



*Paper laid  
by the chairperson of  
the Departmental  
Committee on Justice  
and Legal Affairs  
on Tuesday 22.02.2011*

KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT

FOURTH SESSION (2011)

PARLIAMENT  
OF KENYA  
LIBRARY

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THE DEPARTMENTAL COMMITTEE

ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE JUDICIAL SERVICE BILL, 2011  
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Clerks Chambers,  
Parliament Buildings,  
NAIROBI.

FEBRUARY, 2011

**Mr. Speaker Sir,**

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of Standing Order No. 198(3) which defines functions of the Committee as being:

- 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 ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister; and
- f) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Schedule II of the Standing Orders, the Committee is mandated to consider:-

- a) Constitutional Affairs
- b) The administration of law and order (Judiciary, police, prisons department, and community service orders)
- c) Public prosecutions
- d) Elections
- e) Integrity
- f) Anti-corruption and human rights.

The Committee oversees the following Ministries/Departments:

- a) Ministry of Justice, National Cohesion and Constitutional Affairs

- b) State Law Office
- c) The Judiciary
- d) Kenya Anti-Corruption Commission
- e) Interim Independent Electoral Commission
- f) Interim Independent Boundaries Commission

The Committee also has the mandate to oversee all matters relating to political parties.

### **COMMITTEE MEMBERSHIP**

The Committee comprises of the following members:

- i) Hon. Ababu Namwamba, M.P - Chairperson
- ii) Hon. Njoroge Baiya, M.P - Vice-Chairperson
- iii) Hon. Abdikadir Mohammed, M.P
- iv) Hon. Millie Odhiambo-Mabona, M.P
- v) Hon. Mutava Musyimi, M.P
- vi) Hon. George Omari Nyamweya, M.B.S., M.P
- vii) Hon. Amina Abdalla, M.P
- viii) Hon. Olago Aluoch, M.P
- ix) Hon. Isaac K. Ruto, E.G.H., M.P
- x) Hon. Sophia Noor Abdi, M.P
- xi) Hon. Eugene Wamalwa, M.P

## Background

Mr. Speaker Sir,

The Judicial Service Bill, 2011 was read a First Time on ..... 2011 and subsequently referred to this Committee in accordance with the Standing Orders. The Committee held one sitting to deliberate on the Bill and received memoranda from the Commission for the Implementation of the Constitution (CIC) and the Registrar of the High Court.

This Report contains the deliberations of the Committee on the proposed amendments to the Bill and the rationale behind the proposed amendments. In compiling this report, the Committee also took into consideration submissions by the Commission for the Implementation of the Constitution and the Registrar of the High Court.

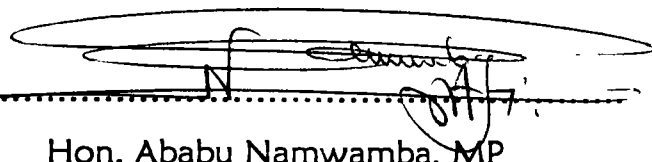
## Acknowledgements

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

Mr. Speaker, Sir,

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to present and commend this report on the proposed amendments to the Judicial Service Bill, 2011, to the House for adoption pursuant to Standing Order No. 181.

Signed



Hon. Ababu Namwamba, MP

CHAIRPERSON

Date: ..... 22 / 02 / 2011 .....

## PROPOSED AMENDMENTS TO THE JUDICIAL SERVICE BILL 2011

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Clause 2: THAT Clause 2 be amended as follows:-

- i). The meaning of 'judicial officer' be amended by deleting the words "other than" and substituting therefor the word "including".

**Rationale:** The word judicial officer should apply to all officers exercising judicial powers in public institutions.

- ii). Inserting a new definition as follows "Until after the first elections under the Constitution, any reference to a cabinet Secretary shall be construed to mean Minister and any reference to a Principal Secretary shall be construed to mean Permanent Secretary".

**Rationale:** To comply with the Constitution.

Clause 3: THAT Clause 3 be amended as follows

- i) by deleting the word "secure"
- ii) Paragraph (j) be amended by adding the words 'administration of justice and the protection of vulnerable children' after the words 'gender equity'

**Rationale:** Gender equity should be broad enough to cover aspects of access to justice for all and the administration

Clause 5: THAT Clause 5 be amended by inserting a new sub-clause 5(1) as follows:-

5(1) The Chief Justice shall be the Head of the Judiciary.

**Rationale:** In the spirit of separation of powers a clear distinction must be made indicating that the Chief Justice was the head of the Judiciary.

