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REPUBLIC OF KENYA



TWELFTH PARLIAMENT (FIFTH SESSION)

THE SENATE

**STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS**

.....

**REPORT ON THE LAW OF SUCCESSION (AMENDMENT) BILL
(SENATE BILLS NO. 15 OF 2021)**

.....

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

Approved
[Signature]
14/10/2021

Rt. Hon. Speaker
You may approve for
tabling. [Signature]
14/10/21

DC-ES
Forwarded & recommended
for tabling
[Signature] 14/10/2021

October, 2021

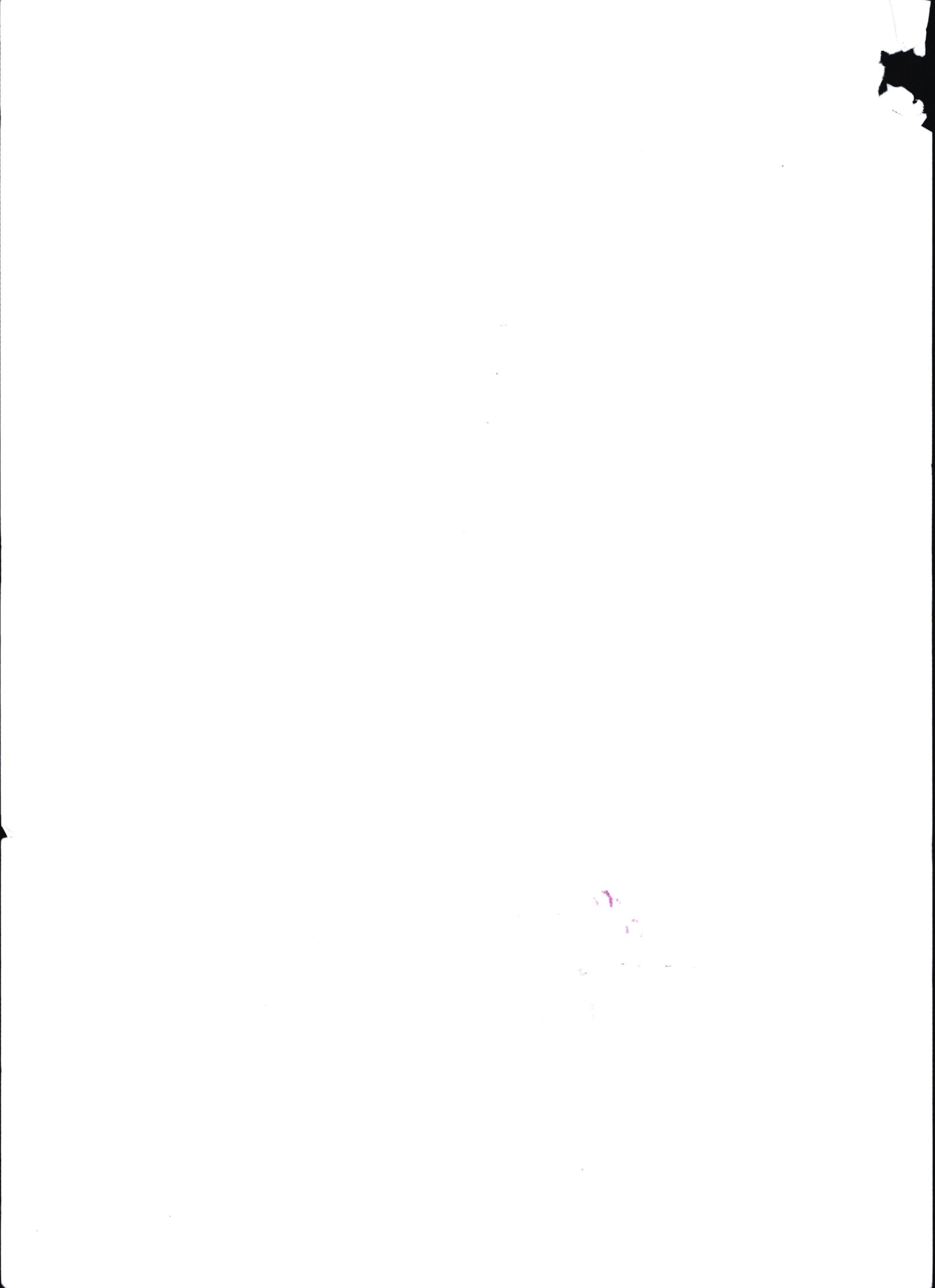


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FOREWORD BY THE CHAIRPERSON

1. The Law of Succession (Amendment) Bill (Senate Bills No. 15 of 2021) seeks to amend the Law of Succession Act, to provide for gender equity in succession matters by ensuring that the widow and widower lose their life interest in the whole of the remainder of the net intestate estate once they re-marry.
2. The Standing Committee on Justice, Legal Affairs and Human Rights considered the Bill at length. A call for submission of memoranda was placed in two newspapers with national circulation on Thursday, 13th May, 2021. The advertisement was also posted on the Parliament website and social media platforms. In response to the advertisement, the Committee received five written submissions from stakeholders, four of whom appeared before the Committee, which were considered by the Committee in making its recommendations on the Bill.
3. Based on its deliberations, the Committee has made various observations and recommendations on the Bill as set out in Chapter Three of this Report. Additionally, the Committee will present amendments with a view of strengthening the provisions of the Bill for consideration by this House.
4. The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in undertaking this important assignment. The Committee further wishes to thank the stakeholders who submitted written memoranda on the Bill.
5. It is now my pleasant duty, pursuant to standing order 143 (1), to present a Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Law of Succession (Amendment) Bill (Senate Bills No. 15 of 2021)


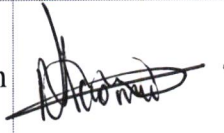
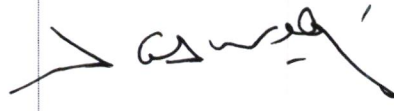
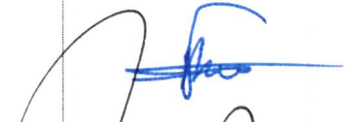
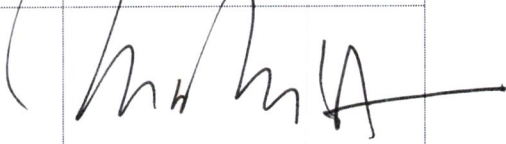
Signed.....

Date.....*5th October, 2021*.....

**SEN. ERICK OKONG'O MOGENI, SC, MP,
CHAIRPERSON,
STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS**

**ADOPTION OF THE REPORT ON THE LAW OF SUCCESSION
(AMENDMENT) BILL (SENATE BILLS NO. 15 OF 2021)**

We, the undersigned Members of the Senate Standing Committee on Justice, Legal Affairs and Human Rights, do hereby append our signatures to adopt this Report –

Sen. Erick Okong’o Mogeni, SC, MP	-Chairperson	
Sen. (Canon) Naomi Jillo Waqo, MP	-Vice-Chairperson	
Sen. Amos Wako, EGH, SC, FCI Arb, MP	-Member	
Sen. James Orengo, EGH, SC, MP	-Member	
Sen. Fatuma Dullo, CBS, MP	-Member	
