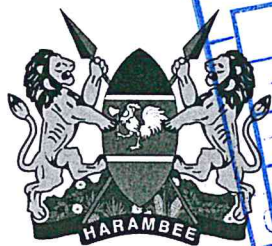


REPUBLIC OF KENYA



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~~Report~~
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 21/7/2020
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TWELFTH PARLIAMENT (FOURTH SESSION)

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

.....

REPORT ON CONSIDERATION OF THE PETITION BY JULIUS MASIVA
 OBUGA REGARDING AMENDMENT OF THE CONSTITUTION TO DELETE
 THE COCKEREL HOLDING AN AXE IN THE COAT OF ARMS AND THE
 PUBLIC SEAL

.....

Ken Speaker 1 bag to
 lay the reference paper on
 the table of the HSE today Thursday
 Thursday 21st July 20.

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

JULY, 2020

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PREFACE

Mr. Speaker,

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to Senate Standing Order 218 and 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 the following members: -

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

Mr. Speaker,

On Tuesday, 25th February, 2020, the Deputy Speaker reported to the Senate the petition by Julius Masiva Obuga, asking the Senate to initiate amendments to the Constitution to delete the cockerel holding an axe from the Coat of Arms and Public Seal. Pursuant to standing order 232(2) of the Senate Standing Orders, the petition was committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

The salient issue raised in the petition was that the late Tom Mboya was referred to as 'Jogoo', and that the cockerel and the axe were the late Tom Mboya's symbol during the first general elections held in the country. Consequently, the petitioner stated that the cockerel and axe on the Coat of Arms and the Public Seal represents *Mboyaism*, which had no relevance in Kenya's struggle for independence.

The petitioner, therefore, prayed that the Senate intervenes by introducing an amendment to the Constitution to delete the cockerel holding an axe, both in the Coat of Arms and the Public Seal.

Mr. Speaker,

The Committee proceeded to consider the Petition pursuant to the Standing Orders of the Senate. In this regard, the Committee invited and considered an advisory opinion from the Office of the Attorney General and Department of Justice, where the College of Arms, established under Section 3 of the College of Arms Act, is domiciled.

The main issue that the Committee had to address was whether the petitioner had established sufficient justification for grant of the prayers contained in the petition. The Committee was also tasked to consider the question of what threshold should be met for a petition to be admitted for consideration by the Senate.

Mr. Speaker,

Having extensively deliberated on the matter, the Committee arrived at the following findings. That -

- ✓ a) That, the Coat of Arms, and the Public Seal of the Republic of Kenya have been national symbols of the country since independence and are recognized both locally and internationally as symbols of the Republic. The Coat of Arms is identified as a national symbol that signifies the country's sovereignty, authority and ownership and is considered the highest visual symbol of the State.
- ✓ b) That, the moving rooster lifting an axe, as depicted in the Coat of Arms and the Public Seal, is a portrayal of authority, willingness to work, breaking of a new dawn, and our national success. It also represents the symbol of Kenya's first ruling party, KANU, which led our nation to independence.
- ✓ c) That, the petitioner did not provide adequate justification for the proposed amendment to the Constitution to delete the cockerel holding an axe from the Coat of Arms and the Public Seal.

d) Regarding the direction to consider the threshold for admission of public petitions for consideration by the Senate, the Committee noted that Article 119 of the Constitution grants to every Kenyan 'the right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.'

The Committee further noted that the Petition to Parliament (Procedure) Act (No. 22 of 2012) and the Senate Standing Orders ^{do} ~~to~~ not provide a summary procedure for disposing of petitions deemed to be without merit, and the same have to be considered by a Standing Committee so long as they meet the requirements set out in the said Act and the Senate Standing Orders.

Mr. Speaker,

Arising from its observations on the matter, the Committee recommends: -

- i) That, the Petition be dismissed on the ground that it lacks merit, and the petitioner did not provide adequate justification for the proposed amendment to the Constitution.
- ii) That, the Procedure and Rules Committee of the Senate considers the matter of the threshold for admission of public petitions to the Senate, with a view to amending the Standing Orders to establish different layers within which such petitions may be considered, while upholding the right of every person to petition Parliament, as set out under Article 119 of the Constitution.

Mr. Speaker,

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it during consideration of this Petition.

Further it wishes to thank the petitioner who submitted the petition, as well as the Office of the Attorney General for the advisory opinion rendered to the Committee during consideration of this petition.

Mr. Speaker,

It is now my pleasant duty, pursuant to Standing Order 232(2), to present the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on its consideration of a petition to amend the Constitution to delete the cockerel holding an axe from the Coat of Arms and the Public Seal.

