

*Paper laid*  
*By Hon S. Chapkonga*  
*- Chair Justice & Legal Aff.*  
*on Thurs 23/10/14*  
*[Signature]*



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**PARLIAMENT OF KENYA  
THE NATIONAL ASSEMBLY**

**ELEVENTH PARLIAMENT  
SECOND SESSION (2014)**

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

**REPORT**

**ON THE REFUSAL TO ASSENT TO THE  
STATUTE LAW (MISCELLANEOUS AMENDMENTS)  
BILL, 2014**

**Clerk's Chambers**

## 1.0 Preface

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order No. 216(5), it is my pleasure and duty to present to the House, the Committee's Report on the President's refusal to assent to the Statute Law (Miscellaneous Amendments) Bill, 2014.

### 1.1 Committee Membership

The Departmental 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. Hon. Samuel Chepkonga, M.P,.....Chairperson
2. Hon. Priscilla Nyokabi, M.P.....Vice-Chairperson
3. Hon. Muriithi Waiganjo, M.P
4. Hon. Ndirangu Waihenya, M.P
5. Hon. Florence Kajuju, M.P
6. Hon. Kang'ata Irungu, M.P
7. Hon. Benson Mutura, M.P
8. Hon. Olago Aluoch, M.P
9. Hon. John Njoroge M.P
10. Hon. William Cheptumo, M.P
11. Hon. Njoroge Baiya, M.P
12. Hon. Mohamed Abdi, M.P
13. Hon. Kangongo Bowen, M.P
14. Hon. Sammy Koech, M.P
15. Hon. Moses Cheboi, M.P
16. Hon. Paul Bii, M.P
17. Hon. Charles Gimose, M.P
18. Hon. Johanna Ngeno, M.P
19. Hon. Boniface Otsiula, M.P
20. Hon. David Ouma Ochieng, M.P
21. Hon. Neto Agostinho, M.P
22. Hon. Dr.Christine Ombaka, M.P
23. Hon. Kaluma Peter, M.P
24. Hon. Fatuma Ibrahim, M.P
25. Hon. Ben Momanyi Orori, M.P
26. Hon. Munuve Mati John, M.P
27. Hon. Mwamkale Kamoti, M.P
28. Hon. T.J Kajwang', M.P
29. Hon. Mutua Mutemi, M.P

## 1.2 Committee Mandate

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 two meetings on Thursday, 16<sup>th</sup> October 2014 and Tuesday, 21<sup>st</sup> October 2014 to deliberate on the Presidential Memorandum on the refusal to assent to the Statute Law (Miscellaneous Amendments) Bill, 2014 and came up with recommendations.

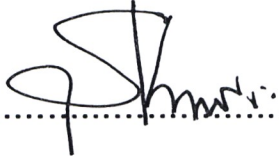
### 1.4 Acknowledgements

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate.

The Chairperson of the Committee takes this opportunity to thank all the Members of the Committee for their useful and immense contribution in scrutinizing the Statute Law (Miscellaneous Amendments) Bill, 2014.

The Committee further wishes to record its appreciation for the services rendered by the staff of the National Assembly that enabled the production of this Report.

Finally it is my pleasant duty and privilege, on behalf of the departmental Committee of Justice and Legal Affairs to introduce this report to the House.

Signed.....

Hon. Samuel Chepkong'a, M.P  
(Chairperson)

Departmental Committee on Justice and Legal Affairs

Date.....23<sup>rd</sup> October, 2014.....

**2.0 CONSIDERATION OF THE PROPOSED AMENDMENTS OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2014**

**THE CONSTITUTION OF KENYA**

**REFUSAL TO ASSENT TO THE MISCELLANEOUS AMENDMENTS BILL, 2014**

**MEMORANDUM**

By His Excellency the Honourable Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces.

Submitted to the Speaker of the National Assembly.

**WHEREAS** a Bill entitled “A Bill for an Act of Parliament to make minor amendments to statute law”, the short title of which is “The Statute Law (Miscellaneous Amendments) Bill, 2014,” was passed by the National Assembly on the 13<sup>th</sup> August, 2014;

**AND WHEREAS** the Statute Law (Miscellaneous Amendments) Bill, 2014, was presented to me for assent in accordance with the provisions of the Constitution, on the 14<sup>th</sup> September, 2014;

**NOW THEREFORE**, in exercise of the powers conferred on me by Article 115(1)(b) of the Constitution, I refuse to assent to the Statute Law (Miscellaneous Amendments) Bill, 2014, for the reasons set out hereunder.

