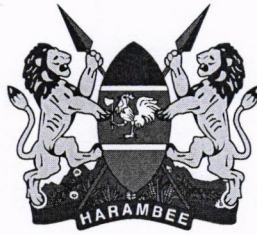


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REPUBLIC OF KENYA



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TWELFTH PARLIAMENT (SIXTH SESSION)

THE SENATE

PAPERS LAID

DATE	5/04/2022
TABLED BY	DLM
COMMITTEE	—
CLERK AT THE TABLE	MR. AMOLO

eg 31/03/22

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

REPORT ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL
(SENATE BILLS NO. 46 OF 2021)

Approved by
[Signature]
31/3/2022

RT. Hon Speaker
You may approve
for tabling -
31/03/22

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

DC-EG
Recommended & Forwarded March, 2022
eg 31/03/22

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31 MAY 2025

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RT. Hon. Charles
for many years
for the
8/10/25

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FOREWORD BY THE CHAIRPERSON

1. One of the objects of devolution as provided for under Article 174 of the Constitution is ‘to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya’. The Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) seeks to ensure that the expansive county of Kitui is divided into Kitui County and Mwingi County, thereby bringing services and resources closer to the people.
2. The Bill was read a First Time in the Senate on 29th September, 2021 and thereafter stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. Pursuant to Article 118 of the Constitution and standing order 140(5) of the Senate Standing Orders, the Committee proceeded to invite stakeholder and public comments on the Bill, whereupon it received written submissions from one (1) stakeholder.
3. While the Committee intended to undertake extensive public hearings on the Bill in Kitui County and across various regions of the country, this was hindered by the prevailing COVID-19 situation in the country at the time. Notably, between October and December 2021, Kenya reached an all-time high COVID-19 infection rate, with positive results in nearly a third of tests, fueled by the highly transmissible omicron variant.
4. Upon resumption of consideration of the Bill during the first part of the Sixth Session, the Committee observed that --
 - i) Article 256(1) (c) of the Constitution provides that a Bill to amend the Constitution by parliamentary initiative ‘shall not be called for second reading in either House within ninety days after the first reading of the Bill in that House’;
 - ii) Unlike other Bills, the Constitution at Article 256(2), imposed a specific obligation on Parliament ‘to publicise any Bill to amend this Constitution, and facilitate public discussion about the Bill.’
 - iii) While Article 94(3) of the Constitution grants Parliament the power to alter county boundaries, and Article 188(2) outlines the criteria and procedure to be followed in making such an alteration, the Constitution is silent on the criteria and procedure to be followed in varying the number of counties, either by

increasing or reducing their number. Consequently, there would be need for extensive stakeholder and public engagements in determining these aspects prior to consideration and passage of a Bill to increase or reduce the number of counties;

- iv) The time remaining in the legislative calendar of the current Parliament would not be sufficient to have the Bill considered in the said manner and passed by both Houses by mid-June, when the two Houses were scheduled to adjourn *sine die*; and
 - v) The schedule of activities preceding the 2022 General Elections was well underway. This meant that it may not be possible to facilitate extensive public discussions on the Bill, as required under Article 256(2) of the Constitution and, even if the Bill was passed, there would not be sufficient time to undertake a referendum or to have the provisions of the Bill apply to the 2022 General Elections.
5. Arising from the said observations, the Standing Committee on Justice, Legal Affairs and Human Rights recommends that –
- i) the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) be not proceeded with, and that the sponsor withdraws the Bill, pursuant to standing order 154 of the Senate Standing Orders; and
 - ii) on commencement of the next term of Parliament, the Standing Committee on Justice, Legal Affairs and Human Rights to facilitate public discourse on the criteria and procedure to be followed in considering a Bill to increase or reduce the number of counties.
6. An opportunity may however be accorded to the Mover to move the Bill at Second Reading stage, and have Senators make their contributions, following which the Mover would withdraw the Bill before the Question on Second Reading of the Bill is put.
7. The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in undertaking this assignment. The Committee further wishes to thank the stakeholders who submitted written memoranda on the Bill, as well as the sponsor of the Bill, who robustly engaged with the Committee both at pre-publication stage and during the substantive consideration of the Bill.

