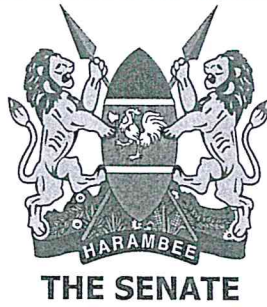
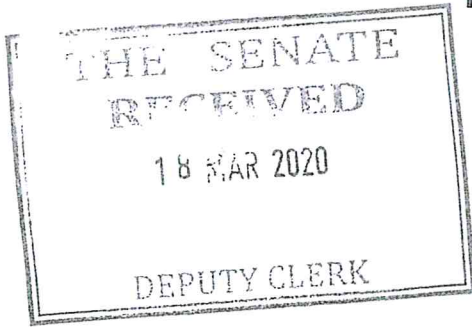


62

REPUBLIC OF KENYA



Hon. Speaker

Recommended for
tabling.

EP
19/03/20

FORWARDING MEMO

TO: THE SPEAKER

THROUGH: CLERK OF THE SENATE

THROUGH: DEPUTY CLERK (EUNICE GICHANGI)

THROUGH: DIRECTOR, COMMITTEE SERVICES

FROM: PRINCIPAL CLERK ASSISTANT, II

DATE: 17TH MARCH, 2020

RE: THE MEDIATION COMMITTEE ON THE COUNTY GOVERNMENTS (AMENDMENT) BILL, (SENATE BILLS NO.11 OF 2017)

Approved
[Signature]
26/3/2020

Recommended & Forwarded
[Signature]
18/03/2020

The Senate Mediation Committee on the County Governments (Amendment) Bill, (Senate Bills No. 11 of 2017 has concluded its consideration of the Bill and is scheduled to table its report and the Mediated Version of the Bill.

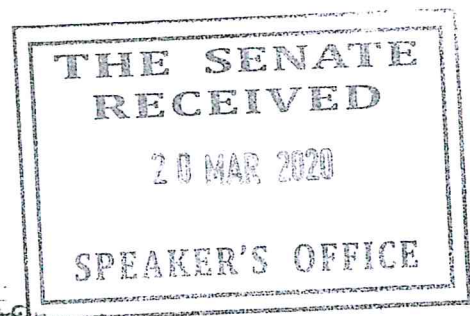
Attached is the Report and the Mediated Version of the Bill for your Approval

My Jt
EMMY CHEKWONY

Mr. Chantia

ps n/r for tabling
Notice of Motion and Motion

[Signature]
26/3/20



REPUBLIC OF KENYA



TWELFTH PARLIAMENT

FOURTH SESSION

**THE MEDIATION COMMITTEE ON THE COUNTY GOVERNMENTS
(AMENDMENT) BILL, (SENATE BILLS NO. 11 OF 2017)**

**REPORT ON THE CONSIDERATION OF THE COUNTY GOVERNMENTS
(AMENDMENT) BILL, (SENATE BILLS NO. 11 OF 2017)**

**Joint Clerk's Chambers,
Parliament Buildings,
NAIROBI.**

March, 2020

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PREFACE

Mr. Speaker Sir,

Establishment of the Committee

The Mediation Committee on the County Governments (Amendment) Bill (Senate Bills No. 11 of 2017) was constituted by the Speakers of the Senate and the National Assembly on 25th and 23rd July, 2019 respectively pursuant to Articles 112 and 113 of the Constitution and the Standing Orders of both the Senate and the National Assembly.

Mandate of the Committee

The Mediation Committee derives its mandate from Articles 112 and 113 of the Constitution, standing order 160 of the Senate Standing Orders and standing order 146 of the National Assembly Standing Order which outlines the functions of the Committee as follows -

1. to consider Bills where the Houses do not agree on all or any of the amendments made by either Houses;
2. to consider Bills where either House rejects a Motion that a Bill which originated in the other House be read a Second or Third time; and
3. to attempt to develop a version of the Bill that both Houses of Parliament will pass.

Membership of the Committee

The Committee comprised the following Members –

- | | |
|---|---------------------------|
| 1. Sen. John Kinyua Nderitu, MP | – Chairperson |
| 2. Hon. Amos Kimunya, EGH, MP | – Vice Chairperson |
| 3. Sen. Kipchumba Murkomen, MP | - Member |
| 4. Hon. George Peter Opondo Kaluma, EGH, MP | - Member |
| 5. Hon. Mutula Kilonzo Junior, MP | - Member |
| 6. Sen. Mary Yiane Seneta, MP | - Member |
| 7. Sen. Judith Pareno, MP | - Member |
| 8. Hon. Halima Mucheke, MP | - Member |
| 9. Hon. Didmus Barasa, MP | - Member |

Secretariat of the Committee

The Committee secretariat comprised –

1. Mr. George Gazemba - Principal Clerk Assistant II (National Assembly);
2. Ms. Emmy Chepkwony -Principal Committee Clerk/ Senate
3. Ms. Clarah Kimeli - Senior Legal Counsel (National Assembly);
4. Ms. Carolyn Cheruiyot - Legal Counsel II (Senate);
5. Mr. Joshua Ondari - Clerk Assistant III/ NA
6. Mr. Simon Muindi - Audio Officer
7. Mr. James Oloo -Serjant at Arms
8. Mr. Rachel Berly - Parliamentary Intern

Committee Sitings

The Committee held its first meeting on 4th March, 2020 and elected Sen. John Nderitu Kinyua, MP and Hon. Amos Kimunya, MP as Chairperson and Vice-Chairperson respectively.

The Committee commenced its work by developing a statement of issues of concern raised that necessitated the rejection of the National Assembly amendments to the Bill. The Committee held its final meeting on Tuesday, 17th March, 2020 to adopt its report.

Appended to this report is a version of the Bill developed by the Committee for consideration by both Houses.

Acknowledgment

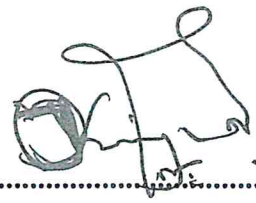
The Committee wishes to thank the Offices of the Speakers and the Offices of the Clerks of both Houses of Parliament for the necessary support extended to it in the execution of its mandate.

The Chairperson and vice-chairperson thank all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process resulting in agreement and arrival at an agreed version of the Bill.

Mr. Speaker Sir,

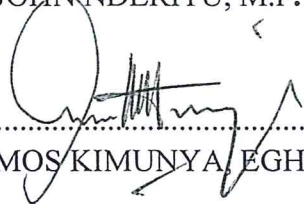
It is our pleasant duty, pursuant to standing order 160(1) of the Senate Standing Orders and standing order 150(1) of the National Assembly Standing Orders to present a report of the Mediation Committee on the County Governments (Amendment) Bill, 2017 for consideration by both Houses of Parliament.

SIGNED:



SEN. JOHN NDERITU, M.P. -CHAIRPERSON

SIGNED:



AMOS KIMUNYA, EGH, M.P.- VICE CHAIRPERSON

DATE: 17th March, 2020.

CHAPTER ONE

INTRODUCTION

1.0 Background on the County Governments (Amendment) Bill (Senate Bills No. 11 of 2017)

The County Governments (Amendment) Bill, 2017 seeks to amend the County Governments Act, No. 17 of 2012 to —

- (a) clarify on commencement and sitting of a county assembly;
- (b) put in place the legal framework for the establishment of the office of a deputy speaker of a county assembly;
- (c) clarify on removal of the speaker of a county assembly;
- (d) clarify on recall of members of a county assembly;
- (e) ensure clarity as regards the powers of the governor to appoint and dismiss a county executive committee member;
- (f) provide for the legal framework for assumption of office of governor by the deputy governor and the appointment of a new deputy governor; and
- (g) ensure the independence, professionalism, transparency and promotion of equity in the functioning of county public service boards.

The proposed Bill is expected to improve on the procedures and processes in the county governments to ensure the realization of devolution in the country.

The County Governments (Amendment) Bill, 2017 was published on 22nd November, 2017 and read a First Time in the Senate on 14th December, 2017. The Bill was considered and passed by the Senate with amendments, on 29th March, 2018 and was thereafter referred to the National Assembly for concurrence.

