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Impeachment
By the Chair, before the
Committee on Justice
and Legal Affairs
Hon. Samuel Njoroge
on Tuesday
6/10/2015

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON

**THE COURT OF APPEAL ORGANIZATION AND ADMINISTRATION
BILL, 2015**

Clerks Chambers,
National Assembly,
Parliament Buildings,
Nairobi

September, 2015

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**A REPORT OF THE DEPARTMENTAL COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS ON THE COURT OF APPEAL
ORGANIZATION AND ADMINISTRATION BILL, 2015**

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 Court of Appeal (Organization and Administration) Bill, 2015.

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 currently 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. First Reading of the Court of Appeal Organization and Administration Bill, 2015

The Court of Appeal Organization and Administration Bill, 2015 was read for the first time on 19th August, 2015 and immediately committed to the Departmental Committee on Justice and Legal Affairs for scrutiny pursuant to Standing Order 127 (1) which provides as follows:-

“A Bill having been read a First Time shall stand committed to the relevant Departmental Committee without question being put to it”

1.4. Public participation in 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”

Pursuant to this Standing Order, the Committee invited the public through the Daily Nation and Standard newspapers of 25th August, 2015 (See appendix 3) to make representations on the Bill by way of memoranda. There was however no response from the public.

1.5 Sittings of the Committee and adoption of report

The Committee discussed the Bill on 22nd September, 2015 at the Swahili Beach Hotel in Diani, Kwale County. The Committee considered and adopted its report on 6th October, 2015 at a sitting held in the Boardroom on 2nd floor, Continental House, Parliament Buildings. The adoption of the report was proposed by Hon. Boniface Otsiula and seconded by Hon. John Waiganjo. 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 success. 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

(i) Memorandum of objects and reasons of the Bill

The Bill is dated 5th August, 2015 and is sponsored by Hon. Aden Duale, the House Majority Party Leader.

Article 164 of the Constitution of Kenya establishes the Court of Appeal which shall consist of not fewer than twelve Judges or as may be prescribed by an Act of Parliament. This Article of the Constitution further provides that the Court of Appeal shall be organized and administered in the manner prescribed by an Act of Parliament.

The main objective and purpose of this proposed law is to make further provision for the organization and administrative matters to enable the effective and efficient functioning of the Court of Appeal. In order to enable efficient and effective delivery on the mandate of the Court, the Bill seeks to enable a consultative and democratic practice of decision making with regard to administrative and organizational matters of the Court.

The effect of the proposed law would also ensure that decisions affecting the Court are made by the Court through its President in consultation with other Judges of the Court and the Chief Justice, Specifically, the Bill proposes to:-

- (a) Provide framework for the facilitation of just, expeditious, proportionate and affordable resolution of appeals before the Court of Appeal;
- (b) Provide for the organization and administration of the Court pursuant to Article 164(1)(b) of the constitution;
- (c) Provide for the procedure for the election of the President of the Court pursuant to Article 164(2) of the Constitution; and
- (d) Provide generally for the conduct of the administration of the Court.

Part I of the Bill contains preliminary provisions, Part II provides for constitution and organization of the High Court, Part III provides for administration of the Court, Part IV provides for procedures of the Court and the application of alternative dispute resolution mechanisms, Part IV contains general provisions relating to case management, records of the court, performance management, inspections and monitoring, ethics and integrity, budget and funding of the Court.

3.0. PUBLIC PARTICIPATION IN THE CONSIDERATION OF THE BILL

Article 118 (1) (b) of the Constitution of Kenya states as follows:-

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”

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”

Pursuant to the foregoing, the Committee invited the public through the Daily Nation and Standard newspapers of 25th August, 2015 to make representations on the Bill. The newspaper advertisement is annexed hereto as appendix 3. There was however no response from the public.

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

The Committee during a retreat held on 23rd September, 2015 at Swahili Beach Hotel in Diani, Kwale County discussed the Bill and proposed the following amendments:

CLAUSE 7

THAT, clause 7 of the Bill be amended by deleting sub clause (1) and substituting therefore the following sub clause—

“(1) The President of the Court may, in consultation with the Chief Justice, organize the Court into such divisions as may be necessary for specialized and expeditious disposal of appeals before it.”

Rationale: To require President of the Court to consult with the Chief Justice before organizing the divisions of the Court.

CLAUSE 13

THAT, clause 13 of the Bill be amended in subclause (2)—

- (a) in the prefatory statement by inserting the words *“,in consultation with the Chief Justice,”* immediately after the word *“shall”*;
- (b) by deleting paragraph (b) and substituting therefor the following paragraph—

“(b) developing guidelines that ensure the expeditious disposal of cases;”.

