

*Approved for tabling and reporting to the
petitioners*

SNA
7/5/19
REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – THIRD SESSION, 2019

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS

REPORT ON A PETITION BY MR. DOMINIC NGA'NGÁ TO AMEND
TYPOGRAPHICAL ERRORS IN THE CONSTITUTION OF KENYA

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	08 MAY 2019
TABLED BY:	Chairperson DC on Justice & Legal Affairs May, 2019
CLERK-AT THE-TABLE:	Getmole deb et.
DAY: Wednesday	

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CHAIRPERSON'S FOREWORD

Article 119 (1) of the Constitution provides that every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation. The procedure for presenting petitions to Parliament is set out in the Petitions to Parliament (Procedure) Act, No. 22 of 2012 as read with the National Assembly Standing Orders Part XXIII (Public Petitions).

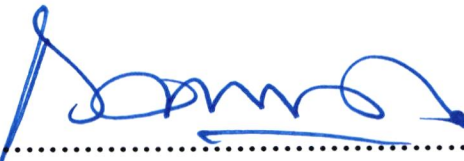
The Speaker, Hon. Justin Muturi, EGH, MP, conveyed this Petition to the House on Thursday 7th March, 2019 in accordance with the provisions of Standing Order No. 225 (2) (b). The Petitioner prays that the House amends typographical errors appearing in Articles 24, 153, 41(3), 49(1), 50(3), 92(1), 95(4) (c), 98(1)(b), 103(2), 115(3), 163 (1), 166, 166(2)(b), 216(4), 230(3), 234(3)(d), 241(2), 241(6), 253(3) and Sections 20,27 and Part 7 of the 6th Schedule of the constitution of Kenya.

The Petition was thereafter referred to the Departmental Committee on Justice and Legal Affairs for consideration and report to the House within sixty (60) days in line with the provisions of Standing Order 227.

The Petitioner appeared before the Committee on 28th March, 2019 and upon making submissions in support of the petition, the Committee was convinced that all the typographical errors as pointed out indeed existed in the Constitution of Kenya. Consequently the Committee has recommended that the Office of the Attorney-General and Department of Justice corrects the errors pursuant to the provisions of the Revision of Laws of Act, Chapter 1 of the Laws of Kenya which mandates him to do so.

May I take this opportunity to express gratitude to the Honourable Members of the Committee for their resilience and devotion to duty which made the consideration of the Petition successful. May I also take this opportunity to express gratitude to the Committee's secretariat for its exemplary performance in provision of technical and logistical support services which made the Committee's work a success.

On behalf of the Committee, and pursuant to the provisions of Standing Order, 199(6) it is my duty to table on the Floor of the House the Report of the Committee on the consideration of the Petition.

Signed..........Date.....07.05.19.....

Hon. William Cheptumo, MP
Chairperson, Departmental Committee on Justice and Legal Affairs

CHAPTER ONE

PREFACE

Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows:-
 - (a) *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) *study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
 - (c) *study and review all legislation referred to it;*
 - (d) *study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - (e) *investigate and enquire 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;*
 - (f) *vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)*

- (g) *examine treaties, agreements and conventions;*
- (h) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- (i) *consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and*
- (j) *examine any questions raised by Members on a matter within its mandate.*

2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-

- (a) Constitutional affairs;
- (b) The administration of law and Justice
- (c) The Judiciary;
- (d) Public prosecutions;
- (e) Elections;
- (f) Ethics, integrity and anti-corruption; and
- (g) Human rights.

Committee Membership

3. The Committee was constituted on Thursday, 14th December, 2017 and comprises the following Honourable Members-

No	NAME	CONSTITU- ENCY	PARTY
•			

1.	Hon. William Cheptumo, M.P. – <i>Chairperson</i>	Baringo North	Jubilee
2.	Hon. Alice Muthoni Wahome, M.P. – <i>Vice Chairperson</i>	Kandara	Jubilee
3.	Hon. John Olago Aluoch, M.P.	Kisumu West	ODM
4.	Hon. Roselinda Soipan Tuyu, M.P.	Narok County	Jubilee
5.	Hon. Charles Gimose, M.P.	Hamisi	Ford Kenya
6.	Hon. William Kamoti Mwamkale, M.P.	Rabai	ODM
7.	Hon. Peter Opondo Kaluma, M.P.	Homa Bay	ODM
8.	Hon. Ben Orori Momanyi, M.P.	Borabu	Wiper Democratic Movement
9.	Hon. Johana Ng'eno, M.P.	Emurua Dikirr	KANU
10.	Hon. George Gitonga Murugara, M.P.	Tharaka	Democratic Party
11.	Hon. Anthony Githiaka Kiai, M.P.	Mukurueni	Jubilee
12.	Hon. Gladys Boss Shollei, CBS, M.P.	Uasin Gishu County	Jubilee
13.	Hon. Beatrice Adagala, M.P.	Vihiga County	Amani National Congress
14.	Hon. Jennifer Shamalla, M.P.	Special Interests	Jubilee
15.	Hon. John Munene Wambugu, M.P.	Kirinyaga	Jubilee
16.	Hon. Japheth Mutai, M.P.	Bureti	Jubilee
17.	Hon. Adan Haji Yussuf, M.P.	Mandera West	Economic Freedom Party
18.	Hon. John Kiarie Waweru, M.P.	Dagoretti South	Jubilee
19.	Hon. Zuleikha Hassan, M.P.	Kwale County	ODM