Signed.....

Date, *21st July*.....

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

**ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON JUSTICE,
LEGAL AFFAIRS AND HUMAN RIGHTS ON ITS CONSIDERATION OF A
PETITION BY JULIUS MASIVA OBUGA REGARDING AMENDMENT OF THE
CONSTITUTION TO DELETE THE COCKEREL HOLDING AN AXE IN THE
COAT OF ARMS AND THE PUBLIC SEAL**

**We, the undersigned Members of the 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 Jilo Waqo, MP	-Vice-Chairperson	
Sen. Amos Wako, EGH, SC, FCI Arb, MP	-Member	
Sen. James Orengo, EGH, SC, MP	-Member	
Sen. Mohamed Yusuf Haji, EGH, MP	-Member	
Sen. Fatuma Dullo, CBS, MP	-Member	
Sen. Mutula Kilonzo Junior, MP	-Member	
Sen. Irungu Kang'ata, MP	-Member	
Sen. Johnson Sakaja, CBS, MP	-Member	

CHAPTER ONE

ESTABLISHMENT, MANDATE AND MEMBERSHIP OF THE COMMITTEE

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to Senate Standing Order 218 and 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 the following members: -

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- 7) Sen. Mutula Kilonzo Junior, MP - Member
- 8) Sen. Irungu Kang'ata, MP - Member
- 9) Sen. Johnson Sakaja, CBS, MP - Member

The Committee secretariat comprises: -

- a) Mr. Charles Munyua - First Clerk Assistant
- b) Ms. Sylvia Adera - Second Clerk Assistant
- c) Mr. Mitchell Otoro - Legal Counsel
- d) Ms. Lucianne Limo - Media Relations Officer
- e) Ms. Lucy Mwaniki - Serjeant-at-Arms

CHAPTER TWO

SUMMARY AND ANALYSIS OF THE PETITION

2.1 Background

The Coat of Arms and the Public Seal are identified as national symbols under Article 9(1)(c) and (d) of the Constitution, and their graphical representation set out in the Second Schedule to the Constitution. The two emblems constitute a variety of symbols and distinct colours, a central feature of which is a cockerel holding an axe.

Figure 1: Representation of the Coat of Arms



The two symbols have been the Coat of Arms and the Public Seal of the Republic of Kenya since independence and were retained in the new Constitution, promulgated in 2010.

2.2 Summary of the Petition

On Tuesday, 25th February, 2020, the Deputy Speaker reported to the Senate the petition by Julius Masiva Obuga on amendment of the Constitution to delete the cockerel holding an axe in the Coat of Arms and the Public Seal. Pursuant to standing order 232(2) of the Senate Standing Orders, the petition was committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration (*A copy of the Petition is attached to this Report as **Annex 1***).

The salient issues raised in the petition were that the national symbols of the Republic of Kenya as set out at Article 9 and the Second Schedule to the Constitution derive from Kenya's history and its long fight for independence.

The petitioner averred, regarding the flag of Kenya, that: -

- a) black colour represents African inhabitants in Kenya;
- b) red colour represents bloodshed which brought Independence;
- c) green colour represents agriculture which is the economic backbone of the nation;
- d) white colour represents milk;
- e) the two spears represent weapons used during the struggle for independence; and,
- f) the lion represents Kenya.

The petitioner further averred that the late Tom Mboya was referred to as 'Jogoo', and that the cockerel and the axe were the late Tom Mboya's symbol during the first general elections held in the country. Consequently, the petitioner stated that the cockerel and axe on the Coat of Arms and the Public Seal represents *Mboyaism*, which had no relevance in Kenya's struggle for independence.

The petitioner, therefore, prayed that the Senate intervenes by introducing an amendment to the Constitution to delete the cockerel holding an axe, both in the Coat of Arms and the Public Seal.

2.3 Plenary comments and directions on the Petition

Upon presentation of the Petition in plenary, the Deputy Speaker allowed Senators to make comments on the petition, pursuant to standing order 231.

The key contributions by Senators were as follows: -

- a) That, at independence, when the flag and national anthem were approved, each item on the flag, the colours and symbols represented something, and an explanation was given for it. Consequently, that the Senate should be very hesitant to alter any aspect of the national symbols as set out in the Constitution, as they comprised an integral part of our history as a nation.

- b) That, the standing orders of the Senate should be amended to provide a summary procedure for dismissing petitions found to be frivolous.

