

Papers laid on
19th June 2012
by Hon
Chair
Justice & Legal
Affairs



KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT



FOURTH SESSION (2012)

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS
REPORT ON STATUTE LAW(MISCELLANEOUS AMENDMENTS)BILL,2012

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

JUNE, 2012

PREFACE

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) Ethics and Anti-Corruption Commission (EACC)
- d) Independent Electoral and Boundaries Commission (IEBC)
- e) Commission on Implementation of the Constitution (CIC)
- f) Kenya National Commission on Human Rights (KNCHR)
- g) Office of the Director of Public Prosecutions (DPP)
- h) Registrar of Political Parties
- i) Witness Protection Agency (WPA)
- j) Commission on Administrative Justice (CAJ)

COMMITTEE MEMBERSHIP

The Committee comprises of the following members:

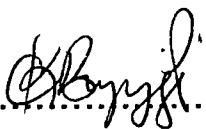
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|---------------------------------------|--------------------|
| Hon. Ababu Namwamba, M.P. | - Chairperson |
| Hon. Njoroge Baiya, M.P. | - Vice-Chairperson |
| Hon. Abdikadir Mohammed, M.P. | |
| Hon. Millie Odhiambo-Mabona, M.P. | |
| Hon. Mutava Musyimi, M.P. | |
| Hon. George Omari Nyamweya, MBS, M.P. | |
| Hon. Amina Abdalla, M.P. | |
| Hon. Olago Aluoch, M.P. | |
| Hon. Isaac K. Ruto, EGH, M.P. | |
| Hon. Sophia Abdi Noor, M.P. | |
| Hon. Yusuf Hassan, M.P. | |

Mr. Speaker Sir, the Statute Law Miscellaneous Amendments Bill, 2012 was read a first time on 10th May, 2012 and stood committed to the Committee. Debate on the Bill ensued but was halted after sometime necessitating a ruling from the Chair on 30th May,

2012. This Report contains deliberations of the Committee on the Bill and the rationale behind the proposed amendments save for the provisions withdrawn by the Attorney General on May 29, 2012. The withdrawn provisions include Sec 3 which seeks to make amendments to the National Assembly Remuneration Act, the Schedule attaching thereto which contains amendments to the Finance Act, 2012, First Schedule, Part 11 of the National Assembly Remuneration Act, Cap 5 and amendments to the Constitutional Offices Remuneration Act, Cap 423.

Mr. Speaker, Sir, in compiling this report, the Committee took into consideration submissions and memorandum from stakeholders including the Law Society of Kenya.

Mr. Speaker, Sir, finally it is now my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to introduce this report to the House, so that it may enrich the debate on the Bill.

SIGNED:.....

Hon. Njoroge Baiya, MP

Ag. Chairperson, Departmental Committee on Justice and Legal Affairs

DATE:.....19/6/12.....

PROPOSED AMENDMENTS TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2012 (BILL NO.17 OF 2012)

Page 1084 - MAGISTRATES COURTS ACT (CAP 10)

Sec 5: Amend Sec 5 as follows:

The Magistrates' Courts shall have and exercise jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter in dispute does not exceed-

- (a) Seven (7) million shillings for Chief Magistrates
- (b) Five (5) million shillings for Senior Principal Magistrates
- (c) Four (4) million shillings for Principal Magistrates
- (d) Three (3) million shillings for Senior Resident Magistrates
- (e) Two (2) million shillings for Resident Magistrates

Rationale:

The Committee feels that conferring jurisdiction on higher value of the subject matter may expose judicial officers to corruption taking into account their terms and conditions of service. Furthermore, the higher the claim, the more complex legal and factual issues arises, and it is imperative to increase gradually.

Sec 5(2) should be retained as is in the Act.

Rationale:

The Committee believes that jurisdiction under sub-section (2) should be saved to ensure claims made under customary law are protected.

Page 1085 - THE ADVOCATES ACT (CAP 16)

Sec 2: Delete the proposed amendment

Rationale:

The amendment appears to affect the self-regulation mechanism and independence of the LSK by introducing government officials into the oversight process of the legal profession.

