

REPUBLIC OF KENYA

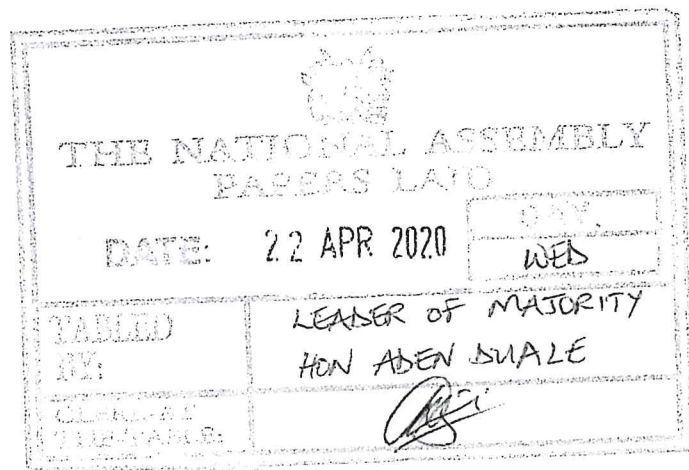


TWELFTH PARLIAMENT

FOURTH SESSION

THE MEDIATION COMMITTEE ON THE COUNTY GOVERNMENTS
(AMENDMENT) (NO. 2) BILL, (SENATE BILL NO. 7 OF 2017)

REPORT ON THE CONSIDERATION OF THE COUNTY GOVERNMENTS
(AMENDMENT) (NO. 2) BILL, (SENATE BILL NO. 7 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) (No. 2) Bill (Senate Bills No. 7 of 2017) was constituted by the Speakers of the Senate and the National Assembly on 3rd 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, 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 |
| 10. | Sen. Mary Yiane Seneta, 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. Carolynne 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 Sitzings

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

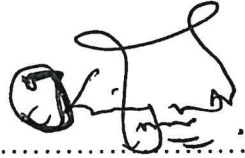
The Committee wishes to thank the Offices of the Speakers and the Offices of the Clerks of both Houses of Parliament for the necessary support extended to it in the execution of its mandate.

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,

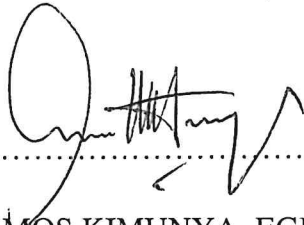
It is our pleasant duty, pursuant to standing order 160(1) of the Senate Standing Orders and standing order 150(1) of the National Assembly Standing Orders to present a report

of the Mediation Committee on the County Governments (Amendment) (No. 2) Bill
(Senate Bills No. 7 of 2017) for consideration by both Houses of Parliament.



SIGNED:

SEN. JOHN NDERITU, M.P. – CHAIRPERSON



SIGNED:

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

Date: 17th March, 2020

CHAPTER ONE

INTRODUCTION

1.1 Background on the County Governments (Amendment) (No. 2) Bill (Senate Bills No. 7 of 2017)

The County Governments (Amendment) (No. 2) Bill (Senate Bills No. 7 of 2017) seeks to amend the County Governments Act, No. 17 of 2012 to provide for the procedure for the disposal of a report of a Commission of Inquiry established pursuant to Article 192(2) of the Constitution. Further, the Bill seeks to provide for the termination of a suspension of a county government under Article 192(4) of the Constitution.

The County Governments (Amendment) (No. 2) Bill, 2017 was published on 2nd November, 2017 and read a First Time in the Senate on 29th November, 2017. The Bill was considered and passed by the Senate on 21st June, 2018 and was thereafter referred to the National Assembly for concurrence.

The Bill was read a First Time in the National Assembly on 24th July, 2018. The National Assembly passed the Bill, with amendments, on Tuesday, 26th March, 2019. The Message of the National Assembly on the passage of the Bill was conveyed to the Senate on 28th March, 2019. The Senate thereafter considered the National Assembly's amendments to the Bill on 30th May, 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

CONSIDERATION OF THE COUNTY GOVERNMENTS (AMENDMENT) (NO. 2) BILL (SENATE BILLS NO. 7 OF 2017)

2.1 Amendments passed by the National Assembly to the County Governments (Amendment) (No. 2) Bill (Senate Bills No. 7 of 2017)

The National Assembly passed the following amendments to the Bill -

CLAUSE 2

THAT, clause 2 be amended in the proposed amendments to section 123 —

- (a) by deleting the proposed subsection (8) and substituting therefore following new subsection —

(8) Where the Commission does not recommend the suspension of a county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body the recommendation of the Commission.

