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REPUBLIC OF KENYA

13TH PARLIAMENT | 5TH SESSION

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

REPORT ON CONSIDERATION OF THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)

PAPERS LAID	
DATE	23/7/2026
TABLED BY	Sen. Wakili
COMMITTEE	JLAHR.
CLERK AT THE TABLE	Tyaay.

Rt. Hon. Speaker
You may approve for tabling
J. M. Nyegenye, C.B.S.,
Clerk of the senate/ secretary, PSC
Date: 23/07/26

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LIST OF ABBREVIATIONS AND ACRONYMS

AG	-	Office of the Attorney General
CAF	-	County Assemblies Forum
CMD-Kenya	-	Centre for Multiparty Democracy Kenya;
CSPEN	-	Civil Society Parliamentary Engagement Network
COG	-	Council Of Governors
ELGIA	-	Electoral Law and Governance Institute for Africa
IEBC	-	Independent Electoral and Boundaries Commission
IRCK	-	Inter-Religious Council of Kenya
NEMA	-	National Environment Management Authority
ORPP	-	Office of the Registrar of Political Parties
TI Kenya	-	Transparency International Kenya

ESTABLISHMENT, MANDATE AND MEMBERSHIP OF THE COMMITTEE

Establishment and Mandate of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established under the Standing Orders of the Senate and is mandated *'to consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.*

Membership of the Committee

The Committee comprises -

1.	Sen. Wakili Hillary Sigei, CBS, MP	- Chairperson
2.	Sen. Veronica W. Maina, CBS, MP	- Vice-chairperson
3.	Sen. Raphael Chimera Mwinzagu, MP	- Member
4.	Sen. Karen N. Nyamu, MP	- Member
5.	Sen. Andrew Omtatah Okoiti, MP	- Member
6.	Sen. (Prof.) Tom Ojienda, SC, MP	- Member
7.	Sen. Crystal Kegehi Asige, MP	- Member
8.	Sen. Daniel Kitonga Maanzo, EBS, MP	- Member

Minutes of the Committee in considering the Referendum Bill, 2026 (Senate Bills No. 3 of 2026) are attached to this Report as ***Annex 1.***

FOREWORD BY THE CHAIRPERSON

Honourable Speaker,

The report contains the proceedings of the Standing Committee of Justice Legal Affairs and Human Rights Committee on its consideration of the Referendum Bill, 2026 (Senate Bills No. 3 of 2026). The Bill was published on 12th February, 2026 and read a first time in the Senate on 5th May, 2026, whereupon it was committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

Honourable Speaker,

The Referendum Bill, 2026 is one of the most consequential pieces of legislation to come before this Senate in recent years. A referendum is the most direct expression of the sovereign power of the people as contemplated under Article 1 of the Constitution of Kenya, 2010. It is the ultimate instrument through which the people exercise their right to determine the supreme law under which they are governed. The integrity, clarity, and constitutional fidelity of the legal framework governing that process is, therefore, a matter of profound democratic importance. This Bill seeks to provide precisely that framework: a comprehensive, coherent, and constitutionally grounded statute dedicated exclusively to the conduct of referenda in Kenya.

Honourable Speaker,

Kenya has, until now, relied on fragmented and inadequate provisions scattered across the Elections Act (Cap. 7) and related instruments to govern the conduct of referenda. The limitations of that arrangement were brought into sharp focus by the Building Bridges Initiative (BBI) litigation, in which the High Court, the Court of Appeal, and the Supreme Court each, in their own way, identified the absence of a dedicated referendum statute as a significant constitutional gap. The High Court noted ambiguities around signature verification, question formulation, public participation, and administrative safeguards.

The Court of Appeal observed that the absence of a comprehensive referendum law was a gap that Parliament ought to address to give full effect to the Constitution. On its part, the Supreme Court noted that while the Constitution permits a referendum without a dedicated statute, the absence of such legislation creates avoidable uncertainty and exposes the process to procedural and constitutional challenge.

Honourable Speaker,

The principal object of the Referendum Bill, 2026 is to provide a legal framework for the conduct of referenda in Kenya. It sets out how referenda are initiated, organized, conducted, challenged in court, and implemented after results are declared. It applies to constitutional amendment referenda, county referenda, and referenda on any other public issue as stipulated the Bill.

The Bill achieves this by establishing a comprehensive framework covering the full lifecycle of a referendum; that is from the pre-referendum processes of initiation, signature collection and verification, and county assembly and parliamentary consideration, through to the conduct of the poll itself, the declaration of results, and the resolution of disputes through a dedicated petition mechanism.

Honourable Speaker,

The Bill establishes, for the first time in statute, a clear and structured process for verifying signatures supporting a popular initiative under Article 257 of the Constitution. It assigns the Independent Electoral and Boundaries Commission (IEBC) specific responsibilities and timelines for each stage of the verification process, replacing the current situation in which the Elections Act is entirely silent on how the authenticity of signatures is to be assessed.

Secondly, the Bill further sets out clear and enforceable standards for the formulation of referendum questions. It requires that questions be written in plain, neutral language in both English and Swahili, that they avoid wording that suggests a judgement or opinion, and that they allow voters to express a clear choice. These standards are absent from the current law, and their introduction ensures that the most fundamental element of any referendum, that is the question put to the people, is framed fairly, clearly, and without ambiguity.

Honourable Speaker,

Third, the Bill introduces a dedicated referendum petition mechanism, setting out who may file a petition, the timelines within which challenges shall be brought, the grounds on which a referendum may be contested, the procedures of the court, and the range of remedies available. This fills a long-standing gap that has left the validity of referendum outcomes open to challenge through general electoral principles that are ill-suited to the unique character of a referendum.

Fourth, the Bill extends the Electoral Code of Conduct to apply to referendum campaigns, ensuring that the same standards of fairness, neutrality, and responsible conduct that govern elections also apply to referendum committees, agents, and participants.

Lastly, the Bill clarifies the role and powers of the Commission in administering the referendum process, equipping that institution with the regulatory authority and administrative tools necessary to discharge its constitutional mandate effectively.

Honourable Speaker,

In compliance with Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee placed an advertisement in the *Daily Nation* and *The Standard* newspapers on 7th May, 2026 inviting the public to submit comments on the Bill by way of written memoranda.

Following this call, the Committee received submissions from various stakeholders, including the Office of the Attorney-General, the Independent Electoral and Boundaries Commission (IEBC), County Assemblies Forum (CAF), Council Of Governors (COG), Electoral Law and Governance Institute for Africa (ELGIA), Linda Mwananchi Diaspora League, Inter-Religious Council of Kenya (IRCK), Civil Society Parliamentary Engagement Network (CSPEN), Centre for Multiparty Democracy Kenya (CMD-Kenya), Transparency International Kenya (TI-Kenya) and members of the public.

Honourable Speaker,

I wish to thank the Offices of the Speaker and the Clerk of the Senate for the support accorded to the Committee during the consideration of the Bill. The Committee also takes this opportunity to acknowledge and appreciate the stakeholders who honoured the Committee's invitations to meetings and submitted written memoranda, which greatly enriched the Committee's consideration of the Bill.

Lastly, I wish to acknowledge and commend the industry, insight, and commitment of the Members of the Committee, as well as the diligence and unfailing support of the Secretariat, whose combined efforts were integral to the successful adoption of this Report.

Honourable Speaker,

It is now my pleasant duty, pursuant to standing order 148(1) of the Senate Standing Orders, to present the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on its consideration of the Referendum Bill, 2026 (Senate Bills No. 3 of 2026).

Signed ..... Date 22/07/2026

SEN. WAKILI HILLARY SIGEI, CBS, MP
CHAIRPERSON, STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

CHAPTER ONE: INTRODUCTION

1.0 Introduction

1. The Referendum Bill, 2026 (Senate Bills No. 3 of 2026) was published on 12th February, 2026 and read a First Time in the Senate on 5th May, 2026, whereupon it was committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. A copy of the Bill is annexed to this Report as *Annex 2.*

1.1 Objects of the Bill

2. The Bill provides a legal framework for the conduct of referenda in Kenya. It sets out the processes on how referenda are initiated, organized, conducted and challenged in court. It also sets out the processes for implementation after results are declared. The Bill applies to constitutional amendment referenda, county referenda and referenda on any other public issue as stipulated in the Bill.

1.2 Overview of the Bill

1.2.1 Scope and Application of the Bill

3. Part I of the Bill which includes Clauses 1–4 sets out preliminary matters, including definitions and the application of the Elections Act to referenda.

4. **Clause 1** provides for a Short Title and states that the Act may be sited as the Referendum Act, 2026 whereas **Clause 2** defines key terms used in the Bill.

5. **Clause 3** of the Bill provides for the application of the act to three categories of referenda, as follows:
   i. national referenda required under the Constitution, including those to amend the Constitution under Articles 255, 256, and 257;
   ii. county-level referenda on matters that fall within the jurisdiction of a county; and
   iii. other referenda on issues that do not involve constitutional amendments.

6. **Clause 4** provides for the application of relevant provisions of the Elections Act to the conduct of a referendum, effectively treating a referendum in the same manner as a general election for specified purposes.

7. **Clause 4(2)** provides that the general procedure for the conduct of an election under the Elections Act shall apply with necessary modifications to the conduct of a referendum.

1.2.2 Pre-Referendum Procedures

8. Part II of the Bill comprised of Clauses 5–9 sets out the procedural steps to be followed before a referendum is conducted.

(a) Constitutional Amendment by Parliamentary Initiative

9. Where a constitutional amendment requires a national referendum, ***Clause 5*** requires that once Parliament passes a constitutional amendment Bill, the President shall formally notify the Independent Electoral and Boundaries Commission (IEBC or Commission) within thirty (30) days, and the Commission is required to conduct the referendum within ninety (90) days.

10. For Bills touching on matters under Article 255(1) of the Constitution, ***Clause 9*** further provides that they shall be formulated in a participatory and inclusive manner, taking into account all opinions and recommendations. Where multiple divergent draft Bills on the same subject are presented through a parliamentary initiative, Parliament may—
    i. merge them into one draft Bill;
    ii. approve one draft Bill and disapprove the other(s); or
    iii. approve all the draft Bills for separate submission to the people in a referendum, with each draft Bill constituting a distinct option with its own symbol and answer on the ballot.

(b) Constitutional Amendment by Popular Initiative

11. ***Clause 6*** governs amendments proposed through a popular initiative pursuant to Article 257 of the Constitution. The promoters of a popular initiative are required to submit to the Commission—
    i. the draft Bill together with information on the name and national identification number of each registered voter supporting the initiative in the prescribed form; and
    ii. the signatures of the registered voters appended against their respective information.

12. Upon receipt of the draft Bill and supporting signatures, the Commission shall, within ninety (90) days—
    i. make the initiative and supporting signatures available for public inspection, either at its offices or electronically;
    ii. verify that the initiative is supported by at least one million (1,000,000) registered voters;
    iii. satisfy itself that the initiative meets the requirements of Article 257 of the Constitution; and
    iv. publish a report on the verification exercise.

13. If the Commission finds that the threshold under Article 257 has not been met, it shall declare the initiative unsuccessful, notify the promoters in writing within seven (7) days, and issue compliance directions. Promoters may resubmit the draft Bill upon complying with those directions.

14. If the requirements are met, the Commission shall forward the draft Bill to all county assemblies for consideration pursuant to Article 257(5) of the Constitution.

(c) Consideration by County Assemblies

15. ***Clause 7*** provides that each county assembly shall, within three (3) months of receipt of the draft Bill from the Commission, either—
    i. approve the draft Bill and deliver a copy together with a certificate of approval (in the form prescribed by the First Schedule) to the Speakers of both Houses of Parliament; or
    ii. reject the draft Bill and deliver a certificate of rejection (in the form prescribed by the Second Schedule) to the Speakers of both Houses.

16. A county assembly that does not respond within the three-month period is deemed to have not approved the Bill in respect of that county assembly.

(d) Consideration by Parliament

17. ***Clause 8*** provides that where a majority of county assemblies approve the draft Bill, it shall be introduced in Parliament pursuant to Article 257(7) of the Constitution. Each House shall publicise the Bill and facilitate public discussion before passage. If both Houses pass the Bill, the Speakers shall jointly submit it to the President.

18. Where the Bill relates to a matter under Article 255(1), the President shall notify the Commission to conduct a national referendum within ninety (90) days before assenting to the Bill. Where it does not relate to an Article 255(1) matter, the President shall assent within seven (7) days.

19. If one or both Houses fail to pass the Bill, the relevant Speaker shall notify the Commission and the proposed amendment shall be submitted to the people in a referendum. A House that neither passes nor rejects the Bill within eighteen (18) months is deemed to have not passed the Bill.

1.2.3 Conduct of a Referendum

20. Part III of the Bill that include Clauses 10–19 governs the conduct of a referendum.

(a) Framing and Publication of a Referendum Question

21. ***Clause 10*** requires the Commission to frame the referendum question or options within twenty-one (21) days of receiving notification. The question shall—
    i. be written in plain, simple, and neutral language in both English and Swahili;
    ii. avoid wording that suggests a judgement or opinion, either explicitly or implicitly;
    iii. contain factual information describing the issue and the options clearly and accurately; and
    iv. be framed to allow voters to express their choice by marking "yes" or "no" on the ballot paper.

22. The Commission may assign symbols to each answer, provided the symbols do not resemble those of political parties or independent candidates. The question or options shall be published in the Gazette, electronic media, and a national newspaper, and shall be accompanied by civic education and public sensitisation.

(b) Notice of the Referendum

23. ***Clause 11*** requires the Commission, within fourteen (14) days of publishing the referendum question, to publish a formal notice of the referendum. The notice shall specify—
    i. the nature of the referendum;
    ii. the referendum question and the options for the answer or answers;
    iii. the symbols assigned for each answer;

iv. the date of the referendum, which shall be at least forty-five (45) days from the date of publication of the notice;
v. the polling time;
vi. the deadline for registration of referendum committees; and
vii. the start and end dates for the campaign period.

(c) Referendum Committees

24. ***Clauses 12, 13 and 14*** provide for the formation, registration and operation of referendum committees. Any person or group intending to campaign for or against a referendum question may form both a national referendum committee and a referendum committee in every constituency. Each committee shall appoint a leader and a chief agent, whose details shall be registered with and maintained by the Commission.

25. The financing of referendum committees is regulated under the Election Campaign Financing Act (Cap. 7A). Each committee shall meet its own operational costs, and the same rules governing expenditure, spending limits, contributions, donations, and dispute resolution during elections shall apply to referendum campaigns.

(d) Voting Threshold and Declaration of Results

26. ***Clause 15*** sets out the minimum voter turnout and approval requirements. For questions contemplated under Articles 255, 256, and 257 of the Constitution (constitutional amendments), a referendum is approved if—
i. at least twenty percent (20%) of the registered voters in each of at least half of all counties participate; and
ii. the amendment is supported by a simple majority of all citizens voting in the referendum.

27. For other referendum questions not involving constitutional amendments, the outcome is decided by a simple majority of votes cast.

28. ***Clause 16*** requires the Commission to declare the results within three (3) days of the referendum through a notice in the Gazette and to certify to the President whether the Bill has been approved. If approved, the President shall assent to the Bill within thirty (30) days of receiving certification.

1.2.4 Other Referenda

(a) County Referenda

29. ***Clause 17*** provides that a referendum may be conducted in a county on local issues, including county laws or petitions, and planning and investment decisions where at least twenty-five percent (25%) of the registered voters in the affected area have signed a petition.

30. A county referendum may be referred to the Commission by the county assembly (in respect of county laws or petitions) or by the relevant county executive committee member (in respect of planning and investment decisions). The Commission shall conduct the referendum within ninety (90) days of the referral.

(b) Parliament-Initiated Referenda

31. ***Clause 18*** provides that Parliament may, upon a resolution supported by more than fifty percent (50%) of the members of each House, initiate a referendum on any matter other than a constitutional amendment.

32. Such a resolution may arise from a matter referred by the Cabinet, a petition submitted under Article 119 of the Constitution, or any other matter within Parliament's legislative competence. The resolution shall specify the nature and purpose of the referendum, the question or options, the eligible voters, public education measures, and any other specific particulars. The Commission shall conduct such a referendum within ninety (90) days.

1.2.5 Referendum Petitions

33. Part IV of the Bill comprising of Clauses 20–35 establishes a framework for challenging the conduct or outcome of a referendum.

(a) Filing and Service

34. Petitions may be filed in the High Court either to contest the conduct, result, or validity of a referendum or to seek a declaration on any matter relating to it. Such petitions shall be filed within fourteen days of the declaration of results or the occurrence of the complained-of event, and shall be determined within thirty days.

35. Petitions shall be served on respondents within seven days of filing, either personally, electronically, or by advertisement in a national newspaper. The respondents vary depending on the nature of the petition and may include the Independent Electoral and Boundaries Commission, promoters of a popular initiative, the Speaker of the relevant House of Parliament, or any other person whose conduct is specifically complained of.

36. All petitions shall be signed by the petitioner or their advocate, and once filed, the Registrar of the High Court shall notify the Commission.

37. If a petitioner dies, proceedings may continue with the remaining petitioners or a substituted party. The Registrar of the High Court shall maintain a public list of all referendum petitions.

(b) Hearing and Determination

38. Petitions shall be heard and determined by a bench of three (3) judges appointed by the Chief Justice, within thirty (30) days of lodging the petition. Filing a petition automatically suspends the effect of the declared referendum results until the petition is heard and determined and the period for appeal has lapsed.

(c) Appeals

39. Appeals from the High Court lie to the Court of Appeal on matters of law only. An appeal shall be filed within fourteen (14) days of the High Court's decision and shall be heard and determined within sixty (60) days. An appeal also operates as a stay of the declared referendum results.

(d) Powers of the Court

40. The Bill also provides for scrutiny of votes, management of evidence, and protection of the secrecy of the ballot. It empowers the High Court to summon witnesses, consolidate related petitions, and issue orders on costs.

41. At the conclusion of hearing, the High Court may dismiss the petition, declare the published result to be incorrect and direct the publication of the correct results, uphold the result of the referendum, or declare the referendum to be void. Where the Court declares a referendum void, the Commission shall conduct a fresh referendum within sixty (60) days.

1.2.6 Miscellaneous Provisions

42. Part V of the Bill (Clauses 36–42) contains miscellaneous provisions which include the following;

i. Retention and Public Inspection of Documents (***Clause 36***): All referendum documents shall be retained by the Commission for a period of six (6) months after declaration of results, and shall be made available for public inspection upon request, subject to prescribed conditions.

ii. Application of the Election Offences Act (***Clause 37***): The provisions of the Election Offences Act (Cap. 66) relating to election offences shall apply, with necessary modifications, to a referendum.

iii. Duty to Co-operate (***Clause 38***): Every public officer, private entity, county administration officer, and member of the public is placed under a duty to co-operate with and support the Commission in the conduct of a referendum. Police officers assigned to referendum duties shall be deemed to be referendum officers for the purposes of the Act.

iv. General Penalty (***Clause 39***): A person who contravenes any provision of the Act for which no specific penalty is provided commits an offence and is liable, on conviction, to a fine not exceeding one million shillings (Kshs. 1,000,000) or to imprisonment for a term not exceeding three (3) years, or to both.

v. Referendum Code of Conduct (***Clause 40***): The Electoral Code of Conduct set out in the Second Schedule to the Elections Act (Cap. 7) shall apply to referenda, and every referendum committee and participant shall subscribe to and observe its provisions.

vi. Regulations (***Clause 41***): The Commission may make regulations for the better implementation of the Act, including on forms, guidelines for draft Bills, signature collection and submission, verification guidelines, committee registration and conduct, and the general conduct of a referendum. Regulations shall take effect only after approval by both Houses of Parliament.

vii. Consequential Amendments (***Clause 42***): The Bill makes targeted consequential amendments to the Elections Act (Cap. 7) to remove referendum-specific provisions that will be superseded by the new standalone Act, and to the County Governments Act (Cap. 265) by repealing section 90.

1.3 Consequences of the Bill

43. Recent jurisprudence, particularly the Building Bridges Initiative (BBI) judgments, has underscored the critical importance of the Referendum Bill. The High Court, Court of Appeal, and Supreme Court all converged on the view that Kenya lacks a comprehensive, coherent referendum law capable of guiding a constitutionally compliant process. The principal consequences of the Bill are set out below.

(a) Filling the Legislative Vacuum Left by the Elections Act

44. The Elections Act contains minimal and fragmented provisions on referenda, offering no comprehensive procedure for initiating, verifying, conducting, or challenging a referendum. The Bill provides a complete procedural framework that sets out a full sequence of steps; thereby directly filling the vacuum that the BBI judgments consistently identified.

(b) Statutory Signature Verification Process

45. A statutory process for verifying signatures is a major innovation of the Bill. It sets out how signatures supporting a popular initiative are to be collected, submitted, authenticated, and verified, and assigns the Commission with clear responsibilities and timelines for each stage. This replaces the current situation in which the Elections Act is entirely silent on the authenticity-assessment of signatures—a central concern in the BBI litigation.

(c) Standards for Referendum Question Formulation

46. The Bill introduces clear, statutory criteria for how referendum questions shall be framed—requiring that each question be simple, neutral, and unambiguous. The Elections Act is entirely silent on question design, and this reform directly addresses that gap by preventing omnibus formulations that could obscure voter choice or bundle unrelated matters together.

(d) Framework for Referendum Dispute Resolution

47. The Bill creates a dedicated referendum petition mechanism, setting out who may file a petition, the timelines within which challenges shall be brought, the permissible grounds, and the available remedies. The Elections Act contains no

such mechanism specific to referenda, leaving litigants and courts to rely on general electoral principles that do not adequately reflect the unique nature of a referendum.

(e) Extension of the Electoral Code of Conduct to Referenda

48. The Bill extends the Electoral Code of Conduct contained in the Second Schedule to the Elections Act to apply specifically to referenda, thereby ensuring that issue-driven referendum campaigns are subject to the same standards of fairness, neutrality, and responsible conduct that apply during elections.

49. Taken together, these reforms convert Kenya's referendum framework from a sparse set of general electoral references into a complete and functional legal regime, providing the certainty, safeguards, and administrative coherence necessary for a credible and constitutionally compliant referendum process.

CHAPTER TWO: CONDUCT OF PUBLIC PARTICIPATION ON THE BILL

2.1. Overview

50. Pursuant to Article 118 (1) (b) of the Constitution provides and standing order 145 (5) of the Senate Standing Orders, the Standing Committee on Justice, Legal Affairs and Human Rights placed an advertisement in the *Daily Nation* and *The Standard* newspapers on 7th May 2026 inviting members of the public to submit comments on the Bill by way of written Memoranda. A copy of the advertisement is attached *as **Annex 3.***

51. Arising from the invitation, the Committee received and considered submissions from fourteen stakeholders and members of the public, namely-
    a) Office of the Attorney-General
    b) Independent Electoral and Boundaries Commission
    c) Council of Governors
    d) County Assemblies Forum
    e) Centre for Multiparty Democracy – Kenya
    f) Inter-Religious Council of Kenya
    g) Electoral Law and Governance Institute for Africa
    h) Civil Society Parliamentary Engagement Network
    i) Transparency International – Kenya
    j) Linda Mwananchi Diaspora League
    k) Prof. PLO Lumumba
    l) Mr. Aldrin Vundi Kasyoka
    m) Mr. Robert S. Khaemba
    n) Mr. Allan Shivanda

52. Copies of the said submissions are attached to this Report as ***Annex 4***, while the matrix summarizing the submissions received with respect to each clause is attached to this Report as ***Annex 5***.

CHAPTER THREE: ANALYSIS AND COMMITTEE OBSERVATIONS ON THE SUBMISSIONS RECEIVED

3.1 Introduction

53. This Chapter presents an overview of the submissions received from stakeholders and the observations by the Committee on the respective provisions of the Bill.

3.2 Clause 2 — Interpretation

54. The Office of the Attorney-General noted that the Bill omitted references to the specific provision of the Elections Act in which the definitions of "polling station", "register of voters", and "voter" are contained. The Office proposed the insertion of the words "section 2 of" after the word "under" in each definition so as to correctly cite the source of those definitions.

55. *The Committee concurred with the Office of the Attorney-General and resolved to adopt the proposed amendments.*

3.3 Clause 3 — Application of the Act

56. Prof. PLO Lumumba submitted that the phrase "any other issue" is excessively broad and may open the door to referenda on ordinary political, legislative or administrative matters without clear constitutional justification. He recommended amending the clause to define the categories of non-constitutional matters that may be subjected to referendum and to state whether such referenda are binding or advisory.

57. IEBC submitted that while paragraph (a) is clearly anchored in the Constitution, paragraphs (b) and (c) raise questions regarding the constitutional basis for county referenda and referenda on matters other than constitutional amendment. It recommended either clarifying the constitutional basis and legal effect of such referenda, or limiting the scope of the Act to referenda expressly contemplated under the Constitution.

58. *The Committee resolved to amend the Bill to refer to clause 18 as per the proposals of Prof. Lumumba. The Committee rejected the proposal put forward by the IEBC.*

3.4 Clause 4 — Application of the Elections Act to a Referendum

59. TI-Kenya proposed the insertion of a sub-clause 3 expressly providing that the conduct of a referendum under the Act shall comply with the principles set out under Articles 10, 81, 86, and 232 of the Constitution, to ensure administrative consistency and to apply the free and fair election principles equally to referenda.

60. Prof. PLO Lumumba raised concern that importing election rules wholesale to referendum processes may create confusion, as referenda involve questions, options and constitutional or public issues rather than candidates, parties and offices. He recommended that the Bill include a schedule or regulations setting out how provisions of the Elections Act apply to referenda and the necessary modifications.

61. *The Committee accepted the proposals by TI Kenya and Prof. PLO Lumumba.*

3.5 Clause 5 — Submission of a Bill to the Commission pursuant to Article 256(5)(a)

62. COG proposed that Clause 5 be amended to align it with the provisions of Article 256 on the procedure for amendment of the Constitution through parliamentary initiative.

63. Specifically, the Council recommended that the clause be reworded to read: "Pursuant to Article 256(5)(a) of the Constitution, if a Bill to amend the Constitution through Parliamentary Initiative proposes an amendment relating to a matter specified in Article 255(1), the President shall, within thirty days of the receipt of the Bill from Parliament, request the Commission to conduct a national referendum for approval of the Bill within ninety days, before assenting to the Bill." The Council's justification was to ensure the clause accurately reflects the constitutional pathway for parliamentary initiative referenda.

64. *The Committee rejected the proposal from the Council of Governors.*

3.6 Clause 6 — Amendment of the Constitution by popular initiative

65. The AG proposed the insertion of the word "the" immediately after the words "information on" to correct a grammatical error in Clause 6(1)(a).

66. Linda Mwananchi Diaspora League argued that Clause 6(2)(c), which allows the IEBC to "satisfy itself" that a popular initiative meets constitutional requirements, goes beyond the purely quantitative threshold set by Article 257 and replicates the gatekeeping concerns raised in the BBI litigation.

67. The stakeholder proposed that paragraph (c) be deleted and replaced with a provision requiring the IEBC to submit the draft Bill to county assemblies forthwith upon confirming that the numerical threshold is met, and that a deeming clause be inserted to treat the draft Bill as verified if the IEBC fails to publish its report within ninety days.

68. The stakeholder was of the opinion that requiring county assemblies and Parliament to vote before the people do in a popular initiative referendum risk predetermining the outcome by creating a powerful political signal that may influence voters. It recommended that the IEBC's civic education mandate be amended to expressly require neutral framing independent of prior legislative votes.

69. TI-Kenya proposed inserting a sub-clause 2 outlining provisions that align with the Data Protection Act, 2019 during the signature verification exercise, and requiring the Commission to publish in a transparent and accessible manner the criteria and methodology used in verification, the total number of signatures submitted, verified, rejected, and pending review, the reasons for rejection in aggregate form, and anonymised verification reports and audit findings. The stakeholder also recommended that the Commission permit accredited independent observers to observe the verification process.

70. CAF proposed the addition of a new sub-section (d) under sub-clause (2) requiring the Commission to verify the authenticity of signatures using biometric data, forensic methods, and such other technological means as may be prescribed by regulations. CAF argued this would address the BBI judgment's concerns about proper verification and ensure the authenticity of signatures in popular initiatives.

71. Prof. PLO Lumumba pointed out that the Bill does not adequately protect personal data, noting that national identification numbers and signatures are sensitive personal information, and recommended that the Commission be required to protect such data in accordance with the Data Protection Act, disclosing only information necessary for verification and accountability.

72. He further submitted that the provision under Clause 6(2)(c) may be interpreted as granting the Commission a broad substantive mandate to determine the constitutional validity of a proposed amendment, and recommended clarifying that the Commission's role is limited to verification of signatures and procedural compliance, with substantive constitutional questions to be determined by the courts.

73. *The Committee observed that the proposal from the Office of the Attorney General sought to amend a grammatical error and accepted it.*

74. *The Committee further observed that the proposals from the Linda Mwananchi Diaspora League, the County Assemblies Forum, TI Kenya and Prof. PLO Lumumba were relating to the technical aspects of the verification process and was therefore best addressed in subsidiary legislation to this Bill in clause 41.*

75. *The second proposed amendment from Prof PLO Lumumba on clause 6(2) was accepted.*

3.7 Clause 7 — Consideration of the draft Bill by County Assemblies

76. Mr. Allan Shivandi argued that county assemblies, as delegates of the sovereign people, should not have a role in deciding on referendum questions under a popular initiative. Drawing on the examples of the BBI and Punguza Mzigo initiatives, he contended that county assembly involvement presents a conflict of interest, as county assemblies tended to approve only initiatives that favoured their political interests.

77. He proposed the removal of county assembly involvement in the popular initiative process under Article 257 and proposed that Articles 257(5), (6), and (7) be repealed from the popular initiative process and transferred to the parliamentary initiative process under Article 256.

78. The AG proposed the deletion of "not approved" and the word be substituted with "rejected" in Clause 7(2)(b) to ensure consistency with the use of the word "rejected" in subclause (1)(b).

79. Linda Mwananchi Diaspora League submitted that treating a non-responding county assembly as having rejected the Bill, as provided in Clause 7(2), exceeds what Article 257(6) of the Constitution provides and that administrative failures at county level could doom an otherwise valid initiative. It recommended that silent

county assemblies be excluded from the count rather than treated as having rejected the Bill, and that a reminder mechanism be introduced.

80. CAF proposed adding new sub-clauses 7(3)(4)(5) expressly providing that a draft Bill to amend the Constitution shall only be introduced in Parliament under Article 257(7) if it has been approved by a majority of the county assemblies, being at least twenty-four (24) of the forty-seven county assemblies. CAF also recommended that the Speakers of both Houses jointly review the certificates delivered and compile a consolidated compliance report within fourteen days after the expiry of the three-month period, and that where the consolidated report indicates the draft Bill has failed to secure the approval of at least twenty-four county assemblies, the Bill shall stand lapsed.

81. COG proposed amending Clause 7(2) so that a county assembly that does not respond within the three-month period stipulated under Article 257(6) shall be deemed to have approved — rather than not approved — the draft Bill in respect of that county assembly.

82. The Council also recommended inserting a new Clause 7(3) requiring each county assembly to publicise the Bill and facilitate public participation before passage. The Council's justification was that a plain reading of Articles 257(5) and (6) indicates that a county assembly is required to consider and either approve or reject a draft Bill within three months of its receipt; the constitutional provisions envisage a time-bound process intended to facilitate the progression of a popular initiative and avoid undue delays in constitutional amendment procedures.

83. The Council opined that, given the citizen-driven nature of a popular initiative, failure by a county assembly to make a decision within the prescribed three months should be deemed as approval of the Bill for purposes of transmitting and progressing the constitutional amendment process before Parliament.

84. Prof. PLO Lumumba raised concern that the provision does not state when the three-month period begins to run, how receipt by county assemblies is confirmed, or how disputes on transmission are resolved. He recommended requiring the Commission to maintain a public register indicating the date of transmission and formal receipt by each county assembly, with time running from formal receipt.

85. *The Committee accepted the proposal from the Office of the Attorney-General to amend subclause (2).*

86. *The Committee also accepted the proposal from the Linda Mwananchi Diaspora League to amend clause 7 to provide for a county assembly's rejection of a draft Bill.*

87. *The Committee rejected the proposals from the County Assemblies Forum and Prof. PLO Lumumba*

3.8 Clause 8 — Consideration of the draft Bill by Parliament

88. The AG proposed deleting the words "the Speaker of the relevant House shall" appearing in the opening words of subclause (5)(a) and replacing them with the words "the Speaker of the relevant House" at the beginning of the paragraph. The Office noted that the Speaker's role is limited to notifying the Commission and does not extend to the conduct of the referendum, which is the responsibility of the Commission.

89. The Stakeholder further proposed insertion of the word "of" immediately after the words "notify the" to correct a grammatical error in subclause (5)(a).

90. Linda Mwananchi Diaspora League submitted that Clause 8(2) uses the term "public discussion" rather than the constitutionally grounded term "public participation" used in Article 118 and other major statutes, and proposed replacing it with "public participation" in accordance with Article 118.

91. The stakeholder raised concern that Clause 8(4) allows the President to determine whether a Bill "relates to" an Article 255(1) matter without any independent review mechanism, creating a structural conflict of interest. It proposed inserting a mechanism allowing any person to petition the Supreme Court for a determination whether a Bill requires a referendum.

92. The stakeholder argued that requiring county assemblies and Parliament to vote before the people do in a popular initiative referendum risk predetermining the outcome by creating a powerful political signal that may influence voters. It recommended that the IEBC's civic education mandate be amended to expressly require neutral framing independent of prior legislative votes.

93. Linda Mwananchi Diaspora League proposed an amendment to Clause 8(5) and recommended that the referendum be held simultaneously with or within thirty days of the conclusion of parliamentary consideration, rather than only as a consequence of parliamentary failure.

94. The stakeholder further submitted that the eighteen-month window proposed under Clause 8(6) before a House is deemed not to have passed a Bill creates a structural incentive for deliberate inaction to block popular initiatives. It recommended replacing the eighteen-month window with a sixty-day fixed voting deadline, with automatic referral to referendum upon expiry.

95. IRCK proposed the insertion of a new Clause 8A after clause 8(3), to read:
"8A. Counter-proposal by Parliament
(1) Where a popular initiative draft Bill is approved by a majority of county assemblies, Parliament may, before submitting the bill to the President, prepare and approve a counter-proposal that offers an alternative to the initiative
(2) Both the original initiative and the counter-proposal shall be submitted to the people in the same referendum as separate options, each with its own symbol and answer
(3) The Commission shall frame clear questions for each option in accordance with section 10".

IRCK argued this would encourage negotiation, reduce polarisation, and improve policy quality while preserving the people's ultimate say.

96. CSPEN noted that subclause (5) does not address the process by which the IEBC receives the matter from Parliament when a House fails to pass a popular initiative Bill, and recommended that specific IEBC notification timelines be inserted to avoid the constitutional impasse experienced during the BBI proceedings

97. COG submitted amending Clause 8(5) to require Parliament to consider and act on a popular initiative Bill within three months of its introduction, rather than allowing the current open-ended period. The proposed wording reads:
"If one or both Houses of Parliament fail to pass the Bill within three months from when the Bill was introduced as stipulated in Article 257(7), the Speaker of the relevant House shall —
(a) notify the Commission its resolution not to pass the Bill; and
(b) the proposed amendment shall be submitted to the people in a referendum."

The Council argued that, noting Article 257(5) accords county assemblies a three-month period within which to consider a draft Bill under a popular initiative, parity, procedural fairness, and consistency within the constitutional amendment

process require that Parliament be allocated a similar timeline. Equal timelines would ensure that no stage of the constitutional amendment process is subjected to undue delay.

98. The Council further recommended amending Clause 8(6) so that if a House of Parliament does not pass or reject the Bill within three months, the Bill shall be deemed to have been passed in respect of that House — rather than deemed not passed as currently provided. The Council further opined that failure by a House of Parliament to make a decision within the prescribed three months should be deemed as approval of the Bill for purposes of transmitting and progressing the draft Bill to the people for a referendum.

99. Prof. PLO Lumumba raised concern that the provision is vague and does not prescribe minimum standards for public participation, and recommended that the Bill prescribe minimum standards including publication of the Bill, adequate timelines for written submissions, public hearings where appropriate, accessibility of materials, and a report demonstrating how public views were considered.

100. IEBC noted that the eighteen-month period for Parliamentary consideration is too long and may cause undue delay for citizens who have already met the threshold for a popular initiative. It recommended introducing a requirement obligating Parliament to conduct public participation using existing mechanisms with clear procedures and timelines, and proposed a shorter three-month period for Parliamentary consideration.

101. *The Committee accepted the proposal from the Office of the Attorney General. As regards the proposal from the Council of Governors, the Committee observed that the proposed amendment to subclause (5) was only acceptable as far as timelines were concerned.*

102. *The proposal from CSPEN to amend sub-clause(5) was accepted by the Committee as were the proposals from Prof. PLO Lumumba and the IEBC. The proposal by Linda Mwananchi to amend sub-clause (6) was also accepted by the Committee.*

103. *The Committee rejected the proposal to amend sub-clause (6) from the Council of Governors as well as the proposal to amend sub-clause (5) from the Linda Mwananchi Diaspora League. The Committee also rejected the proposed new clause 8A from the Inter-Religious Council of Kenya as it did not view the necessity of a counter-proposal.*

3.9 Clause 9 — Bill to amend the Constitution relating to a matter specified in Article 255(1) of the Constitution

104. Linda Mwananchi Diaspora League proposed an amendment to Clause 9(2) and recommended that all submissions, including opposing and dissenting views which shall be recorded in a minority report, be compiled and published alongside the draft Bill and referendum question to ensure the full spectrum of public opinion is available to voters.

105. CSPEN submitted that the Bill does not address what happens when no option obtains a simple majority in a referendum with multiple divergent Bills, and recommended that the Bill address whether the process fails entirely or whether a run-off is permitted.

106. CAF proposed deleting provision under Clause (9)(2) allowing only opinions "not in opposition" to be merged into a single Bill, arguing that the lack of a rigorous test for subject-matter relatedness means unrelated amendments could still be forced on voters as a single package, leaving voters with a "Hobson's choice."

