

Approved for tabling. *Ben SNA 22/3/18*



*Hon. speaker,  
pls approve for  
Tabling. Pjooqos  
22/3/18*



*PAPER LAID BY  
THE LEADER OF  
THE MAJORITY  
PARTY HON. ADEN  
DUALE, EKIT, MP  
ON 22/3/2018  
18m*

**PARLIAMENT OF KENYA**

**THE NATIONAL ASSEMBLY**

**TWELFTH PARLIAMENT – SECOND SESSION**

**DEPARTMENTAL COMMITTEE ON JUSTICE AND  
LEGAL AFFAIRS**

**REPORT ON:**

**THE CONSIDERATION OF THE PUBLIC TRUSTEE  
(AMENDMENT) BILL, 2017**

**Directorate of Committee Services,  
National Assembly,  
Parliament Buildings,  
NAIROBI.**

**March, 2018**

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## CHAIRPERSON'S FOREWORD

The Public Trustees (Amendment) Bill, 2017 underwent First Reading on the 28<sup>th</sup> of September, 2017. The Bill was initially committed to the Departmental Committee on Finance and National Planning for review. It however emerged that the subject of the Bill was on justice and legal affairs culminating in its being committed to the Departmental Committee on Justice and Legal Affairs.

The Committee through local newspapers of *Daily Nation* and *The Standard* of 16<sup>th</sup> February, 2018 invited the public to make representations on the Bill. There was however no response from the public. Nonetheless, the Committee directly contacted the Law Society of Kenya, a key stakeholder in the Bill which submitted memoranda. The memorandum was taken into account by the Committee while considering the Bill.

The Committee held four (4) sittings within the precincts of Parliament to consider the Bill. The sittings were held between 1<sup>st</sup> March and 20<sup>th</sup> March, 2018. The Public Trustee appeared before the Committee on 1<sup>st</sup> March, 2018. The Committee considered and unanimously adopted its report on 20<sup>th</sup> March, 2018.

May I take this opportunity to-

- (i) Commend Committee Members for their devotion and commitment to duty in the discharge of their duties;
- (ii) Express gratitude to the Offices of the Speaker and Clerk of the National Assembly for providing leadership and guidance;
- (iii) Appreciate the Committee secretariat for providing technical and logistical support.

Indeed, their roles were critical to the Committee in the consideration of the Bill.

On behalf of the Committee and pursuant to the provisions of Standing Order 199 (6) of the National Assembly Standing Orders, it's my pleasant privilege to present to the House the Committee's report on the Public Trustees (Amendment) Bill, 2017.

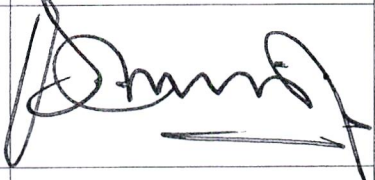





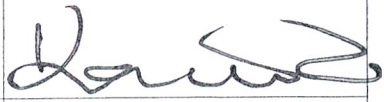


Signed..........this.....day of 20.03.....2018

**HON WILLIAM CHEPTUMO, M.P.**

**Chairperson, Departmental Committee on Justice and Legal  
Affairs**

**ADOPTION OF THE REPORT OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE PUBLIC TRUSTEES (AMENDMENT) BILL, 2017**

We the Honourable Members of the Departmental Committee on Justice and Legal Affairs today the 20<sup>th</sup> day of March, 2018 do hereby affix our signatures to this report on the Public Trustees (Amendment) Bill, 2017 to affirm our approval, support, accuracy, credibility and authenticity.

No.	NAME OF MEMBER	SIGNATURE
1.	Hon. William Cheptumo, M.P. – <i>Chairperson</i>	
2.	Hon. Alice Muthoni Wahome, M.P. – <i>Vice Chairperson</i>	
3.	Hon. John Olago Aluoch, M.P.	
4.	Hon. Roselinda Soipan Tuya, M.P.	
5.	Hon. Charles Gimose, M.P.	
6.	Hon. Johana Ng'eno Kipyegon, M.P.	
7.	Hon. William Kamoti Mwamkale, M.P.	
8.	Hon. Ben Orori Momanyi, M.P.	
9.	Hon. Peter Opondo Kaluma, M.P.	

10.	Hon. Beatrice Adagala, M.P.	<i>Adagala</i>
11.	Hon. Jennifer Shamalla, M.P.	<i>Shamalla</i>
12.	Hon. Gladys Boss Shollei, CBS, M.P.	—
13.	Hon. John Munene Wambugu, M.P.	<del><i>Wambugu</i></del>
14.	Hon. George Gitonga Murugara, M.P.	<i>Gitonga</i>
15.	Hon. Anthony Githiaka Kiai, M.P.	<i>KIAI</i>
16.	Hon. Japheth Mutai, M.P.	<del><i>Mutai</i></del>
17.	Hon. John Kiarie Waweru, M.P.	—
18.	Hon. Adan Haji Yussuf, M.P.	<del><i>Yussuf</i></del>
19.	Hon. Zuleikha Hassan, M.P.	—

## PART 1

### 1. PREFACE

#### 1.1. Mandate of the Committee

The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows:-

- (a) 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) study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
- (c) study and review all legislation referred to it;*
- (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- (e) investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)*
- (g) examine treaties, agreements and conventions;*
- (h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- (i) consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and*
- (j) examine any questions raised by Members on a matter within its mandate.*



The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-

- (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.

### **1.2. Committee Membership**

The Committee was constituted on Thursday, 14<sup>th</sup> December, 2017 and comprises the following Honourable Members-

Hon. William Cheptumo, M.P.	–	<b><i>Chairperson</i></b>
Hon. Alice Muthoni Wahome, M.P.	–	<b><i>Vice Chairperson</i></b>
Hon. John Olago Aluoch, M.P.		
Hon. Roselinda Soipan Tuya, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Johana Ng’eno, M.P.		
Hon. William Kamoti Mwamkale, M.P.		
Hon. Ben Orori Momanyi, M.P.		
Hon. Peter Opondo Kaluma, M.P.		
Hon. Jennifer Shamalla, M.P.		
Hon. Beatrice Adagala, M.P.		
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Hon. John Munene Wambugu, M.P.		
Hon. George Gitonga Murugara, M.P.		
Hon. Anthony Githiaka Kiai, M.P.		
Hon. John Kiarie Waweru, M.P.		
Hon. Japheth Mutai, M.P.		
Hon. Adan Haji Yussuf, M.P.		
Hon. Zuleikha Hassan, M.P.		