- (b) in the proposed sub-section (9) by deleting the words “whether or not appearing in paragraph (a) and substituting therefor the word “that”.

- (c) by inserting a new subsection immediately after the proposed subsection (9) —

(9a) Where the President is not satisfied that justifiable grounds exist for suspension of a county government the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body of his dissatisfaction.

- (d) in the proposed subsection (13) by —

- (i) deleting the word “authorization” immediately after the word “upon” and substituting therefor the word “approval”; and

- (ii) inserting the words “within fourteen days or receipt of the Senate resolution” immediately after the words “the President shall”.

- (e) by deleting the in the proposed subsection (14).

CLAUSE 3

THAT, clause 3 of the Bill to be amended by renumbering the last provision under the proposed new Section 129 as subsection (8).

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 30th May, 2019. Below is a summary of the Senate's consideration of the National Assembly amendments to the Bill -

CLAUSE 2

THAT, clause 2 be amended in the proposed amendments to section 123 —

- (a) by deleting the proposed subsection (8) and substituting therefore following new subsection —

(8) Where the Commission does not recommend the suspension of a county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body the recommendation of the Commission.

Senate Resolution: Not agreed to.

- (b) in the proposed sub-section (9) by deleting the words “whether or not appearing in paragraph (a) and substituting therefor the word “that”.

Senate Resolution: Not agreed to.

- (c) by inserting a new subsection immediately after the proposed subsection (9) —

(9a) Where the President is not satisfied that justifiable grounds exist for suspension of a county government the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body of his dissatisfaction.

Senate Resolution: Not agreed to.

- (d) in the proposed subsection (13) by —

1.0 deleting the word “authorization” immediately after the word “upon”
and substituting therefor the word “approval”; and

2.0 inserting the words “within fourteen days or receipt of the Senate
resolution” immediately after the words “the President shall”.

Senate Resolution: Not agreed to.

CLAUSE 3

THAT, clause 3 of the Bill to be amended by renumbering the last provision under the
proposed new Section 129 as subsection (8).

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) (No. 2) Bill, 2017 and the following amendments to the Bill were adopted by the Committee —

CLAUSE 2

THAT, clause 2 be amended in the proposed amendments to section 123 —

- (a) by deleting the proposed subsection (8) and substituting therefore following new subsection —

(8) Where the Commission does not recommend the suspension of a county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), submit to the Speaker of the Senate and the apex intergovernmental body —

- (a) the report and the recommendations of the Commission; and
- (b) the petition for suspension of the county government.

- (b) in the proposed sub-section (9) by deleting the words “whether or not appearing in paragraph (a) and substituting therefor the word “that”.

(9) Where the Commission recommends the suspension of the county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), submit to the Speaker of the Senate —

- (a) a memorandum stating that the President is satisfied that justifiable grounds exist for suspension of the county government;
- (b) the report and the recommendations of the Commission; and
- (c) the petition for suspension of the county government.

Rationale: The Mediation Committee agreed with the National Assembly amendment since there is need to separate the instances where the President is satisfied with the

recommendation for a suspension and when the President is dissatisfied. As in clause 8, the timeline of fourteen days was agreed to.

(c) by inserting a new subsection immediately after the proposed subsection (9) —

(9a) Where the President is not satisfied that justifiable grounds exist for suspension of a county government the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body of his dissatisfaction.

Rationale: The Mediation Committee agreed with the Senate amendment with regards to submission of the report and the petition and the National Assembly amendment with regards to the timeline of fourteen days and the submission of the report and the petition to the apex intergovernmental body.

