

# NAIROBI CITY COUNTY ASSEMBLY



Report of:-

*The Sectoral Committee on Justice and  
Legal Affairs*

On the consideration of the;

**The Building Bridges Initiative (BBI)  
Constitution of Kenya (Amendment)  
Bill, 2020**

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## 1.0 Preface

- 1.1 The Independent Electoral and Boundaries Commission (IEBC) submitted the Constitution of Kenya (Amendment) Bill, 2020 to the Nairobi City County Assembly vide a letter ref: IEBC/VREO/2/12/BBI, dated 26<sup>th</sup> January 2021 and pursuant to Article 257(4) of the Constitution of Kenya, 2010 for consideration as cited below:-

### Citation – Article 257

*257(1) An amendment to this Constitution may be proposed by a popular initiative signed by at least one million registered voters.*

*257(2) A popular initiative for an amendment to this Constitution may be in the form of a general suggestion or a formulated draft Bill.*

*257(3) If a popular initiative is in the form of a general suggestion, the promoters of that popular initiative shall formulate it into a draft Bill.*

*257(4) The promoters of a popular initiative shall deliver the draft Bill and the supporting signatures to the Independent Electoral and Boundaries Commission, which shall verify that the initiative is supported by at least one million registered voters.*

*257(5) If the Independent Electoral and Boundaries Commission is satisfied that the initiative meets the requirements of this Article, the Commission shall submit the draft Bill to each county assembly for consideration within three months after the date it was submitted by the Commission.*

## Tabling and Committal

- 1.2 The Constitution of Kenya (Amendment) Bill, 2020 under the Building Bridges Initiative (BBI) sponsorship having been duly submitted to the County Assembly, was thereafter laid on the Table of the County Assembly by the Leader of the Majority Party on Tuesday, 9<sup>th</sup> February 2021.
- 1.3 The Bill was subsequently committed to the Sectoral Committee on Justice and Legal Affairs for consideration pursuant to provision of Standing Order 131(3) providing that public participation be conducted and submission of a report to the County Assembly.
- 1.4 Article 257(6) of the Constitution of Kenya 2010 dictates timeline for consideration of the Bill to be **three months from the date submitted by the** Independent Electoral and Boundaries Commission (IEBC) as cited below:-

### Citation – Article 257(6)

*If a county assembly approves the draft Bill within three months after the date it was submitted by the Commission, the speaker of the county assembly shall deliver a copy of the draft Bill jointly to the Speakers of the two Houses of Parliament, with a certificate that the county assembly has approved it.*





## 2.0 Sectoral Committee on Justice and Legal Affairs:

- 2.1 The Sectoral Committee on Justice and Legal Affairs is one of the Sectoral Committees established pursuant to provisions of Standing Order 203 of the Nairobi City County Assembly Standing Orders.
- 2.2 The Committee's mandate pursuant to the provision of Standing Order 203 –Third Schedule is, amongst others, to investigate, inquire into and report on all matters relating to; ***“Constitutional affairs, the administration of law and justice, including the elections, ethics, integrity and anti-corruption and human rights; city inspectorate and enforcement.”***
- 2.3 The Committee on Justice and Legal Affairs comprises of the following Members of the Nairobi City County Assembly;

Table 1: List of the Committee Members

No.	Member	Ward
1.	<b>Hon. Joseph Komu, MCA- Chairperson</b>	Kahawa Ward
2.	<b>Hon. Francis Ngesa, MCA- Vice Chairperson</b>	Dandora IV Ward
3.	Hon. Cecilia Ayot, MCA	Laini Saba Ward
4.	Hon. Millicent Okatch, MCA	Special Elect- Women
5.	Hon. David Ayoi, MCA	Gatina Ward
6.	Hon. Doris Kanario, MCA	Special Elect - Women
7.	Hon. Elijah Mpuhia, MCA	Njiru Ward
8.	Hon. Millicent Jagero, MCA	Special Elect – Youth
9.	Hon. Jairus Omayo, MCA	Lindi Ward
10.	Hon. Antony Kimemia, MCA	Uhuru Ward
11.	Hon. Esther Nyangweso, MCA	Special Elect - Women
12.	Hon. John Kyalo, MCA	Kwa-Njenga Ward
13.	Hon. Maina Njoka, MCA	Kariobangi North Ward
14.	Hon. Margaret Mbote, MCA	Kariobangi North
15.	Hon. Millicent Mugadi, MCA	Ziwani Ward
16.	Hon. Moses ogeto, MCA	Kilimani Ward
17.	Hon. Muchene Kabiru, MCA	Uthiru Ruthimitu Ward
18.	Hon. Patrick Musili, MCA	Hospital Ward
19.	Hon. Mwangi Njihia, MCA	Woodley K. Golf Course
20.	Hon. Kennedy Obuya, MCA	Imara Daima Ward
21.	Hon. Asil Mohammed	Special Elect- Women
22.	Hon. Susan Mukungu, MCA	Special Elect –Youth
23.	Hon. Mary Njambi, MCA	Special Elect- Women