7. It is now my pleasant duty, pursuant to standing order 143 (1), to present a Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021).

Signed.....

Date 29TH MARCH 2022 .

**SEN. ERICK OKONG'O MOGENI, SC, MP,
CHAIRPERSON,
STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS**

PREFACE

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to the Senate Standing Order 212 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.'





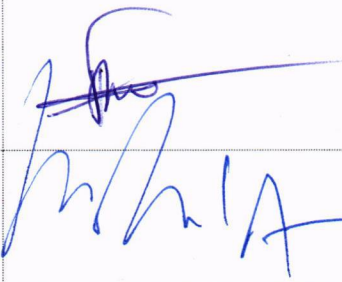
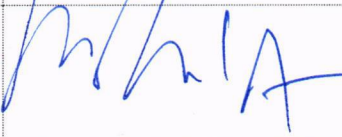

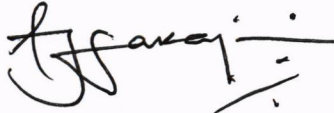

The Committee is comprised of---

- 1) Sen. Erick Okong'o Mogeni, SC, MP - Chairperson
- 2) Sen. (Canon) Naomi Jillo Waqo, MP - Vice Chairperson
- 3) Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP
- 4) Sen. James Orengo, EGH, SC, MP
- 5) Sen. Fatuma Dullo, CBS, MP
- 6) Sen. Mutula Kilonzo Junior, CBS, MP
- 7) Sen. (Dr) Irungu Kang'ata, CBS, MP
- 8) Sen. Johnson Sakaja, CBS, MP
- 9) Sen. Isaac Ngugi Githua, MP

The Minutes of the Sitzings of the Committee in considering the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) are attached to this Report collectively as *Annex 1*.

**ADOPTION OF THE REPORT ON THE CONSTITUTION OF KENYA
(AMENDMENT) BILL (SENATE BILLS NO. 46 OF 2021)**

We, the undersigned Members of the Senate Standing Committee on Justice, Legal Affairs and Human Rights, do hereby append our signatures to adopt this Report –

Sen. Erick Okong’o Mogeni, SC, MP	-Chairperson	
Sen. (Canon) Naomi Jillo Waqo, MP	-Vice-Chairperson	
Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP	-Member	
Sen. James Orengo, EGH, SC, MP	-Member	
Sen. Fatuma Dullo, CBS, MP	-Member	
Sen. Mutula Kilonzo Junior, CBS, MP	-Member	
Sen. (Dr) Irungu Kang’ata, CBS, MP	-Member	
Sen. Johnson Sakaja, CBS, MP	-Member	
Sen. Isaac Ngugi Githua, MP	-Member	

CHAPTER ONE: INTRODUCTION

A. Background

1. The object of the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) is to amend the Constitution of Kenya to ensure that resources and services are brought closer to the people by splitting the vast expansive Kitui County into two Counties, namely Kitui and Mwingi Counties, respectively.
2. As currently constituted, the larger Mwingi region has three constituencies. These are Mwingi Central, Mwingi North and Mwingi West. The proposed new Mwingi County shall also include Kitui East constituency. The four constituencies have a cumulative population of 558,000 people according to the 2019 national census report. This population is spread in twenty-one (21) wards distributed as follows ---

CONSTITUENCY	WARD	
1. Mwingi Central	1.	Kivou ward
	2.	Nguni ward
	3.	Nuu ward
	4.	Mui ward
	5.	Central Ward
2. Mwingi West	1.	Kyome/Thaana Ward
	2.	Nguutani Ward
	3.	Kiomo/Kyethani Ward
	4.	Migwani Ward
3. Mwingi North	1.	Ngomeni Ward
	2.	Kyuso Ward
	3.	Mumoni Ward
	4.	Tharaka Ward
	5.	Tseikuru Ward
4. Kitui East	1.	Endau/Malalani Ward
	2.	Zombe/Mwitika Ward
	3.	Mutitu/Kaliku Ward
	4.	Voo/Kyamatu Ward
	5.	Nzambani Ward
	6.	Chuluni Ward

3. Article 6(1) of the Constitution of Kenya provides that the territory of Kenya is divided into the counties specified in the First Schedule. The First Schedule then lists forty-seven (47) counties. This Bill therefore amends the First Schedule by introducing “Mwingi” as a county hived off from Kitui County.

