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KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT - SECOND SESSION (2008)

THE DEPARTMENTAL COMMITTEE

ON

ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS

REPORT ON

CRIMINAL PROCEDURE CODE (AMENDMENT) BILL, 2008

Clerks Chambers,
Parliament Buildings,
NAIROBI.

JULY 2008

PREFACE

Mr. Speaker Sir,

The Departmental Committee on Administration of Justice and Legal Affairs is established under Standing Order No.151; its mandate pursuant to Standing Order 151(4) is:-

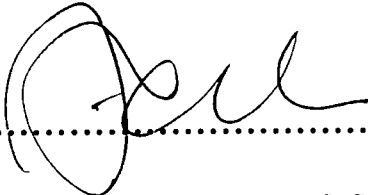
- a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b) to study the programme and policy objectives of the Ministries and departments and the effectiveness for implementation;
- c) to study and know all legislation after First Reading, subject to the exceptions under Standing Order 101A (4);
- d) to study, assess and analyze the relative success of Ministries and departments as measured by the results obtained as compared with its stated objective;
- e) to investigate and inquire into all matter relating to all assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister and;
- f) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee comprises:

1. Hon. Abdikadir Mohammed, M.P - Chairman
2. Hon. George Nyamweya, M.P.
3. Hon. Amina Abdalla, M.P.
4. Hon. Olago Aluoch, M.P.
5. Hon. Millie Odhiambo, M.P.
6. Hon. Ruto Kiprono, M.P.
7. Hon. Alfred Sambu, M.P.
8. Hon. Wamalwa Eugene, M.P.
9. Hon. Mutava Musyimi, M.P
- 10.Hon. Ababu Namwamba, M.P.
- 11.Hon. Peter Baiya, M.P.

Mr. Speaker Sir, on 4th April 2007, the Criminal Procedure Amendment Bill, 2008 was referred to this Committee after its First Reading. This Report contains the proposed amendments to the Bill, which resulted from the deliberations of the Committee. In arriving at the proposed amendments the Committee took into consideration submissions from the Law Society of Kenya, the Department of probation, the Kenya Human Rights Commission, the Magistrates and Judges Association, the Kenya Anti-corruption Commission and the Prisons Department.

Mr. Speaker Sir, it is now my pleasant duty and privilege, on behalf of the Departmental Committee on Administration of Justice and Legal Affairs, to present and commend this report to the House.

Signed: 

Hon. Abdikadir Mohammed, M.P
Chairman, Departmental Committee on Administration of
Justice and Legal Affairs

Date: *14th July 2008*

**PROPOSED COMMITTEE STAGE AMENDMENTS TO THE
CRIMINAL PROCEDURE CODE (AMENDMENT) BILL, 2008**

THAT clause 3 of the Bill be amended as follows:

- (i) **Section 137A(1)** be amended by
- (a) deleting the word "public" before prosecutor
 - (b) inserting the word "and" after the word "person"

Section 137A (1) (a) be amended by deleting the word "include" and substituting thereof the word "related".

Section 137A further be amended by inserting a new subsection (4) to read as follows:

- (4) where a prosecution is undertaken privately no plea agreement shall be concluded without the written consent of the Attorney General.

(ii) SECTION 137B

THAT Section 137B be amended by inserting

- (a) the words "and any other person authorized by any written law to prosecute" after the word "Constutution"

(iii) SECTION 137C(1)

THAT Section 137C subclause (1)(a) be amended by deleting the word "public" before the word "prosecutor"

- (b) Section 137C subclause (1)(b) be amended by adding the word "and" after the word "person"

(iv) SECTION 137C(1)

THAT Section 137C be amended by inserting a new clause before subsection (2) to read – “The court shall be notified by the parties of their intention to negotiate a plea agreement”

(c) That Section 137C(2) be Amended by deleting the word “public” before the word “prosecutor”

(v) SECTION 137D

THAT Section 137D be amended by

- (a) deleting the word "public" before the word “prosecutor”.
- (b) deleting the word "may" after prosecutor and substituting thereof with "shall only."
- (c) deleting the words "whenever practicable" before the word "enter"

Section 137D subclause (c) be amended by

- (a) deleting the words "if the circumstances permit" and substituting thereof the words "unless the circumstances do not permit"
- (b) deleting the word "public" before the prosecutor.

(vi) SECTION 137E

THAT Section 137E subclause (b) be amended by

- (a) deleting the word “public” before “prosecutor”.
- (b) inserting the words "the interpreter is proficient in that language and" after the word "effect "

Section 137E subclause (d) be amended by

- (a) deleting the word “public” before “prosecutor”
- (b) adding the word "and" after the word "person"

(vii) SECTION 137F

THAT Section 137 F (1) (a) subclause (vii) be amended by inserting the word “witnesses” in place of witness after the words “applying to”.

