

Rt. Hon. Speaker

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STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
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REPORT ON CONSIDERATION OF THE CONSTITUTION OF
KENYA (AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

on behalf
of the
Chair
JLAW

07/8/26

APPROVED
RT. HON. SEN
AMASON J. KINGI

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI.

July, 2026

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LIST OF ABBREVIATIONS AND ACRONYMS

AG	– Office of the Attorney-General
DCI	– Directorate of Criminal Investigation
EACC	– Ethics and Anti-Corruption Commission
ELGIA	– Electoral Law and Governance Institute for Africa
IEBC	– Independent Electoral and Boundaries Commission
KLRC	– Kenya Law Reform Commission
KNHCR	– Kenya National Commission on Human Rights
NCIC	– National Cohesion and Integration Commission
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 Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026) are attached to this Report as ***Annex I***.

FOREWORD BY THE CHAIRPERSON

Honourable Speaker,

This report contains the proceedings of the Standing Committee of Justice, Legal Affairs and Human Rights on its consideration of Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026). The Bill was published on 2nd March, 2026 and read a first time in the Senate on 26th March, 2026, whereupon it was committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

Honourable Speaker,

The Constitution of Kenya (Amendment) Bill, 2026, at its foundation, is a Bill aimed at enhancing the integrity of our oversight institutions and the sanctity of public accountability. It is grounded in a profound concern that the current constitutional and electoral framework does not adequately guard against the conflict of interest that arises when a former county governor immediately transitions into a legislative role within the very bodies mandated to oversee that former governor's conduct in office.

County governors, in the course of their duties, are required by law to account to their respective county assemblies and to this House for any financial and administrative decisions made during their tenure. The Office of the Auditor General prepares annual audit reports on the accounts of county governments and submits those reports, pursuant to section 32 of the Public Audit Act, Cap. 412C, to the Senate and to the relevant county assembly for scrutiny. It is through this mechanism that this House and county assemblies exercise their constitutional oversight mandate over county governments and, by extension, over the governors who lead them.

Honourable Speaker,

The Bill proposes to amend Articles 99(2) and 193(2) of the Constitution as well as sections 24(2) and 25(2) of the Elections Act to introduce additional grounds for disqualification from election to the Senate and county assemblies. The Bill seeks to bar a person who is serving as a county governor, or who has held office as a county governor, by introducing a mandatory five-year cooling-off period immediately preceding an election, from vying for election as a Senator or as a member of a county assembly.

By imposing a five-year cooling-off period, the Bill ensures that all material accountability processes arising from a governor's tenure are substantially concluded

before that person can re-enter legislative office. The oversight process is thereby insulated from the risk of undue influence and ensures that by the time a former governor returns to the ballot, all accountability processes have been concluded, and voters are placed in a position to make a fair and informed judgement.

This Bill does not permanently bar former governors from vying for elective office. It simply asks that they step back for a defined period of five years to allow accountability processes to run their course, to allow oversight institutions to complete their inquiries without the risk of interference, and to allow the Kenyan voter to make a fully informed judgement before returning a former governor to legislative office.

Honourable Speaker,

In compliance with Articles 118 and 256 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 8th April, 2026 inviting the public to submit comments on the Bill by way of written memoranda.

Following this call, the Committee received submissions from a broad range of stakeholders and members of the public. These include the Council of Governors, County Assemblies Forum, Electoral Law and Governance Institute for Africa, Ethics and Anti-Corruption Commission, Independent Electoral and Boundaries Commission, Kenya Law Reform Commission, Kenya National Commission on Human Rights, Office of the Attorney General and Department of Justice, Office of the Registrar of Political Parties, Outreach for Action Kenya, Sheria Watch and Transparency International-Kenya.

An overview of the submissions received by the Committee is set out at Chapter Two of this Report, while our deliberations and observations on the respective provisions of the Bill are set out at Chapter Three of the Report.

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 its consideration of the Bill. The Committee also takes this opportunity to acknowledge and appreciate the stakeholders and members of the public who submitted written memoranda on the Bill, which greatly enriched the Committee's consideration of the provisions contained in 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 223 of the Senate Standing Orders, to present the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026).

Signed



Date.....

30/7/2026

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

CHAPTER ONE: INTRODUCTION

1.1 Introduction

1. The Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026) was published on 2nd March, 2026 and read a first time in the Senate on 26th March, 2026, whereupon it was committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. A copy of the Bill is attached to this Report as *Annex 2*.

1.2 Objective of the Bill

2. The principal object of the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026) is to amend the Constitution of Kenya and the Elections Act (Cap. 7) to introduce new disqualifications for persons seeking election to the Senate and to county assemblies.
3. The Bill proposes to introduce a cooling-off period to bar any person who is serving as a county governor, or who has, at any time within the five years immediately preceding the date of election, held office as a county governor, from contesting for a seat in the Senate or in any county assembly.
4. In doing so, the Bill seeks to protect the integrity of oversight institutions, safeguard ongoing accountability processes arising from the tenure of former governors, and ensure that voters are placed in a position to make a fully informed assessment of the suitability of such individuals for future elective office.

1.3 Overview of the Bill

5. The Bill proposes to amend clause 2 of Article 99 of the Constitution by inserting a new paragraph (ba) immediately after paragraph (b) providing that a person is disqualified from elections as a Member of Parliament to the Senate if the person:
 - (a) is a county governor, or
 - (b) has, at any time within the five years immediately preceding the date of election, held office as a county governor.
6. The Bill further proposes to amend Article 193 of the Constitution by inserting a new paragraph (ba) in clause (2), immediately after paragraph (b), providing that a person is disqualified from election as a member of a county assembly if the person has, at any time within the five years immediately before the date of election, held office as a county governor.

7. To ensure consistency and coherence between the constitutional framework and electoral law, the Bill additionally proposes corresponding amendments to the Elections Act (Cap. 7, Laws of Kenya).
8. The Bill proposes that section 24 of the Elections Act is amended in subsection (2) by inserting a new paragraph (ba), immediately after paragraph (b), replicating at the statutory level the disqualification for Senate elections introduced by the amendment to Article 99.
9. The Bill further proposes that section 25 of the Elections Act is amended in subsection (2) by inserting a new paragraph (ba), immediately after paragraph (b), replicating the disqualification for county assembly elections introduced by the amendment to Article 193.
10. These four targeted amendments collectively establish a mandatory five-year cooling-off period during which a former governor is precluded from contesting for either a Senate seat or a seat in any county assembly. The period runs from the date on which the person ceased to hold office as county governor to the date of the election in question.

1.4 Consequences of the Bill

11. By imposing a five-year cooling-off period, the Bill ensures that oversight bodies i.e. Senate and county assemblies, would have adequate time to inquire into any matters arising from the tenure of a previous holder of the office of county governor without interference by the former county governor, which is of particular concern where the person in question is elected as a Member of a County Assembly or to the Senate.
12. The Bill will give voters a clear reference point in making an informed choice on the suitability of such a candidate for another elective office, since all accountability processes relating to the former governor's tenure would have been concluded before the person seeks re-election.

CHAPTER TWO: CONDUCT OF PUBLIC PARTICIPATION ON THE BILL

2.1. Introduction

13. Pursuant to Articles 118 (1) (b) and 256 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 8th April, 2026 inviting members of the public to submit comments on the Bill by way of written Memoranda. A copy of the advertisement is attached to this Report as *Annex 3*.
14. Arising from the invitation, the Committee received and considered submissions from diverse organizations and individuals as listed below-

Organizations

- 1) Council of Governors
- 2) County Assemblies Forum
- 3) Electoral Law and Governance Institute for Africa
- 4) Ethics and Anti-Corruption Commission
- 5) Independent Electoral and Boundaries Commission
- 6) Kenya Law Reform Commission
- 7) Kenya National Commission on Human Rights
- 8) Mau Mau Post Colonial Children
- 9) Office of the Attorney General and Department of Justice
- 10) Office of the Registrar of Political Parties
- 11) Outreach for Action Kenya
- 12) Sheria Watch
- 13) Transparency International Kenya

Individuals

- | | |
|--------------------------|---------------------------|
| 1) Abdulmalik Magong'a | 11) Eddie Owino George |
| 2) Abubakar Kamau Hassan | 12) Elijah ole Lupempe |
| 3) Andrew Maina | 13) Erastus Kamau |
| 4) Anthony Ndung'u | 14) Faustin Ngovu Samuels |
| 5) Belindah Makani | 15) Fidel Wangai |
| 6) Boniface K. Ole Keis | 16) Fredrick Bundi |
| 7) Bryan Kituyi | 17) Geoffrey Wekesa |
| 8) Charles Alari | 18) Githinji Bernard |
| 9) Daniel Kague | 19) Hannah Maina |
| 10) Daniel Waithaka | 20) Ian Muthomi |

- | | |
|--------------------------|----------------------------------|
| 21) Ignatius Amondo | 28) Nahashon Kamau |
| 22) Jeremy Mulonzia | 29) Nasambu Flavia |
| 23) Joyce Wamwea | 30) Purity Sangiru |
| 24) Julius Kabari | 31) Rayzan Bundi |
| 25) Lydia Nyawira Mburia | 32) Robinson Macharia |
| 26) Martin Bosire | 33) Shallet Kibet (The Big Talk) |
| 27) Mwangi Kamau | |

15. 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*.

2.2. Overview of the Submissions received from Organizations

2.2.1. Council of Governors (COG)

16. The Council of Governors submitted its memorandum in opposition to the Bill in its entirety, on the grounds that -
- a) the Bill proposes an amendment that requires a referendum under Article 255 of the Constitution, which outlines the requirement for a referendum when amending certain fundamental provisions of the Constitution, including matters related to the Bill of Rights, and that any proposed constitutional amendment touching on the Bill of Rights must be approved through a referendum;
 - b) the Bill offends Article 38 of the Constitution on political rights by seeking to bar current and former Governors from exercising their political rights without reasonable justification, and that the proposed limitation does not meet the threshold for limitation of rights under Article 24 of the Constitution, which requires that a limitation of a fundamental right must be by law and to the extent that it is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom;
 - c) the Bill violates Article 50(2)(a) on presumption of innocence and fair hearing, in that it speculates that all current and former Governors are guilty of misconduct for which they will be held accountable before they exercise their constitutional right to vie for elective office, and that the oversight role of the Senate or County Assembly is not exercised by individual senators or MCAs but is a collective responsibility of the House, which negates the justification in the Bill's Memorandum of Objects and Reasons;
 - d) the Bill is incongruent with Article 27 and is selective and discriminatory in its exclusion, in that it infringes the right to equal protection and equal benefit

of the law, since the Senate and County Assemblies also oversee other public officers including Cabinet Secretaries, Deputy Governors, County Executive Committee Members and Chief Executive Officers of state and county corporations, none of whom have been subjected to a similar bar;

- e) the Bill violates Article 73(2)(b) and (c) on exercising leadership objectively and in the public interest, in that the Senate appears to be legislating in its self-interest to insulate its members from competition in the next general election;
- f) the Bill conflicts with the decision of the High Court in Constitutional Petition No. E005 of 2022 (Carolyn Andzazi Chilango & Anor v. The Independent Electoral and Boundaries Commission & Others, delivered on 17th June 2022), in which the court dismissed a petition seeking to bar former and current Governors from vying for seats as Members of Parliament, holding that such a limitation was speculative and overbroad, that it targeted a group of people and dangerously assumed all were guilty, and that the orders sought, if granted, would impinge on Article 38 rights and could not pass an Article 24 analysis test;
- g) the Bill ignores the adequacy of existing constitutional and statutory accountability mechanisms, in that the Constitution already contains comprehensive disqualifications under Articles 99(2) and 193(2) together with the existing accountability architecture comprising annual audit reports under the Public Audit Act, Senate and County Assembly oversight, the Ethics and Anti-Corruption Commission, and judicial processes, which adequately address the concerns raised in the Bill's Memorandum of Objects and Reasons;
- h) the Bill undermines voter sovereignty and deprives the legislature of institutional expertise, in that it restricts the electorate's freedom to choose candidates without any corresponding judicial or quasi-judicial determination of unsuitability, and that former County Governors possess deep institutional knowledge and practical experience in devolved governance that would enrich the Senate's and County Assemblies' oversight function; and
- i) the Bill is vague and raises serious implementation challenges, including a lack of clarity on whether the five-year bar applies to current governors, governors who served partial terms, or those who left office through impeachment or voluntary resignation, and that the rigid five-year period bears no relationship to the actual time required to complete audit and accountability processes.

17. The COG further submitted that the Senate and County Assemblies ought to exercise their oversight role and complete the same within the Governor's term, instead of visiting any delays thereto on the former Governor, and noted that Governors are not immune to accountability proceedings after the lapse of their term, as Article 226(5) of the Constitution provides that the holder of a public office who is liable for any loss of public funds pursuant to their instruction shall make good that loss whether they remain the holder of the office or not.
18. The Council therefore requested the Senate to withdraw the Bill and, should Parliament nonetheless determine that additional safeguards are necessary, recommended the following proportionate alternatives:
 - i) mandatory recusal provisions requiring former Governors to recuse themselves from Senate or County Assembly proceedings relating to their own tenure rather than a blanket disqualification; and
 - ii) strengthening of existing Chapter Six and audit processes under the Public Audit Act to ensure timely completion of accountability inquiries within a governor's term.

2.2.2. County Assemblies Forum (CAF)

19. CAF recognised that the oversight mandate of County Assemblies under Article 185(3) is fundamental to the success of devolution and that the integrity and independence of oversight processes must be safeguarded to ensure accountability in the management of public resources.
20. CAF submitted that the Bill addresses a fundamental conflict of interest inherent in the immediate transition of a former county governor into a legislative role within the County Assembly or Senate, and that given that County Assemblies are constitutionally mandated under Article 185(3) to exercise oversight over the county executive, the presence of a former governor as a Member of the County Assembly would undermine the objectivity and credibility of that oversight function, particularly where the Assembly is required to scrutinise decisions made during that governor's tenure.
21. The stakeholder noted that the Bill advances the principles of separation of powers, institutional integrity, and accountable governance by preventing the emergence of a 'revolving door' scenario in which former executive officeholders immediately assume oversight roles over their own prior administration.

22. Notwithstanding the above, CAF noted that the proposed limitation raises significant constitutional concerns, particularly in relation to political rights under Article 38 and equality under Article 27, and that any restriction must meet the threshold set under Article 24.
23. CAF further noted that while Chapter Six of the Constitution underscores leadership and integrity, blanket disqualifications that are not tailored to specific accountability outcomes risk undermining democratic participation.
24. The CAF also gave that comparative jurisdictions including Nigeria, the United States, South Africa, the United Kingdom and India demonstrate that while the risk of conflict of interest arising from former executives transitioning into oversight institutions is widely recognised, most systems do not impose blanket disqualifications but instead rely on institutional safeguards, ethics frameworks, and accountability mechanisms.
25. The stakeholder was of the view that Kenya's proposed five-year restriction is therefore a novel and more restrictive intervention that must be carefully justified under Article 24 of the Constitution to ensure that it is proportionate, necessary, and the least restrictive means of achieving the intended objective.
26. CAF recommended that the proposed amendments to Clause 2 (Article 99) and Clause 3 (Article 193) be passed without amendment, on the grounds that Clause 2 protects the Senate's role in overseeing county funds and ensures that audit reports for a governor's final years are reviewed impartially, and that Clause 3 is essential to prevent a revolving door scenario where executives oversee their own past financial decisions as MCAs.

2.2.3. Electoral Law and Governance Institute for Africa (ELGIA)

27. ELGIA submitted a memorandum presenting two thematic concerns regarding the Bill. On the first theme of political rights and limitation of fundamental rights and freedoms, ELGIA submitted that the Bill limits the political rights guaranteed under Article 38 of the Constitution, which includes the right to vie or be a candidate for any public office, and that Article 38(3)(c) provides that every adult citizen has the right, without unreasonable restrictions, to be a candidate for public office or office within a political party and, if elected, to hold office.
28. ELGIA further submitted that Article 24 of the Constitution sets out the circumstances under which rights and fundamental freedoms may be limited, and

that the Constitution additionally provides that a provision limiting a right or fundamental freedom shall not derogate from its core or essential content. It noted that Article 24 was borrowed heavily from the Canadian Supreme Court Ruling in *R v. David Oakes (1986) 1 S.C.R. 103*, generally referred to as the “Oakes Test”, which requires that a limitation must be justifiable in an open and democratic society and satisfy a proportionality test.

29. The stakeholder submitted that there are other less restrictive means within the electoral law and integrity framework to achieve the stated purposes of the Bill, namely enhancing accountability and dealing with conflicts of interest of an elected leader, and that it is a settled principle that the purpose of a limitation fails the test of proportionality if there is the presence of other means to achieve the same ends without the limitations.
30. On the second theme of comparative analysis and international law, ELGIA submitted that limitations on political rights in a constitutional text must be consistent with international obligations, including the International Covenant on Civil and Political Rights (ICCPR), whose Article 25 on political participation states that there should be no unreasonable restrictions.
31. ELGIA noted that most jurisdictions, including the United States, Canada, and Britain, have no specific laws restricting a person from running for other offices after reaching term limits in a current position, citing the example of Mark Robert Warner, the current Senator for Virginia, who served as the 69th Governor of Virginia from 2002 to 2006 and thereafter ran for the Senate in 2008. ELGIA also noted that the South African Constitution, under Article 36(2), provides a highly sophisticated human rights architecture which provides that no law may limit any right entrenched in the Bill of Rights.

2.2.4. Ethics and Anti-Corruption Commission (EACC)

32. The EACC submitted that the proposed amendment to Article 99(2) of the Constitution prevents conflict of interest since the Senate exercises oversight over County Governments and allows for the completion of audit and accountability processes, while also promoting compliance with Chapter Six of the Constitution on Leadership and Integrity.
33. With respect to the proposed amendment to Article 193(2), the Commission submitted that, since County Assemblies oversee County Executives, the

amendment prevents interference with oversight processes and avoids institutional conflict between former executive roles and legislative oversight.

34. The EACC further submitted that the proposed amendments to Sections 24(2) and 25(2) of the Elections Act align statutory provisions with the constitutional amendment to ensure consistency in electoral law and further enforce integrity safeguards in elections, and that these amendments enable voters to make informed decisions based on verified accountability outcomes, thereby enhancing transparency and trust in electoral systems and reinforcing public trust in governance, electoral systems, and oversight frameworks, so as to promote responsible leadership in public service.

2.2.5.Independent Electoral and Boundaries Commission (IEBC)

35. The IEBC noted that the Bill directly affects its mandate as it proposes to review the qualifications and disqualifications of candidates for election.
36. The Commission submitted that –
 - a) the proposed amendments contrast with Articles 24 and 38 of the Constitution. In its view, any limitation of political rights must satisfy the threshold set out under Article 24. The Commission further submitted that Article 38(3)(c) guarantees every adult citizen the right, without unreasonable restriction, to be a candidate for public office or office within a political party and, if elected, to hold office;
 - b) while the Bill seeks to enhance accountability and address conflicts of interest, these objectives should be achieved through the existing ethics, integrity and electoral legal framework, rather than by imposing a blanket restriction on political rights which is contrary to the constitutional ethos and principles;
 - c) where a matter before a relevant assembly relates to the tenure of an affected person in a previous office, the affected person should recuse himself or herself from presiding over or participating in the proceedings;
 - d) instead of limiting the rights provided for under Article 38(3)(c) of the Constitution, consideration should be made to expand the existing legislative frameworks inherent in the Elections Act, the Election Offences Act, the Leadership and Integrity Act, and the Ethics and Anti-Corruption Commission Act to bar convicted office holders from future elections as anticipated under Chapter Six read together with Article 99(2)(h) of the Constitution.

- e) the Senate ought to be guided by the tests in *R V. David Oakes (1986) 1 S.C.R.103*, which provides two tests; the Oakes test and the proportionality test; which together require that the means chosen to limit a right must be reasonable and demonstrably justified, and that those means must be proportional to the burden placed on the rights of a person;
 - f) the European Convention on Human Rights (ECHR) requires that in all its general limitation clauses, that the measures must be necessary in a democratic society, and that Article 12 of the International Covenant on Civil and Political Rights (ICCPR) on freedom of movement emphasises that limitations must be consistent with the other rights recognised in the Covenant;
 - g) the African Commission on Human and Peoples' Rights provides, under Article 27(2) of the African Charter, that the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest;
 - h) the principles of proportionality, necessity, appropriateness, and the requirement that any limitation adopt the least restrictive means form the core criteria for assessing the permissible scope of limitations on rights, as expressly provided under Article 24 of the Constitution;
 - i) these criteria are further reflected in the Siracusa Principles on the limitation and derogation provisions carried in the ICCPR, which underscore that any limitations imposed must not negate the essence of the rights concerned, must not encroach upon minimum core obligations, and must at all times adhere to the principle of proportionality; and
 - j) all Acts of Parliament ought to conform to applicable international standards at both the drafting and enactment stages, and that such conformity will obviate violations of the applicable limitations contemplated under Article 24 of the Constitution.
37. The Commission further submitted that, should the Bill be enacted into law, it would be obligated to initiate consequential amendments to the electoral statutory instruments and other relevant guidelines within the electoral operational framework.
38. IEBC therefore proposed two specific alternatives: first, that former governors who find themselves in oversight bodies on matters touching their tenure should be required to recuse themselves from those proceedings; and second, that instead of a constitutional restriction, the Elections Act, Election Offences Act, Leadership and Integrity Act, and EACC Act should be expanded to bar convicted officeholders from future elections under Chapter Six read with Article 99(2)(h).

2.2.6. Kenya Law Reform Commission (KLRC)

39. The Kenya Law Reform Commission (KLRC) submitted that the proposed amendments are not sound and that the Bill is a weak proposal under Kenya's current constitutional framework, because it imposes a blanket disqualification beyond what the Constitution already provides, without sufficient justification.
40. The KLRC submitted that the proposed amendments to Articles 99(2) and 193(2) of the Constitution and to Sections 24(2) and 25(2) of the Elections Act could potentially conflict with the people's right to choose their leaders and could violate Articles 1(2) and 38 of the Constitution. The Commission further submitted that the Constitution already gives voters the right to elect anyone who meets clear and objective qualifications such as age, education, and citizenship, and that adding a time-based ban on a specific former office without evidence of inherent unfitness is overbroad.
41. The stakeholder further submitted that the proposal unjustly treats all former governors equally regardless of performance, thereby penalising competent and ethical leaders alongside those who may have performed poorly, and that the requirement may offend the principle of presumption of innocence as it restricts political rights based on unproven or pending accountability processes.
42. The KLRC was of the opinion that the proposal presupposes that accountability processes can only be undertaken after a person leaves office and must be completed within five years, which is not necessarily the case, since accountability mechanisms can be initiated and concluded while governors are still in office, and since election to another office does not shield an individual from administrative or legal accountability as conflict of interest laws and oversight mechanisms remain applicable.
43. The KLRC also noted that there is no comparative precedent for such a restriction, as jurisdictions such as South Africa and the United States permit former premiers or governors to contest for elective positions without a mandatory cooling-off period, and that cooling-off periods are typically applied to appointed public officials transitioning into elective politics to prevent abuse of incumbency, which is distinguishable from the restriction proposed in the Bill.

2.2.7. Kenya National Commission on Human Rights (KNCHR)

44. The KNCHR submitted that while Article 38 of the Constitution entitles every citizen to make political choices, including the right of every adult citizen to vote and to vie for public office, this right can be restricted on legal, reasonable, and justifiable grounds.
45. The Commission opined that limiting the right of former Governors from vying for Senate or County Assembly positions within the first five years after the end of their terms is reasonable and justifiable within the ambit of Article 24 of the Constitution, because Senators and Members of County Assemblies directly oversee Governors, and it is possible for such persons who were Governors to directly or indirectly influence the examination of audit reports submitted by the Auditor-General or the conduct of investigations into administration and financial mismanagement during their immediate tenure.
46. The stakeholder submitted that barring former Governors from vying for oversight positions within the first five years after the end of their tenure would—
 - a) prevent actual conflict of interest in line with Chapter Six of the Constitution, the Leadership and Integrity Act, and the Public Officer Ethics Act;
 - b) promote democratic and accountable exercise of power and ensure that inquiries into the reports or conduct during their tenure would commence and proceed without undue interference;
 - c) enhance the separation of powers and checks and balances which are fundamental principles under Articles 174 and 175 of the Constitution;
 - d) promote the national values and principles of the Constitution under Article 10; and
 - e) promote the values and principles of public service under Article 232 and the Public Service (Values and Principles) Act, 2015.
47. The KNCHR noted that similar restrictions have already been imposed elsewhere in Kenya's constitutional and legal framework, citing Article 88(2) of the Constitution which disqualifies a person from appointment as a member of the Independent Electoral and Boundaries Commission (IEBC) if the person has, at any time within the preceding five years, held office or stood for election as a member of Parliament or of a county assembly, or as a member of the governing body of a political party, and submitted that the proposed restriction for former Governors would therefore not be anything new to Kenya's constitutional framework.

48. The KNCHR however expressed opposition to extending this limitation to positions for Members of the National Assembly, on the ground that they play a minimal role in overseeing county chief executives.

2.2.8. Mau Mau Children Post Colonial Elites

49. The Mau Mau Children Post Colonial Elites, submitted a memorandum in strong support of the Bill, submitting that it addresses a long-standing structural gap that undermines two fundamental pillars of devolution, namely accountability and separation of powers, and urging the Committee to recommend its passage without dilution.
50. The organisation advanced the following grounds in support—
- a) *Accountability and Oversight*: Article 96 mandates the Senate to oversee county governments, and allowing a governor to move directly into the Senate creates a clear conflict of interest as they may be required to review decisions made during their own tenure, while the proposed cooling-off period restores objectivity and strengthens public confidence in Senate oversight;
 - b) *Prevention of Abuse of Office*: without such a restriction, a sitting governor may be tempted to use public resources or influence to advance future legislative ambitions, and the five-year gap acts as a safeguard against such practices and promotes ethical leadership in line with Chapter Six of the Constitution;
 - c) *Promotion of Leadership Renewal and Inclusivity*: devolution was intended to expand opportunities for leadership across the country, and immediate transitions by governors into other elective positions limit space for new leaders and entrench a small political class; and
 - d) *Reinforcement of the Principle of Separation of Powers*: the Bill creates a clear distinction between executive roles at the county level and legislative oversight functions at the national and county levels and aligns with comparative democratic practices where cooling-off periods are used to prevent conflicts of interest and protect institutional integrity.
51. The stakeholder further submitted that the Bill does not bar former governors from political participation entirely, noting that it only limits immediate transition into positions that directly oversee county governments.

2.2.9. The Office of the Attorney-General (AG)

52. In its considered opinion, the Office of the Attorney-General submitted that the Bill does not require approval at a referendum as it does not deal with any of the matters specified in Article 255(1) of the Constitution. Furthermore, in view of the fact that the Bill was introduced in the Senate, it falls within the ambit of Article 256 as an amendment by Parliamentary initiative.
53. The Office of the Attorney-General further submitted that the proposed amendments to the Elections Act are consistent with the requirement set out in Article 256(2) in that they only address consequential amendments to legislation arising out of the proposed amendments to Articles 99 and 193.
54. The AG submitted that the proposed restriction on the eligibility of former county governors to be elected as members of the Senate or county assemblies is consistent with the provisions of Article 24 on the limitation of rights and fundamental freedoms, as the restriction is proposed to be limited by law, and it is reasonable and justifiable, and takes into account the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others.
55. The stakeholder further noted that the question of the eligibility of a person to be elected as a member of Parliament is set out in Article 99 of the Constitution and the provisions are mirrored in clauses (2) and (3) of Article 193.
56. The AG further submitted that the issue of accountability of county governors, members of county executive committees and members of county assemblies is multi-dimensional in nature involving other State organs including the Auditor-General, Controller of Budget, National Police Service, Ethics and Anti-Corruption Commission and Director of Public Prosecutions, which are independent of the Senate and county assemblies.
57. In light of the foregoing, the Office of the Attorney-General expressed the considered view that the issues intended to be addressed by the Bill are sufficiently addressed by Article 99(2) and (3) and Article 193(2) and (3) of the Constitution.
58. On the basis of the above, the Office of the Attorney-General was of the considered view that the Bill, in its current form, is not necessary as the existing constitutional and statutory framework adequately addresses the concerns sought to be addressed by the Bill.

2.2.10. The Office of the Registrar of Political Parties (ORPP)

59. The ORPP lauded the Bill as a path towards promoting accountability of elected representatives and enhancing the capacity of the Senate and county assemblies to undertake their oversight roles. While supporting the Bill in principle, the ORPP called upon the Committee to consider the following issues-

- a) In the absence of a commencement clause, the law shall come into force in line with Article 116 of the Constitution, which has implications for the qualifications of persons currently holding positions in the Senate and the County Assembly. The ORPP proposed that there is need for a transition and/or a savings clause to address this concern.
- b) In terms of Article 180(2) of the Constitution, a person is eligible to be elected as a governor if they are eligible to be elected as a Member of a County Assembly. The qualifications for an MCA are stipulated under Article 193 of the Constitution. The proposed amendment to Article 193 therefore introduces an incongruence between Articles 180 and 193 of the Constitution, an issue that the ORPP submitted may be resolved through recrafting of the relevant provisions.
- c) The ORPP submitted that it is imperative to consider whether there may be less restrictive means to achieve the purpose of the Bill as required under Article 24(1)(e) of the Constitution.

60. The ORPP accordingly invited the Committee to consider the issues raised so as to fend off or prepare for potential litigation on the proposals.

61. ORPP proposed that the Bill be recrafted to include a transition and/or savings clause to address the immediate commencement implications under Article 116 of the Constitution, and that the incongruence between Articles 180 and 193 of the Constitution introduced by the proposed amendment to Article 193 be resolved through appropriate recrafting.

62. The ORPP further invited the Committee to consider whether less restrictive means to achieve the purpose of the Bill, as required under Article 24(1)(e) of the Constitution, may be available, including through mechanisms for declaration of conflict of interest.

2.2.11. Outreach for Action Kenya

63. Outreach for Action Kenya grounded its opposition in five distinct and mutually reinforcing grounds, each of which it submitted is independently sufficient to

warrant the Committee's recommendation against passage of the Bill. The grounds are that-

- a) The Bill rests on a series of unsubstantiated assumptions that cannot withstand constitutional scrutiny. The organisation submitted that the Bill offers no documented evidence of a former governor having successfully obstructed an accountability process upon becoming a senator or MCA, that it applies uniformly to all former governors regardless of their individual accountability record, that the five-year period is an arbitrary legislative choice unsupported by empirical data on audit durations, and that no analysis is presented demonstrating the inadequacy of existing statutory mechanisms.
- b) The Bill imposes a blanket restriction on the fundamental right to political participation guaranteed under Article 38(3) of the Constitution in a manner that is disproportionate and arbitrary, and that fails the limitation test under Article 24. Outreach for Action Kenya highlighted in particular the geographic overbreadth of the Bill, which bars a former governor from contesting an MCA seat in any ward in Kenya, including those in counties entirely different from the one they governed, and its failure to distinguish between governors with clean records and those with unresolved accountability matters.
- c) The Bill offends the constitutional guarantees on presumption of innocence and fair hearing under Articles 25 and 50 of the Constitution. The organisation argued that the Bill has the practical effect of treating former office holders as though they have been found guilty of wrongdoing, without any individual inquiry, evidence, hearing, or determination against them.
- d) The Bill establishes an arbitrary and constitutionally unsustainable precedent by applying an accountability-based disqualification selectively to former county governors while leaving equivalent classes of former public officers entirely unrestricted, in violation of the equal protection guarantee under Article 27 of the Constitution. Outreach for Action Kenya submitted that if the underlying principle were constitutionally sound, it would by necessity apply with equal force to former Cabinet Secretaries, Principal Secretaries, and other officers subject to ongoing parliamentary oversight, and that the selective targeting of one class of officers is therefore arbitrary and unprincipled.
- e) The Bill is a substantive re-introduction of a proposal previously placed before the Senate and withdrawn, namely the Constitution of Kenya (Amendment) (No. 2) Bill, Senate Bills No. 52 of 2023, sponsored by Nominated Senator Raphael Chimera. Outreach for Action Kenya submitted that the present Bill does not demonstrate that the concerns which necessitated the withdrawal of its predecessor have been identified,

considered, or addressed, and that the high threshold for amending the supreme law of Kenya requires more than the re-introduction of a materially identical proposal.

64. In lieu of the Bill, Outreach for Action Kenya advanced five proposals as more constitutionally appropriate, proportionate, and practically effective responses to the identified accountability concerns-
- i) amending Senate and county assembly Standing Orders to introduce mandatory and automatic recusal of former governors from all proceedings concerning audit reports and oversight matters from their tenure;
 - ii) amending the Leadership and Integrity Act and the Ethics and Anti-Corruption Commission Act to introduce a mandatory, time-bound integrity clearance process for former governors before nomination for any elective position;
 - iii) amending the Public Audit Act to require the Auditor-General to compile and publish a consolidated audit status summary for each former governor within ninety days of leaving office;
 - iv) amending the Elections Act to require former governors to file audit status summaries, EACC clearance certificates, and statutory declarations at the point of nomination; and
 - v) amending the Senate Standing Orders to prohibit former governors from serving on Senate committees whose mandate includes scrutiny of audit reports for the county they previously governed.

2.2.12. Sheria Watch

65. Sheria Watch expressed agreement with the spirit of the Bill, but submitted that the proposal raises substantial constitutional and democratic concerns that require careful consideration before enactment.
66. On the limitation of political rights, Sheria Watch submitted that the Bill inadvertently limits political rights under Article 38 of the Constitution by interfering with the guaranteed right of every citizen to make political choices, the right to contest for public office, and the right of voters to freely elect leaders of their choice.
67. They submitted that while Article 24 of the Constitution envisions the limitation of rights, the tests of reasonableness, necessity, and proportionality must be satisfied, and that the Bill has not sufficiently addressed these requirements.

68. The organisation proposed that the Committee rationalise the five-year cooling period and provide substantive justifications if the Bill is to proceed and noted that while accountability is important, constitutional democracy requires caution against excessive restrictions on electoral participation.
69. On the constitutional amendment threshold, Sheria Watch submitted that, given that the Bill affects political rights guaranteed under the Bill of Rights, referendum requirements under Article 255 may be invoked.
70. Sheria Watch pointed out that Kenya is presently operating within a constrained fiscal environment and preparations for the upcoming general elections, and questioned whether it is financially prudent and necessary to conduct a referendum at this juncture.
71. Sheria Watch proposed that if the Bill is to proceed, the Committee should rationalise the five-year cooling period and provide substantive constitutional justifications demonstrating that the limitation satisfies Article 24.

2.2.13. Transparency International Kenya (TI-Kenya)

72. In its view, the proposed five-year cooling-off period is insufficient and misaligned with the realities of Kenya's accountability environment. In particular, TI-Kenya noted that audit reports and corruption-related court proceedings can take substantially longer than five years to conclude, such that a governor with ongoing investigations could re-enter office before those processes are finalised.
73. TI-Kenya proposed that, if such a restriction is to be considered at all, it should be extended to require clearance by the relevant investigative and oversight bodies, and by courts where proceedings have been instituted against a former governor, rather than being tied to an arbitrary political timeline. This would ensure full compliance with Chapter 6 of the Constitution, the Leadership and Integrity Act 2012, and the Public Audit Act Cap. 412B.
74. TI-Kenya relied on the High Court's observations in *Trusted Society of Human Rights Alliance & 3 others v Judicial Service Commission & another* [2016] KEHC 3581 (KLR), in which the court held that the constitutional threshold for leadership requires individuals to be beyond reproach, and that it is sufficient for there to be serious and plausible unresolved questions about a person's integrity. TI-Kenya submitted that any legislative attempt to regulate eligibility for public

office must therefore be firmly grounded in an integrity-based framework rather than a rigid time-bound disqualification.

75. TI-Kenya additionally proposed that the restriction should not be confined to the elective positions outlined in the Bill but should also extend to appointive positions such as Cabinet Secretary, in compliance with Chapter 6 of the Constitution and its related laws.

2.3. Overview of the Submissions received from Individuals

2.3.1. Abdulmalik Magonga

76. Mr. Abdulmalik Magonga submitted a memorandum in opposition to the Bill, characterising it as fundamentally unconstitutional, a politically motivated device aimed at creating electoral monopolies, and an egregious assault on democratic principles.
77. Mr. Magonga submitted that the Bill repeats a historical pattern in Kenya where constitutional amendments are weaponised to neutralise political rivals. He noted that similar proposals between 2015 and 2018 to bar governors from ascending to the Senate or National Assembly were rejected by the public as politically motivated.
78. He further submitted that the 2022 General Election, in which a number of former second-term governors successfully transitioned to the Senate, represented the democratic will of the people, and that the Bill seeks to retroactively change the rules of the political game to prevent this career path.
79. Mr. Magonga submitted that no mature democracy, whether presidential (USA), parliamentary (UK, Canada), Westminster-federal (India, Australia), or cooperative federal (Germany), imposes a blanket post-service ban on executive heads seeking legislative office.
80. He noted examples from the United States Senate, the German Bundesrat, Canadian provincial politics, the Indian Parliament, and South African constitutional jurisprudence, all of which permit or affirmatively value the transition of former executive leaders into legislative roles.
81. He relied on the South African Constitutional Court's decision in *My Vote Counts NPC v Speaker of the National Assembly (2015)*, which held that restrictions on the right to be elected must be proportional, rationally connected to a legitimate

aim, and the least restrictive means available, and submitted that the Kenyan Bill fails all three prongs.

82. On philosophical grounds, Mr. Magonga submitted that the Bill fails every major theory of justice. Applying John Rawls' veil of ignorance, he submitted that no rational legislator would agree to a rule disqualifying an entire class of persons from political participation based solely on past service, without knowing whether they might themselves one day occupy that office.
83. He further submitted that the Bill offends Aristotle's conception of active citizenship, fails the utilitarian test by producing a net loss of societal happiness, violates John Stuart Mill's harm principle by restricting liberty on the basis of potential rather than actual harm, is inconsistent with Hannah Arendt's concept of the right to have rights, and offends the African philosophy of Ubuntu by branding an entire class of elected leaders as unworthy of further service.
84. Mr. Magonga submitted that the Bill violates the right to be elected under Article 38, creates an irrebuttable presumption of unsuitability for office contrary to the holding in *Stanley Munga Githunguri v R (1985)*, and suppresses political competition in breach of Articles 36 (Freedom of Association) and 33 (Freedom of Expression).
85. He further submitted that the accountability rationale advanced for the Bill is legally bankrupt, as it reverses the presumption of innocence under Article 50(2)(a), violates the rule against bias given that the Bill's drafters are primarily current senators who stand to benefit by removing potential rivals, and denies the right to be heard since no former governor was consulted before the introduction of the Bill.
86. He additionally submitted that former governors have a legitimate expectation, rooted in the Constitution as it stood when they offered themselves for election, that they would retain the right to seek any political office for which they are qualified, and that changing these rules mid-career amounts to a retrospective penal provision prohibited under Article 50(2)(o).
87. On each specific clause, Mr. Magonga strongly opposed the proposed amendments to Articles 99(2) and 193(2) of the Constitution and recommended their deletion, submitting that the Elections Act amendments in Clauses 4 and 5 are additionally *ultra vires* the Constitution since, under Article 256(3), amendments to constitutional disqualifications must be effected through constitutional amendment and not through ordinary statute, and that the Elections

Act cannot expand constitutional disqualifications beyond those expressly enumerated.

2.3.2. Abubakar Hassan

88. Mr. Abubakar wholeheartedly endorsed the Bill and urged the Senate to expedite its passage as it comes at a critical juncture as Kenya prepares for the 2027 General Elections and subsequent electoral cycles.
89. Mr. Abubakar pointed out that county governors exercise substantial executive authority over public resources and devolved functions which include education infrastructure, digital learning initiatives and other basic education programmes and acknowledged the role played by the Senate and County Assemblies in providing oversight on these county finances, budgets and the implementation of Auditor-General reports.
90. Mr. Hassan was of the view that permitting a former Governor to assume a position in these oversight bodies immediately upon leaving office particularly ahead of the 2027 General Elections would create a clear conflict of interest, potentially compromising ongoing accountability processes, audits, and investigations.
91. He further submitted that the five-year break period would-
 - a) afford sufficient time for independent oversight institutions to finalise audits, inquiries, and any necessary legal proceedings before the next electoral cycle;
 - b) safeguard the integrity of the oversight function and prevent undue influence in the 2027 elections and future polls;
 - c) enable citizens to make fully informed electoral choices once all accountability matters have been conclusively addressed; and
 - d) reinforce the separation between executive authority and legislative oversight, thereby enhancing transparency and good governance under devolution.
92. Drawing from his professional experience in implementing the Digital Literacy Programme, Mr. Abubakar observed that lapses in county-level accountability can hinder timely procurement, delay project implementation, and ultimately affect the quality of education delivered to Kenyan learners. He stated that the proposed amendment would significantly contribute to protecting public resources and ensuring that national programmes are executed with the highest standards of integrity.

2.3.3. Andrew Maina Mwangi

93. Mr. Andrew Maina Mwangi submitted that he was in support of the Bill, particularly in respect of the proposed amendment seeking to bar former county governors from contesting for positions as Senators or Members of the County Assembly within the first five years after leaving office.
94. Mr. Maina submitted that this provision promotes accountability, reduces undue political influence, and allows for fair competition by creating space for new leadership.
95. He further submitted that the amendment strengthens ethical standards in leadership and aligns with the broader goals of integrity and good governance as envisioned in the Constitution, and urged the Senate to adopt the amendment in the interest of enhancing democratic practices and institutional integrity in Kenya.

2.3.4. Anthony Ndung'u

96. Mr. Anthony Ndung'u acknowledged the intent of the Bill to promote fairness and integrity in leadership by restricting recently serving county governors from immediately transitioning into other elective roles, and proposed the following enhancements to strengthen its effectiveness and better serve the public interest—
 - a) expansion of restricted positions: he recommended that the restriction be expanded to include the position of Member of the National Assembly, as allowing former governors to contest for National Assembly seats immediately after serving undermines the spirit of the amendment by permitting direct continuation of political dominance and influence at the national level; and
 - b) extension of the restriction period: he recommended that the restriction period be extended to ten consecutive years on the ground that a longer cooling-off period would encourage leadership renewal and diversity, reduce the entrenchment of political power by individuals, promote equal opportunity for emerging leaders, and strengthen democratic competition and accountability.

2.3.5. Belindah Makani

97. Ms. Belindah Makani submitted that she accepts the proposed constitutional amendment and expressed her support for the Bill.

2.3.6. Boniface Kontire Ole Keis

98. Mr. Ole Keis submitted that the proposed amendment selectively targets former governors while excluding other holders of public office such as Members of Parliament, Senators, and the President, and that this differential treatment lacks a clear and justifiable basis and risks amounting to unconstitutional discrimination contrary to Article 27 of the Constitution, which guarantees equality before the law and equal protection of the law.
99. He further submitted that the blanket five-year restriction does not meet the constitutional test of being reasonable, justifiable, and proportionate in an open and democratic society as required by Article 38 of the Constitution read together with Article 24, and that the restriction is excessive.
100. He raised concern that the proposed amendment may undermine free and fair political competition by pre-emptively excluding a specific class of leaders, which shifts the power of choice away from the electorate and introduces legislative barriers that may be perceived as politically motivated.
101. Mr. Keis therefore recommended that-
- a) the proposed blanket restriction should be rejected;
 - b) enforcement of Chapter Six mechanisms should be strengthened;
 - c) reforms in anti-corruption, public prosecution, and electoral laws should be prioritised to-
 - i) ensure that only individuals of integrity are eligible for office;
 - ii) enhance legislation that empowers anti-corruption agencies to investigate and act decisively;
 - iii) strengthen the Office of the Director of Public Prosecutions to ensure timely prosecution of corruption-related cases; and
 - iv) bar individuals found culpable of corruption, abuse of office, or gross non-performance from contesting elective positions;
 - d) any post-tenure restrictions, if deemed necessary, should be uniformly applied across all elective offices; and
 - e) the sovereign right of citizens to determine leadership through the ballot should be preserved.

2.3.7. Bryan Kituyi

102. Mr. Kituyi submitted in support of the Bill but proposed that the five-year cooling-off period be strengthened to a permanent bar. He further proposed specific amendments to Articles 99(2) and 193(2) of the Constitution to remove the

temporal limitation and instead create an absolute disqualification for former county governors from seeking election to the Senate or a County Assembly.

103. Mr. Kituyi advanced the following justifications for a permanent bar—

- a) the oversight role of the Senate and County Assemblies over former governors is perpetual, as a governor's influence over county records, personnel, and political structures does not expire; former governors should therefore never sit in bodies responsible for auditing their administration;
- b) a five-year limit merely delays potential interference; a permanent bar is necessary to ensure that the legislative arm remains completely independent from past executive influence at the county level; and
- c) to truly safeguard public participation and the integrity of devolution, legislative bodies must be insulated from those they are meant to hold accountable.

2.3.8. Charles Olungur Alari

104. Mr. Charles Alari submitted his support for the Bill, on the following grounds-

- a) to protect devolution;
- b) to end the culture of corruption among serving governors; and
- c) to give opportunity and an equal playing field to those who will be contesting as Senators and MCAs against governors seeking continuity of representation when they have clearly failed in their mandate as governors.

2.3.9. Daniel Kague Ngigi

105. Mr. Daniel was of the view that the proposed five-year cooling-off period is a necessary and proportionate reform, as governors who leave office should not be able to immediately join the very legislative bodies that are tasked with scrutinising their past decisions and audit reports, which creates an obvious conflict of interest that undermines accountability.

106. He further submitted that the Bill is not about punishing former governors but is about protecting the integrity of oversight institutions and ensuring that accountability processes conclude without interference.

2.3.10. Daniel Waithaka

107. Mr. Daniel Waithaka submitted that he fully supports the Bill.

2.3.11. Eddie Owino George

108. Mr. Eddie submitted that the Bill as drafted creates a disproportionate restriction on political rights in that, while it bars former governors from contesting Senate seats and county assembly seats for five years, it does not bar them from contesting for President, Member of the National Assembly, or Woman Representative, thus creating an irrational classification which appears arbitrary and risks violating the right to equal protection under Article 27 of the Constitution.
109. He pointed out that the Bill overlaps with existing disqualification provisions in the Elections Act, which already provides for disqualifications flowing from Chapter Six of the Constitution and added that a blanket five-year ban applicable to all former governors, including those who served with integrity and left office honourably, amounts to collective punishment and may be challenged as unconstitutional.
110. Mr. Owino was of the view that five years is an excessive cooling-off period within a five-year electoral cycle, and that a former governor who has served two terms of ten years would be aged significantly by the time they could contest a Senate or county assembly seat and may discourage talented leaders from seeking the governorship or drive them prematurely to seek higher offices.
111. He raised concern that the Bill creates a negative incentive in that, if a governor cannot contest for the Senate or a county assembly, they may instead directly contest for a seat in the National Assembly or for the Presidency, which the Bill does not restrict, thereby rendering the Bill ineffective for its stated purpose and potentially creating greater political instability.
112. Mr. George made the following proposals —
 - a) the Bill be rejected in its current form due to constitutional infirmities and lack of rational justification;
 - b) the disqualification should be linked only to governors who were impeached for gross violation of the Constitution or misconduct, or whose county governments were dissolved for persistent financial mismanagement under Article 192 of the Constitution, such that a governor who left office with a clean record should not be barred from contesting;
 - c) the cooling-off period should be reduced to two years, which is sufficient to separate immediate incumbency advantage without unduly restricting political choice; and

- d) if the policy goal is genuine separation of county executive power from legislative oversight, the Bill should be expanded to apply equally to National Assembly seats, failing which it creates a loophole.