Sec 32A: Delete the proposed amendment.

Rationale:

The Committee notes that remuneration is a matter for the employer/employee relationship governed by a contract in accordance with the labour laws.

Sec 32B: Delete the proposed amendment.

Rationale:

The Committee notes that remuneration is a matter for the employer/employee relationship governed by a contract in accordance with the labour laws.

Sec 55: Delete the proposed amendment

Rationale:

It appears to affect the self-regulation mechanism and independence of the LSK by introducing government officials into the oversight process of the legal profession.

Sections 57(2), 57(2A), 57(3), 57(4), 58(1), 58(2), 58(3), 58(4), 58(5), 59, 60(1), 60(2), 60(3), 60(4), 60(5), 60(6), 60(8), 60(9), 60(10), 60(12), 61(1), 61(2), 61(3), 62(2), 64, 71, 72(1), 72(3), 73(1), 75, 76, 77, 78, 80(1), 81(2):

Delete the proposed amendments.

Rationale:

The proposed amendments which seek to redesignate the Disciplinary Committee as the “Disciplinary Tribunal” appears to affect the self-regulation mechanism and independence of the LSK by introducing government officials into the oversight process of the legal profession.

Page 1092 - THE LAW SOCIETY OF KENYA ACT (CAP. 18)

Sec 2: Delete the proposed amendment.

Rationale:

It appears to affect the self-regulation mechanism and independence of the LSK by introducing government officials into the oversight process of the legal profession.

Page 1092 - THE CIVIL PROCEDURE ACT (CAP. 21)

Sec 59A: Amend Clause 59A as follows:

1. In 2(c) by deleting the word “two” and substituting the word “one”
2. In 2(d) by deleting the word “ seven” and substitute therefore the word “ eight”
3. By insert the following sub-section immediately after sub-section 2 (d) –

(Viii) ‘one member nominated by the Federation of Women Lawyers (FIDA).’

Rationale:

This is to ensure that regard is given to gender balance in the composition of this Mediation Committee in line with the Constitution.

Page 1102 - THE KENYA RED CROSS SOCIETY ACT (CAP. 256)

Sec 5(2) and Sec 9(1)(a): The sections be amended to expand the categories for non-discrimination.

Rationale

The current objects are limited and should be comprehensive in line with Article 27 of the Constitution

Page 1117 - WITNESS PROTECTION ACT (NO. 16 OF 2006)

Sec3A: Delete the proposed amendment.

Rationale:

It is observed that the amendment would do away with provisions that allow the Auditor General to audit public funds disbursed to this institution. The Agency should be held accountable for public funds while maintaining confidentiality.

Page 1118 - TRUTH, JUSTICE AND RECONCILIATION ACT (NO. 16 OF 2008)

Sec 52(1): Delete the proposed amendment.

Rationale

It is observed that extending the life of the Commission for a further three months would ensure smooth conclusion of the Commission’s work.

Page 1118 - NATIONAL COHESION AND INTEGRATION COMMISSION ACT

Sec 19: Delete the proposed amendment.

Rationale

It is observed that this amendment is unconstitutional. The appointments should be done in a competitive, transparent and open manner.

Page 1119 – THE MERCHANT SHIPPING ACT 2009 (NO4 OF 2009)

Sec 412A be amended by deleting the words “not exceeding two” and substituting therefor the words “not less than ten”

Rationale

It was observed that two million shillings was not punitive enough, having in mind the kind of money those involved in the Shipping business make.

Page 1120 - THE VETTING OF JUDGES AND MAGISTRATES ACT (NO. 2 OF 2011)

Sec 23: Delete and substitute therefor the following:

“The Board, divided into three panels shall vet the Judges simultaneously while the Judicial service Commission shall vet all Magistrates”.

Rationale

This amendment will ensure that the reforms at the Judiciary are achieved in reasonable time.

Page 1120 – THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT,2011

Sec 5: Delete the proposed amendment.