The Bill was read a First Time in the National Assembly on 19th April, 2018. The National Assembly passed the Bill, with amendments, on 6th March, 2019. The Message of the National Assembly on the passage of the Bill was conveyed to the Senate on 19th March, 2019. The Senate thereafter considered the National Assembly's amendments to the Bill on 4th July, 2019 and negatived the said amendments.

Consequently, pursuant to Article 113 of the Constitution, standing order 160(1) of the Senate Standing Orders and standing order 150(1) of the National Assembly Standing

Orders, the Bill was referred to a Mediation Committee with the sole objective of negotiating an agreed version of the Bill that would be presented to both Houses for approval.

CHAPTER TWO

2.0 CONSIDERATION OF THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILLS NO. 11 OF 2017)

2.1 Amendments passed by the National Assembly to the County Governments (Amendment) Bill (Senate Bills No. 11 of 2017)

The National Assembly passed the following amendments to the Bill -

CLAUSE 8

THAT, clause 8 of the Bill be amended in the proposed amendment to section 25 in the new subsection (2) by deleting the words “and the county Gazette” appearing immediately after the words Kenya Gazette.

CLAUSE 11

THAT, Clause 11 of the Bill be amended in the proposed amendments to section 31 by deleting the proposed new paragraph (a) and substituting therefor —

- (a) may dismiss a county executive member, if the governor considers appropriate and shall give reasons for dismissal.

CLAUSE 15

THAT, the Bill be amended by deleting clause 15 and substituting therefor —

15. Section 44 the principal Act is amended by —

- (a) deleting subsection (2) and substituting therefor —

(2) A person shall be qualified for appointment as a county secretary under subsection (1), if that person —

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years relevant professional experience;
- (d) has at least five years’ experience in a leadership position at senior management level in a public service or private sector organization; and
- (e) meets the requirements of leadership and integrity as prescribed in Chapter Six of the Constitution.

- (b) inserting the following new subsections immediately after subsection (2) —

(2A) The Governor shall, for the purpose of competitive recruitment of a county secretary under subsection (2), constitute a selection panel.

(2B) The selection panel shall consist of the following persons —

- (a) a chairperson, not being a public officer;
- (b) one person from the private sector;
- (c) an Advocate of the High Court of Kenya, who is a member of the Law Society of Kenya;
- (d) an accountant who is a member of the Institute of Certified Public Accountants of Kenya; and
- (e) one person from an association representing workers.

(2C) The provisions of section 58A shall, with such modification as shall be necessary apply to the recruitment of a county secretary.

(2D) Upon interviewing the applicants for the position of county secretary —

- (a) the selection panel shall submit to the governor the names of two applicants who qualify for appointment as county secretary; and
- (b) the governor shall submit the name of one applicant to the county assembly for approval for appointment as county secretary by the governor.

(2E) The county secretary shall hold office for a term of five years and shall be eligible for reappointment once.

(2F) The county secretary shall be an *ex officio* member of the County Executive Committee with no voting rights.

(c) inserting the following new subsection immediately after subsection (3) —

(3A) The county secretary may be removed from office on the following grounds—

- (a) inability to perform functions of the office arising out of physical or mental infirmity;
- (b) incompetence;
- (c) gross misconduct;
- (d) bankruptcy; or
- (e) violation of the Constitution.

(3B) Before removal under subsection (3A), the county secretary shall be informed, in writing, of the reasons for the intended removal, and shall be given an opportunity to put a defence against any such allegations, either in person or through a representative.

(3C) Subject to subsection (3A), (3B) and conditions of appointment, a county secretary may be dismissed by the governor.

2.2 Senate Comments on the National Assembly amendments

The Senate Standing Committee on Devolution and Intergovernmental Relations considered the amendments passed by the National Assembly and rejected some amendments while agreeing to others. The National Assembly amendments were subsequently rejected by the Senate on 18th June, 2019. Below is a summary of the Senate's consideration of the National Assembly amendments to the Bill -

CLAUSE 8

THAT, clause 8 of the Bill be amended in the proposed amendment to section 25 in the new subsection (2) by deleting the words “and the county Gazette” appearing immediately after the words Kenya Gazette.

Senate Resolution: Not agreed to.

CLAUSE 11

THAT, Clause 11 of the Bill be amended in the proposed amendments to section 31 by deleting the proposed new paragraph (a) and substituting therefor —

- (a) may dismiss a county executive member, if the governor considers appropriate and shall give reasons for dismissal.

Senate Resolution: Not agreed to.

CLAUSE 15

THAT, the Bill be amended by deleting clause 15 and substituting therefor —

15. Section 44 the principal Act is amended by —

- (a) deleting subsection (2) and substituting therefor —

(2) A person shall be qualified for appointment as a county secretary under subsection (1), if that person —

- (f) is a citizen of Kenya;
- (g) holds a degree from a university recognized in Kenya;
- (h) has at least ten years relevant professional experience;
- (i) has at least five years' experience in a leadership position at senior management level in a public service or private sector organization; and

(j) meets the requirements of leadership and integrity as prescribed in Chapter Six of the Constitution.

(b) inserting the following new subsections immediately after subsection (2) –

(2A) The Governor shall, for the purpose of competitive recruitment of a county secretary under subsection (2), constitute a selection panel.

(2B) The selection panel shall consist of the following persons —

(f) a chairperson, not being a public officer;

(g) one person from the private sector;

(h) an Advocate of the High Court of Kenya, who is a member of the Law Society of Kenya;

(i) an accountant who is a member of the Institute of Certified Public Accountants of Kenya; and

(j) one person from an association representing workers.

(2C) The provisions of section 58A shall, with such modification as shall be necessary apply to the recruitment of a county secretary.

(2D) Upon interviewing the applicants for the position of county secretary —

(c) the selection panel shall submit to the governor the names of two applicants who qualify for appointment as county secretary; and

(d) the governor shall submit the name of one applicant to the county assembly for approval for appointment as county secretary by the governor.

(2E) The county secretary shall hold office for a term of five years and shall be eligible for reappointment once.

(2F) The county secretary shall be an *ex officio* member of the County Executive Committee with no voting rights.

(c) inserting the following new subsection immediately after subsection (3) –

(3A) The county secretary may be removed from office on the following grounds—

(f) inability to perform functions of the office arising out of physical or mental infirmity;

(g) incompetence;

(h) gross misconduct;

- (i) bankruptcy; or
- (j) violation of the Constitution.

(3B) Before removal under subsection (3A), the county secretary shall be informed, in writing, of the reasons for the intended removal, and shall be given an opportunity to put a defence against any such allegations, either in person or through a representative.

(3C) Subject to subsection (3A), (3B) and conditions of appointment, a county secretary may be dismissed by the governor.

Senate Resolution: Agreed to.

CHAPTER THREE

3.0 RESOLUTIONS OF THE MEDIATION COMMITTEE

The Mediation Committee considered the contentious provisions of the County Governments (Amendment) Bill, 2017 and the following amendments to the Bill were adopted by the Committee —

CLAUSE 8

THAT, clause 8 of the Bill be amended in the proposed amendment to section 25 in the new subsection (2) by deleting the words “and the county Gazette” appearing immediately after the words Kenya Gazette.

Rationale: The Mediation Committee agreed with the National Assembly amendment since the law on county *Gazette* is yet to come into force.

CLAUSE 11

THAT, Clause 11 of the Bill be amended in the proposed amendments to section 31 by deleting the proposed new paragraph (a) and substituting therefor —

- (a) may dismiss a county executive member, if the governor considers appropriate and shall give reasons for dismissal.

Rationale: The Mediation Committee agreed with the Senate amendment that the county executive committee member is a nominee of the county governor and should be dismissed procedurally but the governor should not be required to give reasons.

At the national level, pursuant to Article 132 of the Constitution, the President may dismiss Cabinet Secretaries, the Attorney-General, the Secretary to the Cabinet, Principal Secretaries, high commissioners, ambassadors and diplomatic and consular representatives and any other State or public officer whom the Constitution requires or empowers the President to appoint or dismiss. In such instances, the President is not required to give reasons for the dismissal.

