

②
Hon. Speaker
Please Consider approving for
tabling at Planning
K. D. [Signature]
22/02/21



③
Approved for tabling
[Signature]
SCA
22/02/2021

COUNTY ASSEMBLY OF EMBU

REPORT OF THE JUSTICE AND LEGAL AFFAIRS COMMITTEE ON
CONSTITUTION OF KENYA (AMENDMENT) BILL 2020.

SUBMITTED TO THE COUNTY ASSEMBLY FOR NOTING.

④
DLPCs
T.N.A
[Signature]
22/02/21

①
C.C.A
for further directions
DLPCs
22/2/2021

Clerk's Office
County Assembly of Embu
P.O BOX 140
Embu
Email. countyassemblyofembu@gmail.com.

PCA-KAP
T.N.A
DLPCs
22/2/2021

FEBRUARY 2021

Contents

LIST OF ABBREVIATIONS	3
EXECUTIVE SUMMARY	4
1.1 BACKGROUND.....	4
1.2 MEMBERSHIP OF THE COMMITTEE	5
1.3 MANDATE OF THE COMMITTEE	5
1.4 PROBLEM STATEMENT.....	6
1.5 OBJECTIVES/ TERMS OF REFERENCE	6
2. To cause a report with recommendation for tabling in the assembly and for subsequent submission of the decision to the Speakers of the National Assembly and The Senate together with the outcome of the County Assembly consideration.....	6
1.6 METHODOLOGY	6
1.7 TOOLS OF REFERENCE	6
1.8 ACKNOWLEDGEMENT	7
2.0 LEGAL FRAMEWORK.....	8
3.0 CONSIDERATION OF THE CONSTITUTION (AMENDMENT) BILL, 2020	10
3.1 PUBLIC PARTICIPATION FORA	11
3.1.1 RUNYENJES SUB COUNTY – RUNYENJES SOCIAL HALL	11
3.1.2 MANYATTA SUB COUNTY - (EMBU TALENTS ACADEMY).....	12
3. 1.3 MBEERE NORTH SUB COUNTY – SIAKAGO BARAZA PARK.	13
3.1.4 MBEERE SOUTH SUB COUNTY- KIRITIRI CDF HALL	14
4.0 GENERAL COMMITTEE OBSERVATIONS/FINDINGS.....	16
5.0 RECOMMENDATIONS	20
6.0 CONCLUSION.....	21

LIST OF ABBREVIATIONS

APS	- Administration Police Service
BBI	- Building Bridges Initiative
C.D.F	- Constituency Development Fund
C.O.K	- Constitution of Kenya
CRA	- Commission on Revenue Allocation
DCI	- Director of Criminal Investigations
DPP	- Director of Public Prosecutions
EACC	- Ethics and Anti- Corruption Commission
IEBC	- Independent Electoral and Boundaries Commission
KES	-Kenya Shillings
M.C.A	- Member of County Assembly
M.P	- Member of Parliament
NPS	- National Police Service
PWD	- People With Disabilities
S.I.G	- Special Interest Groups
S.O	- Standing Orders
SRC	- Salaries and Remuneration Commission

EXECUTIVE SUMMARY

Article 257 of The Constitution of Kenya 2010 provides that amendment of the constitution may be proposed by a popular initiative signed by at least one million registered voters.

The Constitution of Kenya (Amendment) Bill, 2020 which was sponsored by Building Bridges Initiative (BBI) was tabled to the assembly on 9th February 2021 and committed to the committee on Justice and Legal Affairs Committee for the necessary consideration. The Committee organized for Public Participation forums in the four Sub-counties of Embu County. This was done pursuant to Article 196(1)(b) of C.O.K 2010 which provides that, *a County Assembly shall— (a) conduct its business in an open manner, and hold its sittings and those of its committees, in public; and (b) facilitate public participation and involvement in the legislative and other business of the assembly and its committees.*

The public participation forums run on 17th February 2021 in the four sub counties in Embu. During the said fora, the committee and the other honorable members explained clause by clause of the Constitution of Kenya (Amendment) Bill, 2020 (draft Bill) to the members of public and thereafter sought their views / suggestions. The draft Bill was accepted by the majority of the attendees in all the sub counties save for Runyenjes Sub County. Key reasons for support of the Bill included but not limited to; the provisions on devolving more funds to counties, establishment of county assembly fund through a legislation, creation of ward development fund, proposal of an additional constituency in Embu County besides other proposals. In a nutshell the report highlights the proposals made on the Constitution (Amendment), Bill, 2020 among others.