B. Prepublication scrutiny

4. The draft Constitution of Kenya (Amendment) Bill, 2021 was submitted to the Honourable Speaker of the Senate on 13th April, 2021 and, pursuant to Senate Standing Order 125(3)(a), referred to the Standing Committee on Justice, Legal Affairs and Human Rights for pre-publication scrutiny and comments.
5. The Committee considered the legislative proposal and noted that—
 - a) The legislative proposal sought to amend the First Schedule of the Constitution to establish a new County named Mwingi, to be hived off the expansive Kitui County. Arising from this, the legislative proposal further sought to amend—
 - i) Article 98(1)(a) of the Constitution, to increase the number of elected Senators from forty-seven to forty-eight; and
 - ii) Article 98(1)(b) of the Constitution, to increase the number of women nominated to the Senate, under that provision, from sixteen to eighteen.
 - b) The legislative proposal would give rise to a Bill relating to matters specified under Article 255(1) of the Constitution and would, upon passage by Parliament, need to be subjected to a referendum as provided for at Article 255(2) and 256(5) of the Constitution.
 - c) While the Bill sought to amend Article 98(1)(a) of the Constitution on the membership of the Senate, a similar amendment ought to have been proposed to Article 97(1)(b) of the Constitution, to increase the number of women elected to represent each county in the National Assembly, from forty-seven to forty-eight.
 - d) The provisions of the legislative proposal referring to Article 98(1)(a) and (b) of the Constitution, on the membership of the Senate, would become moot in the event the Constitution of Kenya (Amendment) Bill, 2020 that is promoted by the Building Bridges Initiative, was passed.

Noting that a Bill to amend the Constitution cannot be amended, this would necessitate withdrawal of the Bill, its redrafting to reflect the revised membership of the Senate, republication, and re-introduction, pursuant to standing orders 154 and 125 of the Senate Standing Orders.

- c) The sponsor may amend the legislative proposal before its publication to include the proposed amendment to Article 97(1)(b) of the Constitution, to increase the number of women elected to represent each county in the National Assembly, from forty-seven to forty-eight.
6. The Committee therefore resolved to recommend to the Honourable Speaker of the Senate to direct that the legislative proposal be accepted and that it be published as a Bill, pursuant to Senate Standing Order 126(2).

C. Publication, First Reading and Committal of the Bill

7. The Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) was published *vide* Kenya Gazette Supplement No. 155 of 12th August, 2021 and was introduced in the Senate by way of First Reading on 29th September, 2021. A copy of the Bill is attached to this Report as *Annex 2*.
8. Pursuant to Article 118 of the Constitution and standing order 140(1) of the Senate Standing Orders, the Bill was committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration and public participation.

D. Purpose of the Bill

9. The purpose of the Bill is to amend the Constitution of Kenya to ensure that resources and services are brought closer to the people by splitting the vast expansive Kitui County into two Counties, Kitui and Mwingi, and to address the one-third gender rule in the composition of the Senate by increasing the specially elected women from sixteen to eighteen Senators.

E. Overview of the Bill

10. Clause 2 of the Bill proposes to amend Article 97(1)(b) of the Constitution to increase the number of women elected to represent each county in the National Assembly, from forty-seven to forty-eight.

11. Clause 3 of the Bill proposes to amend Article 98(1)(a) of the Constitution to increase the number of elected Senators from forty-seven to forty-eight. Additionally, the clause proposes to amend Article 98(1)(b) of the Constitution to increase the specially elected women from sixteen to eighteen Senators.
12. Clause 3 of the Bill proposes to amend the First Schedule to the Constitution to insert county No. 15A, “Mwingi”.

