

*Approved for tabling*  
*19/8/14*



**PARLIAMENT OF KENYA**

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**THE NATIONAL ASSEMBLY**

**ELEVENTH PARLIAMENT**

**SECOND SESSION (2014)**

*Paper laid*  
*By Hon. Samuel Odingo*  
*on Tuesday, August*  
*19, 2014.*  
*Chypa*

**THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL  
AFFAIRS**

# **REPORT**

**ON THE PETITION FOR REMOVAL FROM OFFICE OF THE  
ATTORNEY GENERAL OF THE REPUBLIC OF KENYA**

**CLERK'S CHAMBERS,  
PARLIAMENT BUILDINGS,  
NAIROBI.**

**AUGUST, 2014**

## **1.0 PREFACE**

### **Mr. Speaker Sir,**

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to Standing Order 216(5), it is my pleasure and duty to present to the House, the Committee's Report on the Petition for removal from office of the Attorney General of the Republic of Kenya.

### **1.1 Committee Membership**

The Committee on Justice and Legal Affairs was constituted by the House on Thursday 16<sup>th</sup> May, 2013 comprising of the following members:

1. The Hon. Samuel Chepkong'a, M.P. –Chairperson
2. The Hon. Priscilla Nyokabi, M.P. –Vice Chairperson
3. The Hon. Njoroge Baiya, M.P.
4. The Hon. Muriithi Waiganjo, M.P.
5. The Hon. Ndirangu Waihenya, M.P.
6. The Hon. Florence Kajuju, M.P.
7. The Hon. Kang'ata Irungu, M.P.
8. The Hon. Benson Mutura, M.P.
9. The Hon. John Njoroge Chege, M.P.
10. The Hon. William Cheptumo, M.P.
11. The Hon. Mohamed Abdi Haji, M.P.
12. The Hon. Kangongo Bowen, M.P.
13. The Hon. Sammy Koech, M.P.
14. The Hon. Moses Cheboi, M.P.
15. The Hon. Paul Bii, M.P.
16. The Hon. Charles Gimose, M.P.
17. The Hon. Johana Ng'eno, M.P.
18. The Hon. Boniface Otsiula, M.P.
19. The Hon. David Ouma Ochieng, M.P.
20. The Hon. Neto Agostinho, M.P.
21. The Hon. Kaluma Peter, M.P.
22. The Hon. Fatuma Ibrahim Ali, M.P.

23. The Hon. Ben Momanyi Orori, M.P.
24. The Hon. T. J. Kajwang', M.P.
25. The Hon. (Bishop) Mutua Mutemi, M.P.
26. The Hon. Olago Aluoch, M.P.
27. The Hon. Christine Oduor Ombaka, M.P.
28. The Hon. Munuve G. Mati, M.P.
29. The Hon. Mwamkale William Kamoti, M.P.

### **1.2 Committee's Mandate**

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of Standing order 216(5) which defines functions of the Committee as being to:

- 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 analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) investigate and inquire 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;
- 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); and
- g) make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

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



- 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.

The Committee oversees the following Ministries/Departments:

- a) State Law Office
- b) The Judiciary
- c) Ethics and Anti-Corruption Commission
- d) Independent Electoral and Boundaries Commission
- e) Commission on Administrative Justice

The Committee also has oversight mandate over all matters relating to political parties.

**Mr. Speaker Sir,**

On 17<sup>th</sup> June, 2014 pursuant to Standing Order 225, you conveyed to the House a Petition regarding the removal from Office of the Attorney General of the Republic of Kenya by H.E the President pursuant to Article 132 of the Constitution of Kenya.

The Petition by the Law Society of Kenya dated 19<sup>th</sup> May, 2014 is addressed to the National Assembly and signed by Mr. Eric Mutua and Mr. Apollo Mboya, Chairman and Secretary respectively prays that Parliament looks into the Petition and be satisfied that it discloses reasonable grounds to advise the President to commence the process and/or to remove the Attorney General from office for violation of the Constitution and on account of gross misconduct.



**The Petitioner draws the attention of the National Assembly to the following:**

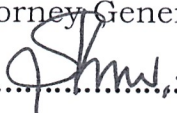
- The Current Attorney General of the Republic of Kenya is the Hon. Professor Githu Muigai.
- The Petitioner seeks the removal of the Attorney General pursuant to Article 132 of the Constitution.
- If Parliament is satisfied that the petition discloses reasonable grounds, it should advise H.E the President of the Republic of Kenya to commence the process of removal of the Attorney General from office.
- The Attorney General should be removed from office for violation of the Constitution and on account of gross misconduct.

The Petition was committed to the Departmental Committee on Justice and Legal Affairs pursuant to provisions of Standing Order 227. The Committee considered the Petition pursuant to the Constitution of Kenya 2010 and the Office of the Attorney General Act, 2012

### **Acknowledgements**

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. The Committee also appreciates the media for coverage of its proceedings and thanks members of the public who made submissions to the Committee.

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to present this report on the Petition for removal from office of the Attorney General of the Republic of Kenya.