Rationale:

The Committee finds this amendment ambiguous & incomplete, and recommends that it be deleted or returned as a complete amendment.

Page 1121 – THE POLITICAL PARTIES ACT,2011 (NO 11 OF 2011)

Sec 14 - Insert the following section immediately after section 8-

(9)(a) A Political Party shall inform the Registrar of Political Parties of any member deemed to have defected to another party who will in turn prosecute the matter before the Political Parties Tribunal.

(b) The Political Parties Tribunal will make a decision on the matter.

Rationale

The amendment is intended to clarify the procedure in matters of defection.

Sec 41: Amend Sec 41(4) by inserting the words “or Criminal Procedure Code” immediately after the words “Civil Procedure Code”.

Rationale

There is no need to restrict the Tribunal to civil or criminal procedure codes. Both codes can be used with the necessary modifications for flexibility.

Page 1139 - THE ETHICS AND ANTI-CORRUPTION ACT (NO. 22 OF 2011)

Sec 3(3): Delete the proposed amendment.

Rationale

It should be possible for this Commission or any other to have its headquarters anywhere in the Republic. This ensures access to its services in any part of the country.

Page 1139 - ELECTIONS ACT (NO. 24 OF 2011)

Sec 28: Amend Sec 28 to read as follows:

Delete the words “three months before the nomination of the candidate” and substitute therefor the words “two months before the date of the election.”

Rationale

The amendment is meant to allow a prospective candidate freedom to choose their party up until 2 months to the election date.

Sec 43(5): Amend Sec 43(5) as follows:

Delete the word “seven” and substitute therefor the word “six”.

Rationale

The Committee recommends that the practice should remain at six months as it has traditionally been.

Sec 108: Amend Sec 108 as follows:

Delete the proposed words "**State-owned broadcasting media**" and substitute with the words "**all broadcasting media**".

Rationale

The Committee desires to obligate even private media houses to accord airtime equally or fairly to all parties, in accordance with Articles 24 and 34 of the Constitution, at all times, not only during the election period.

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MINUTES OF THE 90TH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY, MAY 16, 2012 IN THE MEMBERS' LOUNGE AT PARLIAMENT BUILDINGS AT 11.00 A.M.

PRESENT

Hon. Njoroge Baiya – Ag Chairperson
Hon. Amina Abdalla, M.P.
Hon. George Omari Nyamweya, MBS, M.P.
Hon. Ababu Namwamba, M.P.
Hon. Abdikadir Mohammed, M.P.
Hon. Isaac Ruto, EGH, M.P.
Hon. Millie Odhiambo-Mabona, M.P.

ABSENT WITH APOLOGY

Hon. Mutava Musyimi, M.P.
Hon. Olago Aluoch, M.P.
Hon. Sophia Abdi Noor, M.P.

IN ATTENDANCE

Mrs. Lucy Wanjohi
Ms. Wanjiru Ndindiri
Mr. Kimathi Muriithi

KENYA NATIONAL ASSEMBLY

Second Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

MIN.NO. 324/2012

INTRODUCTION

The meeting was opened with a word of prayer and the Chair welcomed the Members. The purpose of the meeting was to adopt the final report on the 2012/2013 budget estimates for the spending agencies under the purview of the Committee as well as to discuss the Statute (Miscellaneous Amendments) Bill, 2012.

MIN. NO. 325/2012

ADOPTION OF REPORT

The Committee Report on the 2012/2013 budget estimates for the spending agencies under the oversight of the committee was discussed with recommendations and the way-forward agreed to. The Report was then unanimously adopted.