113. He further submitted that should the Senate wish to strengthen accountability, it should instead;

- a) Enforce existing Chapter Six on leadership and Integrity and
- b) Amend the elections Act to bar any person impeached for gross violation of the Constitution or misuse of office from holding any state office for a defined period.

2.3.12. Elijah Ole Lumpepe

114. Mr. Elijah Ole Lupempe submitted a written memorandum in strong support of the Bill and advanced the following grounds in justification of the proposed amendment—

- a) *preventing conflict of interest*: a former governor serving in oversight institutions may influence audit reviews of their own tenure, compromise investigations, and undermine fairness and objectivity;
- b) *strengthening oversight institutions*: immediate entry into oversight bodies risks weakening their credibility, creating a perception of impunity, and compromising the independence of constitutional watchdog bodies;
- c) *upholding Chapter Six on Leadership and Integrity*: public office is a trust, not a shield from scrutiny, and accountability must be completed before new elective positions are sought; and
- d) *promoting fair and informed elections*: the cooling-off period allows completion of audits and informed voter decision-making based on factual accountability records.

115. Mr. Ole Lupempe submitted that while Article 38 guarantees political rights, Article 24 allows reasonable and justifiable limitations in the interest of public accountability, good governance, and institutional integrity, and that the Bill is proportionate, non-permanent, and justified in the public interest, and does not remove political rights but ensures responsible exercise of those rights.

2.3.13. Erastus Kamau

116. Mr. Erastus Kamau submitted that the Bill is constitutionally sound, governance-necessary, and carefully targeted, and urged the Committee to recommend that the Bill be passed.

117. Mr. Kamau submitted that the five-year cooling-off period is constitutionally permissible under Article 24 and is consistent with the identical restriction already applicable to IEBC members under Articles 99(2)(b) and 193(2)(b).
118. He argued that the restriction is necessary to protect the integrity of ongoing accountability processes before the Senate and county assemblies, which directly oversee the executive conduct of county governors, and that the Elections Act amendments are constitutionally required consequential provisions essential to the operational enforcement of the constitutional restriction.
119. Mr. Kamau further submitted that the Bill addresses the systemic and governance-harmful practice of political office recycling, which undermines institutional independence and democratic renewal, and advances the binding constitutional values under Article 10 and Chapter Six.
120. He was of the view that the conflict of interest created when former governors sit in oversight bodies responsible for scrutinising their own executive conduct is structural, pervasive, and irreconcilable, and cannot be resolved through individual recusal.
121. He pointed out that the five-year cooling-off period may be insufficient when measured against the actual duration of accountability processes which can realistically span ten to fifteen years from the end of a governor's tenure.
122. He proposed that the Senate consider extending the period or making the bar conduct-based, operating for as long as any formal accountability proceeding arising from a former governor's tenure remains unresolved.

2.3.14. Faustin N. Samwel

123. Mr. Faustin expressed full support for the Bill while further urging the Committee to consider going beyond the proposed five-year cooling-off period and advocating instead for a constitutional framework that permanently redirects former governors toward retirement from elective public office, thereby entrenching fresh democratic participation as a constitutional value.
124. He highlighted that Kenya's political landscape since the promulgation of the Constitution of Kenya, 2010 has witnessed a persistent pattern in which a small, well-connected political class has perpetually circulated through positions of

elective office, creating what political scientists term 'elite capture' in which a small group monopolises the state's most powerful positions.

125. He submitted that the underpinning of term limits in the Constitution, which applies to the President, governors, and Members of County Assembly, is identical to the rationale for cooling-off periods, which ensures democratic circulation and creates space for new leadership to emerge.
126. He pointed out that it is constitutionally inconsistent to limit a governor to two terms to prevent stagnation and power entrenchment at county level while allowing the same governor to immediately transplant their political machinery to the national Senate.
127. He further submitted that a former governor who transitions directly to the Senate carries structural advantages that make electoral competition grossly unequal, including enormous name recognition, a pre-existing campaign infrastructure, access to government networks and financial resources.
128. He was of the view that former-governor-to-Senator transition creates a structural conflict of interest that compromises the Senate's constitutional mandate and noted that when a significant number of senators are former governors, the Senate's oversight function is permanently compromised.
129. Mr. Faustin made reference to international comparative analysis, that cooling-off periods for former executive officers seeking legislative seats are a recognised feature of democratic governance across numerous jurisdictions including the United States, France, Germany, South Africa, South Korea, Mexico, Brazil, the Philippines, Rwanda, Ghana and Botswana; and that Kenya's proposed restriction is modest by international standards.
130. He was of the view that with Kenya's population among the youngest in the world, the Amendment Bill is a form of intergenerational justice that would give these young citizens the chance to occupy political leadership.
131. He made the following recommendations to the Committee —
 - a) that the cooling-off period be enhanced from five years to ten years to encompass two full electoral cycles, in order to more effectively dissipate the structural advantages that former governors carry;
 - b) the Committee should consider expanding the Bill's scope to cover all elective offices and not just Senate and county assembly positions;

- c) the National Government should develop a robust retirement benefits and honorary recognition framework for former governors who retire from elective politics with dignity, to create a positive incentive for the dignified retirement path;
- d) the cooling-off provision should be fully constitutionally entrenched in a manner that cannot be amended by a simple parliamentary majority; and
- e) the IEBC should be directed to develop comprehensive implementation guidelines for the cooling-off provisions, including clear definitions of what constitutes serving as a county governor and mechanisms for verification.

2.3.15. Fidel Wangai

132. Mr. Fidel Wangai submitted a memorandum in support of the Bill, on the grounds that-

- a) expanding democratic space and opportunity: a structured cooling-off period would encourage leadership renewal and open pathways for new voices;
- b) preservation of the dignity and stature of the Office of Governor: an immediate transition from such a high office to positions subject to oversight functions, particularly at the County Assembly level, risks diminishing the perceived stature of the gubernatorial office and blurring institutional hierarchies, and former governors can continue to contribute meaningfully to public life through statesmanship, advisory roles, mentorship, or national service without re-entering elective office immediately; and
- c) mitigation of conflicts of interest in oversight roles: where a former governor assumes a Senate or County Assembly role shortly after leaving office, there exists a real and perceived risk of conflict of interest, and that no individual should be placed in a position analogous to adjudicating matters in which they were previously a principal actor.

2.3.16. Fredrick Bundi Kirianki, Rayzan Bundi and Joyce Wamwea

133. Mr. Fredrick, Mr. Rayzan and Ms. Joyce submitted memoranda in support of the Constitution of Kenya (Amendment) Bill, 2026. They argued that the proposed restriction is constitutionally sound, governance-justified, and necessary for the institutional integrity of Kenya's devolved system.

134. They were of the view that the Bill advances the national values in Article 10 and that the five-year cooling-off period is a constitutionally permissible limitation on electoral rights under Article 24.

135. They noted that the proposed restriction is consistent with the identical cooling-off period already applicable to IEBC members under Articles 99(2)(b) and 193(2)(b) of the Constitution and is a proportionate and targeted response to the structural conflict of interest that arises when former governors sit in oversight bodies responsible for scrutinising their own prior executive conduct which cannot be cured by recusal.
136. They raised concern that the five-year cooling-off period may be insufficient, observing that when the audit report lag, Senate committee examination, EACC investigation, and court proceedings including appeals are placed end to end, a full accountability cycle can realistically span ten to fifteen years from the end of a governor's tenure.
137. They proposed to the Senate to consider extending the period or making the bar conduct-based, operating for as long as any formal accountability proceeding remains unresolved.

2.3.17. Geoffrey Wekesa

138. Mr. Geoffrey Wekesa expressed full support for the Bill as drafted and submitted that the proposed five-year cooling-off period is a necessary and proportionate reform grounded in the need to strengthen devolution, enhance accountability, and protect the integrity of oversight institutions.
139. Mr. Wekesa submitted that the following grounds justify the enactment of the Bill—
- a) *elimination of conflict of interest*: a governor who transitions immediately into the Senate or a County Assembly would effectively be overseeing themselves, contrary to the fundamental principle of natural justice that one cannot be a judge in their own cause;
 - b) *safeguarding the oversight mandate*: if the Senate is populated by recent former governors, there is a high risk of institutional capture in which former governors use their legislative influence to frustrate inquiries into their past administrations or protect their allies, thereby weakening the Senate's watchdog role;
 - c) *respect for the audit cycle*: audit reports from the Office of the Auditor General often take time to be processed and scrutinised; a five-year waiting period ensures that at least one full audit and oversight cycle is completed without the interference of the individual whose administration is under investigation;

- d) *promoting financial accountability*: barring immediate transition prevents former governors from using the immunity or privileges of a legislator to evade accountability for financial or administrative malpractices committed during their tenure;
- e) *enhancing informed voter choice*: by the time the five-year period elapses, any pending audit queries, court cases, or EACC investigations regarding a governor's tenure will likely have been concluded, providing voters with a clear record of the candidate's previous performance and integrity; and
- f) *levelling the political playing field*: governors wield immense influence and resources during their tenures; an immediate transition to the Senate or County Assembly creates an unfair advantage over other candidates, and a five-year break ensures a more level playing field for new leadership to emerge within the counties.

2.3.18. Githinji Benard

140. Mr. Githinji Bernard submitted that he is in strong support of introducing a provision that bars county governors from immediately contesting for the Senate seat upon completion of their two constitutional terms and proposed the creation of a clear window period of ten years before they become eligible to vie for such offices.
141. Mr. Bernard submitted that when a governor moves directly from the county executive to the Senate, it can make it more difficult to hold them accountable for any alleged maladministration, corruption, or misuse of public funds during their time in office, as the political influence and status that come with a Senate position may hinder or complicate investigations and effective oversight.
142. He proposed that the Bill be amended to include:
- a) a defined period of ten years after leaving office as governor during which a former governor is ineligible to contest for the position of Senator; and
 - b) transitional provisions to clarify how and when this requirement would apply to current and former officeholders.
143. He submitted that a constitutionally mandated window period of two election cycles before a former governor can run for the Senate would;
- i) give oversight and investigative bodies adequate time to properly audit the governor's tenure;
 - ii) strengthen public confidence that high office is not being used as a shield against accountability; and

- iii) promote integrity in public service by reinforcing the idea that leadership carries clear and enforceable responsibility for the management of public resources.

2.3.19. Hannah Maina

- 144. Ms. Hannah acknowledged and expressed support for efforts to strengthen accountability and integrity in public leadership; noting the intent of the proposed amendment to allow completion of accountability processes before a former governor seeks another elective position.
- 145. However, she expressed concern that the proposed amendment violates the right to run for political office as guaranteed by Article 38 of the Kenyan Constitution and observed that a general five-year restriction runs the risk of excluding people without taking into account whether accountability procedures have been completed or whether any wrongdoing has actually been determined.
- 146. Ms. Maina further submitted that voters have the right to choose their leaders, and that restricting the pool of eligible candidates reduces voter choice and may weaken democratic participation, especially in communities that seek to elect leaders with prior governance experience.
- 147. She was of the view that applying such restrictions specifically to county governors raises concerns about consistency and equal treatment. She pointed out that similar accountability concerns may arise in respect of other public officers, yet the amendment targets one category of former public officers without clear justification for the differentiation.
- 148. Ms. Hannah made the following proposals with regards to the amendments:
 - a) instead of a blanket five-year restriction, eligibility should be limited based on the status of accountability processes, such that individuals with pending audit queries, unresolved legal cases, or adverse findings should be restricted from contesting until cleared through due process;
 - b) the capacity and efficiency of oversight institutions should be enhanced to ensure timely audits, investigations, and resolution of cases involving public officers, and that delays in these processes should not serve as justification for broad restrictions on political rights;
 - c) transparency and public access to information should be promoted by ensuring that findings from audits and investigations are accessible to the

public in order to inform voter decisions, thereby supporting accountability while preserving democratic rights; and

- d) any amendment should uphold the principles of fairness, equality, and political rights as enshrined in the Constitution, so as to ensure alignment with constitutional principles.

149. She concluded that while the intention to promote accountability is valid, the proposed amendment in its current form introduces broad restrictions that may undermine political rights and democratic participation and urged the adoption of a balanced approach that strengthens accountability mechanisms while at the same time respecting the constitutional freedoms of all citizens.

2.3.20. Ian Muthomi

150. Mr. Muthomi was in support of the Bill and submitted that imposing a five-year cooling-off period ensures that bodies such as the EACC can operate without the fear of political retribution or interference from a former governor who has assumed a legislative seat.

151. He further submitted that submitted that the cooling-off period ensures that judicial processes can run their full course, and that it prevents individuals from using new legislative positions to influence the outcomes of their own ongoing legal cases.

152. He was of the view that the amendments maintain public trust by sending a clear message that no one is above the law and that the pursuit of justice will not be halted by a change in political office.

153. He pointed out that the immediate transition from the executive arm of county government to the legislative arm through the Senate or county assembly undermines the system of checks and balances, and that a five-year gap is necessary to break the cycle of impunity and ensure that public funds are protected.

154. Mr. Muthomi submitted that the amendment is a necessary step toward strengthening the rule of law and ensuring that public office is not used as a tool for evading justice, and urged the Committee to pass the Bill to close the existing loopholes that allow corruption to thrive under the guise of political immunity

2.3.21. Ignatius Amondo

155. Mr. Ignatius highlighted that the Senate's primary role under Article 96 of the Constitution is to represent the counties and protect the interests of county governments, including oversight of county revenue, and that a governor who has just exited office cannot effectively oversee the very same administration they headed.
156. Mr. Amondo was of the view that the proposed five-year cooling-off period is essential to ensure that any audits by the Auditor-General and subsequent investigations into a governor's tenure can be completed without the former governor using a legislative seat to frustrate oversight processes or influence witnesses and documents.
157. He submitted that barring former governors from the Senate and county assemblies for one electoral term encourages a separation of powers that prevents the recycling of power, promotes fresh leadership, and ensures that those in oversight roles are not politically beholden to the previous administration's legacy.
158. He further submitted that the Bill aligns with the spirit of leadership and integrity under Chapter Six of the Constitution, and that it ensures that public office is used for the service of the people rather than as a shield for self-preservation against accountability.
159. He noted that the proposed amendment is a proactive step toward maturing Kenya's democracy and seals a loophole that has long threatened to undermine the oversight capacity of the Senate and county assemblies, urging the Committee to recommend the Bill for passage without dilution.

2.3.22. Jeremy Mulonzia

160. Mr. Jeremy supported the bill and submitted that the amendment ensures that those responsible for auditing and overseeing county funds are not the same individuals who recently managed them, thereby preserving the integrity and independence of the Senate in its oversight function.
161. He was in agreement that the implementation of a five-year cooling-off period prevents former governors from influencing investigations into their own past

administrations, thereby addressing the conflict of interest that arises when a former governor transitions immediately into the Senate.

162. He was of the view that the Bill promotes a culture of accountability by ensuring that executive powers and legislative oversight remain distinct and independent institutions, and that the amendment to Articles 99(2) and 193(2) is a necessary and proportionate reform.

2.3.23. Julius Kabari

163. Mr. Julius endorsed the Amendment and submitted that the proposed five-year cooling-off period should be increased to a minimum of ten years rather than five years, as a stronger deterrent to the immediate recycling of former county governors into legislative office.

2.3.24. Lydia Nyawira Mburia

164. Ms. Lydia was of the opinion that it is plausible, rational, justifiable, and reasonable to impose an inevitable five-year cooling-off period for former county governors, to ensure that oversight institutions have sufficient time to complete inquiries into the conduct of former governors without undue influence.
165. Beyond the proposed five-year cooling-off period, the submitter made the following additional proposals for the consideration of the Committee —
- a) all gubernatorial and senatorial candidates who have, in the sixteen years since the promulgation of the Constitution of Kenya, 2010, been charged in courts of law for violating Articles 99 and 193 of the Constitution, as well as Articles 24 and 25 of the same, should be barred from contesting for election;
 - b) all gubernatorial and senatorial candidates who have, in the said period, been charged in courts of law for violating the Elections Act, Cap. 7 of the Laws of Kenya, should be barred from contesting and deregistered as candidates;
 - c) all gubernatorial and senatorial candidates who have, in the said period, been charged in courts of law for violating the Public Audit Act, Cap. 412 of the Laws of Kenya, as read together with the County Governments Act, Cap. 265 of the Laws of Kenya and the County Public Finance Act (Amendment) Act, 2025, should be barred from contesting, deregistered as candidates, and punitively surcharged; and
 - d) the Ethics and Anti-Corruption Commission (EACC), the Directorate of Criminal Investigations (DCI), the Ombudsman, the National Cohesion and Integration Commission (NCIC), and the courts of law should be empowered

to institute thorough adversarial and inquisitorial investigations with a view to escalating financial impropriety charges against all such gubernatorial and senatorial candidates, and to institute recovery through the Unclaimed Financial Assets Authority (UFAA) and the Assets Recovery Authority, with a view to repatriating all monies stashed abroad and locally in illegal offshore and non-offshore accounts.

166. She justified that the foregoing proposals are intended to serve as punitive measures to penalise all gubernatorial and senatorial candidates who have, within the relevant period, been charged in courts of law for violating the Leadership and Integrity Act as read with Chapter Six of the Constitution of Kenya on Leadership and Integrity.

2.3.25. Martin Bosire

167. Mr. Martin Bosire submitted a memorandum in support of the Bill, which he characterised as a structural repair to the oversight mechanism of the Republic addressing the accountability gap that has plagued the devolved governance structure since 2013.
168. He advanced the following grounds in support of the Bill—
- a) *curing the self-audit paradox*: when a Governor transitions immediately to the Senate, they enter the very chamber tasked with scrutinising the Auditor-General's reports from their previous administration and may sit on the Committee on Public Accounts and Investments, potentially voting on the adoption of audit reports regarding their own prior administration;
 - b) *preservation of evidence sanctity*: since legal and financial accountability processes in Kenya often take three to five years to reach maturity, a sitting Senator wielding immense influence over State organs and investigative agencies may intimidate witnesses or frustrate the production of documents, and the five-year hiatus ensures that the Auditor-General and the EACC can conclude investigations into a Governor's tenure without interference;
 - c) *proportionality*: while Article 38 grants every citizen the right to contest elections, Article 24 allows for the limitation of rights if it is reasonable and justifiable in a democratic society, and the limitation proposed is proportional in that it does not ban the governor from public life but restricts them from oversight roles in the Senate and county assemblies for a single electoral cycle, thereby elevating Chapter Six from a set of aspirations to a functional bar for entry into high-stakes oversight positions; and

- d) *elimination of political immunity havens*: the Bill removes the incentive to seek office for the purpose of evading accountability and forces a civilian transition, ensuring that any legal consequences arising from their term as Governor are faced without the shield of parliamentary privilege.

169. Mr. Bosire further made the following strategic recommendations to the Committee:

- a) that the Bill should explicitly clarify that the disqualification applies to Deputy Governors who have acted as Governors for more than one year so as to prevent loopholes for acting executives;
- b) that the definition of the preceding five years should align strictly with the electoral calendar to avoid litigious ambiguity regarding the date of nomination versus the date of election; and
- c) that the Committee should consider whether a similar cooling-off period should apply to Senators seeking to become Governors in the same county, to prevent the pre-emptive sabotage of executive budgets for personal political gain.

2.3.26. Mwangi Kamau

170. Mr. Mwangi submitted that the proposed restriction should not be limited to county assembly seats in a narrow sense and that the scope should be extended to include Senate and other national elective positions, to ensure uniform standards of accountability and public trust.

171. He further submitted that the focus of the amendment should not only be on limiting political transitions but also on enhanced accountability for performance in office, including audit outcomes from the Auditor-General, pending investigations by oversight institutions, and unresolved public resource management concerns. He cautioned that without such provisions, the Bill risks becoming a political rotation control measure rather than a genuine governance reform tool.

172. He pointed out that public office is a trust and that any legal reform must ensure that leadership transitions do not become escape routes from scrutiny or responsibility, as citizens expect leaders who serve transparently and are answerable for their tenure.

2.3.27. Nahashon Kamau, HSC

173. Mr. Nahashon submitted that the proposed five-year cooling-off period preserves the integrity of Senate oversight by preventing former governors from overseeing decisions and budgets they themselves made during their tenure, which would constitute a direct conflict of interest contrary to the mandate of the Senate under Article 96 of the Constitution.
174. He further submitted that allowing immediate transition encourages leaders to use one office as a stepping stone to the next, instead of focusing on service delivery, adding that the Bill promotes accountability by closing the revolving door of political office.
175. He raised concern that Kenya faces youth unemployment above thirty-five per cent, and that the amendment creates space for new leaders, including youth and persons with disabilities, to serve in the Senate and county assemblies instead of recycling the same individuals in elective office.
176. Mr. Kamau submitted that the Bill aligns with the leadership and integrity obligations under Chapter Six of the Constitution, and that it reduces the risk of former governors using Senate or county assembly seats to shield themselves from accountability for their tenure.
177. He made the following recommendations on the Bill—
 - a) the Bill should be passed as drafted to strengthen devolution and accountability;
 - b) consideration should be given to extending the bar to other executive positions such as Deputy Governors and County Executive Committee Members for consistency; and
 - c) the IEBC and the ORPP should conduct civic education to sensitise the public on the reasons why the amendment strengthens democracy.

2.3.28. Nasambu Flavia

178. Ms. Nasambu submitted that the Bill advances the national values set out in Article 10 of the Constitution, as well as the obligations imposed on all state officers under Chapter Six of the Constitution, and that it does so by creating a structural mechanism that-
 - a) ensures county governors complete and submit to accountability processes before re-entering elective office;

- b) eliminates an irreconcilable conflict of interest that arises when former governors sit in oversight bodies responsible for scrutinising their own previous executive conduct, and
 - c) interrupts the practice of political office recycling that has weakened the independence of legislative and oversight institutions at both the national and county levels.
179. Ms. Flavia acknowledged that Article 38(3)(c) of the Constitution guarantees every adult citizen the right to be a candidate for public office, while Article 24 sets out the constitutional framework for the limitation of rights and fundamental freedoms.
180. She added that the five-year cooling-off period is a constitutionally permissible limitation on electoral rights under Article 24 of the Constitution, in that;
- a) it is imposed by the highest form of law — a constitutional amendment;
 - b) it serves the legitimate and compelling objectives of accountability, institutional independence, and the prevention of conflicts of interest;
 - c) it corresponds to one electoral cycle and is therefore proportionate in duration without being punitive; and
 - d) it is targeted and specific, applying only to former county governors seeking to enter the two bodies directly responsible for overseeing county government.
181. She alluded to the constitutional precedent established by Articles 99(2)(b) and 193(2)(b) of the Constitution, which already impose an identical five-year cooling-off period on former members of the Independent Electoral and Boundaries Commission (IEBC) before they may contest for election to Parliament or county assemblies.
182. Ms. Nasambu was of the view that this precedent is constitutionally significant as it demonstrates that the framers of the Constitution accepted that certain public officers, by virtue of the nature of the office held, must be subject to a cooling-off period before re-entering elective politics, and that precisely the same rationale applies to former county governors, who remain subjects of ongoing accountability processes before the very bodies they may seek to join.
183. Ms. Flavia supported the amendments to Articles 99(2) and 193(2) noting that accountability processes require insulation from political interference by former governors.

184. She further submitted that that a former governor who immediately contests and wins a Senate or county assembly seat acquires a position from which they can;
- a) directly participate in or influence committee proceedings examining their own audit reports;
 - b) vote on resolutions affecting the outcome of accountability processes relating to their own tenure;
 - c) use political influence to obstruct, delay, or shape the outcome of inquiries into their past conduct; and
 - d) intimidate witnesses or public servants who might otherwise cooperate with accountability processes.
185. She was of the opinion that the conflict of interest created when a former governor sits in an oversight body is structural and pervasive and cannot be cured by recusal, noting that a legislator who is required to recuse themselves from a significant portion of the oversight business of the Senate or county assembly is a legislator who cannot fully discharge the constitutional functions of that office.
186. She pointed out that the five-year period is the minimum necessary to allow outstanding audit cycles and accountability proceedings to be completed and to protect the independence and integrity of oversight institutions.
187. Ms. Flavia supported the amendments to sections 24(2) and 25(2) of the Elections Act and pointed out that they are operationally essential, in that the IEBC relies on the Elections Act as the primary legal instrument governing the candidate nomination and vetting process, and that a constitutional disqualification not reflected in the Elections Act would create an enforcement gap, depriving the IEBC of the direct statutory authority to reject nomination papers filed by a disqualified candidate at the stage of candidate vetting.
188. Ms. Nasambu referred to Kenya's post-2013 political experience which revealed a persistent pattern of political office recycling in which county governors, upon completing their constitutionally limited terms, immediately seek election to the Senate or county assembly seats. She noted that the pattern;
- a) entrenches political dynasties and elite capture of public office;
 - b) converts oversight institutions into destinations for former county executives;
 - c) allows former governors to leverage political networks and resources accumulated during executive tenure to distort electoral competition; and

- d) signals to the electorate that accountability for executive decisions will be avoided through rapid re-entry into legislative seats that provide political cover and procedural leverage.
189. She added that Article 180(7) of the Constitution limits governors to two terms of office in order to prevent the indefinite concentration of executive power at the county level. In her view, the Bill builds on this constitutional logic by providing for a period of separation from elective politics after a governor exits executive office, so as to allow accountability processes to take effect and the democratic space to reset.
190. She further submitted that the cooling-off periods for former executive officers seeking legislative seats are a recognised feature of democratic governance in many jurisdictions, and that Kenya's proposed restriction is modest by international standards, covering a single five-year electoral cycle and applying only to two specific legislative bodies with direct county oversight functions.
191. She highlighted that Chapter Six of the Constitution imposes obligations of integrity, impartiality and accountability on all State officers, Article 73(1)(b) provides guiding principles of leadership and Article 73(2)(c) requires that state officers operate in a manner that withstands public scrutiny; and supported the amendments as they give legislative and structural expression to the constitutional values of transparency, accountability, and integrity that are binding under Articles 10 and Chapter Six of the Constitution.
192. The submitter argued that a former governor who exits office with unresolved audit queries or pending accountability obligations, and immediately seeks election to an oversight body responsible for pursuing those obligations, would be acting inconsistently with the spirit of Chapter Six.
193. She further submitted that Article 10(2)(c) of the Constitution establishes transparency and accountability as national values. In her view, the Bill gives legislative expression to these values by ensuring that;
- a) former governors do not use legislative office as a refuge from accountability;
 - b) that audit and accountability processes are completed before they re-enter elective politics; and
 - c) that voters have access to a complete accountability record before deciding whether to elect them to another public office.

194. Ms. Flavia urged the Committee to recommend that the Bill be passed without amendment, or alternatively, that consideration be given to extending the cooling-off period beyond five years.

2.3.29. Purity Sangiru

195. Ms. Purity Sangiru submitted her strong opposition to county governors who have served their full constitutional terms immediately transitioning to vie for Senatorial or Member of County Assembly seats, and expressed support for the Bill on the following grounds—
- a) conflict of interest in oversight: the primary role of the Senate and County Assemblies is to provide oversight of the County Executive, and a former Governor serving in these houses would essentially be tasked with overseeing the legacy, financial records, and pending projects of their own previous administration, creating an inherent conflict of interest;
 - b) monopolisation of political space: after a decade at the helm of a county, returning immediately in a different capacity stifles the emergence of new leaders and prevents the infusion of fresh perspectives into democratic processes; and
 - c) accountability gaps: there is a risk that such moves are strategically intended to provide political immunity or influence over audits and investigations into past tenures.
196. Ms. Sangiru proposed that for the sake of institutional integrity and the health of Kenya's democracy, there should be a mandatory stand-off period, and that a leader who has held the highest office in a county for ten years should not be eligible to vie for a legislative seat in the election immediately following their tenure end.

2.3.30. Robinson Macharia

197. Mr. Macharia submitted that the Bill promotes fairness in electoral competition by barring former county governors from contesting for Senate or county assembly seats for the first five years after serving, thereby levelling the political playing field and preventing individuals who have already held powerful executive positions from immediately leveraging their incumbency advantages against fresh candidates.
198. He further submitted that the amendment encourages the emergence of new political leadership at the county level and discourages the concentration of

political power in the hands of a few individuals who cycle through different elective positions, thereby giving other qualified citizens a meaningful opportunity to serve.

199. He was of the view that the five-year cooling-off period incentivises outgoing governors to focus on their legacy and the delivery of services rather than using their final term in office as a launchpad for the next political campaign, and that this promotes better governance and public accountability.

2.3.31. Shallet Kibet – The Big Talk

200. Ms. Shallet Kibet, representing The Big Talk, expressed strong support for the Bill, on the following grounds:

- a) *Prevention of Conflict of Interest:* A former governor who transitions directly into the Senate or a county assembly would be called upon to scrutinise their own prior conduct in office, fundamentally compromising the independence and integrity of legislative oversight.
- b) *Completion of Accountability Processes:* Audit reports and accountability processes relating to a governor's tenure are often concluded long after they leave office. The five-year cooling-off period ensures that these processes, including review of county public accounts, are completed without interference or undue influence from a former governor who may occupy a legislative seat.
- c) *Strengthening Devolution and Public Trust:* Allowing former governors to immediately join oversight bodies undermines public confidence in the devolution framework and creates conditions for collusion rather than accountability. Citizens deserve a Senate and county assemblies that are genuinely independent.
- d) *Alignment with Constitutional Principles:* The five-year cooling-off period is consistent with and reinforces the values of integrity, transparency, and accountability in public service enshrined in Articles 10 and 232 of the Constitution.

CHAPTER THREE: OBSERVATIONS

3.1 Committee Observations

201. Having considered the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026) and the submissions received thereon, the Standing Committee on Justice, Legal Affairs and Human Rights observed and resolved as follows–

3.1.1 Short Title and Commencement

202. The Committee noted that Clause 1 provides the short title of the Act. The Committee resolved to adopt Clause 1 as drafted.

3.1.2 Proposed Amendment to Article 99(2)- Introduction of a five-year cooling-off period for former county governors in respect of elections to the Senate

203. The Committee considered submissions both in support and in opposition to the proposed amendment. It noted opposing submissions from the Council of Governors, the Kenya Law Reform Commission, the Electoral Law and Governance Institute for Africa, Outreach for Action Kenya, and individual submitters, arguing that the proposed restriction-
- a) disproportionately limits political rights under Article 38(3)(c);
 - b) fails the Article 24 proportionality test; and
 - c) discriminates contrary to Article 27. The Council of Governors additionally relied on Constitutional Petition No. E005 of 2022, *Carolyn Andzazi Chilango & Another v. IEBC & Others*, as authority that such a restriction cannot pass constitutional muster.
204. The Committee noted that the majority of submissions, including those of the Ethics and Anti-Corruption Commission, the Kenya National Commission on Human Rights, the County Assemblies Forum, and a broad body of public submitters, supported the proposed amendment.
205. The Committee noted the opinion of the Office of the Attorney-General confirming that the Bill does not require a referendum under Article 255(1), that it falls within Article 256 as a parliamentary initiative, and that the proposed restriction is consistent with Article 24. The Committee accepted this opinion.

206. The Committee distinguished the *Chilango* decision, in that the petition sought to impose a categorical disqualification by judicial order under existing law, while the present Bill is a constitutional amendment by Parliament acting within the scope of Article 256. The two are categorically different exercises of power. The *Chilango* dictum does not inhibit Parliament's constitutional competence to amend the fundamental law on eligibility for elective office.
207. The Committee found the conflict of interest rationale compelling. The Senate is constitutionally mandated under Article 96 to oversight county governments. A former governor who immediately enters the Senate may participate in proceedings, including at committee level, that scrutinise their own prior executive conduct, audit reports, and financial management of the county. This is a structural conflict that cannot, in all cases, be resolved by individual recusal.
208. The Committee therefore resolved to adopt the proposed amendment to Article 99(2).

3.1.3 Proposed Amendment to Article 193(2)- Introduction of a five-year cooling-off period for former county governors in respect of elections to county assemblies

209. The Committee adopted its observations on the Article 99(2) amendment as applicable with equal force to the proposed amendment to Article 193(2) and noted the strong support for this clause from the County Assemblies Forum.
210. The Committee identified a textual incongruence between the proposed amendment and Article 180(2) of the Constitution, which provides that a person is eligible for election as county governor if eligible for election as a Member of a County Assembly.
211. The proposed paragraph (ba), if enacted without qualification, would through the cross-reference in Article 180(2) inadvertently render a former governor ineligible for re-election as governor even where that person has not served two terms and is otherwise constitutionally entitled to stand. This is an unintended consequence that goes beyond the Bill's scope and would invite litigation.
212. The Committee resolved to recommend an amendment to Article 180 of the Constitution by inserting a new clause (2A) to explicitly exempt the election of a county governor from the application of Article 193(2)(ba), thereby safeguarding the right of eligible former governors to seek re-election.

3.1.4 Proposed Amendment to Section 24(2) of the Elections Act- Corresponding statutory disqualification for Senate elections

213. The Committee noted the opinion of the Office of the Attorney-General that the proposed amendment to section 24(2) of the Elections Act is consistent with Article 256(2) as a consequential amendment to legislation arising from a constitutional amendment by parliamentary initiative. The Committee accepted this opinion.
214. The Committee noted that without a corresponding amendment to section 24(2), the IEBC would lack direct statutory authority to reject nomination papers filed by a disqualified candidate at the vetting stage. The amendment is operationally essential.
215. The Committee resolved to adopt the proposed amendment to section 24(2) of the Elections Act.

3.1.5 Proposed Amendment to Section 25(2) of the Elections Act- Corresponding statutory disqualification for county assembly elections

216. The Committee adopted its observations on the amendment to section 24(2) as applicable with equal force to the proposed amendment to section 25(2) of the Elections Act.

CHAPTER FOUR: RECOMMENDATIONS

4.1 Committee Recommendations

217. Having considered Constitution of Kenya (Amendment) Bill (Senate Bills No. 7 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.
218. 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 Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026)
- Annex 3* Advertisement published in the *Daily Nation* and *Standard* newspapers on 8th April, 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 302ND SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY, 16TH JULY, 2026 AT 8.00 A.M. VIRTUALLY 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. Crystal Kegehi Asige, MP | - Member |
| 5. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|--------------------|
| 1. Sen. Veronica W. Maina, CBS, MP | - Vice-chairperson |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Member |
| 3. Sen. Karen Njeri Nyamu, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Charles Munyua | - Principal Clerk Assistant II |
| 2. Mr. Boniface Kiambi | - Senior Clerk Assistant |
| 3. Mr. Malcom Ngugi | - Senior Legal Counsel |
| 4. Ms. Faith Wangui | - Legal Counsel II |
| 5. Ms. Angela Bonaya | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 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. 1026/2026

PRELIMINARIES

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

MIN. NO. 1027/2026

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Crystal Kegehi Asige, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 1028/2026 **CONFIRMATION OF MINUTES**

- a) Confirmation of the Minutes of the 294th Sitting was deferred.
- b) The Minutes of the 297th Sitting were confirmed as a true record of the proceedings having been proposed by Sen. Crystal Kegehi Asige, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.
- c) The Minutes of the 298th Sitting were confirmed as a true record of the proceedings having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Crystal Kegehi Asige, MP.
- d) The Minutes of the 299th 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) Confirmation of the Minutes of the 300th Sitting was deferred.
- f) The Minutes of the 301st Sitting were confirmed as a true record of the proceedings having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Daniel Kitonga Maanzo, EBS, MP.

MIN. NO. 1029/2026 **MATTERS ARISING**

Under Min. No. 1019/2026 The Referendum Bill, 2026 (Senate Bills No. 3 of 2026)

The Committee was informed that the draft Report on the captioned Bill as well as the Committee Stage Amendments were undergoing review and would be scheduled for consideration by the Committee at its next meeting.

Under Min. No. 1024/2026 Appeal of the Judgment of the Court of Appeal in Civil Appeal E884 of 2024: The National Assembly of Kenya v Wanjiru Gikonyo & Others

Members were informed that the draft pleadings in relation to the appeal to the Supreme Court would be presented to the Committee the following week.

MIN. NO. 1030/2026 **THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2025 (SENATE BILLS NO. 13 OF 2025)**

The Committee considered and adopted the text of the proposed amendments to the Bill.

Thereupon, the Committee resolved that the Report on the Bill, incorporating the proposed Committee-stage amendments, be processed for tabling in the Senate.

MIN. NO. 1031/2026

**THE CONSTITUTION OF KENYA (AMENDMENT)
(NO. 2) BILL, 2025 (SENATE BILLS NO. 16 OF 2025)**

The Committee considered and adopted the text of the proposed amendments to the Bill.

Thereupon, the Committee resolved that the Report on the Bill, incorporating the proposed Committee-stage amendments, be processed for tabling in the Senate.

MIN. NO. 1032/2026

**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2026 (SENATE BILLS NO. 7 OF 2026)**

The Committee considered and adopted the text of the proposed amendments to the Bill.

Thereupon, the Committee resolved that the Report on the Bill, incorporating the proposed Committee-stage amendments, be processed for tabling in the Senate.

MIN. NO. 1033/2026

ANY OTHER BUSINESS

- i) *Statement sought by Sen. Catherine Mumma, MP regarding the criminalization and re-victimization of survivors of female genital mutilation (FGM)*

The Committee resolved to conduct a fact-finding visit to Narok and Bomet Counties from Thursday, 23rd July, 2026 to Saturday, 25th July, 2026 with Friday, 24th July, 2026 being the working day.

- ii) *Legislative Business before the Committee*

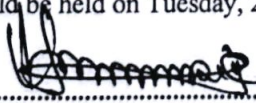
Members were notified of legislative business referred to the Committee during the plenary sittings of the Senate held on 14th and 15th July, 2026, and resolved-

- a) That a letter be sent to the Kenya National Commission on Human Rights (KNCHR) inviting the Commission to submit a written response and to appear before the Committee to deliberate on the Statement sought by Sen. Godfrey Osotsi, CBS, MP regarding the implementation of the Government's compensation and reparations programme for victims of demonstration-related violence and enforced disappearance; and
- b) That the Petition by Mohamed U. Alasow seeking the re-introduction of the Elections (Amendment) Bill, 2021, and the Petition by Mr. Laban Omusundi seeking limitation of tenure of nominated MCAs to one term limit, be scheduled for consideration by the Committee on Thursday, 23rd July, 2026.

MIN. NO. 1034/2026

ADJOURNMENT

The Chairperson adjourned the meeting at fifty-four minutes past eight O'clock. The next meeting would be held on Tuesday, 21st July, 2026.

SIGNED: 

DATE: 22/07/2026



13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 298TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON MONDAY, 15TH JUNE, 2026 AT 2:00 P.M. AT GLEE HOTEL IN KIAMBU COUNTY

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. Crystal Kegehi Asige, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|----------|
| 1. Sen. (Prof.) Tom Ojienda, SC, MP | - Member |
| 2. Sen. Karen Njeri Nyamu, MP | - Member |
| 3. Sen. Raphael Chimera Mwinzagu, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|--|
| 1. Mr. Boniface Kiambi | - Senior Clerk Assistant (<i>Taking Minutes</i>) |
| 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. 1007/2026

PRELIMINARIES

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

MIN. NO. 1008/2026

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.

MIN. NO. 1009/2026

**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2026 (SENATE BILLS NO. 7 OF 2026)**

The Committee resumed consideration of the stakeholder submissions on the Bill and considered proposed amendments to various Articles of the Constitution, including those relating to the introduction of a five-year cooling-off period for former County Governors seeking election to the Senate or County Assemblies.

Following deliberations on the submissions and proposed amendments, the Committee adopted the Report, subject to the agreed amendments, having been proposed by Sen. Crystal Kegehi Asige, MP and seconded by Sen. Daniel Kitonga Maanzo, EBS, MP.

MIN. NO. 1010/2026

**THE CONSTITUTION OF KENYA (AMENDMENT)
(NO. 2) BILL, 2025 (SENATE BILLS NO. 16 OF 2025)**

The Committee resumed the consideration of stakeholder submissions and considered proposed amendments to various Articles of the Constitution, including those relating to implementation of the two-thirds gender principle and disability quotas.

Following deliberations on the submissions and proposed amendments, the Committee adopted the Report, subject to the agreed amendments, having been proposed by Sen. Crystal Kegehi Asige, MP and seconded by Sen. Daniel Kitonga Maanzo, EBS, MP.

MIN. NO. 1011/2026

ADJOURNMENT

The Chairperson adjourned the meeting at ten minutes past three O'clock. The next meeting will be held on Wednesday, 16th June, 2026 at 8:00 a.m.

SIGNED: 

DATE: 22/7/2026



13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 287TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON MONDAY, 25TH JUNE, 2026 AT 9:00 A.M. AT SERENA BEACH RESORT, MOMBASA COUNTY

PRESENT

- | | |
|--|------------------------------|
| 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. Andrew Omtatah Okoiti, MP | - Member |
| 5. Sen. Crystal Kegehi Asige, MP | - Member |
| 6. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member (<i>Chairing</i>) |
| 7. Sen. (Prof.) Tom Ojienda, SC, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------------|----------|
| 1. Sen. Karen Njeri Nyamu, MP | - Member |
|-------------------------------|----------|

SECRETARIAT

- | | |
|----------------------------|--|
| 1. Mr. Njenga Njuguna, OGW | - Director, Governance & Accountability Committees |
| 2. Mr. Hassan Odhowa | - PCA 1/ HoD, Governance Committees |
| 3. Mr. Charles Munyua | - Principal Clerk Assistant II |
| 4. Mr. Boniface Kiambi | - Senior Clerk Assistant |
| 5. Ms. Faith Wangui | - Legal Counsel II |
| 6. Mr. Jackson Wekesa | - Legal Counsel II |
| 7. Ms. Angela Bonaya | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 8. Mr. Jackson Matheshe | - Research Officer III |
| 9. Ms. Linet Aseka | - Research Officer III |
| 10. Mr. Josphat Ngeno | - Media Relations Officer |
| 11. Mr. John Lekampule | - Serjeant at Arms |
| 12. Mr. Zenton Williams | - Audio Officer |

MIN. NO. 956/2026

PRELIMINARIES

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

MIN. NO. 957/2026

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded Sen. Crystal Kegehi Asige, MP.

MIN. NO. 958/2026

**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2026 (SENATE BILLS NO. 7 OF 2026)**

The Committee commenced consideration of the submissions received on the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026).

During deliberations, Members –

- i) noted that a total of forty-six (46) written memoranda were received on the Bill;
- ii) observed that, whereas majority of submissions from the public were in support of the introduction of a five-year cooling off period barring former county governors from vying for election as Senator or Member of County Assembly, key stakeholders such as the Council of Governors and the Kenya Law Reform Commission were not in support of the amendments as they deemed such a limitation not to fit the test of limitation of a fundamental right or freedom as enshrined in Article 24 of the Constitution;
- iii) noted the need to demonstrate the basis for the reasonableness and justifiableness of limiting the Article 38 political rights to fit the Article 24 analysis test;
- iv) further noted concerns raised that the Bill is discriminatory and contrary to Articles 25, 27 and 50 of the Constitution and that former governors should instead be barred only once audits, investigations and court processes are fully exhausted; and
- v) also observed that, to increase transparency and accountability across government, there was need to extend the application of the five-year cooling off period to include not only governors, but all State Officers.

Thereupon, it was resolved that the Secretariat proceeds to prepare the draft report for consideration by the Committee, including any proposed Committee stage amendments to the Bill.

MIN. NO. 959/2026

ADJOURNMENT

The Chairperson adjourned the meeting at twenty minutes past eleven O'clock. The next meeting would be held the same day at 11.45 am.

SIGNED:

DATE: 22-07-2026

***Annex 2: Copy of
the Constitution of
Kenya
(Amendment) Bill,
2026 (Senate Bills
No. 7 of 2026)***

SPECIAL ISSUE

Kenya Gazette Supplement No. 27 (Senate Bills No. 7)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2026

NAIROBI, 2nd March, 2026

CONTENT

Bill for Introduction into the Senate —

PAGE

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**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2026**

A Bill for

**AN ACT of Parliament to amend the Constitution of
Kenya**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2026. Short title.

2. Article 99 of the Constitution is amended in clause (2) by inserting the following new paragraph immediately after paragraph (b)— Amendment of
Article 99 of the
Constitution.

(ba) in the case of election to the Senate—

(i) is a county governor; or

(ii) has, at any time within the five years immediately preceding the date of election, held office as a county governor;

3. Article 193 of the Constitution is amended in clause (2) by inserting the following new paragraph immediately after paragraph (b)— Amendment of
Article 193 of the
Constitution.

(ba) has, at any time within the five years immediately before the date of election, held office as a county governor;

4. Section 24 of the Elections Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (b)— Amendment of
section 24 of Cap.
7.

(ba) in the case of election to the Senate—

(i) is a county governor; or

(ii) has, at any time within the five years immediately preceding the date of election, held office as a county governor;

5. Section 25 of the Elections Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (b)— Amendment of
section 25 of Cap.
7.

(ba) has, at any time within the five years immediately before the date of election, held office as a county governor;

MEMORANDUM OF OBJECTS AND REASONS

The object of the legislative proposal is to amend articles 99(2) and 193(2) of the Constitution of Kenya, as well as section 24(2) and 25(2) of the Elections Act, Cap. 7 of the Laws of Kenya, to bar persons who have served as county governors from vying for election as Members of Parliament or members of county assembly for the first five years immediately after serving as county governors.

County governors, in the course of their duties, have to account to the county assemblies and the Senate for any financial and administrative decisions made. Annual audit reports prepared by the Office of the Auditor General are submitted to the Senate and the relevant county assembly pursuant to section 32 of the Public Audit Act, Cap. 412B of the Laws of Kenya for scrutiny. Barring former county governors from vying for elections will allow for any ongoing accountability processes related to administration and financial management affairs of the county to be completed, as these would have a bearing on the suitability of the former county governor to hold any other elective position.

Additionally, since the Senate and the county assemblies directly exercise oversight over county governments, through examining their audit reports and holding governors accountable for their decisions, having former governors sit in the two legislatures would lead to conflict of interest and interfere in their decision-making process.

The effect of this would be—

- (a) oversight bodies would have adequate time to inquire into any matters arising from the tenure of a previous holder of the office of county governor without interference by the former county governor, which is highly likely particularly if the person is elected as member of county assembly or to the Senate; and
- (b) voters would have a reference point in making an informed choice on the candidate's suitability for another elective office since all accountability processes would have been completed.

Dated the 18th September, 2025.

JAMES KAMAU MURANGO,
Senator.

Article 99 of the Constitution that the Bill proposes to amend—

99. Qualifications and disqualifications for election as member of Parliament

(1) Unless disqualified under clause (2), a person is eligible for election as a member of Parliament if the person—

- (a) is registered as a voter;
- (b) satisfies any educational, moral and ethical requirements prescribed by this Constitution or by an Act of Parliament; and
- (c) is nominated by a political party, or is an independent candidate who is supported—
 - (i) in the case of election to the National Assembly, by at least one thousand registered voters in the constituency; or
 - (ii) in the case of election to the Senate, by at least two thousand registered voters in the county.

(2) A person is disqualified from being elected a member of Parliament if the person—

- (a) is a State officer or other public officer, other than a member of Parliament;
- (b) has, at any time within the five years immediately preceding the date of election, held office as a member of the Independent Electoral and Boundaries Commission;
- (c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
- (d) is a member of a county assembly;
- (e) is of unsound mind;
- (f) is an undischarged bankrupt;
- (g) is subject to a sentence of imprisonment of at least six months, as at the date of registration as a candidate, or at the date of election; or
- (h) is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six.

