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REPUBLIC OF KENYA

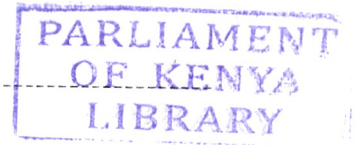


KENYA NATIONAL ASSEMBLY

*Paper laid
By Hon Mahmud
Sirot on Wednesday
morning 8th May
on 22/2/2012
[Signature]*

TENTH PARLIAMENT – FOURTH SESSION

DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES



REPORT OF THE DEPARTMENTAL COMMITTEE ON LOCAL
AUTHORITIES ON THE TRANSITION TO DEVOLVED
GOVERNMENTS BILL, 2012

CLERK'S CHAMBERS
NATIONAL ASSMBLY
NAIROBI

21ST FEBRUARY, 2012

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PREFACE

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

The Committee is comprised of the following Members:-

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

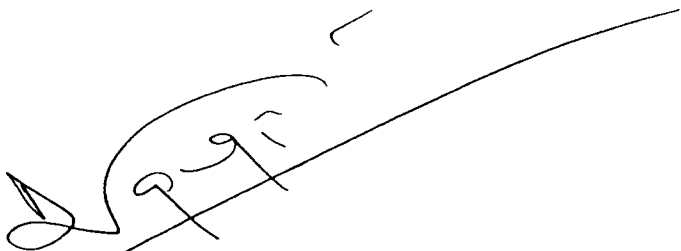
The Transition to Devolved Governments Bill was published by the Deputy Prime Minister and Minister for Local Government on 3rd February, 2012. It was introduced formally in parliament through first reading on 14th February, 2012 after which it was referred to the Committee for scrutiny. Debate on the Bill at the second reading stage commenced on 21st February, 2012, during the morning sitting.

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

The Committee held a retreat with stakeholders at Hotel La Mada in Nairobi from 17th to 18th February, 2012 after the Bill had been committed to it after first reading. Several stakeholders appeared before the Committee during the retreat and discussed the Bill in terms of proposed amendments.

This report therefore contains amendments proposed by the Committee having considered and incorporated where appropriate views of stakeholders.

It is my pleasure therefore, to present this report to the House.



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

21/02/2012

PROPOSALS FROM STAKEHOLDERS

On 17th February, the Committee met with a number of stakeholders and together went through the Bill clause by clause pointing out any issues they felt were inadequately provided for. The stakeholders also submitted memorandum on their proposed amendments to the Bill. Some of the stakeholders and their proposed amendments are as follows:-

PROPOSALS BY KENYA PRIVATE SECTOR ALLIANCE

CLAUSE 5

THAT Clause 5 (1) (a) of the Bill be amended by deleting the word “eight” and substituting therefor with the word “six”

CLAUSE 23

THAT Clause 23 of the Bill be amended by inserting a new sub clause (7) as follows –

23 (7) The Authority shall consult with the Commission on the Implementation of the Constitution and the relevant government ministries, departments or agencies in carrying out the functions provided for under this section.

CLAUSE 36

THAT Clause 36 of the Bill be amended as follows-

(a) In sub clause (1) by deleting the words “transition period” and substituting thereof the words “phase one”.

(b) by deleting sub clause (2) and substituting therefor the following paragraph

36 (2) A state organ, public office, public entity or local authority shall, during phase two, transfer assets, liabilities or immovable property with the approval of

the Authority in consultation with the National Treasury, Commission on Revenue Allocations and the Cabinet

PROPOSALS BY THE INTERNATIONAL COMMISSION OF JURISTS- KENYA CHAPTER

Second Schedule, Clause 1 (6): We propose that the quorum is raised for a third is too small considering the mandate of the Authority. We propose that quorum be half (50%) of the total members.

Clause 12 on Guiding Principles: The Bill does not set out clear mechanisms for the participation of citizens in the Authority. We propose that the authority publishes its progress reports in two daily newspapers with national reach to ensure citizens are aware of the progress.

Clause 18: The Bill should include the words 'before assuming office'

Clause 27 on Access to Information: This clause should be deleted as it can be used to deny citizen access to information. All information should be made available unless that which is exempt information.

Clause 27(3) a on Access to Information: This provision should be deleted as it gives the officer too much discretion. What is unreasonable and who is to determine the standard of reasonableness?

Clause 9 on Appointment of the secretary: We propose to add 9 (c) requiring the person appointed to the position of secretary should meet requirements of chapter 6 of the constitution.

Clause 34: A fine of half a million or jail term of 2 years is too minimal for the nature of offences especially where there has been illegal transfer of assets. We propose that the sentence be punitive and be raised to a fine of not less than 1 million and 5 years.