SIGNED..........DATE..15th August, 2014

**Hon. Samuel Chepkong'a, M.P**

**(Chairperson)**

**Departmental Committee on Justice and Legal Affairs**

## **2.0 BACKGROUND**

### **2.1 Office of the Attorney General of the Republic of Kenya**

The Office of the Attorney General of the Republic of Kenya is a constitutional and independent office established under Article 156 of the Constitution of Kenya 2010.

**The constitution provides as follows;**

- 156.** (1) There is established the office of Attorney-General.
- (2) The Attorney-General shall be nominated by the President and, with the approval of the National Assembly, appointed by the President.
- (3) The qualifications for appointment as Attorney-General are the same as for appointment to the office of Chief Justice.
- (4) The Attorney-General—
- (a) is the principal legal adviser to the Government;
- (b) Shall represent the national government in court or in any Other legal proceedings to which the national government is a party, other than criminal proceedings; and
- (c) Shall perform any other functions conferred on the office by an Act of Parliament or by the President.
- (5) The Attorney-General shall have authority, with the leave of the court, to appear as a friend of the court in any civil proceedings to which the Government is not a party.

(6) The Attorney-General shall promote, protect and uphold the rule of law and defend the public interest.

(7) The powers of the Attorney-General may be exercised in Person or by subordinate officers acting in accordance with general or special instructions.

**In addition to the functions of the Attorney General under Article 156 of the Constitution, under section 5 of the Office of the Attorney General Act, 2012the Attorney General shall be responsible for:**

(a) Advising Government Ministries, Departments, Constitutional Commissions and State Corporations on legislative and other legal matters;

(b) Advising the Government on all matters relating to the Constitution, international law, human rights, consumer protection and legal aid;

(c) Negotiating, drafting, vetting and interpreting local and international documents, agreements and treaties for and on behalf of the Government and its agencies;

(d) coordinating reporting obligations to international human rights treaty bodies to which Kenya is a member or on any matter which member States are required to report;

(e) Drafting legislative proposals for the Government and advising the Government and its agencies on legislative and other legal matters;



(f) Reviewing and overseeing legal matters pertaining to the registration of companies, partnerships, business names, societies, adoptions, marriages, charities, chattels, hire purchase and coat of arms;

(g) Reviewing and overseeing legal matters pertaining to the administration of estates and trusts;

(h) in consultation with the Law Society of Kenya, advising the Government on the regulation of the legal profession;

(i) Representing the national Government in all civil and constitutional matters in accordance with the Government  
Cap. 40 Proceedings Act;

(j) Representing the Government in matters before foreign courts and tribunals;  
and

(k) Performing any function as may be necessary for the effective discharge of the duties and the exercise of the powers of the Attorney-General.

## **2.2 Powers of the Attorney General**

The Office of the Attorney General Act, 2012 provides under section 6 that:

1. The Attorney General shall, by virtue of his office be the titular head of the bar and shall take precedence in court in all matters whenever he appears in accordance with the advocates Act.
2. The Attorney General shall, in discharging his functions under Article 156 of the Constitution have power to-

- a. With leave of the court or tribunal, appear at any stage of proceedings, appeal, execution or any incidental proceedings before any court or tribunal;
- b. Require any officer in the public service to furnish any information in relation to any matter which is the subject of legal inquiry;
- c. Summon any officer in the public service to explain any matter which is the subject of litigation by or against the Government; and
- d. Issue directions to any officer performing legal services functions in any Government Ministry.

3. The Attorney General shall-

- a. Establish such directorates, divisions, sections or units in the office as may be necessary;
- b. Establish such county or regional offices as may be necessary;
- c. Supervise the formulation of policies and plans of the office; and
- d. Perform any other function necessary in the administrative interests of the Office.

4. The attorney General may, upon request, appear and advise on any legal matter in any committee of Parliament.

### **2.3 Removal from office of the Attorney General**

The Office of the Attorney Act under section 12 (1) provides that:

1. The President may remove the Attorney General or Solicitor General from office only for-
  - a. Serious violation of the Constitution or any other law;

- b. Gross misconduct, whether in the performance of their functions or otherwise;
  - c. Physical or mental incapacity to perform the functions of office
  - d. Incompetence; or
  - e. Bankruptcy.
2. Notwithstanding the provisions of subsection (1), the President may, upon election under the Constitution, appoint a person who is qualified as Attorney-General in accordance with the provisions of the Constitution and the Act.

#### **2.4 Petition from the Law Society of Kenya**

The Law Society of Kenya a statutory body established under the Law Society of Kenya Act, Chapter 18 Laws of Kenya presented a petition for the removal of Hon. Professor Githu Muigai as the Attorney General of the Republic of Kenya for violating principles and provisions of the Constitution as per the following particulars:

- a. In claim No. 2006 Folio 881 in the High Court of Justice Queens Bench Division Universal Satspace (North America) LLC versus the Government of the Republic of Kenya ,the Attorney General acted in the following unconstitutional ,illegal, fraudulent and unprofessional manner.
  - i. He failed to respond to five letters by the foreign advocate in England who had been hired by the state to defend the suit.
  - ii. He failed to give instructions to the said Kenyan foreign advocate to file a Reply to the application by the claimant which sought to strike out the defense and counterclaim by the Kenyan Government. The application for striking out was therefore not contested in terms of the facts.



