



Parliament of Kenya

The National Assembly

The Mediation Process in Law Making



Fact Sheet
No. 18

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This Factsheet on **The Mediation Process in Law Making** is part of the Kenya National Assembly Factsheets Series that are supposed to enhance public understanding, awareness and knowledge of the work of the Assembly and its operations. It is intended to serve as easy guide for ready reference by Members of Parliament, staff and the general public. The information contained here is not exhaustive and readers are advised to refer to the original sources for further information.

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The Mediation Process in Law Making

What is mediation?

Mediation is the process by which the Houses of Parliament attempt to build consensus and concurrence on contended provisions of a Bill or the entire Bill, whose passage require consideration by both Houses of Parliament, with the intention of developing an agreed version of the Bill that can be passed by both Houses.

How is the Mediation process undertaken?

Mediation process on a Bill occurs at two levels –

- a) Mediation Committee sessions comprising an equal number of Members drawn from both Houses.
- b) Plenary session for each House to debate a motion on the Report of the mediation Committee and the version of the Bill proposed by the Committee.

Bills that may be concluded through a Mediation Committee

Bills whose passage goes through both Houses of Parliament may end up in a Mediation Committee, if one House disagrees with the version of that Bill or amendments made to it by the other House as explained below:

a) Bills concerning county governments

The Constitution defines a Bill concerning county governments as a Bill containing provisions affecting the functions and powers of the county

governments as set out in the Fourth Schedule to the Constitution.¹ It further provides that a Bill concerning county governments may be introduced in the National Assembly or the Senate.² This means that since both Houses have the jurisdiction to consider Bills concerning county governments, whenever the National Assembly considers and passes a Bill concerning county governments, the Bill has to be referred to the Senate for concurrence and whenever the Senate considers and passes a Bill concerning county governments, the Bill has to be referred to the National Assembly for concurrence.

What happens when Bill concerning county governments is passed in the National Assembly?

It is important to note that whenever the National Assembly passes a Bill concerning county governments, it is referred to the Senate by way of a Message. In the Senate, the Bill invariably undergoes the same process of consideration of any other ordinary Bill, beginning with First, referral to relevant Standing Committee, public participation, Second Reading, Committee of the whole House stage and finally Third Reading. The Senate in considering the Bill may-

- a) pass the Bill without amendments, that means the Senate may pass the Bill in the form in which it was passed by the National Assembly; or
- b) pass the Bill with amendments; or,
- c) reject the Bill.

Where the Senate has passed the Bill without amendments then it is referred back to the National Assembly for onward presentation to the President for assent. Should the Senate make amendments to the Bill, the Senate amendments are referred to the National Assembly by way of a Message for consideration.

b) Bills concerning affairs of the Houses of Parliament

A Bill relating to the proceedings, processes, operations, the running of the business of the Houses or affecting the welfare of members and staff of Parliament may be considered by both Houses. Such Bills are considered in a manner similar to that applicable to Bills concerning County governments.

What necessitates a Mediation process?

The Mediation process occurs whenever-

- (a) the Senate –

¹ Article 110 of the Constitution. A Bill relating to the election of members of a county assembly or a county executive and a Bill affecting the finances of county governments is also a Bill concerning county governments.

² Article 109 (4) of the Constitution.

- (i) does not agree to all or any of the amendments made by the National Assembly to a Bill
 - a. concerning County governments originating from the Senate, or
 - b. relating to the proceedings, processes, operations, the running of the business of the Houses or affecting the welfare of members and staff of Parliament which originated in the Assembly, or,
- (ii) rejects a Motion that a Bill which originated in the National Assembly be read a Second or Third Time;
- (b) the National Assembly –
 - (i) does not agree to all or any of the amendments made by the Senate to a Bill
 - a. concerning County governments originating from the National Assembly, or
 - b. relating to the proceedings, processes, operations, the running of the business of the Houses or affecting the welfare of members and staff of Parliament which originated in the Senate, or,
 - (ii) rejects a Motion that a Bill which originated in the Senate be read a Second or Third Time;

How is the decision to establish a mediation committee communicated?

A decision of a House of Parliament on a Bill with the effect of committing to a Mediation process is communicated to the other House by way of a Message by the Speaker.

How is the Mediation Committee appointed?

A Mediation Committee consists of equal numbers of members of the National Assembly and the Senate appointed by the two Speakers. Invariably, the Speakers consult the whips and may, depending with the subject and character of the Bill, make other considerations and may include -

- a) the mover of the Bill;
- b) the Chairperson or member(s) from the relevant Committee which interacted with the Bill during public participation;
- c) senior/ranking members of the departmental/standing committees of each House that originally considered the Bill;
- d) member(s) with strong views, either against and in favour of the contended clauses;
- e) member(s) with expertise or experience on the subject of the Bill;
- f) leaders of the Majority and Minority Parties.

