

Approved for tabling

By the charge
of the Justice and
Legal Affairs
SIVA
Hon. Samuel
Chengetia
Member
25/8/15

25/8/15

Paper Laid
By the Member
for Meru
on Monday
25/8/15

25/8/15
25/8/15

JLA/2016/19



PARLIAMENT OF KENYA

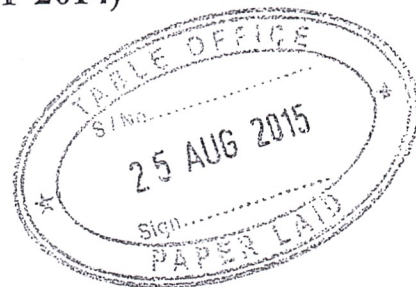
THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL
(SENATE BILL No. 6 OF 2014)



August, 2015

Clerks Chambers,
National Assembly,
Parliament Buildings,
Nairobi

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A REPORT OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (SENATE BILL No. 6 OF 2014)

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 Statute Law (Miscellaneous Amendments) Bill (Senate Bill No. 6 of 2014).

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. Origin of the Bill

The Statute Law (Miscellaneous Amendments) Bill (Senate Bill No. 6) of 2014 is dated 3rd April, 2014 and originates from the Senate. The Bill was sponsored in the Senate by Sen. Amos Wako and upon being passed on 7th August, 2014 was referred to the National Assembly for further scrutiny in line with Article 110 of the Constitution of Kenya.

1.4. First reading of the Bill

Standing Order 143 states as follows:-

“ A Bill which originates in the Senate shall be proceeded with by the National Assembly in the same manner as a Bill introduced in the

National Assembly by way of First Reading in accordance with Standing Order 126 (First Reading of Bills).

The Bill was read in the National Assembly for the first time on 20th August 2014 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”

1.5. Public participation on 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”

The process of public participation in the passage of the Bill was undertaken by the Senate and it was not necessary for the Committee to repeat the same exercise.

1.5 Sittings of the Committee and adoption of report

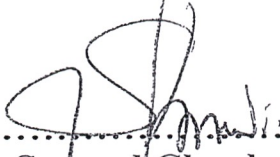
The Committee considered the Bill on 20th March, 2015 in Committee Room 9, Main Parliament Building. The Committee considered and adopted its report on the Bill on 24th March, 2015 at the same venue. The adoption of the report was proposed by Hon. Tom J. Kajwang’ and seconded by Hon. Priscilla Nyokabi. 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 hereto 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.

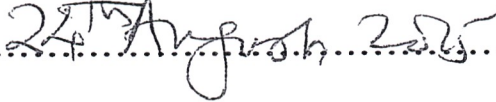
Hon. Speaker Sir,

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 in keeping with the practice of tabling one Bill consisting of various amendments to various Acts which do not warrant individual Bills. The principal purpose of the Bill is to correct the apparent unconstitutionality arising from the enactment of the various Acts without taking into regard the roles and functions of the county governments as set out in the Fourth Schedule to the Constitution of Kenya, 2010.

The Bill seeks to amend the following statutes—

- (i) The Cancer Prevention and Control Act, No. 15 of 2012
- (ii) The National Transport and Safety Authority Act, No. 33 of 2012.
- (iii) The National Authority for the Campaign Against Alcohol and Drug Abuse Act, No. 14 of 2012
- (iv) The Sports Act, No. 25 of 2013
- (v) The Pyrethrum Act, No. 22 of 2013
- (vi) The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, No. 56 of 2012
- (vii) The National Honours Act, No 11 of 2013.

The Bill concerns county governments in terms of Article 110(a) of the Constitution as it contain provisions affecting the functions and powers of county governments as set out in the Fourth Schedule to the Constitution. This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

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”

The process of public participation in the passage of the Bill was undertaken by the Senate and the Committee did not find it necessary to repeat the exercise.

4.0. CONSIDERATION OF THE BILL BY THE COMMITTEE AND PROPOSED AMENDMENTS

The Committee considered the Bill and proposes the following amendments:-

SCHEDULE

(I) THE CANCER PREVENTION AND CONTROL ACT, No. 15 OF 2012

THAT, the Bill be amended in the Schedule in the proposed amendments to the Cancer Prevention and Control Act (No. 15 of 2012) by deleting the words “national and” appearing immediately after the words “with the” in the proposed new section 5 and substituting therefor the words “Cabinet Secretary and the relevant”;

Rationale: The Cabinet Secretary is the representative of the National Government. The Institute may also not require to consult with all county governments.

(II) THE NATIONAL TRANSPORT AND SAFETY AUTHORITY ACT, No. 33 OF 2012

THAT, the Bill be amended in the Schedule in the proposed amendments to the National Transport and Safety Authority Act (No. 33 of 2012) by deleting the proposed new section 53A.

Rationale: The provision is unnecessary. The functions of county governments are well spelt out in the constitution and do not require restatement in the manner proposed.