(3) A person is not disqualified under clause (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

Article 193 of the Constitution that the Bill proposes to amend—

193. Qualifications for election as member of county assembly

(1) Unless disqualified under clause (2), a person is eligible for election as a member of a county assembly if the person—

- (a) is registered as a voter;
- (b) satisfies any educational, moral and ethical requirements prescribed by this Constitution or an Act of Parliament; and
- (c) is either—
 - (i) nominated by a political party; or
 - (ii) an independent candidate supported by at least five hundred registered voters in the ward concerned.

(2) A person is disqualified from being elected a member of a county assembly if the person—

- (a) is a State officer or other public officer, other than a member of the county assembly;
- (b) has, at any time within the five years immediately before the date of election, held office as a member of the Independent Electoral and Boundaries Commission;
- (c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
- (d) is of unsound mind;
- (e) is an undischarged bankrupt;
- (f) is serving a sentence of imprisonment of at least six months; or
- (g) has been found, in accordance with any law, to have misused or abused a State office or public office or to have contravened Chapter Six.

(3) A person is not disqualified under clause (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

Section 24 of Cap. 7 that the Bill proposes to amend—

24. Qualifications and disqualifications for nomination as member of Parliament

(1) Unless disqualified under subsection (2), a person qualifies for nomination as a member of Parliament if the person—

- (a) is registered as a voter;
 - (b) satisfies any educational, moral and ethical requirements prescribed by the Constitution and this Act; and
 - (c) is nominated by a political party, or is an independent candidate who is supported—
 - (i) in the case of election to the National Assembly, by at least one thousand registered voters in the constituency; or
 - (ii) in the case of election to the Senate, by at least two thousand registered voters in the county.
- (2) A person is disqualified from being elected a member of Parliament if the person—
- (a) is a State officer or other public officer, other than a member of Parliament;
 - (b) has, at any time within the five years immediately preceding the date of election, held office as a member of the Commission;
 - (c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
 - (d) is a member of a county assembly;
 - (e) is of unsound mind;
 - (f) is an undischarged bankrupt;
 - (g) is subject to a sentence of imprisonment of at least six months, as at the date of registration as a candidate, or at the date of election; or
 - (h) is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six of the Constitution.
- (3) A person is not disqualified under subsection (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

Section 25 of Cap. 7 that the Bill proposes to amend—

25. Qualifications for nomination as member of county assembly

- (1) Unless disqualified under subsection (2), a person qualifies for nomination as a member of a county assembly if the person—
- (a) is registered as a voter;

(b) satisfies any educational, moral and ethical requirements prescribed the Constitution and this Act; and

(c) is either—

(i) nominated by a political party; or

(ii) an independent candidate supported by at least five hundred registered voters in the ward concerned.

(2) A person is disqualified from being elected a member of a county assembly if the person—

(a) is a State officer or other public officer, other than a member of the county assembly;

(b) has, at any time within the five years immediately before the date of election, held office as a member of the Commission;

(c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;

(d) is of unsound mind;

(e) is an undischarged bankrupt;

(f) is serving a sentence of imprisonment of at least six months; or

(g) has been found, in accordance with any law, to have misused or abused a State office or public office or to have contravened Chapter Six of the Constitution.

(3) A person is not disqualified under subsection (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

***Annex 3:
Advertisement
published in the
Daily Nation and
Standard
newspapers on 8th
April, 2026***

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | FIFTH SESSION
THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA AND PUBLIC HEARINGS

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026
[SENATE BILLS NO. 7 OF 2026]

The **Constitution of Kenya (Amendment) Bill, 2026 [Senate Bills No. 7 of 2026]** was read a First Time in the Senate on Thursday, 26th March, 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 seeks to amend Articles 99(2) and 193(2) of the Constitution and to make related amendments to sections 24(2) and 25(2) of the Elections Act, Cap. 7 of the Laws of Kenya, to bar persons who have served as county governors from vying for election as Members of Parliament or Members of a County Assembly for the first five years immediately after serving as county governors. This will allow for any ongoing accountability processes relating to the administration and financial management of the county to be completed, as these may have a bearing on the suitability of the former county governor to hold any other elective position.

In accordance with the provisions of Articles 118 and 256 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.

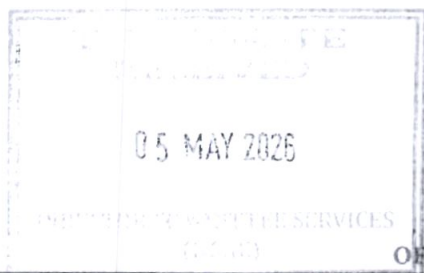
The memoranda may be submitted to the Clerk of the Senate, P. O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to senate.jlahrc@parliament.go.ke, to be received on or before **Friday, 8th May, 2026 at 5.00 p.m.**

In addition, the Senate will hold a public hearing on the Bill on a date and venue to be communicated.

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***



OFFICE OF THE ATTORNEY-GENERAL



Our Ref: AG/LDD/1101/1/98

29th April, 2026

Your Ref: SEN/DGAC/JLAHRC/2026/28(a)

Mr. J. M. Nyegenye CBS

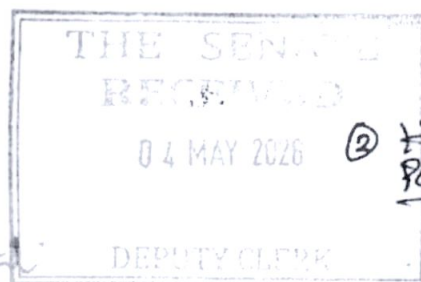
Clerk of the Senate

Clerk's Office, Senate

Parliament Buildings

P.O. Box 41842-00100

NAIROBI



① DGAC
DHS

Kindly deal

05/05/2026

② HDD-Governors
PCA-JLAHRC

Kindly deal

DS/DS/2

RE: THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

This has reference to your letter dated the 13th April, 2026, under Ref. SEN/DGAC/JLAHRC/2026/28(a), and the request for submissions on the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026). We note that the Bill is the same as the one sponsored by Sen. Raphael Chimera that was published by the Senate on the 24th November, 2023.

We have perused the contents of your letter and accompanying text of the Bill and note as hereunder.

The Bill proposes:

- (a) to amend Article 99(1) of the Constitution on the qualifications and disqualifications for election of a member of Parliament to provide that a person is disqualified to be elected as a member of the Senate if that person is county governor or has, at any time in the preceding five years before the election, held office as a county governor;
- (b) to amend Article 193(2) of the Constitution on the qualifications for election as a member of a county assembly to provide that a person is disqualified to be elected as a member of a county assembly if that person has, at any time in the preceding five years before the election, held office as a county governor;
- (c) to amend section 24(2) of the Elections Act (Cap. 7) on the qualifications and disqualifications for nomination as member of Parliament, to provide that a

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.statelawoffices@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

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person is disqualified from being nominated for election as a member of the Senate if that person is county governor or has, at any time in the preceding five years before the election, held office as a county governor; and

- (d) to amend section 25(2) of the Elections Act on the qualifications for nomination as a member of a county assembly to provide that a person is disqualified from being nominated for election as a member of a county assembly if that person has, at any time in the preceding five years before the election, held office as a county governor.

In our considered opinion, the Bill does not require to be approved at a referendum as it does not deal with any of the matters specified in Article 255(1) of the Constitution. Furthermore, in view of the fact that the Bill was introduced in the Senate, it falls within the ambit of Article 256 as an amendment by Parliamentary initiative. The proposed amendments to the Elections Act are consistent with the requirement set out in Article 256(2) in that they only address consequential amendments to legislation arising out of the proposed amendments to Articles 99 and 193.

The proposed restriction on the eligibility of former county governors to be eligible to be elected as members of the Senate or county assemblies is consistent with the provisions of Article 24 on the limitation of rights and fundamental freedoms as the restriction is proposed to be limited by law, and it is reasonable and justifiable, and takes into account the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others.

The question of the eligibility of a person to be elected as a member of Parliament is set out in Article 99 of the Constitution. Clause (2) thereof sets out the grounds for disqualifying a person from being eligible to be elected as Member of Parliament. Paragraph (h) specifically states that a person is disqualified if the person is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six. Clause (3) further states that a person is not disqualified under clause (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted. These provisions are mirrored in clauses (2) and (3) of Article 193.

Furthermore, the issue of accountability of county governors, members of county executive committees and members of county assemblies is multi-dimensional in nature involving other State organs including the Auditor-General, Controller of Budget, National Police Service, Ethics and Anti-Corruption Commission and Director of Public Prosecutions, which are independent of the Senate and county assemblies.

In light of the foregoing, it is our considered view that the issues intended to be addressed by the Bill are sufficiently addressed by Article 99(2) and (3) and Article 193(2) and (3) of the Constitution. Furthermore, the Auditor-General, Controller of Budget, National Police Service, Ethics and Anti-Corruption Commission and Director of Public Prosecutions, in the exercise of their powers and performance of their functions, play a key role in facilitating the oversight role of the Senate and county

assemblies over county governors, and thereby provide voters with reference points in making informed choices of whether or not to vote for a former county governor in a Senate election.

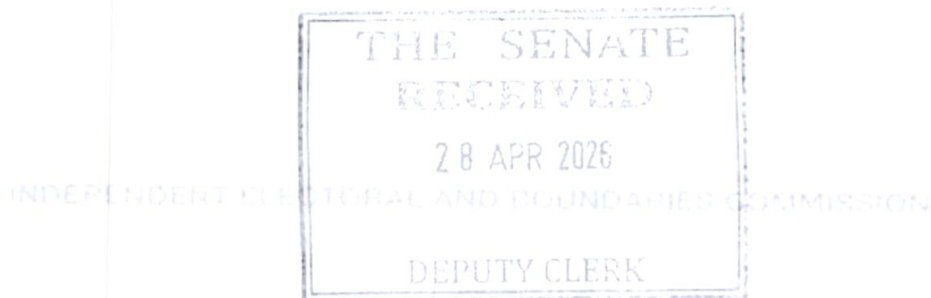
We thank you and assure you of our continued support.



Hon. Shadrack J. Mose, CBS

SOLICITOR GENERAL





OUR REF: IEBC/DLS/CORR/04/2026

27th April, 2026

YOUR REF: SEN/DGAC/DGC/JLAHRC/2026/28(b)

Mr. J.M. Nyegenye, CBS,
Clerk of the Senate
P.O. Box 41842 - 00100
NAIROBI

clerk.senate@parliament.go.ke



Dear *Mr. Nyegenye,*

**RE: SUBMISSIONS ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL,
2026 (SENATE BILLS NO. 7 OF 2026)**

We acknowledge receipt of your letter Ref. SEN/DGAC/DGC/JLAHRC/2026/28(b) dated 13th April, 2026 regarding the above subject matter.

This is to confirm that the Commission will attend the Committee meeting scheduled for Thursday, 30th April, 2026 at 9.00 a.m. to deliberate on the Bill.

Please note that, due to pre-planned activities out of Nairobi, the Acting Commission Secretary/CEO will be unavailable. However, Mr. CS Chrispine Owiye, OGW, Director, Legal Services, will lead the Commission's team during the meeting.

Please do not hesitate to contact the undersigned for any clarification or further information.

Yours

Sincerely

28 APR 2026

DGAC

Moses Sunkuli

Moses Sunkuli, OGW
Ag. Commission Secretary/ CEO

Kindly deal

28/04/2026

*Lead clerk
JLAHRC
please deal
29/04/2026*

Encl. (1) Memorandum



THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

MEMORANDUM

TO THE SENATE

ON

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026

Dated 23rd April, 2026

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

Anniversary Towers, Off University Way

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

Telephone: +254 (0) 20 29925

Introduction

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

Purpose of the Bill

5. The Bill seeks to amend Article 99(2) and 193(2) of the Constitution of Kenya to bar persons who have served as County Governors from vying for election as members of Parliament or members of county assembly for the first five years immediately after serving as county governors.
6. The Bill further proposes to amend Sections 24(2) and 25(2) of the Elections Act which replicate the above provisions of the Constitution.
7. The IEBC makes the following general comments on the laws that directly affect the mandate of the Commission.

General Comments

Whereas the Constitution of Kenya (Amendment) Bill, 2026 makes proposals to amend the Constitution and the Elections Act, these proposals directly affect the Commission's functions as the proposal seeks to review qualifications/disqualifications of candidates for election.

Specific Comments

1. This Bill intends to review provisions of Section 24(2) and 25(2) of the Elections Act taking into account emerging reforms and to this we make the following specific comments on proposals that have an impact on the said Act.
2. The IEBC has endeavored to prepare submissions which highlight the relevant legal framework, implication of the proposed Bill and the consequential impact of the Bill. In addition, IEBC has proffered further views including international best practices on the proposed amendments.

Legal framework	Current provision	New proposal
Article 99 (2)	Provides for the disqualifications of Members of Parliament	99(2) (ba) (i) and (ii) In the case of election to the senate – i. Is a County Governor or ii. Has, at any time within five years immediately preceding the date of election, held office as a County Governor.
Article 193(2)	Provides for disqualifications for Members of the County Assembly	Article 193(2)(ba) has, at any time within five years immediately preceding the date of election, held office as a County Governor.
Section 24 (2)	Provides for disqualifications for Members of the Parliament	Section (24) (2) (ba)In the case of election to the senate – i. Is a County Governor or ii. Has, at any time within five years immediately preceding the date of election, held office as a County Governor

Section 25(2)	Provides for disqualifications for Members of the County Assembly	Section (25)(2) (ba) has, at any time within five years immediately preceding the date of election, held office as a County Governor.
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Assessment of Political Rights in the Kenyan context

3. In its analysis, the IEBC notes that the bills propose to amend the Constitution and the Elections Act with the aim of barring persons who have served as County Governors from contesting as members of Senate and County Assembly amendments which fall within the category of Articles 24 and 38 of the Constitution.
4. Article 24 of the Constitution provides that "*A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom and taking into account all relevant factors*"
5. Article 38 (3)(c) of the Constitution provides that every adult citizen has the right, without unreasonable restriction to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office. This provision is under the Bill of Rights and its proposed limitations need to be in amity with the provisions of Article 24 which provides the circumstances and the extent under the said rights and fundamental freedoms may be limited.
6. Notably, the applicable exception is that these rights can only be limited by express provisions of the law and to the extent that the said limitation is reasonable and justifiable in an open and democratic society. We submit that the said limitations may not be limited arbitrarily or whimsically.
7. Article 24(3) of the Constitution also provides that the state or a person seeking to justify a particular limitation shall demonstrate to the court, Tribunal or other authority that the requirements of Article 24 of the Constitution have been satisfied. This therefore confers upon parliament the duty to not only promote but also protect the rights and fundamental freedoms espoused in the Bill of Rights.

8. In addition, Article 73 (2) (a) of the Constitution provides that: "*The guiding principles of leadership and integrity include selection on the basis of personal integrity, competence and suitability, or election in free and fair elections.*"
9. It is our considered view that the intents and purposes of the Memorandum of Objects and Reason of the Bill that proposes to limit the provisions of Chapter Four, should in essence consider other available mechanisms within the ethics, integrity and electoral legal framework to achieve the desired purpose which includes to enhance accountability and deal with conflict of interest of an elective leader. In addition, it behoves the affected person in the respective assembly to recuse himself or herself from presiding over matters arising from the tenure of their previous office.
10. It is our humble proposal, that instead of limiting the rights espoused under Article 38(3)(c) of the Constitution, consideration should be made to expand the existing legislative frameworks inherent in the Elections Act, Election Offences Act, Leadership and Integrity Act and the Ethics and Anti- Corruption Commission Act to bar convicted office holders in future elections as anticipated under chapter six read together with Article 99 (2)(h) of the Constitution. It is an anathema to constitutional ethos and principles to meet out a blanket punishment of all persons desirous of contesting election to elective state offices.

Consideration of Case law, International Instruments and Best Practices

11. It is a settled constitutional principle that a provision intended to limit a constitutional right should not derogate the core or essential content of the right. It even goes further to fortify the importance of the proportionality test by including an additional safeguard against excessive limitation. Indeed, it is argued that limiting rights degrades human dignity and has the effect of curtailing freedoms. Therefore, any limitation of rights ought to be reasonable and proportionate.

12. The commission is guided by the *Canadian Supreme Court Ruling in R V. David Oakes (1986) 1 S.C.R.103* which provides two tests: The Oakes test and the proportionality test. These two tests read together, state that it must be shown that the means chosen to limit a right must be reasonable and demonstrably justified which implies that the means chosen to achieve the objective must be proportional to the burden on the rights of a person.
13. The European Convention on Human Rights (ECHR) provides in all its general limitation clauses, that the measures must be necessary in a democratic society and Article 12 of the ICCPR on freedom of movement emphasizes that limitations must be consistent with the other rights recognized in the present Covenant.
14. Similarly, the African Commission of Human and Peoples Rights contains a general limitation clause in Article 27 paragraph 2 states thus: "*The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.*"
15. In this regard, the principles of proportionality, necessity, appropriateness and the requirement that any limitation adopt the least restrictive means form the core criteria for assessing the permissible scope of limitations on rights, as expressly provided under Article 24 of the Constitution of Kenya. This criterion is further reflected in the *Sirucasa* principles on the limitation and derogation provisions carried in the ICCPR which underscore that any limitations imposed must not negate the essence of the rights concerned, must not encroach upon minimum core obligations, and must at all times adhere to the principle of proportionality.
16. The Constitution states that a right or fundamental freedom in the Bill of Rights shall not be limited except by law, and such limitation shall be reasonable and justifiable in an open and democratic society. All these requirements are a culmination of the various guiding principles behind the international human rights instruments like the *Sirucasa* principles referred to above.

17. In light of the foregoing, it is imperative to note that the law remains the foremost instrument for safeguarding the rights of the people. Parliament is correspondingly vested with the responsibility of exercising due caution in the discharge of its legislative mandate, so as to avoid the arbitrarily deprivation of any citizen's rights and fundamental freedoms.
18. Accordingly, it is our considered view that, the respect to the aforesaid limitations, all Acts of Parliament ought to conform to the applicable international standards at both the drafting and enactment stages. Such conformity will obviate violations to the applicable limitations contemplated under Article 24.
19. Further, should this Bill be enacted into law, the Commission will be obligated to initiate consequential amendments to the electoral statutory instruments and other relevant guidelines within the electoral operational framework.

CONCLUSION

The Commission submits its comments on the draft Bill and urges this Honourable House to consider the proposals herein.



.....

OBADIAH KEITANY, MBS
FOR: COMMISSION SECRETARY/CEO



COUNTY ASSEMBLIES FORUM (CAF)

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

CAF MEMORANDUM ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

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

FROM: County Assemblies Forum

DATE: 29th April 2026

SUBJECT: CAF Memorandum on the he Constitution of Kenya (Amendment) 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 relations and enhance good practice in legislative development. Our Mission is to provide effective leadership and coordination of the 47 County Assemblies and through policy and legislative action, promote a conducive working environment for all its members, and in that way deliver quality services to the people.
2. As a critical pillar in the governance architecture under devolution, CAF is committed to ensuring that legislative and constitutional reforms uphold the integrity, functionality, and autonomy of County Assemblies.

2.0. BACKGROUND

- 2.1. The Constitution of Kenya (Amendment) Bill, 2026, seeks to amend Articles 99 and 193 of the Constitution, as well as Sections 24 and 25 of the Elections Act.
- 2.2. The Bill introduces a five-year “cooling-off period” barring current and former county governors from contesting for election as Members of the Senate or County Assemblies within five years of leaving office.
- 2.3. The rationale underpinning the Bill is to mitigate conflicts of interest by ensuring that individuals who have served in the executive arm at the county level do not immediately transition into legislative bodies responsible for oversight of their prior administration.

3.0. GENERAL COMMENTS.

- 3.1. CAF recognises that the oversight mandate of County Assemblies under Article 185(3) is fundamental to the success of devolution. The integrity and independence of oversight processes must be safeguarded to ensure accountability in the management of public resources
- 3.2. The Bill addresses a fundamental conflict of interest inherent in the immediate transition

of a former county governor into a legislative role within the County Assembly or Senate. Given that County Assemblies are constitutionally mandated under Article 185(3) to exercise oversight over the county executive, the presence of a former governor as a Member of the County Assembly would undermine the objectivity and credibility of that oversight function, particularly where the Assembly is required to scrutinise decisions made during that governor's tenure.

- 3.3. In sum, the Bill advances the principles of separation of powers, institutional integrity, and accountable governance by preventing the emergence of a "revolving door" scenario in which former executive office holders immediately assume oversight roles over their own prior administration
- 3.4. Notwithstanding the above, CAF notes that the proposed limitation raises significant constitutional concerns, particularly in relation to political rights under Article 38 and equality under Article 27. Any restriction must meet the threshold set under Article 24 on limitation of rights, including proportionality, necessity, and reasonableness.
- 3.5. CAF emphasizes that while Chapter Six of the Constitution underscores leadership and integrity, blanket disqualifications that are not tailored to specific accountability outcomes risk undermining democratic participation.
- 3.6. Comparative jurisdictions (Such as Nigeria, USA, South Africa, United Kingdom and India) demonstrate that while the risk of conflict of interest arising from former executives transitioning into oversight institutions is widely recognised, most systems do not impose blanket disqualifications. Instead, they rely on institutional safeguards, ethics frameworks, and accountability mechanisms. Kenya's proposed five-year restriction is therefore a novel and more restrictive intervention, which must be carefully justified under Article 24 of the Constitution to ensure that it is proportionate, necessary, and the least restrictive means of achieving the intended objective.
- 3.7. CAF appreciates the opportunity to contribute to this Bill and, based on the foregoing comments, notes the following; -

4.0 SUMMARY MATRIX OF THE PROPOSED AMENDMENTS.

NO.	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
	Clause 2 – Amendment of Article 99 of the Constitution of Kenya Article 99 of the Constitution is amended in clause (2) by inserting the following new paragraph immediately after paragraph (b)- (ba) in the case of election to the Senate— (i) is a county governor; or (ii) has, at any time within the five years immediately preceding the date of election, held office as a county governor;	No Amendment	➤ Protects the Senate's role in over-sighting county funds and ensures that audit reports for a governor's final years are reviewed impartially

	2 Clause 3 – Amendment of Article 193 of the Constitution of Kenya Article 193 of the Constitution is amended in clause (2) by inserting the following new paragraph immediately after paragraph (b)– (ba) has, at any time within the five years immediately before the date of election, held office as a county governor;	No Amendment	➤ Essential to prevent a "revolving door" where executives oversee their own past financial decisions as MCAs
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Yours sincerely,



**HON. SETH KAMANZA,
CHAIRPERSON.**



ETHICS AND ANTI-CORRUPTION COMMISSION

MEMORANDUM BY THE ETHICS AND ANTI-CORRUPTION COMMISSION TO THE STANDING COMMITTEE ON JUSTICE LEGAL AFFAIRS AND HUMAN RIGHTS ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

Wednesday, 29th April 2026

1) INTRODUCTION

The Ethics and Anti-Corruption Commission is a Constitutional Commission established under section 3 of the Ethics and Anti-Corruption Commission Act, CAP 7H, pursuant to Article 79 of the Constitution of Kenya.

This memorandum is submitted to the Senate Standing Committee on Justice Legal Affairs and Human Rights as requested vide a letter **SEN/DGAC/JLAHRC/2026/28(m)** dated **13th April 2026** from the Clerk of the Senate.

2) BACKGROUND

The Bill seeks to amend Articles 99(2) and 193(2) of the Constitution and to make related amendments to sections 24(2) and 25(2) of the Elections Act, Cap. 7 of the Laws of Kenya, to bar persons who have served as County Governors from vying for election as Senators or Members of a County Assembly for the first five years immediately after serving as County Governors. This will enable the completion of any ongoing accountability processes concerning the administration and financial management of the county, which may have a bearing on the suitability of the former County Governor to hold any other elective office.

Consequently, the Commission has prepared its submissions to the Committee as elaborated below.

- a) The Ethics and Anti-Corruption Commission (EACC) is established under Article 79 of the Constitution of Kenya 2010 and the Ethics and Anti-Corruption Commission Act, with the mandate to combat and prevent corruption, economic crimes, and unethical conduct in public service.
- b) Pursuant to its constitutional and statutory mandate, the Commission submits this memorandum to the Senate concerning the Constitution of Kenya (Amendment) Bill, 2026, with a focus on integrity, accountability, and good governance. The land is also a key component of the Galana Kulalu Irrigation Development project, aimed at boosting food security and promoting agro-based industries.

3) EACC COMMENTS

S/No	Clause (No.) in the Draft Bill	Provision	Comment (s) Raised / Position	Justification (s)/Rationale
1	Clause 2	Article 99(2) of the Constitution	Supports the Constitution of Kenya (Amendment) Bill, 2026.	Prevents conflict of interest since the Senate exercises oversight over County

				Governments and allows completion of audit and accountability processes. Promotes compliance with Chapter Six (Leadership and Integrity)
2	Clause 3	Article 193(2) of the Constitution		Since County Assemblies oversee County Executives, this will prevents interference with oversight processes and avoids institutional conflict between former executive roles and Legislative oversight
3	Clause 4	Section 24(2) of the Elections Act (Cap. 7)		This Aligns statutory provisions with constitutional amendment that ensure consistency in electoral Law and further enforces integrity safeguards in elections
4	Clause 5	Section 25(2) of the Elections Act (Cap. 7)		Enables voters to make informed decisions based on verified accountability outcomes, thereby enhancing transparency and trust in electoral systems. Reinforces public trust in

				governance, electoral systems, and oversight frameworks, promoting responsible leadership in public service.
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Dated this Wednesday, **29th** day of **April 2026**.



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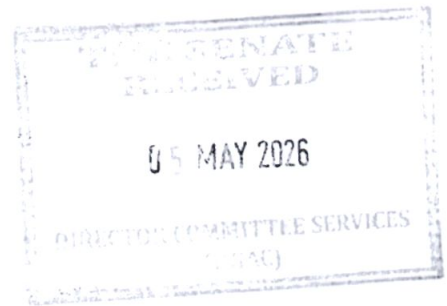
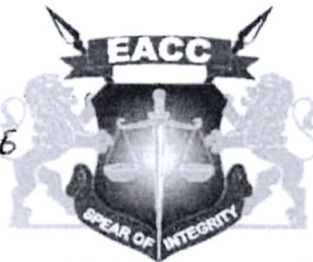
Abdi A. Mohamud, EBS, MBS
Secretary/Chief Executive Officer
ETHICS AND ANTI-CORRUPTION COMMISSION



② HOD-Governance
PCA-JLAHRC

Kindly deal

05/05/2026



ETHICS AND ANTICORRUPTION COMMISSION

INTEGRITY CENTRE (Jakaya Kikwete/Valley Road Junction) P.O. Box 61130 – 00200, NAIROBI, Kenya

TEL.: 254 (020) 4997000, MOBILE: 0709 781000; 0730 997000

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When replying please quote:

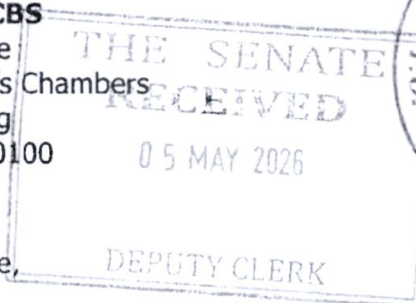
Your Ref: SEN/DGAC/JLAHRC/2026/28(m)

Date: 29th April, 2026

Our Ref: EACC.1/13 VOL IV (110)

J.M Nyegenye, CBS

Clerk of the Senate
The Senate, Clerk's Chambers
Parliament Building
P.O. Box 41842-00100
NAIROBI.



DGAC D
JLS

Kindly deal

05/05/2026

Dear Mr. Nyegenye,

RE: SUBMISSION OF MEMORANDA ON THE DRAFT CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026, (SENATE BILLS NO. 7 OF 2026)

We acknowledge receipt of your letter dated 13th April, 2026 requesting the Commission to Submit views on Constitution of Kenya (Amendment) Bill, 2026.

The Commission has carefully examined the Draft Bill and acknowledges the intent of the Bill to strengthen governance structures, enhance devolution and improve institutional accountability. In this regard, the Ethics and Anti-Corruption Commission expresses its support for the objects and intent of the Constitution of Kenya (Amendment) Bill, 2026.

The Commission notes that the proposed amendments reinforce accountability mechanisms by allowing sufficient time for the audit, investigation and resolution of matters arising during a Governor's tenure. This is critical in ensuring that oversight processes are conducted comprehensively and without undue interference.

Further, the Bill mitigates potential conflicts of interest by preventing former Governors from exercising influence over, or participating in, processes that scrutinize their prior administrative decisions. This safeguard upholds the integrity and independence of accountability institutions.

The Commission also notes that the amendments promote public confidence in the governance and electoral systems by enabling voters to make informed decisions based

on the outcomes of completed accountability processes. In doing so, the Bill advances transparency, integrity and responsible leadership in public service.

Overall, the proposed amendments are consistent with the constitutional principles of good governance, accountability, integrity and are therefore expected to enhance public trust in Kenya's electoral and oversight frameworks.

We trust that our submissions will be of assistance in strengthening the proposed legislative reforms. The Commission remains available for any further clarification or engagement as may be required.

Yours Sincerely,

A handwritten signature in dark ink, appearing to read 'Abdi A. Mohamud', with a stylized flourish at the end.

ABDI A. MOHAMUD, EBS, MBS
SECRETARY/CHIEF EXECUTIVE OFFICER



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

ADVISORY ON THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 7) OF 2026

SUBMITTED TO

**THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS**

28TH APRIL 2026

Kenya National Commission on Human Rights
1st Floor, CVS Plaza, Lenana Road
P.O. Box 74359-00200
NAIROBI, KENYA
Tel: 254-20-2717908 /2717256/2712664
Fax: 254-20-2716160
Website: www.knchr.org

A. INTRODUCTION

1. The Kenya National Commission on Human Rights (the Commission or KNCHR) is a Constitutional Commission established under Article 59(1) and Chapter 15 of the Constitution of Kenya and subsequently operationalized through the Kenya National Commission on Human Rights Act, 2011.¹ The KNCHR is mandated to act as the principal organ of the state in ensuring compliance with obligations under international, and regional treaties and conventions relating to human rights. Section 8 (a) and (b) of the KNCHR Act, 2011 enjoins the KNCHR to promote respect for human rights, develop a culture of human rights in the Republic, and promote the protection and observance of human rights in public and private institutions. Section 8 (j) of the said Act further mandates the KNCHR to perform such other functions as the Commission may consider necessary for the promotion and protection of human rights.
2. In addition to the functions of the Commission outlined in Article 59 (2) Constitution of Kenya 2010 and Section 8 of the Kenya National Commission on Human Rights Act, 2011 the Commission has additional functions to oversight implementation of the Prevention of Torture Act² and also under the Convention on the Rights of Persons with Disabilities as the national monitoring agency. Regionally, the KNCHR enjoys an Affiliate Status with the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child. The Commission is also a member of the Network of African National Human Rights Institutions (NANHRI), the regional umbrella body that brings together National Human Rights Institutions in Africa. The National Commission is accredited with 'A' status by the Global Alliance of National Human Rights Institutions (GANHRI) for compliance with the principles relating to the Status of National Human Rights Institutions ("The Paris Principles").

¹ Act No.14 of 2011.

² Under section 12 of the Prevention of Torture Act, 2017 (Act No. 12 of 2017); available at <http://kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=No.%2012%20of%202017>.

3. In pursuant to the above mandate and upon receipt of a letter dated 23rd February 2024, the KNCHR was invited by the office of the Clerk of the Senate to submit comments on the Constitution of Kenya (Amendment) (No. 2) bill (Senate Bills No. 52 of 2023) and makes the following submissions.

B. GENERAL COMMENTS

4. The Commission welcomes the Constitution of Kenya (Amendment) (No. 2) Bill which, by barring former county Governors from vying for the positions of member of county assemblies and Senate within the first five years after serving as county governors, will allow for any accountability processes related to administration and financial management affairs within the county to be completed.
5. The Constitution at Article 38 entitles every citizen to make political choices. This includes the right of every adult citizen to vote and to vie for public office. This right, however can be restricted on legal, reasonable and justifiable grounds.
6. Article 185(3)(4) of the Constitution as read together with section 8 of the County Governments Act, 2012 vest county assemblies with the oversight role over the county executive committee including the Governor. According to Article 96(3) of the Constitution, the Senate among other things “exercises oversight over national revenue allocated to the county governments”. These oversight and related responsibilities over county governments are further buttressed under the Public Finance Management Act (section 8) and the Senate Standing Orders. Article 229 of the Constitution further stipulates that the Auditor General’s reports may be submitted to Parliament or the relevant county assembly.
7. The Commission opines that limiting the right of former Governors from vying for these positions within the first five years after the end of their terms as Governors is reasonable and justifiable within the ambit of Article 24 of the Constitution. This is because Senators and

Members of County Assemblies directly oversight Governors, it is possible for Senators or Members of County Assemblies who were Governors to directly or indirectly influence the examination of the audit reports submitted by the Auditor General or conduct of investigations into administration and financial mismanagement during their immediate tenure.

8. Barring (former) Governors from vying for the oversight positions within the first five years after the end of their tenure as Governors would:
 - i. Prevent actual conflict of interest; in line with Chapter 6 of the Constitution, Leadership and Integrity Act; Public Officer Ethics Act and other laws;
 - ii. Promote democratic and accountable exercise of Power: This is one of the objectives of devolution. Any inquiry or investigations into the reports or conduct during their tenure as chief executives would commence and proceed without undue interference;
 - iii. Enhance the separation of powers and checks and balances which are fundamental principles and objects of our devolved system under Articles 174, 175 of the Constitution;
 - iv. Promote the national values and principles of the Constitution under Article 10; and
 - v. Promote the values and principles of public service enshrined under Article 232 and Public Service (Values and Principles) Act, 2015
9. The memorandum of object and purpose of the Bill promotes other key constitutional provisions including good governance, integrity, transparency and accountability under Article 10; leadership and integrity under Chapter Six; the values and principles of public service under Article 232 and public finance under Chapter Twelve.

10. The Commission is however opposed to also subjecting this limitation to positions for Members of the National Assembly since they play a minimal role in overseeing county chief executives.
11. The Commission further notes that similar restrictions have been imposed elsewhere in law. For instance, for appointment of members of the Independent Electoral and Boundaries Commission (IEBC), Article 88 (2) of the Constitution disqualifies a person from appointment as a member of the IEBC if the person has, at any time within the preceding five years, held office, or stood for election as a member of Parliament or of a county assembly; or a member of the governing body of a political party. The imposition of this requirement for former Governors under the Bill would therefore not be anything new to Kenya's constitutional and legal framework.
12. In view of these arguments therefore, the Commission recommends the enactment of the Constitution of Kenya (Amendment) (No. 2) bill (Senate Bills No. 52 of 2023).

SIGNED BY:



CLARIS OGANGAH

CHAIRPERSON



MEMORANDUM

From : Electoral Law and Governance Institute for Africa

To : Justice Legal Affairs and Human Rights Committee - Senate

Date : April, 2026

RE : The Constitution of Kenya (Amendment) Bill 2026 (Senate Bill No. 7 of 2026)

Background

- The Justice and Legal Affairs Committee (JLAC) in the Senate, in line with Article 118 of the Constitution and standing order number 145(5) of the Senate Standing Orders, invited the Electoral Law and Governance Institute for Africa (ELGIA) to submit representations/Comments on the Constitutional (Amendment) Bill (Senate Bills No. 7 of 2026).
- The Bill seeks to amend Articles 99(2) and 193(2) of the Constitution, and consequently Sections 24(2) and 25(2) of the Elections Act. The objective of the amendment is to bar persons who have served as County Governors from vying for election as Members of Parliament or members of County Assemblies for the first five years immediately after serving as county governors. According to the Memorandum of Objects and Reasons, the reason for this amendment is to enhance accountability and prevent conflict of interest among such leaders in the decision-making process.
- 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. ELGIA works with continental and sub-regional organizations, among them the African Union, East African Community (EAC), Southern Africa Development Community (SADC), and ECOWAS. Through this, the institution seeks to strengthen governance and political institutions through technical assistance, capacity building, advocacy, and research.



- ELGIA has developed this Memorandum to highlight the main considerations that will inform the Committee on the proposed constitutional amendment. ELGIA presents two thematic issues:

A. Political Rights: Limitation of Fundamental Rights and Freedoms.

- Chapter Four of the Constitution of Kenya provides for the Bill of Rights. Part one of the chapter lays out the general provisions relating to the Bill of Rights, and Part two of the Chapter outlines the Rights and Fundamental Freedoms. The right to contest as a member of Parliament and or to contest as a member of the County Assembly is a Constitutional/Political right within the Bill of Rights. Article 38(3)(c) provides that every adult citizen has the right, ***without unreasonable restrictions, to be a candidate for public office or office within a political party of which the citizen is a member, and if elected to hold office.***
- ELGIA submits that in amending the proposed Constitutional Articles, the Bill, in its content, consequently, limits the political rights provided under Article 38 of the Constitution, which includes the right to vie or be a candidate for any public office. Article 24 of the Constitution sets out the circumstances under which the rights and fundamental freedoms may be limited. Under the Article, the rights can be limited by law to the extent that the limitation is reasonable and justifiable in an open and democratic society.
- The Constitution additionally provides that a provision limiting a right or fundamental freedom shall not derogate from its core or essential content. It is important to note that Article 24 of the Kenyan Constitution was borrowed heavily from the Canadian Supreme Court Ruling in R V. David Oakes (1986) 1 S.C.R. 103, generally referred to as the 'Oakes Test', which generally says that limitation must be justifiable in an open and democratic society and through a proportionality test.
- Article 24(3) of the Constitution also provides that the state or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal, or other authority that the requirements of Article 24 of the Constitution have been satisfied. This is on the basis that the Constitution gives the state and state organs, including parliament, the duty to promote, fulfil, and protect the rights and fundamental freedoms in the Bill of Rights.
- A limitation must be shown to give effect to another constitutional guarantee. A trivial objective will be rejected. In the words of Woolman S in the South African Journal entitled: ***Riding the Push me pull you***, he says, 'Administrative convenience and the saving of costs should not justify the overriding of the constitutional guarantee. After all, if you are going to allow rights to be trumped by efficient

concur, you might as well have left their protection to the whirl-burly of the legislative process.....'

- The Article further outlines factors to be taken into account in an attempt to limit the Bill of Rights. These factors include, but are not limited to, the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.
- After reading the Memorandum of Objects and Reasons of this Bill aiming to limit and restrict the Bill of Rights, it is our submission that there are other, less restrictive means within the electoral law and integrity framework to achieve the purpose, which includes enhancing accountability and dealing with conflicts of interest of an elected leader. It is a settled principle that the purpose of a limitation fails the test of proportionality if there is the presence of other means to achieve the same ends without the limitations, with or without minimally restricting the rights.

B. Comparative analysis and international law and Instruments.

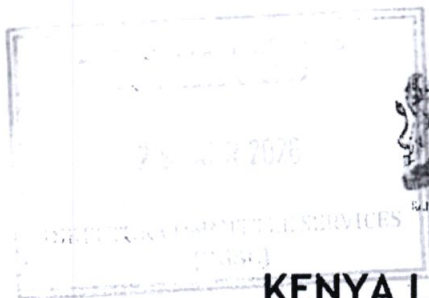
- Lawful restriction on Political Rights has been an ongoing debate. Rufus King, one of the American Founding fathers once said, '*He who has proved himself to be most fit for an office ought not to be excluded by the Constitution from holding it.*' This is an argument he advanced during debate over the necessity of term limits in elective positions.
- Limitations of political rights in a constitutional text must be consistent with international obligations. The International Covenants include the International Covenant on Civil and Political Rights (ICCPR). Article 5 of this Covenant provides that the covenant may not be interpreted as implying for any state, group, or person to perform any act aimed at the destruction of any of the protected rights. Article 25 of ICCPR on political participation states that there should be no unreasonable restrictions. Most jurisdictions have referred to these international covenant provisions while developing the limitation clauses.
- Based on consistency with international obligations, most jurisdictions have no specific laws restricting and limiting a person from running for other offices after reaching term limits in the current position. In the United States, Canada, and Britain, there are no specific laws restricting and limiting a person from running for other offices after reaching term limits in the current position. For instance, in the United States, Mark Robert Warner, the Current Senator for Virginia, served as the 69th Governor of Virginia from the year 2002 to 2006. Upon reaching the maximum term limit, he ran for the Senate in 2008.



- The South African Constitution provides a highly sophisticated human rights architecture and lays out human rights limitation details under Article 36(2) of the Constitution. It provides that no law may limit any right entrenched in the Bill of Rights.

Conclusion

- The drafters of the Constitution of Kenya provided express provisions for due consideration and a framework for limitation of the Bill of Rights and fundamental freedoms. Some of the International Instruments, such as the ICCPR, have also provided a general limitation clause. This is for the purpose of allowing the enjoyment of such rights with restrictions through legislation.



KENYA LAW REFORM COMMISSION

KLRC/8/86 VOL.IX/(14)

27th April, 2026

Mr. J. M. Nyegenye, CBS
Clerk of the Senate
Clerk's Chambers
Parliament Buildings
P. O. Box 41842 - 00100
NAIROBI



RE: THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

Reference is made to your letter Ref: SEN/DGAC/DGC/JLAHRC/2026/28(e) dated 13th April, 2026.

Enclosed herewith, please find the Commission's Comments on Proposed Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills NO.7 of 2026) for further action.

We thank you for your continued cooperation and support.


Peter Musyimi, HSC
Ag. SECRETARY/CEO

Copy to:

Ms. Christine Agimba, SC, MBS
Chairperson, KLRC
NAIROBI

- To see File copy

*Lead clerk
JLAHRC
Please update
and deal
for
29/04/2026*

*DGAC
DLY*

Kindly deal

EG 28/04/2026



KLRC COMMENTS ON THE PROPOSED CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

1.0. INTRODUCTION

The Kenya Law Reform Commission received a request, vide a letter dated 13th April, 2026 from the Clerk of the Senate, to make representations on the Constitution of Kenya (Amendment) Bill, 2026.

The Bill has undergone a First Reading in the Senate and now stands committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration and public participation.

1.1. Objects of the Bill

The Bill seeks to amend Articles 99 (2) and 193 (2) of the Constitution of Kenya and to make related amendments to sections 24 (2) and 25 (2) of the Elections Act (Cap. 7 Laws of Kenya).

The proposed amendments seeks to bar persons who have served as county governors from vying for election as Senators or Members of a County Assembly for a period of five years immediately after leaving office. The rationale is to allow for accountability processes relating to the administration and financial management of the county to be concluded, as these may affect the suitability of a former governor to hold another elective office.

The Kenya Law Reform Commission has analyzed the proposed amendments and makes the following proposals:

2.0. COMMENTS ON THE BILL

STATUTE	SECTION/ AMENDMENT	PROPOSED KLRC PROPOSAL	RATIONALE
The Constitution	Article 99. To bar a person from	Not in agreement.	This is a weak proposal under

of Kenya, 2010.	election to the Senate where they are a county governor or at any time within five years immediately preceding the date of election.		Kenya's current constitutional framework, because it imposes a blanket disqualification beyond what the Constitution already provides, without sufficient justification. This proposal could also potentially be in conflict with the people's right to choose their leaders and could violate Articles 1 (2) and 38 of the Constitution.
	Article 193. To bar a person from election to the Senate where they are a county governor or at any time within five years immediately preceding the date of election, held office as a county governor.	Not in agreement.	
Elections Act, cap. 7 Laws of Kenya.	Section 24. To bar a person from election to the Senate where they are a county governor or at any time within five years immediately preceding the date of election, held office as a county governor.	Not in agreement.	The Constitution already gives voters the right to elect anyone who meets clear and objective qualifications such as age, education, citizenship among others and therefore adding a time-based ban on a specific former office without evidence of inherent unfitness is overbroad.
	Section 25. To bar a person from election to the Senate where they are a county governor or at any time within five years immediately preceding the date of election, held office as a county governor.	Not in agreement.	Further, the proposal unjustly treats former governors equally, regardless of performance, thereby penalizing competent and ethical leaders, alongside those who may have performed

			poorly. Additionally, the requirement may offend the principle of presumption of innocence, as it restricts political rights based on unproven or pending accountability processes.
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3.0. CONCLUSION

The KLRC concludes that the proposal is not sound. While it is well-intentioned in seeking to prevent conflicts of interest and promote accountability, a five year post governorship bar is disproportionate, potentially undemocratic, and likely unconstitutional.

The proposal presupposes that accountability processes can only be undertaken after a person leaves office, and must be completed within five years, which is not necessarily the case.

Accountability mechanisms can be initiated and concluded while governors are still in office. Furthermore, election to another office does not shield an individual from administrative or legal accountability, as conflict of interest laws and oversight mechanisms remain applicable.

Finally, there appears to be no comparative precedent for such restriction. In jurisdictions such as South Africa and the United States, former premiers or governors are permitted to contest for elective positions without a mandatory "cooling off" period.

Cooling-off periods are typically applied to appointed public officials transitioning into elective politics, primarily to ensure fairness and prevent abuse of incumbency. The "resign-to-run" principle serves this purpose and is distinguishable from the restriction proposed in the Bill.



REPUBLIC OF KENYA

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When replying please quote



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Off Waiyaki Way

P.O Box 1131-00606

Sarit Centre, Nairobi.

Ref: RPP/ELE/13(27)

Date: 29th April 2026

Clerk of the Senate
Clerk's Chambers
Senate, Parliament Buildings
P.O. Box 41842-00100
NAIROBI



Dear Sir,

RE: ORPP MEMORANDUM ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026

Reference is made to the above subject matter.

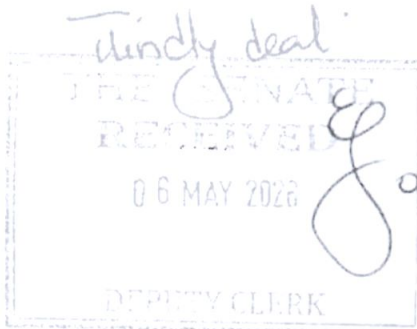
This Office acknowledges receipt of your letter dated 13th April 2026 and the attachment thereto calling for submission of views on the Constitution of Kenya (Amendment) Bill, 2026.

Annexed herewith is a signed memorandum of the Office of the Registrar of Political Parties.

