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PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

*Paper Laid  
by Hon. S. Cheptenga  
Chairperson, DC-J  
Thurs. 30.7.2015  
MNM  
A 22  
(PM)*

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

## REPORT ON

THE CONSTITUTION OF KENYA (AMENDMENT) (No. 2) BILL, 2015

Clerks Chambers,  
National Assembly,  
Parliament Buildings,  
Nairobi

July, 2015

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**A REPORT OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE CONSTITUTION OF KENYA (AMENDMENT) (No. 2) BILL, 2015**

**1. PREFACE**

**Hon Speaker,**

On behalf of the Departmental Committee on Justice and Legal Affairs, and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House a report of the Committee on the Constitution of Kenya (Amendment) (No. 2) Bill, 2015.

The Committee derives its mandate from Standing Order No. 216(5) which provides as follows:-

- 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.*

The Second Schedule of the Standing Orders on Departmental Committees further states the subjects which the Committee is supposed to deal with while discharging its mandate. The subjects are as follows:-

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

**1.1. Committee Membership**

The Committee was constituted on Thursday, 16th May, 2013 and comprises the following:-

- |     |  |   |                  |
|-----|--|---|------------------|
| 1.  | Hon. Samuel Chepkong'a, M.P.           | - | Chairperson      |
| 2.  | Hon. Priscilla Nyokabi, M.P.           | - | Vice Chairperson |
| 3.  | Hon. Njoroge Baiya, M.P.               |   |                  |
| 4.  | Hon. Muriithi Waiganjo, M.P.           |   |                  |
| 5.  | Hon. Ndirangu Waihenya, M.P.           |   |                  |
| 6.  | Hon. Florence Kajuju, M.P.             |   |                  |
| 7.  | Hon. Kang'ata Irungu, M.P.             |   |                  |
| 8.  | Hon. Benson Mutura, M.P.               |   |                  |
| 9.  | Hon. John Njoroge Chege, M.P.          |   |                  |
| 10. | Hon. William Cheptumo, M.P.            |   |                  |
| 11. | Hon. Mohamed Abdi Haji, M.P.           |   |                  |
| 12. | Hon. Sammy Koech, M.P.                 |   |                  |
| 13. | Hon. Moses Cheboi, M.P.                |   |                  |
| 14. | Hon. Paul Bii, M.P.                    |   |                  |
| 15. | Hon. Charles Gimose, M.P.              |   |                  |
| 16. | Hon. Johanna Ng'eno, MP.               |   |                  |
| 17. | Hon. Boniface Otsiula, M.P.            |   |                  |
| 18. | Hon. David Ouma, M.P.                  |   |                  |
| 19. | Hon. Neto Agostinho, M.P.              |   |                  |
| 20. | Hon. Kaluma Peter, M.P.                |   |                  |
| 21. | Hon. Fatuma Ibrahim Ali, M.P.          |   |                  |
| 22. | Hon. Ben Momanyi Orari, M.P.           |   |                  |
| 23. | Hon. Tom J. Kajwang', M.P.             |   |                  |
| 24. | Hon. (Bishop) Mutua Mutemi, M.P.       |   |                  |
| 25. | Hon. Olago Aluoch, M.P.                |   |                  |
| 26. | Hon. (Dr) Christine Oduor Ombaka, M.P. |   |                  |
| 27. | Hon. Munuve G. Mati, M.P.              |   |                  |
| 28. | Hon. Mwamkale William Kamoti, M.P.     |   |                  |
| 29. | Hon. James Bett, M.P.                  |   |                  |

**1.3. First Reading of the Constitution of Kenya (Amendment) (No. 2) Bill, 2015**

The Constitution of Kenya (Amendment) (No. 2) Bill, 2015 was read for the first time on 11<sup>th</sup> February, 2015 and immediately committed to the Departmental Committee on Justice and Legal Affairs for scrutiny as required by Standing Order 127 (1) which states as follows:-

*“A Bill having been read a First Time shall stand committed to the relevant Departmental Committee without question being put to it”*

**1.4. Public participation in the consideration of the Bill**

Standing Order 127(3) states as follows:-

***“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”***

In line with this Standing Order, the Committee invited the public through the Daily Nation and Standard newspapers of 6<sup>th</sup> March, 2015 as evidenced by appendix 3 of this report to make representations on the Bill. The Committee did not however receive any representation.

### **1.5 Sitings of the Committee and adoption of report**

The Committee scrutinized the Bill on 21<sup>st</sup> July, 2015 in the Boardroom on 5<sup>th</sup> floor, Continental House, Parliament Buildings and also considered and adopted its report on the same day. The adoption of the report was proposed by Hon. T.J. Kajwang’ and seconded by Hon. Paul Bill. There was no dissenting voice to the adoption of the report. Minutes of the Committee’s sitting adopting the report are annexed hereto as appendix 1. A list of Members who attended the sitting is also annexed as appendix 2.

### **1.6. Acknowledgement**

The Chairperson wishes to commend Committee Members for their devotion and commitment to duty which made the consideration of this Bill a reality. The Committee further wishes to thank the Offices of the Speaker and Clerk of the National Assembly for providing guidance and technical support without which its work would not have been possible.