Pursuant to Article 257 of the Constitution of Kenya 2010



24.	Hon. Osman Khalif, MCA	South C Ward
25.	Hon. Patrick Logedi, MCA	Kamukunji Ward

2.4 The Committee is under the technical facilitation of the following officers:-

Table 2: List of the Secretariat

No.	Officer	Title
1.	<b>Ms. Cammelyn Anguche</b>	Senior Clerk Assistant
2.	<b>Mr. Adam Kibwana</b>	Senior Clerk Assistant
3.	Ms. Daisy Kariuki	Senior Legal Counsel
4.	Ms. Judith Aron	Clerk Assistant
5.	Ms. Lillian Kyembeni	Office Assistant

### Acknowledgment by the Committee Chairperson:

- 2.5 Hon. Speaker, I wish to take this opportunity to thank all Members of the County Assembly for reaching out and disseminating the propositions contained in the BBI amendment Bill, 2020 to their electorates and for encouraging their active engagement on this civic and constitutional duty;
- 2.6 I also thank the Members of the public for submitting both their written and oral submissions during the public participation exercise, as the same were valuable in shaping the decision of the Committee and the County Assembly at large;
- 2.7 Equally Hon. Speaker, on behalf of the Committee on Justice and legal Affairs, I take this opportunity to thank the **Offices of the Speaker, Office of the Clerk of the County Assembly and the Legal Department** and not forgetting the **Tables and Journals Office** for the logistical support accorded to the Committee during the entire process.
- 2.8 Finally, on behalf of the Committee, it is my pleasure and duty to present to the **Nairobi City County Assembly, the Report of the Sectoral Committee on Justice and Legal Affairs** on consideration of the Constitution of Kenya (Amendment) Bill, 2020.

Dated...*18<sup>th</sup>*.....day of...*February*.....2021

Signed .....*[Signature]*.....

Hon. Joseph Komu, MCA

Chairperson, Justice and Legal Affairs Committee

### 3.0 Public Participation

- 3.1 Article 196(1) of the Constitution of Kenya, 2010 mandates the County Assembly to facilitate public participation and involvement in the legislative and other business of the Assembly and its Committees. Further Section 87 of the County Governments Act, 2012 sets out principles of citizens' participation in the Counties.
- 3.2 At its meeting held on **Wednesday 10<sup>th</sup> February, 2020**, the Committee while deliberating on the Constitutional Amendment Bill, resolved to undertake public participation the on same.

#### Notice for Memoranda:

- 3.3 Members of the Public were duly invited, through a notice issued in the local dailies by the Clerk of the Assembly, on **10<sup>th</sup> February 2021**, and requested to submit memoranda or give views on the said Constitutional Amendment Bill on or before **Wednesday 17<sup>th</sup> February, 2021** at Charter Hall, City Hall Buildings.
- The said advertisements were published both in the **Nation Newspaper** and the **Standard newspaper** of **Wednesday 10<sup>th</sup> February 2021**, notifying the public on the date, time and place where the public participation forum would be conducted, being on **Wednesday 17<sup>th</sup> February, 2021** at Charter Hall, City Hall Buildings.