1.1 BACKGROUND

Article 257 of Constitution of Kenya 2010 makes provision on amendment of Constitution by a popular initiative. It is against this background that the promoters of Bill embarked on the process of collecting at least one million signatures of registered voters so as to justify this initiative.

The Independent Electoral and Boundaries Commission (IEBC) sent Constitution of Kenya (Amendment) Bill, 2020 to all County Assemblies in Kenya, Embu County Assembly included, vide letter REF: IEBC/VREO/2/12/BBI dated 26th January 2021 and the same was received by the County Assembly on 9th February 2021. To this end our county assembly is supposed to consider the draft bill and submit its decision to the speaker of the National Assembly and The Senate within three months from the date of receipt.

1.2 MEMBERSHIP OF THE COMMITTEE

The membership of the committee of Justice and Legal Affairs is as below indicated:

- | | |
|---|--------------------|
| 1. Hon. Ednah Kanini Muisyo | - Chairperson |
| 2. Hon. Patrick Njeru Mukavi | - Vice Chairperson |
| 3. Hon. Steve Mugendi Munene | - Member |
| 4. Hon. Bernard Nyaga Kandia | - Member |
| 5. Hon. Masters Leonard Mwaniki Muriuki | - Member |
| 6. Hon. Elizabeth Ndeleve Kibai | - Member |
| 7. Hon. Edith Wanjira Nyaga | - Member |

1.3 MANDATE OF THE COMMITTEE

The Committee on Justice and Legal Affairs was constituted through a motion passed by the assembly on 6th November 2019. The mandate of the committee was further amended on 17th January 2020.

That the mandate of the committee shall be to-

1. oversee matters concerning inter-governmental and inter-county relations;
2. oversee county sector / department responsible for legal affairs;
3. provide forum for the consideration of proposed amendments on National Laws affecting County Governments for which a formal request for views has been received, but whose subject does not fall under the mandate of any other committee of the Assembly;
4. consider any matter concerning the amendment of the Constitution for which the action of the County Assembly or County Government is required and

5. consider matters related to Legal Affairs, administration of law and justice, including the county inspectorate and enforcement services, ethics, integrity, anti-corruption and human rights.

1.4 PROBLEM STATEMENT

After the committal of the Constitution of Kenya (Amendments) Bill, 2020 to the County Assembly, the County Assembly has to approve or reject the draft Bill. Before this is done however, the County Assembly is supposed to seek the input of county residents. The County Assembly, through Justice and Legal Affairs Committee, conducted public participation fora in four sub-counties on 17th February, 2021. Justice and Legal Affairs Committee now seeks to cause a report to the County Assembly for noting, with observations made after conducting the said public participation.

1.5 OBJECTIVES/ TERMS OF REFERENCE

1. To initiate Public Participation on Constitution of Kenya (Amendment) Bill 2020.
2. To cause a report with recommendation for tabling in the assembly and for subsequent submission of the decision to the Speakers of the National Assembly and The Senate together with the outcome of the County Assembly consideration.

1.6 METHODOLOGY

In making this report the Committee used the following methodology;

1. Consideration of the views of members of public collected during public participation forums.
2. Consideration of legal opinion from the directorate of Legal Services in the county assembly,
3. Invoking the provisions of Constitution of Kenya (C.O.K) 2010

1.7 TOOLS OF REFERENCE

In making the report the Committee on Justice and Legal Affairs made reference to the following documents:-

- i. Constitution of Kenya (C.O. K) 2010.
- ii. The Constitution of Kenya (Amendment) Bill, 2020.
- iii. Legal advisory from the directorate of Legal services – County Assembly of Embu.
- iv. County Assembly of Embu Standing Orders, 2017.

1.8 ACKNOWLEDGEMENT

The committee wishes to thank the offices of the Speaker and the Clerk of the County Assembly of Embu for their continued support in ensuring that the committee executes its mandate. The committee also appreciates the service rendered by the secretariat and also members of the committee, and the other honorable members for their resilience and determination throughout the report writing process.