How long does the Committee take to mediate?

In accordance with the provisions of Article 112 of the Constitution, the Mediation Committee is required to attempt to formulate a version of the Bill agreeable to both Houses within thirty (30) days. Normally, the Committee

focuses on the contended clauses and any other consequential provisions. Thereafter, the Committee compiles a report and appends the *Mediated Version of the Bill*, which is Tabled in both Houses by the respective Co-Chairpersons.

What happens if the mediation committee fails to agree within thirty (30) days?

Whenever a Mediation Committee fails to agree on a version within the Constitutional timeline of thirty (30) days, the Bill is deemed to have been defeated³. It is important to note that, as a practice, the thirty days start counting when a Mediation Committee appointed to undertake a mediation process holds its first meeting.

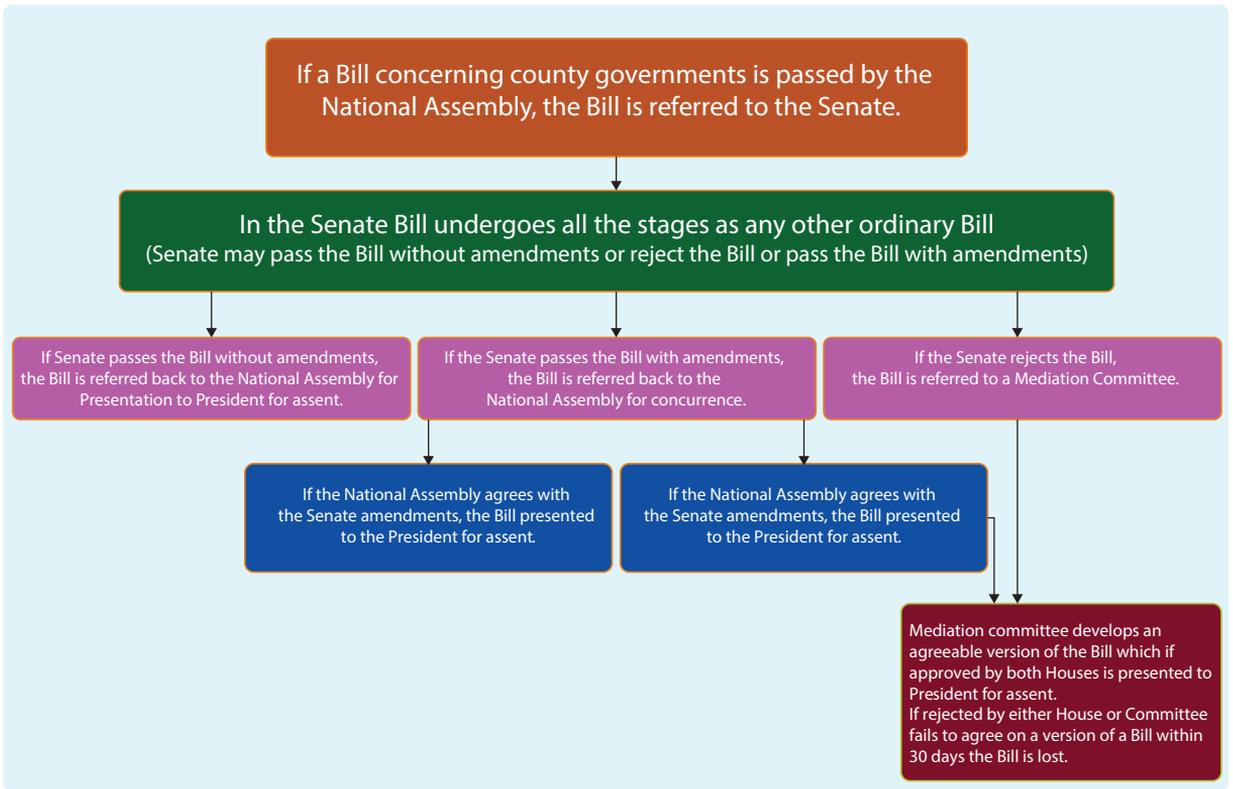
How is the Mediated version of a Bill approved?

The mediated version of the Bill is debated upon a motion moved by the respective Co-Chairpersons in both Houses. If both Houses approve the version of the Bill proposed by the Mediation Committee, the Speaker of the National Assembly presents the Bill to the President within seven (7) days for assent. However, if a version proposed by the Committee is rejected by either House, the Bill is defeated.

What is the fate of a Bill lost through mediation process?

A Bill defeated through mediation process may be re-published in the same or amended form and re-introduced for consideration.

3 Article 113(4) of the Constitution





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