CLAUSE 15

THAT, the Bill be amended by deleting clause 15 and substituting therefor —

15. Section 44 the principal Act is amended by —

(a) deleting subsection (2) and substituting therefor —

(2) A person shall be qualified for appointment as a county secretary under subsection (1), if that person —

- (k) is a citizen of Kenya;
- (l) holds a degree from a university recognized in Kenya;
- (m) has at least ten years relevant professional experience;
- (n) has at least five years' experience in a leadership position at senior management level in a public service or private sector organization; and
- (o) meets the requirements of leadership and integrity as prescribed in Chapter Six of the Constitution.

(b) inserting the following new subsections immediately after subsection (2) —

(2A) The Governor shall, for the purpose of competitive recruitment of a county secretary under subsection (2), constitute a selection panel.

(2B) The selection panel shall consist of the following persons —

- (k) a chairperson, not being a public officer;
- (l) one person from the private sector;
- (m) an Advocate of the High Court of Kenya, who is a member of the Law Society of Kenya;
- (n) an accountant who is a member of the Institute of Certified Public Accountants of Kenya; and
- (o) one person from an association representing workers.

(2C) The provisions of section 58A shall, with such modification as shall be necessary apply to the recruitment of a county secretary.

(2D) Upon interviewing the applicants for the position of county secretary —

- (e) the selection panel shall submit to the governor the names of two applicants who qualify for appointment as county secretary; and
- (f) the governor shall submit the name of one applicant to the county assembly for approval for appointment as county secretary by the governor.

(2E) The county secretary shall hold office for a term of five years and shall be eligible for reappointment once.

(2F) The county secretary shall be an *ex officio* member of the County Executive Committee with no voting rights.

(c) inserting the following new subsection immediately after subsection (3) –

(3A) The county secretary may be removed from office on the following grounds—

(k) inability to perform functions of the office arising out of physical or mental infirmity;

(l) incompetence;

(m) gross misconduct;

(n) bankruptcy; or

(o) violation of the Constitution.

(3B) Before removal under subsection (3A), the county secretary shall be informed, in writing, of the reasons for the intended removal.

(3C) Subject to subsection (3A), (3B) and conditions of appointment, a county secretary may be dismissed by the governor.

Rationale: The Mediation Committee agreed on a modified version of the National Assembly amendment.

APPENDICES

APPENDIX I

Minutes of the Mediation Committee Deliberations

APPENDIX II

Schedule of Members' Adoption of the Report

APPENDIX III

Agreed version of the Bill



REPUBLIC OF KENYA

PARLIAMENT

SENATE BILLS

(Bill No. 11 of 2017)

**THE COUNTY GOVERNMENTS (AMENDMENT)
BILL, 2017**

(A version of the County Governments (Amendment) Bill, 2017 (Senate Bills No. 11 of 2017) as agreed on 17th March, 2020, by a mediation committee appointed pursuant to Article 113 of the Constitution.)

Sen. /B/No. 11/2017

THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2017

A Bill for

AN ACT of Parliament to amend the County Governments Act and for connected purposes.

ENACTED by the Parliament of Kenya, as follows –

Short title.

1. This Act may be cited as the County Governments (Amendment) Act, 2017.

Amendment of section 4 of No. 17 of 2012.

2. Section 4 of the County Governments Act, in this Act referred to as “the principal Act” is amended by deleting subsection (2) and substituting therefor the following new subsection –

(2) The county executive committee member shall –

(a) develop the symbols of the county through a consultative process;

(b) submit the symbol to the county assembly for approval; and

(c) apply to the College of Arms for a grant of arms in accordance with section 4 of the College of Arms Act.

Cap. 98.

Insertion of a new section 7B to No. 17 of 2012.

3. The principal Act is amended by inserting the following new section immediately after section 7A –

Location of sitting of a county assembly.

7B. (1) Whenever a new county assembly is elected, the governor, by notice in the *Gazette* shall appoint –

(a) the place of sitting within the county as set out in the Third Schedule; and

(b) the date of the first sitting of the new county assembly, which shall not be more than thirty days from the date on which the county assembly shall be fully constituted as provided for under section 7A.

(2) except for a sitting of a new county assembly under subsection (1), a sitting of a county assembly may be held at any place within the county and may commence at any time as the county assembly may appoint.

Amendment of section 7 of No. 17 of 2012.

4. Section 7 of the principal Act is amended by deleting the expression “27(3)(a)” appearing immediately after the words “under section” in subsection (3) and substituting therefor the expression “26(3)(a)”.

Amendment of section 9 of No. 17 of 2012.

5. Section 9 of the principal Act is amended —

- (a) in subsection (3) by deleting the words “within fourteen days after the announcement of the final results of an election” appearing immediately after the words “the county assembly clerk” and substituting therefor the words “on the first sitting of the county assembly”;
- (b) deleting subsection (4); and
- (c) deleting subsection (5).

Insertion of a new section 9A to No. 17 of 2012.

6. The principal Act is amended by inserting the following new sections immediately after section 9 —

Speaker and deputy speaker.

9A. (1) The speaker of a county assembly shall be elected, in accordance with standing orders of the respective county assemblies, from among persons who are eligible to be elected as members of a county assembly but are not such members.

(2) There shall be a deputy speaker for each county assembly who shall be elected by the county assembly, in accordance with standing orders of the respective county assemblies, from among the members of that county assembly.

(3) In the absence of the speaker, the deputy speaker shall preside at the sitting of the county assembly.

(4) In the absence of the speaker and deputy speaker, members of the county assembly shall elect, from among themselves, a person to preside at

the sitting of the county assembly.

Amendment to
section 11 of No.
17 of 2012.

7. The principal Act is amended by deleting section 11 and substituting therefor the following new sections —

Vacation of office of
speaker.

11. (1) The office of speaker shall become vacant—

- (a) when a new county assembly first meets after an election;
- (b) if the office holder is disqualified from being elected as a member of a county assembly on grounds specified under Article 193(2) of the Constitution;
- (c) if the county assembly so resolves by a resolution supported by at least two-thirds of all the members of the county assembly;
- (d) if the office holder resigns from office in a letter addressed to the county assembly; or
- (e) if the office holder dies.

(2) The speaker may be removed pursuant to subsection (1)(c) on any of the following grounds —

- (a) gross violation of the Constitution or any other law;
- (b) incompetence;
- (c) gross misconduct;
- (d) if convicted of an offence punishable by imprisonment for at least six months; or
- (e) inability to perform the functions of the office of speaker arising from mental or physical incapacity.

(3) A notice of the intention to move a motion for a resolution to remove the speaker under subsection (1)(c) shall —

- (a) be given in writing to the clerk of the county assembly;
- (b) be signed by at least one third of all the members of the county assembly; and
- (c) state the grounds for removal as specified in subsection (2).

(4) A motion for the removal of the speaker shall specify —

- (a) the grounds for removal as specified in subsection (2) in which the speaker is in breach; and
- (b) the facts constituting those grounds.

(5) Upon notice of the motion being given under subsection (2) —

- (a) the clerk of the county assembly shall within five days —
- (b) notify the speaker; and
- (c) invite the speaker to respond, within seven days, in writing setting out the grounds of opposition;

(6) the speaker shall not perform any of the functions of the office of the speaker pending the resolution of the county assembly.

(7) The speaker shall have the right to appear and be represented before the county assembly during its investigations.

(8) The county assembly shall consider the motion within fourteen days and resolve whether to

approve the motion.

Vacation of office of
deputy speaker.

11A. (1) The office of a deputy speaker shall become vacant if –

- (a) the office holder vacates office pursuant to Article 194 of the Constitution; or
- (b) the county assembly so resolves by a resolution supported by at least two-thirds of all the members of the county assembly.

(2) Section 11(2) to (8) shall, with necessary modifications, apply to the removal of a deputy speaker under subsection (1)(b).

Amendment to
section 25 of No.
17 of 2012.