- iii. He failed to instruct a competent advocate with expertise in complex commercial litigation matters to represent Kenya in the London Courts.
  - iv. He delegated powers and instructions to the Solicitor General Mr. Njee Muturi to represent Kenya in the London Court while aware that the Solicitor General did not have a license to practice law in England and Wales or to appear before the Courts in England and thus rendering the proceedings a nullity.
  - v. He instructed the Solicitor General to represent Kenya while aware that the SG lacked capacity and expertise and was ill prepared to deal with such complex matter.
  - vi. He failed to adequately advance the defense of corruption and bribery in the case.
  - vii. He frustrated efforts by both the local advocates and the foreign advocates to competently represent the government in the case.
  - viii. He failed to appeal (and continues to do so) against the decision of 20<sup>th</sup> December, 2013 when there was and there is an avenue to do so.
  - ix. Gave an unconstitutional, illegal, fraudulent and unprofessional legal opinion to the government other than to pay Universal Satspace (North America) LLC.
  - x. He abandoned a good defense that the contract was unenforceable on account of corruption and bribery (which is against both international and domestic public policy) by recording a consent to take the matter for mediation and subsequently entered into a consent to pay US Dollars 7.6 Million.
- b. He entered into a consent order in Switzerland to pay First Mercantile Securities Corporation.

- c. Advising the Kenyan Foreign Advocates one Lalive not to plead the defence of corruption and bribery and he insisted that the defense was not available to Kenya despite reports from the Ethics and Anti-Corruption Commission, the Public Accounts Committee, Price waterhouse Coopers and the Auditor General.
- d. On the matter of the Standard Gauge Railway, he gave a legal opinion that the contract was procured irregularly but later disowned the said opinion.
- e. Failure to disclose to the public the proceedings in respect of the Anglo-Leasing type contracts.

#### **Appearance before the Committee by the Law Society of Kenya**

The Petitioner through the Chairperson, Council Members and the Secretary appeared before the Committee on Monday 18<sup>th</sup> August, 2014 at 10.30 a.m and informed members as follows:

- i. Parliament has legal mandate to consider the Petition as the matter is not sub-Judice. This is in accordance to the Order issued by Justice Korir in HCCC No.286 of 2014.
- ii. The prayers sought by the Petitioner are different from prayers in matters pending in court.
- iii. The Attorney General is a member of Cabinet as per Article 152 of the Constitution.
- iv. The provisions of Article 152 (6) of the Constitution on dismissal of a Cabinet Secretary can be applied for removal of the Attorney General.
- v. There is no specific provision in the Constitution of Kenya 2010 and Office of the Attorney General Act, 2012 that provides for procedure for removal of the Attorney General.
- vi. The Society drew the attention of Members to Article 259 of the Constitution in so far as interpretation of the constitution is concerned.

- vii. The LSK promised to come up with legislative proposals to amend the Office of the Attorney General Act, 2012 to provide for procedure for the removal of the Attorney General.

## **2.5 Response by the Attorney General**

The Attorney General vide letters dated 1<sup>st</sup> and 16<sup>th</sup> August, 2014 wrote to the Committee and advised that there are two pending matters in the High Court relating to the Petition before Parliament.

He averred that:

- a. In respect to High Court Petition No.213 of 2014, the LSK vs. Cabinet Secretary National Treasury and the Attorney General, the matter will proceed on 18<sup>th</sup> September, 2014.
- b. In respect to High Court Petition No.286 of 2014, the Attorney General Vs. the LSK the matter is scheduled to proceed on 18<sup>th</sup> September, 2014.

### **Appearance before the Committee by the Attorney General of the Republic of Kenya.**

The Attorney General appeared before the Committee on Monday 18<sup>th</sup> August, 2014 at 3.30 p.m and informed Members as follows:

- i. The Office of the Attorney General is an office *sue generis*.
- ii. The Attorney General is not a member of Cabinet but sits in Cabinet as an adviser.
- iii. The Office of the Attorney General is not a member of an Independent Commission.



- iv. The Office of the Attorney General Act does not give the office holder security of tenure but provides for an opportunity for fair administrative action.
- v. The President is the sole decider for the removal of the Attorney General.
- vi. The provisions of the Office of the Attorney General Act are consistent with Article 156 of the Constitution.
- vii. The security of tenure of the Attorney General should subsist so long as the President has confidence in him. The Director of Public Prosecutions has security of tenure because he sometimes makes controversial political decisions which warrant his insulation from removal from office.
- viii. There is no specific provision in the Constitution providing for removal of the Attorney General. Article 95 (5) is a general provision on other state officers and cannot displace specific procedures such as provisions on removal of the Director of Public Prosecutions.
- ix. The Attorney General highlighted on his written submissions to the Committee. He stated that issues pending in court for determination are the same issues grounded in the petition before the Committee.
- x. Issues of fact before court are the same issues that the petitioner has invited the Committee to make findings on.
- xi. The Constitution and Office of Attorney General Act, 2012 do not provide for any procedure for the removal of the Attorney General.

xii. The Office of Attorney General Act, 2012 insulates the Attorney General from removal by any other process other than by the President.

