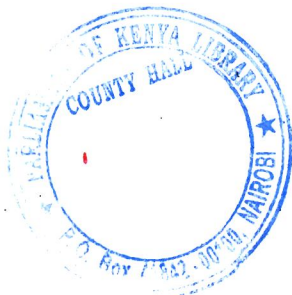


Approved for tabling,

B. J. SNA

16/8/16



PARLIAMENT OF KENYA



NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION, 2016

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON THE CONSIDERATION OF THE SENATE AMENDMENTS TO THE
PROTECTION OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS
BILL (NATIONAL ASSEMBLY BILL NO. 48 OF 2015)

CLERK'S CHAMBERS

AUGUST, 2016

PARLIAMENT BUILDINGS,

NAIROBI

Paper Laid on
Wednesday 17/08/16
at 9.30am by the
Chairperson, DC Justice
& Legal Affairs *(Signature)*

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CHAIR'S FOREWORD

On behalf of the Committee on Justice and Legal Affairs and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honor to present to this House the Report of the Committee on its consideration of the Senate amendments to the Protection of Traditional Knowledge and Cultural Expressions Bill, 2015.

The amendments were passed by the Senate on 14th July, 2016 and communicated to the National Assembly for consideration. The Assembly subsequently committed the amendments to the Committee pursuant to the provisions of Standing Order 41; it is on the basis of this that the Committee makes this Report.

The Committee wishes to register its appreciation to the Offices of the Speaker and the Clerk of the National Assembly for the support accorded to the Committee and the staff, in the execution of its mandate. Let me take this opportunity to thank all Members for their patience, endurance and dedication to committee business, despite their other commitments and tight schedules, which enabled the Committee to complete this Report.

Hon. Samuel Chepkonga, M.P

COMMITTEE MANDATE

The Departmental Committee on Justice and Legal Affairs is established under the National Assembly Standing Orders No. 216 (1). The functions and mandate of the Committee are also contained under the National Assembly Standing Orders, No. 216(5) as:-

1. Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
2. Study the program and policy objectives of the Ministries and departments and the effectiveness of the implementation;
3. Study and review all legislation referred to it;
4. Study, access and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;
5. Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
6. Vet and report on all appointments where the constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and
7. Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The subject matter of the Departmental Committee on Justice and Legal Affairs are stated in the Second Schedule of the National Assembly Standing Orders No. 216 (f) as follows:

- (a) Constitutional affairs;
- (b) The administration of law and Justice, including the Judiciary, public prosecutions, elections, ethics, integrity and anti-corruption; and
- (c) Human rights.

MEMBERS OF THE COMMITTEE

Chairperson	Hon. Samuel Chepkong'a, M.P.
Vice Chairperson	Hon. Priscilla Nyokabi, M.P.
Members	Hon. Njoroge Baiya, M.P.
	Hon. Muriithi Waiganjo, M.P.
	Hon. Ndirangu Waihenya, M.P.
	Hon. Florence Kajuju, M.P.
	Hon. Kang'ata Irungu, M.P.
	Hon. Benson Mutura, M.P.
	Hon. John Njoroge Chege, M.P.
	Hon. William Cheptumo, M.P.
	Hon. Mohamed Abdi Haji, M.P.
	Hon. Bitok Kirwa, M.P.
	Hon. Sammy Koech, M.P.
	Hon. Moses Cheboi, M.P.
	Hon. Paul Bii, M.P.
	Hon. Charles Gimose, M.P.
	Hon. Johana Ng'eno, M.P.
	Hon. Boniface Otsiula, M.P.
	Hon. David Ouma Ochieng, M.P.
	Hon. Neto Agostinho, M.P.
	Hon. Kaluma Peter, M.P.
	Hon. Fatuma Ibrahim Ali, M.P.
	Hon. Ben Momanyi Orori, M.P.
	Hon. T. J. Kajwang', M.P.
	Hon. (Bishop)Mutua Mutemi, M.P.
	Hon. Olago Aluoch, M.P.
	Hon. Christine Oduor Ombaka, M.P.
	Hon. Benjamin Andayi, M.P.
	Hon. Kamoti William Mwamkale, M.P.