Yours faithfully,

J.C. Lorionokou
Registrar of Political Parties/CEO

① DGAC
DLK



② HOD-Governance
PLA-JLHARC
Kindly Deal
07/05/2026



MEMORANDUM ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026

A. INTRODUCTION

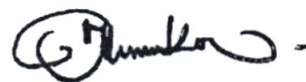
1. Pursuant to Article 118 (1) of the Constitution, the Senate's Standing Committee on Justice, Legal Affairs and Human Rights vide a letter of 13th April 2026 called for submission of views on the Constitution of Kenya (Amendment) Bill 2026.
2. The Office of the Registrar of Political Parties (ORPP) is established under Section 33 of the Political Parties Act Cap. 7D (PPA) as an independent State Office within the meaning of Article 260 of the Constitution. Its mandate, as drawn from Section 33 of the PPA, includes registration and regulation of political parties as well as administration of the Political Parties Fund.
3. The ORPP lauds the Bill as it is a path towards promoting accountability of elected representatives and the capacity of the Senate and county assembly to undertake their oversight roles through the lenses of the County Governments Act Cap. 265.
4. While the ORPP supports the Bill, it calls upon the Committee to consider the following issues: -
 - a) In absence of a commencement clause, the law shall come into force in line with Article 116 of the Constitution. This has an implication on the qualifications required of persons holding the positions in the Senate and the County Assembly. There is need, therefore, for a transition and/or a savings clause.
 - b) In terms of Article 180(2) of the Constitution, a person is eligible to be elected as a governor if they are eligible to be elected as a Member of a County assembly. The qualifications for an MCA are stipulated under Article 193 of the Constitution. The proposal to Article 193 therefore introduces incongruence between Articles 180 and 193 of the Constitution— an issue that may be resolved through recrafting.

c) While the Memorandum of Objects and Reasons provide for the rationale of limiting the rights of individuals who have served as governors or serving as governors with regard to election to the Senate and the County Assembly, it is imperative to consider whether there may be less restrictive means to achieve the purpose of the Bill as required under Article 24(1)(e) of the Constitution noting that—

- Senate and County Assemblies are constitutional structures bound by the values and principles of good governance under Article 10 of the Constitution;
- Opportunities for declaration of conflict of interest and not being party to deliberations while alive to the possibility of the quorum being affected; and
- The High Court's observation in **Jacqueline Okeyo Manani & 5 others v Attorney General & another** on what amounts to discrimination whereby the court observed:

“Discrimination means affording different treatment to different persons attributable wholly or mainly to their descriptions whereby persons of one such description are subjected to ... restrictions to which persons of another description are not made subject or have accorded privileges or advantages which are not accorded to persons of another such description... Discrimination also means unfair treatment or denial of normal privileges to persons because of their race, age sex ... a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured...”

5. The Committee is therefore invited to consider paragraph 4 so as to fend off and or prepare for litigation on the proposals.



J.C Lorionokou
Registrar of Political Parties/CEO

8th May, 2026

J. M. Nyegenye, CBS,
Clerk of the Senate,
The Senate,
Parliament Buildings,
P.O. Box 41842-00100,
Nairobi.

**RE: PUBLIC SUBMISSION IN SUPPORT OF THE CONSTITUTION OF KENYA
(AMENDMENT) BILL, 2026 — SENATE BILLS NO. 7 OF 2026**

Dear Sir,

We write to formally express our strong support for the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026), which was read a First Time in the Senate on Thursday, 26th March, 2026, and thereafter committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

The Bill seeks to amend Articles 99(2) and 193(2) of the Constitution, and to make related amendments to Sections 24(2) and 25(2) of the Elections Act, Cap. 7 of the Laws of Kenya, so as to bar persons who have served as county governors from vying for election as Senators or Members of a County Assembly for the first five years immediately after serving as county governors.

We support this Bill for the following reasons:

- 1. Prevention of Conflict of Interest.** The Senate and county assemblies are mandated by the Constitution to exercise oversight over county governments. A former governor who transitions directly into either of these institutions creates a direct conflict of interest, as they would be called upon to scrutinize — and potentially judge — their own prior conduct in office. This fundamentally compromises the independence and integrity of legislative oversight.
- 2. Completion of Accountability Processes.** Audit reports and accountability processes relating to a governor's tenure in office are often concluded long after they leave office. A cooling-off period of five years ensures that these processes — including review of county public accounts — are completed without interference, intimidation, or undue influence from a former governor who may now occupy a legislative seat.
- 3. Strengthening Devolution and Public Trust.** Devolution was established to bring government closer to the people, with robust checks and balances. Citizens deserve a Senate and county assemblies that are genuinely independent. Allowing former governors to immediately join oversight bodies undermines public confidence in the devolution framework and creates conditions ripe for collusion rather than accountability.
- 4. Alignment with Constitutional Principles.** Articles 10 and 232 of the Constitution enshrine the values of integrity, transparency, and accountability in public service. The five-year cooling-off period is consistent with and reinforces

these constitutional values by ensuring that only those whose public conduct has been fully accounted for may seek higher public office.

We therefore urge the Standing Committee on Justice, Legal Affairs and Human Rights to carefully consider these submissions and to recommend the passage of this Bill to the Senate for enactment into law.

We trust that the Committee will uphold the spirit and letter of the Constitution in arriving at its decision.

Yours faithfully,

Shallet Kibet

The Big Talk

Nairobi County

Tel: 0729 001 669

Email: shalletkibet@gmail.com

*Submitted to: The Clerk of the Senate, Parliament Buildings, Nairobi | clerk.senate@parliament.go.ke
In reference to: Senate Bills No. 7 of 2026 — Constitution of Kenya (Amendment) Bill, 2026*



A MEMORANDUM ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL 2026 (SENATE BILLS NO. 7 OF 2026)

NAME OF ENTITY/PERSON: TRANSPARENCY INTERNATIONAL KENYA

DATE: 8TH MAY 2026

INTRODUCTION:

Transparency International Kenya (TI-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. As a result, we need to ensure full compliance and implementation of Chapter 6 of the Constitution, on leadership and integrity, the Leadership and Integrity Act, 2012, the Public Audit Act, No. 34 of 2015 in the appointment of leaders in elective positions.

PART A: GENERAL COMMENTS

TI-Kenya submits this memorandum in opposition to the proposed Bill in its entirety, which seeks to impose a 5-year disqualification on former County governors from contesting elective political office specifically as MPs or MCAs. County governors, in the course of their duties as provided by the Constitution, have to account to the county assemblies and the Senate for any financial and administrative decisions made. These accountability structures are already embedded in law and are designed to ensure continuous oversight during and after a governor's tenure.

The proposed cooling off period is insufficient and misaligned with the realities' of Kenya's accountability environment, contrary to the doctrine of exhaustion. This is especially when it comes to actioning the Office of the Auditor General's audit reports; and hearing and determination of corruption-related charges in the Anti-corruption courts. Consequently, TI-Kenya proposes that, if such a restriction is to be considered at all, it should be extended to include clearance by the investigative and oversight bodies, and the courts where a case is instituted against a former governor. This ensures compliance with Chapter 6 of the Constitution on leadership and integrity, the Leadership and Integrity Act, 2012, the Public Audit Act, Cap 412B and not just an arbitrary political timeline for the cited positions as currently drafted.

This position is further reinforced in the Implementation of Chapter 6 of the Constitution of Kenya 2010, which, as noted by the Africa Centre for Open Governance (AfriCOG), is to establish higher standards of integrity for persons seeking to serve as state officers. In Trusted Society of Human Rights Alliance & 3 others v Judicial Service Commission & another; Law Society of Kenya (Interested Party); Article 19-Eastern Africa Curiae (*Amicus Curiae*) [2016] KEHC 3581 (KLR), the High Court observed at paragraph 28 that:

...a person is said to lack integrity when there are serious unresolved questions about his honesty, financial probity, scrupulousness, fairness, reputation, soundness of his moral judgment or his commitment to the national values enumerated in the Constitution. In our view, for purposes of the integrity test in our Constitution, there is no requirement that the behaviour, attribute or conduct in question has to rise to the threshold of criminality. It therefore follows that the fact that a person has not been convicted of a

criminal offence is not dispositive of the inquiry whether they lack integrity or not...it is enough if there are sufficient serious, plausible allegations which raise substantial unresolved questions about one's integrity.

The High Court in this case established that the integrity standard required of a person seeking to hold public office is that the individual should be beyond reproach and should not have unresolved questions about his character and commitment to the national values in the Constitution.

This interpretation emphasizes that the constitutional threshold for leadership is not merely procedural but substantive, requiring individuals to be beyond reproach. Consequently, any legislative attempt to regulate eligibility for public office must be firmly grounded in this integrity-based framework, rather than limited to a rigid and time-bound disqualification.

Lastly, the ban should not only be related to the positions outlined in the Bill but should also extend to appointive positions such as Cabinet Secretaries, in compliance with Chapter 6 of the Constitution and its related laws.

PART B: COMMENTS ON THE DRAFT PROVISIONS

Clause	Comment/Proposal	Rationale/ Justification
2,3,4,5	Amendment Opposed	The former governors should be barred from holding office until the audits/investigations and consequent court proceedings are exhausted. The audits/investigations can be active for more than the 5 years proposed.

		The investigations can lead to court proceedings against the said governors which also take a substantial amount of time. If the governors are allowed to hold office after 5 years with investigations ongoing, they might be able to influence decisions against them especially in Public Investments and Public Accounts Committees.
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CONTACT INFORMATION:

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NAIROBI, KENYA

MEMORANDUM ON

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026

(Senate Bills No. 7 of 2026)

SUBMITTED TO:

The Standing Committee on Justice, Legal Affairs and Human Rights
The Senate of the Republic of Kenya

SUBMITTED BY:

OUTREACH FOR ACTION KENYA.

Outreach for Action Kenya welcomes the opportunity to submit its views on the Constitution of Kenya (Amendment) (No. 7) Bill, 2026.

As an organization incorporated in the Republic of Kenya that is committed to accountability, integrity and public confidence in governance, we oppose the Bill's objective to bar persons who have served as county governors from vying for election as Members of Parliament or Members of County Assembly for the first five years immediately after serving as county governors.

This memorandum is submitted in response to the Senate Standing Committee on Justice, Legal Affairs and Human Rights' Invitation for Submission of Memoranda and Public Hearings on the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026) (hereinafter "the Bill"), published pursuant to Articles 118 and 256 of the Constitution of Kenya and Standing Order 145(5) of the Senate Standing Orders.

INTRODUCTION

The Bill, sponsored by Senator James Kamau Murango of Kirinyaga County and read for the First Time in the Senate on 26th March 2026, proposes to amend Articles 99(2) and 193(2) of the Constitution and Sections 24(2) and 25(2) of the Elections Act (Cap. 7) to impose a five-year electoral disqualification on former county governors, barring them from contesting elections as Members of Parliament (both Houses) or as Members of a County Assembly for five years immediately following the end of their gubernatorial tenure.

The position of this memorandum is one of unequivocal opposition to the Bill in its current form i.e. the Bill **SHOULD NOT PASS** in its current form. The opposition is grounded in five distinct but mutually reinforcing grounds, each of which is sufficient, independently, to warrant the Committee's recommendation against passage. The grounds are:

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1. The Bill rests on a series of unsubstantiated assumptions which, when examined critically, cannot be justified under the constitution.
2. The Bill imposes a blanket restriction on the fundamental right to political participation guaranteed under Article 38(3) of the Constitution in a manner that is disproportionate, arbitrary, and fails the limitation test under Article 24.
3. The Bill violates the right to presumption of innocence and the right to a fair hearing, both of which are guaranteed under Articles 25 and 50 of the Constitution and which, by reason of their non-derogable character, place the Bill outside the bounds of permissible legislation entirely.
4. The Bill establishes an arbitrary and constitutionally unsustainable precedent by applying its accountability-based disqualification principle selectively to one class of public officers while leaving equivalent and analogous classes entirely unrestricted, and by enshrining a principle that is neither logically coherent nor consistently applicable, in violation of the equal protection guarantee enshrined in Article 27 of the Constitution. These concerns are elaborated fully in Section 5 of this memorandum.
5. The Bill is a substantive re-introduction of a proposal that was previously placed before the Senate and withdrawn; the Constitution of Kenya (Amendment) (No. 2) Bill, Senate Bills No. 52 of 2023, sponsored by Sen. Raphael Chimera. A Bill that has been withdrawn is not a Bill that failed for want of time or opportunity; it is a Bill that the Senate, for reasons that must have been considered sufficient at the time, determined should not proceed in the form in which it was presented. The re-introduction of a materially identical proposal, without any demonstrated engagement with whatever concerns necessitated that withdrawal, raises a legitimate and unanswered question: what has changed? The present Bill should not proceed unless the Senate is able to demonstrate, through evidence and constitutional justification, that the concerns which led to the withdrawal of its predecessor have been identified, considered, and adequately addressed in the design of the present Bill. These concerns are elaborated in Section 6 of this memorandum.

This memorandum further urges the Committee to direct attention to the robust framework of existing legal and institutional mechanisms that, properly enforced and enhanced, are fully capable of achieving the accountability objectives the Bill seeks to pursue; without the need for a constitutional amendment that introduces significant rights restrictions and creates a dangerous doctrinal precedent.

THE BILL RESTS ON UNSUBSTANTIATED ASSUMPTIONS

The Bill's Memorandum of Objects and Reasons advances its case through a series of foundational propositions that are presented as established facts but which, on examination, are assumptions;

neither empirically verified nor constitutionally demonstrated. Each assumption carries significant weight in the Bill's logic; the failure of any one of them materially undermines the justification for the constitutional amendment.

(a) The assumption that a former governor will interfere with accountability processes

The Bill proceeds on the basis that a former governor who becomes a Senator or MCA will interfere with accountability processes concerning their own tenure. Interference is assumed, not demonstrated. The Bill offers no evidence of a single documented instance in which a former governor, upon becoming a senator or MCA, was proven to have successfully obstructed, derailed, or corrupted an accountability or audit process relating to their own tenure. The closest notable example is the Senate County Public Accounts Committee Ruling, July 2023, ruling on the participation of Senator Jackson Mandago (Uasin Gishu) in proceedings concerning the Auditor-General's Report on Uasin Gishu County for the Financial Year ending June 2020 ("**the July 2023 CPAC Ruling**"), resulted in a committee ruling that the senator be excluded from those specific proceedings. The system self-corrected without constitutional intervention. The assumption conflates the risk of interference with its actuality, and a constitutional amendment cannot be justified on the basis of a risk that the existing institutional framework has demonstrated it can manage.

(b) The assumption that all governors are equally culpable regardless of their individual record

The Bill applies uniformly to all former governors, including those who received clean audit opinions throughout their tenure and against whom no adverse findings exist or are pending. There is no mechanism in the Bill for distinguishing a governor with a clean record from one under active investigation. The sweeping application of the disqualification to all governors, regardless of their individual accountability record, is not an evidence-based response to a proven governance failure; it is a presumption of potential culpability imposed on an entire class of citizens without individualized assessment. This is not a constitutionally permissible basis for restricting fundamental rights.

(c) The assumption that five years is a calibrated and evidence-based restriction period

The Bill offers no empirical basis for the selection of five years as the operative period. No data is presented on the average time taken for county audit processes to be concluded, for CPAC reports to be tabled, or for Chapter Six proceedings to be determined. In the absence of this data, the five-year period is an arbitrary legislative choice, not a calibrated constitutional design. It may be significantly longer than the actual duration of outstanding processes for many governors, rendering the restriction disproportionately punitive in those cases. A constitutional restriction on fundamental rights that is not grounded in evidence cannot satisfy the reasonableness requirement of Article 24.

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(d) The assumption that a constitutional amendment is the necessary and most appropriate instrument

The Bill does not engage with the suite of existing statutory and institutional mechanisms, the Leadership and Integrity Act, the Ethics and Anti-Corruption Act, the Election Offences Act, the Public Audit Act, and mandatory recusal provisions in Senate Standing Orders, that, properly enforced, address the conflict-of-interest concern without amending the supreme law. The assumption that a constitutional amendment is necessary is not supported by any analysis demonstrating the inadequacy of these existing tools. As the IEBC formally argued in its submission opposing the predecessor Bill, the appropriate response is enhancement of the existing legislative framework, not constitutional restriction of political rights. The Bill's proponents have not discharged the burden of demonstrating why these less restrictive means are insufficient.

(e) The assumption that voters are better served by a legal bar than by access to comprehensive accountability information

The Bill implicitly assumes that the electorate cannot be trusted to weigh a governor's accountability record at the ballot box and must instead be protected by a prior legal disqualification. This is a paternalistic assumption that is fundamentally at odds with the democratic philosophy of the Constitution of Kenya, 2010. Article 38(2) guarantees citizens the right to free, fair elections based on the free expression of the will of the electors. A better-designed response to the accountability information deficit, including requirements for the timely completion and public dissemination of audit reports and the establishment of a public integrity register for former governors, would empower voters rather than remove the choice from them entirely.

The combined effect of these unsubstantiated assumptions is that the Bill's case for a constitutional amendment rest on assertion rather than evidence. A provision that restricts fundamental rights must be justified by more than legislative intuition. The Committee is respectfully urged to require the Bill's proponents to furnish empirical evidence in support of each of these foundational propositions before the Bill is considered further.

THE BILL IMPOSES A DISPROPORTIONATE RESTRICTION ON THE RIGHT TO POLITICAL PARTICIPATION

Article 38 of the Constitution gives every adult citizen the right, without unreasonable restrictions, to be a candidate for public office and, if elected, to hold office. Article 24 further requires that any limitation of rights must be by law, reasonable and justifiable in an open and democratic society. It emphasizes the need for less restrictive means to achieve the purpose of limiting the rights should be used. The Bill fails this test on multiple limbs;

The restriction applies regardless of geography and individual culpability

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NAIROBI, KENYA

The Bill bars a former governor from contesting an MCA seat in any ward in Kenya – including wards in counties entirely different from the one they governed. A former Governor of Kisumu County who wishes to contest an MCA seat in Kajiado County presents no conceivable conflict of interest with respect to oversight of the Kisumu County government. The geographic overbreadth of the Bill, combined with its failure to distinguish between governors with clean records and those with unresolved accountability matters, renders the restriction disproportionate in both scope and application.

The restriction penalizes public service

The Constitution of Kenya, 2010 was conceived as a rights-expanding document, designed to deepen democratic participation and broaden civic engagement. A provision that imposes an automatic, blanket five-year exclusion from the democratic arena on an entire class of citizens, solely by virtue of their having served in the most senior county executive office, sends a signal that is corrosive to the democratic culture the Constitution sought to establish: that distinguished public service at the executive level is rewarded with the curtailment of political rights. This is inconsistent with the spirit of Article 38 and with the national values of participation of the people and good governance enshrined in Article 10 of the Constitution.

THE BILL VIOLATES THE RIGHT TO PRESUMPTION OF INNOCENCE AND THE RIGHT TO A FAIR HEARING

The Bill should not be passed as it is because it ignores one of the basic structures of the Constitution that every person has a right to be presumed innocent until proven guilty. The Bill is leaning towards the inverse by treating and presuming an entire class of citizens guilty before granting them a fair hearing. This is not a peripheral concern; it strikes at one of the foundational principles upon which Kenya's constitutional order is built.

The Bill imposes heavy constitutional sanctions on the basis of suspicion alone

The Bill operates on an assumption that all former county governors are unfit to contest for Member of Parliament and Member of County Assembly for five years, regardless of whether any misconduct, corruption finding, audit query, or Chapter Six violation has been established against them. County governors who have served their term in office diligently with no allegation of misconduct, abuse of office or accountability issue will be highly disadvantaged.

In constitutional terms, what the Bill does is structurally equivalent to a legislative finding of guilt; it imposes a significant punitive consequence, the loss of political rights, on an entire class of persons, not because of anything that has been found against any of them individually, but solely because of the office they held. This is the character of what comparative constitutional law

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recognises as a bill of attainder; a legislative act that inflicts punishment on a defined class without judicial process or individual finding. Such an approach is fundamentally at odds with the rule of law and the national values of dignity, equality, and justice enshrined in Article 10 of the Constitution.

The presumption of innocence and the right to a fair hearing are non-derogable

The right to a fair trial is one of the non-derogable rights under Article 25 of the Constitution of Kenya. An attempt to categorise all governors guilty and to hold them to disqualification under Article 99 and 193 of the Constitution, would be an attempt to limit their constitutional right to a fair hearing. The Bill as it stands is therefore unconstitutional and should not be entertained before solving this conundrum.

The presumption of innocence is expressly guaranteed under Article 50(2)(a) of the Constitution, which provides that every accused person has the right to be presumed innocent until the contrary is proved. Kenyan courts have consistently affirmed that this principle extends beyond the narrow confines of criminal proceedings to any state action that is punitive or sanctioning in character. A law that strips a defined class of citizens of their political rights, without a hearing, without a finding, and without any individualized assessment of culpability, is a sanctioning measure in substance, whatever its formal characterisation. It is still subject to Article 50 of the Constitution even if it is presented as an electoral qualification rather than a criminal punishment. Because Article 25 places the right to a fair hearing beyond the reach of any limitation, including limitations that might otherwise be justifiable under Article 24, the Bill's incompatibility with this right is not a defect that can be cured by demonstrating proportionality or legitimate purpose. It is a fundamental constitutional infirmity that places the Bill outside the bounds of permissible legislation entirely.

The distinction between regulation and punishment

It is important to address the argument that the Bill is merely a regulatory measure, a qualification for office, rather than a punishment, and that it therefore does not engage the presumption of innocence or the right to a fair hearing. That argument cannot be sustained. The distinction between a regulatory restriction and a punitive disqualification is one of substance, not of label. A restriction that is imposed on a specific, identifiable class of persons, that deprives them of a fundamental constitutional right, that is triggered not by any objective criterion of present unfitness but solely by membership of a disfavoured class, and that carries no mechanism for individual assessment or rebuttal, is punitive in its practical operation regardless of how it is described in its long title. The Bill meets each of these criteria. Its characterisation as a qualification does not alter the constitutional analysis. The Committee is urged to look through the form of the provision to its

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substance and to recognise that a measure which imposes what is, in effect, a five-year political sentence on every former governor, innocent and culpable alike, cannot be reconciled with the Constitution's guarantee that no person shall be subjected to a punitive consequence without the benefit of a fair hearing and the protection of the presumption of innocence.

THE BILL ESTABLISHES AN ARBITRARY AND CONSTITUTIONALLY UNSUSTAINABLE PRECEDENT

The accountability relationship that the Bill treats as sufficient justification for electoral disqualification, that of a former executive officer whose decisions remain subject to ongoing legislative oversight and audit scrutiny, is not unique to county governors. It is a relationship that pervades the entire constitutional architecture of public governance in Kenya. A former Cabinet Secretary is accountable to the National Assembly's Public Accounts Committee for ministerial expenditure; a former Principal Secretary of the National Treasury bears direct responsibility for decisions scrutinised annually by the same Committee; a former Member of a County Assembly who voted to approve contested county budgets faces no bar from contesting a Senate seat, notwithstanding that the Senate now scrutinises those very budgets; and the heads of State corporations and parastatals are equally answerable to parliamentary oversight bodies for the management of public funds. If the principle underlying the Bill is constitutionally sound, it must, by logical and constitutional necessity, apply with equal force to each of these classes of officers. If it does not, and the Bill proposes no restriction whatsoever on any of them, then the selective targeting of former county governors alone is arbitrary, unprincipled, and inconsistent with the equal protection guarantee enshrined in Article 27 of the Constitution.

The precedent is, moreover, susceptible to a further troubling inversion. The Bill's logic, that a prior relationship with a legislative oversight body disqualifies a person from membership of that body, raises by necessary implication the converse question: ought a person who previously held an oversight role to be barred from seeking an office that would place them under the authority of that same oversight body? If the accountability relationship between a governor and the Senate is a sufficient basis for disqualifying the governor from the Senate, is the prior oversight relationship between a senator and the office of governor not equally a basis for disqualifying the senator from the governorship? A senator who spent years scrutinising county executives, examining their accounts, and holding them publicly to account carries into a gubernatorial campaign an institutional familiarity with, and a public profile built partly upon, the very oversight processes to which they would then be subject as governor. The Bill's logic, applied consistently, would compel that conclusion; yet no such bar is proposed, and rightly so, because such a proposition would be constitutionally untenable. The fact that it is untenable demonstrates that the principle the Bill seeks to constitutionalise is not sufficiently coherent or universal to bear the weight of a constitutional disqualification.

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More gravely, the enactment of this Bill would embed in the supreme law of Kenya a constitutional precedent of far-reaching consequence: that the existence of a post-tenure accountability relationship between a former public officer and a legislative body is, of itself, a sufficient basis for the curtailment of electoral rights. Once so established, that precedent is available, without further constitutional innovation, for successive Parliaments to deploy against an ever-widening category of former public servants – progressively narrowing the field of democratic participation in a manner wholly incompatible with the rights-expanding vision of the Constitution of Kenya, 2010, and with the guarantee under Article 38(3) that every adult citizen shall, without unreasonable restriction, have the right to be a candidate for public office.

THE PRESENT BILL SHOULD NOT PROCEED WITHOUT ADDRESSING THE CONCERNS THAT LED TO THE WITHDRAWAL OF ITS PREDECESSOR

The present Bill is not a novel proposal. It is substantively a re-introduction of **The Constitution of Kenya (Amendment) (No. 2) Bill, Senate Bills No. 52 of 2023**, sponsored by Nominated Senator Raphael Chimera, which was withdrawn from the Senate without being enacted. That earlier Bill pursued the same core objective, the imposition of a five-year cooling-off period on former county governors, through materially identical amendments to the same constitutional provisions and the same sections of the Elections Act.

A Bill that has been withdrawn is not a Bill that failed for want of parliamentary time or legislative opportunity. It is a Bill that the Senate, for reasons that must have been considered sufficient at the time, determined should not proceed in the form in which it was presented. The withdrawal of a constitutional amendment Bill, in particular, is a significant institutional act: it represents a determination that the proposal, as designed, was not ready to be enacted into the supreme law of Kenya. That determination carries weight that the mere re-introduction of a materially identical Bill does not discharge.

The present Bill does not demonstrate that the concerns which necessitated the withdrawal of its predecessor have been identified, considered, or addressed. It has not been accompanied by:

- Any empirical study or report commissioned to assess the frequency, duration, and practical impact of conflicts of interest arising from former governors serving in the Senate or county assemblies;
- Any evidence of broader stakeholder consultation, including with the Council of Governors, the IEBC, civil society organisations, constitutional lawyers, or the general public, that goes

beyond the formal public participation process now being conducted in relation to the Bill itself;

- Any engagement with the constitutional objections that the withdrawal of the predecessor Bill implicitly recognised as requiring a response, or any demonstration that those objections have been addressed in the design of the present Bill; or
- Any explanation for why the less restrictive alternatives identified by stakeholders opposing the 2023 Bill; including the strengthening of Chapter Six enforcement mechanisms and the amendment of Senate Standing Orders – are insufficient to achieve the Bill's objectives, such that a constitutional amendment is necessary.

The Constitution of Kenya is the supreme law of the land. Its amendment is a solemn act, not a routine legislative exercise. The threshold for amending the Constitution to restrict fundamental rights must be correspondingly high. Where a substantially identical proposal has previously been withdrawn, the burden on its proponents to demonstrate that the concerns which necessitated that withdrawal have been met is a heavy one. The present Bill does not discharge that burden.

RECOMMENDATIONS – STRENGTHENING EXISTING MECHANISMS

The accountability concern that motivates the Bill is not without foundation. The risk of conflict of interest when a former governor joins an oversight body that scrutinises their own record is a genuine institutional design challenge, as the July 2023 CPAC Ruling

demonstrated. However, the existence of a genuine problem does not automatically justify any particular solution, and it certainly does not justify a constitutional solution where statutory and institutional solutions are available, effective, and less rights-restrictive. The Constitution already provides a comprehensive framework for addressing the conflict of interest and accountability concerns at the heart of this Bill. What is needed is not a new constitutional prohibition but the rigorous activation, enhancement, and enforcement of the mechanisms that already exist.

The following recommendations are advanced in substitution for the Bill, and the Committee is respectfully urged to direct Parliament's attention to each of them as a more constitutionally appropriate, proportionate, and practically effective response to the identified problem:

Recommendation 1: Mandatory and Comprehensive Recusal Rules in Senate and County Assembly Standing Orders

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The most direct and least rights-restrictive response to the conflict of interest identified in the Bill is a mandatory, automatic recusal rule. The Senate Standing Orders should be amended to provide

that any senator who is a former governor is automatically and comprehensively recused, without the need for a case-by-case committee ruling, from all proceedings, debates, and votes of any Senate committee or the Senate in plenary that concern audit reports, accountability findings, or oversight matters arising from their tenure as governor. A corresponding amendment should be made to county assembly Standing Orders to achieve the same effect at the county level. This resolves the conflict directly, at its source, without touching the electoral rights of any citizen. The July 2023 CPAC Ruling exposed a lacuna in the existing Standing Orders; that lacuna should be closed by amendment of those Orders, not by amendment of the Constitution.

Recommendation 2: Expedited Chapter Six Enforcement and a Mandatory Integrity Clearance Process

Chapter Six of the Constitution, read with Articles 99(2)(h) and 193(2)(g), already provides a constitutionally sound basis for disqualifying a former governor from electoral contest upon a specific, individualised finding that they misused or abused a State office or contravened the standards of integrity. The Leadership and Integrity Act and the Ethics and Anti-Corruption Act should be amended to introduce: (a) a mandatory, time-bound integrity assessment process that every former governor must complete before filing nomination papers for any elective position; (b) prescribed timelines for the EACC to finalise any outstanding integrity investigations concerning former governors ahead of electoral cycles; and (c) automatic disqualification from candidacy upon a finding that has been conclusively determined, meaning one against which all avenues of appeal and review have been exhausted or have lapsed, in express alignment with the existing standard under Articles 99(3) and 193(3) of the Constitution, and without the need for separate disqualification proceedings before the courts. This mechanism achieves the Bill's accountability objective through an individualised, evidence-based process that respects the presumption of innocence and does not impose a blanket restriction on all former governors regardless of their record.

Recommendation 3: Mandatory Public Disclosure of Completed Audit Report Status

The financial year in Kenya runs from 1st July to 30th June, and the Auditor-General is required by law to produce annual audit reports within six months after the end of each financial year, meaning by 31st December of each year. Since General Elections are held in August, governors exit office approximately two months into a new financial year. By that point, at least four completed final annual audit reports, covering each of the preceding financial years of their term, should legally exist and be in the public domain. The Public Audit Act (Cap. 412B) should be amended to require the Auditor-General to compile and publish, within ninety days of a governor leaving office, a

consolidated status summary of those four completed final annual audit reports covering their tenure. The summary should set out clearly: the audit opinion issued for each completed financial year; any outstanding audit queries arising from those completed reports; and any matters that have been referred to the EACC, the Director of Public Prosecutions, or any other body arising from those reports. The fifth and final financial year, which will not be complete until after the election cycle, should be noted in the summary as a financial year whose audit is necessarily pending, without any assessment of it. This summary should be transmitted to the IEBC and published on both the Parliament and IEBC websites for the duration of any election period in which the former governor is a candidate. This is not a new audit process; it is a consolidation of work already completed and already legally in the public domain, achievable within a prescribed and certain timeframe, and directed at empowering voters with the information they need at the point of electoral decision-making.

Recommendation 4: IEBC Mandatory Disclosure Requirements at Nomination Stage

The Elections Act (Cap. 7) should be amended to require any person who has previously served as a county governor, and who seeks nomination as a candidate for any elective position, to file with the IEBC at the point of nomination: (a) a copy of the consolidated audit status summary prepared by the Auditor-General under Recommendation 3 above; (b) a certificate from the EACC confirming the status of any outstanding integrity investigations; and (c) a statutory declaration disclosing any pending proceedings before county assemblies, Senate committees, or courts of law relating to their tenure. All filed documents should be publicly accessible on the IEBC website. Failure to file accurate and complete disclosure documents should constitute an election offence under the Election Offences Act. This approach operationalises accountability at the exact point where it is most democratically relevant – at nomination – without imposing a blanket pre-election disqualification and without creating any process whose timeline is undefined or open-ended.

Recommendation 5: Structural Prohibition on Committee Appointment for Conflicted Senators

The Senate Standing Orders should further be amended to provide that no senator who is a former governor shall be appointed to, or serve on, the Senate County Public Accounts Committee (CPAC) or any other Senate committee whose mandate includes the scrutiny of audit reports for the county in which they previously served as governor. This is a constitutionally proportionate structural rule that addresses the institutional integrity concern without affecting a senator's right to sit, vote, and speak in the Senate generally.

Each of these five recommendations addresses the core accountability concern identified in the Bill, the risk of conflict of interest and the need for voters to have access to a complete and concluded picture of a candidate's governance record, without amending the supreme law of Kenya or

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restricting the political participation rights guaranteed to every citizen under Article 38. They are available for implementation immediately, through statute and through the internal rules of the House, and do not require the high-threshold process of constitutional amendment. They are targeted, evidence-responsive, and constitutionally proportionate. Most importantly, they treat the problem for what it is, an institutional design and enforcement gap, rather than for what the Bill incorrectly characterises it as: a reason to constitutionally exclude an entire class of citizens from democratic participation.

CONCLUSION

The Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026) is opposed in its entirety. The concerns it seeks to address, accountability for county governance and the management of conflicts of interest in legislative oversight, are legitimate and important. They are not, however, concerns that require or justify amendment of the supreme law of Kenya, and still less concerns that justify the imposition of a blanket, class-based restriction on the fundamental right of every Kenyan citizen to seek elective office.

The Bill rests on unsubstantiated assumptions. It fails the proportionality test under Article 24. It violates the non-derogable right to presumption of innocence and the right to a fair hearing guaranteed under Articles 25 and 50 of the Constitution, placing it outside the bounds of permissible legislation entirely. It selectively applies an accountability-based disqualification principle in a manner that is arbitrary, logically incoherent, and inconsistent with the equal protection guarantee of Article 27. It establishes a constitutional precedent of grave and unpredictable consequence for the future of democratic participation in Kenya. And it arrives before the Senate without having addressed, or even seriously engaged with, the concerns that necessitated the withdrawal of its materially identical predecessor, Senate Bills No. 52 of 2023.

The Constitution of Kenya, 2010 was born of a national determination to expand rights, deepen accountability, and build institutions that serve the people rather than restrict them. Every amendment to that Constitution should be measured against that founding purpose. This Bill does not meet that standard.

The Standing Committee is respectfully urged to recommend against the passage of this Bill and to direct Parliament's attention instead to the robust programme of statutory and institutional reforms set out in Section 7 of this memorandum ; reforms that are fully capable of achieving genuine accountability for county governance, protecting the integrity of legislative oversight, and empowering Kenyan voters with the information they need, all without touching the supreme law or curtailing the political rights of any citizen.



**THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS
AND
HUMAN RIGHTS**

Re: Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026)

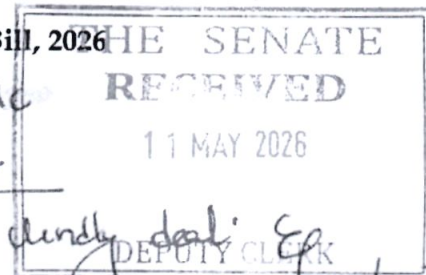
Submission on the Constitution of Kenya (Amendment) Bill, 2026

To: The Clerk of the Senate

Date: 29th April 2026

e-Mail: clerk.senate@parliament.go.ke

① DCAO
DHS



1. INTRODUCTION AND PRELIMINARY OBJECTION

Executive Summary:

This memorandum submits that the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bill No. 7 of 2026) is an egregious assault on democratic principles, fundamentally unconstitutional, and a politically motivated device aimed at creating electoral monopolies. While couched in the language of "*conflict of interest*" and "*accountability*," the Bill is a targeted tool of political exclusion that violates the sovereign right of Kenyans to choose their leaders, contravenes the doctrine of Separation of Powers, and institutionalizes selective persecution of a specific category of elected leaders.

We urge the Committee to recommend that the Bill be **REJECTED** in its entirety. Should it proceed, we demand amendments to strike the offending clauses that create a two-tiered citizenship for politicians.

2. COMPARATIVE & HISTORICAL CONTEXT: A CYCLE OF POLITICAL EXCLUSION

The Bill is not an isolated incident of legislative reform but part of a disturbing historical pattern in Kenya where constitutional amendments are weaponized to neutralize political rivals rather than serve public interest.

② HOD-Governments
PCA-ILHARC
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2.1 The Ghost of "Removing the Githeri Wall" (2015-2018)

History is repeating itself. Between 2015 and 2018, there were sustained legislative pushes to bar governors from ascending to the Senate or National Assembly. The reasoning then, as it is now, was that governors "*harass*" public servants or that their executive experience gives them an "*unfair advantage*" in legislative oversight. Those proposals failed because the public recognized them for what they were: a "*Machosi Bill*" (a bill of tears) designed to lock dynamic executive leaders out of the national legislature for the convenience of "*career legislators*" who feared accountability.

2.2 The 2022 Precedent: Why target the "Class of 2022"?

The political trigger for this Bill is a specific electoral outcome. The 2022 General Election saw a unique wave where former second-term governors successfully

transitioned to the Senate. Examples include **Jackson Mandago** (Uasin Gishu) and **Ali Roba** (Mandera), among others.

Instead of accepting the verdict of the people, the drafters of this Bill seek to change the rules of the game retroactively to prevent this career path. This is the purest form of "*results-based constitutionalism*", where the respect for the Constitution is conditional on who wins an election. By banning this transition, the Bill punishes success and insulates the Senate from members who understand the practical realities of county governance.

3. INTERNATIONAL BEST PRACTICE & COMPARATIVE JURISPRUDENCE

The Bill stands in stark opposition to the established practices of mature democracies worldwide. A survey of leading constitutional democracies reveals no precedent for a blanket ban on former executive heads transitioning to legislative office.

3.1 United States of America

- **Practice:** Numerous former state governors have served with distinction in the United States Senate. Prominent examples include: Tommy Thompson (Governor of Wisconsin, later Senator), George Voinovich (Governor of Ohio, later Senator), and Angus King (Governor of Maine, later Senator). The U.S. Constitution imposes no cooling-off period whatsoever.
- **Rationale:** The American system values "*institutional memory*." Former governors bring unparalleled expertise on federal-state relations, budgetary oversight, and intergovernmental affairs. To exclude them would impoverish legislative debate.

3.2 Federal Republic of Germany

- **Practice:** Under the German Basic Law (Grundgesetz), there is no prohibition on Minister-Presidents (Ministerpräsidenten) of the Länder (states) transitioning to the Bundesrat (Federal Council) or the Bundestag (Federal Parliament). In fact, the Bundesrat is explicitly composed of members of state governments.
- **Rationale:** Germany embraces the principle of "*Politikverflechtung*" (policy entanglement), recognizing that effective governance requires seamless movement between executive and legislative functions at different levels of the federation.

3.3 Canada (Westminster System)

- **Practice:** Provincial premiers routinely seek federal office. Prominent examples include: John Turner (Premier of Quebec? NO, Turner was a federal MP; but more recently, Christy Clark (Premier of British Columbia) considered federal runs, and Bob Rae (Premier of Ontario) later became a federal Member of Parliament and interim leader of the Liberal Party).

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The cure for imperfect enforcement of existing accountability law is better enforcement; not a new constitutional restriction that presumes the guilt of those it targets and closes the democratic door on those who have chosen to serve.

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- **Rationale:** The Canadian tradition upholds "responsible government," holding that the people are the ultimate arbiters of fitness for office, not prior job titles. No statute bars any category of provincial executive from federal legislative service.

3.4 India (Westminster-inspired Federal Republic)

- **Practice:** Former Chief Ministers (state governors equivalent) regularly serve as Members of Parliament. Examples include: Jyoti Basu (Chief Minister of West Bengal for 23 years), Amarinder Singh (Chief Minister of Punjab), and Vasundhara Raje (Chief Minister of Rajasthan), all of whom were considered for or held parliamentary office.
- **Rationale:** The Supreme Court of India has consistently held in *K. Prabhakaran v. P. Jayarajan* (2005) that disqualification of legislators must be "*expressly provided*" and "*narrowly construed*." A blanket ban on former executive heads would constitute an unreasonable restriction on the right to contest elections under Article 14 (right to equality).

3.5 South Africa (Peer African Federal Democracy)

- **Practice:** Former provincial premiers have served as Members of the National Assembly without any statutory bar. The South African Constitution provides no such disqualification. The dominant legal philosophy is that "*electoral democracy requires maximum choice*."
- **Rationale:** The Constitutional Court of South Africa in *My Vote Counts NPC v Speaker of the National Assembly* (2015) emphasized that restrictions on the right to be elected must be "proportional, rationally connected to a legitimate aim, and the least restrictive means available." The Kenyan Bill fails all three prongs.

3.6 The Commonwealth Consensus

- The Lagos Plan of Action (1980) and the African Charter on Democracy, Elections and Governance (2007), to which Kenya is a signatory, both emphasize that state parties shall ensure "*democratic participation*" and "*alternation of power*."
- Arbitrary disqualifications of political leaders undermine the "*principle of periodic free and fair elections*" enshrined in Article 17 of the African Charter.

CONCLUSION FROM COMPARATIVE ANALYSIS:

No mature democracy, whether presidential (USA), parliamentary (UK, Canada), Westminster-federal (India, Australia), or cooperative federal (Germany), imposes a blanket post-service ban on executive heads seeking legislative office. The Kenyan Bill is an outlier, an aberration, and an embarrassment on the continental stage.

4. PHILOSOPHICAL UNDERPINNINGS: WHY THIS BILL FAILS THEORIES OF JUSTICE

Beyond legal positivism, the Bill collapses under the weight of major philosophical traditions.

4.1 John Rawls – Justice as Fairness

In *A Theory of Justice* (1971), Rawls posits the "*veil of ignorance*", that just laws are those one would agree to without knowing their own position in society. Ask: Would a Senator draft this Bill without knowing whether they might one day become a governor seeking to return to the Senate?

- **The Answer:** NO rational actor behind the veil would agree to a rule that disqualifies an entire class from future political participation based solely on past service. The Bill is therefore unjust by Rawlsian standards.

4.2 Aristotle – Political Animals & Citizenship

Aristotle argued in *Politics* that humans are *zōon politikon* (political animals), and that the good life (*eudaimonia*) is achieved through active citizenship (*politeia*). To disqualify capable citizens from standing for office is to "*mutilate the polis*." A state that denies its most experienced leaders a platform is a state that ensures its own poor governance.

4.3 Jeremy Bentham & Utilitarianism – The Greatest Happiness Principle

The Bill fails the utilitarian test. Ask: Does this Bill produce the greatest happiness for the greatest number?

- **Against the Bill:** The electorate (millions) loses the right to vote for preferred leaders. The nation loses access to experienced governance expertise. The former governor suffers dignitary harm.
- **For the Bill:** A handful of incumbent Senators face slightly less electoral competition.
- **VERDICT:** The Bill produces a net loss of societal happiness. It is utility-negative.

4.4 John Stuart Mill – Liberty & Harm Principle

In *On Liberty*, Mill holds that the only justification for restricting individual liberty is to prevent harm to others.

Ask: What concrete harm does a former governor serving as Senator cause?

- The Sponsor alleges "*conflict of interest*", but mere potential for conflict is not actual harm. The law can manage conflicts via recusal rules, not prior disqualification. Mill would condemn this as "*the tyranny of the majority*" or, in this case, the tyranny of incumbent legislators over future candidates.

4.5 Hannah Arendt - The Right to Have Rights

Arendt warned against laws that render specific categories of persons "*rightless*" (rechtlos). By creating a political persona non grata category, the Bill strips former governors of their "*right to have rights*", the foundational right to participate in the political community that makes all other rights possible. This is the logic of oligarchy, not democracy.

4.6 African Philosophy - Ubuntu (I am because we are)

The Bill offends Ubuntu, the Nguni Bantu philosophy emphasizing interconnectedness, consensus, and the dignity of every person. As Justice Mokgoro wrote in *S v Makwanyane* (1995, South Africa), Ubuntu demands that "*harsh, punitive and absolutist rules*" give way to "*recognition of the humanity of others*." To permanently brand an entire class of elected leaders as unworthy of further service is to deny their humanity.

5. HOW THE BILL RUBBISHES DEMOCRACY

The Bill violates the core tenets of a free and fair democratic society in three (3) fundamental ways:

5.1 Violation of the Right to be Elected (Passive Suffrage) - Article 38 of the Constitution

The Supreme Court in *Lemanken Aramat v IEBC* (2014) held that while Parliament can set qualifications, those restrictions must be "*rationaly connected to a legitimate legislative goal*" and must not be "*disproportionate*."

- **The Flaw:** This Bill creates a class-based disqualification (a status-based disability) for former governors. It says: "*You are too qualified to run for the Senate because you were a governor*."
- **Jurisprudence:** In *Njoya & Others v AG* (2008), the High Court struck down provisions that created unfair barriers to political participation. The Bill repeats the same error: it imposes a "*harsh and excessive*" restriction that fails the proportionality test under Article 24 of the Constitution.

5.2 The Illusion of a "Cooling Off" Period - Doctrine of Irrebuttable Presumption

The Bill creates an irrebuttable presumption that every former governor is unsuitable for legislative office. As held in *Stanley Munga Githunguri v R* (1985), the law cannot create a presumption that is "*arbitrary, unreasonable, and incapable of being rebutted by evidence*." A former governor with a spotless audit report, exemplary service, and overwhelming popular support remains barred. This is conclusive evidentiary overreach.

5.3 Suppression of Political Competition - Freedom of Association & Political Expression

By removing experienced governors from the pool of Senatorial candidates, the Bill violates Article 36 (Freedom of Association) and Article 33 (Freedom of Expression). Political expression includes the right to present oneself for election.

THE BILL IS A PRIOR RESTRAINT ON POLITICAL CANDIDACY.

6. THE "ACCOUNTABILITY" EXCUSE VS. NATURAL JUSTICE

The Sponsor argues that the Bill is necessary to allow the Senate and County Assemblies to "*finalize audits*" without interference from the former governor.

THIS RATIONALE IS LEGALLY BANKRUPT.

6.1 Presumption of Innocence (Article 50(2)(a)) – *Ei incumbit probatio qui dicit, non qui negat*

The Latin maxim holds: Proof lies on him who asserts, not on him who denies. The Bill assumes every governor is guilty of pending accountability failures. This reverses the burden of proof. A governor who was cleared by the Auditor General and the Public Accounts Committee (PAC) is still barred for five years. This is punishment without trial, a violation of the *non bis in idem* (no double jeopardy) principle.

6.2 Rule against Bias – *Nemo iudex in causa sua*

THE DRAFTERS OF THIS BILL ARE PRIMARILY CURRENT SENATORS. By barring executive-minded individuals (former governors) from joining their club, the Senators are acting as judges in their own cause. They are removing potential rivals to secure their re-election. This is a direct pecuniary and political conflict of interest at the legislative drafting stage.

6.3 Right to be Heard – *Audi alteram partem*

Not a single former governor was consulted before introducing a Bill that personally targets their career trajectory. The Bill was drafted in camera, without public participation as required under Article 118(1)(b). The *ex post facto* public hearing scheduled for 30th April 2026 cannot cure the fundamental defect that the Bill was conceived in secrecy and bad faith.

6.4 Doctrine of Legitimate Expectation

Former governors have a legitimate expectation, rooted in the Constitution as it stood at the time they offered themselves for election, that they would retain the right to seek any political office for which they are qualified. To change the rules mid-career is a retrospective penal provision prohibited under Article 50(2)(o).

7. SPECIFIC CLAUSES & PROPOSED AMENDMENTS

Clause 2 (a) – Proposed amendment to Article 99(2) of the Constitution

- **Our Position:** Strongly Oppose (contra legem, against the spirit of the law).

- **Recommendation:** Delete in toto.
- **Reasoning:** Adding a specific prohibition for "*former governors*" is odious discrimination. The Constitution already has disqualifications (insolvency, mental incapacity, criminal conviction). This creates a separate class of disqualified persons based purely on past title, a *sui generis* disability unknown to comparative law.

Clause 3 (a) – Proposed amendment to Article 193(2) of the Constitution

- **My Position:** Strongly Oppose.
- **Recommendation:** Delete.
- **Reasoning:** Barring governors from the County Assembly (the very body they formerly reported to) is absurdum, legally absurd. If a former governor wants to serve as a humble MCA in their village ward, the State has no moral or legal right to stop them. This clause violates the principle of subsidiarity, that decisions should be made at the lowest competent level.