MIN.NO. 326/2012 STATUTE LAW (MISCELLANEOUS AMENDMENTS)
BILL, 2012

The Statute Law (Miscellaneous Amendments) Bill, 2012 was discussed at length by members. The Bill proposes various amendments to a number of statutes and the Committee embarked on a review of the proposed amendments especially those touching on areas that the committee is mandated to oversee.

i. Amendments to the Truth, Justice and Reconciliation Act (No. 16 of 2008)

Members approved the proposed amendment to Section 20 of this Act that was aimed at extending the life of the Truth, Justice and Reconciliation Commission (TJRC) to allow it to complete its work. Members, however, took issue with the proposed amendment to Section 52 that aims to reduce the life of the Commission after submission of its report to the President from three (3) months to forty five (45) days. The Committee had noted that the Commission would need more time after completing its report to:

- a. Develop a program for reconciliation and healing
- b. Archive data and materials collected
- c. Give feedback to those whose views were collected

The Committee resolved to oppose the amendment to section 52 so as to allow the TJRC enough time to carry out these activities after submission of its report to the President.

ii. Amendments to the Independent Electoral and Boundaries Commission Act (No.9 of 2011)

Members supported the proposed amendments to the IEBC Act which are aimed at clarifying the determination of employees' salaries, providing for gender and regional balance, and bringing the Fifth Schedule to the Act in line with the Constitution.

The Committee however noted that the amendment to section 5 of the Act appeared incomplete and it was proposed that this clause be omitted from the Bill.

iii. Amendments to the Political Parties Act (No.11 of 2011)

The Committee approved the amendments to section 35 of this Act which were aimed at providing for the extension of the time provided for the appointment of the Selection Committee to facilitate the appointment of a Registrar of Political Parties. Members, however, were against amendments to section 41 that were aimed at having the Criminal Procedure Code apply in the proceedings before the Political Parties Tribunal. They suggested that elements of both the Civil Procedure and Criminal Procedure with the necessary modifications should apply and that the amendment be couched to reflect this.

iv. Amendments to the Elections Act (No.24 of 2011)

Members discussed at length the recommended amendment to section 10 of this Act. The Committee was reminded that it was Parliament's intention when enacting the law to do away with the need for voters' cards. The proposed amendment provides for a voters' card as one of the documents one may produce during voting but also provides that one may still vote at a particular polling station without producing a voters' card so long as the person is registered as a voter in that polling station. The amendment was approved.

The Committee agreed to the proposed amendment to section 22 as regards the qualifications to be attained for purposes of nomination in an election. Members however, proposed that a person who has previously served either in the National Assembly or in a Local Authority sufficiently qualifies to run again for a position in that respective institution. Members proposed a proviso to the section to that effect as follows;

Provided that any person who has previously served as a member of the National Assembly or a Local Authority will be eligible for nomination for an elective position in the respective institution in which they served.

The Committee resolved to support the proposed amendment to Section 27 of the Act that reduces the time required for a political party to submit its nomination rules from a period of 6 months to 3 months before the nomination of candidates.

The Committee proposed an amendment to section 28 of the Elections Act. The section states that;

28. A political party that nominates a person for any election under this Act shall submit to the Commission a party membership list of the party at least 3 months before the nomination of the candidate.

Members felt that in view of the dynamic political environment especially towards the elections, this requirement limited a prospective candidate by locking him or her to a particular party too early (3 months before the person's nomination as candidate). It was suggested that the words "3 months before nomination of the candidates" be deleted and be substituted with the words "2 months before the date of the election" to allow a prospective candidate freedom to choose their party up until 2 months to the election.

The Committee decided to carry the amendments to Section 30(2) and Section 36 (1) (c) on nomination of agents, and inclusion of candidates representing marginalized groups.

MIN.NO 327/2012 ANY OTHER BUSINESS

STUDY TOURS

Members were informed that the study tour to Australia had been confirmed for end of May, while the trip to India would be in June/July.

MIN.NO 327/2012 ADJOURNMENT

There being no other business the Chair adjourned the sitting at one o'clock until Tuesday, May 22, 2012.

Signed: 
(Chairperson)

Date: 19/6/12

MINUTES OF THE 91ST SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY, MAY 23, 2012 IN THE COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE AT 11.00 A.M.

PRESENT

Hon. Njoroge Baiya – Ag Chairperson
Hon. Amina Abdalla, M.P.
Hon. Abdikadir Mohammed, M.P.
Hon. Isaac Ruto, EGH, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. George Omari Nyamweya, MBS, M.P.