Clause 7: THAT Clause 7 be amended by deleting the words "research assistant" and substituting thereof the words "legal researcher"

**Rationale:** The change is intended to signify the importance of the office.

Clause 8: THAT Clause 8 be amended in sub-clause 8(2) by inserting the word "of" immediately after the word "execution"

**Rationale:** The word "of" is missing in the sentence.

**Clause 9:** THAT Clause 9 be amended by deleting the word “five” and substituting therefor the word “three”

**Rationale:** Three years is sufficient for a person to have acquired /demonstrated administrative competence.

**Clause 12:** THAT Clause 12 be amended in sub-clause (2) as follows:

- i). Deleting the word “them” and substituting therefor the words “him/her”
- ii). By inserting the word “herself” immediately after the word “himself”

**Rationale:** The amendment is meant to ensure gender equity.

**Clause 14:** THAT Clause 14 be amended by inserting the words “to sub-committees and the secretariat” immediately after the word “delegate”

**Rationale:** It is important to identify the persons/institutions to be delegated to ensure accountability.

**Clause 15:** That Clause 15 be amended in sub-clause (1) (a) by deleting the words “the president shall” and substituting therefor the words “Until after the first elections under the Constitution, the President shall, subject to the National Accord and Reconciliation Act and after consultation with the Prime Minister”

**Rationale:** To ensure compliance with the Constitution on new appointments in the transitional period.

**Clause 26:** THAT Clause 26(1) be amended by deleting the words “without further appropriation than this Act” immediately after the word “Fund”

**Clause 27:** THAT Clause 27 be amended as follows:-

- i). In sub-clause (3) by deleting the word “not” appearing before the words “be paid into the consolidated Fund”.
- ii). In sub-clause (4) by inserting the words “and any other law on the regulation of the fund for the time being in force” immediately after the word “section”

**Rationale:** The amendments are intended to improve accountability in the administration of the fund.

**Clause 29:** THAT Clause 29 be amended as follows:-

- i). In sub-Clause (2) by deleting the words “and shall thereafter forward them to the Minister responsible for Finance” immediately after the word “necessary”
- ii). By deleting sub-clause (3) and substituting therefor a new sub-clause (3) “The Chief Registrar shall forward the estimates approved by the Commission under sub-clause (2) to the National Assembly for approval”.
- iii). In sub-clause (4) by deleting the words “presented to the National Assembly under sub-clause (3) and substituting therefor the words “by the National Assembly”.

**Rationale:** The National Assembly has to approve all estimates of Government Ministries and Departments.

**Clause 30:** THAT Clause 30 be amended in sub-clause (1) by deleting the word “three” and substituting therefore the word “*five*”.

**Rationale:** There is need to widen the selection panel to represent all interests.

**Clause 30:** THAT Clause 32(1) be amended by inserting the words “which should be gender representative” immediately after the word “panel”

**Rationale:** There should be gender equity.

**Clause 34:** THAT Clause 34 be amended as follows :

- i). In sub-clause (k) by inserting the words “human rights and” immediately after the words “provisions of”
- ii). In sub-clause (l) by inserting the words “with a focus on women and children” immediately after the word “issues”
- iii). Inserting a new paragraph (o) immediately after paragraph (n) “The Director of the Witness Protection Agency”
- iv). Inserting a new sub-clause (5) as follows: “The term of office of the representatives under paragraph (k) and (l) shall be three years”.
- v). Inserting a new sub-clause (6) as follows:- The Minister shall appoint representatives under paragraph (k) and (l) .

**Rationale:** The amendments are meant to ensure that the Act complies with the provisions of the Constitution in so far as human rights and gender issues are concerned while the inclusion of the Director of the Witness Protection Agency will enrich the composition of the national Council.

Clause 35: THAT Clause 35 (2) (c) be amended by deleting the word “district” and substituting therefor the word “County”.

Rationale: The county has replaced the district in the new dispensation.

Clause 38: THAT Clause 38 be amended in sub-clause (4) by deleting the words “in such other manner as the commission and the Judiciary may determine” and substituting therefor the words “shall send a copy of the report to each of the two Clerks of the two Houses of Parliament for it to be placed before the respective Houses for debate and adoption”.

Rationale: To ensure that Parliament checks on the activities of the Judiciary for accountability and transparency.

Clause 48: THAT Clause 48 be amended by inserting the words “and any other written law”.

Rationale: To ensure compliance with the Constitution.

