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# KENYA NATIONAL ASSEMBLY

**NINTH PARLIAMENT – FIFTH SESSION (2006)**

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

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**REPORT ON  
THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)  
BILL, 2006**

Clerk's Chambers,  
Parliament Buildings,  
**NAIROBI.**

June, 2006

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## **PREFACE**

**Mr. Speaker Sir,**

The Departmental Committee on Administration of Justice and Legal Affairs is established under Standing Order No. 151; its mandate pursuant to Standing Order 151(4) is:-

- 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 the Ministries and departments and the effectiveness for implementation;*
- c) to study and know all legislation after First Reading, subject to the exceptions under Standing Order 101A (4);*
- d) to study, assess and analyze the relative success of Ministries and departments as measured by the results obtained as compared with its stated objectives;*
- e) to investigate and inquire into all matters relating to all assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister and;*
- f) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

The Committee comprises:

- (i) Hon. Paul K. Muite, MP – Chairman
- (ii) Hon. Kenneth Marende, MP
- (iii) Hon. Jim Choge, MP
- (iv) Hon. Amina Abdalla, MP
- (v) Hon. Gideon Ndambuki, MP
- (vi) Hon. Moses Cheboi, MP
- (vii) Hon. Macharia Mukiri, MP
- (viii) Hon. Bifwoli Wakoli, MP
- (ix) Hon. Omingo Magara, MP
- (x) Hon. Zaddock Syong’o, MP
- (xi) Hon. Njoki Ndung’u, MP

**Mr. Speaker Sir,** On 19<sup>th</sup> April, 2006, the Statute Law (Miscellaneous Amendments) Bill, 2006 was referred to this Committee after its First Reading. This Report contains the deliberations of the Committee on the

proposed amendments to the Bill and the rationale behind the proposed amendments.

**Mr. Speaker Sir**, the Committee consulted widely and held several meetings with stake holders among them the Law Society of Kenya, the Kenya National Society of Professional Auctioneers and the National Association of Kenya Auctioneers to discuss the contents of the Bill.

**Mr. Speaker Sir**, in compiling this report, the Committee also took into consideration submissions and memorandum from the Judicial Service Commission, the Physical Planners' Registration Board and the Kenya National Commission on Human Rights.

**Mr. Speaker Sir**, finally it is now my pleasant duty and privilege, on behalf of the Departmental Committee on Administration of Justice and Legal Affairs, to lay this report on the Table of the House.

**SIGNED:** .....

**Hon. Paul Muite, MP**  
**Chairman, Departmental Committee on Administration of Justice**  
**and Legal Affairs**

**DATE:** .....

19/6/06

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**PROPOSED AMENDMENTS TO THE STATUTE LAW  
(MISCELLANEOUS AMENDMENTS) BILL, 2006**

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**Page 519 The National Assembly and Presidential Elections Act  
(Cap.7)**

In the third column of the item relating to the National Assembly and Presidential Elections Act (Cap. 7), Section 20 (1), delete the proposed amendment and substitute therefor the following –

Add a new subparagraph (iv) to the proviso as follows –

- (iv) where after due diligence it is not possible to effect service under paragraphs (a) and (b), the presentation may be effected by its publication in the Gazette and in one English and one Kiswahili local daily newspapers with the highest national circulation in each case.

**Rationale**

There has been controversy over the requirement that a petition must be served personally on the respondent. What happens when it is impractical to effect personal service like in the case of a sitting President? In the AG's proposed amendment, the requirement for personal service is deleted altogether. It is suggested that this is to over do things. It is for this reason that the committee is suggesting the further amendment to require first and foremost personal service but where a petitioner demonstrates inability to effect personal service, service through the Kenya Gazette and two Daily Papers with National circulation is permitted. This strikes a fair balance between a petitioner and a respondent.