ABSENT WITH APOLOGY

Hon. Ababu Namwamba, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Olago Aluoch, M.P.
Hon. Sophia Abdi Noor, M.P.

IN ATTENDANCE

Mrs. Lucy Wanjohi
Ms. Wanjiru Ndindiri
Mr. Kimathi Muriithi

KENYA NATIONAL ASSEMBLY

Second Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

MIN.NO. 328/2012

INTRODUCTION

The meeting was opened with a word of prayer and the chair welcomed the members. The purpose of the meeting was to complete discussions on the Statue (Miscellaneous Amendment) Bill 2012.

MIN.NO. 329/2012

AMENDMENTS TO THE ELECTIONS ACT (NO.24 OF 2011)

Members agreed on the proposed amendment to Section 43(1) of the Act that is aimed at prohibiting the use of public resources for the purposes of supporting a candidate or political party.

Members opposed the amendment to section 43(5) that attempts to reduce the time within which a public officer is to resign from public office before the date of elections. As the law stands, an officer is to resign at least seven

(7) months before the elections, while the amendment reduces this period to five (5) months. Members argued that there was no basis for this reduction and that by practice the period had been six (6) months; an amendment to the Bill should be made to maintain this.

Members welcomed the amendments to Section 108 that were meant to include other forms of broadcasting other than state-owned radio and television in the provisions requiring reasonable airtime for candidates during campaign period. In addition, Members proposed that this provision should apply all the time and not just during campaign period.

The Committee further proposed that Section 108 should be applied not only to state-owned broadcasting media but also to privately-owned broadcasting media as well. Members acknowledged that freedom of the media is provided for under article 34 of the Constitution. They however noted that this freedom is under article 24, subject to limitation that is reasonable and justifiable in an open democratic society based on equality. They argued that providing reasonable and equal airtime for candidates and political parties justified a limitation on the freedom of the media and that they should be required to give fair and equal airtime to all parties at all times. Members recommended that an amendment to the Bill be made with reference to other jurisdictions like the UK and Australia. These countries have legislation requiring privately-owned media to give reasonable and equal airtime for candidates and political parties in their broadcasts.

Members agreed with the amendment to section 112 that clarifies that the provisions of the Act will apply to the first elections under the Constitution and not to by-elections to be held before the next general elections.

MIN.NO 330/2012 **ADJOURNMENT**

There being no other business the Chair adjourned the sitting at twenty past noon until Thursday, May 24, 2012.

Signed: 
(Chairperson)

Date: 19/6/12

MINUTES OF THE 92ND SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, JUNE 5TH, 2012 IN THE COMMISSION MEETING ROOM, 1ST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 11.00 A.M.

PRESENT

Hon. Njoroge Baiya – Ag Chairperson
Hon. Ababu Namwamba, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Isaac Ruto, EGH, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. Olago Aluoch, M.P.

ABSENT WITH APOLOGY

Hon. George Omari Nyamweya, MBS, M.P.
Hon. Abdikadir Mohammed, M.P.
Hon. Amina Abdalla, M.P.
Hon. Sophia Abdi Noor, M.P.

IN ATTENDANCE

Mrs. Lucy Wanjohi
Ms. Wanjiru Ndindiri
Mr Kimathi Muriithi

KENYA NATIONAL ASSEMBLY

Second Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

MIN.NO. 331/2012

PRELIMINARIES

The meeting was opened with a word of prayer. Members of the Committee were welcomed to the meeting. The purpose of the meeting was to discuss the Kenya School of Law Bill, 2011, as well as to continue with the review of the Statute Law (Miscellaneous Amendments) Bill, 2012.

MIN.NO. 332/2012

KENYA SCHOOL OF LAW BILL, 2011

In previous deliberations by the Committee on the Kenya School of Law Bill, Members were of the view that the Bill was not necessary since the school already existed under the current Council of Legal Education Act (Cap 16A). Further, Members had suggested that the Commission on Higher Education be mandated to handle all issues of accreditation of higher education institutions for all the professions thereby implying the reduction of the Counsel of Legal Education to a Committee under the Commission.