### **1.3. Committee Secretariat**

Mr. George Gazemba	-	Senior Clerk Assistant and Head of Secretariat
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Doreen Karani	-	Legal Counsel II
Ms. Halima Hussein	-	Clerk Assistant III
Ms. Fiona Musili	-	Research Officer III

Mr. Omar Abdirahim	-	Fiscal Analyst III
Mr. James Macharia	-	Media Liaison Officer
Ms. Roselyne Ndegi	-	Serjeant-at-Arms
Mr. Richard Sang'	-	Serjeant-at-Arms
Mr. Ian Otieno	-	Audio Officer

All minutes of sittings of the Committee on consideration of the Bill are annexed to this report as annexure 1.

## **PART 2**

### **2. INTRODUCTION AND BACKGROUND**

#### **2.1. Memorandum of objects and reasons of the Bill**

The main object of the Bill is to amend the Public Trustee Act to align it with the Constitution of Kenya, enhance good governance, expand the scope of functions of the Public Trustee and reduce the time taken to administer estates of deceased persons.

Clause 1 of the Bill sets out the title of the proposed Act while Clause 2 proposed to amend the definitions section of the Principal Act. Clause 3 proposes to amend the principal Act by inserting a new Section 2A to introduce the objects of the Act.

Clause 4 repeals Section 3 of the principal Act, while Clause 5 proposes to amend Section 5 of the principal Act by substituting the word Minister with the words Attorney-General. Clause 6 proposes to amend the principal Act by inserting the following new sections-

- (a) Section 5A to provide for appointment of Public Trustee;
- (b) Section 5B describing the Office of the Public Trustee
- (c) Section 5C to provide for appointment of Public Trustee as trustee for property of missing persons;
- (d) Section 5D to provide for appointment of Public Trustee as public guardian;
- (e) Section 5E to provide for the establishment of the Investment Board;
- (f) Section 5F to provide for the functions of the Board; and
- (g) Section 5G to provided for the administration of payments of compensation under the Work Injury Benefits Act, Civil Servants Group Accident Insurance Scheme and any other payment arising from compensation as a result of an accident

Clause 7 proposes to amend the principal Act by inserting a new section to provide for the procedure of making a report on death to the Public Trustee while Clause 8 proposes to amend the principal Act to insert a new section which dispenses with requirement for consents for various categories of persons.

Clause 9 proposes to amend section 8 of the principal Act to enhance jurisdiction of the Public Trustee for summary administration from Kenya shillings five hundred thousand to Kenya shillings three million and outlining procedures for summary administration. Clause 10 proposes to amend section 11 of the principal Act to enhance the capacity of the Public Trustee to decide disputes in relation to summary administration of matters.

Clause 11 proposes to amend section 12 to reduce time taken for advertisement for claims from two to one month and dispensing with the requirement for advertisement of matters proceeding to court. It also provides for the keeping of funds in Unclaimed Assets Account where the Public Trustee is unable to distribute the funds or to conclude the administration of any trust. It further provides for reduction of time taken before forwarding unclaimed assets funds to the Consolidated Fund under the doctrine of escheat from twelve to seven years.

Clause 12 seeks to amend section 16 of the principal Act to enhance fees charged on the value of assets of the deceased's estate situated abroad and increases the amount the Public Trustee can hold in a minor's trust estate from Kenya shillings twenty thousand to Kenya shillings two hundred thousand.

Clause 14 intends to amend section 17 of the principal Act by extending the scope of the functions and duties of the Public Trustee and also precludes the Public Trustee from acting as a joint trustee. Clause 15 seeks to amend section 21 of the principal Act by redefining the description of persons of unsound minds and lunatics.

Clause 16 seeks to amend section 25 of the principal Act to empower the Public Trustee to compel production of documents. Clause 17 seeks to amend the principal Act by inserting a new section 28 which precludes the application of the Unclaimed Financial Assets Act from applying to the Public Trustee; and a new section 29 empowering the Public Trustee to apply Alternative Dispute Resolution mechanisms.

The Bill does not delegate legislative powers neither does it limit fundamental rights and freedoms. The Bill does not concern counties and is a money bill in the context of Article 114 of the Constitution.

### **PART 3**

#### **3. PUBLIC PARTICIPATION IN THE CONSIDERATION OF THE BILL**

Article 118 (1) (b) of the Constitution provides 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”*

The Committee through local newspapers of *Daily Nation* and *The Standard* of 16<sup>th</sup> February, 2018 invited the public to make representations on the Bill by way of submission of memoranda as per annexure 2. There was no response from the public. The Committee however directly contacted the Law Society of Kenya, a key stakeholder in the Bill which submitted memoranda. The memorandum which is on this report as annexure 3 was taken into account in the consideration of the Bill.

## PART 4

### 4. CONSIDERATION OF THE BILL BY THE COMMITTEE AND COMMITTEE STAGE PROPOSED AMENDMENTS

The Committee at its sittings of 1<sup>st</sup> March, 2018, 13<sup>th</sup> March and 19<sup>th</sup> March, 2018 considered the Bill clause by clause and settled on the following amendments to be moved during Committee Stage-

#### CLAUSE 2

**THAT** clause 2 of the Bill be amended—

(a) by deleting paragraph (a);

**Justification:** the amendment proposed in the Bill would result in subjecting all matters that the Public Trustee deals with to the High Court only. Notably, the Law of Succession Act, Cap 160, vests jurisdiction to both Magistrates' Courts and High Court to hear and determine matters of succession depending on the value of the estate. Indeed, Section 7 of the Magistrates Court Act that specifies civil jurisdiction of Magistrates' Courts was amended in 2015 to increase the pecuniary limit of the various Magistrates' Courts. Section 7 further vests with the Magistrates' Courts the jurisdiction to determine intestate succession and administration of intestate estates not governed by written law with respect to matters falling under African Customary Law. In observation therefore, the Judiciary is best suited to determine pecuniary jurisdiction of its own various courts after considering factors such as capacity of judicial officers, number of courts etc. It is therefore proposed that this amendment in the Bill be deleted as it would be in conflict with the Magistrates Courts Act under section 7 as highlighted.

(b) in paragraph (b) by—

(i) deleting the proposed definition of the term "Principal Secretary"

**Justification:** the proposed definition of the term "Principal Secretary" is unnecessary as the term is neither used in the context of the Act nor in the proposed amendments in the Bill.

(ii) inserting the following new definitions in proper alphabetical sequence—

No 25 of “enemy” has the meaning assigned to it under the Kenya  
2012. Defence Forces Act;

“missing person” means a person whose whereabouts are unknown despite reasonable efforts to locate the person and-

- (a) who is no longer in communication or contact with those persons who the missing person would likely or ordinarily be in communication or contact with; or
- (b) whose safety and welfare are feared for given the person’s physical or mental capabilities or the circumstances surrounding the individual’s absence; and
- (c) who had not made provision for the administration of his or her property.