Committee Secretariat

4. The Committee's secretariat comprises the following

Mr. George Gazemba	-	Principal Clerk Assistant II
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Halima Hussein	-	Clerk Assistant III
Ms. Fiona Musili	-	Research Officer III
Mr. Omar Abdirahim	-	Fiscal Analyst III
Mr. Joseph Okongo	-	Media Liaison Officer
Mr. Hakeem Kimiti	-	Audio Officer
Ms. Roselyne Ndegi	-	Serjeant-at-Arms

5. Minutes of the Committee sittings on consideration of the Petition form
annexure

CHAPTER TWO

CONSIDERATION OF THE PETITION

6. Mr. Dominic Ng'ang'a appeared before the Committee on 28th March, 2019 and made submissions on typographical errors appearing under Articles 24, 153, 41(3), 49(1), 50(3), 92(1), 95(4) (c), 98(1)(b), 103(2), 115(3), 163 (1), 166, 166(2)(b), 216(4), 230(3), 234(3)(d), 241(2), 241(6), 253(3) and Sections 20, 27 and Part 7 of the 6th Schedule of the constitution of Kenya. He asked the House to correct errors.

(a) In the arrangement of Articles, page 6, part 3, with the heading "The Cabinet" Article 153 is typed twice. The Article supposed to be typed as Article 154 "Secretary to the cabinet" is wrongly referred to and typed as Article 153.

(b) In Article 24 (2) (b), the spelling of the word 'fundamental' in that sentence is misspelled as "fundmental"

(c) In Article 41(3) the numerical-letter arrangement of the paragraphs supposed to read as paragraphs (a) and (b) are mistyped to read as paragraphs (e) and (t) respectively

(d) In Article 49 (1) (a), the indefinite article 'a' supposed to be inserted between the words "in" and "language" to stress the use of the noun language in its singular form is omitted. In Article 50 (3), the same indefinite article 'a' as the case in Article 49(1) (a) is omitted.

(e) In Article 92(i), the word 'political' is misspelt as "politcal".

(f) In Article 95(4)(c), the word 'expenditure' has been misspelt as "expeditnre".

(g) In the Article 98(1) (b), the reference made of "clause (a)" in that paragraph is inconsistent with other similar references made in the constitution, the reference should have been in paragraph (a)

(h) In Article 103, clause (2) of that Article has been omitted and I or clause (2) is mistyped to read as clause (3) instead of reading as clause (2) of Article 103. In Article 115 (3), the word 'amends' is misspelt and instead reads as "amendeds",

(i) In Article 163 (1) there is commissioning of the letter's' in the word "shall consists" instead of 'shall consist'.

- (j) In Article 166(2) (b) the reference made of clause (3) to (6) in that paragraph is not true. Article 166 has only 5 clauses and therefore clause (6) of that Article is non-existent in the Constitution.
- (k) In Article 216 (4), the spelling of the word "commission" is misspelt. The word should have been spelled as "commission".
- (l) In chapter 12 of the constitution, "public finance", part 7 of that chapter headed "financial officers and institutions" is wrongly labeled as part 6. Part 6 of that chapter talks about "control of public money".
- (m) In Article 230 (3), the reference made of "clause (1) (d) and (e)" is incorrect. Clause (1) of Article 230 of the constitution of Kenya 2010 has no subsequent paragraphs, the reference should instead read as 'clause (2) (d) and (e)'.
- (n) In Article 234(3)(d), paragraph (d) of that clause is labeled as paragraph (b) thus making the clause virtually floundrous.
- (o) In the Article 241 (2), the word "consist" is wrongly used in the sentence "the Defence forces consist of" instead of 'the Defence forces consists of'.
- (p) In Article 241 (6) the word "consist" is also wrongly used in the context of that sentence