The Committee evaluated all the proposed amendments and here is a summary of the amendments the Committee felt should be brought on the floor of the House for debate.

SUMMARY OF PROPOSED AMENDMENTS

THE TRANSITION TO DEVOLVED GOVERNMENTS BILL, 2012

COMMITTEE STAGE AMENDMENTS

RE: NOTICE OF PROPOSED AMENDMENT TO THE TRANSITION TO DEVOLVED GOVERNMENTS BILL, 2012

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NOTICE is given that the Member for Kinangop, Hon David Ngugi, intends to move the following amendments to the Transition to Devolved Governments Bill, 2012 at the Committee Stage-

CLAUSE 5

THAT Clause 5 be amended in sub clause (1) by inserting a new paragraph immediately after paragraph (g) as follows-

(gg) the Clerk of the Senate

CLAUSE 6

THAT clause 6 be amended in sub clause (2) by deleting the word "fifteen" and substituting therefor the word "ten"

CLAUSE 9

THAT clause 9 be amended in sub clause (2)-

(a) by inserting a new paragraph (c) immediately after paragraph (d) as follows:-

(c) satisfies the requirements of Chapter 6 of the Constitution

CLAUSE 17

THAT Clause 17 be amended-

(a) in sub clause (1) by deleting the words "and such terms and conditions of service as the Authority may determine";

- (b) in sub clause (2) by deleting the words “, in consultation with the Salaries and Remuneration Authority, may determine” and substituting therefor the words “determine subject to the advice of the Salaries and Remuneration Commission”.

CLAUSE 23

THAT Clause 23 be amended-

- (a) in sub clause (1) by inserting the words “by notice in the Gazette at least thirty days before the first elections under the Constitution” immediately after the word “shall”;
- (b) in sub clause (3) by deleting the words “prescribed criteria” and substituting therefor with the words “criteria set out under section 24”

CLAUSE 32

THAT the Bill be amended by deleting clause 32.

CLAUSE 34

THAT the Bill be amended by deleting clause 34 and substituting therefor the following new clause-

34. (1) A person who—

- (a) without justification or lawful excuse, obstructs, hinders or threatens a member an officer, employee or agent of the Authority acting under this Act;
- (b) submits false or misleading information to the Authority; or
- (c) makes a false representation to, or knowingly misleads a member, an officer, employee or agent of the Authority acting under this Act,

commits an offence and shall be liable, on conviction, to a fine of not less than five hundred thousand shillings or to imprisonment for a term of not less than two years, or to both.

(2) A person who transfers assets without obtaining the requisite approval under section 36 or contrary to the mechanism provided by the Authority under section 7 (2) (g) commits an offence and shall be

liable, on conviction, to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years, or to both.

CLAUSE 36

THAT Clause 36 be amended by inserting a new sub clause immediately after sub clause (1) as follows-

(1A) Any transfer of assets or liabilities made in contravention of subsection (1) shall be invalid

CLAUSE 38

THAT Clause 38 be amended in sub clause (1) by deleting the words “but the National Assembly may, by resolution, extend the period specified in this subsection for a further period not exceeding one year.

FIRST SCHEDULE

THAT the Bill be amended by deleting the First Schedule and substituting therefore a new First Schedule as follows-

FIRST SCHEDULE

(s.6)

PROCEDURE FOR APPOINTMENT OF MEMBERS OF THE AUTHORITY

1. Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the office of the Chairperson or member, the Public Service Commission shall, by notice in the Gazette and in at least two newspapers of national circulation, declare vacancies in the Authority, inviting applications from qualified persons and competitively convene a selection panel for the purpose of selecting suitable candidates for appointment as the chairperson or members under clause 5 (1) (a).

2. The panel shall comprise a chairperson and six members drawn from public and private sectors and civil society.

3. An application in respect of a vacancy declared under paragraph 1 shall be forwarded to the panel within seven days of the publication of the notice and may be made by –

- (a) any qualified person; or
- (b) any person, organization or group of persons proposing the nomination of any qualified person.