Mediated clause:

(13) Upon authorisation of the suspension of a county government by the Senate in terms of Article 192(2) of the Constitution, the President shall, within fourteen days of receipt of the Senate resolution and by notice in the *Gazette*, suspend the county government for a period not exceeding ninety days, or until the suspension is terminated earlier by the Senate in accordance with Article 192(4) of the Constitution.

Rationale: The Mediation Committee agreed with the Senate amendment with regards to use of the word authorisation since it is consistent with the language of the Constitution in Article 192(2). Further, the Mediation Committee agreed with the National Assembly amendment on providing a timeline of fourteen days within which the President is required to act on the Senate resolution.

(d) by deleting the in the proposed subsection (14).

(14) Where the Commission does not recommend the suspension of a county government or where the President is not satisfied that justifiable grounds exist for suspension of a county government, the Senate may

consider any other recommendations of the Commission not relating to whether or not the county government should be suspended and make a determination on the way forward with respect to those recommendations.

Rationale: The Mediation Committee agreed that this amendment by the Senate be rejected since the Senate is not restricted by the Constitution or the Standing Orders to make recommendations or determination on other matters which are not related to the suspension of a county government.

CLAUSE 3

THAT, clause 3 of the Bill to be amended by re-numbering the last provision under the proposed new Section 129 as subsection (8).

- (8) Upon the termination of a suspension of the county government —
 - (a) the Interim County Management Board appointed under section 126 shall stand dissolved; and
 - (b) the governor, the deputy governor, and the members of the county executive committee, the speaker and the members of the county assembly shall resume their functions and continue to receive their benefits in full from the date of termination of the suspension and shall hold office for the remainder of their term.

Rationale: The Mediation Committee agreed with the National Assembly amendment to the Bill in order to address the error.

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. 7 of 2017)

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

(A version of the County Governments (Amendment) (No. 2) Bill, 2017 (Senate Bills No. 7 of 2017) as agreed on 17th March, 2020, by a mediation committee appointed pursuant to Article 113 of the Constitution.)

Sen. /B/No. 7/2017

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

A Bill for

AN ACT of Parliament to amend the County Governments Act to provide for the procedure for the disposal of a report of a Commission of Inquiry established under Article 192(2) of the Constitution and to provide for the termination of a suspension of a county government under Article 192(4) of the Constitution; 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) (No. 2) Act, 2017.

Amendment of
section 123 of No.
17 of 2012.

2. The County Governments Act, in this Act referred to as the “principal Act”, is amended in section 123 by deleting subsections (7), (8), (9) and (10) and substituting therefor the following new subsections—

(7) The Commission shall inquire into the matters before it within three months of its appointment and report on the facts and submit its recommendations to the President.

(8) Where the Commission does not recommend the suspension of a county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), submit to the Speaker of the Senate and the apex intergovernmental body —

(a) the report and the recommendations of the Commission; and

(b) the petition for suspension of the county government.

(9) Where the Commission recommends the suspension of the county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), submit to the Speaker of the Senate —

(a) a memorandum stating that the President is satisfied that justifiable grounds exist for suspension of the county government;

(b) the report and the recommendations of the Commission; and

(c) the petition for suspension of the county government.

(9A) Where the Commission recommends the suspension of the county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), submit to the Speaker of the Senate —

(a) a memorandum stating that the President is not satisfied that justifiable grounds exist for suspension of the county government;

(b) the report and the recommendations of the Commission; and

(c) the petition for suspension of the county government.

(10) Where the President, in the memorandum submitted under subsection (9)(a), is satisfied that justifiable grounds exist for the suspension of a county government, the Speaker of the Senate shall refer the documents received under subsection (9) to the relevant committee of the Senate for consideration.

(11) The committee shall, within fourteen days of receipt of the documents under subsection (10), consider the documents and make its recommendations to the Senate on whether or not the Senate should authorise the suspension of the county government.

(12) An authorisation by the Senate under subsection (11) shall be by a resolution adopted in accordance with the provisions of Articles 122 and 123 of the Constitution.

(13) Upon authorisation of the suspension of a county government by the Senate in terms of Article 192(2) of the Constitution, the President shall, within fourteen days of receipt of the Senate resolution and by notice in the *Gazette*, suspend the county government for a period not exceeding ninety days, or until the suspension is terminated earlier by the Senate in accordance with Article 192(4) of the Constitution.