(III) THE NATIONAL AUTHORITY FOR THE CAMPAIGN AGAINST ALCOHOL AND DRUG ABUSE ACT, No. 14 OF 2012

THAT, the Bill be amended in the Schedule in the proposed amendments to the National Authority for the Campaign Against Alcohol and Drug Abuse Act (No. 14 of 2012) by:-

- (a) deleting paragraphs (b) and (c) of the proposed amendment to section 5;
- (b) deleting paragraph (a) of the proposed amendment to section 6;

Rationale: The proposed amendments to section 5 of the Act unnecessarily require the Cabinet Secretary to submit reports to the Council of Governors and also unnecessarily empower the Council of Governors to assign roles to the Authority without providing funding for the work.

The proposed amendment to section 6 of the Act unnecessarily subjects the approval of the Chairperson of the Authority to both Houses of Parliament.

(IV) THE SPORTS ACT, No. 25 OF 2013

THAT, the Bill be amended in the Schedule in the proposed amendments to the Sports Act (No. 25 of 2013) by—

- (a) deleting the words “liaison with the national and the” appearing immediately after the words “Insert the word “in” in paragraph (a) of the proposed amendment to section 4 and substituting therefor the words “consultation with the relevant”;
- (b) deleting paragraph (b) of the proposed amendment to section 4;
- (c) deleting the proposed amendment to section 5 and substituting therefor the a new amendment as follows—

<i>Provision</i>	<i>Amendment</i>
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Section 5	Delete and replace with a new section 5 as follows—
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Powers of Sports Kenya.	
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5. (1) Sports Kenya shall have the power, in consultation with the relevant county governments, to—

- (a) erect buildings and structures and carry out works necessary or desirable for the purposes of Sports Kenya;
- (b) appoint agents and attorneys
- (c) engage persons to perform services for Sports Kenya;
- (d) obtain commercial sponsorship for Sports Kenya and participate in marketing arrangements involving endorsement by Sports Kenya of products and services associated with sports;
- (e) provide, whether by sale or otherwise, any article or thing bearing a mark, symbol or writing that is associated with Sports Kenya;
- (f) regulate the provision of services and use of the facilities of Sports Kenya;
- (g) act as an agent for any person engaged, whether within Kenya or elsewhere, in the performance of services, or the provision of facilities, of a

kind similar or complementary to those performed or provided by Sports Kenya;

- (h) undertake the construction or execution of any works on land vested in Sports Kenya; and
- (i) make regulations, with the approval of the Cabinet Secretary—
 - (i) relating to the use, safety or maintenance of the stadia falling within its responsibility;
 - (ii) relating to the erection of structures on, near, over or under the stadia falling within its responsibility;
 - (iii) for the drainage of streets, lands, compounds and buildings adjacent to the stadia;
 - (iv) for the inspection of the level, width and construction of stadia and play grounds; and
 - (v) for the removal, demolition or alteration of any projection, structure or thing obstructing a stadia or likely to cause damage or inconvenience to sports facility users.

(2) Where, in this Act, a county government request the performance by Sports Kenya of any functions falling within the sole jurisdiction of counties, that county government shall allocate and appropriate adequate funds to Sports Kenya for the performance of that function.

- (d) deleting the proposed amendment to section 10;
- (e) deleting the proposed amendment to section 18 (2);
- (f) deleting the proposed amendment to section 23;
- (g) deleting the words “liaison with the national and the” appearing in the proposed amendment to section 34 and substituting therefor the words “consultation with the relevant”;
- (h) deleting the proposed amendment to section 67;
- (i) deleting the words “responsible county executive committee member” appearing immediately after the words “and the” in the proposed amendment to section 68 and substituting therefor the words “County Governor”;
- (j) deleting the proposed new section 75;

Rationale: To ensure that counties allocate and appropriate monies for the benefit of Sports Kenya where Sports Kenya carries out works or other roles for counties. To delete proposed amendments that seek the repeal of various sections of the Act without proper justification. To require that the annual report is submitted to the relevant County Governor.

(V) THE PYRETHRUM ACT, No. 22 OF 2013

THAT, the Bill be amended in the Schedule in the proposed amendments to the Pyrethrum Act (No. 22 of 2013) by—

(a) deleting paragraph (a) of the proposed amendment to section 6 (2) and replacing with a new amendment as follows—

“(a) inserting the words “in consultation with the Council of County Governors” immediately after the words “by the Cabinet Secretary” appearing in paragraph (e);”

(b) deleting paragraph (b) of the proposed amendment;

Rationale: To require consultation between the Cabinet Secretary and the Council of Governors in the nomination and appointment of the Chairperson of the Board.