In this meeting, the Committee revisited the issue and noted that the views previously suggested had far reaching effects which required further consultations with the various stakeholders. In the meantime, Members decided to propose certain amendments to the Bill in order to create a scholarship system to cater for students who are unable to come up with the fees charged by the school.

**MIN.NO. 333/2012 STATUTE LAW (MISCELLANEOUS AMENDMENTS)
BILL, 2012**

Members noted that the Statute Law (Miscellaneous Amendments) Bill, 2012 was coming up for 2nd reading. Members were informed that the review of the 55 statutes proposed to be amended by the Bill had been administratively distributed to the relevant committees. The Justice and Legal Affairs Committee would then consider all proposals forwarded by the other Committees, and table a final report on the Bill before the House.

i. Amendments to the Elections Act (No.24 of 2011) and the Political Parties Act (No.11 of 2011)

Members proposed further amendments to the Political Parties Act and the Elections Act to suspend the applicability of certain provisions requiring a Member of Parliament to relinquish his/her seat on leaving or on being expelled from a political party.

Members also revisited the discussion on the proposed amendments to the Election Act to allow for a presidential candidate in an election, as well as his/her running mate, to run for another elective post in the same election. It was noted that the Constitution was silent on the matter. According to the proposal, if a candidate is elected either as President or Vice President, he/she is to relinquish any other elective post that they may have won. If the candidate is defeated in the presidential race on the other hand, they still have the opportunity to hold another elective position.

ii. Amendments to the Appellate Jurisdiction Act (Cap. 9)

Members agreed to the proposed amendments to Section 3 of this Act that aims to expand the jurisdiction of the Court of Appeal.

iii. Amendments to the Magistrates Courts Act (Cap. 10)

The Committee considered the proposed amendments aimed at increasing the pecuniary jurisdiction of the magistrate's courts. Members further considered recommendations suggested by the Law Society of Kenya (LSK) that suggested lowering of the pecuniary jurisdiction proposed by the Bill. This was based on the fact that the high amounts proposed exposed the magistrates to corruption, taking

into account their terms and conditions of service. After deliberations, the Committee adopted the proposals by the LSK.

The Committee further expressed concern that the amendment to section 5 of the Act resulted in the deletion of section 5(2), that provided that the Resident Magistrate's courts could exercise jurisdiction in proceedings concerning claims under customary law. The Committee stated that it was not desirable to strip the court of jurisdiction in these matters and resolved to engage the A.G's office in the next meeting to get an explanation on the rationale behind this deletion.

iv. Amendments to the Advocates Act (Cap. 16)

Members agreed on the amendments to section 10, 14, 20, and 32(1) that recognized the replacement of the Attorney General as the Public Prosecutor by the Director of Public Prosecutions.

The Committee deliberated and agreed on the amendments to sections 12 and 13 that provide for the qualification for admission for advocates of the High Courts of Rwanda and Burundi.

After deliberations and on considering recommendations by the LSK, the Committee opposed the proposed new sections 32A and 32B that provided for employment and practice of in-house advocates. The Committee proposed to invite and engage with the A.G. and the LSK on this amendment at the next Committee sitting.

Members rejected proposals to various sections of the Advocates Act that were aimed at redesignating the 'Disciplinary Committee' as the 'Disciplinary Tribunal'. Members felt that these were substantive amendments that implied a change in the structure of the Disciplinary Committee. The Committee agreed that substantial amendments such as these required wider consultation. The Committee proposed to engage with the A.G. and the LSK on this amendment as well at its next sitting.

v. Amendments to the Law Society of Kenya Act (Cap. 18)

Members rejected proposals to section 2 of the Law Society Act that were aimed at redesignating the 'Disciplinary Committee' as the 'Disciplinary Tribunal' for reasons as mentioned above.

vi. Amendments to the Civil Procedure Act (Cap. 21)

Members agreed to the proposed amendments to section 2 and the addition of section 59A-59D that were aimed at providing for a legal mechanism for use of

mediation as an alternative dispute resolution mechanism to ease pressure on the courts.