8. The principal Act is amended in section 25 by deleting subsection (2) and substituting therefor the following new subsection –

(2) Subject to subsection (3), the county assembly legislation shall come into force on the fourteenth day after its publication in the Kenya Gazette unless the legislation stipulates a different date on, or time at which, it shall come into force.

Amendment to
section 27 of No.
17 of 2012.

9. Section 27 of the principal Act is amended by –

(a) deleting subsection (2) and substituting therefor the following new subsection –

(2) A member of a county assembly may be recalled on any of the following grounds—

- (a) gross violation of the Constitution or any other law;
- (b) incompetence;
- (c) gross misconduct; or
- (d) if convicted of an offence punishable by imprisonment for at least six months.

(b) deleting subsection (3); and

(c) deleting subsection (6)

Amendment to
section 28 of No.
17 of 2012.

10. Section 28 of the principal Act is amended —

(a) in subsection (1) by —

(i) deleting paragraph (b) and substituting therefor the following new paragraph —

(b) signed by a petitioner who is a voter in the Ward in respect of which the recall is sought.

(ii) deleting paragraph (c); and

(b) in subsection (3) by deleting the words “voter card number” appearing immediately after the words “the names, address”.

Amendment to
section 31 of No.
17 of 2012.

11. Section 31 of the principal Act is amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph —

(a) may dismiss a county executive committee member.

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

(ba) may re-assign a county executive committee member.

Insertion of new
sections 32A,
32B, 32C and
32D to No. 17 of
2012.

12. The principal Act is amended by inserting the following new sections immediately after section 32 —

Inability of governor or
deputy governor to assume
office.

32A. (1) If a governor-elect dies after being declared elected as governor, but before assuming office, or is unable to assume office for whatever reason—

(a) the deputy governor-elect shall be sworn in as acting governor on the

date on which the governor elect would otherwise have been sworn-in; and

- (b) a fresh election to the office of governor shall be held within sixty days after the death of the governor-elect.

(2) If the deputy governor-elect dies before assuming office or is unable to assume office for whatever reason, the office of the deputy governor shall be declared vacant on the assumption of office by the person declared elected as the governor.

Assumption to office of governor by the deputy governor.

32B. Whenever the office of governor becomes vacant under Article 182(1) of the Constitution, a person who assumes the office of governor under Article 182(2) of the Constitution shall —

- (a) within a period of fourteen days, from the date the office of governor became vacant, take and subscribe to the oath or affirmation as set out in the First Schedule to this Act before assuming office; and
- (b) take and subscribe to the oath or affirmation, in public, before a High Court Judge.

Vacancy in the office of deputy governor.

32C. (1) The office of deputy governor shall become vacant if the holder of the office —

- (a) dies;
- (b) resigns by a notice, in writing, addressed to the governor;
- (c) ceases to be eligible for nomination as deputy governor under Article 180(5) of the Constitution;

- (d) assumes the office of governor under Article 182(2) of the Constitution;
- (e) is convicted of an offence punishable by imprisonment for at least six months; or
- (f) is removed from office under this Act.

Filling of a vacancy in the office of deputy governor.

32D. (1) Where a vacancy arises in the office of a deputy governor as provided for under section 32C, the governor shall —

- (a) within fourteen days, nominate the deputy governor; and
- (b) with the approval of the county assembly, appoint a deputy governor.

(2) A person nominated for appointment as deputy governor under subsection (1) shall be a person eligible for election as governor.

(3) The county assembly shall —

- (a) consider a motion for approval for the appointment of the deputy governor, within fourteen days, and resolve whether to approve the motion; and
- (b) be deemed to have approved the motion for the appointment of the deputy governor upon the lapse of fourteen days and having failed to make a resolution.

(4) A motion for the approval for appointment of a deputy governor shall be supported by a majority of the members of a county assembly.

(6) A person appointed as deputy governor under subsection (1) shall, for purposes of Article 180(7) of the Constitution, be deemed —

(a) to have served a full term as county deputy governor if, at the date on which the person is appointed, more than two and a half years remain before the date of the next regularly scheduled election under Article 180(1) of the Constitution; or

(b) not to have served a term of office as county deputy governor, in any other case.

Amendment to
section 33 of No.
17 of 2012.

13. Section 33 of the principal Act is amended –

(a) in subsection (7) by deleting the word “members” appearing immediately after the words “of all the” and substituting therefor the words “county delegations”.

(b) by inserting the following new subsection immediately after subsection (9) –

(9A) Subsections (1) to (9) shall, with necessary modifications, apply to the removal from office of a deputy governor.

Amendment to
section 40 of No.
17 of 2012.

14. Section 40 of the principal Act is amended by –

(a) deleting subsection (1);

(b) deleting subsection (2) and substituting therefor the following new subsection –

(2) A member of the county assembly, supported by at least one-third of all the members of the county assembly, may propose a motion requiring the governor to dismiss a county executive committee member on any of the following grounds –

(a) gross violation of the Constitution or any other law;

(b) incompetence;

(c) abuse of office;

- (d) gross misconduct; or
- (e) if convicted of an offence punishable by imprisonment for at least six months.

(i)

Amendment to
section 44 of No.
17 of 2012.

15. Section 44 the principal Act is amended by —

(a) deleting subsection (2) and substituting therefor —

(2) A person shall be qualified for appointment as a county secretary under subsection (1), if that person —

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years relevant professional experience;
- (d) has at least five years' experience in a leadership position at senior management level in a public service or private sector organization; and
- (e) meets the requirements of leadership and integrity as prescribed in Chapter Six of the Constitution.

(b) inserting the following new subsections immediately after subsection (2) —

(2A) The Governor shall, for the purpose of competitive recruitment of a county secretary under subsection (2), constitute a selection panel.

(2B) The selection panel shall consist of the following persons —

- (a) a chairperson, not being a public officer;
- (b) one person from the private sector;
- (c) an Advocate of the High Court of Kenya, who is a member of the Law Society of Kenya;

(d) an accountant who is a member of the Institute of Certified Public Accountants of Kenya; and

(e) one person from an association representing workers.

(2C) The provisions of section 58A shall, with such modification as shall be necessary apply to the recruitment of a county secretary.

(2D) Upon interviewing the applicants for the position of county secretary —

(a) the selection panel shall submit to the governor the names of two applicants who qualify for appointment as county secretary; and

(b) the governor shall submit the name of one applicant to the county assembly for approval for appointment as county secretary by the governor.

(2E) The county secretary shall hold office for a term of five years and shall be eligible for reappointment once.

(2F) The county secretary shall be an *ex officio* member of the County Executive Committee with no voting rights.

(c) inserting the following new subsection immediately after subsection (3) —

(3A) The county secretary may be removed from office on the following grounds —

(a) inability to perform functions of the office arising out of physical or mental infirmity;

(b) incompetence;

(c) gross misconduct;

(d) bankruptcy; or

(e) violation of the Constitution.

(3B) Before removal under subsection (3A), the county secretary shall be informed, in writing, of the reasons for the intended removal.

(3C) Subject to section (3A), (3B) and conditions of appointment, a county secretary may be removed from office by the governor.

Amendment to
section 45 of No.
17 of 2012.

16. Section 45 of the principal Act is amended –

- (a) in subsection (1) by deleting the introductory clause and substituting therefor the following new clause-

Whenever a vacancy arises in the office of a county chief officer, the respective governor shall within fourteen days –

- (b) by deleting subsection (6) and substituting therefor the following subsection -

(6) The office of the county chief officer shall become vacant if the officer –

- (a) dies;
- (b) resigns by notice in writing addressed to the governor; or
- (c) is removed from office in accordance with the terms of service or any other written law applicable to the officer.

Amendment to
section 58 of No.
17 of 2012.