DATE Ednah Kanini Muisyo 21-7/2021 SIGN Ednah Kanini Muisyo

HON. EDNAH KANINI MUISYO, MCA
CHAIRPERSON JUSTICE AND LEGAL AFFAIRS COMMITTEE

2.0 LEGAL FRAMEWORK

In making its report, the committee was guided by the following legal framework:

Constitution of Kenya

Article 257 of Constitution of Kenya 2010 provides that, a constitution can be amended by popular initiative. It is against this background that the Constitution of Kenya (Amendment) Bill 2020 embarked on the process of collecting at least one million signatures of registered voters so as to justify this initiative. The following procedure was followed in its bid to adhere to the provisions of Articles 255, 256 and 257 of C.O.K 2010 which provides as follows:

- (1) An amendment to this Constitution amendment may be proposed by a popular initiative signed by at least one million registered voters.
- (2) A popular initiative for an amendment to this Constitution may be in the form of a general suggestion or a formulated draft Bill.
- (3) If a popular initiative is in the form of a general suggestion, the promoters of that popular initiative shall formulate it into a draft Bill.
- (4) The promoters of a popular initiative shall deliver the draft Bill and the supporting signatures to the Independent Electoral and Boundaries Commission, which shall verify that the initiative is supported by at least one million registered voters.
- (5) *If the Independent Electoral and Boundaries Commission is satisfied that the initiative meets the requirements of this Article, the Commission shall submit the draft Bill to each County Assembly for consideration within three months after the date it was submitted by the Commission.*
- (6) If a County Assembly approves the draft Bill within three months after the date it was submitted by the Commission, the Speaker of the County Assembly shall deliver a copy of the draft Bill jointly to the Speakers of the two Houses of Parliament, with a certificate that the County Assembly has approved it.
- (7) If a draft Bill has been approved by a majority of the County Assemblies, it shall be introduced in Parliament without delay.
- (8) A Bill under this Article is passed by Parliament if supported by a majority of the members of each House.

- (9) If Parliament passes the Bill, it shall be submitted to the President for assent, in accordance with Article 256(4) and (5).
- (10) If either House of Parliament fails to pass the Bill, or the Bill relates to a matter specified in Article 255(1), the proposed amendment shall be submitted to the people in a referendum.
- (11) Article 255(2) applies, with any necessary modifications, to a referendum under clause (10).”

3.0 CONSIDERATION OF THE CONSTITUTION (AMENDMENT) BILL, 2020

Justice and Legal Affairs Committee embarked on an exercise of conducting public participation forums in the entire County. The committee came up with a program which covered the four sub counties. The committee resolved to come up with an operating schedule to guide in working within the stipulated timeframe. The working program was agreed upon as below:

	TIME FRAME	ACTIVITY
1.	9 th February 2021	Tabling of the Constitution (Amendment) Bill, 2020 in the assembly.
2.	10 th February 2021	Advertisement on Public Participation
3.	11 th – 16 th February 2021	Consideration of Constitution of Kenya (Amendment) Bill 2020 by all MCAs.
4.	17 th February 2021	Public participation at the four Sub Counties.
5.	18 th – 22 nd February 2021.	Report writing – Justice and Legal Affairs Committee.
6.	23 rd February 2021	Tabling and consideration of the committee report.
7.	24 th February 2021	Transmission of the Constitution of Kenya (Amendment) Bill 2020, to the Speakers of the National Assembly and The Senate together with the outcome of the County Assembly consideration.

An advert was placed in the *Nation News Paper, Wednesday, 10th February 2021* informing when, where and how the members of public were to submit both their verbal submissions and write memoranda on the bill was also done. Attached a copy of Notice of Memoranda and schedule of public hearing meetings (*Annexure 1*).

3.1 PUBLIC PARTICIPATION FORA

3.1.1 RUNYENJES SUB COUNTY – RUNYENJES SOCIAL HALL

The forum was held in Runyenjes Social Hall on 17th February 2021 and the attendance was as below:

RUNYENJES	NUMBER
1. Central	33
2. Kyeni South	4
3. Kagaari South	13
4. Kyeni North	26
5. Gaturi North	1
6. Kagaari North	28
7. Others	31
Sub Total	136

That, the majority of the general public did not supported the Bill in Runyenjes Sub County. However the public raised the following issues in support and also in opposition of the draft constitution.

