2) of the Constitution.	- The PPLC supports the amendment in its entirety. - The Committee however gives a further proposal that the same formula be applied in the County Assemblies where the aspiring Governor and Deputy Governor are listed in the Party List for Nomination in the County Assemblies.	If adopted, this will enhance unity and strengthen devolution.
KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (AMENDMENT) BILL, 2020		
Amendment of the KNCHR Act to merge the KNHRC and NGEC to form the KNIHREC	The proposed amendment is rejected in toto.	The restructuring of NGEC and KNHRC would be the first step in reversing the gains made by women in socio-political and economic arenas. The new commission-KNIHREC- would be ineffective in handling issues that are specific to women.

Chairperson: Hon. Florence Kajuju, MBS
Vice-Chairperson: Mr. Washington Sati
Commissioner: Mrs. Lucy Ndung'u, EBS, HSC

Our Ref: CAJ/LEG/5(70)



THE
COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of the Ombudsman"

9th June 2020

Clerk of the National Assembly

Clerk's Chambers

Parliament Buildings, Parliament Road

P. O. Box 41842 – 00100

NAIROBI

Dear Sir,

RE: MEMORANDUM ON THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 5) BILL, 2019 AND THE REFERENDUM BILL, 2020

Kindly receive warmest compliments from the Commission on Administrative Justice (Office of the Ombudsman).

Your letter dated 28th May 2020 wherein you sought the input of the Commission in regards to the above captioned Bills refers. The Commission has examined the Bills and noted their noble objects and purposes in the context of promoting good governance in Kenya. The Commission also takes cognisance of the ongoing debate and efforts under the Building Bridges Initiative towards the amendment of the Constitution which may include issues contained in Constitution of Kenya (Amendment) No. 5) Bill, 2019. In this regard, the Commission is of the considered view that it would be important to consider a holistic approach which focuses on all parts of the Constitution as opposed to piecemeal amendments. Nonetheless, the Commission wishes to make the following submissions on the proposed Bills.

1. THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 5) BILL, 2019

The Commission supports the proposed amendment in totality. This is informed by the fact that the Leader and Deputy Leader of a Political Party ought to be given seats in both the Senate and National Assembly so as to push and champion the Party's political agenda in Parliament.

2. THE REFERENDUM BILL, 2020

Provision in the Bill	Proposal by the Commission	Rationale
Clause 4(1)	Change of the sequence of the sub-clauses with clause 4(1) coming after clause 4(5). In addition, there should be an express timeline within which the regulations are developed.	- Procedurally, the development of regulations ought not to come at the beginning of the provision. - Having the timeline for the development of the regulations will address any lacunae in the legal framework that has been experienced in the past in Kenya due to delay in developing the appropriate regulations. This will also be critical in the full operationalisation of the referendum law.
Clause 5	Sub-clauses 3 and 4 should come after sub-clause 8.	Proper sequencing of the sub-clauses engenders coherence.
Clause 5(11)	The communication by the speaker of a County Assembly should include reasons for failure to consider a Bill.	This may address any mischief by a County Assembly which may deliberately fails to consider a Bill with the intention that it fails.
Clause 6(3)	Split the clause to as follows: "3(i) The Commission may assign such symbol, logo, name and colour for each answer to a question to be determined during a referendum as it may consider necessary. (ii) The Commission	- This averts confusion with the symbol, logo, name and colour used by political party, duly elected independent candidate and legally registered organization or association. - Public participation must be undertaken to give a chance to anyone who objects to the

Provision in the Bill	Proposal by the Commission	Rationale
	may consider any objections that may arise in respect of the after publication of the notice."	assigned symbol, logo, name and colour.
Clause 6(4)	Refer to the symbol, logo, name and colour of the political party, duly elected independent candidate as well as of a legally registered organization or association recognized under any written law.	This averts confusion with the symbol, logo, name and colour used by political party, duly elected independent candidate and legally registered organization or association.
Clause 7(1)(f)	Replace the word "cease" with "close"	This ensures statutory harmony with the Elections Act, No. 37 of 2016.
Clause 7(3)	Require the IEBC to publish the voter' register on their website.	This ensures transparency.
Clauses 7(4)	Include a provision that the Commission may partner with other stakeholders in undertaking civic education.	This guarantees that sufficient civic education is undertaken even where the IEBC is not given adequate funding.
Clause 7(5)	Move to clause 6 and insert after sub-clause (4).	Proper sequencing of the sub-clauses engenders coherence.
Clause 15(2)	Application for registration should be signed by the Chairperson and Secretary of the Referendum Committee. Under sub-clause 2(ii),	This prevents singular monopoly and infighting within the Committee.

Provision in the Bill	Proposal by the Commission	Rationale
	require the full name, address and telephone number of the Chairperson, Deputy Chairperson and Secretary. Under sub-clause 2(v), require appointment of two chief agents at the national and county level.	• This ensures statutory harmony with the Elections Act, No. 37 of 2016.
Clause 15(3)	Provide for the issuance of a certificate of registration signed by the Chairperson of the Commission. Under sub-clause 3(b), rejection of registration should be notified to all signatories of the application.	• This averts infighting within the Registration Committees. • For alignment with the above proposal.
Clause 15(5) and 15(6)	Include the symbol, logo, name and colour of the political party, duly elected independent candidate as well as of a legally registered organization or association recognized under any written law.	• This averts confusion with the symbol, logo, name and colour used by political party, duly elected independent candidate and legally registered organization or association.
Clause 17(1)	Require appointment of two chief agents at the national and county level.	• This ensures statutory harmony with the Elections Act, No. 37 of 2016.
Clause 22	Under Clause 22(c),	• This ensures statutory harmony with

Provision in the Bill	Proposal by the Commission	Rationale
	insert the words "Serial" immediately before number. Under Clause 22(e), the symbol, logo, name and colour of the political party, duly elected independent candidate as well as of a legally registered organization or association recognized under any written law.	the Elections Act, No. 37 of 2016. • This averts confusion with the symbol, logo, name and colour used by political party, duly elected independent candidate and legally registered organization or association.
Clause 24(6)	The Commission should grant an observer an opportunity to be heard before revoking the accreditation. Further, gross violation of the referendum law should be included as one of the grounds for revocation of accreditation to any referendum observer.	• The opportunity to be heard ensures compliance with the right to fair administrative action under Article 47 of the Constitution and section 4 of the Fair Administrative Action Act, 2015. • Gross violation of the law on referendum should be a ground for revocation of accreditation, subject to providing an opportunity to be heard before taking such action.
Clause 28	The grounds for a referendum petition should include issues relating to the referendum campaigns.	• The grounds for a petition are not broad enough to cater for the procedural issues that have a bearing on the results. Further, the grounds only focuses on offences committed by IEBC officials.
Clause 30(2)	The necessity sub-clause 30(2)(a) should be considered.	• This provision [30(2)(a)] negates the very reason for petitioning the High Court in the first place since it has the potential of making

Provision in the Bill	Proposal by the Commission	Rationale
	Sub-clause 30(2)(b) lacks clarity.	petition nugatory.
Part III	Introduce a Clause immediately after Clause 7 stating as follows: "8. There shall be a Referendum Committee registered by the Commission with a name, address, telephone number, three officials and chief agents at the national and County level"	This ensures statutory harmony with the bill. Further, the registration of the Referendum Committee is crucial not only during the preliminary stages but also during the actual conduct of the referendum.
Part V	Counting of votes and announcement of results at the polling station is missing	It is important to provide for the process of counting and announcement of results at the polling station before providing for constituency referendum results under Clause 25 of the Bill.
Part VI	Appeal process is missing	Need to state whether the decision of the High Court is final or can be appealed to the Court of Appeal. This is important for legal certainty.

We thank you for the continued support and assure you of our highest regards.
Yours sincerely,



LEONARD NGALUMA, MBS
COMMISSION SECRETARY/CEO



① D/Com's
For CIOC's attention.
11/06/20



Republic of Kenya

Telephone: +254(0)204022000
Email: registrar@orpp.or.ke
Website: www.orpp.or.ke
When replying please quote

Ref: RPP/ORG/34 VOL IV(27)

② LIBENDI
please check
12/6/20

Lion Place, 1st Floor
Off Waiyaki Way
P.O Box 1131-00606
Sarit Centre, Nairobi.

Date: 11th June, 2020

Ms. Serah M. Kioko,
National Assembly,
Clerks Chambers, Parliament Buildings,
P.O. Box 41842-00100,
NAIROBI.

Dear Madam,

RE: STAKEHOLDER SUBMISSIONS ON THE CONSTITUTION OF KENYA (AMENDMENT) (NO.5) BILL, 2019: THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (AMENDMENT) BILL, 2019 AND THE REFERENDUM BILL, 2020

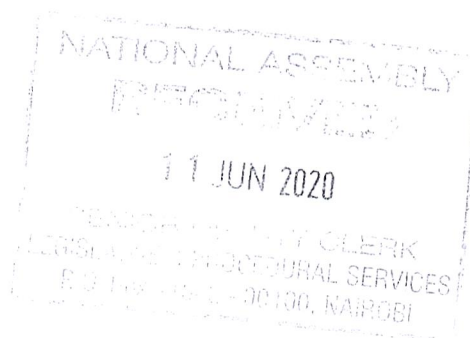
Reference is made to your letter Ref: NA/DCS/CIOC/2020(12) dated 3rd June, 2020 on the above subject matter.

The Office of the Registrar of Political Parties (ORPP) considered the three Bills namely: The Constitution of Kenya (Amendment) Bill (No.5) 2019, the Kenya National Commission on National Rights (Amendment) Bill 2020, and the Referendum Bill 2020 and herewith tender the written Memorandum setting out our recommendations for your consideration.

Thank you for your continued cooperation.

