

COUNTY GOVERNMENT OF BUNGOMA



COUNTY ASSEMBLY OF BUNGOMA

SECOND ASSEMBLY, FIFTH SESSION

JUSTICE AND LEGAL AFFAIRS COMMITTEE REPORT

ON

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

FEBRUARY, 2021

Clerk's Chambers

County Assembly Buildings

PO BOX 1886,

BUNGOMA, KENYA

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CHAPTER ONE

1.1 Preamble

Mr. Speaker Sir, on behalf of the members of the Justice and Legal Affairs Committee, it is my pleasure to present to this House the Committee's report on the Constitution of Kenya (Amendment) Bill, 2020 that was tabled on Tuesday 9th February, 2021 and committed to this Committee for processing.

1.2 The Mandate of the Committee

Mr. Speaker Sir, the Committee on Justice and Legal Affairs draws its mandate from the Standing Order No. 192 (3) of the Bungoma County Assembly which states that:

(3) The Committee shall deal with Constitutional affairs, Administration of Law and Justice, including the election, ethics, integrity and anti-corruption, human rights issues and all petitions save for those provided for under Standing Order 207 (committal of petitions).

1.3 Committee Membership

Mr. Speaker Sir, the Committee on Justice and Legal Affairs as currently constituted comprises of the following Members:-

1. Hon. Peter Sindani	Chairperson
2. Hon. Rosemary Khisa	Member
3. Hon. David Barasa	Member
4. Hon. Anthony Lusenaka	Member
5. Hon. Elvis Abuka	Member
6. Hon Wamusai Simiyu	Member
7. Hon. Everlyne Mutiembu	Member
8. Hon. Nathaniel Asenaka	Member
9. Hon. Rebah Wabwile	Member
10. Hon. Eunice Kirui	Member

1.4 Public hearing

Mr. Speaker Sir, Pursuant to Article 196(1) (a) and (b) of the Constitution of Kenya 2010 and the County Assembly of Bungoma Standing Order No. 121(3) which requires public participation and public involvement in the legislative and other business of the County Assembly and its Committees, a notification was placed in the Daily Nation of Thursday 11th February, 2021 informing the public and inviting them to submit views orally or written memoranda by 18th February, 2021.

1.5 LEGAL FRAMEWORK

1.5.1. Legal Framework on Constitutional Amendment

2. The Preamble to the Constitution of Kenya recognizes that the Kenyan people—

- (a) acknowledge the supremacy of the Almighty God of all creation;
- (b) Are committed to nurturing and protecting the well-being of the individual, the family, communities and the nation;
- (c) recognizes the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law;
- (d) Exercise their sovereign and inalienable right to determine the form of governance of Kenya by participating fully in the making of the Kenya Constitution; by Adopting, Enacting and giving the Kenyan Constitution to themselves and to their future generations.

3. Article 1(1),(2) and (4)(a) and (b) of the Constitution recognizes that all sovereign power belongs to the Kenyan people and can only be exercised directly or through democratically elected representative at the National level or at the County Level.

4. Article 2(1) and (2) of the Constitution provides that the Constitution is the supreme law of the Republic and binds all state organs, and that no person can claim or exercise state authority except under the Constitution. Further Article 2(3) of the Constitution provides that the validity or legality of the Constitution is not subject to challenge by or before any court or state organ.

5. Article 10(1)(a),(b) and (c) and (2)(a) and (b) of the Constitution provides that national values and principles of governance among them the rule of law, democracy and participation of the people and inclusiveness binds all state organs, state officers, public officers and all persons when applying or interpreting the Constitution; enacting, applying or interpreting any law or making or implementing public policy decisions.