Termination of
suspension by the Senate.

129. (1) Pursuant to Article 192(4) of the Constitution, the Senate may at any time terminate the suspension of a county government.

(2) A member of the Senate may move a motion for the termination of a suspension under subsection (1).

(3) Where a member gives notice of a motion under subsection (2), the Speaker of the Senate shall refer the proposed motion to the relevant select committee of the Senate to consider the proposed termination of the suspension of the county government and to make recommendations as to whether or not the Senate should terminate the suspension of the county government.

(4) The committee under subsection (3) shall report to the Senate within ten days of referral of the proposed motion to the committee.

(5) In considering the proposed termination under subsection (3), the committee shall invite representations from the members of public, the Interim County Management Board and any other relevant person.

(6) A motion under subsection (2) shall be moved upon the tabling of the report of the committee under subsection (4).

(7) If the motion is supported by a majority of all the county delegations of the Senate, the suspension of the county government shall stand terminated.

(8) Upon the termination of a suspension of the county government —

(a) the Interim County Management Board appointed under section 126 shall stand dissolved; and

- (b) the governor, the deputy governor, and the members of the county executive committee, the speaker and the members of the county assembly shall resume their functions and continue to receive their benefits in full from the date of termination of the suspension and shall hold office for the remainder of their term.

MINUTES OF THE 1ST SITTING OF THE MEDIATION COMMITTEE ON THE COUNTY GOVERNMENTS COUNTY GOVERNMENTS (AMENDMENT) (NO.2) BILL, (SENATE BILLS NO. 7 OF 2017) HELD ON WEDNESDAY, 4TH MARCH, 2020, IN THE COMMITTEE ROOM 5 MAIN PARLIAMENT BUILDINGS, AT 4.00 P.M.

PRESENT:

- | | | |
|----|--|--------------------|
| 1. | Sen. John Kinyua Nderitu, M.P | – Chairperson |
| 2. | Hon. 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. | Mr. Carolyn Cheruiyot | - Legal Counsel I (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 4.10 pm. The prayers were then read by Hon. John Nderitu, 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) (No.2) Bill, (Senate Bills No. 7 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) (No. 2) Bill (Senate Bills No. 7 of 2017) was constituted by the Speakers of the Senate and the National Assembly on 3rd and 23rd July, 2019 respectively.

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) (NO. 2)
BILL (SENATE BILLS NO.7 OF 2017)**

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 Chairman invited the Secretariat to brief the Committee on the County Governments (Amendment) (No. 2) Bill (Senate Bills No. 7 of 2017). The Committee was informed as follows-

That, the bill seeks to amend the County Governments Act, No. 17 of 2012 to provide for the procedure for the disposal of a report of a Commission of Inquiry established pursuant to Article 192(2) of the Constitution. Further, the Bill seeks to provide for the termination of a suspension of a county government under Article 192(4) of the Constitution.

The County Governments (Amendment) (No. 2) Bill, 2017 was published on 2nd November, 2017 and read a First Time in the Senate on 29th November, 2017. The Bill was considered and passed by the Senate on 21st June, 2018 and was thereafter referred to the National Assembly for concurrence.

The Bill was read a First Time in the National Assembly on 24th July, 2018. The National Assembly passed the Bill, with amendments, on Tuesday, 26th March, 2019. The Message of the National Assembly on the passage of the Bill was conveyed to the Senate on 28th March, 2019. The Senate thereafter considered the National Assembly's amendments to the Bill on 30th May, 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.

The Committee consideration the County Governments (Amendment) (No. 2) Bill (Senate Bills No. 7 Of 2017) clause by clause as follows-

1. Amendments passed by the National Assembly to the County Governments (Amendment) (No. 2) Bill (Senate Bills No. 7 of 2017)

The National Assembly passed the following amendments to the Bill -

CLAUSE 2

THAT, clause 2 be amended in the proposed amendments to section 123 —

(a) by deleting the proposed subsection (8) and substituting therefore following new subsection —

(8) Where the Commission does not recommend the suspension of a county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body the recommendation of the Commission.