Yours faithfully,

Ann N. Nderitu, MBS
Registrar of Political Parties



1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

MEMORANDUM TO THE NATIONAL ASSEMBLY CONSTITUTIONAL
IMPLEMENTATION OVERSIGHT COMMITTEE THROUGH THE OFFICE OF CLERK OF
THE NATIONAL ASSEMBLY

1.0 PRELIMINARY

Further to the Honourable Clerk's invitation – by way of a letter dated 3rd June 2020 and received by the Office of the Registrar of Political Parties on the 3rd of June 2020 as referenced NA/DCS/CIOCL2020(12) - the Office of the Registrar of Political Parties (ORPP) considered the three Bills namely The Constitution of Kenya (Amendment) Bill (No.5) 2019, The Kenya National Commission on National Rights (Amendment) Bill 2020, and The Referendum Bill 2020 and herewith tender the written Memorandum setting out our recommendations for your consideration.

2.0 DISCUSSION

2.1. The Constitution of Kenya (Amendment) (No.5) Bill National Assembly Bill. No. 67) 2019

PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
Clause 1	Consider replacing 2019 with 2020	Proper citation
Clause 2(a)		Elections Act 2011 under Section 34(9) that estops persons registered for elections was declared unconstitutional vide <i>Commissioner for the Implementation of the Constitution v Attorney General & 2 others [2013] eKLR.</i> The same ought to be amended to reflect the principal in this case but be confined to the

	Consider providing that 'a political party participating in a general election exercises the right to nominate and submit its candidates for elections for electoral areas where they have fielded candidates.'	groups under the Constitution's Article 100. Article 90 is meant for affirmative action. A party that has no single-majority candidates for instance, for Parliamentary seats or in a certain county need not spend resources on development of lists for those categories. For avoidance of doubt, Further, this ensures that Parties are not forced to submit lists in areas where they have no candidates. The duty to submit 98 party lists with all nominees should lie on the Political Parties and not IEBC. In this case Parties have the power to choose which lists to submit and the IEBC shall not be liable for the Parties' actions. In 2017 some Parties did not submit all lists yet the Article 90 of the Constitution as is makes it mandatory. Nonetheless, a party that fails to submit a list cannot be considered for allocation of special seats (even when entitled to the same by reason of single-majority elections) as envisioned under Regulation 26(4) of the Elections (Party Primaries and Party Lists) Regulations, 2017 and as was the case in Election Petition Appeal No. 2 of 2018; Ann Potisho Kapasar Vs Sialo Natanya Tasur & 5 Others Consolidated with Election
--	--	--

		Petition Appeal No. 4 of 2018; IEBC Vs Sial Natanya Tasur & 4 Others.
Clause 2(b)	Consider qualifying this clause to gender.	The Composition of the Senate includes two youth (man and woman) and two PWDs (man & woman) under Article 98(2)(c) & (d) of the Constitution. A Party may be entitled to all seats under either category yet its nominees (presidential and deputy candidates) are of the same gender. Two Political Parties may be entitled to a seat each under either category yet their top nominees are of the same gender as was the case with Jubilee Party and ODM Party for the PWD lists for the 2017 elections.
	The Elections Act 2011 under Article 34 ought to be amended to allow the Commission the power to cherry-pick nominees but only in the circumstance of satisfying the composition of Parliament or county assemblies.	The Commission should have the power to balance allocation of seats on priority basis and ensuring that the composition of the Senate isn't defeated. This power ought to also apply to Article 98 of the Constitution for the Youth and PWD categories even when the Presidential and Deputy Presidential candidates are not nominees under the Youth and PWDs categories.
	The Clause should provide that the said Presidential and Deputy Presidential candidates should not be on all lists of Parliament but a particular list.	This condition not only allows for democracy but also accords a level playing field to other special interest groups.

	Reconsider the effect of this proposal on the composition Article 97 (1) (c) of Constitution.	
General comment	The Party lists should remain closed (that is submitted to the Commission before elections).	

2.2. The Kenya National Commission on National Rights (Amendment) Bill (National Assembly Bill No. 1) 2020

PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
General comment	Include a clause that will allow a restructuring of staff of the new Commission in order to accommodate the staff who will be affected by redundancy provisions under the Employment law framework and re-designations due to duplicity of functions.	

2.3. The Referendum Bill (National Assembly No. 11) 2020

PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
Clause 2 read together with other clauses e.g. 11.	Consider deleting reference to elector and elector's card.	The operational word is voter as is under Article 260 of the Constitution and as used in the Elections Act, 2011. The current framework of electoral law has no place for elector's card; persons who apply for registration as voters aren't even issued with elector's cards but a registration slip which is evidence for having applied to be a voter. The identification documents for voting are either national ID or a passport.

		The terms are misleading since elector's cards are not issued. Need for clarity on whether voting will be manual, electronic or both.
Clause 4	Delete clause 4(1)	When cross-referenced with clause 10 herein the register of voters for use will be the one prepared under the Elections Act 2011; the Voter Registrations Regulations 2017 already provide for procedure of verifying voters registration. Further, the power to make regulations is already provided for under Clause under 45 of this bill.
Clause 4(2)	Consider redrafting clause 4(2) to start with 'The Commission may redraft a bill to amend the Constitution through Article 257 by popular initiative....'	For structural drafting.
Clause 4	Consider deleting reference to verifying signatures.	The Commission has no way of ascertaining accuracy of signatures but it can ascertain that the supporters meet the one million voters' threshold. The consent of voters to support the same may however be indicated by signatures but the signatures cannot, in the meaning of this clause, be verified. On the other hand, the Bill could introduce a requirement for the supporters details to be uploaded on a portal so that they confirm if they actually support the Bill.

Clause 5(1)	Consider assigning the role of publication to a different entity for instance IEBC.	Publicizing the bill cannot justify the cost of all 47 county assemblies each publishing the Bill in two local dailies. The Bills could be published a number of times, say seven consecutive days, by the IEBC.
Clause 5(9)	Consider clarifying the threshold as referenced with clause 5(7). Consider redrafting to 'Where a county assembly fails to obtain a majority and not 'a simple majority'. Qualify the clause by completing who the Speaker of the county assembly writes to i.e. Speakers of Parliament.	The simple majority under sub clause 9 is not constitutional in terms of Article 257 (7) of the Constitution. Besides, does the majority specified in 5(7) mean the same in 5(9)?
Clause 8 (2)	Consider restricting the substance of the clause. Clause 8(4) is incomplete.	Returning and Presiding officer positions are not permanent appointments but designation during elections. It therefore goes that a Returning Officer can only perform functions as a Presiding Officer if designated as such.
PART IV	Consider providing timelines for appointment of the referendum officials as well as the registration of committees.	
Clause 11	Consider deleting the word 'valid' so that the identification documents are simply an ID and a passport. Further delete reference to the elector's card.	The role of a passport in this case is to identify the voter, an expired passport is still good for purposes of identification. It is along this line that the Elections Act 2011 define

	Consider deleting reference to the Registration of Persons Act. Consider providing that the document for identification when applying for the ballot shall be the same as that used for registration and the biometrics used in registration.	identification documents as ID and passport without reference to validity. A requirement for on a valid passport will lead to disenfranchisement. Reference to the Act has no value. For ease of confirming the voter's identity identification. Additionally, the Kenyan electoral system has adopted technology; registration includes capturing of biometrics.
Clause 12(b)	Consider redrafting to '...a number or a letter or a combination of numbers and letters.'	Typographical errors
Clause 15(1)	Consider redrafting, to start with 'The Commission shall consider applications of referendum committees...' Replace 'one committee each in every constituency' with 'one referendum committee in each constituency' Consider replacing the word 'form' with 'register'.	Drafting issue
Clause 15(4) (c)	Consider deleting this provision.	The reasons for refusal to register a referendum committee under 15(4) (a) and (b)

		are sufficient. The discretion under 15(4) (c) serves no purpose; it may be open to abuse.
Clause 15(6)	Qualify the party to 'fully registered Political Party'.	To avoid confusion or false association with fully registered parties; the same have elaborate rights under the Political Parties Act 2011.
Generally on clause 15	Consider splitting the clause into registration of referendum committees and requirements for referendum committees.	The clause is bulky.
Clause 18	Should the polling agent be posted to a polling area or a polling station?	Alive to the question of limited space in a polling station, agents serve as a check on the poll officials and protect their position's interests.
Clause 19(c)	Replace 'electors register' with 'voter register'.	The term used in the Constitution is 'voter' and not 'elector'.
Clause 19(2)	Delete the 'shall'.	The word shall is repeated
Clause 19(2)	Rework the numbering.	No. 2 is repeated
Clause 19(2) which the new 19(3)	Reconsider the powers of the deputy presiding officer. Consider replacing the word 'place' with 'polling station' or 'polling area' Generally, clause 19 is too long and thus may be split into two clauses.	Contradicts Clause 8(5)
Clause 20	Consider providing a timeline for the campaign period.	To address unending campaigns.

Clause 21	Delete the term 'elector'	The term used in the Constitution is 'voter' and not 'elector'.
Clause 24 which is new 24(1)	Consider changing to 'The Commission shall accredit referendum observers not later than two months before the referendum date.' Clauses 24(1) and 24(3) should be drafted in one paragraph.	Drafting issue.
Clause 24(2)	Delete this clause..	A repetition of the new 24(1).
Clause 24(3)	Consider merging 24(3) with the revised 24 (1) in line with established criteria under the Act; delete this clause.	
Clause 24	Consider not making reference to partisanship. Accreditation may however be revoked when or if one contravenes the Act. Remove the words 'manifestly partisan' or consider defining the same.	Partisanship means prejudice towards a certain cause. The Bill has not developed a measure for partisanship. Some organizations/individuals that will apply to be observers will be involved in creating awareness on the Referendum questions perhaps with a particular stand as guided by the various principles including respect for human rights. Their stand could have them deemed partisan. The words are an avenue for abuse of discretion.
Clause 25(e)	Consider replacing the word 'deliver' with 'submit'	Voting may be either manual or electronic thus need to provide for both.

