



MZALENDO



A Legislative Compendium of the 12th Parliament



A LEGISLATIVE COMPENDIUM OF THE 12TH PARLIAMENT

ABOUT MZALENDO TRUST

Mzalendo ('Patriot' in Swahili) Trust is a Kenyan non-partisan Parliamentary monitoring organization (PMO) whose mission is to "promote the realization of open, inclusive, and accountable Parliaments across Kenya and Africa". We do so by creating and managing civic tech tools, producing evidence-based research, and leading and facilitating advocacy and partnerships with Parliaments, citizens and other relevant stakeholders. We believe that success in our work will build more effective and responsive legislation and political processes that ultimately support Kenya's national development goals.

FOREWORD

The curtains have come down on Kenya's 12th Parliament and a mixed legacy emanates from the House. The House transacted the highest amount of legislative business that affected the ordinary citizen 'Wanjiku' and whose effects continue to be felt till date. It also found itself in the precarious position of carrying out its constitutional mandates on representation, legislating and oversight during a pandemic and interesting political realignment that followed an acrimonious election, loosely referred as the 'Handshake Era'. Despite this, Parliament exhibited great resilience, quickly adapting by shifting its operations online and thus, allowing members to participate just as effectively in the circumstances.

Mzalendo has released an Annual Parliamentary Scorecard since 2014, that monitors the performance of Parliament, individual MPs and Committees in terms of Parliamentary activities and transparency of proceedings. Therefore, in line with our 2021- 2025 Strategic Plan, and shifting our traditional focus from media sensitization, we have published this Compendium to identify and analyse key legislative proposals, Petitions and motions that affect the common citizen. This has been done on the hindsight that Parliament is not expected to finalize its agenda and therefore the next House can pick up from where their predecessors left and learn a few lessons in enhancing the delivery of their requisite constitutional mandates.

The Compendium highlights the legislative outputs by the 12th Parliament for the period commencing September 2017 to 21st June, 2022 with a specific focus on areas of: devolution, education, food security, health, welfare of persons with disabilities, water & sanitation. The themes were picked as having relatively a higher impact on the day to day lives of citizens but that is not to belittle other areas of interest to citizens. The compendium highlights other relevant components of enhancing the role of parliament key among them being public participation and legislative impact assessment. It makes recommendations on gaps identified over the last five years with the hope that it will stimulate robust discussions on assessing Parliamentary performance.

The launch of this Legislative Compendium also coincides with this year's International Day of Parliamentarism whose theme is 'Public Engagement in the Work of Parliament.' This recognizes that Parliaments play a pivotal role in engaging citizens to connect with their Parliaments and participate in the law-making, policy and oversight process. It therefore remains critical to continue strengthening and monitoring Parliaments: at both the national and sub-national level.

Mzalendo Trust is greatly indebted to the National Endowment for Democracy (NED) and the Netherlands Institute for Multiparty Democracy (NIMD) who offered financial support that enabled the organization to successfully carry out and publish the findings of this study.

We wish to thank everyone involved in the development of this publication, in particular: all the respondents who provided immense contributions and recommendations, including Members of Parliament, various CSOs, and participants at the Validation meeting held prior to launch of this report; the Consultant, Dr. Johnson Okello; lead researchers, Philip Gichana, and Sylvia Katua, as well as other staff members at Mzalendo Trust: Gitungo Wamere, Jefferson Gathumbi, Loise Mwakamba, Idah Knowles, Adisa Viola, and Fredrick Ajok for excellent work and valuable technical direction.

Caroline Gaita,
Executive Director,
Mzalendo Trust.

EXECUTIVE SUMMARY

Parliamentary performance evaluation is a fundamental component of Parliamentary strengthening and public oversight of Parliaments. When legislation is tracked, citizens gain a better understanding of political, economic, and social developments. This understanding, in turn, enables citizens to participate in governance processes, including seeking and demanding for greater accountability.

Article 94 of the Constitution of Kenya 2010 provides for the role of Parliament as legislation, oversight and representation. Since assuming office on 31st August 2017, the 12th Parliament has taken into consideration and passed various legislative proposals, Bills, budget proposals, audit reports, motions, statements, public petitions, vetted and approved appointments of nominees to public and state offices, statutory instruments, ratification of agreements, conventions and treaties, among other issues of concern to Kenyans.

This compendium therefore involves an examination, analysis and review of the legislative output of the 12th Parliament; providing an in-depth assessment and the impact of the legislative outputs to the people of Kenya in areas of food security, water and sanitation, education, health, welfare of people living with disability and devolution.

It broadly identifies the legislation, motions and Petitions considered by the 12th Parliament. The overall aim is to examine and analyse the above legislative business and determine the extent to which they have contributed to and enhanced food security, water and Sanitation, education, health and the welfare of people living with disabilities; while for the Senate, how the identified business has contributed to the development or stagnation of devolution in Kenya.

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INTRODUCTION

1.1 Context

Mzalendo Trust with the support from the Netherlands Institute for Multiparty Democracy (NIMD), is implementing the Power of Dialogue project. The objective of the project is to among other things, strengthen the engagement of consortium partners across the network, enhance the inclusion of the young and women in the political space and work towards safeguarding the civic space. A key output of the third outcome area is strengthening public participation in Parliamentary processes and civic engagement in Kenya.

This consultancy responds to the third outcome area of the project. Parliamentary performance evaluation is a fundamental component of parliamentary strengthening and public oversight of parliaments. Tracking legislation provides citizens with insight and better understanding of political, economic, and social developments. This further enables citizen to participate in governance processes, including seeking and demanding for greater accountability.

This compendium therefor involves an examination, analysis and review of the legislative output of the 12th Parliament, providing an in-depth assessment and the impact of the legislative outputs to the people of Kenya in areas of food security, water and sanitation, education, health, welfare of people living with disability and devolution.

1.2 Purpose of the compendium

Purpose of Compendium is to highlight the legislative outputs by the 12th Parliament for the period commencing September, 2017 to June 19th, 2022, when the Senate is expected to adjourn sine die in readiness for the forthcoming elections in August, 2022.

The compendium examines and analyses the statute book for relevant legislation enacted, Bills, Motions, Statements and Petitions enacted or considered by the 12th Parliament. The compendium further provides an assessment, impact and recommendations for legislative proposals adopted and opportunities missed and make recommendation on outstanding legislative business for consideration by the 13th Parliament. The compendium thus identifies the legislative instruments processed or are still in process and provides a brief profile and stating a summary of the object of the legislation and status and contains a commentary on the impact of the legislation, motion or petition. Where possible, policy statements relating to the legislative instrument is provided.

The legislative compendium broadly identifies the legislation, motions and Petitions considered by the 12th Parliament. The overall aim is to examine and analyze the above legislative business and determine the extent to which they have contributed to and enhanced food security, water and Sanitation, education, health and the welfare of people living with disabilities; while for the Senate, how the identified business has contributed to the development of devolution.

1.3 Statutes and Bills

The 12th Parliament has enacted a number of legislation that have impacted on devolution, food security, water and sanitation, education, health and persons living with disability. There are also legislative proposals (Bills) which are still in progress and only time will tell whether they will see the light of day. This assignment will examine the said legislations and Bills and determine the extent to which they have responded to the public expectation. We will also analyse the same vis-a vis the extent to which the public participated in the enactment of the legislation and whether the views and expectations of the public were taken on board.