Clauses 4 & 5 – Amendments to the Elections Act (Sections 24 & 25)

- **My Position:** Oppose on technical and constitutional grounds.
- **Recommendation:** Strike down as ultra vires the Constitution.
- **Reasoning:** Under Article 256(3), amendments to constitutional disqualifications must be effected through constitutional amendment, not ordinary statute. By duplicating the disqualification in the Elections Act, the drafters create tiered constitutional rights, *a dangerous precedent*. Further, the Elections Act cannot expand constitutional disqualifications beyond those expressly enumerated.

8. INFERENCE AND PRAYER

The Constitution of Kenya, 2010, was built on the pillars of devolution, democracy, and human rights. This Bill (S.B. No. 7 of 2026) tears down all three (3) pillars:

- It destroys devolution by preventing experts in county management from legislating on county matters, violating Article 174(c) (ensuring accountable governance through devolution).
- It rubbishes democracy by removing the voter's right to elect capable executive leaders to the Senate, violating Article 1 (sovereign power belongs to the people).
- It abuses human rights by imposing a punitive "*cooling-off*" period based on unproven allegations, violating Articles 27 (equality), 38 (political rights), and 50 (fair hearing).

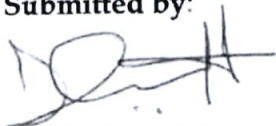
INTERNATIONAL BEST PRACTICE confirms: *No mature democracy has adopted such a draconian, class-based disqualification. From Washington to Westminster, from Delhi to Cape Town, the consensus is clear: the voter is sovereign, not the legislator.*

Philosophical traditions condemn: From Rawls to Arendt, from Aristotle to Ubuntu, the Bill fails every major theory of justice, liberty, and human dignity.

I, **ABDULMALIK MAGONGA**, pray that the Senate Committee:

1. **REJECTS** the Bill for being **unconstitutional, discriminatory, and contrary to international best practice.**
2. **FINDS** that the Bill violates Articles 24 (limitations on rights must be reasonable and justifiable), 27 (Equality), 38 (Political rights), 50 (Fair hearing), and 118 (Public participation) of the Constitution.
3. **RECOMMENDS** that if any reform is needed, it should be a uniform cooling-off period applicable equally to all State Officers (President, Deputy President, Governor, Speaker, Chief Justice) transitioning between branches of government, and such period must not exceed one election cycle (five years) and must be publicly justified with empirical evidence, not speculation.
4. **DECLARES** that the Bill is an abuse of the legislative process and a betrayal of the constitutional promise of 2010.

Submitted by:



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Date: 29th April 2026



MAU MAU CHILDREN POST COLONIAL ELITES

PARTNERS:

- * MAU MAU WAR VETERANS ASSOCIATES
- * MAU MAU INDIGENOUS KNOWLEDGE
- * JEREMIAH MUGI FOUNDATION
- * MMV ASSOCIATES CLG

TO:
THE CLERK OF THE SENATE
PARLIAMENT BUILDINGS
P.O. BOX 41842-00100
NAIROBI, KENYA
EMAIL: clerk.senate@parliament.go.ke

Date: 27th April 2026

**RE: MEMORANDUM IN SUPPORT OF THE CONSTITUTION OF
KENYA (AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)**

Honourable Chairperson, Honourable Members of the Standing Committee on Justice, Legal Affairs and Human Rights, and fellow Kenyans,

I write to express my strong support for the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026), pursuant to Articles 118(1)(b) and 256(2) of the Constitution which provide for public participation in legislative processes. I commend the Senate for inviting public views on this important proposal that directly affects the integrity and sustainability of Kenya's devolved system of governance.

The Bill proposes a five-year cooling-off period barring former county governors from immediately contesting for positions as Senators or Members of County Assembly. This is a necessary and proportionate measure to address a structural gap that undermines accountability and separation of powers.

First, on accountability and oversight, Article 96 mandates the Senate to oversee county governments. Allowing a governor to move directly into the Senate creates a clear conflict of interest, as they may be required to review decisions made during their own tenure. The proposed cooling-off period restores objectivity and strengthens public confidence in Senate oversight.

Second, the Bill helps prevent abuse of office. Without such a restriction, a sitting governor may be tempted to use public resources or influence to advance future

legislative ambitions. The five-year gap acts as a safeguard against such practices and promotes ethical leadership in line with Chapter Six of the Constitution.

Third, the Bill promotes leadership renewal and inclusivity. Devolution was intended to expand opportunities for leadership across the country. Immediate transitions by governors into other elective positions limit space for new leaders and entrench a small political class. This reform opens the democratic space and enhances fair competition.

Further, the Bill reinforces the principle of separation of powers by creating a clear distinction between executive roles at the county level and legislative oversight functions at the national and county levels. It also aligns with comparative democratic practices where cooling-off periods are used to prevent conflicts of interest and protect institutional integrity.

Importantly, the Bill does not bar former governors from political participation entirely; it only limits immediate transition into positions that directly oversee county governments.

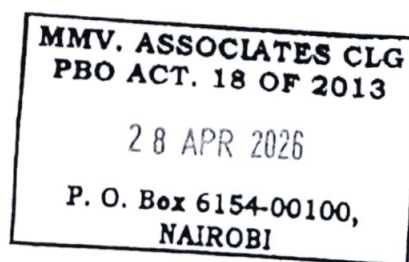
In conclusion, this Bill strengthens devolution, enhances accountability, promotes leadership diversity, and builds public trust in governance. I therefore respectfully urge the Committee to recommend its passage without dilution.

Thank you for the opportunity to present my views.

Yours faithfully,



James Mahuria Njuguna
Director
MMV ASSOCIATES CLG





MAU MAU CHILDREN POST COLONIAL ELITES

PARTNERS:

- * MAU MAU WAR VETERANS ASSOCIATES
- * MAU MAU INDIGENOUS KNOWLEDGE
- * JEREMIAH MUGI FOUNDATION
- * MMV ASSOCIATES CLG

TO:
THE CLERK OF THE SENATE
PARLIAMENT BUILDINGS
P.O. BOX 41842-00100
NAIROBI, KENYA
EMAIL: clerk.senate@parliament.go.ke

Date: 27th April 2026

**RE: MEMORANDUM IN SUPPORT OF THE CONSTITUTION OF
KENYA (AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)**

Honourable Chairperson, Honourable Members of the Standing Committee on Justice, Legal Affairs and Human Rights, and fellow Kenyans,

1. Introduction

Pursuant to Articles 118(1)(b) and 256(2) of the Constitution of Kenya, which guarantee public participation in legislative processes and constitutional amendments, I hereby submit this memorandum in strong support of the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026).

We commend the Senate for inviting public views on this important legislative proposal, which directly impacts the integrity, accountability, and sustainability of Kenya's devolved system of governance.

This Bill addresses a long-standing structural gap that has the potential to undermine two fundamental pillars of devolution—**accountability and separation of powers**—and therefore deserves full support.

2. Summary of Position

I fully support the proposed amendments to Articles 99(2) and 193(2) of the Constitution, as well as sections 24(2) and 25(2) of the Elections Act (Cap. 7), which seek to bar former county governors from contesting for positions as Senators or Members of County Assembly for a period of five years immediately after leaving office.

The proposed five-year cooling-off period is reasonable, proportionate, and necessary to protect the integrity of governance institutions at both county and national levels.

3. Detailed Grounds for Support

(a) Strengthening Accountability and Oversight

Article 96 of the Constitution vests the Senate with the critical role of protecting the interests of counties and exercising oversight over county governments. This oversight function is central to ensuring prudent use of public resources and adherence to the rule of law.

County governors, during their tenure, exercise immense executive authority, including control over substantial financial resources, policy direction, and administrative structures. Allowing such individuals to transition immediately into the Senate creates an inherent and unavoidable **conflict of interest**.

A former governor serving as Senator may be called upon to:

- Review financial decisions made during their own tenure
- Participate in oversight committees investigating county operations they previously led
- Influence legislative or oversight outcomes in ways that may shield past actions

This situation compromises objectivity and undermines public confidence in the Senate's oversight role.

The proposed five-year cooling-off period provides sufficient time to:

- Separate past executive responsibilities from future legislative roles
- Allow independent review of a governor's tenure
- Restore public trust in the impartiality of Senate proceedings

(b) Preventing Abuse of Office and Political Advantage

In the absence of a cooling-off period, a sitting governor may be incentivized to use public office strategically to secure a future legislative seat. This may include:

- Allocating resources to politically advantageous areas
- Building patronage networks using public funds
- Influencing county structures to support future campaigns

Such practices blur the line between public service and political self-interest, contrary to the principles of leadership and integrity under Chapter Six of the Constitution.

The proposed restriction acts as a **preventive safeguard**, discouraging the misuse of public office for future political gain and reinforcing ethical governance.

(c) Promoting Leadership Renewal and Democratic Inclusion

One of the key objectives of devolution under the Constitution of Kenya, 2010, was to **expand democratic space and create opportunities for diverse leadership** across the country.

However, the immediate transition of governors into Senate or County Assembly roles has led to:

- Concentration of leadership within a small group of political elites
- Reduced opportunities for emerging leaders
- Limited generational and professional diversity in governance

By introducing a cooling-off period, this Bill:

- Opens space for new entrants into leadership
- Encourages broader citizen participation in governance
- Strengthens democratic competition and representation

This aligns with the national values under Article 10, particularly inclusivity, equality, and participation of the people.

(d) Reinforcing Separation of Powers

The doctrine of separation of powers is a cornerstone of constitutional governance. It ensures that executive, legislative, and oversight roles are distinct and function independently.

The current framework allows a direct and immediate shift from:

County Executive (Governor) → National Legislative Oversight (Senate)

This weakens institutional independence and creates overlapping interests.

The Bill introduces a necessary buffer that:

- Distinguishes executive authority from legislative oversight
 - Enhances institutional integrity
 - Prevents undue influence across governance structures
-

(e) Alignment with Comparative Constitutional Practice

Globally, many democratic systems recognize the risks associated with immediate transitions between executive and oversight roles and have adopted cooling-off periods or similar safeguards.

Such measures are designed to:

- Prevent conflicts of interest
- Maintain institutional credibility
- Promote fairness in political competition

Importantly, this Bill does not impose a blanket restriction on political participation. Former governors remain eligible to:

- Contest for positions such as Member of Parliament or President
- Participate in political party activities
- Engage in public service in other capacities

The limitation is **narrow, targeted, and justified**, focusing only on positions that directly exercise oversight over county governments.

(f) Enhancing Public Confidence and Trust in Governance

Public trust is a fundamental requirement for effective governance. When citizens perceive oversight institutions as compromised or self-serving, confidence in democratic processes declines.

By addressing potential conflicts of interest and reinforcing accountability mechanisms, this Bill:

- Enhances transparency
- Strengthens institutional credibility
- Reassures citizens that governance structures serve the public interest

4. Conclusion and Recommendation

In conclusion, the Constitution of Kenya (Amendment) Bill, 2026 is a timely and necessary reform that strengthens the architecture of devolution in Kenya.

It:

- Safeguards the integrity of Senate oversight
- Prevents abuse of public office

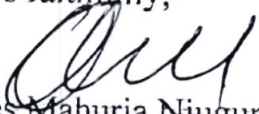
- Promotes leadership renewal
- Reinforces separation of powers
- Enhances public trust in governance

For these reasons, I respectfully and strongly urge the Standing Committee on Justice, Legal Affairs and Human Rights to recommend the passage of this Bill to the Senate without dilution.

5. Appreciation

I thank the Honourable Committee for the opportunity to present my views and for its continued commitment to upholding constitutionalism and good governance in Kenya.

Yours faithfully,


James Mahuria Njuguna
Director
MMV ASSOCIATES CLG

MMV. ASSOCIATES CLG
PBO ACT. 18 OF 2013

28 APR 2026

P. O. Box 6154-00100,
NAIROBI

MEMORANDUM
THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026
(SENATE BILLS NO. 7 OF 2026)

DATE: Thursday, 23 April 2026

TO: The Clerk of the Senate
Parliament Buildings
Nairobi, Kenya

COPIED TO: senatejlahrc@parliament.go.ke

FROM: XX (XXXX@gmail.com)

SUBJECT: Public Participation Submission on the Constitution of Kenya (Amendment) Bill, 2026
(Senate Bills No. 7 of 2026)

Introduction

I write in support of the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026), which seeks to amend Articles 99(2) and 193(2) of the Constitution and to make related consequential amendments to sections 24(2) and 25(2) of the Elections Act, Cap. 7.

The Bill proposes to disqualify persons who are serving as county governors, or who have served as county governors within the five years immediately preceding a general election, from contesting seats in the Senate or in any county assembly. This submission argues that the proposed restriction is constitutionally sound, governance-justified, and necessary for the institutional integrity of Kenya's devolved system.

Kenya's Constitution is built on the national values set out in Article 10, including the rule of law, democracy, equity, social justice, inclusiveness, equality, human rights, non-discrimination, protection of the marginalised, good governance, integrity, transparency, and accountability. Chapter Six further entrenches integrity and accountability as non-negotiable obligations of all state officers.

The Bill advances these values by creating a structural mechanism that:

- ensures that county governors complete and submit to accountability processes before re-entering elective office;
- eliminates an irreconcilable conflict of interest that arises when former governors sit in oversight bodies responsible for scrutinising their own previous executive conduct; and
- interrupts the practice of political office recycling that has weakened the independence of legislative and oversight institutions at both the national and county levels.

For the reasons set out in this memorandum, I urge the Senate Standing Committee on Justice, Legal Affairs and Human Rights to recommend that the Bill be passed, subject to the concerns and proposed

amendments set out in Section 7 of this submission regarding the adequacy of the five-year period and the need for guardrails against the normalisation of constitutional amendment.

Summary of Submissions

NO.	Provision of the Bill	Issue / Argument in Support	Position	Justification
1	Clauses 2 & 3 — Articles 99(2) and 193(2) of the Constitution	The five-year cooling-off period is a constitutionally permissible limitation on electoral rights under Article 24	Support: Retain the amendments as proposed	Article 24 of the Constitution permits limitations on rights where the limitation is reasonable and justifiable in an open and democratic society. Comparable cooling-off periods already exist in the Constitution for IEBC members under Articles 99(2)(b) and 193(2)(b). The proposed restriction is consistent in design and proportionate in duration. It serves the legitimate objectives of institutional independence.
2	Clauses 2 & 3 — Articles 99(2) and 193(2); Bill's Memorandum of Objects and Reasons	Ongoing accountability processes require insulation from political interference by former governors	Support: Retain the amendments as proposed	County governors are accountable to the Senate and county assemblies for financial and administrative decisions under section 32 of the Public Audit Act, Cap. 412B. A former governor sitting in the Senate or a county assembly while audit and accountability processes relating to their tenure are ongoing creates a direct and structural conflict of interest. The restriction protects the institutional integrity of these oversight bodies.
3	Clauses 4 & 5 — Sections 24(2) and 25(2) of the Elections Act, Cap. 7	Statutory amendments are necessary and constitutionally anchored consequential provisions	Support: Retain the amendments as proposed	The amendments to the Elections Act are constitutionally required consequential provisions that give effect to the constitutional amendments. Without corresponding statutory amendments, the constitutional disqualification would lack the operational machinery necessary for its implementation by the Independent Electoral and Boundaries Commission at the candidate nomination stage.
4	The Bill generally — Principle against recycling of public officers	The Bill addresses the systemic problem of political office recycling that entrenches elite capture of public resources	Support: Retain and potentially strengthen the amendments	Kenya's political landscape has witnessed a pattern in which county governors, upon completion of their terms, immediately seek legislative seats, enabling continuity of political influence that undermines the separation of functions between the executive and legislative tiers of devolved government. The Bill introduces a necessary structural break that promotes genuine renewal of political leadership and reduces capture of oversight institutions by former executive office holders.
5	The Bill generally: Chapter Six of the Constitution and national values under Article 10	The Bill advances the national values of accountability, transparency, and integrity	Support: Retain the amendments as proposed	Article 10 of the Constitution establishes accountability, transparency, and integrity as binding national values. Chapter Six imposes integrity obligations on all state officers. The proposed cooling-off period reinforces these values by creating a structural mechanism that

				compels former governors to submit to and complete accountability processes before re-entering elective politics. This strengthens rather than undermines Kenya's constitutional order.
6	Clauses 2 & 3 — Conflict of interest in oversight functions of the Senate and county assemblies	Former governors exercising oversight over their own counties creates an irreconcilable conflict of interest	Support: Retain the amendments as proposed	The Senate and county assemblies exercise direct oversight over county governments, including scrutiny of audit reports and examination of county financial management. A former governor sitting in the Senate or county assembly and participating in oversight of their own county's affairs or influencing the process constitutes an irreconcilable conflict of interest. The restriction is a proportionate and targeted response to a specific structural governance problem.

Detailed Submissions

Clauses 2 and 3 of the Bill / Amendments to Articles 99(2) and 193(2) — The five-year cooling-off period is a constitutionally permissible limitation on electoral rights

The Proposed Amendment

Clause 2 of the Bill amends Article 99(2) of the Constitution by inserting paragraph (ba), which disqualifies from election to the Senate any person who is a county governor or who has, within the five years immediately preceding the date of election, held office as a county governor.

Clause 3 of the Bill amends Article 193(2) by inserting a corresponding disqualification applicable to elections to county assemblies.

Constitutional Permissibility: Article 24

It is accepted that Article 38(3)(c) of the Constitution guarantees every citizen the right to be a candidate for public office. However, this right is not absolute. Article 24 of the Constitution expressly permits the limitation of rights and fundamental freedoms where such limitation is:

- imposed by law;
- reasonable and justifiable;
- proportionate in nature and extent to the purpose it serves; and
- the least restrictive means available to achieve the purpose.

The five-year cooling-off period proposed in the Bill satisfies each of these requirements:

- It is imposed by a constitutional amendment: the highest form of law.
- It serves the legitimate and compelling objectives of accountability, institutional independence, and preventing conflicts of interest.
- A five-year period is proportionate. It corresponds to one electoral cycle, sufficient for oversight processes to be completed without being punitive.
- It is targeted and specific, applying only to former county governors seeking to enter the two bodies directly responsible for overseeing county governments.

Constitutional Precedent: The IEBC Cooling-off Period

The Constitution already provides an identical mechanism for members of the Independent Electoral and Boundaries Commission. Articles 99(2)(b) and 193(2)(b) both disqualify from election to Parliament and county assemblies any person who has, within the five years immediately preceding the date of election, held office as a member of the IEBC.

This precedent is constitutionally significant. It demonstrates that the framers of the Constitution accepted that certain public officers, by virtue of the nature of the office they held, must be subject to a cooling-off period before re-entering elective politics. The rationale for the IEBC restriction is to prevent conflicts of interest and protect institutional integrity. Precisely the same rationale applies to former county governors, who remain the subjects of ongoing accountability processes before the very bodies they may seek to join.

Proposal

Support the amendments to Articles 99(2) and 193(2) as proposed. The five-year cooling-off period is constitutionally grounded, proportionate, and consistent with the existing constitutional framework.

- **Clauses 2 and 3 / The Bill's Memorandum of Objects and Reasons — Accountability processes require insulation from political interference by former governors**

The Accountability Problem

County governors are among the most powerful executive officers in Kenya's devolved system. They control county budgets, supervise county public services, and make financial and administrative decisions with direct consequences for county residents. Under section 32 of the Public Audit Act, Cap. 412B, the Auditor General submits annual audit reports on county accounts to the Senate and the relevant county assembly for scrutiny and action.

Accountability processes arising from these audit reports, including committee inquiries, surcharge proceedings, and referrals to investigative agencies, can extend for periods well beyond the end of a governor's term in office. A former governor who, upon leaving office, immediately contests and wins a Senate or county assembly seat, acquires a position from which they can:

- directly participate in or influence committee proceedings examining their own audit reports;
- vote on resolutions that affect the outcome of accountability processes relating to their own tenure;
- use political influence to obstruct, delay, or shape the outcome of inquiries into their past conduct; and
- intimidate witnesses or public servants who might otherwise cooperate with accountability processes.

Structural Conflict of Interest

The Senate exercises oversight over county governments pursuant to Article 96 of the Constitution. County assemblies exercise oversight over county executives pursuant to Article 185(3). When a former governor sits in either of these bodies, they are placed in the invidious position of overseeing or influencing the oversight of the very executive functions they previously performed.

The Bill's Memorandum of Objects and Reasons correctly identifies that this creates a conflict of interest and interferes in the decision-making process of oversight bodies. This is not cured by recusal. A legislator who is required to recuse themselves from a significant portion of the oversight business of the

Senate or county assembly is a legislator who cannot fully discharge the constitutional functions of that office.

Proposal

Support the amendments. The five-year period is the minimum necessary to allow outstanding audit cycles and accountability proceedings to be completed and to protect the independence and integrity of oversight institutions.

Clauses 4 and 5 of the Bill / Amendments to the Elections Act, Cap. 7: The statutory amendments are necessary consequential provisions

The Role of the Statutory Amendments

Clauses 4 and 5 of the Bill amend sections 24(2) and 25(2) of the Elections Act to insert corresponding disqualification provisions at the statutory level, mirroring the constitutional amendments in Clauses 2 and 3.

These statutory amendments are operationally essential. The IEBC relies on the Elections Act as the primary legal instrument governing the candidate nomination and vetting process. A constitutional disqualification that is not reflected in the Elections Act would create an enforcement gap: the IEBC would lack the direct statutory authority to reject nomination papers filed by a disqualified candidate at the stage of candidate vetting.

The statutory amendments, therefore, give the constitutional restriction operational effect and ensure that it can be enforced practically at the point of nomination before a disqualified candidate reaches the ballot.

Proposal

Support the amendments to sections 24(2) and 25(2) of the Elections Act. They are constitutionally required and operationally necessary.

The Pattern of Recycling

Kenya's post-2013 political experience has revealed a persistent pattern of political office recycling in which elected county governors, upon completing their constitutionally limited two terms in office, immediately seek election to the Senate or to county assembly seats. This pattern has several harmful consequences for Kenya's governance architecture:

- It entrenches political dynasties and elite capture of public office, reducing political competition and the genuine renewal of leadership.
- It converts the Senate and county assemblies institutions designed to check executive power at the county level into destinations for former county executives, fundamentally altering the relationship between oversight and executive functions.
- It allows former governors who retain strong political networks and resources accumulated during their executive tenure to leverage those advantages immediately upon leaving office, distorting electoral competition.
- It signals to the electorate that accountability for executive decisions will be deferred or avoided through rapid re-entry into a legislative seat that provides political cover and procedural leverage.

Constitutional Foundations for the Restriction

The principle of democratic renewal is embedded in Kenya's constitutional architecture. The Constitution limits governors to two terms of office under Article 180(7) precisely to ensure that executive power at the county level is not concentrated in the same individuals indefinitely. The Bill extends this logic by ensuring that the transition out of executive office is accompanied by a genuine period of separation from

elective politics — allowing accountability processes to operate and allowing the democratic space to reset.

Article 10(2)(a) of the Constitution establishes democracy and participation of the people as a national value. Genuine democratic participation is undermined when the electoral field is dominated by recycled political figures who leverage executive advantages accumulated during their time in office.

Comparative Practice

Cooling-off periods for former executive officers seeking legislative seats are a recognised feature of democratic governance in many jurisdictions. The rationale preventing the use of former executive influence to distort legislative oversight functions is well established in comparative constitutional practice. Kenya's proposed restriction is modest by international standards: a single five-year electoral cycle, applying only to two specific legislative bodies with direct county oversight functions.

Proposal

Support the amendments. The Bill provides a necessary and proportionate structural response to the systemic problem of political office recycling and the concentration of political influence that undermines the independence of county oversight institutions.

- **The Bill generally — Advancement of Chapter Six obligations and national values under Article 10**

Integrity as a Constitutional Obligation

Chapter Six of the Constitution imposes obligations of integrity, impartiality, and accountability on all state officers. Article 73(1)(b) provides that the guiding principles of leadership and integrity include bringing honour to the nation and dignity to the office. Article 73(2)(c) requires state officers to conduct public affairs in a manner that withstands public scrutiny.

A former governor who exits office with unresolved audit queries, pending surcharge proceedings, or unresolved accountability obligations and who immediately seeks election to one of the oversight bodies responsible for pursuing those obligations is a former state officer who is not conducting themselves in a manner consistent with the spirit of Chapter Six. The Bill creates a structural mechanism that compels compliance with the letter and spirit of these constitutional integrity obligations.

Transparency and Accountability as National Values

Article 10(2)(c) establishes transparency and accountability as national values applicable to all state organs, state officers, public officers, and all persons whenever they apply or interpret the Constitution. The Bill gives legislative expression to these values by ensuring that:

- County governors cannot use legislative office as a refuge from accountability.
- Audit and accountability processes are completed before a former governor re-enters elective politics, and
- voters have access to a complete accountability record of a former governor before deciding whether to elect that person to a new public office.

The Bill's Memorandum of Objects and Reasons correctly notes that the restriction allows voters to have a reference point in making an informed choice on a candidate's suitability, since all accountability processes would have been completed. This is a constitutionally significant objective: it strengthens informed electoral choice, which is integral to the democratic right under Article 38.

Proposal

Support the amendments. They give legislative and structural expression to the constitutional values of transparency, accountability, and integrity that are binding under Articles 10 and Chapter Six of the Constitution.

- **Clauses 2 and 3 — Irreconcilable conflict of interest in the exercise of Senate and county assembly oversight functions**

The Oversight Functions at Stake

The Senate exercises oversight over county governments through several constitutional and statutory mechanisms:

- Article 96(3) — the Senate determines the allocation of national revenue to counties and exercises oversight of national revenue allocated to county governments.
- Article 217 — The Senate determines the basis for allocating among counties the share of national revenue allocated to them.
- Section 32 of the Public Audit Act requires that annual county audit reports be submitted to the Senate for scrutiny and action.
- Various Senate committee mandates: Senate committees examine county financial management, hear governors on audit queries, and make recommendations on accountability.

County assemblies exercise oversight under Article 185(3), which empowers county assemblies to oversee county executive performance and to examine county financial statements.

The Conflict in Practice

When a former governor sits as a Senator, they may be called upon to:

- participate in Senate committee sessions examining audit reports from their own tenure as governor;
- vote on resolutions censuring or taking action against their own county based on audit findings from their period of office;
- participate in debates on the county revenue allocation formula in ways that benefit their home county, in which they retain a political base; and
- sit on committees with the power to summon and examine current county officials who served under them.

None of these conflicts is manageable by recusal alone. The nature and volume of the conflict mean that a former governor in the Senate would be a structurally compromised legislator unable to fully discharge the oversight mandate of the Senate without constant conflicts of interest arising from their own executive history.

Proposal

Support the amendments. The conflict of interest is structural, pervasive, and not susceptible to resolution by individual recusal. The five-year cooling-off period is the most targeted and effective response available.

- **Concerns in Support The Risk of Normalising Constitutional Amendment and the Adequacy of the Five-Year Period**

Concern 1: The Risk of Normalising Constitutional Amendment

While this submission supports the Bill on its merits, it would be incomplete without acknowledging a broader structural concern: the risk that passing this Bill, however justified, contributes to the normalisation of constitutional amendment as a routine parliamentary instrument. Kenya's Constitution is the supreme law of the Republic under Article 2. It was not designed to be adjusted frequently or casually. The amendment process under Article 256 sets a high bar precisely because constitutional changes carry consequences that extend well beyond the immediate issue being addressed.

The current Parliament has demonstrated a troubling pattern in this regard. Since 2022, this Parliament has tabled or advanced constitutional amendment proposals that include: an attempt to extend the presidential term from five to seven years; the creation of a Prime Minister's office; and the entrenchment of the National Government Constituencies Development Fund a fund that the Supreme Court had already declared unconstitutional in 2022 and that the High Court struck down again in September 2024, finding that it violated the separation of powers by converting legislators into executive administrators. In July 2025, the National Assembly voted unanimously to entrench the NG-CDF in the Constitution, effectively seeking to insulate it from further judicial scrutiny. These are not governance-correcting amendments. They are self-serving amendments passed by, or advanced for the benefit of, the very people doing the amending.

Each time Parliament successfully amends the Constitution even for good reasons it deepens the precedent that constitutional text is negotiable through a parliamentary supermajority. That precedent is dangerous in a Parliament that has shown it is willing to use the same process to protect its own financial interests or to extend executive power. The passage of this Bill should therefore be accompanied by a clear and public articulation by the Senate that constitutional amendment is a power to be exercised with restraint, only where the constitutional framework itself is inadequate to address a structural governance failure, and never for the purpose of legislating in the interests of the legislators themselves and the executive.

This submission accordingly urges the Senate, in passing this Bill, to take two concrete steps. First, to amend the Senate Standing Orders under Article 124(1) of the Constitution to require that any Bill to amend the Constitution be accompanied by a formal memorandum demonstrating that the proposed change addresses a structural governance gap that cannot be remedied through ordinary legislation and that it does not confer a direct financial or political benefit on the Parliament proposing it or the executive. This would be an exercise of the Senate's existing power to regulate its own proceedings and would not itself require a constitutional amendment. It is acknowledged that Standing Orders can be amended by a future Senate and carry no constitutional force, but they create a procedural discipline and a public record of commitment. Second, to pass a public resolution accompanying the passage of this Bill, articulating the principle that the constitutional amendment power under Article 256 is to be exercised with restraint, only where the constitutional framework is itself inadequate, and never for the purpose of legislating in the direct interest of the legislators exercising it or the executive arm of government. Such a resolution would have no binding legal effect, but it would constitute a democratic statement of principle against which future amendment attempts can be measured and publicly tested.

Concern 2: Whether Five Years Is a Sufficient Cooling-Off Period

The Bill's stated rationale is that the five-year period will allow ongoing accountability processes relating to a former governor's administration and financial management of the county to be completed. This submission supports that objective but raises the concern that five years may, in practice, be insufficient to achieve it, when measured against the actual duration of the accountability processes the restriction is designed to protect.

The Auditor General's cycle. Under section 32 of the Public Audit Act, Cap. 412B, the Auditor General submits annual county audit reports to the Senate and the relevant county assembly. In practice, audit reports are submitted with a lag of between 12 and 24 months after the close of the relevant financial year. A governor who leaves office in August 2022 may not have their final-year audit report submitted to the

Senate until late 2023 or even 2024. The Senate committee then schedules hearings, examines the report, and makes recommendations a process that itself can take a further 12 to 18 months depending on the committee's workload and the complexity of the queries. On this timeline alone, the audit cycle for a governor's last year in office may not be concluded until 2025 or 2026 leaving less than one year of the proposed five-year period for any further action.

Senate oversight and committee action. Where the Senate's County Public Accounts and Investments Committee identifies significant irregularities, it may issue surcharge recommendations, refer matters to the Director of Public Prosecutions, or make recommendations to the Ethics and Anti-Corruption Commission. Each of these referrals initiates a separate process with its own timeline. Surcharge proceedings before the county assembly or the courts can take two to four years from initiation to conclusion. EACC investigations, where commenced, routinely take three to five years before a matter is ready for prosecution referral. Criminal proceedings, where charges are preferred, add a further two to seven years on average in the Kenyan courts before final determination including appeals.

The cumulative timeline. When these stages are placed end to end audit report lag (1–2 years), Senate committee examination (1–1.5 years), EACC investigation (3–5 years), and court proceedings including appeals (2–7 years) a full accountability cycle from the end of a governor's tenure to final judicial determination can realistically span ten to fifteen years. Against that timeline, a five-year cooling-off period captures only the earliest stages of the process. A former governor who serves the five-year bar may return to the Senate precisely as criminal proceedings arising from their tenure are approaching trial, reintroducing exactly the structural conflict the Bill seeks to prevent.

This submission therefore urges the Senate to consider whether the five-year period should be extended or whether the Bill should be amended to provide that the bar continues to apply for as long as any formal accountability proceeding arising from a former governor's tenure remains pending and unresolved, including proceedings before the EACC, the Director of Public Prosecutions, or the courts. A conduct-based rather than solely time-based bar would more precisely track the actual period during which the conflict of interest is live. This would also be consistent with how Article 99(2)(h) and 193(2)(g) of the Constitution already operate those provisions disqualify from election any person found to have contravened Chapter Six, and the disqualification persists until all possibility of appeal or review is exhausted, under Article 99(3). The same logic should inform the duration of the governor cooling-off restriction.

Proposal

Support the Bill as drafted, as a necessary minimum floor. In the alternative, amend the Bill to extend the cooling-off period or to make it conduct-based operating for as long as any formal accountability proceeding arising from a former governor's tenure remains unresolved. Additionally, urge the Senate to adopt guardrails on the constitutional amendment process to prevent the normalisation of self-serving amendments that exploit the Article 256 pathway.

Conclusion

The Constitution of Kenya (Amendment) Bill, 2026, is a constitutionally sound, governance-necessary, and carefully targeted legislative reform. This submission has demonstrated that:

- The five-year cooling-off period is constitutionally permissible under Article 24 and consistent with the identical restriction already applicable to IEBC members under the Constitution.

- The restriction is necessary to protect the integrity of ongoing accountability processes before the Senate and county assemblies, which directly oversee the executive conduct of county governors.
- The Elections Act amendments are constitutionally required consequential provisions essential for the operational enforcement of the constitutional restriction.
- The Bill addresses the systemic and governance-harmful practice of political office recycling, which undermines institutional independence and democratic renewal.
- The restriction advances the binding constitutional values of transparency, accountability, and integrity under Article 10 and Chapter Six of the Constitution.
- The conflict of interest created when former governors sit in oversight bodies responsible for scrutinising their own executive conduct is structural, pervasive, and irreconcilable.
- However, the five-year cooling-off period may be insufficient when measured against the actual duration of the accountability processes it is designed to protect. The combined timeline of the audit cycle, Senate committee examination, EACC investigation, and court proceedings including appeals can realistically span ten to fifteen years from the end of a governor's tenure. The Senate should consider extending the period or making the bar conduct-based, operating for as long as any formal accountability proceeding arising from a former governor's tenure remains unresolved.
- The passage of this Bill, while justified on its own merits, risks normalising constitutional amendment as a routine parliamentary instrument. The same Parliament has attempted to extend the presidential term, create a Prime Minister's office, and entrench the NG-CDF in the Constitution despite successive court rulings striking it down. The Senate should adopt principled guardrails on the exercise of the constitutional amendment power to prevent its exploitation for self-serving purposes.

The Bill does not diminish democratic rights. It channels and structures the exercise of those rights in a manner that protects the integrity of Kenya's devolved governance architecture. The right to stand for election, like all constitutional rights, must be exercised in a manner consistent with the constitutional order as a whole.

For these reasons, I urge the Senate to pass the Bill. In doing so, however, I urge the Senate to consider: first, whether the five-year cooling-off period is adequate given the actual duration of audit, EACC, and judicial accountability processes, which can cumulatively span ten to fifteen years from the end of a governor's tenure; and second, whether the Bill should be amended to make the bar conduct-based, subsisting for as long as any formal accountability proceeding arising from a former governor's tenure remains unresolved. Additionally, the Senate should adopt clear guardrails on the constitutional amendment process itself, to ensure that the same pathway used to pass this principled reform is not exploited for self-serving amendments of the kind that this Parliament has already attempted.

Submitted by:

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MEMORANDUM ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL
(SENATE BILL NO. 7 OF 2026)

Submitted to:

The Clerk of the Senate for onward transmission to the Standing Committee on Justice, Legal Affairs and Human Rights

Submitted by:

Sheria Watch – A Youth Led Civic Engagement and Public Participation Initiative

1. Introduction

We acknowledge the policy intent underpinning the Bill, particularly the effort to strengthen accountability, reduce conflicts of interest and safeguard the integrity of oversight institutions within Kenya's devolved governance framework by proposing a 5 – year cooling off period to prevent Governors from immediately contesting for positions as Senators or MCAs.

However, upon careful review of the Bill, we are of the considered view that while the objectives pursued are legitimate and constitutionally important, the proposal raises substantial constitutional and democratic concerns that require careful consideration before enactment.

2. Specific Comments and Recommendations

2.1. Limitation of Political Rights

The Bill inadvertently limits political rights under Article 38 of the Constitution of Kenya (2010) given that it gets between the guaranteed right of every citizen to make political choices, the right to contest for public office and the right of voters to freely elect leaders of their choice. While Article 24 CoK envisions the limitation of rights, the test of reasonableness, necessity and proportionality must be satisfied. In our view, the Bill has not sufficiently addressed these issues. It is important for the committee to rationalize the 5-year cooling period and provide substantive reasons if this Bill is to pass.

The Bill also affects the right of voters to elect leaders of their choice. This arises especially where citizens may fully endorse the record of a former Governor and would thereby prefer to vote the said former Governor to another electoral position to continue with the good work. Even in this situation, the Bill would entirely bar them from electing that individual to the Senate or County Assembly for 5 years. It is for this reason that we reiterate that while accountability is important, constitutional democracy also requires caution against excessive restrictions on electoral participation.

2.2. Constitutional Amendment Thresholds and Referendum Concerns

Given that the Bill will affect political rights, a right guaranteed under the Bill of Rights and that it seeks to amend Article 193 in relation to the composition and functioning of County Assemblies, which forms part of devolved governance under Chapter 11 of our Constitution, referendum requirements may be invoked in accordance with Article 255.

In light of this, it is important to bear in mind that Kenya is presently operating within a constrained fiscal environment characterized by high public debt pressures, growing demands on public expenditure, austerity concerns and preparations for the upcoming general elections. Therefore, we ought to interrogate whether it is financially prudent and necessary to conduct a referendum at this moment.

Reiteratively, while reasonable legal arguments may exist on both sides, the issue is sufficiently weighty – Parliament should seek comprehensive guidance prior to proceeding.

3. Conclusion

In conclusion, we recognize and appreciate the governance concerns that this Bill seeks to address. In fact, we are in agreement with the spirit of this Bill. However, the sanctity of our grundnorm, the Constitution of Kenya, is of paramount importance. The aforementioned issues therefore must be sufficiently addressed if this Bill is to pass and become law.

Subject Memorandum in Strong Support of the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026)

From Abubakar Hassan <hassankamau67@gmail.com>

To clerk senate <clerk.senate@parliament.go.ke>

Cc senatejlahrc@parliament.go.ke <senatejlahrc@parliament.go.ke>

Date Wednesday April 8, 2026 9:18:45 AM

The Clerk of the Senate,
Parliament Buildings,
P.O. Box 41842 – 00100,
Nairobi.

Dear Sir,

I write as a Kenyan citizen and a public servant employed by the Ministry of Education, State Department for Basic Education, where I serve under the Digital Literacy Programme. In the course of my official duties, I interact extensively with county governments, particularly in the implementation of critical national programmes that depend on effective and accountable devolved governance.

I wholeheartedly endorse the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026) and respectfully urge the Senate to expedite its passage.

As Kenya prepares for the 2027 General Elections and subsequent electoral cycles, this Bill comes at a critical juncture. It proposes to amend Articles 99(2) and 193(2) of the Constitution, together with related provisions in the Elections Act (Cap. 7), by introducing a five-year break. This would prohibit persons who have served as County Governors from immediately contesting for election as Senators (Members of Parliament) or as Members of County Assemblies in the 2027 elections and beyond.

This provision is of profound significance for strengthening public accountability in Kenya's devolved system of governance. County Governors exercise substantial executive authority over public resources and devolved functions, including education infrastructure, digital learning initiatives, and other basic education programmes. The Senate and County Assemblies bear the constitutional responsibility of providing oversight on county finances, budgets, and the implementation of Auditor-General reports.

Permitting a former Governor to assume a position in these oversight bodies immediately upon leaving office particularly ahead of the 2027 General Elections would create a clear conflict of interest, potentially compromising ongoing accountability processes, audits, and investigations. The proposed five-year break period will:

- Afford sufficient time for independent oversight institutions to finalise audits, inquiries, and any necessary legal proceedings before the next electoral cycle;
- Safeguard the integrity of the oversight function and prevent undue influence in the 2027 elections and future polls;
- Enable citizens to make fully informed electoral choices once all accountability matters have been conclusively addressed; and
- Reinforce the separation between executive authority and legislative oversight, thereby enhancing transparency and good governance under devolution for many years to come.

As a public servant implementing the Digital Literacy Programme, I have observed how lapses in county-level accountability can hinder timely procurement, delay project implementation, and ultimately affect the quality of education delivered to Kenyan learners. This amendment will contribute meaningfully to protecting public resources and ensuring that national programmes such as ours are executed efficiently and with the highest standards of integrity, especially as we approach the 2027 General Elections.

I therefore strongly support the Bill in its current form and urge that the Standing Committee on Justice, Legal Affairs and Human Rights, as well as the full Senate, will accord it favourable consideration.

Thank you for providing this opportunity for public participation in the legislative process.

Yours faithfully,

Abubakar Kamau Hassan
ICT INTERN
Ministry of Education, State Department for Basic Education

Subject SUBMISSION OF VIEWS ON THE PROPOSED AMENDMENT TO ARTICLES 99(2) AND 193(2) OF THE CONSTITUTION.

From hannah maina <hannamaina25@gmail.com>

To clerk senate <clerk.senate@parliament.go.ke>

Cc senatejlahrc@parliament.go.ke <senatejlahrc@parliament.go.ke>

Date Monday April 20, 2026 12:06:44 PM

I submit these views in response to the invitation by the Senate Standing Committee on Justice, Legal Affairs and Human Rights regarding the Constitution of Kenya (Amendment) Bill, 2026.

I support efforts to strengthen accountability and integrity in public leadership. The proposed amendment seeks to bar individuals who have served as county governors from vying for election as Members of Parliament or Members of a County Assembly within five years after leaving office. The intent to allow completion of accountability processes before seeking another elective position is noted.

The proposal limits the right to contest for political office as provided under Article 38 of the Constitution. A blanket restriction for five years risks excluding individuals without considering whether accountability processes have been concluded or whether any wrongdoing has been established. The amendment applies to all former governors, regardless of their record in office. This approach does not distinguish between individuals who have complied with legal and financial requirements and those under investigation or with unresolved accountability issues.

Voters have the right to choose their leaders. Restricting eligible candidates reduces voter choice and may weaken democratic participation, especially where communities seek to elect leaders with prior governance experience. Applying such restrictions to governors raises concerns about consistency. Similar accountability concerns exist for other public officers, yet the amendment targets one category without clear justification.

My recommendations:

- i. Instead of a blanket five-year restriction, limit eligibility based on the status of accountability processes. Individuals with pending audit queries, unresolved legal cases, or adverse findings should be restricted until cleared through due process.
- ii. Enhance the capacity and efficiency of oversight institutions to ensure timely audits, investigations, and resolution of cases involving public officers. Delays in these processes should not justify broad restrictions on political rights.
- iii. Promote transparency and public access to information by ensuring that findings from audits and investigations are accessible to the public to inform voter decisions. This supports accountability while preserving democratic rights.
- iv. Ensure alignment with constitutional principles whereby any amendment should uphold the principles of fairness, equality, and political rights as enshrined in the Constitution.

While the intention to promote accountability is valid, the proposed amendment in its current form introduces broad restrictions that may undermine political rights and democratic participation. A balanced approach that strengthens accountability mechanisms while respecting constitutional freedoms will better serve the public interest.

Thank you for the opportunity to submit these views.

Regards,

Active citizen

MEMORANDUM
THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026
(SENATE BILLS NO. 7 OF 2026)

DATE: Thursday, 23 April 2026

TO: The Clerk of the Senate
Parliament Buildings
Nairobi, Kenya

COPIED TO: senatejlahrc@parliament.go.ke

FROM: Nasambu Flavia (nasambuflavia0@gmail.com)

SUBJECT: Public Participation Submission on the Constitution of Kenya (Amendment) Bill, 2026
(Senate Bills No. 7 of 2026)

Introduction

I write in support of the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026), which seeks to amend Articles 99(2) and 193(2) of the Constitution and to make related consequential amendments to sections 24(2) and 25(2) of the Elections Act, Cap. 7.

The Bill proposes to disqualify persons who are serving as county governors, or who have served as county governors within the five years immediately preceding a general election, from contesting seats in the Senate or in any county assembly. This submission argues that the proposed restriction is constitutionally sound, governance-justified, and necessary for the institutional integrity of Kenya's devolved system.

Kenya's Constitution is built on the national values set out in Article 10, including the rule of law, democracy, equity, social justice, inclusiveness, equality, human rights, non-discrimination, protection of the marginalised, good governance, integrity, transparency, and accountability. Chapter Six further entrenches integrity and accountability as non-negotiable obligations of all state officers.

The Bill advances these values by creating a structural mechanism that:

- ensures that county governors complete and submit to accountability processes before re-entering elective office;
- eliminates an irreconcilable conflict of interest that arises when former governors sit in oversight bodies responsible for scrutinising their own previous executive conduct; and
- interrupts the practice of political office recycling that has weakened the independence of legislative and oversight institutions at both the national and county levels.

For the reasons set out in this memorandum, I urge the Senate Standing Committee on Justice, Legal Affairs and Human Rights to recommend that the Bill be passed without amendment.

Summary of Submissions

NO.	Provision of the Bill	Issue / Argument in Support	Position	Justification
1	Clauses 2 & 3 — Articles 99(2) and 193(2) of the Constitution	The five-year cooling-off period is a constitutionally permissible limitation on electoral rights under Article 24	Support: Retain the amendments as proposed	Article 24 of the Constitution permits limitations on rights where the limitation is reasonable and justifiable in an open and democratic society. Comparable cooling-off periods already exist in the Constitution for IEBC members under Articles 99(2)(b) and 193(2)(b). The proposed restriction is consistent in design and proportionate in duration. It serves the legitimate objectives of institutional independence.
2	Clauses 2 & 3 — Articles 99(2) and 193(2); Bill's Memorandum of Objects and Reasons	Ongoing accountability processes require insulation from political interference by former governors	Support: Retain the amendments as proposed	County governors are accountable to the Senate and county assemblies for financial and administrative decisions under section 32 of the Public Audit Act, Cap. 412B. A former governor sitting in the Senate or a county assembly while audit and accountability processes relating to their tenure are ongoing creates a direct and structural conflict of interest. The restriction protects the institutional integrity of these oversight bodies.
3	Clauses 4 & 5 — Sections 24(2) and 25(2) of the Elections Act, Cap. 7	Statutory amendments are necessary and constitutionally anchored consequential provisions	Support: Retain the amendments as proposed	The amendments to the Elections Act are constitutionally required consequential provisions that give effect to the constitutional amendments. Without corresponding statutory amendments, the constitutional disqualification would lack the operational machinery necessary for its implementation by the Independent Electoral and Boundaries Commission at the candidate nomination stage.
4	The Bill generally — Principle against recycling of public officers	The Bill addresses the systemic problem of political office recycling that entrenches elite capture of public resources	Support: Retain and potentially strengthen the amendments	Kenya's political landscape has witnessed a pattern in which county governors, upon completion of their terms, immediately seek legislative seats, enabling continuity of political influence that undermines the separation of functions between the executive and legislative tiers of devolved government. The Bill introduces a necessary structural break that promotes genuine renewal of political leadership and reduces capture of oversight institutions by former executive office holders.
5	The Bill generally: Chapter Six of the Constitution and national values under Article 10	The Bill advances the national values of accountability, transparency, and integrity	Support: Retain the amendments as proposed	Article 10 of the Constitution establishes accountability, transparency, and integrity as binding national values. Chapter Six imposes integrity obligations on all state officers. The proposed cooling-off period reinforces these values by creating a structural mechanism that compels former governors to submit to and complete accountability processes before re-entering elective politics. This strengthens

NO.	Provision of the Bill	Issue / Argument in Support	Position	Justification
6	Clauses 2 & 3 — Conflict of interest in oversight functions of the Senate and county assemblies	Former governors exercising oversight over their own counties creates an irreconcilable conflict of interest	Support: Retain the amendments as proposed	rather than undermines Kenya's constitutional order. The Senate and county assemblies exercise direct oversight over county governments, including scrutiny of audit reports and examination of county financial management. A former governor sitting in the Senate or county assembly and participating in oversight of their own county's affairs or influencing the process constitutes an irreconcilable conflict of interest. The restriction is a proportionate and targeted response to a specific structural governance problem.