SECRETARIAT

First Clerk Assistant	Mr. Abenayo Wasike,
Third Clerk Assistant	Mr. Ahmed Salim
Third Clerk Assistant	Ms. Mary Luka,
Legal Counsel	Ms. Mugure Gituto,
Research Officer	Ms. Clare Jerotich,

SITTINGS

The Committee considered the Senate amendments in its Sitting held on Tuesday, 16th August, 2016 and adopted its report on the same day. The Committee's decision to accept the amendments was guided by law and after thorough scrutiny of each of the proposed amendments.

COMMITTEE RECOMMENDATIONS

The Committee having considered the Senate amendments to the Protection of Traditional Knowledge and Cultural Expressions Bill, 2015 and recommends that the National Assembly:

- 1. Approves the Senate amendments to Clauses 4, 22, 25, 34 & 43**

ADOPTION OF THE REPORT

We the Members of the Departmental Committee on Justice and Legal Affairs have, pursuant to Standing Order 199, adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached adoption list (Appendix II).

1.0 INTRODUCTION

The Protection of Traditional Knowledge and Cultural Expressions Bill, 2015 was passed by the National Assembly on 16th March, 2016 and subsequently forwarded to the Senate for consideration pursuant to provisions of Article 110(4) of the Constitution and Standing Order 142. It was reverted, with amendments, to the National Assembly for concurrence on Tuesday, 19th July, 2016 through a message from the Speaker. The Speaker of the National Assembly directed the Committee to table its Report on the amendments for consideration by the House.

2.0 CONSIDERATION OF THE PROPOSED SENATE AMENDMENTS TO THE PROTECTION OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS BILL, 2015

The Committee considered the Senate amendments in its Sitting held on Tuesday, 16th August, 2016. It is in the same sitting that the report was adopted. The Committee's decision to accept the amendments was guided by law and after thorough scrutiny of each of the proposed amendments.

The following are the Senate's amendments to the Protection of Traditional Knowledge and Cultural Expressions Bill, 2015:

Clause 4

THAT Clause 4 of the Bill be amended by inserting the following new sub-clauses immediately after paragraph (d)-

- (e) the allocation of financial resources for the promotion of cultural activities; and
- (f) subject to this Act or any other law, the establishment of mechanisms for using culture as a tool for conflict resolution and promotion of cohesion.

The Committee concurred with the Senate. This amendment seeks to expand the functions of the County Government, and therefore reasonable.

Clause 22

THAT clause 22 of the Bill be amended in sub-clause (3) by inserting the words “and the respective county executive committee member in charge of matters relating to traditional knowledge and culture” immediately after the words “Cabinet Secretary”.

The Committee concurred with the Senate. It was reasonable to include the County Executive Committee Member.

Clause 25

THAT clause 25 of the Bill be amended in sub-clause (3)(d) by inserting the words “after consultations with the person in charge of matters relating to traditional knowledge and culture in the relevant county” immediately after the words “relevant community”.

The Committee concurred with the Senate. The amendment seeks to promote a culture of consultation between the Cabinet Secretary and the County Executive Committee Member.

Clause 34

THAT clause 34 of the Bill be amended by deleting paragraph (h).

The Committee concurred with the Senate. The proposed amendment was reasonable.

Clause 43

THAT clause 43 be amended by inserting the following new sub-clause immediately after sub-clause (2)-

(3) Whenever the Cabinet Secretary is required to make regulations or rules under this Act, the Cabinet Secretary shall make the regulations in consultation with the Council of County Governors.

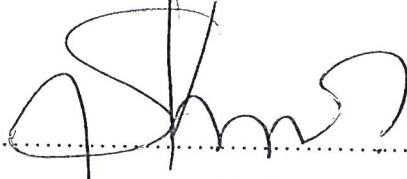
The Committee concurred with the Senate on the amendment. The Committee also noted that the word ‘County’ immediately before the word ‘Governors’ was a typographical error, which can be addressed in line with Standing Order 152.

3.0 COMMITTEE RECOMMENDATIONS

Having considered the Senate amendments to the Protection of Traditional Knowledge and Cultural Expressions Bill, 2015, the Committee recommends that the National Assembly:

- 1. Approves the Senate amendments to Clauses 4, 22, 25, 34 & 43 as proposed.**

SIGNED



CHAIRPERSON

(HON. SAMUEL CHEPKONGA, M.P)

DATE

16th August, 2016

REPUBLIC OF KENYA



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The Senate
Parliament Buildings
P. O. Box 41842 -00100
Nairobi, Kenya