In addition, Members suggested amendments to the proposed section 52A (2) by increasing the membership of the Mediation Accreditation Committee to include one member nominated by the Federation of Women Lawyers (FIDA) to ensure gender balance in the composition of the Mediation Accreditation Committee.

vii. Amendments to the Penal Code (Cap.63)

Members agreed to the proposed amendments to Section 52(3) and 181(4) of this Act that recognize the replacement of the Attorney General as the Public Prosecutor by the Director of Public Prosecutions.

viii. Amendments to the Evidence Act (Cap. 80)

The Committee agreed to the proposed amendment to Section 78(1) of this Act that recognizes the replacement of the Attorney General as the Public Prosecutor by the Director of Public Prosecutions.

ix. Amendments to the Criminal Procedure Code (Cap. 75)

Members agreed to the various amendments to this Act that recognize the replacement of the Attorney General as the Public Prosecutor by the Director of Public Prosecutions.

x. Amendments to the Anti-Corruption and Economic Crimes Act (No.3 of 2003)

The Committee decided to carry the proposed amendments to Section 35(1), 36(1) and 37(1) of this Act that recognize the replacement of the Attorney General as the Public Prosecutor by the Director of Public Prosecutions.

xi. Amendments to the Kenya Red Cross Society Act (Cap. 256)

Members proposed amendments to section 5(2) and 9(a) of the Act to expand the categories of discrimination that the Society should not engage in, in pursuing its objects. The Committee suggested that these categories of discrimination should mirror those stipulated in Article 27 of the Constitution which are more exhaustive.

xii. Amendments to the Witness Protection Act (No.16 of 2006)

Members rejected the proposed amendment to section 3A of this Act based on fears that it would do away with provisions allowing the Auditor General to audit public funds disbursed to the institution, thereby encouraging corruption. The

Committee acknowledged that certain operations of the Witness Protection Agency should remain covert, but this did not mean that they should not be accountable for use of public funds. The Committee resolved to engage the A.G. further on this matter at the next meeting.

xiii. Amendments to the National Cohesion and Integration Act (No. 12 of 2008)

The Committee rejected the proposed amendment to Section 19 that stated that the reappointment of the Chairperson and Commissioners of the National Cohesion and Integration Commission would be made by the President by notice published in the gazette. Members stated that this amendment was unconstitutional and that the appointments should be done in a competitive, transparent and open manner.

xiv. Amendments to the Vetting of Judges and Magistrates (No.2 of 2011)

The proposed deletion of section 23(2) was rejected by members. Members agreed that the Judges and Magistrates Vetting Board may need an extension of time to complete their work but they proposed that this extension be made by way of a motion by the A.G.

xv. Amendments to the Kenya National Commission on Human Rights (No.14 of 2011)

Members agreed to the proposed amendments to Section 30 and 59 of this Act that removed the restriction of the commission against investigation of human rights violations. The Committee also agreed to the proposed amendments to Section 59 of this Act that provides for commencement of the process of appointment of Commissioners under the Act.

xvi. Amendments to the National Gender and Equality Commission Act No.15 of 2011)

The Committee agreed with the amendment to section 2 of this Act that aims to clarify the responsibility of the relevant Cabinet Secretary.

xvii. Amendments to the Ethics and Anti-Corruption (No.22 of 2011)

The Committee rejected the amendments to section 3 of this Act and suggested that the old section be maintained. Both sections aim at providing access to the Ethics and Anti-Corruption Commission's services country wide.

The Committee resolved to have a meeting with the Attorney General's office as well as the LSK on the outstanding issues with regard to the Statute Law (Miscellaneous Amendments) Bill, 2012 before preparation of it's report.

MIN.NO 334/2012

ADJOURNMENT

There being no other business the Chair adjourned the sitting at a half past one o'clock until a Thursday, 7th June 2012 at 10am.