#### Views from the public:

- 3.4 This report Contains submissions and presentations by "*Wananchi*" during the Public Participation exercise which was undertaken on **Wednesday 17<sup>th</sup> February, 2021** at Charter Hall, City Hall Buildings and captured in this report;
- 3.5 The Public Participation exercise was executed in line with the dictates of the Constitution of Kenya, 2010, the **Nairobi City County Public Participation Act, 2015**, the Nairobi City County Assembly Standing Orders and conformed with the Ministry of Health Covid-19 protocols;
- 3.6 Highlights of both the written and oral submissions by the general public during the public participation exercise is as tabulated below:-

Table 3: Highlights of the views from the General Public

Written submissions by the general Public		
#	Stakeholder	View/Reservation
1.	Mr. David Okello	i) The 35% allocation to Counties should be remitted on fixed dates. Counties should not beg Treasury. If there aren't enough funds, Treasury should borrow to fulfill its obligations  ii) Starting from this year's budget, constitutionally devolved functions should not be given huge allocations (Agriculture etc) at National Government level functions must be domiciled where they belong.





		iii) On corruption, any procurement by Government/ parastatals of over Ksh. one billion must be okayed by the Attorney General having checked competitiveness/ fair price.
2.	Mr John Naftali Kwai	The BBI recommendations should be approved in totality. If there are any legacies bequeathed to the citizens by the president of Kenya's administration should be non-other than the Building Bridges Initiative amongst others

### Highlights of the oral submission from the general public

1.	Member of the Public (Youth)	<b>Welcomed the amendment of Article 237</b> establishing the Youth Commission and specifying who to be appointed, their functions, duration of office and objectives of the commission being to promote and implement the rights of youth amongst others
2.	Member of the Public (on behalf of women)	<b>On Amendment of Article 237</b> providing nomination and replacement of a Governor and Deputy Governor and that the party nominating the Governor should also nominate the Deputy Governor, was also seen as a good direction since the amendment provides for consideration of gender balance in nominating Deputy Governors.
3.	Member of the Public (Youth)	<b>On Amendment of Article 151</b> providing that the prime minister nominated by the president from among elected Members of the National Assembly should not earn any other salary apart from the salary of a member of parliament was also well noted.
4.	Member of the Public (Small scale trader)	<b>On a general concern</b> , one of the Member of the Public felt that the BBI amendment Bill should be translated to Kiswahili and copies availed to the members of the public who don't understand/speak English
5.	Member of the Public (Elderly)	<b>A concern was also raised</b> by a Member of the Public who felt that the citizens at the grass-root level had not been sensitized on the BBI Bill and were not aware of what it entailed. She further recommended civic education to be considered to enable the general public to make an informed decision.
6.	Member of the Public (Youth)	<b>A member of the Public</b> also felt that with regards to <b>promotion of Sports</b> , the <b>BBI Constitution Amendment Bill, 2020</b> is not clear on promotion and funding of sports activities by the County Government at the Ward level in matters of kits, payment of coaches among others. He further emphasized that sports activities are critical in deterring youth from engaging in drugs and substance abuse and nurtures talent that will eventually lead to livelihood by the youth.

## 4.0 Observations and findings;

- 4.1 **Mr. Speaker sir**, upon examination of the submissions from the public participation forum & meetings conducted on **Wednesday 17<sup>th</sup> February, 2021** at Charter Hall, City Hall Buildings and the oral submissions presented to the committee by members of the public, a number of observations were made;





### **Committee Observation:**

4.2 Upon examination of the submissions from the public participation forum & meetings conducted on Wednesday 17th February, 2021 at Charter Hall, City Hall Buildings and the oral submissions presented to the committee by members of the public, the Committee observed that the Bill seeks to :-

- 1st) Increase of County revenue allocation from 15% to 35% and the establishment of a Ward Development Fund that will take 5% of all the county governments' revenue to wards, will greatly transform the lives of Kenyans by taking more resources and development to the grassroots;
- 2nd) Provide a tax holidays for young persons starting micro and medium-sized businesses;
- 3rd) Ensure tenders shall be settled within sixty (60) days;
- 4th) Establish a social security fund where the aged will receive monthly stipends and also proposes the enhancement of the capacity of the NHIF to roll out free and comprehensive medical cover for all people over 65 years of age in Kenya;
- 5th) Establish a Health Service Commission to address the welfare of health workers and improving the healthcare system;
- 6th) Protection of whistleblowers and providing them part of proceeds from corruption cases;
- 7th) Establish a business incubation centre in every ward;
- 8th) Expand the National Executive that shall guarantee national inclusivity;
- 9th) Ensure Accountability of the National and County Executives to the people through Parliament;
- 10th) Guarantee the Two Thirds Gender rule; and,
- 11th) Ensure harmony amongst Kenyans.