**Page 519 The Judicature Act (Cap.8)**

In the third column of the item relating to the Judicature Act (Cap. 8)

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- (i) in respect of section 7(1), delete the expression “seventy” and substitute therefor the expression “seventy-five”;
- (ii) in respect of section 7(2), delete the expression “fourteen” and substitute therefor the expression “fifteen”.

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## **Rationale**

It is suggested that the number be fixed at 75 instead of 70; for the High Court Judges and 15 instead of 14 for the Court of Appeal Judges. These numbers are still low compared to the ratio of judges to the population in other jurisdictions and the case-load statistics.

## **Page 520 The Advocates Act (Cap.16)**

In the third column of the item relating to the Advocates Act (Cap. 16), delete the proposed paragraph (d) and substitute a new paragraph (d) as follows –

- (d) an officer in a public, private corporation or local authority:  
Provided that the officers referred to in this section shall not be entitled to charge professional fees for so acting.

Immediately after section 10 insert the following sections-

- s.22(1)(b) Insert the following paragraph immediately after paragraph (b)

- (c) by producing a written approval signed by Society's Chairman that states that there is no objection to the grant of the Certificate.

- s.25(3) Delete and substitute therefore the following new sub-section –

- (3) The Council of the Society shall make representations or submit a recommendation to the Registrar with respect to any application made under this section, and any such representations or recommendations shall be taken into account by the Registrar and shall also be absolutely privileged.

- s.81 Insert the following subsection (3) immediately after subsection (2)-

- (3) No rule made under this section shall require an advocate who is a member of the National Assembly and who holds a practising certificate to undergo continuing legal education during his tenure as such member.

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### **Rationale**

It is proposed that the exemption (see p. 552) be extended to all Advocates employed by corporations and companies. There is no logic in confining the exemption to only State employed Advocates.

Since Council of the Law Society has the mandate over all matters relating to Advocates who hold practicing certificates, it is only fair that the Registrar's administrative power to issue Certificates is subjected to the Council's no objection approval.

It is proposed to exempt lawyer Members of Parliament from the requirement of attending seminars as a condition to renewing practising certificates since the legal work which such members are involved in on daily basis satisfies the requirement of such seminars by far.

### **Page 525 The Evidence Act (Cap.80)**

In the third column of the item relating to the Evidence Act (Cap.80)-

- (i) delete the expression "before a judge, a magistrate or";
- (ii) delete the proposed subsection (2) and substitute therefor the following new subsection –
  - (2) The Attorney General shall, after consultation with the Chief Justice and the Council of the Law Society, make rules governing the making of a confession.
- (iii) Add a new subsection (3) as follows –
  - (3) An accused person shall have a right to make a confession in the presence of a person of his choice.

### **Rationale.**

Pressure from civil society led to the amendment of the Evidence Act to require confessions to be made only before a magistrate. There has been practical difficulties in implementing this law. In the first place, magistrates have refused and been unwilling to take confessions! In the second place, a magistrate before whom a confession is taken immediately becomes a potential witness if the confession is subsequently contested.

The proposed amendment removes judges and magistrates from the list of those before whom a confession can be made. Henceforth, confessions are to be made before a Police Officer of the rank of chief Inspector and above.

~~As a safe guard, there is an additional right given to a suspect to demand the presence of a third party (a lawyer or a relative) to be present when the confession is made.~~

**Page 529 The Traffic Act (Cap.403)**

Delete Section 37 of the Act and insert the following:-

- 37 (1) Driving and Provisional licences shall be in the form of computerized smart card made of plastic material that contains a microprocessor-based chip.
- (2) The said driving and provisional licences shall contain two sides: the front and rear sides; with the front containing the photograph, name, age, date of birth, sex, signature, licence number, of the licence holder, class of the vehicle to be driven/restricted, and on the rear side it shall contain the date of issue per class, date of expiry per class, conditions and any other information, if any, signature of issuing authority and issuing authority's reference number.
- (3) The micro-processor based chip shall contain features for micro printing, image hosting, ultra-violet printing (logo, national coat of arms), hologram, both side lamination (polyester patch lamination hologram)
- (4) The micro-chip shall also contain finger print marks, the photograph, sec, signature, licence number, class of the vehicle to be driven/restricted, date of issue per class, date of expiry per class, conditions or other information, if any, on the rear side, signature of issuing authority and issuing authority's reference numbers on the front.

