

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

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By Hon Mahmud
Swat on Wednesday
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Lg*

TENTH PARLIAMENT – FOURTH SESSION



DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES

REPORT OF THE DEPARTMENTAL COMMITTEE ON LOCAL
AUTHORITIES ON THE COUNTY GOVERNMENTS BILL, 2012

CLERK'S CHAMBERS
NATIONAL ASSMBLY
NAIROBI

21ST FEBRUARY, 2012

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PREFACE

The Departmental Committee on Local Authorities (herein after referred to as 'the Committee') was established pursuant to provisions of Standing Order No. 198 and mandated to among other things, investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments. The Committee is also mandated to study and review all legislation referred to it and make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee is comprised of the following Members:-

1. Hon. David Ngugi, M.P. - **Chairman**
2. Hon. Mahamud Sirat, M.P – **Vice Chairman**
3. Hon. Shakeel Shabir, M.P.
4. Hon. Fahim Twaha, M.P
5. Hon. Joshua Kutuny, M.P.
6. Hon. Gideon Mung'aro, M.P.
7. Hon. Mwalimu Mwachima, M.P.
8. Hon. Gideon Konchella, M.P.
9. Hon. Ali Hassan Joho, M.P.
10. Hon. Zakayo Cheruiyot, MP
11. Hon. Oyugi Magwanga, MP

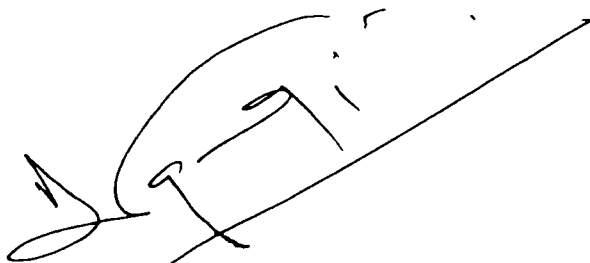
The County Governments Bill was published by the Deputy Prime Minister and Minister for Local Government on 18th January, 2012. It was introduced formally in parliament through a first reading on 14th February, 2012 after which it was referred to the Committee for scrutiny. Debate on the Bill at the second reading stage

commenced on 15th February, 2012, and was concluded on Tuesday, 21st February, 2012 during the morning sitting.

Due to the constitutional timelines provided for enactment of this Bill, the Committee held a retreat from 8th to 10th February, even before the Bill had been read a first time and went through the Bill with the assistance of the Parliamentary Legal Counsel and the Permanent Secretary, Ministry of Local Government in order to understand the contents of the Bill.

The Committee further organized a workshop at the Hotel La Mada in Nairobi from 17th to 18th February, 2012 after the Bill had been referred to it following the first reading where Members met stakeholders to receive the views of the public on the Bill.

This report therefore contains amendments proposed by Committee Members having considered and incorporated where appropriate views of stakeholders. It is my pleasure therefore, to present this report to the House.



HON. DAVID NGUGI, MP,
CHAIRMAN, DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES

PROPOSALS FROM STAKEHOLDERS

On 17th February, the Committee met with a number of stakeholders and together went through the Bill clause by clause pointing out any issues they felt were inadequately provided for. The stakeholders also submitted memorandum containing the following:

PROPOSALS BY INTERNATIONAL COMMISSION OF JURISTS-KENYA CHAPTER

General - There needs to be clarity on the extent of the role of the Attorney General in regards to legal advice and representation in civil proceedings where county governments are parties. We propose that there should be an office mandated to offer legal advice to the County Governments and representation in legal proceedings.

Clause 4 (2) – Proposed addition of a section that also empowers County Assemblies to make regulations specifying the criteria and which County officers shall be entitled to display Armorial Ensigns or fly the National and/or County flag. Currently the *National Flag, Emblems and Names Act Cap 99, The National Flag, Emblems and Names (Flying of the National Flag and Displaying of Armorial Ensigns) Regulations* only allows the president, the vice-president, the chief justice, the speaker of the national assembly, a minister or the attorney-general to such privileges.

Clause 7 – That the Bill is silent on membership of the Senator in the County Assembly. It is recommended that section 7 include the Senator as an *ex officio* member of the County assembly as he has the function of representing the affairs of the county at the National level.

Clause 28 (c) - That the reasons for potential recall of a member of the County assembly should include 'commission of an offence under the Constitution and other laws of Kenya, not only the offences under the Bill.

Clause 32 (c) - There is no definition of "Accounting officer" and the role has not been prescribed. We recommend that office be defined for clarity and roles given. Alternatively, the section should be deleted.

In any event, the Governor should appoint the Accounting Officers for the various departments through transparent, competitive and accountable process, with the approval of the County assembly.

Clause 41 - Gross misconduct in sec. 41 (1) (c) should be expressly stated as in Article 251 (b) to include "whether in the performance of the members' or office holder's functions or otherwise"

Clause 42 - The records of the meetings of the Committee along with any resolutions made should be available and accessible to the public in line with section 94 of Bill.

S. 56(4) (c) - This section provides that for a person to be appointed the chairperson of the county board he/she should have 15yrs experience. This requirement denies the youth an opportunity to serve as Chair or vice chair of the Board, contrary to the right to equal opportunities (art. 27 [3] [6]) and access to employment under the Constitution (Art. 55).

PROPOSALS BY KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

CLAUSE 24 - THAT Clause 24 be amended by inserting a new sub-clause after sub-clause (7) – (7) A. The standing orders referred to in section 13 (1) (a) shall provide for procedure of debating and passing Bills similar to the standing orders applicable to the National Assembly with necessary modifications including committee system and citizen participation.

CLAUSE 31 - THAT Clause 31(2) of the Bill be amended as follows-

(a) In sub clause 31 (2) (j) by inserting the words “on all the measures taken and the progress achieved in the realization of the national values referred to in Article 10 of the Constitution of Kenya in the county which shall be published in the county gazette” after the words “address”.

(b) by inserting a new sub paragraph (m) after paragraph (l) as follows-

(32) (2) (m) address the opening of each newly elected county assembly.

