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Eg 27/02/2024

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT - SECOND SESSION

THE SENATE

28/2/24

STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS



REPORT ON THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2023
(SENATE BILLS NO. 25 OF 2023)

PAPERS LAID	
DATE	29.02.2024
TABLED BY	Chairperson
COMMITTEE	Devolution & Intergovernmental Relations
CLERK AT THE TABLE	Polyarp

Rt. Hon. Speaker
You may approve for tabling
J. M. Ngunjiri, C.B.S.,
Clerk of the Senate, Secretary, PSC
Date: 28/02/24

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

February, 2024

DC-EG
Forwarded and recommended for approval for tabling
27/02/2024

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*RE: Hon. Speaker
You may apply for tabling
J. M. Nyong'o, C.B.S.
Chief of the secretariat & PSC
Date:*

LIST OF ABBREVIATIONS/ ACRONYMS

CAF	County Assembly Forum
CEC	County Executive Committee member
COG	Council of Governors
IGRTC	Intergovernmental Relations Technical Committee
LSK	Law Society of Kenya
MC	Members of County Assembly

PRELIMINARIES

Mandate of the Committee.

The Senate Standing Committee on Devolution and Intergovernmental Relations is established under the Standing Order 228 (3) and the Fourth Schedule of the Senate Standing Orders. The Committee is mandated to “*consider all matters relating to devolution, intergovernmental and inter-county relations, governance and management of county governments, cities, towns and urban areas.*”

Membership of the Committee

1. Sen. Sheikh Mohamed Abass, MP	-	Chairperson
2. Sen. Catherine Muyeka Mumma, MP	-	Vice Chairperson
3. Sen. (Dr) Oburu Oginga, MGH, MP	-	Member
4. Sen. Richard Momoima Onyonka, EBS, MP	-	Member
5. Sen. Peris Pesi Tobiko, CBS, MP	-	Member
6. Sen. Mohamed Said Chute, MP	-	Member
7. Sen. George Mungai Mbugua, MP	-	Member
8. Sen. Hezena M. Lemaletian, MP	-	Member
9. Sen. David Wafula Wakoli, MP	-	Member

The Minutes of the Sitzings of the Committee in considering the County Governments (Amendment) Bill (Senate Bills No. 25 of 2023) are attached to this Report collectively as ***Annex 1.***

CHAIRPERSON'S FOREWORD

Mr. Speaker,

The County Governments (Amendment) Bill (Senate Bills No. 25 of 2023) sponsored by Sen. Samson Cherargei, MP seeks to amend Section 40 of the County Governments Act, 2012 to increase the threshold for removal of a member of a county executive committee. The Bill increases the threshold for removal of such a member from the required “one-third” of the members of the County Assembly to “two-thirds” of the members of the County Assembly.

On 5th May, 2023, the Speaker of the Senate referred, the proposed County Governments (Amendment) Bill, 2023 to the Standing Committee on Devolution and Intergovernmental Relations for pre-publication scrutiny and comments. Pursuant to standing order 130(3)(a) of the Senate Standing Orders, the Committee conducted pre-publication scrutiny of the legislative proposal on Monday, 5th June, 2023 and submitted its comments to the Speaker of the Senate.

The Bill was published on 16th June, 2023 and read a first time in the Senate on Thursday, 3rd August, 2023. Following the first reading in the Senate, the Bill stood committed to the Standing Committee on Devolution and Intergovernmental Relations for consideration pursuant to standing order 145(1) of the Senate Standing Orders.

In compliance with the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. The committee published an advertisement in the Daily Nation and Standard newspapers on Thursday, 10th August, 2023 inviting stakeholders and members of the public to submit any representations that they may have on the Bill by way of written memoranda. Additionally, the Committee wrote specifically to key stakeholders inviting them to submit their comments on the Bill namely; The State Department of Devolution; Council of Governors; Intergovernmental Relations Technical Committee(IGRTC); Law Society of Kenya(LSK); and County Assemblies Forum(CAF).

Following advertisement and invitations to stakeholders, the Committee received written memoranda from the State Department of Devolution and the County Assemblies Forum. The Committee on Thursday, 21st September, 2023 conducted a public participation on the Bill. However, County Assembly Forum(CAF) was the only stakeholder that attended the public participation meeting.

The Committee thereafter proceeded to consider extensively the provisions of the Bill and the submissions received thereon. Based on its deliberations, the Committee has made various observations which are set out in Chapter Four of this report. The final recommendation by the Committee is that the Senate proceeds to consider and pass the County Governments (Amendment) Bill (Senate Bills No. 25 of 2023).

Mr. Speaker,

May I take this opportunity to commend the Members of the Standing Committee on Devolution and Intergovernmental Relations for their devotion and commitment to duty, which made the consideration of the Bill successful.

I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the continued and steadfast support extended to the Committee in undertaking this important assignment. Lastly, I wish to acknowledge and thank the stakeholders who submitted written memoranda and who appeared before the Committee to present their comments on the Bill.

Mr. Speaker,

It is now my pleasant duty, pursuant to standing order 148 (1), to present the Report of the Standing Committee on Devolution and Intergovernmental Relations on the County Governments (Amendment) Bill (Senate Bills No. 25 of 2023).

Signed.....

Date.....