1. That, the government should put system in place so as to ensure that there will be no post-election violence in Kenya again.
2. That, the number of constituencies not be increased from 290 to 360, instead the government should allocate more resources to the highly populated constituencies.
3. That, the increase of seats in the National assembly and the Senate, is geared towards burdening the citizenry with high taxes.
4. That, the increased number of positions in the draft Constitution (Amendment), will negatively affect the national economy.
5. That, the Constitution of Kenya (Amendment) Bill, 2020 has done a good proposal of increasing the county allocation from 15% to 35%.

6. That, there was no need of introducing an amendment of on tax holiday for the Youths.
7. That, the Draft Constitution has given a provision for people living with disparities to be included in the leadership of both county and national governments.
8. That, a memoranda from PWD was received which observed that, there is need for adequate civic education to all and sundry as well as fair representation of special interest groups.

Upon considering the above mentioned observations as raised in the forum, the Runyenjes Sub county citizenry did not supported the draft Constitution of Kenya 2020.

3.1.2 MANYATTA SUB COUNTY - (EMBU TALENTS ACADEMY).

The forum was held in Embu Talents Academy on 17th February 2021 and the attendance was as below:

1. Kirimari	420
2. Mbeti North	38
3. Nginda	18
4. Gaturi South	34
5. Kithimu	23
6. Ruguru Ngandori	23
7. Others	96
Sub Total	652

The public raised the following issues in support and also in opposition of the draft constitution.

1. That, the increment of the county allocation from 15% to 35% was a good proposal.
2. That, the proposal of choosing of ministers from amongst the MPs or MCAs and having a mixed cabinet system, whereby cabinet gives a provision of an MP will be appointed to the cabinet was a welcome idea.
3. That, the proposal of including People with Disabilities will give a good representation of special interest groups.
4. That, the representation of Youths in the draft Bill makes it good.

5. That, the proposal of nomination of candidates whereby, first priority will be given to candidates who had contested during elections was seen to be befitting.
6. That, the proposed increment of senators from 47 to 94 will increase the wage bill which is already strained.

Upon considering the above mentioned observations as raised in the forum, Manyatta Sub county citizenry supported the draft Constitution of Kenya (Amendment) Bill, 2020.

3. 1.3 MBEERE NORTH SUB COUNTY – SIAKAGO BARAZA PARK.

The forum was held in Siakago- Baraza Park on 17th February 2021 and the attendance was as below:

<u>Mbeere North</u>	
1. Muminji	3
2. Nthawa	73
3. Evurori	32
4. Others	5
Sub Total	113

The public raised the following matters and in general support of the Draft Bill.

1. That, the idea of increasing constituencies and Senators need to be looked into so as to cut down wage bill.
2. That, citizens casted aspersions on the implementability of the Draft Bill citing hard economic times. For example the increasing the revenue share to 35%.
3. That, anti-corruption agencies such as EACC should be devolved to fight corruption effectively.
4. That there was a proposal to split Evurore ward in three wards due to its population density and vastness.
5. That, political parties ensures that there will be nomination of people living with disabilities.
6. That, the number of constituencies should not be increased from 290 to 360 but instead the government to allocate more resources to the highly populated constituencies.

7. That, the increase of seats in the National assembly and the Senate will affect the tax payer.
8. That there was no clear provision on how people from the marginalized communities will be benefit from the draft Bill.
9. That, the government should consider putting up multiple questions during the referendum so as to capture interests of all the citizens.
10. That, a memoranda from PWD was received which observed that, there is need for adequate civic education to all and sundry as well as fair representation of special interest groups.

3.1.4 MBEERE SOUTH SUB COUNTY– KIRITIRI CDF HALL.

The forum was held in Kiritiri – CDF Hall on 17th February 2021 and the attendance was as below:

<u>Mbeere South</u>	
1. Kiambere	14
2. Mavuria	108
3. Mwea	00
4. Makima	10
5. Mbeti South	14
6. Others	34
Sub Total	180

That, the majority of the general public supported the Bill in the Sub County, however the public raised the following issues in support and also in opposition of the draft constitution.