1.4 Motions and Other Policy Instruments

Parliament also considered a number of Motions and approved several policy instruments. These will be analyzed and determine the extent to which they have responded to the people's concerns and interests and furthermore protect the rights that are guaranteed in the constitution.

1.5 Petitions

The constitution of Kenya under Article 119 provides that every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation. Parliament has proceeded to enact specific legislation to operationalize this provision. Whereas members of the Public have sent several Petitions, the response in terms of conclusion of Petitions has been a challenge. This assignment will examine the number of Petitions received by both Houses and determine the extent to which this right has been met.

2.0 Methodology

The methodology employed in the preparation of the Compendium has been primarily a desk based review of information available on parliament and government websites. This information has been supplemented by communication (via e-mail) with senior officials in the Parliament, as well as with some other stakeholders. The assignment involved—

- (a) identify the Bills, Motions and Petitions processed by the 12th Parliament;
- (b) undertaking an in-depth desk research of the House procedures, Government policies and the Hansard proceeding of both Houses of Parliament;
- (c) undertaking the research by analyzing and examining the legislative documents; and
- (d) conducting interviews with the identified sponsors of the Bills, Motions and Petitions processed.

CHAPTER ONE

THE PARLIAMENT OF KENYA

1.1 Background

Under the Constitution, Parliament consists of the National Assembly and the Senate. Constitution establishes two organs: Parliament and County Assemblies, with authority to make laws. Parliament is established under Article 93(1) of the Constitution as a bicameral. It comprises of the Senate and the National Assembly.

(i) The Senate

The Senate is made up of 67 members and the Speaker who is an ex officio member. The roles of the Senate as set out under Articles 94 and 96 of the Constitution are __

- (a) representing counties, and protecting the interests of counties and those of county governments;
- (b) legislating laws concerning county governments;
- (c) determines allocation of national revenue amongst counties and oversight utilization of revenue allocated to county governments; and
- (d) oversight of state officers and participate in the impeachment of the President and the Deputy President.

The Senate's legislative role is provided for under Articles 94, 96(2) and 109 of the Constitution. It considers and passes laws which concern counties. Under Article 110(1) of the Constitution a Bill is said to concern counties if __

- (a) it contains provisions affecting the functions and powers of the county governments;
- (b) it relates to the election of members of a county assembly or a county executive; and
- (c) it is Bill affecting the finances of county governments.

(ii) The National Assembly

The National Assembly comprise of 349 members and the Speaker who is an ex officio member. The roles of the National Assembly as set out under Articles 94 and 95 of the Constitution include representation,

legislation, oversight over national revenue and its expenditure, appropriates funds for expenditure by the national government, allocation of revenue, oversight over state organs, approves declaration of war, and removal from office of state officers including the President and the Deputy President.

The National Assembly's legislative role is provided for under Articles 95 and 109 of the Constitution. It makes laws applying nationally and can consider any Bill, including those concerning County Governments. Three critical issues to note regarding the legislative function of the Senate vis-à-vis that of the National Assembly -

- (a) all Bills considered by the Senate must be considered by the National Assembly before they become law;
- (b) all Bills considered by the National Assembly and touching on County Governments must be considered by the Senate before they become law; and
- (c) Bills that do not concern County Governments are only considered by the National Assembly.

1.2 The Basis of Parliamentary Procedure

Like many legislatures around the world, the Parliament regulates its own proceedings without intervention by any other authority. The exclusive right to control its own operation is one of the House's privileges. Together with the associated privilege of free speech, it is fundamental to parliamentary independence and the continuous balancing the constitutional arrangements. Parliament exists within a constitutional framework where the legislature's autonomous law-making capability and scrutiny powers sit alongside the principle of judicial independence. The two institutions involved (the legislature and the judiciary) are at pains to avoid intrusion into each other's sphere, and maintain a relationship of mutual respect so as not to upset the balance. This respectful relationship avoids conflict between the institutions and promotes due regard for existing conventions, while allowing continuing constitutional evolution. Parliament generally avoids setting out the detail of its procedures in legislation.

1.2.1 Statute

The authority for the existence of Parliament, the determination of who is to be a member of Parliament, and many other fundamental parliamentary rules are derived from the Constitution and related election laws. Further, the Constitution and the Parliamentary Powers and Privilege Act provide the statutory basis for the privileges enjoyed by the members of parliament. These constitutional and statutory provisions define the parliamentary legal relations with the judiciary and with persons outside the Parliament.

There are also many statutes directing the Executive and other Constitutional offices, counties and other government agencies to present reports and papers from public agencies or statutory bodies to parliament. Numerous legislations also delegate Parliament's power to make laws to other authorities in the form of subsidiary legislation. In many cases, these Acts state that the resulting delegated legislation is in the category of "disallowable instruments", which parliament may disallow or approve; and an even broader category of delegated legislation is required by law to be published and presented to the Parliament for approval. Other statutes also give legal effect to certain decisions by parliament, such as resolutions to make, recommend or endorse appointments to or removal from public office.

1.2.2 Duty to obey the law

Parliament is under the law, like every other and has a duty to observe any legal provision applying directly to it. Speakers have emphasized that Parliament is bound by the law even though some aspects of the general law may not be judicially enforceable because of the privileges that Parliament enjoys in carrying out parliamentary business. The inability to seek judicial enforcement in the parliamentary context does not imply a legal vacuum in which the law has no application. The Speaker will always exercise any discretions vested in the Chairperson so as to promote compliance with the general law. Where a statute applies to the House, the statute prevails over all other forms of procedure. The Speaker has a special duty to ensure that the House observes such statutory requirements, for example, when a motion is moved for a resolution that would have legal effect under an Act. The Speaker—when acting in his or her capacity as the presiding officer—does not judge the extent to which participants in a statutory process comply with the law outside the parliamentary proceedings. The Speaker determines whether a motion is in order, but either House of Parliament cannot correct by resolution, a failure to comply with the law.

1.2.3 Parliamentary Traditions

To make valid law, Parliament must comply with any constitutional and statutory condition of law-making that is addressed to them. Such statutory conditions are known as "manner and form" provisions. A manner and form provision is one where Parliament has statutorily bound itself, as to the procedure to be employed in enacting law. The term "manner and form" is currently provided for in the Standing Orders of both Houses of Parliament in particular under the famous Standing Order 1.

1.2.4 Legislative fairness

The Constitution and other legislative provisions applies to acts performed by the legislature. It has been accepted that parliament is under a legal obligation to observe the principles of natural justice in transacting its business. The Houses of Parliament have adopted Standing Orders designed to give expression to these obligations in a parliamentary context.

1.2.5 Standing Orders

The Standing Orders are the primary rules of each House of Parliament, providing for the conduct of its proceedings and for the exercise of its powers. They are adopted solely by each House and are not intended to diminish or restrict the rights, privileges, immunities and powers otherwise enjoyed by Parliament. These rights, privileges, immunities and powers are secured principally by statute. In essence, the Standing Orders regulate and moderate the exercise of legislative power and capacity, and they are appropriately regarded as constitutional rules.