F. Consequences of the Bill

13. One of the objects of devolution as provided for under Article 174 of the Constitution is *‘to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya’*. The Bill seeks to ensure that the now very expansive county of Kitui is divided into Kitui County and Mwingi County thereby bringing services and resources closer to the people.
14. Currently the larger Mwingi region has three constituencies: Mwingi Central, Mwingi North and Mwingi West. It is proposed that the new Mwingi County shall also include Kitui East constituency. The four constituencies have a cumulative population of 558,000 people according to the 2019 national census report. This population is spread in twenty-one (21) wards.
15. By increasing the number of counties, and increasing the number of specially elected Senators, the number of Senators will increase from the current sixty-seven to seventy. The number of women elected to represent each county in the National Assembly will also increase from forty-seven to forty-eight
16. The legislative proposal is a constitutional amendment by way of Parliamentary initiative as provided for under Article 256 of the Constitution. Additionally, if an amendment relates to any of the matters set out under Article 255(1), the amendment shall be subjected to a referendum in accordance with Article 255(2) of the Constitution.
17. One of the matters set out under Article 255(1) of the Constitution is *‘the objects, principles and structure of devolved government’*. The intention of the Bill is to bring resources and services closer to the people. Additionally, Article 175 of the Constitution sets out the principles of devolved government. One of these principles

as provided for under Article 175(b) is that '*county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively*'. The proposed new county will require resources in order to deliver services.

18. Therefore, by increasing the number of counties, ensuring access to services and resources to the people, and the fact that the proposed new county will require reliable resources, the proposed amendment will be subjected to a referendum as provided for under Article 255 of the Constitution.

CHAPTER TWO: CONSIDERATION OF THE BILL

A. Invitation of stakeholder submissions on the Bill

19. The Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) was read a First Time in the Senate on 29th September, 2021 and thereafter stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.
20. In compliance with the provisions of Article 118 of the Constitution and Standing Order 140 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the *Daily Nation* and *Standard* newspapers on Friday, 1st October, 2021 inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website and social media platforms. A copy of the advertisement is attached as *Annex 3*.
21. In response to the advertisement and invitations, the Committee received written submissions from one (1) stakeholder, that is the Kariobangi Paralegal Network. A copy of the said submissions is attached to this Report as *Annex 4*.

B. Consideration of the Bill by the Committee

22. The Committee, in considering the Bill, noted that it was required to undertake extensive public participation to comply with the Constitution and judicial pronouncements on the threshold to be met in processing such amendment to the Constitution. Unlike other Bills, the Constitution, at Article 256(2), imposed a specific obligation on Parliament '*to publicise any Bill to amend this Constitution, and facilitate public discussion about the Bill.*'
23. In this regard, the Committee proposed to undertake a series of public hearings on the Bill in Kitui County and across various regions of the country. Due to the prevailing COVID-19 situation in the country at the time, the Committee was however unable to undertake the said visits during the last part of the Fifth Session.
24. Consequently, the Committee resumed consideration of the Bill during the first part of the Sixth Session.