(b) in the proposed sub-section (9) by deleting the words “whether or not appearing in paragraph (a) and substituting therefor the word “that”.

(c) by inserting a new subsection immediately after the proposed subsection (9) —

(9a) Where the President is not satisfied that justifiable grounds exist for suspension of a county government the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body of his dissatisfaction.

(d) in the proposed subsection (13) by —

(i) deleting the word “authorization” immediately after the word “upon” and substituting therefor the word “approval”; and

(ii) inserting the words “within fourteen days or receipt of the Senate resolution” immediately after the words “the President shall”.

(e) by deleting the in the proposed subsection (14).

CLAUSE 3

THAT, clause 3 of the Bill to be amended by renumbering the last provision under the proposed new Section 129 as subsection (8).

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 30th May, 2019. Below is a summary of the Senate's consideration of the National Assembly amendments to the Bill -

CLAUSE 2

THAT, clause 2 be amended in the proposed amendments to section 123 —

(a) by deleting the proposed subsection (8) and substituting therefore following new subsection —

(8) Where the Commission does not recommend the suspension of a county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body the recommendation of the Commission.

Senate Resolution: Not agreed to.

(b) in the proposed sub-section (9) by deleting the words “whether or not appearing in paragraph (a) and substituting therefor the word “that”.

Senate Resolution: Not agreed to.

(c) by inserting a new subsection immediately after the proposed subsection (9) —

(9a) Where the President is not satisfied that justifiable grounds exist for suspension of a county government the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body of his dissatisfaction.

Senate Resolution: Not agreed to.

(d) in the proposed subsection (13) by —

(i) deleting the word “authorization” immediately after the word “upon” and substituting therefor the word “approval”; and

(ii) inserting the words “within fourteen days or receipt of the Senate resolution” immediately after the words “the President shall”.

Senate Resolution: Not agreed to.

CLAUSE 3

THAT, clause 3 of the Bill to be amended by renumbering the last provision under the proposed new Section 129 as subsection (8).

Senate Resolution: Agreed to.

3. Resolutions of the Mediation Committee

The Mediation Committee considered the contentious provisions of the County Governments (Amendment) (No. 2) Bill, 2017 and the following amendments to the Bill were adopted by the Committee —

CLAUSE 2

THAT, clause 2 be amended in the proposed amendments to section 123 —

(a) by deleting the proposed subsection (8) and substituting therefore following new subsection —

(8) Where the Commission does not recommend the suspension of a county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), submit to the Speaker of the Senate and the apex intergovernmental body —

- (a) the report and the recommendations of the Commission; and
- (b) the petition for suspension of the county government.

Rationale: The Mediation Committee agreed with the Senate amendment with regards to submission of the report and the petition and the National Assembly amendment with regards to the timeline of fourteen days and the submission of the report and the petition to the apex intergovernmental body.

(b) in the proposed sub-section (9) by deleting the words “whether or not appearing in paragraph (a) and substituting therefor the word “that”.

(9) Where the Commission recommends the suspension of the county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), submit to the Speaker of the Senate —

- (a) a memorandum stating that the President is satisfied that justifiable grounds exist for suspension of the county government;
- (b) the report and the recommendations of the Commission; and
- (c) the petition for suspension of the county government.

Rationale: The Mediation Committee agreed with the National Assembly amendment since there is need to separate the instances where the President is satisfied with the recommendation for a suspension and when the President is dissatisfied. As in clause 8, the timeline of fourteen days was agreed to.

(c) by inserting a new subsection immediately after the proposed subsection (9) —

(9a) Where the President is not satisfied that justifiable grounds exist for suspension of a county government the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body of his dissatisfaction.

Rationale: The Mediation Committee agreed that this amendment (insertion) by the National Assembly be rejected since the mediated clause 123(9) will address the proposed issue.

(d) in the proposed subsection (13) by —

(i) deleting the word “authorization” immediately after the word “upon” and substituting therefor the word “approval”; and

(ii) inserting the words “within fourteen days or receipt of the Senate resolution” immediately after the words “the President shall”.