Standing Orders are, as the term implies, permanent rules that remain in force until suspended, amended or revoked by a positive decision of the respective House. They apply to the House from one Parliament to the next and are not required to be specifically readopted at the commencement of each new Parliament. The Speaker (or the Deputy Speaker or other member presiding) is responsible for ruling on any dispute about the interpretation or application of the Standing Orders. There are more than 200 Standing Orders, each of which may be divided into paragraphs and subparagraphs. While they set out in considerable detail many and various procedures to be followed, the Standing Orders do not purport to be exhaustive. When a point of procedure needs to be established, the first resort is to the Standing Orders of the House.

The Standing Orders bring order and structure to the work transacted by the House and its committees. They balance the legitimate roles and expectations of Government and non-Government parties in the House's legislative, scrutiny and representative functions. A prime object of the Standing Orders is to

support and give effect to statutory requirements applying to a House of parliament. Thus the detailed mechanical provisions for electing a Speaker help to fulfil the House's duty to elect a Speaker at its first meeting after a general election. The Standing Orders give parliamentary expression to the House's statutory obligation to accord the protections of natural justice to anyone affected by its proceedings. The Standing Orders require the relevant House to follow robust procedures before arriving at decisions and are designed to promote outcomes that serve the national interest. The need for Bills to go through a succession of prescribed stages improves decision-making on the architecture and details of the legislation. The need for select committee consideration, in particular, acts as a brake to allow time for sober reflection and informed public input into Bills. The Standing Orders promote the principle that good process leads to better outcomes: the rules governing such processes include the general procedural requirements for notices of motion to be given and for relevancy in debate, and the restriction on irrelevant amendments.

CHAPTER TWO

LEGISLATION PASSED, AND BILLS DRAFTED OR PUBLISHED BY THE NATIONAL ASSEMBLY IN THE 12TH PARLIAMENT WHICH CONTRIBUTE TO WELFARE OF THE PEOPLE.

2.1 Background

Article 93 of the Constitution of Kenya establishes the Parliament of Kenya which consists of the National Assembly and the Senate. The National Assembly is made up of 349 members and the Speaker who is an ex officio member. The roles of the National Assembly as set out under Articles 94 and 95 of the Constitution include representation, legislation, oversight over national revenue and its expenditure, appropriates funds for expenditure by the national government, allocation of revenue, oversight over state organs, approves declaration of war, and removal from office of state officers including the President and the Deputy President.

The legislative role of the National Assembly is provided for under Articles 95 and 109 of the Constitution. It makes laws applying nationally and can consider any Bill, including those concerning County Governments. This chapter looks at legislation passed or published by the National Assembly which promotes the welfare of the people in the areas of food security, water and sanitation, education, health, and those which contribute to the welfare of persons' living with disabilities. It is important to note that where the Bill or legislation in question affects counties, then the Bill must be processed by both Houses. Thus since, Agriculture, Health and matters relating to Water and Sanitation are devolved functions, all legislation touching on these areas must be processed by both Houses of Parliament.

2.1.1 Food Security

BILL	SPONSOR	OBJECT	PROGRESS/ HOW FAR IT IS
The Irrigation Bill, 2017	Leader of the Majority Party	To promote and regulate the development and management of irrigation in Kenya.	Assented on 2 nd August 2019 and gazetted as the Irrigation Act, 2019. Object of the Act is to provide for the development, management, and regulation of irrigation, to support sustainable food security and socioeconomic development in Kenya, and for connected purposes
The Irrigation (Amendment) Bill, 2021	Leader of the Majority Party	To make amendments to the Irrigation Act, 2019.	Passed; forwarded to the Senate for consideration on 21/10/2021. The Senate passed the Bill without amendment and the same has been assented to.

The Livestock Bill, 2021	Leader of the Majority Party	To provide for the development and regulation of livestock and livestock products, research and capacity building in the livestock sector and establishment of livestock agencies.	Gazetted but has not undergone First Reading. The Bill has lapsed.
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2.1.2 Education

BILL	SPONSOR	OBJECT	HOW FAR IT IS/ PROGRESS
The Higher Education Loans Board (Amendment) Bill, 2021	Hon. Gideon Koske, MP	To amend the Higher Education Loans Board Act, No. 3 of 1995 to expressly provide that the Higher Education Loans Board shall not deny a loan to a student who has not attained the age of eighteen years.	Underwent First Reading on 25/11/2021 and is yet to undergo Second Reading.
The Higher Education Loans Board (Amendment) Bill, 2020	Hon. Gideon Keter, MP	To amend the Higher Education Loans Board Act to waive the imposition of interest on the	Underwent First Reading on 8/10/2020 and is yet to undergo Second Reading.

		principal amount of a loan advanced to the youth and person with disabilities until such time as they secured their first employment.	
The Higher Education Loans Board (Amendment) Bill, 2020	Hon. John Mwirigi, MP	To amend the Higher Education Loans Board Act to provide that a loanee shall commence the repayment of his or her loan once she or he secures employment.	Passed on 8 th June 2022 by the National Assembly. Rejected by the President on 21 st June 2022.

2.1.3 Welfare of Persons with Disabilities

BILL	SPONSOR	OBJECT	HOW FAR IT IS/ PROGRESS
The Representation of Special Interest Groups Laws (Amendment) Bill, 2019	Chairperson, Constitutional Implementation Oversight Committee	To amend various laws to give further effect to Article 100 of the Constitution; to promote the representation in Parliament of women, persons with disabilities, youth, ethnic and other	Passed and forwarded to the Senate for consideration on 6/5/2020.

		minorities, and marginalized communities and for connected purposes	
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2.1.4 Water and Sanitation

BILL	SPONSOR	OBJECT	PROGRESS/HOW FAR IT IS
The Sustainable Waste Management Bill, 2021	Leader of the Majority Party	The principal object of the Bill is to establish the legal and institutional framework for the sustainable management of waste; the realisation of the constitutional provision on the right to a clean and health environment.	Passed. forwarded to the Senate for consideration on 9/3/2022.

2.1.5 Health

BILL	SPONSOR	OBJECT	PROGRESS/HOW FAR IT IS
The Health (Amendment) Bill, 2019	Hon. Swarup Ranjan Mishra, MP	To amend the Health Act No. 21 of 2017 to introduce a new section which provides for the development of policy guidelines to regulate the referral of patients to health institutions both within and outside the country.	Passed and forwarded to the Senate for consideration on 25/3/2021.
The Health (Amendment) Bill, 2020	Hon. Alice Wahome, MP	To amend the Health Act, No. 21 of 2017 to provide that male circumcision shall be performed under medically safe and hygienic conditions. The Bill also seeks to regulate the practice by ensuring that male circumcision is performed by trained and registered persons.	Bill was read a First Time on 8/10/2020, yet to undergo Second Reading.

