AN ADVISORY TO THE COUNTY GOVERNMENT AMENDMENT BILL N.O 4 OF 2014

A. Introduction

The statement of the objects and reasons of the bill are;

*The Bill seeks to amend the County Governments Act, No. 17 of 2012, in order to provide--*

(a) for the election of a deputy speaker of a county assembly;
(b) further clarity on the functions of a Deputy Governor;
(c) that a majority of all county delegations of the Senate vote is required to uphold any impeachment charge
(d) against a Governor; and for the process for the removal of a Deputy Governor from office.

B. Constitutionality of the amendments

*Article 96 of the Constitution of Kenya* provides for the role of the Senate. Specifically subsections 2 and 3 are relevant in the instant case;

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

*Article 109(4) of the Constitution* provides that a Bill concerning County Governments may originate in the National Assembly or in the Senate, and is passed in accordance with *Article 110 to 113, Articles 122 and 123.*

*Article 110* provides for bills concerning counties and sub article 1(b) categorizes a bill relating to election of members of a county assembly or a county executive as a bill concerning counties. If an ordinary bill concerning counties is passed by either house of Parliament and rejected by the other, then the same is referred to the mediation committee comprised of members of the two houses. The amendment is therefore constitutional as either house of parliament has the Constitutional authority to bring it forth. It is also not a money bill that would require the in-put of the two houses of Parliament.
C. Specific amendments

Election of the Deputy Speaker of the County Assembly

The office of the deputy speaker of the County Assembly had to be given legitimacy through statute. Section 7 of the County Government Act did not provide for this office yet all the county assemblies had elected deputy speakers who were discharging those roles on the strength of the various standing orders. The role of the county assembly is akin to that of parliament as such it can only function effectively if it is organized like the other two houses of parliament. The offices of the deputy speaker in both the National Assembly and the Senate enjoy Constitutional legitimacy (Article 106 of the Constitution) and it had to be contemplated that such an office in the county assembly would require statutory backing.

Removal of the deputy speaker from office

Since the bill formally introduces the position of the deputy speaker then it ought to provide for how one can be removed from the position. The amendment to section 11 of the principal act is therefore in order.

Functions of the Deputy Governor

Section 4 of the bill amends s. 30(3) of the principal act and introduces a paragraph (aa) where the Governor subject to the Constitution the Governor shall consult the Deputy Governor in the execution of his functions. Under Article 110 the Constitution provided for the election of the Governor and the Deputy Governor , the role of the Deputy Governor are not elaborated and the constitution only identifies his/her role to assume office of Governor in case of a vacancy for the remainder of the term. The amendment elaborates on the role of the Deputy Governor who is to work in conjunction with the Governor.

Section 5 amends section 32 of the principal act where subsections 2 and 3 are substituted. Subsections 2 and 3 provided for the role of the Deputy Governor in very broad and general terms. The deleted subsection 2 simply provided that the Deputy Governor would deputize the Governor, subsection 3 provided that he/she would partake of duties assigned by the Governor. The amendment bill brings out the duties of the Deputy Governor clearly. First he/she is the principal assistant to the Governor who shall deputize the Governor in execution of the Governor’s function. Secondly he/she co-ordinates functions of the county executive committee and co-ordinates service delivery to the county. This is called for as the Deputy Governor is assigned specific functions and doesn’t necessarily have to wait for the direction of the Governor. Co-ordination of the county executive enables the Governor and the deputy to be abreast with what their team is doing.
Removal of the Deputy Governor

Section 6 of the bill amends section 33 of the principal act and provides for the removal of the Deputy Governor. Key to this amendment is that the same process of removal of a Governor would apply to removal of a Deputy Governor with necessary modifications.

D. KEY CONCERNS

- Under the functions of the Governor the amendment introduces the term ‘consultation’ where he/she shall subject to the constitution consult the Deputy Governor. The term shall is mandatory. The term consultation has been subject to considerable debate. See for instance the case of Minister For Internal Security and Provincial Administration v Centre For Rights Education & Awareness (Creaw) & 8 others [2013] e KL R under the previous regime where the term consultation in the appointment of state officers had brought a lot of tension. Others have interpreted the term consultation to mean concurrence whereas to others it merely means informing.

It is important to note that the previous regime (2008-2013) was a coalition between two units sharing power. This is not the case between the Governor and his/her deputy. To treat this ambiguity, we cannot legislate on this issue. However we may opine that a Governor may seek advice from the Deputy Governor for the authority lies with the former.

- Removal of the deputy speaker and the Deputy Governor follows the same procedure as the removal of the speaker and the Governor respectively but the amendment provides that it would be done with necessary modifications (if need be) whereas this is in order the necessary modifications are unknown. This may allow room for abuse; modifications may be made to suit particular office holders at the time. Therefore a standard procedure must be followed with no room for modification.

- The Deputy Governor has now been given a task to co-ordinate the functions of the county executive members, this is a very engaging task and may pose a challenge of too much work because he/she is to also deputize the Governor.

E. CONCLUSION

If the key concerns are addressed the amendment is called for and a right step in the right direction. It deals with the amorphous way in which the deputy speaker of the County Assembly and the Deputy Governor operated and it specifies and streamlines the specific roles of the Deputy Governor.