Detailed Submissions

Clauses 2 and 3 of the Bill / Amendments to Articles 99(2) and 193(2) — The five-year cooling-off period is a constitutionally permissible limitation on electoral rights

The Proposed Amendment

Clause 2 of the Bill amends Article 99(2) of the Constitution by inserting paragraph (ba), which disqualifies from election to the Senate any person who is a county governor or who has, within the five years immediately preceding the date of election, held office as a county governor.

Clause 3 of the Bill amends Article 193(2) by inserting a corresponding disqualification applicable to elections to county assemblies.

Constitutional Permissibility: Article 24

It is accepted that Article 38(3)(c) of the Constitution guarantees every citizen the right to be a candidate for public office. However, this right is not absolute. Article 24 of the Constitution expressly permits the limitation of rights and fundamental freedoms where such limitation is:

- imposed by law;
- reasonable and justifiable;
- proportionate in nature and extent to the purpose it serves; and
- the least restrictive means available to achieve the purpose.

The five-year cooling-off period proposed in the Bill satisfies each of these requirements:

- It is imposed by a constitutional amendment: the highest form of law.
- It serves the legitimate and compelling objectives of accountability, institutional independence, and preventing conflicts of interest.
- A five-year period is proportionate. It corresponds to one electoral cycle, sufficient for oversight processes to be completed without being punitive.
- It is targeted and specific, applying only to former county governors seeking to enter the two bodies directly responsible for overseeing county governments.

Constitutional Precedent: The IEBC Cooling-off Period

The Constitution already provides an identical mechanism for members of the Independent Electoral and Boundaries Commission. Articles 99(2)(b) and 193(2)(b) both disqualify from election to Parliament and county assemblies any person who has, within the five years immediately preceding the date of election, held office as a member of the IEBC.

This precedent is constitutionally significant. It demonstrates that the framers of the Constitution accepted that certain public officers, by virtue of the nature of the office they held, must be subject to a cooling-off period before re-entering elective politics. The rationale for the IEBC restriction is to prevent conflicts of interest and protect institutional integrity. Precisely the same rationale applies to former county governors, who remain the subjects of ongoing accountability processes before the very bodies they may seek to join.

Proposal

Support the amendments to Articles 99(2) and 193(2) as proposed. The five-year cooling-off period is constitutionally grounded, proportionate, and consistent with the existing constitutional framework.

- **Clauses 2 and 3 / The Bill's Memorandum of Objects and Reasons — Accountability processes require insulation from political interference by former governors**

The Accountability Problem

County governors are among the most powerful executive officers in Kenya's devolved system. They control county budgets, supervise county public services, and make financial and administrative decisions with direct consequences for county residents. Under section 32 of the Public Audit Act, Cap. 412B, the Auditor General submits annual audit reports on county accounts to the Senate and the relevant county assembly for scrutiny and action.

Accountability processes arising from these audit reports, including committee inquiries, surcharge proceedings, and referrals to investigative agencies, can extend for periods well beyond the end of a governor's term in office. A former governor who, upon leaving office, immediately contests and wins a Senate or county assembly seat, acquires a position from which they can:

- directly participate in or influence committee proceedings examining their own audit reports;
- vote on resolutions that affect the outcome of accountability processes relating to their own tenure;
- use political influence to obstruct, delay, or shape the outcome of inquiries into their past conduct; and
- intimidate witnesses or public servants who might otherwise cooperate with accountability processes.

Structural Conflict of Interest

The Senate exercises oversight over county governments pursuant to Article 96 of the Constitution. County assemblies exercise oversight over county executives pursuant to Article 185(3). When a former governor sits in either of these bodies, they are placed in the invidious position of overseeing — or influencing the oversight of — the very executive functions they previously performed.

The Bill's Memorandum of Objects and Reasons correctly identifies that this creates a conflict of interest and interferes in the decision-making process of oversight bodies. This is not cured by recusal. A legislator who is required to recuse themselves from a significant portion of the oversight business of the

Senate or county assembly is a legislator who cannot fully discharge the constitutional functions of that office.

Proposal

Support the amendments. The five-year period is the minimum necessary to allow outstanding audit cycles and accountability proceedings to be completed and to protect the independence and integrity of oversight institutions.

Clauses 4 and 5 of the Bill / Amendments to the Elections Act, Cap. 7: The statutory amendments are necessary consequential provisions

The Role of the Statutory Amendments

Clauses 4 and 5 of the Bill amend sections 24(2) and 25(2) of the Elections Act to insert corresponding disqualification provisions at the statutory level, mirroring the constitutional amendments in Clauses 2 and 3.

These statutory amendments are operationally essential. The IEBC relies on the Elections Act as the primary legal instrument governing the candidate nomination and vetting process. A constitutional disqualification that is not reflected in the Elections Act would create an enforcement gap: the IEBC would lack the direct statutory authority to reject nomination papers filed by a disqualified candidate at the stage of candidate vetting.

The statutory amendments, therefore, give the constitutional restriction operational effect and ensure that it can be enforced practically at the point of nomination before a disqualified candidate reaches the ballot.

Proposal

Support the amendments to sections 24(2) and 25(2) of the Elections Act. They are constitutionally required and operationally necessary.

The Pattern of Recycling

Kenya's post-2013 political experience has revealed a persistent pattern of political office recycling in which elected county governors, upon completing their constitutionally limited two terms in office, immediately seek election to the Senate or to county assembly seats. This pattern has several harmful consequences for Kenya's governance architecture:

- It entrenches political dynasties and elite capture of public office, reducing political competition and the genuine renewal of leadership.
- It converts the Senate and county assemblies institutions designed to check executive power at the county level into destinations for former county executives, fundamentally altering the relationship between oversight and executive functions.
- It allows former governors who retain strong political networks and resources accumulated during their executive tenure to leverage those advantages immediately upon leaving office, distorting electoral competition.
- It signals to the electorate that accountability for executive decisions will be deferred or avoided through rapid re-entry into a legislative seat that provides political cover and procedural leverage.

Constitutional Foundations for the Restriction

The principle of democratic renewal is embedded in Kenya's constitutional architecture. The Constitution limits governors to two terms of office under Article 180(7) precisely to ensure that executive power at the county level is not concentrated in the same individuals indefinitely. The Bill extends this logic by ensuring that the transition out of executive office is accompanied by a genuine period of separation from

elective politics — allowing accountability processes to operate and allowing the democratic space to reset.

Article 10(2)(a) of the Constitution establishes democracy and participation of the people as a national value. Genuine democratic participation is undermined when the electoral field is dominated by recycled political figures who leverage executive advantages accumulated during their time in office.

Comparative Practice

Cooling-off periods for former executive officers seeking legislative seats are a recognised feature of democratic governance in many jurisdictions. The rationale preventing the use of former executive influence to distort legislative oversight functions is well established in comparative constitutional practice. Kenya's proposed restriction is modest by international standards: a single five-year electoral cycle, applying only to two specific legislative bodies with direct county oversight functions.

Proposal

Support the amendments. The Bill provides a necessary and proportionate structural response to the systemic problem of political office recycling and the concentration of political influence that undermines the independence of county oversight institutions.

- **The Bill generally — Advancement of Chapter Six obligations and national values under Article 10**

Integrity as a Constitutional Obligation

Chapter Six of the Constitution imposes obligations of integrity, impartiality, and accountability on all state officers. Article 73(1)(b) provides that the guiding principles of leadership and integrity include bringing honour to the nation and dignity to the office. Article 73(2)(c) requires state officers to conduct public affairs in a manner that withstands public scrutiny.

A former governor who exits office with unresolved audit queries, pending surcharge proceedings, or unresolved accountability obligations and who immediately seeks election to one of the oversight bodies responsible for pursuing those obligations is a former state officer who is not conducting themselves in a manner consistent with the spirit of Chapter Six. The Bill creates a structural mechanism that compels compliance with the letter and spirit of these constitutional integrity obligations.

Transparency and Accountability as National Values

Article 10(2)(c) establishes transparency and accountability as national values applicable to all state organs, state officers, public officers, and all persons whenever they apply or interpret the Constitution. The Bill gives legislative expression to these values by ensuring that:

- County governors cannot use legislative office as a refuge from accountability.
- Audit and accountability processes are completed before a former governor re-enters elective politics, and
- voters have access to a complete accountability record of a former governor before deciding whether to elect that person to a new public office.

The Bill's Memorandum of Objects and Reasons correctly notes that the restriction allows voters to have a reference point in making an informed choice on a candidate's suitability, since all accountability processes would have been completed. This is a constitutionally significant objective: it strengthens informed electoral choice, which is integral to the democratic right under Article 38.

Proposal

Support the amendments. They give legislative and structural expression to the constitutional values of transparency, accountability, and integrity that are binding under Articles 10 and Chapter Six of the Constitution.

- **Clauses 2 and 3 — Irreconcilable conflict of interest in the exercise of Senate and county assembly oversight functions**

The Oversight Functions at Stake

The Senate exercises oversight over county governments through several constitutional and statutory mechanisms:

- Article 96(3) — the Senate determines the allocation of national revenue to counties and exercises oversight of national revenue allocated to county governments.
- Article 217 — The Senate determines the basis for allocating among counties the share of national revenue allocated to them.
- Section 32 of the Public Audit Act requires that annual county audit reports be submitted to the Senate for scrutiny and action.
- Various Senate committee mandates: Senate committees examine county financial management, hear governors on audit queries, and make recommendations on accountability.

County assemblies exercise oversight under Article 185(3), which empowers county assemblies to oversee county executive performance and to examine county financial statements.

The Conflict in Practice

When a former governor sits as a Senator, they may be called upon to:

- participate in Senate committee sessions examining audit reports from their own tenure as governor;
- vote on resolutions censuring or taking action against their own county based on audit findings from their period of office;
- participate in debates on the county revenue allocation formula in ways that benefit their home county, in which they retain a political base; and
- sit on committees with the power to summon and examine current county officials who served under them.

None of these conflicts is manageable by recusal alone. The nature and volume of the conflict mean that a former governor in the Senate would be a structurally compromised legislator unable to fully discharge the oversight mandate of the Senate without constant conflicts of interest arising from their own executive history.

Proposal

Support the amendments. The conflict of interest is structural, pervasive, and not susceptible to resolution by individual recusal. The five-year cooling-off period is the most targeted and effective response available.

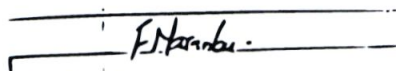
Conclusion

The Constitution of Kenya (Amendment) Bill, 2026, is a constitutionally sound, governance-necessary, and carefully targeted legislative reform. This submission has demonstrated that:

- The five-year cooling-off period is constitutionally permissible under Article 24 and consistent with the identical restriction already applicable to IEBC members under the Constitution.
- The restriction is necessary to protect the integrity of ongoing accountability processes before the Senate and county assemblies, which directly oversee the executive conduct of county governors.
- The Elections Act amendments are constitutionally required consequential provisions essential for the operational enforcement of the constitutional restriction.
- The Bill addresses the systemic and governance-harmful practice of political office recycling, which undermines institutional independence and democratic renewal.
- The restriction advances the binding constitutional values of transparency, accountability, and integrity under Article 10 and Chapter Six of the Constitution.
- The conflict of interest created when former governors sit in oversight bodies responsible for scrutinising their own executive conduct is structural, pervasive, and irreconcilable.

The Bill does not diminish democratic rights. It channels and structures the exercise of those rights in a manner that protects the integrity of Kenya's devolved governance architecture. The right to stand for election, like all constitutional rights, must be exercised in a manner consistent with the constitutional order as a whole.

For these reasons, I urge the Senate to pass the Bill without amendment unless it is to extend the cooling-off period to forever, preferably.



Submitted by:

Nasambu Flavia

The Clerk of Senate

NAIROBI

SUBMISSION WITH REGARDS NOTIFICATION OF PUBLIC HEARING & INVITATION TO SUBMIT VIEWS ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

Good morning Clerk of the Senate? Please see my submissions with regards to the above cited subject matter.

PREAMBLE

Reference is made to the above matter of National Importance;

Being aware of the constitutional dictates;

Cognisant of the fact that the COK 2010 is the primary supreme law of the Land;

Fully aware that the amendment shall substantially and significantly contribute to streamlining governance in all the 47 counties by instilling fiscal discipline;

I THEREFORE SUBMIT AS FOLLOWS:

1. As per the constitutional dictates contemplated in **Article 99. Qualifications and disqualifications for election as member of Parliament**

(1) Unless disqualified under clause (2), a person is eligible for election as a member of Parliament if the person—

- (a) is registered as a voter;
- (b) satisfies any educational, moral and ethical requirements prescribed by this Constitution or by an Act of Parliament; and
- (c) is nominated by a political party, or is an independent candidate who is supported—
 - (i) in the case of election to the National Assembly, by at least one thousand registered voters in the constituency; or
 - (ii) in the case of election to the Senate, by at least two thousand registered voters in the county.

(2) A person is disqualified from being elected a member of Parliament if the person—

- (a) is a State officer or other public officer, other than a member of Parliament;
- (b) has, at any time within the five years immediately preceding the date of election, held office as a member of the Independent Electoral and Boundaries Commission;
- (c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
- (d) is a member of a county assembly;
- (e) is of unsound mind;
- (f) is an undischarged bankrupt;
- (g) is subject to a sentence of imprisonment of at least six months, as at the date of registration

as a candidate, or at the date of election; or

(h) is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six.

(3) A person is not disqualified under clause (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

SUBMISSION NUMBER 1:

- a. Bar all gubernatorial and senatorial candidates who have in the past 16 years being charged in Courts of Law for violating COK 2010 Articles 99 & 193, as well as Articles 24 and 25;
- b. Bar deregistered all gubernatorial and senatorial candidates who have in the past 16 years being charged in Courts of Law for violating the Elections Act CAP 7 Laws of Kenya;
- c. Bar, deregister and punitively surcharge all gubernatorial and senatorial candidates who have in the past 16 years being charged in Courts of Law for violating the Public Audit Act CAP 412 Laws of Kenya as read with the County Governments Act CAP 265 Laws of Kenya & the County Public Finance Act (Amendment) Act 2025;

NB: i. Proposals shall serve as punitive measures to penalize all gubernatorial and senatorial candidates who have in the past 16 years being charged in Courts of Law for violating the Leadership and Integrity Act as read with Chapter 6 of the COK 2010 on Leadership and Integrity;

ii. The proposal further seek to empower the EACC, DCI, Ombudsman, NCIC, Courts of Law to institute thorough adversarial and inquisitorial investigation with a bid to escalate the financial impropriety charges against all gubernatorial and senatorial candidates to institute recovery by UFAA, Assets Recovery Authority to repatriate all colossal amounts stashed abroad and locally in all manner of illegal off shore and non-off shore accounts illegally opened without consent of the EACC;

iii. This therefore it is plausible, rational, justifiable and reasonable to impose an inevitable (5) five-year cooling-off period, the Bill aims to ensure that oversight institutions have sufficient time to complete inquiries into the conduct of former governors without undue influence;

Yours Faithfully,

Ms. Lydia Nyawira Mburia-0711850405/0743864426

NEMA EIA & SEA Associate Expert,

German DAAD Summer School Fellow

Fellow Africa Group of Negotiators & Experts (AGNES)

BA Community Development, MBA Natural Resource Management

Dated this: 28th Day of April 2026

TO: THE CLERK OF THE SENATE
FROM: EDDIE OWINO GEORGE

ID NO: 33134111

ADDRESS: P.O BOX 84 USENGE, SIAYA

DATE: 27TH APRIL 2026



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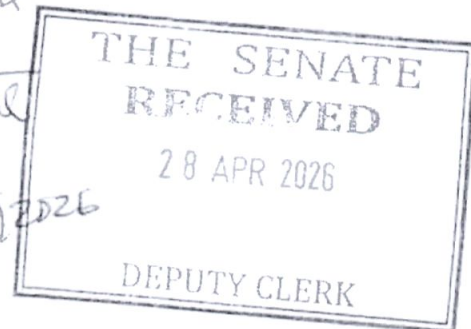
② HOD - Governance
PCA - JLTARC

Wendy Seal

28/04/2026

kindly deal.

28/04/2026



MEMORANDUM TO THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

**ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026
(SENATE BILLS NO. 7 OF 2026)**

SUBJECT: PROPOSED MEMORANDUM ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026



1. PRELIMINARY OBSERVATIONS

I write to express my views on the Constitution of Kenya (Amendment) Bill, 2026, which seeks to bar persons who have served as county governors from being elected as Senators or Members of a County Assembly for the first five years immediately after serving as governor.

While I support the general principle of promoting accountability, integrity, and political renewal, I wish to raise concerns about the Bill as currently drafted and propose specific amendments.

2. MY GENERAL POSITION

I support the Bill in principle but recommend amendments to make it more consistent with the Constitution, particularly the right to stand for elective office (Article 38), and to avoid unintended consequences.

3. SPECIFIC ISSUES AND PROPOSED AMENDMENTS

(a) Disproportionate Restriction on Political Rights

The Bill as drafted bars former governors from contesting Senator or MCA seats for five years. However, it does not bar them from contesting for President, MP (in the National Assembly), or Woman Representative. This creates an irrational classification – a former governor could become **President** just one year after leaving office, but cannot become an **MCA**. This appears arbitrary and risks violating the right to equal protection under Article 27 of the Constitution.

Proposed amendment:

Either remove the restriction entirely and rely on existing leadership and integrity provisions, or apply a uniform cooling period e.g., two or three years for all elective posts except where disqualification is linked to a specific violation e.g., impeachment over gross violation of the Constitution.

(b) Overlaps with the Elections Act

The Bill proposes amendments to Sections 24(2) and 25(2) of the Elections Act. However, the Elections Act already provides for disqualifications flowing from Chapter Six of the Constitution. A blanket five-year ban for all former governors – even those who served with integrity and left office honorably – amounts to collective punishment and may be challenged as unconstitutional.

Proposed amendment:

Link the disqualification only to governors who were **impeached for gross violation of the Constitution or misconduct** or whose county governments were dissolved for persistent financial mismanagement under Article 192 of the Constitution. A clean governor should not be barred.

(c) Length of the Cooling Period – Five Years is Excessive

Five years is a lengthy period in a five-year electoral cycle. A former governor serving two terms (10 years) would be aged significantly by the time they can run for Senate or

MCA. This may discourage talented leaders from seeking governorship or drive them to higher offices prematurely.

Proposed amendment:

Reduce the cooling period to **two (2) years** – enough to separate immediate incumbency advantage without unduly restricting political choice.

(d) Negative Incentive – Governors Might Lobby for MP or President Instead

If a governor cannot ascend to Senate or a county assembly, they may instead directly contest for Member of the National Assembly (MP) or President, which the Bill does not restrict. This makes the Bill ineffective for its stated purpose and instead pushes governors into other competitive races, potentially creating more political instability.

Proposed amendment:

If the policy goal is to separate county executive power from other legislative seats, the Bill should be expanded to apply equally to **National Assembly** seats, otherwise it creates loopholes.

4. ADDITIONAL COMMENT

The Bill as currently framed appears to be aimed at a small number of individuals rather than addressing a systemic constitutional problem. Public participation submissions already indicate concern that this Bill is *ad hominem* legislation. Parliament should avoid amending the Constitution to target specific persons or small groups.

If the Senate wishes to strengthen accountability, it should instead:

- Enforce existing Chapter Six on leadership and integrity.
- Amend the Elections Act to bar any person impeached for gross violation of the Constitution or misuse of office from holding any state office for a defined period.

5. RECOMMENDATION

I respectfully recommend that the Standing Committee on Justice, Legal Affairs and Human Rights:

1. **Reject the Bill in its current form** due to constitutional infirmities and lack of rational justification.
2. **Alternatively, adopt the following amendments:**
 - Reduce the cooling period to **two (2) years**.
 - Restrict disqualification only to **former governors who were impeached for corruption or gross misconduct**, not all former governors.
 - Extend the restriction equally to **National Assembly membership** if the policy goal is genuine separation of powers.

6. CONCLUSION

The Constitution should not be amended lightly. While public concern over governors “hopping” to other positions immediately after serving is understandable, the remedy must be **proportionate, rational, and consistent with the Constitution**. The current Bill fails these tests.

I urge the Committee to invite further technical input from the Kenya Law Reform Commission, the Office of the Attorney General, and civil society organisations specialising in constitutional law before reporting to the Senate.



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

Ref: COG/6/12 Vol.14 (76)

28th April 2026

J.M Nyegenye, CBS
Clerk of the Senate
The Senate
Clerk's Chambers
NAIROBI

Dear Mr. Nyegenye,

LEGISLATIVE MEMORANDUM ON THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

Greetings from the Council of Governors.

We refer to the above matter and your letter dated 13th April 2026 Ref. **SEN/DGAC/DGC/JLAHR/2026/28(g)** calling for submission of legislative memoranda on the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026)

In view of the above, the Council wishes to forward for your consideration the attached memorandum.

Please accept assurance of our highest esteem and consideration.

Yours sincerely,

Mary Mwiti, EBS
Chief Executive Officer



COUNCIL OF VERNORS

Westlands Delta House 2nd Floor, 4th Avenue
PO BOX 40401 CC 100
Johannesburg

Tel (020) 2403314-2403318
E-mail: info@wv.co.za



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**LEGISLATIVE MEMORANDUM ON THE CONSTITUTION OF KENYA
(AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 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 the Constitution under Article 20(2) dictates that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom; and

Aware that the Constitution also requires institutions including Parliament to interpret the Bill of Rights in a manner that promotes the values that underlie an open and democratic society based on human dignity, equality, equity and freedom, and the spirit, purport and objects of the Bill of Rights.

Having reviewed **Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026)**, the Council notes that the object of the Bill is to amend Article 99 (2) of the Constitution of Kenya to bar persons who are or have served as County Governors from vying for election to the Senate, and to amend Article 193 (2) to bar former County Governors from vying for election as members of county assembly, for the first five years immediately after serving as county governors. The Bill also amends sections 24 (2) and 25 (2) of the Elections Act, Cap. 7 of the Laws of Kenya which replicate the above provisions of the Constitution.

The Council **OPPOSES** the Bill in its entirety for the reasons outlined hereunder:

B. REASONS FOR OBJECTION OF THE BILL

i. The Bill proposes an amendment that requires a referendum under Article 255 of the Constitution

The Council notes that the Bill falls squarely under Article 255 of the Constitution, which outlines the requirement for a referendum when amending certain fundamental provisions of the Constitution, including matters related to the Bill of Rights. It provides that any proposed constitutional amendment touching on the Bill of Rights shall be approved through a referendum as outlined in sub-article (2) thereof.

ii. The Bill offends Article 38 of the Constitution on political rights

The Council opposes the Bill as it seeks to bar current and former Governors from exercising their political rights under Article 38 of the Constitution without reasonable justification. The Bill's justification avers that barring former county governors from vying for elections will allow for any ongoing accountability processes related to administration and financial management affairs of the county to be completed, as these would have a bearing on their suitability to hold any other elective position.

This limitation **does not meet the threshold** for limitation of rights under Article 24 of the Constitution, which requires that a limitation of a fundamental right must be by law and to the extent that it is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors.

iii. The Bill violates Article 50 (2) (a) on presumption of innocence and fair hearing

The Council notes that the Bill speculates that all current and former Governors are guilty of misconduct for which they will be held accountable before they exercise their constitutional right to vie for elective office. This speculation is contrary to Article 50 (2) (a) of the Constitution on presumption of innocence and fair hearing. Additionally, we note that the oversight role of the Senate or County Assembly **is not exercised by individual senators or MCAs but is a collective responsibility of the House**, which negates the justification in the Bill's Memorandum of Objects and Reasons.

iv. The Bill is incongruent with Article 27 in that it is selective and discriminatory in its exclusion

The Council notes that the Bill infringes Article 27 of the Constitution that stipulates that every person is equal before the law and has the right to equal protection and equal benefit of the law. The State is obligated to ensure it does not discriminate directly or indirectly against any person under sub-article (4). While accountability and oversight over county governance are important considerations, the proposed restrictions **do not align** with the principles of **fairness and equality**, as contemplated under Article 27 (1) of the Constitution of Kenya. We note that the Bill is selective as it excludes Governors from vying for Senate or County Assemblies yet the Senate and County Assemblies oversees other public officers including Cabinet Secretaries, Deputy Governors, County Executive Committee Members and Chief Executive Officers of state/county corporations. These public officers have not been barred from contesting for these elective seats.

v. The Bill violates Article 73 (2) (b) and (c) on exercising leadership objectively and in the public interest

The Council notes that the spirit of the Bill offends Article 73 (2) (b) and (c) of the Constitution that provides for the guiding principles of leadership which include objectivity in decision making and selfless service based solely on the public interest. We note that the Senate in this case, appears to be legislating in its self-interest in a move to insulate and or cushion its members from competition in the next general election.

vi. The Bill conflicts a decision of the Court on the same subject matter

The Council notes that the Bill is in blatant incongruence with the decision of the Court in ***Constitutional Petition No. E005 of 2022; Carolyne Andzazi Chilango & Anor v. The Independent Electoral and Boundaries Commission & Others*** delivered on 17th June 2022. The Council was a party to the petition where the court dismissed a petition seeking to bar former and current Governors from vying for seats as Members of Parliament as there will be an affront to the Senate's oversight role on County Governments because the MPs will essentially be overseeing functions they themselves performed. The court held:

"The above averment is speculative and overbroad ... It targets a group of people and dangerously assumes all are guilty. It wants the court to "declare" former and current governors' guilty long before the culpable are identified through a credible process. Its tantamount to applying an arrest warrant and suspend it over a group of people who stand "arrested" before culpability is established ... the orders sought if granted are likely to impinge Article 38 rights of the targeted group of people ... Such a limitation cannot pass an Article 24 analysis test because a limitation of a fundamental right must be reasonable and justifiable in an open and democratic society... (emphasis ours)"

(Attached hereto is a copy of the court decision for your reference)

The Council submits that the Senate and County Assemblies ought to exercise their oversight role and complete the same within the Governor's term instead of visiting any delays thereto on the former Governor.

Nevertheless, **Governors are not immune to accountability proceedings** after the lapse of their term. **Article 226 (5)** of the Constitution provides that the holder of a

public office who is liable for any loss of public funds pursuant to their instruction shall make good that loss **whether they remain the holder of the office or not.**

vii. The Bill ignores the adequacy of existing constitutional and statutory accountability mechanisms

The Constitution already contains comprehensive disqualifications under Articles 99(2) and 193(2), including disqualification for any person found to have misused or abused State or public office or to have contravened Chapter Six. These provisions, together with the existing accountability architecture comprising annual audit reports under the Public Audit Act, Cap. 412B, Senate and County Assembly oversight, the Ethics and Anti-Corruption Commission, and judicial processes, adequately address the concerns raised in the Bill's Memorandum of Objects and Reasons. The proposed amendment is therefore unnecessary and duplicative of existing protections.

viii. The Bill undermines voter sovereignty and deprives the legislature of institutional expertise

The Bill restricts the electorate's freedom to choose candidates without any corresponding judicial or quasi-judicial determination of unsuitability, thereby undermining the principle of voter sovereignty enshrined in Article 1 of the Constitution. Furthermore, former County Governors possess deep institutional knowledge and practical experience in devolved governance that would enrich the Senate's and County Assemblies' oversight function. A blanket disqualification deprives these oversight institutions of valuable expertise and may in fact weaken rather than strengthen the quality of devolution oversight.

ix. The Bill is vague and raises serious implementation challenges

The Bill lacks clarity on several critical implementation questions: whether the five-year bar applies to acting governors, governors who served partial terms, or those who left office through impeachment or voluntary resignation. Additionally, the rigid five-year period bears no relationship to the actual time required to complete audit and accountability processes, which may be shorter or longer depending on the circumstances of each individual former governor. This renders the proposed restriction arbitrary and disproportionate.

C. CONCLUSION

In conclusion, the Council notes that the existing Constitutional provisions on qualifications for election as Senator and Member of County Assembly are sufficient and suitability is a continuous process. Should Parliament nonetheless determine that additional safeguards are necessary, the Council recommends the following proportionate alternatives:

- i. Mandatory recusal provisions requiring former Governors to recuse themselves from Senate or County Assembly proceedings relating to their own tenure, rather than a blanket disqualification from office;
- ii. Strengthening of existing Chapter Six and audit processes under the Public Audit Act to ensure timely completion of accountability inquiries within a governor's term; and
- iii. If any cooling-off period is deemed absolutely necessary, it should be narrowly tailored, time-bound (not exceeding two years), and triggered only where specific accountability proceedings are pending against the individual former governor, with clear and fair procedural safeguards.



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**LEGISLATIVE MEMORANDUM ON THE CONSTITUTION OF KENYA
(AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 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,

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In further recognition that the Constitution under Article 20(2) dictates that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom; and

Aware that the Constitution also requires institutions including Parliament to interpret the Bill of Rights in a manner that promotes the values that underlie an open and democratic society based on human dignity, equality, equity and freedom, and the spirit, purport and objects of the Bill of Rights.

Having reviewed **Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026)**, the Council notes that the object of the Bill is to amend Article 99 (2) of the Constitution of Kenya to bar persons who are or have served as County Governors from vying for election to the Senate, and to amend Article 193 (2) to bar former County Governors from vying for election as members of county assembly, for the first five years immediately after serving as county governors. The Bill also amends sections 24 (2) and 25 (2) of the Elections Act, Cap. 7 of the Laws of Kenya which replicate the above provisions of the Constitution.

The Council **OPPOSES** the Bill in its entirety for the reasons outlined hereunder:

B. REASONS FOR OBJECTION OF THE BILL

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justification avers that barring former county governors from vying for elections will allow for any ongoing accountability processes related to administration and financial management affairs of the county to be completed, as these would have a bearing on their suitability to hold any other elective position.

This limitation **does not meet the threshold** for limitation of rights under Article 24 of the Constitution, which requires that a limitation of a fundamental right must be by law and to the extent that it is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors.

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v. The Bill violates Article 73 (2) (b) and (c) on exercising leadership objectively and in the public interest

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appears to be legislating in its self-interest in a move to insulate and or cushion its members from competition in the next general election.

vi. The Bill conflicts a decision of the Court on the same subject matter

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(Attached hereto is a copy of the court decision for your reference)

The Council submits that the Senate and County Assemblies ought to exercise their oversight role and complete the same within the Governor's term instead of visiting any delays thereto on the former Governor.

Nevertheless, **Governors are not immune to accountability proceedings** after the lapse of their term. **Article 226 (5)** of the Constitution provides that the holder of a public office who is liable for any loss of public funds pursuant to their instruction shall make good that loss **whether they remain the holder of the office or not.**

vii. The Bill ignores the adequacy of existing constitutional and statutory accountability mechanisms

The Constitution already contains comprehensive disqualifications under Articles 99(2) and 193(2), including disqualification for any person found to have misused or abused State or public office or to have contravened Chapter Six. These provisions, together with the existing accountability architecture comprising annual audit reports under the Public Audit Act, Cap. 412B, Senate and County Assembly oversight, the Ethics and Anti-Corruption Commission, and judicial

processes, adequately address the concerns raised in the Bill's Memorandum of Objects and Reasons. The proposed amendment is therefore unnecessary and duplicative of existing protections.

viii. The Bill undermines voter sovereignty and deprives the legislature of institutional expertise

The Bill restricts the electorate's freedom to choose candidates without any corresponding judicial or quasi-judicial determination of unsuitability, thereby undermining the principle of voter sovereignty enshrined in Article 1 of the Constitution. Furthermore, former County Governors possess deep institutional knowledge and practical experience in devolved governance that would enrich the Senate's and County Assemblies' oversight function. A blanket disqualification deprives these oversight institutions of valuable expertise and may in fact weaken rather than strengthen the quality of devolution oversight.

ix. The Bill is vague and raises serious implementation challenges

The Bill lacks clarity on several critical implementation questions: whether the five-year bar applies to current governors, governors who served partial terms, or those who left office through impeachment or voluntary resignation. Additionally, the rigid five-year period bears no relationship to the actual time required to complete audit and accountability processes, which may be shorter or longer depending on the circumstances of each individual former governor. This renders the proposed restriction arbitrary and disproportionate.

C. CONCLUSION

In conclusion, the Council requests the Senate to **withdraw the Bill** since the existing Constitutional provisions on qualifications for election as Senator and Member of County Assembly are sufficient and that the Bill is unconstitutional and discriminatory to Governors. Should Parliament nonetheless determine that additional safeguards are necessary, the Council recommends the following proportionate alternatives:

- i. Mandatory recusal provisions requiring former Governors to recuse themselves from Senate or County Assembly proceedings relating to their own tenure, rather than a blanket disqualification from office; and
- ii. Strengthening of existing Chapter Six and audit processes under the Public Audit Act to ensure timely completion of accountability inquiries within a governor's term.

**MEMORANDUM TO THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS**

THE SENATE, PARLIAMENT OF KENYA

RE: **MEMORANDUM ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026**
[SENATE BILLS NO. 7 OF 2026]

I, Nahashon Kamau, HSC, a Kenyan citizen, ID No. 39197782, and student at KMTC Nairobi Campus, hereby submit this memorandum pursuant to Articles 118(1)(b) and 256(2) of the Constitution, and the invitation published on 8th April 2026.

I have read the Bill and **SUPPORT** the proposed amendments.

2. Understanding of the Bill

The Bill seeks to amend Articles 99(2) and 193(2) of the Constitution, and Sections 24(2) and 25(2) of the Elections Act, to bar persons who have served as county governors from vying for election as Senators or Members of County Assembly for 5 years immediately after leaving office.

3. Grounds for Support

I support this Bill for the following reasons:

a) *Separation of Powers & Oversight Integrity*

Senators are mandated under Article 96 to oversee county governments. A former governor becoming a Senator immediately creates a conflict of interest. They would be overseeing decisions and budgets they themselves made. The 5-year cooling-off period preserves the integrity of Senate oversight.

b) *Prevents “Revolving Door” Politics*

The Constitution intended different roles for governors and senators/MCAs. Allowing immediate transition encourages leaders to use one office as a stepping stone to the next, instead of focusing on service delivery. This Bill promotes accountability.

c) *Encourages New Leadership*

Kenya has youth unemployment above 35%. This amendment creates space for new leaders, including youth and PWDs, to serve in Senate and County Assemblies instead of recycling the same individuals.

d) *Aligns with Chapter Six*

Leadership and integrity demand that power is not personalized. This Bill reduces the risk of former governors using Senate or MCAs to shield themselves from accountability for their 10-year tenure.

4. *Recommendations*

1. Pass the Bill as is to strengthen devolution and accountability.
2. Consider extending the bar to other executive positions like Deputy Governors and CECs for consistency.
3. Civic education: IEBC and ORPP to sensitize public on why the amendment strengthens democracy.

5. *Conclusion*

This Bill is progressive and protects the spirit of devolution. I urge the Committee to recommend its passage.

Dated at Nairobi this 28th day of April, 2026

Signed:

Nahashon Kamau

Tel: +**254743048144**

Email: **knahashon2@gmail.com**

Subject Fwd: Written Memorandum in Support of the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026)

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlhrc <senatejlhrc@parliament.go.ke>

Date Wednesday April 29, 2026 9:36:04 AM

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 |

*-----Original Message-----

From: Nyaga <nyagamacharia6@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Tuesday, 28 April 2026 8:43 PM EAT

Subject: Written Memorandum in Support of the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026)

The Clerk of the Senate
Standing Committee on Justice, Legal Affairs and Human Rights
P. O. Box 41842-00100
Nairobi

Dear Sir/Madam,

RE: WRITTEN MEMORANDUM IN SUPPORT OF THE CONSTITUTION OF KENYA
(AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

I write to submit my views in support of the above-referenced Bill, which seeks to amend Articles 99(2) and 193(2) of the Constitution and to make related amendments to sections 24(2) and 25(2) of the Elections Act, Cap. 7 of the Laws of Kenya.

I am in full support of this Bill for the following reasons:

1. Promoting Fairness in Electoral Competition

By barring former county governors from contesting for Senate or County Assembly seats for the first five years after serving, the Bill levels the political playing field. It prevents individuals who have already held powerful executive positions from immediately leveraging their incumbency advantages — financial, logistical, and reputational — against fresh candidates.

2. Encouraging Devolution of Political Influence

The amendment encourages the emergence of new political leadership at the county level. It discourages the concentration of political power in the hands of a few individuals who cycle through different elective positions, thereby giving other qualified citizens a meaningful opportunity to serve.

3. Strengthening Accountability

A five-year cooling-off period incentivises outgoing governors to focus on their legacy and delivery of service rather than using their final term in office as a launchpad for their next political campaign. This promotes better governance and public accountability.

the Senate without amendments.

Thank you for the opportunity to participate in this important public process.

Yours faithfully,

Robinson Macharia

Subject

* Fwd: SUBMISSION OF VIEWS ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlahrc <senatejlahrc@parliament.go.ke>

Date Wednesday April 29, 2026 9:35:42 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: Elizaphan <kamauelizaphan@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Tuesday, 28 April 2026 8:06 PM EAT

Subject: SUBMISSION OF VIEWS ON THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

The Clerk of the Senate

Email: clerk.senate@parliament.go.ke

Date: 28th April 2026

Subject: STRENGTHENING THE PROPOSED RESTRICTIONS ON FORMER COUNTY
GOVERNORS SEEKING ELECTIVE OFFICE.

I hereby submit my views in response to the Senate's invitation for public participation on the Constitution of Kenya (Amendment) Bill, 2026, which proposes, among other provisions, to bar former County Governors from seeking elective office within five years after leaving office.

While the intention of promoting accountability and safeguarding public resources is commendable, I submit the following observations and recommendations for consideration:

1. Need for broader application across key elective offices

The proposed restriction should not be limited to other elective positions in a narrow sense. In practice, many former Governors transition directly into the Senate. This creates a governance loophole where individuals may evade accountability mechanisms tied to their

I therefore propose that the restriction be extended to include the Senate and other national elective positions, to ensure uniform standards of accountability and public trust.

2.Strengthening accountability rather than political recycling

The focus of the amendment should not only be political transition limits but also enhanced accountability for performance in office, including:

- a) Audit outcomes from the Auditor-General,
- b) Pending investigations by oversight institutions,
- c) and unresolved public resource management concerns.

Without this, the Bill risks becoming a political rotation control measure rather than a genuine governance reform tool.

3.Upholding the spirit of public service

Public office is a trust. Any legal reform must ensure that leadership transitions do not become escape routes from scrutiny or responsibility. Citizens expect leaders who serve transparently and are answerable for their tenure.

CONCLUSION

I support reforms aimed at strengthening governance and accountability. However, I urge the Senate to consider expanding the scope of this amendment to include Senate seats and to reinforce accountability provisions to prevent circumvention of responsibility through elective office transitions.

Yours faithfully,
Mwangi Kamau
Policy Analyst
Citizen of the Republic of Kenya

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From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlahrc <senatejlahrc@parliament.go.ke>

Date Wednesday April 29, 2026 9:38:45 AM

Regards

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Parliament of Kenya |**

Tel: + 254 (20) 2848000 | Ext. 3282 |

Email: clerk.senate@parliament.go.ke |

www.parliament.go.ke |

From: Jeremy <tjmulonzia@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Tuesday, 28 April 2026 9:44 PM EAT

Subject: RE: SUBMISSION ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL,
2026 (SENATE BILLS NO. 7 OF 2026)

I am writing to express my strong support for the Constitution of Kenya (Amendment) Bill, 2026, currently before the Senate.

As a Kenyan citizen, I urge the Senate to pass this bill in its entirety for the following reasons:

Enhanced Oversight: This amendment ensures that those responsible for auditing and overseeing county funds are not the same individuals who recently managed them, preserving the integrity of the Senate.

Conflict of Interest: Implementing a five-year "cooling-off" period prevents former Governors from influencing investigations into their own past administrations.

Accountability: The bill promotes a culture of accountability by ensuring that executive powers and legislative oversight remain distinct and independent.

I support the amendment to Articles 99(2) and 193(2) and demand that my representative votes in favour of this bill to strengthen our democratic checks and balances.

Yours Faithfully,
Jeremy Mulonzia
ID NO: 471782699

Subject Fwd: SUPPORT FOR THE IMPOSITION OF A COOLING-OFF PERIOD FOR COUNTY GOVERNORS

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlahrc <senatejlahrc@parliament.go.ke>

Date Wednesday April 29, 2026 9:39:41 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: Muthomi <muthomiiian80@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Tuesday, 28 April 2026 9:45 PM EAT

Subject: RE: SUPPORT FOR THE IMPOSITION OF A COOLING-OFF PERIOD FOR
COUNTY GOVERNORS

SUBMISSION ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026 (SENATE
BILLS NO. 7 OF 2026)

TO: The Standing Committee on Justice, Legal Affairs and Human Rights

FROM: Ian Muthomi from Igembe Central - Meru

DATE:28/04/2026

I, Ian Muthomi, express strong support for the provisions of the Constitution of Kenya (Amendment) Bill, 2026. Specifically, I endorse the proposed amendment to Articles 99(2) and 163(2) to bar persons who have served as county governors from vying for election as Senators or Members of a County Assembly for the first five years immediately after their term.

The primary justification for this amendment is the critical need for uninterrupted investigations into fraud and corruption.

1. Ensuring Accountability Without Political Interference

Currently, a Governor finishing their term can immediately ascend to the Senate or return to the County Assembly. This creates a significant loophole where political immunity and power can be used to shield oneself from accountability. By imposing a five-year cooling-off period,

- Ethics and Anti-Corruption Bodies (such as the EACC) can operate without the fear of political retribution or interference from a former Governor who now holds a legislative seat.
- Judicial Processes can run their full course. A cooling-off period prevents individuals from using their new legislative positions to influence the outcomes of their own ongoing cases.
- Public Trust is maintained. It sends a clear message that no one is above the law and that the pursuit of justice will not be halted by a change in political office.

2. Preventing the "Revolving Door" of Impunity

The immediate transition from the Executive arm (County Government) to the Legislative arm (Senate/County Assembly) undermines the system of checks and balances. A five-year gap is necessary to break the cycle of impunity and ensure that public funds are protected. This period provides ample time for audits, investigations, and potential prosecutions to conclude without the subject of the investigation sitting in a position of power.

Conclusion

This amendment is a necessary step toward strengthening the rule of law and ensuring that public office is not used as a tool for evading justice. I urge the Committee to pass this Bill to close the existing loopholes that allow corruption to thrive under the guise of political immunity.

PS. Kindly do not entertain any ideas of Term extension as insinuated quite often by Hon. Cherargei and co.

Regards
Ian Muthomi

Subject Fwd: Post-tenure eligibility of Governors for election to County Assembly (MCA) or Senate seats within five (5) years

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlhrc <senatejlhrc@parliament.go.ke>

Date Monday May 4, 2026 6:47:39 PM

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: Fidel <fidwangai@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Monday, 4 May 2026 6:16 PM EAT

Subject: Post-tenure eligibility of Governors for election to County Assembly (MCA) or Senate seats within five (5) years

Re: The Constitution of Kenya (Amendment) Bill, 2026 (Senate Bill No. 7 of 2026)

1. Introduction

I respectfully submit this memorandum in support of a clear statutory restriction barring any person who has served two full terms as a County Governor from contesting for the positions of Member of County Assembly (MCA) or Senator within a period of five (5) years after leaving office.

My position is unequivocal: such immediate transition should NOT be permitted.

2. Rationale for a Five-Year Cooling-Off Period

a) Expanding democratic space and opportunity

Kenya's counties are not short of capable, qualified, and energetic leaders. Allowing former governors to immediately re-enter elective politics at county or senatorial level risks crowding out emerging leaders and entrenching a cycle of recycled leadership.

A structured cooling-off period would encourage leadership renewal, open pathways for new voices, and deepen democratic participation at the grassroots level.

b) Preservation of the dignity and stature of the Office of Governor

The office of County Governor is one of significant constitutional weight, carrying executive authority, visibility, and institutional influence.

An immediate transition from such a high office to positions subject to oversight functions (particularly at a lower tier like the County Assembly) risks diminishing the perceived stature of the gubernatorial office and blurring institutional hierarchies.

Former governors can continue to contribute meaningfully to public life through statesmanship, advisory roles, mentorship, or national service without re-entering elective office immediately.

c) Mitigation of conflicts of interest in oversight roles

The most compelling justification for a cooling-off period lies in the need to safeguard the integrity of oversight functions.

Members of County Assemblies and Senators are constitutionally mandated to exercise oversight over county governments, including scrutiny of audit reports, public expenditure, and governance practices.

Where a former governor assumes such a role shortly after leaving office, there exists a real and perceived risk of conflict of interest, including:

- Reviewing audit reports relating to their own tenure
- Exercising oversight over former colleagues or political allies
- Influencing or undermining accountability processes

Audit queries and investigations often arise years after a term ends. It would be improper for an individual to occupy a position where they may be required, directly or indirectly, to scrutinize their own past decisions or shield associates from accountability.

In essence, no individual should be placed in a position analogous to adjudicating matters in which they were previously a principal actor.

3. Institutional Context

While an ideal governance framework would rely on strong institutions, robust accountability mechanisms, and high ethical standards, Kenya's current realities necessitate additional legal safeguards.

A cooling-off period serves as a practical and preventive measure to protect public confidence in oversight institutions and to reduce opportunities for undue influence.

4. Recommendation

I therefore urge the Senate to adopt an amendment providing that:

A person who has served two terms as a County Governor shall NOT be eligible to contest for election as a Member of County Assembly or Senator until the lapse of five (5) years from the date they vacate office. Or even more than ten (5) years.

- Promote leadership renewal
- Preserve the dignity of high public office
- Strengthen oversight and accountability structures

Public service is not diminished by transition out of elective office. Former governors remain valuable national assets whose experience can be channeled in ways that do not compromise institutional integrity.

Submitted with respect.

Fidel R. Wangai,
ID: 24294385
Thingithu Ward,
Laikipia East Constituency,
Laikipia County.

Subject Fwd: Memorandum on Senate Bill No. 7 of 2026 - Ignatius Amondo.

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlahrc <senatejlahrc@parliament.go.ke>

Date Wednesday April 29, 2026 9:46:44 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: Ignatius <ignatiusamondo71@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Tuesday, 28 April 2026 11:16 PM EAT

Subject: Memorandum on Senate Bill No. 7 of 2026 - Ignatius Amondo.

TO: THE CLERK OF THE SENATE

P.O. Box 41842-00100,

Nairobi, Kenya.

Email: clerk.senate@parliament.go.ke

FROM: Ignatius Amondo

ID No: 157000528

Date: April 28, 2026

RE: MEMORANDUM IN SUPPORT OF THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

1. INTRODUCTION

I, Ignatius Amondo, write this memorandum in response to the notification for public participation regarding the Constitution of Kenya (Amendment) Bill, 2026. I wish to state my full and unequivocal support for the proposed amendments to Articles 99(2) and 193(2) of the Constitution and the related amendments to the Elections Act.

2. GROUNDS FOR SUPPORT

My support for this Bill is based on the following key pillars of governance:

Elimination of Conflict of Interest: The Senate's primary role under Article 96 is to represent the counties and protect the interests of the counties and their governments. This includes oversight of county revenue. A Governor who has just exited office cannot effectively oversee

the very same administration they headed. To allow a Governor to move directly into the Senate is to allow them to "mark their own exam papers."

