



**REPUBLIC OF KENYA
BOMET COUNTY ASSEMBLY**

SECOND ASSEMBLY-FIFTH SESSION

**THE COMMITTEE ON ADMINISTRATION, PEACE, JUSTICE
AND LEGAL AFFAIRS**

REPORT

**ON THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2020**

FEBRUARY 2021



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1.0 PREFACE

Mr. Speaker Sir,

On behalf of the Committee on Administration, Peace, Justice and Legal Affairs and pursuant to Standing Order 193(5)(f), it is my duty and pleasure to present to the Assembly, the Committee's report on the Constitution of Kenya(Amendment) Bill, 2020.

This is therefore the relevant committee to consider the Messages received from the Independent Electoral and Boundaries Commission, particularly the Constitution Amendment Bills envisaged under Article 256(5) of the Constitution.

1.1 COMMITTEE MEMBERSHIP

Mr. Speaker Sir,

The Committee on Administration, Peace, Justice and Legal Affairs, as currently constituted, comprises of the following members: -

- | | |
|----------------------------|--------------------|
| 1. Hon. Samwel Keter | -Chairperson |
| 2. Hon. Evaline Chepkemai | - Vice Chairperson |
| 3. Hon. Catherine Chemutai | - Member |
| 4. Hon. Hellen Chepkorir | - Member |
| 5. Hon. Josphat Kirui | - Member |
| 6. Hon. Kiprotich Wesley | - Member |
| 7. Hon. Robert Serbai | - Member |

1.2 COMMITTEE'S MANDATE

Mr. Speaker,

The Sectoral Committee on Administration, Peace, Justice and Legal Affairs derives its mandate from the provisions of Standing order 193(5) which defines functions of the Committee as being:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;
- b) To study the programs and policy objectives of departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, assess and analyze the relative success of the departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned departments as may be deemed necessary, and as may be referred to it by the County Assembly;

- f) To vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 188 (Committee on appointments); and
- g) To make reports and recommendations to the Assembly as often as possible, including recommendations of proposed legislation.

COMMITTAL TO THE COMMITTEE ON ADMINISTRATION, PEACE, JUSTICE AND LEGAL AFFAIRS

Hon. Speaker,

Pursuant to Article 257 (5) of the Constitution of Kenya 2010, on 26th January, 2021, the office of the Honorable Speaker of the Bomet County Assembly received a copy of the Constitution (Amendment) Bill 2020 together with the Memorandum of Objects from the Independent Electoral and Boundaries Commission for consideration by the County Assembly of Bomet in accordance with the law.

Consequently, on 10th February 2021, the Honourable Speaker notified Members of the County Assembly of Bomet of his receipt of the Constitution (Amendment) Bill 2020 and pursuant to Standing 125, the Bill was committed to the Committee on Administration, Peace, Justice and Legal affairs for proper assessment, preparation and conduct of public participation and reporting to the County Assembly within twenty calendar days in accordance with Standing Order 125(4) of the Bomet County Assembly Standing Orders.

V. COMMITTEE MEETINGS

Hon. Speaker,

In considering the Constitution of Kenya(Amendment) Bill, 2020, the Committee on Administration, Peace, Justice and Legal affairs was taken through the Constitution of Kenya (Amendment) Bill, 2020 in Kisumu Sunset Hotel. The Committee also invited all the Members to a capacity building retreat on the Bill in the same venue.

The committee then held one robust public participation forum at the County Assembly grounds where the residents of all the twenty wards were invited.

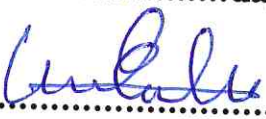
VI. ACKNOWLEDGEMENT

Hon. Speaker,

May I take this opportunity to thank all Members of the Public for their invaluable input, in-depth understanding of the process of public participation and valuable contributions made during the process of public participation. The Committee also takes this opportunity to thank the Offices of the Speaker, the Clerk of the County Assembly, the Legal Department and the research department for the logistical support accorded to it during the public participation exercise. The Committee is grateful to the staff of the County Assembly attached to the Committee for their services rendered to the Committee. Their efforts and input made the work of the Committee and the production of this report possible.