Signed: 
(Chairperson)

Date: 19/6/12

MINUTES OF THE 93RD SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, JUNE 7TH, 2012 AT THE RESOURCE CENTRE 1ST FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.30 A.M.

PRESENT

Hon. Njoroge Baiya - Ag Chairperson
Hon. Ababu Namwamba, M.P.
Hon. Millie Odhiambo-Mabona, M.P. (Chairing)
Hon. Mutava Musyimi, M.P.
Hon. Amina Abdalla, M.P.

ABSENT WITH APOLOGY

Hon. Abdikadir Mohammed, M.P.
Hon. Isaac Ruto, EGH, M.P.
Hon. Olago Aluoch, M.P.
Hon. George Omari Nyamweya, MBS, M.P.
Hon. Sophia Abdi Noor, M.P.

IN ATTENDANCE

Mrs. Lucy Wanjohi
Ms. Wanjiru Ndindiri
Mr Kimathi Muriithi

KENYA NATIONAL ASSEMBLY

Second Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

MIN.NO. 335/2011

PRELIMINARIES

The meeting was opened with a word of prayer. Members of the Committee were welcomed to the meeting. The agenda of the meeting was adopted. The purpose of the meeting was to continue with the review of the Statute Law (Miscellaneous Amendments) Bill, 2012 and the Kenya School of Law Bill, 2012 as well as to meet with various stakeholders concerning these bills.

MIN.NO. 336/2011

MEETING WITH STAKEHOLDERS

The Committee was informed that the stakeholders, who included the A.G's office, the Law Society of Kenya (LSK), the Federation of Women Lawyers (FIDA), and the Kenyan Section of the International Commission of Jurists (ICJ), had requested for more time to prepare their responses. The Committee therefore resolved to meet the stakeholders on Monday, 11th June, 2012 at 10am.

The Committee further resolved to request the Minister of Justice and Constitutional Affairs to temporarily withdraw the Kenya School of Law Bill so as

to allow the Committee to complete its consultations with stakeholders on the same.

MIN.NO. 337/2011 AMENDMENTS TO THE ELECTIONS ACT AND THE POLITICAL PARTIES ACT

The Committee considered further amendments to the Elections Act (No.24 of 2011) and the Political Parties Act (No.11 of 2011). Members agreed to discuss the proposed amendments at the next meeting since they were substantive amendments which required wider consultation.

MIN.NO 338/2012 ADJOURNMENT

There being no other business the Chair adjourned the sitting at eleven o'clock. The next meeting would be held on Monday, 11th June 2012 at 10am.

Signed: 
(Chairperson)

Date: 19/6/12
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MINUTES OF THE 94TH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON MONDAY, JUNE 18TH, 2012 IN COMMITTEE ROOM, 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

Hon. Njoroge Baiya - Ag Chairperson
Hon. Abdikadir Mohammed, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Amina Abdalla, M.P.
Hon. Sophia Abdi Noor, M.P.
Hon. Yusuf Hassan, M.P.

ABSENT WITH APOLOGY

Hon. Ababu Namwamba, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. Isaac Ruto, EGH, M.P.
Hon. Olago Aluoch, M.P.
Hon. George Omari Nyamweya, MBS, M.P.

IN ATTENDANCE

Mrs. Lucy Wanjohi
Mr Kimathi Muriithi

KENYA NATIONAL ASSEMBLY

Second Clerk Assistant
Parliamentary Intern

MIN.NO. 339/2012 PRELIMINARIES

The meeting was opened with a word of prayer after which the Chairperson invited members to consider the report on the Statute Law (Miscellaneous Amendments) Bill, 2012.

MIN.NO. 340/2012 REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2012

The Committee considered proposed amendments to the Statute Law (Miscellaneous Amendments) Bill, proposed further amendments to the Political Parties Act and the Vetting of Judges and Magistrates Act after which the Report was unanimously adopted and approved for tabling.

MIN.NO 341/2012 ADJOURNMENT

There being no other business the Chair adjourned the sitting at twelve o'clock.

Signed:
(Chairperson)

Date:
19/6/12