SEN. SHEIKH MOHAMED ABASS, MP

**CHAIRPERSON,
STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL
RELATIONS**

**ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON DEVOLUTION
AND INTERGOVERNMENTAL RELATIONS ON THE COUNTY GOVERNMENTS
(AMENDMENT) BILL (SENATE BILLS NO. 25 OF 2023)**

We, the undersigned Members of the Standing Committee on Devolution and Intergovernmental Relations, do hereby append our signatures to adopt this Report-

Sen. Sheikh Mohamed Abass	- Chairperson	
Sen. Catherine Muyeka Mumma	-Vice-Chairperson	
Sen. (Dr.) Oburu Oginga, MGH, MP	-Member	
Sen. Richard Momoima Onyonka, EBS, MP	-Member	
Sen. Peris Pesi Tobiko, CBS, MP	-Member	
Sen. Mohamed Said Chute, MP	-Member	
Sen. George Mungai Mbugua, MP	-Member	
Sen. Hezena M. Lemaletian, MP	-Member	
Sen. David Wafula Wakoli, MP	-Member	

CHAPTER ONE: OVERVIEW OF THE BILL

1.1 Background

1. The County Governments (Amendment) Bill (Senate Bills No. 25 of 2023) is sponsored by Sen. Samson Cherargei, MP. On 5th May, 2023, the Speaker of the Senate referred, the proposed County Governments (Amendment) Bill, 2023 to the Standing Committee on Devolution and Intergovernmental Relations for pre-publication scrutiny and comments.
2. Pursuant to standing order 130(3)(a) of the Senate Standing Orders, the Standing Committee on Devolution and Intergovernmental Relations, conducted pre-publication scrutiny of the legislative proposal on Monday, 5th June 2023 and submitted its comments to the Speaker of the Senate.
3. The Bill was published on 16th June, 2023 and read a first time in the Senate on Thursday, 3rd August, 2023. Following the first reading in the Senate, the Bill stood committed to the Standing Committee on Devolution and Intergovernmental Relations for consideration pursuant to standing order 145(1) of the Senate Standing Orders. A copy of the Bill is attached to this Report as *Annex 3*.

1.2 Justification of the Bill

4. Article 10 of the Constitution of Kenya provides for the national values and principles of governance applicable to State officers when exercising public power. These national values and principles include good governance, integrity, transparency and accountability as stated in Article 10 (2)(c). One of the means of ensuring accountability in the exercise of public power involves the legislative oversight of executive members at both levels of government.
5. In this regard, Section 40 of the County Governments Act, 2012 provides for the procedure for the removal of a member of the county executive committee by a County

Assembly. However, the Act sets a relatively low threshold for voting by the County Assembly to remove a county executive committee member, that is, one- third of the members of the county assembly. This Bill therefore proposes to enhance the threshold of voting in a County Assembly for the removal of a member of a county executive committee from the required “one-third” of the members of the County Assembly to “two-thirds” of the members of the County Assembly.

1.3 Objects of the Bill

6. The purpose of the Bill is to amend the County Governments Act to increase the threshold for removal of a member of a county executive committee.

1.4 Overview of the Bill

7. **Clause 1** of the Bill sets out the short title of the Bill.
8. **Clause 2** amends **Section 40** of the County Governments Act;
 - a) in subsection (2) by deleting the word “one-third” appearing immediately after the words “supported by at least” and substituting therefor the word “two-thirds”;
 - b) in subsection (3) by deleting the word “one-third” appearing immediately after the words ‘supported by at least’ and substituting therefor the word ‘two-thirds’; and
 - c) in subsection (6) by deleting the words “a majority” appearing immediately after the words “supported by” and substituting therefor the words “at least two-thirds”.
9. This section provides for the removal of a member of the County Executive committee. The Bill increases the threshold for removal of such a member from the required “one-third” of the members of the County Assembly to “two-thirds” of the members of the County Assembly.

1.5 Consequences of the Bill

10. The Bill will ensure that a high threshold is met before impeaching a member of the County executive committee. This will safeguard the county executive committee members ensuring that they can carry out their responsibilities without the constant threat of easy impeachment, considering that they manage important public resources. This will ensure stability and functioning of county governments hence strengthening devolution.

CHAPTER TWO: OVERVIEW OF PUBLIC PARTICIPATION

2.1 Introduction

11. In compliance with the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. The committee published an advertisement in the Daily Nation and Standard newspapers on Thursday, 10th August, 2023 inviting stakeholders and members of the public to submit any representations that they may have on the Bill by way of written memoranda. A copy of the advertisement is attached as *Annex 4*.
12. Additionally, the Committee wrote specifically to key stakeholders inviting them to submit their comments on the Bill. These stakeholders are;
 - a) State Department of Devolution;
 - b) Council of Governors(COG);
 - c) Intergovernmental Relations Technical Committee(IGRTC);
 - d) Law Society of Kenya(LSK); and
 - e) County Assemblies Forum(CAF).
13. In response to the advertisement and invitations, the Committee received written and oral submissions from two (2) stakeholders. The detailed submissions by stakeholders, organized clause-by-clause, are set out in a matrix attached as *Annex 5*. Additionally, copies of the stakeholder submissions on the Bill are attached collectively as *Annex 6*.

2.2 Attendance by Stakeholders

14. Following advertisement and invitations to stakeholders, the Committee received written memoranda from;
 - a) State Department of Devolution vide a letter dated 18th September, 2023
 - b) County Assemblies Forum vide a letter dated 19th September, 2023.
15. The Committee on Thursday, 21st September, 2023 conducted a public participation on the Bill. However, the County Assembly Forum was the only stakeholder that attended the public participation meeting.