Consequently, the Deputy Speaker of the Senate directed that the Standing Committee on Justice, Legal Affairs and Human Rights, in considering the petition, to also consider the threshold for admission of petitions for consideration by the Senate. (*An extract of the Hansard for the sitting of the Senate held on Tuesday, 25th February, 2020 is attached to this Report as Annex 2*).

CHAPTER THREE

CONSIDERATION OF THE PETITION

The Committee considered the petition, as submitted by the petitioner, and further invited the Attorney General to make written submissions on the subject matter.

3.1 Advisory from the Attorney General

The Attorney General submitted an advisory to the Committee vide a letter dated 5th May, 2020, in which he stated as follows: -

a) Symbolism of the Kenya Coat of Arms.

Under Article 9(1) of the Constitution, the Coat of Arms is identified as a national symbol that signifies the country's sovereignty, authority and ownership and is considered the highest visual symbol of the State. As a national emblem, it constitutes a variety of symbols and distinct colours and has developed to be a central tool of power, governance and is a symbol of national unity. Its meaning stretches beyond expression of unity to encompass our national status and pride. Further it communicates about the Kenyan history, freedom, and persistent fight for success.

The shield bears a moving rooster lifting an axe. The rooster is a portrayal of authority, willingness to work, breaking of a new dawn, and our national success. It also represents the symbol of Kenya's first ruling party, KANU, which led our nation to independence.

According to African tradition, the rooster is the only domestic fowl that announces the dawn of a new day. As the rooster crows, all awake and head for work. The rooster is also one of the animals that seldom moves backward. The rooster holding an axe while moving forward portrays authority, the will to work, success and the break of a new dawn.

b) Legal and Constitutional Interpretation

The Attorney General noted that the petition raised constitutional issues under Article 256 and 257 of the Constitution, which provide the procedure for amendment of the Constitution. This was because deleting the cockerel holding an axe from the Coat of Arms and the Public Seal would require an amendment to the Constitution, specifically the Second Schedule.

Additionally, the petition, if allowed, would have serious financial ramifications to the country and tax payers as it would require an amendment to the Constitution and a review of all the places/things where the Coat of Arms is displayed, including on the currency and all government offices. Further the Coat of Arms is recognized internationally as a national symbol of Kenya.

c) Attorney General's recommendation on the petition

Considering the foregoing, the Attorney General proposed that the petition be dismissed for lack of merit, given that: -

- i) the Coat of Arms, with all its symbols, has been in the public domain since independence and plays a part in the history of this country;
- ii) the petitioner did not provide adequate justification for the proposed amendment;
- iii) the petitioner's prayers, if granted, would occasion a huge expenditure which would be borne by taxpayers;
- iv) the petitioner had not followed the procedure set out in the Constitution for amendment of the Constitution; and
- v) that allowing the petition would result in an influx of similar petitions as every Kenyan accorded an opportunity can interpret nationally recognized and accepted symbols differently.

*Copies of the letter to the Attorney General, dated 30th March, 2020, and the Attorney General's response thereon, dated 5th May, 2020, are attached to this Report as **Annexes 3A and 3B**.*

3.2 Consideration of the Petition by the Committee

a) Definition of Coat of Arms and Blazon¹

Coat of Arms is the official shield or seal having an arrangement of bearings, or symbols usually depicted on and around a shield in a special language described as heraldry which uses symbolic short hand. It is a more sophisticated symbol of identity that is used mainly by Central and Local Governments, Unions, distinguished families, Educational, Civic and Ecclesiastical institutions. It constitutes the highest statement in graphic form of an Organization's mission and aspirations and is displayed prominently in the Organization's premises, correspondence, certificates, uniforms, etc.

A **blazon** is the formal defining description of a Coat of Arms in Heraldic language. To emblazon is to decorate something or to depict an armorial bearing in graphic form.

b) History of the Coat of Arms and Public Seal of Kenya

In 1895, Kenya became a protectorate of Great Britain, and the first flag of the nation was adopted, made up of a British blue ensign with red lion. When the country became a British Colony in 1920 the flag remained the same.