**PROPOSED AMENDMENTS TO THE INTERPRETATION AND GENERAL PROVISIONS ACT (CAP.2)**

**SECTION 3:**

The Bill initially proposed the following definition to replace the definition of the expression “the Minister” for the purposes of the administration of written laws:

**“the Cabinet Secretary” means the Cabinet Secretary for the time being responsible for the matter in question, or the President where executive authority for the matter in question is retained by**

him, or by the Attorney-General where executive authority for the matter in question has been conferred on him”.

The position in the proposed definition has always been the law and the amendment was only intended to harmonise it with the Constitution by replacing the reference to “Minister” with the expression “Cabinet Secretary”. The definition was however amended to remove reference therein to the President and the Attorney-General. This means that unless Parliament specifically assigns the administration of an Act or the performance of an executive function thereunder to these offices, it will no longer be possible to construe Acts of Parliament as conferring any such powers. If enacted, the provision will have far reaching consequences on the performance of executive functions by the offices. The office of the Attorney-General and Department of Justice in particular will be most affected by the change, This is because the office routinely administers numerous laws in the legal sector, including the laws relating to-

- (a) companies, partnerships and insolvency;
- (b) copyright;
- (c) marriage;
- (d) legal education;
- (e) the Kenya Law Reform Commission;
- (f) the National Council for Law Reporting;
- (g) the National Crime Research Centre;
- (h) the constitutional commissions on the implementation of the Constitution, human rights, ethics and integrity, etc.

#### RECOMMENDATION:

In view of the foregoing, I recommend that the proposed definition of the expression “the Cabinet Secretary” be deleted and replaced with the following-

“the Cabinet Secretary” means the Cabinet Secretary for the time being responsible for the matter in question, or the President where executive authority is retained by him:

Provided that for the purposes of the administration of laws relating to the legal sector, the expression shall, subject to any assignment under Article 132(3)(c) of the Constitution, include the Attorney-General.

#### COMMITTEES' RECOMMENDATION:

The Committee agreed with the recommendation as there is currently no Cabinet Secretary for Justice. The Attorney General being in-charge of matters to do with law and justice, it is important to include him/her in the definition of the Cabinet Secretary for the Attorney General to execute the roles and functions of the Cabinet Secretary.

#### PROPOSED AMENDMENTS TO THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT, 2003

##### SECTION 62(1):

The Bill proposes to amend section 62(1) of the Anti-Corruption and Economic Crimes Act, 2003, by deleting the existing provision and substituting therefore the following new subsection-

- (1) A public officer or state officer with executive responsibility who is charged with corruption or economic crime shall be suspended, at half pay, with effect from the date of the charge until the conclusion of the case:

Provided that the case shall be determined within twenty-four months.

This amendment can be construed to be discriminatory against public or state officers with executive responsibility in that it excludes other public offices which have similar responsibilities.

#### RECOMMENDATION:

In view of the foregoing, I recommend that the proposed subsection (62)1 be amended by deleting the words "with executive responsibility".

## COMMITTEE'S RECOMMENDATION.

The Committee agreed with the amendment that the proposed subsection (62)1 be amended by deleting the words "with executive responsibility".

### SUBSECTION (1A):

The Bill further proposes to amend section 62 of the Anti-Corruption and Economic Crimes Act, 2003, by inserting the following new subsection immediately after subsection (1)–

(1A) A state officer or public officer with executive responsibility who has been adversely mentioned in a report prepared by a committee of a House of Parliament and adopted by the relevant House shall be suspended until investigations are complete.

This amendment can similarly be construed to be discriminatory towards state and public officers with executive responsibility. In addition, the House committee report is normally presented after the investigations are complete and any public or state officer adversely mentioned therein is subject to the provisions of subsection (1). This therefore renders the subsection unnecessary.

### RECOMMENDATION:

For the foregoing reasons, I recommend that the proposed subsection 62(1A) be deleted.

### COMMITTEE'S RECOMMENDATION:

The Committee agreed to the recommendation to delete subsection 62(1A).

## PROPOSED AMENDMENT TO THE ETHICS AND ANTI-CORRUPTION COMMISSION ACT, 2011.

### SECTION 17:

The Bill proposes to amend section 17 of the Ethics and Anti-Corruption Act, 2011, by inserting the following new subsection–



(3) Where the Commission, after giving the Secretary the opportunity to be heard in accordance with subsection (2), is satisfied that the Secretary warrants removal from office, the Commission shall submit a petition to the National Assembly setting out the alleged facts constituting the grounds for the intended removal.