Rationale: (i) To require the President of the Court to consult with the Chief Justice in carrying out his functions; and (ii) To require the President of the Court to develop guidelines on the expeditious disposal of appeals before the Court.

CLAUSE 15

THAT, clause 15 of the Bill be amended—

- (a) in subclause (1) by deleting the words “*not less than three quarters*” appearing immediately after the words “*at which*” and substitute therefore the words “*more than half*”;
- (b) in subclause (3) by inserting the words “*through the Registrar*” immediately after the word “*writing*”;
- (c) in subclause (4) by deleting the word “*half*” appearing immediately after the words “*at least*” and substituting therefor the words “*one third*”;
- (d) in subclause (5) by deleting the words “*forty-five days after receipt of the communication under subsection (3) respond to the accusations*” appearing immediately after the word “*within*” and substituting therefor the words “*fourteen days after receipt of the communication under subsection (3) respond, through the Registrar, to the accusations*”;
- (e) in subclause (6) by deleting the words “*in such a manner as to reach all the judges within the period set out in that subsection*” appearing immediately after the word “*communicated*” and substituting therefor the words “*by the Registrar to all judges within seven days*”;
- (f) in subclause (7) by deleting the word “*shall*” appearing immediately after the words “*Chief Justice*” and substituting therefor the word “*may*”.

Rationale: (i) To reduce the number of judges required to vote for the removal of the President of the Court from three quarters of all judges to more than half of the judges; (ii) To reduce the number of judges required to sign a notice for the removal of the President of the Court from half of all the judges to one third of the judges; (iii) to require that the Registrar receive and transmit the communications related to the removal process; and (iv) to reduce the time-periods stipulated for the service of the documents related to the removal process.

CLAUSE 19

THAT, clause 19 of the Bill be amended in subclause (3) by deleting the word “*but*” appearing immediately after the word “*shall*” and substituting therefor the word “*put*”;

Rationale: To correct an error of grammar.

CLAUSE 20

THAT, clause 20 of the Bill be amended in subclause (1) by deleting the words “*the Commission may determine*” appearing immediately after the words “*Court as*” and substituting therefor the words “*may be appointed under the Judicial Service Act, 2011*”.

Rationale: To subject the recruitment of Deputy Registrars of the Court to established procedures under the Judicial Service Act.

CLAUSE 22

THAT, clause 22 of the Bill be amended in subclause (1) by deleting the prefatory statement and substituting therefor the following statement—

“The Registrar shall perform such duties as the Chief Registrar or the President of the Court may direct, and in particular be responsible for—”

Rationale: To subject the functions of the Registrar to the Chief Registrar or the President of the Court.

CLAUSE 26

THAT, clause 26 of the Bill be amended in subclause (1)—

- (a) by deleting paragraph (a) and substituting therefor the following paragraph—

“(a) from the Thursday before Good Friday to the Wednesday after Easter Monday, inclusive;”

- (b) in paragraph (b) by deleting the word “*September*” and substituting therefor the word “*August*”;

(c) in paragraph (c) by deleting the expression “13th” and substituting therefor the expression “7th”.

Rationale: To reduce the number of days provided for the recess of the Court.

CLAUSE 27

THAT, clause 27 of the Bill be amended—

(a) in subclause (1) by deleting the words “*adopted by the Court*” appearing immediately after the word “*policy*” and substituting therefor the words “*determined by the Commission*”;

(b) by deleting subclause (2).

Rationale: To subject the Judges of the Court to a transfer policy developed by the Judicial Service Commission as the body charged with promoting the welfare of members of the Judiciary.

CLAUSE 28

THAT, clause 28 of the Bill be amended—

(a) in the prefatory statement by deleting the word “*under*” appearing immediately after the word “*prescribed*” and substituting therefor the words “*by written law.*”

(b) by deleting paragraphs (a), (b) and (c).

Rationale: To require the Court to employ the rules of practice and procedure prescribed under any Act of Parliament as the circumstances may require.

CLAUSE 29

THAT, clause 29 of the Bill be amended in subclause (1) by deleting the words “*initiate*” appearing immediately after the words “*judge shall*” and substituting therefor the word “*implement*”.

Rationale: To require that the Presiding Judge implement a case management system developed by the Chief Justice and the Commission.

judge of the Court, the Registrar of the Court, a Deputy Registrar or officer of the Court, or a witness, during a sitting or attendance in Court, or in going to or returning from the Court;

(b) interrupts or obstructs the proceedings of the Court; or

(c) without lawful excuse disobeys an order or direction of the Court in the course of the hearing of a proceeding,

commits an offence.