The Health (Amendment) Bill, 2021.	Hon. Mwambu Mabongah, MP	To amend the Health Act, No. 21 of 2017 to provide that the national government and county governments shall in consultation through the existing inter-governmental relations mechanisms establish regional cancer centres. The Bill also seeks to amend the Principal Act to make it an offence for a person in-charge of a public health facility to demand or permit demands of payment of advance medical fees as a pre-condition to provision of medical services.	Second Reading; 6/4/2022, 11/5/2022 (ongoing).
The Health Laws (Amendment) Bill, 2018	Leader of the Majority Party	The Health Law (Amendments) Bill, 2018 seeks to make various, wide-	Assented to on; 13/5/2019

		ranging amendments to various health-related statutes on matters relating to health policy.	
The Pharmacy and Poisons (Amendment) Bill, 2021	Hon. Alfred Kiptoo Keter, MP	To amend the Pharmacy and Poisons Act to prohibit the sale or dispensing of medicine without a written prescription from a registered health practitioner. This is aimed at safeguarding the health of all Kenyans and to encourage them to always seek medical attention from a qualified health practitioner notwithstanding that an ailment may be considered minor.	Underwent First Reading on 9/6/2021.
The Kenya National Blood Transfusion Service Bill, 2020.	Hon. Sabina Chege, MP	To establish the Kenya National Blood Transfusion Service to provide for the regulation of	Passed and forwarded to the Senate for Consideration on 20/9/2021. The Bill is pending in the Senate

Transfusion Service Bill, 2020.		Blood Transfusion Service to provide for the regulation of the activities relating to blood donation, testing, processing, safeguarding, transfusion, and quality control.	Consideration on 20/9/2021. The Bill is pending in the Senate and will not proceed because there was no concurrence by the two Speakers before the consideration of the Bill.
The Cancer Prevention and Control (Amendment) Bill, 2019	Hon. Gladys Wanga, MP	To amend the Cancer Prevention and Control Act, 2012 to make provision for training of health cadres in the specialized medical field of oncology, to include cancer treatment as part of the provision of primary healthcare and to incorporate the use of e-health and telemedicine.	Passed; forwarded to the Senate for consideration on 9/11/2020.
The National Hospital Insurance Fund (Amendment) Bill, 2021.	Leader of the Majority Party.	To amend the National Hospital Insurance Fund Act, 1998 to establish the National –	Assented on 10/1/22.

		Health Scheme and to enhance the mandate and capacity of the National Hospital Insurance Fund to facilitate and deliver the Universal Health Coverage.	
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2.2 Observation and Conclusion

There are a good number of Bills whose objects and purposes are very noble and benefits the public in the areas identified. The Bills if enacted would facilitate the enjoyment of rights guaranteed under the Constitution. However, the Bills may not see the light of day in the twelfth Parliament and accordingly the same should be prioritised in the 13th Parliament.

CHAPTER THREE

LEGISLATION PASSED, AND BILLS DRAFTED OR PUBLISHED, AND REGULATIONS PASSED OR DRAFTED BY THE SENATE IN THE 12TH PARLIAMENT WHICH CONTRIBUTE TO DEVOLUTION

3.0 Background

Article 93 of the Constitution of Kenya establishes the Parliament of Kenya which consists of the National Assembly and the Senate. The functions of the Senate are set out in Article 96 of the Constitution and one of its functions is to participate in the law-making function of Parliament by considering, debating, and approving Bills concerning counties, as provided in Articles 109 to 113.

This chapter will look at the various Bills considered by the Senate which have contributed to devolution as well as regulations which the Senate has passed which seek to enhance devolution.

3.1 Bills processed by the Senate

The Senate has processed seventy-four (74) Bills majority originated from the Senate and the rest from the National Assembly. The Constitutions clear that any law that concerns counties must be processed through the Senate. Accordingly, any legislation considered by the Senate irrespective of the originating House, concerns counties and are therefore entrenching devolution.

3.1.1 Food Security Bill, Senate Bills No. 12 of 2020

The Bill proposes to give effect to Article 43(l) (c) of the Constitution on freedom from hunger and the right to adequate food of acceptable quality. Article 43 of the constitution establishes the right to be free from hunger, and to have adequate food of acceptable quality". Under Article 21 (3), all State organs and all public officers have a duty to address needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities.

The need for this legislative framework is based on the requirement that National and county governments put in place measures and mechanisms to address food insecurity and ensure that the right to food for all is realized. This Bill provides a framework and mechanism for the National and county governments to fulfil their obligations in relation to food security.

This Bill was enacted by the Senate and transmitted to the National Assembly where it lapsed. The Bill should be prioritized in the 13th Parliament.

3.1.2 The Early Childhood Education Act, 2021

The principal object of this Act is to provide a framework for the implementation of early childhood education by the county government in line with its functions as set out under the Fourth Schedule of the Constitution. The county governments are conferred with the responsibility of ensuring the implementation of early childhood education in the counties. The Act contributes to the realization of devolution by ensuring quality early childhood education in the counties.

3.1.3 Natural Resources (Benefit Sharing) Bill, Senate Bills No. 25 of 2020

The Bill seeks to provide a legislative framework for the establishment and enforcement of a system of benefit sharing in natural resource exploitation between natural resource exploiters, the national government, county governments and local communities and to that end provides that the Commission for Revenue Allocation oversees the same. The Bill concerns county governments in that it contains provisions that among others affect local community participation and prioritization, administration and utilization of funds within counties. The Bill contributes to devolution by ensuring that county governments and the local communities in the county have a stake in the natural resources emanating from the respective Counties.

3.1.4 The Tea Act, 2021

The principal object of the Act is to liberalize the tea industry. This will be done through the reorganization of the tea industry by transitioning of the regulatory and commercial roles currently undertaken by the Agriculture and Food Authority to the Tea Regulatory Authority of Kenya.

Agriculture plays a vital role in the economy of most county governments. It is the leading industrial crop in terms of its contribution to the country's GDP. It is therefore important that the tea industry is regulated and supported in terms of policy and law. This Act therefore affects the economic growth of most counties and the country as a whole and contributes to the full realization of devolution.

3.1.5. The Coffee Bill, Senate Bills No. 22 of 2020

The principle object of the Bill is to provide for the development and regulation of the Coffee industry in Kenya. The Bill proposes to reorganize the coffee industry by transitioning the regulatory and commercial roles currently undertaken by the Agriculture and Food Authority to the Coffee Board of Kenya.

Paragraph 1 of Part 2 of the Fourth Schedule to the Constitution designates agriculture as a function of county governments. Further, the Bill delineates the roles of the National government vis a vis that of the county governments in relation to the coffee industry in Kenya. The Bill therefore affects the economic growth of most counties and the country as a whole and therefor contributes to the growth of devolution. This is one of the Bills that will lapse in the 12th Parliament and should therefore be prioritized in the 13th Parliament.

3.1.6 Finance Related Bills/Acts

Every year, the Senate processes the Division of Revenue Act, the County Allocation of Revenue Act and now the County Additional Allocation Act. These legislations are critical to devolution because they provide funding for counties. The Division of Revenue Act provide for the Sharing of revenue between County

Governments and the National Government. The amount allocated to Counties have risen steadily from Kshs. 310 Billion to Kshs. 370 Billion.

The County Allocation of Revenue Act, as an annual legislation shares the equitable share among the county government using an established formula; while the Additional Allocation Act basically are funds dispensed to counties from the National Government and Donors for specific projects.

3.1.7 County Resource Development Bill, Senate Bills No. 45 of 2021

The principal objective of the Bill is to ensure that county governments make maximum use of the resources within their location in the interests of economic development. The provisions of the Bill also place an obligation on the county government to carry out formal assessments of the resources within their county, to manage these resources and to include the same in the County Integrated Development Plan as per the requirements of the County Governments Act, 2012. The Bill further enables the formation of economic blocs between counties and makes provisions for a sample of a written agreement for an economic bloc.

The Bill also proposes a means of resolution of disputes within the economic bloc and a mechanism for the resolution of disputes over resources between the national government and the county government. It also seeks to enjoin youth, women and marginalized groups in the exploitation of resources within the county.