### **Adoption of the Report:**

4.3 The Nairobi City County Assembly's Sectoral Committee on Justice and Legal Affairs upon examination of the submissions by the general public, hereby adopts this report as per the appended signing register contained in Annex 1 of this report.

4.4 Documents also appended in this report includes:-

- (i) Copy of the notice calling for Memorandum from the general public;
- (ii) Copy of the written memorandum from the general public;
- (iii) BBI Constitutional Amendment Bill, 2020 and its digest; and,
- (iv) Copies of attendance list of Members of the public.





## 5.0 Committee recommendation

- 5.1 In light of the submissions from the public participation exercises contained herein and pursuant to the Provisions of Article 257(6) of the Constitution of Kenya, 2010, the Sectoral Committee on Justice and Legal Affairs hereby recommends to the Nairobi City County Assembly as follows, THAT;-

**The Nairobi City County Assembly APPROVES the Building Bridges Initiative (BBI) Constitution of Kenya (Amendment) Bill, 2020.**


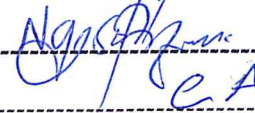
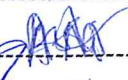





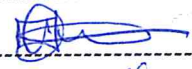
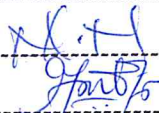

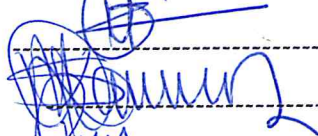
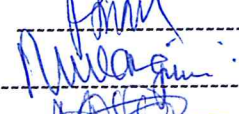
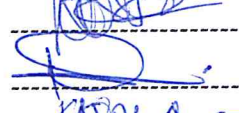

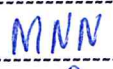
















## LIST OF MEMBERS OF JUSTICE AND LEGAL AFFAIRS COMMITTEE

1. Hon. Joseph Komu, MCA- Chairperson
2. Hon. Francis Ngesa, MCA- Vice Chairperson
3. Hon. Cecilia Ayot, MCA
4. Hon. Asli Mohamed, MCA
5. Hon. David Ayoi, MCA
6. Hon. Doris Kanario, MCA
7. Hon. Elijah Mputhia, MCA
8. Hon. Millicent Jagero, MCA
9. Hon. Jairus Omayo, MCA
10. Hon. Antony Kimemia, MCA
11. Hon. Esther Nyangweso, MCA
12. Hon. John Kyalo, MCA
13. Hon. Maina Njoka, MCA
14. Hon. Margaret Mbote, MCA
15. Hon. Millicent Mugadi, MCA
16. Hon. Moses ogeto, MCA
17. Hon. Muchene Kabiru, MCA
18. Hon. Patrick Musili, MCA
19. Hon. Mwangi Njihia, MCA
20. Hon. Kennedy Oyugi, MCA
21. Hon. Kennedy Obuya, MCA
22. Hon. Millicent Okatch, MCA
23. Hon. Susan Mukungu, MCA
24. Hon. Mary Njambi, MCA
25. Hon. Osman Khalif, MCA
26. Hon. Patrick Logedi, MCA

  
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**MINUTES OF THE 5<sup>TH</sup> SITTING OF THE SECTORAL COMMITTEE ON JUSTICE COMMITTEE HELD ON THURSDAY 18<sup>TH</sup> FEBRUARY, 2021 AT 10.30 AM AT THE MEMBERS LOUNGE, CITY HALL BUILDINGS.**

**MEMBERS PRESENT**

1. Hon. Joseph Komu, MCA- Chairperson
2. Hon. Francis Ngesa, MCA- Vice Chairperson
3. Hon. Millicent Mugadi, MCA
4. Hon. Moses ogeto, MCA
5. Hon. Mary Njambi, MCA
6. Hon. Millicent Okatch, MCA
7. Hon. Patrick Musili, MCA
8. Hon. Margaret Mbote, MCA
9. Hon. Esther Nyangweso, MCA
10. Hon. Jairus Omayo, MCA
11. Hon. Osman Khalif, MCA
12. Hon. Muchene Kabiru, MCA
13. Hon. Asli Mohamed, MCA
14. Hon. Mwangi Njihia, MCA
15. Hon. Cecilia Ayot, MCA
16. Hon. David Ayoi, MCA
17. Hon. Millicent Jagero, MCA
18. Hon. Doris Kanario, MCA
19. Hon. John Kyalo, MCA
20. Hon. Susan Mukungu, MCA
21. Hon. Kennedy Obuya, MCA
22. Hon. Elijah Mputhia, MCA
23. Hon. Antony Kimemia, MCA