### **3.0 CONSIDERATION OF THE PETITION BY THE COMMITTEE**

- i). The Committee had sittings and deliberated on the petition by the Law Society of Kenya.
- ii). The Committee through the Office of the Clerk of the National Assembly put an advert in the print media on 26<sup>th</sup> June, 2014 for submission of written representations and submissions pertaining to the Petition.
- iii). The Committee received written memoranda/affidavits from Mr. Kenneth Kiplagat of M/S Okoth and Kiplagat Advocates.
- iv). The Committee considered the Petition, written and oral presentations and materials hereinabove.

### **3.1 COMMITTEE'S OBSERVATIONS AND FINDINGS**

The mandate of the Committee and the National Assembly on this matter is as prescribed in Standing Order 227 of the National Assembly.

The Committee considered the Petition together with supporting documents, Constitution of Kenya 2010, Office of the Attorney General Act, 2012, Petitions to Parliament Act and the Standing Orders of the National Assembly and observed as follows;

- I. The Petitioner and the Attorney General are in agreement that there is no express procedure provided for the removal of the Attorney General from Office.
- II. There is no constitutional or statutory procedure provided for the removal of the Attorney General.

- III. There are matters touching on the Petition which are pending in court for determination.

### **Committee's Findings**

#### **Upon due considerations and review of the presentations and materials availed to the Committee, the Committee found that:**

- i. The Office of the Attorney General is not listed either as a Constitutional Commission or an Independent Office under Article 248 (2) and (3) of the Constitution.
- ii. The procedure for removal contemplated under Article 251 of the Constitution cannot be used for removal of the Attorney General.
- iii. While the Attorney General is a member of the Cabinet under Article 152 (2) of the Constitution, he is not a Cabinet Secretary and therefore the process of removal of a Cabinet Secretary cannot apply in this case.
- iv. Whereas Article 132 of the Constitution gives the President power to dismiss the Attorney General in accordance with Article 156, the same Article 156 does not have provisions on removal.
- v. The Office of the Attorney General Act has made provision for the grounds for removal but does not set out the procedure of removal.
- vi. The power and discretion to remove the Attorney General is vested in the President vide Article 132 (2) (b) of the Constitution.

In addition to the above, the Committee noted that there were two pending cases, namely HCCC No.213 of 2014 and HCCC No.286 of 2014 and it is doubtful whether the Committee could have considered the Petition in light of the provisions of Standing Order No.89 on the rule of sub Judice.



#### **4.0 RECOMMENDATIONS OF THE COMMITTEE**

Having considered the provisions of Articles 132,248 (2) and (3), 152 (1), 156 and 251 of the Constitution; and the Office of the Attorney General Act, 2012; and the provisions of the Petitions to Parliament (Procedure) Act; and the Standing orders of the National Assembly, the Committee by majority recommends that:

**The Office of the Attorney General Act, 2012 should be amended to provide for express provisions on the procedure for removal of the Attorney General from office by way of an all inclusive process.**

.....END.....

MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS HELD ON TUESDAY 19<sup>TH</sup> AUGUST, 2014 AT THE MEDIA CENTRE, MAIN PARLIAMENT BUILDINGS AT 12.00 NOON.

AGENDA

1. Prayers & Preliminaries
2. Adoption of AG's Petition Report.

PRESENT

Hon. Samuel Chepkonga, M.P. - Chairperson  
Hon. Priscilla Nyokabi, M.P. - Vice Chairperson  
Hon. T. J. Kajwang, M.P.  
Hon. Paul K. Bii, M.P.  
Hon. Neto Agostinho, M.P.  
Hon. John M. Waiganjo, M.P.  
Hon. Peter Kaluma, M.P.  
Hon. Benson Mutura, M.P.  
Hon. Olago Aluoch, M.P.  
Hon. Fatuma Ibrahim, M.P.  
Hon. Dr. Christine Ombaka, M.P.  
Hon. Kamoti Mwamkale William, M.P.  
Hon. John Njoroge, M.P.  
Hon. Mutua Mutemi, M.P.  
Hon. David Ochieng, M.P.  
Hon. William Cheptumo, M.P.  
Hon. Boniface Otsiula, M.P.  
Hon. Ben Momanyi, M.P.  
Hon. Moses Cheboi, M.P.  
Hon. Sammy Koech, M.P.  
Hon. Munuve Mati John, M.P.

ABSENT WITH APOLOGIES

Hon. William Kisang, M.P.  
Hon. Florence Kajuju, M.P.  
Hon. Mohamed Abdi, M.P.  
Hon. Johanna Ngeno, M.P.  
Hon. Njoroge Baiya, M.P.

Hon. Charles Gimose, M.P.  
Hon. Kangata Irungu, M.P.  
Hon. Ndirangu Waihenya, M.P.

#### IN ATTENDANCE

Mr. Abenayo Wasike - Committee Clerk  
Ms. Hellen Lokwang - Committee Clerk  
Ms. Mary L. Lemerelle - Committee Clerk  
Mr. Ahmed Salim - Committee Clerk

#### MIN.NO.JLA/AG/ 10 /2014 - PRELIMINARIES

The Chair called the meeting to order at 12.15 p.m. with a word of prayer. He informed the members that the primary objective of the meeting is to adopt the report of the petition for the removal of the Attorney General in office.