“Public Guardian” means the Public Trustee acting as trustee for a person who has impaired capacity and has no one willing or able to act on behalf of the person;

**Justification: the new definitions are necessary as the above terms are used unique manner in the context of the law and it is important to define the terms so as to avoid ambiguity or misinterpretation by users of the law.**

## **CLAUSE 6**

**THAT** the Bill be amended in clause 6 —

- (a) by deleting the proposed new section 5B and substituting therefor the following new section 5B—

Office of the Public Trustee to be a body corporate. **5B.** There is established an office of the Public Trustee which-

- (a) shall be a body corporate with perpetual succession and a common seal;
- (b) may acquire, hold and dispose of property; and
- (c) is capable of suing and being sued in its corporate name.

**Justification: the bill proposes to move the provision relating to the office of Public Trustee as a body corporate from section 25 of the Public Trustees Act to the Preliminary provisions in the Act in**

order to create sequence and flow. This amendment by the Committee is an redrafted version of that amendment in order to make proper reference to the office of the Public Trustee (which is the body corporate) and distinguish it from the office bearer(a natural person).

(b)in the proposed new section 5C by—

- (i) inserting the words “for at least one hundred and eighty days” immediately after the words “person is missing” in the prefatory statement in subsection (1); and

**Justification:** the bill proposes that the Public Trustee may be appointed as trustee of the property of missing persons. Section 118A of the Evidence Act provides for a rebuttable presumption of death where a person has been missing for a period of seven years. In that case, personal representatives (executors and administrators) will be granted authority by the court to deal with the property of the deceased. However, there exists a lacuna as to the manner of dealing with the property of a missing person before the expiry of the seven years. This is because there exists a gap in law and no guardian or trustee can be appointed to deal with the missing person’s property or finances. For this reason, it becomes detrimental for the loved ones and dependants of a missing person who may be financially constrained and unable to access the property of a missing person who was the breadwinner.

The amendment in the Bill seeks to address this gap by enabling the Public Trustee to be appointed by the Court as trustee of the property of the missing person so that the property of the missing person can be accessed in order to cover urgent and immediate needs of the dependants. However, it is necessary to provide for a timeframe within which efforts should have been made to trace the person before that person is declared missing and a trustee appointed. It is proposed through this amendment that six months would be a reasonable period and this is benchmarked with jurisdictions such as Uganda that provides for six months. Notably, UK which provides for a period of ninety days under the Guardianship (Missing Persons) Act, 2017. In our case therefore, is the amendment is approved, the Public Trustee may apply to the Court for orders that a person who has been missing for at least six months be declared a missing person and for appointment as a trustee of the missing person’s property.



**The Committee notes that there is need to enact comprehensive legislation to respond to the gap highlighted above and allow for guardians to be appointed to administer the property of a missing person.**

- (ii) inserting the following new subsections immediately after subsection (5) —

“(5A) Where a court is seized of an application under this section, the court may only grant an order or consent to the sale, charge, transfer, exchange or disposal of any property if the total value does not exceed two hundred and fifty thousand shillings or ten percent of the gross value of the estate of the missing person whichever is lower.”

**Justification: this proviso is necessary in order to preserve property over two hundred and fifty thousand shillings or ten percent of the gross value of the estate as a measure to safeguard the missing person’s interests (if he/she is found).**

- (c) in the proposed new section 5E —

- (i) in subsection (2) by deleting paragraphs (b) and (c) and substituting therefor the following new paragraphs—

“(b) the person for the time being in charge of public investment and portfolio management at the ministry responsible for matters relating to finance or a designated representative;

- (d) one advocate having at least ten years’ experience nominated by the Law Society of Kenya;

- (e) three persons with knowledge and at least fifteen years’ experience in matters relating to finance, economics and investments—

(i) one of whom shall be of opposite gender from the other two ; and

(ii) not being public officers.

(iii) not being full time employees or directors of a public company;”

**Justification: there is need to have board members with knowledge and extensive experience in law, finance, investments and economics who will discharge the functions of the board more effectively.**

(ii) in subsection (2) by renumbering paragraph (d) as (e)

(iii) inserting a new subsection immediately after subsection (2)—

2A. The members of the Board under subsection 2 (c) and (d) shall be appointed by the Attorney-General.

**Justification: the proposed amendments make no reference to the appointing authority. It is proposed that the Attorney-General be the appointing authority as he bears general responsibility and oversight over of the affairs of the office of the Public Trustee.**

(d)in the proposed new section 5Fby deleting subsection (1) and substituting therefor the following new subsection(1)—

“(1). The functions of the Board shall be to—

- (a) review and oversee matters pertaining to the investment of estate and trust funds;
- (b) formulate, review and oversee the implementation of the Public Trustee Investment Policy; and
- (c) advise the Attorney-General on the management of the investment portfolio.”

**Justification: there is need to stipulate the functions of the investment Board.**

**CLAUSE 7**

**THAT** Clause 7 of the Bill be amended—

- (a) in the marginal note by deleting the words “report of death” and substituting therefore the words “consent of a missing person”; and
- (b) by deleting the proposed new section 6A and substituting therefor the following new section 6A—

“6A. Where the consent of a person is required before the appointment of the Public Trustee as an administrator or trustee and the person required to give consent is declared to be missing by a Court of law, the appointment of the Public Trustee may be made without the consent from the missing person having been obtained.”

**Justification: under the Law of Succession Act, the beneficiaries of an estate of a deceased must consent to the appointment of an administrator or trustee and administration of the estate cannot proceed without such consent. The Bill proposes to make provision that dispenses with the consent of certain categories of persons such as- persons absent from Kenya, persons under eighteen, persons not of full mental capacity, disabled persons and missing persons.**

**In observation, there are adequate legal provisions for the manner in which some of these persons may give consent. For illustration, the consent of a minor may be given by a parent or legal guardian, the consent of a person of unsound mind can be given by the guardian and a person who is abroad may consent in the presence of a Notary Public.**

**It is therefore only missing persons who may not be able to give consent hence this amendment has been proposed to allow the other persons capable of giving consent to do so. It is important to allow for reasonable efforts to be made to obtain the consent of all beneficiaries who are capable of so consenting either in person or through their legal guardians in order to safeguard their interests.**

### **CLAUSE 8**

**THAT** the Bill be amended in Clause 8 —

- (a) by inserting the following new paragraph immediately after paragraph (b) —

(ba) in subsection (2) by deleting the words “twenty thousand” and substituting therefor the words “one hundred thousand”

**Justification:** As it is presently in section 8(2) of the Act, where the estate of a deceased is worth less than twenty thousand shillings, a person entitled to be granted probate or letters of administration of the estate of the deceased can apply to the Public Trustee for a certificate to administer the estate of the deceased after lapse of 14 days from the death. The rationale for that provision is that the gross value of the estate is not significantly large and need not be subjected to the extensive probate process that ordinarily takes about six months where there is no dispute.