Finally, on behalf of the Committee, it is my pleasure and duty to present to the Assembly, the Committee's Report on public participation on the Constitution of Kenya (Amendment) Bill, 2020.

Dated...23/2/2021.....day of...February.....2021

Signed.....

Hon. Samwel Keter

Chairperson, Administration, Peace, Justice and Legal Affairs Committee

VII. ADOPTION OF THE REPORT

Hon. Speaker,

Pursuant to standing order 180 (2), we the Members of the Committee on Administration, Peace, Justice and Legal Affairs do append our signatures against our names to this report to affirm that the contents in the report are true as deliberated on by the committee;

1. Hon. Evaline Chepkemai
2. Hon. Josphat Kirui
3. Hon. Catherine Chemutai
4. Hon. Robert Serbai
5. Hon. Kiprotich Wesley
6. Hon. Hellen Chepkorir

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1.1 PUBLIC PARTICIPATION PROCESS

1.2 Notification to the public

Consequent to the tabling of the Constitution of Kenya (Amendment) Bill, 2020 and committal to the Administration, Peace, Justice and Legal Affairs Committee, the Clerk of the County Assembly of Bomet caused an advertisement to be put in the local daily newspapers and local radio stations informing the public of the intention of the County Assembly to conduct public participation on the Constitution of Kenya (Amendment) Bill, 2020.

The advertisement was published in the Standard newspaper of Thursday 18th February 2021 and local radio stations notifying the public on the date, time and place of the public participation forum.

1.3 PUBLIC PARTICIPATION ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

Following the public participation as advertised, the Administration, Peace, Justice and Legal Affairs Committee conducted public participation on Tuesday 23rd February 2021 at the County Assembly grounds starting at 10.30 Am. The residents of all the twenty-five wards were expected to attend to the public participation exercise and the gave their views on the Constitution of Kenya(Amendment) Bill, 2020.

PUBLIC VIEWS;

The members of the public stated as follows:-

- (1) **THAT** the establishment of two more constituencies in Bomet County will benefit the county as resources shall follow the establishment of those constituencies;
- (2) **THAT** the appointment of members of the County assembly to the county executive committee is good because the members understand the needs of the residents and it shall also ensure accountability.
- (3) **THAT**, the increase of the equitable share of the revenue raised nationally that is allocated to county governments from the current minimum of fifteen per cent of all revenue collected by the national government to thirty-five percent is good for economic development.
- (4) **THAT**, the establishment of Ward Development Fund for each county into which shall be paid in each financial year at least five percent of all the county government's revenue in each financial year would spur economic growth in our wards.

However, some of the members of the public stated that the passage of the Bill would increase tax burden to the citizens as it seeks to increase representation in Parliament and the National executive.

2.0 THE DISCUSSION ON THE AMENDMENTS PROPOSED IN THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

Hon Speaker, the Constitution Amendment Bill 2020 as received has a total of 74 amendments as well as amendments on the schedules to the existing Constitution of Kenya, 2010.

On Amendment of Article 10

The amendment is on regional integration and cohesion which would ensure that the principles of sustainable development are attained and the prosperity of Africans is enhanced.

On Amendment of Article 11

The Amendment is on the economy and the principle of shared prosperity. This will benefit the people of Kenya as it will ensure there is an economic system that provides for equitable opportunities that support small and micro enterprises and will also ensure economic growth.

[On Amendment of Article 18](#)

The consequent of this amendment is that the citizens will have more responsibilities that will ensure the promotion and protection of the wellbeing of the citizens and their families; it will help instil ethics in the citizens to help them better fulfil their various responsibilities, respect and protect each other and each other's property and to effectively combat corruption.

[On Amendment of Article 31](#)

This Amendment is on the privacy of Kenyans with regard to their personal data. This recognizes the right to have peoples' data that is given online to be protected and not infringed.

[On Amendment of Article 80](#)

This Amendment seeks to further put in check state officers, as it proposes that legislation be enacted to enable effective and expeditious investigation, prosecution and trial of cases relating to the conduct of state officers. This will likely give timelines within which cases relating to ethics and integrity are heard and determined.

[On Amendment of Article 82](#)

This Article is amended to ensure political parties adhere to the two-thirds gender rule when submitting lists of nominated candidates in their various parties to the Registrar of Political Parties.