Mediated clause:

(13) Upon authorisation of the suspension of a county government by the Senate in terms of Article 192(2) of the Constitution, the President shall, within fourteen days of receipt of the Senate resolution and by notice in the Gazette, suspend the county government for a period not exceeding ninety days, or until the suspension is terminated earlier by the Senate in accordance with Article 192(4) of the Constitution.

Rationale: The Mediation Committee agreed with the Senate amendment with regards to use of the word authorization since it is consistent with the language of the Constitution in Article 192(2). Further, the Mediation Committee agreed with the National Assembly amendment on providing a timeline of fourteen days within which the President is required to act on the Senate resolution.

(e) by deleting the in the proposed subsection (14).

(14) Where the Commission does not recommend the suspension of a county government or where the President is not satisfied that justifiable grounds exist for suspension of a county government, the Senate may consider any other recommendations of the Commission not relating to whether or not the county government should be suspended and make a determination on the way forward with respect to those recommendations.

Rationale: The Mediation Committee agreed that this amendment by the Senate be rejected since the proposed amendment seeks to permit the Senate to make recommendations or determination on other matters which are not related to the suspension of a county government. There is therefore need to amend the proposal to limit the provision within the auspices of a suspension of a county government.

CLAUSE 3

THAT, clause 3 of the Bill to be amended by renumbering the last provision under the proposed new Section 129 as subsection (8).

(8) Upon the termination of a suspension of the county government —

- a. the Interim County Management Board appointed under section 126 shall stand dissolved; and
- b. the governor, the deputy governor, and the members of the county executive committee, the speaker and the members of the county assembly shall resume their functions and continue to receive their benefits in full from the date of termination of the suspension and shall hold office for the remainder of their term.

Rationale: The Mediation Committee agreed with the National Assembly amendment to the Bill in order to address a typographical error.

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 5.35 p.m. The next sitting will be held on **Tuesday, 10th March, 2020 at 1.00pm.**

SIGNED:

SEN. JOHN NDERITU, M.P. -CHAIRPERSON

SIGNED:

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

DATE: 17th March, 2020.

MINUTES OF THE 2ND SITTING OF THE MEDIATION COMMITTEE ON THE COUNTY GOVERNMENTS COUNTY GOVERNMENTS (AMENDMENT) (NO.2) BILL, (SENATE BILLS NO. 7 OF 2017) HELD ON TUESDAY, 4TH MARCH, 2020, IN THE COMMITTEE ROOM 5 MAIN PARLIAMENT BUILDINGS, AT 1.00 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. | Hon. Halima Mucheke, MP | - Member |
| 8. | Hon. Didmus Barasa, MP | - Member |

ABSENT WITH APOLOGIES

- | | | |
|----|----------------------------|----------|
| 1. | Sen. Mary Yiane Seneta, MP | - Member |
| 2. | Sen. Judith Pareno, 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. | Mr. Josephine Kusinyi | - Principal Counsel II (Senate); |
| 4. | Ms. Clarah Kimeli | - Senior Legal Counsel (National Assembly); |
| 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. 07/3 /2020: PRELIMINARIES

The Chairman called the meeting to order at 1.15pm. The prayers were then read by Hon. John Nderitu, MP.

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

The agenda was adopted having been proposed by Hon. Halima Mucheke, MP., and seconded by Sen. Mutula Kilonzo, MP as follows-

1. Prayer

2. Adoption of the Agenda
- 3. Confirmation of Minutes of the Previous Sitzings**
- 4. Consideration and Adoption of the Committee Report**
5. Any Other Business
6. Adjournment

MIN. NO. 09/3/2020:

**CONFIRMATION OF MINUTES OF THE
PREVIOUS SITTINGS**

The Minutes of the First Sitting of the Committee were signed by the Chairman and Vice Chairman after it was confirmed as a true record of the sitting's proceedings. The Minutes were proposed by Hon. (Prof.) Margaret Kamar, MP, and seconded by Hon. Halima Mucheke, MP.