(c) by inserting a new sub paragraph (n) after the proposed paragraph (m) as follows-

(32) (2) (n) address a special sitting of the county assembly once every year and may address the county assembly at any other time.

CLAUSE 89 - THAT Clause 89 of the Bill be amended as follows-

(a) by deleting clause 89 (c) and substituting therefore the following paragraph -

89 (c) budget preparation, validation, implementation and monitoring
and evaluation

(b) by inserting a new sub-clause 89 (g) after sub-clause (f)-

89 (f) Development Committees at county and other levels of development

CLAUSE 117 - THAT Clause 117 of the Bill be amended by deleting the word “governor” appearing at the beginning of sub clause (1) and sub clause (3) and substituting therefor the following words “county executive committee”

CLAUSE 118 - THAT Clause 118 (3) of the Bill be amended by inserting a new paragraph (j) after paragraph (i) as follows-

(118) (3) (j) subsidies on tariffs shall only be maintained if they do not distort the market related to that particular service.

SUMMARY OF PROPOSED AMENDMENTS

THE COUNTY GOVERNMENTS BILL, 2012

COMMITTEE STAGE AMENDMENTS

**RE: COMMITTEE STAGE AMENDMENTS TO THE COUNTY
GOVERNMENTS BILL, 2012**

NOTICE is given that the chairperson of the Departmental Committee on Local Authorities, Hon. David Ngugi, intends to move the following amendments to the County Governments Bill, 2012 at the Committee Stage—

CLAUSE 2

THAT, clause 2 be amended in the definition of “apex body” by inserting the word “apex” immediately after the words “means the”.

CLAUSE 4

THAT, clause 4 of the Bill be amended by inserting the following new sub clause immediately after sub clause (2)-

(3) The county legislation enacted under subsection (1) shall provide for the use of the county symbols in the same manner as provided for in the National Flag, Emblems and Names Act.

CLAUSE 6

THAT, clause 6 be amended -

(a) in subclause (1) by inserting the words “be a body corporate with perpetual succession and shall” immediately after the words “a county government”;

(b) in subclause (2) (b) by deleting the words “whether situate within or without its area of jurisdiction.”

CLAUSE 8

THAT, clause 8 be amended in subclause (1) by inserting a new paragraph (a) as follows-

(aa) vet and approve nominees for appointment to county public offices as may be provided for in this Act or any other law.

CLAUSE 9

THAT, clause 9 be amended in sub clause (5) by deleting the words “deputize for the Speaker” and substituting therefor the words “in the absence of the Speaker, preside over the sittings of the assembly”

CLAUSE 12

THAT, clause 12 be deleted and the following substituted —

- The county assembly service board.
12. (1) There shall be a county assembly service board for each county assembly.
- (2) The county assembly service board shall be a body corporate with perpetual succession and a common seal.

(3) The county assembly service board shall consist of-

- (a) the Speaker of the county assembly as the chairperson;
- (b) the leader of the majority party or a member of the county assembly deputed by him or her, as the vice-chairperson;
- (c) the leader of the minority party or a member of county assembly deputed by him or her; and
- (d) one person resident in the county, appointed by the county assembly from among persons who have knowledge and experience in public affairs, but who is not a member of the county assembly.

(4) The county assembly clerk shall be the secretary to the county assembly service board.

(5) A member of the county assembly service board shall vacate office—

(a) if the person is a member of county assembly—

(i) at the end of the term of the county assembly; or

(ii) if the person ceases to be a member of the county assembly; or

(b) if the person is an appointed member, on revocation of the person's appointment by the county assembly or

(c) if the person is the Speaker, Leader of Majority Party, or Leader of Minority Party when the person ceases to be such Speaker, Leader of Majority Party, or Leader of Minority Party .

(6) Despite subsection (5), when the term of the county assembly ends, a member of the county assembly service board under subsection (3) (d) shall continue in office until a new member has assumed office in the member's place in the next assembly.

(7) The county assembly service board is responsible for—

- (a) providing services and facilities to ensure the efficient and effective functioning of the county assembly;
- (b) constituting offices in the county assembly service, and appointing and supervising office holders;
- (c) preparing annual estimates of expenditure of the county assembly service and submitting them to the county assembly for approval, and exercising budgetary control over the service;
- (d) undertaking, singly or jointly with other relevant organisations, programmes to promote the ideals of parliamentary democracy; and
- (e) performing other functions—
 - (i) necessary for the well-being of the members and staff of the county assembly; or
 - (ii) prescribed by national legislation.

NEW CLAUSE

THAT, the following new clause be inserted immediately after clause 12-

Clerk and staff of the county
12A. (1) There shall be a clerk of the county assembly, appointed by the county assembly service board with the approval of the county assembly.

assembly.

(2) A person shall not be qualified for appointment as a clerk of the county assembly unless such person-

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya or its equivalent;
- (c) has had at least five years relevant professional experience;
- (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution

(3) The functions and powers of a Clerk of Parliament shall with necessary modifications be the functions and powers of the clerk of a county assembly.

(4) For the purposes of this Act, the clerk of a county assembly is an authorized officer.

(5) The office of the clerk of the county assembly and the offices of members of the staff of the clerk of the county assembly shall be offices in the county assembly service.

(6) The remuneration of the clerk and staff of the county assembly shall be determined by the county assembly service board upon the advice of the Salaries and Remuneration Commission.

CLAUSE 13

THAT clause 13 be amended by inserting a new subs clause immediately after sub clause (7) as follows-

(8) Without limiting the generality of subsection (1), the Standing Orders made under this section shall provide for the matters specified in the Second Schedule.

CLAUSE 15

THAT, clause 15 be amended by deleting the words “proceedings in the county assembly and substituting therefor the words “proceedings of the county assembly”.

CLAUSE 17

THAT, clause 17 be amended –

(a) in subclause (1), by deleting the words “Kiswahili and English” and substituting therefor the words “Kiswahili, English and Kenyan Sign language, and the business of the county assembly may be conducted in English, Kiswahili and Kenyan Sign language.”;

(b) by inserting a new subclause immediately after sub clause (1) as follows-

(1A) No business of the county assembly or any of its committees or other organs may be conducted or transacted in a language other than the official languages.;

(c) in subclause (3) by deleting the words “in either of the official languages and substituting therefor the words “in the official language in which it was presented.”