17. Section 58 of the principal Act is amended –

- (a) in subsection (1) by –

- (i) deleting paragraph (a) and substituting therefor the following new paragraph –

(a) a chairperson appointed in accordance with section 58A;

- (ii) deleting paragraph (b) and substituting therefor the

following new paragraph –

- (b) at least three but not more than five members appointed in accordance with section 58A;
- (b) by deleting subsection (2); and
- (c) in subsection (3) by inserting the following new paragraphs immediately after paragraph (b) –
 - (ba) has not, at any time within the preceding five years, held office, or stood for election as –
 - (i) a member of Parliament or of a county assembly; or
 - (ii) a member of the governing body of a political party;
 - (bb) is, or as at any time been, a candidate for election as a member of Parliament or of a county assembly;
 - (bc) is, or has at any time been, the holder of an office in any political organisation that sponsors or otherwise supports, or has at any time sponsored or otherwise supported, a candidate for election as a member of Parliament or of a county assembly.

Insertion of a new section 58A to No. 17 of 2012.

18. The principal Act is amended by inserting the following new section immediately after section 58 –

Procedure for nomination and appointment of members of the Board.

58A. (1) Whenever a vacancy arises in a county public service board, the governor shall nominate and, with the approval of the county assembly, appoint members to a selection panel for the purpose of selecting suitable candidates for appointment as members of the county public service board.

(2) The selection panel under subsection (1) shall consist of the following persons –

- (a) a chairperson, not being a public officer;
- (b) one person from the private sector;

- (c) an Advocate of the High Court of Kenya, who is a member of the Law Society of Kenya;
- (d) an accountant who is a member of the Institute of Certified Public Accountants of Kenya; and
- (e) one person from an association representing workers.

(3) The governor shall, in nominating members to the selection panel, ensure that not more than two-thirds of the nominees are of the same gender.

(4) The chairperson shall convene the first meeting of the selection panel within five days of his or her appointment.

(5) The selection panel shall, within seven days of convening, invite applications from persons who qualify for nomination and appointment as chairperson or member of the county public service board by advertisement in at least two daily newspapers of national circulation.

(6) The selection panel shall within seven days of receipt of applications under subsection (5)-

- (a) consider the applications to determine their compliance with the provisions of the Constitution and this Act;
- (b) shortlist the applicants;
- (c) interview the shortlisted applicants; and
- (d) submit the names of three qualified applicants for the position of chairperson, six qualified applicants for the position of a member and two qualified applicants for the position secretary to the Governor.

(7) The Governor shall, within seven days of receipt of the names forwarded under subsection (6), nominate one person, and at least three but not more than five others for appointment as

chairperson and members of the county public service board, respectively, and forward the names to the county assembly for approval.

(8) The county assembly shall, within twenty one days of receipt of the names of the nominees from the Governor, consider each nomination received under subsection (7) and approve or reject any of them.

(9) Where the county assembly approves the nominees, the Speaker of the county assembly shall, within five days, forward the names of the approved applicants to the Governor for appointment.

(10) Where the county assembly rejects any nominee, the Speaker shall within five days communicate the decision of the county assembly to the Governor and request the Governor to submit fresh nominations from amongst the persons shortlisted and forwarded by the selection panel under subsection (6).

(11) If the county assembly rejects any or all of the subsequent nominees submitted by the Governor for approval under subsection (9), the provisions of subsections (6) and (7) shall apply.

(12) The selection panel shall stand dissolved upon the appointment of the chairperson and members under subsection (9).

(13) Where the provisions of subsection (10) apply, the selection panel shall continue to exist but shall stand dissolved upon the requisite appointments being made.

(14) The department responsible for public service shall provide secretariat services to the selection panel.

(15) In nominating or appointing a person as a member of the Board, the selection panel and the Governor shall—

- (a) observe the principle of gender equity, ethnic and other diversities of the people of Kenya, and shall ensure equality of opportunity for persons with disabilities; and
- (b) take into account the national values and principles set out in

Articles 10, 27 and 232 of the Constitution.

(16) Despite the foregoing provisions of this section, the Governor may extend the period specified in respect of any matter under this section by a period not exceeding fourteen days.

(17) Subject to this section, the selection panel may determine its own procedure.

Insertion of new section 59A to No. 17 of 2012

19. The principal Act is amended by inserting the following new section immediately after section 59 –

Independence of the county public service board.

59A. In the performance of its functions under this Act, the county public service board shall –

- (a) be independent and shall not be subject to the direction or control of any other person or authority; and
- (b) adhere to the Constitution, this Act and any other relevant law.

Amendment to section 63 of No. 17 of 2012.

20. Section 63 of the principal Act is amended by deleting paragraph (b) of subsection (2).

Amendment to section 65 of No. 17 of 2012.

21. Section 65 of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (c) –

(ca) the need to ensure that the candidates proposed for appointment have knowledge and experience in diverse fields including human resource management and development and finance.

Insertion of new sections 68A, 68B, 68C, 68D and 68E to No. 17 of 2012.

22. The principal Act is amended by inserting the following new sections immediately after section 68 –

Promotion of equity by the county public service boards.

68A. (1) Each county public service board shall promote equal opportunity in the county public service and shall establish and implement strategies for the elimination of any form of discrimination on the basis of ethnicity, gender,

religion, health, marital status or disability.

(2) It shall not be unfair discrimination to –

- (a) implement affirmative action measures consistent with the purpose of this Act; and
- (b) distinguish, exclude or prefer any person on the basis of an inherent requirement of a particular office in the county public service.

(3) In implementing the provisions of subsection (1), the county public service board shall –

- (a) take measures to ensure that diversity is maintained in the county public service;
- (b) implement strategies that result in the granting of a fair opportunity to all persons applying to serve in the county public service and the elimination of ethnicity within the county public service;
- (c) identify and eliminate employment barriers against persons who do not belong to the dominant ethnic group within the county or marginalized persons that result from systems of employment, policies or practices which are not authorized by law; and
- (d) afford an equal opportunity to all persons, including – marginalized groups in the county, in the appointment process to an office in the county public service.

(4) In meeting the requirements under subsection (1), the county public service board

shall not –

- (a) take measures whose implementation would cause undue hardship on the county public service board;
- (b) appoint or promote persons who do not meet the qualifications or requirements of an office;
- (c) deviate from the provisions of Article 232 of the Constitution; or
- (d) create new offices or positions in the county public service.

Collection and
analysis of
information on
county public
service.

68B. (1) Each county public service board shall, for the purpose of implementing the provisions of section 68A–

- (a) collect information and conduct an analysis of the county public service in order to determine the degree of the underrepresentation of persons in marginalized groups in each occupational group in the respective county public service; and
- (b) conduct a review of the county public service systems, policies and practices, in order to identify employment barriers against persons from minority or marginalized groups that result from those systems, policies and practices.

County public
service
employment equity
plan.

68C. (1) Each county public service shall, for the purpose of eliminating ethnic imbalance and implementing the provisions of section 65(1)(e), prepare and implement a public service employment equity plan.

(2) In preparing an employment equity plan, the county public service shall –

- (a) set out the positive policies and practices which shall be instituted in the short term for the hiring and retention of underrepresented persons or persons belonging to marginalized groups;
- (b) outline the strategies through which the

county public service board shall ensure that at least thirty percent of the offices in the county public service consists of persons who are not from the dominant ethnic community within the county where this has not been achieved;

- (c) set out the affirmative action measures required to be implemented and the anticipated outcome of such measures;
- (d) set out the framework for monitoring and evaluating the implementation of the equity plan;
- (e) set out the long term goal for increasing representation of underrepresented persons or marginalized groups in the county public service and the employment strategies for achieving such goals; and
- (f) set out such other information as the county public service board shall consider necessary.

(3) The county public service board shall consult with the Governor, the Public Service Commission and such other stakeholders as the board shall consider appropriate.

(4) The county public service board shall ensure that the public service employment equity plan would, shall ensure the realization of the provisions of section 65(1)(e) and that employment equity within the county public service is achieved.

Review of county
public service
employment equity
plan.

68D. (1) Each county public service board shall, at least once during the period in respect of which the short term goals referred to in section 68C(2) are established, review its employment equity plan and revise it by –

- (a) updating the short term goals, taking into account the factors set out in section 68C; and
- (b) make any other changes that are necessary as a result of an assessment made pursuant to section 68B or as a result of changing

circumstances.