- (q) In Article 252 (3), the word "summons" is wrongly used in the words "to issue a summons", a wrongly placed indefinite article 'a'.
- (r) In the Article 260 in the interpretation of the word county legislation, the word "under" just after the words "government or" is repeated as "under".
- (s) In Article 260 in the interpretation of the word "public officer," the phrase used in Paragraph (b) as "other than" is wrongly used as such instead of 'other than'.
- (t) In the fourth schedule part 1, function 27 of functions of the National Government is omitted. There is no function no. 27 of the National Government therefore making the total functions of the National Government to factually total 34 functions as opposed to the Mathematically incorrect 35 functions as indicated in that part of schedule four of the constitution
- (u) In the fifth schedule on the legislation to be enacted by parliament, the reference made on chapter 11 "Devolved Government the Article on Urban areas and cities is wrongly referred to and indicated as Article 183 instead of Article 184. Article 183 talks of the functions of county executive committees not Urban areas and Cities.
- (v) In the sixth schedule section 20 subsection 3(a) to (d); the reference made of Article 171 (4) (c), (d), (f) and (h) is not

correct and thus misleading as clause (4) of Article 171 has no subsequent paragraph and the reference made is therefore nonexistent in the Constitution. The reference is supposed to read as Article 171 (2) (c) (d) (f) and (h) respectively

(w)

In the sixth schedule, section 27, subsection 2 of that section has been omitted and/or subsection (3) and (4) of the section are mistyped to read as such instead of reading as subsection (2) and (3) respectively,

(x) In the sixth schedule, part 7, headed "miscellaneous matter" of the schedule is mistyped to read as part 6. Part 6 of the sixth schedule talks about "commissions and offices".

7. The Committee observed as correct all the typographical errors as submitted by the Petitioner.

CHAPTER THREE

3.0 COMMITTEE OBSERVATIONS, FINDINGS AND CONCLUSIONS

8. Upon considering the petition, the Committee made the following observations, findings and conclusions -

- (i) The mandate of Parliament under Article 94(3) of the Constitution to consider and pass amendments to the Constitution does not extend to amending typographical errors in the Constitution which have no effect on the interpretation to be given to the respective substantive provisions.
- (ii) It would be practically impossible for Parliament to amend the cited typographical errors due to the provisions of Article 109(1) of the Constitution which provides that Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the President. It would be a herculean task to draft and process such an amendment Bill through the Parliamentary legislative process and the Bill would still be self-defeating if it is not passed because the typographical errors will still remain as such in the Constitution.
- (iii) The power to correct typographical and grammatical mistakes in the Laws of Kenya is vested in the Attorney-General of the Republic by virtue of the provisions of the Revision of Laws Act, Chapter 1 of the Laws of Kenya. Section 4 of the Act provides that the Laws

of Kenya shall include the Constitution, all Acts in force, subsidiary legislation and such foreign legislation applicable to Kenya as the Attorney-General may deem fit to include.

(iv) Section 7 of the Act requires the Attorney-General to prepare and publish, as soon as practicable after the beginning of every year-

(a) a revised edition of every Act which has been enacted or has come into force during the previous year together with such subsidiary legislation made thereunder as the Attorney-General thinks fit to include, unless any such Act is omitted under section 5 or its sole effect is to amend, without replacing, other written laws;

(b) a new revised edition of the Constitution, any Act, any foreign legislation applied to Kenya or any subsidiary legislation where, by reason of—

(i) *its* having been substantially amended;

(ii) *in* the case of the Constitution or an Act, a substantial quantity of subsidiary legislation having been made thereunder, during the preceding year or years, a new revised edition is in the opinion of the Attorney-General desirable;

(v) Section 8(1) of the Act, in pertinent parts, provides that the Attorney-General has the following powers when preparing the annual supplement of the Laws of Kenya-

(d) To alter the order of sections in any law, and, in all cases where it is necessary to do so, to renumber the sections of any law;

(e) To alter the form or arrangement of any section of any law, either by combining it in whole or in part with another section or other sections or by dividing it into two or more subsections;

(f) To divide any law, whether consolidated or not, into Parts or other divisions;

(g) To transfer any provisions contained in an enactment from that enactment to any other enactment to which the Attorney-General considers that it more properly belongs;

(h) To supply or alter marginal notes, section headings and tables showing the arrangement of sections;

(i) To correct cross-references;

(j) To shorten or simplify the phraseology of any law;

(i) to add a short title or citation to any law which requires it, and, if necessary or expedient, to alter the long title, short title or citation of any law;

(j) *to correct grammatical and typographical mistakes in the existing copies of laws, and for that purpose to make verbal additions, omissions or alterations not affecting the meaning of the laws;*