The Bill will lapse in the current parliament and may need to be prioritized in the 13th Parliament.

3.1.8 Health Related Bills

The senate in the 12th Parliament has proposed and processed a number of Health related Bills. Health being a fully devolved function is very critical to the success of devolution. Some of the Bills developed by the Senate include the —

(a) County E- Health Bill, Senate Bills No. 39 of 2021

The Bill seeks to enhance the delivery of medical services through the provision of e-health at the county level. As per the World Health Organisation, e-Health is the use of information and communication technologies (ICT) for health. The World Health Assembly in 2005 recognized the potential of eHealth to strengthen health systems and improve quality, safety and access to care, and encouraged Member States to take action to incorporate eHealth into health systems and services. Health information is used by policy-makers, planners, healthcare providers, development partners and the general public to track health system performance, support better health policies and make effective health-related decisions. Section 104 of the Health Act, 2017 recognizes the importance of e-health and states that within three (3) years of the enactment of the Act, legislation shall be enacted to ensure the enhancement of e-health. The Bill lapsed in the 12th Parliament and will have to be republished.

(b) Community Health Services Bill, Senate Bills No.5 of 2020

The principal object of this Bill is to provide a framework for the regulation of community health services and the recognition of community health workers. The First Schedule of the Health Act, 2017, recognizes Community Health Services at Level 1 as a function of the county governments. Community health services are instrumental in achieving preventive health care and ensuring access to health services in compliance with Article 43 of the Constitution. Part II of the Bill sets out the role of the National Government and the role of county government in regard to the provision of community health services.

It further establishes the office of the Deputy Director of Community Health Services and empowers the

respective county executive committee members to establish, where necessary, a community health committee to ensure the effective delivery of community health services in the county. The Bill further seeks to ensure that the counties invest in community health services by requiring the counties to among other things, ensure the recruitment and retention of the community health workforce.

There is a similar Bill in the National Assembly which was transmitted to the Senate for concurrence. The two Bills lapsed in the current parliament and will have to be republished

(c) Maternal, Newborn and Child Health Bill, Senate Bills No. 52 of 2021

The health and well-being of women and their children determines the health of the next generation. Ensuring proper and affordable healthcare for women, newborns and children is thus an important societal goal.

The principal object of this Bill, therefore, is to propose a legal framework that can facilitate and enhance the delivery of quality maternal, newborn and child health services, provide a platform for raising the profile and agenda for maternal, newborn and child health services, provide a framework for formal engagement, cooperation and promotion of coordinated approach to service delivery of maternal, newborn and child health services in the country, provide a platform of engagements between the national and county governments, and to enhance accountability and sound funding strategy for maternal, newborn and child health services. The Bill lapsed in the 12th Parliament and should therefore be prioritized by the 13th Parliament.

(d) The Mental Health (Amendment) Act, 2022

Article 43 (1) (a) of the Constitution guarantees every person the right to the highest attainable standard of health which includes the right to health care services. The Constitution further establishes two levels of government, the national government and the county governments. These two levels of government have an obligation to ensure that every person has access to health care services within their jurisdiction. Further, Part 2 of the Fourth Schedule requires county governments to provide county health services including, promote primary health care. To buttress this Constitutional requirement, section 73 of the Health Act, 2017 states that Parliament should enact legislation to ensure inter alia that the rights of an individual suffering from any mental disorder or condition are protected and mental hospitals with sufficient capacity are established at the national and county levels.

The Act therefore impose obligations on each level of government to address the issue of accessibility to mental health services including care, treatment and rehabilitation of persons with mental illness. The Act incorporates within the membership of Kenya Mental Health Board representation of the county governments. It further reviews the membership of the Kenya Mental Health Board from the current fourteen executive members to nine in order to make the workings of the Council more efficient and representative.

Table: status of Bills in the Senate

BILL	SPONSOR	OBJECT	PROGRESS/ HOW FAR IT IS
The County Allocation of Revenue (Amendment) Bill (Sen. Bill No. 9 of 2017)	Senate Majority Leader	The Principal object of this Bill is to amend the County Allocation of Revenue Act, No. 23 of 2017 to replace the Third Schedule of the Act on Conditional Allocations to County Governments from loans and grants from development partners in Financial Year 2017/2018.	Assented to on 6/12/17.
The Assumption of Office of the County Governor Bill (Sen. Bill No. 1 of 2018)	Sen. Wamatangi Paul, MP	To provide for the procedure and ceremony for the assumption of the office of Governor by a Governor elect.	<p>Bill passed by the Senate with amendments and referred to the National Assembly.</p> <p>Bill passed by the National Assembly with amendments and referred back to the Senate for concurrence.</p> <p>National Assembly amendments passed by the Senate.</p> <p>Bill assented to on 13/05/19.</p>

The County Allocation of Revenue Bill (Sen. Bill No. 11 of 2018)	Chairperson, SC on Finance and Budget	To make provision for the division of revenue raised nationally among the county governments for the financial year 2018/2019.	Assented to on 29/06/2018.
The Office of the County Printer Bill (Sen. Bill No. 13 of 2021)	Sen. Petronila Were Lokorio, MP	To establish the office of the county printer in each of the forty-seven counties.	Bill passed by the Senate without amendments and referred to the National Assembly.
The Division of Revenue (Amendment) Bill (Sen. Bill No. 14 of 2018)	Chairperson, SC on Finance and Budget.	To provide for three additional conditional allocations to county governments in Financial Year 2018/19 to be financed by loans and grants from donors. These additional conditional allocations are not provided for in the Division of Revenue Act, No.1 of 2018.	Bill assented to on 5/10/18.

<p>The County Allocation of Revenue (Amendment) Bill (Sen. Bills No. 29 of 2018)</p>	<p>Chairperson, SC on Finance and Budget.</p>	<p>To amend the County Allocation of Revenue Act, No. 8 of 2018 to replace the Third Schedule of the Bill on Conditional allocations to County Governments from Loans and Grants from Development Partners in Financial Year 2018/2019.</p>	<p>Bill passed by the Senate without amendments and referred to the National Assembly for concurrence. Bill passed by the National Assembly without amendments.</p> <p>Bill assented to on 31/12/18.</p>
<p>The Natural Resources (Benefit Sharing) Bill (Sen. Bills No. 25 of 2020)</p>	<p>Sen. (Dr.) Agnes Zani</p>	<p>To provide a legislative framework for the establishment and enforcement of a system of benefit sharing in natural resource exploitation between natural resource exploiters, the national government, county governments and local communities and to that end provides that the Commission for</p>	<p>Bill passed by the Senate with amendments and referred to the National Assembly.</p>

		Revenue Allocation oversees the same.	
The County Allocation of Revenue Bill (Sen. Bills No. 8 of 2019)	Chairperson, SC on Finance and Budget	To provide for the equitable allocation of revenue raised nationally among the county governments for the 2019/2020 financial year and the responsibilities of national and county governments pursuant to such allocation.	<p>Bill passed by the Senate with amendments and referred to the National Assembly.</p> <p>Bill passed by the National Assembly without amendments.</p> <p>Bill assented to on 18/09/19.</p>
The County Allocation of Revenue Bill (Senate Bills No. 1 of 2022)	Chairperson, Standing Committee, Finance and Budget	To make provision for the allocation of revenue raised nationally among county governments for the Financial Year 2022/2023.	Bill passed by the Senate with amendments and referred to the National Assembly.
The County Governments Additional Allocation Bill (Senate Bills No. 2 of 2022)	Chairperson, Standing Committee on Finance and Budget	To make provision for the transfer of conditional allocations from national governments share of revenue and from development	Bill awaiting division at the Second Reading.