This proposed amendment seeks an enhancement of the gross value of estates that can be so administered from twenty thousand shillings to one hundred thousand in view of present day currency value so as to address socio-economic changes that have taken place since the law was enacted.

#### **CLAUSE 10**

THAT the Bill be amended in Clause 10—

- (b) by deleting subparagraph (i) in paragraph (a); and
- (c) in paragraph (a) by deleting the word “administers” in subparagraph (ii) and substituting therefor the word “administering”.

#### **Justification:**

(1) subparagraph (i) - the bill proposes in to render section 12 (2) optional meaning that the Public Trustee to give notice to creditors to prove their debts in either the Kenya Gazette or any other suitable manner. However, it is necessary to have the notice placed in both the Kenya Gazette and any other suitable manner to ensure that any potential creditors see the notice.

(2) The next proposed amendment seeks to correct a typographical error.

#### **CLAUSE 13**

THAT the Bill be amended in Clause 13 by inserting the following new paragraph immediately after paragraph (i)—

“(j) formulate, implement and oversee programmes to raise awareness on law of succession and trusteeship”

**Justification: This additional duty will enable the public trustee to conduct civic education on matters relating to law of succession and trusteeship.**

**One of the principles of Right Based Approach to service delivery is empowering the citizen with information and knowledge in order for them to claim their rights.**

**The office of the Public Trustee has, through feedback from the public and other stakeholders, become aware that there is a serious lack of awareness or limited knowledge on the law of succession, processes involved and where to find services thus making citizens unable to enforce their rights and fulfil their obligations.**

**Article 35 of the Constitution guarantees the right to information for the exercise or protection of any right. The state as the duty bearer has an obligation to provide the relevant information for citizens to enforce their rights. The Public Trustee as a state agency may raise citizens’ awareness on rights, obligations and responsibilities under the law of inheritance and trusteeship for effective and efficient realization of rights.**

#### **CLAUSE 14**

**THAT** the Bill be amended in Clause 14—

- (a) by deleting the words “living with mental disability” appearing after the word “person” in paragraph (a) and substituting therefor the words “ suffering from mental disorder”; and
- (b) by deleting the words “living with mental disability” appearing after the word “person” in paragraph (b) and substituting therefor the words “ suffering from mental disorder”

**Justification: The Mental Health Act uses the term “person suffering from mental disorder”. This Act is referred to in section 21 that is being amended in the Bill. It is important that there be consistency in use of terms bearing the same meaning and usage across the statute book and more specifically in this case because there is a cross reference to the Act. This amendment will ensure that this uniformity is met.**

## CLAUSE 17

**THAT** Clause 17 of the Bill be amended by deleting the proposed section 28 and substituting therefor the following new section 28—

Application  
of Unclaimed  
Financial  
Assets Act  
No. 40 of  
2011.

**“28.** The provisions in the Unclaimed Financial Assets Act that require institutions to remit unclaimed assets to the Unclaimed Financial Assets Authority shall not apply to the Public Trustee.”

**Justification:** The amendment of Section 28 in Clause 17 of Bill had proposed to exclude the entire Act from application to the Public Trustee. In this amendment only excludes the application of the provisions in the Unclaimed Financial Assets Act that require institutions to remit unclaimed assets to the Unclaimed Financial Assets Authority by the Public Trustee.

The context of the development of UFAA Act was for the state to secure private funds which were in the hands of private firms, i.e. insurance companies, banks, companies registered in the Nairobi Securities Exchange among others. The legislation governing those institutions had not provided a framework for handling unclaimed funds. The UFAA responded to this gap. The Public Trustee Act has made provisions for funds which are unclaimed to be deposited into an Unclaimed Estates Account and where the funds remained unclaimed for 7 years to be paid into the Consolidated Fund.

Further, the Public Trustee is an executive agency of Government and the Public Trustee Act deals with unclaimed estate assets. The Public Trustee pays interest on funds unlike UFAA which pays the principal amount only. The Public Trustee also receives from time to time reports on financial assets which are in the possession of the Authority.

Unclaimed estates do not constitute unclaimed assets since they belong to the estate of the deceased. The Act and the Bill contain provisions for handling unclaimed estates. If the estate assets are not claimed, they escheat to the State after seven years.

**PART 5**

**RECOMMENDATION**

Having considered the Public Trustee (Amendment) Bill, 2017, the Committee recommends that the House passes the Bill during Committee Stage with its proposed amendments.

# **ANNEXURE 1**

(Minutes of Committee sittings on the  
consideration of the Bill)



**MINUTES OF THE TWENTY FOURTH SITTING OF THE  
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS  
HELD ON TUESDAY, 20<sup>TH</sup> MARCH, 2018 AT 10.00 A.M. AT THE MEDIA  
CENTRE, MAIN PARLIAMENT BUILDING**

**PRESENT:**

Hon. William Cheptumo, M.P. - **Chairperson**  
Hon. George G. Murugara, M.P.  
Hon. Jennifer Shamalla, M.P.  
Hon. John M. Wambugu, M.P.  
Hon. William K. Mwamkale, M.P.  
Hon. Adan Haji Yussuf, M.P.  
Hon. Japheth Mutai, M.P.  
Hon. Beatrice Adagala, M.P.  
Hon. Charles Gimose, M.P.  
Hon. Anthony G. Kiai, M.P.

**ABSENT WITH APOLOGIES:**

Hon. Alice Wahome, M.P. - **Vice Chairperson**  
Hon. Gladys B. Shollei, CBS, M.P.  
Hon. John Olago Aluoch, M.P.

**ABSENT:**

Hon. Peter O. Kaluma, M.P.  
Hon. Johana Ng'eno, M.P.  
Hon. Ben Momanyi Orori, M.P.  
Hon. Roselinda Soipan Tuya, M.P.  
Hon. John Kiarie Waweru, M.P.  
Hon. Zuleikha Hassan, M.P.

**IN ATTENDANCE:**

**COMMITTEE SECRETARIAT**

Mr. George Gazemba - Senior Clerk Assistant  
Ms. Doreen Karani - Legal Counsel II  
Ms. Halima Hussein - Clerk Assistant III

**MIN No. 81/2018:**                    **PRAYERS AND PRELIMINARIES**

The Chairperson called the meeting to order at 10:20 a.m. with a word of prayer from Hon. Japheth Mutai.

**MIN No. 82/2018:**                    **CONSIDERATION OF REPORT ON THE PUBLIC TRUSTEE (AMENDMENT) BILL, 2017**

The meeting considered its report on the Public Trustees (Amendment) Bill, 2018 and unanimously adopted it with a new amendment proposed by the Public Trustee in Clause 13 to read as follows-

*“(j) formulate, implement and oversee programmes to raise awareness on law of succession and trusteeship”*

The adoption of the report was proposed by Hon. John Wambugu, and seconded by Hon. Beatrice Adagala.