CHAPTER THREE: CLAUSE BY CLAUSE SYNTHESIS OF SUBMISSIONS

16. The following are some of the key issues arising from the stakeholder submissions on the County Governments (Amendment) Bill (Senate Bills No. 25 of 2023). The matrix on stakeholder engagement and Committee resolution is attached –

Clause 2 : Amendment of Section 40

17. The County Assembly Forum (CAF) proposed that this clause should remain as it is in the County Governments Act, 2012. They provided a set of reasons for their proposal which are;

i. Preservation of Oversight Authority;

CAF stated that, County Assemblies serve as the primary oversight bodies for county governments, acting as the voice of the people and the custodians of their interests. The existing threshold for removal of a County Executive Committee member (CEC) is an essential tool that empowers County Assemblies to exercise their oversight authority effectively. For this reason, refusing the amendment ensures that this crucial oversight role is preserved.

ii. Accountability and Transparency:

CAF highlighted that County Assemblies understand that accountability is the cornerstone of good governance. The current threshold enables County Assemblies to hold CECs accountable for their actions and decisions, hence maintaining this threshold ensures transparency in the management of county resources and the execution of county functions.

iii. Checks and Balances:

They further noted that the current threshold serves as a necessary check and balance within the county government structure. It prevents the concentration of power and ensures that CECs are answerable to the representatives of the people. Refusing the

amendment helps maintain these checks and balances, which are essential for the proper functioning of county governments.

iv. Ward Representation:

Members of County Assemblies (MCAs) are elected to represent the interests of their constituents at the county level. The existing threshold allows MCAs to act on behalf of their constituents when they perceive misconduct, incompetence, or other issues that warrant the removal of a County Executive Committee (CEC) member. Therefore, refusing the amendment ensures that MCAs can continue to fulfil their role effectively.

v. Balancing Accountability and Fairness:

While acknowledging concerns about frivolous or politically motivated impeachment motions, County Assemblies emphasize the need to strike a balance between protecting the rights of CECs and maintaining accountability. The current threshold already incorporates due process, investigations, and grounds for removal, ensuring fairness in the impeachment process.

vi. Preserving Distinct Roles:

County Assemblies recognize the distinct roles and responsibilities of CEC members and the Governor within the county government structure. The Governor serves as the chief executive of the county, while CEC members are department heads responsible for specific portfolios. There is no enough persuasive evidence on contrary to warrant CEC's a similar threshold as that of a Governor. Refusing the amendment ensures that the threshold for CEC removal remains commensurate with their roles, allowing County Assemblies to address issues specific to CEC members' performance without conflating them with the Governor's position.

18. On the same clause, the State Department for Devolution also proposed that the clause should remain as it is in the County Governments Act. The rationale behind their proposal was that, Section 40 of the County governments Act mirrors Article 152 (6) of the Constitution on the process of removal of Cabinet secretary by the National Assembly. Additionally, Section 31 of the County governments Act gives the Governor

discretionary power to dismiss the County Executive Committee member notwithstanding section 40.

Further, that the general interpretation of Article 191 of the Constitution reveals that systems and procedure such as the removal of County executive should mirror those of the national government and therefore, the proposal is against the spirit of Article 191 of the Constitution and Section 40 of the County governments Act.

CHAPTER FOUR: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS.

4.1 Committee Observations

19. The Committee observed that the amendment does not undermine the oversight authority of the County Assembly, oversight can still be done effectively.
20. The County Governments Act, 2012 is a county legislation and doesn't necessarily have to mirror the national legislation, hence the procedure for removal of a county executive committee member by the County Assembly doesn't have to mirror removal of a Cabinet Secretary by the National Assembly. The Bill mainly aims to ensure functionality of County governments.

4.2 Committee Recommendations

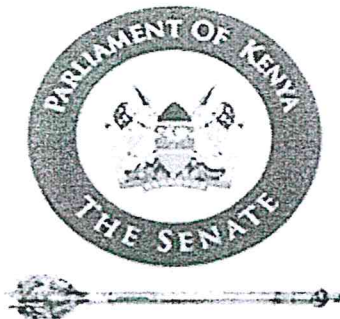
21. Having considered the County Governments (Amendment) Bill (Senate Bills No. 25 of 2023) and the submissions received thereon, the Senate Standing Committee on Devolution and Intergovernmental Relations recommends that the Senate passes the Bill without amendments.

LIST OF ANNEXURES

Annex 1	Minutes of the Standing Committee on Devolution and Intergovernmental Relations
Annex 2	Letter dated 5 th May, 2023 by the Speaker of the Senate referring the Bill to the Committee for pre-publication scrutiny.
Annex 3	The County Governments (Amendment) Bill (Senate Bills No. 25 of 2023)
Annex 4	Advertisement published in the <i>Daily Nation</i> and <i>Standard</i> newspapers on Thursday 10 th August, 2023
Annex 5	Matrix of the stakeholder submissions on the Bill received by the Committee on each clause of the Bill.
Annex 6	Copies of stakeholder submissions on the Bill

Annex 1:

***Minutes of the Standing
Committee on Devolution and
Intergovernmental Relations***



MINUTES OF THE NINETY FIRST SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON MONDAY, 26TH FEBRUARY, 2024 AT 10 AM.

PRESENT

- | | |
|--|--------------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson |
| 3. Sen. (Dr) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 5. Sen. David Wafula Wakoli, MP | - Member |
| 6. Sen. George Mungai Mbugua, MP | - Member |
| 7. Sen. Mohamed Chute, MP | - Member |
| 8. Sen. Hezena Lemaletian, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|------------------------------------|----------|
| 1. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
|------------------------------------|----------|

SECRETARIAT

- | | |
|----------------------------|---|
| 1. Ms. Sylvia Nasambu | - Clerk Assistant I |
| 2. Mr. Desmond Rasugu | - Clerk Assistant III (taking minutes) |
| 3. Mr. Walters Omondi | - Legal Counsel II |
| 4. Ms. Mwanamisi Mwachasi | - Research Officer III |
| 5. Ms. Celestine Jepkosgey | - Public Communications Officer |
| 6. Mr. John Lenkampule | - Serjeant-at-Arms |
| 7. Mr. Johnstone Simuyu | - Audio Officer III |

