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THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON

**THE POLITICAL PARTIES (AMENDMENT) BILL (SENATE BILL No. 3
OF 2014)**

Clerks Chambers,
National Assembly,
Parliament Buildings,
Nairobi

August, 2015

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**A REPORT OF THE DEPARTMENTAL COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS ON THE POLITICAL PARTIES
(AMENDMENT) BILL (SENATE BILL No. 3 OF 2014)**

1. PREFACE

Hon Speaker,

On behalf of the Departmental Committee on Justice and Legal Affairs, and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House a report of the Committee on the Political Parties (Amendment) Bill (Senate Bill No. 3 of 2014).

The Committee derives its mandate from Standing Order No. 216(5) which provides as follows:-

- a) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- b) *To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
- c) **To study and review all legislation referred to it;**
- d) *To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;*
- e) *To investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister; and*
- f) *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.*

The Second Schedule of the Standing Orders on Departmental Committees further states the subjects which the Committee is supposed to deal with while discharging its mandate. The subjects are as follows:-

- (a) Constitutional affairs;
- (b) The administration of law and Justice, including the Judiciary, public prosecutions, elections, ethics, integrity and anti-corruption;
and
- (c) Human rights.

1.1. Committee Membership

The Committee was constituted on Thursday, 16th May, 2013 and comprises the following:-

- | | | | |
|-----|--|---|------------------|
| 1. | Hon. Samuel Chepkong'a, M.P. | - | Chairperson |
| 2. | Hon. Priscilla Nyokabi, M.P. | - | Vice Chairperson |
| 3. | Hon. Njoroge Baiya, M.P. | | |
| 4. | Hon. Muriithi Waiganjo, M.P. | | |
| 5. | Hon. Ndirangu Waihenya, M.P. | | |
| 6. | Hon. Florence Kajuju, M.P. | | |
| 7. | Hon. Kang'ata Irungu, M.P. | | |
| 8. | Hon. Benson Mutura, M.P. | | |
| 9. | Hon. John Njoroge Chege, M.P. | | |
| 10. | Hon. William Cheptumo, M.P. | | |
| 11. | Hon. Mohamed Abdi Haji, M.P. | | |
| 12. | Hon. Sammy Koech, M.P. | | |
| 13. | Hon. Moses Cheboi, M.P. | | |
| 14. | Hon. Paul Bii, M.P. | | |
| 15. | Hon. Charles Gimose, M.P. | | |
| 16. | Hon. Johanna Ng'eno, MP. | | |
| 17. | Hon. Boniface Otsiula, M.P. | | |
| 18. | Hon. David Ouma, M.P. | | |
| 19. | Hon. Neto Agostinho, M.P. | | |
| 20. | Hon. Kaluma Peter, M.P. | | |
| 21. | Hon. Fatuma Ibrahim Ali, M.P. | | |
| 22. | Hon. Ben Momanyi Orari, M.P. | | |
| 23. | Hon. Tom J. Kajwang', M.P. | | |
| 24. | Hon. (Bishop) Mutua Mutemi, M.P. | | |
| 25. | Hon. Olago Aluoch, M.P. | | |
| 26. | Hon. (Dr) Christine Oduor Ombaka, M.P. | | |
| 27. | Hon. Munuve G. Mati, M.P. | | |
| 28. | Hon. Mwamkale William Kamoti, M.P. | | |
| 29. | Hon. James Bett, M.P. | | |

1.3. Origin of the Bill

The Political Parties (Amendment) Bill (Senate Bill No. 3) of 2014 is dated 28th February, 2014 and originates from the Senate. The Bill was sponsored in the Senate by Sen. (Dr) Boni Khalwale and upon being passed was referred to the National Assembly for further scrutiny in line with Article 110 of the Constitution of Kenya.

1.4. First reading of the Bill

Standing Order 143 states as follows:-

“ A Bill which originates in the Senate shall be proceeded with by the National Assembly in the same manner as a Bill introduced in the National Assembly by way of First Reading in accordance with Standing Order 126 (First Reading of Bills).