**MIN No. 83/2018:**                    **PETITION BY MS. PERIS SHANYASI AGAINST JUDGEMENT OF JUSTICE M. ODENY IN ENVIRONMENT AND LAND CASE No. 41 OF 2016 IN THE ELDORET HIGH COURT**

The Petitioner was aggrieved by the decision of the Court and sought the Committee’s intervention to ensure that she gets justice. She submitted the court judgement together with the petition for the Committee’s action. Upon considering the petition, the Committee held as follows-

- (i) The petition did not meet the requirements of Standing Order 223;
- (ii) The only remedy available to the petitioner was to appeal against the High Court’s decision in the Court of Appeal in view of the doctrine of separation of powers.

The Committee instructed the secretariat to prepare a report on the petition for its consideration and adoption on 22<sup>nd</sup> March, 2018 before tabling in the House.

**MIN No. 84/2018:**                    **ANY OTHER BUSINESS**

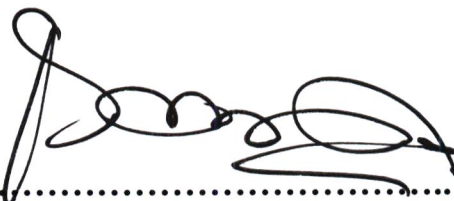
The Committee deliberated on business pending before it and resolved as follows-

- (i) Meet Allen Waiyaki Advocate on 10<sup>th</sup> April, 2018 to discuss his petition on the enactment of anti-fraud legislation;
- (ii) Meet Hon. Nelson Koech on 22<sup>nd</sup> March, 2018 to discuss his Legislative Proposal on the Companies (Amendment) Bill, 2018;
- (iii) Seek extension of time within which the Committee should table its report on the Parliamentary Service Bill, 2018 because the timeline provided for by the Standing Orders would lapse when the House is on recess.

**MIN No. 85/2018:**

**ADJOURNMENT**

There being no other business to transact, the Chairperson adjourned the meeting at 11:25 a.m.

Signed.....  
Chairperson

Date.....20.03.18.....

**MINUTES OF THE TWENTY THIRD SITTING OF THE  
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS  
HELD ON THURSDAY, 15<sup>TH</sup> MARCH, 2018 AT 10.00 A.M. AT THE  
MEDIA CENTRE, MAIN PARLIAMENT BUILDING**

**PRESENT:**

Hon. William Cheptumo, M.P. - **Chairperson**  
Hon. George G. Murugara, M.P.  
Hon. Jennifer Shamalla, M.P.  
Hon. John M. Wambugu, M.P.  
Hon. William K. Mwamkale, M.P.  
Hon. Zuleikha Hassan, M.P.  
Hon. Adan Haji Yussuf, M.P.  
Hon. Japheth Mutai, M.P.

**ABSENT WITH APOLOGIES:**

Hon. Alice Wahome, M.P. - **Vice Chairperson**  
Hon. Gladys B. Shollei, CBS, M.P.  
Hon. John Olago Aluoch, M.P.

**ABSENT:**

Hon. Charles Gimose, M.P.  
Hon. Peter O. Kaluma, M.P.  
Hon. Johana Ng'eno, M.P.  
Hon. Ben Momanyi Orori, M.P.  
Hon. Roselinda Soipan Tuya, M.P.  
Hon. Anthony G. Kiai, M.P.  
Hon. John Kiarie Waweru, M.P.  
Hon. Beatrice Adagala, M.P.

**IN ATTENDANCE:**

**COMMITTEE SECRETARIAT**

Mr. George Gazemba - Senior Clerk Assistant  
Mr. Denis Abisai - Principal Legal Counsel I  
Ms. Doreen Karani - Legal Counsel II

Ms. Halima Hussein - Clerk Assistant III  
Ms. Roselyn Njuki - Serjeant-at-Arms II

**MIN No. 77/2018: PRAYERS AND PRELIMINARIES**

The Chairperson called the meeting to order at 10:25 a.m. with a word of prayer from Hon. William Kamoti Mwamkale.

The Chairperson thanked Members for their resilience and dedication to duty which saw the Committee vet nominees on two occasions and table reports in the House within set timelines. This came against the backdrop of debate on the Committee's report on the vetting of the Solicitor-General which was adopted within a short time, an indication that it was well received.

**MIN No. 78/2018: CONSIDERATION OF THE PUBLIC TRUSTEE (AMENDMENT) BILL, 2017**

Ms. Doreen Karani, Legal Counsel I took the Committee through amendments drafted by the Legal Department following the sitting of 13<sup>th</sup> March, 2018. The Committee adopted the amendments for tabling in the House for consideration during Committee stage with a few amendments which the Legal Counsel was instructed to incorporate.

It was resolved that the Committee introduces in the House for enactment legislation on Missing Persons as there was none in place in Kenya.

**MIN No. 79/2018: CONSIDERATION OF LEGISLATIVE PROPOSAL ON THE COMPANIES (AMENDMENT) BILL, 2017**

The agenda item was deferred to Tuesday, 20<sup>th</sup> March, 2018 because the Legislative Proposal's sponsor was out of the country thus unable to appear before the Committee for deliberations.

**MIN No. 80/2018: ADJOURNMENT**

There being no other business to transact, the Chairperson adjourned the meeting at 12:05 p.m.

Signed.....

Chairperson

Date.....

2003-18

**MINUTES OF THE TWENTY SECOND SITTING OF THE  
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS  
HELD ON TUESDAY, 13<sup>TH</sup> MARCH, 2018 AT 10.00 A.M. AT THE MEDIA  
CENTRE, MAIN PARLIAMENT BUILDING**

**PRESENT:**

Hon. George G. Murugara, M.P. - **Ag Chair**  
Hon. Ben Momanyi Orori, M.P.  
Hon. Roselinda Soipan Tuya, M.P.  
Hon. Jennifer Shamalla, M.P.  
Hon. John M. Wambugu, M.P.  
Hon. Anthony G. Kiai, M.P.  
Hon. John Kiarie Waweru, M.P.  
Hon. Beatrice Adagala, M.P.  
Hon. William K. Mwamkale, M.P.

**ABSENT WITH APOLOGIES:**

Hon. William Cheptumo, M.P. - **Chairperson**  
Hon. Alice Wahome, M.P. - **Vice Chairperson**  
Hon. John Olago Aluoch, M.P.  
Hon. Gladys B. Shollei, CBS, M.P.

**ABSENT:**

Hon. Charles Gimose, M.P.  
Hon. Zuleikha Hassan, M.P.  
Hon. Adan Haji Yussuf, M.P.  
Hon. Japheth Mutai, M.P.  
Hon. Peter O. Kaluma, M.P.  
Hon. Johana Ng'eno, M.P.