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MINUTES OF THE 1ST SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS COMMITTEE TO CONSIDER THE JUDICIAL SERVICE BILL,2011 HELD ON FEBRUARY 21<sup>ST</sup> 2011 IN COMMITTEE ROOM,CONTINENTAL HOUSE PARLIAMENT BUILDINGS,4<sup>TH</sup> FLOOR AT 2.30 P.M

PRESENT

Hon. Njoroge Baiya Vice-Chairperson  
Hon. Millie Odhiambo-Mabona,M.P,  
Hon. George Nyamweya, M.B.S, M.P,  
Hon. Olago Aluoch ,M.P,  
Hon. Abdikadir Mohammed,M.P,  
Hon.Mutava Musyimi,M.P

ABSENT WITH APOLOGY

Hon. Eugene Wamalwa,M.P,  
Hon. Isaac Ruto, EGH, M.P,  
Hon. Sophia Abdi Noor M.P,  
Hon. Ababu Namwamba, M.P, (Chairperson)  
Hon. Amina Abdalla .M.P

IN ATTENDANCE

Mrs.Lucy Wanjohi  
Mr.George Otieno  
Ms.Wanjiru Ndindiri  
Ms. Annette Bosibori

KENYA NATIONAL ASSEMBLY

Clerk Assistant  
Clerk Assistant 111  
Clerk Assistant 111  
Parliamentary Intern

MIN 01/2011: THE JUDICIAL SERVICE BILL , 2011

The committee went through the Judicial Service Bill,2011 clause by clause and adopted it subject to the following amendments:-

Clause 1: Agreed to.

Clause 2:

THAT the meaning of 'Judicial officer ' in Clause 2 be amended by deleting the words 'other than' and inserting the word "including " immediately after the words 'parliament'.

**Rationale:** The judiciary and judicial service commissions are both separate institutions.

THAT the meaning of 'Minister ' in Clause 2 be amended by deleting the word 'minister' with the word 'cabinet secretary'.

**Rationale:** The constitution under Article 152 acknowledges the existence of cabinet secretaries after the transition period. This bill ought to be in conformity with the constitution.

THAT the meaning of 'Principal secretary means permanent secretary in the transition period

**Rationale:** The constitution takes cognizance of the term principal secretary to exist after the transition period. It would be important for this reference to also be made in the bill.

Clause 3: THAT Clause 3 be amended by deleting the "secure"

**Rationale:** The is irrelevant.

THAT Clause 3(j) be amended by adding the words 'administration of justice and the protection of vulnerable children 'after the words 'gender equity'

**Rationale:** Gender equity should be broad enough to cover aspects of access to justice for all and the administration

Clause 4: Agreed to.

Clause 5: THAT Clause 5(1) be amended and a new clause added to read as follows;

The Chief justice shall be the head of the judiciary.

Clause 6: Agreed to.

Clause 7: THAT Clause 7 be amended by deleting the word 'Research assistant' and replacing it soon thereafter with the words 'legal researcher'

**Rationale:** The word research assistant is quite general.

Clause 8: Agreed to.

Clause 9: THAT Clause 9 (b) be amended by deleting the word 'five' and substituting therefor with the words 'three'

**Rationale:** Three years is usually enough period for one to effectively learn administrative services.

Clause 10: Agreed to.

Clause 11: Agreed to.

Clause 12: THAT Clause 12 be amended in sub-clause (2) as follows:

- i). Deleting the word “them” and substituting therefor the words “him/her”
- ii). By inserting the word “herself” immediately after the word “himself”  
Rationale: The amendment is meant to ensure gender equity.

Clause 13: Agreed to.

Clause 14: THAT Clause 14 be amended by inserting the words “to sub-committees and the secretariat” immediately after the word “delegate”

Rationale: It is important to identify the persons/institutions to be delegated to ensure accountability.

Clause 15: That Clause 15 be amended in sub-clause (1) (a) by deleting the words “the president shall” and substituting therefor the words “Until after the first elections under the Constitution, the President shall, subject to the National Accord and Reconciliation Act and after consultation with the Prime Minister”

Rationale: it is important for the bill to take cognizance of the National Accord act and provide for consultation between the president and the prime minister during the transition period.

Clause 16: Agreed to.

Clause 17: Agreed to.

Clause 18: Agreed to

Clause 19: Agreed to

Clause 20: Agreed to.

Clause 21: Agreed to

Clause 22: Agreed to

Clause 23: Agreed to.

Clause 24: Agreed to.

Clause 25: Agreed to

Clause 26: THAT Clause 26 be amended by deleting the words “without further appropriation than this act and the budget of the commission” after the word “*consolidated fund*”.

**Rationale;** The deleted clause is a repetition and irrelevant.

Clause 27: THAT Clause 27 be amended as follows:-

- i). In sub-clause (3) by deleting the word “not” appearing before the words “be paid into the consolidated Fund”.
- ii). In sub-clause (4) by inserting the words “and any other law on the regulation of the fund for the time being in force” immediately after the word “section”

**Rationale:** The amendments are intended to improve accountability in the administration of the fund.

Clause 28: Agreed to.