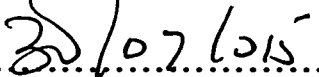
**Hon. Speaker Sir,**

On behalf of the Committee, I now wish to table this report in the House.

SIGNED..........

**Hon. Samuel Chepkong’a, MP  
(Vice Chairperson)**

**Departmental Committee on Justice and Legal Affairs**

DATE........

## **2.0. BACKGROUND**

The Bill is dated 22<sup>nd</sup> May, 2014 and is sponsored Hon. George Kaluma. The principle objective of the Bill is to amend the Constitution of Kenya so as to prohibit the courts from interfering with matters pending consideration or being processed before Parliament, County Assemblies or any of their Committees in line with international practice where courts only intervene after Parliament has executed its mandate. It is only in Kenya where this state of judicial curtailment of parliamentary functions exists thus severally threatening the exercise of the sovereign will of the people through their democratically elected representatives.

The proposed amendments are intended to entrench the governance ideal of separation of powers in the functions and functioning of the arms of government and to limit interference by the respective organs of government in the internal functions of each other as may be mandated by the Constitution.

While the proposed amendments preclude courts from interfering with the proceedings of Parliament and the County Assemblies, they by implication recognize the court's jurisdiction to determine the constitutionality of legislations made by Parliament and County Assemblies. In public law, Parliament and the High Court are equal and co-ordinate organs of government exercising separate constitutional functions. Therefore the High Court enjoys no supervisory powers over Parliament but its powers are limited to determining the constitutionality of the laws made by Parliament.

The enactment of this Bill shall occasion additional expenditure of public funds which it is expected shall be provided for in the budget.

## **3.0. PUBLIC PARTICIPATION IN THE CONSIDERATION OF THE BILL**

Standing Order 127(3) provides as follows:-

***“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”***

Pursuant to this Standing Order, the Committee invited the public through the Daily Nation and Standard newspapers of 6<sup>th</sup> March, 2015 to make representations on the Bill. The newspaper advertisement is annexed hereto as appendix 3. The Committee did not however receive any representation.

**4.0. CONSIDERATION OF THE BILL**

The Committee considered the Bill on 21<sup>st</sup> July, 2015 in the Boardroom on 5<sup>th</sup> floor, Continental House, Parliament Buildings and did not propose any amendments to it. It should be noted that the Bill originated from the Committee through the sponsoring Member .

**5.0. RECOMMENDATIONS**

The Committee recommends that the House passes the Bill in its published form.

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# **APPENDIX 1**

**MINUTES OF THE FIFTY THIRD SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 21<sup>ST</sup> JULY, 2015 AT 10 A.M. IN THE BOARDROOM ON 5<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS**

**PRESENT:-**

Hon. Samuel Chepkong'a, MP	-	<b>Chairperson</b>
Hon. Priscilla Nyokabi, MP	-	<b>Vice Chairperson</b>
Hon. Benson Mutura, MP		
Hon. Fatuma Ibrahim Ali, MP		
Hon. Johanna Ngeno, MP		
Hon. Olago Aluoch, MP		
Hon. Mutua Mutemi (Bishop), MP		
Hon. Tom.J. Kajwang', MP		
Hon. John Njoroge Chege, MP		
Hon. Ben Momanyi Orori, MP		
Hon. Moses Cheboi, MP		
Hon. Muriithi Waiganjo, MP		
Hon. Dr. Christine Ombaka, MP		
Hon. Kaluma Peter, MP		
Hon. Paul Bii, MP		

**ABSENT:-**

Hon. Florence Kajuju, MP  
Hon. Kang'ata Irungu, MP  
Hon. William Cheptumo, MP  
Hon. Sammy Koech, MP  
Hon. William Mwamkale, M.P  
Hon. Charles Gimose, MP  
Hon. Njoroge Baiya, MP  
Hon. David Ouma Ochieng, MP  
Hon. Boniface Otsiula, MP  
Hon. James Bett, MP  
Hon. Mohamed Abdi Haji, MP  
Hon. Munuve Mati John, MP  
Hon. Ndirangu Waihenya, MP  
Hon. Neto Agostinho, MP

**IN ATTENDANCE:-**

**SECRETARIAT:-**

Mr. George Gazemba - Senior Clerk Assistant  
Ms. Mary L. Lemerelle - Clerk Assistant III  
Mr. Ahmed Salim - Clerk Assistant III  
Mr. Ronald Walala - Legal Counsel II  
Mr. Salem Lorot - Legal Counsel II

**MIN NO. JLA/206/2015:-** - **PRELIMINARIES**

The Chairperson called the meeting to order at 10.30 a.m. Prayer was said by Hon. Paul Bii, MP

**MIN NO. JLA/207/2015:-** **CONSIDERATION AND ADOPTION OF REPORTS ON BILLS**

**(i) Consideration and adoption of report on the Constitution of Kenya (Amendment) (No. 2) Bill, 2015**

The Committee considered and adopted its report on the Constitution of Kenya (Amendment) (No. 2) Bill, 2015. The adoption of the report was proposed by Hon. Tom J. Kajwang' and seconded by Hon. Paul Bii. There was no dissenting voice to the adoption of the report.