(k) *to correct the punctuation in any law;*

(l) *to provide footnotes by way of amplification;*

(m) (o) *to make such formal alterations as to names, localities offices and otherwise as are necessary to bring any law into conformity with the circumstances of Kenya;*

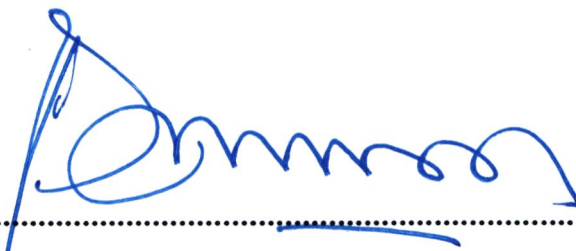
(n) *Section 8(4) of the Act provides that nothing in the section shall empower the Attorney-General to make any alteration or amendment in the substance of any law.*

CHAPTER 4

4.0 RECOMMENDATIONS

9. The Committee recommends as follows-

Pursuant to the provisions of the Revision of Laws Act, Chapter 1 of the Laws of Kenya, the Office of the Attorney-General and Department of Justice of the Republic of Kenya should correct all the typographical errors in the Constitution of Kenya as pointed out by the Petitioner.

Sign..........Date.....**07.5.19**.....

HON WILLIAM CHEPTUMO, M.P.

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS**

ANNEXURE 1

**Minutes of the Committee on sittings
considering and adopting the petition**

**MINUTES OF THE ONE HUNDRED AND TWENTY-FIFTH SITTING OF
THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS HELD ON TUESDAY, 23RD APRIL, 2019 AT 10.00 A.M. IN
COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING**

PRESENT-

1. Hon. William Cheptumo, M.P. - **Chairperson**
2. Hon. John Olago Aluoch, M.P.
3. Hon. Peter Opondo Kaluma, M.P.
4. Hon. Beatrice Adagala, M.P.
5. Hon. Anthony G. Kiai, M.P.
6. Hon. Japheth Mutai, M.P.
7. Hon. William K. Mwamkale, M.P.
8. Hon. George G. Murugara, M.P.
9. Hon. Adan Haji Yussuf, M.P.

ABSENT WITH APOLOGIES-

1. Hon. Alice Muthoni Wahome, M.P. - **Vice Chairperson**
2. Hon. Jennifer Shamalla, M.P.
3. Hon. John M. Wambugu, M.P.
4. Hon. Roselinda Soipan Tuya, M.P.
5. Hon. Ben Momanyi, M.P.
6. Hon. Charles Gimose, M.P.
7. Hon. Gladys Boss Shollei, CBS, M.P.
8. Hon. Johana Ng'eno, M.P.
9. Hon. Zuleikha Hassan, M.P.
10. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

1. Mr. George Gazemba - Principal Clerk Assistant II
2. Mrs. Halima Hussein - Clerk Assistant II
3. Mr. Joseph Okongo - Media Officer
4. Mr. Hakeem Kimiti - Audio Recording Officer

MIN No. 496/2019:-

PRELIMINARIES

The meeting commenced at 10.15 a.m. with a word of prayer by the chairperson.

MIN No. 497/2019:-

CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Minutes of the One Hundred and Twenty-Third Sitting held on Thursday, 4th April, 2019 at 10.00 a.m. the Boardroom on 4th Floor, Continental House, Parliament Buildings were confirmed as true record of proceedings and signed by the chairperson. The confirmation of the Minutes was proposed by Hon. Beatrice Adagala and seconded by Hon. George Muruagara.

MIN No. 498/2019:-

MATTERS ARISING FROM THE CONFIRMATION OF THE MINUTES

Under Minute No. 490/2019, the following matters arose-

- (i) The Attorney-General of the Republic of Kenya and the Ethics and Anti-Corruption Commission CEO appeared before the Committee on 16th April, 2019 at 2.30 p.m. and deliberated on the Ratification (Accession) of the Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization and the National Anti-Corruption Policy. The Committee would be finalizing its reports for tabling in the House.
- (ii) The retreat with the Judiciary for the examination of the State of the Judiciary and the Administration of Justice Reports for the years 2016/2017 and 2017/2018 had been scheduled for 1st to 5th May, 2019 in Mombasa. 2nd May, 2019 would be a House sitting day and the Committee had obtained the Speaker's permission to sit on this day.