**MEMBERS ABSENT**

1. Hon. Patrick Logedi, MCA
2. Hon. Maina Njoka, MCA

**SECRETARIAT – COUNTY ASSEMBLY**

- |                          |                          |
|--------------------------|--------------------------|
| 1. Ms. Cammelyne Anguche | - Senior Clerk Assistant |
| 2. Ms. Judy Aron         | - Clerk Assistant        |

**MIN. 172/J&LA/18/ FEBRUARY/2021 – preliminaries**

- The meeting was called to order at 10.30 pm by the Chairperson who invited Hon. Millicent Okatch, MCA for a word of prayer. The Chairperson then took

members through the agenda of the day, that was adopted as proposed by Hon. Patrick Musili, MCA and seconded by Hon. Doris Kanario, MCA as follows: -

**AGENDA**

1. Preliminaries (Prayers & adoption of the Agenda),
2. **Adoption of the report on the Building Bridges Initiative (BBI) Constitution of Kenya (Amendment) Bill, 2020.**
3. Any Other Business
4. Adjournment

**MIN. 173/J&LA/18/FEBRUARY/2021 – ADOPTION OF THE REPORT ON THE BUILDING BRIDGES INITIATIVE (BBI) CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020.**

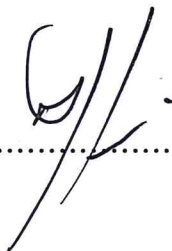
The report on the Building Bridges Initiative (BBI) Constitution of Kenya (Amendment) Bill, 2020 was read through by Hon. Esther Nyangweso. The report was thereafter unanimously agreed to as proposed by Hon. Francis Ngesa and seconded by Hon. Mwangi Njihia.

**MIN. 174/ J&LA/18/FEBRUARY/2021 – ADJOURNMENT**

The Committee having dispensed with the business of the day and the time being 11.15pm, the Chairperson adjourned the meeting to Monday 22<sup>nd</sup> February, 2021 at 12.30 pm.

**CONFIRMED AS TRUE RECORDS OF PROCEEDINGS**

CHAIRPERSON: Signature .....



DATE.....18.02.2021.....





John G. Nattali Kivai  
P.O. Box 65062-00618/NAI  
Mobile 0722772644  
16th Feb. 2021.

The B.B.I. representations,

The B.B.I. recommendations should be approved in Total. If there are any legacies bequeathed to us by Uhuru Kenyatta's administration is none other but B.B.I. among others.

I therefore wholeheartedly support the same

Yours

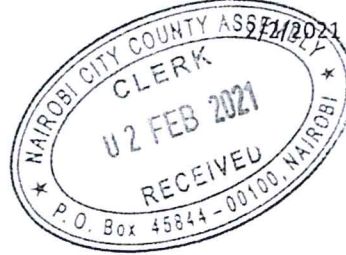
John G.N. Kivai.



MATHEWS NJERU ELIJAH

P.O. BOX 2751

EMBU



TO ALL SPEAKERS AND ALL MEMBERS,

47 COUNTY ASSEMBLIES,

REPUBLIC OF KENYA.

DEAR ALL.

REF. CONSTITUTION OF KENYA (AMENDMENT) BILL 2020

1. PREFACE

Pursuant to article 257 (5) of the constitution of Kenya 2010 in regard to the constitution of Kenya (amendment) bill 2020 and the fact that the county assemblies are required by law to facilitate public discussion about this bill, I hereby state the following:

2. OPENING REMARKS

This bill has some good proposals that would be lost if the bill is rejected. It also has some bad proposals that will make me sad if the bill passes and are anchored in Kenya's statutes. It has some contradictory proposals too and I'll comment on one of them. It also has a good proposal but Kenya's fiscal reality will not enable its implementation. I'll also comment on that.