Clause 26	Redraft 'for ward' to forward. Reconsider redrafting sub clause (2) to 'The Commission shall receive results from every constituency before declaring referendum results.' Consider adopting the procedure for the Presidential election for sub clause (3).	Typographical error. Drafting issue. Logical flow of activities.
Clause 27(a)	Consider replacing 'or' with 'and'.	Transparency purposes.
Clause 33	Persons authorised to sign the petition should include a person/persons authorised by the petitioner(s).	Lessons learnt from <i>Moi V Matiba & 2 others</i> Civil Appeal No 176 of 1993 whereby the case failed on account of the failure by Matiba to sign the petition personally. The purpose of pleadings is to aid justice. The Elections (Parliamentary and County Elections) Petitions Rules, 2017 under Regulation 8(4) (a) stipulate that the petition shall be signed by the petitioner or by a person authorised by the petitioner. The same could be applied to Referendum Petitions.
Clause 37(1)(a)	Consider reducing the timeline for determining the Petition. An upper limit of sixty days could be interrogated.	The six months is long not unless the court have other competing electoral cases.
Clause 37	Consider making provision for an appeal process.	The stakes at hand require comprehensive avenues for aggrieved parties to seek justice.
Clause 40	Consider providing that the Commission shall have custody of ballot boxes and	Preservation of records and integrity of the election materials.

	forms. Further, that examination of votes ought to happen at the Commission's warehouse as opposed to ferrying ballot boxes to the court.	
General comment	Consider making a proviso for exit polls as is in under Paragraph 14(b) of the second schedule to the Elections Act, 2011 as long those conducting exit polls do not publish their results during polling time.	Builds up to transparency and one of the ways of determining voting behaviour/demographics



Ann N. Nderitu, MBS
Registrar of Political Parties

592



② LIBENDI
Please doaf
AAA
10/6/20

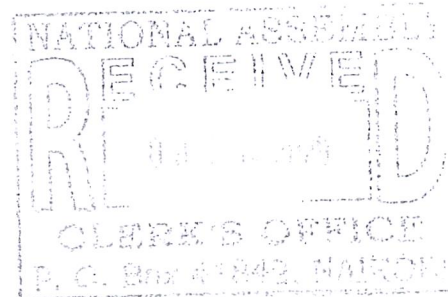
Our Ref: IEBC/DLPA/CORR/2020
Your Ref: KNA/DCS/CIOC/2019(09)

Date: 8th June, 2020

①
D/Conts

9/6/20

The Clerk,
National Assembly,
Clerk's Chambers, National Assembly,
Parliament Buildings,
P.O Box 41842-00100,
NAIROBI.



Attn: Serah M. Kioko

Dear

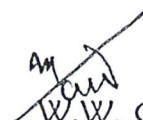
RE: STAKEHOLDER SUBMISSIONS ON THE CONSTITUTION OF KENYA (AMENDMENT), (NO.5) BILL 2019, THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (AMENDMENT) BILL, 2020 AND REFERENDUM BILL 2020

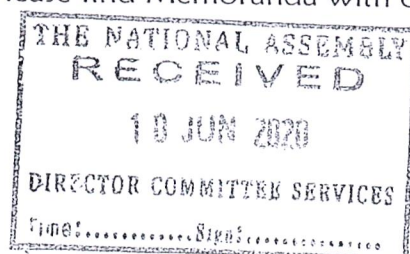
Reference is made to the above and the call for submissions in the facilitation of public participation on the above captioned Bills.

The Commission has since reviewed the Bills that have a direct impact on its mandate namely:

1. The Referendum Bill, 2020- Kenya Gazette Supplement No. 71 (National Assembly Bills No. 11); and
2. The Constitution of Kenya (Amendment) (No.5) Bill, 2019-Kenya Gazette Supplement No. 158 (National Assembly Bills No. 67)

Forwarded herewith please find Memoranda with our comments for your consideration.


W.W. CHEBUKATI
CHAIRMAN





THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

MEMORANDUM

TO THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE OF
PARLIAMENT

ON
THE FOLLOWING BILLS;

1. The Referendum Bill, 2020- Kenya Gazette Supplement No. 71 (National Assembly Bills No. 11)
2. The Constitution of Kenya (Amendment) (No.5) Bill, 2019-Kenya Gazette Supplement No. 158 (National Assembly Bills No. 67)

Independent Electoral & Boundaries Commission (I.E.B.C)

Anniversary Towers, Off University Way

P.O. Box 45371-00100, Nairobi-Kenya

Telephone: +254 (0) 20 29925

INTRODUCTION

1. The Independent Electoral and Boundaries Commission (IEBC) established under Article 88 of the Constitution is responsible for the conduct or supervision of referenda and elections to any elective body or office established by the Constitution and any other elections prescribed by an Act of Parliament.
2. The IEBC is a Constitutional Commission established under Chapter 15 of the Constitution with particular reference to Article 249 which sets out the objects of Constitutional Commissions.
3. The general functions of the IEBC and other Commissions as we are aware are set-out under Article 252(1). However, the specific mandate of the Commission is primarily governed by Article 88(4) of the Constitution and the IEBC Act.
4. The Commission notes the Bills under reference and makes submissions:

1. THE REFERENDUM BILL (NATIONAL ASSEMBLY BILLS NO. 11), 2020.

Purpose of the Bill

5. The Bill seeks among others to provide for the procedure of the approval of an amendment to the Constitution by a Referendum, the conduct of a Referendum, Referendum Petitions and consequential amendments to the Elections Act, No. 24 of 2011 which currently provides for the conduct of a Referendum.
6. We welcome this draft and wish to make some general comments as follows:

General Comments

7. The Commission in consultation with the Justice and Legal Affairs Committee of Parliament (JLAC) has also developed a Referendum Bill which has since been forwarded to the Speaker of the National Assembly. Our proposals herewith therefore largely reflect the provisions in the Commission's Bill.



Specific Comments

8. This Bill intends to provide for detailed procedures applicable in the conduct of Referendum and to this we make the following specific comments:

2104-1871/2020-2021/2022-2023/2024/2025/2026/2027/2028/2029/2030/2031/2032/2033/2034/2035/2036/2037/2038/2039/2040/2041/2042/2043/2044/2045/2046/2047/2048/2049/2050/2051/2052/2053/2054/2055/2056/2057/2058/2059/2060/2061/2062/2063/2064/2065/2066/2067/2068/2069/2070/2071/2072/2073/2074/2075/2076/2077/2078/2079/2080/2081/2082/2083/2084/2085/2086/2087/2088/2089/2090/2091/2092/2093/2094/2095/2096/2097/2098/2099/2100/2101/2102/2103/2104/2105/2106/2107/2108/2109/2110/2111/2112/2113/2114/2115/2116/2117/2118/2119/2120/2121/2122/2123/2124/2125/2126/2127/2128/2129/2130/2131/2132/2133/2134/2135/2136/2137/2138/2139/2140/2141/2142/2143/2144/2145/2146/2147/2148/2149/2150/2151/2152/2153/2154/2155/2156/2157/2158/2159/2160/2161/2162/2163/2164/2165/2166/2167/2168/2169/2170/2171/2172/2173/2174/2175/2176/2177/2178/2179/2180/2181/2182/2183/2184/2185/2186/2187/2188/2189/2190/2191/2192/2193/2194/2195/2196/2197/2198/2199/2200/2201/2202/2203/2204/2205/2206/2207/2208/2209/2210/2211/2212/2213/2214/2215/2216/2217/2218/2219/2220/2221/2222/2223/2224/2225/2226/2227/2228/2229/2230/2231/2232/2233/2234/2235/2236/2237/2238/2239/2240/2241/2242/2243/2244/2245/2246/2247/2248/2249/2250/2251/2252/2253/2254/2255/2256/2257/2258/2259/2260/2261/2262/2263/2264/2265/2266/2267/2268/2269/2270/2271/2272/2273/2274/2275/2276/2277/2278/2279/2280/2281/2282/2283/2284/2285/2286/2287/2288/2289/2290/2291/2292/2293/2294/2295/2296/2297/2298/2299/2300/2301/2302/2303/2304/2305/2306/2307/2308/2309/2310/2311/2312/2313/2314/2315/2316/2317/2318/2319/2320/2321/2322/2323/2324/2325/2326/2327/2328/2329/2330/2331/2332/2333/2334/2335/2336/2337/2338/2339/2340/2341/2342/2343/2344/2345/2346/2347/2348/2349/2350/2351/2352/2353/2354/2355/2356/2357/2358/2359/2360/2361/2362/2363/2364/2365/2366/2367/2368/2369/2370/2371/2372/2373/2374/2375/2376/2377/2378/2379/2380/2381/2382/2383/2384/2385/2386/2387/2388/2389/2390/2391/2392/2393/2394/2395/2396/2397/2398/2399/2400/2401/2402/2403/2404/2405/2406/2407/2408/2409/2410/2411/2412/2413/2414/2415/2416/2417/2418/2419/2420/2421/2422/2423/2424/2425/2426/2427/2428/2429/2430/2431/2432/2433/2434/2435/2436/2437/2438/2439/2440/2441/2442/2443/2444/2445/2446/2447/2448/2449/2450/2451/2452/2453/2454/2455/2456/2457/2458/2459/2460/2461/2462/2463/2464/2465/2466/2467/2468/2469/2470/2471/2472/2473/2474/2475/2476/2477/2478/2479/2480/2481/2482/2483/2484/2485/2486/2487/2488/2489/2490/2491/2492/2493/2494/2495/2496/2497/2498/2499/2500/2501/2502/2503/2504/2505/2506/2507/2508/2509/2510/2511/2512/2513/2514/2515/2516/2517/2518/2519/2520/2521/2522/2523/2524/2525/2526/2527/2528/2529/2530/2531/2532/2533/2534/2535/2536/2537/2538/2539/2540/2541/2542/2543/2544/2545/2546/2547/2548/2549/2550/2551/2552/2553/2554/2555/2556/2557/2558/2559/2560/2561/2562/2563/2564/2565/2566/2567/2568/2569/2570/2571/2572/2573/2574/2575/2576/2577/2578/2579/2580/2581/2582/2583/2584/2585/2586/2587/2588/2589/2590/2591/2592/2593/2594/2595/2596/2597/2598/2599/2600/2601/2602/2603/2604/2605/2606/2607/2608/2609/2610/2611/2612/2613/2614/2615/2616/2617/2618/2619/2620/2621/2622/2623/2624/2625/2626/2627/2628/2629/2630/2631/2632/2633/2634/2635/2636/2637/2638/2639/2640/2641/2642/2643/2644/2645/2646/2647/2648/2649/2650/2651/2652/2653/2654/2655/2656/2657/2658/2659/2660/2661/2662/2663/2664/2665/2666/2667/2668/2669/2670/2671/2672/2673/2674/2675/2676/2677/2678/2679/2680/2681/2682/2683/2684/2685/2686/2687/2688/2689/2690/2691/2692/2693/2694/2695/2696/2697/2698/2699/2700/2701/2702/2703/2704/2705/2706/2707/2708/2709/2710/2711/2712/2713/2714/2715/2716/2717/2718/2719/2720/2721/2722/2723/2724/2725/2726/2727/2728/2729/2730/2731/2732/2733/2734/2735/2736/2737/2738/2739/2740/2741/2742/2743/2744/2745/2746/2747/2748/2749/2750/2751/2752/2753/2754/2755/2756/2757/2758/2759/2760/2761/2762/2763/2764/2765/2766/2767/2768/2769/2770/2771/2772/2773/2774/2775/2776/2777/2778/2779/2780/2781/2782/2783/2784/2785/2786/2787/2788/2789/2790/2791/2792/2793/2794/2795/2796/2797/2798/2799/2800/2801/2802/2803/2804/2805/2806/2807/2808/2809/2810/2811/2812/2813/2814/2815/2816/2817/2818/2819/2820/2821/2822/2823/2824/2825/2826/2827/2828/2829/2830/2831/2832/2833/2834/2835/2836/2837/2838/2839/2840/2841/2842/2843/2844/2845/2846/2847/2848/2849/2850/2851/2852/2853/2854/2855/2856/2857/2858/2859/2860/2861/2862/2863/2864/2865/2866/2867/2868/2869/2870/2871/2872/2873/2874/2875/2876/2877/2878/2879/2880/2881/2882/2883/2884/2885/2886/2887/2888/2889/2890/2891/2892/2893/2894/2895/2896/2897/2898/2899/2900/2901/2902/2903/2904/2905/2906/2907/2908/2909/2910/2911/2912/2913/2914/2915/2916/2917/2918/2919/2920/2921/2922/2923/2924/2925/2926/2927/2928/2929/2930/2931/2932/2933/2934/2935/2936/2937/2938/2939/2940/2941/2942/2943/2944/2945/2946/2947/2948/2949/2950/2951/2952/2953/2954/2955/2956/2957/2958/2959/2960/2961/2962/2963/2964/2965/2966/2967/2968/2969/2970/2971/2972/2973/2974/2975/2976/2977/2978/2979/2980/2981/2982/2983/2984/2985/2986/2987/2988/2989/2990/2991/2992/2993/2994/2995/2996/2997/2998/2999/3000/3001/3002/3003/3004/3005/3006/3007/3008/3009/3010/3011/3012/3013/3014/3015/3016/3017/3018/3019/3020/3021/3022/3023/3024/3025/3026/3027/3028/3029/3030/3031/3032/3033/3034/3035/3036/3037/3038/3039/3040/3041/3042/3043/3044/3045/3046/3047/3048/3049/3050/3051/3052/3053/3054/3055/3056/3057/3058/3059/3060/3061/3062/3063/3064/3065/3066/3067/3068/3069/3070/3071/3072/3073/3074/3075/3076/3077/3078/3079/3080/3081/3082/3083/3084/3085/3086/3087/3088/3089/3090/3091/3092/3093/3094/3095/3096/3097/3098/3099/3100/3101/3102/3103/3104/3105/3106/3107/3108/3109/3110/3111/3112/3113/3114/3115/3116/3117/3118/3119/3120/3121/3122/3123/3124/3125/3126/3127/3128/3129/3130/3131/3132/3133/3134/3135/3136/3137/3138/3139/3140/3141/3142/3143/3144/3145/3146/3147/3148/3149/3150/3151/3152/3153/3154/3155/3156/3157/3158/3159/3160/3161/3162/3163/3164/3165/3166/3167/3168/3169/3170/3171/3172/3173/3174/3175/3176/3177/3178/3179/3180/3181/3182/3183/3184/3185/3186/3187/3188/3189/3190/3191/3192/3193/3194/3195/3196/3197/3198/3199/3200/3201/3202/3203/3204/3205/3206/3207/3208/3209/3210/3211/3212/3213/3214/3215/3216/3217/3218/3219/3220/3221/3222/3223/3224/3225/3226/3227/3228/3229/3230/3231/3232/3233/3234/3235/3236/3237/3238/3239/3240/3241/3242/3243/3244/3245/3246/3247/3248/3249/3250/3251/3252/3253/3254/3255/3256/3257/3258/3259/3260/3261/3262/3263/3264/3265/3266/3267/3268/3269/3270/3271/3272/3273/3274/3275/3276/3277/3278/3279/3280/3281/3282/3283/3284/3285/3286/3287/3288/3289/3290/3291/3292/3293/3294/3295/3296/3297/3298/3299/3300/3301/3302/3303/3304/3305/3306/3307/3308/3309/3310/3311/3312/3313/3314/3315/3316/3317/3318/3319/3320/3321/3322/3323/3324/3325/3326/3327/3328/3329/3330/3331/3332/3333/3334/3335/3336/3337/3338/3339/3340/3341/3342/3343/3344/3345/3346/3347/3348/3349/3350/3351/3352/3353/3354/3355/3356/3357/3358/3359/3360/3361/3362/3363/3364/3365/3366/3367/3368/3369/3370/3371/3372/3373/3374/3375/3376/3377/3378/3379/3380/3381/3382/3383/3384/3385/3386/3387/3388/3389/3390/3391/3392/3393/3394/3395/3396/3397/3398/3399/3400/3401/3402/3403/3404/3405/3406/3407/3408/3409/3410/3411/3412/3413/3414/3415/3416/3417/3418/3419/3420/3421/3422/3423/3424/3425/3426/3427/3428/3429/3430/3431/3432/3433/3434/3435/3436/3437/3438/3439/3440/3441/3442/3443/3444/3445/3446/3447/3448/3449/3450/3451/3452/3453/3454/3455/3456/3457/3458/3459/3460/3461/3462/3463/3464/3465/3466/3467/3468/3469/3470/3471/3472/3473/3474/3475/3476/3477/3478/3479/3480/3481/3482/3483/3484/3485/3486/3487/3488/3489/3490/3491/3492/3493/3494/3495/3496/3497/3498/3499/3500/3501/3502/3503/3504/3505/3506/3507/3508/3509/3510/3511/3512/3513/3514/3515/3516/3517/3518/3519/3520/3521/3522/3523/3524/3525/3526/3527/3528/3529/3530/3531/3532/3533/3534/3535/3536/3537/3538/3539/3540/3541/3542/3543/3544/3545/3546/3547/3548/3549/3550/3551/3552/3553/3554/3555/3556/3557/3558/3559/3560/3561/3562/3563/3564/3565/3566/3567/3568/3569/3570/3571/3572/3573/3574/3575/3576/3577/3578/3579/3580/3581/3582/3583/3584/3585/3586/3587/3588/3589/3590/3591/3592/3593/3594/3595/3596/3597/3598/3599/3600/3601/3602/3603/3604/3605/3606/3607/3608/3609/3610/3611/3612/3613/3614/3615/3616/3617/3618/3619/3620/3621/3622/3623/3624/3625/3626/3627/3628/3629/3630/3631/3632/3633/3634/3635/3636/3637/3638/3639/3640/3641/3642/3643/3644/3645/3646/3647/3648/3649/3650/3651/3652/3653/3654/3655/3656/3657/3658/3659/3660/3661/3662/3663/3664/3665/3666/3667/3668/3669/3670/3671/3672/3673/3674/3675/3676/3677/3678/3679/3680/3681/3682/3683/3684/3685/3686/3687/3688/3689/3690/3691/3692/3693/3694/3695/3696/3697/3698/3699/3700/3701/3702/3703/3704/3705/3706/3707/3708/3709/3710/3711/3712/3713/3714/3715/3716/3717/3718/3719/3720/3721/3722/3723/3724/3725/3726/3727/3728/3729/3730/3731/3732/3733/3734/3735/3736/3737/3738/3739/3740/3741/3742/3743/3744/3745/3746/3747/3748/3749/3750/3751/3752/3753/3754/3755/3756/3757/3758/3759/3760/3761/3762/3763/3764/3765/3766/3767/3768/3769/3770/3771/3772/3773/3774/3775/3776/3777/3778/3779/3780/3781/3782/3783/3784/3785/3786/3787/3788/3789/3790/3791/3792/3793/3794/3795/3796/3797/3798/3799/3800/3801/3802/3803/3804/3805/3806/3807/3808/3809/3810/3811/3812/3813/3814/3815/3816/3817/3818/3819/3820/3821/3822/3823/3824/3825/3826/3827/3828/3829/3830/3831/3832/3833/3834/3835/3836/3837/3838/3839/3840/3841/3842/3843/3844/3845/3846/3847/3848/3849/3850/3851/3852/3853/3854/3855/3856/3857/3858/3859/3860/3861/3862/3863/3864/3865/3866/3867/3868/3869/3870/3871/3872/3873/3874/3875/3876/3877/3878/3879/3880/3881/3882/3883/3884/3885/3886/3887/3888/3889/3890/3891/3892/3893/3894/3895/3896/3897/3898/3899/3900/3901/3902/3903/3904/3905/3906/3907/3908/3909/3910/3911/3912/3913/3914/3915/3916/3917/3918/3919/3920/3921/3922/3923/3924/3925/3926/3927/3928/3929/3930/3931/3932/3933/3934/3935/3936/3937/3938/3939/3940/3941/3942/3943/3944/3945/3946/3947/3948/3949/3950/3951/3952/3953/3954/3955/3956/3957/3958/3959/3960/3961/3962/3963/3964/3965/3966/3967/3968/3969/3970/3971/3972/3973/3974/3975/3976/3977/3978/3979/3980/3981/3982/3983/3984/3985/3986/3987/3988/3989/3990/3991/3992/3993/3994/3995/3996/3997/3998/3999/4000/4001/4002/4003/4004/4005/4006/4007/4008/4009/4010/4011/4012/4013/4014/4015/4016/4017/4018/4019/4020/4021/4022/4023/4024/4025/4026/4027/4028/4029/4030/4031/4032/4033/4034/4035/4036/4037/4038/4039/4040/4041/4042/4043/4044/4045/4046/4047/4048/4049/4050/4051/4052/4053/4054/4055/4056/4057/4058/4059/4060/4061/4062/4063/4064/4065/4066/4067/4068/4069/4070/4071/4072/4073/4074/4075/4076/4077/4078/4079/4080/4081/4082/4083/4084/4085/4086/4087/4088/4089/4090/4091/4092/4093/4094/4095/4096/4097/4098/4099/4100/4101/4102/4103/4104/4105/4106/4107/4108/4109/4110/4111/4112/4113/4114/4115/4116/4117/4118/4119/4120/4121/4122/4123/4124/4125/4126/4127/4128/4129/4130/4131/4132/4133/4134/4135/4136/4137/4138/4139/4140/4141/4142/4143/4144/4145/4146/4147/4148/4149/4150/4151/4152/4153/4154/4155/4156/4157/4158/4159/4160/4161/4162/4163/4164/4165/4166/4167/4168/4169/4170/4171/4172/4173/4174/4175/4176/4177/4178/4179/4180/4181/4182/4183/4184/4185/4186/4187/4188/4189/4190/4191/4192/4193/4194/4195/4196/4197/4198/4199/4200/4201/4202/4203/4204/4205/4206/4207/4208/4209/4210/4211/4212/4213/4214/4215/4216/4217/4218/4219/4220/4221/4222/4223/4224/4225/4226/4227/4228/4229/4230/4231/4232/4233/4234/4235/4236/4237/4238/4239/4240/4241/4242/4243/4244/4245/4246/4247/4248/4249/4250/4251/4252/4253/4254/4255/4256/4257/4258/4259/4260/4261/4262/4263/4264/4265/4266/4267/4268/4269/4270/4271/4272/4273/4274/4275/4276/4277/4278/4279/4280/4281/4282/4283/4284/4285/4286/4287/4288/4289/4290/4291/4292/4293/4294/4295/4296/4297/4298/4299/4300/4301/4302/4303/4304/4305/4306/4307/4308/4309/4310/4311/4312/4313/4314/4315/4316/4317/4318/4319/4320/4321/4322/4323/4324/4325/4326/4327/4328/4329/4330/4331/4332/4333/43