MIN. NO.10/3/2020:

**CONSIDERATION AND ADOPTION OF
COMMITTEE REPORT**

The Mediation Committee considered the contentious provisions of the County Governments (Amendment) (No. 2) Bill, 2017 and the following amendments to the Bill were adopted by the Committee —

CLAUSE 2

THAT, clause 2 be amended in the proposed amendments to section 123 —

by deleting the proposed subsection (8) and substituting therefore following new subsection —

(8) Where the Commission does not recommend the suspension of a county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), submit to the Speaker of the Senate and the apex intergovernmental body —

the report and the recommendations of the Commission; and

the petition for suspension of the county government.

in the proposed sub-section (9) by deleting the words “whether or not appearing in paragraph (a) and substituting therefor the word “that”.

(9) Where the Commission recommends the suspension of the county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), submit to the Speaker of the Senate —

a memorandum stating that the President is satisfied that justifiable grounds exist for suspension of the county government;

the report and the recommendations of the Commission; and

the petition for suspension of the county government.

Rationale: The Mediation Committee agreed with the National Assembly amendment since there is need to separate the instances where the President is satisfied with the recommendation for a suspension and when the President is dissatisfied. As in clause 8, the timeline of fourteen days was agreed to.

by inserting a new subsection immediately after the proposed subsection (9) —

(9a) Where the President is not satisfied that justifiable grounds exist for suspension of a county government the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body of his dissatisfaction.

Rationale: The Mediation Committee agreed with the Senate amendment with regards to submission of the report and the petition and the National Assembly amendment with regards to the timeline of fourteen days and the submission of the report and the petition to the apex intergovernmental body.

Mediated clause:

(13) Upon authorisation of the suspension of a county government by the Senate in terms of Article 192(2) of the Constitution, the President shall, within fourteen days of receipt of the Senate resolution and by notice in the Gazette, suspend the county government for a period not exceeding ninety days, or until the suspension is terminated earlier by the Senate in accordance with Article 192(4) of the Constitution.

Rationale: The Mediation Committee agreed with the Senate amendment with regards to use of the word authorisation since it is consistent with the language of the Constitution in Article 192(2). Further, the Mediation Committee agreed with the National Assembly amendment on providing a timeline of fourteen days within which the President is required to act on the Senate resolution.

by deleting the in the proposed subsection (14).

(14) Where the Commission does not recommend the suspension of a county government or where the President is not satisfied that justifiable grounds exist for suspension of a county government, the Senate may consider any other recommendations of the

Commission not relating to whether or not the county government should be suspended and make a determination on the way forward with respect to those recommendations.

Rationale: The Mediation Committee agreed that this amendment by the Senate be rejected since the Senate is not restricted by the Constitution or the Standing Orders to make recommendations or determination on other matters which are not related to the suspension of a county government.

CLAUSE 3

THAT, clause 3 of the Bill to be amended by re-numbering the last provision under the proposed new Section 129 as subsection (8).

(8) Upon the termination of a suspension of the county government —

the Interim County Management Board appointed under section 126 shall stand dissolved; and

the governor, the deputy governor, and the members of the county executive committee, the speaker and the members of the county assembly shall resume their functions and continue to receive their benefits in full from the date of termination of the suspension and shall hold office for the remainder of their term.

Rationale: The Mediation Committee agreed with the National Assembly amendment to the Bill in order to address the error.

The Mediation Committee adopted the Mediated version of the bill as attached to the minutes.

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

There being no any other business the meeting was adjourned at 1.40pm.

SIGNED:

SEN. JOHN NDERITU, M.P. -CHAIRPERSON

SIGNED:

Hon. (Dr.) AMOS KIMUNYA, EGH, M.P.- VICE CHAIRPERSON

DATE: 17th March 2020

PARLIAMENT OF KENYA



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

ATTENDANCE SHEET

DATE: 17/3/2020

TIME: 1:00PM

VENUE: Committee Room 5

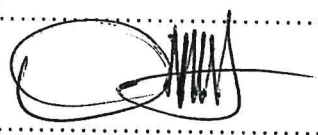
AGENDA: ADOPTION OF THE REPORT

NO	NAME	SIGNATURE
	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	
..	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: George Gazezmbz

CONFIRMED BY: Emmy Chapman

COMMITTEE CLERK: SIGNATURE: 

COMMITTEE CLERK: SIGNATURE: 

DATE: 17/03/2020