6. Article 94(1) and (2) of the Constitution provides that the legislative authority of the Republic is derived from the people and shall be vested and exercised by Parliament at the National Level which manifests the diversity of the nation, represents the will of the people and exercises their sovereignty. Further Article 94(4) of the Constitution provides that the Parliament must protect the Constitution and promote the democratic governance of the Republic.
7. Article 174(a), (c) and (d) of the Constitution provides that the objects of devolution includes promotion of democracy and accountable exercise of power, giving powers of self-governance to the people and enhancing the participation of the people in the exercise of the powers of the State and in making decisions affecting them; and recognition of the right of communities to manage their own affairs and to further their development.
8. Article 185(1) of the Constitution provides that the legislative authority of a County Government is vested on and exercised by the County Assembly.
9. Article 196(1) (a) and (b) provides that a County Assembly must conduct their business in an open manner and facilitate public participation and involvement in the legislative and other business of the assembly and its committees.
10. Chapter 16 of the Constitution makes provision for the various ways in which any proposed amendment to the Constitution shall be undertaken.
11. Article 255 of the Constitution provides that any amendment to the Constitution whose amendment relates to the supremacy of the Constitution, the territory of Kenya; the sovereignty of the people; the term of office of the President; the Bill of Rights the independence of the Judiciary and the commissions and independent offices to which Chapter Fifteen applies; the functions of Parliament and the objects, principles and structure of devolved government, a proposed amendment shall be approved by a referendum if—
 - (a) at least twenty per cent of the registered voters in each of at least half of the counties vote in the referendum; and
 - (b) the amendment is supported by a simple majority of the citizens voting in the referendum
12. Article 257 (1),(2) and (3) of the Constitution provides that any amendment to the Constitution through popular version must be signed by at least one million registered voters and may be in the form of a general suggestion or a formulated draft Bill. If a

popular initiative is in the form of a general suggestion, the promoters of that popular initiative shall formulate it into a draft Bill. Further, Article 257(4) and (5) of the Constitution provides that upon support by at least one million registered voters of the draft Bill, the Independent Electoral and Boundaries Commission shall verify the signatures where upon satisfaction, the Commission shall submit the draft Bill to all County Assemblies for consideration within three months upon receipt of the Bill by the County Assemblies.

13. Article 257(6) of the Constitution provides that upon approval of the draft Bill by County Assembly, the Speaker of the County Assembly must deliver a copy of the Bill jointly to the Speakers of the Senate and National Assembly with a certificate that the assembly has approved the Bill.
14. Article 257(8) and (9) of the Constitution provides that a Bill seeking to amend the Constitution shall be passed if supported by majority of members of Parliament and forwarded to the President for assent.
15. Article 257(10) of the Constitution provides that if either House of Parliament fails to pass the Bill, or the Bill relates to a matter specified in Article 255(1), the proposed amendment shall be submitted to the people in a referendum.

1.6 Acknowledgment

Mr. Speaker Sir, let me take this opportunity to express my gratitude and sincere thanks to the members of this Committee for dedicating their limited time to sit and examine the Constitution of Kenya (Amendment) Bill, 2020. The Committee would also like to register appreciation to the members of secretariat who worked with us for their unwavering commitment. Further, the Committee is grateful to the Hon. Speaker, and the office of the Clerk of the County Assembly of Bungoma for the support received as it discharged its mandate.

Mr. Speaker Sir, it is therefore my singular duty, on behalf of the Committee members of Justice and Legal Affairs, to table this report to the County Assembly for consideration and adoption.

Signed  Date. 22-2-2021

Hon. Peter Sindani, MCA

Chairperson, Committee on Justice and Legal Affairs

CHAPTER TWO

2.0 THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

2.1 OVERVIEW OF THE PROPOSED AMENDMENTS.

The Constitution of Kenya (Amendment) Bill, 2020 seeks to provide for the following proposed amendments-

CHAPTER TWO-THE REPUBLIC

Clause 2 of the Bill proposes to insert a new Article,10A on Regional Integration and Cohesion into the Constitution to recognize integration and cohesion of the Eastern Africa region and Africa as integral towards attainment of sustainable development, prosperity for all and stability.