Sen. Mutula Kilonzo Junior, CBS, MP	-Member	
Sen. Irungu Kang’ata, CBS, MP	-Member	
Sen. Johnson Sakaja, CBS, MP	-Member	

PREFACE

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to the standing 218 of and the Second Schedule to the Senate Standing Orders, and is mandated to: -

'consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.'

The Committee is comprised of –

- | | |
|---|--------------------|
| 1) Sen. Erick Okong'o Mogeni, SC, MP | - Chairperson |
| 2) Sen. (Canon) Naomi Jillo Waqo, MP | - Vice Chairperson |
| 3) Sen. Amos Wako, EGH, SC, FCI Arb, MP | |
| 4) Sen. James Orengo, EGH, SC, MP | |
| 5) Sen. Fatuma Dullo, CBS, MP | |
| 6) Sen. Mutula Kilonzo Junior, CBS, MP | |
| 7) Sen. Irungu Kang'ata, CBS, MP | |
| 8) Sen. Johnson Sakaja, CBS, MP | |

The Minutes of the Sittings of the Committee in considering the Law of Succession (Amendment) Bill (Senate Bill No. 15 of 2021) are attached to this Report collectively as *Annex 1*.

CHAPTER ONE: INTRODUCTION

A. Background on the Law of Succession (Amendment) Bill (Senate Bills No. 15 of 2021))

1. The Law of Succession (Amendment) Bill (Senate Bills No. 15 of 2021) is sponsored by Sen. Abshiro Halake MP. A copy of the Bill is attached to this Report as *Annex 2*.
2. The Bill was published on 12th March, 2021 and was read a First Time in the Senate on 11th May, 2021. Following the First Reading in the Senate, it stood committed, pursuant to Standing Order 140(1), to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.
3. Before publication of the Bill on 12th March, 2021, the Bill had initially been introduced in the Senate and read a First Time on 11th May, 2021. However, before the passage by the Senate, the High Court in Petition No. 284 of 2019 held that the concurrence process under Article 110(3) of the Constitution is mandatory and is a condition precedent before any House of Parliament can consider a Bill. The court further ordered the immediate cessation of consideration of all Bills that were pending before either House, and for which joint concurrence by the Speakers of both Houses could not be demonstrated, in order to allow such Bills to be subjected to the mandatory joint concurrence process contemplated under Article 110(3) of the Constitution.
4. As part of implementing the Court decision, it was determined that concurrence as required under the Constitution could not be demonstrated in respect of this Bill. The Bill was withdrawn and republished in compliance with the Court orders in Petition No. 284 of 2019.
5. The Standing Committee on Justice, Legal Affairs and Human Rights considered the Bill at length. A call for submission of memoranda was placed in the *Daily Nation* and *Standard* newspapers on Thursday, 13th May, 2021 (*Annex 3*). The advertisement was also posted on the Parliament website and social media platforms.
6. In response to the advertisement, the Committee received five written submissions from stakeholders, four of whom appeared before the Committee (*Annex 4*). The