		partners to the county governments for the financial year 2021/22.	
The County Resource Development Bill (Senate Bills No. 45 of 2021)	Sen. Rose Nyamunga, MP	A Bill for an Act of Parliament to make provision for the obligation of county governments to engage in protection and development of natural resources, for the collection of local revenues, the creation of regional economic blocs.	Bill awaiting Committee of the Whole.
The County E Health Bill (Senate Bills No.39 of 2021)	Sen. Judith Pareno, MP	A Bill to provide a framework for the implementation of section 104 of the Health Act, 2017, the provision of telemedicine services and the establishment and management of e-health infrastructure and services at the	Bill awaiting Committee of the Whole Stage.

		national and county levels of government.	
The County Governments (Amendments) Bill, (Senate Bills No. 38 of 2021)	Sen. Moses Kajwang', MP	<p>To amend the County Governments Act 2012, to provide clarity in the operations of the County Assembly Service Board in instances where the office of the speaker becomes vacant.</p> <p>Section 12(3) of the County Governments Act provides that the Speaker of the County Assembly shall serve as the chairperson of the Board with a vice chairperson being elected by the Board from the members.</p> <p>However, in recent times there have been instances in several county assemblies where the Deputy speakers</p>	Bill passed by the Senate with amendments and referred to the National Assembly.

		acting as speakers have assumed the office of the Chairperson of the Board. The Bill therefore seeks to address this challenge.	
The County Boundaries Bill, Senate Bills No. 20 of 2021	Sen. Mutula Kilonzo Jr, MP	To provide for an Act of Parliament to define the boundaries of the counties of Kenya, to provide for the resolution of county boundary disputes through the establishment of a county boundaries mediation committee; and to give effect to Article 188 of the Constitution on the alteration of county boundaries.	Bill passed by the Senate with amendments and referred to the National Assembly.
The 3rd Generation Revenue Sharing formula between National and County Governments		Increased the equitable allocation to Counties to at least Kshs. 370 Billion.	Passed and currently being implemented.

CHAPTER FOUR

PETITIONS AND MOTIONS CONSIDERED BY THE 12TH PARLIAMENT

4.1 Petitions

The right to petition Parliament in a democracy is of immense importance for safeguarding the rights of the citizens. The Constitution of Kenya in Articles 37 and 119 gives a broader framework to any citizen a right to petition public authorities and in particular Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation. This can be done by any citizen or by a Member of Parliament on behalf of the citizen(s).

As required by the Constitution, Parliament enacted the Petitions to Parliament (Procedure) Act (No. 12 of 2012) to make provision for the procedure for the exercise of this right. Further, Part XXV of the Standing Orders of the Senate also make provision of how this right will be enjoyed or exercised.

4.1.1 Requirements for a Public Petition under the Petitions to Parliament (Procedure) Act and the National Assembly and Senate Standing Orders

A public petition to the Senate shall—

- (a) be handwritten, printed or typed;
- (b) be in English or Kiswahili and be written in respectful, decorous and temperate language;
- (c) be free of alterations and interlineations in its text;
- (d) be addressed to the Clerk of the Senate;
- (e) have its subject-matter indicated on every sheet if it consists of more than one sheet;
- (f) indicate whether any efforts have been made to have the matter addressed by a relevant body and whether there has been any response from that body or whether the response has been unsatisfactory;
- (g) indicate whether the issues in respect of which the petition is made are pending before any court of law or other constitutional or legal body;

- (h) conclude with a clear, proper and respectful prayer, reciting the definite object of the petitioner or petitioners in regard to the matter to which it relates;
- (i) subject to paragraph (m), contain the names, addresses, identification numbers, signature or a thumb impression of the petitioner or of every petitioner, where there is more than one petitioner;
- (j) contain only signatures or thumb impressions, as the case may be, and addresses and identification numbers written directly onto the petition and not pasted thereon or otherwise transferred to it;
- (k) not have any letters, affidavits or other documents annexed to it;
- (l) in the case of a petition presented by a Member of Parliament on behalf of a petitioner, be countersigned by the Member presenting it; and
- (m) be signed by the petitioner, or if the petitioner is unable to sign, by a witness in whose presence the petitioner shall make his or her mark on the petition.

4.1.2 Committal of Petitions

Every Petition presented stands committed to the relevant Standing Committee which will have not more than sixty (60) calendar days from the time of reading the prayer, to respond to the petitioner(s) by way of a report tabled in the Senate. The Senate and the National Assembly Standing Orders each provide that the Clerk shall, within fifteen days of submission of a report of a petition, notify the petitioner in writing. Most petitions to Parliament relate to land issues, displacement of a group of people, among others just to mention a few. The general rule is that once a Petition is presented to either house, the same is committed to the relevant committee. The Committee undertakes its investigation and upon conclusion, the committee tables its report for adoption and further shares its finding with the Petitioners. If the Report is adopted by the House, then the recommendations become resolutions of the House which then are supposed to be implemented. The procedure for implementing House resolutions is still a challenge and therefore one cannot be in a position to say with certainty how effective Petitions are.

4.1.3 Challenges

Most Petitions are individual in nature and are hardly processed to conclusion. Indeed, the 60 days provided for has never been met. Both Houses have raised issues on the use of Petitions. Their effect is negligible.

4.2 The Status of Petitions in the 12th Parliament

The number of Petitions received by both Houses are many. In the Senate, 145 Petitions were received and processed either to their logical conclusion while others are still pending in various committees. The National Assembly also received an estimate 687 petitions which were either concluded, lapsed or are pending as at the time the House went on recess sine die. In both Houses, the Petitions principally address issues surrounding land ownership and illegal hiving off of land by various institution. The rate of Petitions that lapse or that are pending before various committee is very high and therefore it is difficult to determine the impact of Petitions generally.

Table showing the consideration rate in the Houses

National Assembly					
No.	Year	No. of Petitions Received	No. Concluded	No. Pending	No. Lapsed
1.	2018	103	33	-	70
2.	2019	71	32	38	1
3.	2020	111	37	34	30
4.	2021	192	71	86	35
5.	2022	210	38	89	89
<i>NB: Some petitions that did not lapse in the previous session/year may roll over to the next year on the request by a Committee dealing with the same.</i>					
Senate					
1.	2017-2022	145	114	31	-

Petitions that have been considered and concluded are tabled in the House for adoption and then communication of the finding is made to the Petitioners.

There is very little way of monitoring implementation status of the resolutions once adopted by the House. To this end, Senator Agnes Zani had proposed a Bill to ensure that all Parliamentary resolutions are implemented without fail. The Bill is currently before the National Assembly and will definitely lapse in the 12th Parliament.

It is recommended that the Bill be prioritized in the 13th Parliament.

4.3 Motions

Most Motions are presented by members to deal with particular matters of interest. Most Motions have been considered and negative in the House and therefore one cannot really refer to Motions as an effective legislative tool.