**IN ATTENDANCE:**

**COMMITTEE SECRETARIAT**

Mr. Denis Abisai - Principal Legal Counsel I  
Ms. Doreen Karani - Legal Counsel II  
Ms. Halima Hussein - Clerk Assistant III

Ms. Roselyn Njuki - Serjeant-at-Arms II

**MIN No. 74/2018: PRAYERS AND PRELIMINARIES**

The chairperson called the meeting to order at 10:00 a.m. which was followed by a prayer by himself.

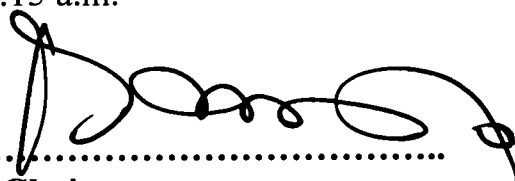
**MIN No. 75/2018: CONSIDERATION OF THE PUBLIC TRUSTEE (AMENDMENT) BILL, 2017**

Ms. Doreen Karani, Legal Counsel I took the Committee through a report by Public Trustee on the amendments proposed to the Public Trustee (Amendment) Bill, 2017. The amendments were proposed by the Committee during its 19<sup>th</sup> sitting held on 1<sup>st</sup> March, 2018 with the Public Trustee. The Committee proposed the following additional amendments to the Bill-

- (i) The proposed word "*enemy*" in Clause 2 should conform to other existing legislation e.g. the Kenya Defence Forces Act;
- (ii) Clause 2 (d) regarding missing persons should indicate timeline of reporting missing persons to Public Trustee. The Committee further instructed the Legal Counsels to study legislation in other jurisdictions on the same for guidelines;
- (iii) To include the words "*not less than 15 years of experience*" in Clause 5E (e);
- (iv) To retain clause 8 as it is in the Bill.

**MIN No. 76/2018: ADJOURNMENT**

There being no other business to transact, the Acting Chairperson adjourned the meeting at 11:15 a.m.

Signed.....  
Chairperson

Date.....



**MINUTES OF THE NINETEENTH SITTING OF THE DEPARTMENTAL  
COMMITTEE ON JUSTICE AND LEGAL AFFAIRS MEETING HELD ON  
THURSDAY, 1<sup>ST</sup> MARCH, 2018 AT 9.30 A.M. IN BOARDROOM ON 5<sup>TH</sup>  
FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS**

**PRESENT:**

Hon. William Cheptumo, M.P.	-	<b>Chairperson</b>
Hon. Alice Wahome, M.P.	-	<b>Vice Chairperson</b>
Hon. Zuleikha Hassan, M.P.		
Hon. Gladys B. Shollei, CBS, M.P.		
Hon. Jennifer Shamalla, M.P.		
Hon. John M Wambugu, M.P.		
Hon. George G. Murugara, M.P.		
Hon. Beatrice Adagala, M.P.		
Hon. Adan Haji Yussuf, M.P.		
Hon. Anthony G. Kiai, M.P.		

**ABSENT:**

Hon. John Olago Aluoch, M.P.  
Hon. Ben Momanyi Orori, M.P.  
Hon. Roselinda Soipan Tuya, M.P.  
Hon. Charles Gimose, M.P.  
Hon. Japheth Mutai, M.P.  
Hon. Peter O. Kaluma, M.P.  
Hon. William K. Mwamkale, M.P.  
Hon. Johana Ng'eno, M.P.  
Hon. John Kiarie Waweru, M.P.

**IN ATTENDANCE:-**

**COMMITTEE SECRETARIAT**

Mr. George Gazemba	-	Senior Clerk Assistant
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Doreen Karani	-	Legal Counsel II
Ms. Halima Hussein	-	Clerk Assistant III
Ms. Fiona Musili	-	Research Officer III
Ms. Roselyn Njuki	-	Serjeant-at Arms II

Mr. Ian Otieno - Audio Officer

**OFFICE OF THE ATTORNEY GENERAL**

Eunice J. Sawe - Public Trustee  
Maryann Njau - Secretary, Justice and Constitutional Affairs  
Concepta Wasilwa - Chief State Counsel  
Emily Chweya - Chief State Counsel  
Lillian Matagaro - Deputy Chief Parliamentary Counsel

**KENYA LAW REFORM COMMISSION**

Joash Dache, MBS - Chief Executive Officer  
Mercy Muthuri - Deputy Director, Legislative Drafting

**MIN No. 61/2018: PRAYERS AND PRELIMINARIES**

The Chairperson called the meeting to order at 10:00 a.m. followed by prayer from Hon Anthony Kiai, M.P.

**MIN No. 62/2018: SUPREME COURT JUDGEMENT OF DECEMBER, 2017 DECLARING THE MANDATORY DEATH SENTENCE UNCONSTITUTIONAL**

The purpose of the meeting was to discuss and agree on a road map in respect of a Supreme Court Judgement declaring the mandatory death penalty unconstitutional and requiring Parliament, Office of the Attorney General and Kenya Law Reform Commission to enact legislation to effect the judgement. The meeting was informed as follows-

- (i) By Judgment dated 14 December 2017 in *Francis Karioko Muruatetu v. Republic Of Kenya*, the Supreme Court of Kenya at Nairobi declared that the mandatory nature of the death penalty contained in section 204 of the *Penal Code* is unconstitutional. The Court further found that a life sentence should not necessarily mean the natural life of a prisoner, rather it could also mean a certain minimum or maximum time to be set along established parameters;
- (ii) The court directed the Attorney General, the Kenya Law Reform Commission and the Speakers of the National Assembly and Senate to give effect to its judgment on the mandatory nature of the death sentence

- and parameters of what ought to constitute life imprisonment through any necessary amendments, formulation and enactment of statute law;
- (iii) The court further granted the Attorney General and Director of Public Prosecutions twelve months to prepare a progress report identifying an appropriate framework to address sentence re-hearings for other persons subject to the mandatory death sentence;
  - (iv) Accordingly the Kenya Law Reform Commission proceeded to prepare an opinion in accordance with the Court's direction, which opinion was sent to the Registrar of the Supreme Court;
  - (v) On 10<sup>th</sup> January 2018, the Hon Attorney General constituted a Working Group pursuant to Article 156 of the Constitution of Kenya and the Court's directive. He invited the stakeholders for a consultative meeting on 29<sup>th</sup> January 2018.
  - (vi) The meeting was attended by the Office of the Attorney General and Department of Justice, Kenya Law Reform Commission, National Crime Research Centre, Power of Mercy Advisory Committee, Director of Public Prosecutions, Parliament of Kenya, Judiciary, Kenya National Commission on Human Rights and the Ministry of Interior and Coordination of National Government. As a result of the meeting, a Task Force was constituted.
  - (vii) The following are the Terms of Reference for the Task Force:
    - (a) Prepare a detailed professional review in regards to the death penalty in the context of the Judgment and the Order made in the Petition with a view to-
      - Setting up a framework to deal with sentence re-hearing cases similar to that of the Petitioners;
      - Recommending a guide to death sentencing,
      - Formulating parameters of what ought to constitute life imprisonment,
      - Formulating amendments and enactment of a law to give effect to the judgment,
    - (b) Prepare and forward a progress report to the Supreme Court within twelve (12) months from the date of the judgment;