(2) Every county public service board shall establish and maintain county public service employment equity records in respect of the county public service and the implementation of employment equity by the board.

Report of the
county public
service board.

68E. A county public service board shall include in a report a description of -

- (a) the measures taken by the board during the reporting period to implement employment equity and the results achieved; and
- (b) the consultations between the board, the Public Service Commission and such other stakeholders as the board may consider necessary during the reporting period concerning the implementation of employment equity.

Amendment to
section 121 of No.
17 of 2012.

23. Section 121 of the principal Act is amended in subsection (2)(j) by deleting the words “with the approval of the secretary” appearing at the beginning of the subsection and substituting therefor the words “in consultation with the county executive committee”.

Amendment to
section 124 of No.
17 of 2012.

24. Section 124 of the principal Act is amended in subsection (2) by inserting the words “the deputy speaker” immediately after the words “the speaker”.

Transition
provisions.

25. A person who, immediately before the commencement of this Act was serving as deputy speaker, a member of the county public service board or as a county secretary immediately before the coming into force of this Act shall –

- (a) not cease to hold office only on account of the coming into force of this Act; and
- (b) continue to serve in office for the remainder of the term and in the case of the county secretary, in accordance with the terms and conditions of appointment.

MINUTES OF THE 1ST SITTING OF THE MEDIATION COMMITTEE ON THE COUNTY GOVERNMENTS (AMENDMENTS) BILL, 2017 (SENATE BILLS NO. 11 OF 2017 HELD ON WEDNESDAY, 4TH MARCH, 2020, AT THE COMMITTEE ROOM 5 MAIN PARLIAMENT BUILDINGS, AT 12.00 P.M.

PRESENT:

- | | |
|---|--------------------|
| 1. Sen. John Kinyua Nderitu, M.P | - Chairperson |
| 2. Hon. (Dr.) Amos Kimunya, EGH, MP | - Vice Chairperson |
| 3. Sen. Mutula Kilonzo Junior, M.P. | - Member |
| 4. Sen. (Prof.) Margaret Kamar, EGH, MP | - Member |
| 5. Hon. George Peter Opondo Kaluma, EGH, MP | - Member |
| 6. Hon. Edward Kaunya, MP | - Member |
| 7. Sen. Judith Pareno, MP | - Member |
| 8. Hon. Halima Mucheke, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|-------------------------------|----------|
| 1. Hon. Didmus Barasa, MP | - Member |
| 2. Sen. Mary Yiane Seneta, MP | - Member |

IN ATTENDANCE

COMMITTEE SECRETARIAT

- | | |
|---------------------------|---|
| 1. Mr. George Gazemba | - Principal Clerk Assistant II (National Assembly); |
| 2. Ms. Emmy Chepkwony | - Principal Committee Clerk/ Senate |
| 3. Ms. Clarah Kimeli | - Senior Legal Counsel (National Assembly); |
| 4. Ms. Carolyne Cheruiyot | - Legal Counsel II (Senate); |
| 5. Mr. Joshua Ondari | - Clerk Assistant III/ NA |
| 6. Mr. Simon Muindi | - Audio Officer |
| 7. Mr. James Oloo | - Serjant at Arms |
| 8. Mr. Rachel Berly | - Parliamentary Intern |

MIN. NO. 1/3 /2020: PRELIMINARIES

The Principal Committee Clerk, Mr. George Gazemba, welcomed the members to the meeting and called the meeting to order at 12.10 pm. The prayers were then read by Hon. Amos Kimunya, EGH, MP.

MIN. NO. 2/3/2020: ADOPTION OF THE AGENDA

The agenda was adopted with amendments having been proposed by Hon. Halima Mucheke, MP., and seconded by Sen. Judith Pareno, MP as follows-

1. Prayer
2. Adoption of the Agenda

3. Election of the Chairperson and the Vice Chairperson
4. Mediation on the County Governments (Amendment) Bill 2017, (Senate Bills No. 11 of 2017)
5. Any Other Business
6. Date of the Next Meeting & Adjournment

MIN. NO. 3/3/2020:

ELECTION OF THE CHAIRPERSON AND VICE CHAIRPERSON

The first sitting of the Mediation Committee on the election of Chairperson and Vice Chairperson was facilitated by the representative of the office of the Clerk, subject to the provisions of standing order 193 and 179 of the Senate and National Assembly Standing Orders, respectively.

The attention of the Committee was drawn to Article 113 of the Constitution and Standing orders 149 and 160 of the National Assembly and Senate, Standing Orders, respectively on the establishment, mandate, membership and procedure for election of Chairperson and Vice Chairperson of a Mediation Committee.

The Committee made reference to the precedent set and the recommendation in the report of the pioneer Mediation Committee that in future mediations, the Chairperson of the Mediation Committee be elected from amongst members of the House that originates the Bill.

After deliberations, the Committee unanimously elected-

- i. Sen. John Kinyua Nderitu, M.P., the Chairperson of the Committee, after being proposed and Seconded by Hon. George Kaluma, EGH, MP., and Sen. Judith Pareno, MP., respectively); and,
- ii. Hon. Amos Kimunya, EGH, MP., was elected the Vice Chairperson of the Committee after being Proposed and seconded by Sen. Judith Pareno, MP and Hon. Halima Mucheke, MP., respectively).

MIN. NO. 4/3/2020:

CONSIDERATION OF COMMITTEE MANDATE

The Committee heard that the Mediation Committee on the County Governments (Amendment) Bill (Senate Bills No. 11 of 2017) was constituted by the Speakers of the Senate and the National Assembly on 25th and 23rd July, 2019 respectively pursuant to Articles 112 and 113 of the Constitution and the Standing Orders of both the Senate and the National Assembly.

The Mediation Committee derives its mandate from Articles 112 and 113 of the Constitution, standing order 160 of the Senate Standing Orders and standing order 146 of the National Assembly Standing Order which outlines the functions of the Committee as follows -

1. to consider Bills where the Houses do not agree on all or any of the amendments made by either Houses;
2. to consider Bills where either House rejects a Motion that a Bill which originated in the other House be read a Second or Third time; and
3. to attempt to develop a version of the Bill that both Houses of Parliament will pass.

MIN. NO. 5/3/2020:

**MEDIATION ON THE COUNTY
GOVERNMENTS (AMENDMENT) BILL,
2017 SEEKS TO AMEND THE COUNTY
GOVERNMENTS ACT, NO. 11 OF 2012**

The Chairman invited the Secretariat to brief the Committee on the County Governments (Amendment) Bill, 2017 seeks to amend the County Governments Act, No. 11 of 2012 to

- (a) clarify on commencement and sitting of a county assembly;
- (b) put in place the legal framework for the establishment of the office of a deputy speaker of a county assembly;
- (c) clarify on removal of the speaker of a county assembly;
- (d) clarify on recall of members of a county assembly;
- (e) ensure clarity as regards the powers of the governor to appoint and dismiss a county executive committee member;
- (f) provide for the legal framework for assumption of office of governor by the deputy governor and the appointment of a new deputy governor; and
- (g) ensure the independence, professionalism, transparency and promotion of equity in the functioning of county public service boards.

The proposed Bill is expected to improve on the procedures and processes in the county governments to ensure the realization of devolution in the country.

The County Governments (Amendment) Bill, 2017 was published on 22nd November, 2017 and read a First Time in the Senate on 14th December, 2017. The Bill was considered and

passed by the Senate with amendments, on 29th March, 2018 and was thereafter referred to the National Assembly for concurrence.

The Bill was read a First Time in the National Assembly on 19th April, 2018. The National Assembly passed the Bill, with amendments, on 6th March, 2019. The Message of the National Assembly on the passage of the Bill was conveyed to the Senate on 19th March, 2019. The Senate thereafter considered the National Assembly's amendments to the Bill on 4th July, 2019 and negatived the said amendments.

Consequently, pursuant to Article 113 of the Constitution, standing order 160(1) of the Senate Standing Orders and standing order 150(1) of the National Assembly Standing Orders, the Bill was referred to a Mediation Committee with the sole objective of negotiating an agreed version of the Bill that would be presented to both Houses for approval.