Clause 3 of the Bill proposes to insert a new Article 11A,on Economy and Shared Prosperity into the Constitution to provide for an economic system that will enhance equitable opportunities for all the people, promote industrialization and support small and micro enterprises.

CHAPTER THREE-CITIZENSHIP

Clause 4 of the Bill proposes to insert a New Article 18A into the Constitution that sets out moral principles to be adhered to by every citizen. The proposed amendment recognizes the responsibility of every citizen as a key to building a prosperous, fair and secure nation which includes cultivation of national unity, promotion and protection of the well-being of the family, payment of prescribed taxes, combating corruption, respecting private property and protecting public property from waste and misuse.

CHAPTER FOUR-THE BILL OF RIGHTS

Clause 5 of the Bill proposes to amend Article 31 of the Constitution on the right to privacy to include the right to have citizens' personal data protected from infringement; in view of the technology advancement.

CHAPTER SIX-LEADERSHIP AND INTEGRITY.

Clause 6 of the Bill seeks to amend Article 80 on Legislation on Leadership to require Parliament to enact a legislation that will ensure effective and expeditious investigation, prosecution and trial of cases relating to non-adherence to the provisions of the Constitution on Leadership and Integrity.

CHAPTER SEVEN-REPRESENTATION OF THE PEOPLE.

Clause 7 of the Bill proposes to amend Article 82 of the Constitution relating to Legislation on Elections to provide for sanctions for a political party that fails to comply with the principle that not more than two-thirds of the party's candidates are of the same gender.

Clause 8 of the Bill seeks to amend Article 87 of the Constitution (**Electoral Disputes**) to require Parliament to legislate not only on establishing mechanisms for timely settling of electoral disputes but also on disputes arising from nomination of candidates by a political party. Further, the clause proposes incorporation of electronic media as one of the modes of service in election petition.

Clause 9 of the Bill proposes to amend Article 88 of the Constitution on Independent Electoral and Boundaries Commission to bar any person who at any time within the preceding five years has held office, or stood for election either as a President, Deputy President, a County Governor, a Member of Parliament or a Member of County Assembly from being eligible for appointment as a member of the Independent Electoral and Boundaries Commission. The current Constitution only bars a person who at any time within the preceding five years had held office or stood for election either as a Member of Parliament or a Member of County Assembly from being eligible for appointment as a member of the Commission.

In addition, the Clause proposes an insertion of a provision requiring the Independent Electoral and Boundaries Commission to ensure that not more than two-thirds of the party's candidates are of the same gender.

Clause 10 of the Bill proposes to amend Article 89 of the Constitution (**Delimitation of electoral units**) to increase the number of constituencies from 290 to 360.

Clause 11 of the Bill proposes to amend Article 90 of the Constitution (**allocation of party list seats**) providing for the nomination of candidates from a party list for seats in the National Assembly and the County Assemblies based on the total votes received by their political parties as opposed to the current practice where such allocation is based on seats won by a political party.

CHAPTER EIGHT-LEGISLATURE

Clause 12 of the Bill proposes to amend Article 96(3) of the Constitution to expand the role of the Senate to not only oversight the national revenue allocated to counties but to also carry out oversight over county revenues and their expenditure.

Clause 13 of the Bill proposes to Amend Article 97 of the Constitution on membership of the national assembly. The Clause proposes the membership to comprise of:

360 elected members, four members, being two women and two men ,representing persons with disabilities, two members, being one woman and one man representing the youth, the number of special seats members to ensure that no more than two thirds of the membership of Parliament are of the same gender.

The Speaker, who is an ex-officio member, the Leader of official opposition, the Attorney General who shall be an ex-officio member and the cabinet ministers who shall not be elected members of the National Assembly who shall be ex-officio members.

However, in filling of the special top up seats, first priority in the nomination shall be given to candidates who contested for the constituency seats but were not elected.

The affirmative action for top-up to ensure that two thirds gender rule is met shall lapse after the general elections from the commencement date.