#### MIN.NO.JLA/AG/11/2014 - ADOPTION OF MINUTES

The Minutes of the sitting held on Tuesday, 5<sup>th</sup> August, 2014 were proposed and seconded by Hon. Paul Bii, and Hon. Munuve Mati respectively.

The Minutes of the sitting held on Thursday, 7<sup>th</sup> August, 2014 were proposed and seconded by Hon. Benson Mutura and Hon. Bishop Mutua Mutemi respectively.

The Minutes of the sitting held on Monday, 18<sup>th</sup> August 2014 at 11.00 a.m. were proposed and seconded by Hon. Fatuma Ibrahim and Hon. Ben Momanyi respectively.

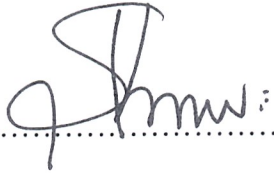
The Minutes of the sitting held on Monday, 18<sup>th</sup> August 2014 at 3.30 p.m. were proposed and seconded by Hon. Moses Cheboi and Hon. Priscilla Nyokabi respectively.

#### MIN.NOJLA/AG/12/2014 - ADOPTION OF REPORT

The Members went through the draft report and confirmed it as a true record of the proceedings of the meetings held on the petition of the removal of Attorney General. The report was proposed for adoption by Hon. Moses Cheboi and seconded by Hon. Bishop Mutua Mutemi.



There being no other business the meeting was adjourned at 12.40 p.m. and next meeting will be on notice.

Signed..... .....

(Chairperson)

Date..... 19th August, 2014.....

**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON  
JUSTICE AND LEGAL AFFAIRS MEETING HELD ON MONDAY 18<sup>TH</sup>  
AUGUST, 2014 IN COMMITTEE ROOM 7, PARLIAMENT BUILDINGS AT 3.30  
P.M**

**PRESENT**

Hon. Samuel Chepkong'a, MP – **Chairperson**  
Hon. Priscilla Nyokabi, MP - **Vice Chairperson**  
Hon. Moses Cheboi, MP  
Hon. Paul Bii, MP  
Hon. Mutua Mutemi (Bishop) , MP  
Hon. John Njoroge Chege, MP  
Hon. Mohamed Abdi Haji, MP  
Hon. William Cheptumo, MP  
Hon. Ben Momanyi Orori, MP  
Hon. David Ouma Ochieng, MP  
Hon. Kaluma Peter, MP  
Hon. Munuve Mati John, MP  
Hon. Johanna Ngeno, MP  
Hon. Fatuma Ibrahim Ali, MP  
Hon. Njoroge Baiya, MP  
Hon. Sammy Koech, MP  
Hon. Kangongo Bowen, MP  
Hon. T.J. Kajwang', MP  
Hon. Kang'ata Irungu, M  
Hon. Kamoti Mwamkale, M.P  
Hon. Benson Mutura, MP

**ABSENT WITH APOLOGIES**

Hon. Olago Aluoch, MP  
Hon. Ndirangu Waihenya, MP  
Hon. Florence Kajuju, MP  
Hon. Muriithi Waiganjo, MP  
Hon. Charles Gimose, MP  
Hon. Boniface Otsiula, MP  
Hon. Neto Agostinho, MP  
Hon. Dr. Christine Ombaka, MP

## **IN ATTENDANCE**

Prof. Githu Muigai - Attorney General of the Republic of Kenya

Mr. Tom Odede – Personal Assistant to the Attorney General

## **NATIONAL ASSEMBLY**

Abenayo Wasike - Committee Clerk 1  
Hellen Lokwang - Committee Clerk III  
Mary Lemerelle - Committee Clerk III  
Ahmed Salim - Committee Clerk III  
Mogure Gihito - Legal Counsel  
Ronald Walala - Legal Counsel

## **MIN.NO.JLA/AG/11/2014**

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## **PRELIMINARIES**

The meeting started at 3.00 p.m after a word of prayer by the Chairperson.

The Chairperson informed the Attorney General that the Committee was interested in his response to the Petition against him by the LSK.

## **MIN.NO.JLA/AG/12/2014**

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## **MEETING WITH THE ATTORNEY**

## **GENERAL**

The Attorney General briefed members on letters he wrote to the Committee and stated as follows:

- In respect to High Court Petition No.213 of 2014: the LSK vs. Cabinet Secretary National Treasury and the Attorney General, the matter will proceed on 18<sup>th</sup> September, 2014.
- In respect to High Court Petition No.286 of 2014: The Attorney General Vs. The LSK the matter is scheduled to proceed on 18<sup>th</sup> September, 2014.

The Attorney General further stated that:

- i. The Office of the Attorney General is an office *sue generis*.