MIN/SEN/DEVIR/460/2024: **PRAYER**

The meeting was called to order by the Chairperson at 10:08 am followed by a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/461/2024: **ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted as presented after being proposed by Sen. Richard Onyonka, EBS, MP and seconded by Sen. (Dr.) Oburu Oginga, MGH, MP as follows –

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the Minutes of the Previous Meetings; (5 sets)
4. Consideration of Matters Arising from the Minutes;
5. Consideration of the draft report of the County Governments (Amendment), Bill (Senate Bills No. 25 of 2023);
6. Consideration of submissions from the public on the County Assembly Services (Amendment) Bill, 2023 (Senate Bills No. 34 of 2023);
7. Consideration of matters concerning the proposed removal from office by impeachment of Hon. (Dr.) Robert Monda, Deputy Governor of Kisii County;
8. Any Other Business; and
9. Date of the Next Meeting and Adjournment.

MIN/SEN/DEVIR/462/2024: **CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS**

1. The minutes of the eighty-sixth sitting of the Committee held on Thursday, 16th November, 2023 were confirmed to be a true record of the proceedings after being proposed by Sen. Catherine Mumma, MP and seconded by Sen. George Mbugua, MP;
2. The minutes of the eighty-seventh sitting of the Committee held on Monday, 20th November, 2023 were confirmed to be a true record of the proceedings after being proposed by Sen. George Mbugua, MP and seconded by Sen. David Wakoli, MP;
3. The minutes of the eighty-eighth sitting of the Committee held on Monday, 27th November, 2023 were confirmed to be a true record of the proceedings after being proposed by Sen. Catherine Mumma, MP and seconded by Sen. George Mbugua, MP;
4. The minutes of the eighty-ninth sitting of the Committee held on Monday 12th February, 2024 were confirmed to be a true record of the proceedings after being proposed by Sen. (Dr.) Oburu Oginga, MGH, MP and seconded by Sen. David Wakoli, MP;
5. The Minutes of the ninetieth sitting that was held on Thursday, 22nd February, 2024 were confirmed to be a true record of the proceedings after being proposed by Sen. (Dr) Oburu Oginga, MGH, MP seconded by Sen. David Wakoli MP;

1. The Committee was taken through the County Governments Amendment Bill (Senate Bills No. 25 of 2023) sponsored by Sen. Samson Cherargei, MP. The Bill seeks to amend Section 40 of the County Governments Act, 2012 to increase the threshold for removal of a member of a county executive committee. The Bill increases the threshold for removal of such a member from the required “one-third” of the members of the County Assembly to “two-thirds” of the members of the County Assembly;
2. The Committee observed that the Bill will ensure that a high threshold is met before impeaching a member of the County executive committee. This will safeguard the county executive committee members ensuring that they can carry out their responsibilities without the constant threat of easy impeachment, considering that they manage important public resources. This will ensure the stability and functioning of county governments hence strengthening devolution;
3. The Committee further noted of the submissions received from the County Assemblies Forum and the State Department for Devolution who were the only stakeholders who submitted their views about their Bill;
4. The Committee agreed with the sponsor of the bill that the amendment does not undermine the oversight authority of the County Assembly and that oversight can still be done effectively;
5. Further, the Committee observed that The County Governments Act, 2012 is a county legislation and doesn’t necessarily have to mirror the national legislation, hence the procedure for removal of a county executive committee member by the County Assembly doesn’t have to mirror removal of a Cabinet Secretary by the National Assembly. The Bill mainly aims to ensure the functionality and stability of County governments;
6. After deliberating on the key issues on the report including the submissions received thereon from the public, the Committee recommended that the Senate passes the County Governments (Amendment) Bill (Senate Bills No. 25 of 2023) without amendments.

7. Consequently, the Committee unanimously adopted the report as presented.

MIN/SEN/DEVIR/464/2024:

**CONSIDERATION OF SUBMISSIONS FROM
THE PUBLIC ON THE COUNTY ASSEMBLY
SERVICES (AMENDMENT) BILL, 2023
(SENATE BILLS NO. 34 OF 2023**

1. The Committee considered the Matrix of submissions received from the public on the County Assembly Services (Amendment) Bill, Senate Bills No. 34 of 2023 which is sponsored by Sen. Mohamed Chute, MP. The Bill proposes to provide for a procedure for the suspension of a Clerk of the County Assembly taking into account the principles of fair administration action. The Bill further seeks to ensure that the Clerk of a County Assembly exercises effective control over the staff of the Assembly in order to ensure the efficient running of the respective legislature.
2. The Committee considered every clause that each stakeholder submitted views on indicating the justification for each proposal. The submissions were received from the County Assemblies Forum, Society of Clerks at Table (SOCATT) and Mr. Mbaka Omwoyo;
3. After deliberations, the Committee resolved to support clause 2, 3, 6, 7, 8, 9, and 10. The Committee however rejected proposals on clause 4 and 5 of the Amendment Bill.
4. The Committee unanimously resolved to adopt the report on the Bill.

MIN/SEN/DEVIR/465/2024

**CONSIDERATION OF MATTERS CONCERNING
THE PROPOSED REMOVAL FROM OFFICE BY
IMPEACHMENT OF HON. DR. ROBERT MONDA
DEPUTY GOVERNOR, KISII COUNTY**

1. The Committee deliberated on the proposed removal from office by impeachment of the Deputy Governor for Kisii County by the Members of the County Assembly of Kisii. The Committee noted that the motion for the impeachment of the Deputy Governor had already been tabled in the County Assembly of Kisii.