Clause 29: THAT Clause 29 be amended as follows:-

- i). In sub-Clause (2) by deleting the words “and shall thereafter forward them to the Minister responsible for Finance” immediately after the word “necessary”
- ii). By deleting sub-clause (3) and substituting therefor a new sub-clause (3) “The Chief Registrar shall forward the estimates approved by the Commission under sub-clause (2) to the National Assembly for approval”.
- iii). In sub-clause (4) by deleting the words “presented to the National Assembly under sub-clause (3) and substituting therefor the words “by the National Assembly”.

Clause 30: : THAT Clause 30 be amended by deleting the words “three” and substituting therefor the word “*five*”.

**Rationale:** There is need to widen the selection panel to represent all interests.

Clause 31; Agreed to.

Clause 32: THAT Clause 32 be amended by adding the words “that shall take into account gender equity” after the word ‘panel’.

Clause 33: Agreed to.

Clause 34: THAT Clause 34 be amended as follows :

- i). In sub-clause (k) by inserting the words “human rights and” immediately after the words “provisions of”
- ii). In sub-clause (l) by inserting the words “with a focus on women and children” immediately after the word “issues”
- iii). Inserting a new paragraph (o) immediately after paragraph (n) “The Director of the Witness Protection Agency”
- iv). Inserting a new sub-clause (5) as follows:”The term of office of the representatives under paragraph (k) and (l) shall be three years”.
- v). Inserting a new sub-clause (6) as follows:- The Minister shall appoint representatives under paragraph (k) and (l) .

THAT Clause 35(2)(C) be amended by deleting the words “district with ‘county’

#### Rationale

The constitution takes cognizance of the term county to exist after the transition period. it would be important for this reference to also be made in the bill.

Clause 36:Agreed to.

Clause 37:Agreed to.

Clause 38: THAT Clause 38 be amended in sub-clause (4) by deleting the words” in such other manner as the commission and the Judiciary may determine” and substituting therefor the words “shall send a copy of the report to each of the two Clerks of the two Houses of Parliament for it to be placed before the respective Houses for debate and adoption”.

**Rationale:** To ensure that Parliament checks on the activities of the Judiciary for accountability and transparency.

Clause 39:Agreed to.

Clause 40:Agreed to.

Clause 41:Agreed to.

Clause 42: Agreed to

Clause 43:Agreed to.

Clause 44:Agreed to

Clause 45:Agreed to.

Clause 46:Agreed to

Clause 47:Agreed to.

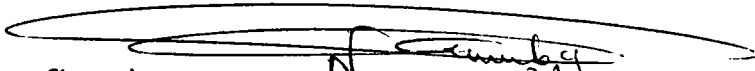
accountability and transparency.

Clause 48: THAT Clause 48 be amended by inserting the words “and any other written law”.

Rationale: To ensure compliance with the Constitution.

MIN 02/2011:      ADJOURNMENT

The Chairman adjourned the meeting at twenty five minutes past Six o'clock until Tuesday 22<sup>nd</sup> February, 2011 at 2.00 p.m.

  
Signed: .....  
(Chairperson)  
Date: 22 / 02 / 2011 .....

MINUTES OF THE 2<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS COMMITTEE TO CONSIDER THE JUDICIAL SERVICE BILL, 2011 HELD ON TUESDAY FEBRUARY 22<sup>ND</sup> 2011 IN THE MAIN CONFERENCE ROOM, COUNTY HALL PARLIAMENT BUILDINGS, AT 2. 00 P.M

PRESENT

Hon. Ababu Namwamba, M.P,	Chairperson
Hon. Njoroge Baiya	Vice-Chairperson
Hon. Millie Odhiambo-Mabona, M.P,	
Hon. Olago Aluoch ,M.P,	
Hon. Mutava Musyimi, M.P	
Hon. Sophia Abdi Noor M.P,	

ABSENT WITH APOLOGY

Hon. Eugene Wamalwa, M.P,  
Hon. George Nyamweya, M.B.S, M.P,  
Hon. Abdikadir Mohammed, M.P,  
Hon. Isaac Ruto, EGH, M.P,  
Hon. Amina Abdalla .M.P

IN ATTENDANCE

Mrs. Lucy Wanjohi  
Mr. George Otieno  
Ms. Wanjiru Ndindiri  
Ms. Annette Bosibori

KENYA NATIONAL ASSEMBLY

Clerk Assistant  
Clerk Assistant 111  
Clerk Assistant 111  
Parliamentary Intern

MIN 03/2011: ADOPTION OF REPORT ON THE JUDICIAL SERVICE BILL 2011

The committee unanimously approved and adopted the Report on the Judicial Service Bill, 2011 for tabling by the Chairperson.

MIN 04/2011: ADJOURNMENT

And there being no other business, the Chairperson adjourned the meeting at fifteen minutes past two o'clock.

HON. ABABU NAMWAMBA, MP

Signed: .....  
(Chairperson)

Date: ..... FEBRUARY 22, 2011.....