Clause 14 of the Bill proposes to amend Article 98 of the Constitution to increase the number of elected members of the senate from the current forty seven members to ninety four members, being one woman and one man from each County elected by the registered voters of the counties.

Clause 15 of the Bill proposes to amend Article 99(2) of the Constitution to remove a disqualification barring members of the county assemblies from being qualified to be elected as members of Parliament.

Clause 16 of the Bill proposes to amend the Constitution by inserting a new Article 107A to create the position of a leader of official opposition in the National Assembly. In the proposed amendment, the leader of official opposition shall be the person who received the second greatest number of votes in a presidential election and whose political party or coalition of parties has at least twenty-five percent of all the members of the National Assembly.

The leader of official opposition and the prime minister shall not be members of the same political party.

Clause 17 of the Bill proposes to amend Article 108 of the Constitution to introduce new order of precedence in the National Assembly. The order to be observed shall be, the Speaker of the National Assembly, the prime minister, and then the leader of official opposition.

The Clause seeks to abolish the positions of the leader of the majority party and the leader of the minority party at the National Assembly.

Clause 18 of the Bill proposes to insert a new Article 108A in the Constitution to introduce the positions of the leader of the majority party and the leader of the minority party in the senate. The proposed order of precedence to be observed at the senate shall be, the Speaker, of the Senate, the leader of the majority party and the leader of the minority party.

Clause 19 of the Bill proposes to amend Article 113(3) of the Constitution to allow the Speaker of the originating House to refer the Bill to the President and not to limit this function to the Speaker of the National Assembly. It also expands the period within which a Bill shall be referred to the president for assent from the current seven days to fourteen days.

Clause 20 of the Bill proposes to amend Article 115(4) of the Constitution to abolish voting by delegation in the senate.

Clause 21 of the Bill proposes to repeal Article 123 of the Constitution to do away with voting by delegation in the senate.

CHAPTER NINE-THE EXECUTIVE

Clause 22 of the Bill proposes to Amend Article 130(1) of the Constitution to introduce the prime minister and deputy prime minister as additional members of the national executive.

Clause 23 proposes to include the prime minister and deputy prime ministers in the list of persons to assist the president in the exercise of executive authority.

The amendment also proposes to rename the cabinet secretaries as cabinet ministers since the Bill proposes a mixed cabinet.

Clause 24 of the Bill proposes to amend Article 132 of the Constitution to require the president once every year to outline measures taken and the progress achieved in the realization of socio-economic rights referred to in Article 43 of the Constitution during the president's address to the nation.

Clause 25 of the Bill of the Bill proposes to amend Article 134(2) (c) by renaming cabinet secretaries as cabinet members.

Clause 26 of the Bill proposes to amend Article 138 of the Constitution to remove a condition that requires a presidential election to be cancelled and a new election to be held if a deputy president dies on or before the scheduled election date.

Clause 27 proposes to amend Article 140(2) to increase the period upon which the Supreme Court shall hear and determine the petition on presidential election from fourteen days to thirty days.

Clause 28 proposes to insert a new part 2A in the Constitution to establish the offices of the prime minister and deputy prime minister, providing for their mode of appointment, functions and removal from office.

Clause 29 proposes to amend Article 152 of the Constitution:

To include the prime minister and the deputy prime minister into the membership of the cabinet

To make provision for a mixed cabinet with some of the members of the cabinet being appointed from the Members of the National Assembly. When an election of Parliament is held, the cabinet shall remain in office until the president elect assumes office.

To give president powers to appoint principal secretaries from among the list of persons recommended by the public service commission.

Clause 30 proposes to amend Article 153 of the Constitution to require cabinet secretaries to be individually and collectively accountable not only to the president but also to parliament for the exercise of their powers and the performance of their functions.

Clause 31 of the Bill proposes to insert a new Article 153A establishing the offices of the deputy ministers outlining their mode of appointment, function and removal.