107. Prof. PLO Lumumba submitted that the provision creates the clearest risk of omnibus constitutional amendment by potentially allowing unrelated constitutional questions to be bundled together, thereby denying voters the opportunity to approve or reject each issue on its own merits. He recommended amending the clause to prohibit the bundling of unrelated or materially distinct constitutional amendments, with each separate constitutional issue to be voted on separately.

108. IEBC submitted that Article 255(1) outlines ten different matters, and where more than one matter is contained in one Bill it is important to ensure different referendum questions are framed for each matter. It recommended that the clause be amended to provide that where matters are merged in one Bill, separate referendum questions shall be framed for each matter with its own options and symbols.

109. *The Committee accepted the proposal by the IEBC to amend clause 9. The proposed amendments by Linda Mwananchi Diaspora League, CSPEN, County Assemblies Forum and Prof. PLO Lumumba were rejected.*

3.10 Heading to Part III — Other Referenda

110. The AG, CSPEN and Prof. PLO Lumumba pointed out that the expression "Part III" is repeated and proposed deletion of the repeated expression appearing immediately after Clause 16 and substituting therefore the expression with "Part IV" to ensure consistency in the numbering of the Parts of the Bill.

111. *The Committee accepted the proposal to amend the Heading to read "Part IV".*

3.11 Clause 10 — Referendum Question

112. Mr. Aldrin Vundi Kasyoka raised concern that Clause 10 grants the Commission broad discretionary powers to frame referendum questions within twenty-one days without an independent oversight or approval mechanism.

113. He pointed out that the previous framework under the Elections Act required consultation with the relevant House before approval of referendum questions, whereas the Bill merely provides that the Commission may consult Parliament.

114. He proposed that that the Bill be amended to introduce a mandatory independent approval or review process for referendum questions before publication, involving Parliament, the Judiciary, or a multi-sectoral panel, and that the Bill provides for the establishment of an independent review mechanism and provision for pre referendum legal challenges relating to the wording of referendum questions in order to safeguard transparency, accountability and constitutional integrity.

115. ELGIA proposed an amendment to subclause (6) and recommended that the restriction on referendum symbols resembling those of political parties or independent candidates should apply to registered political parties and not independent candidates, on the basis that the symbols of independent candidates are not legally registered and carry no legal ownership after an electoral cycle. The submission also recommended that the restriction be extended to include the colours of registered political parties.

116. Linda Mwananchi Diaspora League recommended amendment to Clause 10(1) to provide that for parliamentary initiative referenda, notification to the IEBC be made jointly by the Speakers of both Houses rather than by the President alone.

117. The stakeholder further proposed inserting a mechanism allowing any aggrieved party to petition the High Court on question framing within seven days, with a

fourteen-day determination deadline under Clause 10(4) to provide for pre-referendum independent review of question framing.

118. IRCK proposed inserting a new subsection after clause 10(3)(b): (c) to read "The Commission shall ensure that at least thirty percent of the referendum budget is ring-fenced for impartial civic education and shall publish an annual report on the reach and neutrality of such programmes", to strengthen accountability and public confidence.

119. IRCK further proposed the insertion of a new subclause (7) after Clause 10(6) requiring the Commission to prepare and publish, not later than twenty-one days before the referendum, an official neutral Voter Information Guide in English and Swahili. The Guide would contain-
    i. the exact wording of the question or options,
    ii. a plain-language summary of the proposed amendment,
    iii. arguments for and against as submitted by registered referendum committees, and
    iv. the estimated fiscal and legal impact where applicable.

    It would be distributed to every polling station and made available electronically and in accessible formats.

120. CSPEN raised three concerns about the IEBC's civic education mandate: that the IEBC, as referendum administrator, has institutional interests that may unintentionally favour one outcome; that the provision sets no minimum floor for reach, duration, language, or accessibility; and that there is no independent monitoring of the quality or neutrality of civic education. CSPEN recommended addressing all three gaps.

121. CMD-Kenya proposed that referendum questions be provided in Braille to promote inclusivity and ensure that all citizens, regardless of visual impairment, have the same opportunity to participate in civic processes.

122. The stakeholder further proposed that specific provisions be put in place to address the needs of persons with disabilities, persons in areas of low connectivity, and elderly voters, in fulfilment of Article 27 of the Constitution on equality and freedom from discrimination.

123. CAF recommended amending Clause 10(4) to require referendum questions to be written in Braille and sign language where necessary, and to be confined to a single

subject matter, so as to enhance linguistic inclusion and accessibility for persons with disabilities and to prevent omnibus referenda that undermine voter autonomy.

124. The stakeholder proposed the insertion of a new Clause 10A requiring the Commission, in consultation with promoters and other stakeholders, to develop and implement a comprehensive civic education programme at least sixty days before the referendum, and to ensure the draft Bill and proposed referendum questions are printed and distributed to the lowest administrative units in accessible formats including Braille and local dialects.

125. Prof. PLO Lumumba submitted that the Commission's discretion to consult Parliament or promoters when framing referendum questions is inadequate, and recommended that consultation be made mandatory and that the Bill require publication of the draft referendum question, public participation on its wording, independent expert review for neutrality and clarity, and an expedited pre-referendum court process for challenging vague, misleading, biased, or compound questions.

126. IEBC proposed amending the clause to use the term "voter education" rather than "civic education," on the basis that only registered voters will vote in the referendum and the IEBC's constitutional mandate under Article 88(4)(g) is voter education.

127. *The Committee accepted the proposed amendment by Prof. PLO Lumumba to ensure mandatory consultation. The Committee also accepted the proposal by the IEBC to amend the clause to use the term 'voter education'.*

128. *The Committee also accepted the proposal from County Assemblies Forum on public participation and voter education.*

129. *The Committee further observed that the proposed amendments from CSPEN, Centre for Multiparty Democracy and County Assemblies Forum on the language formats was best addressed by subsidiary legislation as per clause 41.*

130. *The Committee rejected the proposals by Mr. Aldrin Vundi Kasyoka, the ELGIA, and the Linda Mwananchi Diaspora League.*

3.12 Clause 11— Notice of Holding Referendum

131. Linda Mwananchi Diaspora League submitted that the forty-five-day notice period be reserved for non-constitutional referenda and that constitutional amendment referenda require at least ninety days' notice to enable meaningful civic education.

132. CSPEN, CMD-Kenya and Prof. PLO Lumumba pointed out that Clause 11(1) incorrectly references Clause 9 (which deals with divergent Bills) rather than Clause 10 (which governs question framing), and recommended correcting the cross-reference.

133. Prof. PLO Lumumba submitted that forty-five days is inadequate for complex constitutional amendment referenda, and recommended a longer minimum period of not less than sixty to ninety days, depending on the complexity of the proposed amendment, to permit meaningful civic education and public debate.

134. *The Committee accepted the proposed amendment by the Centre for Multiparty Democracy to amend the reference of clause 9 with clause 10 of the Bill.*

135. *The Committee further observed that the proposals from Prof. PLO Lumumba and the Linda Mwananchi Diaspora League were not acceptable.*

3.13 Clause 12 — Referendum Committees

136. Linda Mwananchi Diaspora League argued that the formal committee registration requirements place civic participation out of reach for ordinary citizens and grassroots organisations, and recommended inserting a simplified individual and community participation pathway for those spending below one hundred thousand shillings.

137. The stakeholder further proposed inserting an express ban on foreign funding to referendum committees, mirroring Article 88(4)(j) of the Constitution arguing that referendum committees are not political parties thus are not governed by the Political Parties Act's foreign funding prohibition.

138. Prof. PLO Lumumba submitted that the Bill does not sufficiently regulate the representativeness, governance, and accountability of referendum committees, nor does it ensure equality of opportunity between opposing sides. He recommended that referendum committees be required to disclose their officials, governance

structures, funding sources, and campaign positions, and that the law ensure equal access to public media and public forums.

139. *The Committee rejected the proposals from the Linda Mwananchi League and Prof. PLO Lumumba.*

3.14 Clause 14 — Cost of Referendum Committee

140. TI-Kenya proposed the insertion of sub-clauses 3-7 requiring referendum committees to maintain complete financial records, to disclose all donations and expenditures to the Commission within prescribed timelines, and to subject their accounts to independent audit. Critically, TI-Kenya recommended an express prohibition on public officers, state officers, and public entities from using public resources, public funds, public office, government infrastructure, or official functions to support or oppose any referendum question or option.

141. Prof. PLO Lumumba raised concern that merely applying the Election Campaign Financing Act to referendum committees is insufficient, as referendum campaigns are vulnerable to capture by undisclosed interests, foreign influence, misuse of public resources, and disproportionate spending. He recommended that the Bill provide for donor disclosure, spending limits, audit obligations, restrictions on foreign funding, and sanctions for misuse of public resources.

142. *The Committee accepted the proposed amendment to insert new sub-clauses from TI Kenya. The Committee however regarded the proposal by Prof. PLO Lumumba as being a matter that could be addressed under clause 41.*

3.15 Clause 15 — Voting Threshold

143. IRCK proposed deletion of the twenty per cent county turnout quorum in Clause 15(1)(a) and renumber subsection (1)(b) as (1)(a) and inserting a new subsection (1)(b) to read "(b)For amendments under Article 255,256 and 257, the amendment shall also be supported by a majority of the votes cast in at least half of the counties". IRCK argued that the current quorum risks invalidating a clear national majority, and that the proposed change maintains county-level protection while ensuring a decisive outcome when voters participate.

144. Prof. PLO Lumumba submitted that for non-constitutional referenda the Bill does not prescribe a minimum turnout threshold and does not clarify whether the result is binding or advisory. He recommended that the Bill clarify the legal effect of

non-constitutional referenda and prescribe appropriate turnout thresholds where the result is intended to be binding.

145. *The Committee observed that the amendment to the voting threshold as proposed by Prof. PLO Lumumba could only be done to ensure that the Bill reflected the position of the Constitution.*

146. *The Committee also rejected the proposed amendments made by the Inter-Religious Council of Kenya.*

3.16 Clause 16 — Declaration and Certification of Referendum Results

147. ELGIA supported the provision but recommended that it be extended to include a specific procedure for the declaration of results and certification at the county referendum level, noting that the procedure for county referenda differs from that of national referenda.

148. Linda Mwananchi Diaspora League noted that Clause 16(2) of the Bill allows presidential assent within 30 days of certification whereas Clause 25(1) creates an automatic stay upon petition. The Bill does not prevent the President from assenting to a referendum-approved Bill before the fourteen-day petition filing window closes, and recommended that assent be withheld until the petition window lapses or all proceedings are concluded.

149. CMD-Kenya recommended the addition of a provision under Clause 16 – (d) requiring the Commission to publish a post-referendum evaluation report, for purposes of institutional learning, democratic accountability, and general public oversight, and consistent with Venice Commission standards.

150. *The Committee accepted the proposed amendment by ELGIA to amend the Bill to include the process of declaration of results and certification of county referenda at county level.*

151. *The Committee also accepted the amendment proposed by Linda Mwananchi to address the potential assent before the end of the 14-day petition window set in clause 16.*

152. *The Committee also accepted the proposed amendment by Centre for Multiparty Democracy, Kenya to provide for publication of a post referendum evaluation report.*

3.17 Clause 17 — Conduct of County Referenda

153. Linda Mwananchi Diaspora League noted that Clause 17 is entirely silent on the voting threshold for county referenda, including the required turnout and majority. It recommended inserting a provision applying the simple majority standard in Clause 15(2) *mutatis mutandis* to county referenda.

154. Prof. PLO Lumumba submitted that the twenty-five percent petition threshold may be too high and could place county referenda beyond the reach of ordinary citizens, and recommended graduated thresholds depending on whether the referendum is county-wide, sub-county, ward-level, or project-specific.

155. *The Committee accepted the proposed amendment made by the Linda Mwananchi Diaspora League on county referenda.*

156. *The Committee further rejected the proposed amendment made by Prof. PLO Lumumba to reconsider the voting threshold for county referenda.*

3.18 Clause 18 — A Resolution of Parliament for Specific Referendum

157. TI-Kenya recommended the deletion of Clause 18 in its entirety, arguing that the provision allowing Parliament to initiate referenda on "any other matter" is overly broad and potentially unconstitutional, as the Constitution only expressly provides for referendum in the specific contexts identified under Article 255. The stakeholder further argued that the clause may create an avenue for political mobilisation outside constitutional intent and risks normalising plebiscitary governance.

158. Prof. PLO Lumumba submitted that the power granted by the clause is broad and insufficiently defined and may allow Parliament to refer ordinary political questions to the people without clear standards. He recommended limiting such referenda to matters of substantial national importance and requiring Parliament to publish reasons for referral.

159. *The Committee rejected the proposals to amend clause 18 made by TI Kenya and Prof. PLO Lumumba.*

3.19 Heading to Part IV — Referendum Petitions

160. The AG proposed deleting the expression "Part IV" appearing immediately after Clause 19 and substituting therefore the expression with "Part V" to ensure consistency in the numbering of the Parts of the Bill.

161. ELGIA proposed that the Bill include a pre-referendum dispute resolution mechanism similar to that provided in electoral laws, to offer clarity on the resolution of disputes before the conduct of a referendum.

162. *The Committee accepted the proposal made by the Office of the Attorney-General to amend this part.*

163. *The Committee further rejected the proposal to amend the part made by ELGIA as it would be better addressed under regulations.*

3.20 Clause 20 — Referendum Petitions

164. The AG proposed adding the word "or" at the end of subclause (3)(a) to indicate that paragraphs (3)(a) and (b) are disjunctive.

165. ELGIA recommended that the reference to Article 22(1) and (2) of the Constitution in subclause (2) be replaced with a reference to electoral law, on the basis that Article 22 is a Bill of Rights enforcement provision and that a referendum petition cannot be filed on behalf of another person, unlike a Bill of Rights petition.

166. The stakeholder further recommended that the clause prescribe the right and legal capacity for anybody; just like in Elections Petition; to file a petition, particularly for county referenda, to prevent abuse of process.

167. CSPEN proposed that the court's power under Clause 26(2) to consolidate petitions challenging the same referendum be made mandatory rather than discretionary, to prevent the courts from being overwhelmed by multiple petitions on the same matter.

168. COG proposed amending Clause 20(5) to extend the period within which a referendum petition shall be heard and determined from thirty days to sixty days of lodging the petition. The Council justified this on the basis that referenda are

complex nationwide exercises that may involve scrutiny and recounts of votes, and thus may not realistically be concluded within thirty days.

169. Prof. PLO Lumumba submitted that the timelines are very compressed and that a national referendum petition may involve complex questions on technology, tallying, public participation, civic education, financing, misinformation, intimidation and irregularities across multiple counties. He recommended extending the determination period to at least forty-five or sixty days.

170. Prof. PLO Lumumba noted that the thirty-day timeline for hearing and determining a referendum petition is too short and recommended expanding the time. It further proposed that the clause provide timelines for respondents to file responses, and proposed fourteen days for that purpose.

171. *The Committee accepted the proposed amendment made by the Office of the Attorney-General.*

172. *The Committee further rejected the proposals made by the Council of Governors, the ELGIA, CSPEN and Prof. PLO Lumumba.*

3.21 Clause 22 — Respondents to a Referendum Petition

173. The AG proposed deleting the words "been guilty of a corrupt practice" and substituting them with the words "committed a corrupt act" in subclause (1) in order to align the provision with Article 50(2)(a) of the Constitution, which guarantees the presumption of innocence of a person accused of an offence.

174. ELGIA submitted that subclause (2) in its plain reading, appears to suggest that the Commission itself can file a referendum petition, creating ambiguity that should be resolved.

175. *The Committee accepted the proposed amendment made by the Office of the Attorney-General.*

176. *The Committee further accepted the proposed amendment from ELGIA to ensure that IEBC could not be a petitioner in a referendum petition.*

3.22 Clause 23 — Filing of Referendum Petition

177. The AG proposed deleting the words "their behalf, if more than one" and substituting them with the words "the petitioner's behalf" in subclause (1) to be consistent with the provisions of section 3(4) of the Interpretation and General Provisions Act whereby words and expressions in the singular include the plural and words and expressions in the plural include in the singular.

178. The stakeholder further submitted that this preserves the right of a petitioner to represent himself or herself in a referendum petition, regardless of the fact that there may be more than one petitioner.

179. ELGIA was of the opinion that the provision under subclause (2) is unnecessary as its intended purpose is adequately covered by Clause 22 of the Bill.

180. *The Committee accepted the proposed amendments from the Office of the Attorney-General and ELGIA.*

3.23 Clause 24 — Composition of the Bench to hear and determine Referendum Petition

181. ELGIA submitted that the requirement for a bench of three judges apply only to national referendum petitions, and that county referendum petitions be heard and determined by a single judge, consistent with the approach taken for gubernatorial election petitions under the Elections Act.

182. COG proposed amending Clause 24(1) to provide that a referendum petition shall be heard by an uneven number of judges being not less than three assigned by the Chief Justice, rather than a bench of exactly three judges as currently provided. The Council's justification was to align the provision with Article 165(4) of the Constitution.

183. Prof. PLO Lumumba raised concern that the Bill does not address urgent interlocutory matters, consolidation of petitions or case management before empanelment thus recommended that the Bill should empower the Chief Justice to issue practice directions on case management, consolidation, urgent applications and interlocutory matters.

184. *The Committee accepted the proposed amendment made by ELGIA to ensure that clause 24 was applicable to national referenda.*

185. *The Committee further rejected the proposed amendments made by the Council of Governors and Prof PLO Lumumba on the grounds that their proposals, if enacted, would infringe on the discretion of the Chief Justice.*

3.24 Clause 25 — Operation of Declared Result of issue Submitted to Referendum

186. Prof. PLO Lumumba submitted that an automatic stay may encourage frivolous petitions and allow any petitioner to suspend the legal effect of a referendum result merely by filing a petition. He recommended that a petitioner be required to apply for a stay and that the Court determine the application urgently based on statutory criteria.

187. He also pointed out that this Clause contains duplicated subsection numbering and should be corrected before enactment.

188. IEBC proposed deleting the sub-clause providing for an automatic stay upon filing of a petition, in keeping with the law on election petitions where a specific order of stay must be sought in order to stay the results.

189. *The Committee accepted the proposed amendment from Prof. PLO Lumumba to avoid duplication of the subclause numbering.*

190. *The Committee further resolved to retain the 30-day timeline in the Bill contrary to the proposed amendment by Prof. PLO Lumumba. The Committee also rejected the proposal from the IEBC to delete the sub-clause (3).*

3.25 Clause 27— Practice Procedure

191. Prof. PLO Lumumba and IEBC pointed out that this Clause makes reference to section 43 of the Bill yet the Bill appears to end at Clause 42.

192. *The Committee accepted the proposal by Prof. PLO Lumumba and IEBC to amend the Bill to ensure proper cross-referencing.*

3.26 Clause 30 — Appeals to the Court of Appeal

193. CSPEN pointed out that Clause 30(2) refers to "subsection (2)" when the intended reference is Clause 30(1), and recommended correction of the circular self-reference.

194. The stakeholder further noted that Clause 25(1) provides that the filing of a referendum petition automatically stays the declared results, while Clause 29(1)(b) requires the petition to be determined within thirty days. However, under Clause 30(2), an appeal to the Court of Appeal automatically stays the declared referendum results for up to sixty days without requiring the appellant to demonstrate a prima facie case. The stakeholder observed that this may encourage vexatious litigation and unnecessarily delay the implementation of a democratically approved outcome. Consequently, it recommended amending Clause 30(2) to require the demonstration of a prima facie case before an appeal stay takes effect.

195. CMD-Kenya recommended that the reference to "subsection (2)" in Clause 30(2) be replaced with "subsection (1)" to correct the circular self-reference and properly identify the appeal provision to which the stay applies.

196. Prof. PLO Lumumba submitted that the Bill should correct any inconsistency between Clause 30 and the Memorandum of Objects and Reasons on appeal timelines and recommended that the timelines should be harmonised before enactment.

197. IEBC was of the opinion that, given the significance and gravity of matters that may be raised in a referendum petition, it may be prudent to consider providing an appeal mechanism to the Supreme Court.

198. *The Committee accepted the proposals by CSPEN and Centre for Multiparty Democracy to amend clause 30(2) to correct a drafting error.*

199. *The Committee also accepted the proposal from Prof PLO Lumumba to harmonise the timelines indicated in the Bill and the proposal by the IEBC to include provisions on appeal mechanisms to the Supreme Court.*

200. *The Committee rejected the proposal by CSPEN requiring a provision to ensure that a demonstrated prima facie case is made before a stay under clause 30(2) takes effect.*

3.27 Clause 34 — Powers of Court

201. Prof. PLO Lumumba submitted that the Court should be empowered to order scrutiny, recounts, correction of results, declarations, structural directions to the Commission and nay other remedy necessary to secure the integrity of the referendum.

202. *The Committee accepted the proposal from Prof. PLO Lumumba.*

3.28 Heading to Part V — Miscellaneous Provisions

203. The AG proposed deleting the expression "Part V" appearing immediately after Clause 35 and substituting therefore the expression with "Part VI" to ensure consistency in the numbering of the Parts of the Bill.

204. *The Committee accepted the proposal to amend the Heading to read "Part VI".*

3.29 Clause 36 — Retention and Public Inspection of Documents

205. Linda Mwananchi Diaspora League proposed extending the retention period from six months to twelve months, or until the conclusion of all legal proceedings, whichever is later, and requiring permanent archiving of documents relating to constitutional amendment referenda.

206. TI-Kenya proposed that the six-month retention period be replaced with the framework under Section 7 of the Public Archives and Documentation Service Act, on the basis that automatic destruction of referendum records after six months is inconsistent with the procedural safeguards in that Act and creates potential conflicts regarding retention, preservation, and disposal of referendum records.

207. Prof. PLO Lumumba submitted that six months may be insufficient for litigation, audit, accountability, or historical review and recommended extending the retention period to at least three years, with digital records preserved for longer subject to data protection safeguards.

208. *The Committee accepted the proposal from Linda Mwananchi Diaspora League to amend clause 36 to provide that the documents may be retained up to the end of the litigation process.*

209. *The Committee also accepted the similar proposal from TI Kenya on the retention and public inspection of documents. As concerns the proposal from Prof. PLO Lumumba, the Committee observed that the proposed 3 years was too long and that 12 months was sufficient enough.*

3.30 Clause 37 — Application of the election Offences Act Cap. 66

210. The AG proposed deleting the words "Election Offences Act" in the marginal note to ensure consistency in the drafting style of the Government.

211. The stakeholder further proposed inserting the word "the" immediately after the word "provisions" to correct the grammatical error.

212. *The Committee accepted the proposal from the Office of the Attorney-General.*

3.31 Clause 38 — Duty to Co-operate

213. **Prof. PLO Lumumba** submitted that the duty imposed on private entities is broad and undefined and recommended that the bill should define the scope of co-operation required and provide that requests must be lawful, reasonable, proportionate and in writing.

214. *The Committee resolved to amend clause 38 to ensure that the duty to cooperate emphasizes that scope of the cooperation is reasonable.*

3.32 Clause 39 — General Penalty

215. Prof. PLO Lumumba raised concern that the penalty imposed may be disproportionate where the breach is minor, technical or administrative. He recommended that the bill should distinguish between serious offences and administrative breaches. He was of the view that criminal penalties should be reserved for intentional, fraudulent or serious misconduct.

216. *The Committee rejected the proposed amendment from Prof. PLO Lumumba.*

3.33 Clause 40 — Referendum Code of Conduct

217. The AG proposed inserting the word "the" immediately after the word "under" in subclause (1) to correct the grammatical error.

218. IRCK proposed amending this clause to include "The Referendum Code of Conduct shall bind all referendum committees, political parties, the media, and the Commission itself to principles of factual accuracy and non-violence." To strengthen accountability and public confidence.

219. CMD-Kenya recommended that the Code of Conduct be explicitly provided for in the Bill rather than by cross-reference to the Elections Act, to avoid the cross-reference becoming stale as laws evolve, and that explicit provisions address referendum-specific conduct issues including the obligations of the promoters of a popular initiative and the obligations of county governors and MCAs who have significant influence over county assembly consideration.

220. Prof. PLO Lumumba submitted that the Electoral Code of Conduct is election-focused and may not sufficiently address referendum-specific risks such as misinformation, misuse of civic education platforms, unequal campaign financing, and distortion of referendum questions. He recommended that the Bill include a dedicated Referendum Code of Conduct.

221. *The Committee accepted the proposed amendments from the Office of the Attorney-General, and the Centre for Multi-Party Democracy.*

3.34 Clause 41 — Regulations

222. The AG proposed deleting the words "and provisions" in subclause (1) noting that the words are superfluous and unnecessary.

223. Linda Mwananchi Diaspora League proposed inserting a new Clause 41(4) to provide a non-contradiction and non-derogation clause to expressly prohibit IEBC regulations that contradict the Act or purport to amend constitutional requirements.

224. TI-Kenya proposed inserting a sub-clauses 4 and 5 under Clause 41 requiring the Commission, before submitting proposed regulations to Parliament, to publish the draft regulations in the Gazette, on its official website, and in a national newspaper, and to invite public comments for a period of not less than thirty days, and thereafter to publish a summary of comments received including an explanation of whether and how they were incorporated.

225. CAF proposed the insertion of a new Clause 41A expressly prohibiting any state officer, including the President, Deputy President, or member of the Executive, from initiating, sponsoring, or funding a popular initiative under Article 257, with any contravention rendering the entire process null and void. The stakeholder further argued this directly codifies and implements the Supreme Court's ruling that popular initiatives under Article 257 must remain exclusively citizen driven.

226. Prof. PLO Lumumba submitted that the Bill does not require regulations to be made within a fixed period after commencement and recommended that the Commission be required to prepare and submit initial regulations within six months of commencement.

227. *The Committee accepted the proposed amendments from the Office of the Attorney-General, the Linda Mwananchi Diaspora League and Prof. PLO Lumumba.*

228. *The Committee further resolved to amend clause 41 as proposed by TI Kenya with the exception that it would be 14 days as opposed to the proposed 30 days.*

229. *The Committee rejected the proposals from the County Assemblies Forum.*

3.35 Clause 42 — Consequential Amendments

230. Linda Mwananchi Diaspora League proposed inserting a transitional savings provision as Clause 43 to preserve the legal effect of proceedings commenced under the Elections Act referendum provisions before the commencement of the new Act.

231. Prof. PLO Lumumba was of the opinion that Clause 17 does not sufficiently regulate county referenda and proposed that the Clause be expanded before section 90 of the County Government Act is repealed.

232. *The Committee accepted the proposed amendment from the Linda Mwananchi Diaspora League in so far as it was aligned with the amendments to the existing legislation.*

233. *The Committee also accepted the proposed amendment from Prof. PLO Lumumba to expand clause 17 to address country referenda.*

3.36 Additional Proposed Amendments

234. The Committee considered and accepted a proposal by the Office of the Attorney General to align the arrangement of clauses indicated on page 9 of the Bill to ensure consistency in the text of the Bill.

235. The Committee further considered and did not accede to the following additional general comments and proposed amendments to the Bill-

a) A proposal by CSPEN to insert provisions prohibiting or regulating the use of public resources, state media, government vehicles, public officer time, and county government resources in referendum campaigns, noting that the Bill made adequate provisions on the matter;

b) Proposals by CSPEN and TI-Kenya to insert provisions addressing online and social media campaign regulation, disinformation response mechanisms, and standards for digital signature verification, noting that this would be adequately addressed in the proposed Regulations;

c) Proposals by CSPEN and TI-Kenya to expand the Referendum Code of Conduct to address referendum-specific conduct issues, noting that these would be adequately addressed in the proposed Regulations;

d) A proposal by CSPEN to insert in the Bill a post-referendum evaluation and reporting mechanism consistent with the Venice Commission Code recommendations;

e) Proposals by Mr. Robert S. Khaemba on the planning process for a referendum, dissemination of information, continuous acceptance by Parliament of referendum questions, referendum voting at county level on investments and development, and for countrywide referendums to be done once every four years before the next national elections; and

f) Proposals by Prof. PLO Lumumba on barring constitutional amendments without adequate safeguards, prevent omnibus constitutional amendments, bundling of referendum questions, and non-constitutional referenda, noting that these concerns were adequately addressed in the current Constitutional framework and in the respective provisions of the Bill.

CHAPTER FOUR: RECOMMENDATION

4.1 Committee Recommendation

236. Having considered the Referendum Bill, 2026 (Senate Bills No. 3 of 2026) and the submissions received thereon, the Standing Committee on Justice, Legal Affairs and Human Rights recommends that the Senate **passes the Bill with amendments** as proposed by the Committee.

237. The text of the amendments proposed by the Committee is attached to this Report as ***Annex 6***.

LIST OF ANNEXURES

Annex 1	Minutes of the sittings of the Committee in considering the Bill
Annex 2	Copy of the Referendum Bill, 2026 (Senate Bills No. 3 of 2026)
Annex 3	Advertisement published in the *Daily Nation* and *Standard* newspapers on 7th May, 2026
Annex 4	Copies of Stakeholder Submissions on the Bill
Annex 5	Matrix of stakeholder submissions on the Bill
Annex 6	Text of the proposed Committee amendments to the Bill

Annex 1 - Minutes of the sittings of the Committee in considering the Bill

13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 291ST SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY, 4TH JUNE, 2026 AT 8:00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

1. Sen. Wakili Hillary Sigei, CBS, MP - Chairperson
2. Sen. Veronica W. Maina, CBS, MP - Vice-chairperson
3. Sen. Andrew Omtatah Okoiti, MP - Member
4. Sen. (Prof.) Tom Ojienda, SC, MP - Member
5. Sen. Crystal Kegehi Asige, MP - Member

ABSENT WITH APOLOGY

1. Sen. Karen Njeri Nyamu, MP - Member
2. Sen. Raphael Chimera Mwinzagu, MP - Member
3. Sen. Daniel Kitonga Maanzo, EBS, MP - Member

SECRETARIAT

1. Mr. Charles Munyua - Principal Clerk Assistant II
2. Mr. Boniface Kiambi - Senior Clerk Assistant *(Taking Minutes)*
3. Mr. Malcolm Ngugi - Senior Legal Counsel
4. Ms. Faith Wangui - Legal Counsel II
5. Ms. Angela Bonaya - Clerk Assistant III
6. Mr. Jackson Matheshe - Research Officer III
7. Mr. Josphat Ngeno - Media Relations Officer
8. Mr. Zenton Williams - Audio Officer
9. Ms. Anne Kigoro - Pupil

MIN. NO. 975/2026 PRELIMINARIES

The meeting was called to order at fifteen minutes past eight O'clock and opened with a word of Prayer.

MIN. NO. 976/2026 ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. (Prof.) Tom Ojienda, SC, MP.

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MIN. NO. 977/2026 **THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)**

The Committee commenced consideration of the submissions received from stakeholders and the public on the Referendum Bill, 2026 (Senate Bills No. 3 of 2026).

Members were taken through and deliberated on amendments proposed by the Office of the Attorney General and the Council of Governors to clauses 2, 5 and 7 of the Bill.

It was noted that additional submissions had since been received on the Bill. Consequently, the Committee resolved that further consideration of the submissions be deferred to allow for the incorporation of the additional stakeholder inputs into the submissions matrix before proceeding with the review of the Bill.

MIN. NO. 978/2026 **ADJOURNMENT**

The Chairperson adjourned the meeting at twenty one minutes past nine O'clock. The next meeting will be held on Monday, 8th June, 2026 at 9.00 am.

SIGNED: .....

DATE: 22/7/2026

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13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 292ND SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 9TH JUNE, 2026 AT 8:00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

1. Sen. Wakili Hillary Sigei, CBS, MP - Chairperson
2. Sen. Veronica W. Maina, CBS, MP - Vice-chairperson
3. Sen. Andrew Omtatah Okoiti, MP - Member
4. Sen. (Prof.) Tom Ojienda, SC, MP - Member
5. Sen. Crystal Kegehi Asige, MP - Member
6. Sen. Karen Njeri Nyamu, MP - Member

ABSENT WITH APOLOGY

1. Sen. Raphael Chimera Mwinzagu, MP - Member
2. Sen. Daniel Kitonga Maanzo, EBS, MP - Member

SECRETARIAT

1. Mr. Charles Munyua - Principal Clerk Assistant II
2. Mr. Boniface Kiambi - Senior Clerk Assistant
3. Mr. Malcolm Ngugi - Senior Legal Counsel
4. Ms. Faith Wangui - Legal Counsel II
5. Ms. Angela Bonaya - Clerk Assistant III *(Taking Minutes)*
6. Mr. Jackson Matheshe - Research Officer III
7. Ms. Linet Aseka - Research Officer III
8. Mr. Josphat Ngeno - Media Relations Officer
9. Mr. Zenton Williams - Audio Officer
10. Mr. Micheal Shida - Pupil
11. Ms. Natalie Amu - Attachee

MIN. NO. 979/2026 PRELIMINARIES

The meeting was called to order at twenty-nine minutes past eight O'clock and opened with a word of Prayer.

MIN. NO. 980/2026 ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Veronica W. Maina, CBS, MP.

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MIN. NO. 981/2026 CONFIRMATION OF MINUTES

i) Confirmation of the Minutes of the 286th sitting was deferred.

ii) The Minutes of the 290th Sitting were confirmed as a true record of the proceedings having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Veronica W. Maina, CBS, MP.

iii) The Minutes of the 291st Sitting were confirmed as a true record of the proceedings having been proposed by Sen. Veronica W. Maina, CBS, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 982/2026 THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)

The Committee resumed consideration of the matrix of submissions on the captioned Bill, from Clause 3.

During deliberations-

i) Members noted the need to link the phrase "any other issue" in clause 3 to clause 18 which provides clear definitions and examples of what constitutes any other matter for which a referendum may be conducted;

ii) on the application of the Elections Act under clause 4, Members noted that the proposal to introduce the express reference to Articles 10, 81, 86 and 232 of the Constitution in the conduct of referenda was not necessary as they were already implied and therefore applicable;

iii) on the proposed amendments to clause 6 regarding the process of verification of signatures, the Committee noted that this would be best dealt with under the attendant Regulations given the technical expertise required to legislate over the matter;

iv) Members concurred with the proposal to amend clause 7(2) to the effect that where the Speakers of Parliament fail to receive a response from a county within the three month timeline, the Bill shall be deemed approved in respect of the county assembly rather than rejected; and

v) further noted the need for the introduction of a notification requirement such that Parliament issues a notice to the county assembly fourteen days prior to the lapse of the ninety-day timeline indicating the consequences of non-response.

Owing to time constraints, it was resolved that further consideration of the matrix of submissions be deferred to the next meeting which would be held on Wednesday, 10th June, 2026 at 8:00 a.m.

MIN. NO. 983/2026 ANY OTHER BUSINESS

Retreat with stakeholders on the state of preparedness and electoral reforms ahead of the 2027 general elections

i) Members were requested to confirm their availability for the proposed retreat with the Independent Electoral and Boundaries Commission, the Office of the Registrar

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of Political Parties and the Judiciary Committee on Elections scheduled to take place from 11th to 14th June, 2026 in Naivasha, Nakuru County.

ii) The Chairperson sought time to consult further with Members including on the proposed retreat venue and get back to the Secretariat.

iii) Members further directed that in addition to the three invited stakeholders, the Political Parties Disputes Tribunal be invited to the meeting.

MIN. NO. 984/2026 ADJOURNMENT

The Chairperson adjourned the meeting at ten minutes past ten O'clock. The next meeting will be held on Wednesday, 10th June, 2026 at 8.00 am.

SIGNED: .....

DATE: 22/07/2026

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MIN. NO. 987/2026 **THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)**

The Committee resumed consideration of the matrix of submissions on the captioned Bill. The Committee further noted that the Independent Electoral and Boundaries Commission (IEBC) had since submitted their memorandum on the Bill.

During deliberations, Members-

i) noted that the proposal by IEBC to amend clause 3 to introduce the requirement for a presidential proclamation to direct the Commission to conduct a referendum was not sound as the Commission is already mandated to do so as per section 4 of the Independent Electoral and Boundaries Commission Act;

ii) concurred with the proposal to amend section 8(6) to reduce the eighteen (18) month timeline for a House to consider a Bill to ninety (90) days so as to curb inaction by either House of Parliament;

iii) rejected a proposal to introduce a new clause 8A, to provide for a counter-proposal by Parliament to offer an alternative to the initiative in question as it was not deemed necessary;

iv) concurred with proposals to amend clause 8(5) to provide for a fourteen (14) day timeline for either House of Parliament to convey its Resolution to the Commission for specificity and clarity in timelines;

v) rejected a proposal to amend clause 9(5) to provide for a procedure in the event no option obtains a simple majority as Article 255(2) of the Constitution clearly stipulates the required threshold; and

vi) noted various proposals to amend clause 9 to address the issue of bundling of several unrelated constitutional amendments into one omnibus Bill as also flagged by the courts in the BBI Judgement. In this regard, the Secretariat was directed to draft a suitable amendment to clause 9 to address this issue.

Owing to time constraints, it was resolved that further consideration of the matrix of submissions be deferred to the next meeting which would be held on Thursday, 11th June, 2026 at 8:00 a.m.

MIN. NO. 988/2026 **ANY OTHER BUSINESS**

a) Committee foreign travel for FY 2026/2027

i) It was suggested that in light of the ongoing consideration of the Referendum Bill, 2026 (Senate Bills No. 3 of 2026) it would be beneficial for the Committee to undertake a benchmarking visit to countries with established referendum frameworks such as Switzerland, in the next financial year.

ii) Noting that the Bill was already due for Second Reading in the Senate it was agreed that the Committee Report incorporates a comparative analysis of countries with established referendum frameworks.

b) Committee Retreats

i) The Chairperson informed the Committee that, following consultations with Members, there was need to change the venue of the retreat on election

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preparedness from Naivasha, Nakuru County to Kiambu County for ease of logistical arrangements for Members. The dates for the retreat would remain as earlier scheduled.

ii) The Committee further resolved that the retreat that was initially to be held from 7th to 9th June, 2026 in Kiambu County be re-scheduled to 14th to 16th June, 2026 in Kiambu County.

MIN. NO. 989/2026 ADJOURNMENT

The Chairperson adjourned the meeting at thirty-one minutes past nine O'clock. The next meeting would be held on Thursday, 11th June, 2026 at 8.00 am.

SIGNED: .....