CHAPTER THREE: COMMITTEE OBSERVATIONS AND RECOMMENDATION

B. Observations

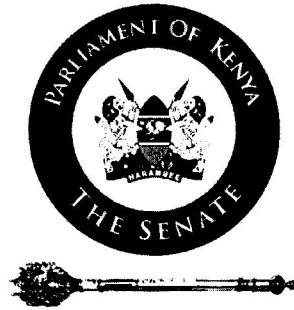
25. One of the objects of devolution as provided for under Article 174 of the Constitution is 'to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya'. The Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) seeks to ensure that the now very expansive county of Kitui is divided into Kitui County and Mwingi County, thereby bringing services and resources closer to the people.
26. The Committee, in considering the Bill, observed that –
- i) Article 256(1) (c) of the Constitution provides that a Bill to amend the Constitution by parliamentary initiative 'shall not be called for second reading in either House within ninety days after the first reading of the Bill in that House';
 - ii) Unlike other Bills, the Constitution at Article 256(2), imposed a specific obligation on Parliament 'to publicise any Bill to amend this Constitution, and facilitate public discussion about the Bill.'
 - iii) While Article 94(3) of the Constitution grants Parliament the power to alter county boundaries, and Article 188(2) outlines the criteria and procedure to be followed in making such an alteration, the Constitution is silent on the criteria and procedure to be followed in varying the number of counties, either by increasing or reducing their number. Consequently, there would be need for extensive stakeholder and public engagements in determining these aspects prior to consideration and passage of a Bill to increase or reduce the number of counties.
 - iv) The time remaining in the legislative calendar of the current Parliament would not be sufficient to have the Bill considered in the said manner and passed by both Houses by mid-June, when the two Houses were scheduled to adjourn *sine die*; and
 - v) The schedule of activities preceding the 2022 General Elections was well underway. This meant that it may not be possible to facilitate extensive public discussions on the Bill, as required under Article 256(2) of the Constitution and, even if the Bill was passed, there would not be sufficient time to undertake a referendum or to have the provisions of the Bill apply to the 2022 General Elections.

C. Recommendation

27. Arising from the said observations, and following consultations with the sponsor of the Bill, the Standing Committee on Justice, Legal Affairs and Human Rights recommends that –
- a) the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021) be **stepped down**, and that it be reintroduced for consideration early during the next term of Parliament, when there would be sufficient time to undertake extensive public participation and meet the timelines for processing of the Bill as set out in the Constitution; and
 - b) on commencement of the next term of Parliament, the Standing Committee on Justice, Legal Affairs and Human Rights to facilitate public discourse on the criteria and procedure to be followed in considering a Bill to increase or reduce the number of counties.

LIST OF ANNEXES

<i>Annex 1:</i>	Minutes of the Committee in considering the Bill
<i>Annex 2:</i>	The Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021)
<i>Annex 3:</i>	Advertisement published in the <i>Daily Nation</i> and <i>Standard</i> newspapers on Friday, 1 st October, 2021
<i>Annex 4:</i>	Copies of stakeholder submissions on the Bill



TWELFTH PARLIAMENT | SIXTH SESSION

MINUTES OF THE THIRTY FOURTH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON TUESDAY, 22ND MARCH, 2022, AT 10:30 AM.

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP | - Chairperson (Chairing) |
| 2. Sen. (Canon) Naomi Jillo Waqo, MP | - Vice Chairperson |
| 3. Sen. Fatuma Dullo, CBS, MP | - Member |
| 4. Sen. Mutula Kilonzo Junior, CBS, MP | - Member |
| 5. Sen. (Dr.) Irungu Kang'ata, CBS, MP | - Member |
| 6. Sen. Isaac Ngugi Githua, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member |
| 2. Sen. James Orengo, EGH, SC, MP | - Member |
| 3. Sen. Johnson Sakaja, CBS, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Charles Munyua | - Clerk Assistant |
| 2. Mr. Moses Kenyanchui | - Legal Counsel |
| 3. Mr. Mitchell Otoro | - Legal Counsel |
| 4. Mr. Said Osman | - Research Officer |
| 5. Mr. Kennedy Owuoth | - Fiscal Analyst |
| 6. Ms. Purity Orutwa | - Clerk Assistant (<i>Taking minutes</i>) |
| 7. Mr. James Kimiti | - Hansard/ Audio Officer |
| 8. Ms. Hawa Abdi | - Serjeant at Arms |
| 9. Ms. Sandra Alusa | - Intern |
| 10. Mr. Titus Michubu | - Pupil |

MIN. NO. 180/2022

PRAYER

The sitting commenced with a word of prayer by the Vice Chairperson.

MIN. NO. 181/2022 **ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. (Dr.) Irungu Kang'ata, CBS, MP.

MIN. NO. 182/2022 **THE POLITICAL PARTY PRIMARIES BILL (SENATE BILLS NO. 35 OF 2020)**

The Committee considered and adopted the Report on the Political Party Primaries Bill (Senate Bills No. 35 of 2020), having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. Isaac Ngugi Githua, MP.