CLAUSE 20

THAT, clause 20 be amended-

(a) by deleting subclause (1) and;

(b) inserting the following new subclause immediately after the existing subclause (2)-

(2) A Bill may be introduced by any member or committee of the county assembly, but a money Bill may be introduced only in accordance with subsection (3).

CLAUSE 21

THAT, clause 21 be deleted.

CLAUSE 22

THAT, clause 22 be deleted.

CLAUSE 24

THAT, clause 24 be deleted.

CLAUSE 25

THAT, clause 25 be amended by deleting subclause (1) and substituting therefor the following-

(1) When a Bill has been passed by the county assembly, the speaker of the assembly shall forward the Bill to the governor for assent.

CLAUSE 28

THAT, clause 28 be deleted and replaced with the following-

Recall of a county assembly member. **28** (1) The electorate in a county Ward may recall their member of the county assembly before the end of the term of the member on any of the grounds specified in subsection (2).

(2) A member of a county assembly may be recalled where the member—

(a) is found, after due process of the law, to have violated the provisions of Chapter Six of the Constitution;

(b) is found, after due process of the law, to have mismanaged public resources;

(c) is convicted of an offence under the Elections Act, 2012.

(3) A recall of a member of the county assembly under subsection (1) shall only be initiated upon a judgment or finding by the High Court confirming the grounds specified in subsection (2).

(4) A recall under subsection (1) shall only be initiated twenty-four months after the election of the member of the county assembly and not later than twelve months immediately

preceding the next general election.

(5) A recall petition shall not be filed against a member of the county assembly more than once during the term of that member in the county assembly.

(6) A person who unsuccessfully contested an election under the Elections Act, 2012 shall not be eligible, directly or indirectly, to initiate a petition under this section.

Petition for recall. **28A.** (1) A recall under section 28 shall be initiated by a petition which shall be filed with the Independent Electoral and Boundaries Commission and which shall be—

(a) in writing;

(b) signed by a petitioner who—

(i) is a voter in the Ward in respect of which the recall is sought; and

(ii) was registered to vote in the election in respect of which the recall is sought;

(c) accompanied by an order of the High Court issued in terms of section 21(3).

(2) The petition referred to in subsection (1) shall—

(a) specify the grounds for the recall as specified under section 45 (2);

(b) contain a list of such number of names of voters in the Ward which shall represent at least thirty percent of the registered voters in that Ward; and

(c) be accompanied by the fee prescribed for an election petition.

(3) The list of names referred to in subsection (2) (b) shall contain the names, address, voter card number, national identity card or passport number and signature of the voters supporting the petition.

(4) The voters supporting a petition under subsection (3) shall represent the diversity of the people in the Ward.

(5) The petitioner shall collect and submit to the Commission the list of names under subsection (2) (b) within a period of thirty days after filing the petition.

(6) The Commission shall verify the list of names within a period of thirty days of receipt of that list.

(7) The Commission, if satisfied that the requirements of this section are met, shall within fifteen days after the verification, issue a notice of the recall to the speaker of the county assembly.

(8) The Commission shall conduct a recall election within the Ward within ninety days of the publication of the question.

Recall elections. **28B.** (1) Where a member of the county assembly is to be recalled under section 28, the Commission shall frame the question to be determined at the recall election.

(2) A question referred to in subsection (1) shall be framed in such a manner as to require the answer “yes” or the answer “no”.

(3) The Commission shall assign a symbol for each answer to the recall question.

(4) The voting at a recall election shall be by secret ballot.

(5) A recall election shall be decided by a simple majority of the voters voting in the recall election.

(6) Where a recall election results in the removal of a member of the county assembly, the Commission shall conduct a by-election in the affected constituency or county.

(7) A member of the county assembly who has been recalled may run in the by-election conducted under subsection (6).

CLAUSE 31

THAT, clause 31 be amended in subclause (2)-

(a) by inserting the words “Subject to the Constitution” in the opening paragraph immediately before the words “The governor shall”;

(b) in paragraph (h) by inserting the words “by decision notified in the Kenya county Gazette” immediately before the words “assign to every member of the county executive committee”;

(c) in paragraph (k), by deleting the words “Police Service Act” and substituting therefor the words “National Police Service Act, 2011”;

(d) by deleting paragraph (l) and substituting therefor the following-

(l) sign and cause to be published in the county Gazette, notice of all important formal decisions made by the governor or by the county executive committee.

(e) by inserting the words “containing such matters as may be specified in county legislation” at the end of paragraph (j).

CLAUSE 32

THAT, clause 32 be amended by deleting paragraph (a), and substituting therefor the following-

(a) may, despite section 41, dismiss a county executive committee member at any time, if the governor considers that it is appropriate or necessary to do so;

CLAUSE 34

THAT, clause 34 be amended by deleting subclasses (2),(3),(4)(5)(6)(7) (8) and substituting therefor the following new subclasses-

(2) If a motion under clause (1) is supported by at least two-thirds of all the members of the County Assembly—

(a) the Speaker of the County Assembly shall inform the Speaker of the Senate of that resolution within two days; and

(b) the Governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section.

(3) Within seven days after receiving notice of a resolution from the Speaker of the County Assembly—

(a) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the Governor; and

(b) the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.

(4) A special committee appointed under clause (3) (b) shall—

(a) investigate the matter; and

(b) report to the Senate within ten days whether it finds the particulars of the allegations against the Governor to have been substantiated.

(5) The Governor shall have the right to appear and be represented before the special committee during its investigations.

(6) If the special committee reports that the particulars of any allegation against the Governor—

(a) have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or

(b) have been substantiated, the Senate shall, after according the Governor an opportunity to be heard, vote on the impeachment charges.

(7) If a majority of all the members of the Senate vote to uphold any impeachment charge, the Governor shall cease to hold office.

(8) A vacancy in the office of the governor or deputy governor arising under this section shall be filled in the manner provided for by Article 182 of the Constitution.

