



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI CITY

COURT NAME: MILIMANI LAW COURTS

CASE NUMBER: HCCHRPET/E234/2025

CITATION: KATIBA INSTITUTE VS STATE LAW OFFICE

ORDERS(COURT DOCUMENT)

**02/05/2025**

**L. N. MUGAMBI - JUDGE**

I have read the Notice of motion application dated 02/05/2025, the certificate of urgency of even date together with the affidavit in support of Emily Kinama and direct as follows:

1. The Application be physically served upon the respondents within **3 days**, and an affidavit of service be sworn to that effect.
2. Responses be filed and served within **7 days**.
3. The Applicant/Petitioner may file and serve a rejoinder within **7 days** from the date of receipt of responses.
4. Further directions on **21/05/2025**.

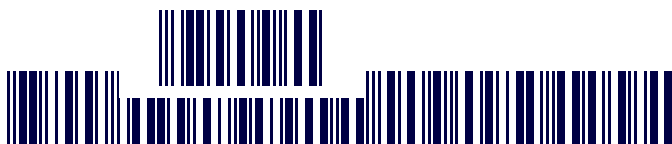
**L. N. MUGAMBI**

**JUDGE**

**02/05/2025**

***Penal Notice: Take notice that any disobedience or non-observance of the order of the court served herewith will result in penal consequences to you and any other person(s) disobeying and not observing the same***

SIGNED BY: HON. MR. JUSTICE LAWRENCE N. MUGAMBI



THE JUDICIARY OF KENYA.  
MILIMANI HIGH COURT  
HIGH COURT CONSTITUTION AND HUMAN RIGHTS  
DATE: 2025-05-02 13:26:36+03  
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**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA IN NAIROBI**  
**HCCHRPET/E...../2025**

KATIBA INSTITUTE ..... 1<sup>ST</sup> PETITIONER  
THE INSTITUTE FOR SOCIAL ACCOUNTABILITY ..... 2<sup>ND</sup> PETITIONER  
CENTRE FOR ENHANCING DEMOCRACY  
AND GOOD GOVERNANCE..... 3<sup>RD</sup> PETITIONER  
TRANSPARENCY INTERNATIONAL-KENYA ..... 4<sup>TH</sup> PETITIONER  
KENYA HUMAN RIGHTS COMMISSION ..... 5<sup>TH</sup> PETITIONER

VERSUS

ATTORNEY-GENERAL..... 1<sup>ST</sup> RESPONDENT  
THE NATIONAL ASSEMBLY..... 2<sup>ND</sup> RESPONDENT  
THE SENATE ..... 3<sup>RD</sup> RESPONDENT  
CONTROLLER OF BUDGET..... 4<sup>TH</sup> RESPONDENT

AND

INUKA KENYA NI SISI ..... 1<sup>ST</sup> INTERESTED PARTY  
ELIUD MATINDI..... 2<sup>ND</sup> INTERESTED PARTY

**Certificate of Urgency**

I, Joshua Malidzo Nyawa, Advocate of the High Court of Kenya, certify this matter extremely urgent because:

1. Constitution-making and amendment are a cardinal expression of the people's sovereignty. They lie at the centre of the making and remaking a nation's history and identity. In the case of amendments, they are akin to dressing and redressing to fix ills not previously covered and/or envisioned by the current or retiring Constitution. The people of Kenya have the prerogative to engage in these processes, and Parliament plays a key role in this.
2. However, Kenya is currently operating in a fiscally constrained environment. The entire national budget was revised in an unprecedented

move this financial year to impose austerity measures. As a result, the government struggled to meet its financial obligations, including paying capitation to schools for basic education. In a similar move, on 29 April 2025, Cabinet resolved, for a second time prior to the start of the upcoming financial year, to “implement significant budget realignments in line with the government’s policy of fiscal consolidation and commitment to living within its means”.

3. This fiscal environment centres and gives prominence to the constitutional imperative for prudent and responsible use of public funds and the requirement for responsible financial management under articles 201 (d) and (e) of the Constitution. These are tied together with the principles of good governance and sustainable development under articles 10 (2)(c) and (d) of the Constitution.
4. However, contrary to this context and the constitutional imperatives above, the National Assembly has proposed constitutional amendments over matters that are either being lawfully implemented presently or that can rightly be implemented within the confines of the current Constitutional framework. This is proposed under the Constitution of Kenya (Amendment) Bill, 2025, which seeks to entrench three (3) funds in the Constitution: the National Government Constituencies Fund (NGCF), the National Government Affirmative Action Fund (NGAAF), and the Senate Oversight Fund (SOF).
5. The proposed NGAAF is currently being implemented through the Public Finance Management Act (National Government Affirmative Action Fund) Regulations, 2016. Various court decisions, including that of the Supreme Court, have emphasised that the proposed NGCF can be lawfully implemented within the confines of the current Constitution. The idea behind the proposed SOF is presently implemented through the budgetary provisions relating to Parliament under the Constitution.
6. Notwithstanding, and to further the realisation of this otherwise constitutionally superfluous endeavour, the National Assembly has



scheduled public hearings in all of Kenya's 290 constituencies to take place between 5 May and 7 May 2025.

7. For reference, public participation for an ordinary legislative proposal (as opposed to a constitutional amendment one) costs between 10 million and 100 million. Ordinary legislative proposals do not require public hearings in all of Kenya's 290 constituencies. Public hearings for the proposed Constitution Amendment Bill, however, are scheduled to take place not only in each of the 290 constituencies but also in multiple places within those constituencies.
8. There is therefore a real risk that scarce public resources are in the process of being channelled towards an otherwise legitimate constitutional process, but which on close scrutiny is not only constitutionally superfluous but also runs afoul established constitutional principle.
9. Besides the above, the sanctity and uniquely important nature of constitution-making and remaking processes demand a high level of clarity and certainty of the applicable rules and procedures. This is intended to ensure that the expression of the sovereign will of the people through them is unequivocal and beyond reproach. However, it is over 14 years post the promulgation of the Kenyan Constitution; 9 years post the constitutional deadline for the enactment of legislation intended to operationalise the Constitution and several recommendations from the Courts (including the Supreme Court) later, yet Kenya's current legislative terrain lacks a framework intended to guarantee this; a referendum law.
10. Article 82 commands Parliament to enact legislation to provide for the "conduct of elections and referenda and the regulation and efficient supervision of elections and referenda". Fourteen years later, this has not been done. This is contrary to the explicit requirement of Article 261, as read together with the fifth schedule of the Constitution, that such a law must have been passed within 5 years of the promulgation of the Constitution. Parliament has not only grossly violated the Constitution but has also abdicated its constitutional mandate.

11. There are express constitutional provisions on how Constitutions are to be made and/or remade. This is meant to create a balance between the culture of hyper amendments and rigidity, thereby safeguarding the people's sovereignty. The Kenyan Constitution stipulates how amendments to it may be enacted: popular initiative or parliamentary initiative. Article 255 of the Constitution of Kenya, however, expressly entrenches provisions that can only be amended through a popular initiative. Although amendments to these provisions may be initiated through parliament (Article 256), they must be subjected to a referendum (Article 257).
12. The Constitution of Kenya (Amendment) Bill, 2025, seeks to, among other things, entrench the Senate Oversight Fund. This is stated to be intended to facilitate the Senate's oversight functions. The Senate serves as a critical institutional structure of devolved government. Based on these two facts, the Bill touches on the entrenched provisions under Article 255(1)(h) & (i) of the Constitution: the functions of Parliament and the structure of devolved government. The Bill will therefore need to be subjected to a referendum for approval.
13. However, the lack of legislation has created a gap in how referenda are to be understood and conducted. One of the fundamental gaps in the law regards the transition of the consideration of constitutional amendments from the parliamentary route to a referendum, where the Bill touches on the entrenched provisions under Article 255 of the Constitution. For instance, who makes the decision whether a Bill relates to the entrenched provisions, Parliament or the President?
14. There is a real threat that by dint of article 256(5), once the Constitutional Amendment Bill is presented to the President, he might assent to the same without subjecting it to a referendum if the current state of uncertainty as

to who bears this obligation, persists.

15. Further, there is no known criteria and/or legal framework to guide the custodian of this obligation in making the determination under Article 256(5), on whether the proposed amendments relate to Article 255(1).
16. What makes this legislative gap more unique hence deserving of particular and urgent attention is that once the President assents to and publishes a Constitutional Amendment Bill, its provisions become, not only law, but also enjoy constitutional status/supremacy, meaning that their validity and/or legality will automatically be excluded from challenge by or before any Court of law by virtue of Article 2(3) of the *Constitution*.
17. The threat to the enforcement of fundamental rights, the entire bulwark of constitutionalism and the rule of law, and the risk of entrenching constitutional amendments without following the correct procedure laid down in the Constitution are apparent. There is an urgent need to apprehend the risks and harms that may be caused by presidential assent on the Bill.
18. Allowing parliament to proceed with the constitutional amendments, without having a sufficient legal framework in place, and allowing parliament to pass a constitutional amendment having failed to enact a law to govern the process, would be akin to allowing parliament to steal a match against the Constitution.
19. Allowing parliament to proceed and conduct the scheduled public participation exercise for a constitutionally superfluous amendment bill in a context where there is no legal framework governing the conduct of referenda for the amendment of the Constitution will be a waste of significant public resources that could otherwise provide much needed

basic services in the context of Kenya's constrained fiscal environment. This will be contrary to the express provisions of Article 201 and Article 10 of the Constitution.

20. The need for this Court to invoke its solemn and sacred duty to preserve the subject matter of litigation and prevent it from being irrevocably altered in a manner over which there may be no adequate remedy at law is self-apparent.

21. Therefore, the urgency to arrest this terrible exercise is self-evident. The court is obligated to ensure that the meagre Kenyan resources are used prudently by stopping the planned public participation exercise and preventing the possible abuse of the constitutional amendment provisions where no law to govern the process exists.

Dated 02 May 2025, Nairobi



**Joshua Malidzo Nyawa**  
**Advocate for Petitioner**

**Drawn and filed by**

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**REPUBLIC OF KENYA**  
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CONTROLLER OF BUDGET..... 4TH RESPONDENT

AND

INUKA KENYA NI SISI ..... 1<sup>ST</sup> INTERESTED PARTY  
ELIUD MATINDI..... 2<sup>ND</sup> INTERESTED PARTY

**Notice of Motion**

(Under Rule 3(2),(3), (4) and (5), 19, 23 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and Article 23 of the Constitution of Kenya, 2010)

**TAKE NOTICE** that this Honourable court shall be moved on the ..... day of .....2025 at 9.00 in the morning or soon thereafter as Counsel for the Petitioners/Applicants may be heard on an application for orders that:

- a) This Application be certified urgent and heard on a priority basis in the first instance.

- b) Pending the hearing and determination of the Application, a conservatory order do issue suspending the public participation exercise scheduled for 5 May 2025 to 7 May 2025.
- c) Pending the hearing and determination of the Application, a conservatory order do issue restraining the Controller of Budget from approving the withdrawal of any funds for any expenditure related to the conduct of the scheduled public participation.
- d) Pending the hearing and determination of the Petition, a conservatory order do issue suspending the public participation exercise scheduled for 5 May 2025 to 7 May 2025.
- e) Pending the hearing and determination of the Petition, a conservatory order do issue prohibiting Parliament from forwarding the Constitution of Kenya (Amendment) Bill, 2025 to the President for assent.
- f) Pending the hearing and determination of the Petition, a conservatory order do issue restraining the Controller of Budget from approving the withdrawal of any funds for any expenditure related to the conduct of the scheduled public participation.
- g) Pending hearing and determination of the Petition, a conservatory order do issue restraining the president from assenting to the Constitution of Kenya (Amendment) Bill, 2025.
- h) The Court be pleased to certify that the Petition raises substantial questions of law under Article 165(4) of the Constitution warranting the empanelment of an uneven number of judges (not less than three) to hear and determine the matter.

- i) Costs of the application be borne by the respective parties given the public interest nature of this Petition.

Which Application is based on the following grounds and supported by the affidavit of **Emily Kinama**:

1. Kenya is currently operating in a constrained fiscal environment that threatens the provision of basic services and the realisation of rights. This fiscal environment centres and gives prominence to the constitutional imperative for prudent and responsible use of public funds as well as the requirement for responsible financial management, under Article 201 (d) & (e) of the Constitution. These are tied together with the principles of good governance and sustainable development under Article 10 (2)(c) & (d) of the Constitution.
2. However, contrary to this context and the constitutional imperatives above, the National Assembly has proposed constitutional amendments over matters that are either being lawfully implemented presently or that can rightly be implemented within the confines of the current constitutional framework. This is proposed under the Constitution of Kenya (Amendment) Bill, 2025 which seeks to entrench three (3) funds in the Constitution: National Government Constituencies Fund (NGCF), National Government Affirmative Action Fund (NGAAF) and the Senate Oversight Fund (SOF).
3. The proposed NGAAF is currently being implemented through the Public Finance Management Act (National Government Affirmative Action Fund) Regulations, 2016. Various court decisions, including that of the Supreme Court, have emphasized that the proposed NGCF can be lawfully implemented within the confines of the current constitution. The idea behind the proposed SOF is presently implemented through the budgetary provisions relating to Parliament under the Constitution.
4. Notwithstanding, and to further the realisation of this otherwise

constitutionally superfluous endeavour, the National Assembly has scheduled public hearings in all of Kenya's 290 constituencies to take place between 5 May and 7 May 2025.

5. For reference, public participation for an ordinary legislative proposal (as opposed to a constitutional amendment one) costs between 10million and 100 million. Ordinary legislative proposals do not require public hearings in all of Kenya's 290 constituencies. Public hearings for the proposed Constitution Amendment Bill, however, are scheduled to take place not only in each of the 290 constituencies but also in multiple places within those constituencies.
6. There is therefore a real risk that scarce public resources are in the process of being channelled towards an otherwise legitimate constitutional process, but which on close scrutiny is not only constitutionally superfluous but also runs afoul established constitutional principles.
7. Besides the above, the sanctity and uniquely important nature of constitution making and remaking processes demand a high level of clarity and certainty of the applicable rules and procedures. This is intended to ensure that the expression of the sovereign will of the people through them is unequivocal and beyond reproach. However, it is over 14 years post the promulgation of the Kenyan Constitution; 9 years post the constitutional deadline for the enactment of legislation intended to operationalize the Constitution and several recommendations from the Courts (including the Supreme Court) later, yet Kenya's current legislative terrain lacks a framework intended to guarantee this; a referendum law.
8. Therefore, constitutional amendment contemplated under chapter sixteen of the Constitution is an arduous and convoluted process that cannot be undertaken without first setting the guiding statutory and procedural rubric.
9. Parliament is mandated under Article 82 of the Constitution to enact legislation to provide for the "conduct of elections and referenda and the regulation and efficient supervision of elections and referenda."



10. The timelines within which such legislation was to be passed as per Article 261, as read together with the fifth schedule of the Constitution, was within 5 years from the date of promulgation of the Constitution.
11. The historical experiences in Kenya where the 1963 Independence Constitution was watered down due to the culture of hyper constitutional amendment underscores the need to have clear statutory guidelines on constitutional amendment before embarking on amending the Constitution. This requirement is embedded in the Constitution and any contrary route taken by the president and parliament is unconstitutional, null and void.
12. All organs of State including Parliament and the President must remain within the constitutional confines when interpreting and/or implementing the constitution. When the President, on 9<sup>th</sup> December 2022 requested Parliament to embark on constitutional amendments to establish the office of the leader of opposition and entrench into the Constitution certain funds including NGCF, SOF and NGAFF; he knew or ought to have known that there was no legislation governing the process. The first port of call was to request parliament to first enact legislation governing constitutional amendment before diving into the process of amending the Constitution.
13. The Constitution of Kenya (Amendment) Bill, 2025 seeks to, among other things, entrench the Senate Oversight Fund. This is stated to be intended to facilitate the Senate's oversight functions. The Senate serves as a critical institutional structure of devolved government. Based on these two facts, the Bill touches on the entrenched provisions under Article 255(1)(h) & (i) of the Constitution: the functions of Parliament and the structure of devolved government. The Bill will therefore need to be subjected to a referendum for approval.
14. However, the lack of legislation has created a gap in how referenda are to be understood and conducted. One of the fundamental gaps in the law regards the transition of the consideration of constitutional amendments

from the parliamentary route to a referendum, where the Bill touches on the entrenched provisions under Article 255 of the Constitution. For instance, who makes the decision whether a Bill relates to the entrenched provisions, Parliament or the President?

