

# PARLIAMENT OF KENYA

## THE SENATE

### BILLS DIGEST

#### THE REFERENDUM BILL (SENATE BILLS NO. 3 OF 2026)

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**Sponsor:** Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights

**Type of Bill:** Ordinary Bill

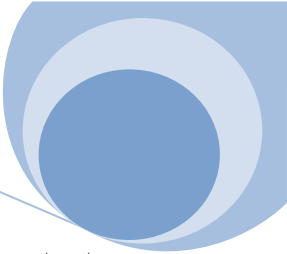
#### **A. Purpose of the Bill**

The Bill seeks to consolidate the laws governing referenda and to establish clear, transparent and fair procedures for conducting referenda in a manner that reflects the will of the people.

#### **B. Types of Referenda**

The Bill distinguishes between three main categories of referenda as follows-

- (a) The first is the national referendum on constitutional amendments, which takes place when changes touch on the protected provisions of the Constitution listed in Article 255(1) of the Constitution, such as the Bill of Rights and Fundamental Freedoms, the structure of Parliament, the term of office of the President, and the independence of the Judiciary and other independent offices. In such cases, the amendment cannot take effect unless it is approved directly by the people in a referendum. These amendments may be initiated either through Parliament or through a popular initiative by citizens. A parliamentary initiative begins with Parliament proposing the amendment, while a popular initiative allows citizens to propose changes by collecting the support of at least one million registered voters.
- (b) The second category is the county-level referendum, which allows people in counties to vote directly on issues that affect them. These might include matters such as county laws, petitions, or major planning and investment decisions.
- (c) The Bill also proposes a category of national referenda that do not involve



changing the Constitution. Parliament may call for such a vote on important national questions, for example, matters of policy or public interest that require direct input from the people.

### **C. Process for a Referendum to Amend the Constitution**

The Bill sets out the process that must be followed before a constitutional amendment is submitted to a referendum. Where Parliament passes a constitutional amendment relating to matters listed under Article 255(1) of the Constitution, the President must notify the IEBC to conduct a referendum within the prescribed timelines.

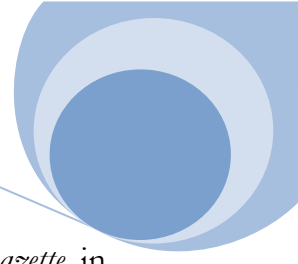
For constitutional amendments proposed through a popular initiative under Article 257 of the Constitution, promoters must submit the draft Bill together with the signatures and identification details of at least one million registered voters. The IEBC must verify the signatures, make the proposal available for public inspection, and confirm whether the initiative meets constitutional requirements. Where the requirements are not met, the promoters may revise and resubmit the proposal.

Once verified, the proposal is submitted to county assemblies for approval or rejection within three months. If approved by a majority of county assemblies, the Bill is introduced in Parliament, where both Houses must publicise the Bill, facilitate public participation, and vote on it. If Parliament approves a Bill that concerns matters protected under Article 255(1) of the Constitution, the proposed amendment must be approved by the people in a referendum before the President can assent to it. In addition, if either House of Parliament fails to pass the Bill, the proposed amendment must also be submitted to the people in a referendum.

The Bill also requires constitutional amendments proposed by Parliament to be developed through public participation and an inclusive process.

### **D. Conduct of a Referendum**

Once a referendum has been triggered, the Independent Electoral and Boundaries Commission (IEBC) takes charge of managing the process. The Bill assigns the IEBC responsibility for framing referendum questions or options. This must be done within twenty-one days of receiving formal notice. The Bill provides that the wording of a referendum question must be simple, neutral, and easy to understand in both English and Swahili. The Bill also requires the question to avoid any bias or suggestion of opinion, so that voters can make a clear choice by marking “yes” or “no.” Where necessary, the IEBC may also assign symbols to the answers, provided those symbols do not resemble those of political parties or candidates.



After the question is framed, the IEBC is required to publish it widely through the *Gazette*, in newspapers, and through electronic media, and begin civic education to ensure that the public understands what they are being asked to decide. Within fourteen days of publishing the question, the Commission must issue a formal notice announcing the referendum. This notice sets out the type and purpose of the referendum, the exact wording of the question, the polling date, the campaign period, and other key details such as polling hours and deadlines for registering campaign committees.