1. Senate Comments on the National Assembly amendments

The Senate Standing Committee on Devolution and Intergovernmental Relations considered the amendments passed by the National Assembly and rejected some amendments while agreeing to others. The National Assembly amendments were subsequently rejected by the Senate on 18th June, 2019. Below is a summary of the Senate's consideration of the National Assembly amendments to the Bill -

CLAUSE 8

THAT, clause 8 of the Bill be amended in the proposed amendment to section 25 in the new subsection (2) by deleting the words "and the county Gazette" appearing immediately after the words Kenya Gazette.

Senate Resolution: Not agreed to.

CLAUSE 11

THAT, Clause 11 of the Bill be amended in the proposed amendments to section 31 by deleting the proposed new paragraph (a) and substituting therefor —

- (a) may dismiss a county executive member, if the governor considers appropriate and shall give reasons for dismissal.

CLAUSE 15

THAT, the Bill be amended by deleting clause 15 and substituting therefor —

15. Section 44 the principal Act is amended by —

(a) deleting subsection (2) and substituting therefor —

(2) A person shall be qualified for appointment as a county secretary under subsection (1), if that person —

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years relevant professional experience;
- (d) has at least five years' experience in a leadership position at senior management level in a public service or private sector organization; and
- (e) meets the requirements of leadership and integrity as prescribed in Chapter Six of the Constitution.

(b) inserting the following new subsections immediately after subsection (2) —

(2A) The Governor shall, for the purpose of competitive recruitment of a county secretary under subsection (2), constitute a selection panel.

(2B) The selection panel shall consist of the following persons —

- (a) a chairperson, not being a public officer;
- (b) one person from the private sector;
- (c) an Advocate of the High Court of Kenya, who is a member of the Law Society of Kenya;
- (d) an accountant who is a member of the Institute of Certified Public Accountants of Kenya; and
- (e) one person from an association representing workers.

(2C) The provisions of section 58A shall, with such modification as shall be necessary apply to the recruitment of a county secretary.

(2D) Upon interviewing the applicants for the position of county secretary —

- (a) the selection panel shall submit to the governor the names of two applicants who qualify for appointment as county secretary; and
- (b) the governor shall submit the name of one applicant to the county assembly for approval for appointment as county secretary by the governor.

(2E) The county secretary shall hold office for a term of five years and shall be eligible for reappointment once.

(2F) The county secretary shall be an *ex officio* member of the County Executive Committee with no voting rights.

(c) inserting the following new subsection immediately after subsection (3) –

(3A) The county secretary may be removed from office on the following grounds—

- (a) inability to perform functions of the office arising out of physical or mental infirmity;
- (b) incompetence;
- (c) gross misconduct;
- (d) bankruptcy; or
- (e) violation of the Constitution.

(3B) Before removal under subsection (3A), the county secretary shall be informed, in writing, of the reasons for the intended removal, and shall be given an opportunity to put a defence against any such allegations, either in person or through a representative.

(3C) Subject to subsection (3A), (3B) and conditions of appointment, a county secretary may be dismissed by the governor.

Senate Resolution: Agreed to.

2. Resolutions of the Mediation Committee

The Mediation Committee considered the contentious provisions of the County Governments (Amendment) Bill, 2017 and the following amendements to the to be considered by the Committee in its next sitting —

CLAUSE 8

11A1, clause 8 of the Bill be amended in the proposed amendment to section 25 in the new subsection (2) by deleting the words “and the county Gazette” appearing immediately after the words Kenya Gazette.

Rationale: The Mediation Committee agreed with the National Assembly amendment since the law on county *Gazette* is yet to come into force.

CLAUSE 11

THAT, Clause 11 of the Bill be amended in the proposed amendments to section 31 by deleting the proposed new paragraph (a) and substituting therefor —

- (a) may dismiss a county executive member, if the governor considers appropriate and shall give reasons for dismissal.

Rationale: The Mediation Committee agreed with the Senate amendment that the county executive committee member is a nominee of the county governor and should be dismissed procedurally but the governor should not be required to give reasons.

At the national level, pursuant to Article 132 of the Constitution, the President may dismiss Cabinet Secretaries, the Attorney-General, the Secretary to the Cabinet, Principal Secretaries, high commissioners, ambassadors and diplomatic and consular representatives and any other State or public officer whom the Constitution requires or empowers the President to appoint or dismiss. In such instances, the President is not required to give reasons for the dismissal.

CLAUSE 15

THAT, the Bill be amended by deleting clause 15 and substituting therefor —

15. Section 44 the principal Act is amended by —

- (a) deleting subsection (2) and substituting therefor —

(2) A person shall be qualified for appointment as a county secretary under subsection (1), if that person —

- (f) is a citizen of Kenya;
- (g) holds a degree from a university recognized in Kenya;
- (h) has at least ten years relevant professional experience;

- (i) has at least five years' experience in a leadership position at senior management level in a public service or private sector organization; and
- (j) meets the requirements of leadership and integrity as prescribed in Chapter Six of the Constitution.

(b) inserting the following new subsections immediately after subsection (2) –

(2A) The Governor shall, for the purpose of competitive recruitment of a county secretary under subsection (2), constitute a selection panel.

(2B) The selection panel shall consist of the following persons —

- (f) a chairperson, not being a public officer;
- (g) one person from the private sector;
- (h) an Advocate of the High Court of Kenya, who is a member of the Law Society of Kenya;
- (i) an accountant who is a member of the Institute of Certified Public Accountants of Kenya; and
- (j) one person from an association representing workers.

(2C) The provisions of section 58A shall, with such modification as shall be necessary apply to the recruitment of a county secretary.

(2D) Upon interviewing the applicants for the position of county secretary —

- (c) the selection panel shall submit to the governor the names of two applicants who qualify for appointment as county secretary; and
- (d) the governor shall submit the name of one applicant to the county assembly for approval for appointment as county secretary by the governor.

(2E) The county secretary shall hold office for a term of five years and shall be eligible for reappointment once.

(2F) The county secretary shall be an *ex officio* member of the County Executive Committee with no voting rights.

(c) inserting the following new subsection immediately after subsection (3) –

(3A) The county secretary may be removed from office on the following grounds—

- (f) inability to perform functions of the office arising out of physical or mental infirmity;

- (g) incompetence,
- (h) gross misconduct;
- (i) bankruptcy; or
- (j) violation of the Constitution.

(3B) Before removal under subsection (3A), the county secretary shall be informed, in writing, of the reasons for the intended removal.


(3C) Subject to subsection (3A), (3B) and conditions of appointment, a county secretary may be dismissed by the governor.

Rationale: The Mediation Committee agreed on a modified version of the National Assembly amendment.

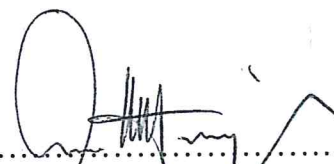
The Mediation Committee having agreed to a mediated version of the Bill, resolved to consider and adopt its report and the mediated version of the bill in its next sitting.