[On Amendment of Article 87](#)

Article 87(1) is amended to provide that apart from disputes arising out of elections, disputes that arise out of unfair or un-procedural nomination will also be resolved in the Courts of law.

Article 87(3) is amended by adding ways to effect service of petitions. Initially it was through direct service and through publishing the petition in a newspaper

with national circulation. The amendment allows service to be effected via electronic media which is cheap and fast.

[On Amendment of Article 88](#)

Article 88(2)(a) is amended to add persons not eligible to be appointed as commissioners in the Independent Electoral and Boundaries Commission to include; The president, the Deputy President, the Governor, Deputy governor, Member of Parliament and member of the County Assembly.

Article 88 (4) is amended to increase the responsibilities of the Independent Electoral and Boundaries Commission to ensure that not more than two-thirds of persons to be nominated as candidates in a particular Party are of the same gender.

[On Amendment of Article 90](#)

This Article is amended to provide that seventy more constituencies will be added to make a total of three hundred and sixty constituencies from the initial two hundred and ninety.

[On Amendment of Article 96](#)

This Article is amended to add some roles to the Senate to include oversight of County Governments' local revenue.

[On Amendment of Article 97](#)

This Article is amended to increase the membership of the National Assembly from two hundred and ninety to three hundred and sixty while adhering to the two-thirds gender rule.

Special elect seats will be reserved for four persons being two women and two men to represent persons with disability; two persons being a woman and a man to represent the youth and such special seats that shall ensure that not more than two thirds of the membership of the Parliament is of the same gender. The filling of special seats to ensure the two thirds gender rule is met shall lapse after the next three general elections from the commencement date.

In addition to this membership, there shall be the Speaker and the Attorney General who shall be ex-officio members, there will be a Leader of Official

Opposition as a Member of the National Assembly and Cabinet Ministers who will also be ex-officio members forming part of the membership of the National Assembly. There will no longer be the position of Women Representatives if the amendment Bill is passed.

[On Amendment of Article 98](#)

This Article is amended to indicate that in the Senate there will no longer be Nominations, and instead of the forty-seven senators there will ninety-four elected Senators in the Senate being one woman and one man who will be elected by registered voters of the respective counties.

[On Amendment of Article 107](#)

This Amendment brings on board the office of Leader of Official Opposition in the National Assembly who shall be the person that received the second greatest number of votes in a presidential election and whose political party or coalition of parties has at least 25 per cent of all members of the National Assembly. This Amendment is meant to cure the problem of winner takes it all and to bring inclusivity in the leadership of the Nation.

The Leader of Official Opposition and the Prime Minister shall not come from the same political party or coalition of parties.

[On Amendment of Article 108](#)

This amendment introduces the new order of precedence in the National Assembly, which shall be; The Speaker of the National Assembly, The Prime Minister and the Leader of Official Opposition. There will no longer be a Leader of Majority and a Leader of Minority in the National Assembly.

A new Article is introduced right after Article 108 as 108A that states that there will be a Leader of the Majority party and a Leader of the Minority party in the Senate; and the precedence of the Senate shall be as follows, the Speaker of the Senate, the Leader of the Majority party and the Leader of the Minority party.

[On Amendment of Article 113\(3\)](#)

This Article has been amended to clarify that the Speaker of the Originating House shall be the one to refer a Bill to the President within fourteen days. Since the

functions of the National Assembly and the Senate are clearly stated in the Amendment now the Houses can effectively discharge duties.

[On Amendment of Article 130](#)

This Article is amended to introduce the additional membership of the Executive who are the Prime Minister, Two Deputy Prime Ministers and Cabinet Ministers.

[On Amendment of Article 131](#)

This Article is amended to indicate that the Prime Minister and the Deputy Prime Minister shall aid the President in the exercise of the Executive Authority of the Republic alongside the Deputy President and the Cabinet Ministers.

[On Amendment of Article 132](#)

This Article is amended to increase the functions of the President to include reporting on the measures taken and progress achieved in realisation of National economic and social rights referred to in Article 43.

[On Amendment of Article 138 \(b\)](#)

This is an amendment to indicate that a presidential election shall only be cancelled and a new election held if a candidate for election as president dies on or before the scheduled election date. It would no longer include the Deputy President.