The Ethics and Anti-Corruption Commission is a Commission to which the provisions of Chapter Fifteen of the Constitution applies. Under Article 250(12), the Commissions are empowered to appoint their Secretaries through a competitive process. This means that as the appointing authorities, the Commissions can remove their Secretaries without involving the National Assembly. The proposed involvement of the National Assembly in the removal of the Secretary in this case is therefore contrary to provisions of Article 250(2) of the Constitution.

#### **RECOMMENDATION:**

In view of the above, I recommend that the proposed subsection 17(3) be deleted.

#### **COMMITTEE'S RECOMMENDATION:-**

The Committee disagreed with the recommendation given that the National Assembly has a role to play in the hiring of the Secretary to the EACC, it is important that the National Assembly has a role too during the removal of the Secretary.

#### **SUBSECTION (4):**

The Bill further proposes to amend section 17 by inserting the following new subsection immediately after subsection (3)–

(4) The National Assembly shall consider the petition and the Secretary shall stand removed from office if the Assembly is satisfied by resolution that the Secretary has breached any of the grounds set out in subsection (1).

For the reasons stated in relation to subsection 17(3), this provision is similarly inconsistent with Article 250 (2) of the Constitution.

#### RECOMMENDATION:

In view of the foregoing, I recommend that the proposed subsection 17(4) be deleted.

#### COMMITTEE'S RECOMMENDATION:-

The Committee disagreed with the recommendation. The National Assembly has to consider the petition for removal in the interest of fairness and as a matter of oversight in such an important Commission. The Secretary to the Commission should be protected against any possible manipulation and interference in his work by the Commission.

#### PROPOSED AMENDMENT TO THE LEGAL EDUCATION ACT, 2012

##### SECTION 2(1):

The Bill proposes to amend the definition of "legal education provider" in section 2(1) of the Legal Education Act, 2012 by inserting the words "except those granted a charter under section 19 of the Universities Act, 2012" immediately after the word "degree" to read –

"legal education provider" means a post-secondary school institution that is licensed to offer legal education or training for the award of a certificate, diploma or degree, **except those granted a charter under section 19 of the Universities Act, 2012.**

The Universities Act, 2012 imposes a requirement for each university, including pre-existing universities, to apply for and obtain a Charter from the Commission for University Education. This amendment can therefore be construed to exclude all universities from the definition which was never intended.

**RECOMMENDATION:**

In view of the above, I recommend that the definition of the expression “legal education provider” be amended by deleting the word “except” and replacing it with the word “including”.

**COMMITTEE’S RECOMMENDATION:-**

The Committee agreed with the recommendation to delete the word “except” and replacing it with the word “including”.

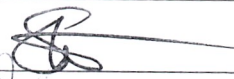
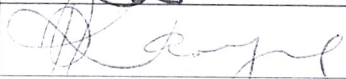

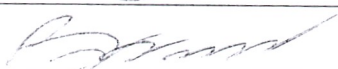
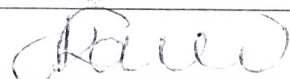










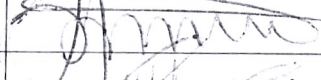

\*\*\*\*\*END\*\*\*\*\*

MEMBERS ATTENDANCE

DEPARTMENTAL COMMITTEE OF JUSTICE AND LEGAL AFFAIRS

11<sup>TH</sup> PARLIAMENT

DATE... 23<sup>rd</sup> October 2014 11<sup>th</sup> floor, Protection House

NO.	NAME	SIGNATURE
1.	Samuel K. Chibwe	
2.	Priscilla Nyirazi	
3.	Bonface O. Otsila	
4.	Renson Mutua	
5.	Hon Florence Kajuku	
	<del>William D.</del>	<del></del>
7.	Fatuma Ibrahim	
8.	Tosir K. Chibwe	
9.	Bishop R. Mutemi	
10.	John Njoro	
11.	John Oloo Amout	
12.	Pam K. Bii	
13.	Kamoti Mwanjale	
14.	T. J. Kagwang	
15.	John M. Waiganyo	
16.	Ngendo Jehana	
17.	Wambui Mwangi	
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A. M. Wasike

For: Clerk of the National Assembly

**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS MEETING HELD ON THURSDAY 16<sup>TH</sup> OCTOBER, 2014 IN MEMBERS' LOUNGE, PARLIAMENT BUILDINGS AT 10.00 A.M**