The Referendum Bill (National Assembly Bills No. 11), 2020 seeks among others to provide for the procedure of the approval of an amendment to the Constitution by a referendum, the conduct of a referendum, referendum petitions and consequential amendments to the Elections Act, No. 24 of 2011 which currently provides for the conduct of a referendum.

No.	PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
1.	<u>PART I: PRELIMINARY</u> Clause 2-Interpretation	Delete the words "elector" and replace "voter" Delete reference to "electors card" which has since been deleted by Act No. 12 of 2012. Delete the words 'polling area' and replace with "electoral area". Delete "polling time" and replace with "voting period" and assign definition provided under the Elections Act.	Introduces and/or makes reference to some definitions that either have no co-relation to the referendum process or have a meaning assigned to it that is wrong.
2.	Clause 3-Objects of the Act The object of this Act is to provide for— (a) the procedure for the approval of an amendment to the Constitution by a referendum; (b) the conduct of a referendum for the approval of an amendment to the Constitution; and (c) the procedure to challenge the conduct of a referendum.	Reword (a) and (b).	Provisions (a) and (b) are synonymous. (Have the same connotations)

The Referendum Bill (National Assembly Bills No. 11), 2020 seeks among others to provide for the procedure of the approval of an amendment to the Constitution by a referendum, the conduct of a referendum, referendum petitions and consequential amendments to the Elections Act, No. 24 of 2011 which currently provides for the conduct of a referendum.

No.	PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
3.	<u>PART II: AMMENDMENT BY POPULAR INITIATIVE- Clause 4(2)-Procedure</u> (2) In determining whether the initiative meets the requirements of Article 257 of the Constitution, the Commission may redraft the draft Bill to conform with the Constitution and the format and style prescribed in the standing orders of Parliament without altering the substance of the Bill	To delete option for the Commission to redraft a Bill presented to it that does not conform with the Constitution or format and style prescribed by the Standing orders of Parliament.	The Constitutional requirement is for the Commission to only verify signatures which does not include verification on the format of any Bill presented. By the time the Bill is submitted to the Commission, the supporters have already appended their signatures against it as presented, therefore to alter the Bill is tantamount to introducing a Bill that the supporters have had no interaction with.
4.	Clause 5-Procedure in the County Assembly. (1) Upon receipt of a Bill submitted to a county assembly under Clause (4), the county assembly shall notify the public of the Bill by notice in the Gazette and in two newspapers of national circulation. (2) The notification in sub-clause (1) shall contain all relevant details including— (a) a summary of the proposed amendments to the Constitution; (b) the timelines within which the public may submit views on the Bill; and	Delete 5(2), (b).	Consideration of the Bill by the County Assemblies is for purposes of voting within the framework of the County Assembly Framework/Standing Orders. It is not intended that the public will be involved at this juncture. Public and civic education follows where the Referendum has been initiated and in any case, public participation has already been undertaken by the promoters of the Bill in support of the initiative by the time the Bill is submitted to the County Assemblies.

The Referendum Bill (National Assembly Bills No. 11), 2020 seeks among others to provide for the procedure of the approval of an amendment to the Constitution by a referendum, the conduct of a referendum, referendum petitions and consequential amendments to the Elections Act, No. 24 of 2011 which currently provides for the conduct of a referendum.

No.	PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
	(c) the timelines within which the county assembly shall consider the Bill.		
	New Provision	<u>To add a new provision to read:</u> “For purposes of a referendum to amend the Constitution by popular initiative pursuant to Article 257 of the Constitution the promoters of the popular initiative shall collect not less than one million signatures of registered voters of whom— (a) not more than one third shall be from one county; and (b) voters in each of at least half of the counties shall be represented.	This is to affirm that a majority of citizens were engaged before an Initiative can be considered. This ensures that the promoters of the Bill are able to demonstrate an absolute majority in support of the initiative as opposed to pushing an initiative where signatures have been collected by example from only 2 constituencies out of 17 in Nairobi County.
5.	Clause 5(3)-(12) -Provides procedures for voting on the Bill by the County Assemblies.	To consider cross-reference to the County Government Act to mitigate introduction of procedures that may differ than that provided under the County Government Act.	General procedures for debate and voting in the County Assemblies is exhaustively covered under the County Government Act No. 17 of 2012).
6.	Clause 5 (10) If a draft Bill has been approved by twenty-four county assemblies it shall be introduced in the	To delete the word “introduced” and replace with “submitted”.	The County Assemblies are merely submitting what they received and debated upon within the meaning of Article 257(6) & (7) and as such cannot be said to ‘introduce’ the Bill

The Referendum Bill (National Assembly Bills No. 11), 2020 seeks among others to provide for the procedure of the approval of an amendment to the Constitution by a referendum, the conduct of a referendum, referendum petitions and consequential amendments to the Elections Act, No. 24 of 2011 which currently provides for the conduct of a referendum.

No.	PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
	two Houses of Parliament within fourteen days of such approval.	14 days considerable.	Article 257(7) refers to delivery of the Bill to Parliament <u>‘without delay’</u>
7.	<u>PART III: CONDUCT OF REFERENDUM</u> Clause 6(2)-Initiation of a Referendum (2) The Commission shall within seven days of receipt of the notice under sub-clause (1) publish a question to be determined during a referendum in the Gazette and in electronic and print media of national circulation.	To provide timelines upon which Parliament is required to consider the Bill. Delete “seven” and replace with “twenty-one”.	The law is silent on the timelines applicable thus posing the risk of indefinite deliberations by Parliament on the Bill (s) once received. Timeline of seven days is too short as the Commission is required to refer the question or option to the relevant Houses for approval.
8.	Clause 7(2)-Notice for holding referendum (2) The notice shall specify— (a) the question to be determined during a referendum; (b) the symbol assigned to each answer to the question to be determined during the referendum;	To Add: (g) the nature of the referendum.	Requirements provided are not exhaustive.

The Referendum Bill (National Assembly Bills No. 11), 2020 seeks among others to provide for the procedure of the approval of an amendment to the Constitution by a referendum, the conduct of a referendum, referendum petitions and consequential amendments to the Elections Act, No. 24 of 2011 which currently provides for the conduct of a referendum.