Most Motions in the National Assembly relates to national government or House business and therefore one cannot comment beyond that. For the Senate, the twelve (12) Parliament considered a total of thirty-six (36) Motions, majority relating to House business. However, 5 related to investigations into the Covid -19 pandemic and the much talked of the Leased Medical Equipment (MES). The MES report was negated while the Committee on Covid-19 came up with a Bill which was never processed to conclusion.

4.4 Conclusions and Recommendations

The accountability of other arms of Government to Parliament is necessary for democratic governance and is anchored on the fundamental principle that Parliament represents the will of the people and exercises their sovereignty. Reporting requirements are one of the oversight mechanisms that Parliament employs to monitor the actions of the Executive and other independent offices to ensure accountability, transparency and responsibility in the performance of their duties. In addition, parliamentary committee reports contain important policy recommendations and perspectives that reflect the will of the people and insights from the legislators and other stakeholders.

A lot of time and resources go into the work of Committees and the resultant reports that are tabled and adopted in Parliament. It is therefore antithetical to good governance for those resolutions to be submitted to the Executive and other offices with no action taken or feedback given. Unfortunately, this is the position that Parliament finds itself in relation to petitions and motions. Once Parliament has considered a petition or motion and passed a resolution, the same is forwarded to the respective government agency for implementation. This however rarely happens if at all.

Accordingly, in order to make petitions and motions effective, Parliament must consider and take petitions and motions seriously to avail to the public the opportunity granted by the Constitution by ensuring that petitions and motions are considered and processed within the stipulated timelines of 60 days.

Secondly, Parliament must devise a method of ensuring that the Resolutions made by either House of Parliament are implemented to the letter. To this end, the Bill by Senator (Dr.) Agnes Zani that pushes for expeditious implementation of Parliamentary Resolutions, should be enacted. The Parliamentary Powers and Privileges (Amendment) Bill, Senate Bills No. 33 of 2020, sponsored by Senator Agnes Zani should be prioritized to ensure parliamentary resolutions are implemented efficiently. The Bill has lapsed in the 12th Parliament and should therefore be prioritized in the 13th Parliament.

CHAPTER FIVE

PUBLIC PARTICIPATION AND THE LEGISLATIVE PROCESS IN THE PARLIAMENT OF KENYA: FOCUS ON THE 12TH PARLIAMENT

5.1 Background

Public participation is a constitutional requirement. Article 1 (2) provides that all sovereign power belongs to the people of Kenya. The people may exercise their sovereignty directly or through their elected representatives. Article 10 (2) (a), (b) and (c) further states the national values and principles of governance to include: democracy and participation of the people; inclusiveness; good governance, integrity, transparency and accountability.

The Constitution vests the legislative authority in Parliament which consists of two houses: The National Assembly (NA) and the Senate. The Constitution also provides for fourteen seven (47) County government structures, with legislative power vested in the County Assemblies. The NA and the Senate represent different interests in the legislative process, with the NA representing "the people ... to ensure government by the people" and the Senate principally being established to protect the interest of counties and their governments. The participation of both Houses of Parliament is required in the legislative process. In the view of the court, if either of these democratic institutions fails to fulfill its constitutional duty in relation to a Bill, which includes the duty to facilitate public participation, Parliament has tied to fulfill its duty though the jury is still out there as to the effectiveness of the various parliamentary initiative in the public participation processes.

The constitutional duty to facilitate public involvement in the legislative and other processes is provided for in Article 118 of the Constitution and the Standing orders of the respective Houses of Parliament. Article 118 sets the foundations of public involvement in the legislative process in a democratic government, which, according to the court, include ensuring accountability, responsiveness and openness. Article 118 (1)(a) in particular provides that "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its committees".

The Preamble of the Constitution expresses the values that underpin the goals agreed upon for the establishment of a society based on democratic values: government based on the essential values of human rights, equality, freedom, democracy, social justice and rule of law. The Constitution further indicates that "the legislative authority of the Republic of Kenya is derived from the people and, at national level, is vested in and exercised by Parliament." The right to political participation is further strengthened by the political rights clause found in Article 38 of the Constitution and on the protection of the freedom

of expression found in Article 33 of the Constitution. The provisions clearly indicate a broader notion of political participation than simply the right to vote which has been argued to be an aspect of public participation.

5.2 Public Participation Bill(s)

Currently, there are a number of bills on public participation; including the Public Participation Bill (Sen. Bills No. 4 of 2018), Public Participation Bill (NA Bill No. 69 of 2019) and the Public Participation Bill (NA Bill No. 79 of 2019). The purpose of these Bills is to give effect to the Constitutional provisions on public participation (Article 10(2)(a), 69(1)(d), 174(c), 184(1)(c), 196(1)(b), 201(a) and 232(1)(d)). The Bills seek to provide a framework for public participation by defining the parameters for assessing its effectiveness and defining the obligations of state organs and public offices when conducting public participation. This is an important step in the right direction considering the practical challenges that the public continue to face when participating in decision-making processes on matters affecting them.

The absence of a law to prescribe the requirements for public participation that meets the Constitutional threshold has created the conditions for duty bearers to conduct consultations as a formality. Whereas Parliament has been undertaking public participation, the process has been perceived more as a cosmetic exercise because it is not effective both quantitatively and qualitatively. Indeed, judicial decisions have not helped much. Courts have stated that if a party can demonstrate that the public was given an opportunity to participate in a process either through physical appearance, or through the submission of memoranda, and that there is evidence of such invite through the media, then the concern party will have dispensed with the burden of undertaking public participation.

5.3 Public Participation by the 12th Parliament

The predominant procedure used by parliament to reach out to members of the public for their input in legislative process is through newspaper advertisements, parliamentary websites and individual letters sent to invited parties. Primarily, newspaper advertisements calling for memoranda from the public is the main media for reaching out. These advertisements are usually placed in the two major dailies, the Standard and Daily Nation. Most of the advertisements give interested participants seven days to submit mostly written views via email, post office or through physical delivery to the Clerk's office. The use of this media is generally ineffective in reaching the wider population, who preferred radio, television, or physical meetings. The procedure used by the parliament therefore negatively affect participation by the public and thus the quality of the legislation passed. The legislation as enacted therefor barely reflect the will of the public.

In the circumstances, it is clear that public participation has had little effect on outcome of legislation passed by parliament. This is due to many factors; First, the public are unaware of various constitutional guarantees at their disposal to enable them actively participate in legislation. When the public is unaware and incapacitated, lack of awareness hampers effective participation. Thus, though parliament has made effort towards compliance with the Constitution, the same is cosmetic in nature and public participation conducted is the bare minimum, through call for memoranda in nationwide newspapers, and occasionally conducting meetings for oral submission within the precincts of Parliament, with very little innovation to facilitate the citizens to participate in legislation effectively.

Further, participation by individual members of the public is inadequate due to ignorance, disinterest, incapacity and general apathy. Associations and the civil society have however shown some aspects of participation in the legislative process. These non-state actors are however not as strong as has been evidenced in other jurisdictions. Ultimately, there is very little change that is captured in legislation arising out of public participation save for what parliament wants. Public participation is just but a gimmick.

5.4 Conclusion and Recommendations

Public participation is a constitutional principle that must be applied by the legislature in its work. This requirement is anchored in the standing orders of the National Assembly and the Senate. Whereas Parliament has tried to involve the public in its legislative work, it is still not clear as to the quality and quantitative aspects of public participation. There may be need for a legislative framework to provide for minimum parameters or standards in order to determine whether effective public participation has been undertaken. Absence of a legislation on public participation is no excuse for not undertaking effective public participation, however.