From there, the IEBC oversees the entire voting process. It designates polling stations, appoints officials, and ensures that voting procedures mirror those used in general elections, with adjustments suited to a referendum.

### **Campaigns**

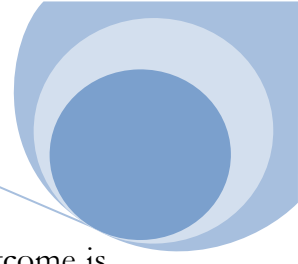
During the referendum process, people may want to campaign either in support of or against the referendum question. The Bill provides a clear structure for how these campaigns should be organised. Anyone who wishes to campaign must form a referendum committee, which can exist at both the national and constituency levels. A national committee is responsible for coordinating the work of its constituency committees, ensuring that activities are consistent and properly managed across the country.

Before registering, each committee must appoint key officials: a leader, a chief agent and other members. The chief agent is particularly important because they oversee the committee's affairs and provide an official signature to the IEBC for authentication. The IEBC keeps a register of all committees and their officials, making the process transparent and accountable. To ensure fairness, the Bill applies the same rules found in the Election Campaign Financing Act. This means there are limits on spending, rules on contributions and donations, and mechanisms for resolving disputes about campaign financing.

### **E. Voting Thresholds**

For a referendum to be valid, it is not enough simply to hold the vote; certain thresholds must be met. The Bill sets out clear rules to ensure the outcome reflects genuine public participation.

When the referendum involves amending the Constitution, two conditions must be satisfied. First, at least twenty percent of registered voters in at least half of all counties must take part in the vote. Second, a simple majority of all those who cast their ballots must support the amendment. In other words, more people must vote “yes” than “no.”



For other types of referenda that do not involve constitutional amendments, the outcome is decided purely by a simple majority of the votes cast, without the additional turnout requirement.

Once the vote is concluded, the IEBC must declare the results within three days and certify them to the President. If the referendum approves a constitutional amendment, the President is required to assent to it within thirty days.

#### **F. Other Referenda**

Not all referenda are about amending the Constitution. The Bill also provides citizens with the opportunity to vote directly on local and national issues.

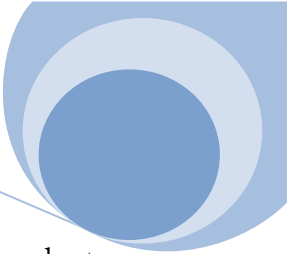
At the county level, a referendum can be called when the county assembly wants the people to decide on a law or petition, or when at least a quarter of registered voters in a particular area sign a petition on a planning or investment matter affecting the county. Once such an issue is referred to the IEBC by the county assembly or the relevant county executive committee member, the IEBC must hold the referendum within ninety days, following the same procedures that apply nationally.

At the national level, Parliament can also initiate a referendum on important questions that do not involve amending the Constitution. For this to happen, more than half of the members of each House must pass a resolution calling for the vote. Such a resolution must clearly spell out the purpose of the referendum, the question to be asked, who is eligible to vote, and how the public will be educated about the issue. Once Parliament refers the matter to the IEBC, the IEBC is required to conduct the referendum within ninety days.

#### **G. Disputes**

The Bill sets out the process for handling petitions to challenge the conduct, result or validity of a referendum through the courts.

Anyone who believes the referendum was not properly carried out, or who wishes to challenge its outcome, may file a petition in the High Court. There are two main types of petitions: one that questions the conduct, result, or validity of the referendum, and another that seeks a declaration on any matter connected to it. These petitions must be filed within fourteen days of the results being announced, and served on the respondents within seven days.



The Bill also specifies who must be named in such cases. The IEBC is always a respondent when the conduct or result is challenged. If the referendum arose from a popular initiative, the promoters must also be included. Where a Bill from Parliament is involved, the Speaker of the relevant House must be named.

A petition is heard by a three-judge bench appointed by the Chief Justice, and the High Court must determine the case within thirty days. Importantly, once a petition is filed, the referendum results are automatically suspended until the case is resolved.