2. The motion was debated and thereafter, debate was adjourned for public participation on the matter to commence. An advertisement to this effect was also published in the dailies on Thursday, 24th February, 2024.
3. With the foregoing, the Committee resolved not to intervene in the matter and allow the due legal process of the impeachment of a Deputy Governor to take its course;
4. The Committee, however, noted with concern that many other Counties are experiencing similar feuds, with Deputy Governors increasingly reporting frustrations from the Governors.
5. As a measure to cure these wrangles that are curtailing the effective relations between the county organs and weakening Devolution in general, the Members resolved to make the following recommendations to the report of the National Dialogue Committee that is before the Senate -
 - a) there be an established ward fund for all the wards in the country to enable members of the county assemblies to implement development projects and programmes in the wards;
 - b) that Deputy Governors to have specific official duties and responsibilities spelt out in the law; and
 - c) amend the law to grant financial autonomy to County Assemblies so that they do not have to depend on the Executive to utilize and implement the budgets allocated to them.

MIN/SEN/DEVIR/466/2024

ANY OTHER BUSINESS

Invitation to the 2nd Intergovernmental Relations Symposium

The Committee deliberated on the invitation by IGRTC TO attend the 2nd Intergovernmental Relations symposium to be held from 4th - 6th March, 2024 in Naivasha, Nakuru County. However, noting that the House shall be having its plenary sittings during the said days, the Committee resolved not to honor the invitation but plan to hold consultative engagements with IGRTC at a more appropriate time.

MIN/SEN/DEVIR/467/2024

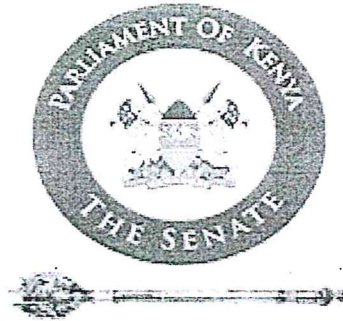
**ADJOURNMENT AND DATE OF NEXT
MEETING.**

The Chairperson adjourned the meeting at 12:35 pm. The next meeting to be held on Thursday, 29th February, 2024.

SIGNED.....

DATE..... 26/02/2024

**SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.**



MINUTES OF THE EIGHTY SIXTH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON THURSDAY, 16TH NOVEMBER, 2023 AT COMMITTEE ROOM 5, AT 10.00 AM.

PRESENT

- | | |
|------------------------------------|--------------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson |
| 3. Sen. (Dr) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. Mohamed Chute, MP | - Member |
| 5. Sen. George Mungai Mbugua, MP | - Member |
| 6. Sen. Hezena Lemaletian, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 2. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 3. Sen. David Wafula Wakoli, MP | - Member |

IN ATTENDANCE

- | | |
|---------------------------|-------------------------|
| Sen. Samson Cherarkey, MP | - Senator, Nandi County |
|---------------------------|-------------------------|

SECRETARIAT

- | | |
|----------------------------|---|
| 1. Mr. Desmond Rasugu | - Clerk Assistant III (taking minutes) |
| 2. Mr. Walters Omondi | - Legal Counsel II |
| 3. Ms. Lucianne Limo | - Media Relations Officer |
| 4. Ms. Mwanamisi mwachasi | - Research Officer III |
| 5. Ms. Celestine Jepkosgey | - Public Communications Officer |
| 6. Mr. John Lenkampule | - Serjeant-at-Arms |
| 7. Mr. Johnstone Simiyu | - Audio Officer III |

MIN/SEN/DEVIR/433/2023: **PRAYER**

The meeting was called to order by the Chairperson at 10:15 am followed by a word of prayer by Mr. Desmond Rasugu.

MIN/SEN/DEVIR/434/2023: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented after being proposed by Sen. George Mbugua, MP and seconded by Sen. Mohamed Chute, MP as follows -

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the Minutes of the Previous Meetings (2 sets)
4. Consideration of Matters Arising from the Minutes;
5. Consideration of:
 - a) the matrix on the submissions on the County Governments (Amendment) Bill, 2023 (Senate Bills No. 25 of 2023); and
 - b) letter from the County Public Service Boards National Consultative Forum on the proposed amendments to the County Governments Act, 2012;
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MIN/SEN/DEVIR/435/2023: CONFIRMATION OF THE MINUTES OF THE

PREVIOUS MEETINGS

- a) The Minutes of the eighty third sitting held on Monday, 30th October, 2023 were confirmed to be a true record of the proceedings after being proposed by Sen. Mohamed Chute, MP and seconded by Sen. George Mbugua, MP;
- b) The Minutes of the eighty fourth sitting held on Thursday, 2nd November, 2023 were confirmed as a true record of the proceedings after being proposed by Sen. (Dr.) Oburu Oginga, MGH, MP and seconded by Sen Mohamed Chute, MP; and
- c) The Minutes of the eighty fifth sitting held on Monday, 6th November, 2023 were confirmed as a true record of the proceedings after being proposed by Sen. George Mbugua, MP and seconded by Sen. Mohamed Chute, MP.