The Bill was read in the National Assembly for the first time on 20th August 2014 and immediately committed to the Departmental Committee on Justice and Legal Affairs for scrutiny in line with Standing Order 127 (1) which states as follows:-

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

1.5. Public participation on the consideration of the Bill

Standing Order 127(3) states as follows:-

“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”

The process of public participation in the passage of the Bill was undertaken by the Senate and the Committee did not find it necessary to repeat the exercise.

1.5 Sittings of the Committee and adoption of report

The Committee considered the Bill on 20th March, 2015 in Committee Room 9, Main Parliament Building. The Committee then considered and adopted its report on the Bill on 24th August, 2015 at the same venue. The adoption of the report was proposed by Hon. John Njoroge and seconded by Hon. Sammy Koech. There was no dissenting voice to the adoption of the report. Minutes of the Committee’s sitting adopting the report are annexed hereto as appendix 1. A list of Members who attended the sitting is also annexed hereto as appendix 2.

1.6. Acknowledgement

The Chairperson wishes to commend Committee Members for their devotion and commitment to duty which made the consideration of this Bill a reality. The Committee further wishes to thank the Offices of the Speaker and Clerk of the National Assembly for providing guidance and technical support without which its work would not have been possible.

Hon. Speaker Sir,

On behalf of the Committee, I now wish to table this report in the House.

SIGNED.....*S. Chepkong'a*.....

Hon. Samuel Chepkong'a, MP
(Vice Chairperson)

Departmental Committee on Justice and Legal Affairs

DATE.....*24th August, 2015*.....

2.0. BACKGROUND

The Bill is dated 18th September, 2013 and was sponsored in the Senate by Senator. (Dr) Bony Khalwale.

The principle object of the Bill is to amend section 25 of the Political Parties Act, No 11 of 2011 in order to provide for the distribution of funds to all political parties that have won at least one elective constituency seat in Parliament or in any of the county assemblies.

The amendment further proposes that the total number of votes obtained by a Presidential candidate should be excluded from consideration for the distribution of funds since this provision disadvantages a political party that may decide to support a presidential candidate from a different political party.

The amendment if passed will protect all political parties as envisaged in Article 10 of the constitution which provides that the country's national values and principles of governance include democracy and the rule of law.

The Bill concerns county governments in terms of Article 110(1)(b) of the Constitution of Kenya in that the provision of funds to political parties affects the election of members of county assemblies and county executives. The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms neither is it a money Bill within the context of Article 114 of the Constitution.

3.0. PUBLIC PARTICIPATION IN THE CONSIDERATION OF THE BILL

Standing Order 127(3) provides as follows:-

“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”

The process of public participation in the passage of the Bill was undertaken by the Senate and the Committee did not find it necessary to repeat the exercise.

4.0. CONSIDERATION OF THE BILL BY THE COMMITTEE AND OBSERVATIONS

The Committee considered the Bill at its sitting of 20th March, 2015 and made the following observations:-

- (i) The proposed amendment to section 7 of the Political Parties Act seeks to remove the requirement that political parties have branch offices in more than half the counties. Such an amendment would go against Article 91 of the Constitution which requires political parties to have a national character. The amendment is therefore in contravention of Article 91 of the Constitution.

- (ii) The proposed amendment to section 25 of the Political Parties Act seeks to create two modes for funding political parties as required under Article 92. As per the proposal—
 - (a) seventy percent of the Political Parties Fund is to be shared proportionately between political parties on the basis of the number of votes each party receives at the last general election. This means that with regard to the seventy percent, the higher the number of votes garnered by a party, the larger its share as compared to other parties;

 - (b) twenty five percent of the Fund is to be shared equally between the political parties that participated in the last general election and managed to secure at least one of the following:-
 - (a) one seat in the office of a county governor;
 - (b) one seat in the office of a senator;
 - (c) at least two seats in the office of a member of the National Assembly;
 - (d) at least twenty seats in the office of a member of a County Assembly;

- (iii) The amendment further seeks the removal of the votes for the Presidential Election from the tally to be used in the sharing of the Fund. If passed, the amendment would:-
 - (a) further the inclusion of other political parties in sharing in the Fund as long as they manage to secure either of the seats provided for; and
 - (b) provide for the interests of political parties that fail to field a presidential candidate in an election.