Clause 32 proposes to amend Article 154(2) (a) of the Constitution to do away with the requirement of national assembly approval of the secretary to the cabinet.

Clause 33 of the Bill proposes to amend Article 155 of the Constitution to remove the requirement for vetting of the principal secretaries by the national assembly.

PART 4-OTHER OFFICES

Clause 34 of the Bill proposes to amend Article 156(4) (c) of the Constitution to give a mandate to the Attorney General to perform the functions of the cabinet ministers in addition to the function assigned to him/her under Article 154(4).

Clause 35 of the Bill proposes to amend Article 157(3) of the Constitution to enhance the qualification for appointment as the Director of Public Prosecution to be the same as for the appointment as a judge of court of appeal.

Clause 36 of the Bill proposes to repeal Article 158 of the Constitution on the removal and resignation of Director of Public Prosecution.

CHAPTER TEN-JUDICIARY

Clause 37 of the Bill proposes to Amend Article 164 to limit the tenure of the president of the court of appeal to a single term of five years and to provide for the finality for determination by the court of appeal on the validity of any appeal relating to an election petition other than presidential election.

Clause 38 proposes to amend Article 165 of the Constitution to limit the tenure of the principal judge of the High Court to a single term of five years.

Clause 39 of the Bill proposes to amend Article 166 of the Constitution to enhance qualifications in terms of experience for one to be appointed as the judge of the Supreme Court and the judge of court of appeal. The judge of the Supreme Court shall be required to have at least twenty years' experience as a superior court judge or at least twenty years' experience as a distinguished academic or legal practitioner or such experience in other relevant legal field.

The judge of the Court of Appeal shall be required to have fifteen years' experience as a superior court judge or at least fifteen years' experience as a distinguished academic or legal practitioner or such experience in other relevant legal field.

Clause 40 of the Bill proposes to amend Article 167 of the Constitution to align the tenure of office of the deputy chief justice to that of the chief justice.

Clause 41 proposes to amend Article 168(2) of the Constitution to include a motion by the Judiciary Ombudsman to the Judicial Service Commission as one of the ways that the removal of a judge may be initiated.

Clause 42 of the Bill proposes to amend Article 171 of the Constitution to expand the membership of the judicial service commission to include the Judiciary Ombudsman who shall be an ex-officio member, remove provision that allows members of the commission apart from the Chief Justice and the Attorney General to be eligible to be nominated for one further term of five years.

Advocates appointed as members of the Commission shall not be allowed to practice in courts and tribunals during their period of service with the commission.

Clause 43 of the Bill proposes to amend Article 172(1) of the Constitution to expand the Judicial service commission mandate to receive complaints against judges, investigate and discipline judges by warning, reprimanding or suspending a judge.

Clause 44 of the Bill proposes to insert a new article 172A to establish an office of the Judiciary Ombudsman. The Judiciary Ombudsman shall be nominated by the president with the approval of the senate. The functions of the Judiciary Ombudsman shall be to receive and conduct inquiries into complaints against judges, registrars, magistrates and other staff of the judiciary; to sensitize the

public on the role and performance of the judiciary and prepare regular reports to the judicial service commission and an annual report to parliament on any complaint raised to the judiciary ombudsman.

For appointment as judiciary ombudsman, one must have the same qualifications as a judge of the Supreme Court and shall hold office for a single term of five years with no re-appointment.

The Judiciary Ombudsman shall not investigate any matter pending before any court or tribunal or re-open a court or tribunal case or review a judge's decision.

Parliament shall be required to enact legislation to give effect to the provisions of the proposed new Article 172A

CHAPTER ELEVEN - DEVOLVED GOVERNMENT

Clause 45 of the Bill proposes to amend Article 177 of the Constitution (**membership of the County assembly**) to provide that nomination of candidates shall be based on the proportion of the votes received by a political party in an election and not the seats received by a political party. The members shall be elected through the party list by political parties in proportion to the votes received and this will comprise of candidates who stood for election with precedence being given to those who received the greatest number of votes.