**PRESENT**

- |                                    |   |                         |
|------------------------------------|---|-------------------------|
| 1. Hon. Samuel Chepkong'a, MP      | - | <b>Chairperson</b>      |
| 2. Hon. Priscilla Nyokabi, MP      | - | <b>Vice Chairperson</b> |
| 3. Hon. Moses Cheboi, MP           |   |                         |
| 4. Hon. Paul Bii, MP               |   |                         |
| 5. Hon. Mutua Mutemi (Bishop ), MP |   |                         |
| 6. Hon. John Njoroge Chege, MP     |   |                         |
| 7. Hon. Benson Mutura, MP          |   |                         |
| 8. Hon. Charles Gimose, MP         |   |                         |
| 9. Hon. Muriithi Waiganjo, MP      |   |                         |
| 10. Hon. Kaluma Peter, MP          |   |                         |
| 11. Hon. Munuve Mati John, MP      |   |                         |
| 12. Hon. Johanna Ngeno, MP         |   |                         |
| 13. Hon. Florence Kajuju, MP       |   |                         |
| 14. Hon. Fatuma Ibrahim Ali, MP    |   |                         |
| 15. Hon. Neto Agostinho, MP        |   |                         |
| 16. Hon. Ndirangu Waihenya, MP     |   |                         |
| 17. Hon. Olago Aluoch, MP          |   |                         |
| 18. Hon. William Mwamkale, M.P     |   |                         |
| 19. Hon. Ben Momanyi Orori, MP     |   |                         |

**ABSENT WITH APOLOGIES**

20. Hon. Sammy Koech, MP
21. Hon. Boniface Otsiula, MP
22. Hon. Dr. Christine Ombaka, MP
23. Hon. Kangongo Bowen, MP
24. Hon. Kang'ata Irungu, M
25. Hon. Mohamed Abdi Haji, MP
26. Hon. William Cheptumo, MP
27. Hon. David Ouma Ochieng, MP
28. Hon. T.J. Kajwang', MP
29. Hon. Njoroge Baiya, MP

**IN ATTENDANCE**

- |                    |   |                     |
|--------------------|---|---------------------|
| Ms. Hellen Lokwang | - | Committee Clerk III |
| Ms. Mary Lemerelle | - | Committee Clerk III |
| Mr. Ahmed Abdalla  | - | Committee Clerk III |

Mr. Ronald Walala      Legal Counsel

**MIN.NO.JLA/2014      -      PRELIMINARIES**

The meeting started at 10.15 a.m. after a word of prayer by the Chairperson.

**MIN.NO.JLA/2014      -      FOREIGN VISITS**

The Chair briefed members on the available trips for the Committee as follows:-

- ✓ International Conference for Jurists (ICJ) in Cape Town from 15<sup>th</sup> to 23<sup>rd</sup> November, 2014.
- ✓ New Zealand trip- only awaiting confirmation of dates.
- ✓ Morocco (Rabat) trip in December from 4<sup>th</sup> to 5<sup>th</sup> December, 2014.

The Chair proposed that those members who have never travelled will be given a priority. The members included;

1. Hon. Florence Kajuju, M.P
2. Hon. Waihenya Ndirangu, M.P
3. Hon. Kagongo Bowen, M.P
4. Hon. Njoroge Baiya, M.P

The members suggested that criteria for selection of foreign visits to be based on party and gender balance and the Committee Clerks to help in numbering in this aspect. It was agreed that the proposal be given in the next meeting.

**MIN.NO.JLA/2014      -      PRESIDENT'S MEMORANDUM ON STATUTE LAW (MISCELLANOUS AMMENDMENTS) BILL 2014**

**1. Proposed amendments to the interpretation and General Provisions Act**

Members were of the view that the functions of the Ministry of Justice was given to the office of Attorney General hence the Attorney General serves the role; The members therefore noted that the office of the Attorney General is equivalent to that of the Cabinet Secretary and agreed to the proposed amendments.

**2. Proposed Amendments to the Anti-Corruption and Economic Crimes Act,2003**

The members disagreed with the proposed amendments on the view that it was inconsistent with the law.

**Further proposal to amend section 62 of the Anti-Corruption and Economic Crimes Act, 2003**

The members agreed to the recommendation to delete subsection 62(1A)

**3. Proposed Amendments to Ethics & Anti-Corruption Commission Act, 2011**

The members were of the view that the National Assembly has a role to play in the hiring of the Secretary to the Ethics & Anti-Corruption; hence it would be important too that National Assembly be given a role during the removal of the Secretary. The members therefore, disagreed to the proposed amendments.