Figure 2: The Flag of the East African Protectorate and the Colony of Kenya (1895 – 1920) (1920 – 1963)



¹ Office of the Attorney General and Department of Justice (www.statelaw.go.ke)

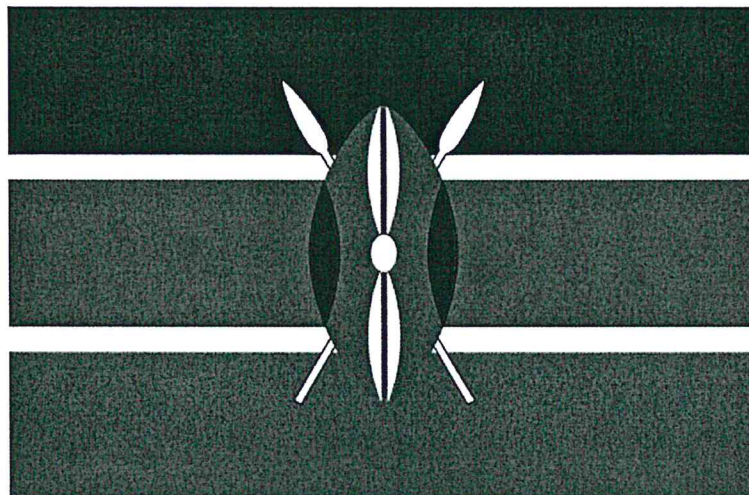
When Kenya became independent in 1963, a new flag was designed and adopted. The flag is a black, red, green, and white-bordered horizontal tricolor. The red colour represents for the fight for independence; the black represents the people, the green for the landscape and the white for peace. The Maasai shield and spears represent defence.

The independence flag of Kenya was modelled along the flag of the Kenya African National Union (KANU), with the omission of the cockerel which is found in the flag of KANU but was not included in the flag. The cockerel was however included in the Coat of Arms and the Public Seal.

Figure 3: The Symbol of the Kenya African National Union (1944 to date)



Figure 4: The Flag of Kenya (1963 to date)



The Coat of Arms of Kenya was adopted in 1963 and has two lions holding spears with a traditional Maasai shield to serve as supporters. The shield and spears symbolize unity and defense of freedom. The shield has the four national colours. These are black for the people of Kenya; green for the agriculture and natural resources; red for the struggle for freedom and white for unity and peace.

On the shield is a rooster holding an axe while moving forward, portraying authority, the will to work, success, and the break of a new dawn. It is also the symbol of Kenya African National Union (KANU), the political party that led the country to independence. The shield and lions stand on a silhouette of Mount Kenya with the foreground featuring key agricultural produce, coffee, pyrethrum, sisal, tea, maize, and pineapples. The coat of arms is supported by a scroll upon which is written the word 'HARAMBEE' a Kiswahili word, meaning let us come together.²

c) Constitutional and statutory provisions

The Coat of Arms of the Republic of Kenya has remained unchanged since independence and was retained during promulgation of the new Constitution in the year 2010. In the 1963 Constitution, the Public Seal was provided for at section 2 which stated that '*The Public Seal of Kenya shall be such device as may be prescribed by or under an Act of Parliament.*'

The National Flag, Emblems and Names Act (Cap 99 Laws of Kenya) sets out at section 2 thereon, the design and description of the national flag, the description of the Coat of Arms (the Armorial Ensigns), the design of the Public Seal, and the words and music of the National Anthem of Kenya.

Part II of the Second Schedule to the said Act details the representation of the Coat of Arms as follows: -

BLAZON:

Arms.—Per fess sable and vert, on a fess gules fimbriated argent a cock grasping in the dexter claw an axe also argent.

Supporters.—On either side a lion or, grasping in the interior forepaw a spear of estate, the hafts of the spears crossed in saltire behind the shield.

The whole upon a compartment representing Mount Kenya proper.

Motto.—Harambee.

DESCRIPTION:

The shield contains the colours of the National Flag, the middle red strip bearing a cockerel holding an axe; the supporters of the shield are two lions

² Office of the Attorney General and Department of Justice (www.statelaw.go.ke)

resting on a background silhouett of Mount Kenya containing in the foreground examples of Kenya agricultural produce—coffee, pyrethrum, sisal, tea, maize and pineapples; the scroll containing the motto—Harambee—supports the coat of arms.

The design of the Public Seal of Kenya is set out at Part III of the Second Schedule to the said Act.

While the representation, words and designs of the national symbols were not included in the 1963 Constitution, and were instead set out in the National Flag, Emblems and Names Act (Cap 99 Laws of Kenya), these were included in the Constitution of Kenya 2010, where they are provided for at Article 9 and set out in the Second Schedule.