No.	PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
	(c) the day on which a referendum is to be held which shall not be less than twenty-one days after the date of the publication of the notice; (d) the polling times during the referendum; (e) the day by which a referendum committee shall have registered with the Commission; and (f) the day and time by which campaigns in support of or in opposition to a question to be determined during a referendum shall start and cease.		
9.	Clause 7 (5)- Every question to be determined during a referendum shall require the voter to select an answer that is either "yes" or "no".	<u>To reword to read:</u> 7(5)- A referendum question shall be so worded that each voter may express an opinion on the question or option by making a mark after the word "yes" or "no" on the ballot paper. 7(6)-Where there are two or more Bills, a referendum option shall be so worded that each voter may express an opinion	Framing of Referendum Question cannot be restricted to a "Yes" or "No" answer whereas there is possibility of the need for different wording based on nature of referendum.

The Referendum Bill (National Assembly Bills No. 11), 2020 seeks among others to provide for the procedure of the approval of an amendment to the Constitution by a referendum, the conduct of a referendum, referendum petitions and consequential amendments to the Elections Act, No. 24 of 2011 which currently provides for the conduct of a referendum.

No.	PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
		on the option by making a mark after the option ballot paper.	
10.	<u>PART IV: MATTERS PRELIMINARY TO REFERENDUM</u> Clauses 8-13-Appointment of Polling Officials, Register of Voters, Identification of Voters	Reword to provide a composite provision that makes reference to application of the Elections Act so as to mitigate against wrong reference to processes.	Administrative processes that govern the conduct of an election apply to a referendum ' <i>mutatis-mutandis</i> '.
11.	Clause 15-Registration of Referendum Committees.	To Add: "An application to register a Referendum Committee shall be accompanied by information showing that the applicant adequately represents persons campaigning for or against the referendum question or option"	Necessary to affirm declaration to associate and to satisfy the principle of ownership.
12.	<u>PART V: VOTING AND REFERENDUM RESULTS</u> -Clause 25-27-Voting, Return of Referendum Results, Publication of Referendum Results.	To provide for application of the Elections Act on the provisions relating to voting.	Replicates provisions for voting under Elections Act which provisions apply to a referendum ' <i>mutatis-mutandis</i> '.
13.	Clause 27-Publication of Referendum results. 27. (1) The Commission shall on receipt of results of the referendum from all	To delete "48 hours" and replace with "7 days".	A Referendum is equal to the magnitude of a presidential election thus seven days aligns with the timeline under Article 138(10) of the Constitution on declaration and publication of presidential results.

The Referendum Bill (National Assembly Bills No. 11), 2020 seeks among others to provide for the procedure of the approval of an amendment to the Constitution by a referendum, the conduct of a referendum, referendum petitions and consequential amendments to the Elections Act, No. 24 of 2011 which currently provides for the conduct of a referendum.

No.	PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
	constituencies and within forty eight hours from the close of the final polling in the referendum—		
14.	<u>PART VI: REFERENDUM PETITIONS</u> Clause 29-Referendum Petition and composition of the court.	<u>To Add:</u> 'An appeal from the High Court in a referendum petition shall lie to the Court of Appeal on matters of law only'	To ensure that we safeguard the right for review of possible wrong decisions.
15.	Clause 40(2)-Examination of Votes (2) Where the votes at the trial of an election petition are scrutinized, only the following votes shall be struck off—	To reword and cross-reference applicable grounds to the Elections Act in relation to election petitions.	The grounds when results may be struck out under vote scrutiny are not exhaustive and fall short of grounds listed under Clause 82 of Elections Act
16.	Clause 41-Powers of the Court 41(3)-The Registrar of the High Court shall deliver to the Commission a certified copy of any decision made by the High Court under sub-clause (1).	To add the words, " <u>within seven days</u> " between the words 'court' and 'shall'	There is need to provide clarity on when the Registrar of the High Court is to deliver decision made by the court determining the Referendum Petition.
17.	28(2) A petition challenging the conduct, result or validity of a referendum shall— (d) be filed in the High Court within twenty-one days of the publication of the	To delete "twenty-one" and replace with "twenty-eight".	21 days is not sufficient. The period of 28 days is informed by best-practice in the management of election

The Referendum Bill (National Assembly Bills No. 11), 2020 seeks among others to provide for the procedure of the approval of an amendment to the Constitution by a referendum, the conduct of a referendum, referendum petitions and consequential amendments to the Elections Act, No. 24 of 2011 which currently provides for the conduct of a referendum.

No.	PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
	notice of the results of the referendum in the Gazette.		petitions as provided under Article 87(2) of the Constitution.
18.	<u>PART VII: MISCELLANEOUS PROVISIONS</u> -Clause 44-Offences by Referendum Officials 44. A referendum officer or other person who, without reasonable cause, commits an offence, and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.	To delete. To Add additional general provisions in relation to- i. Retention and Inspection of Documents ii. Duty to Co-operate iii. Powers of Arrest and Prosecution	Not necessary as provisions relating to Offences has already been dealt with under Clause 14 by cross-reference to Election Offences Act. Necessary in respect to management of the Referendum process.
19.	<u>PART VIII: PROVISIONS ON DELEGATED POWERS</u>	In Agreement. Generally, introduces power of commission to develop regulations.	Recognizes authority of Commission to make regulations.
20..	<u>PART IX : CONSEQUENTIAL AMMENDMENTS</u>	In Agreement.	Deletion of provisions under the Elections Act that provide for Referendum.

II. THE CONSTITUTION OF KENYA (AMENDMENT) BILL, (NO. 5) OF 2019

Purpose of the Bill

9. The Bill seeks to amend Article 90 of the Constitution of Kenya in order to make provision for political parties to nominate to Parliament, Presidential and Deputy Presidential Candidates and further to prioritize them in the party lists. Further the Bill seeks to among others; implement Article 10 of the Constitution, providing for national unity, participation of the people and inclusiveness in order to ensure the country remains united after general elections.
10. We note the proposals in the Bill and wish to make some general comments as follows:

General Comments

11. Proportional Representation as governed under Article 90 of the Constitution is a hybrid of both the FPTP ('First-Past-The-Post') and PR ('Proportional Representation') models. It provides for the allocation of special seats to Parliament in proportion to the total number of seats won by candidates of the political party at a General Election based on closed lists. A system which combines various elements but in essence is somewhat a Mixed Member proportional system as it combines the mixed plurality and the proportional representation at the same time.
12. We note therefore that while this proposal seeks to provide for the nomination of candidates for President and Deputy president in the party lists, it results in the introduction of a new PR model of the electoral system which if implemented will inevitably have an equal effect on nomination of all other candidates for other elective positions both at National and County level.

Specific Comments

13. While we appreciate that the Bill seeks to ensure the realization of Article 10 of the Constitution within the electoral system, we make the following specific comments:

The Constitution of Kenya (Amendment), (No. 5) of 2020 seeks to amend Article 90 of the Constitution of Kenya in order to make provision for political parties to nominate to Parliament, Presidential and Deputy Presidential Candidates and further to prioritize them in the party lists. Further the Bill seeks to among others; implement Article 10 of the Constitution, providing for national unity, participation of the people and inclusiveness in order to ensure the country remains united after general elections.

No.	PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
1.	Article 90 (2) -The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that— (a) each political party participating in a general election nominates and submits a list of its candidates for election.	Reword to: i. Provide clarity on whether voters can choose between voting for a complete list of candidates of a single party ("list vote") or voting for individual candidates from one or several lists. ii. Provide for "The water mark" i.e -the number of seats a specific party can be expected to achieve. (The number of seats that the party wins, combined with the candidates' positions on the party's list, in determining whether a particular candidate will get a seat etc). To indicate whether the List will be a "Closed-List" or "Open-List".	How will the seats be distributed to each party? Shouldn't it be in proportion to the number of votes the party receives? By deleting the words "<u>of all the persons who would stand elected if the party were to be entitled to all the seats provided for under clause (1)</u>". it is not clear whether voters may vote directly for the party or for candidates whose vote total will pool to the party. As a measure towards ensuring equity in representation, it is important to affirm whether the List is to be submitted before or after a General Election and FURTHER delineate whether voters have at least some influence on the order in which a party's candidates are to be listed OR whether it will remain that only active members or party officials determine the order of its candidates.

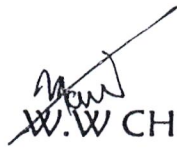
The Constitution of Kenya (Amendment), (No. 5) of 2020 seeks to amend Article 90 of the Constitution of Kenya in order to make provision for political parties to nominate to Parliament, Presidential and Deputy Presidential Candidates and further to prioritize them in the party lists. Further the Bill seeks to among others; implement Article 10 of the Constitution, providing for national unity, participation of the people and inclusiveness in order to ensure the country remains united after general elections.

No.	PROVISION IN THE BILL	STAKEHOLDER PROPOSAL	RATIONALE
2.	Article 90 (2) -The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for the seats provided for under clause (1) and shall ensure that— (b) except in the case of the seats provided for under Article 98(1) (b), each party list comprises- i. a candidate nominated for election as president or deputy president who shall be the first and second respectively in the party list; and ii. the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed.	To review Article 97(1), (c) which provides for nomination of 12 members by parliamentary political parties to the proportion of those elected in accordance to Article 90. Review provisions of the Elections Act in respect to nomination of political party candidates to align to the proposed electoral system. To add a provision importing similar amendments in respect to all other elective positions in the Senate , National Assembly and County.	Proposed amendments to Article 90 (2), (a) and (b) introduces an electoral system that puts Article 97(1), (c) in conflict. The amendment introduces an electoral system based on pure party-list proportional representation but provides no clarity if all leaders will be elected in this manner such that their presence in Parliament is owed to the number of votes that their party won, not to votes received by them personally. Necessary in order to ensure uniformity in the manner in which candidates for all elective positions are nominated. (Equitable Representation).

