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*19/11/15*

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By Hon. Hussein  
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[Signature]*

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

**REPORT ON**

**THE GOVERNMENT PROCEEDINGS (AMENDMENT) BILL (SENATE  
BILL NO. 10 OF 2014)**

Clerks Chambers,  
National Assembly,  
Parliament Buildings,  
Nairobi

November, 2015

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**A REPORT OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE GOVERNMENT PROCEEDINGS (AMENDMENT) BILL (SENATE BILL NO. 10 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 Government Proceedings (Amendment) Bill (Senate Bill No. 10 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.

## **1.2 Origin of the Bill**

The Government Proceedings (Amendment) Bill (Senate Bill No. 10 of 2014) is dated 4<sup>th</sup> April, 2014 and originates from the Senate. The Bill was sponsored in the Senate by Sen. Mutula Kilonzo Junior and upon being passed on 2<sup>nd</sup> December, 2014 was referred to the National Assembly for further scrutiny in line with Article 110 of the Constitution of Kenya.

### **1.3 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 11<sup>th</sup> December 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”*

### **1.4 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 Sitings of the Committee and adoption of report**

The Committee considered the Bill on 9<sup>th</sup> June, 2015 in 4<sup>th</sup> Floor, Protection House, Parliament Buildings. The Committee considered and adopted its report on the Bill at the same venue. The adoption of the report was proposed by Hon. Tom J. Kajwang’ and seconded by Hon. Priscila Nyokabi. There was no dissenting voice to the adoption of the report. Minutes of the Committee’s sitting are annexed hereto.

### **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. Priscila Nyokabi, MP  
(Vice Chairperson)**

**Departmental Committee on Justice and Legal Affairs**

DATE.....19/11/2015.....

## **2.0. BACKGROUND**

The Bill proposes to amend section 21 of the Government Proceedings Act, Cap 40 which, in a nutshell, provides for the manner in which court orders against the Government to be satisfied, and in so doing, protects the interests of the Government.

The Bill concerns county governments in terms of Article 110(a) of the Constitution as it contains 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 Bill proposes to amend section 21 of the Government Proceedings Act, Cap 40. The Committee deemed necessary that protection accorded to the National Government with regard to the satisfaction of court orders should also be accorded to county governments.

## **5.0. RECOMMENDATION**

The Committee proposes the Bill be passed in its current form.

**Rationale:** The proposed amendment adequately accommodates and protects county governments in the process of executing court orders. The National



Government currently enjoys the protection of section 21 and it would be appropriate to extend such protection to county governments.

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**MINUTES OF THE THIRTY NINTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 9<sup>TH</sup> JUNE, 2015 AT 11.00 A.M. IN THE BOARDROOM ON 4<sup>TH</sup> FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS**

**PRESENT:-**

1. Hon. Priscilla Nyokabi, M.P. - **Vice Chairperson**
2. Hon. Paul K. Bii, M.P.
3. Hon. Charles Gimose, M.P.
4. Hon. Benson Mutura, M.P.
5. Hon. John M. Waiganjo, M.P.
6. Hon. Boniface Otsiula, M.P.
7. Hon. John Njoroge, M.P.
8. Hon. Kamoti Mwamkale William, M.P.
9. Hon. Ben Momanyi, M.P.
10. Hon. James Bett, M.P.
11. Hon. Tom John Kajwang' M.P.
12. Hon. Olago Aluoch, M.P.
13. Hon. Munuve Mati John, M.P.
14. Hon. Ndirangu Waihenya, M.P.
15. Hon. Peter Kaluma, M.P.
16. Hon. Moses Cheboi, M.P.
17. Hon. Njoroge Baiya, M.P.
18. Hon. Christine Ombaka, M.P.

**ABSENT:-**

19. Hon. Samuel Chepkong'a, M.P. - **Chairperson**
20. Hon. Kang'ata Irungu, M.P.
21. Hon. David Ochieng, M.P.
22. Hon. Sammy Koech, M.P.
23. Hon. Johanna Ngeno, M.P.
24. Hon. William Cheptumo, M.P.
25. Hon. Florence Kajuju, M.P.
26. Hon. Neto Agostinho, M.P.
27. Hon. Mutua Mutemi, M.P.
28. Hon. Mohamed Abdi, M.P.
29. Hon. Fatuma Ibrahim, M.P.

**IN ATTENDANCE:-**

Mr. Ahmed Salim - Clerk Assistant III  
Ms. Mary L. Lemerelle - Clerk Assistant III  
Ms. Ronald Walala - Legal Counsel II  
Ms. Clare Jerotich - Researcher Assistant II

**MIN No. 122/2015 :-** - **PRAYER**

The meeting was called to order at 11.15 a.m. Prayer was said by the Vice Chairperson.

**MIN No. 123/2015:-** - **CONSIDERATION OF LEGISLATIVE PROPOSALS**

Before the Committee were the Sexual Offences, Criminal Procedure, Penal Code (Amendment) and Constitution of Kenya (Amendment) Legislative Proposals. The meeting resolved to get views of the Attorney General, Kenya Law Reform Commission and Commission on Implementation of the Constitution before discussing the Proposals.

The Committee also tasked the Legal Counsel to draft for it an amendment on the Ethics and Anti-Corruption Commission Act to increase the number of Commissioners to five (5) who should serve on a part time basis.


**The Government Proceedings (Amendment) Bill, 2014 by Senator Mutula Kilonzo Junior**

The Bill proposes to amend section 21 of the Government Proceedings Act, Cap 40. The Committee deemed necessary that protection accorded to the National Government with regard to the satisfaction of court orders should also be accorded to county governments. The Committee proposed that the Bill be passed in its current form, and the report was adopted by the Committee after being proposed by Hon. Priscila Nyokabi and seconded by Hon. Tom J. Kajwang.

The Committee notes that the amendment on the same section by Hon Olago Aluoch on execution of court orders is still pending.

**MIN No. 124/2015:-** - **ADJOURNMENT**

There being no other business to transact, the meeting was adjourned at forty minutes past noon.

Signed.....  
(Vice Chairperson)  
Date.....19/11/2015.....