1. That, the government should consider revisiting Article 100 so as to operationalize the legislation which requires the Parliament shall enact legislation to promote the representation in Parliament, so that PWD may properly be represented.
2. That, concerning political parties, something needs to be done so as to ensure that, PWD are represented.
3. That, the PWD be allowed to be electing their own representatives in both National Assembly and County Assembly.

4. That, the government should not consider nominating people who had vied for elective posts, instead should look for people with good morals and ready to serve the people in various positions.
5. That, the government should put system in place so as to ensure that there will be no post-election violence in Kenya again.
6. That the number of constituencies not to be increased from 290 to 360 but instead the government to allocate more resources to the highly populated constituencies.
7. That, the increase of seats in the National assembly and the Senate, is geared towards increasing tax to the citizenry.
8. That, the increased number of positions in the draft Constitution will negatively affect the national economy.
9. That, there was a memorandum by Mbeere South Youth Council who rejected the Draft Bill, indicating that the Bill was wrongly timed as well as failure to put into consideration the interests of the minority communities.
10. That, there was a memorandum by Mavuria Elites who proposed for the rejection of the Bill citing high wage bill as well as imminent post-election violence.
11. That, a memorandum from PWD was received which observed that, there is need for adequate civic education to all and sundry as well as fair representation of special interest groups.
12. That, a memorandum from representatives of Kenya African Nation Union (KANU) in Mbeere South supported the Draft Bill.

Upon considering the above mentioned observations as raised in the forum, the Mbeere South citizenry supported the draft Constitution (Amendment) Bill, 2020.

4.0 GENERAL COMMITTEE OBSERVATIONS/FINDINGS

The Committee upon detailed consideration of the draft Bill vis' a vis the Constitution of Kenya, 2010 and after taking into account input made by members of public through Memoranda and in the scheduled public fora, made the following observations: -

1. THAT the draft Bill proposes a new Article 18A on Responsibilities of a citizen in addition to the existing Bill of rights.
2. THAT in Article 89 on delimitation of electoral units, the draft Bill proposes additional Constituencies from the current 290 to 360 constituencies.
3. THAT in addressing concerns of the two third gender rule, Articles 97 and 98 of the Constitution of Kenya on membership of National Assembly and Senate respectively, have raft proposed amendment. The draft Bill also seeks to amend process of nomination of candidates for elections as well as those that fill special seats.
4. THAT in in creation of Special seats in the National and County Assemblies (Article 90) shall be based on total votes received by the political parties.
5. THAT in the composition of the National Assembly, there will be 360 members, each elected from each Constituency, 4 PWD representatives, and 2 youth representatives.
6. THAT the composition of the Senate is proposed to be increased from the current 47 to 94 (Article 98)
7. THAT in its oversighting role the Senate, (Article 96) shall oversight the revenue allocations received from both the County Government as well as the expenditure.
8. THAT the person who receives second greatest number of votes in presidential elections be the leader of Opposition in the National Assembly (proposed new Article 107A)
9. THAT the Order of Precedence in the National Assembly is proposed as follows under Article 108:
 - i) The Speaker of the National Assembly
 - ii) The Prime Minister
 - iii) The Leader of opposition
10. THAT the is a proposal of new Leadership structure in The Senate leadership under the New Article 108A which shall take the following precedence:

- i) The Speaker
 - ii) Leader of Majority party
 - iii) Leader of minority party
11. THAT the draft Bill proposes a new Part 2A on the Prime Minister and Deputy Prime Minister. The process of appointment of the Prime Minister, Deputy Prime Minister, and their respective responsibilities are proposed in this new Part as well.
 12. THAT the draft Bill proposes to increase the period for hearing of a presidential election petition under Article 140 from the current fourteen days to thirty days.
 13. THAT the mixed cabinet proposal under Article 152 where part of the members of the Cabinet are to be appointed from the members of the National Assembly.
 14. THAT the Principal Secretaries (Article 155) be appointed by President from the list of the recommended persons from the Public Service Commission. The draft Bill removes the approval of Parliament part in the current Constitution.
 15. THAT the Director of Public Prosecutions (Article 157) qualifications have been adjusted from those of a High Court Judge to those of a Judge of Court of Appeal.
 16. THAT the draft Bill on removal and resignation of the director of Public Prosecution (DPP) proposes repeal of Article 158 and the office of DPP to be aligned to that of a Constitution Commission.
 17. THAT the draft Bill through proposed new Article 172A, seeks to create office of the Judiciary Ombudsman which office shall among other responsibilities, is to receive and conduct inquiries into complaint against Judges, registrars, magistrates and other judicial officers.
 18. THAT the membership of the County Executive Committee (Article 179) is proposed to be amended to give the Governor Powers to dismiss or reassign the County Executive Committee Member as well as inclusion of Members of County Assembly to the County Executive Committee.
 19. THAT in the nomination of a Deputy Governor by the Governor (Article 180) the gubernatorial candidate to only consider a person of the opposite gender.