- (c) Create awareness and or sensitize stakeholders and the public on the Judgment and its implications and take into account their views on the same; and
  - (d) Consider and prepare proposals upon undertaking comparison studies with other jurisdictions that have had equivalent situations.
- (viii) It was decided that representatives of the Prison Service, and Probation/After Care be invited to join the Working Group/Task Force. The NCRC, POMAC and the KLRC all noted the work that has already been done by their respective organizations, and agreed to share these with the Task Force. Attached to this Report is a copy of the NCRC submission.
- (ix) The group further constituted three Sub-Committees as follows:
- (a) Sentencing Re-Hearing - Judiciary (chair), ODPP, KLRC and Probation/After Care;
  - (b) Legislative Amendments/Reforms - KLRC (chair), AG/DOJ, KNCHR, National Assembly/Senate;
  - (c) Parameters of Life Imprisonment - POMAC (chair), Prisons, Ministry Interior, NCRC, KLRC
- (x) The representative of the Judiciary was asked to canvass the members of the judiciary and report to the Task Force on the judiciary's interpretation of the Court's judgment regarding sentencing re-hearing, and in particular on who is entitled to such a re-hearing.
- (xi) A draft work plan was discussed that includes public sensitization. In this regard, it was decided a Communications Officer be appointed to serve the Task Force. Targeted stakeholder consultations and public consultations are to be held in April and May 2018 and a technical retreat to draft an interim report with a view to submitting it in June 2018.
- (xii) Two meetings of the Task Force have been held on 7<sup>th</sup> February and 26<sup>th</sup> February, 2018 to refine the draft Terms of Reference, develop a work plan and report on the work to date of the sub-committees. In this respect, the KLRC has chaired an initial meeting of the Sub-Committee on Legislative Reforms on 15<sup>th</sup> February 2018. At this meeting, the Sub-Committee developed a work-plan to prepare a report and

recommendations to be used to facilitate the public sensitization, and the stakeholder consultations.

- (xiii) Further, POMAC has chaired an initial meeting of the Sub-Committee on the Parameters of Life Imprisonment which is also preparing a report containing the following elements: comparative review of other jurisdictions; proposed model on parameters of a life sentence; measures of life; sentencing parameters and the concept of parole. The draft report is being polished and will be presented at the next meeting of the Task Force. The third Sub-Committee, on Sentencing Re-Hearing, has not yet met;
- (xiv) The Task Force required extra budget to be able to meet its operations. Towards this end, it was agreed that the Office of the Attorney General factors the Task Force operations in its budget for 2018/2019 financial year.

The Committee observed the need to have more meetings with the Attorney General's Office and Kenya Law Reform Commission to deliberate on the way forward and the report of the task force on the judgement.

**MIN No. 63/2018:                      CONSIDERATION OF THE PUBLIC TRUSTEE (AMENDMENT) BILL, 2018**

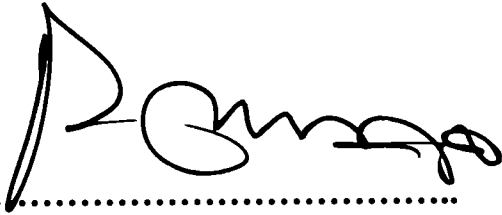
Ms Doreen Karani, Legal Counsel II took the Committee through a legal brief on the proposed amendments of the Public Trustee (Amendment) Bill, 2017 to the Public Trustee Act. The brief is attached hereto.

The Committee deliberated on the Bill with the Public Trustee and agreed on some amendments which the Public Trustee was directed to draft and submit to the Committee for the purposes of finalization of its report.

**MIN No. 64/2018:-                      ADJOURNMENT**

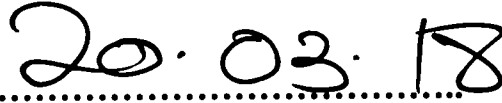
There being no Any Other Business to transact, the Chairperson adjourned the meeting at 1.30 p.m.

Signed.....

A handwritten signature in black ink, appearing to be 'P. Gomez', written over a dotted line.

Chairperson

Date.....

A handwritten date '20.03.18' in black ink, written over a dotted line.

# **ANNEXURE 2**

(A copy of the newspaper advertisement  
inviting the public to submit memoranda  
on the Bill)

Big > Festival is celebrated in over 400 cities in more than 130 countries

# Chinese Year of the Dog finally here

An estimated 6.5m Chinese are travelling outside the country as event is marked

NAIROBI, Thursday

The most important holiday in the traditional Chinese calendar, the Lunar New Year also the Year of Dog is here with key activities lined up across the world namely feasts, performances and family reunions.

If you were born in the year 1934, 1946, 1958, 1970, 1982, 1994, 2006, 2018 or today then you are likely to possess attributes associated with those born in the Year of Dog such as honesty, loyalty and courage. The Chinese Lunar New Year is not a big thing only in China where over 390 million people are estimated to be travelling by rail to join family and friends for the festivities.

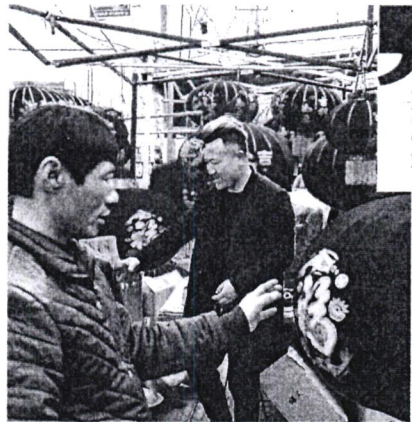
Data released by China's State Council Information Office

indicate that the Lunar New Year which also marks the beginning of spring in China will be celebrated in over 400 cities located in more than 130 countries and regions across the globe.

An additional 6.5 million Chinese are travelling outside the Asian country to celebrate the Lunar New Year in various destinations across the globe, this is according to data released by China Tourism Academy and Ctrip (a popular online travel agency based in Shanghai).

The Year of Dog comes number 11 after the Year of Rooster, which was marked last year and before the Year of Pig which will be celebrated next year (2019). Other symbols in the 12-animal Chinese Lunar calendar include rat, ox, tiger, rabbit, dragon, snake, horse, goat and monkey with each year recurring once after 12 years between 21st January and 20th February.

This means that those born in the Year of Dog, which is being celebrated this year, are either a few



Those born in the Year of Dog tend to be honest, loyal, kind, cautious, prudent'

Chinese buy lanterns and decorations on the outskirts of Xi'an, Shaanxi province, yesterday, on the eve of the Lunar New Year, marking the Year of the Dog.