15. Parliament, by initiating an amendment to the constitution before passing the required legislation on referenda has jumped the gun and overlooked the constitutional requirement to enact legislation governing the constitutional amendment process.
16. The legislation on referenda is so central to the Constitutional amendment process because it will govern how a referendum is conducted if the proposed amendments fall under Article 255(1).
17. Courts have repeatedly called upon parliament to enact legislation on amendment of the constitution so that roles of different players can be outlined. For instance, it is not clear whether either Parliament or the President has a role in determining whether a Bill falls under article 255(1). Legislation is required to set out clear guidelines on how this determination can be made. It is thus a violation of the Constitution to initiate an amendment without the required legislation in place.
18. The Court has authority and the duty to enforce compliance with the Constitution.
19. It is imperative that the orders sought be granted in order to preserve the integrity of the Constitution.
20. Unless the Petition and the Application are certified as urgent, and the prayers sought in the application are granted, the Petition shall be rendered nugatory because:

- a) The constitutional obligation and commandment to use public resources prudently will be violated.
- b) Superfluous and redundant provisions that are inconsistent and in disharmony with the letter and spirit of the Constitution will

be passed and assented to.

- c) The Constitution of Kenya will be amended without a referendum law that sets out legal safeguards and procedures on amending the Constitution.
- d) The Constitution of Kenya (Amendment) Bill, 2025, will be passed without a referendum, yet it contains amendments touching on entrenched provisions that require one.
- e) The Constitution of Kenya (Amendment) Bill, 2025 will be passed and assented to and will not be subject to a challenge before any Court of law.
- f) Remedies issued at the Judgement stage are insufficient to address the harm done to the Constitution as amendments passed become part of the Constitution and therefore immune from challenge before any court of law.
- g) Public resources once used in the public participation exercise cannot be recovered.
- h) It is the duty of this Honourable Court to arrest a threat to the Bill of Rights and the Constitution of Kenya.

21. The Petition raises substantial questions warranting the empanelment of a bench of an uneven number of judges as follows:

- 1) Whether the Constitution can be amended to introduce amendments which conflict with existing constitutional provisions and principles.
- 2) Whether constitutional amendments can be initiated to provide for issues that the Constitution sufficiently considers and makes provision for.

- 3) Whether Parliament bears a positive obligation to sieve proposed constitutional amendments and make a determination on whether the issues sought to be addressed through the proposed amendments are capable of being adequately addressed within the confines of the existing the Constitution so as to preserve the sanctity of the Constitution and ensure the prudent and responsible use of public resources.
- 4) Whether a constitutional amendment can be initiated, considered and passed without a referendum law to govern the process.
- 5) Whether the memorandum accompanying a constitutional amendment bill should declare whether the bill touches on the entrenched provisions, hence should be subjected to a referendum?.
- 6) Whether the referendum law should provide for a mechanism for contesting the classification of an amendment Bill as either relating to or not relating to the entrenched provisions.

22. We ask that this Application be allowed as prayed.

Dated 02 May 2025, Nairobi



Joshua Malidzo Nyawa  
Advocate for Applicant

**Drawn and filed by**

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ELIUD MATINDI ..... 2<sup>ND</sup> INTERESTED PARTY

**Affidavit of Emily Kinama in Support of the Petition and Application**

I, Emily Kinama, make oath and state:

1. I am an adult resident of Nairobi and the Litigation Manager at Katiba Institute, the 1st Petitioner. My address of service is Post Office Box Number 26586-00100, Nairobi, in the Republic of Kenya.
2. Katiba Institute is a Constitutional litigation and research institution established in 2011 to promote knowledge and understanding of Kenya's Constitution and Constitutionalism and to defend and facilitate the implementation of the Constitution.

3. I am familiar with the issues relating to this Petition and am competent to swear this affidavit.
4. I have been authorised by the Executive Directors of the 2nd, 3rd, 4th and 5th Petitioners to swear this Affidavit on their behalf in support of the Petition.
5. The genesis of this Petition emanates from a Memorandum dated 9 December, 2022 President William Ruto requested parliament to embark on constitutional amendments to address implementation of the two thirds gender quarter, establish the office of the leader of opposition and entrench into the Constitution certain funds including the constituency development fund, senate oversight fund and National Government Affirmative Action fund. *Annexed herewith and marked EK 1 is a copy of the Memorandum.*
6. Picking the cue from the President, Members of Parliament have introduced in the National Assembly, the Constitution of Kenya (Amendment Bill, 2025) whose object is to amend the Constitution to introduce the following funds in the Constitution.
7. Clause 2 of the Bill seeks to amend the Constitution and introduce Article 204A which establishes the National Government Constituencies Fund (NGCF). The fund is established for the purposes of ensuring the provision of exclusive national government functions in each constituency.
8. Clause 2 of the Bill seeks to amend the Constitution to introduce Article 204B which establishes the Senate Oversight Fund (SOF). The fund is established for the purpose of ensuring that the senate is adequately resourced and empowered to perform its oversight functions.

9. Clause 2 of the Bill seeks to amend the Constitution to introduce Article 204C which establishes the National Government Affirmative Action Fund (NGAAF). The fund is established for the purpose of enhancing the measures of the national government on affirmative action. *Annexed herewith and marked EK 2 is a copy of the Constitution of Kenya (Amendment) Bill 2025*
10. On 17 April 2025, the Parliament published on its website the National Assembly's intention to undertake nationwide public participation on the Bill. The bill is scheduled for public participation from Monday May 5, 2025 to Wednesday May 7, 2025. *Annexed herewith and marked EK 3 is the call for Nationwide public participation as published by Parliament.*
11. Kenya is currently operating in a fiscally constrained environment. To wit, the entire national budget was revised in an unprecedented move this financial year to impose austerity measures. As a result, the government struggled to meet its financial obligations including the payment of capitation to schools for basic education. In a similar move, on 29 April 2025, Cabinet resolved, for a second time prior to the start of the upcoming financial year, to “to implement significant budget realignments in line with the government’s policy of fiscal consolidation and commitment to living within its means”. *Annexed herewith and marked EK 4 is the Cabinet Despatch dated 29 April 2025.*
12. This fiscal environment centers and gives prominence to the constitutional imperative for prudent and responsible use of public funds as well as the requirement for responsible financial management, under Article 201 (d) & (e) of the Constitution. These are tied together with the principles of good governance and sustainable development under Article

10 (2)(c) & (d) of the Constitution.

13. However, contrary to this context and the constitutional imperatives above, the National Assembly has proposed constitutional amendments over matters that are either being lawfully implemented presently or that can rightly be implemented within the confines of the current constitutional framework.
14. The proposed NGAAF is currently being implemented through the Public Finance Management Act (National Government Affirmative Action Fund) Regulations, 2016. Various court decisions, including that of the Supreme Court, have emphasised that the proposed NGCF can be lawfully implemented within the confines of the current Constitution. The idea behind the proposed SOF is presently implemented through the budgetary provisions relating to Parliament under the Constitution.
15. Notwithstanding, and to further the realisation of this otherwise constitutionally superfluous endeavour, the National Assembly has scheduled public hearings in all of Kenya's 290 constituencies.
16. For reference, public participation for an ordinary legislative proposal (as opposed to a constitutional amendment one) costs between 10 million and 100 million. *Annexed herewith and marked EK 5 is a report from the National Advertising Agency providing the indicative cost of public participation.*
17. Ordinary legislative proposals do not require public hearings in all of Kenya's 290 constituencies. Public hearings for the proposed Constitution Amendment Bill, however, are scheduled to take place not only in each of the 290 Constituencies but also in multiple places within those constituencies.



18. There is, therefore, a real risk that scarce public resources are being channelled towards an otherwise legitimate constitutional process that, on scrutiny, is not only constitutionally superfluous but also runs afoul of established constitutional principles.
19. Besides, the constitutional amendment process suggested by the President and initiated by Parliament through the Constitutional (Amendment) Bill, 2025 is being undertaken without first setting the guiding statutory and procedural rubric contemplated under Article 82 of the Constitution.
20. The Kenyan Superior Courts have repeatedly spoken to this by calling upon parliament to enact the said legislation. For instance, in *Attorney-General & 2 others v Ndii & 79 others; Dixon & 7 others (Amicus Curiae)* [2022] KESC 8 (KLR) MK Koome CJ. observed *Obiter* at paragraph 65 that  
Parliament needs to consider the onerous complexity in the implementation and compliance with the obligations in Chapter Sixteen and **enact a legislation to guide the constitutional amendment process.** This could be formulated in the mould of the Constitution of Kenya Review Act, No. 6 of 2009, which was enacted to guide the review of the repealed Constitution, only that the proposed legislation will provide a more detailed framework to guide the process of amendment according to the three tiered process, or if it is the desire of the people to add a fourth tier as proposed by the two superior courts.  
Moreover, it is necessary to note that many of the petitions challenged the impugned amendment process because there was no legislation that was put in place to govern the collection of signatures, the verification, public participation and the conduct of a referendum. In my humble view, it is not at all reasonable to expect

citizens to navigate all the numerous steps in the amendment process without a simplified guide drawn from legislation and even perhaps augmented by some rules or guidelines on the amendment process. The time and effort taken in determining this consolidated appeal is a testament that the provisions of Chapter Sixteen are complex and cannot be properly navigated without a legally ordained guide.

21. The CJ observed further at paragraph 68 *Obiter* that

It ought to be appreciated that the Legislature has a duty to fulfil its obligations under the Constitution by enacting legislation to actualize constitutional imperatives. Furthermore, pursuant to Article 10 of the Constitution, the Legislature and other State organs were under a command to implement or help realize the values and principles that the Constitution secures. **Taking into account that the Constitution also places an affirmative duty on the Legislature to enact a legislation on the conduct of referenda under article 82(1)(d), I implore the Legislature to enact comprehensive legislations that will implement these twin constitutional obligations** (*emphasis mine*).

22. Parliament is mandated under Article 82 of the Constitution to enact legislation to provide for the “conduct of elections and referenda and the regulation and efficient supervision of elections and referenda.” The timelines within which such legislation was to be passed as per Article 261, as read together with the fifth schedule of the Constitution, was within 5 years from the date of promulgation of the Constitution.

23. The historical experiences in Kenya where the 1963 independence Constitution was watered down due to the culture of hyper constitutional amendment underscores the need to have clear statutory guidelines on

constitutional amendment, before embarking on amending the Constitution. This requirement is embedded in the Constitution and any contrary route taken by the president and parliament is unconstitutional, null and void.

24. All organs of State including Parliament and the Presidency must remain within the constitutional confines when interpreting and/or implementing the constitution. In the Memorandum to Parliament, the President acknowledged that he has followed judicial determinations regarding the matters raised. It is therefore apparent that he knew or ought to have known that there was no legislation governing the process of constitutional amendment. The first port of call was to request parliament to first enact legislation governing constitutional amendment before diving into the process of amending the Constitution.
25. Parliament, by initiating an amendment to the constitution before passing the required legislation on referenda has jumped the gun. The legislation on referenda is so central to the constitutional amendment process because it will govern how a referendum is conducted if the proposed amendments fall under Article 255(1).
26. The Constitution of Kenya (Amendment) Bill, 2025 seeks to, among other things, entrench the Senate Oversight Fund. This is stated to be intended to facilitate the Senate's oversight functions. The Senate serves as a critical institutional structure of devolved government. Based on these two facts, the Bill touches on the entrenched provisions under Article 255(1)(h) & (i) of the Constitution: the functions of Parliament and the structure of devolved government. The Bill will therefore need to be subjected to a referendum for approval.

27. However, the lack of legislation has created a gap in how referenda are to be understood and conducted. One of the fundamental gaps in the law regards the transition of the consideration of constitutional amendments from the Parliamentary route to a referendum, where the Bill touches on the entrenched provisions under Article 255 of the Constitution. For instance, who makes the decision whether a Bill relates to the entrenched provisions, Parliament or the President?

28. It is the legislation will bring clarity on the role of the President in determining if a Bill falls under Article 255(1). The legislation is required to set out clear guidelines on how this determination can be made. Mwilu DCJ in the above quoted case of *Attorney-General & 2 others v Ndihi & 79 others; Dixon & 7 others (Amicus Curiae)* observed at paragraph 81 that:

**The role of the President with regard to determining whether or not the amendment Bill was to be subjected to a referendum was ceremonial.** Though an important role, it was a formality. Kenya was a constitutional democracy, and the roles and functions of all persons were subject to the Constitution. The President was not the sovereign, the sovereign in Kenya was the people of Kenya. All the authority exercised by the President was delegated by the sovereign people of Kenya through the Constitution and thus exercised always under and pursuant to the Constitution.

29. It is a violation of the constitutional imperatives to initiate an amendment without the required legislation in place and this court has authority and the duty to enforce compliance with the Constitution.

30. The public interest demands that the Constitution be upheld, Bill of Rights be protected and the values and principles be realised. It is in the public

interest that the Application be allowed.

31. Unless the Petition and the Application are certified as urgent, and the prayers sought in the application are granted, the Petition shall be rendered nugatory because:

- a) The constitutional obligation and commandment to use public resources prudently will be violated.
- b) Superfluous and redundant provisions that are inconsistent and in disharmony with the letter and spirit of the Constitution will be passed and assented to.
- c) The Constitution of Kenya will be amended without a referendum law that sets out legal safeguards and procedures on amending the Constitution.
- d) The Constitution of Kenya (Amendment) Bill, 2025, will be passed without a referendum, yet it contains amendments touching on entrenched provisions that require one.
- e) The Constitution of Kenya (Amendment) Bill, 2025 will be passed and assented to and will not be subject to a challenge before any Court of law.
- f) Remedies issued at the Judgement stage are insufficient to address the harm done to the Constitution, as amendments passed become part of the Constitution.
- g) Public resources once used in the public participation exercise cannot be recovered.

- h) It is the duty of this Honourable Court to arrest a threat to the Bill of Rights and the Constitution of Kenya.

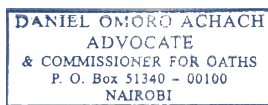
32. The Petition raises substantial questions warranting the empanelment of a bench of an uneven number of judges as follows:

- a) Whether the Constitution can be amended to introduce amendments which are in conflict with existing constitutional provisions and principles.
- b) Whether constitutional amendments can be initiated to provide for issues that the Constitution sufficiently considers and makes provision for.
- c) Whether parliament bears a positive obligation to sieve proposed constitutional amendments and make a determination on whether the issues sought to be addressed through the proposed amendments are capable of being adequately addressed within the confines of the existing the Constitution so as to preserve the sanctity of the Constitution and ensure the prudent and responsible use of public resources.
- d) Whether a constitutional amendment can be initiated, considered and passed without a referendum law to govern the process.
- e) Whether the memorandum accompanying a constitutional amendment bill should declare whether the bill touches on the entrenched provisions, hence should be subjected to a referendum.
- f) Whether the referendum law should provide for a mechanism for contesting the classification of an amendment Bill as either relating to or not relating to the entrenched provisions.

33. I swear this affidavit in support of the Application and the Petition.

34. What I have stated in this affidavit is true and accurate to the best of my knowledge, information, and belief. When I have relied on information outside my direct experience, I have explained why that information is reliable and included supporting exhibits

Sworn by Emily Kinama on 02 May 2025 in  
Nairobi



A handwritten signature in black ink, appearing to be "DA", followed by a horizontal line.

BEFORE ME  
COMMISSIONER OF OATHS


A handwritten signature in black ink, appearing to be "Emily Kinama", written over a horizontal line.