MIN No. 499/2019:-

APPEARANCE BY THE DIRECTOR OF PUBLIC PROSECUTIONS AND THE ETHICS AND ANTI-CORRUPTION COMMISSION

The Director of Public Prosecutions and the Chairperson, Ethics and Anti-Corruption Commission were to appear before the Committee to discuss

investigation and prosecution of cases as well as recovery of stolen assets. The chairperson informed the meeting that after establishing that the Ethics and Anti-Corruption Commission, chairperson would be unavailable for the meeting and that the CEO would be representing the Commission decided to postpone the meeting until the Chairperson and Commissioners are present. The chairperson decision was informed by the fact that the meeting's agenda was on policy matters for which the Commissioners were directly responsible and that their presence was mandatory. While unanimously supporting the chairperson's decision, the Committee rescheduled the meeting for 30th April, 2019 at 10.00 a.m.

MIN No. 500/2019:- **CONSIDERATION AND ADOPTION OF REPORT ON PETITION BY MR DOMINIC NG'ANG'A TO CORRECT TYPOGRAPHICAL ERRORS IN THE CONSTITUTION OF KENYA**

The Committee considered and unanimously adopted its report on petition by Mr. Dominic Ng'ang'a to correct several typographical errors in the Constitution of Kenya with recommendation that - *Pursuant to the provisions of the Revision of Laws Act, Chapter 1 of the Laws of Kenya, the Office of the Attorney-General of the Republic of Kenya should correct all the typographical errors in the Constitution of Kenya as pointed out by the Petitioner.*

The adoption of the report was proposed by Hon. Japheth Mutai and seconded by Hon. Adan Haji Yussuf.

MIN No. 501/2019:- **ANY OTHER BUSINESS**

The following were discussed-

- (i) Hon. George Murugara and Hon. John Wambugu did not attend the Commonwealth Lawyers Association Conference in Livingston, Zambia from 8th to 12th April, 2019 due to lack of convenient and reliable flights to Livingstone. Nothing was however lost on account of their inability to travel since the funds would finance another trip.
- (ii) The Republic of India would hold its general elections in phases in May, 2019. The Committee had been invited by the Independent Electoral and Boundaries Commission (IEBC) of Kenya to join it as part of the mission to observe the elections from 11th to 13th May, 2019 in selected states. The Committee however had a budget of Kshs.1.5 million under the 2018/2019

financial year which was inadequate to send a sizeable delegation. The chairperson informed the meeting that there was additional Kshs. 5 million allocated to each Committee for international travel and he would follow up on the funds with the Liaison Committee and the Clerk of the National Assembly after the meeting to fund the trip to India.

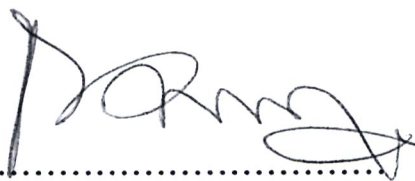
- (iii) The Committee agreed to meet the Commission on Administrative Justice from Botswana on 30th April, 2019 at 9.00 a.m. before meeting the Ethics and Anti-Corruption Commission and the Director of Public Prosecutions at 10.00 a.m.

MIN No. 502/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at twenty-minutes past eleven in the morning until, 30th April, 2019 at 9.00 a.m. at a venue to be advised.

Signed.....



Chairperson

Date.....

25/04/19

**MINUTES OF THE ONE HUNDRED AND TWENTY-FIRST SITTING OF
THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS HELD ON THURSDAY, 28TH MARCH, 2019 AT 10.00 A.M. IN
THE BAORDROOM ON 4TH FLOOR, PROTECTION HOUSE,
PARLIAMENT BUILDINGS**

PRESENT-

- | | | |
|------------------------------------|---|-------------------------|
| 1. Hon. William Cheptumo, M.P. | - | Chairperson |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. George G. Murugara, M.P. | | |
| 4. Hon. Jennifer Shamalla, M.P. | | |
| 5. Hon. John M. Wambugu, M.P. | | |
| 6. Hon. Adan Haji Yussuf, M.P. | | |
| 7. Hon. Beatrice Adagala, M.P. | | |
| 8. Hon. Peter Opondo Kaluma, M.P. | | |
| 9. Hon. Anthony G. Kiai, M.P. | | |

ABSENT WITH APOLOGIES-

1. Hon. John Olago Aluoch, M.P.
2. Hon. William K. Mwamkale, M.P.
3. Hon. Japheth Mutai, M.P.
4. Hon. Roselinda Soipan Tuya, M.P.
5. Hon. Ben Momanyi, M.P.
6. Hon. Charles Gimose, M.P.
7. Hon. Gladys Boss Shollei, CBS, M.P
8. Hon. Johana Ng'eno, M.P.
9. Hon. Zuleikha Hassan, M.P.
10. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Mr. Denis Abisai | - | Principal Legal Counsel I |
| 3. Ms. Halima Hussein | - | Third Clerk Assistant |
| 4. Ms. Fiona Musili | - | Research Officer |
| 5. Ms. Roselyn Njuki | - | Serjeant-at-Arms |

6. Hakeem Kimiti - Audio Officer

LEGISLATIVE PROPOSAL SPONSOR

Hon. Joshua Kutuny

PETITIONER

Mr. Dominic Nganga

MIN No. 475/2019:-

PRELIMINARIES

The meeting commenced at 10.20 a.m. with a word of prayer by the chairperson.