CLAUSE 42

THAT, clause 42 be amended in subclause (3) by inserting the words “in accordance with Article 35 of the Constitution” immediately after the words “shall be accessible to the public.”

NEW CLAUSE 43A

THAT the Bill be amended by inserting a new clause immediately after clause 43 as follows-

43A. A county government may, pursuant to article 156 (4) of the Constitution request the Attorney General to represent the county government in court or in any other legal proceedings to which the county government is a party other than criminal proceedings

CLAUSE 56

THAT, clause 56 be amended-

- (a) in sub clause (1) by inserting the words “nominated and appointed by the county governor with the approval of the county assembly;
- (b) in sub clause (2) by inserting the words “ chairperson and” immediately before the word “members”

CLAUSE 89

THAT, clause 89 be amended by inserting the words “preparation and” immediately before the word “validation” appearing in paragraph (c).

CLAUSE 96

THAT clause 96 be amended by deleting the words “under this Act” appearing in sub clause (2) and substituting therefor the words “in section 98”.

CLAUSE 101

THAT clause 101 be amended by inserting the following new paragraph immediately after paragraph (i)-

(j) develop the human resource capacity of the county

CLAUSE 104

THAT clause 104 be amended in sub clause (2) by inserting the words “on the functions of the county governments as specified in the Fourth Schedule to the Constitution and” immediately after the word “based”

CLAUSE 116

THAT clause 116 be amended in sub clause (1) by inserting the words “or any agency of the national government” immediately before the words “or another county”

CLAUSE 117

THAT clause 117 be amended in sub clause (1) by deleting the words “governor” and substituting therefor the words “County Executive Committee”.

CLAUSE 119

THAT clause 119 be amended in sub clause (2) by deleting the word “corroboration” and substituting therefor the word “collaboration” appearing in paragraph (h).

CLAUSE 120

THAT, clause 120 be deleted and the following new clause substituted-

Grounds for suspension arising from conflict or war.	120 (1) The President may suspend a county government— (a) in an emergency arising out of internal conflict or war; or (b) in any other exceptional circumstances
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CLAUSE 121

THAT, clause 121 be amended –

(a) in sub clause (5), by deleting the word “inspector-general” appearing in paragraph (b) and substituting therefor the words “ the chairperson”;

(b) in sub clause (7), by deleting the word “binding” immediately after the words “report on the facts and make”;

NEW SCHEDULE

THAT the Bill be amended by renumbering the Schedule as the First Schedule and inserting the following new Schedule immediately after the First Schedule-

SECOND SCHEDULE

MATTERS TO BE PROVIDED FOR IN THE COUNTY ASSEMBLY STANDING ORDERS	
GENERAL SUBJECT MATTER	SPECIFIC MATTER TO BE ADDRESSED
Introductory	Interpretation
Swearing - in of Members and election of Speaker	Proceedings on assembly of a new Assembly
	Swearing-in of Members
	Election of the Speaker
Election of member to deputize for Speaker	Election of Member to deputize for Speaker
	Chairperson of Committees of the Whole Assembly
	Presiding in the Assembly
Leader of the majority	Leader of the Majority Party
	Opposition in the Assembly
Governor and persons other than a Member	Governor's address to Assembly
	Governor entering or leaving Chamber

	Address by Senator or persons other than the Governor or member
Sittings and Adjournments of the Assembly	Location of sittings of a new Assembly
	Regular sessions of the Assembly
	Special sittings of the Assembly
	Hours of meeting
	Adjournment of the Assembly
	Adjournment on definite matter of urgent national or county importance
Quorum of the Assembly	Quorum at commencement of the Assembly
	Quorum during the proceeding of the Assembly
	Quorum during voting or division
Order of Business	Order Paper to be prepared and circulated
	Messages from the Governor or Senator
	Sequence of proceedings
Statements	Statement Hour
Approval of county public appointments	Committal to committees
Motions	Notices of Motions
	Amendment of Notice of Motion
	Certain Motions not to be moved
	Time for moving Motions
	Motion withdrawn may be moved again
	Motions which may be moved without Notice

	Manner of debating Motions, Amendments thereto and deferment of putting a question
	Amendments to be in writing
	Amendments to be relevant to Motion
	Question proposed after Motion made
	Motion in possession of the Assembly
	Question as amended put
	When amendment proposed but not made
Special Motions	Definition of Special Motion
	Procedure for removal of Governor
	Procedure for removal of Deputy Governor
	Procedure for removal of Member of County Executive Committee
Voting and Divisions	Voting in the Assembly
	Division claimed
	Technical failure, confusion or error occurring
	Roll call voting
	In case of confusion or error
	Decorum during division
	Original vote
Rules of Debate	Proceedings to be in Kiswahili, English or Kenyan Sign Language
	Members to address the Speaker
	Two or more Members rising to speak

	Speeches may not be read
	No Member to speak after Question put
	Speaking twice to a Question
	Point of Order
	Anticipating debate
	Proceedings of Select Committees not to be referred to
	Contents of speeches
	Matters sub judice or secret
	Declaration of interest
	Responsibility for statement of fact
	Member who has spoken to question may speak to amendment
	Debate on amendment confined to amendment
	Reserving rights of speech
	Closure of debate
	Adjournment of debate
Limitation of Debate	Limitation of debate
Order In the Assembly and In Committee of the Whole Assembly	Maintenance of order
	Security checks
	Firearms and other offensive weapon
	Lady Members' handbags
	When the Speaker rises Members to be silent
	Members and the Chair

	Members to be seated
	Members to remain in their places until the Speaker has left the Chamber
	Irrelevance or repetition
	Disorderly conduct
	Member may be suspended after being named
	Member suspended to withdraw from precincts of the Assembly
	Duration of suspension of a Member
	Action to be taken on refusal to withdraw
	Grave disorder
Public Bills	Application and limitation
	Introduction of Bills
	Printing of amending provisions
	Memorandum of Objects and Reasons
	Publication
	Not more than one stage of a Bill to be taken at the same sitting
	Reading of Bills
	First Reading
	Committal of Bills to Committees
	Second Reading
	Committal of Bills to Committee of the whole Assembly
	Sequence to be observed on a Bill in Committee
	Procedure in Committee of the whole Assembly on a Bill
	Report of Progress