DATE: 22/07/2026

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13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 294TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY, 11TH JUNE, 2026 AT 8:00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

1. Sen. Wakili Hillary Sigei, CBS, MP - Chairperson
2. Sen. Andrew Omtatah Okoiti, MP - Member
3. Sen. (Prof.) Tom Ojienda, SC, MP - Member
4. Sen. Raphael Chimera Mwinzagu, MP - Member
5. Sen. Karen Njeri Nyamu, MP - Member

ABSENT WITH APOLOGY

1. Sen. Veronica W. Maina, CBS, MP - Vice-chairperson
2. Sen. Daniel Kitonga Maanzo, EBS, MP - Member
3. Sen. Crystal Kegehi Asige, MP - Member

SECRETARIAT

1. Mr. Charles Munyua - Principal Clerk Assistant II
2. Mr. Boniface Kiambi - Senior Clerk Assistant
3. Mr. Malcolm Ngugi - Senior Legal Counsel
4. Ms. Faith Wangui - Legal Counsel II
5. Ms. Angela Bonaya - Clerk Assistant III *(Taking Minutes)*
6. Mr. Jackson Matheshe - Research Officer III
7. Ms. Linet Aseka - Research Officer III
8. Mr. Josphat Ngeno - Media Relations Officer
9. Mr. Zenton Williams - Audio Officer
10. Mr. Micheal Shida - Pupil
11. Ms. Natalie Amu - Attachee

MIN. NO. 990/2026 PRELIMINARIES

The meeting was called to order at eighteen minutes past eight O'clock and opened with a word of Prayer.

MIN. NO. 991/2026 ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. (Prof.) Tom Ojienda, SC, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

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MIN. NO. 992/2026 **THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)**

The Committee resumed consideration of the matrix of submissions from clause 10 of the Bill.

During deliberations, Members-

i) rejected a proposal to amend clause 10 to introduce a mandatory independent approval or review process for referendum questions aside from the IEBC's powers as the Commission is already a competent independent authority vested with this mandate;

ii) noted a proposal for insertion of clause 10(7) to provide for a voter information guide and resolved that the same could be best addressed under civic education laws;

iii) rejected a proposal to amend clause 10(1) to provide that a referendum notice should come from both Houses rather than the President alone as this was contrary to Article 256 (5) of the Constitution which expressly mandates the President to do so;

iv) observed that the proposal to amend clause 10(3) to provide for guidelines within civic education could be best addressed in the attendant Regulations;

v) rejected a proposal to amend clause 11(2)(d) to change the period of notice of holding a referendum from forty-five days to ninety days as it would not comply with Article 256(5)(a) which provides that the entire referendum should be conducted within ninety days. In this regard, the forty-five day notification timeline as provided in the Bill was sufficient;

vi) rejected a proposal amend clause 12 to ban foreign funding for referendum committees as section 9 of the Elections Act (Cap 7.) already addresses issues of financing and expenditure of referendum committees;

vii) further proposed that matters touching on regulation of referendum committees such as disclosure requirements should be addressed in the attendant Regulations;

viii) resolved that the threshold for non-constitutional referenda be the same as that under Article 255(2) of the Constitution;

ix) concurred with a proposal to introduce a proviso under clause 16 to veto presidential assent prior to the 14-day petition filing window;

x) rejected a proposal to reduce the threshold for county referenda under clause 17 to align with the thresholds as set out in Article 255(2) of the Constitution;

xi) rejected proposals to either delete or revise clause 18 to limit the powers of Parliament to resolve to conduct a referendum on any other matter other than amendment of the Constitution;

xii) concurred with a proposal to amend clause 22(1) by deleting the words "been guilty of a corrupt practice" and substitute therefor the words "committed corrupt act" to align with the provisions of Article 50(2)(a) of the Constitution regarding the presumption of innocence;

xiii) rejected proposals to amend clause 24 to have county referenda heard by a single judge rather than a three judge bench and resolved that composition of the bench be left to the discretion of the Chief Justice in accordance with Article 165(4) of the Constitution; and

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xiv) noted the need for further clarity on the effect of automatic stay of results of a referendum following the filing of a petition as provided under clause 25 vis-à-vis timelines for consideration of the petition by the courts.

Owing to time constraints, it was resolved that further consideration of the matrix of submissions be deferred to the next meeting which would be held on Tuesday, 16th June, 2026 at 8:00 a.m.

MIN. NO. 993/2026 ANY OTHER BUSINESS

Committee Retreat to deliberate on Electoral Reforms

Members were reminded of the retreat with key stakeholders to deliberate on the status of preparedness and electoral reforms ahead of the 2027 general elections, scheduled to take place on Friday, 12th June, 2026 at Windsor Golf Hotel and Country Club in Kiambu County.

MIN. NO. 994/2026 ADJOURNMENT

The Chairperson adjourned the meeting at ten minutes past eleven O'clock. The next meeting would be held on Friday, 12th June, 2026 at 9.00 am.

SIGNED: .....

DATE: 22/07/2026.....

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13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 299TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 16TH JUNE, 2026 AT 8.00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

1. Sen. Wakili Hillary Sigei, CBS, MP - Chairperson
2. Sen. Veronica W. Maina, CBS, MP - Vice-chairperson
3. Sen. Andrew Omtatah Okoiti, MP - Member
4. Sen. Daniel Kitonga Maanzo, EBS, MP - Member
5. Sen. (Prof.) Tom Ojienda, SC, MP - Member

ABSENT WITH APOLOGY

1. Sen. Karen Njeri Nyamu, MP - Member
2. Sen. Raphael Chimera Mwinzagu, MP - Member
3. Sen. Crystal Kegehi Asige, MP - Member

SECRETARIAT

1. Mr. Boniface Kiambi - Senior Clerk Assistant *(Taking Minutes)*
2. Mr. Malcom Ngugi - Senior Legal Counsel
3. Ms. Faith Wangui - Legal Counsel II
4. Ms. Angela Bonaya - Clerk Assistant III
5. Mr. Jackson Matheshe - Research Officer III
6. Mr. Josphat Ngeno - Media Relations Officer
7. Ms. Rosebella Ngesa - Public Communications Officer
8. Mr. Zenton Williams - Audio Officer
9. Mr. John Lekampule - Serjeant-at-Arms
10. Ms. Anne Kigoro - Pupil

MIN. NO. 1012/2026 PRELIMINARIES

The meeting was called to order at ten minutes past eight O'clock and opened with a word of Prayer.

MIN. NO. 1013/2026 ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Veronica W. Maina, CBS, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

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MIN. NO. 1014/2026 **CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

a) The Minutes of the 292nd Sitting were confirmed as a true record of the proceedings, having been proposed by Sen. Andrew Omtatah Okoiti, MP, and seconded by Sen. Veronica W. Maina, CBS, MP.

b) The Minutes of the 293rd Sitting were confirmed as a true record of the proceedings, having been proposed by Sen. Andrew Omtatah Okoiti, MP, and seconded by Sen. Veronica W. Maina, CBS, MP.

c) Consideration of the Minutes of the 294th Sitting was deferred.

d) The Minutes of the 295th Sitting were confirmed as a true record of the proceedings, having been proposed by Sen. Daniel Kitonga Maanzo, EBS, MP, and seconded by Sen. Andrew Omtatah Okoiti, MP.

e) The Minutes of the 296th Sitting were confirmed as a true record of the proceedings, having been proposed by Sen. Daniel Kitonga Maanzo, EBS, MP, and seconded by Sen. Veronica W. Maina, CBS, MP.

MIN. NO. 1015/2026 **THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)**

The Committee resumed consideration of the submissions received on the captioned Bill. During deliberations, Members-

a) considered proposed amendments to Clauses 32 and 34 relating to appeal timelines, cross-referencing, and the powers of the Court, and agreed on amendments to strengthen the Court's remedial powers in safeguarding the integrity of referendums;
b) considered amendments to Clause 36 on the retention of referendum documents and agreed to extend the retention period from six months to twelve months; and
c) considered amendments to Clauses 38 and 39 relating to cooperation requirements and penalties and agreed to incorporate the principle of reasonableness in cooperation requirements and to distinguish serious offences from administrative breaches.

Thereupon, owing to quorum challenges, further consideration of the submissions was deferred to the next meeting.

MIN. NO. 1016/2026 **ADJOURNMENT**

The Chairperson adjourned the meeting at fifty minutes past nine O'clock. The next meeting will be held on Wednesday, 17th June, 2026 at 8:00 a.m.

SIGNED: .....

DATE: 22/7/2026

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13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 300TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 17TH JUNE, 2026 AT 8.00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

1. Sen. Wakili Hillary Sigei, CBS, MP - Chairperson
2. Sen. Andrew Omtatah Okoiti, MP - Member
3. Sen. Raphael Chimera Mwinzagu, MP - Member
4. Sen. (Prof.) Tom Ojienda, SC, MP - Member

ABSENT WITH APOLOGY

1. Sen. Veronica W. Maina, CBS, MP - Vice-chairperson
2. Sen. Daniel Kitonga Maanzo, EBS, MP - Member
3. Sen. Karen Njeri Nyamu, MP - Member
4. Sen. Crystal Kegehi Asige, MP - Member

SECRETARIAT

1. Mr. Boniface Kiambi - Senior Clerk Assistant *(Taking Minutes)*
2. Mr. Malcom Ngugi - Senior Legal Counsel
3. Ms. Faith Wangui - Legal Counsel II
4. Ms. Angela Bonaya - Clerk Assistant III
5. Mr. Jackson Matheshe - Research Officer III
6. Mr. Josphat Ngeno - Media Relations Officer
7. Ms. Rosebella Ngesa - Public Communications Officer
8. Mr. Zenton Williams - Audio Officer
9. Mr. John Lekampule - Serjeant-at-Arms
10. Ms. Anne Kigoro - Pupil

MIN. NO. 1017/2026 PRELIMINARIES

The meeting was called to order at twelve minutes past eight O'clock and opened with a word of Prayer.

MIN. NO. 1018/2026 ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Raphael Chimera Mwinzagu, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

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MIN. NO. 1019/2026 **THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)**

The Committee resumed consideration of the submissions received on the captioned Bill.

During deliberations, Members-

a) considered and rejected proposals relating to State neutrality, regulation of online referendum campaigns, post-referendum evaluation mechanisms, and specific codes of conduct for County Assemblies and public officers;
b) considered proposed amendments to Clause 18 on the initiation of referendums on non-constitutional matters by Parliament and agreed that the threshold of a simple majority vote in each House was appropriate; and
c) discussed concerns relating to the bundling of unrelated constitutional amendments and the framing of referendum questions and noted that these issues were adequately addressed in the Bill and the existing regulatory framework.

Thereupon, the Committee resolved that a draft Report and proposed amendments to the Bill be prepared for its consideration after the upcoming recess period.

MIN. NO. 1020/2026 **ADJOURNMENT**

The Chairperson adjourned the meeting at thirty minutes past nine O'clock. The next meeting will be held on Thursday, 18th June, 2026 at 8:00 a.m.

SIGNED: .....

DATE: 22/7/2026

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13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 303RD SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 21ST JULY, 2026 AT 8.00 A.M., VIRTUALLY, VIA THE ZOOM ONLINE MEETING PLATFORM

PRESENT

1.	Sen. Wakili Hillary Sigei, CBS, MP	- Chairperson
2.	Sen. Veronica W. Maina, CBS, MP	- Vice-chairperson
3.	Sen. Andrew Omtatah Okoiti, MP	- Member
4.	Sen. Daniel Kitonga Maanzo, EBS, MP	- Member
5.	Sen. (Prof.) Tom Ojienda, SC, MP	- Member
6.	Sen. Crystal Kegehi Asige, MP	- Member

ABSENT WITH APOLOGY

1.	Sen. Karen Njeri Nyamu, MP	- Member
2.	Sen. Raphael Chimera Mwinzagu, MP	- Member

IN ATTENDANCE

1.	Sen. Miraj Abdulrahman, MP	- Nominated Senator

SECRETARIAT

1.	Mr. Charles Munyua	- Principal Clerk Assistant II
2.	Mr. Boniface Kiambi	- Senior Clerk Assistant *(Taking Minutes)*
3.	Mr. Malcom Ngugi	- Senior Legal Counsel
4.	Ms. Faith Wangui	- Legal Counsel II
5.	Ms. Angela Bonaya	- Clerk Assistant III
6.	Mr. Jackson Matheshe	- Research Officer III
7.	Ms. Linet Aseka	- Research Officer III
8.	Mr. Josphat Ngeno	- Media Relations Officer
9.	Ms. Rosebella Ngesa	- Public Communications Officer
10.	Mr. Zenton Williams	- Audio Officer

MIN. NO. 1035/2026 PRELIMINARIES

The meeting was called to order at ten minutes past eight O'clock and opened with a word of Prayer.

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MIN. NO. 1036/2026 ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Daniel Kitonga Maanzo, EBS, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 1037/2026 CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

a) The Minutes of the 294th Sitting were confirmed as a true record of the proceedings, having been proposed by Sen. Andrew Omtatah Okoiti, MP, and seconded by Sen. (Prof.) Tom Ojienda, SC, MP.

b) The Minutes of the 300th Sitting were confirmed as a true record of the proceedings, having been proposed by Sen. Andrew Omtatah Okoiti, MP, and seconded by Sen. (Prof.) Tom Ojienda, SC, MP.

c) The Minutes of the 302nd Sitting were confirmed as a true record of the proceedings, having been proposed by Sen. Andrew Omtatah Okoiti, MP, and seconded by Sen. (Prof.) Tom Ojienda, SC, MP.

MIN. NO. 1038/2026 PRE-PUBLICATION SCRUTINY: THE DRAFT LAW OF SUCCESSION (AMENDMENT) BILL, 2026

The Committee was taken through a brief on and considered the draft Law of Succession (Amendment) Bill , 2026.

During deliberations, Members-

a) observed that the draft Bill sought to amend provisions similar to those contained in the Law of Succession (Amendment) Bill, 2023 (Senate Bills No. 202 of 2023);
b) expressed concern regarding the potential implications of the proposed amendments on traditional family structures and the possible effect on existing succession disputes before the courts; and
c) observed that the proposed amendments raised complex legal, social and cultural issues requiring further examination.

Thereupon, the Committee resolved that a comprehensive consideration of the proposed amendments was necessary and agreed to convene a retreat to facilitate detailed deliberations before making its recommendations on the Bill.

MIN. NO. 1039/2026 THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)

The Committee was taken through and considered the draft Report and proposed Committee amendments to the Referendum Bill, 2026 (Senate Bills No. 3 of 2026).

Thereupon, the Committee adopted the Report having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Wakili Hillary Sigei, CBS, MP.

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MIN. NO. 1040/2026 **ADJOURNMENT**

The Chairperson adjourned the meeting at twenty two minutes past nine O'clock. The next meeting would be held on Thursday, 23rd July, 2026 at 8:00 a.m.

SIGNED: .....

DATE: 22/7/2026

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Annex 2 - Copy of the Referendum Bill, 2026 (Senate Bills No. 3 of 2026)

SPECIAL ISSUE

Kenya Gazette Supplement No. 13 (Senate Bills No. 3)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2026

NAIROBI, 12th February, 2026

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PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

THE REFERENDUM BILL, 2026

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6— Amendment of the Constitution by popular initiative

7—Consideration of the draft Bill by county assemblies

8—Consideration of the draft Bill by Parliament

9—Bill to amend the Constitution relating to a matter specified in Article 255(1) of the Constitution

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THE REFERENDUM BILL, 2026

A Bill for

AN ACT of Parliament to provide for the conduct of a referendum, and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Referendum Act, 2026.

Interpretation.

2. In this Act,—

"draft Bill" means a Bill for the amendment of the Constitution proposed by a popular initiative as contemplated under Article 257(2) of the Constitution;

"chief agent" in respect of a registered referendum committee, means the person recorded in the register maintained by the Commission as the person responsible for the affairs of the referendum committee;

"Commission" means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

"constituency" means one of the constituencies into which Kenya is divided under Article 89 of the Constitution;

"petition" means an application to the election court under the Constitution or under this Act;

Cap. 7.

"polling station" has the meaning assigned to it under the Elections Act;

"register of voters" has the meaning assigned to it under the Elections Act;

"referendum" means a poll held under this Act;

"referendum committee" means a national or a parliamentary constituency committee comprising of persons intending to support or oppose a referendum question;

"referendum officer" means a person appointed by the Commission for the purpose of conducting a referendum;

"referendum option" means one of the preferences upon which voters shall vote in a referendum under this Act;

"referendum question" means a question upon which voters shall vote in a referendum under this Act; and

"voter" has the meaning assigned to it under the Elections Act.

Application of the Act.

3. This Act shall apply to the conduct of—

(a) a referendum to amend the Constitution under Articles 255, 256 and 257 of the Constitution;

(b) county referenda; and

(c) a referendum on any other issue other than amendment of the Constitution.

Application of the Elections Act.

4. (1) For purposes of conducting a referendum under this Act, the provisions under the Elections Act relating to —

(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,

shall apply in the same manner as if a referendum was a general election.

(2) The procedure for the conduct of an election under the Elections Act shall apply with necessary modifications to the conduct of a referendum.

PART II—PRE-REFERENDUM PROCESSES

Submission of a Bill to the Commission pursuant to Article 256(5)(a).

5. Whenever it is necessary to hold a referendum to amend the Constitution in relation to a matter specified in Article 255 (1) of the Constitution, the President shall, within thirty days of the receipt of the Bill from Parliament, notify the Commission to conduct a referendum within ninety days.

Amendment of the Constitution by popular initiative.

6. (1) For the purpose of a referendum to amend the Constitution by popular initiative pursuant to Article 257 of the Constitution, the promoters of a popular initiative shall deliver to the Commission, the draft Bill together with –

(a) information on name and national identification number of each registered voter supporting the initiative in the prescribed form; and

(b) signatures of the registered voters appended against the respective voter's information under paragraph (a).

(2) The Commission shall, within ninety days of receipt of the draft Bill and supporting signatures,—

(a) avail the initiative and supporting signatures for inspection by the public at its offices, or electronically through its public portal or such other medium the Commission may approve;

(b) verify that the initiative is supported by at least one million registered voters;

(c) satisfy itself that the initiative meets the requirements of Article 257 of the Constitution; and

(d) publish a report on the verification exercise.

(3) If the Commission finds that the requirements of Article 257 of the Constitution have not been met, it shall—

(a) declare that the initiative has failed to meet the threshold under Article 257;

(b) notify the promoters, in writing and within seven days of the verification exercise, of its decision under paragraph (a); and

(c) give such directions as are necessary to ensure compliance with Article 257.

(4) The promoters of a popular initiative may resubmit the draft Bill and supporting signatures upon complying with the Commission's directions as issued in subsection (3).

(5) If the Commission finds that the requirements of subsection (3) have been met, it shall, pursuant to Article 257(5) of the Constitution, submit the draft Bill to each county assembly for consideration.

Consideration of the draft Bill by county assemblies.

7. (1) Each county assembly shall—

(a) approve the draft Bill and deliver to the Speakers of both Houses a copy of the draft Bill together with the certificate prescribed in the First Schedule 1 certifying that the county assembly has approved it; or

(b) reject the draft Bill and deliver, to the Speakers of both Houses, the certificate prescribed in the Second Schedule certifying that the county assembly has rejected the draft Bill,

within three months after the date it was submitted by the Commission.

(2) If the Speakers of the two Houses do not receive a response from a county assembly within the three months stipulated under Article 257 (6), the Bill shall be deemed as not approved in respect of that county assembly.

Consideration of the draft Bill by Parliament.

8. (1) If the draft Bill is approved by a majority of the county assemblies, it shall be introduced in Parliament pursuant to Article 257(7) of the Constitution.

(2) Each House shall publicise the Bill and facilitate public discussion before passage.

(3) If the Bill is supported by a majority of the members of each House of Parliament, the Speakers of the two Houses shall jointly submit the Bill to the President.

(4) The President shall, if the Bill —

(a) relates to a matter specified under Article 255(1) of the Constitution, within thirty days, notify the Commission to conduct, within ninety days, a national referendum for approval of the Bill, before assenting to the Bill; or

(b) does not relate to a matter specified under Article 255(1) of the Constitution, assent to the Bill within seven days.

(5) If one or both Houses of Parliament fail to pass the Bill, the Speaker of the relevant House shall—

(a) notify the Commission its resolution not to pass the Bill; and

(b) the proposed amendment shall be submitted to the people in a referendum.

(6) If a House of Parliament does not pass or reject the Bill within eighteen months, the Bill shall be deemed as not passed in respect of that House.

Bill to amend the Constitution relating to a matter specified in Article 255(1) of the Constitution.

9. (1) A Bill to amend the Constitution through a parliamentary initiative relating to a matter specified under Article 255(1) of the Constitution shall be formulated in a participatory and inclusive manner taking into account all opinions and recommendations.

(2) All opinions and recommendations that are not in opposition may be incorporated into a single Bill.

(3) Where, in the case of an amendment to the Constitution by parliamentary initiative, there is a divergent draft Bill, Parliament shall consider all the draft Bills and may—

(a) merge them into one draft Bill;

(b) approve one draft Bill and disapprove the other; or

(c) approve all the draft Bills for submission to the people in a referendum.

(4) Where more than one draft Bill is to be submitted to the people in a referendum, each of the draft Bills shall constitute an option with a separate symbol and answer.

(5) A voter in a referendum may only vote for one option.

PART III – CONDUCT OF A REFERENDUM

Referendum question.

10. (1) Where the Commission—

(a) receives a notification from the President under Article 256(5)(a); or

(b) is notified by the Speaker of one or both Houses of Parliament that the draft Bill considered under section 8 has not been passed,

the Commission shall, within twenty-one days, frame the question or option to be determined during the referendum.

(2) The Commission may consult Parliament or in the case of a popular initiative, the promoters of the initiative, when framing the question or option.

(3) The Commission shall—

(a) publish the question or option in the *Gazette*, in the electronic media, and in a newspaper of national circulation; and

(b) conduct civic education and public sensitisation on the referendum through various platforms including local radio and television stations, social media and public forums.

(4) A referendum question shall—

(a) be written in plain language in both English and Swahili using short sentences, simple and direct wording, and familiar terms without jargon or technical language;

(b) be written in neutral language and shall avoid words that suggest a judgement or opinion, either explicitly or implicitly;

(c) contain information that is factual, and shall describe the issue and the options clearly and accurately; and

(d) 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.

(5) The Commission may assign such symbol for each answer to the referendum question or option as it may consider necessary.

(6) A symbol assigned under subsection (5) shall not resemble that of a political party or of an independent candidate used in a preceding election.

Notice of holding referendum

11. (1) The Commission shall, within fourteen days after publication of the question or option referred to in section 9, publish in the *Gazette,* in the electronic media and in a newspaper of national circulation, a notice of the holding of the referendum specifying the particulars set out in subsection (2).

(2) The notice shall contain the following particulars—

(a) the nature of the referendum;

(b) the referendum question and option of the answer or answers;

(c) the symbols assigned for each answer to the referendum question or option;

(d) the day on which the referendum is to be held which shall be at least forty-five days from the date of the publication of the notice;

(e) the polling time of the referendum;

(f) the day by which the referendum committees must have registered with the Commission; and

(g) the day and time by which campaigns in support of or in opposition to the referendum question or option shall start and cease.

Referendum committees.

12. (1) A Person intending to campaign for or against a referendum question or option may form a national referendum committee and a referendum committee in every constituency.

(2) A referendum committee may, where there is more than one question or option, indicate the questions or options it intends to campaign for or against at the time of its registration.

(3) A person intending to register a referendum committee shall submit to the Commission—

(a) an application for registration in the prescribed form;

(b) information showing that the applicant adequately represents persons campaigning for or against the referendum question or option;

(c) information relating to the members appointed under section 13(1); and

(d) such other information as the Commission shall prescribe.

(4) A national referendum committee shall control and regulate the conduct and activities of its respective constituency referendum committees.

Appointment of chief agent.

13. (1) A person who intends to apply for registration under section 12 shall, before submitting an application, appoint a leader, a chief agent and the members of the committee.

(2) The Commission shall maintain a register of leaders, chief agents and committee members of registered referendum committees in which shall be recorded the name, address and telephone number of the leader, chief agent and committee members of each such committee.

(3) The chief agent of a referendum committee appointed under subsection (1) shall be responsible for the affairs of the registered referendum committee and shall provide a sample signature to the Commission.

(4) The Commission may prescribe timelines for the appointment of chief agents and lodging of registration applications.

Costs of referendum committee.

14. (1) Each referendum committee shall bear the costs of its operations during its existence.

Cap. 7A

(2) The provisions of the Election Campaign Financing Act relating to formation of expenditure committees, regulation of expenditure, contributions and donations, resolution of disputes shall apply to financing of referendums under this Act.

Voting threshold.

15. (1) A question on an issue contemplated under Articles 255, 256 and 257 of the Constitution shall be approved by a referendum if—

(a) at least twenty percent 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.

(2) A referendum question on an issue other than that contemplated in Articles 255, 256 and 257 of the Constitution shall be decided by a simple majority of the citizens voting in the referendum.

Declaration and certification of referendum results.

16. (1) Upon conclusion of the referendum, the Chairperson of the Commission shall within three days of the referendum—

(a) declare the referendum results though a notice published in the *Gazette*; and

(b) certify to the President whether the Bill has been approved in the referendum.

(2) If the Bill is approved in the referendum, the President shall assent to the Bill within thirty days of certification under subsection (1)(b).

PART III – OTHER REFERENDA

County referenda.

17. (1) A referendum may be conducted in a county on local issues including —

(a) county laws or petitions; or

(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 is to take place.

(2) A referendum under subsection (1) may be referred to the Commission by—

(a) the county assembly in respect of issues under subsection (1)(a); or

(b) the relevant county executive committee member in respect of issues under subsection (1)(b).

(3) Where an issue to be decided in a referendum under subsection (1) has been referred to the Commission the Commission shall conduct a referendum within ninety days in accordance with this Act.

A resolution of Parliament for specific referendum.

18. (1) A referendum may, upon resolution by more than fifty percent of the members of each House of Parliament, be conducted on any other matter other than amendment of the Constitution.

(2) The resolution may be made on the basis of—

(a) a matter referred to Parliament by the Cabinet;

(b) a petition presented in accordance with Article 119 of the Constitution; or

(c) any other matter within the legislative competence of Parliament.

(3) The resolution shall specify—

(a) nature and purpose of the referendum;

(b) the referendum question or option;

(c) persons eligible to vote in the referendum;

(d) public education and sensitisation; and

(e) any other matter specific to the referendum.

(4) Where an issue to be decided in a referendum under subsection (1) has been referred to the Commission the Commission shall conduct a referendum within ninety days in accordance with this Act.

General power of the Commission.

19. Nothing in this Act precludes the Commission from taking any administrative measures to ensure the effective conduct of a referendum.

PART IV—REFERENDUM PETITIONS

Referendum petitions.

20. (1) Unless specifically provided for in this Act, the procedure applicable to an election petition shall apply to a referendum petition.

(2) A referendum petition may be presented in the High Court by any person in accordance with Article 22(1) and (2) of the Constitution.

(3) A petition—

(a) to question the conduct, result and validity of a referendum shall be filed within fourteen days after the date of declaration of the results of the referendum and served within seven days of presentation;

(b) to seek a declaration concerning any matter relating to the referendum shall be presented within fourteen days after the proclamation of the referendum or occurrence the event complained against whichever is later.

(4) A petition challenging the conduct, result or validity of a referendum shall—

(a) set out the facts relied upon to invalidate the referendum;

(b) identify the specific matter or matters on which the petitioner relies as justifying the grant of relief; and

(c) contain a request for the relief to which the petitioner claims to be entitled.

(5) A referendum petition shall be heard and determined within thirty days of lodging the petition.

Service of a referendum petition.

21. (1). A petitioner who files a referendum petition shall serve all the respondents to the petition within seven days of filing the petition.

(2) A petition may be served personally upon the respondent, electronically, or by advertisement in a newspaper with national circulation.

(3) A petition that has not been served within the stipulated timelines shall be struck out.

Respondents to a referendum petition.

22. (1) Where, at the hearing of a referendum petition, a person is alleged to have been guilty of a corrupt practice in relation to the referendum, or where a copy of a referendum petition is served on a particular person on the direction of the High Court, the High Court may, on the application of that person, add or name that person as a respondent to the petition.

(2) Where, at the trial of a referendum petition presented by the Commission, a question of law arises in

relation to action or omission by a referendum officer, the High Court may, on the application of the Commission, name the referendum officer as a respondent to the petition.

Filing of referendum petition.

23. (1) A referendum petition shall be signed by every petitioner or by an advocate acting on their behalf, if more than one.

(2) Whenever a referendum petition is filed under this section, the Registrar of the High Court shall, in writing, inform the Commission of the filing.

Composition of the Bench.

24. (1) A referendum petition shall be heard and determined by a bench of three judges appointed by the Chief Justice.

Operation of declared result of issue submitted to referendum.

25. (1) A referendum petition shall act as a stay of the results of a referendum from the time of filing of the petition, until the petition is heard and determined, and any period of filing of an appeal has lapsed without an appeal being filed.

(2) Where a referendum petition is not presented to the High Court within the time specified under section 19(2), the declared result of referendum shall—

(a) have effect from the date on which the result is declared;

(b) be final; and

(c) be conclusive evidence of the voting at the referendum and of the result of the referendum.

(2) Nothing in this section shall be construed as preventing or delaying the coming into operation of any law in respect of which a referendum is held pursuant to the provisions of the Constitution or any other law if—

(a) it is stated in the declared result of the referendum that the provisions of the Act are supported by the votes of a majority of the persons entitled to vote in the referendum; and

(b) the question raised by any referendum petition or, if more than one, by all referendum petitions presented to the High Court in respect of such referendum would not, if decided in favour of the petitioner or petitioners, as the case may be, lead

to a declaration by the Commission that the votes of a majority of the citizens voting in the referendum did not support the provisions of the said referendum.

Duty of Registrar to make list of referendum petitions

26. (1) Subject to subsection (2), the Registrar of the High Court shall make a list of all the referendum petitions filed under this Part in the order in which they are filed, and shall keep in the Registrar's office, a copy of the list which shall be open for inspection by any person who applies to inspect the list.

(2) Where more than one petition is presented relating to the same referendum, all such petitions may be dealt with as one petition as far as the inquiry into the referendum is concerned.

Practice procedure Cap. 21.

27. (1) Subject to the provisions of section 43, the Rules Committee constituted under the Civil Procedure Act, may make rules generally to regulate the practice and procedure of the High Court with respect to the filing of referendum petitions, including rules—

(a) specifying—

(i) the time within which any requirement of the rules is to be complied with;

(ii) the costs of and incidental to the filing and the trial of a referendum petition; and

(iii) the fees to be charged in respect of proceedings of a referendum petition; and

(b) generally, with regard to any other matter relating to a referendum petition as the Chief Justice may deem necessary.

(2) The High Court may, make such order as to costs as it may consider fit and just in respect of any referendum petition dismissed under this section.

Death of petitioner

28. (1) Where there are two or more petitioners and one or more of the petitioners dies at any time before the final order of the court hearing the petition, the surviving petitioner or petitioners shall be entitled to continue with the petition.

(2) Upon death of a petitioner under subsection (1), any qualified person may apply to the court to be substituted as the petitioner.

Hearing of referendum petition

29. (1) A referendum petition shall be—

(a) heard in open court; and

(b) heard and determined within thirty days from the date of presentation of a petition.

(2) The High Court may, in respect of the trial of a referendum petition, exercise such powers within its civil jurisdiction as it may deem appropriate.

(3) A referendum petition may be withdrawn by the petitioner on notice to the other parties and the High Court, subject to any order of the Court as to costs.

Appeals to the Court of Appeal.

30. (1) An appeal from the High Court in a referendum petition shall lie to the Court of Appeal on matters of law only and shall be —

(a) filed within fourteen days of the decision of the High Court; and

(b) heard and determined within sixty days of the filing of the appeal.

(2) An appeal under subsection (2) shall act as a stay of the results of a referendum until the appeal is heard and determined.

Powers of a court to summon witnesses in a referendum petition

31. (1) A court hearing a referendum petition may, at the hearing of the petition—

(a) issue summons to any person who appears to the court to be concerned in or affected by the referendum petition to attend as a witness at such hearing; and

(b) examine any witness or person who is present at the hearing even if the witness or person is not called as a witness by any party to the proceedings.

(2) A witness or person under subsection (1) may, upon examination, be cross-examined by or on behalf of the petitioner or the respondent.

(3) Where a person is summoned to attend as a witness under subsection (1), the Court may direct that a copy of the referendum petition be served on that person.

Secrecy of the ballot.

32. A voter who has cast a ballot at a referendum shall not, in proceedings to question the referendum be required to state how he or she voted.

Examination of votes.

Cap. 7

33. (1) The High Court on its own motion or on an application by a petitioner may, during the hearing of a referendum petition, order for a scrutiny of votes to be carried out in such manner as the High Court may determine.

(2) The provisions of section 82 of the Elections Act shall apply with respect to scrutiny of votes under this section.

(3) The Commission shall be responsible for the custody of all the ballot boxes.

Powers of Court

34. (1) At the conclusion of the hearing of a referendum petition challenging the conduct or result of the referendum, the High Court may—

(a) dismiss the petition;

(b) declare the published result to be incorrect and direct the publication of the correct results;

(c) uphold the result of the referendum; or

(d) declare the referendum to be void.

(2) Without limiting the generality of this section, the High Court may exercise its powers to declare a referendum void on the ground that this Act or the regulations made under this Act were contravened during the referendum, and such contravention has seriously affected the result of the referendum.

(3) The Registrar of the High Court shall, within seven days of conclusion of the proceedings in respect of a referendum petition, submit to the Commission—

(a) a certificate under the Registrar's hand, stating that the hearing of the referendum petition has been concluded; and

(b) a certified copy of any decision made by the High Court under subsection (1).

(4) The Commission shall, where the Court has declared the published result to be incorrect, declare and

publish the result of the referendum in accordance with the findings of the High Court.

(5) Where the High Court declares a referendum void, the Commission shall conduct a fresh referendum within sixty days.

Petition expenses.

35. The costs of a referendum petition shall be borne in such manner and in such proportions as the High Court may order.

PART IV—MISCELLANEOUS PROVISIONS

Retention and public inspection of documents Cap. 19.

36. (1) All documents relating to the referendum shall be forwarded to and retained in safe custody by the Commission for a period of six months after the results of the referendum have been declared and shall, subject to the provisions of the Public Archives and Documentation Service Act, and unless the Commission or the High Court otherwise directs, be destroyed.

(2) Documents retained under this section, other than ballot papers and their counterfoils, shall be made available for inspection by any member of the public, upon request, at such time and subject to such conditions as may be prescribed by the Commission.

(3) For the purpose of an inspection under subsection (2), the referendum officer shall unseal the documents concerned in the presence of a witness, who shall not be the person making the inspection and the referendum officer and the witness shall keep the documents under their scrutiny until they are resealed by the referendum officer in the presence of the witness after the inspection is completed.

(4) The provisions of this section shall not apply to documents that concern a pending referendum petition unless there is a court order granting such authority.

Application of the Elections Offences Act. Cap 66.

37. The provisions of Election Offences Act relating to election offences, shall apply with necessary modifications to a referendum under this Act.

Duty to co-operate.

38. (1) It shall be the duty of every public officer and public or private entity to co-operate with the Commission in its activities during a referendum and not to hinder the Commission in carrying out its functions.

(2) It shall be the duty of police officers in their respective areas of operation, to take all necessary measures for the maintenance of law and order and stability necessary for the conduct of a referendum and to protect and uphold the rights of all persons under any written law relating to the referendum.

(3) Notwithstanding the provisions of the law relating to the National Police Service or any other written law, a police officer assigned duties during the conduct of a referendum shall be deemed to be a referendum officer for purposes of this Act and subject to direction and instruction of the Commission.

(4) It shall be the duty of—

(a) all officers of the county administration, in their respective administrative units;

(b) all persons in charge of county government facilities;

(c) persons in charge public of facilities;

(d) all referendum committees and members of the public;

(e) all persons in charge of public utilities including teachers in charge of public schools used as polling centres;

(f) the Registrar of Persons; and

(g) the Registrar of Political Parties,

to give the Commission and its officers the support and collaboration necessary for the Commission to execute the activities relating to the conduct of a referendum.

General penalty.

39. A person who contravenes a provision in this Act for which a penalty has not been provided for, commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.

Referendum Code of Conduct.

40. (1) The Electoral Code of Conduct prescribed under Second Schedule to the Elections Act shall apply to a referendum under this Act.

(2) Every referendum committee and every person who participates in a referendum under the Constitution and this Act shall subscribe to and observe the Electoral Cap. 7

Code of Conduct set out in the Second Schedule to the Elections Act.

(3) Any person who contravenes the Electoral Code of Conduct commits an offence.

(4) The trial of an offence under this section shall be without prejudice to any proceedings in or consequent upon a petition.

Regulations.

41. (1) The Commission may make regulations generally for the better carrying out of the purposes and provisions of this Act.

(2) The regulations under subsection (1) may prescribe—

(a) the forms required under this Act;

(b) guidelines for formulation of a draft Bill for amendment of the Constitution through a popular initiative;

(c) forms and procedures for collection and submission of supporting signatures to the Commission;

(d) guidelines for verification that a popular initiative meets the threshold under Article 257 of the Constitution;

(e) registration and conduct of referendum committees;

(f) the conduct of a referendum generally; and

(g) any other matter required to be prescribed under this Act.

(3) The power to make regulations shall be exercised only after a draft of the proposed regulations has been approved by both Houses of Parliament.

Consequential amendments.

42. (1) The Elections Act is amended—

(a) in section 2 by—

(i) deleting paragraph (b) of the definition of the term "agent";

(ii) deleting the words "or in a referendum" appearing in the definition of the word "ballot box";

(iii) deleting the words "or a referendum" appearing in the definition of the term "observer";

(iv) deleting the definition of the word "referendum";

(v) deleting the definition of the word "referendum committees";

(vi) deleting the definition of the word "referendum officer";

(vii) deleting the definition of the word "referendum question";

(viii) deleting the words "or a referendum" appearing in the definition of the word "returning officer";

(b) in section 41 by deleting the words "and referendum" appearing in subsection (4); Cap. 265.

(c) by repealing sections 49 to 55;

(d) by repealing sections 88 to 104;

(e) in section 105 by deleting the words "or referendum" appearing in subsection (3); and

(f) in section 109 by deleting the term "referendum" appearing in subsections (1) (dd) and (1) (ee).