PHOTO | AFP

hours old, 12 years old, 24, 36, 48, 60, 72 years old and so on. Notable personalities born in the Year of Dog include Donald Trump (1946), Winston Churchill (1874), Michael Jackson (1958), Bill Clinton (1946) and Mother Teresa (1910) among others.

### Your personality traits

In Chinese astrology, your year of birth determines your personality traits. Those born in the Year of Dog tend to be honest, loyal, kind, cautious, prudent and courageous among other pleasant traits. However, just like most African customs, the Chinese may also use the dog in some curses to represent certain unpleasant traits like promiscuity, filth, snobbery, degradation and

ungratefulness. In order to avoid bad luck during your zodiac year, the Chinese advise that people wear red garment like socks, tie, and underwear from an elderly person to ward off evil spirits.

Curiously, the Year of Dog has absolutely nothing to do with the much criticized dog eating festival which is a customary practice held in south China's Guangxi Zhuang Autonomous Region every summer.

The dog eating festival is a controversial yearly event where party goers enjoy dog meat with lychees and rice wine on one side of the street as animal rights activists protest on the other buying live dogs to save them from being eaten. (Xinhua, Michael Omond)

# Australia bans sex between ministers, staff

SYDNEY, Thursday

Australia's prime minister imposed a ban on sex between ministers and their aides today after his deputy made "a shocking error of judgement" by having an affair that left an aide pregnant and the government reeling.

Mr Malcolm Turnbull announced the amendment to the ministerial code of conduct during an extraordinary press conference during which he slammed deputy Barnaby Joyce for causing "terrible hurt and humiliation" to his wife and four children.

"Barnaby made a shocking error of judgement in having an affair with a young woman working in his office," he said.

"In doing so, he has set off a world of grief for those women and appalled all of us. Our hearts go out to them. It has been a dreadful thing for them to go through in the glare of publicity."

Mr Joyce, 50, has been under immense pressure since his affair with former media adviser Vikki Campion, 33, who is now pregnant with their child, became public last week.

It has led to allegations that he breached ministerial rules, with the crisis dominating the front pages and parliament questioned with calls mounting for him to resign.

Mr Joyce, whose National Party is in coalition with the prime minister's Liberals, is expected to take leave next week, allowing him to side-step the role of acting leader while Mr Turnbull on a visit to the United States.

Mr Turnbull departs for Washington on Wednesday for meetings with US President Donald Trump and is scheduled to be overseas for four days. (AFP)

REPUBLIC OF KENYA



## NATIONAL ASSEMBLY TWELFTH PARLIAMENT - SECOND SESSION

In the Matter of consideration by the National Assembly -  
The Irrigation Bill, 2017

### SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House".

The Irrigation Bill, 2017 seeks to promote and regulate the development and management of irrigation in Kenya. The Bill further sets out powers of the National Government in the regulation of irrigation and particularly the powers and duties of the Cabinet Secretary.

The Irrigation Bill, 2017 has undergone First Reading pursuant to Standing Order 127(3) and is now committed to the Departmental Committee on Agriculture and Livestock for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the Public to submit any representations they may have on the said Bill. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Friday 23<sup>rd</sup> February, 2018 at 5.00 pm.

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



## NATIONAL ASSEMBLY

TWELFTH PARLIAMENT - SECOND SESSION

In the Matter of consideration by the National Assembly -  
The Public Trustee (Amendment) Bill, 2017

### SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House".

The Public Trustee (Amendment) Bill, 2017 seeks to amend the Public Trustee Act to align it with the Constitution of Kenya, enhance good governance, expand the scope of the functions of the Public Trustee and reduce the time taken to administer estates of deceased persons.

The Public Trustee (Amendment) Bill, 2017 has undergone First Reading pursuant to Standing Order 127(3) and is now committed to the Departmental Committee on Justice and Legal Affairs for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites members of the Public to submit any representations they may have on the Public Trustee (Amendment) Bill, 2017. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Friday 23<sup>rd</sup> February, 2018 at 5:00 pm.

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY

The County secretary  
County Government of Kiambu  
P.O. Box 2344-00900  
Kiambu.  
... on or before 5th March 2018 at 12:00 noon, and shall be opened immediately  
... of bidders or their representatives who choose to attend at Ruiru Road,  
... and Utilities department head quarter offices. Prices quoted must remain  
... of twenty (20) days from the date of the tender opening.

Select ONE  
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Bureau of Circulation

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# **ANNEXURE 3**

(Memoranda from the Law Society of  
Kenya)



**LAW SOCIETY OF KENYA**

*Mr. Hazen/APC/Clas*

~~*[Handwritten signature]*~~

*This relates to  
the public trustee  
Bill before the  
Justice & Legal  
Committee.*

*2/2/18*

*16/2/18*

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

Isaac Okero (President), Faith Waigwa (Vice-President)  
Manthi Masika, Alex Gatundu, Alan Kosgey (General Membership Representatives)  
Edwin Sifuna, Harriette Chiggai, Jemator Dorothy, (Nairobi Representatives)  
Godfrey Kitiwa, Annet Nyukuri, David Njoroge, Jane Masai, (Upcountry Representatives)  
Grace Okumu (Coast Representative)

SUBMISSION

BY

THE LAW SOCIETY OF KENYA

TO

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE  
PUBLIC TRUSTEE (AMENDMENT) BILL, 2018

THURSDAY 15TH FEBRUARY 2018

THE PARLIAMENT OF KENYA

The Honourable Clerks to the National Assembly,

The Law Society of Kenya is a body corporate established by the Law Society of Kenya Act No.21 of 2014.

One of the statutory roles of the Law Society is to assist the government and the public in all matters affecting legislation and administration and practice of the law.

It has come to our attention that the parliament published Bills which seek to amend and review aspects of the Public Trustees Act.

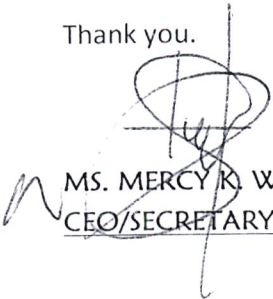
Our interest in this Bill is section 5E regarding the constitution of the investment Board, where the AG is given the mandate to appoint experts in matters relating to the Law of Succession. It is our submission that the AG should appoint in consultation and concurrence with the Law Society of Kenya Council, this will engender the principle of inclusivity and better still the Law Society keeps the current and updated data of all registered legal practitioners and their areas of expertise.

Recommendation:

Clause 5E(1)(c) – should be amended to read “two persons nominated by the AG in consultation and concurrence with the Council of the Law Society, with knowledge and expertise in matters relating to the Law of succession; and”

That is all for now.

Thank you.

  
MS. MERCY K. WAMBUA  
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