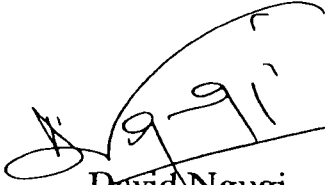
4. The panel shall, subject to this section, determine its own procedure and the Public Service Commission shall provide it with such facilities and other support as it may require for the discharge of its functions.
5. The panel shall consider the applications and shortlist and publish the names and qualifications of all shortlisted applicants in the Gazette and two daily newspapers of national circulation within seven days from the last day of receipt of the applications under paragraph 3.
6. The Panel shall interview the shortlisted applicants within fourteen days from the date of publication of the list of shortlisted applicants under paragraph 5.
7. After carrying out the interviews, the panel shall select the three persons qualified to be appointed as chairperson and thirteen persons qualified to be members of the Authority and forward the names to the President.
8. The President shall, within seven days of receipt of the names forwarded under subsection (6), nominate a chairperson and other members of the Authority and forward the names of the nominees to the National Assembly.
9. The National Assembly shall, within twenty one days of the day it next sits after receipt of the names of the nominees under subsection (8), consider all nominations and may approve or reject any nomination.
10. Where the National Assembly approves the nominees, the Speaker shall forward the names of the approved nominees to the President for appointment.
11. The President shall, within seven days of the receipt of the approved nominees from the National Assembly, by notice in the Gazette, appoint the chairperson and members approved by the National Assembly.
12. Where the National Assembly rejects any nomination, the Speaker shall communicate the decision to the President who shall submit fresh nominations and the procedure set out under this section shall with necessary modifications, apply.
13. For the purposes of the appointment of the first Authority and filling of any vacancy in the Authority before the first general elections after the commencement of this Act, the President shall act in consultation with the Prime Minister.
14. Despite the foregoing provisions of this section, the President, in consultation with the Prime Minister may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.
15. In selecting, nominating, approving or appointing the chairperson and members of the Authority, the selection panel, the National Assembly, the President and the Prime Minister shall—

(a) ensure that the Authority reflects the regional and other diversities of the people of Kenya and that not more than two-thirds of the members are of the same gender;

(b) have due regard to the required experience and expertise.

16. The term of the Panel constituted under paragraph 2 shall expire upon the appointment of the members for which the panel was constituted under this Schedule.

Dated the _____, 2012.


David Ngugi,
Member of Parliament.
24/02/2012

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

PRESENT

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

ABSENT WITH APOLOGY

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

IN ATTENDANCE

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

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

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

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

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

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

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

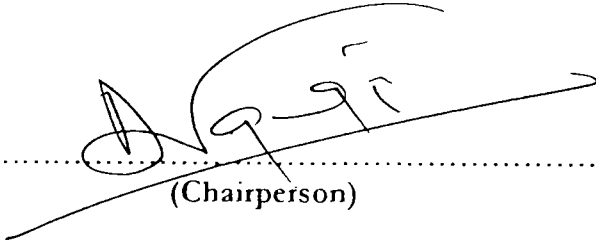
MIN. NO./SC2/204/2011:

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Any Other Business and Adjournment

There being no other business, the Chairman adjourned the meeting at 5 40 pm.

SIGNATURE.....



(Chairperson)

DATE.....

21/02/2012

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

PRESENT

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

ABSENT WITH APOLOGY

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

IN ATTENDANCE

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

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

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

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

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

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

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

The stakeholders among other issues raised the following proposals:

PROPOSALS BY INTERNATIONAL COMMISSION OF JURISTS-KENYA CHAPTER

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

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

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

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

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

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

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

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

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

PROPOSALS BY KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MIN. NO./SC2/200/2011:

Any Other Business and Adjournment

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

SIGNATURE.....


(Chairperson)

DATE.....

21/02/2012

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

PRESENT

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

ABSENT WITH APOLOGY

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

IN ATTENDANCE

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

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

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

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

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

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

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

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

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

There being no other business to transact, the Chairman adjourned the meeting at 11 15 am.

SIGNATURE.....
(Chairperson)

DATE

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

PRESENT

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

ABSENT WITH APOLOGY

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

IN ATTENDANCE

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

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

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

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

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

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

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

THE COUNTY GOVERNMENTS BILL, 2012

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

Part III

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

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

PART IV

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

PART V-COUNTY EXECUTIVE

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

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

PART VIII-CITIZEN PARTICIPATION

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

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

THE INTERGOVERNMENTAL RELATIONS BILL, 2012

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

PART II-ESTABLISHMENT OF INTERGOVERNMENTAL RELATIONS STRUCTURE

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

PART IV-DISPUTE RESOLUTION MECHANISMS

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

SCHEDULE

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

THE TRANSITION TO DEVOLVED GOVERNMENTS BILL, 2012

PART II-TRANSITION MECHANISM TO DEVOLVED GOVERNMENT SYSTEM

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

PART V-FINANCIAL PROVISIONS

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

PART VI-MISCELLANEOUS PROVISIONS

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

FIRST SCHEDULE

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

Conclusion

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

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

3 The Transition to Devolved Governments Bill, 2012

MIN. NO./SC2/192/2011:

- Any Other Business and Adjournment

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

SIGNATURE.....
(Chairperson)

DATE