**Rationale**

The current form of the driving licence as per the Traffic Act, Chapter 403 of the Laws of Kenya Rev. 1993 is provided for in section 37(1) and (2) of the said Act. The section provides for the driving and provisional licences to carry the photograph of a licence holder with an official stamp of the Registrar of motor vehicles. Other particulars required to be on the driving and provisional licences are to be found in the prescribed form provided for in form number VIII of the 2<sup>nd</sup> schedule to the said Act. These particulars include surname, other names, date of birth, certificate of competence number, signature and authority of issuer as well as date of issue of the licence.

These provisions have been in force in Kenya since colonial times. A driving licence is issued in paper form, usually engrossed with a hard cover paper material to keep it from being mutilated. However, it has

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a number of disadvantages in today's day and age of globalization and the rise of international crime and terrorism. Some of the disadvantages include:-

- Susceptibility to forgery
- Loss of government revenue as a result of forgery and unofficial issuance
- Weak accountability by issuers because of difficulty in identification of issuer's particulars by other law enforcement agents
- Improperly authorized licence holders may cause accidents and endanger public safety
- Difficulty in maintaining an accurate record of a licence holder's movement and driving record (e.g. accident, convictions etc)

The proposed amendments address these shortcomings and have the following advantages:-

- Forgery of driving and provisional licences would be curbed.
- The government would be able to collect more revenue as a result of effectively controlling an official issuance of such licences.
- There will be transparency as issuers of driving licences would be accountable as a result of a centrally electronically verifiable registry.
- Public safety will be protected by ensuring that those who get the licences are genuinely qualified personnel.
- Electronic licences would guarantee an accurate record of a licence holder's movements and driving record (e.g. accidents, convictions etc) which would be kept in a central database which is easily accessible.
- There will be an excellent statistical management tool allowing reporting on the driving population in the country.
- The government will be able to make better management decisions on traffic safety, road administration, personnel and projections in terms of budgets.

### **Page 530 The State Corporations Act (Cap.446)**

In the third column of the item relating to the State Corporations Act (Cap.446), delete the proposed amendment.

### **Rationale**

The amendment seeks to exempt most State Corporations from the provisions of the State Corporations Act especially from audit by the Controller and Auditor General. It is in the public interest that the law continues to apply as it is now because it is the public money that is at stake. When most State Corporations were exempted from similar provisions between 1986 and 2002, there was a lot of gross financial and



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administrative mismanagement. Furthermore, the amendment is not in the spirit of the Public Audit Act, 2003.

**Page 534 The Hire Purchase Act (Cap. 507)**

- (i) s.3 Delete the expression "two million" at the end of the section and substitute therefor the expression "four million".
- (ii) s.18(2) Delete the expression "one hundred thousand" at the end of the section, and substitute therefor the expression "two hundred thousand".
- (iii) s.33 Delete the expression "fifty thousand" at the end of the section, and substitute therefor the expression "one hundred thousand".

**Rationale.**

Given the ever rising cost of living and inflation, the more realistic figures are (i) four million (ii) two hundred thousand; and (iii) one hundred thousand shillings respectively.

**Page 535 The Physical Planners' Registration Act, 1996 (No.3 of 1996)**

In the third column of the item relating to the Physical Planners' Registration Act, 1996 (No. 3 of 1996), delete the proposed amendment.