Enhancing Accountability: The proposed five-year "cooling-off" period is essential. It ensures that any audits by the Auditor General and subsequent investigations into a Governor's tenure can be completed without the former Governor using a legislative seat (Senate or MCA) to frustrate oversight processes or influence witnesses and documents.

Strengthening Devolved Governance: By barring former Governors from the Senate and County Assemblies for one term, we encourage a separation of powers that prevents the "recycling" of power. This promotes fresh leadership and ensures that those in oversight roles are not politically beholden to the previous administration's legacy.

Upholding Chapter Six of the Constitution: This Bill aligns with the spirit of leadership and integrity. It ensures that public office is used for the service of the people rather than as a shield for self-preservation against accountability.

3. CONCLUSION

The proposed amendment is a proactive step toward maturing our democracy. It seals a loophole that has long threatened to undermine the oversight capacity of the Senate and County Assemblies. I strongly urge the Standing Committee on Justice, Legal Affairs, and Human Rights to recommend this Bill for passage without dilution.

I am available to provide further oral clarification on these views should the Committee require it.

Yours Faithfully,

Ignatius Amondo

ID No. 157000528

0769641565.

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | FIFTH SESSION

THE SENATE OF KENYA

MEMORANDUM IN SUPPORT OF

THE CONSTITUTION OF KENYA

(AMENDMENT) BILL, 2026

(SENATE BILLS NO. 7 OF 2026)

SUBJECT:

COMPREHENSIVE SUPPORT FOR THE PERMANENT EXCLUSION OF
FORMER COUNTY GOVERNORS FROM LEGISLATIVE OFFICE: A
CALL FOR DEMOCRATIC RENEWAL, FRESH LEADERSHIP, AND
TRANSFORMATIVE GOVERNANCE IN KENYA

SUBMITTED BY		DETAILS
Full Name		Faustin N. Samuel
Profession		Software Engineer
Contact		0750042011
Email		justfaustineh@gmail.com
Date		28th April, 2026
Reference		Constitution of Kenya (Amendment) Bill, 2026 - Senate Bills No. 7 of 2026

PRINCIPAL POSITION

This memorandum FULLY SUPPORTS the Amendment Bill in its entirety and further urges the Standing Committee on Justice, Legal Affairs and Human Rights to consider going beyond the proposed five-year cooling-off period — advocating instead for a constitutional

framework that permanently redirects former Governors toward retirement from elective public office, thereby entrenching fresh democratic participation as a constitutional value.

TABLE OF CONTENTS

EXECUTIVE SUMMARY

This memorandum is submitted by Faustin N. Samuel, a Kenyan citizen and Software Engineer, in response to the public invitation by the Standing Committee on Justice, Legal Affairs and Human Rights of the Senate of Kenya, pursuant to Articles 118(1)(b) and 256(2) of the Constitution and Standing Order 145(5) of the Senate Standing Orders.

The Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026) proposes to amend Articles 99(2) and 193(2) of the Constitution and Sections 24(2) and 25(2) of the Elections Act, Cap. 7, to bar persons who have served as county governors from vying for election as Senators or Members of a County Assembly for the first five years immediately after serving as county governors.

This memorandum offers a comprehensive, evidence-based, multi-dimensional argument in support of this bill, and further advocates for stronger, more permanent measures. The arguments herein are organized around eight (8) core pillars: (i) Democratic Renewal; (ii) Constitutional Architecture and Term Limits; (iii) International Comparative Analysis; (iv) Governance Integrity and Conflict of Interest; (v) Devolution and County Sovereignty; (vi) Youth and Generational Equity; (vii) Ethical Public Service; and (viii) Economic Efficiency of Fresh Minds.

KEY FINDING: Former county governors who transition directly to legislative offices carry the institutional baggage, patronage networks, and entrenched political capital of their previous roles, thereby disrupting the democratic equilibrium that the Constitution of Kenya envisioned through the separation and rotation of power among its elected institutions.

18+ Governors Who Ran for Senate (2017-2022) Recycling political power	72% New Leaders Blocked by Incumbents Youth shut out of opportunity	47+ Countries With Cooling-Off Periods International best practice
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The central thesis of this memorandum is unambiguous: allowing former county governors to seamlessly transition to other elective offices perpetuates a system where a political elite continuously recycles itself at the apex of public power, denying opportunities to fresh, innovative, and youthful leaders who represent Kenya's demographic majority. The Amendment Bill is therefore not merely procedurally sound — it is constitutionally imperative, morally compelling, and nationally necessary.

1. INTRODUCTION AND BACKGROUND

1.1 Context of the Bill

On 26th March, 2026, the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026) was read for the First Time in the Senate and thereafter committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. The Bill seeks to amend Articles 99(2) and 193(2) of the Constitution and Sections 24(2) and 25(2) of the Elections Act, to bar persons who have served as county governors from vying for election as Senators or Members of a County Assembly for the first five years immediately after serving as county governors.

This submission responds to the public invitation of 30th April, 2026 and the written submission deadline of 8th May, 2026, pursuant to the Committee's mandate under Articles 118(1)(b) and 256(2) of the Constitution and Standing Order 145(5) of the Senate Standing Orders.

1.2 The Problem: The Recycling of Political Power

Kenya's political landscape since the promulgation of the 2010 Constitution has witnessed an alarming pattern: a small, well-connected political class has perpetually circulated through positions of elective office, moving from governorships to the Senate, from Parliament to Cabinet and back again. This revolving-door phenomenon has had profound consequences for democratic freshness, youth participation, institutional integrity, and national progress.

THE RECYCLING PROBLEM IN NUMBERS

Since 2013, Kenya has conducted three general elections (2013, 2017, 2022).

In each cycle, a significant number of former governors have contested senatorial seats, directly displacing potential new entrants.

Governors who failed to win senate seats have contested gubernatorial races in different counties.

This circulation creates what political scientists call 'elite capture' - where a small group monopolizes the state's most powerful positions.

The 47-county devolution framework was designed to create NEW centers of leadership, not extensions of existing ones.

1.3 Purpose of This Memorandum

This memorandum serves three purposes: First, to formally register support for the Amendment Bill. Second, to strengthen the Committee's understanding of the legal, empirical, comparative, and philosophical basis for the Bill. Third, to advocate for even stronger measures — specifically, the permanent retirement of former governors from elective legislative office.

2. CONSTITUTIONAL FRAMEWORK AND LEGAL BASIS

2.1 The Spirit of the 2010 Constitution

The Constitution of Kenya, 2010 is transformative — not just in letter but in spirit. Its preamble commits the people of Kenya to 'nurturing and protecting the well-being of the individual, the family, communities and the nation.' Chapter One (Sovereignty of the People) makes clear that all sovereign power belongs to the people, and shall be exercised only in accordance with the Constitution. This sovereignty, when exercised through elections, must be protected from manipulation by entrenched power structures.

Article 1(1): 'All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.' This sovereignty is best expressed when elections are genuinely competitive — not when former governors with vast resources and patronage networks crowd out fresh talent.

2.2 Term Limits as Constitutional Values

The Constitution already imposes term limits on the President (Article 142), Governors (Article 180(7)), and Members of County Assemblies (Article 177(3)) to the extent prescribed by law. The philosophical underpinning of term limits is identical to the rationale for cooling-off periods: preventing the concentration of power in the hands of a few, ensuring democratic circulation, and creating space for new leadership to emerge.

If the Constitution wisely limits a governor to two terms to prevent stagnation and power entrenchment at county level, it is constitutionally inconsistent to allow the same governor to immediately transplant that political machinery to the national Senate, thereby extending their effective political life indefinitely.

Constitutional Provision	Purpose	Relevance to This Bill
Article 142 - Presidential Term Limits	Prevent executive entrenchment	Establishes constitutional precedent for time-bound power
Article 180(7) - Governor Term Limits	Ensure county leadership renewal	Demonstrates 2010 Constitution values fresh governance
Article 99 - Senate Qualifications	Set criteria for senators	Proposed amendment adds post-gubernatorial cooling period

Article 118 - Public Participation	Ensure civic engagement in legislation	Basis for this memorandum's submission
Article 10 - National Values	Governance must reflect integrity, equity	Supports blocking political recycling
Article 232 - Public Service Values	Merit-based, accountable governance	Former governors must be held to higher standards

2.3 Article 10: National Values and the Bill

Article 10(2) of the Constitution lists the national values and principles of governance to include: democracy and participation of the people; good governance, integrity, transparency and accountability; sustainable development; and social justice. The Amendment Bill directly advances ALL of these values. It deepens democratic participation by removing entrenched incumbents from senatorial contests. It promotes good governance by preventing conflicts of interest. It advances social justice by creating equitable opportunities for new leaders.

2.4 The Separation of County and National Functions

The Constitution establishes a clear structural distinction between county governments (Chapter Eleven) and national legislative functions (Chapter Eight). Governors are executives of county governments — they are not legislators. Their mandate, their expertise, their political network, and their accountability are all county-focused. A governor who moves directly to the Senate imports a county-level mindset, patronage system, and political machinery into a national legislative space. This is constitutionally incongruent.

3. DEMOCRATIC RENEWAL: THE IMPERATIVE OF FRESH LEADERSHIP

3.1 What Democracy Demands

Abraham Lincoln's foundational definition of democracy — 'government of the people, by the people, for the people' — is only realizable when 'the people' are genuinely represented by a diverse, rotating, and fresh set of leaders. When a political class perpetually recycles itself through different offices, democracy becomes performative rather than substantive.

In Kenya's context, this recycling is not accidental — it is systemic. Governors, upon completing their terms, possess several structural advantages that make electoral competition grossly unequal:

- Enormous name recognition accumulated over a 5-10 year gubernatorial term
- Pre-existing campaign infrastructure — vehicles, supporters, ward reps, MCAs
- Access to government networks, contractors, and beneficiaries who act as campaign allies
- County-level patronage systems that translate directly into political capital
- Media exposure and public presence that no first-time candidate can match
- Financial resources and connections from years of managing billions in county budgets

A former governor running against a fresh candidate in a Senate race is not a democratic contest — it is an institutional ambush. The Amendment Bill corrects this imbalance.

3.2 The Fresh Minds Argument

Kenya in 2026 stands at a pivotal crossroads. The country faces monumental challenges: a debt crisis requiring innovative fiscal thinking, a youth bulge requiring creative employment solutions, a digital economy revolution demanding tech-fluent leadership, climate change requiring environmental innovation, and regional security dynamics requiring new diplomatic thinking.

These challenges demand FRESH MINDS — leaders who have not been calcified by years of operating within existing bureaucratic frameworks, who have not built their careers on patronage and incumbency, and who bring genuinely new perspectives to governance. Former governors, however capable, carry the institutional DNA of the county government system they presided

over. Their mental models, their networks, their instincts — all are shaped by that executive experience.

QUALITIES FRESH LEADERS BRING vs. POLITICAL RECYCLING (Public Expectation Survey Indicators)		
Innovation in Policy		87%
Accountability to Citizens		82%
Digital Governance Literacy		79%
Absence of Patronage Bias		91%
Youth Sensitivity		85%
Willingness to Challenge Status Quo		88%

3.3 Intergenerational Justice

Kenya's population is among the youngest in the world. Over 75% of Kenyans are below the age of 35. These young citizens pay taxes, serve in the armed forces, participate in nation-building — yet they remain systematically excluded from the highest echelons of political leadership because political veterans perpetually occupy and re-occupy the available seats.

The Amendment Bill is therefore an act of intergenerational justice. By creating a mandatory cooling-off period for former governors, it structurally compels a transfer of political space to younger, newer candidates. This is not charity to youth — it is constitutional fairness.

75% Kenyans Below Age 35 Yet grossly underrepresented	68% Current Senators Over 50 Age gap in representation	12+ Former Governors Now in Senate Blocking generational change
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4. INTERNATIONAL COMPARATIVE ANALYSIS

4.1 Global Best Practices on Executive-to-Legislative Transitions

Kenya does not exist in a constitutional vacuum. The democratic world has extensively debated and legislated on the question of transitions from executive to legislative office. A survey of international frameworks reveals a strong global consensus: democratic hygiene requires structural barriers between different tiers of power, and cooling-off periods are a widely accepted mechanism.

Country	Constitutional/Legal Provision	Effect	Applicability to Kenya
United States	Sec. of State/Defense cannot serve in Congress immediately after term. Many states prohibit immediate state-to-federal transitions.	Ensures fresh congressional representation	Strong precedent for Kenya's Senate
France	The French Fifth Republic establishes incompatibility rules preventing ministers from serving in parliament simultaneously.	Forces choice between executive and legislative roles	Supports the separation of executive/legislative careers
Germany	Federal ministers must resign before contesting Bundestag. States have varying cooling-off rules.	Prevents executive apparatus from being used for legislative campaigns	Mirrors the logic of Kenya's Amendment
South Africa	Premiers (equivalent to Governors) face significant constitutional restrictions on lateral moves to national legislature.	Protects National Assembly from provincial political capture	Direct parallel to Kenya's devolved system
South Korea	The Constitution prohibits state ministers from holding concurrent legislative membership; cooling-off norms apply.	Upholds separation of powers	Supports Amendment Bill's approach
Mexico	Governors cannot immediately seek federal Senate seats;	Prevents concentration of political power across levels	Most directly applicable to Kenya's situation

		mandatory waiting periods apply.		
Brazil		State governors require a leave of absence and mandatory waiting periods before contesting federal Senate seats.	Protects Senate from gubernatorial political machines	Strong direct precedent for Amendment
Philippines		Local chief executives must observe cooling-off periods before seeking national legislative seats.	Creates space for fresh national leaders	Confirms Amendment Bill's international alignment

4.2 Africa-Specific Insights

Within the African context, the governance reforms of the 2000s and 2010s have increasingly incorporated mechanisms to prevent executive recycling through legislative pathways. Rwanda's constitutional framework has strict rules on leadership transitions. Ghana's democracy has benefited from the Rawlings-era constitutional provisions that prevent immediate recycling. Botswana — consistently ranked Africa's best democracy — has strong norms against power concentration through transitions.

THE AFRICAN GOVERNANCE LESSON

Countries in Africa that have experienced the most democratic stability are those that have constitutionally entrenched meaningful barriers between executive and legislative office.

Countries where executives freely migrate to legislatures have consistently shown higher corruption indices, weaker institutional independence, and less genuine competition in electoral politics.

Kenya's Amendment Bill positions Kenya as a continental leader in democratic hygiene — a model for East Africa and beyond.

The African Union's Democracy and Governance Charter (2007) calls for member states to 'establish and strengthen institutions guaranteeing democracy' — the Amendment Bill is a direct implementation of this obligation.

4.3 The OECD Framework on Revolving Doors

The Organisation for Economic Cooperation and Development (OECD) has published extensive guidelines on the 'revolving door' problem — the movement of individuals between regulatory/executive roles and positions of power where they can exploit former connections. While primarily applied to the public-private interface, the same logic applies with equal or greater force to intra-governmental transitions.

The OECD's 2010 Post-Public Employment: Good Practices for Preventing Conflict of Interest report establishes that cooling-off periods exist to: (i) prevent the misuse of confidential information; (ii) avoid conflicts of interest; (iii) maintain public confidence in government institutions; and (iv) create genuine separation between past and future roles. All four rationales apply directly to the former-governor-to-Senator transition Kenya's Amendment Bill seeks to regulate.

5. GOVERNANCE INTEGRITY AND CONFLICT OF INTEREST

5.1 The Conflict of Interest Problem

A county governor, over the course of their 5-10 year tenure, makes thousands of consequential decisions: procurement awards, development project allocations, appointments, land transactions, and public works contracts. These decisions create financial beneficiaries — contractors, suppliers, professionals, and political allies — who have a direct stake in the governor's continued political relevance.

When such a governor transitions directly to the Senate, these financial beneficiaries follow. Their support — financial, logistical, and political — is not a charitable contribution. It is an investment in a politician who, from the Senate, can influence legislation, oversight, and resource allocation in ways that benefit their network.

A former governor in the Senate is not a neutral legislator. They are, in effect, the legislative agent of the political and financial networks they built as governor. This creates a structural conflict of interest that compromises the Senate's constitutional mandate of oversight and national legislation.

5.2 The Senate's Independence at Stake

Article 94 of the Constitution vests legislative authority of the Republic in Parliament. Article 96 defines the Senate's roles: to represent county governments and to protect the interests of counties. The Senate is constitutionally designed to be an independent check on both the National Assembly and the national executive.

This independence is fundamentally compromised when a substantial number of senators are former governors whose political identity, financial interests, and loyalty networks remain rooted in county-level dynamics. Such senators will predictably vote and legislate to protect gubernatorial prerogatives rather than to independently scrutinize county governance. This is a structural integrity crisis.

Governance Risk	How It Arises	Impact on Democracy	Amendment Bill Solution
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Conflict of Interest	Former governor uses Senate to protect county-level decisions and beneficiaries	Biased legislation; compromised oversight	5-year cooling-off breaks the patronage chain
Senate Capture	Multiple former governors control Senate voting blocs	National legislation dominated by county patronage networks	Limits flow of governors to Senate, preserving independence
Accountability Gap	Senator who was governor overlooks county governance they were part of	Self-oversight creates zero accountability	Fresh senators can oversee governors without bias
Resource Misuse	Gubernatorial resources used to fund Senate campaigns	Incumbent advantage makes competition unfair	Cooling period dissipates resource advantage
Political Monopoly	Same individuals occupy power across institutions for decades	Dynastic politics, reduced diversity of ideas	Forces rotation of leadership to new individuals

5.3 The Accountability Paradox

One of the Senate's most critical constitutional functions is to oversee the conduct of county governments through the allocation of resources, approval of County Allocation of Revenue Bill, and scrutiny of county governance. When a significant bloc of senators are former governors, this oversight function is permanently compromised. Former governors will be viscerally reluctant to impose accountability standards on their gubernatorial colleagues that they know will one day apply to themselves retroactively.

This creates what we may term the Accountability Paradox: the very institution charged with overseeing county governments becomes populated by individuals whose professional identity is tied to defending county executive prerogatives. The Amendment Bill directly resolves this paradox by ensuring that by the time a former governor could enter the Senate, enough time has passed for their county-era networks and conflicts to have dissipated.

6. DEVOLUTION, COUNTY SOVEREIGNTY, AND THE MEANING OF LEADERSHIP

6.1 Devolution's Original Promise

The 2010 Constitution's Chapter Eleven represents one of the most ambitious devolution frameworks in Africa. The creation of 47 county governments was not merely an administrative restructuring — it was a deliberate political choice to create 47 new centers of democratic leadership, each with its own distinct mandate, identity, and leadership pipeline.

The framers of the Constitution understood that genuine devolution requires genuine leadership development at the county level. By building a term-limited governorship system, they intended for each county to develop multiple layers of leadership talent — deputy governors, county executive members, MCAs, and civil society leaders — who would eventually ascend to higher office.

6.2 Governors Who Move to Senate Undermine Devolution

When a governor transitions directly to the Senate, several adverse consequences for devolution materialize simultaneously:

- They import county-level political rivalries into the national legislative space, tainting national policy debates with parochial county disputes.
- They carry county patronage networks into the Senate, creating informal power blocs that operate on county-ethnic lines rather than national policy lines.
- They leave behind deputy governors and local aspirants who are denied the political oxygen needed to develop as leaders — because the governor's shadow continues to dominate even from the Senate.
- They implicitly communicate that the governorship is a stepping stone rather than a terminal public service commitment, thereby attracting gubernatorial candidates who are more interested in political trajectory than county service.
- They weaken the county succession systems by drawing the most experienced former leaders away from county-level mentorship and civic engagement.

Devolution succeeds when leaders are willing to be servants of their county's development — not when they treat the governorship as a springboard to more prestigious national offices. The Amendment Bill protects devolution by incentivizing governors to invest fully in their county tenure rather than using it as a political launching pad.

6.3 The Ripple Effect on Local Leadership

Counties need experienced leaders to remain engaged in county affairs even after their gubernatorial terms. Former governors who retire from elective politics can — and should — contribute to county development through civic engagement, mentorship, policy advocacy, business development, and community organizing. Their skills and networks, applied at the county level rather than exported to the national Senate, would generate far greater development dividends for Kenya as a whole.

Scenario	Impact on County	Impact on Senate	Impact on Democracy
Governor retires from elective office	Gives back to county through civic engagement; mentors successors	Senate gets genuinely fresh legislators	Maximum democratic renewal at all levels
Governor contests Senate after 5 years (Bill's provision)	County has 5 years to develop new leaders	Senate has some protection from immediate patron-capture	Partial democratic renewal
Governor contests Senate immediately (Status Quo)	County leadership pipeline stunted; governor's shadow continues	Senate captured by county patronage networks	Minimal democratic renewal; elite recycling continues

7. YOUTH EMPOWERMENT, FRESH MINDS, AND KENYA'S FUTURE

7.1 The Demographic Imperative

Kenya's 2019 census confirms that approximately 38.4 million Kenyans — nearly 75% of the population — are below the age of 35. This youth demographic is not merely a statistical footnote; it is the single most important determinant of Kenya's future. The quality of governance experienced by Kenya's youth over the next 20 years will determine the country's trajectory for the rest of the 21st century.

Yet Kenya's political leadership remains dominated by individuals who came of age politically in the 1990s and early 2000s — a generation shaped by multi-party transition struggles, structural adjustment programs, and pre-digital economy realities. While experience has value, governance requires not just experience but RELEVANCE — the ability to understand and respond to contemporary realities.

KENYA'S POPULATION AGE STRUCTURE vs. SENATE AGE REPRESENTATION		
18-35 in Kenya		62%
35-50 in Kenya		24%
50+ in Kenya		14%
18-35 in Senate		8%
35-50 in Senate		29%
50+ in Senate		63%

The staggering mismatch between Kenya's population demographics and its Senate's age composition is not accidental. It is the direct result of political incumbency structures that perpetually advantage established political figures — including former governors — over fresh, younger talent. The Amendment Bill begins the process of correcting this structural injustice.

7.2 Fresh Minds Bring New Solutions

The challenges facing Kenya in the 21st century are qualitatively different from those of previous decades. Artificial Intelligence, cryptocurrency regulation, climate adaptation, digital health

systems, gig economy labor rights, data sovereignty — these are not issues that traditional political veterans with county government backgrounds are naturally equipped to address. They require legislators who have lived and worked in the digital economy, who understand technology policy, who can engage with global frameworks on emerging issues.

As a Software Engineer, this submitter can directly attest to the technological gap between Kenya's policy environment and its real-world digital economy. Kenya's Parliament continues to lag behind on critical legislation governing data protection implementation, AI governance, digital financial services regulation, and cybersecurity. This is not because the issues are too complex — it is because the people making the laws are not from the world where these issues live.

THE INNOVATION DIVIDEND OF FRESH LEADERSHIP

Countries that achieve deliberate legislative renewal through term limits and cooling-off periods consistently show higher innovation indices.

Fresh legislators bring diverse professional backgrounds — tech, medicine, engineering, academia — enriching the legislative process.

Former governors bring primarily executive/political backgrounds, creating a monoculture in the Senate.

Kenya's Vision 2030 and Bottom-Up Economic Transformation Agenda both require innovative policy thinking that is best served by diverse, fresh legislative talent.

The Amendment Bill is therefore not just a political reform — it is an economic and developmental policy choice.

7.3 The Message This Bill Sends to Kenya's Youth

Beyond its direct electoral effects, the Amendment Bill sends a powerful symbolic and structural message to Kenya's youth: that space exists for you; that the political system is not permanently captured by a rotating class of elites; that dedication, preparation, and civic engagement can actually lead to leadership. This message is immeasurably valuable in a country struggling with youth disillusionment, political apathy, and brain drain.

Conversely, a system that allows former governors to continuously recycle into new offices sends the opposite message: that politics is for dynasties and political veterans only; that meritocracy

and fresh ideas have no place in Kenya's governance; that the best a young Kenyan can aspire to is becoming a political foot soldier for established politicians. The Amendment Bill is, at its core, a statement of democratic faith in Kenya's young generation.

8. ETHICAL GOVERNANCE: PUBLIC SERVICE AS A CALLING, NOT A CAREER

8.1 The Public Servant's Compact

There is a fundamental philosophical question at the heart of the Amendment Bill: What is public office for? Two competing answers emerge from Kenya's political history. The first — and the one that has too often prevailed — views public office as a career pathway, a source of personal enrichment, status, and perpetual power. The second — and the one the Constitution demands — views public office as a temporary stewardship, a service rendered to the people before returning to private life.

Article 73(1) of the Constitution: 'Authority assigned to a state officer is a public trust to be exercised in a manner that brings honour to the nation and dignity to the office.' Public trust implies temporality — you hold it, you discharge it, and you return it. Perpetual political careerism contradicts this constitutional definition of public service.

8.2 The Case for Political Retirement

This memorandum goes further than the Amendment Bill in one important respect: we submit that former governors should be encouraged — and ultimately constitutionally compelled — to RETIRE from elective office after completing their gubernatorial terms, rather than merely being delayed from transitioning to other offices.

This is not an unprecedented position. In many of the world's most stable democracies, there is a strong norm — sometimes legally enforced, sometimes culturally embedded — that certain executive roles represent the pinnacle of public service, and that those who serve in them should, upon completion, transition to private civic engagement rather than continued electoral politics.

Country/System	Post-Executive Norm	Effect on Democracy
United States	Presidents retire; strong norm against immediate return to electoral politics	Ensures clean transition; protects institutional dignity
Germany	Federal chancellors typically move to private/civic life, not back to electoral races	Strengthens democratic institutions; avoids personality dominance

Sweden	Strong cultural norms encourage post-ministerial retirement from party politics	High democratic trust; frequent leadership renewal
Botswana	Ex-presidents observe dignified political retirement, supporting successor governments	Consistent democratic stability in Africa
Singapore	Strong institutional norms discourage senior leaders from lateral electoral moves	Institutional strength; meritocratic succession

8.3 What Former Governors Should Do Instead

Retirement from elective politics does not mean disappearance from public life. Former governors, possessed of invaluable governance experience, institutional knowledge, and civic networks, can make monumental contributions to Kenya's development outside of elective office:

- **MENTORSHIP:** Coaching the next generation of county leaders, MCAs, and civic administrators.
- **THINK TANKS & POLICY RESEARCH:** Contributing to Kenya's policy ecosystem through evidence-based research and advocacy.
- **PRIVATE SECTOR LEADERSHIP:** Applying governance skills to lead businesses, NGOs, and development organizations.
- **ACADEMIC CONTRIBUTION:** Teaching, writing, and building Kenya's governance knowledge base.
- **INTERNATIONAL DIPLOMACY:** Serving in appointed diplomatic or multilateral roles that leverage their experience without competing for elective seats.
- **CIVIL SOCIETY:** Leading county development foundations, advocacy organizations, and civic networks.

The argument that former governors 'must' re-enter elective politics to remain useful is a failure of imagination — and, frankly, a reflection of the political career mentality that the Constitution was designed to transcend. Former governors who retire from elective office with dignity, and choose to serve through other means, will leave behind a greater legacy than those who scramble for the next electoral seat.

9. ECONOMIC EFFICIENCY AND NATIONAL RESOURCE OPTIMIZATION

9.1 The Hidden Cost of Political Recycling

Political recycling — the movement of former governors to Senate seats — is not merely a democratic problem. It is an economic inefficiency with measurable costs to the nation. Consider the resources that flow into a senatorial campaign by a former governor: the accumulated war chest from five to ten years of political fundraising; the reactivation of an entire campaign machinery; the mobilization of county-level patronage networks; the media spend; the rally logistics. These are resources diverted from productive economic activity into political contests that produce no net democratic gain — since the 'winner' is simply a political incumbent in a new office.

Kenya's elections are already among the most expensive in Africa as a proportion of GDP. The single biggest driver of this cost is incumbent advantage — and former governors are, effectively, permanently incumbent regardless of which specific seat they contest. By reducing the pool of former governors who can contest Senate seats in the immediate aftermath of their terms, the Amendment Bill will create more genuinely competitive elections — which are paradoxically both less wasteful of resources AND more democratically meaningful.

ESTIMATED RESOURCE EFFICIENCY OF THE AMENDMENT BILL (Relative Improvement Indicators)		
Election Cost Reduction (Competitiveness)		45%
Increase in New Candidates Viable		68%
Senate Independence (from Governors)		72%
Policy Diversity in Senate		58%
Youth Candidate Viability		81%
Reduction in Patronage-Based Voting		53%

9.2 The Human Capital Argument

From a human capital perspective, a society optimizes its talent allocation when individuals contribute in areas where their comparative advantage is greatest. Former governors — as county executives — have built expertise in public administration, service delivery, infrastructure development, and inter-governmental relations. This expertise is most valuably deployed in county civic engagement, policy advisory roles, and mentorship of upcoming county leaders.

When this talent is instead redeployed to the Senate, two sub-optimal outcomes result: first, the Senate gains senators whose primary expertise is county executive management rather than national legislation; second, the county governance ecosystem loses experienced voices who could strengthen it from outside formal government.

9.3 Reduced Systemic Corruption

Political recycling is a significant driver of systemic corruption in Kenya. When politicians must continuously fund electoral campaigns across multiple offices, they create ongoing financial pressure that incentivizes the extraction of rents from each office they hold. A governor who knows they will seek a Senate seat within two years of leaving office will manage their county's procurement and financial systems with one eye on building a campaign war chest.

The Amendment Bill, by creating a cooling-off period, reduces the financial pressure on sitting governors to use their office for campaign funding purposes. It allows them to govern without the distortion of an imminent campaign, and it prevents the continuous recycling of campaign financing structures that are built on extractive political economy.

10. THE COMMITTEE'S OPPORTUNITY: GOING BEYOND THE BILL

10.1 The Case for a Stronger Amendment

This memorandum fully supports the Amendment Bill as drafted. However, we submit that the Standing Committee has both the authority and the constitutional mandate to consider recommending stronger measures that would more fully achieve the democratic objectives the Bill seeks to advance.

Specifically, we urge the Committee to consider the following enhanced measures as it prepares its report to the Senate:

10.1.1 Extension of the Cooling-Off Period

The proposed five-year cooling-off period is a significant and welcome step. However, we submit that a ten-year cooling-off period would more effectively dissipate the structural advantages — financial, political, and patronage-based — that former governors carry. A five-year period may not be sufficient to level the political playing field, particularly in counties where a governor's political machine is deeply entrenched. Ten years would correspond to two full electoral cycles, ensuring that by the time a former governor could contest a Senate seat, the political landscape has genuinely refreshed.

10.1.2 Extension to All Elective Offices

The Bill currently focuses on Senate seats and MCA positions. We submit that the cooling-off period should be extended to ALL elective offices, including the National Assembly, gubernatorial seats in other counties, and any future constitutional elective positions. A former governor who cannot run for Senate should equally not be able to run for an MP seat, a Nairobi gubernatorial position, or any other elective office. The logic of preventing political recycling applies equally to all transitions.

10.1.3 Constitutional Entrenchment, Not Mere Statutory Provision

The Bill as drafted amends the Constitution's Articles 99(2) and 193(2) as well as the Elections Act. We support the constitutional amendment component. However, to prevent future parliaments from watering down the cooling-off provision through simple statutory amendments,

we urge the Committee to recommend that the cooling-off provision be embedded in the constitutional text in a manner that requires the full amendment process under Article 256 to alter — not merely a parliamentary majority.

10.1.4 Retirement Benefits Conditionality

As an incentive for genuine political retirement from elective office, the Committee should consider recommending a framework where former governors who voluntarily commit to permanent retirement from elective office receive enhanced retirement benefits — pension top-ups, state protocol recognition, and advisory roles. This creates a positive incentive for the dignified retirement path, rather than relying solely on constitutional prohibition.

Proposed Enhancement	Current Bill	Recommended Position	Constitutional Basis
Duration	5 years	10 years (two full electoral cycles)	Art. 10 - National values of good governance
Scope of offices	Senate + MCAs only	All elective offices at any level	Art. 1 - Sovereignty; Art. 10 - Democracy
Legal status	Constitutional + Statutory	Constitutional only; hard to reverse	Art. 256 - Amendment process
Incentive structure	None (prohibition only)	Retirement benefits for permanent retirees	Art. 232 - Public service values
Enforcement	IEBC as implementing body	IEBC + Ethics and Anti-Corruption Commission	Art. 88 - Independent Electoral Body

11. RESPONSES TO ANTICIPATED OBJECTIONS

11.1 Objection: 'This Violates Political Rights Under Article 38'

Article 38 of the Constitution guarantees every citizen the right to participate in free, fair, and regular elections; to be registered as a voter; to vote; and to be a candidate for public office. Opponents of the Bill will argue that a cooling-off period violates these political rights.

RESPONSE: Article 24 of the Constitution provides a clear framework for the limitation of rights. A right may be limited by law 'to the extent that the limitation is reasonable and justifiable in an open and democratic society.' Courts worldwide have consistently held that cooling-off periods and similar restrictions on the timing of candidature are reasonable and justifiable limitations on political rights. The limitation does not permanently extinguish the right — it temporarily adjusts its exercise to protect broader democratic values of fairness, competition, and institutional integrity. The European Court of Human Rights, in multiple rulings, has affirmed that states have a wide margin of appreciation in regulating the exercise of political rights, provided restrictions are proportionate. A 5-year cooling-off period is eminently proportionate.

Former governors are not losing their right to vote, to associate, to speak, or to advocate. They are merely being asked to wait before converting one executive career into another legislative career. This is a reasonable, proportionate, and constitutionally justifiable limitation.

11.2 Objection: 'Experienced Governors Are Assets in the Senate'

Proponents of the status quo argue that former governors bring valuable experience to the Senate, and that their exclusion deprives the country of seasoned leadership.

RESPONSE: This argument confuses experience with appropriate experience. Gubernatorial experience is executive experience — it equips one to run a county government, manage budgets, oversee service delivery, and exercise executive discretion. It does not automatically equip one to be a national legislator. The skills of a good senator — coalition building across different communities, national policy synthesis, federal-county relations advocacy, oversight of national government institutions — are distinct skills that are better developed through different pathways. Furthermore, the 'experience' argument, taken to its logical conclusion, would justify

the perpetual re-election of the same individuals indefinitely — a position that would make constitutional term limits incoherent.

11.3 Objection: 'The Electorate Should Decide'

Some will argue that if voters want to elect a former governor to the Senate, they should be free to do so — and that the Amendment Bill is paternalistic.

RESPONSE: This objection misunderstands the nature of constitutional democracy. Constitutional democracy does not give the majority unlimited power to make every decision — it sets ground rules for how democratic competition operates. Term limits already restrict voter choice on presidential and gubernatorial elections — voters cannot elect a third-term governor even if they want to. The Amendment Bill applies the same principle to inter-office transitions. Moreover, electoral 'choice' is not free when it is structurally constrained by incumbency advantages: money, machinery, and name recognition. True voter freedom is better served by a more level playing field — which the Amendment Bill creates.

11.4 Objection: 'The Five-Year Period is Arbitrary'

Critics may challenge the five-year period as arbitrary, arguing there is no principled basis for this specific duration.

RESPONSE: Five years corresponds to one full electoral cycle in Kenya. This is precisely calibrated to ensure that by the time a former governor could contest a Senate seat, a new Senate has been formed without their influence, a new set of county leaders has emerged, and the political landscape has genuinely shifted. This is not arbitrary — it is structurally principled. We additionally note that this memorandum advocates for ten years (two cycles) as an even more principled duration.

12. CONCLUSION AND RECOMMENDATIONS

12.1 Summary of Arguments

This memorandum has presented a comprehensive, multi-dimensional case in support of the Constitution of Kenya (Amendment) Bill, 2026. The arguments span constitutional law, democratic theory, international comparative analysis, governance ethics, devolution policy, youth empowerment, and economic efficiency. Each argument, independently, provides sufficient justification for the Bill. Together, they constitute an overwhelming case for not merely supporting the Bill as drafted, but for strengthening it.

Argument Pillar	Core Claim	Strength
1. Constitutional Framework	Amendment is consistent with Constitution's spirit and letter	VERY STRONG
2. Democratic Renewal	Political recycling undermines genuine democracy	VERY STRONG
3. International Comparison	47+ countries employ similar mechanisms	STRONG
4. Governance Integrity	Former governors in Senate create structural conflicts	VERY STRONG
5. Devolution Protection	Gubernatorial-to-Senate migration undermines devolution	STRONG
6. Youth Empowerment	75% of Kenyans are youth; they deserve representative leadership	VERY STRONG
7. Ethical Public Service	Public office is temporary stewardship, not a career	VERY STRONG
8. Economic Efficiency	Political recycling creates economic waste and corruption incentives	STRONG

12.2 Specific Recommendations to the Committee

1. SUPPORT THE AMENDMENT BILL: The Standing Committee on Justice, Legal Affairs and Human Rights is urged to recommend the Constitution of Kenya (Amendment) Bill, 2026 for passage by the Senate without reservations.
2. EXTEND THE COOLING-OFF PERIOD: The Committee should consider recommending an amendment to increase the cooling-off period from five years to ten years to encompass two full electoral cycles.

3. **EXPAND THE SCOPE:** The Committee should consider expanding the Bill's scope to cover all elective offices, not just Senate and MCA positions.
4. **CREATE POSITIVE INCENTIVES:** The National Government should develop a robust retirement benefits and honorary recognition framework for former governors who retire from elective politics with dignity.
5. **CONSTITUTIONAL ENTRENCHMENT:** Ensure that the cooling-off provision is fully constitutionally entrenched and cannot be amended by a simple parliamentary majority.
6. **CIVIC EDUCATION:** Pair the Amendment Bill with a robust public education campaign on the democratic values it embeds — particularly targeting youth on the importance of democratic renewal.
7. **IMPLEMENTATION FRAMEWORK:** Direct the IEBC to develop comprehensive implementation guidelines for the cooling-off provisions, including clear definitions of 'serving as county governor' and mechanisms for verification.

12.3 Closing Statement

Kenya's democratic journey has been remarkable — from colonial subjugation to independence, from single-party politics to multi-party democracy, from a centralized state to a devolved republic. Each step in this journey has required courageous constitutional choices: to limit executive power, to create new democratic institutions, to guarantee fundamental rights, and to empower previously marginalized communities.

The Constitution of Kenya (Amendment) Bill, 2026 represents another such courageous constitutional choice: to limit the recycling of political power, to create genuine space for fresh leadership, and to affirm that public office is a temporary stewardship rather than a permanent career. This choice is constitutionally sound, democratically necessary, ethically imperative, and historically significant.

We urge the Senate of Kenya to pass this Bill, to strengthen it where possible, and to send a clear signal to all Kenyans — especially the 75% who are below 35 years old — that their democracy is not a closed club for political veterans, but an open, renewing, living institution that belongs to all of them.

"The measure of a democracy is not in how it treats its political elites, but in how well it creates space for its citizens to be heard, to lead, and to renew the institutions that serve them."

13. DECLARATION AND SIGNATURE

I, Faustin N. Samuel, a citizen of the Republic of Kenya, do hereby solemnly declare that:

- This memorandum represents my genuine views on the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026).
- All arguments contained herein are made in good faith, for the public interest and the betterment of Kenya's democracy.
- I have no personal financial interest in the passage or failure of this Bill.
- This memorandum is submitted in accordance with the public participation process mandated by Articles 118(1)(b) and 256(2) of the Constitution and Standing Order 145(5) of the Senate Standing Orders.
- I understand that this submission becomes part of the public record before the Senate and may be used by the Committee in its deliberations.

Field	Details
Full Name	Faustin N. Samuel
ID / Contact	0750042011
Email Address	justfaustineh@gmail.com
Profession	Software Engineer
Date of Submission	28th April, 2026
Submission Venue	Clerk of the Senate, Parliament of Kenya / clerk.senate@parliament.go.ke

Signed:

Signature: 
Faustin N. Samuel
Software Engineer | Kenya
Date: 28th April, 2026

14. REFERENCES AND SOURCES

Legal Instruments

- Constitution of Kenya, 2010 — Articles 1, 10, 24, 38, 73, 88, 94, 96, 99, 118, 142, 177, 180, 193, 232, 256.
- Elections Act, Cap. 7 of the Laws of Kenya — Sections 24(2) and 25(2).
- Constitution of Kenya (Amendment) Bill, 2026 — Senate Bills No. 7 of 2026.
- Senate Standing Orders — Order 145(5).
- Senate Standing Committee on Justice, Legal Affairs and Human Rights — Public Hearing Notice, 8th April 2026.

International Instruments

- African Union Charter on Democracy, Elections and Governance (2007).
- OECD Guidelines for Post-Public Employment: Good Practices for Preventing Conflict of Interest (2010).
- Venice Commission Guidelines on the Limitation of Political Rights (2019).
- Inter-Parliamentary Union (IPU) — Parliamentary Framework on Term Limits and Democratic Renewal (2021).
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Comparative Constitutional Sources

- Constitution of the Republic of South Africa, 1996.
- Basic Law for the Federal Republic of Germany (Grundgesetz), 1949.
- Constitution of the United Mexican States.
- Constitution of the Federative Republic of Brazil.
- Constitution of the Republic of Ghana, 1992.
- Constitution of the Republic of Rwanda, 2003 (Revised 2015).

END OF MEMORANDUM

Constitution of Kenya (Amendment) Bill, 2026 | Senate Bills No. 7 of 2026
Submitted by: Faustin N. Samuel | justfaustineh@gmail.com | 0750042011
28th April, 2026

Subject Fwd: The Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7)

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlahrc <senatejlahrc@parliament.go.ke>

Date Wednesday April 29, 2026 9:49:13 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: Kabari <kabarijulius@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Wednesday, 29 April 2026 7:02 AM EAT

Subject: The Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7)

Hello Senate,

I am proposing the governors to be barred for minimum 10years and not 5years.

I support the Amendment.

Regards

Subject Fwd: Public Views in Support of Senate Bills No. 7 of 2026

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlhrc <senatejlhrc@parliament.go.ke>

Date Wednesday April 29, 2026 9:49:29 AM

Regards

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From: Daniel <danielkague86@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Wednesday, 29 April 2026 7:09 AM EAT

Subject: Public Views in Support of Senate Bills No. 7 of 2026

Dear Clerk of the Senate,

I write to express my support for The Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026).

I believe the proposed five-year cooling-off period for former governors is a necessary and proportionate reform. Governors who leave office should not be able to immediately join the very legislative bodies — the Senate and county assemblies — that are tasked with scrutinising their past decisions and audit reports. This creates an obvious conflict of interest that undermines accountability.

The Bill is not about punishing former governors. It is about protecting the integrity of oversight institutions and ensuring that accountability processes conclude without interference. Kenyans deserve a devolution framework they can trust, and this Bill moves us closer to that.

I urge the Committee to recommend its passage.

Yours faithfully,

Daniel Kague Ngigi

Kiambu

**MEMORANDUM ON POLITICAL EQUITY, EQUAL PROTECTION, AND FAIR ELECTORAL
COMPETITION**

To: The Clerk of the Senate,
Parliament of Kenya

**RE: CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026 – PROPOSED RESTRICTION
ON FORMER COUNTY GOVERNORS**

I submit my views regarding the proposed amendment to bar former County Governors from contesting for elective office within five years after leaving office.

While the objective of strengthening accountability in public service is commendable, the proposed provision raises significant constitutional concerns.

1. Violation of Equality and Freedom from Discrimination (Article 27)

Article 27 of the Constitution guarantees equality before the law and equal protection of the law. The proposed amendment selectively targets former Governors while excluding other holders of public office such as Members of Parliament, Senators, and the President. This differential treatment lacks a clear and justifiable basis and risks amounting to unconstitutional discrimination.

2. Limitation of Political Rights (Article 38)

Article 38 guarantees every citizen the right to make political choices, including the right to be a candidate for public office.

Any limitation to this right must satisfy the constitutional test of being reasonable, justifiable, and proportionate in an open and democratic society.

A blanket five-year restriction is excessive and does not meet this threshold.

3. Misalignment with Leadership and Integrity Framework (Chapter Six)

Chapter Six provides a comprehensive framework for ensuring accountability, integrity,

and ethical conduct in public office.

Rather than imposing categorical bans, the Constitution envisions **case-by-case assessment** based on integrity, conduct, and compliance with the law.

4. Risk of Distorting Democratic Competition

The proposed amendment may undermine free and fair political competition by pre-emptively excluding a specific class of leaders.

This shifts the power of choice away from the electorate and introduces legislative barriers that may be perceived as politically motivated.

5. Need to Strengthen Accountability Mechanisms Instead of Blanket Restrictions

Rather than imposing a generalized restriction, Parliament should focus on strengthening the legal and institutional framework governing accountability.

This includes:

- a. Enhancing legislation that empowers anti-corruption agencies to investigate and act decisively
- b. Strengthening the Office of the Director of Public Prosecutions to ensure timely prosecution of corruption-related cases
- c. Reforming electoral laws to introduce clear and enforceable standards that bar individuals found culpable of corruption, abuse of office, or gross non-performance from contesting elective positions after serving their terms

Such an approach ensures that restrictions are **evidence-based, merit-driven, and universally applicable**, rather than broad and indiscriminate.

Recommendations

In light of the above, I respectfully recommend that the Senate:

- a. Reject the proposed blanket restriction
- b. Strengthen enforcement of Chapter Six mechanisms
- c. Prioritize reforms in anti-corruption, public prosecution, and electoral laws to ensure only individuals of integrity are eligible for office
- d. Ensure that any post-tenure restrictions are **uniformly applied across all elective offices**, if deemed necessary
- e. Preserve the sovereign right of citizens to determine leadership through the ballot

Conclusion

The Constitution must remain a shield for rights and fairness, not a tool for selective exclusion. True reform lies not in limiting participation broadly, but in ensuring that only those who meet the standards of integrity and performance are allowed to lead.

Yours faithfully,

BONIFACE KONTIRE OLE KEIS

0722103923.

DATED 29 April, 2026 at Nairobi.

Subject

Fwd: SUBMISSION OF MEMORANDUM – PROPOSED AMENDMENT TO SENATE BILL NO. 7 OF 2026 (THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026)

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlahrc <senatejlahrc@parliament.go.ke>

Date Wednesday April 29, 2026 11:28:36 AM

Regards

**Clerk of the Senate/ Secretary, Parliamentary Service Commission |
Parliament of Kenya |**

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From: Bryan <kituyib@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Wednesday, 29 April 2026 11:22 AM EAT

Subject: SUBMISSION OF MEMORANDUM – PROPOSED AMENDMENT TO SENATE BILL NO. 7 OF 2026 (THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026)

Dear Sir,

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 145(5) of the Senate Standing Orders, I wish to submit my views regarding **The Constitution of Kenya (Amendment) Bill, 2026**.

While I support the intent of the Bill to enhance accountability, I find the proposed five-year restriction insufficient. I hereby propose that the Bill be amended to **permanently bar** any person who has served as a county governor from vying for election as a Senator or Member of a County Assembly.

Proposed Amendments:

1. **Article 99(2):** Amend the proposed disqualification clause to remove any temporal limit (the "five years" phrase), effectively creating an absolute disqualification for former governors.
2. **Article 193(2):** Similarly, amend this article to permanently disqualify former governors from membership in a County Assembly.

Justification for a Permanent Bar:

- **Irreconcilable Conflict of Interest:** The oversight role of the Senate and County Assemblies over former governors is perpetual. A governor's influence over county records, personnel, and political structures does not expire; therefore, they should never sit in the very bodies responsible for auditing their administration.

- **Closing Legal Loopholes:** A five-year limit only delays potential interference. A permanent ban ensures that the legislative arm remains completely independent from past executive influence at the county level.
- **Upholding Public Trust:** To truly safeguard public participation and the integrity of devolution, legislative bodies must be insulated from those they are meant to hold accountable.