It is thus recommended that in order to have effective public participation, parliament should provide for the minimum standards in their respective standing orders to ensure that public participation in the legislative process is both qualitative and quantitative.

It is further recommended that the civil society organizations to establish formal ways of collaborating with Parliament to make public participation more meaningful. To this end, the Dokeza platform hosted by Mzalendo and therefore taking a lead by a providing public participation platform, is encouraged.

CHAPTER SIX

6.0 ASSESSING THE IMPACT OF LEGISLATION, PETITIONS AND MOTIONS CONSIDERED BY THE 12TH PARLIAMENT

6.1 Legislative Assessment Tool and Post Legislative Scrutiny

One of the main roles of parliament is to create laws that meet the needs of the country's citizens. It is also a parliament's role to evaluate whether the laws it has passed achieve their intended outcome(s). Post-legislative scrutiny refers to the stage at which a parliament applies itself to this question: whether the laws of a country are producing expected outcomes, to what extent, and if not, why not. A "Post-Legislative Scrutiny: is required to provide practical guidance for organizing Post-Legislative Scrutiny inquiries in parliament.

Currently, it is a challenge to effectively assess the legislative impact on the public from the legislation and Petitions enacted by Parliament. Kenya lacks a robust legislative impact assessment tool neither does Kenyan institutions undertake post legislative scrutiny to determine the impact of a legislation.

Moving forward, it is critical that institutions develop legislative assessment tools for purposes of ensuring that legislation enacted meets the needs of the people and the ultimate intended purpose. If such an assessment is undertaken, then the same can inform future amendments if at all.

6.1.1 Legislative Impact Assessment Tool

The effective implementation of laws is a complex business and it depends on many elements including funding, compliance, commitment and cooperation from institutions and citizens. Implementation can also be affected by changes in politics, in the economy or in society. The Constitution clearly vest in the legislative role in Parliament. Further, the same Parliament has oversight roles to ensure that the laws it passes or resolutions made, are implemented by all. Due to this requirement, there is need for Parliament to continuously evaluate the laws it passes to ensure that the laws are fit for purposes and are relevant. Parliaments and elected representatives have often little information on what happens after a law is enacted. The focus is often on getting legislation made, not on checking how well it is being implemented and if it is effective at all. Currently in the Parliament of Kenya, there is no applicable tool to assess the impact of legislation proposed or even enacted by Parliament. As a matter of fact, there is no legislative impact assessment undertaken by Parliament at all to determine the efficacy of any of its legislation.

For purposes of assessing the success or otherwise of a legislature, the Commonwealth Parliamentary Association has developed certain parameters but the same have nothing to do with legislative impact assessment. The areas include —

- Representative aspects of parliament
- Assurance of the independence, effectiveness, and accountability of parliament
- Parliamentary procedures
- Public accountability
- Parliamentary service
- Parliament and the media

Traditional assessment of legislative impact assessment has taken the form of Regulatory Impact Assessment (RIA). This however has not addressed the concern of determining the impact of a legislation that has been enacted in order to inform any possible reforms. Indeed, RIA has primarily been used to assess the impact of subsidiary legislation in the form of regulations. Assessing the impact of a legislation requires parameters to be developed to provide Parliament with a tool for undertaking assessment. The tool should provide for—

- (a) The object of the legislation;
- (b) The process of developing and ultimately enacting the legislation; did it comply with the constitutional and other legal requirements;
- (c) Was the law necessary;
- (d) What is the cost of implementing the law;
- (e) How soon after enactment did the implementing agency start implementation;
- (f) What is the total cost of implementation;
- (g) What is the cost of administration vis a vis the funds used in implementing projects and programmes;
- (h) What are the shortcomings of the law; and
- (i) Which areas need amendments or otherwise.

These plus other parameters can be developed and applied by Parliament or other players in the assessing the impact of a legislation or legislative measures taken by Parliament.

6.1.2 Post Legislative Scrutiny

Post-Legislative Scrutiny, also known as Ex-Post Evaluation of Legislation, consists of the body of mechanisms and practice used to monitor and evaluate the implementation of legislation, ensuring laws benefit constituents in the way originally intended by lawmakers. Post-Legislative Scrutiny includes two main dimensions: evaluating the introduction and enforcement of a piece of legislation; and evaluating the

impact of legislation. Post-Legislative Scrutiny provides an opportunity to assess the impact of legislation on the well-being of all citizens and to address any unforeseen disadvantages or inequalities that may have been created based on gender, education, geographic location, disability, sexuality, income, religion, ethnicity, language or other factors.

In the London Declaration on Post Legislative Scrutiny, The Declaration is an outcome of the Academic Seminar on Post-Legislative Scrutiny held in London on 10 July 2018 and jointly organised by the Institute of Advanced Legal Studies of the University of London and WFD the Declaration implore parliaments to include Post Legislative Scrutiny as part of a full-cycle approach —

- (a) by including outreach and public engagement as part of the Post Legislative Scrutiny process as this enables the access to additional sources of information and evidence;
- (b) by ensuring that Committee public hearings or consultations which are part of the Post Legislative Scrutiny inquiry can enhance public trust in parliament and in other democratic institutions, and public participation in the decision-making within Parliament;
- (c) as part of best parliamentary practices, by making the Post-Legislative Scrutiny reports available to the public, whenever possible;
- (d) by ensuring that independent or autonomous agencies, in particular when established by legislation approved by parliament, report to parliament on how that legislation has been implemented, identifying any issues with implementation and whether it solved the problem that it was intended to address;
- (e) by ensuring that in drafting legislation, parliaments may resort when appropriate to sunset or review clauses as specific means for planning post-legislative scrutiny reviews put processes in place to ensure consideration of the findings of Post-Legislative Scrutiny;
- (f) by ensuring that recommendations of Post-Legislative Scrutiny reviews are tracked and followed through and, where necessary, changes to legislation and policy made in a timely manner; and
- (g) by considering institutionalizing Parliamentary efforts in Post-Legislative Scrutiny by inclusion in the parliamentary rules of procedures or other equivalent documents, in line with their respective parliamentary practices. This may contribute to generating clarity, purpose and resources for Post-Legislative Scrutiny activities, and ensures its sustainability.

The overall picture is that post-legislative scrutiny does take place but it is not systematic and there are many gaps. It is apparent that post legislative scrutiny means different things to different people in terms of its objectives and the mechanisms adopted to carry it out.

6.2 Recommendations

Accordingly, it is recommended that moving forward, post legislative scrutiny should be formalized and undertaken in a systematic manner. This may be achieved by including post legislative scrutiny as part of parliamentary procedures by including it in the Standing Orders and as functions of respective Committees. Further, Parliament may provide in various legislation enacted, sunset or review provisions to anchor post legislative security in the law.

Once this is done, Parliament may then develop specific tools for use in both legislative impact assessment and post legislative scrutiny processes.

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MZALENDO TRUST
ACK Garden House
2nd Floor, Wing A | 1st Ngong Avenue
P. O. Box 21765, 00505 Nairobi, Kenya
[e]: info@mzalendo.com | [w]: www.mzalendo.com
[f]: [mzalendowatch](https://www.facebook.com/mzalendowatch) | [t]: [@mzalendowatch](https://twitter.com/mzalendowatch)

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