MIN/SEN/DEVIR 436/2023:

CONSIDERATION OF THE MATRIX ON THE SUBMISSIONS ON THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2023 (SENATE BILLS NO. 25 OF 2023)

- a) The Committee considered Committee Paper No. 52, a brief on the matrix on the submissions from various stakeholders on the County Governments (Amendment) Bill 2023, (Senate Bills. No 25 of 2023) which proposes to amend section 40 of the Act to increase the threshold of impeachment of a CEC from the current one third to two third of the members of the County Assembly;

- b) The Committee was informed that only two stakeholders, the County Assemblies Forum and the State Department for Devolution had made their submissions on the Bill, both of which opposed the amendment;
- c) The committee additionally heard the views of the sponsor of the Bill, Sen. Samson Cherarkey, MP who submitted that the objective of the amendment is to improve the stability of the functioning of the County Governments and that will in no way undermine the oversight authority of the County Assemblies; and
- d) Having considered the submissions made, the Committee deliberated on the agenda and **unanimously resolved to support the amendment as proposed.**

MIN/SEN/DEVIR/437/2023:

CONSIDERATION OF THE LETTER FROM THE COUNTY PUBLIC SERVICE BOARDS NATIONAL CONSULTATIVE FORUM ON THE PROPOSED AMENDMENTS TO THE COUNTY GOVERNMENTS ACT, 2012

- a) The Committee considered Committee paper No. 53, a brief on the letter from the County Public Service Boards National Consultative Forum on the proposed amendments to section 58 of the County Governments Act, 2012 by the State Department for Devolution on the eligibility of appointment as a County Secretary;
- b) The amendment proposes to remove the requirement of being a Certified Secretary and a member of good professional standing of the Institute of Certified Secretaries of Kenya.
- c) Noting that the proposal has not yet been received in the Senate, the Committee resolved not to consider the issues raised by the Forum until when the Bill is tabled in the Senate.

MIN/SEN/DEVIR/438/2023:

ANY OTHER BUSINESS

The Committee resolved to have a joint meeting with the Committee on Justice, Legal Affairs and Human Rights at a date that shall be communicated for consideration of the following legislative business:

- a) the laws in the Devolution sector that need to be amended to conform to the 2010 Constitution, and;
- b) consideration of the Impeachment procedure of a County Governor.

MIN/SEN/DEVIR/439/2023
NEXT

ADJOURNMENT AND DATE OF

MEETING.

The Chairperson adjourned the meeting at 11:05 am. The next meeting to be held on Monday, 20th November, 2023 at 10.00 am.

SIGNED.....

DATE.....

SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.



**MINUTES OF THE EIGHTY FOURTH SITTING OF THE SENATE
STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS HELD ON THURSDAY, 2ND
NOVEMBER, 2023 AT COMMITTEE ROOM 4, AT 10.00 AM.**

PRESENT

- | | |
|--|--------------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson |
| 3. Sen. (Dr) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 5. Sen. Mohamed Chute, MP | - Member |
| 6. Sen. David Wafula Wakoli, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|------------------------------------|----------|
| 1. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 2. Sen. George Mungai Mbugua, MP | - Member |
| 3. Sen. Hezena Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|---------------------------|---|
| 1. Ms. Sylvia Nasambu | - Clerk Assistant I |
| 2. Mr. Walters Omondi | - Legal Counsel II |
| 3. Ms. Ann Kigoro | - Research Officer II |
| 4. Mr. Desmond Rasugu | - Clerk Assistant III (taking minutes) |
| 5. Ms. Mwanamisi mwachasi | - Research Officer III |
| 6. Mr. John Lenkampule | - Serjeant-at-Arms |
| 7. Mr. Johnstone Simiyu | - Audio Officer III |

MIN/SEN/DEVIR/421/2023

PRAYER

The meeting was called to order by the Chairperson at 10:15 am followed by a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/422/2023: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented after being proposed by Sen. (Dr.) Oburu Oginga, MGH, MP and seconded by the Sen. Catherine Mumma, MP as follows:

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of Minutes of the previous meeting;
4. Consideration of matters arising from the Minutes of the previous meeting;
5. Consideration of:
 - a) Statement from Sen. Alexander Mundigi, MP on disparities in development in Embu County; and
 - b) the matrix on submissions on the County Governments (amendment) Bill, 2023, (Senate Bills No. 25 of 2023) sponsored by Sen. Samson Cherarkey, MP;
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MIN/SEN/DEVIR/423/2023: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS

Confirmation of the minutes of the eighty third sitting was deferred to the next meeting.

MIN/SEN/DEVIR/424/2023: CONSIDERATION OF A STATEMENT BY SEN. ALEXANDER MUNDIGI, MP ON DISPARITIES IN DEVELOPMENT IN EMBU COUNTY

1. The Committee met with Sen. Alexander Mundigi, MP who expounded on his statement regarding disparities in development in Embu County. He explained that some parts of the County, especially Mbeere South and Mbeere North Sub Counties are significantly underdeveloped in terms of infrastructural and social amenities compared to other regions such as Runyenjues which are comparatively better developed;
2. He additionally stated that there is need for deliberate measures to be put in place by both the National Government and County Government to have the affected regions to benefit appropriately from the Equalisation Fund so as to promptly address the conspicuous intra-county inequalities He concluded by urging the committee to intervene on the discrepancies and recommend urgent interventions to address the situation;
3. Having heard the views of the requester of the Statement, the Committee deliberated upon the matter and resolved as follows;

- a) The Committee to write a letter to the Governor of Embu County requesting for a comprehensive written response reporting on distribution of infrastructural and social amenities for each of the Sub counties in Embu County for the last ten years; and
- b) that after receiving and considering the response of the Governor, the Committee shall determine on how to engage the Commission on Revenue Allocation regarding allocation and utilization of the Equalization Fund for the County.

MIN/ SEN/DEVIR/425:

CONSIDERATION OF MATRIX ON SUBMISSIONS ON THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2023 (SENATE BILLS NO. 25 OF 2023

4. The Legal counsel took the committee through the matrix of the submissions received from various stakeholders on the County Governments (Amendment) Bill, 2023 (Senate Bills No. 25 of 2023) sponsored by Sen. Samson Cherarkey, MP. The Bill seeks to amend section 40 of the said Act in order to increase the threshold required to impeach a member of the County Executive Committee from the current one third of the county Assembly members to two thirds.;
5. The Committee was informed that only two stakeholders; the County Assemblies Forum and the State Department for Devolution had made their submissions, both of which opposed the proposed amendment;
6. Upon deliberation, the Committee resolved to consider the agenda further in another meeting in which the sponsor of the Bill shall be present, before the Committee makes its final resolution.