**Further proposal to amend section 17**

The members were of the view that the National Assembly has to consider the petition for removal of the secretary in the interest of fairness and as a matter of oversight in such an important Commission; that the Secretary to the Commission be protected against any possible manipulation and interference in his work by the Commission.

**4. Proposed Amendment to the Legal Education Act, 2012**

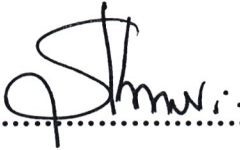
The members agreed and supported the President's Recommendations.

**MIN.NO.JLA/2014 - A.O.B**

The Chair pointed out that members will be notified and advised of the consequences and the draft report to be tabled on Tuesday.

**MIN.NO.JL A/2014 ADJOURNMENT**

The meeting was adjourned at 11.30 am.

Signed..........

**Chairperson**

Date.....*23<sup>rd</sup> October, 2014*.....



**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS MEETING HELD ON TUESDAY 21<sup>ST</sup> OCTOBER, 2014 IN THE BOARD ROOM, 11<sup>TH</sup> FLOOR, PROTECTION HOUSE AT 10.00 A.M.**

**PRESENT**

1. Hon. Samuel Chepkong'a, MP – **Chairperson**
2. Hon. Priscilla Nyokabi, MP – **Vice Chairperson**
3. Hon. Moses Cheboi, MP
4. Hon. Paul Bii, MP
5. Hon. Mutua Mutemi (Bishop) , MP
6. Hon. John Njoroge Chege, MP
7. Hon. Benson Mutura, MP
8. Hon. Charles Gimose, MP
9. Hon. William Cheptumo, MP
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12. Hon. David Ouma Ochieng, MP
13. Hon. Johanna Ngeno, MP
14. Hon. Florence Kajuju, MP
15. Hon. Fatuma Ibrahim Ali, MP
16. Hon. Boniface Otsiula, MP
17. Hon. Neto Agostinho, MP
18. Hon. T.J. Kajwang', MP
19. Hon. Kamoti Mwamkale, MP
20. Hon. Olago Aluoch, MP

**APOLOGIES**

21. Hon. Dr. Christine Ombaka, MP
22. Hon. Kaluma Peter, MP
23. Hon. Kang'ata Irungu, MP
24. Hon. Sammy Koech, MP
25. Hon. Njoroge Baiya, MP
26. Hon. Munuve Mati John, MP
27. Hon. Mohamed Abdi Haji, MP
28. Hon. Kangongo Bowen, MP
29. Hon. Ndirangu Waihenya, MP

## **IN ATTENDANCE**

Hellen Lokwang - Committee Clerk III  
Mary Luka Lemerelle - Committee Clerk III  
Ahmed Salim Abdalla - Committee Clerk III  
Ronald Walala - Legal Counsel

## **MIN.NO.JLA/2014 - PRELIMINARIES**

The meeting started at 11.00 a.m after a word of prayer by the Chairperson. For the benefit of the Members who were absent, the Chairperson briefed Members on what the Committee agreed in the previous meeting.

## **MIN.NO.JLA/2014 - REPORT ON THE PRESIDENT'S MEMORANDUM**

Members went through the Draft report on the President's Memorandum on the Statute Law (Amendment) Bill, 2014 and agreed to make some few changes to the draft report.

The changes agreed upon were as follows:

**(i) Proposed Amendments to the Anti-Corruption and Economic Crimes Act, 2003.**

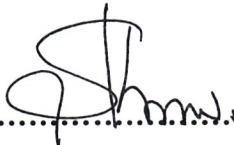
**The Committee agreed to that the proposed subsection (62) 1 be amended by deleting the words "with executive responsibility".**

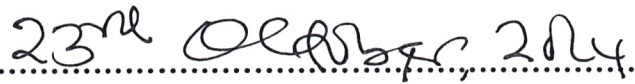
**(ii) Proposed Amendment to the Ethics and Anti-Corruption Commission Act, 2011.**

**The Committee disagreed with the recommendation given that the National Assembly has a role to play in the hiring of the Secretary to the EACC, it is important that the National Assembly plays a role too during the removal of the Secretary.**

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

There being no other business, the meeting was adjourned at 11.40 am. The next meeting was scheduled for Thursday, 23<sup>rd</sup> October 2014 at 10.00 a.m.

Signed..........  
Chairperson

Date..........