I request the Committee to consider these amendments to ensure the highest standards of integrity in our governance.

Sincerely,
Bryan kituyi,
3070793,
Kiambu county
*254704539274

Subject

Fwd: SUBMISSION OF VIEWS IN SUPPORT OF THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlahrc <senatejlahrc@parliament.go.ke>

Date Wednesday April 29, 2026 11:30:47 AM

Regards

**Clerk of the Senate/ Secretary, Parliamentary Service Commission |
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From: Geoffrey <wekesageoffrey@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Wednesday, 29 April 2026 11:24 AM EAT

Subject: SUBMISSION OF VIEWS IN SUPPORT OF THE CONSTITUTION OF KENYA
(AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

1. INTRODUCTION

We write to express my full support for the Constitution of Kenya (Amendment) Bill, 2026, sponsored by Sen. James Kamau Murango. This Bill seeks to amend Articles 99 and 193 of the Constitution and the Elections Act to introduce a five-year "cooling-off" period for former County Governors before they can contest for seats in the Senate or County Assemblies.

2. JUSTIFICATION FOR SUPPORT

My support for this Bill is grounded in the need to strengthen devolution, enhance accountability, and protect the integrity of oversight institutions. The reasons are as follows:

- **Elimination of Conflict of Interest:**

The Senate and County Assemblies are the primary oversight bodies for the County Executive. A Governor who transitions immediately into the Senate or a County Assembly would effectively be "overseeing themselves". It is a fundamental principle of natural justice that one cannot be a judge in their own cause. This Bill ensures that the person who made executive decisions is not the same person reviewing them in a legislative capacity.

- **Safeguarding the Oversight Mandate:**

The Senate's core role is to protect the interests of counties and their governments. If the Senate is populated by recent former Governors, there is a high risk of "institutional capture." Former Governors

may use their legislative influence to frustrate inquiries into their past administrations or to protect their allies, thereby weakening the Senate's watchdog role.

- **Respect for the Audit Cycle:**

As noted in the Bill's Digest, audit reports from the Office of the Auditor General often take time to be processed, tabled, and scrutinized by relevant committees (such as the CPAIC). A five-year waiting period ensures that at least one full audit and oversight cycle is completed without the interference of the individual whose administration is under investigation.

- **Promoting Financial Accountability:**

County Governors manage billions of shillings in public funds. To ensure that these funds were used prudently, the oversight process must be allowed to conclude objectively. Barring immediate transition prevents former Governors from using the immunity or privileges of a legislator to evade accountability for financial or administrative malpractices committed during their tenure.

- **Enhancing Informed Choice for Voters:**

This Bill empowers the Kenyan voter. By the time the five-year period elapses, any pending audit queries, court cases, or EACC investigations regarding a Governor's tenure will likely have been concluded. This provides voters with a clear record of the candidate's previous performance and integrity before deciding whether to return them to a different elective office.

- **Leveling the Political Playing Field:**

Governors wield immense influence and resources during their tenures. An immediate transition to the Senate or County Assembly can create an unfair advantage over other candidates. A five-year break ensures a more level playing field for new leadership to emerge within the counties.

3. CONCLUSION

The proposed amendment is a proactive step toward curing the "accountability gap" currently existing in our devolved system. It reinforces the spirit of Chapter Six of the Constitution on Leadership and Integrity. By separating the roles of the "Overseen" (Executive) and the "Overseer" (Legislature) with a reasonable time buffer, Kenya will ensure that devolution serves the people, not the interests of a few individuals.

I, therefore, urge the Committee and the Senate to pass this Bill in its entirety.

Signed,

Geoffrey Wekesa

Subject Fwd: Constitution of Kenya(Amendment) Bill,2026(Senate bill no 7 of 2026).

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlahrc <senatejlahrc@parliament.go.ke>

Date Wednesday April 29, 2026 12:27:31 PM

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: Belindah <belindahmakani@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Wednesday, 29 April 2026 12:12 PM EAT

Subject: Constitution of Kenya(Amendment) Bill,2026(Senate bill no 7 of 2026).

I accept the amendment as a Kenyan Citizen.

Thank you.

Subject Fwd: Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026)

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlahrc <senatejlahrc@parliament.go.ke>

Date Wednesday April 29, 2026 12:27:46 PM

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 |

—Original Message—

From: Daniel <danwaithaka74@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Wednesday, 29 April 2026 12:03 PM EAT

Subject: Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026)

I fully support the bill

Subject Fwd: THE CONSTITUTION OF KENYA(AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlhrc <senatejlhrc@parliament.go.ke>

Date Wednesday April 29, 2026 1:28:41 PM

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: purity <puritysangiru@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Wednesday, 29 April 2026 12:59 PM EAT

Subject: THE CONSTITUTION OF KENYA(AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

I am writing to formally express my strong opposition to the idea of Governors who have served their full ten-year constitutional terms immediately transitioning to vie for Senatorial or Member of County Assembly (MCA) seats.

The spirit of devolution and the principle of term limits were designed to ensure a renewal of leadership and to prevent the entrenchment of political power within a single individual.

Allowing a Governor to move directly into a legislative role especially within the same county they previously governed presents several significant concerns:

- **Conflict of Interest in Oversight:** The primary role of the Senate and County Assemblies is to provide oversight of the County Executive. A former Governor serving in these houses would essentially be tasked with overseeing the legacy, financial records, and pending projects of their own previous administration, creating an inherent conflict of interest.
- **Monopolization of Political Space:** After a decade at the helm of a county, returning immediately in a different capacity stifles the emergence of new leaders and prevents the infusion of fresh perspectives into our democratic processes.
- **Accountability Gaps:** There is a risk that such moves are strategically intended to provide political immunity or influence over audits and investigations into past tenures.

I believe that for the sake of institutional integrity and the health of our democracy, there should be a mandatory "stand-off" period. A leader who has held the highest office in a county for ten years should not be eligible to vie for a legislative seat in the election immediately following their tenure end.

I urge all relevant stakeholders and legislative bodies to consider the long-term implications of this trend and to advocate for frameworks that protect the independence of our oversight institutions. So that being said, yes, I support the bill that seeks to bar persons who have served as county governors from vying for elections as senators or members of a county assembly for the first five years immediately after serving as county governors.

Kind Regards,

P. Sangiru

Subject Fwd: Senate Bill No 7 of 2026

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlahrc <senatejlahrc@parliament.go.ke>

Date Wednesday April 29, 2026 1:31:40 PM

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: Githinji <githinjibernard6@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Wednesday, 29 April 2026 1:19 PM EAT

Subject: Senate Bill No 7 of 2026

I wish to submit my views on the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026), as invited in the Senate notification of public hearing.

I am in strong support of introducing a provision that bars county governors from immediately contesting for the Senate seat upon completion of their two constitutional terms. Instead, I propose the creation of a clear window period of 10 years before they become eligible to vie for such offices.

My reasoning is as follows:

When a governor moves directly from the county executive to the Senate, it can make it more difficult to hold them accountable for any alleged maladministration, corruption, or misuse of public funds during their time in office. The political influence and status that come with a Senate position may hinder or complicate investigations and effective oversight.

In recent years, public debate has raised serious concerns about former governors who have become senators while facing allegations involving misappropriation of funds meant for vulnerable groups, including the youth. One commonly cited example is Senator Jackson Mandago, who has been the subject of widely reported allegations and investigations regarding funds intended for young people in his county. There have also been public concerns about the state of development and amenities during his tenure as governor, which many feel contrasts sharply with his later public commentary on governance issues in other counties.

While it is the role of the courts and investigative agencies to determine the truth and legal responsibility in any specific case, such situations highlight the danger of perceived impunity when former governors can seamlessly move into powerful legislative roles without any meaningful interval for scrutiny.

Introducing a constitutionally mandated window period of two election cycles before a former governor can run for the Senate would:

- Give oversight and investigative bodies adequate time to properly audit the governor's tenure and, where necessary, pursue legal or administrative action.
- Strengthen public confidence that high office is not being used as a shield against accountability.
- Promote integrity in public service by reinforcing the idea that leadership carries clear and enforceable responsibility for the management of public resources.

In view of the above, I propose that the Bill be amended to include:

1. A defined period (e.g., ten years) after leaving office as governor during which a former governor is ineligible to contest for the position of Senator; and
2. Transitional provisions to clarify how and when this requirement would apply to current and former office holders.

I respectfully urge the Senate to consider and incorporate these proposals when deliberating on the Constitution of Kenya (Amendment) Bill, 2026, as a step towards greater accountability, deterrence of the plunder of county resources, and the strengthening of public trust in our devolved system of governance.

Thank you for the opportunity to present my views.

Subject Fwd: 260429- CONSTITUTION OF KENYA AMENDMENT BILL 2026(Senate Bills No. 7 Of 2026)

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlhrc <senatejlhrc@parliament.go.ke>

Date Wednesday April 29, 2026 4:45:46 PM

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: CHARLES <charlesalari22@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Wednesday, 29 April 2026 2:45 PM EAT

Subject: 260429- CONSTITUTION OF KENYA AMENDMENT BILL 2026(Senate Bills No. 7 Of 2026)

Dear All,

The above matter refers,

I Charles OLUNGUR Alari, Kenyan citizen of sound mind and an adult first write to thank the mover of this very important constitutional amendment bill.

May I say it's timely and intact it could have been in action from 2017.

My reasons for supporting this Bill is first to protect devolution, second to end the culture of corruption among the serving governors and secondly, to give opportunity and Equal playground to those who will be contesting as senators and MCA from the governors who will be seeking for continuity of representation when they have clearly failed in their mandate as governor's.

Thank you for your attention on this matter and I will appreciate when this view is published and taken into account.

Yours Truly.

Charles OLUNGUR Alari

MCA aspirant.

AMUKURA WEST ward 2026.

PUBLIC SUBMISSION ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026

I wish to commend the Senate and the Standing Committee on Justice, Legal Affairs and Human Rights for facilitating public participation on the Constitution of Kenya (Amendment) Bill, 2026.

While I acknowledge the intent of the Bill to promote fairness and integrity in leadership by restricting recently serving county governors from immediately transitioning into other elective roles, I propose the following enhancements to strengthen its effectiveness and better serve the public interest:

1. Expansion of Restricted Positions

The proposed restriction currently bars former governors from vying for positions as Senators or Members of County Assembly within the specified period. However, this limitation is incomplete. I recommend that the restriction be expanded to include the position of Member of the National Assembly.

Allowing former governors to contest for National Assembly seats immediately after serving undermines the spirit of the amendment, as it still permits direct continuation of political dominance and influence at the national level. A comprehensive approach should therefore cover all legislative positions to ensure consistency and fairness.

2. Extension of the Restriction Period

The proposed five-year restriction period is insufficient to achieve the intended objective of creating space for new leadership. I recommend that the restriction period be extended to ten (10) consecutive years.

A longer cooling-off period would:

- Encourage leadership renewal and diversity
- Reduce the entrenchment of political power by individuals
- Promote equal opportunity for emerging leaders
- Strengthen democratic competition and accountability

A ten-year period provides a more meaningful interval for institutional independence and prevents the recycling of leadership within short cycles.

Conclusion

In conclusion, while the Bill is a step in the right direction, its impact would be significantly enhanced by:

- Including the National Assembly among the restricted positions, and
- Extending the restriction period to ten years.

These amendments would better align the Bill with the principles of good governance, equity, and democratic renewal as envisioned in the Constitution of Kenya.

WRITTEN SUBMISSIONS IN SUPPORT OF THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026

SENATE BILLS NO. 7 OF 2026

SUBMITTED TO: The Senate Standing Committee on Justice, Legal Affairs and Human Rights,
Parliament of Kenya

SUBMITTED BY: ELIJAH OLE LUPEMPE

1.0 INTRODUCTION

I respectfully submit this memorandum in strong support of the Constitution of Kenya (Amendment) Bill, 2026 sponsored by Sen. James Kamau Murango, MP.

The Bill proposes a five-year cooling-off period barring serving and former county governors from contesting for seats in the Senate or county assemblies.

This is a necessary constitutional reform aimed at strengthening accountability, protecting oversight institutions, and enhancing public trust in devolved governance.

Kenya's governance system depends not only on democratic elections but also on strong, independent accountability institutions that function without fear, favour, or undue influence.

2.0 JUSTIFICATION FOR THE AMENDMENT

County governors exercise significant executive authority over public resources, including budgeting, procurement, and implementation of county development programmes.

They are directly accountable to oversight institutions such as:
the Senate;
county assemblies;
the Office of the Auditor General; and
other constitutional bodies.

Audit and accountability processes often continue long after a governor leaves office, meaning unresolved issues may still be under review.

Allowing a former governor to immediately transition into oversight institutions creates a serious conflict of interest and weakens institutional independence.

3.0 SUPPORTING GROUNDS

(a) Preventing Conflict of Interest

A former governor serving in oversight institutions may influence audit reviews of their own tenure, compromise investigations, and undermine fairness and objectivity.

(b) Strengthening Oversight Institutions

Immediate entry risks weakening credibility, creating perception of impunity, and compromising independence of constitutional watchdog bodies.

(c) Upholding Chapter Six on Leadership and Integrity

Public office is a trust, not a shield from scrutiny. Accountability must be completed before new elective positions are sought.

(d) Promoting Fair and Informed Elections

The cooling-off period allows completion of audits and informed voter decision-making based on factual accountability records.

4.0 PUBLIC INTEREST

The Bill addresses concerns including misuse of county resources, corruption allegations, weak enforcement of accountability mechanisms, and erosion of public trust.

If enacted, it will strengthen devolution, enhance transparency, reinforce accountability, and restore public confidence in leadership.

5.0 RESPONSE TO RIGHTS CONCERNS

While Article 38 guarantees political rights, Article 24 allows reasonable and justifiable limitations in the interest of public accountability, good governance, and institutional integrity.

This Bill is:

proportionate;

non-permanent;

justified in public interest.

It does not remove political rights but ensures responsible exercise of those rights.

6.0 RECOMMENDATIONS

I respectfully urge full support of the Bill, retention of the five-year cooling-off period, strengthening of oversight safeguards, promotion of accountability, and prompt passage of the Bill.

7.0 CONCLUSION

This Bill strengthens accountability and protects devolved governance institutions.

It ensures leaders undergo full accountability before seeking oversight positions.

I therefore strongly support its enactment in the interest of justice, transparency, and good governance.

NAME: ELIJAH OLE LUPEMPE
Citizen of the Republic of Kenya
DATE: 29/4/2026

MEMORANDUM OF JURIDICAL ANALYSIS

TO: The Senate Standing Committee on Justice, Legal Affairs, and Human Rights

FROM: Martin Bosire, Legal Consultant & Researcher

DATE: May 1, 2026

REF: Juridical Critique of the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bill No. 7 of 2026)

I. PREAMBLE: THE DOCTRINE OF "TEMPORAL NEUTRALITY"

The Constitution of Kenya (Amendment) Bill, 2026, is a sophisticated intervention into the "Accountability Gap" that has plagued the devolved governance structure since 2013. As a concerned citizen, I view this Bill not as a punitive measure against individuals, but as a structural repair to the **Oversight Mechanism** of the Republic.

The core of this memorandum rests on the principle of **Temporal Neutrality**—the necessity of a time-buffer between an executive mandate (spending power) and a legislative mandate (auditing power).

II. THE SAVANT PILLARS OF SUPPORT

1. Curing the "Self-Audit" Paradox

Under Article 96, the Senate is the primary protector of counties and their governments. When a Governor transitions immediately to the Senate, they enter the very chamber tasked with scrutinizing the Auditor General's reports from their previous administration.

- **The Analysis:** This creates a **Structural Conflict of Interest**. An immediate transition allows a former Governor to sit on the Public Accounts and Investments Committee (CPAIC), potentially voting on the adoption of audit reports regarding their own prior mismanagement. The five-year "cooling-off" period is a surgical tool to ensure the overseer is not the overseen.

2. Preservation of "Evidence Sanctity"

Legal and financial accountability processes in Kenya often take 3 to 5 years to reach maturity (from audit query to investigative report to prosecution).

- **The Analysis:** A sitting Senator wields immense influence over State Organs and investigative agencies. By imposing a five-year hiatus, the Bill ensures that the **Auditor General** and the **EACC** can conclude investigations into a Governor's tenure without the subject of those investigations holding a superior constitutional office that could be used to intimidate witnesses or frustrate the production of documents.

3. The "Standard of Suitability" vs. The "Right to Contest"

While Article 38 grants every citizen the right to contest elections, Article 24 allows for the **Limitation of Rights** if it is "reasonable and justifiable in a democratic society."

- **The Analysis:** The limitation proposed is proportional. It does not ban the Governor from public life; it restricts them from **Oversight Roles** (Senate/MCA) for a single electoral cycle. This is a legitimate safeguard to protect the public purse. It elevates **Chapter Six** from a set of aspirations to a functional bar for entry into high-stakes oversight.

4. Eliminating "Political Immunity" Havens

In the Kenyan political theatre, the Senate is often perceived as a "refuge" for former Governors seeking legislative immunity or a platform to fight off legal challenges.

- **The Analysis:** This Bill removes the incentive to seek office for the purpose of **Evading Accountability**. It forces a "civilian transition," ensuring that any legal consequences arising from their term as Governor are faced on a level playing field, without the shield of parliamentary privilege.

III. STRATEGIC RECOMMENDATIONS FOR THE COMMITTEE

To ensure this Bill survives a "Basic Structure" or "Unconstitutionality" challenge in the High Court, I propose the following refinements:

1. **The "Successor Clause":** The Bill should explicitly clarify that this disqualification applies to Deputy Governors who have acted as Governors for more than one year, ensuring no loopholes exist for "acting" executives.
2. **Harmonization with the Elections Act:** Ensure the definition of "preceding five years" aligns strictly with the electoral calendar to avoid litigious ambiguity regarding "date of nomination" vs. "date of election."
3. **Reciprocal Restriction:** For a truly "Savant" framework, the Committee should consider whether a similar cooling-off period should apply to Senators seeking to become Governors in the *same* county, to prevent "pre-emptive sabotage" of executive budgets for personal political gain.

IV. CLOSING JURIDICAL STATEMENT

The 2026 Amendment is the "Regulatory Circuit Breaker" our devolution needs. It ensures that the Senate remains a house of **Impartial Review** rather than a house of **Executive Alumni**. By separating the "spending years" from the "auditing years," we move from a culture of political convenience to a culture of institutional integrity.

Respectfully Submitted,

Martin Bosire

Subject Fwd: Submission of Public Views in Support of the Constitution of Kenya (Amendment) Bill, 2026

From Clerk of the Senate <clerk.senate@parliament.go.ke>

To senatejlhrc <senatejlhrc@parliament.go.ke>

Date Tuesday May 5, 2026 8:13:19 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: Andrew <andrewmaina384@gmail.com>

To: clerk <clerk.senate@parliament.go.ke>

Date: Tuesday, 5 May 2026 8:01 AM EAT

Subject: Submission of Public Views in Support of the Constitution of Kenya (Amendment) Bill, 2026

Dear Sir,

RE: SUPPORT FOR THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026

I write to formally submit my views in support of the Constitution of Kenya (Amendment) Bill, 2026, currently under consideration by the Senate.

I commend the Senate for facilitating public participation in this legislative process, as required under the Constitution. This opportunity allows citizens to actively contribute to the strengthening of our governance structures.

I particularly support the proposed amendment seeking to bar former county governors from contesting for positions as Senators or Members of the County Assembly within the first five years after leaving office. In my view, this provision promotes accountability, reduces undue political influence, and allows for fair competition by creating space for new leadership.

To explain simply, imagine a class where one student has been the class prefect for years. If that same student is allowed to immediately take another leadership role, other students may never get a fair chance to lead. This amendment helps ensure leadership opportunities are distributed more fairly and encourages fresh ideas in governance.

Additionally, the amendment strengthens ethical standards in leadership and aligns with the

broader goals of integrity and good governance as envisioned in the Constitution.

I respectfully urge the Senate to consider and adopt this amendment in the interest of enhancing democratic practices and institutional integrity in Kenya.

Thank you for considering my submission.

Yours faithfully,
Andrew Maina Mwangi

***Annex 5: Matrix of
stakeholder
submissions on
the Bill***

THE SENATE



MATRIX

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)

Stakeholders:

- 1.
2. Abdulmalik Magong'a
3. Abubakar Kamau Hassan
4. Andrew Maina
5. Anthony Ndung'u
6. Belindah Makani
7. Boniface K. Ole Keis
8. Bryan Kituyi
9. Charles Alari
10. Council Of Governors
11. County Assemblies Forum
12. Daniel Kague
13. Daniel Waithaka
14. Eddie Owino George
15. Electoral Law and Governance Institute for Africa
16. Elijah ole Lupempe
17. Erastus Kamau
18. Ethics and Anti-Corruption Commission
19. Faustineh Ngovu Samuels
20. Fidel Wangai
21. Fredrick Bundi
22. Geoffrey Wekesa
23. Githinji Bernard
24. Hannah Maina
25. Ian Muthomi
26. Ignatius Amondo
27. Independent Electoral and Boundaries Commission
28. Jeremy Mulonzia
29. Joyce Wamwea
30. Julius Kabari
31. Kenya Law Reform Commission
32. Kenya National Commission on Human Rights
33. Lydia Nyawira Mburia
34. Martin Bosire
35. Mau Mau Post Colonial Children
36. Mwangi Kamau
37. Nahashon Kamau
38. Nasambu Flavia
39. Office of the Attorney General and Department of Justice
40. Office of the Registrar of Political Parties
41. Outreach for Action Kenya
42. Purity Sangiru
43. Rayzan Bundi
44. Robinson Macharia
45. Shallet Kibet (The Big Talk)

46. Sheria Watch
47. Transparency International Kenya

CLAUSE	STAKEHOLDER	PROPOSAL/ISSUE	REASONS
1 Amendment to clause 99(2) and 193(2) of the Constitution	Lydia Nyawira Mburia	Amend the proposal to bar all gubernatorial and senatorial candidates who have been charged in courts of law for violating COK 2010 Articles 9	Proposals shall serve as punitive measures to penalize all gubernatorial and senatorial candidates who have in the past 16 years been charged in court for violating the Leadership and Integrity Act as read with Chapter 6 of COK on leadership and integrity
	Geoffrey Wekesa	Adopt the proposal	The proposal is grounded on the need to strengthen devolution, enhance accountability and protect the integrity of oversight institutions.
	Abubakar Kamau Hassan	Adopt the proposal	This provision is of profound significance in strengthening public accountability in Kenya's devolved system of governance. County governors exercise substantial executive authority over public resources and devolved functions. The senate and county assembly bear oversight authority. Permitting a former governor to assume a position in a body overseeing county immediately after their terms come to an end creates a conflict of interest.
	Bryan Kituyi	On Article 99(2) amend the proposal to remove any temporal limit (the "five years" phrase) effectively creating an absolute disqualification for former governors.	The oversight role of the senate and County assemblies over former governors is perpetual. A five-year limit only delays potential interference
	Nasambu Flavia	Adopt proposal	Article 24 of the constitution permits limitation on rights where the limitation is reasonable and justifiable in an open and democratic society

	Daniel Kague Ngigi	Adopt the proposal	The proposed five-year period is necessary and proportionate reform. Governors who leave office should not be able to join the very legislative bodies.
	Julius Kabari	Amend the proposal from five years to ten years.	
	Faustin N. Samuel	Extend the cooling period beyond the proposed five-year cooling period by permanently redirecting former Governors towards retirement from elective public office	The proposal would prevent: Conflict of interest where former governors use the Senate to protect county level decisions and beneficiaries; Senate capture where former governors control senate voting blocs; Accountability gaps where a Senator who was governor overlooks county governance they were part of; Resource misuse where gubernatorial resources may be used to fund Senate campaigns; Political Monopoly where the same individuals occupy power across different offices for decades.
	Ignatius Amondo	Adopt the proposal	The Senate's primary role under Article 96 is to represent counties and oversight them. A governor who has just exited office cannot effectively oversee the same administration they headed.
	Ian Muthomi	Adopt the proposal	The primary justification is the need for uninterrupted investigations into fraud and corruption.
	Jeremy Mulonzia	Adopt the proposal	The amendment ensures those responsible for auditing and overseeing county funds are not the same people who recently managed them.
	Mwangi Kamau	The proposal should extend to senators and other elective positions	Broader application across key elective offices to ensure uniform standards of accountability and public trust
	Robinson Macharia	Adopt the proposal	By barring former governors for contesting seats for senate or county assemblies it levels the playing field.

			It also promotes accountability
	Nahashon Kamau	Adopt the proposal	Passing the Bill will strengthen devolution and accountability
	Boniface K. Ole Keis	Reject the proposal	The proposal raises serious constitutional concerns. It should not be used as a tool for selective exclusion
	Eddie Owino George	Reject the proposal in its current form or amend the proposal to reduce cooling period to two years and restrict it to former governors who were impeached for corruption or gross misconduct.	The constitution should not be amended lightly. While there is concern over governors hopping to other the constitution should not be amended positions immediately after serving, the remedy must be proportionate, rational and consistent with the constitution.
	Hannah Maina	Amend the proposal to limit eligibility to former governors with accountability issues	While the intention to promote accountability is valid, the proposed amendment in its current form introduces broad restrictions that may undermine political rights and democratic participation.
	Council of governors	Reject the proposals	The Bill proposes an amendment that requires a referendum under Article 255 of COK. The Bill offends Article 38 of COK on political rights The Bill violates Article 50(2)(a) on presumption of innocence and fair hearing. The Bill is incongruent with Article 27 in that it is selective and discriminatory in its exclusion. The Bill violates Article 73(2)(b)(c) on exercising leadership objectively and in the public interest. The Bill ignores the adequacy of constitutional and statutory accountability mechanisms. The Bill undermines the voter sovereignty and deprives the legislature of institutional expertise The Bill is vague and raises serious implementation

			challenges. The Bill conflicts with a decision of the court on the same matter, constitutional petition No. E005 of 2022; Carolyn Andaze Chilango & Anor v. The Independent Electoral and boundaries commission & others The court stated that: “such a limitation cannot pass an Article 24 analysis test because a limitation of a fundamental right must be reasonable and justifiable in an open and democratic society.....”
	The Independent Electoral and boundaries Commission	Instead of limiting the rights espoused under Article 38(3)(c) of COK, consideration should be on expanding the existing legislative framework inherent in the Elections Act, Elections Offences Act, Leadership and Integrity Act and Anti-Corruption Commission Act to bar convicted office holders from future elections.	It is imperative to note the law remains the foremost instrument for safeguarding the rights of people. Parliament has the responsibility of exercising due caution in the discharge of its legislative function. Should the Bill be enacted the commission will be forced to initiate consequential amendments to the electoral statutory instruments and other relevant guidelines within the electoral operational framework.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Lydia Nyawira Mburia	Amend to bar all gubernatorial or senatorial candidates who have in the past sixteen years been charged in a court of law for violating Elections Act cap 7 of laws of Kenya	It is plausible, rational and justifiable to impose an inevitable five-year cooling period. The Bill ensures oversight bodies have enough time to conclude inquiries into conduct of former governors
	Geoffrey Wekesa	Adopt the proposal	The proposed amendment is a proactive step toward curing the accountability gap currently existing in our devolved system
	Abubakar Kamu	Adopt the proposal	This provision is of profound significance in

	Hassan		strengthening public accountability in Kenya's devolved system of governance.
	Nasambu Flavia	Adopt the proposal	The amendments of the Election Act are a constitutional required consequential provision that gives effect to the constitutional amendments. Without corresponding statutory amendments would lack operational machinery necessary for its implementation by IEBC at the nomination phase
	Daniel Kague Ngigi	Adopt the proposal	The proposed five-year period is necessary and proportionate reform. Governors who leave office should not be able to join the very legislative bodies that scrutinize their past decisions.
	Julius Kabari	Adopt the proposal	
	Faustine Ngovu Samuels	Extend the cooling period beyond the proposed five-year cooling period by permanently redirecting former Governors towards retirement from elective public office	The proposal prevents: Conflict of interest where former governors use the Senate to protect county level decisions and beneficiaries; Senate capture where former governors control senate voting blocs; Accountability gaps where a Senator who was governor overlooks county governance they were part of; Resource misuse where gubernatorial resources may be used to fund Senate campaigns; Political Monopoly where the same individuals occupy power across different offices for decades.
	Ignatius Amondo	Adopt the proposal	The Senate's primary role under Article 96 is to represent counties and oversight them. A governor who has just exited office cannot effectively oversee the same administration they headed.
	Robinson Macharia	Adopt the proposal	By barring former governors for contesting seats for senate or county assemblies it levels the playing field. It also promotes accountability

	Nahashon Kamau	Adopt the proposal	Passing the Bill will strengthen devolution and accountability
	Boniface K. Ole Keis	Reject the proposal	The proposal raises serious constitutional concerns. It should not be used as a tool for selective exclusion. Prioritize reforms in anti-corruption and electoral laws to ensure only persons of integrity run in elections
	Edwin Owino George	Reject the proposal in its current form or amend the proposal to reduce cooling period to two years and restrict it to former governors who were impeached for corruption or gross misconduct	The constitution should not be amended lightly. While there is concern over governors hopping to other positions immediately after serving, the remedy must be proportionate, rational and consistent with the constitution.
	Council of Governors	Reject the proposal	The Bill proposes an amendment that requires a referendum under Article 255 of COK. The Bill offends Article 38 of COK on political rights The Bill violates Article 50(2)(a) on presumption of innocence and fair hearing. The Bill is incongruent with Article 27 in that it is selective and discriminatory in its exclusion. The Bill violates Article 73(2)(b)(c) on exercising leadership objectively and in the public interest. The Bill ignores the adequacy of constitutional and statutory accountability mechanisms. The Bill undermines the voter sovereignty and deprives the legislature of institutional expertise The Bill is vague and raises serious implementation challenges. The Bill conflicts with a decision of the court on the same matter, Constitutional Petition No. E005 of

			2022; Carolyn Andaze Chilango & Anor v. The Independent Electoral And Boundaries Commission & others. The court stated that: “such a limitation cannot pass an Article 24 analysis test because a limitation of a fundamental right must be reasonable and justifiable in an open and democratic society....”
	The Independent Electoral and Boundaries Commission	Instead of limiting the rights espoused under Article 38(3)(c) of COK, consideration should be on expanding the existing legislative framework inherent in the Elections Act, Elections Offences Act, Leadership and Integrity Act and Anti-corruption commission Act to bar convicted office holders from future elections.	It is imperative to note the law remains the foremost instrument for safeguarding the rights of people. Parliament has the responsibility of exercising due caution in the discharge of its legislative function. Should the Bill be enacted the commission will be forced to initiate consequential amendments to the electoral statutory instruments and other relevant guidelines within the electoral operational framework.
	ELGIA	Reject the proposal; consider less restrictive means	The Bill limits political rights under Article 38. The limitation does not clearly pass the Article 24 proportionality test as there are less restrictive means within the electoral law and integrity framework to achieve the same purpose. No comparative precedent in the US, Canada, or UK for restricting former executives from legislative office.
	KLRC	Reject the proposal	The proposal is disproportionate, potentially undemocratic, and likely unconstitutional. It imposes a blanket disqualification beyond what the Constitution already provides, without sufficient justification. Conflicts with Articles 1(2) and 38. Presupposes accountability processes can only be completed after

			leaving office. Accountability mechanisms can be initiated and concluded while governors are still in office. No comparative precedent in South Africa or the United States.
	Belindah Makani	Accept the proposal	Supports the amendment as a Kenyan citizen.
	Daniel Waithaka	Adopt the proposal	Fully supports the Bill.
	Purity Sangiru	Adopt the proposal	Supports a mandatory cooling-off period. Conflict of interest in oversight: a former governor serving in senate/county assembly would scrutinize their own legacy and pending projects. Monopolization of political space: entrenchment prevents emergence of new leaders. Accountability gaps: such transitions may be strategically intended to provide political immunity over audits of past tenures.
	Githinji Bernard	Amend the proposal to extend the cooling period to ten years	Introducing a constitutionally mandated window period of two election cycles before a former governor can run for the Senate would: give oversight and investigative bodies adequate time to audit the governor's tenure; strengthen public confidence that high office is not used as a shield against accountability; and reinforce that leadership carries clear and enforceable responsibility for management of public resources.
	KNCHR	Adopt the proposal; however, oppose subjecting the limitation to National Assembly positions	The limitation of former Governors from vying for Senate and county assembly positions within the first five years is reasonable and justifiable under Article 24. Senators and MCAs directly oversight Governors and may influence audit reports or investigations into their tenure. However, the Commission is opposed to

			also subjecting this limitation to positions for Members of the National Assembly since they play a minimal role in overseeing county chief executives.
	Charles Alari	Adopt the proposal	To protect devolution, end the culture of corruption among serving governors, and give equal opportunity and a level playing ground to other candidates contesting against former governors.
	Anthony Ndung'u	Amend the proposal to expand restriction to include Member of National Assembly and extend the restriction period to ten years	The restriction is incomplete: allowing former governors to contest for National Assembly seats immediately after serving undermines the spirit of the amendment. A comprehensive approach should cover all legislative positions. The five-year restriction period is insufficient to achieve the intended objective of creating space for new leadership.
	EACC	Adopt the proposal	Prevents conflict of interest since the Senate exercises oversight over County Governments. Allows completion of audit and accountability processes. The restriction is consistent with Chapter Six of the Constitution and the Ethics and Anti-Corruption Commission Act.
	Elijah ole Lupempe	Adopt the proposal	Preventing conflict of interest: a former governor serving in oversight institutions may influence audit reviews of their own tenure, compromise investigations, and undermine fairness and objectivity. Strengthening oversight institutions: immediate entry risks weakening credibility and creating a perception of impunity. Upholding Chapter Six on Leadership and Integrity. Promotes fair and informed elections by allowing completion of audits before new elective positions are sought.

	Mau Mau Post Colonial Children	Adopt the proposal	Strengthens accountability and oversight by restoring objectivity to Senate oversight of county governments. Prevents abuse of office by serving governors using public resources to fund legislative ambitions. Promotes leadership renewal and inclusivity by opening democratic space for new leaders. Reinforces separation of powers between executive roles at county level and legislative oversight functions.
	County Assemblies Forum (CAF)	No amendment; adopt the proposal	Protects the Senate's role in overseeing county funds and ensures audit reports are reviewed impartially. Addresses a fundamental conflict of interest inherent in the immediate transition of a former county governor into a legislative role within the County Assembly or Senate given the constitutional mandate under Article 185(3). Notes that the limitation raises constitutional concerns under Articles 38 and 27 but finds the Bill is justified.
	Martin Bosire	Adopt the proposal; recommends refinements	The Bill is a 'regulatory circuit breaker'; needed to ensure the Senate remains a house of impartial review. Cures the self-audit paradox by preventing former governors from sitting on CPAIC and voting on their own audit reports. Recommends: (1) a Successor Clause covering Deputy Governors who acted as Governor for more than one year; (2) harmonization of the definition of 'preceding five years'; with the electoral calendar; (3) consideration of a reciprocal restriction on Senators seeking to become Governors in the same county.
	Fidel Wangai	Adopt the proposal; recommends	Supports adoption. A person who has served two

		extending the cooling period to ten years or more	terms as a County Governor should not be eligible to contest for election as a Member of County Assembly or Senator until the lapse of five years (or even ten years) from the date they vacate office. Conflict of interest: no individual should be placed in a position of adjudicating matters in which they were previously a principal actor. Promotes leadership renewal. Preserves dignity and stature of the gubernatorial office.
	Andrew Maina	Adopt the proposal	Promotes accountability, reduces undue political influence, and creates space for new leadership. Strengthens ethical standards in leadership and aligns with the broader goals of integrity and good governance as envisioned in the Constitution.
	Office of the Attorney General and Department of Justice	The Bill is constitutionally permissible but existing mechanisms are adequate	The Bill does not require approval at a referendum under Article 255(1) and falls within Article 256 as an amendment by Parliamentary initiative. The restriction on eligibility of former governors is consistent with Article 24. However, the issues intended to be addressed by the Bill are sufficiently addressed by existing provisions (Articles 99(2)(3) and 193(2)(3)) and existing oversight bodies (Auditor-General, Controller of Budget, NPS, EACC, and DPP) which provide voters with reference points in making informed choices.
	Fredrick Bundi	Adopt the proposal	The five-year cooling-off period is a constitutionally permissible limitation on electoral rights under Article 24. Comparable cooling-off periods already exist in the Constitution for IEBC members under Articles 99(2)(b) and 193(2)(b). Ongoing accountability

			processes require insulation from political interference by former governors. The restriction is a proportionate and targeted response to a specific structural governance problem.
	Rayzan Bundi	Adopt the proposal	The five-year cooling-off period is a constitutionally permissible limitation under Article 24. Ongoing accountability processes require insulation from political interference. Former governors exercising oversight over their own counties creates an irreconcilable conflict of interest. The restriction is proportionate and targeted.
	Erastus Kamau	Adopt the proposal	The five-year cooling-off period is constitutionally permissible under Article 24 and consistent with the IEBC cooling-off precedent. Eliminates an irreconcilable conflict of interest when former governors sit in oversight bodies. Interrupts political office recycling that has weakened the independence of legislative and oversight institutions.
	Joyce Wamwea	Adopt the proposal	The five-year cooling-off period is a constitutionally permissible limitation under Article 24. Ongoing accountability processes require insulation from political interference. Advances national values of accountability, transparency, and integrity under Article 10 and Chapter Six. Former governors exercising oversight over their own counties creates an irreconcilable conflict of interest.
	Sheria Watch	Adopt the proposal with caution; raises constitutional concerns	Agrees with the spirit of the Bill. However, raises concerns: (1) the Bill limits political rights under Article 38 and must satisfy the Article 24 proportionality test;

			(2) the Bill may require a referendum under Article 255 given amendments to Article 193 relating to devolved governance; (3) cautions that a referendum during a constrained fiscal environment requires careful consideration.
	ORPP	Support with conditions	Lauds the Bill as a path toward promoting accountability of elected representatives. Calls for: (a) a commencement and/or savings clause given absence of a commencement clause; (b) consideration of whether less restrictive means exist under Article 24(1)(e) such as conflict of interest declaration mechanisms; (c) attention to the principle against discrimination as articulated in Jacqueline Okeyo Manani & others v Attorney General.
	Shallet Kibet (The Big Talk)	Adopt the proposal	Prevention of conflict of interest: a former governor transitioning directly into Senate or county assembly would be called to scrutinize their own prior conduct. Completion of accountability processes: audit reports and accountability processes are often concluded long after a governor leaves office. Strengthening devolution and public trust. Alignment with constitutional principles under Articles 10 and 232 on integrity, transparency, and accountability.
	Transparency International Kenya (TI-Kenya)	Oppose the proposal in its current form; extend the bar until audits and court proceedings are exhausted	The 5-year disqualification is insufficient and misaligned with Kenya's accountability environment. Former governors should be barred until audits, investigations, and consequent court proceedings are exhausted. The bar should also extend to appointive positions such as Cabinet Secretaries in compliance with Chapter Six of the Constitution and the

			Leadership and Integrity Act, 2012.
	Outreach for Action Kenya	Reject the proposal	The Bill rests on unsubstantiated assumptions. It imposes a blanket restriction on Article 38(3) rights that fails the Article 24 proportionality test. It violates the non-derogable right to presumption of innocence and fair hearing under Articles 25 and 50. It selectively applies a disqualification principle contrary to Article 27 equal protection. It re-introduces a proposal (Senate Bills No. 52 of 2023) previously withdrawn without demonstrating what has changed. Recommends five alternative statutory and institutional reforms including consolidated audit status disclosures, mandatory integrity clearances, and structural prohibition on committee appointments for conflicted Senators.
	Abdulmalik Magonga	Reject the proposal	The Bill is unconstitutional, discriminatory, and a politically motivated device creating electoral monopolies. Violates Articles 24, 27, 38, 50, and 118. No comparative precedent in any mature democracy (US, Canada, UK, India, South Africa) for a blanket ban on former executive heads transitioning to legislative office. Recommendation: delete in toto Clauses 2 and 3. If any reform is needed, it should be a uniform cooling-off period applicable equally to all State Officers (President, Deputy President, Governor, Speaker, Chief Justice) transitioning between branches.
2 Amendment to section 24(2) and 25(2) of the	ELGIA	Reject the proposal; consider less restrictive means	The consequential statutory amendments to the Elections Act similarly do not pass the Article 24 proportionality test. Less restrictive means within the

Elections Act			existing electoral law and integrity framework can achieve the same purposes.
2 Amendment to section 24(2) and 25(2) of the Elections Act	KLRC	Reject the proposal	The consequential amendments to the Elections Act are equally unsound for the same reasons as the constitutional amendments. A blanket disqualification at the nomination stage violates Articles 1(2) and 38 and presupposes the guilt of former governors without due process.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Belindah Makani	Accept the proposal	Supports the amendment as a Kenyan citizen.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Daniel Waithaka	Adopt the proposal	Fully supports the Bill including the consequential amendments to the Elections Act.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Purity Sangiru	Adopt the proposal	Supports the consequential amendments to the Elections Act to give operational effect to the constitutional bar.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Githinji Bernard	Amend the proposal to extend the cooling period to ten years	The Elections Act should be amended consistently with the constitutional amendment, but the restriction period should be extended to ten years for the reasons stated in relation to Clause 1.
2 Amendment to section 24(2) and 25(2) of the Elections Act	KNCHR	Adopt the proposal	The amendments to the Elections Act are constitutionally required consequential provisions that give effect to the constitutional amendments. Without corresponding statutory amendments, the constitutional disqualification would lack the operational machinery necessary for implementation

			by the IEBC at the nomination stage.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Charles Alari	Adopt the proposal	Supports the consequential amendments to the Elections Act.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Anthony Ndung'u	Amend to extend restriction to National Assembly and extend period to ten years	The consequential Elections Act amendments should also cover National Assembly seats and extend the restriction period to ten years to be consistent with the proposed amendment to the constitutional provisions.
2 Amendment to section 24(2) and 25(2) of the Elections Act	EACC	Adopt the proposal	Supports the amendments to sections 24(2) and 25(2) of the Elections Act as constitutionally required consequential provisions to give effect to the constitutional amendments and enable IEBC to implement the disqualification at the nomination stage.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Elijah ole Lupempe	Adopt the proposal	The amendments to the Elections Act are necessary consequential provisions to operationalise the constitutional disqualification at the IEBC nomination and vetting stage.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Mau Mau Post Colonial Children	Adopt the proposal	Supports the consequential amendments to the Elections Act as necessary to operationalise the constitutional bar.
2 Amendment to section 24(2) and 25(2) of the Elections Act	County Assemblies Forum (CAF)	No amendment; adopt the proposal	Essential to prevent a revolving door where county executives immediately proceed to oversee their own past financial decisions as MCAs. The Elections Act amendments give operational machinery to the constitutional amendments.
2 Amendment to	Martin Bosire	Adopt the proposal	The Elections Act amendments are constitutionally

section 24(2) and 25(2) of the Elections Act			required consequential provisions. Recommends harmonization of the definition of “preceding five years” in the Elections Act with the electoral calendar to avoid litigious ambiguity regarding the date of nomination versus date of election.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Fidel Wangai	Adopt the proposal	The Elections Act amendments are necessary to give operational effect to the constitutional bar. The IEBC requires clear statutory authority to reject nomination papers filed by a disqualified candidate.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Andrew Maina	Adopt the proposal	Supports the consequential amendments to the Elections Act to operationalise the constitutional disqualification.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Office of the Attorney General and Department of Justice	The amendments are constitutionally permissible	The proposed amendments to the Elections Act are consistent with Article 256(2) in that they only address consequential amendments to legislation arising out of the proposed amendments to Articles 99 and 193 of the Constitution.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Fredrick Bundi	Adopt the proposal	The amendments to the Elections Act are constitutionally required consequential provisions that give effect to the constitutional amendments. Without corresponding statutory amendments, the constitutional disqualification would lack the operational machinery necessary for implementation by the IEBC at the candidate nomination stage.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Rayzan Bundi	Adopt the proposal	The statutory amendments are constitutionally required consequential provisions. Without corresponding Elections Act amendments, the constitutional disqualification would lack operational machinery necessary for IEBC implementation at

			nomination stage.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Erastus Kamau	Adopt the proposal	The statutory amendments are constitutionally required consequential provisions. The IEBC relies on the Elections Act as the primary legal instrument governing the candidate nomination and vetting process and requires direct statutory authority to reject nomination papers filed by a disqualified candidate.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Joyce Wamwea	Adopt the proposal	The amendments to the Elections Act are constitutionally required consequential provisions that give effect to the constitutional amendments and ensure the disqualification can be enforced practically at the point of nomination before a disqualified candidate reaches the ballot.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Sheria Watch	Adopt with caution; raises constitutional concerns	Agrees with the spirit of the Elections Act amendments but reiterates concerns on the proportionality of the 5-year cooling period and the potential referendum requirement under Article 255, which must be sufficiently addressed before enactment.
2 Amendment to section 24(2) and 25(2) of the Elections Act	ORPP	Support with conditions	Supports the Elections Act consequential amendments but calls for a commencement and/or savings clause and for consideration of less restrictive means such as conflict of interest declaration mechanisms in line with Article 24(1)(e).
2 Amendment to section 24(2) and 25(2) of the Elections Act	Shallet Kibet (The Big Talk)	Adopt the proposal	The Elections Act amendments are necessary to give operational effect to the constitutional restriction and to enable the IEBC to implement the disqualification at the candidate nomination stage.
2 Amendment to section 24(2) and	Transparency International Kenya	Oppose the proposal in its current form	The Elections Act amendments operationalize an inadequate 5-year bar. Former governors should

25(2) of the Elections Act	(TI-Kenya)		instead be barred until audits, investigations, and court proceedings are fully exhausted regardless of the time taken. The bar under the Elections Act should also extend to candidacy for appointive positions.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Outreach for Action Kenya	Reject the proposal	The Elections Act amendments operationalize a blanket disqualification that fails the proportionality test under Article 24, violates non-derogable rights under Articles 25 and 50, and discriminates contrary to Article 27. Recommends statutory reforms that operationalize accountability at nomination through disclosure obligations and IEBC vetting frameworks, without imposing a blanket disqualification.
2 Amendment to section 24(2) and 25(2) of the Elections Act	Abdulmalik Magong’a	Reject the proposal	Opposes on technical and constitutional grounds. The Elections Act amendments operationalize an unconstitutional and discriminatory disqualification. They should be deleted along with the constitutional amendments.

***Annex 6: Text of
the proposed
Committee
amendments on
the Bill***

1st July, 2026

The Clerk of the Senate,
Parliament Buildings,
NAIROBI.

**RE: COMMITTEE STAGE AMENDMENTS TO THE CONSTITUTION OF KENYA
(AMENDMENT) BILL, 2026 (SENATE BILLS NO. 7 OF 2026)**

NOTICE is given that Sen. Wakili Hillary Sigei, Chairperson to the Standing Committee on Justice, Legal Affairs and Human Rights, intends to move the following amendments to the Constitution of Kenya (Amendment) Bill, 2026 (Senate Bills No. 7 of 2026), at the Committee Stage—

NEW CLAUSE

CLAUSE 2A

THAT the Bill be amended by inserting the following new clause immediately after clause 2—

Amendment of Article
180 of the
Constitution.

2A. Article 180 of the Constitution is amended in clause (2) by inserting the following new clause immediately after clause 2—

2A. Notwithstanding clause (2), the provisions of Article 193(2)(ba) shall not apply to an election of a county governor.

Dated 30th July 2026.

Sen. Wakili Hillary Sigei,
Chairperson,

Standing Committee on Justice, Legal Affairs and Human Rights