(2) The County Governments Act is amended by repealing section 90.

FIRST SCHEDULE

(Section 7(a))

Certificate of Approval by the County Assembly

To: The Hon. Speaker of the National Assembly,

Parliament of Kenya,

Parliament Buildings,

NAIROBI.

To: The Hon. Speaker of the Senate,

Parliament of Kenya,

Parliament Buildings,

NAIROBI.

I, ..., Speaker of the County Assembly of ....., hereby certify that the County Assembly of ....., having received a draft Bill for the amendment of the Constitution by popular initiative pursuant to Article 257(5) on ....., 20.....considered and approved the....., a draft Bill pursuant to Article 257(6) on ....., 20.....

Name:.....

Speaker of the County Assembly of.....

Signature:.....

Date:.....

SECOND SCHEDULE

(Section 7(b))

Certificate of Rejection by the County Assembly

To: The Hon. Speaker of the National Assembly,

Parliament of Kenya,

Parliament Buildings,

NAIROBI.

To: The Hon. Speaker of the Senate,

Parliament of Kenya,

Parliament Buildings,

NAIROBI.

I, ..., Speaker of the County Assembly of ....., hereby certify that the County Assembly of ....., having received a draft Bill for the amendment of the Constitution by popular initiative pursuant to Article 257(5) on ....., 20.....considered and rejected the....., a draft Bill pursuant to Article 257(6) on ....., 20.....

Name:.....

Speaker of the County Assembly of.....

Signature:.....

Date:.....

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to consolidate the law relating to conduct of a referendum, to provide for a transparent and fair process in order to obtain a clear expression of the will of people, by establishing the procedures for the conduct of a referendum. The structure of the Bill is as follows:

Clauses 1 to 4 provide for preliminary matters including the short title, interpretation and the application of the Elections Act to referenda.

Clause 5 provide for the notification of the Commission by the President of a referendum to amend the Constitution in relation to matters specified in Articles 255 (1) and 257 (10) of the Constitution. Upon the notification, the Independent Electoral and Boundaries Commission shall conduct a referendum in 90 days.

Clause 7 and 8 provide for the consideration of the draft Bill, in respect of an amendment to the Constitution through a popular initiative, by both county assemblies and Parliament.

Clause 10 provides the procedure and timelines for framing the referendum question or option and assigning symbols for each answer.

Clause 11 of the Bill provides for notice of holding a referendum and requires the Commission to publish the notice in the Gazette as well as in electronic and print media. The notice shall contain specific particulars relating to the referendum.

Clause 12, 13 and 14 provides for formation and registration of referendum committees, appointment of the chief agent for every referendum committee, costs of referendum committees and invokes the relevant sections of the Election Campaign Financing Act, 2013.

Clause 15 provides for the approval threshold in a referendum which is at least twenty percent of the registered voters in each of at least half of the counties vote in the referendum and the majority of the citizens voting in the referendum.

Clause 16 provides for declaration of results and certification of the results of the referendum. This is to be done within three days of polls.

Clause 17 and 18 provide for the conduct of other forms of referendum, including county referenda and refenda conducted pursuant to a specific resolution of Parliament. This clause contemplates that the resolution of Parliament shall specify the wording of the referendum question or option. The notice shall contain key particulars including the nature and purpose of the referendum, the referendum question(s), the symbols assigned for each answer, the date of the referendum, polling

time, date of registration of referendum committees and the campaign period for the referendum.

Clause 19 provides for a general power of the Commission to take administrative measures to ensure successful conduct of a referendum.

Clauses 20 provides for filing of referendum petitions within fourteen days, and for the petitions to be heard within thirty days from the date of filing.

Clause 21 to 35 also provide for referendum petitions including persons who may present petitions, respondents, composition of the Court, appeals to the Court of Appeal, hearing of petitions, examination of votes and petition expenses. **Clause 30** provides for appeals to the Court of Appeal to be filed within thirty days of the decision of the High Court.

Clauses 36 to 42 contain general provisions dealing with the documents, offences and general penalty, application of the Election Offences Act, 2016, duty to cooperate, prosecutions and arrests, power to make regulations and consequential amendments.

Statement on the limitation of fundamental rights and freedoms

The Bill does not limit fundamental rights and freedoms.

Statement on how the bill concerns county governments

This Bill concerns county governments in terms of Article 110(1) (a) of the Constitution.

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

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 28th January, 2026.

WAKILI HILLARY SIGEI,
Chairperson,
Standing Committee on Justice,
Legal Affairs and Human Rights.

Section 2 of Cap 7 of which it is proposed to amend—

2. Interpretation.

In this Act, unless the context otherwise requires—

"adult" has the meaning assigned to it in Article 260 of the Constitution;

"agent" means a person duly appointed by—

(a) a political party or an independent candidate for the purposes of an election under this Act; or

(b) a referendum committee for the purposes of a referendum under this Act, and includes a counting agent and a tallying agent;

"ballot box" means a transparent container with a slot on the top sufficient to accept a ballot paper in an election or in a referendum but which prevents access to the votes cast until the closing of the voting period;

"ballot paper" means a paper used to record the choice made by a voter and shall include an electronic version of a ballot paper or its equivalent for purposes of electronic voting;

"biometric" means unique identifiers or attributes including fingerprints, hand geometry, earlobe geometry, retina and iris patterns, voice waves, DNA, and signatures;

"campaign period" means the period specified as such in the notice issued by the Commission in relation to an election;

"candidate" means a person contesting for an elective post;

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

"constituency" means one of the constituencies into which Kenya is divided under Article 89 of the Constitution;

"constituency register" means the register of voters compiled in respect of each constituency by the Commission;

"county" means one of the counties into which Kenya is divided under Article 6(1) of the Constitution and specified in the First Schedule of the Constitution;

"county assembly" means a county assembly constituted in accordance with Article 177 of the Constitution;

"county election" means the election of a county governor or a member of a county assembly;

"disability" has the meaning assigned to it in Article 260 of the Constitution;

"election" means a presidential, parliamentary or county election and includes a by-election;

"electoral area" means a constituency, a county or a ward;

"election court" means the Supreme Court in exercise of the jurisdiction conferred upon it by Article 163(3)(a) or the High Court in the exercise of the jurisdiction conferred upon it by Article 165(3)(a) of the Constitution or the Resident Magistrate's Court designated by the Chief Justice in accordance with section 75 of this Act;

"election material" means ballot boxes, ballot papers, counterfoils, envelopes, packets statements and other documents used in connection with voting in an election and includes information technology equipment for voting, the voting compartments, instruments, seals and other materials and things required for the purpose of conducting an election;

"election offence" means an offence under this Act;

"elections officer" means a person appointed by the Commission for the purposes of conducting an election under this Act;

"election period" means the period between the publication of a notice by the Commission for a presidential, parliamentary or county election under sections 14, 16, 17 and 19 and the gazettement of the election results;

"election results" means the declared outcome of the casting of votes by voters at an election;

"harambee" means the public collection of monies or other property in aid or support of a cause or a project;

"identification document" means a Kenyan national identification card or a Kenyan passport;

"illegal practice" means an offence specified in Part VI;

"independent candidate" means a candidate for presidential, parliamentary or county elections who is not a member of a political party;

"integrated electronic electoral system" refers to a system that includes biometric voter registration, biometric voter identification and electronic result transmission system;

"nomination" means the submission to the Commission of the name of a candidate in accordance with the Constitution and this Act;

"nomination day" in respect of an election, means the day gazetted at least sixty days before an election by the Commission as the day for the nomination of candidates for that election;

"observer" means a person or an organisation accredited by the Commission to observe an election or a referendum;

"party list" means a party list prepared by a political party and submitted to the Commission pursuant to and in accordance with Article 90 of the Constitution and sections 28, 34, 35, 36 and 37;

"parliamentary election" means the election of one or more members of Parliament;

"petition" means an application to the election court under the Constitution or under this Act;

"political party" has the meaning assigned to it in Article 260 of the Constitution;

"polling station" means any room, place, vehicle or vessel set apart and equipped for the casting of votes by voters at an election;

"presidential election" means an election of a President in accordance with Articles 136, 139(1)(b) and 146(2)(b) of the Constitution;

"public officer" has the meaning assigned to it in Article 260 of the Constitution;

"public resources" include—

(a) any vehicle, or equipment owned by or in the possession; or

(b) premises owned or occupied by, any government, state organ, statutory corporation or a company in which the Government owns a controlling interest;

"referendum" means a poll held under Part V;

"referendum committee" means a national or a parliamentary constituency committee comprising of persons intending to support or oppose a referendum question;

"referendum officer" means a person appointed by the Commission for the purpose of conducting a referendum;

"referendum question" means a question upon which voters shall vote in a referendum as specified in section 49;

"Register of Voters" means a current register of persons entitled to vote at an election prepared in accordance with section 3 and includes a register that is compiled electronically;

"registration officer" means a person appointed by the Commission for the purpose of preparing a register of voters;

"returning officer" means a person appointed by the Commission for the purpose of conducting an election under this Act;

"supporter" means a voter who supports the nomination of a candidate;

"vessel" includes any ship, boat or any other description of vessel used in navigation;

"voter" means a person whose name is included in a current register of voters;

"voter's card" *deleted by Act No. 12 of 2012, Sch.;*

"voting period" means the period specified as such in the notice issued by the Commission in relation to an election;

"ward" means an electoral area within a county delimited in accordance with Article 89 of the Constitution.

Section 41 of Cap 7 of which it is proposed to amend—

41. Access to and obligation of media

(1) Subject to subsection (2), a political party participating in an election shall have access to the state owned media services during the campaign period.

(2) The Commission shall, after consultations with the independent candidates, the political parties concerned and the officers responsible for the state owned media services, monitor the equitable allocation of air-time during the campaign period.

(3) Every state owned print or electronic media which publishes any information relating to the electoral process shall be guided by the principle of total impartiality and shall refrain from any discrimination in relation to any candidate.

(4) The Code of Conduct for the practice of journalism prescribed under the Media Council Act (Cap. 411B) shall be subscribed to and observed by every media house and every person who reports on any election and referendum under the Constitution and this Act.

(5) For the purpose of giving effect to this section, the Commission may, in writing, issue directives to the media.

(6) The Commission may prohibit a media house that contravenes the Code of Conduct prescribed under the Media Council Act (Cap. 411B) from transmitting information related to an election under this Act.

Section 49 of Cap 7 of which it is proposed to amend—

49. Initiation of a referendum.

(1) Whenever it is necessary to hold a referendum on any issue, the President shall by notice refer the issue to the Commission for the purposes of conducting a referendum.

(2) Where an issue to be decided in a referendum has been referred to the Commission under subsection (1), the Commission shall frame the question or questions to be determined during the referendum.

(3) The Commission shall, in consultation with the Speaker of the relevant House, lay the question referred to in subsection (2) before the House for approval by resolution.

(4) The National Assembly may approve one or more questions for a referendum.

(5) The Commission shall publish the question approved under subsection (4) in the *Gazette* and in the electronic and print media of national circulation.

(6) The Commission shall conduct the referendum within ninety days of publication of the question.

(7) The Commission may assign such symbol for each answer to the referendum question or questions as it may consider necessary.

(8) A symbol assigned under subsection (7) shall not resemble that of a political party or of an independent candidate.

Section 50 of Cap 7 of which it is proposed to amend—

50. Notice of holding referendum.

(1) The Commission shall, within fourteen days after publication of the question referred to in section 49 publish a notice of the holding of the referendum and the details thereof in the *Gazette*, in the electronic and print media of national circulation.

(2) The notice shall specify—

(a) the referendum question or questions and the option of the answer or answers;

(b) the symbols assigned for the answer or answers to the referendum question or questions;

(c) the day on which the 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 time of the referendum;

(e) the day by which the referendum committees shall have registered with the Commission; and

(f) the day and time by which campaign in support of or in opposition to the referendum question shall start and cease.

Section 51 of Cap 7 of which it is proposed to amend—

51. Referendum Committees.

(1) Where a referendum question requires a "yes" or "no" answer, persons intending to campaign for or against the referendum question shall form such national referendum committees and constituency referendum committees as are necessary.

(2) Where there is more than one referendum question, persons intending to campaign for or against each referendum question shall, on application to the Commission, form one national referendum committee each and one committee each in every constituency for each referendum question.

(3) A referendum committee shall apply to the Commission for registration in the prescribed form.

(4) An application under subsection (3) shall be accompanied by information showing that the applicant adequately represents persons campaigning for or against the referendum question.

(5) The national referendum committees shall control and regulate the constituency referendum committees.

(6) A member of a referendum committee shall subscribe to and abide by the Electoral Code of Conduct set out in the Second Schedule.

Section 52 of Cap 7 of which it is proposed to amend—

52. Costs of referendum committee.

(1) Each referendum committee shall bear its own costs during the campaign period of the referendum.

(2) The costs referred to in subsection (1) include payment of the agents of the respective referendum committees.

Section 53 of Cap 7 of which it is proposed to amend—

53. Procedure for conduct of referendum.

The procedure for the conduct of an election shall apply with necessary modifications to the conduct of referendum.

Section 54 of Cap 7 of which it is proposed to amend—

54. Voting threshold.

A referendum question on an issue other than that contemplated in Articles 255, 256 and 257 of the Constitution shall be decided by a simple majority of the citizens voting in the referendum.

Section 55 of Cap 7 of which it is proposed to amend—

55. General power of the Commission.

Nothing in this Act shall preclude the Commission from taking any administrative measures to ensure effective conduct of the referendum.

Section 88 of Cap 7 of which it is proposed to amend—

88. Election petition procedures to apply to referendum petition.

Unless specifically provided for in this Act, the procedure applicable to an election petition shall apply to a referendum petition.

Section 89 of Cap 7 of which it is proposed to amend—

89. Referendum petition.

(1) The conduct, result and validity of a referendum may be challenged by petition to the High Court.

(2) A petition challenging the conduct, result or validity of a referendum shall—

(a) set out the facts relied on to invalidate the referendum;

(b) identify the specific matter or matters on which the petitioner relies as justifying the grant of relief;

(c) contain a request for the relief to which the petitioner claims to be entitled; and

(d) be filed in the High Court within twenty-one days of the publication of the notice of the results of the referendum in the *Gazette*.

(3) A referendum petition may be presented on any of the following grounds—

(a) in respect of the result of the voting in all the constituencies or in any one constituency, that corrupt practices prevailed at or in relation to the voting at the referendum in that constituency, or that there was an error or misconduct, whether by act or omission, on the part of a referendum officer; or

(b) in respect of the declared result of the referendum, that there was an error in the counting or tallying of the votes cast in the referendum.

Section 90 of Cap 7 of which it is proposed to amend—

90. Composition of Court.

A referendum petition shall be heard and determined by a bench of three judges appointed by the Chief Justice.

Section 91 of Cap 7 of which it is proposed to amend—

91. Operation of declared result of issue submitted to referendum.

(1) Where a referendum petition is not presented to the High Court within the time specified in section 89 (2) (d), the declared result of referendum shall—

(a) have effect from the date on which the result is declared;

(b) be final and not be challenged in any court of law; and

(c) be conclusive evidence of the voting at the referendum and of the result of the referendum.

(2) Nothing in this section shall be construed as preventing or delaying the coming into operation of any law in respect of which a referendum is held pursuant to the provisions of the Constitution or any other written law if—

(a) it is stated in the declared result of the referendum that the provisions of the Act are supported by a simple majority of the citizens voting in the referendum; and

(b) the question raised by any referendum petition or, if more than one, by all referendum petitions presented to the High Court in respect of such referendum would not, if decided in favour of the petitioner or petitioners, as the case may be, lead to a declaration by the Commission that a simple majority of the citizens voting in such referendum did not support the provisions of the said law.

Section 92 of Cap 7 of which it is proposed to amend—

92. Persons who may present referendum petition.

(1) A referendum petition may be presented in the High Court, by—

(a) in the case of a petition in respect of the result of the voting in a constituency, a person who voted lawfully or had a right to vote in that constituency at the referendum;

(b) in the case of a petition in respect of the declared result of the referendum, a person who voted at the referendum or had a right to vote at the referendum; or(c)in any other case, the Commission.

(2) A petitioner who presents a referendum petition shall serve all the respondents to the petition within seven days of filing the petition.

(3) A petitioner shall publish a notice of the petition in the *Gazette* and in at least one newspaper of national circulation, within fourteen days after the petition is filed.

(4) A petition may be served personally upon the respondent or by advertisement in a newspaper with national circulation.

Section 93 of Cap 7 of which it is proposed to amend—

93. Respondents to referendum petition.

(1) Where, at the hearing of a referendum petition, a person is alleged to have been guilty of a corrupt practice in relation to the referendum, or where a copy of a referendum petition is served on a particular person on the direction of the High Court, the High Court may, on the application of that person, add or name that person as a respondent to the petition.

(2) Where, at the trial of a referendum petition presented by the Commission, a question of law arises in relation to action or omission by a referendum officer, the High Court may, on the application of the Attorney-General, name the referendum officer as a respondent to the petition.

Section 94 of Cap 7 of which it is proposed to amend—

94. Filing of referendum petition.

(1) A referendum petition shall be signed by the petitioner or by all the petitioners, if more than one.

(2) Whenever a referendum petition is presented under this section, the Registrar of the High Court shall, in writing, inform the Commission of the filing.

Section 95 of Cap 7 of which it is proposed to amend—

95. Duty of Registrar to make list of referendum petitions.

(1) Subject to the provisions of subsection (2), the Registrar of the High Court shall make a list of all the referendum petitions filed under this Part in the order in which they are filed, and shall keep in the Registrar's office, a copy of the list which shall be open for inspection by any person who applies to inspect the list.

(2) A referendum petition shall, unless the High Court orders otherwise, be tried in the order in which it appears on the list made by the Registrar under subsection (1).

(3) Where more than one petition is presented relating to the same referendum, all such petitions shall be dealt with as one petition as far as the inquiry into the referendum is concerned.

Section 96 of Cap 7 of which it is proposed to amend—

96. Practice procedure and security for costs.

(1) Subject to the provisions of section 98, the Rules Committee as constituted under the Civil Procedure Act (Cap. 21), may make rules generally to regulate the practice and procedure of the High Court with respect to the filing and trial of election and referendum petitions, including rules—

(a) specifying—

(i) the time within which any requirement of the rules is to be complied with;

(ii) the costs of and incidental to the filing and the trial of an election and referendum petition; and

(iii) the fees to be charged in respect of proceedings of an election and referendum petition; and

(b) generally with regard to any other matter relating to an election and referendum petition as the Chief Justice may deem necessary.

(2) A petitioner shall deposit one million shillings as security for costs of a petition presented under this Act, within ten days of presenting the petition.

(3) Where a petitioner does not deposit security for costs as required under this section after presenting of a referendum petition the referendum petition shall be struck out.

(4) The High Court may make such order as to costs as it may deem fit and just in respect of any referendum petition dismissed under this section.

Section 97 of Cap 7 of which it is proposed to amend—

97. Death of or delay by petitioner.

Where there are two or more petitioners and any of the petitioners dies at any time before the final order of the court hearing the petition, the

surviving petitioner or petitioners shall be entitled to continue with the petition.

Section 98 of Cap 7 of which it is proposed to amend—

98. Hearing of referendum petition.

(1) A referendum petition shall be—(a)heard and determined within six months from the date of presentation of a petition; and(b)heard in open court.(2)The High Court may, in respect of the trial of a referendum petition, exercise such powers within its civil jurisdiction as it may deem appropriate.(3)A referendum petition may be withdrawn by the petitioner on notice to the other parties and the High Court, subject to any order of the Court as to costs.

Section 99 of Cap 7 of which it is proposed to amend—

99. Powers of a court to summon witnesses in a referendum petition.

(1) A Court hearing a referendum petition may, at the hearing of the petition—(a)order any person who appears to the court to be concerned in or affected by the referendum petition to attend as a witness at such hearing; and(b)examine any witness or any person who is present at the hearing even if the witness or person is not called as a witness by any party to the proceedings:Provided that after examination by the court, the witness or person may be cross-examined by or on behalf of the petitioner or the respondent.

(2) Where a person is ordered to attend as a witness under subsection (1), the Court may direct that a copy of the referendum petition be served on that person.

(3)A person who is called as a witness at the trial of a referendum petition shall not be excused from answering any question relating to any offence connected with the referendum on the ground that the answer thereto may incriminate them or on the ground of privilege.

(4) Notwithstanding subsection (3)—(a)a witness who answers every question which they are required to answer under this section to the satisfaction of the court, and the answers to which may tend to incriminate them, shall not be liable to prosecution for any offence committed by them in connection with the referendum and in respect of which they are so examined, and shall be entitled to receive a certificate of indemnity issued by the Registrar stating that the person is discharged from liability and shall not be prosecuted for that offence; and(b)an answer by a witness to a question before the Court under this section shall not, except in the case of any criminal proceedings for giving false evidence in respect of such

evidence, be admissible as evidence in any civil or criminal proceedings against them.

(5) Where a person has received a certificate of indemnity under subsection (3), and legal proceedings are, at any time, brought against that person for an offence to which the certificate relates, the court having cognizance of the case shall, on proof of the certificate of indemnity, stay such proceedings.

(6) All reasonable expenses incurred by any person in attending at or appearing before the High Court to give evidence as a witness at the trial of a referendum petition shall be paid to such person according to the scale of allowances and expenses appropriate in civil proceedings before the High Court.

Section 100 of Cap 7 of which it is proposed to amend—

100. Prohibition of disclosure of vote.

A voter who has voted at a referendum shall not, in proceedings to question the referendum be required to state how he voted.

Section 101 of Cap 7 of which it is proposed to amend—

101. Examination of votes.

(1) The High Court on its own motion or on an application by a petitioner may, during the hearing of a referendum petition, order for a scrutiny of votes to be carried out in such manner as the High Court may determine.

(2) The provisions of section 82 shall apply with respect to scrutiny of votes under this section.

Section 102 of Cap 7 of which it is proposed to amend—

102. Powers of Court.

(1) At the conclusion of the hearing of a referendum petition challenging the conduct or result of the referendum, the High Court may—

(a) dismiss the petition;

(b) declare the published result to be incorrect;

(c) declare the referendum to be void; or(d)uphold the petition in whole or in part.

(2) Without limiting the generality of this section, the High Court may exercise its powers to declare a referendum void on the ground that this Act or the regulations made under this Act were contravened during

the referendum, and such contravention has seriously affected the result of the referendum.

(3) The Registrar of the High Court shall deliver to the Commission a certified copy of any decision made by the High Court under subsection (1).

(4) The Registrar of the High Court shall, at the conclusion of the proceedings in respect of a referendum petition, submit to the Commission a certificate under the Registrar's hand, stating that the hearing of the referendum petition has been concluded, and the Commission shall, upon receipt of such certificate, declare and publish the result of the referendum in accordance with the findings of the High Court.

(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 it relates and of the result of such referendum.

(6) Where the High Court declares a referendum void, the Commission shall conduct a fresh referendum.

Section 103 of Cap 7 of which it is proposed to amend—

103. Petition expenses.

(1) Subject to the provisions of this section, all costs, charges and expenses of and incidental to the presentation and hearing of a referendum petition shall be borne in such manner and in such proportions as the High Court may order, and in particular, any costs which, in the opinion of the High Court, have been caused by any vexatious conduct or by any frivolous or vexatious allegations or objections on the part of the petitioner or of the respondent, may be ordered to be paid by the party by whom such costs have been caused.

(2) Where in the hearing of a referendum petition a person appears to the High Court to have been guilty of any corrupt practice relating to the referendum, the High Court may, after giving that person an opportunity to make a statement to show why the order should not be made, order the whole or a portion of the costs of or incidental to the trial of the referendum petition to be paid by that person to such person or persons as the High Court may determine.

(3) Money deposited as security shall, when no longer needed as security for costs, be returned to the person in whose name it is deposited or to any person entitled to receive the money by order of the High Court, which may be made upon motion after notice and proof that all just claims

have been satisfied or otherwise sufficiently provided for as the High Court may require.

Section 105 of Cap 7 of which it is proposed to amend—

105. Duty to co-operate.

(1) It shall be the duty of every public officer and public or private entity to co-operate with the Commission in its activities during an election and not to hinder the Commission in carrying out its functions.

(2) It shall be the duty of police officers in their respective areas of operation, to take all necessary measures for the maintenance of law and order and stability necessary for the conduct of an election and to protect and uphold the rights of all persons under any written law relating to elections.

(3) Notwithstanding the provisions of the law relating to the National Police Service or any other written law, a police officer assigned duties during the conduct of an election or referendum shall be deemed to be an elections officer for purposes of this Act and subject to direction and instruction of the Commission.

(4) It shall be the duty of—

(a) all officers of the county administration, in their respective administrative units;

(b) all persons in charge of local authority facilities;

(c) persons in charge of facilities;

(d) all political parties and members of the public;

(e) all persons in charge of public utilities including teachers in charge of public schools;

(f) the Registrar of Persons; and

(g) the Registrar of Political Parties,

to give the Commission and its officers the support and collaboration necessary for the Commission to execute the activities relating to the conduct of an election.

Section 109 of Cap 7 of which it is proposed to amend—

109. Regulations.

(1) The Commission may make regulations generally for the better carrying out of the purposes and provisions of this Act, and in particular,

but without prejudice to the generality of the foregoing, may make regulations to—

(a) prescribe the manner in which registers of voters shall be compiled and the manner in which they shall be revised;

(b) prescribe the procedure for registration and issuance of voters cards and provide for the progressive registration of Kenyan citizens living abroad and prisoners;

(c) to provide for the regulation of the process by which parties nominate candidates for elections;

(d) to provide for the manner of nomination, allocation and re-allocation of special seats and mechanisms for resolving disputes arising out of such nomination, allocation and re-allocation;

(e) prescribe the procedure for making and determining claims to be registered and objections to registration;

(f) authorise any registration officer to consider or determine any application, claim, objection or appeal, to summon any person to appear before them and give evidence on oath, and to administer an oath for that purpose and to order the production of any document relevant to any issue which the officer is required to consider and determine;

(g) provide for the division of constituencies into units for the purpose of the registration of voters;

(h) prescribe the conditions under which elections may be held in accordance with the provisions of the Constitution, this Act or any other written law relating to elections;

(i) prescribe the amount of the deposit to be paid by or on behalf of candidates at all elections and the circumstances in which the deposit may be forfeited;

(j) provide for the appointment of officers to preside at polling stations;

(k) prescribe the facilities to be provided at polling stations and the persons who may be admitted to polling stations;

(l) prescribe the place and manner in which votes may be cast and the construction and scaling of ballot boxes and provide for the issue a ballot papers to voters;

(m) provide for the manner in which, and the person by whom any question as to the identity of any person claiming the right to vote shall be determined;

(n) provide for the manner in which a voter who is not able to read or write may vote or be assisted in voting;

(o) provide for the manner in which a voter with special needs including a person with a disability may vote or be assisted in voting;

(p) prescribe the procedure to be followed in the counting of votes and the circumstances in which votes may be rejected by a returning officers as being invalid;

(q) prescribe conditions for the use of private motor vehicles, vessels or buildings at elections;

(r) prescribe the facilities to be provided during the electoral process and in particular, for voting by electronic machines and the persons entitled so to vote and the circumstances in which persons may so vote;

(s) provide for the allocation by the Commission, in a just and equitable manner of the use of state-owned radio and television broadcasting services during any election period;

(t) prescribe the procedure to be adopted by the public in making representations for the alteration of electoral area boundaries;

(u) prescribe the forms which may be used under this Act and the fees in respect of anything to be done under this Act;

(v) prescribe the procedure for advance voting for special categories including patients admitted in hospital, pastoralists, armed forces, elections officers and other citizens of Kenya providing essential services;

(w) prescribe the procedure for voting for citizens residing outside Kenya;

(x) provide for complaints resolution mechanisms and for the manner of settlement of electoral disputes;

(y) provide for the conduct of election observers, the media, monitors and evaluators and organisations carrying out civic and voter education;

(z) provide with reasonable grounds for the postponement of elections;

(aa) provide for mechanisms for carrying out effective voter education;

(bb) provide for the mode of declaration of the result of an election;

(cc) prescribe the manner of enforcing the Electoral Code of Conduct; or

(dd) provide for the conduct of campaigns during a referendum or an election;

(ee) Provide for the financing of campaigns during a referendum or an election;

(ff) prescribe anything which is required to be prescribed or is necessary or desirable for the better giving effect to this Act.

(2) The power to make regulations conferred on the Commission under this Act shall be—

(a) for the purpose and objective of giving effect to the Constitution and this Act;

(b) limited to the nature and scope specifically stipulated in the Constitution and this Act; and

(c) based on the general principles and standards contained in the Constitution and this Act.

(3) The power to make regulations shall be exercised only after a draft of the proposed regulations has been approved by the National Assembly, at least four months preceding a general election. Provided that this applies to the first general election under this Act.

(4) The Commission shall publish in the *Gazette*, not later than sixty days prior to the date of a general election, the regulations approved by the National Assembly under subsection (3).

Annex 3 - Advertisement published in the Daily Nation and Standard newspapers on 7th May, 2026

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | FIFTH SESSION
THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA AND PUBLIC HEARINGS THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)

The **Referendum Bill, 2026 (Senate Bills No. 3 of 2026)** was read a First Time in the Senate on Tuesday, 5th May, 2026 and thereafter stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. The Committee is required, under standing order 145(5) of the Senate Standing Orders, to facilitate public participation on the Bill and to take into account the views and recommendations of the public when the Committee makes its report to the Senate.

The Bill provides a legal framework for the conduct of referenda in Kenya. It sets out the processes on how referenda are initiated, organized, conducted and challenged in court. It also sets out the processes for implementation after results are declared. The Bill applies to constitutional amendment referenda, county referenda and referenda on any other public issue as stipulated in the Bill.

Pursuant to Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Standing Committee on Justice, Legal Affairs and Human Rights now invites members of the public to submit any representations that they may have on the Bill by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P. O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to senatejlahrc@parliament.go.ke, to be received on or before **Friday, 29th May, 2026 at 5.00 p.m.**

The Bill and a digest that summarizes the contents and context of the Bill may be accessed on the Parliament website at http://www.parliament.go.ke/the-senate/house-business/bills.

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

Annex 4 - Copies of Stakeholder Submissions on the Bill

MEMORANDUM ON THE REFERENDUM BILL, 2026

RE: CONCERNS ON THE POWERS GRANTED TO THE COMMISSION IN FRAMING REFERENDUM QUESTIONS

The Referendum Bill, 2026 is a progressive legislative proposal intended to streamline and regulate the conduct of referenda in Kenya. While the Bill establishes important procedures relating to constitutional amendments, popular initiatives, county referenda and referendum petitions, there exists a significant concern under Clause 10 relating to the framing of referendum questions by the Independent Electoral and Boundaries Commission (IEBC).

Clause 10 grants the Commission authority to frame referendum questions or options within twenty one days upon receiving notification for a referendum. Although the Bill requires the questions to be framed in plain, neutral and factual language, the provision still leaves broad discretionary powers in the hands of the Commission without providing an independent oversight or approval mechanism.

A referendum question is the foundation upon which citizens make a national decision. The wording, structure or presentation of such a question can directly influence public perception and voting behaviour. In the absence of an independent review mechanism, there is a risk that referendum questions may be framed in a manner that subtly favours one side, especially in highly polarised political environments. This may erode public trust in the process and potentially trigger disputes and litigation.

Further, unlike the previous framework under the Elections Act which required consultation with the relevant House before approval of referendum questions, the current Bill merely states that the Commission "may consult Parliament" or promoters of a popular initiative. This weakens institutional accountability and reduces participatory safeguards in a matter of immense national importance.

The Bill should therefore be amended to introduce a mandatory independent approval or review process for referendum questions before publication. Such a process may involve Parliament, the Judiciary, a multi sectoral panel, or public participation mechanisms to ensure fairness, neutrality and national consensus on the wording of referendum questions.

Additionally, the Bill should expressly provide a legal avenue for challenging the wording of referendum questions before the referendum date in order to avoid avoidable constitutional disputes after the vote.

In conclusion, while the Referendum Bill, 2026 is a timely and necessary legislative instrument, Clause 10 requires further strengthening to safeguard transparency, impartiality and public confidence in the referendum process. A referendum is a direct

exercise of sovereign power by the people and its credibility largely depends on the neutrality and clarity of the question presented to voters.

To: senate@parliament.go.ke
Cc: senatejlahrc@parliament.go.ke

The Clerk of the Senate
Parliament of Kenya
P.O. Box 41842-00100
Nairobi, Kenya

Dear Sir/Madam,

RE: SUBMISSION OF MEMORANDUM ON THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)

I hereby submit my memorandum on the Referendum Bill, 2026 for consideration by the Senate and the Standing Committee on Justice, Legal Affairs and Human Rights.

The memorandum particularly raises concern regarding Clause 10 of the Bill which grants broad discretionary powers to the Independent Electoral and Boundaries Commission in framing referendum questions without establishing a mandatory independent oversight or approval mechanism. The concern is that such unchecked discretion may affect neutrality, public confidence and fairness in the referendum process.

The memorandum further recommends the establishment of an independent review mechanism and provision for pre referendum legal challenges relating to the wording of referendum questions in order to safeguard transparency, accountability and constitutional integrity.

I respectfully request the Senate and the relevant Committee to consider the proposals and recommendations contained in the memorandum during deliberations on the Bill.

Kindly acknowledge receipt of this submission.

Yours faithfully,

Mr. Aldrin Vundi Kasyoka alias Katethya
Politician and Sociopolitical Activist

Phone No: 0769355564

TO : Justice Legal Affairs and Human Rights committee, SENATE

From : Allan Shivanda

Date : 15 May 2026

SUBJECT: PUBLIC PARTICIPATION SUBMISSION ON REFERENDUM THROUGH POPULAR INITIATIVE

I am a responsible citizen writing to submit this memorandum pursuant to constitutional and statutory provisions on public participation. This memorandum seeks to underscore the bulkiness in referendum through popular initiative and propose practical recommendations for streamlining. Referendum through popular is a pillar in governance through amplifying voice, decisions and power of the sovereigns and since the people are the sovereigns, I would recommend the doing away with County Assembly involvement on referendum

through popular initiative since county Assembly are just but the delegates of the sovereigns.

Given that we already have the article 256 section (1), no further delegates should be allowed to intervene with the decision made by the sovereigns lest we undermine article 1 section (1) of the constitution.

Drawing examples from previous popular initiatives in BBI and Punguza mzigo, where both showed how county Assembly process is a conflict of interest, on either side it touched on political seats, but the county Assembly only passed the one favouring them.

On that basis article 257 section 5,6,7 should be repealed, from popular initiatives process and taken to article 256 on parliamentary initiative process.

Email: aldihvush@gmail.com
Box No: 69-90402
Mwingi West Constituency, Kitui County



Date: 11/05/2026

Yours truly: Allan Shivanda
Contact: 0112593038.
Email : shivandaallan@gmail.com
Machakos, Mavoko.

REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL

Our Ref: AG/LDD/619/1/16 **18th May, 2026**
Your Ref. SEN/DGAC/DGC/JLARHC/2026/35(a)

Mr. J.M. Nyegenye CBS
Clerk of the Senate
Clerk's Chambers
Parliament Buildings
NAIROBI

DLS
PCA-JLHARC
Kindly deal
21/05/2026

THE SENATE
RECEIVED
21 MAY 2026
DIRECTOR COMMITTEE SERVICES
(DGAC)

RE: THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)

Reference is made to your letter dated the 7th May, 2026, under Ref. SEN/DGAC/DGC/JLARHC/2026/35(a), and the request for written representations on the Referendum Bill, 2026 (Senate Bills No. 3 of 2026).

We have perused the contents of your letter and accompanying draft of the Bill. In our considered view, the Bill does not raise substantial constitutional or statutory issues. Should any constitutional or statutory questions arise during the processing of the Bill, this Office shall provide the necessary legal guidance as may be requested.

However, the Bill contains several errors, for which we recommend correction as follows:

S/No.	*Provision*	*Issue*	*Proposed correction*	*Reason for proposed correction*
1.	Arrangement of Clauses	The arrangement of clauses indicated on page 9 of the Bill is not consistent with	Align the arrangement of clauses so that it is consistent with the contents of the Bill.	To ensure consistency in the text of the Bill.

		the content of the Bill.		
2.	Clause 2 (Interpretation)	Definition of "polling station".	Insert the expression "section 2 of" immediately after the word "under".	To expressly refer to the section of the Elections Act where the definition of "polling station" is found.
3.		Definition of "register of voters".	Insert the expression "section 2 of" immediately after the word "under".	To expressly refer to the section of the Elections Act where the definition of "register of voters" is found.
4.		Definition of "voter".	Insert the expression "section 2 of" immediately after the word "under".	To expressly refer to the section of the Elections Act where the definition of "voter" is found.
5.	Clause 6 (Amendment of the Constitution by popular initiative)		In subclause (1)(a), insert the word "the" immediately after the words "information on".	To correct a grammatical error.
6.	Clause 7 (Consideration of draft Bill by county assemblies)		In subclause (2), delete the words "not approved" and substitute therefor the word "rejected".	To ensure consistency with the use of the word "rejected" in subclause (1)(b).