**(ii) Consideration and adoption of report on the Two-Third Gender Rule Laws (Amendment) Bill, 2015**

The Committee deferred the adoption of the report to give room for further consultations and taking a position on proposed amendment on the establishment of the Special Affirmation Action Election Fund.

Though the Committee supported the establishment of the Fund, it observed a lot of grey areas on its operationalization which needed to be addressed.

**(iii) Consideration and adoption of report on the Constitution of Kenya (Amendment) (No. 3) Bill, 2015**

The Committee considered and adopted its report on the Constitution of Kenya (Amendment) (No. 3) Bill, 2015. The adoption of the report was proposed by Hon. Benson Mutura and seconded by Hon. George Kaluma. There was no dissenting voice to the adoption of the report.

**(iv) Consideration and adoption of report on the Political Parties (Amendment) Bill, 2015**

The Committee considered and adopted its report on the Political Parties (Amendment) Bill, 2015. The adoption of the report was proposed by Hon Benson Mutura and

seconded by George Kaluma. There was no dissenting voice to the adoption of the report.

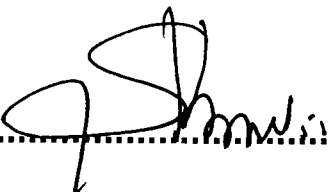
**MIN NO. JLA/208/2015:- ANY OTHER BUSINESS**

**Courtesy call on the Chief Justice of the Republic of Kenya**

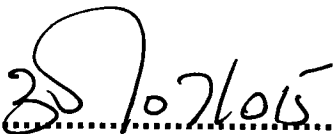
The Committee resolved to pay Dr. Willy Mutunga, Chief Justice of the Republic of Kenya a courtesy call on 22<sup>nd</sup> July, 2015 at 10.00 a.m. at his Offices at the Supreme Court Building, Nairobi. The Committee had earlier scheduled to pay him the courtesy call on 21<sup>st</sup> July, 2015 but he wrote requesting for 22<sup>nd</sup> July, 2015.

**MIN NO. JLA/209/2015:- - ADJOURNMENT**

There being no other business to transact, the sitting adjourned at forty five minutes past noon.

Signed:  .....

**(Chairperson, Departmental Committee on Justice & Legal Affairs)**

Date:  .....

# **APPENDIX 2**



**DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS**

MEMBERS ATTENDANCE

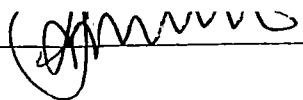


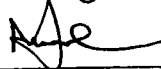
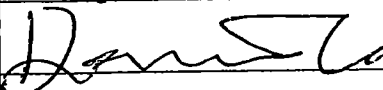
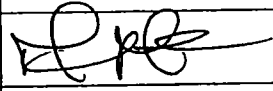
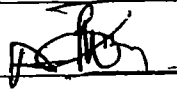
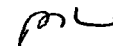
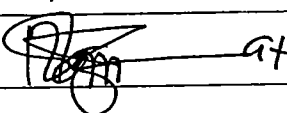
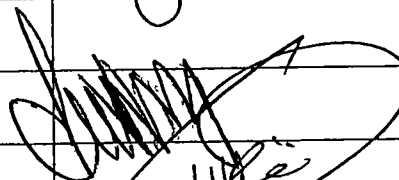
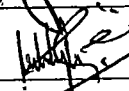
DATE: 21<sup>ST</sup> JULY 2015

VENUE: CONTINENTAL HOUSE, 5<sup>TH</sup> FLOOR BOARDROOM

AGENDA: ADOPTION OF REPORTS ON CONSTITUTION OF KENYA (AMENDMENT)

(NO.3) BILL, 2015, TWO THIRD GENDER LAWS (AMENDMENT) BILL, 2015, & POLITICAL PARTIES OF KENYA (AMENDMENT) BILL, 2015

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

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

George Gazemba

For: The Clerk of the National Assembly

# **APPENDIX 3**



REPUBLIC OF KENYA



**KENYA NATIONAL ASSEMBLY  
ELEVENTH PARLIAMENT**

**In the Matter of consideration by the National Assembly of the  
Constitution of Kenya (Amendment) Bill, 2015 and Constitution  
of Kenya (Amendment) (No.2) Bill, 2015**

Article 118(1)(b) of the Constitution provides that "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees." Standing Order 127(3) states that "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House."

**SUBMISSION OF MEMORANDA**

The Constitution of Kenya (Amendment) Bill, 2015 and Constitution of Kenya (Amendment) (No.2) Bill, 2015 have undergone First Reading as stipulated in the standing Orders of the House. The Bills, having been read for the First time, stood committed to the Departmental Committee on Justice and Legal Affairs for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the Public to submit any representations they may have on The Constitution of Kenya (Amendment) Bill, 2015 and The Constitution of Kenya (Amendment) (No.2) Bill. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before Monday, March 16<sup>th</sup>, 2015 at 5:00pm.

**JUSTIN BUNDI, CBS  
CLERK OF THE NATIONAL ASSEMBLY**