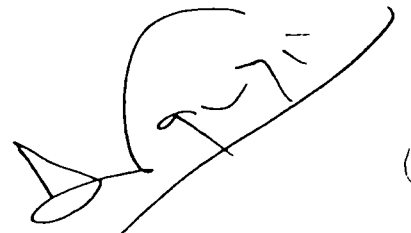
	Bill to be reported
	Procedure on Bills reported from Committee of the whole Assembly
	Procedure on Bills reported from Select Committees
	Procedure upon the re-committal of a Bill
	Withdrawal of Bills Third Reading
	Re-introduction of Bills
	Custody of Bills
Committee of the Whole Assembly	Limits on consideration of matters by Committee
	Committee of the whole Assembly may not adjourn
	Report.
	No debate on Motion for Report
	Chairperson leaves Chair without question put when directed to report
	General application of rules in Committee
Select Committees	Assembly Business Committee
	Nomination of members of select committees
	Criteria for nomination
	Approval of nomination
	Discharge of a member from a committee
	Composition of select committees
	Chairing of select committees and quorum
	Conduct of election

	Notice of meetings
	Sittings of select committees
	Member adversely mentioned not to sit
	Adjournment for lack of quorum
	Frequency of meetings
	Failure to attend meetings
	Absence of chairperson and vice-chairperson
	List of attendance
	Minutes of select committees
	Summoning of witnesses
	Temporary absence of a member of a select committee
	Vote of no confidence in the chairperson or vice-chairperson
	Filling of vacancies in select committees
	Original vote
	Attendance by non-members of select committee
	Procedure in select committees
	Public access to meetings of select committee
	Reports of select committees
	Progress reports
	Reports on Assembly Resolutions
	Joint meetings of committees
	Engagement of experts
	County Public Accounts & Investments Committee
	Budget and Finance Committee

	Rules and Programme Committee
	Committee on Implementation
	Sectoral Committees
	Appointment of Sectoral Committees
	Limitation of mandate
	Committee to be limited to mandate
Public Petitions	Meaning of Public Petition
	Member's statement on presentation of Petition
	Petition on Private Bill
	Notice of intention to present Petition
	Form of Petition
	Presentation of Petition
	Comments on petitions
	Printing of Petitions
	Committal of Petitions
Financial Procedures	General
	Restrictions with regard to certain financial measures
	Presentation of Budget Policy Paper in liaison with commission for revenue allocation.
	Presentation of Annual Estimates and committal to Committees
	Committee of Ways and Means and Committee of Supply
	Procedure in Committee of Supply
	Procedure on Supplementary Estimates
	Consideration of Supply Resolutions

	Order of Votes
Journals, Records and Broadcast of Proceedings	Journals of the Assembly
	Custody of Journals and Record
	Hansard reports
	Secret or personal matters
	Broadcast of Assembly Proceedings
Communication with the Senate	Messages to and from the Senate
	Procedure for presentation of reports and other matters from the Senate
The Public	Places to which members of public are not admitted
	Exclusion of the public
	Press representatives infringing Standing Orders or the Speaker's Rules
General	In cases not provided for, the Speaker to decide
	Exemption of business from Standing Orders
	Seating in the Chamber
	Members travelling outside the County or outside Kenya
	Expenses of witnesses
Suspension and Amendment of Standing Orders	
Broadcasting Rules	Broadcasting of Assembly proceedings
	Protection of the dignity of the Assembly
	External media houses

	Breach of broadcasting Rules



HON. DAVID NGUGI,
Member of Parliament

MINUTES OF THE 45TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON MONDAY 20TH FEBRUARY, 2012 IN COMMITTEE ROOM 9 AT 2.30 PM

PRESENT

Hon. Mahamud Sirat, MP - Ag.-Chairman
Hon. Oyugi Magwanga, MP
Hon. Zakayo Cheruiyot, MP
Hon. Gideon Mung'aro, MP
Hon. Fahim Twaha, MP
Hon. Gideon Konchella, MP

ABSENT WITH APOLOGY

Hon. David Ngugi, MP - Chairman
Hon. Masoud Mwahima, MP
Hon. Shakeel Shabbir, MP
Hon. Ali Hassan Joho, MP
Hon. Joshua Kutuny, MP

IN ATTENDANCE

Mr. George Gazemba - Clerk Assistant
Mr. Edward Libendi - Clerk Assistant

MIN. NO./SC2/201/2011: - **Preliminaries**

The Chairman called the meeting to order at 2.45 pm and opened the meeting with a word of prayer.

MIN. NO./SC2/202/2011: - **Adoption of Agenda**

Members adopted the agenda of the meeting being deliberation and adoption of the report of the Committee on Scrutiny of the three devolution Bills

MIN. NO./SC2/203/2011: - **Deliberation on report of Scrutiny of the Bills**

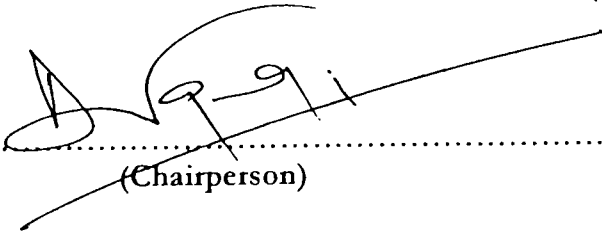
The Members went through the report of the Bills with the assistance of the Legal Counsel of Parliament and resolved to adopt the report with amendments.

MIN. NO./SC2/204/2011:

- Any Other Business and Adjournment

There being no other business, the Chairman adjourned the meeting at 5.40 pm.

SIGNATURE.....