MIN. NO. 183/2022 **THE ALTERNATIVE DISPUTE RESOLUTION BILL (SENATE BILLS NO.34 OF 2021)**

The Committee considered and adopted the Report on the Alternative Dispute Resolution Bill (Senate Bills No.34 of 2021), having been proposed by Sen. (Dr.) Irungu Kang'ata, CBS, MP and seconded by Sen. (Canon) Naomi Jillo Waqo, MP.

MIN. NO. 184/2022 **THE ELECTION (AMENDMENT) (NO.2) BILL (SENATE BILLS NO. 43 OF 2021)**

The Committee considered and adopted the Report on the Election (Amendment) (No.2) Bill (Senate Bills No. 43 of 2021) having been proposed by Sen. (Canon) Naomi Jillo Waqo, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

MIN. NO. 185/2022 **THE CONSTITUTION OF KENYA (AMENDMENT) BILL (SENATE BILLS NO. 46 OF 2021)**

The Committee considered and adopted the Report on the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021), having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. Isaac Ngugi Githua, MP.

MIN. NO. 186/2022 **PETITION ON AMENDMENT TO THE CONSTITUTION OF KENYA AND OTHER RELEVANT LAWS ON THE ELECTION OF A DEPUTY PRESIDENT AND A DEPUTY GOVERNOR**

The Committee considered and adopted the Report on a Petition by Taratisio Irceri Kawe, regarding proposed amendments to the Constitution and various statutes on the election of a Deputy President and Deputy Governor, whenever such a position became vacant. The Report was proposed by Sen. (Dr.) Irungu Kang'ata, CBS, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

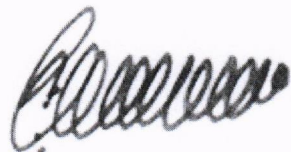
MIN. NO. 187/2022 ANY OTHER BUSINESS

Members were informed that the following meetings were scheduled for Wednesday and Thursday that week, and that the respective stakeholders had confirmed attendance. Consequently, Members were urged to avail themselves for the meetings –

No.	Date	Time	Meeting
a)	Wednesday, 23 rd March, 2022	8.00 am	Meeting with the Attorney General and the Law Society of Kenya to consider a Statement sought by Sen. Samson Cherarkey, MP on unqualified persons practicing as Advocates in various private companies.
b)	Thursday, 24 th March, 2022	8.00 am	Meeting with the Chairperson of the Independent Electoral and Boundaries Commission to discuss the status of preparedness for the 2022 General Elections.

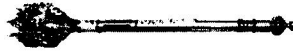
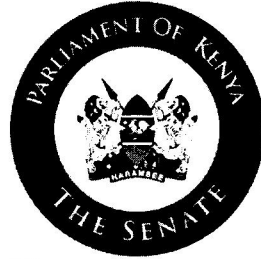
MIN. NO. 188/2022 ADJOURNMENT

The meeting was adjourned at 11:14am. The next meeting was scheduled for Wednesday, 23rd March at 8:00 am.



SIGNED:
(CHAIRPERSON)

DATE: 30/03/2022



TWELFTH PARLIAMENT | FIFTH SESSION

MINUTES OF THE NINETY-SIXTH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD AT WHITESANDS BEACH RESORT, IN MOMBASA COUNTY, ON FRIDAY, 26TH NOVEMBER, 2021 AT 10.00 A.M.