MIN/SEN/DEVIR/426/2023

ANY OTHER BUSINESS

Letter from Hon. Philomenah Kapkory, Deputy Governor, Trans Nzoia County.

- a) The Committee was presented with a letter from the Deputy Governor of Trans Nzoia County addressed to the Deputy President and copied to the Speaker of the Senate, on issues concerning her personal security. In the letter, she reported that various instances have been taking place in Trans Nzoia County since 26th September, 2023 which have impacted her ability to deliver on her mandate of serving the people as the Deputy Governor. They included threats and abuses levelled against her by the staff of the County Governor;

- b) She stated of the efforts that she had made to have this issue addressed by trying to reach out to the Governor and even reporting the matter to the Directorate of Criminal Investigations and the Police, but reported that she had not received any response from either of them. She additionally stated that from the unfortunate happenings, she had not been able to go back to her office in Trans Nzoia County and that she was operating from Nairobi; and
- c) The committee deliberated on the matter and resolved that owing to its urgency, the Committee to invite the Deputy Governor to a meeting of the Committee on Monday, 6th November, 2023 to deliberate on the issue.

MIN/SEN/DEVIR/427/2023

ADJOURNMENT AND DATE OF NEXT MEETING.

The Chairperson adjourned the meeting at 11:35 am. The next meeting to be held on Monday, 6th November, 2023 at 10.00 am.

SIGNED.....

DATE.....

SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.

Annex 2:

**Letter by the Speaker of the
Senate referring the Bill to the
Committee**

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Telephone 2848000
Fax: 2243694
E-mail: ssenate@parliament.go.ke



Speaker's Chambers
The Senate
Parliament Buildings
P. O. Box 41842 -00100
NAIROBI, Kenya

PARLIAMENT

OFFICE OF THE THE SPEAKER OF THE SENATE

REF: DLS(S)/GEN-CORR/VOL. 1/2023/196

5th May, 2023

Sen. Mohamed Abass Sheikh, MP,
Chairperson,
Standing Committee on Devolution and
Intergovernmental Relations,
Parliament Buildings,
NAIROBI

Dear *Sen*

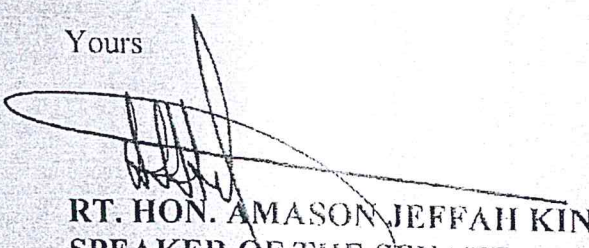
**PRE-PUBLICATION SCRUTINY OF THE COUNTY GOVERNMENTS
(AMENDMENT) BILL, 2023**

The above matter refers.

Pursuant to Standing Order 130(3)(a) of the Senate Standing Orders, I hereby refer to the ~~Standing Committee on Devolution and Intergovernmental Relations~~, a legislative proposal, the proposed County Governments (Amendment) Bill, 2023, for pre-publication scrutiny and comments by the Committee. The legislative proposal has been drafted by the Directorate of Legal Services on the instructions of Sen. Samson Cherarkey, MP.

In terms of Standing Order 130(3)(a) of the Senate Standing Orders, the Standing Committee on Devolution and Intergovernmental Relations is required to submit its comments to the Speaker within fourteen days of the referral of the proposal to the Committee following which the Speaker may, in terms of Standing Order 131(2) of the Senate Standing Orders, direct that the legislative proposal be accepted and published as a Bill.

Yours


**RT. HON. AMASON JEFFAH KINGI, EGH, MP,
SPEAKER OF THE SENATE**

Copy to: Sen. Samson Cherarkey, M.P
Parliament Buildings,
NAIROBI

Annex 3:

**The County Governments
(Amendment) Bill (Senate Bills
No. 25 of 2023)**

THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the County Governments Act to increase the threshold for removal of a member of a county executive committee; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the County Governments (Amendment) Act, 2023.

Short title.

2. Section 40 of the County Governments Act, is amended—

Amendment of section
40 of No.17 of 2012.

- (a) in subsection (2) by deleting the word “one-third” appearing immediately after the words “supported by at least” and substituting therefor the word “two-thirds”;
- (b) in subsection (3) by deleting the word “one-third” appearing immediately after the words ‘supported by at least’ and substituting therefor the word ‘two- thirds’; and
- (c) in subsection (6) by deleting the words “a majority” appearing immediately after the words “supported by” and substituting therefor the words “at least two- thirds”.

MEMORANDUM OF OBJECTS AND REASONS

Article 10 of the Constitution provides for the national values and principles applicable to State officers when exercising public power. These values and principles include good governance, integrity, transparency and accountability. One of the means of ensuring accountability in the exercise of public power is oversight of members of the executive by the legislature at both levels of government.

In this regard section 40 of the County Governments Act provides for the procedure for the removal of a member of the County Executive by a County Assembly. However, cognizant that the office of county executive committee member is established by the Constitution and noting the adverse consequences of removal by impeachment of a member of a county executive committee, the threshold for voting for such a removal in the Act are low. This Bill therefore proposes to enhance the threshold of voting in a County Assembly for the removal of a member of a county executive committee.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill neither delegates legislative powers to the Cabinet Secretary nor limits fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill proposes to enhance the voting threshold in a county assembly for the removal of a member of a county executive committee. Members of a County Executive are appointed to head various dockets in the county executive charged with discharging of devolved functions as set out in Part 2 of the Fourth Schedule to the Constitution. The Bill therefore affects the powers and functions of the county government and it is therefore a Bill that concerns counties in terms of Article 110(1)(a) of the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 2nd May....., 2023.