7.	Clause 8 (Consideration of the draft Bill by Parliament)		In subclause (5)—	
8.			(a) delete the words "the Speaker of the relevant House shall" appearing in the opening words;	The words "the Speaker of the relevant House shall" only apply to the requirement to notify the Commission and not the holding of the referendum.
9.			(b) in paragraph (a), insert the words "the Speaker of the relevant House" at the beginning of the paragraph;	The words "the Speaker of the relevant House shall" only apply to the requirement to notify the Commission of the resolution of the House.
10.			(c) in paragraph (a), insert the word "of" immediately after the words "notify the".	To correct a grammatical error.
11.	Part III (Other Referenda)	The expression "Part III" is repeated.	Delete the expression "Part III" appearing immediately after	To ensure consistency in the

			clause 16 and substitute therefore the expression "Part IV".	numbering of the Parts of the Bill.
12.	Part IV (Referendum Petitions)		Delete the expression "Part IV" appearing immediately after clause 19 and substitute therefore the expression "Part V".	To ensure consistency in the numbering of the Parts of the Bill.
13.	Clause 20 (Referendum petitions)		Add the word "or" at the end of subclause (3)(a).	To indicate that paragraphs (3)(a) and (b) are disjunctive.
14.	Clause 22 (Respondents to a referendum petition)		In subclause (1), delete the words "been guilty of a corrupt practice" and substitute therefor the words "committed corrupt act".	In order to be consistent with the provisions of Article 50(2)(a) of the Constitution regarding the presumption of innocence of a person alleged to have committed an offence.
15.	Clause 23 (Filing of referendum petition)		In subclause (1), delete the words "their behalf, if more than one" and substitute therefor the words "the petitioner's behalf".	To be consistent with the provisions of section 3(4) of the Interpretation and General Provisions Act whereby words and expressions

				in the singular include the plural and words and expressions in the plural include the singular. Furthermore, it preserves the right of a petitioner to represent himself or herself in a referendum petition, regardless of the fact that there may be more than one petitioner.
16.	Part V (Miscellaneous Provisions)		Delete the expression "Part IV" appearing immediately after clause 19 and substitute therefore the expression "Part VI".	To ensure consistency in the numbering of the Parts of the Bill.
17.	Clause 37 (Application of the Election Offences Act. Cap. 66.)		In the marginal note, delete the words "Election Offences Act".	To ensure consistency ion the drafting style of the Government.
18.			Insert the word "the" immediately after the word "provisions".	To correct a grammatical error.

19.	Clause 40 (Referendum Code of Conduct)		In subclause (1), insert the word "the" immediately after the word "under".	To correct a grammatical error.
20.	Clause 41 (Regulations)		In subclause (1), delete the words "and provisions".	The words are superfluous and unnecessary.

We thank you and assure you of our continued support.

DORCAS A. ODUOR SC, EGH
ATTORNEY-GENERAL

MEMORANDUM

From : Electoral Law and Governance Institute for Africa

To : The Clerk of the Senate

Date: 21st May, 2026

RE : The Referendum Bill, 2026 (Senate Bill No.3 of 2026)

Background

- Electoral Law and Governance Institute for Africa (ELGIA), a continental organization, headquartered in Nairobi, Kenya, working to strengthen and consolidate constitutional democracy, good governance, and electoral processes in African dialogue, electoral reforms, and advocacy. Through this, the institution seeks to strengthen governance and political institutions through technical assistance, capacity building, advocacy, and research.

- The Standing Committee on Justice and Legal Affairs and Human Rights in the Senate, in line with Article 118 of the Constitution and the Standing Order Number 145(5) of the Senate Standing Orders, through a letter dated 7th May 2026, invited the Electoral Law and Governance Institute for Africa (ELGIA) to submit representations/Comments on the Referendum Bill (Senate Bills No. 3 of 2026).

- The principal object of the Bill is to provide a legal framework for the conduct of a referendum and for connected purposes in Kenya. The Bill sets out the process of how referenda are initiated, conducted, and challenged. ELGIA has developed this Memorandum to highlight the main considerations that will inform the Committee of the proposals contained in the Bill.

Amendment Proposals, Recommendations, and Justification

Proposed Amendment Clauses	Recommendation and Remarks	Justification
Clause 10 (6) of the Bill The Bill proposes that a symbol to be used in the Referendum shall not resemble that of a political party or of an independent candidate used in the preceding elections	• The restriction should only apply to registered political parties and not independent candidates • The proposal should include the colours of the registered political parties	• Unlike the symbols and colours of registered political parties, the symbols of independent candidates are not legally registered and hence have no legal ownership within an electoral cycle.

Clause 16 of the Bill The Clause proposes the process of declaration and certification of referendum results.	• The proposal is agreeable. However, the proposal should include the process of declaration of results and certification of the county referenda	• The procedure of the results declaration at the county referenda is different from the National referendum.
Part IV of the Bill The Part proposes the procedures applicable to a referendum petition.	• Just like electoral laws, the Bill should provide a procedure for pre-referendum dispute resolution procedure	• This will provide clarity on how the pre-referendum disputes are resolved before the conduct of the referendum
Clause 20 of the Bill The Clause refers to Article 22(1) and (2) of the Constitution in the filing of referendum Petitions.	• The proposal should refer to the Election Law and not a bill of rights enforcement provision.	• This provision means that, in filling a Referendum Petition, one shall be required to indicate the Right which has been violated under the Bill of Rights in line with Art. 22 of the Constitution. • Unlike the question of a petition under the Bill of Rights, a Referendum Petition cannot be filed on behalf of another person
Clause 20 (2) of the Bill The Clause provides for who can file the Referendum Petition and where the Petition would be filed	• Just like in Election Petitions, the Clause ought to prescribe the locus standi (The right and legal capacity of a person to file the Petition).	• The right and capacity to file the Petition ought not to be left open to anybody. especially for a County Referendum. This might be abused.
Clause 22 (2) of the Bill	• The Clause, in its plain reading, suggests that a	• The Clause is ambiguous.

The Clause provides for the Respondent to a referendum petition		Commission (IEBC) can equally file a Referendum Petition.		
Clause 23 (2) of the Bill The clauses provide for the procedure of filing a referendum petition	•	The clause is unnecessary as its intention and purpose have been covered in clause 22 of the Bill.	•	The intended purpose has been adequately covered under Clause 22 of the Bill.
Clause 24 of the Bill The Clause provides for the composition of the Bench to hear and determine Referendum Petitions	•	The proposal should apply to the National Referendum Petitions and not to the County referendum.	•	The County Referendum Petitions should be heard and determined by one Judge, just like a Petition challenging an election of a county Governor under the Elections ActMEMORANDUM.

Felix Odhiambo Owuor
Executive Director,
Electoral Law and Governance Institute for Africa (ELGIA)

REPUBLIC OF KENYA

PARLIAMENT OF KENYA: SENATE

MEMORANDUM OF COMMENTS ON THE REFERENDUM BILL, 2026

(Senate Bills No. 3 of 2026)

Submitted to the Senate Standing Committee on Justice, Legal Affairs, and Human Rights

Date: May 2026

Prepared by: Linda Mwananchi Diaspora League

A Public Interest Review for Citizen Participation

INTRODUCTION AND PURPOSE OF THIS MEMORANDUM

This Memorandum sets out detailed comments on **The Referendum Bill, 2026 (Senate Bills No. 3 of 2026)**, published on 12th February 2026 and before the Senate for first reading. The Bill was introduced by the Standing Committee on Justice, Legal Affairs and Human Rights, chaired by Wakili Hillary Sigei.

The Bill's principal object is to consolidate referendum law into a dedicated statute, replacing the patchwork of referendum provisions currently embedded in the Elections Act (Cap. 7). This is a necessary and long-overdue reform. Kenya has held two national referenda: in 2005 and 2010, and saw the 2021 BBI initiative struck down in part on procedural grounds. The absence of a dedicated referendum statute has contributed to repeated constitutional uncertainty and litigation.

This Memorandum is submitted in the spirit of constructive public participation under Article 118 of the Constitution of Kenya, 2010, and the Standing Orders of the Senate. Comments are grouped by clause and accompanied by specific drafting proposals for the Senate's consideration.

The overall assessment is that the Bill is structurally sound and a welcome step forward. However, sixteen specific issues have been identified: ranging from unconstitutional discretionary powers granted to the IEBC and the President, to structural concerns about sequencing, terminology, citizen access, and the absence of a transitional savings clause, that must be addressed before the Bill is passed.

OVERALL ASSESSMENT

SUPPORT : with the amendments proposed in this Memorandum

The Bill provides a necessary and constitutionally grounded framework for the conduct of referenda in Kenya. Its consolidation of referendum law from the Elections Act into a dedicated statute is the correct legislative approach.

Sixteen specific issues have been identified. The most critical are: (1) the IEBC's unconstitutional discretionary 'satisfaction' power in clause 6(2)(c), which must be deleted; (2) the deemed-rejection rule for silent county assemblies in clause 7, which exceeds Article 257(6); (3) the use of 'public discussion' rather than 'public participation' in clause 8(2); (4) the absence of an independent check on presidential discretion under clause 8(4); (5) the structural sequencing problem in clauses 6 and 8 that allows legislative votes to predetermine the referendum outcome; (6) the 18-month inaction window in clause 8(6) that rewards deliberate parliamentary delay; (7) the exclusion of grassroots citizen participation under clauses 12to13; (8) the absence of a non-contradiction clause in clause 41; and (9) the missing transitional savings clause in clause 42.

SUMMARY OF COMMENTS

The table below summarises all sixteen issues identified in this memorandum. Detailed analysis follows in Part IV.

No.	Provision	Issue	Position	Justification / Recommendation
1	Clauses 1to4 : Preliminary and scope	County referendum voting threshold not specified : s.17 silent on turnout/majority required	**Support with amendment**	Section 17 governs county referenda but does not specify the voting threshold. Once a petition triggers the referendum, what turnout is required? What majority? The Bill is silent. Section 15 thresholds should be expressly applied mutatis mutandis.

No.	Provision	Issue	Position	Justification / Recommendation
2	Clause 6(2)(b)to(c) : IEBC verification: 90 days, no default; discretionary 'satisfaction' power	No consequence if IEBC fails to act within 90 days. Worse, s.6(2)(c) gives IEBC discretionary power to 'satisfy itself' beyond the constitutional threshold : which is purely quantitative	**Amend : critical**	Article 257 requires only 1 million signatures. Once verified, the obligation to submit is automatic. 'Satisfying itself that requirements are met' goes beyond the Constitution and replicates the BBI gatekeeping problem. Remove discretion; insert a deeming clause for IEBC inaction.
3	Clause 7 : County assembly consideration: deemed rejection for silence	Treating a non-responding county assembly as having rejected the Bill goes beyond Article 257(6) and tilts the process against popular initiatives	**Amend**	Article 257(6) does not prescribe a consequence for silence. Deemed rejection caused by an administrative failure (e.g. a clerk who fails to table the Bill) could doom an otherwise valid initiative. Silence should trigger a reminder process, with non-responding assemblies excluded from the count rather than treated as rejections.
4	Clause 8(2) : 'Public discussion' vs. public participation	Section 8(2) uses the term 'public discussion' while the Constitution and other statutes use 'public participation' : inconsistency creates legal uncertainty	**Amend**	Article 118 of the Constitution guarantees public participation as a constitutional right. Using a different, weaker term ('public discussion') in s.8(2) may dilute that right. The Bill should use 'public participation' consistently throughout.
5	Clause 8(4) : Discretionary presidential power to assent or refer to referendum	Section 8(4) gives the President discretion to either send a Bill to referendum or assent directly, depending on whether it touches Article 255(1) matters : but 'relates to' is undefined and subject to manipulation	**Amend**	The President's determination of whether a Bill 'relates to' an Article 255(1) matter should not be left to executive discretion without judicial review. A mechanism for the Supreme Court to settle disputes about whether a Bill requires a referendum : on the application of any person : should be inserted.
6	Clause 8 and Clause 6 : County assemblies and Parliament vote before the public	The sequence in which county assemblies and Parliament consider a popular initiative Bill before the public votes may predetermine or unduly influence the referendum outcome	**Amend : structural concern**	When 33+ county assemblies and both Houses of Parliament have publicly rejected a Bill, the political signal sent to ordinary voters before a referendum is powerful and potentially determinative. The sequencing should be reconsidered, or at minimum, the IEBC's civic education mandate must explicitly neutralise the influence of prior legislative votes.
7	Clause 8(5) : Referendum	Section 8(5) treats a referendum as a	**Amend**	If the people have already gathered 1 million signatures and county assemblies have

No.	Provision	Issue	Position	Justification / Recommendation
	should be concurrent with, not sequential to, Parliament's failure	remedy after Parliament fails : but the referendum should logically run simultaneously with, or be triggered automatically alongside, the parliamentary vote		approved the Bill, the people's mandate should not wait for Parliament's failure. A simultaneous or automatically triggered referendum removes Parliament's veto power over a process it did not initiate.
8	Clause 8(6) : 18-month deemed failure: House may deliberately delay to block	An 18-month window before a House is deemed to have not passed the Bill creates a structural opportunity for deliberate inaction to frustrate popular initiatives	**Reject / Amend**	A House that wishes to block a popular initiative need not vote against it : it can simply fail to schedule it for 18 months. The deemed-failure mechanism rewards procedural bad faith. A shorter, fixed voting deadline (e.g. 60 days) with automatic referral to referendum upon expiry should replace the 18-month window.
9	Clause 9(2) : Opposition comments and divergent Bills	Section 9(2) allows non-opposing opinions to be merged into a single Bill but does not specify how opposing or minority views are handled	**Amend**	Where citizens or legislators hold fundamentally different views on a constitutional amendment, merging only 'non-opposing' opinions silences legitimate dissent. The Bill should require that divergent opinions be recorded in a published report, and that where irreconcilable differences exist, separate draft Bills may be submitted to the people under s.9(3).
10	Clause 10 : Referendum notice: should come from both Houses, not the President alone	Section 10(1)(a) triggers the IEBC's question-framing duty upon notification from the President. For parliamentary initiatives, both Houses should jointly notify	**Amend**	A referendum arising from a parliamentary initiative is the product of both Houses acting under Article 256. Notification to IEBC by the President alone : who may have political interests in the question framing : is inappropriate. Joint notification by the Speakers of both Houses should be required for parliamentary initiative referenda.
11	Clause 10 : No pre-referendum independent review of question framing	No mechanism exists to challenge a biased, leading, or confusing referendum question before the vote is held	**Support : strengthen**	Section 10(4) sets admirable standards for neutral, plain-language, bilingual questions. But there is no pre-referendum review mechanism. An aggrieved party must wait until after the vote and petition to void the result : far more disruptive than pre-emptive correction. A 7-day window to petition the High Court on question framing, with a 14-day determination deadline, should be inserted.
12	Clause 11 : 45-day notice period too short for constitutional amendments	45 days is insufficient for meaningful public education on complex constitutional	**Amend**	Constitutional amendments require at minimum 90 days' notice to enable genuine civic education across 47 counties including rural and marginalised communities. The 45-day period should be reserved for non-constitutional referenda only.

No.	Provision	Issue	Position	Justification / Recommendation
		changes affecting millions of voters		
13	Clauses 12to13 : Referendum committee formation: excludes resource-poor citizens	Requiring registration of a formal committee with a chief agent, members, and documentation places civic participation out of reach for ordinary citizens and community groups without organisational resources	**Amend**	Section 12 as drafted effectively limits active referendum participation to organised, well-resourced entities. Individual citizens, community groups, and grassroots organisations : who are the primary constituency for popular initiatives : are functionally excluded. A simplified individual and community participation pathway, separate from formal committee registration, must be provided.
14	Clauses 12to14 : No prohibition on foreign funding of referendum committees	The Bill applies the Election Campaign Financing Act but does not expressly prohibit foreign funding of referendum committees	**Amend**	Referendum committees are not political parties and are not governed by the Political Parties Act's foreign funding prohibition. An express ban on foreign contributions to referendum committees : mirroring Article 88(4)(j) : must be inserted.
15	Clauses 16 & 25 : 3-day declaration vs. automatic petition stay: structural tension	The President could assent to a referendum-approved Bill while a petition is pending or during the 14-day petition filing window	**Amend**	Section 16(2) allows presidential assent within 30 days of certification. Section 25(1) creates an automatic stay upon petition filing. The Bill does not prohibit assent before the 14-day petition window closes. This must be expressly addressed.
16	Clause 36 : Document retention: 6 months too short	Six months may expire before all petition and appeal proceedings are concluded, risking destruction of evidence	**Amend**	A 12-month minimum retention period : or until conclusion of all legal proceedings, whichever is later : is the appropriate standard for constitutional amendment referenda.
17	Clause 41(1) : IEBC regulations must not contradict the Act or amend the Constitution	The regulation-making power in s.41 does not expressly prohibit IEBC from making regulations that contradict the Act's provisions or that purport to amend constitutional requirements	**Amend : critical**	Delegated legislation cannot override its parent Act, and no regulation can amend the Constitution. Yet without an express prohibition, litigation risk remains. A non-contradiction and non-derogation clause must be inserted in s.41.
18	Clause 42 : Repeal of Elections Act referendum	Proceedings initiated under the repealed Elections Act provisions	**Amend**	A standard transitional savings provision : preserving the legal effect of acts done and proceedings commenced under the repealed provisions : is constitutionally necessary and

No.	Provision	Issue	Position	Justification / Recommendation
	provisions: no transitional savings clause	would have no legal home after repeal		reflects established Kenyan legislative practice.

DETAILED ANALYSIS AND PROPOSALS

1. Clauses 1to4: Preliminary and Scope: County Referendum Threshold Gap

Issue Identified

Section 17 governs county referenda but does not specify the voting threshold: what turnout is required and what majority determines the result.

Analysis

The Bill applies to three categories of referendum: constitutional (Articles 255to257), county (s.17), and parliamentary issue (s.18). Section 15 specifies the voting threshold for constitutional referenda (20% turnout in at least half of counties, plus simple majority) and for non-constitutional referenda (simple majority only).

However, section 17, which governs county referenda on local laws, petitions, and planning decisions, is completely silent on the applicable voting threshold. The 25% figure in s.17(1)(b) is a petition signature threshold, not a voting threshold. Once the referendum is actually held, no provision tells us what majority or turnout is required for the result to be binding.

This gap will generate litigation. Different county executives will advance different interpretations. An express provision applying the simple majority standard in s.15(2) mutatis mutandis to county referenda is necessary.

Proposal

> **Amend section 17 to insert: 'A question submitted to a county referendum shall be determined by a simple majority of the citizens voting in the referendum, and the provisions of section 15(2) shall apply with necessary modifications.'**

2. Clause 6(2)(b)to(c) : IEBC Verification: Discretionary Power Must Be Removed; Deeming Clause Needed

Issue Identified

Section 6(2)(c) gives the IEBC power to 'satisfy itself' that a popular initiative meets constitutional requirements: a discretionary gatekeeping power that goes beyond what Article 257 provides. Additionally, there is no consequence if IEBC fails to publish its verification report within 90 days.

Analysis

Article 257 of the Constitution sets a purely quantitative threshold for a valid popular initiative: one million registered voters must support it, with their signatures appended against their voter information. That is the entirety of the constitutional requirement. Once those conditions are met, the IEBC's obligation is to submit the draft Bill to the county assemblies. There is no constitutional room for a further qualitative assessment.

Section 6(2)(c) as drafted requires the IEBC to 'satisfy itself that the initiative meets the requirements of Article 257.' The word 'satisfy itself' imports an open-ended discretionary judgment that does not exist in the Constitution. It replicates exactly the kind of gatekeeping that caused constitutional controversy in the BBI litigation, where the IEBC's role in facilitating versus scrutinising popular initiatives was fiercely contested.

If constitutional requirements are met: signatures are genuine, the count reaches one million, voter information is correctly appended, then the IEBC's obligation is triggered automatically. There is no 'finding' to be made. The Commission either confirms the numbers add up or it does not. Anything beyond that is an unconstitutional usurpation of the people's sovereign right under Article 257.

Separately, section 6(2) gives the IEBC 90 days to complete verification but specifies no consequence for failure to act. An IEBC that is politically reluctant to facilitate a particular initiative can simply allow the 90-day window to lapse. A deeming clause is essential.

Proposal

> **Amend section 6(2) to delete paragraph (c) entirely. Replace with: 'Where the Commission confirms that at least one million registered voters support the draft Bill and that the requirements of subsection (1) have been met, it shall forthwith: and in any event within seven days of such confirmation: submit the draft Bill to the county assemblies pursuant to section 7. Where the Commission fails to publish its report within ninety days, the draft Bill and supporting signatures shall be deemed verified, and the Commission shall submit the draft Bill to county assemblies within seven days.'**

3. Clause 7 : Deemed Rejection for Silent County Assemblies: Constitutionally Questionable

Issue Identified

Section 7(2) treats a county assembly that does not respond within three months as having rejected the Bill. This exceeds what Article 257(6) provides.

Analysis

Article 257(6) requires each county assembly to consider the draft Bill within three months. It does not prescribe what happens if a county assembly is silent. Section 7(2) fills that gap by treating silence as rejection.

Given that approval of a majority of county assemblies (at least 24 of 47) is required before Parliament considers the Bill, a deemed rejection caused by administrative failure, such as a clerk who does not table the Bill, a quorum not achieved, or a Speaker who is absent, can doom an otherwise valid initiative. This effectively gives county-level bureaucrats a veto over the sovereign popular initiative right.

A more constitutionally sound approach is to treat non-responding assemblies as abstentions, exclude them from the count entirely, and require only that a majority of the responding assemblies approve the Bill.

Proposal

> **Amend section 7(2) to read: 'Where the Speakers of the two Houses do not receive a response from a county assembly within three months, the Commission shall, within seven days, issue a formal reminder to the Speaker of that assembly. Where no response is received within twenty-one days of the reminder, that county assembly shall be excluded from the count for Article 257(7), and the majority required shall be computed based on county assemblies that have voted.'**

4. Clause 8(2): 'Public Discussion' vs. 'Public Participation': Terminological Inconsistency

Issue Identified

Section 8(2) requires each House to 'publicise the Bill and facilitate public discussion.' The Constitution and all other major statutes use the term 'public participation,' which carries specific legal weight.

Analysis

Article 118 of the Constitution guarantees citizens the right to public participation in legislative and other business of Parliament and its committees. This right has been extensively interpreted by the courts : it requires meaningful, not tokenistic, engagement.

The term 'public discussion' in section 8(2) is legally weaker than 'public participation.' It could be satisfied by mere publicity : publishing the Bill in the Gazette and allowing comments : without the robust consultative process that Article 118 demands.

Every other piece of Kenyan legislation governing parliamentary processes : from the County Governments Act to the Public Finance Management Act : uses the term 'public participation.' Using a different term in this Bill without explanation creates inconsistency and opens the door to legal challenge on whether the constitutional standard was met.

Consistency in statutory language is not merely a drafting preference : it is a principle of constitutional fidelity.

Proposal

> **Amend section 8(2) to read: 'Each House shall publicise the Bill and facilitate public participation in accordance with Article 118 of the Constitution before passage.'**

5. Clause 8(4) : Presidential Discretion: 'Relates to' Article 255(1) is Undefined and Subject to Manipulation

Issue Identified

Section 8(4) allows the President to determine whether a Bill 'relates to' an Article 255(1) matter: and thus whether a referendum is required. This is an executive discretion with no checks.

Analysis

Article 255(1) lists the matters that require a referendum for constitutional amendment. Whether a particular Bill relates to' one of those matters' is a legal and constitutional question, not a political one.

By leaving this determination to the President without any mechanism for independent review, the Bill creates a situation in which a President who wishes to avoid a referendum can simply declare that the Bill does not relate to Article 255(1) matters and assent to it directly under s.8(4)(b). Conversely, a President seeking to block a Bill can declare that it does relate to Article 255(1) and trigger the referendum process as a delaying tactic.

This is a structural conflict of interest. The determination of whether a referendum is constitutionally required should be made by the Supreme Court, not the executive. Comparable jurisdictions provide for pre-assent constitutional review precisely to resolve this.

Proposal

> **Amend section 8(4) to insert: 'Where there is a dispute as to whether a Bill relates to a matter specified under Article 255(1) of the Constitution, any person may petition the Supreme Court for a determination within seven days of the Bill being submitted to the President. The President shall not assent to or refer the Bill until the Supreme Court has made a determination, which shall be made within fourteen days of the petition.'**

6. Clauses 6 and 8 : Sequencing: County Assemblies and Parliament Vote Before the Public, Potentially Predetermining the Referendum Outcome

Issue Identified

The Bill requires county assemblies and Parliament to publicly deliberate and vote on a popular initiative Bill before it goes to the people. This sequencing risks predetermining the referendum result.

Analysis

Under the current scheme, by the time a popular initiative reaches a national referendum, the following has already happened in full public view: the IEBC has published its verification report; county assembly speakers have delivered certificates of approval or rejection; both Houses of Parliament have debated and voted on the Bill. All of this is public record.

When 33 county assemblies and both Houses of Parliament have publicly voted against a Bill, the political signal sent to ordinary voters, many of whom look to elected representatives for cues on complex constitutional matters, is powerful and may be determinative. Voters may reasonably ask: 'If my MP, my MCA, and Parliament all rejected this, why should I support it?'

This sequencing gives established political actors, who may be self-interested in the outcome, a structural advantage over the popular initiative process, which exists precisely to enable constitutional change that political actors resist.

At minimum, the IEBC's civic education mandate under s.10(3)(b) must explicitly require neutral framing that does not amplify or echo prior legislative votes. Ideally, the sequencing should be reconsidered so that the people's voice is not filtered through and potentially suppressed by political gatekeeping.

Proposal

> **Amend section 10(3)(b) to include: 'Civic education and public sensitisation conducted by the Commission shall be conducted independently and shall not reference or amplify prior votes or positions taken by Parliament or any county assembly on the subject matter of the referendum.' Consider amending the Bill to allow a popular initiative to proceed directly to a referendum upon approval by county assemblies, without requiring parliamentary passage as a precondition.**

7. Clause 8(5): Referendum After Parliament's Failure: Should Be Concurrent, Not Sequential

Issue Identified

Section 8(5) treats a referendum as a remedy triggered by Parliament's failure to pass a popular initiative, Bill. This makes the referendum a consolation prize for a failed parliamentary process, rather than a coequal expression of the people's will.

Analysis

The popular initiative right under Article 257 is a sovereign right of the people: not a parliamentary right, and not a remedy for parliamentary dysfunction. When one million Kenyans sign a petition and county assemblies approve a Bill, the people have already spoken. Parliamentary consideration is a constitutional step in the process, but Parliament's failure should not delay the people's vote.

Under section 8(5), a referendum is held only after Parliament has failed. This means the people cannot vote until Parliament has had up to 18 months to act (or fail to act). The referendum becomes a back-up option, not a co-equal sovereign process.

A more constitutionally faithful approach is for the referendum to run simultaneously with or immediately after parliamentary consideration, not as a consequence of parliamentary failure.

Proposal

> **Amend section 8(5) to provide: 'Where a Bill is supported by a majority of county assemblies and is submitted to Parliament pursuant to Article 257(7), the Commission shall simultaneously schedule a national referendum on the Bill to be held on the same day as, or within thirty days of, the conclusion of parliamentary consideration, regardless of whether Parliament has passed or rejected the Bill.'**

8. Clause 8(6) : 18-Month Deemed Failure: Rewards Deliberate Inaction

Issue Identified

Giving a House of Parliament 18 months before it is 'deemed' not to have passed a Bill creates a structural incentive for deliberate delay to block popular initiatives.

Analysis

Section 8(6) provides that if a House does not pass or reject the Bill within 18 months, it is deemed not to have passed. This is a generous window that any House with political motivation to block a popular initiative can exploit simply by never scheduling the Bill for debate.

There is no mechanism in the Bill to compel a Speaker to table the Bill, no consequence for delay, and no remedy available to the promoters of the initiative during the 18-month window. A promoter who gathers one million signatures and wins approval from county assemblies can be neutralised by a parliamentary diary that is simply never made available to their Bill.

An 18-month deemed-failure window is also inconsistent with the urgency inherent in a popular initiative: a process through which citizens seek to make changes their elected representatives have been unwilling to make. Handing those same elected representatives 18 months of inertia-power contradicts the constitutional purpose of Article 257.

Proposal

> **Replace section 8(6) with: 'Each House shall vote on the Bill within sixty days of its introduction in that House. Where a House fails to vote within sixty days, the Bill shall be deemed not passed, and the provisions of section 8(5) shall apply. The Speaker of the relevant House shall have a constitutional duty to schedule the Bill for consideration within thirty days of its introduction, and failure to do so shall be subject to judicial review.'**

9. Clause 9(2) : Opposition and Minority Views in Bill Drafting: No Safeguard

Issue Identified

Section 9(2) allows only non-opposing opinions to be merged into a single Bill. It does not address what happens to opposing or minority views.

Analysis

Section 9(2) provides that 'all opinions and recommendations that are not in opposition may be incorporated into a single Bill.' This means that opinions in opposition are by definition excluded from the merged Bill: they are set aside.

The Bill does not then provide any mechanism for how those opposing views are to be recorded, considered, or given effect. Section 9(3) allows divergent Bills to be considered, but only in the context of parliamentary initiative Bills, not in the context of the initial merging process.

A constitutional amendment process that structurally excludes dissenting voices at the drafting stage, without even requiring that they be documented and published, is procedurally incomplete. Minority and opposition views on constitutional amendments are constitutionally significant and must be preserved in the public record.

The Bill should require that all submissions received, both supporting and opposing, be compiled in a publicly available report, so that the people voting in the referendum can access the full spectrum of opinion.

Proposal

> **Amend section 9(2) to read: 'All opinions and recommendations received shall be compiled in a public report published by Parliament. Opinions and recommendations that are not in opposition to the Bill may be incorporated into the draft Bill. Opposing and dissenting opinions shall be recorded in a published minority report, which shall be made available to the public alongside the draft Bill and the referendum question.'**

10. Clause 10: Referendum Notice for Parliamentary Initiatives: Should Come from Both Houses

Issue Identified

Section 10(1)(a) triggers IEBC's question-framing duty upon notification from the President alone. For Bills arising from parliamentary initiatives, both Houses should jointly notify IEBC.

Analysis

Section 10(1)(a) provides that the IEBC shall frame the referendum question when it receives a notification from the President under Article 256(5)(a).' Article 256(5)(a) requires the President to notify the IEBC after a parliamentary initiative Bill is passed.

However, a referendum arising from a parliamentary initiative is the product of both Houses of Parliament acting under Article 256. Filtering this notification exclusively through the President, who may have political interests in how the question is framed, and who may delay or withhold notification, is inappropriate.

The Speakers of both Houses, acting jointly, are the appropriate constitutional officers to notify the IEBC of Parliament's decision on a parliamentary initiative Bill. This is consistent with the role of the Speakers in jointly submitting the Bill to the President under section 8(3).

Proposal

> **Amend section 10(1)(a) to read: 'receives a notification from the Speakers of both Houses of Parliament, acting jointly, that a Bill submitted under section 8 has been passed, or a notification from the President under Article 256(5)(a); or': and add a corresponding obligation on the Speakers to notify IEBC within seven days of the Bill passing both Houses.**

11. Clause 11: 45-Day Notice Period: Inadequate for Constitutional Amendments

Issue Identified

Forty-five days from notice to polling day is insufficient for meaningful civic education on complex constitutional amendments affecting all Kenyans.

Analysis

Section 11(2)(d) requires only a 45-day gap between the notice of referendum and polling day. Section 10(3)(b) separately requires IEBC to conduct civic education across the country, including through local radio, television, social media, and public forums.

Forty-five days to educate approximately 22 million registered voters across 47 counties, including rural, pastoralist, low-literacy, and marginalised communities, on the substance and implications of a constitutional amendment is demonstrably inadequate. Kenya's 2010 Constitution ratification process took over two years of public education.

The 45 days were carried over from the Elections Act's general referendum provisions, which were designed for simpler issue referenda. Constitutional amendment referenda require a different and more rigorous standard.

Proposal

> **Amend section 11(2)(d) to provide: '(i) for a referendum under Articles 255, 256 or 257 of the Constitution, at least ninety days from the date of publication of the notice; and (ii) for a referendum under sections 17 or 18, at least forty-five days from the date of publication of the notice.'**

12. Clauses 12to13: Referendum Committee Registration: Excludes Resource-Poor Citizens and Community Groups

Issue Identified

The formal committee registration requirements place active civic participation in referenda out of reach for ordinary citizens, grassroots organisations, and community groups without institutional resources.

Analysis

Section 12 requires anyone wishing to campaign for or against a referendum question to form a national referendum committee and constituency-level committees, appoint a leader, chief agent, and members, submit a formal application with prescribed documentation, and be registered with the IEBC.

Section 13 adds further requirements: the chief agent must provide a sample signature and be recorded in an IEBC register. Section 14 imposes the full Election Campaign Financing Act framework on these committees.

This architecture was designed for political parties and well-resourced civil society organisations. It is fundamentally incompatible with grassroots civic participation. A village elder, a women's group, a community radio station, or an individual citizen who wants to campaign on a referendum question faces a compliance burden comparable to running a parliamentary election campaign.

The popular initiative right under Article 257 exists precisely to enable citizens, including resource-poor citizens, to participate in constitutional democracy. A Bill designed to facilitate that right should not simultaneously erect registration barriers that exclude the very citizens it is meant to empower.

Proposal

> **Insert a new section 12A: 'Notwithstanding section 12, an individual citizen or community organisation may campaign for or against a referendum question without forming a registered referendum committee, provided that : (a) the individual or organisation does not receive or expend funds exceeding one hundred thousand shillings; (b) no foreign funding is received; and (c) the individual or organisation identifies itself publicly in all materials as an unregistered participant. The Commission shall provide a simplified notification mechanism for such participants.'**

13. Clauses 16 and 25: 3-Day Declaration vs. Automatic Stay: Structural Tension Must Be Resolved

Issue Identified

The President may assent to a referendum-approved Bill while a petition is pending or during the open 14-day petition filing window.

Analysis

Section 16(1) requires the IEBC to declare results within 3 days. Section 16(2) allows the President to assent within 30 days of certification. Section 25(1) provides for an automatic stay upon petition filing. Section 20(3)(a) allows petitions to be filed within 14 days of declaration.

The conflict is this: results are declared on Day 3. The 14-day petition window runs from Day 3 to Day 17. The President may assent at any point within 30 days of certification, including on Day 4, before any petition has been filed and before the petition window has closed. If a petition is subsequently filed on Day 14 and a stay is granted, the President will have already assented to a Bill whose referendum result is now legally stayed.

This constitutional tangle: declared result, presidential assent, automatic stay, and petition: must be sequenced clearly and expressly in the Bill to avoid a constitutional crisis.

Proposal

> **Amend section 16(2) to provide: 'The President shall not assent to the Bill until : (a) the fourteen days for filing a referendum petition has lapsed without a petition being filed; or (b) any petition filed has been heard, determined, and upheld, and any period for appeal has lapsed without an appeal being filed.'**

14. Clause 36: Document Retention: 6 Months Is Inadequate

Issue Identified

Referendum documents may be destroyed before all legal proceedings are complete.

Analysis

Section 36(1) sets a 6-month retention period from the declaration of results. All petition and appeal proceedings: filing (14 days), High Court hearing (30 days), Court of Appeal filing (14 days), Court of Appeal determination (60 days): total approximately 118 days, within 6 months.

However, where Supreme Court proceedings or other constitutional challenges follow an appeal, the 6-month window may expire before those proceedings are concluded. For constitutional amendment referenda, the documents also carry permanent historical and archival significance.

A 12-month retention period, or until conclusion of all proceedings, whichever is later, is the minimum appropriate standard.

Proposal

> **Amend section 36(1) to read: 'All documents relating to a referendum shall be retained by the Commission for a period of twelve months after the results of the referendum have been declared, or until the conclusion of all petition and appeal proceedings relating to the referendum, whichever is the later. Documents relating to a referendum on the amendment of the Constitution shall be permanently archived in accordance with the Public Archives and Documentation Service Act.'**

15. Clause 41(1): Regulation-Making Power: No Non-Contradiction Clause

Issue Identified

Section 41 confers broad regulation-making power on the IEBC without expressly prohibiting regulations that contradict the Act or purport to amend constitutional requirements.

Analysis

Section 41(1) allows the IEBC to 'make regulations generally for the better carrying out of the purposes and provisions of this Act.' This is standard enabling language. However, the Bill does not contain an express clause prohibiting the IEBC from making regulations that are inconsistent with the Act, that contradict its provisions, or that purport to impose requirements beyond, or in derogation of, constitutional standards.

The principle that subordinate legislation cannot override its parent Act is established at common law and under the Interpretation and General Provisions Act. However, in a politically charged environment, particularly where referendum regulations touch directly on the constitutional amendment process, relying on implied limitations is insufficient.

An express non-contradiction clause serves two purposes: it protects citizens whose rights are at stake, and it protects the IEBC itself from challenges alleging that its regulations have overstepped their statutory foundation.

Proposal

> **Insert a new section 41(4): 'No regulation made under this section shall : (a) be inconsistent with or contradict any provision of this Act; (b) impose requirements that derogate from rights or procedures guaranteed under the Constitution; or (c) purport to amend, qualify, or add to any requirement imposed by the Constitution in relation to the amendment of the Constitution or the conduct of a referendum. Any regulation that is inconsistent with this subsection shall be void to the extent of the inconsistency.'**

16. Clause 42: Repeal of Elections Act Referendum Provisions: No Transitional Savings Clause

Issue Identified

The repeal of the Elections Act referendum provisions (ss.49 to 55 and 88 to 104) without a savings clause may invalidate proceedings initiated under the old law.

Analysis

Section 42(1) repeals sections 49 to 55 and sections 88 to 104 of the Elections Act. The Bill does not contain any transitional savings provision.

Any referendum initiated, any petition filed, or any action taken under the Elections Act's referendum provisions before the commencement of this Bill would have no statutory footing after the repeal. Reliance on the default savings provisions of the Interpretation and General Provisions Act (Cap. 2) is inadequate for legislation with such significant constitutional implications.

Kenya's own legislative practice, including the 2016 Elections Act, demonstrates the standard of including an express savings clause upon repealing predecessor provisions. The same discipline must apply here.

Proposal

> **Insert a new section 43 (Transitional Provisions): 'Notwithstanding the repeal of the relevant provisions of the Elections Act under section 42, any referendum initiated, any referendum petition filed, and any proceedings commenced under those provisions before the commencement of this Act shall continue and be concluded as if those provisions had not been repealed. Any rights, obligations, or liabilities accrued under those provisions are preserved and shall be enforceable under this Act with necessary modifications.'**

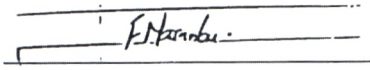
CONCLUSION

The Referendum Bill, 2026, is a welcome and necessary piece of legislation. Kenya has operated without a dedicated referendum statute for too long, relying on a patchwork of Elections Act provisions that have proven inadequate.

The sixteen amendments proposed in this Memorandum address both technical gaps and substantive constitutional concerns. Several of the issues identified, particularly the unconstitutional discretionary powers in clauses 6 and 8, the sequencing problem that allows legislative votes to predetermine the popular vote, the exclusion of grassroots citizens from committee participation, and the absence of a non-contradiction clause in the regulation-making power, go to the heart of whether this Bill will deliver a genuinely free and fair referendum process.