Emily Kinama  
Deponent

**Drawn and filed by**

Joshua Malidzo Nyawa,  
C/o Katiba Institute  
House No. 5, The Crescent, Off Parklands Road  
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litigation@katibainstitute.org  
jmnyawa@katibainstitute.org



This is the Exhibit Marked "EK - 1"  
Referred to in the Annexed Affidavit Declaration  
of Emily Kinama  
Sworn / declared before me  
this 02 day of May 2025  
at Nairobi  
  
Commissioner For Oaths



## EXECUTIVE OFFICE OF THE PRESIDENT

### MEMORANDUM

By **His Excellency the Honourable William Samoei Ruto**, PhD, CGH, President and Commander-in-Chief of the Kenya Defence Forces.

Submitted to:

The Speaker of the National Assembly; and  
The Speaker of the Senate.

Honourable Speakers, I write to engage you as the apex of parliamentary leadership, outside the rigid framework of Executive-Parliament interaction set out in Article 132 of the Constitution.

The purpose of this engagement is to initiate a collaborative exploration of existing opportunities to enrich Kenya's democratic experience by enhancing the institutional capacities, strengthening complementary interrelationships and refining the mandates, in order to develop the potential to conform with the constitution and actualise the nation's expectations.

A number of these opportunities call for measures to adjust the constitutional framework. At the same time, I am mindful of the imperative to defer to the judiciary's guidance, laid down





through the constitutional court's determination, that the president lacks legitimate authority to initiate changes to the constitution.

Nevertheless, I hold the firm belief that as president, I can and indeed must engage authorised entities like Parliament. Accordingly, the purpose of this letter to you, dear **Honourable Speakers**, is to request that Parliament considers all policy measures necessary and sufficient to fully actualise the promise of our constitution.

In effect, I am urging Parliament to exercise its full authority and precisely calibrate the balance of constitutional powers, deepen good governance, enhance inclusion in the democratic space, strengthen parliamentary oversight of the executive and promote the responsiveness of elected representatives to citizen aspirations. Broadly, the matters in which I request this purposive intervention are:

1. Implementation of the two-thirds Gender Rule.
2. Constituency Development, Senate Oversight and National Government Affirmative Action funds.
3. The position of the leader of official opposition.
4. Parliamentary oversight of the executive.

I am persuaded that the intrinsic implications of these matters are sufficiently fundamental to mobilise effective bipartisan parliamentary collaboration and ultimately generate broad consensus among citizens throughout the country.

## **1. Gender Inclusion and Affirmative Action**

On compliance with the gender inclusion framework of the two-thirds rule, it is regrettable that implementation has



become a conundrum that has remained unresolved for too long. There is a profound sense that we have failed Kenya's women, and I believe that it is time to make a decisive breakthrough.

There has been notable legislative endeavour to facilitate greater political participation by women, especially by encouraging more women to vie for elective positions. Equally appreciable are the significant gains made in terms of sustained increase in the number of women leaders elected to various positions. Despite this, the composition of the 13<sup>th</sup> Parliament remains far short of the constitutional minimum requirement. This non-compliance has far-reaching consequences.

We must recall that in 2020, the Chief justice wrote to the President calling for the dissolution of Parliament due to its non-conformity with the two-thirds gender inclusion principle.

I am committed to all efforts that will help us avert a similar constitutional predicament. Our government pledged to champion the promotion and realisation of women's inclusion and effective participation in every sphere of national endeavour. We have an opportunity to collaborate and deliver this critical mandate.

The constitution mandates the progressive realisation of the gender representation ratio set out in the gender inclusion principle through legislative and other policy measures.

**I therefore propose that, if Parliament concurs, a constitutional amendment be enacted, establishing a**





**formula to guide the computation of the gender ration in the National Assembly based only on the numbers of those members elected from the constituencies (National Assembly) and counties (Senate) per Art. 97(1)(a) and 98(1)(a) respectively. The proposed amendment can be set out under Art. 97(3).**

For the National Assembly, the effect of this formula would establish one-third at 97 members. There already exist 47 affirmative action seats dedicated to women leadership. The maximum number of seats required to fulfil the constitutional threshold would therefore be only 50. In the case of the current National Assembly, with 26 women elected from the constituencies, the nomination of an additional 24 women would suffice to meet the constitutional requirement.

By the same formula, the constitutional gender inclusion threshold would be met through the nomination of 16 women to the Senate.

I believe that trading off the increase in the parliamentary wage bill with the achievement of compliant inclusion of women in parliament is eminently worthwhile. I therefore encourage you to seriously consider it.

Another modality of achieving compliance is for political parties to deliberately embark on sustained, institutionalised and robust initiatives that facilitate the empowerment of women to successfully contest legislative seats in greater numbers. Apart from minimising or even eliminating the necessity of top-up nominations, this modality is superior as



it captures the proper spirit of affirmative action, and expresses the essence of the gender inclusion agenda.

There is empirical evidence to support the proposition that equipping and promoting more women to run for office will, in a few election cycles, bring the number of women contesting and winning elections to at least the same level as men.

In order to actualise this intention, I further propose that under an article 97(3)(b), existing legislation be amended to establish a Women's Inclusion and Political Participation Fund. The Fund will be drawn from a percentage of funds allocated to political parties, and will finance education and training, mentorship and capacity building as well as support for women seeking competitive elected representative positions.

It is my further suggestion, **Honourable Speakers**, that such amendments be subject to an appropriate sunset clause to retire it upon attainment of the constitutional requirement.

## 2. **Constituency Development, Senate Oversight and National Government Affirmative Action Funds**

I have followed the public discourse, parliamentary debate as well as judicial determinations on the constitutionality of the Constituency Development Fund and its successor, the National Government Constituency Development Fund, with great interest. It is essential, Honourable Speakers, that as leaders, we lead the way in following the law. It is equally paramount that we do not risk undermining our credibility by appearing to employ mischievous legalities and technicalities to skirt about constitutional boundaries. At the same time,





Parliament is the proper forum with full authority to develop laws that are not only constitutionally sound, but which are also responsive to citizens' aspirations.

In my days in Parliament, I served when there was no CDF, and also served when there was CDF. Localised problems often demand expeditious local interventions. CDF empowers legislators to perform their function of representation more effectively by keeping them in touch with the pulse of their constituencies. The CDF also makes the constituency a forum for continuous engagement on critical issues, and effective mobilisation to solve problems in the spirit of collective action. There is, therefore, a strong case to be made, rooted in the essence of the very idea of representative democracy, for the CDF to exist under an appropriate framework.

I am encouraged to note that the 13<sup>th</sup> Parliament is very much alive to the imperative of this moment, and has already taken up the issue through the Constitution of Kenya (Amendment) Bill, 2022. The proposed insertion of an Article 204A to establish the National Government Constituency Development, Senate Oversight and the National Government Affirmative Action Funds to be drawn out of the national government's shareable revenue, in my considered opinion, are sufficient for purposes of conformity with the express and implicit parameters set out by the constitutional court.

### **3. The Leadership of the Official Opposition**

The commitment to robust democracy, rule of law and effective checks and balances comes with the mandate to respect institutions and to promote sound institutional practices. The 2010 constitution defined and entrenched the



institutions established through democratic elections. However, whilst it provided adequately for the institutional subsistence of the majority side, in my view, the constitution fell short in providing similar clarity on the full post-election fate of the minority side. This is to say that the bipartisan symmetry between the majority and minority sides does not extend to its full logical extent.

The transition to the Presidential system, coupled with the exclusion of presidential candidates from simultaneously contesting parliamentary seats in a General Election created a novel political paradigm. The consequence is that the overall political leader of the minority side is effectively excluded from meaningful political participation, and left to rely on the minority house leaderships to perform the function of oversight. No sound rationale has been proffered to adequately allay the sense that this anomaly is the result of a monumental oversight.

I believe that the idea of Official Opposition, above and beyond mere minority parliamentary leadership, makes tremendous sense in terms of institutionalising governance, strengthening oversight and deepening democracy. The time has come for us to explore the possibility of remedying this shortcoming.

I therefore propose that Parliament consider an amendment to Chapter nine, Part IV of the constitution to establish the office of the Leader of the Official Opposition, with its operational dimensions to be provided for in consequential legislation.



#### **4. Parliamentary Oversight of the Executive**

It is ill-considered to interpret the rigid separation of powers established under the constitution as the effective insulation of various institutions and organs of government from oversight and accountability. I believe that our government will become more responsive, accountable and effective when it is subjected to rigorous oversight. There is tremendous benefit in experiencing checks and balances in the course of policy implementation.

The Executive has a vested interest in engaging productively with Parliament because the legislature is the custodian of critical instruments that are indispensable for the functioning of government. There is profound value in prosecuting the Executive's legislative agenda and elaborating government policy from the floor of the House, as opposed to segmented committee engagements. An additional benefit of executive participation in parliamentary business is transparency of public proceedings, which can close the information gap between citizens and government, thereby enhancing trust.

For these reasons, I recommend and request that Parliament consider formulating a mechanism within its Standing Orders to facilitate the participation of Cabinet Secretaries/ Chief Administrative Secretaries in parliamentary proceedings, particularly by responding to questions raised by MPs.

#### **Honourable Speakers,**

I have taken this opportunity to transmit the foregoing proposals in good faith, trusting that Parliament will consider them in the spirit of perfecting our democratic institutions,





unlocking the promise of our constitutional dispensation and enhancing our nation's capacity to actualise the aspirations of Kenyans.

I am sensitive to the current state of our nation, which is settling down after a long season of vigorous political mobilisation. For this reason, it is important that we endeavour to pursue only those pathways to institutional changes by means which do not entail the resumption of disruptive and potentially divisive mobilisation for a referendum, or campaigning. The proposals set out above, in my considered view, satisfy this critical prudential safeguard.

It is my hope then, that these proposals elicit appropriate consultation and bipartisan deliberation, and, in due course, enable the people's representatives do their part in liberating the country from contradictions and dilemmas which have cost us a lot of opportunities.

**I HAVE SET MY HAND** unto this Memorandum on this **NINTH** Day of **DECEMBER**, 2022.

A handwritten signature in black ink, reading 'William Samoei Ruto'.

**WILLIAM SAMOEI RUTO**  
**PRESIDENT.**



This is the Exhibit Marked **EK - 2**  
Referred to in the Annexed Affidavit Declaration  
of **Emily Kinama**  
Sworn / declared before me  
this **2** day of **May** 20**25**  
at **Nairobi**  
*[Signature]*  
Commissioner For Oaths

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 22 (National Assembly Bills No. 4)*



REPUBLIC OF KENYA

**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2025**

**NAIROBI, 26th February, 2025**

CONTENT

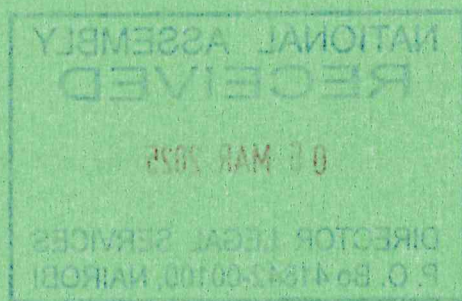
Bill for Introduction into the National Assembly—

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The Constitution of Kenya (Amendment) Bill, 2025 ..... 59









**THE CONSTITUTION OF KENYA (AMENDMENT)  
BILL, 2025**

**A Bill for**

**AN ACT of Parliament to amend the Constitution of  
Kenya**

**ENACTED** by the Parliament of Kenya as follows—

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2025.

Short title.

2. The Constitution is amended by inserting the following new Articles immediately after Article 204—

Insertion of new  
Articles in the  
Constitution.

National Government  
Constituencies Fund.

**204A.** (1) There is established the National Government Constituencies Fund.

(2) The National Government Constituencies Fund is established for the purpose of ensuring the provision of exclusive national government functions in each constituency.

(3) The National Government Constituencies Fund shall be a national government fund consisting of monies appropriated from the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218.

(4) All monies allocated under this Article shall be considered as funds allocated to constituencies to be administered in accordance with the provisions of an Act of Parliament.

(5) Parliament shall enact legislation to make further provisions for the operation of this Article.

Senate Oversight  
Fund

**204B.** (1) There is established the Senate Oversight Fund.

(2) The Senate Oversight Fund is established for the purpose of ensuring that the Senate is adequately resourced and



empowered to perform its oversight functions.

(3) The Senate Oversight Fund shall be a national government fund consisting of monies appropriated from the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218.

(4) All monies allocated under this Article shall be considered as funds allocated to the Senate to be administered in accordance with the provisions of an Act of Parliament.

(5) Parliament shall enact legislation to make further provision for the operation of this Article.

National Government  
Affirmative Action  
Fund.

**204C.** (1) There is established the National Government Affirmative Action Fund.

(2) The National Government Affirmative Action Fund is established for the purpose of enhancing the measures of the national government on affirmative action.

(3) The National Government Affirmative Action Fund shall be a national government fund consisting of monies appropriated from the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218.

(4) Parliament shall enact legislation to make further provision for the operation of this Article.



## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of objects and reasons for the Bill**

The principal object of this Bill is to amend the Constitution to entrench the following Funds in the Constitution—

- (a) the National Government Constituencies Fund;
- (b) the Senate Oversight Fund; and
- (c) the National Government Affirmative Action Fund.

The establishment of the National Government Constituencies Fund in the Constitution will ensure reasonable access to exclusive national government functions in all constituencies as envisaged in Article 6(3) of the Constitution and ensure the participation of the people in the identification and implementation of priority national government programmes.

The establishment of the Senate Oversight Fund in the Constitution will ensure that the Senate is adequately empowered and resourced to perform its oversight functions.

The establishment of the National Government Affirmative Action Fund shall enhance the measures of the national government on affirmative action.

### **Statement on the delegation of legislative powers and limitations of fundamental rights and freedoms**

The Bill does not delegate legislative powers nor does it limit any fundamental rights and freedoms.

### **Statement on whether the Bill concerns county governments**

Pursuant to Article 256 of the Constitution, a Bill to amend the Constitution through a parliamentary initiative is considered by both Houses of Parliament.

### **Statement on whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

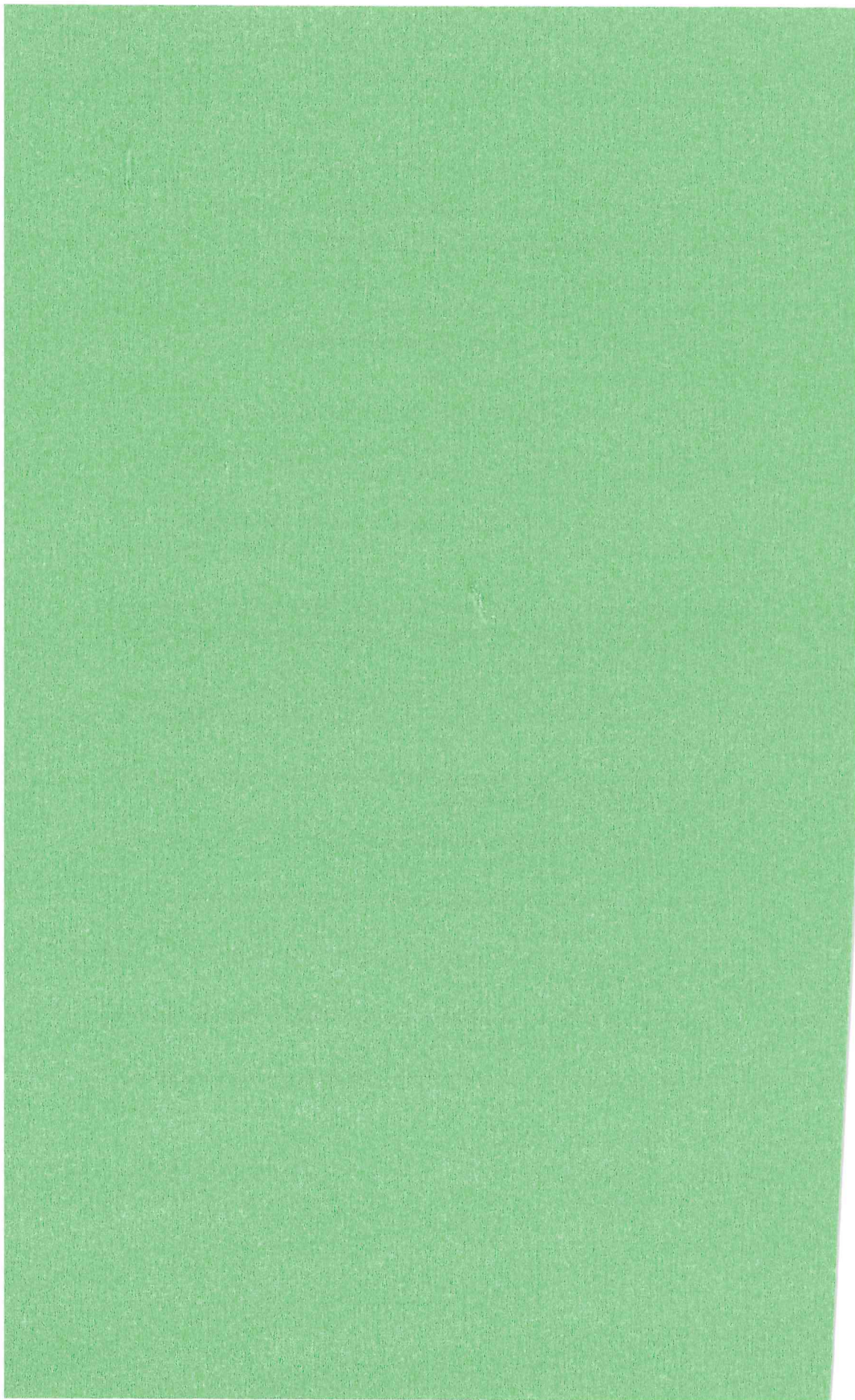
The Bill contains provisions dealing with appropriation and issue of public money.