(Chairperson)

DATE

21/02/2012

MINUTES OF THE 44TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON FRIDAY 17TH AND SATURDAY 18TH FEBRUARY, 2012 AT HOTEL LA MADA FROM 9.00 AM

PRESENT

Hon. David Ngugi, MP - Chairman
Hon. Oyugi Magwanga, MP
Hon. Zakayo Cheruyot, MP
Hon. Gideon Mung'aro, MP

ABSENT WITH APOLOGY

Hon. Mahamud Sirat, MP - Vice-Chairman
Hon. Masoud Mwachima, MP
Hon. Fahim Twaha, MP
Hon. Shakeel Shabbir, MP
Hon. Ali Hassan Joho, MP
Hon. Joshua Kutuny, MP
Hon. Gideon Konchella, MP

IN ATTENDANCE

Mr. Patrick Karanja - Ministry of Local Government
Mr. Jeremiah Ndombi - Senior Legal Counsel, Parliament
Mr. George Gazemba - Clerk Assistant
Mr. Edward Libendi - Clerk Assistant

MIN. NO./SC2/197/2011: - **Preliminaries**

The Chairman called the meeting to order at 9.30 am and opened the meeting with a word of prayer.

He welcomed the participants to the workshop and thanked them and thereafter called upon the participants to introduce themselves. He gave a brief explaining the purpose of the meeting and requesting the participants to be specific in their presentations to the Committee on proposed amendments.

MIN. NO./SC2/198/2011: - **Adoption of Agenda**

Members adopted the agenda of the workshop being Scrutiny of the three devolution Bills with stakeholders

The Charman read through the Bills clause by clause beginning with the County Governments Bill, the Intergovernmental Relations Bill and the Transition to Devolved Governments Bill pausing at the end of every part of the Bill to allow the participants to raise any issue they considered pertinent.

The stakeholders among other issues raised the following proposals:

PROPOSALS BY INTERNATIONAL COMMISSION OF JURISTS-KENYA CHAPTER

General - There needs to be clarity on the extent of the role of the Attorney General in regards to legal advice and representation in civil proceedings where county governments are parties. We propose that there should be an office mandated to offer legal advice to the County Governments and representation in legal proceedings.

Clause 4 (2) – Proposed addition of a section that also empowers County Assemblies to make regulations specifying the criteria and which County officers shall be entitled to display Armorial Ensigns or fly the National and/or County flag. Currently the *National Flag, Emblems and Names Act Cap 99, The National Flag, Emblems and Names (Flying of the National Flag and Displaying of Armorial Ensigns) Regulations* only allows the president, the vice-president, the chief justice, the speaker of the national assembly, a minister or the attorney-general to such privileges.

Clause 7 – That the Bill is silent on membership of the Senator in the County Assembly. It is recommended that section 7 include the Senator as an *ex officio* member of the County assembly as he has the function of representing the affairs of the county at the National level.

Clause 28 (c) - That the reasons for potential recall of a member of the County assembly should include 'commission of an offence under the Constitution and other laws of Kenya, not only the offences under the Bill.

Clause 32 (c) - There is no definition of "Accounting officer" and the role has not been prescribed. We recommend that office be defined for clarity and roles given. Alternatively, the section should be deleted.

In any event, the Governor should appoint the Accounting Officers for the various departments through transparent, competitive and accountable process, with the approval of the County assembly.

Clause 41 - Gross misconduct in sec. 41 (1) (c) should be expressly stated as in Article 251 (b) to include "whether in the performance of the members' or office holder's functions or otherwise"

Clause 42 - The records of the meetings of the Committee along with any resolutions made should be available and accessible to the public in line with section 94 of Bill.

S. 56(4) (c) - This section provides that for a person to be appointed the chairperson of the county board he/she should have 15yrs experience. This requirement denies the youth an opportunity to serve as Chair or vice chair of the Board, contrary to the right to equal opportunities (art. 27 [3] [6]) and access to employment under the Constitution (Art. 55).

PROPOSALS BY KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

CLAUSE 24 - THAT Clause 24 be amended by inserting a new sub-clause after sub-clause (7) - (7) A. The standing orders referred to in section 13 (1) (a) shall provide for procedure of debating and passing Bills similar to the standing orders applicable to the National Assembly with necessary modifications including committee system and citizen participation.

CLAUSE 31 - THAT Clause 31(2) of the Bill be amended as follows-

(a) In sub clause 31 (2) (j) by inserting the words “on all the measures taken and the progress achieved in the realization of the national values referred to in Article 10 of the Constitution of Kenya in the county which shall be published in the county gazette” after the words “address”.

(b) by inserting a new sub paragraph (m) after paragraph (l) as follows-

(32) (2) (m) address the opening of each newly elected county assembly.

(c) by inserting a new sub paragraph (n) after the proposed paragraph (m) as follows-

(32) (2) (n) address a special sitting of the county assembly once every year and may address the county assembly at any other time.

CLAUSE 89 - THAT Clause 89 of the Bill be amended as follows-

(a) by deleting clause 89 (c) and substituting therefore the following paragraph -

89 (c) budget preparation, validation, implementation and monitoring
and evaluation

(b) by inserting a new sub-clause 89 (g) after sub-clause (f)-

89 (f) Development Committees at county and other levels of development

CLAUSE 117 - THAT Clause 117 of the Bill be amended by deleting the word “governor” appearing at the beginning of sub clause (1) and sub clause (3) and substituting therefor the following words “county executive committee”

· **CLAUSE 118 - THAT** Clause 118 (3) of the Bill be amended by inserting a new paragraph (j) after paragraph (i) as follows-

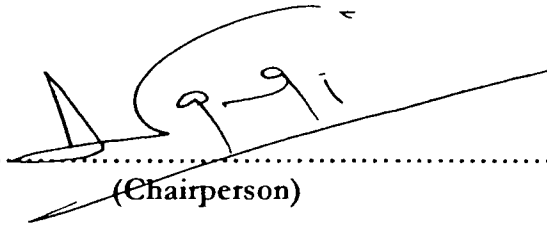
(118) (3) (j) subsidies on tariffs shall only be maintained if they do not distort the market related to that particular service.

MIN. NO./SC2/200/2011:

- **Any Other Business and Adjournment**

The Chairman thanked the participants for their informative views and informed them that the Committee would meet later on to consider the views submitted and to agree on which ones to incorporate in the report of the Committee.

SIGNATURE.....