We respectfully urge the Senate Standing Committee on Justice, Legal Affairs and Human Rights to consider these proposals and incorporate the recommended amendments before the Bill proceeds to the Committee of the Whole Senate.

Submitted by:

Signature: 

Nasambu Flavia

On behalf of Linda Mwananchi Diaspora League

May 2026

INTER-RELIGIOUS COUNCIL of KENYA

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29th May 2026

J.M Nyengeye, CBS
Clerk of the Senate
Office of the Clerk of the Senate
Parliament Buildings
P.O. Box 41842 - 00100
NAIROBI

Dear Sir,
RE: SUBMISSION OF MEMORANDUM ON THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026) IN RESPONSE TO THE LETTER REF: SEN/DGAC/DGC/JLAHRC/2026/35(k) DATED 7TH MAY 2026
Salutations of peace from the Inter-Religious Council of Kenya (IRCK).

The Inter-Religious Council of Kenya (IRCK) is a national coalition of all major faith communities (Christian, Hindu, and Muslim) in Kenya that works together to deepen interfaith dialogue and collaboration among members for a common endeavour to mobilise the unique moral and social resources of religious people and address shared concerns.

Through our broad interfaith membership and extensive grassroots networks, IRCK continues to play a significant role in national dialogue, peacebuilding, civic engagement, and advocacy on governance and constitutional matters affecting citizens at both national and county levels. We recognise that a robust referendum framework has profound implications for citizen sovereignty, public participation, national unity, social cohesion, and the protection of human dignity and minority rights as enshrined in the Constitution of Kenya 2010.

In response to your letter **REF: SEN/DGAC/DGC/JLAHRC/2026/35(k) dated 7TH MAY 2026,** inviting written representations on the above Bill, IRCK respectfully submits the attached Memorandum for consideration by the Standing Committee on Justice, Legal Affairs and Human Rights during the Committee Stage and public participation process. Our submission is informed by wide consultations with faith communities and ordinary Kenyans, as well as comparative analysis of global best practices in direct democracy.

Thank you for the invitation and for your leadership in perfecting this important legislation. We pray for wisdom and discernment as the Committee undertakes this vital national duty.

Yours sincerely,

Linus Nthigai
Executive Director

INTER-RELIGIOUS COUNCIL OF KENYA (IRCK)
SUBMISSION OF MEMORANDUM ON THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026) IN RESPONSE TO THE LETTER REF: SEN/DGAC/DGC/JLAHRC/2026/35(K) DATED 7TH MAY 2026

Page No/Guideline	Copy and paste here the specific sentence or paragraph you wish to commend about	Proposed amendment (Provide the exact wording of how your proposed amendment should read)	Explain your reason for the proposed amendment
Clause 10(4) (Bill page 16)	"A referendum question shall— (a) be written in plain language in both English and Swahili using short sentences, simple and direct wording, and familiar terms without jargon or technical language; (b) be written in neutral language and shall avoid words that suggest a judgement or opinion, either explicitly or implicitly; (c) contain information that is factual, and shall describe the issue and the options clearly and accurately; and (d) 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."	Insert new subsection (7) immediately after subsection (6): "(7) The Commission shall, not later than twenty-one days before the referendum, prepare and publish an official neutral Voter Information Guide in English and Swahili containing: (a) the exact wording of the question or options; (b) a plain-language summary of the proposed amendment or issue; (c) arguments for and against as submitted by registered referendum committees; and (d) the estimated fiscal and legal impact where applicable. The Guide shall be distributed to every polling station and made available electronically and in accessible formats."	Mandatory official information booklets will enable high voter understanding. . This addition ensures factual balance beyond the question itself, reduces misinformation risks, and aligns with globally accepted standard for voter information without altering the Commission's existing civic education mandate.
Clause: Clause 15(1) (Bill page 19)	"A question on an issue contemplated	Delete subsection (1)(a) and renumber	The current 20 per cent turnout quorum

	under Articles 255, 256 and 257 of the Constitution shall be approved by a referendum if— (a) at least twenty percent 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."	subsection (1)(b) as (1)(a). Insert new subsection (1)(b): "(b) For amendments under Articles 255, 256 and 257, the amendment shall also be supported by a majority of the votes cast in at least half of the counties."	per county, while aiming for geographic balance, risks invalidating a clear national majority. The proposed change maintains county protection while ensuring a decisive outcome when voters do participate.
Clauses 6–9 (Popular initiative process – Bill pages 13–15)	Clause 8(1)–(3) and Clause 5–9 overall structure providing verification, county assembly consideration, parliamentary debate, and fallback referendum if Parliament fails to pass the Bill.	After Clause 8(3), insert new Clause 8A: "8A. Counter-proposal by Parliament (1) Where a popular initiative draft Bill is approved by a majority of county assemblies, Parliament may, before submitting the Bill to the President, prepare and approve a counter-proposal that offers an alternative to the initiative. (2) Both the original initiative and the counter-proposal shall be submitted to the people in the same referendum as separate options, each with its own symbol and answer. (3) The Commission	This will encourage negotiation, produce moderate outcomes, and result in at least 80 per cent of initiatives being withdrawn or improved without a vote. The Bill currently lacks this compromise tool; adding it would dramatically reduce polarisation and increase policy quality while preserving the people's ultimate say.

		shall frame clear questions for each option in accordance with section 10."	
Clause 10(3)(b) and Clause 40 (Civic education & Code of Conduct – Bill pages 16 & implied in Part V)	"The Commission shall— … (b) conduct civic education and public sensitisation on the referendum through various platforms including local radio and television stations, social media and public forums."	Insert new subsection after Clause 10(3)(b): "(c) The Commission shall ensure that at least thirty percent of the referendum budget is ring-fenced for impartial civic education and shall publish an annual report on the reach and neutrality of such programmes." Amend Clause 40 to include: "The Referendum Code of Conduct shall bind all referendum committees, political parties, the media, and the Commission itself to principles of factual accuracy and non-violence."	Ring-fencing funding and extending the Code of Conduct to all actors strengthens accountability and public confidence.

CSPEN
CIVIL SOCIETY PARLIAMENTARY ENGAGEMENT NETWORK

CSPEN MEMORANDUM ON THE REFERENDUM BILL (SENATE BILLS NO.3) 2026

BACKGROUND AND INTRODUCTION

The Civil Society Parliamentary Engagement Network (CSPEN) is a forum for Non-state Actors, bringing together civil society organizations, professional associations, think tanks and research institutions whose programme areas involve working with the legislature. The network was established in 2019 as a joint initiative of the Westminster Foundation for Democracy and Mzalendo Trust to provide a coordinated engagement with the Kenyan legislature, its committees and members in their oversight, legislation, and representation roles. Broadly, CSPEN seeks to engage with the legislature to ensure that legislative output meets the constitutional requirements of leadership, accountability, and integrity and is reflective of and aligns with the broader public interest. Currently, CSPEN has a Membership of Thirty-Five National Civil Society Organizations, and the priority areas are guided by the design and architectural framework of the parliamentary committees of the 13th Parliament ranging from, Public Finance Management (PFM) and Devolution; Inclusion and Representation; Leadership and Integrity; Human Rights and Access to Justice; Public Participation & Service Delivery; Climate Justice and Environmental democracy.

Parliament derives its legislative authority from the people and has further put in place measures to comply with the principle of public participation as enlisted under Articles 10 & 118 of the Constitution of Kenya, 2010. This includes convening public forums, submitting calls for memorandum through print and electronic media, and inviting members of the public, including representatives of civil society organizations to present their views - a key tenet of entrenching good governance. It is on this premise that CSPEN alongside other stakeholders, collectively submit this memorandum on the Referendum Bill (Senate Bills No.3) 2026 and pray that it be considered.

Signed by:
Head of programs

For: Ms. Caroline Gaita
Executive Director
Mzalendo Trust

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REFERENDUM BILL (SENATE BILLS NO.3) 2026

EXECUTIVE SUMMARY

The Referendum Bill, 2026 (Senate Bills No. 3 of 2026) represents Kenya's most significant attempt to consolidate and codify referendum law into a standalone statute. Introduced by the Standing Committee on Justice, Legal Affairs and Human Rights and published on 12 February 2026, the Bill seeks to operationalise the referendum provisions of Chapter Sixteen of the Constitution of Kenya, 2010 (Articles 255, 256 and 257), while also providing a framework for county referenda and Parliament-initiated referenda on non-constitutional matters.

This review, assesses the Bill's architecture and technical drafting quality, its constitutional fidelity, its alignment with international standards (particularly the Venice Commission Code of Good Practice on Referendums 2007/2022), identified gaps, ambiguities and potential loopholes, and the broader implications of the legislation for Kenya's democratic and governance landscape.

KEY FINDINGS AT A GLANCE

The Bill consolidates a fragmented legal landscape and introduces welcome procedural clarity. However, it contains significant gaps in digital participation frameworks, disinformation governance, independent monitoring of civic education, and protection of minority rights. Several provisions contain internal cross-referencing errors. The Bill is broadly constitutional in intent but carries implementation risks that require amendment before passage.

SUMMARY OF KEY RECOMMENDATIONS

- Correct cross-referencing errors between sections (particularly Clauses 11, 25, and 30).
- Insert an explicit independent media monitoring and disinformation-response framework.
- Strengthen the public participation obligation with mandatory timelines and disaggregated outreach requirements.
- Include digital/online signature verification standards for the popular initiative pathway.

- Provide explicit disability access, gender inclusion and minority language provisions.
- Clarify the interaction between a petition-triggered stay of results (Clause 30) and the democratic imperative of timely resolution.
- Introduce a mandatory post-referendum evaluation mechanism.
- Align the petition filing window with constitutional timelines and remove potential for parallel challenge regimes.

SPECIFIC CLAUSE ANALYSIS

Clause	Proposed Provision	Comments on the Proposed Amendments
Clause 8(5)	If one or both Houses of Parliament fail to pass the Bill, the Speaker of the relevant House shall— (a) notify the Commission its resolution not to pass the Bill; and (b) the proposed amendment shall be submitted to the people in a referendum.	Clause 8(5) provides that if one or both Houses fail to pass a popular initiative Bill, the proposed amendment shall be submitted to the people in a referendum. This is a faithful restatement of Article 257(10). However, the Bill does not address the sequencing question: does the IEBC receive the matter directly from Parliament, or must the promoters re-engage? This gap could cause a Constitutional impasse of the type seen in the BBI matter. The Bill should include a specific provision for IEBC notification timelines in this scenario.
Clause 9(3), 9 (5)	(3) Where, in the case of an amendment to the Constitution by parliamentary initiative, there is a divergent	Clause 9 addresses divergent draft Bills, allowing Parliament to merge, select, or submit multiple Bills to referendum, each with a separate symbol. Section 9(5) restricts voters to one option. This is a sound democratic design principle. However, the Bill does not address what happens when no option obtains a simple majority — does the entire process fail, or is a run-off permitted? This is a significant omission that could paralyse a referendum on a contested constitutional matter.

	draft Bill, Parliament shall consider all the draft Bills and may— (a) merge them into one draft Bill; (b) approve one draft Bill and disapprove the other; or (c) approve all the draft Bills for submission to the people in a referendum. (5) A voter in a referendum may only vote for one option.	
Clause 10 (3) (b)	The Commission shall: (b)conduct civic education and public sensitisation on the referendum through various platforms including local radio and television stations, social media and public forums.	Clause 10(3)(b) requires IEBC to conduct civic education on the referendum through radio, television, social media and public forums. Three concerns arise: Institutional independence: IEBC is the referendum administrator and thus has institutional interests. International best practice (Ireland, Australia, New Zealand) assigns civic education to an independent commission or requires a structured presentation of both sides. IEBC's civic education could, even unintentionally, favour one outcome. No minimum standards: The provision sets no floor for civic education reach, duration, language, or accessibility. There is no requirement for materials in minority languages (e.g. Somali, Rendille, Borana, Luhya, Kamba), no requirement for audio/visual formats for non-literate voters, and no requirement for prior consultation with civil society on content.

		No independent monitoring: There is no provision for independent monitoring of the quality or neutrality of IEBC's civic education — a gap that creates an accountability vacuum.Referendum Petition Stay — Disproportionate Impact (Clause 25)
Clause 11 (1)	(1) The Commission shall, within fourteen days after publication of the question or option referred to in section 9, publish in the Gazette, in the electronic media and in a newspaper of national circulation, a notice of the holding of the referendum specifying the particulars set out in subsection (2).	Clause 11(1) requires the Commission to publish a referendum notice within 14 days after publication of 'the question or option referred to in Clause 9.' Clause 9 deals with multiple divergent Bills — the general question framing provision is Clause 10. The correct cross-reference should be to Clause 10. This error, if unremedied, creates an ambiguity about when the notice obligation is triggered
Clause 20 (2)	A referendum petition may be presented in the High Court by any person in accordance with Article 22(1) and (2) of the Constitution.	Clause 20(2) allows any person to file a referendum petition under Article 22(1) and (2) of the Constitution. The breadth of Article 22 standing — which includes petitions in the public interest — while constitutionally correct, must be balanced against the risk of a multiplicity of petitions on the same matter overwhelming the courts. The Bill's Clause 26(2) addresses this by allowing consolidation, but does not require it. The court's consolidation power should be made mandatory for petitions challenging the same referendum.

Clause 30 (1) (a)	An appeal from the High Court in a referendum petition shall lie to the Court of Appeal on matters of law only and shall be — (a) filed within fourteen days of the decision of the High Court; and	The Memorandum states that appeals to the Court of Appeal are to be filed within 30 days of the High Court decision. However, Clause 30(1)(a) of the Bill states 14 days. This inconsistency between the substantive provisions and the explanatory memorandum should be resolved.
Clause 30 (2)	An appeal under subsection (2) shall act as a stay of the results of a referendum until the appeal is heard and determined.	Clause 30(2) refers to 'subclause (2)' for appeals acting as a stay — but this is itself subsection (2). The intended reference appears to be Clause 30(1). This circular self-reference is a clear drafting error. Clause 25(1) provides that filing a referendum petition automatically stays the declared results. Given the mandatory 30-day determination deadline in Clause 29(1)(b), the petition stay alone is reasonably tight. The more significant concern is Clause 30(2): an appeal to the Court of Appeal — filed within 14 days of the High Court decision — also triggers an automatic stay for up to 60 further days, with no threshold requirement. The combined maximum stay period across petition and appeal is approximately 104 days. Any person may initiate this chain with no prima facie showing of merit, creating potential for vexatious litigation that delays implementation of a democratically-approved result by over three months. The Bill should require a demonstrated prima facie case before the Clause 30(2) appeal stay takes effect.
PART III and IV		Parts III and IV in the body of the document share the same Roman numeral label (both titled Part III), a drafting error that will cause interpretive confusion and should be corrected.

RECOMMENDATIONS

The following clauses have not been included in the Bill but are indeed critical for the realization of a robust legal framework for conducting referenda in Kenya:

- Absence of State Neutrality Provisions

This is the most serious policy gap in the Bill. The Venice Commission Code (Guideline I.3.1) is explicit that while governments need not be entirely passive, public authorities must not use State resources for one-sided campaigning or to excessively influence the outcome. Kenya's constitutional history demonstrates that incumbency advantage in referendum campaigns is a live risk.

The Bill contains no provision prohibiting or regulating the use of public resources, state media, government vehicles, public officer time, or county government resources in referendum campaigns. The Election Campaign Financing Act provisions incorporated by Clause 14(2) apply to referendum committees(which are not mandatory- Clause 12 (1)) — not to the State itself as a campaigner. This creates a structural imbalance that the Bill must address.

- Digital Era Gaps — Disinformation, Online Campaigning, Digital Signatures

The Bill was introduced in February 2026 but contains no provisions addressing:

Online and social media campaign regulation: The Elections Act's media provisions are designed for broadcast and print media. Referendum campaigns increasingly play out on WhatsApp, X (formerly Twitter), Facebook, YouTube and TikTok. The Bill's incorporation of the media provisions of the Elections Act does not address platform-based campaign communications, algorithmic amplification, or coordinated inauthentic behaviour.

Disinformation response: There is no provision requiring IEBC to establish a rapid response mechanism for referendum disinformation, no role for the Communications Authority, and no framework for engaging platforms on content moderation during referendum periods.

- Absence of a Post-Referendum Evaluation Mechanism

The Bill provides for IEBC to declare results (Clause 16) and retain documents (Clause 36), but includes no post-referendum evaluation, report, or lessons-learned mechanism. The Venice Commission Code recommends that referendum administrators publish comprehensive post-event reports. This is important for institutional learning, democratic accountability, and civil society oversight.

- Referendum Code of Conduct — Substantive Gap

Clause 40 simply incorporates the Elections Act's Electoral Code of Conduct by reference. This is adequate for basic conduct standards but does not address referendum-specific conduct issues such as: the conduct of promoters of a popular initiative, the obligations of county governors and MCAs who have significant influence over county assembly consideration, the obligations of Cabinet Secretaries and public officers during a referendum campaign period, or the obligations of social media platforms operating in Kenya during a referendum.

CONCLUSION

The Referendum Bill, 2026 is a necessary and largely well-intentioned piece of legislation that addresses a genuine gap in Kenya's democratic infrastructure. Its consolidation of referendum law into a standalone statute, its plain-language question requirements, its extended campaign period, and its judicial oversight framework are genuine contributions to Kenya's constitutional democracy.

However, the Bill arrives at a moment when the global standards for referendum conduct — shaped by the Venice Commission's 2022 revised Code — have moved significantly beyond where the Bill currently sits. The absence of State neutrality provisions, the gap on digital campaigning and disinformation, the weak public participation framework, and the disproportionate automatic stay provision are not minor technical issues. They are structural vulnerabilities that, if unaddressed, could enable a future referendum to be lawfully conducted under this Act while nonetheless failing to meet the substantive standards of democratic legitimacy.

Kenya's constitutional history since 2010 has been marked by contestation over the boundaries of constitutional change — the BBI litigation being the most significant example. The Referendum Bill has the potential to either strengthen or weaken those boundaries, depending on the amendments made during its passage through Parliament. The recommendations in this review are intended to close the most significant gaps and produce a statute that not only consolidates existing law but elevates Kenya's referendum framework to meet 21st century democratic standards.

Centre for Multiparty Democracy Kenya

25th May 2026

To the Clerk of the Senate
Parliament Building
P.O.BOX 41842-00100
Nairobi.

Re: The Referendum Bill, 2026 (Senate Bills No.3 of 2026)

The Centre for Multi-Party Democracy (CMD-Kenya) is a political parties-based membership organization, whose mandate is to enhance multiparty democracy and strengthen the institutional capacity of political parties in Kenya through policy influence and capacity building.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145(5) of the Senate Standing Order, CMD-Kenya hereby submits its memoranda on the Referendum Bill, 2026 as follows:

Title and Clause in the Bill	Current Provision in the Bill	Proposed Amendments by CMD-Kenya Political Parties.	Justification
Clause 10 Referendum question	(1) Where the Commission- (a) Receives a notification from the President under Article 256 (5)(a); or (b) Is notified by the speaker of one or both houses of parliament that the draft Bill considered under section 8 has not been passed, the commission shall, within twenty-one days, frame the question or option to be determined during the referendum.	We propose that the referendum question in clause 4 be provided in braille.	This is to promote inclusivity and ensure that all citizens, regardless of their visual impairment have the same opportunity to participate in civic processes

	(2) The Commission may consult Parliament or in the case of a popular initiative, the promoters of the initiative, when framing the question or option. (3) The commission shall- (a) Publish the question or option in the *Gazette*, in the electronic media, and in a newspaper of national circulation; and (b) conduct civic education and public sensitization on the referendum through various platforms including local radio and television stations, social media and public forums. (4) A referendum question shall- (a) be written in plain language in both English and Swahili using short sentences, simple and direct wording, and familiar terms without jargon or technical language; (b) be written in neutral language and avoid words that suggest judgement or opinions, either explicitly or implicitly; (c) contain information that is factual, and shall describe the issue and the options clearly and accurately ;and (d) 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 (5) The commission may assign such symbol for each answer to the referendum question or opinion as it may consider necessary	We propose that specific provisions are put in place to take care of persons with disabilities, persons in areas of low connectivity and the elderly voters.	To respond to and meet the constitutional provisions as provided under article 27.

	(6) A symbol assigned under subsection (5) shall not resemble that of a political party or of an independent candidate used in a preceding election.		
Clause 11 Notice of holding referendum	(1) The commission shall, within fourteen days after publication of the question or option referred to in section 9 published in the 'Gazette' , in the electronic media and newspaper of national circulation , a notice of the holding of the referendum specifying particulars set out in the sub section (2). (2) The notice shall contain the following particulars- (a) the nature of the referendum; (b) the referendum question and option of the answer or answers (c) the symbols assigned for each answer to the referendum questions or option (d) the day on which the referendum is to be held which shall be at least forty-five days from the date of the publication of the notice ; (e) the polling time of the referendum (f) the day by which the referendum committees must have registered with the commission; and (g) the day and time by which campaigns in support of or in opposition of referendum question or option shall start cease.	Replace the reference of section 9 with clause 10 of the bill.	This is to ensure reference is made to the correct clauses in the Bill to prevent any ambiguities. .. Clause 9 of the bill makes reference to divergent draft bills while clause 10 provides for the conduct of the referendum.
Clause16 Declaration and certification of referendum results	(1) Upon conclusion of the referendum, the Chairperson of the Commission shall within three days of the referendum- (a) Declare the referendum results through a notice published in the *Gazette*; and (b) Certify to the president whether the Bill has been approved in the referendum.	We propose an additional section under this clause - (d) to provide for publication of a post referendum evaluation report.	This is important: (i) for institutional learning, democratic accountability

	(2) If the Bill is approved in the referendum, the President shall assent to the Bill within thirty days of certification under subsection (1)(b).		and general public oversight. (ii) To meet international standards i.e. as in the Venice commission Code.
Clause 30 Appeals to the court of Appeal	(1) An appeal from the High Court in a referendum petition shall lie to the Court of Appeal on matters of law only and shall be – (a) Filed within fourteen days of the decision of the High court; and (b) Heard and determined within sixty days of the filing of the appeal. (2) An appeal under subsection (2)shall act as a stay of the results of a referendum until the appeal is heard and determined.	Replace the reference of subsection (2) with subsection (1)	Subsection (1) makes reference to the correct section that makes reference to appeals.

Centre for Multiparty Democracy Kenya

Clause 40 ~~Referendum code of~~ conduct	(1) The electoral code of conduct prescribed under Second ~~Schedule to the elections Act shall apply to a referendum~~ under this Act (2) Every referendum committee and every person who participates in a referendum under the constitution and this Act shall subscribe to and observe the Electoral Code of Conduct set out in the second schedule to the Electoral Act (3) Any person who contravenes in Electoral Code of Conduct commits an office (4) The trial of an offence under this section shall be without prejudice to any proceedings in or consequent upon a petition	Explicitly provide for the referendums code of conduct, to avoid cross-referencing with the electoral code of conduct. We propose for provision of explicit additions - (5) that address referendum specific issues such as, the conduct of the promoters of a popular initiative, obligations of County Governors and Members of County who have significant influence over county assembly consideration.	The cross-referencing may become stale as laws evolve. To adequately address the referendum code of conduct.

Frankline Mukwanja

Executive Director
Centre for Multiparty Democracy.

TRANSPARENCY INTERNATIONAL KENYA

A MEMORANDUM ON THE REFERENDUM BILL (SENATE BILLS NO. 3 OF 2026)

NAME OF ENTITY/PERSON: TRANSPARENCY INTERNATIONAL KENYA

DATE: 29TH MAY 2026

INTRODUCTION

Transparency International Kenya is a not-for-profit organization with the aim of developing a transparent and corruption-free society through good governance and social justice initiatives. TI-Kenya contributes to development of effective legal, policy, and legislative frameworks as well as the promotion of national values that support transparency and accountability. It is on this background that TI-Kenya submits this memorandum. As TI-Kenya our mandate is to promote integrity, transparency, and accountability, and we affirm this as our core mandate to the commitment to integrity and constitutionalism. We advocate for the adherence to the Constitution of Kenya and to the spirit of devolution, transparency, and separation of powers.

PART A: GENERAL COMMENTS

The principal object of this Bill is to consolidate the law relating to conduct of a referendum, to provide for a transparent and fair process in order to obtain a clear expression of the will of people, by establishing the procedures for the conduct of a referendum.

TRANSPARENCY INTERNATIONAL KENYA

The enactment of a standalone referendum law is a significant step toward operationalizing Articles 255, 256, and 257 of the Constitution of Kenya, 2010. The Bill, which is in alignment of Chapter 16 of the Constitution, addresses an existing legislative gap by providing procedures for constitutional referenda, county referenda, and referenda on other national matters.

However;

i) The public participation framework is insufficiently elaborated;
ii) The Bill does not sufficiently safeguard digital rights and data protection, particularly in relation to the collection, verification, publication, and storage of personal data obtained through popular initiatives. Given the constitutional right to privacy under Article 31 and the requirements of the Data Protection Act, stronger protections are necessary;
iii) Certain provisions of the Bill may create constitutional uncertainty or conflict with existing legislation. For instance, the provision allowing referenda on "any other matter" potentially exceeds the constitutional framework contemplated under Article 255, while the proposed retention and disposal timelines for referendum records appear inconsistent with the Public Archives and Documentation Service Act;
iv) As a drafting error, the Bill contains the label 'Part III' twice, which error could cause interpretative confusion;
v) Another drafting error is under Clause 30 and the memorandum of objects. The memorandum states that appeals to the Court of Appeal is to be filed within 30 days of the High Court decision. However, clause 30(1)(a) of the Bill states 14 days. This inconsistency between the substantive provisions and the explanatory memorandum should be resolved; and
vi) While Clause 40 makes reference to the Code of Conduct under the Elections Act, the code does not address referendum-specific conduct issues such as obligations of public officers, county governors/MCAs during a referendum campaign period.

Therefore, TI-Kenya recommends that Parliament comprehensively review the Bill and incorporate the proposed amendments to align the legislation with constitutional principles, democratic governance standards, and international best practices on referenda and direct democracy.

PART B: COMMENTS ON THE DRAFT PROVISIONS

TRANSPARENCY INTERNATIONAL KENYA

Clause	Comment/Proposal	Rationale/ Justification
4	Insert Sub-clause 3 as follows; *"The conduct of a referendum under this Act shall comply with the principles set out under Articles 10, 81, 86, and 232 of the Constitution."*	The incorporation of provisions from the Elections Act is key to ensure administrative consistency. However, the Bill should expressly provide that all principles under Article 81 and Article 86 of the Constitution relating to free and fair elections apply equally to referendum.
6	Insert under Clause 6, Sub-clause 2 as follows; *"(2A) In carrying out the verification exercise under subsection (2), the Commission shall ensure compliance with the Data Protection Act, 2019.* *(2B) The Commission shall publish, in a transparent and accessible manner;-* *(a) the criteria and methodology used in verification of signatures;* *(b) the total number of signatures submitted, verified, rejected and pending review;* *(c) the reasons for rejection of signatures, categorized in aggregate form; and*	The Bill provides for public inspection of signatures and verification by the Commission. While this promotes transparency, there is absence of safeguards regarding protection of personal data; verification methodology; auditability of the process; and independent oversight. Publication of personal identification information without adequate safeguards may violate the right to privacy under

	(d) anonymized verification reports and audit findings. ***(2C)*** *The Commission shall permit accredited independent observers, including representatives of civil society organizations, professional bodies and the media, to observe the verification process in accordance with regulations prescribed under this Act."*	Article 31 of the Constitution and the provisions of the Data Protection Act.
14	Insert the following new sub-clauses under Clause 14; *"**(3)** Every referendum committee shall maintain accurate and complete records of all contributions, donations, expenditures and other financial transactions relating to referendum campaigns.* ***(4)*** *A referendum committee shall disclose to the Commission, in the prescribed manner and within the prescribed timelines, all donations received and expenditures incurred during the referendum period.* ***(5)*** *The Commission shall publish periodic campaign financing reports submitted under this section in a manner accessible to the public.* ***(6)*** *The accounts of every referendum committee shall be subjected to an independent audit by a qualified auditor in accordance with regulations prescribed under this Act.* *(7) A public officer, State officer or public entity shall not use public resources, public funds, public office, government infrastructure or official functions to support or oppose any referendum question or option."*	TI-Kenya appreciates the attempt to regulate referendum committees and apply provisions of the Election Campaign Financing Act. However, the Bill fails to sufficiently address disclosure obligations; foreign funding; use of state resources; and real-time transparency. The absence of robust financing safeguards creates significant corruption and state capture risks.

18	Delete the clause.	The provision allowing Parliament to initiate referenda on "any other matter" is overly broad and potentially unconstitutional. The Constitution only expressly provides for referendum in specific contexts under Article 255, that is, any amendments touching on supremacy of the Constitution, Bill of Rights, Sovereignty of the people, devolution and the independence of the Judiciary. This clause may create an avenue for political mobilization outside constitutional intent and risks normalizing plebiscitary governance.
36	Adopt and apply Section 7 of the Public Archives and Documentation Service Act	The six-month retention period may be inadequate, particularly where litigation or investigations continue beyond that period. Moreso, the proposed clause refers to the application of the Public Archives and Documentation Service Act which gives a criteria for disposing off records as follows; ***"7. Destruction of public archives***

		Where the Director is of the opinion that any public archives or records are duplicated, or that for some other special reason any public archives or records should not be preserved, he may, ***in consultation with the Commission on Administrative Justice and with the approval of the Minister and of such other person as the Minister considers to be primarily concerned with public archives or records of the category in question, authorize the destruction or other disposal of such public archives or records:*** *Provided that nothing in this section shall empower the Director to authorize the destruction or other disposal of any public archives or records obtained otherwise than by transfer under section 5 of this Act, contrary to the terms or conditions on which they were obtained, or, if they were obtained by gift, during the lifetime of the donor without his consent."* The proposed automatic destruction of referendum records after six months is therefore inconsistent with the safeguards and procedural requirements set out under the Public Archives and Documentation

		Service Act. This creates potential ambiguity and conflict between the two legislative frameworks, which may create implementation challenges regarding the retention, preservation, and disposal of referendum records.
41	Insert a sub-clause under Clause 41 as follows; "***(4)*** *Before submitting any proposed regulations to Parliament for approval under this section, the Commission shall publish the draft regulations in the Gazette, on its official website and through at least one newspaper of national circulation, and invite public comments for a period of not less than thirty days.* ***(5)*** *The Commission shall consider and publish a summary of the comments received under subsection (4), including an explanation of whether and how the comments were incorporated into the final draft regulations.*"	The regulations of the Act should also be subjected to public participation before approval.

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TRANSPARENCY
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COUNTY ASSEMBLIES FORUM (CAF)

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CAF MEMORANDUM ON THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)

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

FROM: County Assemblies Forum

DATE: 29th May 2026 .

SUBJECT: CAF Memorandum on the Referendum Bill, 2026

1.0 INTRODUCTION

1. The County Assemblies Forum (CAF) is the coordinating body of the 47 County Assemblies in Kenya. The primary mandate of CAF is to promote networking and synergy among the 47 County Assemblies, coordinate intergovernmental relationsand enhance good practice in legislative development. Our Mission is to provide effective leadership and coordination of the 47 County Assemblies and through policy and legislative action, promote a conducive working environment for all itsmembers, and in that way deliver quality services to the people.

2. As a critical pillar of devolution, CAF is committed to legislative processes that strengthen direct democracy, safeguard the sovereignty of the people, protect devolved units, and ensure constitutional amendments that reflect genuine public will.

2.0. BACKGROUND

2.1. The Referendum Bill, 2026 seeks to consolidate and provide a comprehensive framework for the conduct of referenda in Kenya, covering constitutional amendments under Articles 255, 256 and 257, county-level referenda, and other national referenda..

2.2. The Bill establishes procedures for popular initiatives, framing of referendum questions, verification of signatures, conduct of campaigns, voting thresholds, and resolution of disputes. It assigns key roles to the Independent Electoral and Boundaries Commission (IEBC) and introduces referendum committees.

2.3. This Bill comes against the backdrop of judicial pronouncements in the BBI cases, which highlighted significant gaps in the legal framework for popular initiatives and referenda.

3.0. CAF's POSITION

3.1. CAF welcomes the Bill as a timely attempt to fill the legislative vacuum exposed by the courts in the BBI litigation.

3.2. Further, replacing the skeletal and fragmented provisions of the Elections Act with a single, predictable statutory mechanism reduces overall litigation risks and guarantees institutional consistency for the electoral commission.

3.3. It worth noting that, setting strict standards for clear, bilingual, and non-suggestive wording on ballots directly remedies the historical risk of manipulative framing.

3.4. CAF strongly welcomes Clause 17, which grants citizens the power to vote directly on local county laws, planning, and investment decisions. This operationalizes the core principle of devolution by handing direct oversight powers back to the sovereign populace

3.5. However, critical legislative gaps remain. The Bill does not explicitly ban state officers or public resources from driving popular initiatives, leaving a severe vulnerability to executive capture. Furthermore, the lack of a mandatory "subject-matter relatedness" requirement means a single massive omnibus bill could still bundle unrelated topics, leaving voters with a "Hobson's choice".

3.6. Lastly, verifying millions of signatures within 90 days without explicit forensic authorization risks turning signature checking into a superficial numbers game rather than an authentic confirmation of voter consent.

3.7. In light of the above, CAF urges the Senate to adopt the proposed amendments set out in the Summary Matrix.

4.0 SUMMARY MATRIX OF THE PROPOSED AMENDMENTS.

	CLAUSE	AMENDMENT	JUSTIFICATION
1.	*Clause 6.* *6. (1) For the purpose of a referendum to amend the Constitution by popular initiative pursuant to Article 257 of the Constitution, the promoters of a popular initiative shall deliver to the Commission, the draft Bill together with –* *a) information on name and national identification number of each registered voter supporting the initiative in the prescribed form; and* *b) signatures of the registered voters appended against the respective voter's information under paragraph (a).* *(2) The Commission shall, within ninety days of receipt of the draft Bill and supporting signatures, –*	Amend section 6 (2) to include a new sub section to state as follows:- *"(2) The Commission shall, within ninety days of receipt of the draft Bill and supporting signatures, –* *a) avail the initiative and supporting signatures for inspection by the public at its offices, or electronically through its public portal or such other medium the Commission may approve;* *b) verify that the initiative is supported by at least one million registered voters;* *c) satisfy itself that the initiative meets the requirements of Article 257 of the Constitution; and* ***d) verify the authenticity of the signatures using biometric data, forensic methods and such other technological means as***	a) This will ensure it addresses the BBI judgment concerns on proper verification and ensures authenticity of signatures in popular initiatives.

	a) avail the initiative and supporting signatures for inspection by the public at its offices, or electronically through its public portal or such other medium the Commission may approve; *b) verify that the initiative is supported by at least one million registered voters;* *c) satisfy itself that the initiative meets the requirements of Article 257 of the Constitution; and* *d) publish a report on the verification exercise.* *(3) If the Commission finds that the requirements of Article 257 of the Constitution have not been met, it shall –* *(a) declare that the initiative has failed to meet the threshold under Article 257;* *(b) notify the promoters, in writing and within seven days of the verification exercise, of its decision under paragraph (a); and*	***may be prescribed by regulations made under this Act*** *e) publish a report on the verification exercise.* "	

	(c) give such directions as are necessary to ensure compliance with Article 257. (4) The promoters of a popular initiative may resubmit the draft Bill and supporting signatures upon complying with the Commission's directions as issued in subsection (3). *(5) If the Commission finds that the requirements of subsection (3) have been met, it shall, pursuant to Article 257(5) of the Constitution, submit the draft Bill to each county assembly for consideration.*		
2.	***Section 7*** *(1) Each county assembly shall –* *(a) approve the draft Bill and deliver to the Speakers of both Houses a copy of the draft Bill together with the certificate prescribed in the First Schedule 1 certifying that the county assembly has approved* *it; or* *(b) reject the draft Bill and deliver, to the Speakers of both Houses, the certificate prescribed*	Amend the Section by adding a new section 7(3):- "Section 7 *(1) Each county assembly shall –* *(a) approve the draft Bill and deliver to the Speakers of both Houses a copy of the draft Bill together with the certificate prescribed in the First Schedule 1 certifying that the county assembly has approved*	a) This amendment operationalizes and codifies the structural threshold mandated by Article 257(7) of the Constitution. It shifts the burden from a fragmented tracking exercise to a mandatory joint parliamentary accounting framework. By providing a clear timeline for

	in the Second Schedule certifying that the county assembly has rejected the draft Bill, within three months after the date it was submitted by the Commission. *(2) If the Speakers of the two Houses do not receive a response from a county assembly within the three months* *stipulated under Article 257 (6), the Bill shall be deemed as not approved in respect of that county assembly.*	*it; or* *(b) reject the draft Bill and deliver, to the Speakers of both Houses, the certificate prescribed in the Second Schedule certifying that the county assembly has rejected the draft Bill, within three months after the date it was submitted by the Commission.* *(2) If the Speakers of the two Houses do not receive a response from a county assembly within the three months* *stipulated under Article 257 (6), the Bill shall be deemed as not approved in respect of that county assembly.* ***(3) A draft Bill to amend the Constitution under this section shall only be introduced in Parliament under Article 257(7) of the Constitution if it has been approved by a majority of the county assemblies, being at least twenty-four (24) county assemblies.*** ***(4) The Speakers of both Houses of Parliament shall jointly review the certificates delivered under subsection (1) and compile a***	compiling a consolidated compliance report and certifying the absolute statutory target of 24 county assemblies, the amendment creates a legally secure barrier that prevents premature legislative introductions and avoids the risk of post-facto constitutional litigation.

		consolidated compliance report within fourteen (14) days after the expiry of the three-month period specified under subclause (1). *(5) Where the consolidated compliance report compiled under subsection (3) indicates that the draft Bill has failed to secure the approval of at least twenty-four (24) county assemblies, the Bill shall stand lapsed, and the Speakers of both Houses shall jointly publish a notice to that effect in the Gazette.""*	
3.	*Section 9(2)* *All opinions and recommendations that are not in opposition may be incorporated into a single Bill.*	Remove clause	(a) Clause 9(2) allows opinions that are "not in opposition" to be incorporated into a single Bill (b) . The lack of a rigorous test for "relatedness" means unrelated amendments (e.g., judicial reform bundled with agricultural policy) could still be forced on voters as a single package

4.	*Section 10* *10. (1) Where the Commission –* *(a) receives a notification from the President under Article 256(5)(a); or* *(b) is notified by the Speaker of one or both Houses of Parliament that the draft Bill considered under section 8 has not been passed, the Commission shall, within twenty-one days, frame the question or option to be determined during the referendum.* *(2) The Commission may consult Parliament or in the case of a popular initiative, the promoters of the initiative, when framing the question or option.* *(3) The Commission shall –* *(a) publish the question or option in the Gazette, in the electronic media, and in a newspaper of national circulation; and* *(b) conduct civic education and public sensitisation on the referendum through various platforms including local radio and television*	Amend section 10(4) to include:- *":(4) A referendum question shall –* *(a) be written in plain language in both English and Swahili using short sentences, simple and direct wording, and familiar terms without jargon or technical language;* ***(b) be written Braille, sign language, and where necessary*** *(c) be written in neutral language and shall avoidwords that suggest a judgement or opinion, either explicitly or implicitly;* *(d) contain information that is factual, and shall describe the issue and the options clearly and accurately; and* *(e) 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.* ***(f) confined to a single subject matter"***	(a) Enhances linguistic inclusion and accessibility, ensuring meaningful public participation for persons with disabilities. (b) Confining to a single subject matter prevents omnibus "Hobson's choice" referenda and protects voter autonomy

	stations, social media and public forums. *(4) A referendum question shall –* *(a) be written in plain language in both English and Swahili using short sentences, simple and direct wording, and familiar terms without jargon or technical language;* *(b) be written in neutral language and shall avoidwords that suggest a judgement or opinion, either explicitly or implicitly;* *(c) contain information that is factual, and shall describe the issue and the options clearly and accurately; and* *(d) 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.*		
5.	***Section 10(3)(b)*** *10* *(3) The Commission shall –* *(a) publish the question or option in the Gazette, in the electronic media, and in a newspaper of*	Add a new clause 10(A) to state:- *"Public Participation and Civic Education (1) The Commission shall, in consultation with the promoters and other stakeholders, develop and implement a comprehensive civic education*	(a) CAF is concerned that the lack of timelines to conduct civic education might result sensitization not being effective.

	national circulation; and *(b) conduct civic education and public sensitisation on the referendum through various platforms including local radio and television stations, social media and public forums.*	*programme at least sixty (60) days before the referendum.* *(2) The Commission shall ensure the draft Bill and proposed referendum questions are printed and distributed to the lowest administrative units, including in accessible formats like Braille and local dialects"*	(b) Further, the proposed amendment will judicial concerns regarding systemic lack of meaningful public engagement. Placing the fiscal and operational burden on the Commission rather than private promoters ensures a balanced, non-partisan, and legally compliant outreach process.
6.	**Section 41** *(1) The Commission may make regulations generally for the better carrying out of the purposes and* *provisions of this Act.* *(2) The regulations under subsection (1) may prescribe –* *(a) the forms required under this Act;* *(b) guidelines for formulation of a draft Bill for amendment of the Constitution through a popular initiative;*	Amend Section 41 to include A new section 41(A) to state:- **41A. Independence of Popular Initiative** *"No State officer, including the President, Deputy President, or member of the Executive, shall initiate, sponsor, or fund a popular initiative under Article 257.* *(2) Any contravention of subsection (1) shall render the entire process null and void.* *(3) The Commission shall, in every verification*	(a) Directly codifies and implements the Supreme Court's ruling that popular initiatives under Article 257 must remain exclusively citizen-driven. A State officer cannot simultaneously act as both a player and a referee, ensuring executive power cannot usurp mechanisms reserved for direct public

	(c) forms and procedures for collection and submission of supporting signatures to the Commission; *(d) guidelines for verification that a popular initiative* *meets the threshold under Article 257 of the Constitution;* *(e) registration and conduct of referendum committees;* *(f) the conduct of a referendum generally; and* *(g) any other matter required to be prescribed under this Act.* *(3) The power to make regulations shall be exercised only after a draft of the proposed regulations has been approved by both Houses of Parliament.*	*report, certify that the initiative was genuinely citizen-driven."*	sovereignty.

