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COUNTY REQUESTS FOR ADVISORY OPINION FROM THE SUPREME COURT

The Office of the Governor, Makueni County has filed an Advisory Opinion at the Supreme Court asking the Court to provide guidance on two key issues concerning amendment of the Constitution. The two broad questions we have sent to the court are the following:

1. Whether a bill containing a proposed amendment to the Constitution should only be limited to an amendment of a single issue of the Constitution.
2. Whether national or county governments or state or public officers (acting in their official capacities) can be promoters of a popular initiative and whether it is constitutionally acceptable for a government or state/public officer to use public resources to finance and seek support to amend the Constitution through a popular initiative.

We have asked the Supreme Court's guidance on these two questions for the following reasons:

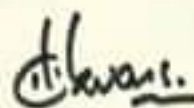
- a. We think that the Constitution expects that a bill to amend it should be limited to only one constitutional issue. This is because, first, it ensures that the authority to amend the Constitution is not abused to replace or overhaul the Constitution.

A handwritten signature in black ink, appearing to read 'O. Wani'.

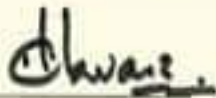
Second, it makes it easy for the public to understand what issue is proposed to be amended and for the people to freely exercise their will on whether to support the amendment without being confused about having to choose between too many issues. It also makes it easy for county governments - which are charged with constitutional obligation of facilitating civic education and public participation - to properly and adequately inform the public what is proposed to be amended.

We are concerned that packing in too many issues in a Bill to amend the Constitution creates such confusion and significantly compromises the public's ability to understand the issues and fully participate, including being able to exercise free will while voting for the proposed (unrelated) amendments at the referendum. We have, for example, analysed the proposed BBI Bill to amend the Constitution and found out that it has proposed more than seventyeight (78) different issues for amendment. These proposed changes affect at least thirteen (13) of the eighteen Chapters of the Constitution. We believe this presents real challenge to those charged with civic education and public participation and ultimately and more importantly even greater challenge to the public in exercising free will. It is also likely to result in a Constitution that totally lacks in internal coherence.

- b. There are a few reasons why we have asked the Supreme Court to clarify on whether governments (both national and county) or state or public officers can propose to amend the Constitution using the popular initiative route. First, we believe that the popular initiative route was a path preserved by the Constitution for the people and not governments or state and public officers. We are convinced in this belief because we think it might be inherently unfair for people - who do not have the amount of resources that governments have - to have to compete with the governments' limitless resources in the use of popular initiative. Second, we worry that allowing governments and state/public officers (which includes MCAs, Chiefs, etc) to use state resources to mobilize for constitutional change through popular initiative will result in significant wastage of public funds for now and in the future.



We are however, keen to receive the opinion of the Supreme Court, especially to ensure that we provide correct and accurate information to the public while conducting civic education on proposed BBI Constitution amendments and in facilitating public participation.



H.E. (Prof) Kivutha Kibwana
The Governor, Makeni County

November 30, 2020