Dated 25th February, 2025.

SAMUEL CHEPKONG'A,  
*Member of Parliament.*

OTIENDE AMOLLO,  
*Member of Parliament.*















This is the Exhibit Marked "EK-3"  
Referred to in the Annexed Affidavit Declaration  
of.....  
Emily Kinama  
Sworn / declared before me  
this.....day of..... May 2025  
at..... Nairobi  
.....  
Commissioner For Oaths



THIRTEENTH PARLIAMENT - FOURTH SESSION (2025)  
THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLES 118(1)(B) AND 256(2) OF THE CONSTITUTION  
AND  
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE CONSTITUTION OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY  
BILL NO. 4 OF 2025)

NOTIFICATION OF PUBLIC HEARINGS AND INVITATION TO SUBMIT VIEWS

**WHEREAS**, Articles 118(1)(b) and 256(2) of the Constitution require Parliament to facilitate public participation and involvement in its legislative and other business and to publicise any Bill to amend the Constitution and facilitate public discussion about the Bill;

**AND WHEREAS**, the **Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 4 of 2025)** was read a First Time on **Wednesday, 12th March 2025**, and referred to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House;

**IT IS NOTIFIED** that the **Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 4 of 2025)** is a Bill co-sponsored by the **Hon. Samuel Chepkong'a, MP** and the **Hon. Otiende Amollo, MP** that seeks to amend the Constitution to entrench the following Funds in the Constitution—

**(1) The National Government Constituencies Fund** for purposes of ensuring reasonable access to exclusive national government functions in all constituencies as envisaged in Article 6(3) and ensure the participation of the people in the identification and implementation of priority national government programmes;

**(2) The Senate Oversight Fund** to ensure that the Senate is adequately empowered and resourced to perform its oversight functions; and

**(3) The National Government Affirmative Action Fund** to enhance the measures of the national government on affirmative action.

**NOW THEREFORE**, in compliance with Articles 118(1) (b) and 256(2) of the Constitution and National Assembly Standing Order 127(3), and further to the advertisement dated 21<sup>st</sup> and 22<sup>nd</sup> April 2025, the Departmental Committee on Justice and Legal Affairs has, in addition to receiving written memoranda and consulting relevant stakeholders and experts on technical subjects, resolved to hold **public hearings on Monday, 5<sup>th</sup> May 2025, Tuesday, 6<sup>th</sup> May 2025, Wednesday 7<sup>th</sup> May 2025 and Thursday 8<sup>th</sup> May 2025 from 8.00 am to 5.00pm** across the country at the below **290 Constituency Offices of Members of the National Assembly and 47 County Women Representative Offices of Members of the National Assembly**, which are Offices under the Parliamentary Service Commission—

VENUES OF PUBLIC HEARINGS

S/No.	CONSTITUENCY/ COUNTY	OFFICE LOCATION
1.	Mombasa County	Tudor Mwisho, Mombasa
2.	Changamwe	NG-CDF Building next to Deputy County Commissioner's Office
3.	Jomvu	Jomvu Sub-County Office Complex, Next to Mikindani Police Station
4.	Kisauni	Karigithu House, Karissa Maitha Road, Zamzam Stage, Opposite Jocham Hospital.
5.	Nyali	Nyali NG-CDF Building, Kongowea kwa Chief
6.	Likoni	Likoni NG-CDF Building, Mrima Street opposite Mt. Sinai Academy
7.	Mvita	Tudor near Tudor Water Sports, Tom Mboya Road
8.	Kwale County	Barracuda Building, Opposite Swahili Dishes, Kwale Town
9.	Msambweni	Gazi Complex, Lunga Lunga Highway
10.	Lungalunga	Lungalunga NG-CDF Office, Lungalunga Road
11.	Matuga	Matuga NG-CDF Office, Kwale High Road
12.	Kinango	Kinango NG-CDF Building
13.	Kilifi	Kilifi Plaza Building –Next to Equity Bank, Kilifi Town
14.	Kilifi North	Kilifi North Deputy County Commissioner's Office Block, Behind Huduma Centre
15.	Kilifi South	Kilifi South NG-CDF Building, Vipingo Shopping Centre, Malindi Road
16.	Kaloleni	Kaloleni NG-CDF Building
17.	Rabai	Rabai NG-CDF Offices, Shikadabu
18.	Ganze	Ganze NG-CDF Offices, Bamba Building
19.	Malindi	Malindi NG-CDF Office, County Assembly Road next to Mawasco Office
20.	Magarini	Marafa Centre, Hospital Road
21.	Tana River County	Chufana, Hola Malindi Road
22.	Garsen	Homeboys Building, Posta – Garsen Road
23.	Galole	Hola Mission, Laza Primary – Hola Primary School Road
24.	Bura	Bura NG-CDF Building
25.	Lamu County	Loserene House, Lamu-Garsen Road
26.	Lamu East	Mwenye Zein Area, Hon. Shakila Road
27.	Lamu West	Lake Kenyatta Farmers Cooperative Society Building
28.	Taita/Taveta County	Mwatate -Taveta Road
29.	Taveta	Taveta NG-CDF Office
30.	Wundanyi	Wundanyi NG-CDF Building
31.	Mwatate	Mwatate NG-CDF Hall
32.	Voi	Voi NG-CDF Offices, Adjacent to Voi Law Court
33.	Garissa County	Lamu Road, Garissa
34.	Garissa Township	Kismayo Road, Opposite IPOA Office
35.	Balambala	Opposite Balambala Deputy County Commisisoner's Office
36.	Lagdera	Modogashe Town
37.	Dadaab	Halima Homes, Kismayu Road
38.	Fafi	Lamu Road, Off Lanten Resort, next to IEBC Office
39.	Ijara	Opposite Masalani Primary
40.	Wajir County	Adala Building, Wajir Town
41.	Wajir North	Abdille building, along Moyale-Dandu Road. Bute town.
42.	Wajir East	Wajir East NG-CDF Office, Halane Road
43.	Tarbaj	Mansa Road. Tarbaj Town
44.	Wajir West	Griftu, along Moyale Road

45.	Eldas	Eldas NG-CDF Offices, Anole Road
46.	Wajir South	Abdikani House, Diif Road
47.	Mandera County	Next to County Commissioner Office, B9 Road, Old Town
48.	Mandera West	Takaba Plaza, Takaba – Elwak Road
49.	Banissa	Opposite Makka Hardware, Banisa Takaba Road
50.	Mandera North	Dariqa Road along Deputy County Commissioner/ Administration Police Camp, Rhamu
51.	Mandera South	Elwak South, B9 Road, Old Town
52.	Mandera East	Along Jamia Mosque Street, Mandera
53.	Lafey	Next to Government Offices, B9 Road, Lafey
54.	Marsabit County	Bank Cotters/Badasa Road, Marsabit Town
55.	Moyale	Moyale NG-CDF Office, Hospital Road
56.	North Horr	North Horr NG-CDF Office, Hospital Road next to County Assembly's Office, Turbi
57.	Saku	Saku NG-CDF Building, Marsabit Town
58.	Laisamis	Laisamis, Along Laisamis – Marsabit Highway
59.	Isiolo County	Behind DCIO Office, Tullu Roba
60.	Isiolo North	Isiolo North NG-CDF Building, Isiolo Town
61.	Isiolo South	Isiolo South NG-CDF Building, Garbatulla
62.	Meru County	Kinoru Area, Imenti North
63.	Igembe South	Igembe South NG-CDF Building, Maua Town, Kanuni Street
64.	Igembe Central	Igembe Central NG-CDF Offices, Kangeta Town
65.	Igembe North	Igembe North NG-CDF Offices, Laare
66.	Tigania West	Tigania West NG-CDF Offices, Kirindine – Miathene Road, Urru
67.	Tigania East	Tigania East NG-CDF Offices, Meru– Kianjai-Maua Road
68.	North Imenti	North Imenti NG-CDF Building, Mwendantu Road, Meru Town
69.	Buuri	Buuri NG-CDF Building, Buuri West Sub-County Headquarters Compound, Timau Township
70.	Central Imenti	NG-CDF Offices, Mutengo-Abohunguchi Central
71.	South Imenti	South Imenti NG-CDF Office, Kanyakine
72.	Tharaka Nithi County	H. Kathare Building, County Headquarters Road, Kathwana Town
73.	Maara	Maara NG-CDF Office, Kienganguru, Chogoria
74.	Chuka/ Igambang'ombe	Chuka/Igambang'ombe NG-CDF Building, Chuka Town
75.	Tharaka	Tharaka NG-CDF Office, Marimanti Town
76.	Embu County	Behind Embu Law Court, Embu Town
77.	Manyatta	Manyatta NG-CDF Office, Meru Nairobi Highway, Manyatta
78.	Runyenjes	Runyenjes NG-CDF Building, Embu Meru Road
79.	Mbeere South	Mbeere South Youth Empowerment Centre, Kiritiri Town
80.	Mbeere North	Mbeere North NG-CDF Building, Siakago Town
81.	Kitui County	Nzambani Park Building, Kitui Town
82.	Mwingi North	Mwingi North NG-CDF Building, Kyuso Town
83.	Mwingi West	Mwingi West Constituency NG-CDF Building, Migwani Town
84.	Mwingi Central	Mwingi District Trust Fund Building, Junction of Garissa-Tseikuru Road
85.	Kitui West	Kitui West NG-CDF Office, Kabati-Kitui Road, Ndolo's–Corner
86.	Kitui Rural	Kitui Rural NG-CDF Building, Kwavonza Shopping Centre, Machakos–Kitui Road
87.	Kitui Central	Kitui Central NG-CDF Office Building, Kitui–KwaNgindu Road
88.	Kitui East	Kitui East NG-CDFC Office, Chuluni-Kitui-Kibwezi Road
89.	Kitui South	Kitui South NG-CDF Building, Kitui Kibwezi Road, Mutomo
90.	Machakos County	ACK Building Emmanuel House, Machakos-Nairobi Road
91.	Masinga	Masinga Market Musyoka Musembi Building, Masinga-Katulye Road
92.	Yatta	Yatta NG-CDF Offices, Matuu Town
93.	Kagundo	Kangundo NG-CDF Office
94.	Matungulu	Matungulu NG-CDF Offices, Tala-Nairobi Road
95.	Kathiani	Nzaikoni Market, Kaviani-Nzaikoni Road
96.	Mavoko	Femapplex Building, Old Mombasa Road
97.	Machakos Town	Machakos Town NG-CDF Office, Utalii Road
98.	Mwala	Makutano Market, Kitui Road
99.	Makueni County	Punda Road, Wote
100.	Mbooni	Mbooni NG-CDF Building, Kithungo/Kikima Road
101.	Kilome	Romwa Building, Kasikeu Market, Kasikeu Road
102.	Kaiti	Kaiti NG-CDF Office, Wote-Machakos Road
103.	Makueni	Makueni NG-CDF Office Building, Opposite Makueni County Commissioner's Office, Wote-Makindu Road
104.	Kibwezi West	NG-CDF Building, Makindu off Nairobi–Mombasa Road. Next to Law Courts
105.	Kibwezi East	Kibwezi East NG-CDF Tower, Kambu Town Nairobi–Mombasa Road

106.	Nyandarua County	Olkalou Vatican Road, Ol Kalou Town
107.	Kinangop	Kinangop NG-CDF Building, Cooperative –AIC Church Road, Next to the Ministry of Agriculture.
108.	Kipipiri	Miharati Town Deputy County Commissioner's Office, Kinangop–Olkalou Road
109.	OlKalou	Nyandarua County Commissioner Ground, Gilgil–Olkalou Road
110.	Ol-Jorok	Ol-Jororok NG-CDF Office near Deputy County Commissioner's Office
111.	Ndaragwa	Deputy County Commissioner's Complex Building, Ndaragwa Town
112.	Nyeri County	Baden Powell Road, Nyeri Town
113.	Tetu	Wamagana Center, Tetu NG-CDF Building
114.	Kieni	Mama Naomi's House Opposite Naromoru Mosque, Naromoru Town
115.	Mathira	Mathira NG-CDF Building
116.	Othaya	Othaya NG-CDF Building, Kanyange Road
117.	Mukurweini	Mukurweini NG-CDF Office, Opposite Mukurweini Police Station
118.	Nyeri Town	Nyeri Town NG-CDF Building, Ruringa Stadium–Boma Inn Road
119.	Kirinyaga County	Machere Building, Kerugoya Town
120.	Mwea	Mwea East Sub-County Deputy County Commissioner's Office, Waruguru Road
121.	Gichugu	Gichugu NG-CDF Office, Kianyaga Town
122.	Ndia	Ndia NG-CDF Office, Baricho Shopping Center, Kagio Baricho Road
123.	Kirinyaga Central	Kirinyaga central NG-CDF Office, Kerugoya Town
124.	Murang'a County	Philan Building, Kenol Town
125.	Kangema	Kangema NG-CDF Office Building
126.	Mathioya	Mathioya Sub-County HQ Compound, Kiria-Ini Town
127.	Kiharu	Ngeka Center, Uhuru Highway, Murang'a Town
128.	Kigumo	Kigumo –Friends Building Kaharati-Kangari Road, Kigumo Town
129.	Maragwa	Chawaru Plaza, Kenol, Kimorori Road,
130.	Kandara	Kandara NG-CDF Building, Kandara Town
131.	Gatanga	Gatanga NG-CDF Offices, Mabanda Town.
132.	Kiambu County	Thaathi-Ini Estate, Kirigiti Road
133.	Gatundu South	Gatundu South NG-CDF Building opposite Equity Bank, Kenyatta Road
134.	Gatundu North	Gatundu North NG-CDF Office Buildings, Kamwangi Town
135.	Juja	Juja City Hall Building, Thika Road.
136.	Thika Town	Thika Town NG-CDF Office Buildings
137.	Ruiru	Steja house, DO's road, off Mwhiko Road, Githurai 45
138.	Githunguri	Githunguri NG-CDF Office Buildings
139.	Kiambu	Kiambu NG-CDF Towers opposite Kiambu Police Station
140.	Kiambaa	Kiambaa NG-CDF Office, Banana Hill Road.
141.	Kabete	Kabete Constituency office opposite Deputy County Commissioner's Office, Kaihuria Road-.
142.	Kikuyu	Kikuyu Sub-County Education Offices, Kikuyu Avenue, Kikuyu Road
143.	Limuru	Rock House Bata, Kihingo Road, Limuru Town
144.	Lari	Kimende Town, Main Sub-County Offices, Kimende-Kagwe Road
145.	Turkana County	Nawoitorong Road, Opposite Lodwar Hills Hospital
146.	Turkana North	Turkana North NG-CDF Building, Lokitaung Todonyang Road
147.	Turkana West	NG-CDF Buildings behind DRS Offices Kakuma Town.
148.	Turkana Central	Turkana Central NG-CDF Building, Nawoitorong Road
149.	Loima	Lorugum NG-CDF Building, Lorugum Centre
150.	Turkana South	Lokichar Ward, Kitale–Lodwar Road
151.	Turkana East	AIC Lokori Building, Lokori-Lokichar Road
152.	West Pokot County	Opposite Kilimo House, Kapenguria
153.	Kapenguria	Kapenguria NG-CDF Office Building, Governor's Residence Road
154.	Sigor	Sigor NG-CDF Office Building, Sigor Centre,
155.	Kacheliba	Kacheliba NG-CDF Office Building, Makutano-Alale Road, Kapchok
156.	Pokot South	Chepareria Centre, along Kapenguria-Ortum–Lodwar Highway
157.	Samburu County	KVDA Building, Maralal
158.	Samburu West	Samburu West NG-CDF Office Building, Kenyatta Avenue, Maralal
159.	Samburu North	Deputy County Commissioner Grounds, Baragoi, along Baragoi–South Horr Road
160.	Samburu East	Archers Post Road/Catholic Church Road, Wamba Town
161.	Trans Nzoia County	Opposite Ambwere Building, Police Lane Street, Kitale
162.	Kwanza	Kitale KFA building, Maziwa Road next to Kenya Seed Headquarters.