(3) In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court constitutes contempt of court.

(4) In the case of criminal proceedings, the publication, whether by words, spoken or written, by signs, visible representation, or otherwise, of any matters or the doing of any other act which—

(a) scandalizes or tends to scandalize, or lowers or tends to lower the judicial authority or dignity of the court

(b) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(c) interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice,

constitutes contempt of court.

(5) A police officer, with or without the assistance of any other person, may, by order of a judge of the Court, take into custody and detain a person who commits an offence under subsection (2) until the rising of the Court.

(6) The Court may sentence a person who commits an offence under subsection (1) to imprisonment for a period not exceeding six months, or a fine not exceeding five hundred thousand shillings, or both.

(7) A person may appeal against an order of the Court made by way of punishment for contempt of

court as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the Court.

(8) The Chief Justice may make Rules to regulate procedures relating to contempt of court''.

Rationale: (i) To provide a penalty for contempt of court (imprisonment to six months or a fine of Kshs. 500,000/-) and expand the definition of contempt of court.

CLAUSE 36

THAT clause 36 of the Bill be amended by deleting the words "*so far as it is appropriate to do so*" appearing immediately after the word "*Republic*".

Rationale: To remove the limitation on the requirement that the Court is to ensure reasonable access to its services in all parts of the country.

CLAUSE 37

THAT, clause 37 of the Bill be amended in subclause (1) by deleting the word "*person*" appearing immediately after the words "*or other*" and substituting therefor the words "*judicial officer*".

Rationale: To clarify that the protection from personal liability afforded by the clause only applies to judicial officers.

CLAUSE 38

THAT, clause 38 of the Bill be amended by inserting the following subclause immediately after subclause (1)—

“(1A) Without prejudice to the generality of subsection (1), such Rules may provide for the—

- (a) conduct of the election of the President of the Court;*
- (b) procedure of removal of the President of the Court;*
- (c) form of notification of the sittings of the Court;*
- (d) disposal of urgent and priority matters during Court recess;*

- (e) automation of Court records, case management, protection and sharing of Court information and the use of information communication technology;*
- (f) form, style, storage, maintenance and retrieval of Court records; and*
- (g) procedure relating to contempt of court.”*

Rationale: To prescribe the limits of the exercise by the Chief Justice of the powers to make delegated legislation as required by Article 94 (6) of the Constitution.

5.0. RECOMMENDATIONS

The Committee recommends that the House passes the Bill with the proposed amendments.

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APPENDIX 1

**MINUTES OF THE SIXTY THIRD SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 6TH OCTOBER, 2015 AT
10.00 A.M. IN THE BOARDROOM ON 2ND FLOOR, CONTINENTAL HOUSE,
PARLIAMENT BUILDINGS**

PRESENT:-

Hon. Samuel Chepkonga, M.P. - **Chairperson**
Hon. Benson Mutura, M.P.
Hon. Boniface Otsiula, M.P.
Hon. John M. Waiganjo, M.P.
Hon. Moses Cheboi, M.P.
Hon. Paul K. Bii, M.P.
Hon. (Bishop) Robert Mutemi, M.P.
Hon. Sammy Koech, M.P.
Hon. Tom J. Kajwang', M.P.
Hon. Johanna Ngeno, M.P.
Hon. James Bett, M.P.
Hon. Ben Momanyi, M.P.
Hon. David Ochieng, M.P.
Hon. Fatuma Ibrahim, M.P.
Hon. Florence Kajuju, M.P.
Hon. Kang'ata Irungu, M.P.
Hon. John Njoroge Chege, M.P.
Hon. John Olago Aluoch, M.P.

ABSENT:-

Hon. Priscilla Nyokabi, M.P. - **Vice Chairperson**
Hon. Charles Gimose, M.P.
Hon. Dr. Christine Ombaka, M.P.
Hon. Munuve Mati John, M.P.
Hon. Mohamed Abdi Haji, M.P.
Hon. Njoroge Baiya, M.P.
Hon. Peter Kaluma, M.P.
Hon. Ndirangu Waihenya, M.P.
Hon. Kamoti Mwamkale William, M.P.
Hon. William Cheptumo, M.P.
Hon. Neto Agostinho, M.P.

IN ATTENDANCE:-

SECRETARIAT

Mr. George Gazemba - Senior Clerk Assistant

Ahmed Salim - Clerk Assistant III
Ms. Mary L. Lemerelle - Clerk Assistant III

MIN No. 208/2015:-

PRELIMINARIES

The Chairperson called the meeting to order at five minutes past ten in the morning with a word of prayer from Hon. (Bishop) Robert Mutemi.