Clause 46 of the Bill proposes to amend Article 179 of the Constitution to give discretion to the Governor to appoint not more than half of the members of the County Executive from among persons who are members of the County Assembly. The County Governor shall have powers to dismiss or reassign the members of the Executive. Moreover, the County Governor and the Deputy County Governor shall be accountable to their respective County Assemblies.

Clause 47 of the Bill proposes to amend Article 180 by inserting new clause 5A to require a governor to consider a person of the opposite gender in nominating a candidate for deputy governor.

Clause 48 of the Bill proposes to amend Article 188(1) (b) (ii) of the Constitution to remove voting by delegation in the senate.

CHAPTER TWELVE-PUBLIC FINANCE

Clause 49 of the Bill proposes to amend Article 202 of the Constitution on Equitable Sharing of the National Resources to provide that where revenue sharing in the Constitution is based on the approval of the most recent audited accounts but the National Assembly has not approved the accounts, the most recent audited accounts of revenue submitted by the Auditor General shall be taken as the accounts of the revenue for that purpose.

Clause 50 of the Bill proposes to amend Article 203 of the Constitution to include the need to eradicate corrupt practices and wastage of public resources, the need to ensure the attainment of the economic and social rights guaranteed under Article 43, and the need to ensure that average amount of money allocated per person to a county with the highest allocation does not exceed three times the average amount per person allocated to a county with the lowest allocation.

The Clause also proposes to increase the equitable share of the revenue raised nationally that is allocated to County Governments from fifteen percent to thirty five percent of all revenue collected by the national government.

Clause 51 of the Bill proposes to amend Article 204 of the Constitution on Equalization Fund to increase the life span of the Fund from twenty years to thirty years from the effective date.

Clause 52 of the Bill proposes to insert a new Article 206A into the Constitution to establish Constituencies Development Fund. The Fund shall be used to facilitate the performance and implementation of national government development priorities set out in the national budget within the constituencies.

Parliament shall be required to enact a legislation to provide for the management of the Fund including public participation by residents in a Constituency.

Clause 53 of the Bill proposes to amend Article 207(4) (b) to provide for an Act of Parliament to establish a County Assembly Fund as one of the Funds in the County.

Clause 54 of the Bill proposes to insert a new Article 207A into the Constitution to establish Ward Development Fund for each County into which shall be paid in each financial year at least five percent of all the County Government's revenue in each financial year.

The Fund shall be used only for development expenditure falling within the functions of the County Government within the wards and to facilitate the actualization of the Socio-Economic rights under Article 43 within the wards.

An act of Parliament shall provide for the management of the Fund, criteria for disbursement to each ward and public participation and identification of the development projects.

Clause 56 of the Bill proposes to amend Article 218 of the Constitution to allow the withdrawal from consolidated fund of up to fifty percent of the minimum amount of equitable share guaranteed to County Governments based on the criteria contained in the Division of Revenue Act of the immediately preceding financial year if the County Allocation of Revenue Act for a financial year has not been passed by Parliament before the beginning of that financial year.

Clause 55 of the Bill proposes to amend Article 215(2) of the Constitution to reduce the number of Commission Members nominated by political parties represented in the Senate from five to two and to provide for two members to represent County Governors and one person nominated by members of a statutory body responsible for professional regulation of accountants.

Clause 57 of the Bill proposes to amend Article 220 of the Constitution to require the budgets of the National and County Governments to contain an explanation of previous, current and proposed budgetary measures taken to give effect to Article 21(2) on implementation of the right guaranteed under Article 43 of the Constitution.

Clause 58 of the Bill proposes to amend Article 224 of the Constitution to remove the provision that requires each County to prepare and adopt its own annual budget and appropriation Bill based on the Division of Revenue Bill.