- ii. The Attorney General is not a member of Cabinet but sits in Cabinet as an adviser.
- iii. The OAG is not a member of an Independent Commission.
- iv. The OAG Act does not give the office holder security of tenure but provides for an opportunity for fair administrative action.
- v. The President is the sole decider for the removal of the AG.
- vi. The provisions of the OAG Act are consistent with Article 156 of the Constitution.
- vii. The security of tenure of the A.G should subsist so long as the President has confidence in him. The Director of Public Prosecutions has security of tenure because he sometimes makes controversial political decisions which warrant his insulation from removal from office.
- viii. There is no specific provision in the Constitution providing for removal of the Attorney General. Article 95 (5) is a general provision on other state officers and cannot displace specific procedures such as provisions on removal of the DPP.
- ix. The AG highlighted on his written submissions to the Committee. He stated that issues pending in court for determination are the same issues grounded in the petition before the Committee.
- x. Issues of fact before court are the same issues that the petitioner has invited the Committee to make findings on.
- xi. The Constitution and Office of Attorney General Act, 2012 do not provide for any procedure for the removal of the Attorney General.
- xii. The Office of Attorney General Act , 2012 insulates the AG from removal by any other process other than by the President.

Members observed that the Act does not provide for the procedure to remove the Attorney General from Office.

On *sub judice*, the Attorney General raised an issue whether *Sub judice* rule applies to the Petition presented, in light of the pending proceedings in court.


The Committee noted that the rule does not apply to the Petition. The rule as set out in S.O No.89 is a rule that the House imposes on itself in appropriate circumstances and it cannot be imposed on Parliament and its proceedings by any court or other tribunal.

**MIN.NO.JLA/AG/13/2014** - **ANY OTHER BUSINESS**

Members asked the AG to speed up consideration of Bills submitted to his office for pre-publication scrutiny and speedy settlement of Hon. Mak'Onyango payments as decreed by the Court.

**MIN.NO.JLA/AG/14/2014** - **ADJOURNMENT**

The meeting was adjourned at 5.40 pm.

Signed.....

Chairperson

Date.....

**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS MEETING HELD ON MONDAY 18<sup>TH</sup> AUGUST, 2014 IN COMMITTEE ROOM 7, PARLIAMENT BUILDINGS AT 11.00 A.M**

**PRESENT**

Hon. Samuel Chepkong'a, MP - **Chairperson**  
Hon. Priscilla Nyokabi, MP - **Vice Chairperson**  
Hon. Moses Cheboi, MP  
Hon. Paul Bii, MP  
Hon. Mutua Mutemi (Bishop) , MP  
Hon. John Njoroge Chege, MP  
Hon. Mohamed Abdi Haji, MP  
Hon. Ben Momanyi Orori, MP  
Hon. Kaluma Peter, MP  
Hon. Fatuma Ibrahim Ali, MP  
Hon. Sammy Koech, MP  
Hon. Kangongo Bowen, MP  
Hon. T.J. Kajwang', MP  
Hon. Kang'ata Irungu, M  
Hon. Munuve Mati John, MP  
Hon. Njoroge Baiya, MP  
Hon. Boniface Otsiula, MP

**ABSENT WITH APOLOGIES**

Hon. Dr. Christine Ombaka, MP  
Hon. Kamoti Mwamkale, M.P  
Hon. Florence Kajuju, MP  
Hon. Benson Mutura, MP  
Hon. Neto Agostinho, MP  
Hon. Ndirangu Waihenya, MP  
Hon. David Ouma Ochieng, MP  
Hon. Muriithi Waiganjo, MP  
Hon. Charles Gimose, MP  
Hon. William Cheptumo, MP  
Hon. Johanna Ngeno, MP



## IN ATTENDANCE

Mr. Abenayo Wasike	-	Committee Clerk
Ms. Hellen Lokwang	-	Committee Clerk
Ms. Mary Lemerelle	-	Committee Clerk
Mr. Ahmed Salim	-	Committee Clerk
Ms. Mogure Gituto	-	Legal Counsel
Mr. Ronald Walala	-	Legal Counsel

## THE LAW SOCIETY OF KENYA COUNCIL

Mr. Eric Mutua	-	Chairperson
Ms. Lillian Omondi	-	Vice-Chairperson
Ms. Gertrude Angote	-	Member
Mr. Ben Mosotoh	-	Member
Mr. Eric Theuri	-	Member
Mr. Apollo Mboya	-	Secretary/CEO

## MIN.NO.JLA/AG/7/2014 - PRELIMINARIES

The meeting started at 11.25 a.m after a word of prayer by the Chairperson.

The Chairperson made introductory remarks and welcomed members of LSK to brief members on the Constitutional and Legal process for removal of the Attorney General from office.

## MIN.NO.JLA/AG/8/2014 - MEETING WITH THE LSK

The Chairperson of LSK briefed members on the Petition presented in National Assembly for the removal of the Attorney General of the Republic of Kenya.

He informed members as follows;

- i. Parliament has legal mandate to consider the Petition as the matter is not sub-Judice. This is in accordance to the Order issued by Justice Korir in HCCC No.286 of 2014.