(VI) THE PREVENTION, PROTECTION AND ASSISTANCE TO INTERNALLY DISPLACED PERSONS AND AFFECTED COMMUNITIES ACT, No. 56 OF 2012

THAT, the Bill be amended in the Schedule in the proposed amendments to the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (No. 56 of 2012) by—

- (a) inserting the word “relevant” immediately after the words “national and the” appearing in the proposed new section 4;
- (b) inserting the word “relevant” immediately after the words “national and the” appearing in subsection (1) the proposed new section 5;
- (c) inserting the word “relevant” immediately after the words “national and the” appearing in subsection (2) the proposed new section 5;
- (d) inserting the word “relevant” immediately after the words “national and the” appearing in subsection (3) the proposed new section 5;
- (e) inserting the word “relevant” immediately after the words “national and the” appearing in subsection (4) the proposed new section 5;
- (f) inserting the word “relevant” immediately after the words “national and the” appearing in the proposed new section 7;

(g) inserting the word “relevant” immediately after the words “national and the” appearing in subsection (1) the proposed new section 8;

(h) inserting the word “relevant” immediately after the words “national and the” appearing in subsection (1) the proposed new section 9;

Rationale: To limit the need for consultation to only the relevant county governments.

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MINUTES OF THE SIXTY FIRST SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON MONDAY 24TH AUGUST, 2015 AT 3.00 P.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS

PRESENT

Hon. Samuel Chepkonga, M.P.	-	Chairperson
Hon. Priscilla Nyokabi, M.P.	-	Vice Chairperson
Hon. Benson Mutura, M.P.		
Hon. Boniface Otsiula, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Dr.Christine Ombaka, M.P.		
Hon. David Ochieng, M.P.		
Hon. Kang'ata Irungu, M.P.		
Hon. Munuve Mati John, M.P.		
Hon. John Njoroge Chege, M.P.		
Hon. John M. Waiganjo, M.P.		
Hon. Olago Aluoch, M.P.		
Hon. Mohamed Abdi Haji, M.P.		
Hon. Moses Cheboi, M.P.		
Hon. Njoroge Baiya, M.P.		
Hon. Paul K. Bii, M.P.		
Hon. Peter Kaluma, M.P.		
Hon. (Bishop) Robert Mutemi, M.P.		
Hon. Sammy Koech, M.P.		
Hon. Tom J. Kajwang', M.P.		
Hon. Ndirangu Waihenya, M.P.		

ABSENT:-

Hon. Kamoti Mwamkale William, M.P.
Hon. Johanna Ngeno, M.P.
Hon. James Bett, M.P
Hon. William Cheptumo, M.P.
Hon. Ben Momanyi, M.P
Hon. Florence Kajuju, M.P.
Hon. Fatuma Ibrahim, M.P.
Hon. Mutua Mutemi, M.P.
Hon. Neto Agostinho, M.P.

IN ATTENDANCE:-

SECRETARIAT

Mr. George Gazemba	-	Senior Clerk Assistant
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Ms. Mary L. Lemerelle
Mr. Ronald Walala

- Clerk Assistant III
- Legal Counsel II

MIN No. JLA 233/2015:-

PRELIMINARIES

The Chairperson called the meeting to order at 3:20 p.m. Prayer was said by Hon. (Bishop) Robert Mutemi, M.P.

MIN No. JLA 234/2015:- **CONSIDERATION AND ADOPTION OF REPORTS ON BILLS**

(i) **Consideration and adoption of report on the Political Parties (Amendment) Bill (Senate Bill No. 3 of 2014)**

The Committee considered and adopted its report on the Political Parties (Amendment) Bill (Senate Bill No. 3 of 2014). The report rejected the Bill because it was a money Bill which should have originated from the National Assembly. The adoption of the report was proposed by Hon. John Njoroge, and seconded by Hon. Sammy Koech. There was no dissenting voice to the adoption of the report.

(ii) **Consideration and adoption of report on the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No. 6 of 2014)**

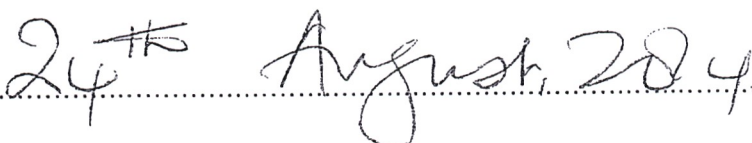
The Committee considered and adopted its report on the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No. 6 of 2014). The report proposed some amendments to the Bill. The adoption of the report was proposed by Hon. Tom John Kajwang' and seconded by Hon. Priscilla Nyokabi. There was no dissenting voice to the adoption of the report.

MIN No. JLA 235/2015:-

ADJOURNMENT OF THE MEETING

There being no other business to transact, the sitting adjourned at fifteen minutes past four o'clock in the afternoon.

Signed.....
(Chairperson)

Date.....

APPENDIX 1

APPENDIX 2



KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

MEMBERS ATTENDANCE

Date: 24th August, 2015

Venue: COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING

Agenda: CONSIDERATION OF REPORT ON POLITICAL PARTIES (AMENDMENT) BILL, 2014
AND STATUTES LAW (MISCELLANEOUS AMENDMENTS) BILL, 2014

	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	