MIN No. 476/2019:-

CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Confirmation of minutes of previous sittings was deferred to the next meeting

MIN No. 477/2019:-

CONSIDERATION OF A LEGISLATIVE PROPOSAL BY HON. JOSHUA KUTUNY TO AMEND VARIOUS ARTICLES OF THE CONSTITUTION OF KENYA

Hon. Joshua Kutuny's legislative proposal sought to amend Articles 107, 108, 117, 130, 131, 132, 136, 148, 151, 152, 240, 260 and the Third Schedule of the Constitution of Kenya. The Members appeared before the Committee and submitted as follows in support of his legislative proposal for publication-

- (i) The distribution of political power among various tribes was a key factor in holding the republic of Kenya together in terms of ethnicity and inclusivity. As at the moment, not everybody in Kenya felt like he was part of the government despite the President making every effort to distribute power through creation and appointment to positions like of Cabinet Assistant Secretaries in addition to Cabinet Secretaries.
- (ii) In the year, 2007/2008 when there was post-election violence in the country due to disputed Presidential election results, the formation of a grand coalition government which saw power distributed among various

political players from various regions through the National Peace Accord calmed the country politically. The handshake between President H.E. Uhuru Kenyatta and former Prime Minister Hon. Raila Odinga had stabilized the country politically.

- (iii) He faulted the current Kenyan presidential system of governance as providing an enabling situation where two leading tribes in numbers if united could win every presidential elections and govern the country for ever to the disadvantage of other tribes.
- (iv) He proposed the creation of position of Prime Minister and two Deputy Prime Ministers as a way and means of ensuring inclusivity in the Government. Persons running for the position of President and Prime Minister should run for the position of Member of Parliament so that they have a fallback position to Parliament in the event they are not elected as President and Prime Minister. This will help retain some good brains in Parliament for the benefit of law making.
- (v) The Prime Minister and the two Deputy Prime Ministers shall be from the largest political parties in the National Assembly and shall be appointed by the President with the approval of the National Assembly. They will also be cabinet members.
- (vi) He proposed the creation of powerful positions of Leader of Government Business in Parliament to be held by the Prime Minister and the Official Opposition Leader to be held by the leader of the second largest party in the National Assembly as another way and means of ensuring inclusivity in the Government. A strong Office of Leader of Official Opposition was necessary in order to oversight the Executive for better performance and stability in democracy.
- (vii) He proposed that Cabinet Secretaries should be appointed from Members of Parliament as they represent people inform of constituencies and special interests and would at cabinet level be able push the agenda of the people they represent unlike the current Cabinet Secretaries who are handpicked and don't represent the public.
- (viii) With Cabinet Secretaries, Prime Minister and Leader of Government

Business attending Parliament, it would be a perfect opportunity for the Executive to be interrogated on issues of public importance in Parliament and this was good for democracy. In the current set up, the Leader of Majority Party defends Government Policies on the floor of the House, yet he does not attend cabinet meetings. He was also opposed to the Deputy President being a Member of the House.

- (ix) The Constitution if amended will not have financial implications on the taxpayer since the positions sought to be introduced are in existence but under different names.
- (x) The amendments if carried will not require referendum as they are not amendments contemplated under Article 155 of the Constitution of Kenya. The passage of the Bill in the House will require two-thirds majority Members supporting it.
- (xi) The Legislative Proposal if it becomes a Bill, it does not affect the role of the Senate over County Governments and it would be upon candidates to determine which House they want to contest for positions come the general election time.

The Committee instructed the Member to provide a write-up on why he was opposed to the Deputy President being a Member of Parliament and also to avail documents supporting his legislative proposal.

MIN No. 478/2019:-

CONSIDERATION OF PETITION BY MR. DOMINIC NGÁNGÁ TO AMEND TYPOGRAPHICAL ERRORS IN THE CONSTITUTION OF KENYA

Mr. Dominic Ngángá appeared before the Committee and made submissions on various typographical errors under Articles 24, 153, 41(3), 49(1), 50(3), 92(1), 95(4) (c), 98(1)(b), 103(2), 115(3), 163 (1), 166, 166(2)(b), 216(4), 230(3), 234(3)(d), 241(2), 241(6), 253(3) and Sections 20,27 and Part 7 of the 6th Schedule of the constitution of Kenya. The Committee observed as correct all the typographical errors as submitted by the Petitioner.