- ii. The prayers sought by the Petitioner are different from prayers in matters pending in court.
- iii. The Attorney General is a member of Cabinet as per Article 152 of the Constitution.
- iv. The provisions of Article 152 (6) of the Constitution on dismissal of a Cabinet Secretary can be applied for removal of the Attorney General.
- v. There is no specific provision in the Constitution of Kenya 2010 and Office of the Attorney General Act, 2012 that provides for procedure for removal of the Attorney General.
- vi. The Society drew the attention of members to Article 259 of the Constitution in so far as interpretation of the constitution is concerned.
- vii. The LSK promised to come up with legislative proposals to amend the Office of the Attorney General Act, 2012 to provide for procedure for the removal of the Attorney General.

**MIN.NO.JLA/AG/9/2014**

**MEMBERS OBSERVATIONS**

- That interpretation of the Constitution is provided for under Article 165 (3) (i) of the Constitution.
- The Office of the Attorney General Act does not provide for procedure on the removal of the AG.
- Having agreed with the LSK that there is no express procedure for the removal of the AG, the Members asked the LSK to present to the Committee a draft Bill to amend the Office of Attorney General Act, 2012.

**MIN.NO.JLA/AG/10/2014**


**ADJOURNMENT**

There being no other business, the meeting was adjourned at 1.00 p.m

The next meeting will be at 3.30 pm with the Hon. Attorney General.

Signed..........

Chairperson

Date..........

MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS HELD ON THURSDAY 7<sup>TH</sup> AUGUST, 2014 IN PROTECTION HOUSE 11<sup>TH</sup> FLOOR BOARDROOM AT 10.00 A.M.

AGENDA

1. Prayers & Preliminaries
2. AG's petition
3. Pending Matters

PRESENT

Hon. Samuel Chepkonga, M.P.	-	Chairperson
Hon. Priscilla Nyokabi, M.P.	-	Vice Chairperson
Hon. T. J. Kajwang, M.P.		
Hon. Paul K. Bii, M.P.		
Hon. John M. Waiganjo, M.P.		
Hon. Ndirangu Waihenya, M.P.		
Hon. Benson Mutura, M.P.		
Hon. Olago Aluoch, M.P.		
Hon. Fatuma Ibrahim, M.P.		
Hon. Dr. Christine Ombaka, M.P.		
Hon. David Ochieng, M.P.		
Hon. Mohamed Abdi, M.P.		
Hon. William Cheptumo, M.P.		
Hon. Boniface Otsiula, M.P.		
Hon. Johanna Ngeno, M.P.		
Hon. Ben Momanyi, M.P.		
Hon. Florence Kajuju, M.P.		
Hon. Moses Cheboi, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Mutua Mutemi, M.P.		
Hon. Munuve Mati John, M.P.		
Hon. John Njoroge, M.P.		
Hon. Kamoti Mwamkale William, M.P.		



### ABSENT WITH APOLOGIES

Hon. William Kisang, M.P.  
Hon. Sammy Koech, M.P.  
Hon. Njoroge Baiya, M.P.  
Hon. Kangata Irungu, M.P.  
Hon. Neto Agostinho, M.P.  
Hon. Peter Kaluma, M.P.

### IN ATTENDANCE

Mr. Abenayo Wasike - Clerk Assistant I  
Ms. Mary L. Lemerelle - Clerk Assistant III  
Ms. Mogure Gituto - Legal Counsel  
Mr. Ronald Walala - Legal Counsel

### MIN.NO.JLA/AG/4/2014 - PRELIMINARIES

The meeting was called to order at 11:00 A.M with a word of prayer from Bishop Hon. Mutua Mutemi.

The chair reminded the members on the pending bills; companies' bill, insolvency bill, and miscellaneous bill and requested the members to agree to a meeting on Monday 2.30 to conclude statute law. The pre-publication scrutiny bills for Hon. Ochieng and Hon. Kaluma to be dealt with for 20 minutes and the rest to be scheduled. The chair also informed the members on statement by Hon. Lekuton. He however said the committee was working on a constitution deadline of 27<sup>th</sup> August 2014 for determining the AG's petition.

### MIN.NO.JLA/AG/5/2014 - CONCERNS ON ATTORNEY GENERAL'S PETITION

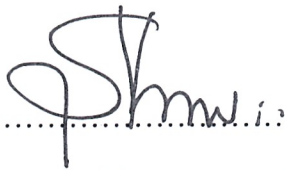
Members noted that the procedure for removal of Attorney General did not exist in the Attorney General's Act 2012, hence it was viewed that the person who drafted the Act thought only about themselves.


On the question of law, it was noted that there was pending matters in Parliament and High Court. Therefore the members agreed that the AG to allay the petition as *subjudice* or appear before the committee. It was also noted that Law Society of Kenya had to take the committee through its mandate.

The members therefore agreed to invite the Law society of Kenya and the Attorney General for a hearing.

MIN.NO.JLA/AG/6/2014 - ADJOURNMENT OF THE MEETING

The meeting was adjourned at 12:00 P.M.The next meeting will be on Monday at 2.30 P.M.

Signed..........  
(Chairperson)

Date..........

MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS HELD ON TUESDAY 5<sup>TH</sup> AUGUST, 2014 IN COUNTY HALL BOARDROOM AT 11.00 A.M.