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP | - Chairperson (Chairing) |
| 2. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member |
| 3. Sen. Fatuma Dullo, CBS, MP | - Member (V) |
| 4. Sen. (Dr.) Irungu Kang'ata, CBS, MP | - Member |
| 5. Sen. Isaac Ngugi Githua, MP | - Member (V) |

ABSENT WITH APOLOGY

- | | |
|--|--------------------|
| 1. Sen. (Canon) Naomi Jillo Waqo, MP | - Vice Chairperson |
| 2. Sen. James Orenge, EGH, SC, MP | - Member |
| 3. Sen. Mutula Kilonzo Junior, CBS, MP | - Member |
| 4. Sen. Johnson Sakaja, CBS, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Dr. Johnson Okello | - Director, Legal Services |
| 2. Ms. Mercy Thanji | - Legal Counsel |
| 3. Mr. Charles Munyua | - Clerk Assistant |
| 4. Mr. Said Osman | - Research Officer |
| 5. Mr. Moses Kenyanchui | - Legal Counsel |
| 6. Ms. Lucianne Limo | - Media Relations Officer |
| 7. Mr. Javan Nang'eyo | - Sergeant at Arms |
| 8. Ms. Purity Orutwa | - Clerk Assistant (<i>Taking Minutes</i>) |
| 9. Ms. Hawa Abdi | - Sergeant at Arms |
| 10. Mr. James Kimiti | - Hansard Officer |

MIN. NO. 462/2021

PRAYER

The sitting commenced with a word of prayer by Sen. Fatuma Dullo, CBS, MP.

MIN. NO. 463/2021 **ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, having been proposed by Sen. (Dr.) Irungu Kang'ata, CBS, MP and seconded by Sen. Isaac Ngugi Githua, MP.

MIN. NO. 464/2021 **JUDGMENT BY THE COURT OF APPEAL IN CIVIL APPEAL NO. E084 OF 2021 - SPEAKER OF THE NATIONAL ASSEMBLY OF THE REPUBLIC OF KENYA & ANOTHER Vs SENATE OF THE REPUBLIC OF KENYA & 12 OTHERS**

The Committee was taken through a brief on the Judgment delivered by the Court of Appeal on 19th November, 2021 in Civil Appeal No. E084 of 2021 - *Speaker of the National Assembly of the Republic of Kenya & Another Vs Senate of the Republic of Kenya & 12 Others*.

It was noted that the Judgment had greatly eroded the gains made in the Judgment delivered by the High Court on 29th October 2020 in HC Petition No. 284 of 2019. Consequently, it was resolved that an appeal be preferred to the Supreme Court on the aspects of the Court of Appeal Judgment that the Senate was dissatisfied with.

In this regard, the Committee directed the legal team to file the Notice of Appeal within the required timelines. The Committee would convene at a later date to consider the draft Petition and Record of Appeal to be filed at the Supreme Court.

MIN. NO. 465/2021 **THE ALTERNATIVE DISPUTE RESOLUTION BILL (SENATE BILLS NO. 34 OF 2021)**

The Committee noted that, due to the extensive public and stakeholder submissions received on the Bill, it was important that the matrix be considered at a physical sitting during which at least five Members were present, to enable decisions to be made on the respective clauses of the Bill.

Consequently, further consideration of the Bill was deferred.

MIN. NO. 466/2021 **THE LIFESTYLE AUDIT BILL, (SENATE BILL NO. 36 OF 2021)**

The Committee noted that, due to the extensive public and stakeholder submissions received on the Bill, it was important that the matrix be considered at a physical sitting during which at least five Members were present, to enable decisions to be made on the respective clauses of the Bill.

Consequently, further consideration of the Bill was deferred.

MIN. NO. 467/2021

- I) THE ELECTION (AMENDMENT) BILL (SENATE BILLS NO. 42 OF 2021);**
- II) THE ELECTION (AMENDMENT) (NO. 2) BILL (SENATE BILLS NO. 43 OF 2021); AND**
- III) THE ELECTION (AMENDMENT) (NO 3) BILL (SENATE BILLS NO. 48 OF 2021).**

The Committee noted that a public hearing on the three Bills was scheduled to be held in Nairobi on 3rd December, 2021. The Committee further resolved to explore the possibility of undertaking public hearings on the Bills, at selected regions outside Nairobi, in January, 2022.

MIN. NO. 468/2021

THE CONSTITUTION OF KENYA (AMENDMENT) BILL (SENATE BILLS NO. 46 OF 2021).

The Committee resolved to explore the possibility of undertaking public hearings on the Bills, in Kitui County and other selected regions, in January, 2022.