**Rationale.**

The Hon. Amos Kimunya then Minister for Lands and Housing, through a Gazette Notice no.5939 of 29<sup>th</sup> August 2003, appointed members to the Physical Planners Registration Board without consultation with the Architectural Association of Kenya in contravention of Section 3(3) of the Physical Planners Registration Act (No.3 of 1996). The amendment is now seeking to regularize that violation of the law. It is proposed that this proposed amendment be deleted.

**Page 536 The Auctioneers Act, 1996 (No. 5 of 1996)**

In the third column of the item relating to the Auctioneers Act, 1996 (No. 5 of 1996), delete the proposed amendment.

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**Rationale.**

In order to enforce discipline, all auctioneers should belong to the one registered body. A plethora of registered bodies of auctioneers is not in the public interest.

**Page 536 The Kenya Roads Board Act (No.7 of 1999)**

Insert the following amendments –

s.6(2)(d) (i) Delete the expression “twenty-four” and substitute therefore the expression “sixteen”.

s.6(2)(d) (ii) Delete the expression “sixteen” and substitute therefore the expression “twenty-four”.

**Rationale.**

The proposed amendments seeks to recognize the effect of development monies at the constituency level by increasing monies from the Kenya Roads Board Fund from sixteen percent to twenty-four percent in all constituencies in the country and reducing monies to the District Roads Boards from twenty-four percent to sixteen percent.

**Page 541 The Anti-Corruption and Economic Crimes Act, 2003 (No.3 of 2003)**

(i) Immediately after reference to section 3, insert reference to sub sections (4) as follows-

s. 8 Substitute a colon for the full-stop at the end of subsection (4) and add the following proviso-

Provided that if the President refuses or fails to appoint the person concerned to the office in respect of which the approval was given within fourteen days of that approval, the appointment shall be deemed to have been made upon expiration of that period. For the avoidance of doubt, this proviso shall take effect retrospectively and shall apply to any nomination approved by Parliament in the past but not yet gazetted.

(ii) Immediately after reference to section 23, insert reference to sections 26, 27 and 28 as follows-

s.26	Delete
s.27	Delete
s.28	Delete

**Rationale**

- (i) The Kenya Anti-Corruption and Economic Crimes Act intended the role of the President in appointing / gazetting someone who parliament has vetted / approved to be purely ceremonial and formal. The proposed proviso makes it clear that if the President fails to perform that role within 14 days, Parliament’s nominee will automatically assume office.
- (ii) A suspect in criminal investigations and/or trial has constitutional rights and safeguards to secure protection of the law and a fair trial. These constitutional rights and safeguards include:-
  - a) The right to silence
  - b) The right not to self-incriminate
  - c) The right of presumption of innocence.

Indeed, the judges rules which govern the asking of questions of a suspect require a police officer to caution a suspect who the police officer has decided to charge that the suspect is not obliged to say anything but that if he elects to say anything, the same shall be taken down in writing and may be used in evidence against him/her. To the extent that sections 26, 27 and 28 reverse these constitutional rights and safeguards including the right to privacy of properties (section 70 of the constitution) and obliges a suspect to provide evidence, investigate oneself where the Director believes that the suspect has committed criminal offenses, the sections are clearly unconstitutional.

It is proposed that the sections be deleted.

**Page 549 The Public Officer Ethics Act, 2003 (No.4 of 2003)**

In the third column of the item relating to the Public Officer Ethics Act, 2003 (No.4 of 2003), Delete s.3(2).

**Rationale.**

The idea behind the proposed amendment is to make KACC the depository of all declarations. It is proposed that the law stays the way it is with Members of Parliament making their declarations to the Speaker, Judges to the Judicial Service Commission and so on. Accordingly, it is proposed that section 3(2) be deleted.