Article 9(1) and (2) provides as follows: -

9. National symbols and national days

(1) The national symbols of the Republic are—

- (a) the national flag;*
- (b) the national anthem;*
- (c) the coat of arms; and*
- (d) the public seal.*

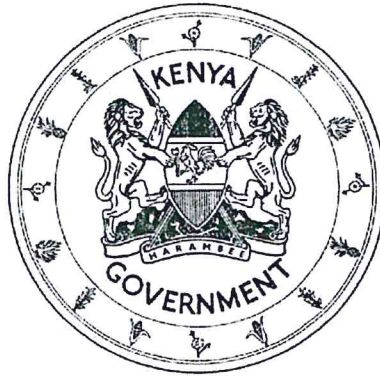
(2) The national symbols are as set out in the Second Schedule.

The Second Schedule to the Constitution sets out the representation of the Coat of Arms and the Public Seal, at parts (c) and (d) thereof, as follows: -

Figure 5: The Coat of Arms



Figure 6: The Public Seal



Other than the move to include the national symbols and their designs in the Constitution, the Committee noted that, during the process to review the Constitution, no further changes were proposed or effected to the Coat of Arms and the Public Seal.

In the Report of the Constitution of Kenya Review Commission (2005), which contained a summary of the views received from the public, the only reference to the Coat of Arms is found at page 97, where it is noted that Kenyans preferred that *'national celebrations, symbols, designs etc, have Kenyan Values...including national days, national currency, Coat of Arms etc.'*³

d) Previous petition to amend the Coat of Arms and the Public Seal

The Committee recalled that, during the Second Session of the Twelfth Parliament, the Senate Standing Committee on Justice, Legal Affairs and Human Rights considered a petition by Mr. Isaac Aluoch Polo Aluochier, seeking to amend the Constitution by deleting the word *'Harambee'* appearing in both the Coat of Arms and the Public Seal. This was on the basis that the word *'Harambee'* referred to a Hindu goddess, and thus offended the Constitutional provisions on separation of state and religion.

The Committee considered the matter and found that the word *'Harambee'*, in its ordinary usage, referred to a 'a call to encourage people to come together to push or pull something heavy or a call to urge citizens to cooperate and contribute towards their development.' Consequently, the Committee found that the petition did not have merit.

³ CKRC (2005), The Final Report of the Constitution of Kenya Review Commission

CHAPTER FOUR

COMMITTEE FINDINGS AND RECOMMENDATIONS

4.1 Committee Findings

Having considered the Petition and engaged with stakeholders on the matter, the Committee makes the following findings: -

- e) That, the Coat of Arms, and the Public Seal of the Republic of Kenya have been national symbols of the country since independence and are recognized both locally and internationally as symbols of the Republic. The Coat of Arms is identified as a national symbol that signifies the country's sovereignty, authority and ownership and is considered the highest visual symbol of the State.
- f) That, the moving rooster lifting an axe, as depicted in the Coat of Arms and the Public Seal, is a portrayal of authority, willingness to work, breaking of a new dawn, and our national success. It also represents the symbol of Kenya's first ruling party, KANU, which led our nation to independence.
- g) That, the petitioner did not provide adequate justification for the proposed amendment to the Constitution to delete the cockerel holding an axe from the Coat of Arms and the Public Seal.
- h) Regarding the direction to consider the threshold for admission of public petitions for consideration by the Senate, the Committee noted that Article 119 of the Constitution grants to every Kenyan 'the right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.'

The Committee further noted that the Petition to Parliament (Procedure) Act (No. 22 of 2012) and the Senate Standing Orders do not provide a summary procedure for disposing of petitions deemed to be without merit, and the same have to be considered by a Standing Committee so long as they meet the requirements set out in the said Act and the Senate Standing Orders.

4.2 Committee Recommendations

Arising from its observations on the matter, the Committee recommends: -

- i) That, the Petition be dismissed on the ground that it lacks merit, and the petitioner did not provide adequate justification for the proposed amendment to the Constitution.

- ii) That, the Procedure and Rules Committee of the Senate considers the matter of the threshold for admission of public petitions to the Senate, with a view to amending the Standing Orders to establish different layers within which such petitions may be considered, while upholding the right of every person to petition Parliament, as set out under Article 119 of the Constitution.

LIST OF ANNEXES

- Annex 1:** Copy of the Petition by Julius Masiva Obuga on amendment of the Constitution to delete the cockerel holding an axe in the Coat of Arms and the Public Seal.
- Annex 2:** Extract of the Hansard for the sitting of the Senate held on Tuesday, 25th February, 2020.
- Annex 3A:** Copy of the letter to the Attorney General, dated 30th March, 2020.
- Annex 3B:** Copy of the Advisory from the Office of the Attorney General, dated 5th May, 2020.
- Annex 4:** Minutes of the 17th Sitting of the Committee.