MIN. NO. 469/2021

ADJOURNMENT

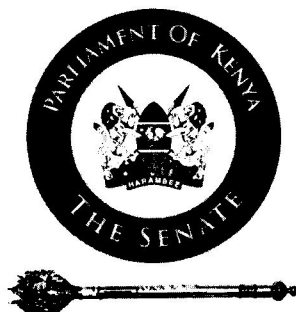
There being no other business, the meeting was adjourned at 12.45 pm. The next sitting will be held on Friday, 26th November, 2021 at 2.00 pm, in Mombasa County.



SIGNED:

(CHAIRPERSON)

DATE: 30/03/2022



TWELFTH PARLIAMENT | FIFTH SESSION

MINUTES OF THE NINETY-FIFTH SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON THURSDAY, 18TH NOVEMBER, 2021 AT 8.10 A.M.

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP | - Chairperson (Chairing) |
| 2. Sen. (Canon) Naomi Jillo Waqo, MP | - Vice Chairperson |
| 3. Sen. Mutula Kilonzo Junior, CBS, MP | - Member |
| 4. Sen. Johnson Sakaja, CBS, MP | - Member |
| 5. Sen. Isaac Ngugi Githua, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Amos Wako, EGH, EBS, SC, FCI Arb, MP | - Member |
| 2. Sen. James Orengo, EGH, SC, MP | - Member |
| 3. Sen. Fatuma Dullo, CBS, MP | - Member |
| 4. Sen. (Dr.) Irungu Kang'ata, CBS, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Charles Munyua | - Clerk Assistant |
| 2. Mr. Said Osman | - Research Officer |
| 3. Mr. Moses Kenyanchui | - Legal Counsel |
| 4. Ms. Purity Orutwa | - Clerk Assistant (<i>Taking Minutes</i>) |
| 5. Ms. Hawa Abdi | - Sergeant at Arms |
| 6. Mr. James Kimiti | - Hansard Officer |
| 7. Ms. Cynthia Wanjiku | - Pupil |

MIN. NO. 457/2021

PRAYER

The sitting commenced with a word of prayer by the Vice Chairperson.

MIN. NO. 458/2021

ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Isaac Ngugi Githua, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

MIN. NO. 459/2021

- I) THE ELECTION (AMENDMENT) BILL (SENATE BILLS NO. 42 OF 2021);**
- II) THE ELECTION (AMENDMENT) (NO. 2) BILL (SENATE BILLS NO. 43 OF 2021);**
- III) THE ELECTION (AMENDMENT) (NO 3) BILL (SENATE BILLS NO. 48 OF 2021); AND**
- IV) THE CONSTITUTION OF KENYA (AMENDMENT) BILL (SENATE BILLS NO. 46 OF 2021).**

The Committee considered the Election (Amendment) Bill (Senate Bills No. 42 of 2021); the Election (Amendment) (No. 2) Bill (Senate Bills No. 43 of 2021); the Election (Amendment) (No 3) Bill (Senate Bills No. 48 of 2021); and, the Constitution of Kenya (Amendment) Bill (Senate Bills No. 46 of 2021).

It was noted that, the Bills being of great public interest, there was need to ensure that adequate public participation was undertaken thereon, to avoid any legal challenges that may be brought up relating to the process for passage of the said Bills.

Consequently, the Committee resolved to hold a public hearing on the Bills on Friday, 3rd December, 2021.

MIN. NO. 460/2021


ANY OTHER BUSINESS

The Committee noted with concern that, following the tabling and debate on the Committee Reports relating to extrajudicial killings and the delay in appointment of Judges, the Chairperson of the Committee had been targeted in a sustained campaign on social media to malign his name and character. The Committee resolved to not be intimidated in the conduct of its business.

MIN. NO. 461/2021

ADJOURNMENT

There being no other business, the meeting was adjourned at 8.45 am. The next sitting will be held on Friday, 26th November, 2021 at 9.00 am, in Mombasa County.



SIGNED:
(CHAIRPERSON)

DATE: 30/10/2022