[On Amendment of Article 140 \(2\)](#)

This Article is amended to help cure the problem of limitation of time to conclusively determine Election Petitions hence the time is proposed to be increased from fourteen days to thirty days in the Amendment.

[On Amendment of Article 151](#)

This includes the addition of four new Articles in the Constitution providing for the Office of the Prime Minister and Deputy Prime Ministers, providing for their nomination and appointment, removal from office and their functions.

[On Amendment of Article 155](#)

This Article states that the President shall appoint Principal Secretaries from among persons recommended by the Public Service Commission.

[On Amendment of Article 156 \(4c\)](#)

This Article is amended to state that the Attorney General, in addition to his or her functions under Article 154 (4) (a) and (b) shall perform functions of Cabinet Ministers.

[On Amendment of Article 157 \(3\)](#)

This Article is amended by raising the bar of the qualifications required to be appointed as a Director of Public Prosecutions to be the same as those for appointment of a judge of the Court of Appeal.

[On Amendment of Article 164](#)

The amendment proposes that the President of the Court of Appeal shall hold office for a single term of five years; and Appeals relating to election petitions determined by the court of Appeal shall not move to the Supreme Court. A determination by the Court of Appeal in such cases is proposed to be final.

[On Amendment of Article 165](#)

A Principal judge of the High Court shall be elected by Judges of the High Court from amongst themselves and shall hold office for a single term of five years.

[On Amendment of Article 166](#)

This Article is amended to state that for appointment as a Chief Justice or a Judge of the Supreme Court you must have at least twenty years' experience as a Superior Court Judge or as a distinguished academic Judicial officer, or legal practitioner; and for appointment as a judge of the Court of appeal at least fifteen years' experience as a superior court Judge or distinguished academic or legal practitioner.

[On Amendment of Article 167](#)

The tenure of office of the chief justice to also apply to the Deputy Chief Justice.

[On Amendment of Article 168](#)

The removal of office of judges shall also be on a motion by the Judiciary Ombudsman.

[On Amendment of Article 171 and 172](#)

This Article introduces the Judiciary Ombudsman who shall be a member of the Judicial Service Commission and an ex-officio member. The Judiciary Ombudsman shall be nominated by the President with the approval of the Senate. His functions will be to receive and conduct inquiries into complaints against judges, registrars, magistrates and other staff of the judiciary; to sensitize the public on the role and performance of the judiciary and prepare regular reports to the Judicial Service Commission and an annual report to Parliament on any complaint raised to the Judiciary Ombudsman.

For appointment as a Judiciary Ombudsman one must have the same qualifications as a judge of the Supreme Court and shall hold office for a single term of five years with no re-appointment.

The Judiciary Ombudsman shall not investigate any matter before court or Tribunal, or re-open a court or Tribunal case or review a Judge's decision.

Parliament shall allocate adequate funds to the office of the Judiciary Ombudsman to enable the Ombudsman perform its functions.

The members of the Judicial Service Commission shall hold office for five years but shall not be eligible for nomination for another term; they shall not practice in courts and tribunals during their period of service with the commission. In addition to the functions of the Judicial Service Commission it shall receive complaints against judges, investigate and discipline judges by warning, reprimanding or suspending a judge.

[On Amendment of Article 177](#)

This Article stipulates that nominations shall no longer be in proportion to seats received but elected through party lists in proportion to the votes received and this will only comprise of candidates who vied for election with precedence being given to those who received the greatest number of votes.

The term of a County Assembly expires on the date of the next general election but a member of the County Assembly may be re-called before the end of the term of the Assembly by the electorate or the nominating political party.

On Amendment of Article 179

This Article states that County Executive Committee members can now be picked from members of the County Assembly but these persons shall not exceed half of the entire County Executive Committee. County Executive Committee members may be re-assigned or dismissed by the County Governor.

On Amendment of Article 180

This Article imposes an obligation on any person contesting as a Governor of any county to consider choosing a Deputy Governor of the opposite gender.

On Amendment of Article 202

This Amendment is on the Equitable sharing of National Revenue, where revenue sharing is based on approval of the most recent Audited accounts by the National Assembly and the Assembly has not approved the accounts the most recent audited accounts of the revenue submitted by the Auditor General shall be taken as the accounts of revenue for that purpose.