The Petitioner also informed the Committee that he had sued the Attorney-General seeking an order for the amendments but the court referred him to Parliament

which was mandated to amend laws. His case was pending in court pending the outcome of the Petition before Parliament.

The Committee observed that typographical errors as noted by the Petitioner could only be corrected by the Attorney-General of the Republic of Kenya as provided by the Revision of Laws Act, Cap 1. Consequently, the Committee would be taking up the matter with the Office of the Attorney-General and Department of Justice.

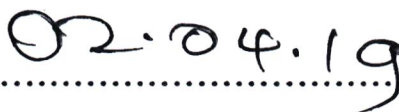
MIN No. 479/2019:- CONSIDERATION AND ADOPTION OF REPORT ON THE LEGISLATIVE PROPOSAL ON PUBLIC PARTICIPATION BY HON. CHRIS WAMALWA

The Committee considered and unanimously adopted its report on the Public Participation Legislative Proposal by Hon. Chris Wamalwa for signing by the Chairperson and presentation to the Hon. Speaker. The adoption of the report was proposed by Hon. Jennifer Shamalla and seconded by Hon. Adan Haji Yussuf.

MIN No. 480/2019:- ADJOURNMENT

There being no other business to transact, the meeting was adjourned at ten minutes past noon until, Tuesday, 1st April, 2019 at 10.00 a.m. at a venue to be advised.

Signed.....
Chairperson

Date..........

ANNEXURE 2

**Copy of the petition as presented to the
House**

PETITION TO THE NATIONAL ASSEMBLY UNDER ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, TO AMEND TYPOGRAPHICAL ERRORS PRESENT IN THE CONTENT OF THE CONSTITUTION OF KENYA 2010.

- a) In the arrangement of Articles, page 6, part 3, with the heading "The Cabinet" Article 153 is typed twice. The Article supposed to be typed as Article 154 "Secretary to the cabinet" is wrongly referred to and typed as Article 153.
- b) In Article 24 (2) (b), the spelling of the word 'fundamental' in that sentence is misspelled as "fundmental"
- c) In Article 41(3) the numerical-letter arrangement of the paragraphs supposed to read as paragraphs (a) and (b) are mistyped to read as paragraphs (e) and (f) respectively.
- d) In Article 49 (1) (a), the indefinite article 'a' supposed to be inserted between the words "in" and "language" to stress the use of the noun language in its singular form is omitted.
- e) In Article 50 (3), the same indefinite article 'a' as the case in Article 49(1) (a) is omitted.
- f) In Article 92(i), the word 'political' is mis-spelled as "politcal".
- g) In Article 95(4)(c), the word 'expenditure' has been mis-spelled as "expediture".
- h) In the Article 98(1) (b), the reference made of "clause (a)" in that paragraph is inconsistent with other similar references made in the constitution. In my own considered opinion the reference should have been made ~~as~~ paragraph (a)'.
i) In Article 103, clause (2) of that Article has been omitted and / or clause (2) is mistyped to read as clause (3) instead of reading as clause (2) of Article 103.
- j) In Article 115 (3), the word 'amends' is mis-spelled and instead reads as "amendeds".
- k) In Article 163 (1) there is commissioning of the letter 's' in the word "shall consists" instead of 'shall consist'.
- l) In Article 166(2)(b) the reference made of clause (3) to (6) in that paragraph is not true. Article 166 has only 5 clauses and therefore clause (6) of that Article is non existent in the constitution.
- m) In Article 216 (4), the spelling of the word "comission" is misspelled. The word should have been spelled as "commission".
- n) In chapter 12 of the constitution, "public finance", part 7 of that chapter headed "financial officers and institutions" is wrongly labeled as part 6. Part 6 of that chapter talks about "control of public money".
- o) In Article 230 (3), the reference made of "clause (1) (d) and (e)" is incorrect. Clause (1) of Article 230 of the constitution of Kenya 2010 has no subsequent paragraphs. The reference should instead read as 'clause (2) (d) and (e)'.
p) In Article 234(3)(d), paragraph (d) of that clause is labeled as paragraph (b) thus making the clause virtually floundrous.
- q) In the Article 241 (2), the word "consist" is wrongly used in the sentence "the Defence forces consist of" instead of 'the Defence forces consists of'.
- r) In Article 241 (6) the word "consist" is also wrongly used in the context of that sentence.
- s) In Article 252 (3), the word "summons" is wrongly used in the words "to issue a summons", a wrongly placed indefinite article 'a'.
- t) In the Article 260 in the interpretation of the word county legislation, the word "under" just after the words "government or" is repeated as "under under".

