

Approved for tabling ^{3rd} SNA

28/10/15

Paper laid
by the Hon
Florence
Wajir
on wednesday
28/10/2015

[Signature]

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OF KENYA
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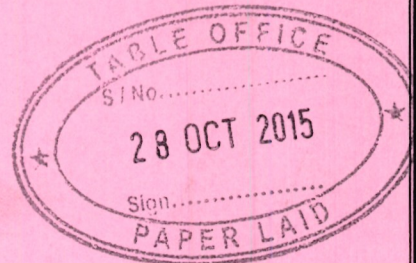
PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS

REPORT ON
THE CONSTITUTION OF KENYA (AMENDMENT) (No. 5) BILL,
2015



Clerks Chambers,
National Assembly,
Parliament Buildings,
Nairobi

October, 2015

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A REPORT OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE CONSTITUTION OF KENYA (AMENDMENT) (No. 5) 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. 5) 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. 5) Bill, 2015

The Constitution of Kenya (Amendment) (No. 5) Bill, 2015 was read for the first time on 7th October, 2015 and immediately committed to the Departmental Committee on Justice and Legal Affairs for scrutiny in line with 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”

Pursuant to this Standing Order, the Committee invited the public through the Daily Nation and Standard newspapers of Friday, 16th October, 2015 as per appendix 3 of this report to make representations on the Bill by way of submission of memoranda. The Committee did not however receive any memoranda.

1.5 Sittings of the Committee and adoption of report

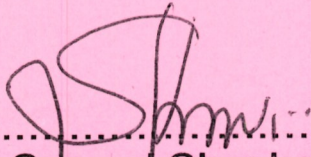
The Committee considered and adopted its report on the Bill at a sitting held at the Commonwealth Parliamentary Association (CPA) Room on Tuesday, the 27th of October, 2015. The adoption of the report was proposed by Hon. Fatuma Ibrahim and seconded by Hon. John Waiganjo. No Member dissented to the adoption 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 hereto as appendix 2.

1.6. Acknowledgement

The Chairperson commends Committee Members and staff for their devotion and commitment to duty which made the consideration of the Bill and production of this report 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 25th October 2015.....

2.0. MEMORANDUM OF OBJECTS AND REASONS OF THE BILL

The Bill is dated 28th August, 2015 and is sponsored by Hon. Nicholas Gumbo.

The Bill seeks to amend Article 103 of the Constitution of Kenya, 2010 so as to prevent the office of a Member of Parliament from becoming vacant for failure to attend eight consecutive sittings of the relevant House during any session of Parliament. The Bill proposes to introduce the aspect of eight consecutive sittings meaning that a member who is absent from eight sittings may lose his/her seat.

The Bill further proposes to remove the requirement of a Member seeking permission in writing from the Speaker in the case of absence and substitutes it with the requirement of notifying the Speaker of such absence in writing. This is in recognition of the fact that the role of the National Assembly and the Senate in terms of Articles 95 and 96 of the Constitution include legislation, oversight and representation.

The role of Parliamentarians as cited above can be discharged in the Chamber, Committees, or anywhere else in or outside the country. Therefore the failure to attend a sitting of the House does not mean the Member or Senator in question is not discharging his/her constitutional duties.

The Bill does not delegate legislative powers neither does it limit fundamental rights and freedoms. The Bill does not concern County Governments in terms of Article 109(3) of the Constitution neither does it affect the functions and powers of the County Governments recognized in the Fourth Schedule to the Constitution.

The enactment of the Bill shall not occasion additional expenditure of public funds.

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 Friday, the 16th

of October, 2015 to make representations on the Bill by way of submission of memoranda. The newspaper advertisement is annexed hereto as appendix 3. The Committee did not however receive any memoranda.

4.0. CONSIDERATION OF THE BILL BY THE COMMITTEE

The Committee considered the Bill at a sitting held in the Commonwealth Parliamentary Association (CPA) Room in the Main Parliament Building on Tuesday, the 27th of October, 2015. The Committee did not however come up with any proposed amendments. It should be noted that the Committee had scrutinized the Legislative Proposal on the Bill and approved it for publication vide a report dated 18th August, 2015.