20. THAT under Article 203 on equitable share of National Revenue, the draft Bill proposes to change the allocation of Counties from the current 'not less than 15%' to 'not less than 35%' of all revenue collected by the National Government.
21. THAT the draft Bill proposes under new Article 206A to establish a Constituency Development Fund under the Constitution. The current one was made through a legislation by Parliament and Constitution question have been raised in our courts challenging its constitutionality.
22. THAT a proposed new Article 207A proposes that, the Ward Development Fund be established of at least 5% of all the County Government's revenue in each financial year.
23. THAT on County Revenue Authority (CRA), the draft Bill proposes to adjust the membership under Article 215(2) to have two nominees by the County Governors and one nominee by Professional Regulation of Accountants.
24. THAT the Salaries and Remuneration Commission (SRC) mandate is proposed to be expounded under Article 230 (4) to have a responsibility to determine and harmonize the rates paid by National and County Governments to professional consultants for services rendered.
25. THAT the draft Bill makes a proposal under the new Article 237A to create a Youth Commission to advance the participation of the youth in spheres of public and private life.
26. THAT the National Police Service (NPS) under Article 243 is proposed to be amended to make Directorate of Criminal Investigation (DCI) a distinct arm in addition to Administration Police Service (APS) and Kenya police service.
27. THAT the draft Bill proposes that the number of Commissioners in Independent Commissions under Article 250 be reduced from the current 9 to 7 Commissioners.
28. THAT the transition of the appointive offices is proposed in proposed amendment of Article 259 to have recruitment of the successors commencing at least six months before the lapse of the term of office of the office holder. This will ensure continuity

and hiccups as experienced at the Office of Auditor General and office of Chief Justice will be a thing of the past.

29. THAT the offices of Prime Ministers and the Deputy Prime Ministers, and Judiciary Ombudsman are proposed under Article 260 to be included into the (Third Schedule) and form part of the state offices.
30. THAT Parliament is supposed to enact the necessary Legislations to actualize the proposed amendment upon ultimate approval.
31. THAT during the public participation fora Kirimari ward had the highest number of attendees (420) while Mwea and Gatari North wards had the lowest numbers attendees, ie 0 no. and 1 no respectively.
32. THAT overwhelming majority of those that did memoranda and the attendants in the four Sub-counties save for Runyenjes Sub County, were in support of the draft Bill as is. There were however a few who suggested that the draft Bill was untimely and will burden Kenyans even further through taxes to fund the extra offices created.
33. THAT it is important that the will of the people be expressly sought through referendum on this draft Bill as it has critical and important provisions that directly affect the citizenry in Embu County.

5.0 RECOMMENDATIONS

Pursuant to Article 257 of the Constitution of Kenya 2010, the Committee recommends that this house considers this report on the Constitution (Amendment) Bill 2020 and the motion therein, (*vide the attached*).

6.0 CONCLUSION

This committee urges this Assembly to note this report on Constitution of Kenya (Amendment) Bill 2020, together with the motion therein.

NAME	POSITION	SIGNATURE
1. Hon. Patrick Njeru Mukavi	- Vice Chairperson	
2. Hon. Steve Mugendi Munene	- Member	
3. Hon. Masters Mwaniki Muriuki	- Member	
4. Hon. Elizabeth Ndeleve Kibai	- Member	
5. Hon. Edith Wanjira Nyaga	- Member	 
6. Hon. Bernard Nyaga Kandia	- Member	-----

SIGNED:  DATE: 21/2/2021

HON. EDINAH KANINI MUISYO, MCA
CHAIRPERSON JUSTICE AND LEGAL AFFAIRS COMMITTEE