Clause 59 of the Bill proposes to amend Article 225 of the Constitution to empower the Cabinet Minister responsible for finance to stop the transfer of funds to a state organ or other public entity or a county Government where there are serious and persistent material breach of the set out financial control measures and to table the matter before the relevant House of Parliament.

Clause 60 of the Bill proposes to amend Article 228(1) of the Constitution to transfer the role of vetting the controller of Budget from the National Assembly to the Senate.

Clause 61 of the Bill proposes to amend Article 230 of the Constitution to restructure the membership of the Salaries and Remuneration Commission. The proposed composition shall consist of a chairperson and six members with experience in human resource and economic matters; nominated by the President and approved by the National Assembly. Their mandate shall be to determine and harmonize rates paid by National and County Governments to professional consultants for services rendered and to rationalize and harmonize remuneration and benefits paid to all state officers and public officers.

Clause 62 of the Bill proposes to amend Article 234(3) (c) of the Constitution to remove the national security organs as one of the offices in the public service to which the public service commission shall have no mandate.

CHAPTER THIRTEEN-THE PUBLIC SERVICE

Clause 63 of the Bill proposes to insert a new Article 237A to establish a Youth Commission. The members of the Commission shall be appointed by the President and shall consist of a chairperson and six members, with equal representation of both genders. The members of the Commission shall hold office for a single term of four years.

The functions of the commission among others shall be to advance the participation of the youth in all spheres of public and private lives and to ensure the mainstreaming of the youth perspectives in planning and decision making.

CHAPTER FOURTEEN-NATIONAL SECURITY

Clause 64 of the Bill proposes to amend Article 240(2) of the Constitution to include the Prime Minister as a member of the National Security Council.

Clause 65 of the Bill proposes to amend Article 243(2) of the Constitution to include the Directorate of Criminal Investigations as a third arm of the National Police Service.

Clause 66 of the Bill proposes to amend Article 245 of the Constitution to mandate the Inspector General of the National Police Service to exercise independent command over the service, determine promotions and transfers within the service and perform any other functions prescribed by legislation.

Further, the clause proposes the Deputy Inspector General appointed by the president in accordance with the recommendation of the National Police Service Commission to head both the Administration Police Service and the Directorate of Criminal Investigations

The Directorate of criminal investigations shall be headed by a Deputy Inspector General.

Clause 67 of the Bill proposes to amend Article 247 of the Constitution to harmonize certain functions of the National Police Service Commission with the functions of centrality of command by the Inspector General of Police.

CHAPTER FIFTEEN-COMMISSIONS AND INDEPENDENT OFFICES

Clause 68 of the Bill proposes to amend Article 248(3) of the Constitution to make the office of the Director of Public Prosecutions an independent office in terms of Chapter fifteen of the Constitution.

Clause 69 of the Bill proposes to amend Article 250(1) of the Constitution to reduce the membership of commissions and independent offices to consist of at least three but not more than seven members.

CHAPTER SEVENTEEN-GENERAL PROVISIONS

Clause 70 of the Bill proposes to amend Article 259 of the Constitution by inserting a new clause (12) which stipulates that where an appointive office with tenure under this Constitution is due to fall vacant, the process of replacing the holder of that office shall commence at least six months before the lapse of the term of the office holder.

Clause 71 of the Bill proposes to amend Article 260 of the Constitution to include the Prime Minister, Deputy Prime Minister and Judiciary Ombudsman in the definition of the term “state office”.

Clause 72 of the Bill proposes to amend the third schedule to the Constitution to include Prime Minister as state officer who shall be required to take oath or solemn affirmation.

Clause 73 of the Bill mandates Parliament to enact any legislation required by this Act to be enacted to govern a particular matter within the period recommended in the first schedule .The Kenya Law

Reform Commission and the Attorney General shall be required to prepare the relevant Bills for tabling before Parliament as soon as reasonably practicable.