Committee proceeded to consider the Bill and the submissions received thereon as set out in the matrix attached to this Report as *Annex 5*.

7. Based on its deliberations, the Committee has made various observations and recommendations as set out at Chapter Three of this Report. Additionally, the Committee has presented amendments with a view of strengthening the provisions of the Bill, for consideration by this House (*Annex 6*).

B. Objective of the Bill

8. The Law of Succession (Amendment) Bill (Senate Bills No. 15 of 2021) seeks to amend the Law of Succession Act, to provide for gender equity in succession matters by ensuring that a widow and widower lose their life interest in the whole of the remainder of the net intestate estate once they re-marry, and that the father and mother of a deceased person inherit the deceased person on an equal footing.

C. Overview of the Bill

9. The Bill proposes the following—
 - i) Clause 2 of the Bill proposes to amend section 2 of the Act to provide for the definition of words which have been used in the Act but the same have not been defined. These words are intermeddling, marriage, matrimonial home, matrimonial property, residue estate, and spouse;
 - ii) Clause 3 of the Bill proposes to amend section 29 of the Act which provides for the definition of the word ‘dependant’. The Bill proposes to amend paragraph (a) to include a husband and remove ‘former wife or wives’ in the category of dependant. As a consequence of including a husband in paragraph (a), the Bill further proposes to delete paragraph (c) which provides that a husband is considered a dependant if he was being maintained by the deceased wife;
 - iii) Clause 4 of the Bill proposes to delete section 32 of the Act and substitute thereof a new subsection. Section 32 of the Act when read together with section 33 of the Act provides that the law applicable to agricultural land and crops on such lands, and livestock in the former Districts of West Pokot, Turkana, Marsabit, Mandera, Wajir, Garissa, Tana River, Narok, Samburu, Isiolo, Lamu and Kajiado in case of intestacy is the law or customs of the deceased’s community or tribe. The proposed amendment seeks to replace

- districts with counties, and include community land as provided for under Article 63 of the Constitution as another exception in section 32;
- iv) Clause 5 of the Bill proposes to amend section 33 of the Act to provide that the law or customs to govern intestacy as regards property excluded in section 32 is the existing law or custom of the deceased's community or tribe;
 - v) Clauses 6 and 7 of the Bill proposes to amend sections 35 and 36 of the Act to provide for termination of the life interest in the whole residue of the net intestate estate in the case of a widower who remarries. Currently, the Act only provides for termination of such life interest in the case of a widow who remarries;
 - vi) Clause 8 of the Bill proposes to amend section 39 of the Act to provide for equality of parents in inheriting the net intestate estate where the deceased has left no surviving spouse or child. Currently, the deceased's mother inherits such property if the deceased's father is not alive; and
 - vii) Clause 9 of the Bill proposes to insert a Tenth Schedule to the Act to set out the counties excluded under section 32 as opposed to setting them out in section 32.

D. Consequences of the Bill

- 10. The Bill will address gender inequalities in succession matters by ensuring that a widow and widower lose their life interest in the whole of the remainder of the net intestate estate once they re-marry, and also enabling mothers to inherit their deceased children on an equal footing with fathers of such children.
- 11. Additionally, the Bill further will ensure that community land is excluded from the provisions of the Law of Succession Act.

CHAPTER TWO: PUBLIC PARTICIPATION

A. Invitation and consideration of stakeholder submissions on the Bill

12. The Standing Committee on Justice, Legal Affairs and Human Rights, pursuant to Article 118 of the Constitution and Standing Order 140, invited submissions from members of the public on the Bill via an advertisement placed in the Daily Nation and Standard newspapers on Thursday, 13th May, 2021 (*Annex 3*). The advertisement was also posted on the Parliament website and social media platforms.
13. In response to the advertisement, the Committee received five written submissions from stakeholders, four of whom appeared before the Committee (*Annex 4*).
14. The Committee proceeded to consider the Bill and the submissions received thereon as set out in the matrix attached to this Report as *Annex 5*.
15. In addition to the submission received pursuant to an advertisement made on 13th May, 2012, the Committee also considered submissions which were received before the Bill was republished. *Annex 7*