S/No.	CONSTITUENCY/ COUNTY	OFFICE LOCATION
163.	Endebess	Kongasis Building, Endebess
164.	Saboti	Teachers Plaza, Kitale Town
165.	Kiminari	St. Antony Road, Milimani Area, Kitale
166.	Cherangany	Kaplamai Road, Kitale
167.	Uasin Gishu County	Sagas Building, Eldoret East Street, Ainabkoi
168.	Soy	Soy Constituency NG-CDF Offices, County Commissioners Grounds, Coca-Cola Road
169.	Turbo	Turbo NG-CDF Offices, Cheramei Grounds, Along Eldoret-Malaba Highway
170.	Moiben	Moiben Constituency NG-CDF Offices, Ainaptich Estate, along Iten Road
171.	Ainabkoi	ET Center, Ronald Ngala Street, Eldoret
172.	Kapseret	Kapseret Sub County Building, Kapsabet Road
173.	Kesses	Jamboni Road off Eldoret-Nairobi Highway
174.	Elgeyo/Marakwet County	Boresha SACCO Building, Iten Town
175.	Marakwet East	Marakwet East NG-CDF Office, next to Chesoi Health Center, Chesoi-Kapsowar Road
176.	Marakwet West	Marakwet West NG-CDF Plaza, Kapsowar
177.	Keiyo North	Keiyo North NG-CDF Building, Iten Municipality, behind Huduma Centre
178.	Keiyo South	Keiyo South NG-CDF Building, Eldoret-Eldama Ravine Road
179.	Nandi County	Behind Transelite SACCO, opposite Kapsabet Police Station
180.	Tinderet	Songhor, Maraba, off Kopere-Timboroa Road
181.	Aldai	Aldai NG-CDF Offices, Kobujoi Area
182.	Nandi Hills	Kirui Complex, Henry Kosgei Street, Nandi Hills
183.	Chesumei	Chesumei NG-CDF Building, Chemundu Sub-County Headquarters, Baraton Road
184.	Emgwen	East View Namgoi, along Eldoret-Kapsabet Highway, Kapsabet
185.	Mosop	Lel Building, Rivatex-Kipkaren Road, Selia
186.	Baringo County	Kipnyekwei Building, Kabarnet-Kabartonjo Road
187.	Tiaty	Opposite Deputy County Commissioner's Office, Chemolingot Township
188.	Baringo North	Baringo North NG-CDF Office Building, Kabartonjo
189.	Baringo Central	Diwani Building along Church Road, Kabarnet
190.	Baringo South	Baringo South NG-CDF Building, Marigat Inn road
191.	Mogotio	Mogotio NG- CDF Office Building, Kipsogon Road
192.	Eldama Ravine	J.B Building along Eldama Ravine-Nakuru Road.
193.	Laikipia County	Mount Kenya Road, Nanyuki Town
194.	Laikipia West	Laikipia West NG-CDF Office Building, Nyahururu Area, Igwamiti Ward
195.	Laikipia East	Laikipia East NG-CDF Office Building, Kenyatta Street, Next to ACK Church
196.	Laikipia North	Butson Building, Nanyuki Hospital Road
197.	Nakuru County	Christ The King Cathedral, Ronald Ngala Road, Nakuru Town
198.	Molo	Molo NG-CDF Office Building, Molo Deputy County Commissioner's Compound
199.	Njoro	Njoro NG-CDF / Deputy County Commissioner's Offices, Homecraft Road, Njoro
200.	Naivasha	Jonka House, Biashara/Mama Ngina Roads Junction, Naivasha Town
201.	Gilgil	Gilgil NG-CDF Offices, Gilgil-Nyahururu Road
202.	Kuresoi South	Kuresoi South NG-CDF Building, Keringet, Molo-Olenguruone Road
203.	Kuresoi North	Kuresoi North NG-CDF Offices, Sirikwa, Highland road.
204.	Subukia	Lari Complex, along Nakuru-Nyahururu Road
205.	Rongai	Rongai NG-CDF Offices, Kambi ya Moto-Kabarak Road
206.	Bahati	Bahati NG-CDF Office Buildings, Bahati along Nyahururu Road
207.	Nakuru Town West	Nakuru Town West NG-CDF Offices, along Eveready/Gethima Road
208.	Nakuru Town East	Nakuru Town, Free Area Chief's Office, Oginga Odinga Road
209.	Narok County	Lenana Street, Narok Town
210.	Kilgoris	Kilgoris NG-CDF Office Buildings, Kilgoris-Kisii Road, Kilgoris Town
211.	Emurua Dikirr	Emurua Dikir NG-CDF Office Building, Dikir area,
212.	Narok North	Narok North NG-CDF Building, next to Narok Referral Hospital
213.	Narok East	Mara Resort building along Narok Road, Suswa
214.	Narok South	Narok South NG-CDF Office Buildings, Olulung'a Centre, Narok
215.	Narok West	Narok West NG-CDF office Buildings, Lemek-Mara Road
216.	Kajiado County	Bamako Close near Asyania Gardens, Rongai
217.	Kajiado North	Rescom House (National Bank Building), Ongata Rongai
218.	Kajiado Central	Kajiado Central NG-CDF Office Buildings, along Nairobi-Namanga road, Opposite County Commisioner's Office, Kajiado
219.	Kajiado East	Kajiado East NG-CDF Building, DO's Ground, Along Namanga Road, Kitengela
220.	Kajiado West	Kajiado West NG-CDF Office, Keekonyokie Ward, Kisamis
221.	Kajiado South	Kajiado South NG-CDF Building off Emali Loitokitik Road, Opposite DEB Primary School, Loitokitok
222.	Kericho County	Bethany Building, Temple Road, Kericho
223.	Kipkelion East	Londiani Junction, Kisumu Highway
224.	Kipkelion West	Kipkelion West NG-CDF Building
225.	Ainamoi	Ainamoi Center, Poiywek Road
226.	Bureti	Bureti NG-CDF Building, Opposite Bureti DDC Offices along Kericho-Kisii Road, Litein
227.	Belgut	Sosiot, along Sosiot-Chepnयोगaa Road
228.	Sigowet/Soin	Sigowet Center, Sigowet

S/No.	CONSTITUENCY/ COUNTY	OFFICE LOCATION
229.	Bomet County	Governor's Office Road, opposite Siloam Hospital
230.	Sotik	Sotik NG-CDF Offices, Sotik-Kericho Road
231.	Chepalungu	Chepalungu Constituency NG-CDF Building opposite Bomwai Building, Siongiroi
232.	Bomet East	Bomet East NG-CDF Offices, Longisa Market, Narok-Bomet Road
233.	Bomet Central	Stegro Plaza, Silibwet-Litein Road
234.	Konoin	Konoin NG-CDF Building Mogogosiek-Litein Road Mogogosiek
235.	Kakamega County	Amalemba National Housing, Kakamega-Kisumu Road
236.	Lugari	Parklands Building, Hospital Road, Lumakanda Town
237.	Likuyani	Likuyani NG-CDF Office Building, Eldoret- Kitale Road, Kongoni Junction
238.	Malava	Malava NG-CDF Office Building, Kakamega-Webuye Road, Malava Township
239.	Lurambi	Next to ABSA Bank, Kakamega Town
240.	Navakholo	Navakholo NG-CDF Office Building. Navakholo Main Market,
241.	Mumias West	Mumias West NG-CDF Office Building, along Mumias-Bungoma Road, Mumias Town
242.	Mumias East	Mumias East NG-CDF Office Building, Shianda
243.	Matungu	Matungu NG-CDF Office Building, Matungu Centre, Mumias-Busia Road
244.	Butere	Off Mumias-Buyangu Road, Butere Town
245.	Khwisero	Buyangu-Ekero Road, Khumalo Stage
246.	Shinyalu	Shinyalu NG-CDF Office, Khalisia House, Shinyalu Market
247.	Ikolomani	Malinya Market, Sigalagala-Butere Road
248.	Vihiga County	Cherry House Building, Kisumu-Kakamega Road
249.	Vihiga	Vihiga NG-CDF Building, Majengo- Luanda Road near Vihiga Police Station
250.	Sabatia	Sabatia NG-CDF Building, Sabatia Sub County Headquarters, Kapsabet -Chavakali Road
251.	Hamisi	Next to Tambua ACC Office, Jebrouk Centre, Jebrouk-Serem Road
252.	Luanda	Luanda NG-CDF Building, adjacent to Emutusa Primary School, Emutusa Area
253.	Emuhaya	Emuhaya NG-CDF Building, Itumbu Area, Luanda
254.	Bungoma County	Ministry of Housing Land, Ndengelwa Market, Bukembe West Ward
255.	Mt Elgon	Kapsokwony, Kaptama Town
256.	Sirisia	NG-CDF Buildings, Next to Sirisia Police station, Chwele-Sirisia-Lwakhakha Road
257.	Kabuchai	Tobias Building, Chwele Market
258.	Bumula	Bumula NG-CDF Building , Bumula Centre
259.	Kanduyi	Kanduyi NG-CDF Building, Kanduyi Market, Webuye-Malaba Road
260.	Webuye East	Next to KMTc, Webuye Town
261.	Webuye West	Matisi, Webuye-Bungoma Road
262.	Kimilili	Kimilili NG-CDF Building next to Kimilili District Hospital
263.	Tongaren	Kitale Road, Past Mfupi market, Mukuyuni Area
264.	Busia County	Tanaka Hospital Road, Busia
265.	Teso North	Teso North NG-CDF Building, opposite Amagoro Police Patrol Base
266.	Teso South	Amukura, Nambale-Malaba Road
267.	Nambale	Thorn and Thatch Road, behind Nambale Town Mosque, Nambale Town
268.	Matayos	Maccavvan Building, Mundika Market, Kisumu-Busia Road
269.	Butula	Butula NG-CDF building, Bumala- Ejinja road, next to Butula High School
270.	Funyula	Funyula NG-CDF Building, Near Funyula Police Station, Funyula Town
271.	Budalangi	Channa Building, Budalangi Market
272.	Siaya County	Siaya Hospital Road, Siaya
273.	Ugenya	Next to Ugenya NG-CDF Building, Sega Town
274.	Ugunja	Ugunja NG-CDF Building, Nyasanda- Ugunja Ring Road
275.	Alego Usonga	Alego Usonga NG-CDF Building, Siaya-Rabango Road
276.	Gem	Gem NG-CDF Building, Wagai Centre, Luanda-Siaya Road
277.	Bondo	Bondo NG-CDF Building, opposite Bondo Post Office
278.	Rarieda	Rarieda NG-CDF Office, next to Aram Market, Ndori-Luanda Kotieno Road
279.	Kisumu County	Tom Mboya Estate, next to Golden Elites Academy, Nyerere Road
280.	Kisumu East	Kisumu East NG-CDF Office, opposite Kunya Primary School, Kibos
281.	Kisumu West	Kisumu West NG-CDF Office, next to Kisumu West Deputy County Commissioner's Office, Kisumu-Busia Highway
282.	Kisumu Central	Tom Mboya Estate Behind Golden Elites Academy.
283.	Seme	Seme NG-CDF Building, Behind Seme Deputy County Commissioner's Office. Kisumu-Kombewa Road
284.	Nyando	Nyando NG-CDF Office Building, behind Tuungane, Ahero Town
285.	Muhoroni	Muhoroni NG-CDF Building, next to Muhoroni Deputy County Commissioner's Office/Chemelil Railways Station, Off Awasi-Nandi Hills Road
286.	Nyakach	Nyakach NG-CDF Building, Katito-Kendu Road, Pap Onditi Junction ,
287.	Homa Bay County	Opposite Department of Public Health, Homa Bay County
288.	Kasipul	Oyugis Town, behind Virgin Lake Hotel
289.	Kabondo Kasipul	Kisumu-Kisii Road, Nyamira Junction Centre
290.	Karachuoonyo	Pala Market, Pala Society Grounds
291.	Rangwe	Rangwe NG-CDF Office Building, opposite Rangwe Primary School

S/No.	CONSTITUENCY/ COUNTY	OFFICE LOCATION
292.	Homa Bay Town	Opposite Homabay High School, adjacent to Homabay Primary School
293.	Ndhiwa	Ndhiwa Multipurpose Hall, Rodi-Sori Road
294.	Mbita	Suba North NG-CDF Office opposite Kenya Women Finance Trust, off ICIPE Junction
295.	Suba South	Magunga Town, next to Police Station
296.	Migori County	Kimaiga Building, Migori-Kisii Road
297.	Rongo	Rongo NG-CDF Building next Rongo Deputy County Commissioner's Office
298.	Awendo	Awendo NG-CDF Building, next to Awendo Deputy County Commissioner's Office
299.	Suna East	Suna East NG-CDF Office, Posta Roundabout, Huduma Centre Road, next to IEBC offices
300.	Suna West	Suna West NG-CDF offices, Piny Oyie, Wasimbete,
301.	Uriri	NG-CDF Offices, ASSC Compound Rapogi, Off Rapogi-Awendo Road.
302.	Nyatike	Nyatike NG-CDF Office, Wath Onger Centre
303.	Kuria West	Kehancha Town behind Law Court
304.	Kuria East	Kuria East NG-CDF Building Opposite Deputy County Commissioner's Office, Kegonga Town
305.	Kisii County	GBV Centre, Daraja Moja Street, Kisii Town
306.	Bonchari	Bonchari NG-CDF Building, Suneka Town, Kisii-Migori Road
307.	South Mugirango	South Mugirango NG-CDF Building, Nyamarambe
308.	Bomachoge Borabu	Bomachoge Borabu NG-CDF Building, Kenyanya
309.	Bobasi	Next to Nyamache Deputy County Commissioner's Office
310.	Bomachoge Chache	Bomachoge Chache NG-CDF office, Tendere Area, Kisii-Kilgoris Road
311.	Nyaribari Masaba	Nyaribari Masaba NG-CDF Building, Masaba South Sub-County HQ, Masimba Town
312.	Nyaribari Chache	Nyaribari Chache NG-CDF Building, Kisii-Nairobi Highway, Keumbu Town
313.	Kitutu Chache North	Vumilia Flats, Marani
314.	Kitutu Chache South	Adjacent to Bosongo Hospital, Kisii-Migori Highway, Kisii Town
315.	Nyamira County	Risda Building, Nyagoso Road
316.	Kitutu Masaba	Kitutu Masaba NG-CDF Building, Tombe
317.	West Mugirango	West Mugirango NG-CDF Building, Nyamira Town
318.	North Mugirango	Opposite Ekereny ACC Office, Ekereny Centre, Nyamira-Kericho Road
319.	Borabu	Borabu NG-CDF Building, Deputy County Commissioner Street
320.	Nairobi City County	Komarock Sector One, Kangaru Road
321.	Westlands	Gituamba Lane, off Kyuna Crescent. Kyuna Estate
322.	Dagoretti North	House No 24, Mji-kenda Road, Lavington
323.	Dagoretti South	Dagoreti Deputy County Commissioner's Compound, Kawangware.
324.	Langata	Langata Deputy County Commissioner's Office, next to Wilson Airport
325.	Kibra	Off Kibra Drive, opposite Kibra Huduma Centre
326.	Roysambu	Ridgeville Gardens House, Ridgeways Road, opposite Jacaranda Close
327.	Kasarani	Kasarani NG-CDF Building, off Kangundo Road next to Njiru Chiefs Camp
328.	Ruaraka	Matigari Building, Ruaraka-Outer Ring Road
329.	Embakasi South	Nyayo Embakasi Gate D Road, Village Market, Lemara Hotel
330.	Embakasi North	Living Good Building, adjacent to KCB Bank/KWFT Bank, Outer Ring Road Kariobangi North
331.	Embakasi Central	Embakasi Central NG-CDF Building, Tushauriane Stage, Spine Road
332.	Embakasi East	East Donholm, Sunrise Estate Phase 3, House 1600
333.	Embakasi West	Umoja 1, Peacock Stage, House E118
334.	Makadara	KCB Building, Jogoo Lane, off Jogoo Road
335.	Kamukunji	Kamukunji Deputy County Commissioner's Building, Digo Road
336.	Starehe	Starehe NG-CDF Building, Kinyanjui Street, Kariakor, Nairobi
337.	Mathare	Juja Road, Deputy County Commissioner's Compound

Members of the public and stakeholders are hereby invited to attend, make oral representations or submit written memoranda on the Bill and discuss the Bill during the public hearings.