(Chairperson)

DATE

21/02/2012

MINUTES OF THE 43RD SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON WEDNESDAY 15TH FEBRUARY, 2012 IN THE SMALL DINING, MAIN PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

Hon. David Ngugi, MP - Chairman
Hon. Oyugi Magwanga, MP
Hon. Zakayo Cheruiyot, MP

ABSENT WITH APOLOGY

Hon. Mahamud Sirat, MP - Vice-Chairman
Hon. Masoud Mwahima, MP
Hon. Fahim Twaha, MP
Hon. Shakeel Shabbir, MP
Hon. Ali Hassan Joho, MP
Hon. Joshua Kutuny, MP
Hon. Gideon Konchella, MP
Hon. Gideon Mung'aro, MP

IN ATTENDANCE

Mr. George Gazemba - Clerk Assistant
Mr. Edward Libendi - Clerk Assistant

MIN. NO./SC2/193/2011: - Preliminaries

The Chairman called the meeting to order at 10.30 am and opened the meeting with a word of prayer.

MIN. NO./SC2/194/2011: - Adoption of Agenda

Members adopted the day's agenda being discussion on the way forward regarding the Devolution Bills


MIN. NO./SC2/195/2011: - Way forward on the Devolution Bills

Members noted that despite the decision of the House on 14th February, 2012 to commit the County Governments Bill to the Committee for scrutiny after first reading, the House Business Committee had gone ahead to schedule the Bill for second reading before the Committee could table its report.

Members deliberated on what course of action to take in the current circumstances and resolved to be prepared to go ahead with debate on the Bill and organize a workshop at the weekend (17th and 18th February) during which the Committee would meet stakeholders and listen to their views on the Bill.

MIN. NO./SC2/196/2011: - Any Other Business and Adjournment

There being no other business to transact, the Chairman adjourned the meeting at 11.15 am.

SIGNATURE.....

(Chairperson)

DATE 21/02/2012

MINUTES OF THE 42ND SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON THURSDAY 9TH TO FRIDAY 10TH FEBRUARY, 2012 AT HOTEL LA MADA FROM 9.00 AM

PRESENT

Hon. David Ngugi, MP	-	Chairman
Hon. Mohamud Sirat, MP	-	Vice-Chairman
Hon. Oyugi Magwanga, MP		
Hon. Gideon Konchella, MP		
Hon. Zakayo Cheruiyot, MP		

ABSENT WITH APOLOGY

Hon. Masoud Mwahima, MP
Hon. Fahim Twaha, MP
Hon. Shakeel Shabbir, MP
Hon. Ali Hassan Joho, MP
Hon. Gideon Mung'aro, MP
Hon. Joshua Kutuny, MP

IN ATTENDANCE

Prof. Karega Mutahi	-	Permanent Secretary, Ministry of Local Government
Amb. Owade	-	Ministry of Local Government
Mr. Jeremiah Nyegenye	-	Director, Legal Services, Parliament
Mr. Jeremiah Ndombi	-	Senior Legal Counsel, Parliament
Mr. George Gazemba	-	Clerk Assistant
Mr. Edward Libendi	-	Clerk Assistant

MIN. NO./SC2/189/2011: - Preliminaries

The Chairman called the meeting to order at 9.00 am and opened the meeting with a word of prayer.

He welcomed the Members to the retreat and thanked the Permanent Secretary and officials from the Ministry for accepting to meet the Committee despite the short notice and explained to the Members the objects of the meeting stating that the meeting had been convened to read through the Bills so that the Members could understand the contents therein before parliament reopens so as to expedite their enactment in the House. He then invited the Permanent Secretary to take the Members through the Bills.

MIN. NO./SC2/190/2011: - Adoption of Agenda

The Members adopted the workshops agenda being review of the three Devolution Bills

The Permanent Secretary explained the policy behind the three Devolution Bills; The County Governments Bill, the Intergovernmental Relations Bill and Transition to Devolved Governments Bill before taking the Members through the contents of the Bill, clause by clause and allowing them to intervene and propose amendments where necessary. The following amendments were proposed by Members:

THE COUNTY GOVERNMENTS BILL, 2012

The Committee was agreeable with the provisions of Part I and II.

Part III

1. Amend Clause 9 (1): Role of members of the County Assembly-To read that the roles shall be in addition to those set out in the Constitution.
2. Amend Clause 12 on County Assembly Clerk to ensure Independence of the County Assembly as follows:
3. a) 12(1) by deleting the words "County Public Service Board" and replacing them with "County Assembly"
b) 12(4) Delete the words, "the County Public Service" and replace them with "County Assembly"
4. Introduce a new clause 12: Establishing the Office of County Commissioner to consist of a few Members of the County Assembly: The Office shall be a body corporate with perpetual succession.
5. Introduce a new clause providing 'the AG may at the request of the County Government represent the County Government in court or in any other legal proceedings to which the County government is a party, other than criminal proceedings in accordance with article 156(4) (c) of the Constitution'
6. Amend clause 15 by deleting the word "in" in the last sentence and replacing it with "of"
7. Amend clause 17(1) to include "and sign language" after the word English – As the Constitution provides that the official language shall be English, Kiswahili and Sign language
 - a) Amend 17 (3) by deleting all the words after "in either of" in the last sentence and adding the words 'the official language in which it was said'
 - b) Add clause 17 (4) to read "outlaw use of any non-official language"
8. Amend clause 20 by borrowing language used in article 109 of the Constitution – as County Assembly can only initiate a Bill through its members.
9. Amend Clause 21 to remove the requirement for a Motion to be passed by the Assembly- This may prevent the County Executive from enacting laws if Motion is not passed or may slow down the legislative process

- 10 Amend clause 24: To amend the procedure of enacting laws to mirror the procedure used in the National Assembly

PART IV

11. Amend clause 28 – to mirror provisions for recall of a Member of Parliament as provided in the Elections Act.
12. Review clause 29 on recall to ensure it mirrors recall procedure for MPs as provided in the Elections Act.