5.0. RECOMMENDATIONS

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

-END-

APPENDIX 1

MINUTES OF THE SIXTY SEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 27TH OCTOBER, 2015 AT 10.30 A.M. AT THE COMMONWEALTH PARLIAMNETARY ASSOCIATION (CPA) CENTRE, MAIN PARLIAMENT BUILDING

PRESENT:-

Hon. Samuel Chepkonga, M.P. - **Chairperson**
Hon. Priscilla Nyokabi, M.P. - **Vice Chairperson**
Hon. Benson Mutura, M.P.
Hon. John M. Waiganjo, M.P.
Hon. Olago Aluoch, M.P.
Hon. Ndirangu Waihenya, M.P.
Hon. Mohamed Abdi Haji, M.P.
Hon. Moses Cheboi, M.P.
Hon. (Bishop) Robert Mutemi, M.P.
Hon. John Njoroge Chege, M.P.
Hon. Florence Kajuju, M.P.
Hon. Fatuma Ibrahim, M.P.
Hon. Sammy Koech, M.P.
Hon. Paul K. Bii, M.P.
Hon. Peter Kaluma, M.P.

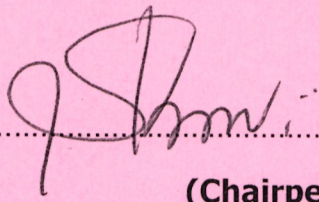
ABSENT:-

Hon. Njoroge Baiya, M.P.
Hon. David Ochieng, M.P.
Hon. James Bett, M.P.
Hon. Boniface Otsiula, M.P.
Hon. Dr. Christine Ombaka, M.P.
Hon. Munuve Mati John, M.P.
Hon. William Cheptumo, M.P.
Hon. Neto Agostinho, M.P.
Hon. Ben Momanyi, M.P.
Hon. Charles Gimose, M.P.
Hon. Kang'ata Irungu, M.P.
Hon. Johanna Ngeno, M.P.
Hon. Kamoti Mwamkale William, M.P.
Hon. Tom J. Kajwang', M.P.

SECRETARIAT:-

Mr. George Gazemba - Senior Clerk Assistant
Mr. Ahmed Salim - Clerk Assistant III
Mr. Ronald Walala - Legal Counsel II

Signed.....



(Chairperson)

Date.....

28th October, 2015

APPENDIX 2



KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT

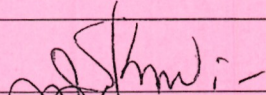
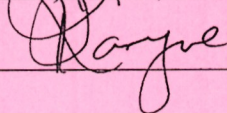
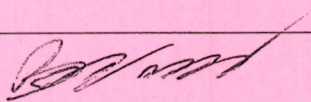
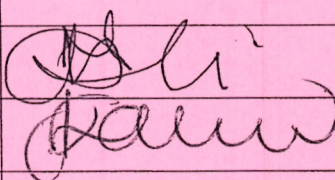
DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

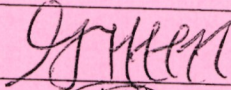
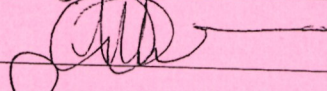
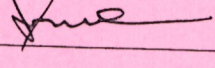
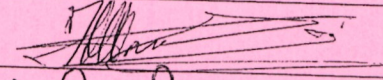
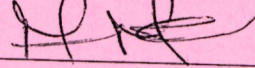
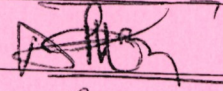
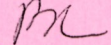
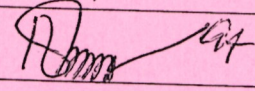
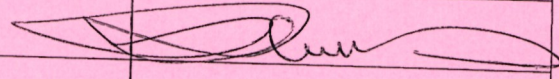
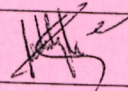
MEMBERS ATTENDANCE

Date: 27th October, 2015

Venue: CPA ROOM, MAIN PARLIAMENT BUILDING, 10AM

Agenda: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2015
AND THE STATUTE LAW (MISCELLANEOUS AMENDMENT) (NO.2) 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 | |
| 14. | Hon. Johanna Ngeno | |

| | | |
|-----|-----------------------------|--|
| 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

He spoke after meeting with squat-

matiang'i

squatters.

Local leaders have urged the gov-

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sq

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT - THIRD SESSION

In the Matters of consideration by the National Assembly-
The Constitution of Kenya (Amendment)(No.5) Bill, 2015
The Election Laws (Amendment)(No.2) Bill, 2015

SUBMISSION OF MEMORANDA

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.*"

The Constitution of Kenya (Amendment)(No.5) Bill, 2015 and the Election Laws (Amendment)(No.2) Bill, 2015 have undergone First Reading pursuant to Standing Order 127(3) and are now 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 said bills. 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**; to be received on or before **Friday 23rd October, 2015 at 5.00 pm.**

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

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