CONCLUSION

14. The Commission requests this Honourable Committee to consider the proposals herein.

.....


W.W. CHEBUKATI
CHAIRMAN

Memorandum on the Referendum Bill, 2020

(National Assembly Bills No. 11 of 2020)
To the National Assembly Constitutional Implementation Oversight
Committee

By **Katiba Institute**

18/6/2020

Description of Organization

Katiba Institute is a research, litigation, constitutional education, and public engagement body whose principal objective is to achieve social transformation through the Kenyan Constitution. To achieve that objective, KI promotes the implementation of the Constitution, including its political, social and economic agenda, and values and principles. In the medium term, KI's work will help establish a culture of constitutionalism.

General Remarks

The Referendum Bill seeks to provide for the procedure for the approval of an amendment to the Constitution by a referendum, the conduct of a referendum for the approval of an amendment to the Constitution and the procedure to challenge the conduct of a referendum.

The proposal for legislation referendum goes towards addressing a legitimate gap on the process of constitutional amendments in Kenya. However, it is our view that the Bill as presented fails to take into account fundamental aspects concerning the constitutional amendment process and principles of the Constitution that impact on this process. The proposed law has not made adequate and comprehensive provisions on the various procedural components on the amendment of the constitution and conduct of a referendum as outlined under Article 257, of the Constitution. In particular, and as explained in detail below, the Bill falls short of the constitutional requirements of public participation, freedom of association, detailed procedures about constitutional amendments not clarified by the Constitution; absence of timelines of the process both at the national and county levels; procedures, powers and roles of the president, judiciary, parliament, and county assemblies attendant to the conduct of referendum.

A. Summary Review of the Bill

Upon review of the Bill, we have made note of both general and specific shortfalls in the provisions of the Bill, which are set out comprehensively in the submission attached. Our observations are as summarized below:

Procedure for the approval of amendment of the constitution

This is one of the key components of the Bill, which has however, failed to address substantive aspects concerning the constitutional amendment process for instance:

- Impasse on amendment Bill between the Houses and implications on the subsequent processes leading to referendum
- Certification that a Bill is one that requires a referendum – is this the function of parliament when presenting the Bill to the president, and if so, can the certification of a Bill as one requiring or not requiring a referendum be a disputed matter to be challenged? This is a legitimate issue since, depending on the intended outcome, the process can be manipulated by submitting it as one that is not a referendum issue while in substance it is.
- The county assemblies may not amend the bill but may Parliament? I Parliament can make changes then the bill would cease to be from the popular initiative.

Public participation: The Constitution entrenches public participation in all matters involving the public, the constitutional amendment process thus, demands that the people are centrally involved in the process from its initiation to the completion through the referendum process. Proactive public education and public consultation should be ensured through diverse channels that facilitate participation and reaches the public needs in all the procedures including:

- Initiation of the amendment process
- Processes by IEBC e.g. formulation of referendum questions, review of Bill from the popular initiative
- Procedure in the National Assembly
- Procedure in the County Assembly

The participation of the people in an amendment to the Constitution needs to be as prominent as the process of making the constitution.

Appeals and right to petition court

- The Bill also fails to provide for procedure for any recourse where there is dissatisfaction with the decisions on the process for instance, decision of the IEBC on verification of signatures (clause/regulations); drafting of referendum question(s) – clause 6; register of voters; decision on whether popular initiative meets the constitutional requirement
- On the right to petition court, the Bill does not cover instances when the public can petition to court. Since the Bill under clause 3 is also concerned with the procedure for the approval of an amendment to the Constitution by a referendum, the right to petition court should also be assured beyond challenging the conduct of a referendum. Furthermore, the Bill should not limit grounds under which the court can be petitioned to challenge a referendum.
- The right of who can initiate an administrative appeal or petition to High Court should not be limited, since constitutional amendment process is a public interest process.
- The Bill should also clarify the right of appeal against a decision

Referendum questions: There is a conflation of issues regarding the formulation of referendum question(s) from the proposals for constitutional amendments. It is not clear what a referendum question entails – does a question deal with a set of amendment issues or not or are different amendment issued covered by different referendum questions? What is the procedure for formulating the referendum questions including the guiding criteria? Is the process of formulation vested in the Commission solely? How does the public participate? Can the Commission's exercise of its formulation powers be challenged and what ways – Parliament? Courts?

Campaign committees: the principle behind the model/concept of campaign committees needs further reflection; it does not seem to be adapted to the local circumstances and the dynamics of the Kenyan population. Requirement for registration and regulation may not facilitate a meaningful participatory process and limits how the public may wish to organise itself in the constitutional amendment process.

Demarcation of roles, powers and procedures of key actors: The Bill needs to be clear on the exercise of powers of various actors involved in the amendment of the constitution and the referendum process including the Commission, Parliament, County Assemblies, President and the Courts. The extent of the powers of each actor should be clear, implications and recourse for failure to fulfil roles and recourse from the decisions along the process.

Definitions:

- The Bill needs to ensure harmonization of terms e.g. elector versus voter
- All definitions should be aligned to the referendum and not electoral process
- Referendum question definition should be revisited in view of concerns about formulation of referendum question

Timelines

The Bill also needs to clarify all the timelines involved in the process and set out clear timelines at each stage e.g.

- Verification of signatures in respect of amendment by popular initiative
- Period within which the president requests the Commission to conduct an election from the point when he received the Bill
- Period within which Commission sends the proposals to Counties

B. Detailed Review of the Bill

Original	Amending instructions	Comments
Use of “voter and elector” – should be harmonized. Both terms voter and elector defined in clause 2	Recommend adoption of the word “voter” as it is a more familiar term with the public and doesn’t necessarily speak to an election as compared to “elector”	This should be amended for clarity purposes to avoid confusion. The word “elector” seems more inclined towards elections and not a referendum process
Polling station definition – clause 2 – should refer to a referendum and not an election.	In clause 2, redefine “polling station” to fit the context of a referendum and not electoral process	The wrong terms may cause the public to confuse a referendum with an election process
In clause 3(a) the phrase used is “approval of an amendment to the Constitution by a referendum,” and in (b) the	It hard to see the difference between these. Presumably (a) was intended to refer to the popular initiative procedure and (b) to Article 255 referendum. The provisions on the	

Original	Amending instructions	Comments
conduct of a referendum for the approval of an amendment to the Constitution	popular initiative are not limited to a referendum – quite rightly. Indeed the entire Bill is not limited to referendum issues.	
Clause 3 (c) seems to imply that only the process of conducting a referendum is subject to challenge and not the outcome of a referendum. It does not capture what can be challenged as set out by Clause 28. (1) The conduct, result and validity of a referendum may be challenged by petition to the High Court. That said, Clause 28(3) seems to limit the issues that can be challenged concerning the conduct of the referendum	Clause 3 (c), clause 28(1) and clause 28 (3) should speak to each other to avoid gaps in instances when the outcome is challenged	This will ensure that parties have accurate information regarding the law governing the referendum
Clause 3 does not mention other referendums – not related to the Constitution but the Bill would repeal the existing provisions in the Elections Act on thus	Include other referendums	
4(1) The commission shall make regulations to govern the verification of registered voters and signatures;	The Bill ought to clearly outline the precedents that the commission would rely on in coming up with the regulations. The person who signs a petition to amend the Constitution should not be required to be a registered voter; but, contact details must be provided, at least a phone number, so that some people be contacted in a spot check to see that signature were genuine. The bill should also define a signature: Is it physical? Electronic? Or just a click?	This will provide more information on qualifications for a person who can sign and the information that should accompany the signing

Original	Amending instructions	Comments
4(2) on the role of the IEBC in redrafting the Bill	Suggest it is for the Law Reform Commission. Should consult closely with the Bill promoters. Remove reference to the Standing Orders	Standing Orders do not deal with the form of Bills
Part II: Have many gaps in the process. It does not include critical stages in the process - including people participation, recourse where there is dissatisfaction with IEBC's decision.	Reference to the Public Participation (PP) Bill should guide how PP should be incorporated into this Bill. There is no active public education on the proposed amendments to the Bill – only mention of publication about the Bill that includes a summary of the amendments and invitation of views from the public and civic education by the IEBC (which is only in the period before the referendum vote)	Meaningful public participation is required under the Constitution and should meet the threshold for general satisfaction and confidence in the process. It would be a gross injustice not to ensure that the public is provided with the information necessary to meaningfully participate.
Clause 5(1) Upon receipt of a Bill submitted to a County Assembly under clause (4), the County Assembly shall notify the public of the Bill by notice in the gazette and in two newspapers of national circulation;	The Bill should also require the use of local radio stations and public notices at all County Commissioners', Chiefs and Assistant Chiefs' offices to encourage local discussions on the Bill and also to ensure that the notice of the Bill reaches communities within each county that do not have access to the gazette or national newspapers in circulation. The Bill should also state that "County Assemblies must hold public meetings in each location or sub-location within the county to hear the entirety of a county popular opinion on the Bill before voting on whether or not to approve the Bill. Perhaps the Bill should clearly define what a "county majority" is.	It is not enough for a county to give notice in the gazette and two national newspapers. Further, the procedures in a county assembly need to better explain how the views expressed by ethnic groups and marginalized communities will inform the decisions made by county assemblies when they vote on the Draft Bill.
Clause 6; Reference to the referendum question in clause 6 (2) 7 2a f & 4 is contradictory to (5) where it is stated that "Every question" to be determined	Need to clarify whether the referendum is a set of questions or limited to one question to avoid confusion and further clarify whether the setting of the referendum question is exclusively the mandate of	This appears to limit the issues to be addressed in a referendum to a single question as opposed to a set of questions. It also is not clear about whether