On Amendment of Article 203

The Equitable share of the revenue raised by the National Government that is allocated to County Governments shall be increased from fifteen per cent to thirty-five per cent of all revenue collected by National Government.

On Amendment of Article 206

There is established a Constituencies Development Fund that shall be used to facilitate performance and implementation of National Government development priorities set out in the National Budget within Constituencies.

Management of the Fund shall be provided for in an Act of Parliament including Public Participation by residents in a Constituency.

On Amendment of Article 207

There is established a Ward Development Fund for each County into which shall be paid at least five percent of all the County Government's revenue in each financial year, for development expenditure falling within the functions of the County Government within the County wards.

An Act of Parliament shall provide for the management of the Fund, criteria for disbursement of funds to each ward and public participation of the Development projects.

On Amendment of Article 218

This an amendment on County allocation of Revenue stating that in the event that the County Allocation of Revenue Act has not been passed by Parliament before beginning of that financial year the Controller of Budget may authorize a County to withdraw up to fifty percent from the consolidated fund of the minimum amount of equitable share guaranteed to a County Government based on the criteria contained in the Division of Revenue Act of the immediately preceding financial year.

On Amendment of Article 230

The Salaries and Remuneration Commission shall now consist of a chairperson and six members with extensive professional experience in Human resource and economic matters; nominated by the President and approved by National Assembly. They are mandated to determine and harmonize rates paid by National and County Governments to professional consultants for services rendered and to rationalize and harmonize remuneration and benefits paid to all state officers and public officers.

On Amendment of Article 237

There is established a Youth commission that consists of a chairperson and six members with equal representation of both genders at least four of whom shall be youth. They are to hold office for a single term of four years and shall be appointed

by the President with the approval of the Senate. The Commission shall advance youth agenda and youth participation in all spheres of public and private life.

On Amendment of Article 243

The Directorate of Criminal Investigation shall be part of the National Police Service.

On Amendment of Article 245

The Inspector General of Police shall now exercise independent command over the National Police Service, determine promotions and transfers within the service and exercise disciplinary control through suspension of officers in the service.

On Amendment of Article 250

All Commissions shall reduce their membership to consist of at least three but not more than seven members.

On Amendment of Article 259

Replacing of holders of appointive offices whose tenure is due to fall vacant shall commence six months before the lapse of the term of the office holder.

3.0 COMMITTEE OBSERVATIONS

Mr. Speaker sir,

The committee after conducting the public participation process as stipulated in the Constitution of Kenya 2010, the County Governments Act and in the County Assembly of Bomet Standing Orders, the committee made the following observations;

- (1) **THAT**, the Bill proposes to cure the constitutional requirement of Article 27(8) which provides that the State shall take legislative and other measures to implement the principle that not more than two thirds of the members of elective or appointive bodies shall be of the same gender. The Bill seeks to

address this by ensuring that the membership of both the National Assembly and the Senate conforms with the requirement.

- (2) **THAT**, the Bill also seeks to cure the winner takes it all mentality in our election circles by creating the position of the Leader of Official Opposition who shall be the person who received the second greatest number of votes in a presidential election and whose political party or coalition of parties has at least twenty-five percent of all the members of the National Assembly.
- (3) **THAT**, the Bill also seeks to increase the equitable share of the revenue raised nationally that is allocated to county governments from the current minimum of fifteen per cent of all revenue collected by the national government to thirty-five percent.
- (4) **THAT**, the Bill seeks to establish Ward Development Fund for each county into which shall be paid in each financial year at least five percent of all the county government's revenue in each financial year. This would spur economic growth in our wards and would then ensure that the services are decentralized to the lower units of decentralization as envisaged in Article 176(2) of the Constitution.

4.0 COMMITTEE RECOMMENDATIONS

In view of the conducted public participation and the response received from the Members of the Public the Committee of Administration, Justice and Legal affairs recommends to the County Assembly to adopt this report and consequently **pass** the Constitution of Kenya (Amendment) Bill, 2020 in terms of Article 257 (6) of the Constitution of Kenya 2010.

The Committee further recommends that Consequent to the said approval, the Hon.Speaker should without delay submit the required certificate to the National Assembly and to the Senate for further action.