CHERARKEY SAMSON K,
Senator.

Section 40 of Act No. 17 of 2012 which it is proposed to amend—

40. Removal of member of executive committee

- (1) Deleted by Act No. 11 of 2020, s. 14.
- (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.
- (3) If a motion under subsection (2) is supported by at least one-third of the members of the county assembly—
 - (a) the county assembly shall appoint a select committee comprising five of its members to investigate the matter; and
 - (b) the select committee shall report, within ten days, to the county assembly whether it finds the allegations against the county executive committee member to be substantiated.
- (4) The county executive committee member has the right to appear and be represented before the select committee during its investigations.
- (5) If the select committee reports that it finds the allegations—
 - (a) unsubstantiated, no further proceedings shall be taken; or
 - (b) substantiated, the county assembly shall vote whether to approve the resolution requiring the county executive committee member to be dismissed.
- (6) If a resolution under subsection (5)(b) is supported by a majority of the members of the county assembly—
 - (a) the speaker of the county assembly shall promptly deliver the resolution to the governor; and
 - (b) the governor shall dismiss the county executive committee member.

Annex 4:

**Advertisement published in the
Daily Nation and Standard
Newspapers on Thursday, 10th
August, 2023**

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | SECOND SESSION THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At sittings of the Senate held on Wednesday, 2nd August, 2023, Thursday, 3rd August, 2023 and Tuesday 8th August, 2023, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145(5) of the Senate Standing Orders, the respective Senate Standing Committees now invite interested members of the public to submit any representations that they may have on the Bills.

The representations may be made by way of written memoranda on email to the Clerk of the Senate on the address: clerk.senate@parliament.go.ke and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before **Friday, 25th August, 2023 at 5.00 p.m.**

	BILL	COMMITTEE REFERRED TO	EMAIL ADDRESS
a)	The Maternal, Newborn and Child Health Bill (Senate Bills No. 17 of 2023)	Standing Committee on Health	Healthcommittee.senate@parliament.go.ke
b)	The County Hall of Fame Bill (Senate Bills No. 18 of 2023)	Standing Committee on Labour and Social Welfare	Laboursocialwelfarecomm.senate@parliament.go.ke
c)	The Rice Bill (Senate Bills No. 19 of 2023)	Standing Committee on Agriculture, Livestock and Fisheries.	agriculturelfcommittee.senate@parliament.go.ke
d) e	The County Governments (Amendment) Bill (Senate Bills No. 25 of 2023)	Standing Committee on Devolution and Intergovernmental Relations	senate.devolution@parliament.go.ke
e)	Care and Protection of Child Parents Bill (Senate Bills No. 29 of 2023)	Standing Committee on Labour and Social Welfare	Laboursocialwelfarecomm.senate@parliament.go.ke

The Bills may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.

Annex 5:

Matrix of Stakeholder
Submissions

THE SENATE



PUBLIC PARTICIPATION MATRIX

THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2023 (SENATE BILLS NO.25 OF 2023)

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
Clause 1				
Clause 2	County Assemblies Forum	Reject the amendment	<p>1. Preservation of Oversight Authority</p> <p>County Assemblies serve as the primary oversight bodies for county governments, acting as the voice of the people and the custodians of their interests. The existing threshold for CEC removal is</p>	<p>The Committee rejected the proposal. The Committee noted that the amendment does not in any way offend the roles of the Members of County Assembly on their role.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			<p>an essential tool that empowers County Assemblies to exercise their oversight authority effectively. Refusing the amendment ensures that this crucial oversight role is preserved.</p> <p>2. Accountability and Transparency:</p> <p>County Assemblies understand that accountability is the cornerstone of good governance. The current threshold enables County Assemblies to hold CECs accountable for their actions and decisions. Maintaining</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			<p>this threshold ensures transparency in the management of county resources and the execution of county functions.</p> <p>3. Checks and Balances:</p> <p>The current threshold serves as a necessary check and balance within the county government structure. It prevents the concentration of power and ensures that CECs are answerable to the representatives of the people. Refusing the amendment helps maintain these checks and balances, which are</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			<p>essential for the proper functioning of county governments.</p> <p>4. Ward Representation:</p> <p>MCAs are elected to represent the interests of their constituents at the county level. The existing threshold allows MCAs to act on behalf of their constituents when they perceive misconduct, incompetence, or other issues that warrant the removal of a CEC. Refusing the amendment ensures that MCAs can continue to fulfil</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			<p>their role effectively.</p> <p>5. Balancing Accountability and Fairness:</p> <p>While acknowledging concerns about frivolous or politically motivated impeachment motions, County Assemblies emphasize the need to strike a balance between protecting the rights of CECs and maintaining accountability.</p> <p>The current threshold already incorporates due process, investigations, and grounds for removal, ensuring fairness in the impeachment process.</p>	

A general interpretation of Article 191 of the Constitution reveals that the systems and procedures such as the ones for removal of a County Executive should mirror those of the National Government.

Therefore, the proposal to increase the threshold for removal of a member of the County Executive Committee from one-third to two-thirds is against the spirit of Article 191 and Section 40 of the County Government Act.

In our view there is no justifiable rationale for increasing the threshold from one-third to two-thirds as proposed in the Bill.

Yours *Sincerely*

T. Mbaika

Teresia Mbaika
PRINCIPAL SECRETARY