**IT IS FURTHER NOTIFIED** that the public may also continue submitting written representations on the Bill to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; by hand delivery to Main Parliament Buildings, Nairobi; or by email to ***constitutionamendment@parliament.go.ke*** and ***cna@parliament.go.ke*** to be received on or before **Tuesday, 10<sup>th</sup> June 2025 at 5.00pm**. A **Public Views Template** providing guidance on the form of submission to be received is available on ***www.parliament.go.ke***.

A copy of the Bill may be downloaded from the parliamentary website ***www.parliament.go.ke***

**S. NJOROGÉ, CBS**  
**CLERK OF THE NATIONAL ASSEMBLY**  
**2<sup>nd</sup> May, 2025**



This is the Exhibit Marked ".....EK-4....."  
Referred to in the Annexed Affidavit Declaration  
of.....Emily Kinama.....  
Sworn / declared before me  
this.....2.....day of.....May.....20.....25.....  
at.....Nairobi.....  
.....  
Commissioner For Oaths



REPUBLIC OF KENYA

**CABINET NEWS**

**APRIL 29, 2025**

**STATE HOUSE, NAIROBI**

The Cabinet has resolved to implement significant budget realignments in line with the government's policy of fiscal consolidation and commitment to living within its means.

In a Cabinet meeting chaired by President William Ruto at State House, Nairobi today, Cabinet Secretaries were directed to work closely with the National Treasury to identify and implement necessary adjustments within their respective ministries and State departments. This move aims to cap the fiscal deficit at no more than 4.5% of GDP for the 2025/26 financial year, down from 5.3% in 2023/24, 5.1% in 2024/25, and with a medium-term target of reducing the deficit to 2.7%.

As a result, the initial budget estimates of KSh4.3 trillion will undergo substantial revisions before being tabled in Parliament. These adjustments are part of broader austerity measures designed to strengthen fiscal discipline, reduce public debt vulnerabilities, and create the fiscal space necessary to deliver essential public goods and services.

In furtherance of these objectives, Cabinet also approved the Finance Bill, 2025, which focuses primarily on closing loopholes and enhancing efficiency, including addressing loopholes related to tax expenditures that have historically been exploited to siphon funds from public coffers, such as through inflated tax refund claims.

Importantly, the Bill seeks to minimise tax-raising measures. Instead, it aims to enhance tax administration efficiency through a new legislative framework. Key provisions include streamlining tax refund processes, sealing legal gaps that delay revenue collection, and reducing tax disputes by amending the Income Tax Act, VAT Act, Excise Duty Act, and the Tax Procedures Act.

Notably, the Bill proposes critical changes to support small businesses, allowing them to fully deduct the cost of everyday tools and equipment in the year of purchase, thereby eliminating unnecessary delays in accessing tax relief.



In addition, retirees will benefit significantly as all gratuity payments, whether in public or private pension schemes, will now be fully tax-exempt, ensuring dignity for Kenya's senior citizens after retirement.

Employers will also be required to automatically apply all eligible tax reliefs and exemptions when calculating Pay As You Earn (PAYE) taxes for employees. Currently, many employers omit these reliefs, forcing employees to seek refunds from the Kenya Revenue Authority.

These reforms underpin the Bottom-Up Economic Transformation Agenda (BETA) and reinforce the Government's commitment to building a stronger, more inclusive economy.

In a move to ensure predictability and strengthen emergency preparedness, the Cabinet also gave nod to the Public Finance Management (Amendment) Bill, 2024. This Bill mandates, rather than merely encouraging, all county governments to establish County Emergency Funds.

This decision follows the serious gaps exposed by the 2023 El Nino rains and stems from extensive consultations and a directive issued at the 24th Ordinary Session of the Intergovernmental Budget and Economic Council (IBEC) in August 2024. The amendment aims to equip counties with the financial readiness to respond swiftly to future emergencies, thereby protecting lives, livelihoods, and critical infrastructure.

In a demonstration of its commitment to enhancing governance, strengthening judicial independence, and attracting the most qualified legal professionals, the Cabinet endorsed the Judges Retirement Benefits Bill, 2025.

The Bill establishes a dedicated pension and retirement benefits framework for judges of the superior courts, moving them away from the general Pensions Act and recognising the unique demands of judicial service. It introduces a Defined Benefit system for serving judges and a Defined Contribution system for new appointees, ensuring financial



security, protecting judicial independence, and aligning with broader public sector pension reforms.

The new law provides for enhanced retirement benefits, including monthly pensions, gratuities, medical coverage, and diplomatic privileges for retired judges and their spouses, allowing them to retire with dignity after decades of service under strict ethical standards.

In line with the Government's focus on achieving Universal Health Coverage (UHC) and improving access to quality healthcare, especially in underserved regions, Cabinet approved the construction of two Level VI teaching and referral hospitals in Bungoma and Kericho counties in partnership with the African Development Bank.

To stimulate investment and deepen financial markets, the Cabinet gave a green light to amendments to the Capital Markets Act to remove shareholder limits in regulated institutions. While strong governance frameworks remain in place, the Cabinet Secretary retains the discretion to impose limits on specific license categories if necessary. These amendments are not expected to have a direct financial impact on government revenue.

Additionally, the Cabinet approved the Draft Pest Control Products Bill, 2024, which modernises the regulation of pest control products in Kenya. The Bill establishes the Pest Control Products Authority, aligns with constitutional and international standards, and enhances food safety, environmental protection, public health, and agricultural exports.

Finally, the Cabinet approved the establishment of a Consulate General in Port-au-Prince, Haiti. This decision underscores Kenya's commitment to promoting global peace and security while expanding diplomatic presence in the Caribbean. The consulate will provide strategic support to Kenya's leadership role in restoring law and order in Haiti.

**###**





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☎ (+254) 020 4920000 / 1



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This is the Exhibit Marked "EK-5"  
Referred to in the Annexed Affidavit Declaration  
of [Emily Kinama](#)  
Sworn / declared before me  
this 2 day of May, 2025  
at Nairobi  
*[Signature]*  
Commissioner For Oaths



[News Update](#) [Resources ▾](#)



## Mudavadi calls for fast-tracking of Public Participation Bill to cut costs

[NEWS](#) / TUE, 04/08/2025 - 10:29

### Baraka Mweni and Emmanuel Masha-KNA

Prime Cabinet Secretary Musalia Mudavadi has urged Parliament to fast-track the enactment of the Public Participation Bill 2024 to establish structured and cost-effective mechanisms for citizen involvement in governance.

Speaking at a Malindi hotel in an event organized by the Malindi Education and Development Association (MEDA), Mudavadi underscored the need to streamline public participation processes to curb excessive costs and avoid unnecessary litigation.

He highlighted the financial strain caused by the current approach, noting that Kenya spends billions of shillings annually on public participation, hindering the enactment of legislation and the implementation of government programs.

"It is important as a country to uphold public participation, because it is enshrined in the Constitution. I therefore appeal to our MPs to pass the

He called for a unified approach to public participation and urged the Auditor General to audit funds allocated for these exercises.

"The national government, the National Assembly, the Senate, county governments, and county assemblies all conduct separate public participation for the same legislation. We need the Auditor General to review this issue and provide guidance. Public participation must be conducted efficiently to avoid draining resources needed for development projects," Mudavadi said.

Mudavadi also defended the broad-based government approach, emphasizing the importance of unity among leaders to ensure equitable resource allocation across the country.

He acknowledged the challenges of securing a parliamentary majority and praised the cooperation between Kenya Kwanza and ODM within the broad-based government as a unique opportunity to advance the national agenda for long-term progress.

Public Participation Bill to make the process more efficient,” Mudavadi said.

He revealed that government agencies often conduct separate public participation exercises for the same legislation or program, leading to unsustainable expenditures.

“For instance, in the Department of Parliamentary Affairs within my office, we have compiled a list of over 700 legislative agendas awaiting parliamentary debate and approval. The cumulative cost of public participation for these agendas exceeds Sh7 billion, which is unsustainable,” he explained.

Mudavadi added that public participation costs for individual legislation range between Sh10 million and Sh100 million, diverting funds from critical sectors such as healthcare, which is already grappling with shortages of drugs and personnel.

Elected leaders from the Coast region echoed Mudavadi’s sentiments of unity and inclusive governance and commended the efforts of the President and ODM leader Raila Odinga for fostering political collaboration, that such efforts strengthen national cohesion and development.

The leaders included Kilifi Deputy Governor Flora Chibule, Malindi MP Amina Mnyazi and her counterparts Owen Baya of Kilifi North and Ali Wario of Garsen, UDA Secretary General Hassan Omar, Principal Secretary nominee for Youth Affairs Fikirini Jacobs and Shella ward MCA Twahir Abdulkarim among others.

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**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA IN NAIROBI**  
**HCCHRPET/E/2025**

In the matter of:       The supremacy of the Constitution, the preservation  
                                  of its values and principles, including the rule of law  
                                  and legality and the Bill of Rights, including  
                                  safeguarding the sovereignty of the people, the right  
                                  to vote, the right to fair administrative action and the  
                                  right to access justice

In the matter of:       The Constitution of Kenya (Amendment) Bill, 2025

In the matter of:       Violations and/or threatened violations of Articles  
                                  1(1), (3) & (4); 2(1), (2) & (4); 10, 19(1) & (2); 20;  
                                  21(1); 22; 23; 38; 47; 82, 255, 256, 257, 258, 259 (8),  
                                  261 of the Constitution of Kenya, 2010

KATIBA INSTITUTE .....1<sup>ST</sup> PETITIONER  
THE INSTITUTE FOR SOCIAL ACCOUNTABILITY ..... 2<sup>ND</sup> PETITIONER  
CENTRE FOR ENHANCING DEMOCRACY  
AND GOOD GOVERNANCE.....3<sup>RD</sup> PETITIONER  
TRANSPARENCY INTERNATIONAL-KENYA .....4<sup>TH</sup> PETITIONER  
KENYA HUMAN RIGHTS COMMISSION .....5<sup>TH</sup> PETITIONER

VERSUS

ATTORNEY-GENERAL..... 1<sup>ST</sup> RESPONDENT  
THE NATIONAL ASSEMBLY.....2<sup>ND</sup> RESPONDENT  
THE SENATE ..... 3<sup>RD</sup> RESPONDENT  
CONTROLLER OF BUDGET..... 4<sup>TH</sup> RESPONDENT

AND

INUKA KENYA NI SISI ..... 1<sup>ST</sup> INTERESTED PARTY  
ELIUD MATINDI ..... 2<sup>ND</sup> INTERESTED PARTY

**TO: THE HIGH COURT OF KENYA**

**PETITION**

**A. Introduction**

*I should think, with respect, that it speaks to a national malaise of inattention to duty, a satisfaction with dilatoriness, and being reactive instead of proactive on the part of officialdom, that the Referendum Law has never been passed notwithstanding that some two years ago Nyamweya, J. had spoken to its glaring need in Republic v Country Assembly Of Kirinyaga & Anor Ex Parte Kenda Muriuki & Anor (supra)’ Justice Kiage, Independent Electoral and Boundaries Commission & 4 others v Ndii & 312 others; Ojwang & 4 others (Amicus Curiae) (Petition E291 of 2021 & Civil Appeal E292, E293 & E294 of 2021 (Consolidated)) [2021] KECA 363*

1. Making, unmaking and remaking the Constitution is a supreme issue in Kenya’s rule of law and goes to the heart of our legal system. This stems from the historical struggle preceding the entrenchment of constitutionalism in Kenya. In a bid to defeat the independent ideas of the rule of law and constitutionalism, Kenya’s independent Constitution was pierced with amendments (call it dismembering) that removed all elements of constitutionalism. The amendments, however, were without *Wanjiku’s* input.
2. The struggle to promulgate the 2010 Constitution was, however, marked by *Wanjiku’s* participation in every stage of constitutional making. As such, the 2010 Constitution requires the participation of the people when amending fundamental rights and issues that go to the heart of our legal system and the social contract. Failure to involve the people, or failure to provide necessary information for people to adequately participate or know how to participate, has the effect of rendering proposed amendments and/or the process touching on such matters unconstitutional.
3. The Constitution emphasizes the people’s sovereignty, the values of

the rule of law, equity, inclusiveness, equality, human rights, and the right to vote guaranteed under **Article 38**.

4. Apart from merely guaranteeing the right, the Constitution places upon the State and its agencies the positive responsibility to ensure that all the people of Kenya, particularly those marginalised or vulnerable, can exercise their sovereignty.
5. The 2010 Kenyan Constitution is not self-executing. As such, parliament is required to enact a constitutional statute to regulate referenda. Article 82 mandates that parliament pass legislation to govern the conduct of referenda to give effect to the right to vote and the sovereignty of the people. Article 261, read together with the fifth schedule, requires parliament to have passed this law within 5 years of its promulgation.
6. Several Courts have already expressed themselves on the importance of legislation on referenda and how the failure to enact such legislation has created gaps in the enforcement of the Constitution. The Supreme Court of Kenya in **Attorney-General & 2 Others v Ndi & 79 Others; Prof. Rosalind Dixon & 7 Others (2022) eKLR, paras 226, 493, 501, 509, 2037, 2097** decried the lack of a referenda legislation and indicted parliament as follows

[2108] Before I conclude, it must be stressed that some of these issues would not have ended up before the courts had the offices and institutions concerned played their constitutional roles. The CKRC Final Report, long before the passage of the Constitution had recommended the enactment of a referendum law. Article 82 itself commands Parliament to enact legislation to provide for the “conduct of elections and referenda and the regulation and efficient supervision of elections and referenda”. This, Parliament has not done.

7. The Constitution of Kenya (Amendment) Bill, 2025, seeks to, among other things, entrench the Senate Oversight Fund. This is stated to be intended to facilitate the Senate’s oversight functions. The Senate

serves as a critical institutional structure of devolved government. Based on these two facts, the Bill touches on the entrenched provisions under Article 255(1)(h) & (i) of the Constitution: the functions of Parliament and the structure of devolved government. The Bill will therefore need to be subjected to a referendum for approval.

