



PARLIAMENT OF KENYA
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KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT

SECOND SESSION

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

**REPORT ON THE CONSTITUTION OF KENYA
(AMENDMENT) BILL, 2013**

Clerk's Chambers,
Parliament Buildings,

NAIROBI.

FEBRUARY, 2014

1.0 PREFACE

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order No. 199, it is my pleasure and duty to present to the House, the Committee's Report on the Constitution of Kenya (Amendment)(No.2)Bill, 2013.

1.1 COMMITTEE MEMBERSHIP

The Committee on Justice and Legal Affairs was constituted by the House on Thursday 16th 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. Johanna 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 Orari, 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.

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

- 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 the 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 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 Cabinet Secretary;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments); and
- g) To 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.

1.3 COMMITTEE MEETINGS

The Committee held sittings during which the Constitution of Kenya (Amendment) Bill, 2013 was considered in accordance with the standing orders of the National Assembly. The Committee also received Memoranda from various interested parties.

The Constitution of Kenya (Amendment) Bill, 2013 was read a first time on 1st August, 2013 and stood committed to the Committee. The Committee needed sufficient time to receive memoranda and thus did not proceed and report as expected. This Report contains deliberations of the Committee on the Bill and has proposed the same to the House for consideration.

Finally it is now my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to introduce this report to the House, so that it may enrich debate on the Bill.

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2013

Consideration by the Committee

Pursuant to article 118(1) (b) of the Constitution and standing Order 127(3) of the National Assembly, the Committee through the office of the Clerk of the National Assembly received Memoranda from the following parties:

- The National Council of Churches of Kenya (NCCCK)
- The Kenya National Audit Office
- The Salaries and Remuneration Commission
- The Kenya National Commission on Human Rights

The National Council of Churches of Kenya (NCCCK), Salaries and Remuneration Commission (SRC) and the Kenya National Commission on Human Rights (KNCHR) in their advisory opinions expressed reservations that amendments to article 260 of the Constitution will oust the jurisdiction of the SRC and pave way for members of Parliament to determine their own salaries.

On the other hand, the Kenya National Audit office advised that it is logical for the amendment to be realized so as to insulate the subject offices from activities that may compromise their independence.

Comments of the Committee

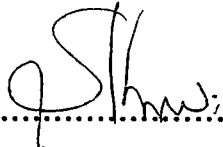
The Committee scrutinized the Constitution of Kenya (Amendment) Bill, 2013 together with the memoranda from interested parties and observed as follows:

- The objective of the Bill is well captured in the Memorandum of objects and reasons.
- The Bill is informed by the need to uphold the doctrine of separation of powers between the various arms of government.

- The categorization of occupants of the Judiciary, Legislature and Executive under the definition of state office, compromises their independence.
- The Bill bolsters the governance structure of Public institutions by ensuring that there is an efficient system of checks and balances between different arms of government.
- The amendment will strengthen the oversight role of Parliament.
- The Bill is not intended to remove members of Parliament from provisions of chapter six of the Constitution.
- The Bill does not pave way for members of Parliament to determine their own remuneration.
- Members of Parliament and other officers affected by the Bill will remain public officers.
- The amendment will not trigger any conflict of interest among public officers.

RECOMMENDATIONS

1. The Committee did not propose any amendment to the Bill and;
2. The Committee recommends that the House prioritises the Bill for consideration and passage.

SIGNED.....

Hon. Samuel Chepkong'a, MP

(Chairperson)

Committee on Justice and Legal Affairs

DATE.....