MIN No. 209/2015:-

CONSIDERATION AND ADOPTION OF REPORTS ON BILLS

(i) Consideration and adoption of report on the Court of Appeal Organization and Administration Bill, 2015

The Committee considered and adopted its report on the Court of Appeal Organization and Administration Bill, 2015. The adoption of the report was proposed by Hon. Boniface Otsiula and seconded by Hon. John Waiganjo. There was no dissenting voice to the adoption of the report.

(ii) Consideration and adoption of report on the High Court Organization and Administration Bill, 2015

The Committee considered and adopted its report on the High Court Organization and Administration Bill, 2015. The adoption of the report was proposed by Hon. John Waiganjo and seconded by Hon. Paul K. Bii. There was no dissenting voice to the adoption of the report.

(iii) Consideration and adoption of report on the Small Claims Court Bill, 2015

The Committee considered and adopted its report on the Small Claims Court Bill, 2015. The adoption of the report was proposed by Hon. Benson Mutura and seconded by Hon. Johanna Ng'eno. There was no dissenting voice to the adoption of the report.

(iv) Consideration and adoption of report on the Magistrates' Courts Bill, 2015

The Committee considered and adopted its report on the Magistrates' Courts Bill, 2015. The adoption of the report was proposed by Hon. Boniface Otsiula and seconded by Hon. Benson Mutura. There was no dissenting voice to the adoption of the report.

MIN No. 210/2015:-

PRE-PUBLICATION SCRUTINY OF THE INTERNATIONAL CRIMES (REPEAL) BILL, 2015

Hon. Boniface Otsiula, a member of the Committee made submissions supporting the publication of the Bill. He stated that the two Houses (National Assembly and Senate) had previously passed motions supporting Kenya's withdrawal from the International Criminal Court and that his Bill's purpose was to effect the two Houses' decisions.

The Committee was persuaded by his argument and recommended that the Legislative Proposal be published.

MIN No. 211/2015:-

ADJOURNMENT

There being no other business to transact, the chair adjourned the sitting and thirty minutes past eleven in the morning till Thursday, 8th October, 2015 at ten in the morning.

Signed.....
(Chairperson)

Date.....

APPENDIX 2



DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

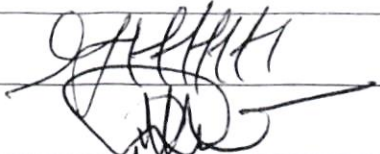
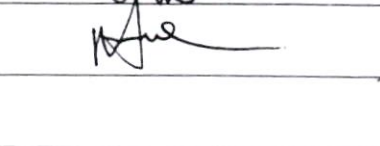
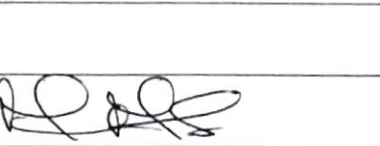
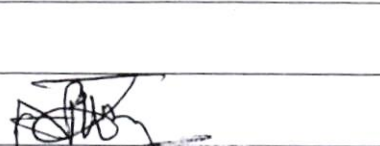
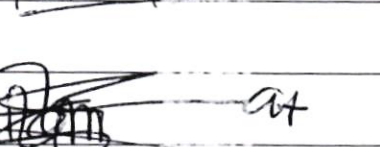


MEMBERS ATTENDANCE

Date: 06.10.2015

Venue: 2ND FLOOR BOARDROOM, CONTINENTAL HOUSE

Agenda: ADOPTION OF COURT BILL

	NAMES	SIGNATURE
1.	Hon. Samuel Chepkonga (Chairperson)	
2.	Hon. Priscila Nyokabi (Vice Chairperson)	
3.	Hon. Agostinho Neto	
4.	Hon. Ben Momanyi Orodia	
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	
15.	Hon. John Munuve	

16.	Hon. John M. Waiganjo	
17.	Hon. John Njoroge	
18.	Hon. John Olago Aluoch	
19.	Hon. Kamoti W. Mwamkale	
20.	Hon. Mohamed Abdi Haji	
21.	Hon. Moses Cheboi	
22.	Hon. Njoroge Baiya	
23.	Hon. Paul K.Bii	
24.	Hon. Peter Kaluma	
25.	Hon. Robert Mutemi (Bishop)	
26.	Hon. Sammy Koech	
27.	Hon. T.J. Kajwang	
28.	Hon. Waihenya Ndirangu	
29.	Hon. William Cheptumo	

George Gazemba

For: The Clerk of the National Assembly

APPENDIX 3