8. However, the lack of legislation has created a gap in how referenda are to be understood and conducted. One of the fundamental gaps in the law regards the transition of the consideration of constitutional amendments from the parliamentary route to a referendum, where the Bill touches on the entrenched provisions under Article 255 of the Constitution. For instance, who makes the decision whether a Bill relates to the entrenched provisions, Parliament or the President? Further, at what stage should the determination on whether the bill touches on entrenched provisions be made?
9. Contrary to the Courts' pronouncements and several constitutional provisions protecting the sovereignty of the people, right to vote, dignity and fair administrative action, as well as recognising the normative value-based state, the Respondents continue to treat the constitutional obligations, rights and freedoms as mere suggestions, superfluous, ornamental or lofty aspirations.
10. The failure to enact the referenda law threatens a democratic society based on the values of transparency, rule of law, constitutionalism, good governance, accountability, and human rights. Inaction needs to be met with a consequence.
11. Besides, Kenya is currently operating in a fiscally constrained environment. The entire national budget was revised in an unprecedented move this financial year to impose austerity measures. As a result, the government struggled to meet its financial obligations, including paying capitation to schools for basic education. In a similar move, on 29 April 2025, Cabinet resolved, for a second time prior to the start of the upcoming financial year, to "implement significant budget realignments in line with the government's policy of fiscal

consolidation and commitment to living within its means”.

12. This fiscal environment centers and gives prominence to the constitutional imperative for prudent and responsible use of public funds and the requirement for responsible financial management under articles 201 (d) and (e) of the Constitution. These are tied together with the principles of good governance and sustainable development under articles 10 (2)(c) and (d) of the Constitution.
13. However, contrary to this context and the constitutional imperatives above, the National Assembly has proposed constitutional amendments over matters that are either being lawfully implemented presently or that can rightly be implemented within the confines of the current Constitutional framework. This is proposed under the Constitution of Kenya (Amendment) Bill, 2025, which seeks to entrench three (3) funds in the Constitution: the National Government Constituencies Fund (NGCF), the National Government Affirmative Action Fund (NGAAF), and the Senate Oversight Fund (SOF).
14. The proposed NGAAF is currently being implemented through the Public Finance Management Act (National Government Affirmative Action Fund) Regulations, 2016. Various court decisions, including that of the Supreme Court, have emphasised that the proposed NGCF can be lawfully implemented within the confines of the current Constitution. The idea behind the proposed SOF is presently implemented through the budgetary provisions relating to Parliament under the Constitution.
15. Notwithstanding, and to further the realisation of this otherwise constitutionally superfluous endeavour, the National Assembly has scheduled public hearings in all of Kenya’s 290 constituencies to take place between 5 May and 7 May 2025.
16. For reference, public participation for an ordinary legislative proposal (as opposed to a constitutional amendment one) costs between 10 million and 100 million. Ordinary legislative proposals do not require public hearings in all of Kenya’s 290 constituencies. Public hearings for

the proposed Constitution Amendment Bill, however, are scheduled to take place not only in each of the 290 constituencies but also in multiple places within those constituencies.

17. There is therefore a real risk that scarce public resources are in the process of being channelled towards an otherwise legitimate constitutional process, but which on close scrutiny is not only constitutionally superfluous but also runs afoul established constitutional principle.
18. It is for these reasons that the Petitioner approaches the Court.

## **B. Description of Parties**

### **1. Petitioners**

19. The 1<sup>st</sup> Petitioner is Katiba Institute. It is a research and litigation institution established in 2011 with the mission of supporting the implementation of Kenya's 2010 Constitution, helping to resist efforts to undermine that Constitution, and generally assisting in developing a culture of constitutionalism in Kenya and the wider region.
20. The 2<sup>nd</sup> Petitioner is the Institute for Social Accountability. It is a movement that seeks to promote citizen empowerment and government accountability in Kenya with the aim of helping Kenyans fulfil the promise of constitutional reform.
21. The 3<sup>rd</sup> Petitioner is the Centre for Enhancing Democracy and Good governance. It is a not for profit non-governmental organization that works to advance the rights of vulnerable and marginalized communities in Kenya through innovative and strategic advocacy and capacity building using the Human rights-based approach to development.
22. The 4<sup>th</sup> Petitioner is Transparency International-Kenya. It is a not-for-profit organisation with the aim of developing a transparent and corruption-free society through good governance and social justice initiatives.

23. The 5<sup>th</sup> Petitioner is the Kenya Human Rights Commission. It is a non-governmental organization whose mandate is to enhance human rights centred governance at all levels.
24. The 1<sup>st</sup> Interested Party is Inuka Kenya Ni Sisi. It is a Kenyan grassroots social movement organisation founded in 2009 whose goal is to create and build a social movement that seeks to unite Kenyans to forge a collective identity, drive transformation in citizens and leaders, and, improve livelihoods for all.
25. The 2<sup>nd</sup> Interested Party is Eliud Matindi, a Kenya citizen who is enthusiastic about championing compliance with the constitution.

## **2. Respondents**

26. The 1st Respondent is the Attorney-General. The Attorney-General is an office established under Article 156 of the Constitution as the principal legal adviser to the government. The Attorney-General represents the national government in court or other legal proceedings.
27. The 2nd Respondent is the National Assembly. The National Assembly exercises legislative authority as a house of Parliament established under Article 93 of the Constitution. Its duties include representing the people of the constituencies, deliberating and resolving issues of concern to the people, enacting legislation, determining the allocation of revenue among the different levels of government, and overseeing national revenue expenditures.
28. The 3rd Respondent is the Senate. The Senate exercises legislative authority as a house of Parliament established under Article 93 of the Constitution. Among other things, the Senate represents the interests of counties, participates in making and deliberating bills concerning counties, and allocates and oversees national revenue.
29. The 4th Respondent is the Controller of Budget (COB). The COB oversees the implementation of the budgets by authorising withdrawals from public funds under Article 228(4) of the Constitution.

### **C. Statement of Standing and Jurisdiction**

30. The Petitioner institutes this petition on the strength of Article 3(1), which states that every person has an obligation to respect, uphold, and defend the Constitution of Kenya 2010.
31. The Petitioner is a person envisaged under Articles 22(2)(c) and 258(2)(c) of the Constitution, which provides every person with the right to approach this Honourable Court in the public interest and institute court proceedings, claiming that a right in the Bill of Rights or another constitutional provision, respectively, has been contravened or is threatened with contravention.
32. Under Article 165(3)(d)(i) and (ii) of the Constitution of Kenya, the High Court has jurisdiction to hear any question respecting the interpretation of this Constitution, including the determination of the question whether any law is inconsistent with or in contravention of this Constitution and whether anything said to be done under the authority of this Constitution or any law is inconsistent with, or in contravention of, the Constitution

### **D. Background to the petition**

33. The President, on December 9, 2022, wrote to the Speakers of the Senate and the National Assembly asking them to spearhead the process of making amendments to the Constitution to establish the office of the leader of opposition and entrench into the Constitution certain funds including the Constituency development fund, senate oversight fund and National Government Affirmative Action fund.
34. Picking the cue from the President, Members of Parliament have introduced in the National Assembly, the Constitution of Kenya (Amendment Bill, 2025) whose object is to amend the Constitution to introduce the following funds in the Constitution;
35. Clause 2 of the Bill seeks to amend the Constitution and introduce Article 204A which establishes the National Government Constituencies Fund. The fund is established for the purposes of



ensuring the provision of exclusive national government functions in each constituency.

36. Clause 2 of the Bill seeks to amend the Constitution to introduce Article 204B which establishes the Senate Oversight Fund. The fund is established for the purpose of ensuring that the senate is adequately resourced and empowered to perform its oversight functions.
37. Clause 2 of the Bill seeks to amend the Constitution to introduce Article 204C which establishes the National Government Affirmative Action fund. The fund is established for the purpose of enhancing the measures of the national government on affirmative action.
38. On 17 April 2025, the parliament published on its website the National Assembly's intention to undertake nationwide public participation on the Bill. The bill is scheduled for public participation from Monday May 5, 2025 to Wednesday May 7, 2025.

#### **E. Legal basis for the petition**

39. The Petition contests the constitutionality of the action of Executive and National Assembly to initiate the process of entrenching constitutionally superfluous amendments in the Constitution without regard to the constitutional imperatives on prudent and responsible use of public resources and without having complied with the constitutional obligation of enacting a referenda law, 15 years after promulgation of the Constitution, contending that the action violates the spirit, tenor, aspirations, and text of international law, the Constitution, and related legislation.

##### **a) Constitution of Kenya**

40. The Preamble to the Constitution recognises the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice, and the rule of law.
41. Article 1(1) of the Constitution of Kenya 2010 embodies the concept of the people's sovereignty and states that 'All sovereign power belongs

to the people of Kenya and shall be exercised only in accordance with this Constitution’.

42. Articles 2(1) and (4) of the Constitution provide that the Constitution is the supreme law of the Republic and binds all persons. Any law inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid.

43. Article 3(1) states, ‘Every person has an obligation to respect, uphold and defend this Constitution.’

44. Article 6(2) states that ‘the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation’.

45. Article 10 establishes the national values and principles of governance. Article 10(1):

The national values and principles bind all State organs, State officers, public officers, and all persons whenever any of them—

- (a) applies or interprets this Constitution;
- (b) enacts, applies or interprets any law; or
- (c) makes or implements public policy decisions.

46. Article 10(2) asserts that the national values and principles of governance include:

- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
- (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
- (c) good governance, integrity, transparency and accountability; and
- (d) sustainable development.

47. Chapter Four of the Constitution establishes the Bill of Rights. Article 19(1) states that '[t]he Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies'. According to Article 19(2), human rights and fundamental freedoms are protected to 'preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings'. Article 19(3). Provides that the rights and fundamental freedoms guaranteed in the Bill of Rights:

- (a) belong to each individual and are not granted by the State;
- (b) do not exclude other rights and fundamental freedoms not in the Bill of Rights but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and
- (c) are subject only to the limitations contemplated in this Constitution.

48. Article 20 addresses the application of the Bill of Rights. Articles 20(1)-(4) state that:

- (1) The Bill of Rights applies to all law and binds all State organs and all persons.
- (2) Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
- (3) In applying a provision of the Bill of Rights, a court shall—
  - (a) develop the law to the extent that it does not give effect to a right or fundamental freedom; and
  - (b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom.
- (4) In interpreting the Bill of Rights, a court, tribunal, or other authority shall promote—
  - (a) the values that underlie an open and democratic society

based on human dignity, equality, equity and freedom; and

(b) the spirit, purport and objects of the Bill of Rights.

49. Article 21 addresses the implementation of rights and fundamental freedoms. Articles 21(1), (3) & (4) state that:

(1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

(3) All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.

(4) The State shall enact and implement legislation to fulfil its international obligations regarding human rights and fundamental freedoms.

50. Article 22 provides for the enforcement of the Bill of Rights and provides that ‘every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened’.

51. Article 23(1) gives this Court ‘jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights’.

52. In proceedings alleging that a fundamental right or freedom has been denied, violated, infringed, or threatened, this Court may grant appropriate relief, including:

(a) a declaration of rights;

(b) an injunction;

(c) a conservatory order;

(d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the

Bill of Rights and is not justified under Article 24;

(e) an order for compensation; and

(f) an order of judicial review.

53. Article 24(1) states that ‘A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-

a) the nature of the right or fundamental freedom;

b) the importance of the purpose of the limitation;

c) the nature and extent of the limitation;

d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and

e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

54. Article 28 entitles every person to dignity and the right to have their dignity respected.

55. Article 38 of the Constitution safeguards the right to vote in elections and referenda. It provides that

(1) Every citizen is free to make political choices, which includes the right--

(a) to form, or participate in forming, a political party;

(b) to participate in the activities of, or recruit members for, a political party; or

(c) to campaign for a political party or cause.

(2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will



of the electors for—

(a) any elective public body or office established under this Constitution; or

(b) any office of any political party of which the citizen is a member.

3) Every adult citizen has the right, without unreasonable restrictions, (a) to be registered as a voter;

(b) to vote by secret ballot in any election or referendum; and

(c) to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.

56. Article 47(1) states that every person has the right to fair administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair; and (2) if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

57. Article 48 states that the state shall ensure access to justice for all persons and if any fee is reasonable and shall not impede access to justice.

58. Article 82 commands Parliament to enact legislation to provide for the “conduct of elections and referenda and the regulation and efficient supervision of elections and referenda.

59. Article 96 outlines the nature and role of the Senate. Specifically it states that:

(1) The Senate represents the counties, and serves to protect the interests of the counties and their governments.

(2) The Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113.

(3) The Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments.

(4) The Senate participates in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with Article 145.

60. Article 165(3)(a) and (b) establishes the High Court and vests it with unlimited jurisdiction in criminal and civil matters to determine whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened'. It also has jurisdiction under Article 165(3)(d):

to hear any question respecting the interpretation of this Constitution including the determination of—

(i) the question whether any law is inconsistent with or in contravention of this Constitution;

(ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution....

61. Article 201 details the principles of public finance. Specifically, the Articles 201(d) & (e) provide as follows:

(d) public money shall be used in a prudent and responsible way; and

(e) financial management shall be responsible, and fiscal reporting shall be clear.

62. Article 206 establishes the Consolidated Fund and allows for the establishment Funds separate from the Consolidated Fund for specific functions. Specifically, Article 206(1) states:

(1) There is established the Consolidated Fund into which shall be paid all money raised or received by or on behalf of the national government, except money that--

(a) is reasonably excluded from the Fund by an Act of Parliament and payable into another public fund established for

a specific purpose; or

(b) may, under an Act of Parliament, be retained by the State organ that received it for the purpose of defraying the expenses of the State organ.

63. Article 221 provides for the procedure for considering and approving Parliament's annual expenditure needs. Article 221(3) & (6) safeguard parliamentary budgetary autonomy by stipulating how the PSC and the National Assembly shall deal with parliament's budgetary estimates until they are included in the annual appropriations Act.

64. Article 255(1) provides that

(1) A proposed amendment to this Constitution shall be enacted in accordance with Article 256 or 257, and approved in accordance with clause (2) by a referendum, if the amendment relates to any of the following matters---

- (a) the supremacy of this Constitution;
- (b) the territory of Kenya;
- (c) the sovereignty of the people;
- (d) the national values and principles of governance referred to in Article 10 (2) (a) to (d);
- (e) the Bill of Rights;
- (f) the term of office of the President;
- (g) the independence of the Judiciary and the commissions and independent offices to which Chapter Fifteen applies;
- (h) the functions of Parliament;
- (i) the objects, principles and structure of devolved government; or
- (j) the provisions of this Chapter.

65. Article 256 governs the amendment of the Constitution through the parliamentary route as follows

(1) A Bill to amend this Constitution--

- (a) may be introduced in either House of Parliament;

(b) may not address any other matter apart from consequential amendments to legislation arising from the Bill;

(c) shall not be called for second reading in either House within ninety days after the first reading of the Bill in that House; and

(d) shall have been passed by Parliament when each House of Parliament has passed the Bill, in both its second and third readings, by not less than two-thirds of all the members of that House.

(2) Parliament shall publicise any Bill to amend this Constitution, and facilitate public discussion about the Bill.

(3) After Parliament passes a Bill to amend this Constitution, the Speakers of the two Houses of Parliament shall jointly submit to the President--

(a) the Bill, for assent and publication; and

(b) a certificate that the Bill has been passed by Parliament in accordance with this Article.

(4) Subject to clause (5), the President shall assent to the Bill and cause it to be published within thirty days after the Bill is enacted by Parliament.

(5) If a Bill to amend this Constitution proposes an amendment relating to a matter specified in Article 255 (1)--

(a) the President shall, before assenting to the Bill, request the Independent Electoral and Boundaries Commission to conduct, within ninety days, a national referendum for approval of the Bill; and

(b) within thirty days after the chairperson of the Independent Electoral and Boundaries Commission has certified to the President that the Bill has been approved in accordance with

Article 255 (2), the President shall assent to the Bill and cause it to be published.

66. Article 257 of the Constitution governs the amendment of the Constitution through popular initiative as follows:

- (1) An amendment to this Constitution 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 Articles 256 (4) and (5).

(10) If either House of Parliament fails to pass the Bill, or the Bill relates to a matter specified in 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).

67. Article 258(2) of the Constitution provides that 1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention. In addition to a person acting in their interest, court proceedings under clause (1) may be instituted by a person acting in public interest.