PARLIAMENT
OFFICE OF THE CLERK OF THE SENATE

**SENATE AMENDMENTS TO THE PROTECTION OF TRADITIONAL
KNOWLEDGE AND CULTURAL EXPRESSIONS BILL (NATIONAL
ASSEMBLY BILL NO. 48 OF 2015)**

The following amendments to the **Protection of Traditional Knowledge and Cultural Expressions Bill (National Assembly Bill No. 48 of 2015)** were passed by the Senate on Thursday, 14th July, 2016-

Clause 4

THAT Clause 4 of the Bill be amended by inserting the following new sub-clauses immediately after paragraph (d)-

- (e) the allocation of financial resources for the promotion of cultural activities; and
- (f) subject to this Act or any other law, the establishment of mechanisms for using culture as a tool for conflict resolution and promotion of cohesion.

Clause 22

THAT clause 22 of the Bill be amended in sub-clause (3) by inserting the words "and the respective county executive committee member in charge of matters relating to traditional knowledge and culture" immediately after the words "Cabinet Secretary".

Clause 25

THAT clause 25 of the Bill be amended in sub-clause (3)(d) by inserting the words "after consultations with the person in charge of matters relating to traditional knowledge and culture in the relevant county" immediately after the words "relevant community".

Clause 34

THAT clause 34 of the Bill be amended by deleting paragraph (h).

Clause 43

THAT clause 43 be amended by inserting the following new sub-clause immediately after sub-clause (2)-

- (3) Whenever the Cabinet Secretary is required to make regulations or rules under this Act, the Cabinet Secretary shall make the regulations in consultation with the Council of County Governors.

.....



**KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT**

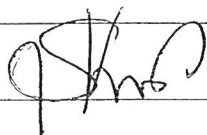


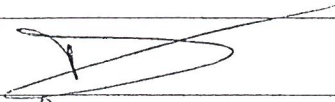
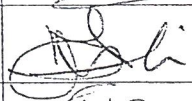

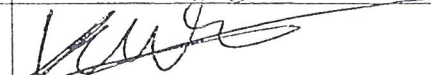
DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

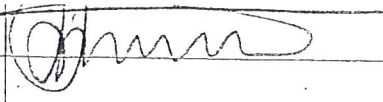
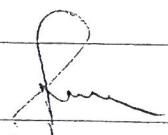
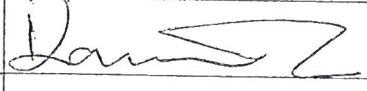
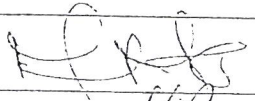
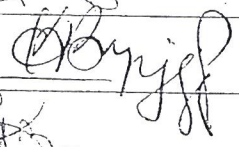
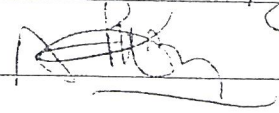
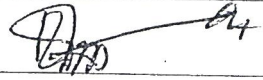
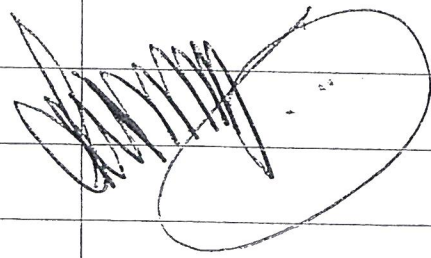
MEMBERS' ADOPTION LIST

Adoption of a Report on Senate's Amendments to the Protection of Traditional Knowledge and Traditional Cultural Expressions Bill, 2015

Date: 16th August 2016 (11 AM)

Venue: GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS

	NAMES	SIGNATURE
1.	Hon. Samuel Chepkonga (Chairperson)	
2.	Hon. Priscila Nyokabi (Vice Chairperson)	
3.	Hon. Agostinho Neto	
4.	Hon. Ben Momanyi Orori	
5.	Hon. Benson Mutura	
6.	Hon. Boniface Otsiula	
7.	Hon. Bitok Kirwa	
8.	Hon. Charles Gimose	
9.	Hon. Christine Ombaka (Dr.)	
10.	Hon. David Ochieng'	
11.	Hon. Fatuma Ibrahim	
12.	Hon. Florence Kajuju	
13.	Hon. Irungu Kang'ata	