Thank you.
Yours sincerely,

HON. SETH MWATELA KAMANZA
CHAIRPERSON CAF

Subject Fwd: a contribution on the referendum bill of the Senate,Senate bill no.3 of 2026.

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlahrc <senatejlahrc@parliament.go.ke>

Date Tuesday June 2, 2026 10:26:41 AM

Regards

Clerk of the Senate/ Secretary, Parliamentary Service Commission |
Parliament of Kenya |
Tel: + 254 (20) 2848000 | Ext. 3282 |
Email: clerk.senate@parliament.go.ke |
www.parliament.go.ke |

From: robert <simiyuur888@gmail.com>
To: clerk <clerk.senate@parliament.go.ke>
Date: Friday, 22 May 2026 5:32 PM EAT
Subject: a contribution on the referendum bill of the Senate,Senate bill no.3 of 2026.

FRIDAY 22ND.MAY,2026.
ROBERT S.KHAEMBA.I am a former member of staff of Mwalimu National Sacco of Upper-Hill,Nairobi,Kenya.
to;
THE STANDING COMMITTEE ON JUSTICE ,LEGAL AFFAIRS AND HUMAN RIGHTS.THIRTEENTH PARLIAMENT.THE SENATE.
Dear Honorable members of the Justice Committee,Ladies and gentlemen,
REF:SUBMISSION OF MEMORANDA AND PUBLIC HEARINGS.THE REFERENDUM BILL,2026[SENATE BILLS NO.3 OF 2026]
I do write to give my contribution on the referendum bill in the Senate in Kenya.
How can we ensure the rules and regulations for the process and management of the referendum in our country kenya are effective?

1. IEBC must plan a good process to ensure kenyans forward to IEBC as many questions that should be discussed and such answers be a part of the constitution.
2. Kenyans should be given information on radio,television and the internet and also in the newspapers on how they can attend meetings,and how they can write to the Senate,Parliament.
3. Referendum questions should be accepted by Parliament and Senate every month,so long as the questions are important.The committee recieving questions should sit atleast two sittings every week.
4. Referendum voting at county level on investments and development should be done at all counties.Constitutional amendments should be made urgently.

especially on elections to put a stop to a constitutional crisis or our country degenerating into a failed state.

5. A countrywide referendum should be done every 4 years before the next national elections. Such a referendum should check all chapters in the constitution.

I will write again to give more contributions on the referendum bill, no.3 of 2026.

Please do work quickly to ensure kenyans can also call on mobile phones in the early morning hours upto 11am.

YOURS FAITHFULLY,

Robert S. Khaemba. Webuye, Kenya.

COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way
P.O. BOX 40401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@icog.go.ke

THE SENATE
RECEIVED
02 JUN 2026
DEPUTY CLERK

Our Ref: COG/6/12 Vol. 15 (91)

29th May 2026

THE SENATE
RECEIVED
02 JUN 2026
CLERK'S OFFICE
P.O. Box 41842-00100

03 JUN 2026

J.M Nyegenye, CBS
Clerk of the Senate
The Senate
Clerk's Chambers
NAIROBI

Dear Clerk,

LEGISLATIVE MEMORANDUM ON THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)

Greetings from the Council of Governors.

We refer to the above matter and your letter **Ref. SEN/DGAC/DGC/JLAHR/2026/35(f)** dated **7th May 2026,** calling for submission of comments on the Referendum Bill, 2026 (Senate Bills No. 3 of 2026)

In view of the above, the Council wishes to forward for your consideration the attached memorandum.

Please accept the assurance of our highest esteem and consideration.

Yours sincerely,

Mary Mwiti, EBS
Chief Executive Officer

① DGAC ✓
DG
Kindly deal
02/06/2026

② HOD - Governance
PLA - JLAHRC
Kindly deal
03/06/2026



LEGISLATIVE MEMORANDUM ON THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)

TO

THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

FROM

THE COUNCIL OF GOVERNORS

A. INTRODUCTION

THE COUNCIL OF GOVERNORS,

In recognition of the fact that sovereign power of the state is exercised at two levels of government, that is, the National Government and the County Governments, whose distinctness is recognized by Articles 6 (2) and 189 of the Constitution;

In further recognition that Chapter Sixteen of the Constitution stipulates the pathways for amending the Constitution; and

Aware that the **Referendum Bill, 2026 (Senate Bills No. 3 of 2026) (hereafter referred to as "the Bill"** seeks to provide a legal framework for the conduct of referenda in Kenya. It sets out the processes on how referenda are initiated, organized, conducted and challenged in court.

Having reviewed the Bill, the Council notes as follows:

A. GENERAL COMMENTS

The Bill seeks to establish a comprehensive legal framework governing referenda in Kenya and attempts to operationalize constitutional amendment procedures under Articles 255–257. This addresses a longstanding legislative gap. The Bill generally aligns with constitutional requirements by: recognizing both parliamentary and popular initiatives; providing procedures for verification of signatures; providing for county assembly consideration; establishing referendum procedures and dispute resolution mechanisms.

However, several provisions raise constitutional and legal concerns which we have recommended specific amendments below. We also urge the Senate to provide for the procedures for both popular and parliamentary initiatives as separate parts in the Bill for clarity purposes.

B. SPECIFIC AMENDMENTS

CLAUSE	PROVISION OF THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
5. Submission of a Bill to the Commission pursuant to Article 256(5)(a)	5. Whenever it is necessary to hold a referendum to amend the Constitution in relation to a matter specified in Article 255 (1) of the Constitution, the President shall, within thirty days of the	Amend to read as follows: **5. Pursuant to Article 256(5)(a) of the Constitution, if a Bill to amend the Constitution through Parliamentary Initiative proposes an amendment relating to a matter specified in Article 255 (1), the President shall, within thirty**	To align it to the provisions of Article 256 on the procedure for amendment of the Constitution through parliamentary initiative.

COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way
P.O. BOX 40401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@cog.go.ke

THE SENATE
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02 JUN 2026
DEPUTY CLERK

Our Ref: COG/6/12 Vol. 15 (91)

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CLERK'S CHAMBERS

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J.M Nyegenye, CBS
Clerk of the Senate
The Senate
Clerk's Chambers
NAIROBI

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Mary Mwiti, EBS
Chief Executive Officer

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Duly
Kindly deal
02/06/2026

② HOD - Governance
PLP - JLAHRL
Kindly deal
03/06/2026



LEGISLATIVE MEMORANDUM ON THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)

TO

THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

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Aware that the **Referendum Bill, 2026 (Senate Bills No. 3 of 2026) (hereafter referred to as "the Bill"** seeks to provide a legal framework for the conduct of referenda in Kenya. It sets out the processes on how referenda are initiated, organized, conducted and challenged in court.

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However, several provisions raise constitutional and legal concerns which we have recommended specific amendments below. We also urge the Senate to provide for the procedures for both popular and parliamentary initiatives as separate parts in the Bill for clarity purposes.

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CLAUSE	PROVISION OF THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
5. Submission of a Bill to the Commission pursuant to Article 256(5)(a)	5. Whenever it is necessary to hold a referendum to amend the Constitution in relation to a matter specified in Article 255 (1) of the Constitution, the President shall, within thirty days of the	Amend to read as follows: **5. Pursuant to Article 256(5)(a) of the Constitution, if a Bill to amend the Constitution through Parliamentary Initiative proposes an amendment relating to a matter specified in Article 255 (1),** the President shall, within thirty	To align it to the provisions of Article 256 on the procedure for amendment of the Constitution through parliamentary initiative.

	receipt of the Bill from Parliament, notify the Commission to conduct a referendum within ninety days.	**days of the receipt of the Bill from Parliament, request the Commission to conduct a national referendum for approval of the Bill within ninety days, before assenting to the Bill.**	
7. Consideration of the draft Bill by County assemblies.	7 (2) If the Speakers of the two Houses do not receive a response from a county assembly within the three months stipulated under Article 257 (6), the Bill shall be deemed as not approved in respect of that county assembly.	Amend to read as follows: **7 (2) If the Speakers of the two Houses do not receive a response from a county assembly within the three months stipulated under Article 257 (6), the Bill shall be deemed approved in respect of that county assembly.**	A plain reading of Articles 257(5) and (6) of the Constitution indicates that a County Assembly is required to consider and either approve or reject a draft Bill within three months of its receipt. The constitutional provisions envisage a time-bound process intended to facilitate the progression of a popular initiative and avoid undue delays in constitutional amendment procedures. Consequently, where a County Assembly fails to make a determination on the draft Bill within the stipulated constitutional timeline, such inaction should not be construed as a rejection of the Bill. The Council is of the view that, given the citizen-driven nature of a popular initiative, failure by a County Assembly to make a decision within the prescribed three months should be deemed as approval of the Bill for purposes of transmitting and progressing the constitutional amendment process before Parliament.

		Introduce the following new clause 7(3) after 7(2) to read as follows: **7(3). Each County Assembly shall publicise the Bill and facilitate public participation before passage**	To provide for public participation at the county assembly level.
8. Consideration of the draft Bill by Parliament	8(5) If one or both Houses of Parliament fail to pass the Bill, the Speaker of the relevant House shall— (a) notify the Commission its resolution not to pass the Bill; and (b) the proposed amendment shall be submitted to the people in a referendum.	Amend clause 8(5) to read as follows: **8(5) If one or both Houses of Parliament fail to pass the Bill within three months from when the Bill was introduced as stipulated in Article 257(7), the Speaker of the relevant House shall—** **(a) notify the Commission its resolution not to pass the Bill; and** **(b) the proposed amendment shall be submitted to the people in a referendum.**	Noting that Article 257(5) of the Constitution accords County Assemblies a period of three months within which to consider a draft Bill under a popular initiative, it is imperative, for purposes of maintaining parity, procedural fairness, and consistency within the constitutional amendment process, that Parliament be allocated a similar timeline for consideration of the Bill. Equal timelines would ensure that no stage of the constitutional amendment process is subjected to undue delay and would uphold the constitutional intention of facilitating an efficient and predictable process for constitutional reform. We further opine that failure by a House of Parliament to make a decision within the prescribed three months should be deemed as approval of the Bill for purposes of transmitting and progressing the draft Bill to the people for referendum.
	8. (6) If a House of Parliament does not pass or reject the Bill within eighteen months, the Bill shall be deemed as not passed in respect of that House.	Amend to read as follows: **8. (6) If a House of Parliament does not pass or reject the Bill within three months, the Bill shall be deemed have been passed in respect of that House.**	

20. Referendum petitions.	20. (5) A referendum petition shall be heard and determined within thirty days of lodging the petition.	Amend to read as follows: **20. (5) A referendum petition shall be heard and determined within sixty days of lodging the petition.**	The Council opines that referenda are complex nationwide exercise that may involve scrutiny and recounts of votes and thus may not realistically be concluded within 30 days.
24. Composition of the Bench	24. (1) A referendum petition shall be heard and determined by a bench of three judges appointed by the Chief Justice.	Amend clause 24 to read as follows: **24(1). A referendum petition shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.**	To align to the provisions of Article 165(4) of the Constitution.

Prof. PLO-Lumumba

LL.D, D. Litt (hc), D.Sc (hc) FCPS (K), SC (K), FKIM, FAAS (hon)

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E-mail: plolumumbal@gmail.com
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Advocate of the High Courts of Kenya and Tanganyika and Certified International Mediator

4th Avenue Towers, 15th Floor,
Suite #3, 4th Ngong Avenue
P.O. Box 10676 - 00400
NAIROBI - KENYA

OUR REF:	**YOUR REF:**	**DATE:**
PLO/GEN/PER/2026	TBA	2nd June, 2026

Ms. Ruth Nyaberi
Chairperson
The Parliamentary Affairs & Legislation Directorate Committee
Law Society of Kenya
South C, Off Red Cross Road
P.O. Box 72219 – 00200
NAIROBI – REPUBLIC OF KENYA

Chairperson

RE: SUBMISSION OF COMMENTS ON THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)

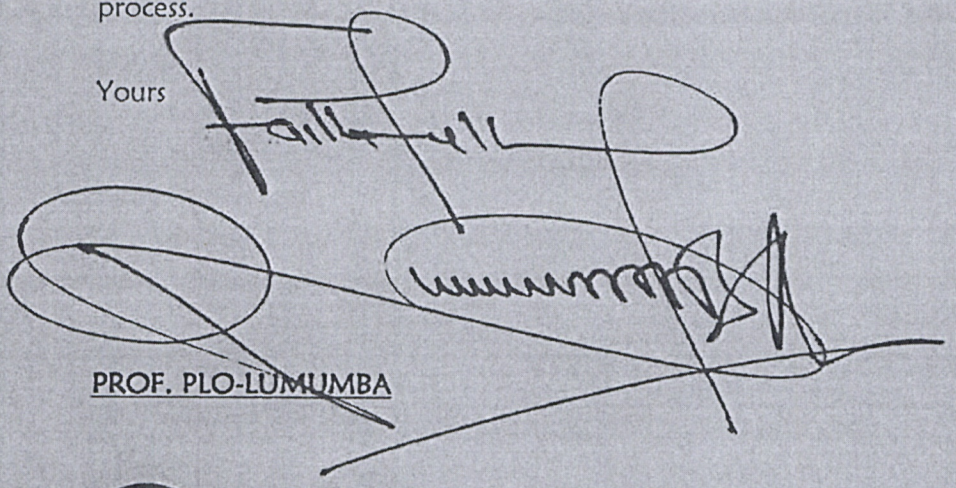
I refer to the notice issued by the Law Society of Kenya dated 26th May 2026 inviting members to submit comments on the Referendum Bill, 2026 (Senate Bills No. 3 of 2026), following its First Reading in the Senate and committal to the Senate Standing Committee on Justice, Legal Affairs and Human Rights.

Enclosed herewith are my comments on the Bill for your consideration and onward transmission to the Senate Standing Committee on Justice, Legal Affairs and Human Rights.

While the Bill is necessary in principle, the enclosed comments raise concern that, in its present form, the Bill does not provide sufficient constitutional safeguards against the misuse of referendum processes, particularly in relation to constitutional amendment referenda. A referendum law must not merely facilitate the holding of referenda. It must also protect the Constitution from rushed processes, bundled questions, inadequate civic education, opaque financing and elite-driven amendment initiatives clothed in the language of popular sovereignty.

I trust that the enclosed comments will be considered in the ongoing legislative process.

Yours



PROF. PLO-LUMUMBA

ENCLOSURE

OUR REF: IEBC/DLS/CORR/05/2026
YOUR REF: SEN/DGAC/DGC/JLAHRC/2026/35(b)

27th May, 2026

J. M. Nyegenye, CBS
Clerk of the Senate
P. O. Box 41842 - 00100
NAIROBI

Email: clerk.senate@parliament.go.ke

Dear Nyegenye,

RE: SUBMISSIONS ON THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)

We acknowledge receipt of your letter Ref. SEN/DGAC/DGC/JLAHRC/2026/35(b) dated 7th May, 2026 on the above subject matter.

As requested, the Commission forwards its memorandum on the Bill for your consideration.

For any clarification or further information please contact the undersigned.

Yours Sincerely,

Moses Sunkuli, OGW
Ag. Commission Secretary/CEO

Encl. (1) Memorandum

address: Anniversary Towers, 6th Floor, off University Way, P.O Box 45371-00100 Nairobi, Kenya
phone: +254 (0) 2769000, fax: +254 (0) 20 2219185, email: info@iebc.or.ke, website: www.iebc.or.ke

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

MEMORANDUM ON

THE REFERENDUM BILL, 2026

(SENATE BILLS NO. 3 OF 2026)

Dated 27TH MAY, 2026

Independent Electoral & Boundaries Commission (IEBC)
Anniversary Towers, 6th Floor, Off University Way
P.O. Box 45371 – 00100, Nairobi – Kenya
Telephone: + 254 (0) 20 29925

A. Introduction

1. The Independent Electoral and Boundaries Commission (IEBC) hereinafter referred to as "the Commission" is a Constitutional Commission established under Article 88 of the Constitution of Kenya.

2. Article 88(4) Constitution of Kenya outlines its general mandate to conduct and supervise referenda and elections to any elective body or office established by the Constitution and any other elections as prescribed by an Act of Parliament.

3. Chapter 16 of the Constitution speaks to amendment of the constitution under which the Commission is responsible for the conduct of a national referendum.

4. Further, in the case of amendment by popular initiative, the Commission has the mandate to ensure that the requirements of Article 257 are met by the presenters of an amendment bill before submission of the bill to each county assembly for consideration.

5. Part V of the Elections Act, Cap 7 contains provisions on the conduct of a referendum. It is noteworthy however that the part does not conclusively deal with all matters that pertain the conduct of a referendum.

6. Consequently, the Commission developed a Referendum Bill and submitted it to Parliament for consideration. However, it has not been considered to date. The Commission therefore welcomes the Referendum Bill, 2026 as an important initiative to establish a comprehensive legal framework for the conduct of referenda and provide clarity on the referendum process.

B. Purpose of the Bill

7. The Referendum Bill, 2026 seeks to consolidate the law relating to the conduct of a referendum and provide clarity on the process by establishing the necessary procedures.

8. We welcome the Bill and wish to make comments as outlined below;

C. General Comments

9. We note that the bill provides for not only constitutional referenda under Articles 255, 256 and 257 of the Constitution but also to County referenda and any other referendum on any matter and a referendum by Parliamentary resolution.

10. The Commission notes the proposals made in the Bill. However, we note that there are certain clauses that raise constitutional and legal questions and suggest an inquiry/ review of the proposals reflected in the matrix below.

D. Specific Comments

11. The Commission has endeavored to highlight its submissions in matrix format on the relevant clause of the Bill, comments on the same and proposals for review where necessary.

TABLE: MATRIX OF IEBC'S COMMENTS ON THE REFERENDUM BILL, 2026

S No.	Clause of the Bill	IEBC Observations and Comments	Recommendation
1.	Clause 3 – Application of the Act This Act shall apply to the conduct of— (a) a referendum to amend the Constitution under Articles 255, 256 and 257 of the Constitution; (b) county referenda; and (c) a referendum on any other issue other than amendment of the Constitution.	While paragraph (a) is clearly anchored in the Constitution, paragraphs (b) and (c) raise questions regarding the constitutional basis for county referenda and referenda on matters other than constitutional amendment. This is further reinforced under clauses 17 and 18 of the bill. Clarify the constitutional basis and legal effect of county and other non-constitutional referenda, or limit the scope of the Act to referenda expressly contemplated under the Constitution.	(1) Whenever it is necessary to hold a national referendum on any issue, other than a referendum to amend the constitution, the President may, by notice in the Gazette, proclaim and direct the Commission to conduct a referendum. (2) A county government may conduct a local referendum on among other local issues— (a) county laws and petitions; or (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 is to take place. (3) The Elections Act, 2011 shall apply, with necessary modifications, with regard to a local referendum. (4) Where an issue to be decided in a referendum has been referred to the Commission under subsection (1), the Commission shall conduct a referendum in accordance with this Act.
2.	Clause 8 – Consideration of the draft Bill by Parliament (1) If the draft Bill is approved by a majority of the county assemblies, it shall be introduced in Parliament pursuant to Article 257(7) of the Constitution.	The clause provides a framework for Parliamentary consideration of a popular initiative. It incorporates public participation. The Commission notes that Article 257 does not expressly require	While the proposed provision promotes the constitutional values of public participation and transparency, consideration may be given to clarifying that such public discussion shall not constitute an additional substantive requirement capable of invalidating the amendment process

S No.	Clause of the Bill	IEBC Observations and Comments	Recommendation
	(2) Each House shall publicize the Bill and facilitate public discussion before passage. (3) If the Bill is supported by a majority of the members of each House of Parliament, the Speakers of the two Houses shall jointly submit the Bill to the President. (4) The President shall, if the Bill — (a) relates to a matter specified under Article 255(1) of the Constitution, within thirty days, notify the Commission to conduct, within ninety days, a national referendum for approval of the Bill, before assenting to the Bill; or (b) does not relate to a matter specified under Article 255(1) of the Constitution, assent to the Bill within seven days. (5) If one or both Houses of Parliament fail to pass the Bill, the Speaker of the relevant House shall— (a) notify the Commission its resolution not to pass the Bill; and (b) the proposed amendment shall be submitted to the people in a referendum. (6) If a House of Parliament does not pass or reject the Bill within eighteen months, the Bill shall be deemed as not passed in respect of that House.	Parliament to facilitate a public discussion for a popular initiative, In addition, the eighteen-month period for Parliamentary consideration is too long and may cause undue delay for citizens who have already met the threshold for a popular initiative.	where Parliament has otherwise complied with Article 257 of the Constitution. In addition, it would be prudent to introduce a requirement to obligating Parliament to conduct public participation using the exiting mechanisms with clear procedures and timelines. There is need to provide for a shorter time period of three months for consideration by Parliament to avoid unnecessary delays considering the amount of time and resources that go into processing a referendum proposal.

S No.	Clause of the Bill	IEBC Observations and Comments	Recommendation
3.	Clause 9 – Bill to amend the Constitution relating to a matter specified in Article 255(1) of the Constitution. (1) A Bill to amend the Constitution through a parliamentary initiative relating to a matter specified under Article 255(1) of the Constitution shall be formulated in a participatory and inclusive manner taking into account all opinions and recommendations. (2) All opinions and recommendations that are not in opposition may be incorporated into a single Bill. (3) Where, in the case of an amendment to the Constitution by parliamentary initiative, there is a divergent draft Bill, Parliament shall consider all the draft Bills and may— (a) merge them into one draft Bill; (b) approve one draft Bill and disapprove the other; or (c) approve all the draft Bills for submission to the people in a referendum.	Article 255(1) outlines 10 different matters. Where there is more than one matter contained in one bill, it is important to ensure that there are different referendum question that citizens can vote on.	The clause be amended to provide that where matters are merged in one bill, separate referendum questions shall be framed for each matter with own options and symbols.

S No.	Clause of the Bill	IEBC Observations and Comments	Recommendation
	(4) Where more than one draft Bill is to be submitted to the people in a referendum, each of the draft Bills shall constitute an option with a separate symbol and answer.		
4.	Clause 10 – Referendum question 10(3) The Commission shall- (c) conduct civic education and public sensitization on the referendum through various platforms including local radio and television stations, social media and public forums	The mandate of the Commission under Article 88(4)(g) is voter education.	Amend the clause to use the term voter education instead of civic education or restrict the education to referendum related matters. This is because only registered voters will vote for the referendum.
5.	Clause 20 – Referendum Petitions	The clause provides a 30 day timeline for hearing and determination of a referendum petition	Consider expanding the time. Provide timelines for respondents to file responses. The Commission proposes 14 days.
6.	Clause 25(1) (1) A referendum petition shall act as a stay of the results of a referendum from the time of filing of the petition, until the petition is heard and determined, and any period of filing of an appeal has lapsed without an appeal being filed.	Automatic suspension of referendum results upon filing of a petition may delay implementation of referendum outcomes and encourage frivolous litigation and in not consistent with the law on election petitions.	Delete the sub-clause in keeping up with the law on election petitions where a specific order of stay must be sought in order to stay the results.
7.	Clause 27 – Practice Procedure	The clause references section 43 but does not clarify which Act.	Clarify the provision.

S No.	Clause of the Bill	IEBC Observations and Comments	Recommendation
8.	Clause 30 – Appeals to the Court of Appeal	The bill provides for appeals to the Court of Appeal only. Considering the significance and gravity of matters that may be raised in a referendum petition, it may be prudent to consider appeal up to the Supreme Court.	Consider provision of appeal mechanism to the Supreme Court.

E. CONCLUSION

The Bill presents a practical legislative attempt to resolve the long-standing challenge of the lack of a comprehensive legal framework on the conduct of a referendum. However, the Committee is requested to consider the issues identified in the matrix.

Annex 5 - Matrix of stakeholder submissions on the Bill

PUBLIC PARTICIPATION MATRIX OF THE REFERENDUM BILL, 2026 (SENATE BILL NO. 3 OF 2026)

No	CLAUSE NUMBER	MARGINAL NOTE	COMMENT/KEY AMENDMENT	JUSTIFICATION
1.	Clause 2	Interpretation	**Office of the Attorney-General** ▪ Definition of "polling station" ▪ Insert the expression 'section 2 of' immediately after the word 'under'	▪ To expressly refer to the section of the Elections Act where the definition of 'polling station' is found
			Office of the Attorney-General ▪ Definition of "register of voters". ▪ Insert the expression 'section 2 of' immediately after the word 'under'.	▪ To expressly refer to the section of the Elections Act where the definition of 'register of voters' is found.
			Office of the Attorney-General ▪ Definition of "voter" ▪ Amend the definition by inserting the expression 'section 2 of' immediately after the word 'under'.	▪ To expressly refer to the section of the Elections Act where the definition of 'voter' is found
2.	Clause 4	Application of the Elections Act.	**Transparency International Kenya** ▪ Proposed insertion of new sub-clause (3) as follows— (3) The conduct of a referendum under this Act shall comply with the principles set out under Articles 10, 81, 86, and 232 of the Constitution.	▪ The incorporation of provisions from the Elections Act is key to ensure administrative consistency. ▪ However, the Bill should expressly provide that all principles under Article 81 and Article 86 of the Constitution relating to free and fair elections apply equally to referendum.
3.	Clause 5	Submission of a Bill to the Commission pursuant to Article 256(5)(a)	**Council of Governors** ▪ Amend clause 5 as follows— 5. Pursuant to Article 256(5)(a) of the Constitution, if a Bill to amend the Constitution through Parliamentary	▪ To align it to the provisions of Article 256 on the procedure for amendment of the Constitution through parliamentary initiative.

			Initiative proposes an amendment relating to a matter specified in Article 255(1), the President shall, within thirty days of the receipt of the Bill from Parliament, request the Commission to conduct a national referendum for approval of the Bill within ninety days, before assenting to the Bill.	
4.	Clause 6	Amendment of the Constitution by popular initiative.	**Office of the Attorney-General** ▪ Amend in sub-clause(1)(a) by inserting the word 'the' immediately after the words 'information on'	▪ To correct a grammatical error
			Linda Mwananchi Diaspora League ▪ Amend clause 6(2)(b)to(c) to insert a deeming clause for the inaction of IEBC.	▪ No consequence if IEBC fails to act within 90 days. Worse, clause 6(2)(c) gives IEBC discretionary power to 'satisfy itself' beyond the constitutional threshold: which is purely quantitative. ▪ Article 257 requires only 1 million signatures. Once verified, the obligation to submit is automatic. 'Satisfying itself that requirements are met' goes beyond the Constitution and replicates the BBI gatekeeping problem. Remove discretion; insert a deeming clause for IEBC inaction.
			County Assemblies Forum ▪ Proposed amendment to insert the following new paragraph to subclause (2) as follows— (d)verify the authenticity of the signatures using biometric data, forensic methods and such other technological means as	▪ This will ensure it addresses the BBI judgment concerns on proper verification and ensures authenticity of signatures in popular initiatives.

			Transparency International Kenya ▪ Proposed insertion of new sub-clause (2) as follows— (2A)In carrying out the verification exercise under subsection (2), the Commission shall ensure compliance with the Data Protection Act, 2019. (2B) The Commission shall publish, in a transparent and accessible manner– (a) the criteria and methodology used in verification of signatures; (b) the total number of signatures submitted, verified, rejected and pending review; (c) the reasons for rejection of signatures, categorized in aggregate form; and (d) anonymized verification reports and audit findings. (2C)The Commission shall permit accredited independent observers, including representatives of civil society organizations, professional bodies and the media, to observe the verification process in accordance with regulations prescribed under this Act	▪ The Bill provides for public inspection of signatures and verification by the Commission. ▪ While this promotes transparency, there is absence of safeguards regarding protection of personal data; verification methodology; auditability of the process; and independent oversight. ▪ Publication of personal identification information without adequate safeguards may violate the right to privacy under Article 31 of the Constitution and the Data Protection Act.
5.	Clause 7	Consideration of the draft Bill by county assemblies.	**Office of the Attorney-General** ▪ Amend in sub-clause (2) by deleting the words 'not approved' and substituting therefor the word 'rejected'	▪ To ensure consistency with the use of the word 'rejected' in sub-clause(1)(b)

			Council of Governors ▪ Amend sub-clause(2) as follows— (2) If the Speakers of the two Houses do not receive a response from a county assembly within the three months stipulated under Article 257(6), the Bill shall be deemed approved in respect of that county assembly.	▪ A plain reading of Articles 257(5) and (6) of the Constitution indicates that a county assembly is required to consider and either approve or reject a draft Bill within three months of its receipt. The constitutional provisions envisage a time-bound process intended to facilitate the progression of a popular initiative and avoid undue delays in constitutional amendment procedures. ▪ Consequently, where a county assembly fails to make a determination on the draft Bill within the stipulated constitutional timeline, such inaction should not be construed as a rejection of the Bill. ▪ The Council if of the view that, given the citizen-driven nature of a popular initiative, failure by a county assembly to make a decision within the prescribed three months should be deemed as approval of the Bill for purposes of transmitting and progressing the constitutional amendment process before Parliament.

			Council of Governors ▪ Amend the section by inserting the following new clause after sub-clause(2)— (3) Each county assembly shall publicise the Bill and facilitate public participation before passage.	▪ To provide for public participation at the county assembly level.
			Linda Mwananchi Diaspora League ▪ Amend clause 7 to provide for a county assembly's rejection of a draft Bill.	▪ Treating a nonresponding county assembly as having rejected the Bill goes beyond Article 257(6) and tilts the process against popular initiatives. ▪ Article 257(6) does not prescribe a consequence for silence. Deemed rejection caused by an administrative failure (e.g. a clerk who fails to table the Bill) could doom an otherwise valid initiative. Silence should trigger a reminder process, with nonresponding assemblies excluded from the count rather than treated as rejections.
			County Assemblies Forum ▪ Proposed amendment to insert a new sub-clause (3) as follows— (3) A draft Bill to amend the Constitution under this section shall only be introduced in Parliament under Article 257(7) of the Constitution if it has been approved by a majority of the county assemblies, being at least twenty-four (24) county assemblies. (4) The Speakers of both Houses of Parliament shall jointly review the	▪ This amendment operationalizes and codifies the structural threshold mandated by Article 257(7) of the Constitution. It shifts the burden from a fragmented tracking exercise to a mandatory joint parliamentary accounting framework. ▪ By providing a clear timeline for compiling a consolidated compliance report and certifying the absolute statutory target of 24 county assemblies, the amendment creates a legally secure barrier that prevents premature legislative

			certificates delivered under subsection (1) and compile a consolidated compliance report within fourteen (14) days after the expiry of the three month period specified under subclause (1). (5) Where the consolidated compliance report compiled under subsection (3) indicates that the draft Bill has failed to secure the approval of at least twenty-four (24) county assemblies, the Bill shall stand lapsed, and the Speakers of both Houses shall jointly publish a notice to that effect in the Gazette.	introductions and avoids the risk of post-facto constitutional litigation.
6.	Clause 8	Consideration of the draft Bill by Parliament.	**<u>Office of the Attorney-General</u>** ▪ Amend sub-clause (5) — (a) by deleting the words 'the Speaker of the relevant House shall' appearing in the opening words; (b) in paragraph(a) by inserting the words 'the Speaker of the relevant House' at the beginning of the paragraph; and (c) in paragraph(a), insert the word 'of' immediately after the words 'notify the'	▪ The words 'the Speaker of the relevant House shall' only applies to the requirement to notify the Commission and not the holding of the referendum. ▪ The words 'the Speaker of the relevant House shall' only applies to the requirement to notify the Commission of the resolution of the House ▪ To correct a grammatical error.
			<u>Council of Governors</u> ▪ Amend sub-clause(5) as follows— (5) If one or both Houses of Parliament fail to pass the Bill within three months from when the Bill was introduced as stipulated in Article 257(7), the Speaker of the relevant House shall—	▪ Noting that Article 257(5) of the Constitution accords the county assemblies a period of three months within which to consider a draft Bill under a popular initiative, it is imperative for purposes of maintaining parity, procedural fairness, and consistency within the constitutional amendment process, that Parliament be

			(a) notify the Commission its resolution not to pass the Bill; and (b) the proposed amendment shall be submitted to the people in a referendum.	allocated a similar timeline for consideration of the Bill. ▪ Equal timelines would ensure that no stage of the constitutional amendment process is subjected to undue delay and would uphold the constitutional intention of facilitating an efficient and predictable process for constitutional reform. ▪ We further opine that failure by a House of Parliament to make a decision within the prescribed three months should be deemed as approval of the Bill for purposes of transmitting and progressing the draft Bill to the people for referendum.
			<u>Council of Governors</u> ▪ Amend sub-clause (6) as follows— (6) If a House of Parliament does not pass or reject the Bill within three months, the Bill shall be deemed have been passed in respect of that House.	
			<u>Linda Mwananchi Diaspora League</u> ▪ Amend sub-clause(5) to ensure that a referendum is concurrent with, not sequential to, Parliament's failure	▪ Clause 8(5) treats a referendum as a remedy after Parliament fails but the referendum should logically run simultaneously with, or be triggered automatically alongside, the parliamentary vote. ▪ If the people have already gathered 1 million signatures and county assemblies have approved the Bill, the people's mandate should not wait for Parliament's failure.

				▪ A simultaneous or automatically triggered referendum removes Parliament's veto power over a process it did not initiate.
			Linda Mwananchi Diaspora League ▪ Amend sub-clause(6) to change the 18 month timeline.	▪ An 18-month window before a House is deemed to have not passed the Bill creates a structural opportunity for deliberate inaction to frustrate popular initiatives. ▪ A House that wishes to block a popular initiative need not vote against it : it can simply fail to schedule it for 18 months. The deemed-failure mechanism rewards procedural bad faith. A shorter, fixed voting deadline (e.g. 60 days) with automatic referral to referendum upon expiry should replace the 18-month window

			Inter-Religious Council of Kenya ▪ Proposed insertion of new clause 8A— **8A. Counterproposal by Parliament** (1) Where a popular initiative draft Bill is approved by a majority of county assemblies, Parliament may, before submitting the Bill to the President, prepare and approve a counter-proposal that offers an alternative to the initiative. (2) Both the original initiative and the counter-proposal shall be submitted to the people in the same referendum as separate options, each with its own symbol and answer. (3) The Commission shall frame clear questions for each option in accordance with section 10.	This will encourage negotiation, produce moderate outcomes, and result in at least 80 per cent of initiatives being withdrawn or improved without a vote. The Bill currently lacks this compromise tool; adding it would dramatically reduce polarisation and increase policy quality while preserving the people's ultimate say
			Civil Society Parliamentary Engagement Network (CSPEN) ▪ Proposed amendment to clause 8(5) to avoid a constitutional impasse of the type seen in the BBI matter. The amendment should include a specific provision for IEBC notification timelines .	▪ Clause 8(5) provides that if one or both Houses fail to pass a popular initiative Bill, the proposed amendment shall be submitted to the people in a referendum. This is a faithful restatement of Article 257(10). However, the Bill does not address the sequencing question: does the IEBC receive the matter directly from Parliament, or must the promoters re-engage? ▪ This gap could cause a Constitutional impasse of the type seen in the BBI matter. The Bill should include a specific provision for IEBC notification timelines in this scenario.