MIN. NO. 6/3/2020: ANY OTHER BUSINESS & ADJOURNMENT

There being no any other business the meeting was adjourned at 2.27 p.m. The next sitting will be held on **Tuesday, 10th March, 2020 at 12.00pm.**

SIGNED: 

SEN. JOHN NDERITU, M.P. – CHAIRPERSON

SIGNED: 

HON. (DR.) AMOS KIMUNYA, EGH, M.P. – VICE CHAIRPERSON

DATE.. *17th march, 2020*

PRESENT:

- | | |
|---|--------------------|
| 1. Sen. John Kinyua Nderitu, M.P | - Chairperson |
| 2. Hon. (Dr.) Amos Kimunya, EGH, MP | - Vice Chairperson |
| 3. Sen. Mutula Kilonzo Junior, M.P. | - Member |
| 4. Sen. (Prof.) Margaret Kamar, EGH, MP | - Member |
| 5. Hon. George Peter Opondo Kaluma, EGH, MP | - Member |
| 6. Hon. Edward Kaunya, MP | - Member |
| 7. Sen. Judith Pareno, MP | - Member |
| 8. Hon. Halima Mucheke, MP | - Member |
| 9. Hon. Didmus Barasa, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|-------------------------------|----------|
| 1. Sen. Mary Yiane Seneta, MP | - Member |
|-------------------------------|----------|

IN ATTENDANCE

COMMITTEE SECRETARIAT

- | | |
|--------------------------|---|
| 1. Mr. George Gazemba | - Principal Clerk Assistant II (National Assembly); |
| 2. Ms. Emmy Chepkwony | - Principal Committee Clerk/ Senate |
| 3. Ms. Josephine Kusinyi | - Principal Legal Counsel II (Senate); |
| 4. Mr. Joshua Ondari | - Clerk Assistant III/ NA |
| 5. Mr. Simon Muindi | - Audio Officer |
| 6. Mr. James Oloo | - Serjant at Arms |
| 7. Mr. Rachel Berly | - Parliamentary Intern |

MIN. NO. 07/3 /2020: PRELIMINARIES

The chairman called the meeting to order at 12.32pm. The prayers were then read by Hon. (Dr.) Amos Kimunya, EGH, MP.

MIN. NO. 08/3/2020: ADOPTION OF THE AGENDA

The agenda was adopted with amendments having been proposed by Hon. Peter Kaluma, MP., and seconded by Sen. Kipchumba Murkomen, MP as follows-

1. Prayer
2. Adoption of the Agenda
3. **Confirmation of Minutes of the Previous Sitting**

4. Consideration and Adoption of the Mediated Version of the County Governments (Amendment) Bill 2017, (Senate Bills No. 11 of 2017) and Report.
5. Any Other Business
6. Date of the Next Meeting & Adjournment

MIN. NO. 09/3/2020:

**CONFIRMATION OF MINUTES OF THE
PREVIOUS SITTINGS**

The minutes of the first sitting of the Mediation Committee was confirmed as a true reflection of the sittings proceedings and signed by the Chairman and Vice Chairman. They were proposed by Sen. Kipchumba Murkomen, MP and Seconded by Hon. Halima Mucheke, MP

MIN. NO. 10/3/2020:

**CONSIDERATION AND ADOPTION OF
THE REPORT**

The Mediation Committee considered the contentious provisions of the County Governments (Amendment) Bill, 2017 and the following amendments to the to be approved mediated version of the Clauses —

CLAUSE 8

THAT, clause 8 of the Bill be amended in the proposed amendment to section 25 in the new subsection (2) by deleting the words “and the county Gazette” appearing immediately after the words Kenya Gazette.

Rationale: The Mediation Committee agreed with the National Assembly amendment since the law on county *Gazette* is yet to come into force.

CLAUSE 11

THAT, Clause 11 of the Bill be amended in the proposed amendments to section 31 by deleting the proposed new paragraph (a) and substituting therefor —

(b) may dismiss a county executive member, if the governor considers appropriate and shall give reasons for dismissal.

Rationale: The Mediation Committee agreed with the Senate amendment that the county executive committee member is a nominee of the county governor and should be dismissed procedurally but the governor should not be required to give reasons.

At the national level, pursuant to Article 152 of the Constitution, the President may, by written instrument, appoint or dismiss Cabinet Secretaries, the Attorney-General, the Secretary to the Cabinet, Principal Secretaries, high commissioners, ambassadors and diplomatic and consular representatives and any other State or public officer whom the Constitution requires or empowers the President to appoint or dismiss. In such instances, the President is not required to give reasons for the dismissal.

CLAUSE 15

THAT, the Bill be amended by deleting clause 15 and substituting therefor —

16. Section 44 the principal Act is amended by —

(d) deleting subsection (2) and substituting therefor —

(2) A person shall be qualified for appointment as a county secretary under subsection (1), if that person —

- (k) is a citizen of Kenya;
- (l) holds a degree from a university recognized in Kenya;
- (m) has at least ten years relevant professional experience;
- (n) has at least five years' experience in a leadership position at senior management level in a public service or private sector organization; and
- (o) meets the requirements of leadership and integrity as prescribed in Chapter Six of the Constitution.

(e) inserting the following new subsections immediately after subsection (2) —

(2A) The Governor shall, for the purpose of competitive recruitment of a county secretary under subsection (2), constitute a selection panel.

(2B) The selection panel shall consist of the following persons —

- (k) a chairperson, not being a public officer;
- (l) one person from the private sector;
- (m) an Advocate of the High Court of Kenya, who is a member of the Law Society of Kenya;
- (n) an accountant who is a member of the Institute of Certified Public Accountants of Kenya; and
- (o) one person from an association representing workers.

(2C) The provisions of section 58A shall, with such modification as shall be necessary apply to the recruitment of a county secretary.

(2D) Upon interviewing the applicants for the position of county secretary —

- (e) the selection panel shall submit to the governor the names of two applicants who qualify for appointment as county secretary; and
- (f) the governor shall submit the name of one applicant to the county assembly for approval for appointment as county secretary by the governor.

(2E) The county secretary shall hold office for a term of five years and shall be eligible for reappointment once.

(2F) The county secretary shall be an *ex officio* member of the County Executive Committee with no voting rights.

(f) inserting the following new subsection immediately after subsection (3) —

(3A) The county secretary may be removed from office on the following grounds—

- (k) inability to perform functions of the office arising out of physical or mental infirmity;
- (l) incompetence;
- (m) gross misconduct;
- (n) bankruptcy; or
- (o) violation of the Constitution.

(3B) Before removal under subsection (3A), the county secretary shall be informed, in writing, of the reasons for the intended removal.

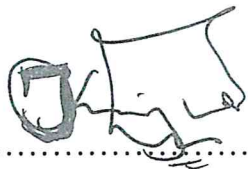
(3C) Subject to subsection (3A), (3B) and conditions of appointment, a county secretary may be dismissed by the governor.

Rationale: The Mediation Committee agreed on a modified version of the National Assembly amendment.

The Mediation Committee having agreed to a mediated version of the Bill, approved and adopted its report and the mediated version of the bill as attached.

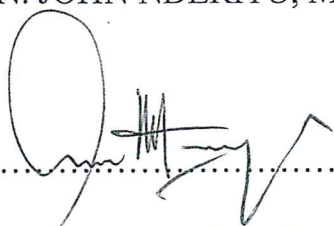
MIN. NO.11/3/2020: ANY OTHER BUSINESS & ADJOURNMENT

there being no other business the meeting was adjourned at 1:20 p.m.



SIGNED:

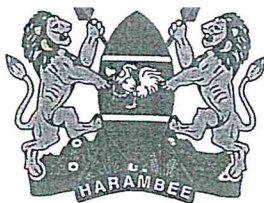
SEN. JOHN NDERITU, M.P. – CHAIRPERSON



SIGNED:

HON. (DR.) AMOS KIMUNYA, EGH, M.P. – VICE CHAIRPERSON

DATE..... 17th March, 2020



**MEDIATION COMMITTEE THE COUNTY GOVERNMENTS (AMENDMENT)
(NO. 2) BILL, 2017**

ATTENDANCE SHEET

DATE: 17/3/2020

TIME: 1:00pm

VENUE: Committee Room 5

AGENDA: ADDITION OF THE REPORT

NO	NAME	SIGNATURE
1.	Hon. Amos Kimunya, EGH, MP	
2.	Hon. George Peter Opondo Kaluma, EGH, MP.	
3.	Hon. Didmus Barasa, MP	
4.	Hon. Edward Oku Kaunya, MP	
5.	Hon. Halima Mucheke, MP	
6.	Sen. Mutula Kilonzo, MP	
7.	Sen. Judith Pareno, MP	
8.	Sen. (Prof.) Margaret Kamar, EGH, MP	
9.	Sen. Mary Yiane Seneta, MP	
10.	Sen. John Kinyua Nderitu, MP	
11.		

CONFIRMED BY: Emmy Oberway

COMMITTEE CLERK: SIGNATURE: [Signature]

COMMITTEE CLERK: SIGNATURE:

DATE: 17/3/2020