15.	Hon. John M. Waiganjo	
16.	Hon. John Njoroge	
17.	Hon. John Olago Aluoch	
18.	Hon. Kamoti W. Mwamkale	
19.	Hon. Mohamed Abdi Haji	
20.	Hon. Moses Cheboi	
21.	Hon. Njoroge Baiya	
22.	Hon. Paul K. Bii	
23.	Hon. Peter Kaluma	
24.	Hon. Robert Mutemi (Bishop)	
25.	Hon. Sammy Koech	
26.	Hon. T.J. Kajwang	
27.	Hon. Waihenya Ndirangu	
28.	Hon. William Cheptumo	

A. M. Wasike

For: The Clerk of the National Assembly

**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS HELD ON TUESDAY, 16TH AUGUST, 2016 AT 11.00 A.M. IN
GROUND FLOOR BOARDROOM, COUNTY HALL**

PRESENT

Hon. Samuel Chepkonga, M.P. - Chairperson
Hon. Boniface Otsiula, M.P.
Hon. Charles Gimose, M.P.
Hon. David Ochieng, M.P.
Hon. Fatuma Ibrahim, M.P.
Hon. Florence Kajuju, M.P.
Hon. Kang'ata Irungu, M.P.
Hon. Johanna Ngeno, M.P.
Hon. Olago Aluoch, M.P.
Hon. Kamoti Mwamkale William, M.P.
Hon. Moses Cheboi, M.P.
Hon. Njoroge Baiya, M.P.
Hon. Paul K. Bii, M.P.
Hon. (Bishop) Robert Mutemi, M.P.
Hon. Tom J. Kajwang', M.P.

APOLOGY

Hon. Priscilla Nyokabi, M.P. - Vice Chairperson
Hon. Bitok Kirwa, M.P.
Hon. Dr. Christine Ombaka, M.P.
Hon. Sammy Koech, M.P.
Hon. John M. Waiganjo, M.P.
Hon. Ben Momanyi, M.P.

ABSENT

Hon. John Njoroge Chege, M.P.
Hon. William Cheptumo, M.P.
Hon. Peter Kaluma, M.P.
Hon. Mohamed Abdi Haji, M.P.
Hon. Ndirangu Waihenya, M.P.
Hon. Benson Mutura, M.P.
Hon. Neto Agostinho, M.P.
Hon. Mohamed Abdi Haji, M.P.

SECRETARIAT

Mr. Ahmed Salim
Ms. Mugure Gituto

- Clerk Assistant III
- Legal Counsel II

MIN No. JLA /2016:-

PRELIMINARIES

The Chairperson called the meeting to order at 11.11 a.m. and commenced with a word of prayer from Hon. Fatuma Ibrahim.

MIN No. JLA /2016:-

ADOPTION OF THE REPORT ON PUBLIC FUNDRAISING APPEALS BILL, 2014

The Committee adopted the report. The adoption was proposed by Hon. Paul Bii and proposed by Hon. Florence Kajuju.

MIN No. JLA /2016:-

CONSIDERATION OF THE SENATE AMENDMENTS TO THE PROTECTION OF TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS BILL, 2015

The Committee considered the amendments, and concurred with the Senate on the same. The following are the amendments and the committee's comments:

Clause 4

THAT Clause 4 of the Bill be amended by inserting the following new sub-clauses immediately after paragraph (d)-

(e) the allocation of financial resources for the promotion of cultural activities; and
(f) subject to this Act or any other law, the establishment of mechanisms for using culture as a tool for conflict resolution and promotion of cohesion.

The Committee concurred with the Senate. This amendment seeks to expand the functions of the County Government, and therefore reasonable.

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(3) Whenever the Cabinet Secretary is required to make regulations or rules under this Act, the Cabinet Secretary shall make the regulations in consultation with the Council of County Governors.

The Committee concurred with the Senate on the amendment. The Committee also noted that the word 'County' immediately before the word 'Governors' was a typographical error, which can be addressed in line with Standing Order 152.

The Committee also went through a draft report on the Senate amendments before the same was proposed for adoption.

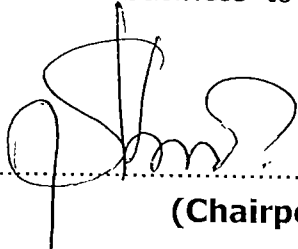
The Committee adopted the report. The adoption was proposed by Hon. Florence Kajuju and seconded by Hon. Fatuma Ibrahim.

MIN No. JLA/2016:-

ADJOURNMENT

There being no other business to transact, the sitting adjourned at thirty minutes past twelve o'clock.

Signed.....



(Chairperson)

Date.....

18/08/16