Section 137 F (1)(d) be amended by inserting the words “or unconditional” after the word “conditional”

Section 137 F (2) be amended by deleting the word "public" before prosecutor.

(viii) SECTION 137H

THAT Section 137H(1)(b) be amended by deleting the word “public” before the word “prosecutor”

Section 137 H (1) (c) be amended by deleting the words “court record’ and substituting thereof the words “record of the court”

(ix) SECTION 137I

THAT Section 137 I be amended by inserting a new subsection (3) to read: “where necessary and desirable the court may consider a probation officers report”

(x) SECTION 137L

THAT Section 137 L (2) be amended by inserting the words “and the accused person” after the “Attorney General”

(xi) SECTION 137N

THAT Section 137 N be amended by deleting the whole of clause (b) and substituting thereof:

- (b) The offences of genocide, war crimes and crime against humanity.

**MINUTES OF THE TWELVETH SITTING OF THE DEPARTMENTAL
COMMITTEE ON THE ADMINISTRATION OF JUSTICE AND
LEGAL AFFAIRS HELD ON 11TH JULY 2008, IN CONTINENTAL
RESORT AT 9.30 A.M**

PRESENT

1. Hon. Abdikadir, Mohammed, MP
2. Hon. Rev. Mutava Musyimi, MP
3. Hon. Issac Ruto Kiprono, MP
4. Hon. Ababu Namwamba, M.P
5. Hon. Baiya Peter, MP
6. Hon. Olago Aluoch, MP

ABSENT WITH APOLOGY

1. Hon. Amina Abdalla, MP
2. Hon. Millie Odhiambo, MP
3. Hon. Alfred Sambu, MP
4. Hon. Wamalwa Eugene, MP
5. Hon. George Nyamweya, MP

IN ATTENDANCE

1. Mr. P.G Gichohi
2. Mrs. N. Mukunya
3. Hellen Kimaiga

KENYA NATIONAL ASSEMBLY

Clerk of the National Ass
Principal Clerk/Deputy Director
Parliamentary Intern

**MIN. NO. 57/2008: OPENING REMARKS BY CLERK OF THE
NATIONAL ASSEMBLY**

The Chairman called the meeting to order at 9.40 a.m and Hon. Olago Aluoch opened the meeting with a word of prayer. The Clerk of the National Assembly then made his remarks in which he underscored the importance of the Committee on Administration of Justice and Legal Affairs. He assured the Members that his office will support the

Committee in terms of all the required staff and any other logistics to enable it fulfill its Mandate. In this respect, the Parliamentary Service Commission was ready to have a full secretariat set up to assist the Committee. The Committee would also be enabled to use Legal experts especially in matters dealing with the Constitutional Review.

He further observed that the current Bills referred to the Committee were also important and it was imperative for the Members to consider them and avail the reports to the House without undue delay. He urged the Committee to have a work plan to guide its activities and to help in finalizing reports on the Bills in time.

MIN. NO. 58/2008: CONSIDERATION OF THE PROPOSED
AMENDMENTS TO THE CRIMINAL
PROCEDURE CODE (AMENDMENT) BILL,
2008

The Chairman observed that the Committee had received submissions from the Law Society of Kenya, the Kenya National Commission on Human Rights, the Probation department, the Judges and Magistrates Association, the Prisons department and the Kenya Anti-Corruption Commission.

He then requested the Chairman of the sub-committee appointed to consider these submissions to take the Members through the submissions and the proposed amendments.

Hon. Olago Aluoch, who was a member of the subcommittee, took the Members through the proposed amendments and those that were rejected by the Members were removed there from.

The Members then agreed that the present amendments would be brought to the House.

MIN. NO. 59/2008: CONSIDERATION OF THE NATIONAL ETHNIC AND RACE RELATIONS COMMISSION BILL, 2008

The Members noted that the functions of the proposed Commission were similar to those of many other Commissions. They also observed that the Bill merely sets out a Commission whose role was only advisory. After a lot of debate the Members agreed that the Bill does not provide a way to deal with Ethnic Relations. A subcommittee of four members, namely, Hon Isaac Ruto, Hon. Mutava Musyimi, Hon. Njoroge Baiya and Hon, Olago Aluoch was then set up and it was mandated to seek expert advice and report its findings to the main Committee on or before 11th August 2008.

MIN. NO.60/2008: CONSIDERATION OF THE PROPOSED AMENDMENTS TO THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION BILL, 2008


The Members received a presentation from three representatives from the Kenya National Commission on Human Rights and then debate ensued. After a lot of deliberations and considerations of various views the members agreed that another sitting was required to finalize the proposed amendments. It was agreed that the issue of Amnesty was to be specifically revisited.

N. NO. 61/2008:

ADJOURNMENT

There being no other listed business for the day the meeting was adjourned at 6.10 p.m. until the next day at 8.30 a.m.

Signed.....



CHAIRMAN

Date.

14th July 2008