AGENDA

1. Prayers & Preliminaries
2. AG's Petition

PRESENT

Hon. Samuel Chepkonga, M.P.	-	Chairperson
Hon. Priscilla Nyokabi, M.P.	-	Vice Chairperson
Hon. T. J. Kajwang, M.P.		
Hon. Paul K. Bii, M.P.		
Hon. Neto Agostinho, M.P.		
Hon. John M. Waiganjo, M.P.		
Hon. Peter Kaluma, M.P.		
Hon. Ndirangu Waihenya, M.P.		
Hon. Benson Mutura, M.P.		
Hon. Olago Aluoch, M.P.		
Hon. Fatuma Ibrahim, M.P.		
Hon. Dr.Christine Ombaka, M.P.		
Hon. David Ochieng, M.P.		
Hon. Mohamed Abdi, M.P.		
Hon. William Cheptumo, M.P.		
Hon. Boniface Otsiula, M.P.		
Hon. Johanna Ngeno, M.P.		
Hon. Ben Momanyi, M.P.		
Hon. Florence Kajuju, M.P.		
Hon. Moses Cheboi, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Mutua Mutemi, M.P.		
Hon. Munuve Mati John, M.P.		
Hon. John Njoroge, M.P.		



## ABSENT WITH APOLOGIES

Hon. William Kisang, M.P.  
Hon. Kamoti Mwamkale William, M.P.  
Hon. Sammy Koech, M.P.  
Hon. Njoroge Baiya, M.P.  
Hon. Kangata Irungu, M.P.

## IN ATTENDANCE

Mr. Abenayo Wasike - Clerk Assistant I  
Ms. Mary L. Lemerelle - Clerk Assistant III  
Ms. Mogure Gituto - Legal Counsel  
Mr. Ronald Walala - Legal Counsel

## MIN.NO.JLA/AG/1/2014 - PRELIMINARIES

The meeting was called to order at 11:30 a.m. with a word of prayer from the Chairperson.

The Chair brought out the matter of the removal from office of the Attorney General and further mentioned that in May, the Law Society of Kenya presented a petition to Parliament, and moved to court on the same issue in June 2014.

## MIN.NO.JLA/AG/2/2014 - COMMENTS FROM MEMBERS

Members were concerned on double jeopardy; and proposed that the matter cannot be heard twice (Section 89 of Standing Orders limits the Committee from *subjudice*), hence the petition be left to be dealt with by the Court for purposes of separation of powers which is strengthened by the Constitution.

Other members were of the view that whether the matter was pending in Court or not, the Committee needs to set a precedence and give the petitioners a hearing in accordance to Article 50 of the Constitution and later determine whether the matter is *subjudice*, in order to avoid preliminary objections.

It was noted that LSK's petition to Parliament was removal of AG from office, and the petition to high court was stoppage of payments to Anglo Leasing. The members therefore agreed to consider the following:-

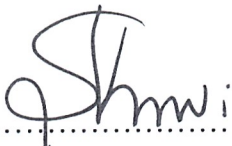
- Look at both affidavits of Mr. Apollo Mboya; to Parliament and High Court.
- Does Parliament have powers to recommend to the President to remove AG?
- By the LSK going to court, were they seeking to stop Parliament from looking into this petition?
- Structure of Attorney General's office and look at the process of appointment of Attorney General into office.

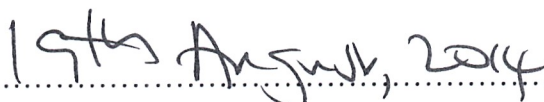
The Legal team was tasked to flag out contentious issues that the Committee needs to look into. The Members agreed to look at various issues and consider whether to seek extension on the matter.

MIN.NO.JL/AG/3/2014

- ADJOURNMENT OF THE MEETING

The meeting was adjourned at 1:00 P.M.The next meeting will be on Thursday at 10.00 a.m.

Signed..........  
(Chairperson)

Date..........

MEMBERS ATTENDANCE

DEPARTMENTAL COMMITTEE OF JUSTICE AND LEGAL AFFAIRS

11<sup>TH</sup> PARLIAMENT

DATE 19<sup>th</sup> August 2014 Adoption of Report

NO.	NAME	SIGNATURE
1.	SAMUEL CHERKORUA	
2.	Hon JOHN NSONOGE	
3.	TLOSER CHEROI	
4.	Bishop B. Mutemi	
5.	JOHN M. MUNUVE	
6.	Christine Ombaka	
7.	T. J. Kapwong	
8.	Mohamed Achi Hap	
9.	<del>Sammy Koeh</del>	<del></del>
10.	Ben Mwangi	
11.	Hon William Chepkemo	
12.	John M. Waiganyo	
13.	KAMOCI MURAMUTIA	
14.	John Ogo Amore	
15.	<del>CHIENG DAVID</del>	<del></del>
16.	BENSON MURUA	
17.	NETO JWO THWA	
18.	Kangogo Bowen	
19.	Falme Ibrahim	



20.	Paul K. Bii	<del>Paul K. Bii</del>
21.	Paul K. Bii	<del>Paul K. Bii</del>
22.	PRISCILLA NYOKABI	Priscilla Nyokabi
23.		
24.		
25.		
26.		
27.		
28.		
29.		

A. ~~M. Wasike~~

For: Clerk of the National Assembly