2.2 Public views

Mr. Speaker Sir, the committee held one public hearing meeting at Mabanga ACT on Thursday 18th February, 2021 to receive oral views, submissions and memoranda from the members of the public. Below are the views that were submitted;

- That the Constitution of Kenya(Amendment) Bill, 2020 will resolve the election violence experienced after every 5 years by fostering peace throughout the country.
- That constitution making is a continuous process that should aim at the common good of citizens and not interests of politicians.
- That the draft Bill advocates for inclusivity at all levels of governance.
- That the proposed increased resource allocation to Counties in the draft Bill from 15% to 35% will spur economic development and improve infrastructure.
- That the Constitution of Kenya(amendment) Bill, 2020 could go through at the County Assemblies level but rejected at the ballot if proper civic education will not be undertaken.
- That the draft Bill proposes additional 3 constituencies in Bungoma County which will lead to increased Constituencies Development Fund allocation in the County.
- That the Bill proposes 5% of the total County allocation to respective wards which they affirmed would spur development if used prudently.
- That the expanded Executive gives the winner of the Presidential Elections room to maneuver and bring other leaders together to build the country after elections.
- That the Bill proposes mechanisms to curb the runaway corruption in Kenya by recommending speedy prosecution and conclusion of corruption cases. No more hiding or delay tactics.

- That businesses owned by youth will be given a chance to flourish through tax holidays for youth in startups to allow and encourage growth and stability. This will be the first and largest tax incentive of its kind offered to entrepreneurs.

3.0 COMMITTEE OBSERVATIONS AND RECOMMENDATION

3.1 Committee Observations

1. The committee adhered to all the legal requirements during the processing of the Constitution of Kenya (Amendment) Bill, 2020.
2. Majority of members of the public who presented their views before the committee supported the Draft Constitution of Kenya (Amendment) Bill, 2020.
3. Majority of the members of the public have not accessed the copies of the Draft Constitution of Kenya (Amendment) Bill, 2020.
4. The Bill contains several provisions which are progressive and resonate with majority of members of the public such as increased allocation to counties aimed at achieving the objects and principles of devolved government under Chapter 11 of the Constitution of Kenya 2010.
5. The Committee on Justice and Legal Affairs which was tasked to consider the Constitution of Kenya (Amendment Bill), 2020 in accordance with Article 257 (5) and (6) of the Constitution of Kenya, 2010 can only recommend to this Honorable House to either approve or reject the said Bill as forwarded to the Assembly by the Independent Electoral and Boundaries Commission (IEBC).

3.2 COMMITTEE RECOMMENDATION

Mr. Speaker Sir,

In view of the public participation conducted and the responses received from the members of the public and the committee scrutiny of the document, the Committee on Justice and Legal Affairs recommends that this Honourable House adopts this report and consequently approve the Constitution of Kenya (Amendment) Bill, 2020 pursuant to Article 257 (6) of the Constitution of Kenya, 2010.

Further, the Committee recommends that consequent to the said approval, the Honourable Speaker should submit the required certificate to the National Assembly and the Senate for further action.

ADOPTION SCHEDULE


We, the members of Justice and Legal Affairs Committee hereby append our signatures adopting this report.

NAME

SIGNATURE

1. Hon. Peter Sindani

Chairperson



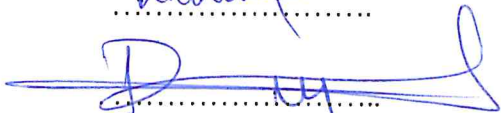
2. Hon. Rosemary Khisa

Member



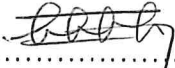
3. Hon. David Barasa

Member




4. Hon. Anthony Lusenaka

Member



5. Hon. Elvis Abuka

Member



6. Hon Wamusai Simiyu

Member



7. Hon. Everlyne Mutiembu

Member



8. Hon. Nathaniel Asenaka

Member



9. Hon. Rebah Wabwile

Member

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10. Hon. Eunice Kirui

Member