Original	Amending instructions	Comments
during a referendum shall require the voter to select an answer that is either “yes” or “no”.	IEBC. It does not give direction on whether IEBC can be challenged, for example, for not addressing some of the referendum issues that may arise	the IEBC has the exclusive mandate to set up the referendum questions.
Clause 6(7) says threshold to be a majority of the CA members Clause 6(9) 6(9) and (11) Communicating failure to pass or to consider the Bill	Change language to quorum which is presumably what is meant. Alternatively– a vote in the county assembly is not valid unless at least half of all the members cast a vote, if this is what is meant. Suggest that the motions should not pass unless supported by at least half of all the members. Should clarify that is to Speakers of 2 Houses of Parliament – and IEBC?	
Clause 6(3) The commission may assign such symbol for each answer to a question to be determined during a referendum as it may consider necessary.	The symbol should be easily identifiable and understood across the populace	This will help avoid confusion during the voting process
Clause 7(1) Notice of holding a Referendum	Accessibility of information needs to be put into consideration to ensure that the citizenry has the necessary information	This would enable citizens to fully participate in the Referendum process.
Clause 7(4) The commission shall conduct voter and civic education on the question to be determined during the Referendum;	Make it explicit that the voter and civic education ought to be widely, evenly, and equally distributed across counties, constituencies, wards and predominantly within marginalized communities.	This would ensure compliance with the constitution in terms of adequate public participation and complying with the inclusion principles.
Clause 9(1) Appointment of other officers;	The Bill should provide the specific duties and powers the additional referendum officers shall be given, compliant with the commission designations.	For clarity purposes.
Clauses 15(1) and 16 (1) Referendum Committees;	This needs more thought. It is possible that the registration/accreditation can eat into	Certain individuals/co may not have

Original	Amending instructions	Comments
	the 90 days and could be abused to deny accreditation to others. Language also unclear: A person ... shall form one committee... We also contend that it is a violation of the right to freedom of expression to say that anyone who wants to campaign must form a committee. If so a statement under Article 24(2) is necessary	to establish a committee in every constituency and thus may be left out On the other hand, clause 20 indicates a person may campaign.
Clauses 18(1-3) and 19 (1-4) Appointment of agents and Rights and duties of agents respectively;	Include a clause that requires election agents to make an oath of confidentiality and secrecy.	Referendum Code of Conduct requires secrecy and confidentiality, thus the need for the agents to swear so as to uphold these requirements. .
Cause 21(2) must not vote other than where one is registered	Consider removing this limitation	The whole country is one constituency, rather like a presidential election. If the voters roll is electronic it should not be necessary to vote only where one is registered. A referendum may be at any time of year – many people will not be where they are registered. For purposes of Article 255(2) the county of registration could be calculated again electronically
make	Make it more of an obligation.	Everyone has the right to vote.
n	Incorporate a timetable and avenues for publication of accreditation guidelines. incorporate provisions which state t kinds of organizations, or 'tions' shall be eligible for tion. visions about partisanship.	Need for clarification One would expect no Kenyan to be neutral in the sense of having no view. International is different.

amunities
the capacity

Original	Amending instructions	Comments
Clause 42 (1) Petition Expenses;	What are the possible grounds under which the vexatious claims are found?	The grounds have not been outlined clearly in the Bill.
Part VI - does not indicate whether the decision of the petition before the high court is final or can be appealed.	Give clear provisions on whether the petition before the high court is final or appealable	If the appellate process and determination of a final judgement are not clear, then any challenges will result in protracted litigation on jurisdictional questions.
Clause 43 on facilitating voting by persons with disability	Should come along with provisions on who votes and.	Question of logical arrangement
Clause 44; Offences by referendum officials	This section needs to be reviewed in consideration of the Election Offences Act (EOA)	Further clarity required on the penalties for election offences by referendum officials
Clause 8(1) under the Schedule: Composition of the Code of Conduct Enforcement Committee;	Is there a maximum number of representatives that the committee should have? If there is, what is the selection process?	Further clarification required.

Original	Amending instructions	Comments
		Code of practice will ban campaigning while being observer
Clause 25 Implies counting is at polling stations	Should it be explicit?	
Clause 28 Referendum petition	Incorporate a section requiring that all the information and documents created throughout the referendum voting cycle will be made available to the public upon request.	To ensure adequate access to information and to facilitate filing of petitions
Clause 30 (1)(b) Clause 30(2)(b)	Delete? Rethink and redraft	The result is not final – because there may be a petition, as the following clauses make clear (b) is well-nigh incomprehensible! If the petitions <u>is</u> presented in time – what is the effect? This clause is about an out-of-time petition.
Clause 31; On Persons who may present referendum petition.	This needs to be interrogated since its effect is to limit who can challenge a referendum before the High Court	This appears to be unconstitutional as it can mean that all organizations would be easily locked out from challenging the process because they have no vote! Particularly if the basis is a violation of human right (e.g. to vote) this violates Article 22(2).
Clause 37(3) withdrawal of petition	With permission of the court?	Should it be so easy to withdraw if it is a public interest action?
Clause 38 (1-6) Powers of the court to summon witnesses in a Referendum petition;	What is the exact punishment for any person responsible for tampering with the conduct of the Referendum or results in any way?	More clarity ought to be put here as to the punishment for the said referendum offences

CMD-Kenya Memoranda on the Referendum Bill, 2020

The Referendum Bill, 2020 (National Assembly Bills No. 11)			
Parts of the Bill	Provision of the Bill	Stakeholder Proposal	Rationale
	A Bill for AN ACT of Parliament to provide for the procedure of the approval of an amendment of the Constitution by a referendum, the conduct of a referendum, referendum petitions and for connected purposes.		
	ENACTED by the Parliament of Kenya, as follows-		
PART 1-PRELIMINARY	1. This Act may be cited as the Referendum Act, 2020		
	2. Interpretation In this Act, unless the context otherwise requires- "elector" means a person whose name is included in the current register of voters; "elector's card" means a person whose name is included in the current register of voters; "voter" in relation to the referendum, means a person whose name is included in the current register of voters.	Delete the words and definition of "elector" and retain the use of the word voter.	- This is to avoid confusion when referring to voters during the referendum. - Further, the word voter has been substantially used compared to the word "elector" which has not been used anywhere in the bill. - Also, since the citizens will be required to vote "Yes " or " No", and thus the use of the word voter is more appropriate in this context than the use of the word "elector".
PART II-AMENDMENT OF THE CONSTITUTION BY	Procedure under popular initiative	Delete clause 4 (2) & (3) on the	- The Bill gives IEBC the

CMD-Kenya Memoranda on the Referendum Bill, 2020

POPULAR INITIATIVE			
Clause 4 (2) In determining whether the initiative meets the requirements of Article 257 of the Constitution, the Commission may redraft the Bill to conform with the Constitution and the format and style prescribed in the standing orders of Parliament without altering the substance of the Bill. (3) The Commission may consult with the Attorney General or Parliament in the redrafting of a draft bill under subsection(2) (4) The commission shall verify the registered voters, signature and format if the draft Bill within ninety days of receipt of the draft Bill.	role of redrafting the bill given to the IEBC.	role of redrafting the draft bill in order to conform with the Constitutional format and style. Giving IEBC this role without supervision of the promoters exposes the bill to interference through insertion of misleading information, thus altering the substance of the original bill. - Article 257 of the Constitution does not delegate this mandate to the IEBC.	
Procedure in a county assembly. Clause 12 A Bill referred to Parliament under Article 257 (7) of the Constitution shall be introduced in Parliament by the chairperson of the relevant committee of each House of Parliament, and approve it <u>within three months after the introduction.</u>	Insert the words “and approve it within three months after the introduction.” after the word Parliament in clause 12.	- Since the Constitution allocates three months for the senate to consider the bill, the same timeframe can be adopted for Parliament for consistency. - Further, overtime, parliament has been seen to take ages in discussing and passing bills, indicating the timeframe, will ensure that they deliver results on time.	

CMD-Kenya Memoranda on the Referendum Bill, 2020

PART IV- MATTERS PRELIMINARY TO REFERENDUM	Right to vote and the evidence of identity Clause 11(2) A presiding officer shall require a person applying for a ballot paper to produce the person's identity card issued under the Registrar of Persons Act or a valid Kenyan passport and the elector's card issued by the Commission	Delete the words " and the elector's card issued by the Commission" appearing after the word passport in clause 11 (2)	- In the last election, the IECB in implementing the Kriegler report did away with the requirement of voters producing their voters' card in addition to identity cards for them to be given the ballot papers.¹ - The same spirit should be upheld during the referendum and allow voters to only produce their identity cards/ passport for identification.
	Rights and duties of agents Clause 19 (1) (c) examine elector's registers; register of voters	Delete the words "elector's register " appearing after the words examine and replace with the words "register of voters"	- <u> </u> The word electors register has not been defined in the bill. - Further its use in the bill causes confusion as to whether there exist two registers.
	Return of referendum Section 26 (1) the returning officer shall as soon as practicable, for-ward to the Commission the results of the referendum.	Backspace the word "ward" in for ward so as to read <u>forward</u> .	- The word forward has been misspelled in the bill.
PART VI- REFERENDUM PETITION		After clause 41 which provides for the Powers of Court, <u>insert a new clause "14 (A) to provide for the procedure of Appeals of</u>	- The Referendum Bill in part iv provides that the High Court has the original and final

¹ <https://www.iebc.or.ke/uploads/resources/o8K6y0Co55.pdf>

CMD-Kenya Memoranda on the Referendum Bill, 2020

		<u>decisions from the High Court.</u>	jurisdiction of petitions arising out of the referendum. In order to promote justice, provide the procedure for appeals arising out of the High Court decisions. This will give petitioners an avenue to appeal the High Court decisions.
--	--	---------------------------------------	---