68. Article 259(1) requires that the Constitution be interpreted in a manner that:

- (a) promotes its purposes, values and principles;
- (b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
- (c) permits the development of the law; and
- (d) contributes to good governance.

**b) Fair Administrative Action Act, Cap. 7L**

69. Article 47 of the Constitution, as read with section 4(1) of the Fair Administrative Action Act, 2015, guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. This is echoed in section 4(1) of the Fair Administrative Action Act, 2015 (FAA).

70. Section 2 of the Act defines “administrative action” as powers, functions and duties exercised by authorities or quasi-judicial tribunals or any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.

71. Under Section 7 of the Fair Administrative Action Act, any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to a court in accordance with section 8 of the Act. The court is empowered to review an administrative action if there is an unreasonable delay.

**d) The Public Finance Management Act**

72. The Act details processes to be followed in the annual budgeting process and the manner of resourcing parliament, the creation of special purpose funds as well as the gazettment of regulations to facilitate all these.

**e) International Law**

**i. Universal Declaration of Human Rights, 1948 (UDHR)**

73. Article 21 of the UDHR provides that

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**ii. International Covenant for Civil and Political Rights (ICCPR)**

74. Article 25 of the ICCPR provides that

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

**iii. African Charter on Democracy, Elections and Governance, (ACDEG)**

75. Article 10 of the ACDEG provides that

2. State Parties shall ensure that the process of amendment or revision of their constitution reposes on national consensus, obtained if need be, through referendum.

## **F. Particulars of Constitutional Violations**

### **i. Violation of Articles 201(d) & (e) on the prudent and responsible use of public funds**

76. The National Assembly's attempt to amend the Constitution to entrench constitutionally superfluous and redundant funds and to expend public expenditures in this endeavour despite the country's ongoing fiscal constraints is unconstitutional and violates Articles 201(d) and (e) of the Constitution, which require prudent and responsible use of public funds and responsible financial management. It also violates the principles of good governance and sustainable development under Article 10(2) of the Constitution.
77. It is not only imprudent but also irresponsible to seek to take the country through an entire costly constitutional amendment exercise for matters that are either already being lawfully implemented or are capable of lawful and effective implementation within the confines of the current constitutional framework.
78. The proposed NGAAF is currently being implemented through the Public Finance Management Act (National Government Affirmative Action Fund) Regulations, 2016. Various court decisions, including that of the Supreme Court, have emphasised that the proposed NGCF can be lawfully implemented within the confines of the current Constitution. The idea behind the proposed SOF is presently implemented through the budgetary provisions relating to Parliament under the Constitution.

### **ii. Inconsistency with the constitutionally established executive structure for the implementation of national government functions under Articles 127 as read with Articles 152 – 155, 186 (as read with Part 1 of the Fourth Schedule), 189(2), 6(2), 187, 202(2) and 206(1)(a)**

79. Article 204A of the Constitution Amendment Bill proposes to establish the NGCF whose aim is to ensure the provision of exclusive

national government functions in each constituency. Monies for the Fund are proposed to be appropriated for the national government's share of revenue.

80. While the national government does indeed have constitutionally conferred service delivery mandates capable of implementation at lower levels including constituencies, the very elaborate budgeting process under Part 5 of Chapter 12 of the Constitution (Articles 220, 221 & 223) are specifically fashioned to provide funding for the implementation of these primary functions. Creating a separate Fund to undertake these basic functions using its own constitutionally allocated funds is akin to having counties proposing constitutional amendment to establish separate funds and bureaucracies for the implementation of each of the functions assigned to them under the Constitution.
81. Besides, Article 127 as read with Article 152 - 155 provide a constitutional basis for the establishment of an executive-level mechanism and/or bureaucracy for the implementation of these national government functions.
82. Further, in the event the national government wishes to have their functions undertaken under a special arrangement closer to the people of the constituencies but outside their own executive structures, they can do this through counties. Constituencies are the equivalent of sub counties. The Constitution establishes counties as service delivery units and has put in place mechanisms through which the national government may opt to have these otherwise exclusive national government functions undertaken by the counties. Article 6(2) recognizes the interdependence of the two levels of government, Article 189 (2) requires them to cooperate in the performance of functions, Article 187 allows for the transfer of any functions (if need be) while Article 202(2) provides for conditional grants that the national government may use to ensure funds sent to counties are used for specific national government functions.
83. In the unlikely event that there are unique reasons why a separate Fund must be established to run otherwise ordinary and primary national government functions, Article 206(1)(a) provides an avenue

for achieving this. In fact, the NGAAF currently exists on this basis as further guided by provisions of the PFMA. Creation of the NGCF is therefore inconsistent with the Constitution.

**iii. Inconsistency with Article 221 as read with Article 127 (6) on the mechanism for resourcing the Senate**

84. Senate's mandates to oversee the expenditure of national revenue allocated to counties and to participate in the oversight of State Officers, constitute two of the four of its core mandates under Article 96 of the Constitution.
85. It follows, therefore, that the funding of the Senate provided for under Article 221 as read with Article 127(6) is intended to facilitate their execution of these functions.
86. Therefore, the creation of a Senate Oversight Fund under Article 204B of the Amendment Bill is redundant and inconsistent with these provisions and the constitutional intent behind them.

**iv. Violation of Articles 82, 259(8), Article 261 and the fifth Schedule of the Constitution of Kenya**

87. Article 82 commands Parliament to enact legislation to provide for the "conduct of elections and referenda and the regulation and efficient supervision of elections and referenda." The enjoinder of parliament to enact a legislation governing the conduct of referenda is a clear manifestation of the seriousness with which the drafters of *the Constitution* treated such legislation. This is the idea of constitutional statutes.
88. Constitutional statutes are enacted, as wings, to enable the constitutional provisions to fly. Failure to enact a constitutional statute, mandated by the constitution, has the effect of crippling the transformative potential of the constitution. For this reason, Constitution fixes the enactment of a constitutional statute within a certain timeline.
89. The enactment of a referenda legislation carries an important role in



the Kenyan society. It was meant to create the legal and factual predictability that the process of amending the Constitution follows; provide comprehensive roadmap to the people on what to expect when in order that they are able to adequately exercise their right to participation and sovereignty; ultimately give effect to the mode, manner and extent of participation of the people in the amendment of their constitution, and; constrain the actions of parliament, the President, IEBC and any other state actor to ensure they fully comply with the law in conduct of their relevant affairs concerning amendment. It is therefore imperative that the enactment of an instrument to govern such an important subject be treated with urgency.

90. Article 261 read together with the fifth schedule requires the enactment of any other legislation required by the Constitution whose timeframe has not been provided for to be within 5 years of the promulgation of the Constitution. At the latest, the referenda legislation should have been enacted within 5 years of the promulgation of the Constitution.
91. Further, although the Constitution does not provide for prescribed timelines for enacting the legislation regulating referenda pursuant to Article 82 of the Constitution, Article 259(8) of the Constitution comes into play to compel the enactment of the contemplated legislation to be undertaken. The said provision stipulates that:

If a particular time is not prescribed by this Constitution for performing a required act, the act shall be done without unreasonable delay, and as often as occasion arises.

92. More than 14 years' delay in enacting legislation geared towards realising the people's sovereignty, the right to vote, and the regulation of constitutional amendments, especially in a country healing from a culture of hyper-constitutional amendments, is unreasonable and cannot be countenanced.

**v. Violation of the right to vote**

93. The right to vote in a referendum is important and of serious concern

for all Kenyans. It is one of the ways where the sovereignty exercises their constituent power, the power to constitute and/or reconstitute as the case may be their framework of Government.

94. Failure to pass a legislation to regulate referenda, as has happened in this case, then Parliament has not only violated the constitution, but it will also have violated the fundamental rights and freedoms of the citizens guaranteed under the constitution. Refusal to enact the required legislation amounts to denial of the fundamental rights guaranteed to the citizens.
95. More importantly, however, is that our constitution is a transformative, monumental, and memorial constitution. As such, it is meant to transform society along egalitarian lines while considering the country's history and soul. To this end, it can be described as a reactive Constitution seeking to cure the problems that had bedevilled the country.
96. The participation of the people in a referendum is one of the ways of curing the ills of the past where the people were excluded from the governance structure and the leaders made decisions on their behalf.
97. Today, Kenya has adult citizens who are no 'No longer pawns on a political chess board'. Failure to enact the referenda legislation, however, has the effect of making Kenyans pawns on the political chessboard.
98. Failure to enact a constitutional statute that is meant to give effect to the right to vote is a denial of the right to vote and therefore a violation of the right to vote as it hampers the enjoyment of the right.

**vi. Violation of the right to a fair administrative action**

99. The right to fair administrative action requires administrative actions that flow from statutes and must now meet the constitutional test of

legality, reasonableness and procedural fairness. The Constitutional entrenchment of the right is an important safeguard against capricious and whimsical actions that lead to abuse of authority by public bodies exercising administrative and quasi-judicial functions. These no longer have a place in our constitutional dispensation.

100. Article 47 of the Constitution guarantees every person the right to expeditious, efficient, lawful, reasonable, and procedurally fair administrative action. This is echoed in section 4(1) of the Fair Administrative Action Act, CAP 7L of the Laws of Kenya (FAA).

101. Section 2 of the Act defines “administrative action” as “powers, functions and duties exercised by authorities” or “any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person affected by the action”.

102. Under section 7 of the Fair Administrative Action Act, this Court is entitled to review administrative action where:

The administrator—

b. unreasonably delayed or failed to act in the discharge of a duty imposed under any written law

103. The Parliament was constitutionally obligated to pass a referendum law within 5 years from the date of the promulgation of the 2010 Constitution. Parliament has neglected to perform this obligation/duty for more than 14 years now. Such a delay is not only unconstitutional but also prejudicial to the enjoyment of rights of the citizens.

**vii. An objective normative value-based system**

104. The objective normative value-based system established in the Constitution was not accidental. Instead, Kenyans reacted to the unchecked powers vested in the executive branch, the lack of transparency and the failure to entrench accountability. To constrain

these powers, Kenyans decided to preclude the exercise of arbitrary power. They envisioned a society founded on values and principles, as in Article 10 of the Constitution, such as the rule of law, transparency, accountability, devolution of powers and good governance.

105. Kenyans intended that the said provisions should have substantive bite and that they will be enforced and implemented. They desired these values and principles to be put into practice. It follows, therefore, that all State organs, State officers, public officers and all persons, whether they apply or interpret the Constitution, enact, apply or interpret any law or make or implement public policy decisions, must defer to Article

106. National values of good governance, the rule of law and accountability demand that when the obligation is imposed on a national organ, in this case the parliament, it must be performed without delay. To completely neglect a constitutional obligation is an affront to the constitution.

107. Articles 82 and 261 of the Constitution impose an obligation to pass a referendum law within 5 years. 14 years later, Parliament is yet to enact this critical legislation. Despite this failure, parliament wants to amend the Constitution without a law. Parliament wants to amend the Constitution without having a framework to govern the process. If this was to be allowed, it would be akin to allowing parliament to steal a match against the Constitution.

108. The transformative nature of the Constitution, which introduced values such as transparency, accountability, the rule of law, and good governance, requires government entities and officers to perform their functions and fulfil their legal obligations to be transparent, accountable, and open to scrutiny. Rules 5 and 6 are a clawback on the gains so far made under this Constitution in the

entrenchment of the values of transparency and accountability.

**viii. Violation of Chapter sixteen of the Constitution**

109. Chapter sixteen of the Constitution of Kenya governs the amendment of the Constitution. The chapter was, however, required to be implemented by a statute enacted pursuant to Article 82 of the Constitution. Fourteen years after promulgating the Constitution, this is yet to happen.

110. The lack of the legislation has created a gap on how referenda is to be conducted. One of the fundamental gaps that exists in the law is regards the transition of the consideration of constitutional amendments from the parliamentary route to a referendum if the bill touches on the entrenched provisions under Article 255 of the Constitution. For instance, who makes the decision that the bill concerns the entrenched provisions, is it parliament or the President?

111. There is a real threat that by dint of Article 256(5), once the Constitutional Amendment Bill is presented to the President, he might assent to the same if he forms the opinion that the proposed amendments do not relate to the protected clauses under article 255(1) of the Constitution.

112. Further, there is no known criteria and/or legal framework to guide the President in making the determination under Article 256(5) on whether the proposed amendments relate to Article 255(1).

113. Failure to enact a constitutional statute demanded by a constitution has the consequential effect of violating Chapter 16 of the Constitution of Kenya.

114. Further, Chapter 16 of the Constitution of Kenya establishes two modes of amending the Constitution. Although Members of Parliament can amend the Constitution, if the amendment touches on



the entrenched provisions, such an amendment must be subjected to referendum. This creates an implicit obligation on parliamentarians to explain in their memorandum accompanying the constitutional amendment bill whether the amendments touch on entrenched provisions and will be therefore subjected to the Article 257 procedure. The Constitution of Kenya Amendment Act, 2025 (the impugned Bill) is unconstitutional for failure to include an explanation on whether the bill touches on entrenched provisions and will be subjected to the referendum procedure.

## **G. Conclusion**

115. In conclusion, the Respondents' failure to enact a law demanded by the Constitution is not only a violation of the Constitution but also an abdication of responsibility. The action exposes the Constitution to abuse and misuse of resources. The inaction is screamingly unconstitutional and cries for immediate annulment.

## **H. Reliefs Requested**

116. As a result, invoking Article 23 of the Constitution, the Petitioners seek the following or other appropriate reliefs:

- a) A declaration that the proposed Constitution of Kenya (Amendment) Bill, 2025 is superfluous and redundant and violates Articles 201 (d) & (e) as read with Article 10 (2) (c) & (d) of the Constitution mandating the prudent and responsible use of public resources, good governance and sustainable development.
- b) A declaration that the proposed amendments under Article 204A and 204B are inconsistent with the letter and spirit of the Constitution.
- c) A declaration that the proposed amendments under Article

204C are constitutionally redundant as the NGAAF is capable of implementation, and is indeed presently being lawfully implemented, within the confines of Article 206(1)(a) of the Constitution.

- d) A declaration that the constitutional imperatives under Articles 201(d) & (e) as read with Article 10 (2) (c) & (d) dictate that constitutional amendments should not be initiated to provide for issues that the Constitution already sufficiently considers and makes provision for.
- e) A declaration that Parliament bears a positive obligation to sieve proposed constitutional amendments and ensure that the issues sought to be addressed are only those not capable of being adequately addressed within the confines of the existing Constitution so as to preserve the sanctity of the Constitution and ensure the prudent and responsible use of public resources
- f) A declaration that the failure by Parliament to enact a referendum law is a violation of the right to vote in referenda.
- g) A declaration that Parliament's failure to enact a referendum law after 14 years is an abdication of responsibility and, therefore, unconstitutional for violating Articles 10, 94, 95 and 96 of the Constitution.
- h) A declaration that the National Assembly and Senate have violated Articles 10, 38, 47, 201, 259(8) and 261 of the Constitution of Kenya for failing to enact a referendum law after 14 years since the promulgation of the Constitution
- i) An order of mandamus be issued to operate as a condition precedent that before any further action can be taken in regard to processing and/or consideration of any constitutional amendments, including the Constitution of Kenya

Amendment Act, 2025 (the impugned Bill), Parliament must enact the legislation required under Article 82, and also recommended by this Court, regulating constitutional amendments and referenda.

- j) An order of Prohibition restraining the Respondents and any other state agency from introducing in parliament or considering a constitutional amendment bill without a referendum law having been enacted.
- k) A declaration that the referendum law enacted by Parliament should among other things ensure that a mechanism is provided for contesting the classification of a Constitution Amendment Bill as either relating to or not relating to the entrenched provisions.
- l) A declaration be issued that the Constitution of Kenya Amendment Act, 2025 (the impugned Bill) is unconstitutional for failure to include an explanation on whether the proposed amendments touch on entrenched provisions hence would require approval in a referendum.
- m) A structural interdict directing the Respondents to report to the Court after six months to update the Court on the status of compliance with order i and j above.
- n) Any other orders this Court deems fit.

Dated 02 May 2025, Nairobi



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