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**MINUTES OF THE ONE HUNDRED AND FIFTEENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY 14<sup>TH</sup> JUNE 2006 IN THE COMMITTEE ROOM 5<sup>TH</sup> FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 11:00 A.M.**

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**PRESENT**

Hon. Paul Muite, MP - **Chairman**  
Hon. Moses Cheboi, MP  
Hon. Kenneth Marende, MP  
Hon. Amina Abdalla, MP  
Hon. Gideon Ndambuki, MP  
Hon. Macharia Mukiri, MP  
Hon. Zaddock Syong'o, MP  
Hon. Omingo Magara, MP

**ABSENT WITH APOLOGY**

Hon. Jim Choge, MP  
Hon. Bifwoli Wakoli, MP  
Hon. Njoki Ndung'u, MP

**IN-ATTENDANCE**

Mr. J. Gitau  
Mr. Dickson Matei  
Mr. S.Juma  
Mr. Francis Muchiri  
Mr. S. Mugacha  
Mr. J. Mutundura

**KENYA NATIONAL SOCIETY OF PROFESSIONAL AUCTIONEERS (KENSAP)**

Chairman - Gallant Auctioneers  
Vice-Chairman - Marchet Auctioneers  
Secretary – Intime Auctioneers  
Treasurer – Expedition Auctioneers  
Member – Galax Auctioneers  
Organizing Secretary – Jumbo Auctioneers

**NATIONAL ASSOCIATION OF KENYA AUCTIONEERS (NAKA)**

Mr. D. K. Karwili  
Mr. B.K. Sila  
Mr. J.O. Josiah  
Mr. J.M. Mbijiwe

Chairman  
Secretary – Legacy Auctioneers  
Member  
Member

**IN-ATTENDANCE**

Mr. Zakayo Mogere  
Ms. Benedictus Rono

**- KENYA NATIONAL ASSEMBLY**

- Clerk Assistant  
- Parliamentary Intern

**MINUTE NO. 098/2006**

**MEETING WITH THE ASSOCIATIONS OF AUCTIONEERS**

The Kenya National Society of Professional Auctioneers (KENSAP) and the National Association of Kenya Auctioneers (NAKA) had written to the Committee requesting for a meeting to discuss the proposed amendment to the Auctioneers Act, 1996 (No.5 of 1996) in the Statute

Law (Miscellaneous Amendments) Bill, 2006. The amendment seeks to recognize the existence of more than just one registered body of auctioneers which may be eligible to nominate members to the Auctioneers Licensing Board.

The National Association of Kenya Auctioneers (NAKA) was the pioneer body that governed the auctioneers and the only body that nominates members to the Board. The Board's role is mainly to ensure that the auctioneers carry out their duties as per the law and is responsible for the licensing of the auctioneers and also recommends amendments to the Chief Justice on matters concerning the auctioneers. KENSAP which is a splinter group do not have a representative in the Board. However, according to the Act both associations have got equal status as they are registered under the Societies Act.

The Committee informed the associations that the amendment if passed, will breed confusion in their profession as it will create room for proliferation of associations at a time when they have been requesting for a single professional body along the lines of the Law Society of Kenya. The Committee also advised them to focus on the policy issue of professionalism rather than the narrow interest of representation in the Board.

**MINUTE NO.099/2006**      **DELIBERATIONS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2006.**


Members went through the Committee's draft report on the Statute Law (Miscellaneous Amendments) Bill, 2006 and adopted it.

**MINUTE NO.100/2006**      **ANY OTHER BUSINESS**

Hon. Muita informed the Committee that he had a meeting with the Speaker concerning the mandate of the committee and that of the Committee on Administration, National Security and Local Authorities over the summoning of witnesses in relation to the Armenian saga. He further informed the committee that a meeting has been scheduled for Thursday 15<sup>th</sup> June 2006 in the Speaker's office where both chairmen will attend.

**MINUTE NO.101/2006**      **ADJOURNMENT**

The Chairman adjourned the meeting at fifteen minutes past one o'clock until Friday, 16<sup>th</sup> June, 2006 at 09:00 a.m.

Signed: ..........  
(Chairman)

Date: .....19/6/06.....