PART V-COUNTY EXECUTIVE

13. Amend clause 31 (2) to read: Subject to the Constitution, the governor shall:-
 - a) Add a sub-clause after (h) requiring the Governor to publish such assignment of responsibilities in the County Gazette-to mirror words of article 132(3)(c).
 - b) Delete sub-clause (l) and draft amendment to reflect which County Gazette the Governor can sign.
14. Delete clause 32 as the powers of governor to remove the Executive is covered under clause 41.
15. Delete clause 34(7) as it is unconstitutional-*(the Constitution in article 123(4)(c) provides that a decision of the Senate on any matters affecting Counties will be determined by a vote of the majority of the delegations)*
16. Include a new clause 34 (9) to provide for the Deputy Governor to take over if the Governor is removed from office as provided in article 182 (2) of the Constitution
17. Amend clause 42 (3) to reflect provisions in article 35 of the Constitution-Borrow the words of clause 27 in the Transition to Devolved Governments Bill, 2012

The Committee was agreeable with the provisions of Part VI and VII.

PART VIII-CITIZEN PARTICIPATION

1. Amend clause 88 (1) (a) to read “ laws and petitions which are supported by at least 25% of the registered voters” – This is to eliminate the need for referendum on all laws and petitions and limit it to only those laws and petitions supported by at least 25% of the registered voters in the county.
2. Add a new clause 88 (1) (c) to include requirement for referendum on any other matter that the County Executive may decide.

The Committee was agreeable with the provisions in Part IX to XV including the Schedule

THE INTERGOVERNMENTAL RELATIONS BILL, 2012

This Bill derives its basis from Article 6 and 189 of the Constitution of Kenya, 2010.

PART II-ESTABLISHMENT OF INTERGOVERNMENTAL RELATIONS STRUCTURE

1. Amend clause 15 (1) to read "There shall be a secretariat of the Technical Committee headed by a secretary"
2. Amend 15 to include the tenure of the Secretary should be six years non-renewable.
3. Amend clause 19 (3) to enable the chairperson and vice chairperson of the Council of County Governors to serve a maximum of two terms of one year.-This is meant to ensure continuity especially in the formative years.
4. Amend clause 20 to include sub-clause j, to read "Consider any other matter of national interest or of common interest"
5. Amend clause 21 (1) by deleting all the words after "twice a year". This will allow the Council to meet anytime they have an issue to address so that there meetings are not tied to four just like the Summit.
6. Amend clause 23 to include a sub-clause (c) establishing the Secretariat of the Technical Committee to serve also as secretariat of the Council

PART IV-DISPUTE RESOLUTION MECHANISMS

7. Amend clause 34 by including an additional sub-clause 4 to read: The summit may after listening to the parties to the dispute, make recommendations to resolve the dispute.-This is to ensure that there is some finality in dispute resolution so that parties do not just go round and round.
8. Amend clause 36 (1) by including the words '**this Act if in violation of**' between the words '**under**' and '**section**' and deleting the word '**if**' after '**34**'. -The new clause will now read "*A person commits an offence under this Act if in violation of section 34, the person:-*"

SCHEDULE

9. Amend section 2 (1) by deleting the word "**the**" before secretariat and replacing it with the word "**its**" to connote that a chairperson of any body consults his secretariat to determine agenda before calling a meeting.
10. Amend clause 2 (2) (b) by inserting the words, "**the Vice-chairperson or where there is no vice-chairperson**" between the word "**bodies**" and "**the members**" in the first sentence. The clause will now read "in the case of other bodies, the vice-chairperson and where there is no vice-chairperson, the members present shall elect one member to chair the meeting".

THE TRANSITION TO DEVOLVED GOVERNMENTS BILL, 2012

PART II-TRANSITION MECHANISM TO DEVOLVED GOVERNMENT SYSTEM

1. Amend clause 5 (1) (a) to read: the Members of the Transition Authority shall be nominated by the Public Service Commission, and appointed by the President with approval of parliament.-This is meant to ensure Parliamentary approval of Members of the Transition Authority.
2. Amend clause 5 to include in the Authority a nominee of the Clerk of the Senate to facilitate in establishment of the County Assemblies
3. Amend clause 17 (1) by deleting the word 'Authority' in the third sentence and replacing it with the word "Salaries and Remuneration Commission".
4. Amend Clause 23 (2) by deleting "in the prescribed manner" to read "In the manner prescribed in clause 24" after the words the Authority in the third sentence.

PART V-FINANCIAL PROVISIONS

5. Delete clause 32 which allows the Transition Authority to invest any of its funds as this would facilitate corruption.

PART VI-MISCELLANEOUS PROVISIONS

6. Amend clause 34 by distinguishing the penalties so that we have harsh penalty for clause 34 (c) of a fine of Ksh.10 million and or imprisonment of 7 years and maintain the penalty for sub-clauses (a), (b) and (d) but to read "not less than five hundred thousand shillings or to imprisonment for a term not less than two years, or to both.
7. Amend clause 36 to include a new sub-clause (d) to invalidate any such transfer that is contrary to the law.
8. Amend clause 38 (1) by deleting all the words after 'earlier' in the third sentence.-This is because section 15 of the sixth schedule requires that the transition take a maximum of three years which period cannot be extended.

FIRST SCHEDULE

9. Amend section 12 (b) (1) of First schedule: to include the word "Being" before the word "absent"

Conclusion

The Permanent Secretary concluded by thanking the Committee for the opportunity to discuss the Bills with the Committee and requested that the Bills be passed in the following manner due to the interrelations among the Bills:

1. The County Governments Bill, 2012
2. The Intergovernmental Relations Bill, 2012

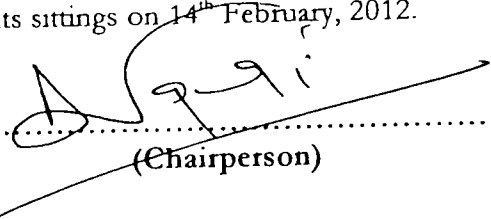
3. The Transition to Devolved Governments Bill, 2012

MIN. NO./SC2/192/2011:

Any Other Business and Adjournment

The Chairman thanked the Ministry officials once again for their commitment during the review process and expressed confidence that the Committee was now well prepared to tackle the Bill when parliament resumes its sittings on 14th February, 2012.

SIGNATURE.....



(Chairperson)

DATE

21/02/2012