PETITION TO THE NATIONAL ASSEMBLY UNDER ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, TO AMEND TYPOGRAPHICAL ERRORS PRESENT IN THE CONTENT OF THE CONSTITUTION OF KENYA 2010.

- u) In Article 260 in the interpretation of the word “public officer,” the phrase used in paragraph (b) as “other than” is wrongly used as such instead of ‘other than’.
- v) In the fourth schedule part 1, function 27 of functions of the National Government is omitted. There is no function no. 27 of the National Government therefore making the total functions of the National Government to factually total 34 functions as opposed to the Mathematically incorrect 35 functions as indicated in that part of schedule four of the constitution.
- w) In the fifth schedule on the legislation to be enacted by parliament, the reference made on chapter 11 “Devolved Government” the Article on Urban areas and cities is wrongly referred to and indicated as Article 183 instead of Article 184. Article 183 talks of the functions of county executive committees not Urban areas and Cities.
- x) In the sixth schedule section 20 subsection 3(a) to (d), the reference made of Article 171 (4) (c), (d), (f) and (h) is not correct and thus misleading as clause (4) of Article 171 has no subsequent paragraphs and the reference made is therefore non-existent in the constitution of Kenya 2010. The reference is supposed to read as Article 171(2) (c) (d),(f) and (h) respectively.
- y) In the sixth schedule section 27, subsection 2 of that section has been omitted and/or subsection (3) and (4) of the section are mistyped to read as such instead of reading as subsection (2) and (3) respectively.
- z) In the sixth schedule, part 7, headed “miscellaneous matter” of the schedule is mistyped to read as part 6. Part 6 of the sixth schedule talks about “commissions and offices”.


4. PRAYERS

HEREFORE your humble petitioner pray that parliament to grant:-

- (a) THAT the typographical errors as identified and any other errors therein be considered and amended at the appropriate time pursuant to Article 94 (3) of the constitution, and in the spirit of Article 259 (8) of the constitution and in accordance with the provisions of Article 256 of the constitution of Kenya, 2010 to standardize, sanctify and enhance clarity to the text and content layout of our supreme law.
- (b) Any such consideration that this House shall deem just.


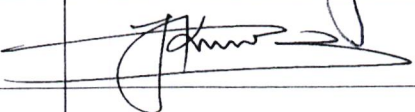
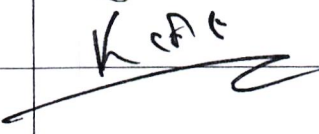




And your petitioner will ever pray.

Dated this ^{3rd}.....day of... DECEMBER 2018

NAME	ADDRESS	ID. NO	SIGN
Dominic Ng'ang'a Mburu PETITIONER	P.O Box +254706740724-00200 Nairobi. Mobile: 0706740724 Email: creakpark@gmail.com	25563819	

ANNEXURE 3

**List of Members who attended the
Sitting that adopted the report.**

13.	Hon. Adan Haji Yussuf, MP.	
14.	Hon. Japheth Kiplangat Mutai, MP.	
15.	Hon. Anthony Githiaka Kiai, MP.	
16.	Hon. Jennifer Shamalla, MP.	
17.	Hon. Beatrice Adagala, MP.	
18.	Hon. John Munene Wambugu, MP.	
19.	Hon. Boss Shollei, CBS, MP.	



GEORGE GAZEMBA, ACI Arb
For: CLERK OF THE NATIONAL ASSEMBLY

KENYA NATIONAL ASSEMBLY



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ATTENDANCE REGISTER FOR MEMBERS

DATE... 23/4/19 TIME... 10:15 AM

VENUE... ~~10:15 AM~~ COMMITTEE ROOM 9

NO.	NAME	SIGNATURE
1.	Hon. William Cheptumo, M.P. – Chairperson	
2.	Hon. Alice Wahome, MP. - Vice Chairperson	
3.	Hon. John Olago Aluoch, MP.	
4.	Hon. Roselinda Soipan Tuyu, MP.	
5.	Hon. Ben Momanyi, MP.	
6.	Hon. Mwamkale William Kamoti, MP.	
7.	Hon. Peter Opondo Kaluma, MP.	
8.	Hon. Charles Gimose, MP.	
9.	Hon. Johana Ngeno Kipyegon, MP.	
10.	Hon. Zuleikha Hassan, MP.	
11.	Hon. John Kiarie Waweru, MP.	
12.	Hon. George Gitonga Murugara, MP.	