7.	Clause 9	Bill to amend the Constitution relating to a matter specified in Article 255(1) of the Constitution.	**Linda Mwananchi Diaspora League** ▪ Amend sub-clause(2) to allow opposition comments and divergent Bills.	▪ Clause 9(2) allows non-opposing opinions to be merged into a single Bill but does not specify how opposing or minority views are handled. ▪ Where citizens or legislators hold fundamentally different views on a constitutional amendment, merging only 'non-opposing' opinions silences legitimate dissent. The Bill should require that divergent opinions be recorded in a published report, and that where irreconcilable differences exist, separate draft Bills may be submitted to the people under clause 9(3).
			Civil Society Parliamentary Engagement Network (CSPEN) ▪ Proposed amendment to clause 9(5) to provide for the procedure in the event that no option obtains a simple majority.	▪ Clause 9 addresses divergent draft Bills, allowing Parliament to merge, select, or submit multiple Bills to referendum, each with a separate symbol. Section 9(5) restricts voters to one option. This is a sound democratic design principle. ▪ However, the Bill does not address what happens when no option obtains a simple majority — does the entire process fail, or is a run-off permitted? This is a significant omission that could paralyse a referendum on a contested constitutional matter.

			<u>County Assemblies Forum</u> ▪ Proposed deletion of subclause (2)	▪ Clause 9(2) allows opinions that are "not in opposition" to be incorporated into a single Bill. ▪ The lack of a rigorous test for "relatedness" means unrelated amendments (e.g., judicial reform bundled with agricultural policy) could still be forced on voters as a single package.
8.	Clause 10	Referendum Question	**<u>Mr. Aldrin Vundi Kasyoka</u>** ▪ Amend Clause 10 to introduce a mandatory independent approval or review process for referendum questions before publication. ▪ Bill should expressly provide a legal avenue for challenging the wording of referendum questions before the referendum date in order to avoid avoidable constitutional disputes after the vote.	▪ Clause 10 grants the Commission authority to frame referendum questions or options within twenty-one days upon receiving notification for a referendum. ▪ Although the Bill requires the questions to be framed in plain, neutral and factual language, the provision still leaves broad discretionary powers in the hands of the Commission without providing an independent oversight or approval mechanism.
			<u>Electoral Law and Governance Institute for Africa</u> ▪ Amend sub-clause (6) to provide that the restriction on symbols should only apply to registered political parties and not independent candidates. ▪ The proposal should include the colours of the registered political parties	▪ Unlike the symbols and colours of registered political parties, the symbols of independent candidates are not legally registered and hence have no legal ownership within an electoral cycle.

			Inter-Religious Council of Kenya ▪ Proposed amendment to insert sub-clause(7) as follows— (7) The Commission shall, not later than twenty-one days before the referendum, prepare and publish an official neutral Voter Information Guide in English and Swahili containing— (a) the exact wording of the question or options; (b) a plain-language summary of the proposed amendment or issue; (c) arguments for and against as submitted by registered referendum committees; and (d) (d)the estimated fiscal and legal impact where applicable. The Guide shall be distributed to every polling station and made available electronically and in accessible formats	▪ Mandatory official information booklets will enable high voter understanding. This addition ensures factual balance beyond the question itself, reduces misinformation risks, and aligns with globally accepted standard for voter information without altering the Commission's existing civic education mandate.
			Linda Mwananchi Diaspoa League ▪ Amend sub-clause(1) to ensure that the referendum notice should come from both Houses, not the President alone.	▪ Clause 10(1)(a) triggers the IEBC's question-framing duty upon notification from the President. For Parliamentary initiatives, both Houses should jointly notify. ▪ A referendum arising from a parliamentary initiative is the product of both Houses acting under Article 256. Notification to IEBC by the President alone : who may have political interests in the question framing : is inappropriate. Joint notification by the Speakers of both Houses

				should be required for parliamentary initiative referenda.
			Linda Mwananchi Diaspora League ▪ Amend clause 10 to include a pre-referendum independent review of question framing	▪ No mechanism exists to challenge a biased, leading, or confusing referendum question before the vote is held. ▪ Clause 10(4) sets admirable standards for neutral, plain-language, bilingual questions. But there is no pre-referendum review mechanism. ▪ An aggrieved party must wait until after the vote and petition to void the result : far more disruptive than pre-emptive correction. A 7-day window to petition the High Court on question framing, with a 14-day determination deadline, should be inserted.
			Civil Society Parliamentary Engagement Network (CSPEN) ▪ Proposed amendment to clause 10(3)(b) to strengthen civic education.	▪ Clause 10(3)(b) requires IEBC to conduct civic education on the referendum through radio, television, social media and public forums. Three concerns arise: i. Institutional independence: IEBC is the referendum administrator and thus has institutional interests. International best practice (Ireland, Australia, New Zealand) assigns civic education to an independent commission or requires a

				structured presentation of both sides. IEBC's civic education could, even unintentionally, favour one outcome. ii. No minimum standards: The provision sets no floor for civic education reach, duration, language, or accessibility. There is no requirement for materials in minority languages (e.g. Somali, Rendille, Borana, Luhya, Kamba), no requirement for audio/visual formats for non-literate voters, and no requirement for prior consultation with civil society on content. iii. No independent monitoring: There is no provision for independent monitoring of the quality or neutrality of IEBC's civic education — a gap that creates an accountability vacuum.
			Centre for Multiparty Democracy Kenya ▪ Proposed amendment to clause 10(2) to ensure that the referendum question is provided in braille and further to ensure that specific provisions are put in place to take care of persons with disabilities, persons in areas of low connectivity and the elderly voters.	▪ This is to promote inclusivity and ensure that all citizens, regardless of their visual impairment have the same opportunity to participate in civic processes. ▪ Further the proposed amendments are to ensure that the constitutional provisions as provided under article 27 are met.
			County Assemblies Forum ▪ Proposed amendment to subclause(4) by (i) deleting paragraph (b) and inserting the following new paragraph— (b) be written Braille, sign language, and where necessary; and (ii) by inserting the following new paragraph immediately after (d)—	▪ Enhances linguistic inclusion and accessibility, ensuring meaningful public participation for persons with disabilities. ▪ Confining to a single subject matter prevents omnibus "Hobson's choice" referenda and protects voter autonomy

			(e) configured to a single subject matter.	
			<u>County Assemblies Forum</u> ▪ Proposed amendment to add a new clause 10A as follows— **10A. Public Participation and Civic Education** (1) The Commission shall, in consultation with the promoters and other stakeholders, develop and implement a comprehensive civic education. (2) The Commission shall ensure the draft Bill and proposed referendum questions are printed and distributed to the lowest administrative units, including in accessible formats like Braille and local dialects.	▪ CAF is concerned that the lack of timelines to conduct civic education might result sensitization not being effective. ▪ Further, the proposed amendment will judicial concerns regarding systemic lack of meaningful public engagement. Placing the fiscal and operational burden on the Commission rather than private promoters ensures a balanced, non-partisan, and legally compliant outreach process.
9.	Clause 11	Notice of holding referendum	**<u>Linda Mwananchi Diaspora League</u>** ▪ Amend clause 11 to change the forty-five-day period in sub-clause (2)(d).	▪ 45 days is insufficient for meaningful public education on complex constitutional changes affecting millions of voters. ▪ Constitutional amendments require at minimum 90 days' notice to enable genuine civic education across 47 counties including rural and marginalised communities. The 45- day period should be reserved for nonconstitutional referenda only.

			Civil Society Parliamentary Engagement Network (CSPEN) ▪ Proposed amendment to clause 11(1) to ensure correct cross-reference to clause 10.	▪ Clause 11(1) requires the Commission to publish a referendum notice within 14 days after publication of 'the question or option referred to in Clause 9.' ▪ Clause 9 deals with multiple divergent Bills — the general question framing provision is Clause 10. The correct cross-reference should be to Clause 10. This error, if unremedied, creates an ambiguity about when the notice obligation is triggered
			Centre for Multiparty Democracy Kenya ▪ Proposed amendment to replace the reference of clause 9 with clause 10 of the Bill.	▪ This is to ensure reference is made to the correct clauses in the Bill to prevent any ambiguities. ▪ Clause 9 of the bill makes reference to divergent draft bills while clause 10 provides for the conduct of the referendum.
10.	Clause 12	Referendum Committees	**Linda Mwananchi Diaspora League** ▪ Amend the composition of the referendum committee to include resource poor citizens.	▪ Clause 12 does not have provisions requiring registration of a formal committee with a chief agent, members, and documentation places civic participation out of reach for ordinary citizens and community groups without organisational resource. ▪ Clause 12 as drafted effectively limits active referendum participation to organised, well-resourced entities. Individual citizens, community groups, and grassroots organisations : who are the primary constituency for popular initiatives : are functionally excluded.

				▪ A simplified individual and community participation pathway, separate from formal committee registration, must be provided
			Linda Mwananchi Diaspora League ▪ Amend clause 12 to prohibit the foreign funding of referendum committees	▪ The Bill applies the Election Campaign Financing Act but does not expressly prohibit foreign funding of referendum committees. ▪ Referendum committees are not political parties and are not governed by the Political Parties Act's foreign funding prohibition. ▪ An express ban on foreign contributions to referendum committees mirroring Article 88(4)(j) : must be inserted.
11.	PART III	CONDUCT OF REFERENDUM	**Office of the Attorney-General** ▪ Delete the expression 'Part III' appearing immediately after clause 16 and substitute therefor the expression 'Part IV'	▪ The Expression 'Part III' appearing immediately after clause 16 is repeated
12.	Clause 14	Costs of referendum committee.	**Transparency International- Kenya** ▪ Insert the following new sub-clauses under clause 14— (3) Every referendum committee shall maintain accurate and complete records of all contributions, donations, expenditures and other financial transactions relating to referendum campaigns.	▪ TI-Kenya appreciates the attempt to regulate referendum committees and apply provisions of the Election Campaign Financing Act. ▪ However, the Bill fails to sufficiently address disclosure obligations; foreign funding; use of state resources; and real-time transparency.

			(4)A referendum committee shall disclose to the Commission, in the prescribed manner and within the prescribed timelines, all donations received and expenditures incurred during the referendum period. (5)The Commission shall publish periodic campaign financing reports submitted under this section in a manner accessible to the public. (6) The accounts of every referendum committee shall be subjected to an independent audit by a qualified auditor in accordance with regulations prescribed under this Act. (7) A public officer, State officer or public entity shall not use public resources, public funds, public office, government infrastructure or official functions to support or oppose any referendum question or option."	▪ The absence of robust financing safeguards creates significant corruption and state capture risks
13.	Clause 15	Voting threshold	**Inter-Religious Council of Kenya** ▪ Proposed deletion of sub-clause(1)(a) and renumber subsection (1)(b) as(1)(a) and insert new subclause (1)(b)— (b) For amendments under Articles 255, 256 and 257, the amendment shall also be supported by a majority of the votes cast in at least half of the counties.	▪ The current 20 percent turnout quorum per county, while aiming for geographic balance, risks invalidating a clear national majority. ▪ The proposed change maintains county protection while ensuring a decisive outcome when voters do participate.

14.	Clause 16	Declaration and certification of referendum results	**Electoral Law and Governance Institute for Africa** ▪ Amend clause 16 of the Bill to include the process of declaration of results and certification of county referenda.	▪ The procedure of the results declaration at the county referenda is different from the National referendum.
			Linda Mwananchi Diaspora League ▪ Amend clause 16 to address the potential of an assent before the 14-day petition window closes.	▪ The President could assent to a referendum approved Bill while a petition is pending or during the 14-day petition filing window. ▪ Clause 16(2) allows presidential assent within 30 days of certification. ▪ Clause 25(1) creates an automatic stay upon petition filing. The Bill does not prohibit assent before the 14-day petition window closes. This must be expressly addressed.
			Centre for Multiparty Democracy Kenya ▪ Proposed amendment to clause 16(1) by inserting additional paragraph (d) to provide for publication of a post referendum evaluation report.	▪ This is important— (i) for institutional learning, democratic accountability and general public oversight. (ii) to meet international standards i.e. as in the Venice Commission Code.
15.	Clause 17	County referenda	**Linda Mwananchi Diaspora League** ▪ Amend clause 17 to specify the voting threshold for county referenda.	▪ Clause 17 governs county referenda but does not specify the voting threshold. Once a petition triggers the referendum, what turnout is required? What majority? The Bill is silent. ▪ Clause 15 thresholds should be expressly applied *mutatis mutandis*.

16.	Clause 18	A resolution of Parliament for specific referendum	**Transparency International Kenya** ▪ Delete the clause.	▪ The provision allowing Parliament to initiate referenda on "any other matter" is overly broad and potentially unconstitutional. ▪ The Constitution only expressly provides for referendum in specific contexts under Article 255, that is, any amendments touching on supremacy of the Constitution, Bill of Rights, Sovereignty of the people, devolution and the independence of the Judiciary. ▪ This clause may create an avenue for political mobilization outside constitutional intent and risks normalizing plebiscitary governance.
17.	PART IV	REFERENDUM PETITIONS	**Office of the Attorney-General** ▪ Delete the expression 'Part IV' appearing immediately after clause 19 and substitute therefor the expression 'Part V'.	▪ To ensure consistency in the numbering of the Parts of the Bill
			Electoral Law and Governance Institute for Africa ▪ Amend this part to ensure that the Bill provides for a procedure for pre-referendum dispute resolution procedure.	▪ This will provide clarity on how the pre-referendum disputes are resolved before the conduct of the referendum.
18.	Clause 20	Referendum Petitions	**Office of the Attorney-General** ▪ Amend by adding the word "or" as the end of sub-clause (3)(a).	▪ To indicate that paragraphs (3)(a) and (b) are disjunctive.
			Council of Governors ▪ Amend sub-clause(5) as follows—	▪ The Council opines that referenda are complex nationwide exercises that may involve scrutiny and recounts of votes and

			(5)A referendum petition shall be heard and determined within sixty days of lodging the petition.	thus may not realistically be concluded within 30 days.
			Electoral Law and Governance Institute for Africa ▪ Amend the clause to ensure that it refers to the Election Law and not a Bill of Rights enforcement provision.	▪ This provision means that in filing a Referendum Petition, one shall be required to indicate the right which has been violated under the Bill of Rights in line with Art.22 of the Constitution. ▪ Unlike the question of a petition under the Bill of Rights, a referendum petition cannot be filed on behalf of another person.
			Electoral Law and Governance Institute for Africa ▪ Amend sub-clause(2) to ensure that it prescribes the locus standi(the right and legal capacity of a person to file the Petition).	▪ The right and capacity to file the Petition ought not to be left open for anybody, especially for a county referendum. This might be abused
			Civil Society Parliamentary Engagement Network (CSPEN) ▪ Proposed amendment to clause 20(2) to ensure the mandatory consolidation of referendum petitions.	▪ Clause 20(2) allows any person to file a referendum petition under Article 22(1) and (2) of the Constitution. ▪ The breadth of Article 22 standing — which includes petitions in the public interest — while constitutionally correct, must be balanced against the risk of a multiplicity of petitions on the same matter overwhelming the courts. ▪ The Bill's Clause 26(2) addresses this by allowing consolidation, but does not require it. The court's consolidation power should be made mandatory for petitions challenging the same referendum.

19.	Clause 22	Respondents to a referendum petition.	**Office of the Attorney-General** ▪ Amend in sub-clause(1), by deleting the words "been guilty of a corrupt practice' and substitute therefor the words 'committed corrupt act'.	▪ In order to be consistent with the provisions of Article 50 (2)(a) of the Constitution regarding the presumption of innocence of a person alleged to have committed an offence.
			Electoral Law and Governance Institute for Africa ▪ Amend sub-clause (2) as in its plain reading, it suggests that a Commission, (IEBC) can equally file a referendum petition.	▪ The Clause is ambiguous.
20.	Clause 23	Filing of referendum petition	**Office of the Attorney-General** ▪ Amend in sub-clause(1) by deleting the words 'their behalf, if more than one' and substitute therefor the words 'the petitioner's behalf'.	▪ To be consistent with the provisions of section 3(4) of the Interpretation and General Provisions Act, whereby words and expressions in the singular include the plural and words and expressions in the plural include the singular. ▪ Furthermore, it preserves the right of a petitioner to represent himself or herself in a referendum petition, regardless of the fact that there may be more than one petitioner.

			Electoral Law and Governance Institute for Africa ▪ Amend sub-clause(2) as it is unnecessary given that its intention and purpose have been covered in clause 22 of the Bill.	▪ The intended purpose has been adequately covered under clause 22 of the Bill.
21.	Clause 24	Composition of the Bench	**Council of Governors** ▪ Amend sub-clause(1) to read as follows— (1) A referendum petition shall be heard by an uneven number of judges, being not less than three assigned by the Chief Justice.	▪ To align to the provisions of Article 165(4) of the Constitution.
			Electoral Law and Governance Institute for Africa ▪ The proposal should apply to the National Referendum Petitions and not to the county referendum.	▪ The County Referendum petitions should be heard and determined by one judge, just like a Petition challenging an election of a county governor under the Election Act.
22.	PART V	MISCELLANEOUS PROVISIONS	**Office of the Attorney-General** ▪ Amend by deleting the expression 'Part IV' appearing immediately after clause 19 and substitute therefor the expression 'Part VI'.	▪ To ensure consistency in the numbering of the Parts of the Bill.
23.	Clause 30	Appeals to the Court of Appeal	**Civil Society Parliamentary Engagement Network (CSPEN)** ▪ Proposed amendment to clause 30(1)(a) to resolve inconsistency in the timelines for filing.	▪ The Memorandum states that appeals to the Court of Appeal are to be filed within 30 days of the High Court decision. However, Clause 30(1)(a) of the Bill states 14 days. ▪ This inconsistency between the substantive provisions and the explanatory memorandum should be resolved.

			Civil Society Parliamentary Engagement Network (CSPEN) ▪ Proposed amendment to clause 30(2) to correct drafting error.	▪ Clause 30(2) refers to 'subclause (2)' for appeals acting as a stay — but this is itself subsection (2). The intended reference appears to be Clause 30(1). This circular self-reference is a clear drafting error.
			Civil Society Parliamentary Engagement Network (CSPEN) ▪ Proposed amendment to clause 30 to ensure that a demonstrated prima facie case is made before a stay under clause 30(2) takes effect.	▪ Clause 25(1) provides that filing a referendum petition automatically stays the declared results. Given the mandatory 30-day determination deadline in Clause 29(1)(b), the petition stay alone is reasonably tight. ▪ The more significant concern is Clause 30(2): an appeal to the Court of Appeal — filed within 14 days of the High Court decision — also triggers an automatic stay for up to 60 further days, with no threshold requirement. The combined maximum stay period across petition and appeal is approximately 104 days. ▪ Any person may initiate this chain with no prima facie showing of merit, creating potential for vexatious litigation that delays implementation of a democratically-approved result by over three months. ▪ The Bill should require a demonstrated prima facie case before the Clause 30(2) appeal stay takes effect
			Centre for Multiparty Democracy Kenya ▪ Proposed amendment to clause 30(2) to ensure proper cross referencing.	▪ Clause 30(1) makes reference to the correct section that makes reference to appeals.

24.	Clause 36	Retention and public inspection of documents.	**Linda Mwananchi Diaspora League** ▪ Amend clause 36 to extend the six-month period for document retention.	▪ Six months may expire before all petition and appeal proceedings are concluded, risking destruction of evidence. ▪ A 12-month minimum retention period or until conclusion of all legal proceedings, whichever is later is the appropriate standard for constitutional amendment referenda.
			Transparency International Kenya ▪ Amend clause 36 by adopting the provisions of section 7 of the Public Archives and Documentation Service Act.	▪ The six-month retention period may be inadequate, particularly where litigation or investigations continue beyond that period. ▪ Moreso, the proposed clause refers to the application of the Public Archives and Documentation Service Act which gives a criteria for disposing off records as follows; ***7. Destruction of public archives*** *Where the Director is of the opinion that any public archives or records are duplicated, or that for some other special reason any public archives or records should not be preserved, he may, in consultation with the Commission on Administrative Justice and with the approval of the Cabinet Secretary and of such other person as the Cabinet Secretary considers to be primarily concerned with public archives or records of the category in question, authorize the destruction or other disposal of such public archives or records:* *Provided that nothing in this section shall empower the Director to authorize the destruction or other disposal of any public archives or records obtained*

				otherwise than by transfer under section 5 of this Act, contrary to the terms or conditions on which they were obtained, or, if they were obtained by gift, during the lifetime of the donor without his consent. ▪ The proposed automatic destruction of referendum records after six months is therefore inconsistent with the safeguards and procedural requirements set out under the Public Archives and Documentation Service Act. ▪ This creates potential ambiguity and conflict between the two legislative frameworks, which may create implementation challenges regarding the retention, preservation, and disposal of referendum records.
25.	Clause 37	Application of the Election Offences Act, Cap. 66	**Office of the Attorney-General** ▪ In the marginal note, delete the words 'Election Offences Act'. ▪ Insert the word 'the' immediately after the word 'provisions'.	▪ To ensure consistency in the drafting style of the Government. ▪ To correct a grammatical error.
26.	Clause 40	Referendum Code of Conduct	**Office of the Attorney-General** ▪ Amend in sub-clause (1) by inserting the word 'the' immediately after the word 'under'	▪ To correct a grammatical error.
			Centre for Multiparty Democracy Kenya ▪ Proposed amendment to explicitly provide for the referendums code of conduct, to avoid cross-referencing with the electoral code of conduct.	▪ The cross-referencing may become stale as laws evolve. ▪ To adequately address the referendum code of conduct.

			▪ We propose for provision of explicit additions - (5) that address referendum specific issues such as, the conduct of the promoters of a popular initiative, obligations of County Governors and Members of County who have significant influence over county assembly consideration.	
27.	Clause 41	Regulations	**Office of the Attorney-General** ▪ Amend in sub-clause (1) by deleting the words 'and provisions'	▪ The words are superfluous and unnecessary.
			Linda Mwananchi Diaspora League ▪ Amend clause 41(1) to ensure that IEBC Regulations do not contradict the Act or amend the Constitution.	▪ The regulation making power in clause 41 does not expressly prohibit IEBC from making regulations that contradict the Act's provisions or that purport to amend constitutional requirements
			County Assemblies Forum ▪ Proposed amendment to clause 41 by including a new section 41A— **41A Independence of Popular Initiative** (1) No State officer, including the President, Deputy President, or member of the Executive, shal initiate, sponsor, or fund a popular initiative under Article 257. (2) Any contravention of subsection (1) shall render the entire process null and void. (3) The Commission shall, in every verification report, certify that the initiative was genuinely citizen-driven.	▪ Directly codifies and implements the Supreme Court's ruling that popular initiatives under Article 257 must remain exclusively citizen-driven. ▪ A State officer cannot simultaneously act as both a player and a referee, ensuring executive power cannot usurp mechanisms reserved for direct public sovereignty.

			Transparency International Kenya ▪ Proposed amendment to clause 41 by inserting the following new sub-clauses— (4) Before submitting any proposed regulations to Parliament for approval under this section, the Commission shall publish the draft regulations in the Gazette, on its official website and through at least one newspaper of national circulation, and invite public comments for a period of not less than thirty days. (5) The Commission shall consider and publish a summary of the comments received under subsection (4), including an explanation of whether and how the comments were incorporated into the final draft regulations.	▪ The regulations of the Act should also be subjected to public participation before approval.
28.	Clause 42	Consequential Amendments	**Linda Mwananchi Diaspora League** ▪ Proposed amendment to clause 42 to repeal the Elections Act referendum.	▪ Proceedings initiated under the repealed Elections Ac provisions would have no legal home after repeal. ▪ A standard transitional savings provision preserving the legal effect of acts done and proceedings commenced under the repealed provisions is constitutionally necessary and reflects established Kenyan legislative practice.
29.	General Comment	Arrangement of clauses	**Office of the Attorney-General**	▪ The arrangement of the clauses indicated on page 9 of the Bill is not consistent with the content of the Bill.

			▪ Align the arrangement of the clauses so that it is consistent with the contents of the Bill.	▪ This is to ensure consistency in the text of the Bill.
30.	General Comment	Absence of state neutrality provisions	**Civil Society Parliamentary Engagement Network (CSPEN)** ▪ Proposed amendment to address the neutrality of the state in referenda.	▪ This is the most serious policy gap in the Bill. The Venice Commission Code (Guideline I.3.1) is explicit that while governments need not be entirely passive, public authorities must not use State resources for one-sided campaigning or to excessively influence the outcome. Kenya's constitutional history demonstrates that incumbency advantage in referendum campaigns is a live risk. ▪ The Bill contains no provision prohibiting or regulating the use of public resources, state media, government vehicles, public officer time, or county government resources in referendum campaigns. The Election Campaign Financing Act provisions incorporated by Clause 14(2) apply to referendum committees (which are not mandatory- Clause 12 (1)) — not to the State itself as a campaigner. This creates a structural imbalance that the Bill must address.
31.	General Comment	Need to address disinformation, online campaigning and digital signatures	**Civil Society Parliamentary Engagement Network (CSPEN)** ▪ Proposed amendment to address disinformation.	▪ The Bill was introduced in February 2026 but contains no provisions addressing: i. Online and social media campaign regulation: The Elections Act's media provisions are designed for broadcast and print media. Referendum campaigns increasingly play out on WhatsApp, X

				(formerly Twitter), Facebook, YouTube and TikTok. The Bill's incorporation of the media provisions of the Elections Act does not address platform-based campaign communications, algorithmic amplification, or coordinated inauthentic behaviour. ii. Disinformation response: There is no provision requiring IEBC to establish a rapid response mechanism for referendum disinformation, no role for the Communications Authority, and no framework for engaging platforms on content moderation during referendum periods.
32.	General Comment	Absence of a post-referendum evaluation mechanism	**Civil Society Parliamentary Engagement Network (CSPEN)** ▪ Proposed amendment to include a clause on post-referendum evaluation mechanism.	▪ The Bill provides for IEBC to declare results (Clause 16) and retain documents (Clause 36), but includes no post-referendum evaluation, report, or lessons-learned mechanism. ▪ The Venice Commission Code recommends that referendum administrators publish comprehensive post-event reports. This is important for institutional learning, democratic accountability, and civil society oversight.
33.	General Comment	Substantive Gap in Referendum Code of Conduct.	**Civil Society Parliamentary Engagement Network (CSPEN)** ▪ Proposed amendment to strengthen the Referendum Code of Conduct.	▪ Clause 40 simply incorporates the Elections Act's Electoral Code of Conduct by reference. This is adequate for basic conduct standards but does not address referendum-specific conduct issues such

				as: the conduct of promoters of a popular initiative, the obligations of county governors and MCAs who have significant influence over county assembly consideration, the obligations of Cabinet Secretaries and public officers during a referendum campaign period, or the obligations of social media platforms operating in Kenya during a referendum.
34.	General Comment	Effective Process Planning	**Mr. Robert S. Khaemba** ▪ IEBC must plan a good process to ensure Kenyans forward to IEBC as many questions that should be discussed and such answers be a part of the Constitution.	
35.	General Comment	Dissemination of information	**Mr. Robert S. Khaemba** ▪ Kenyans should be given information on radio, television and the internet and also in the newspapers on how they can attend meetings, and how they can write to the Senate, Parliament	
36.	General Comment	Referendum questions	**Mr Robert S. Khaemba** ▪ Referendum questions should be accepted by Parliament and Senate every month, so long as the questions are important. ▪ The committee receiving questions should sit at least two sittings every week.	
37.	General Comment	County voting and votes on investment & development	**Mr. Robert S. Khaemba** ▪ Referendum voting at county level on investments and development should be done at all counties. ▪ Constitutional amendments should be made urgently, especially on elections to	

			put a stop to a constitutional crisis or our country degenerating into a failed state.	
38.	General Comment	Proposed quadrennial referendum	**Mr. Robert S. Khaemba** ▪ A countrywide referendum should be done every 4 years before the next national elections. ▪ Such a referendum should check all chapters in the constitution.	
39.	General Comment	Removal of county assembly involvement	**Mr. Allan Shivanda** ▪ Recommendation to delete clauses involving the county assemblies in referendums	▪ Given the provisions of Article 256(1) of the Constitution, no further delegates should be allowed to intervene with the decision made by the sovereigns lest we undermine Article 1 of the Constitution. ▪ Drawing examples from previous popular initiatives in BBI and *Punguza Mizigo*., where both showed how county assembly process is a conflict of interest, on either side it touched on political seats, but the county assembly only passed the one favouring them. ▪ On that basis, Article 257, section 5,6,7 should be repealed, from popular initiatives process and taken to Article 256 on parliamentary initiative process.

Annex 6 - Text of the proposed Committee amendments to the Bill

20th July, 2026

The Clerk of the Senate
Parliament Buildings
NAIROBI

RE: COMMITTEE STAGE AMENDMENTS TO THE REFERENDUM BILL, 2026 (SENATE BILLS NO. 3 OF 2026)

NOTICE is given that Sen. Wakili Hillary Sigei, Chairperson, Senate Standing Committee on Justice, Legal Affairs and Human Rights, intends to move the following amendments to the Referendum Bill, Senate Bills No. 3 of 2026, at the Committee Stage—

CLAUSE 3

THAT clause 3 of the Bill be amended in paragraph(c) by inserting the words "as specified in clause 18" immediately after the words "of the Constitution".

CLAUSE 4

THAT clause 4 of the Bill be amended by inserting the following new subclause immediately after subclause (2)—

(3) The conduct of a referendum under this Act shall comply with the principles set out under Articles 10, 81, 86, and 232 of the Constitution.

CLAUSE 6

THAT clause 6 of the Bill be amended in subclause (1) by inserting the word "the" immediately after the words "information on" in paragraph (a).

CLAUSE 7

THAT clause 7 of the Bill be amended by inserting the following new subclause after subclause (2)—

(3) Each county assembly shall facilitate public participation in their respective county during the processing of the Bill by the county assembly.

CLAUSE 8

THAT clause 8 of the Bill be amended—

(a) in subclause (5) by deleting the introductory phrase and substituting therefor the following new introductory phrase —

(5) If one or both Houses of Parliament fails to pass the Bill within three months from when the Bill was introduced as stipulated in Article 257(7) of the Constitution, the Speaker of the relevant House shall —

(b) in subclause (6) by deleting the words "eighteen months" appearing immediately after the words "reject the Bill within" and substituting therefor the words "fourteen days".

CLAUSE 9

THAT clause 9 of the Bill be amended by inserting the following new subclause immediately after subclause (3)—

(4) In the event that draft Bills have been merged into one draft Bill, there shall be separate referendum questions framed for each matter with its own options and symbols.

CLAUSE 10

THAT clause 10 of the Bill be amended—

(a) in subclause (2) by deleting the word "may" appearing immediately after the words "The Commission" and substituting therefor the word "shall";

(b) in paragraph (b) of subclause (3) by deleting the word "civic" appearing in paragraph (b) before the word "education" and substituting therefor the word "voter"; and

(c) in paragraph (a) of subclause (4) by inserting the words "and where necessary in Braille or sign language" appearing immediately after the word "Swahili.

CLAUSE 11

THAT clause 11 of the Bill be amended in subclause (1) by deleting the words "section 9" and substituting therefor the words "section 10".

CLAUSE 14

THAT clause 14 of the Bill be amended by inserting the following new subclauses immediately after subclause (2)—

(3) Every referendum committee shall maintain accurate and complete records of all contributions, donations, expenditures and other financial transactions relating to referendum campaigns.

(4)A referendum committee shall disclose to the Commission, in the prescribed manner and within the prescribed timelines, all donations received and expenditures incurred during the referendum period.

(5) The Commission shall publish periodic campaign financing reports submitted under this section in a manner accessible to the public.

(6) The accounts of every referendum committee shall be subjected to an independent audit by a qualified auditor in accordance with regulations prescribed under this Act.

(7) A State officer, public officer or public entity shall not use public resources, public funds, public office, government infrastructure or official functions to support or oppose any referendum question or option."

CLAUSE 16

THAT clause 16 of the Bill be amended—

(a) in the introductory phrase by deleting the word "the" appearing immediately after the words "conclusion of" and substituting therefor the words "a national"; and

(b) in subclause (2) by inserting the words "if a petition has not been filed pursuant to section 25 of this Act" immediately after the words "subsection (1)(b)".

HEADING TO PART III

THAT the heading to Part III of the Bill be amended by deleting the word "III" appearing immediately before the words "OTHER REFERENDA" and substituting therefor the word "IV".

CLAUSE 17

THAT clause 17 of the Bill be amended by inserting the following new subclause immediately after subclause (3)—

(4) upon conclusion of a referendum in subsection (3), the Commission shall within three days of the referendum declare the results through a notice published in the *Gazette*.

HEADING TO PART IV

THAT the heading to Part IV of the Bill be amended by deleting the word "IV" appearing immediately before the words "REFERENDUM PETITIONS" and substitute therefor the word "V".

CLAUSE 20

THAT clause 20 of the Bill be amended in subclause (3) by inserting the word "or" immediately after the words "seven days of presentation" in paragraph (a).

CLAUSE 22

THAT clause 22 of the Bill be amended—

(a) in subclause (1) by deleting the words "been guilty of a corrupt practice" appearing immediately after the words "alleged to have" and substituting therefor the words "committed a corrupt act"; and

(b)in subclause (2) by deleting the words "presented by the Commission" appearing immediately after the words "of a referendum petition".

CLAUSE 23

THAT the Bill be amended by deleting clause 23 and substituting therefor the following new clause—

Filing of a referendum petition.

23. A referendum petition shall be signed by every petitioner or an advocate acting on the petitioner's behalf.

CLAUSE 24

THAT clause 24 of the Bill be amended—

(a) in subclause (1) by inserting the word "national" immediately after the word "A" appearing at the beginning of the subclause and

(b) by inserting the following new subclause immediately after subclause (1)—

(2) A county referendum petition shall be heard and determined by at least one judge appointed by the Chief Justice.

CLAUSE 27

THAT clause 27 of the Bill be amended in subclause (1) by deleting the words "section 43" appearing immediately after the words "the provisions of" and substituting therefor the words "section 42".

CLAUSE 30

THAT clause 30 of the Bill be amended in subclause (2) by deleting the words "subsection (2)" appearing after the words "an appeal under" and substituting therefor the words "subsection (1)".

CLAUSE 34

THAT clause 34 of the Bill be amended in subclause (1) by inserting the following new paragraphs immediately after paragraph (a)—

(aa) order a scrutiny or a recount of the votes cast in the referendum;

(ab) issue structural directions to the Commission;

HEADING TO PART V

THAT the heading to Part V of the Bill be amended by deleting the word "V" appearing immediately before the words "MISCELLANEOUS PROVISIONS" and substituting therefor the word "VI".

CLAUSE 36

THAT clause 36 of the Bill be amended by inserting the following new subclause immediately after subclause (5)—

(5) All documents relating to a referendum petition shall be retained up to the end of the litigation process.

CLAUSE 37

THAT clause 37 of the Bill be amended—

(a) in the marginal note by deleting the words "Election Offences Act." appearing immediately after the words "Application of the"; and

(b) by inserting the word "the" appearing immediately after the words "provisions of".

CLAUSE 38

THAT clause 38 of the Bill be amended by inserting the following new subclause immediately after subclause (1)—

(1A) Subject to subsection (1), all requests for cooperation made by the Commission to private entities shall be lawful, reasonable, proportionate and in writing.

CLAUSE 40

THAT clause 40 of the Bill be amended in subclause (1) by inserting the word "the" immediately after the words "prescribed under".

CLAUSE 41

THAT clause 41 of the Bill be amended—

(a) in subclause (1) by deleting the words "and provisions" appearing after the words "out of the purposes"; and

(b) by inserting the following new subclauses immediately after subclause (3)—

(4) Before submitting any proposed regulations to Parliament for approval under this section, the Commission shall publish the draft regulations in the *Gazette*, on its official website and in at least one newspaper of national circulation and invite public comments for a period of not less than fourteen days.

(5) The Commission shall consider and publish a summary of the comments received under subsection (4) including an explanation of whether and how the comments were incorporated into the final draft regulations.

CLAUSE 2

THAT clause 2 of the Bill be amended—

(a) in the definition of the word "polling station" by inserting the words "section 2 of" immediately after the words "to it under";

(b) in the definition of the word "register of voters" by inserting the words "section 2 of" immediately after the words "to it under"; and

(c) in the definition of the word "voter" by inserting the words "section 2 of" immediately after the words "to it under".

Dated.....22/07/2026.....2026

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Sen. Wakili Hillary Sigei, MP,

Chairperson,

Standing Committee on Justice, Legal Affairs and Human Rights.

CLAUSE 38

THAT clause 38 of the Bill be amended by inserting the following new subclause immediately after subclause (1)—

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CLAUSE 40

THAT clause 40 of the Bill be amended in subclause (1) by inserting the word "the" immediately after the words "prescribed under".

CLAUSE 41

THAT clause 41 of the Bill be amended—

(a) in subclause (1) by deleting the words "and provisions" appearing after the words "out of the purposes"; and

(b) by inserting the following new subclauses immediately after subclause (3)—

(4) Before submitting any proposed regulations to Parliament for approval under this section, the Commission shall publish the draft regulations in the *Gazette*, on its official website and in at least one newspaper of national circulation and invite public comments for a period of not less than fourteen days.

(5) The Commission shall consider and publish a summary of the comments received under subsection (4) including an explanation of whether and how the comments were incorporated into the final draft regulations.

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Dated.....22/07/2026.....2026

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Sen. Wakili Hillary Sigei, MP,

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