At the conclusion of the hearing of a referendum petition challenging the conduct or result of a referendum, the High Court may dismiss the petition, declare the published results incorrect and direct the publication of the correct results, uphold the result of the referendum, or declare the referendum void. Where the High Court declares a referendum void, the Commission shall conduct a fresh referendum within sixty days.

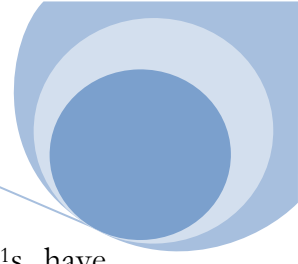
Appeals to the decision of the High Court can then be made to the Court of Appeal, but only on matters of law, and must be concluded within sixty days.

## **H. Code of Conduct & Safeguards**

The Bill makes the existing Electoral Code of Conduct in the Elections Act binding on all participants. This means that the same standards of neutrality, equality, responsible communication, and respect for the process that apply during elections also apply during a referendum.

In addition, the Bill requires referendum documents to be retained and made available for public inspection, protects the secrecy of the vote so that no one can be forced to reveal how they voted, and applies the Election Offences Act to misconduct during referenda. The IEBC is also empowered to issue or the better carrying out of the purposes and provisions of this Act.

## **I. Why this Bill Matters**



Recent court decisions, particularly the Building Bridges Initiative (BBI) judgment<sup>1</sup>s, have highlighted the importance of the Referendum Bill. In those cases, the High Court, the Court of Appeal, and the Supreme Court all pointed to significant gaps in Kenya’s legal framework on referenda.

The courts highlighted several gaps. The High Court pointed out that existing laws, such as the Elections Act, provide a basic skeleton but fail to address key issues, including how signatures should be verified, how questions should be framed, and how public participation should be guaranteed. The Court of Appeal noted that while a referendum could technically proceed under current law, the process lacked clarity and adequate safeguards. The Supreme Court added that although the Constitution allows a referendum without a dedicated statute, the absence of such a law creates unnecessary uncertainty and exposes the process to legal challenge.

The Bill therefore seeks to address the procedural gaps identified in the BBI litigation, including matters relating to signature verification, referendum procedures, referendum questions, and dispute resolution.

## **J. Way Forward**

Public participation is a vital part of law-making in Kenya, and it is especially important for this Bill. A referendum is one of the most direct ways that citizens exercise their power under the Constitution. Since this Bill sets out the rules for how future referenda will be conducted, it touches directly on people’s democratic rights. It is essential for the people of Kenya, and all other stakeholders to have a meaningful opportunity to review the proposals, give feedback, and help shape the final legislation.

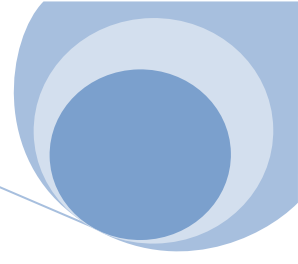
The Bill was read a First Time in the Senate on 5<sup>th</sup> May, 2026. In accordance with standing order 145 of the Senate Standing Orders, the Senate Standing Committee on Justice, Legal Affairs and Human Rights shall facilitate public participation and take into account the views and recommendations of the public when it submits its report to the Senate.

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<sup>1</sup> **High Court:** *David Ndiu & Others v Attorney General & Others* [2021] KEHC 9746 (KLR), Constitutional and Human Rights Petition No. E282 of 2020 (Consolidated).

<sup>2</sup> **Court of Appeal:** *Attorney General & 2 Others v David Ndiu & 73 Others* [2021] KECA 282 (KLR), Civil Appeal No. E291 of 2021 (Consolidated).

<sup>3</sup> **Supreme Court:** *Attorney General & 2 Others v Ndiu & 79 Others; Dixon & 7 Others (Amicus Curiae)* [2022] KESC 8 (KLR), Petition No. 12 of 2021 (Consolidated).



***What is expected of members of the public?***

Members of the public are therefore invited to present their views to the Senate Standing Committee on Justice, Legal Affairs and Human Rights within thirty (30) days of the call for participation. Submissions may be submitted orally during public hearings conducted by the Committee, by sending a written memorandum to the Clerk of the Senate via email at [clerk.senate@parliament.go.ke](mailto:clerk.senate@parliament.go.ke) or by delivering a physical copy to the Office of the Clerk of the Senate at Parliament Buildings, Nairobi.