3. THE CONTRADICTING PROPOSAL

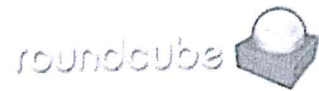
The bill seeks to create an office of the Judiciary ombudsman. This will be by amending the constitution by inserting a new article 172A immediately after article 172. In the proposed new sub article 172 A (3), the judiciary ombudsman shall receive and conduct inquiries into complaints against judges, registrars, magistrates, staff and judiciary officers. This bill did not amend Article 172 (1) c in the constitution Of Kenya 2010 that mandated the judicial service commission to do the same. If this bill passes, Kenya shall have two entities that will be mandated by the constitution to do a similar duty. This begs the following questions:

What happens if both come up with deferring verdicts and stand after investigating an individual in the judiciary? Why does the proposed article 172A 3(a) give the ombudsman immense powers then the bill seems to be tying his hands and legs in the proposed Article 172 A (6)? Is it not a contradiction to say that the judiciary ombudsman shall not investigate any matter pending before any court or tribunal or reopen a court case or tribunal or review a judge's decision? If this official will not be allowed to work when a case is ongoing or even when it has been concluded, then when is he/ she supposed to work? Somebody must explain to me how this will work.





Subject **BBI-PUBLIC PARTICIPATION**  
From David Okello <okellodg@yahoo.com>  
To clerk@nairobiassembly.go.ke <clerk@nairobiassembly.go.ke>  
Date 2021-02-10 08:31



1.DEVOLUTION:

THE 35%TO COUNTIES SHOULD BE REMITTED ON FIXED DATES. COUNTIES SHOULD NOT BED TREASURY.IF THERE AREN'T ENOUGH FUNDS,TREASURY SHOULD BORROW TO FULFIL ITS OBLIGATIONS

2.STARTING FROM THIS YEARS BUDGET, CONSTITUTIONALLY DEVOLVED FUNCTIONS SHOULD NOT BE GIVEN HUGE ALLOCATIONS (AGRICULTURE ETC) AT NATIONAL GOVERNMENT LEVEL.FUNCTIONIONS MUST BE DOMICILED WHERE THEY BELONG

3.CORRUPTION:

ANY PROCUREMENT BY GOVERNMENT/PARASTATALS OVER ONE BILLION MUST BE OKAYED BY AG HAVING CHECKED COMPETITIVENESS/FAIR PRICE

David Okello  
0724527294

Sent from Yahoo Mail on Android







#### 4. THE UNREALISTIC PROPOSAL

The bill seeks to amend Article 203 (2) by deleting the word "fifteen" and substituting therefore the word "thirty five". Of late, Kenya's budget is funded by revenue collected nationally which translates to two thirds. The other third is sourced from domestic and foreign borrowing. In this bill, the national government will hive off 20% more of its funds and allocate it to the county governments in addition to the 15% which they normally remit. In the 2021/2022 financial year, the government will allocate the county governments around ksh 330 billion under the 15% rule. If this bill sees the light of the day, this figure will shoot to around kshs 700 billion under the 35% rule. Of concern here is the fact that in this bill, the government did not devolve any of the functions which it has. To finance its functions minus the 20% gap, the central government will resort to borrowing which will increase its debt which is at 60% of the gross domestic product (GDP). In five years, despite debt repayment, Kenya's debt will still shoot to around kshs 12 trillion. When we get to this figure, Kenya's economy will collapse. Who will bail out Kenya? Portugal, Italy, Greece and Spain (PIGS) had Germany who bailed them out? The central government has actually added more burden on its shoulders by amending Article 11 to add article 11 A. It promises to promote:

- (a) Productivity by protecting intellectual and property rights
- (b) Investment enterprise and industrialization
- (c) Sustainable agriculture
- (d) Small and micro enterprises
- (e) Digital infrastructure
- (f) Science and technology

This ideas are very good but Kenya's economy cannot be able to actualize then. E.g. To make agriculture sustainable by providing subsidies and allocation of cushion funds for all food and cash crops, this country will require not less than ksh 200 billion per year. I'll not give an estimate of the cost of the other systems that are meant for economic growth because the figure is so huge.

#### 5. CLOSING REMARKS

It is very painful for me to advise you to shoot down this bill, but you'll have to do it. It will die but the very good proposals in it will not die. They have been noted. One day when the economy will allow, Kenyans will come up with a bill that will adopt all the good proposals in this bill and other bills which preceded it. I hope Kenyans will not let that bill have contradictions, contentious issues and unrealistic proposals. I may be dead by that time but I believe Kenyans will vote for it overwhelmingly. When that time comes and that happens, my descendants will be proud to be Kenyans and happy to live in a democratic and prosperous KENYA.

Mathews Njeru Elijah

0719155099

ID.NO 12403739