The amendment represents a suitable proposal for consideration in achieving an equitable method of sharing the Fund.

However, the Committee notes that the Bill seeks to amend an Act of Parliament that does not contain matters that concern county governments and, insofar as it seeks to amend the distribution of

public funds, it qualifies to be a Money Bill. These two attributes make it a Bill that may only be introduced in the National Assembly.

5.0. RECOMMENDATIONS

Based on the cited observations, the Committee recommends that the House rejects the Bill.

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APPENDIX 1

**MINUTES OF THE SIXTY FIRST SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS HELD ON MONDAY 24TH AUGUST, 2015 AT
3.00 P.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS**

PRESENT

Hon. Samuel Chepkonga, M.P.	-	Chairperson
Hon. Priscilla Nyokabi, M.P.	-	Vice Chairperson
Hon. Benson Mutura, M.P.		
Hon. Boniface Otsiula, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Dr.Christine Ombaka, M.P.		
Hon. David Ochieng, M.P.		
Hon. Kang'ata Irungu, M.P.		
Hon. Munuve Mati John, M.P.		
Hon. John Njoroge Chege, M.P		
Hon. John M. Waiganjo, M.P.		
Hon. Olago Aluoch, M.P.		
Hon. Mohamed Abdi Haji, M.P.		
Hon. Moses Cheboi, M.P.		
Hon. Njoroge Baiya, M.P.		
Hon. Paul K. Bii, M.P.		
Hon. Peter Kaluma, M.P.		
Hon. (Bishop) Robert Mutemi, M.P.		
Hon. Sammy Koech, M.P.		
Hon. Tom J. Kajwang', M.P.		
Hon. Ndirangu Waihenya, M.P.		

ABSENT:-

Hon. Kamoti Mwamkale William, M.P.
Hon. Johanna Ngeno, M.P.
Hon. James Bett, M.P
Hon. William Cheptumo, M.P.
Hon. Ben Momanyi, M.P
Hon. Florence Kajuju, M.P.
Hon. Fatuma Ibrahim, M.P.
Hon. Mutua Mutemi, M.P.
Hon. Neto Agostinho, M.P.

IN ATTENDANCE:-

SECRETARIAT

Mr. George Gazemba	-	Senior Clerk Assistant
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Ms. Mary L. Lemerelle
Mr. Ronald Walala

- Clerk Assistant III
- Legal Counsel II

MIN No. JLA 233/2015:-

PRELIMINARIES

The Chairperson called the meeting to order at 3:20 p.m. Prayer was said by Hon. (Bishop) Robert Mutemi, M.P.

MIN No. JLA 234/2015:- **CONSIDERATION AND ADOPTION OF REPORTS ON BILLS**

(i) **Consideration and adoption of report on the Political Parties (Amendment) Bill (Senate Bill No. 3 of 2014)**

The Committee considered and adopted its report on the Political Parties (Amendment) Bill (Senate Bill No. 3 of 2014). The report rejected the Bill because it was a money Bill which should have originated from the National Assembly. The adoption of the report was proposed by Hon. John Njoroge, and seconded by Hon. Sammy Koech. There was no dissenting voice to the adoption of the report.

(ii) **Consideration and adoption of report on the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No. 6 of 2014)**

The Committee considered and adopted its report on the Statute Law (Miscellaneous Amendments) Bill (Senate Bill No. 6 of 2014). The report proposed some amendments to the Bill. The adoption of the report was proposed by Hon. Tom John Kajwang' and seconded by Hon. Priscilla Nyokabi. There was no dissenting voice to the adoption of the report.

MIN No. JLA 235/2015:-

ADJOURNMENT OF THE MEETING

There being no other business to transact, the sitting adjourned at fifteen minutes past four o'clock in the afternoon.

Signed.....

(Chairperson)

Date.....

APPENDIX 2



DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

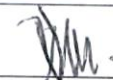
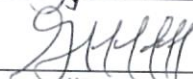




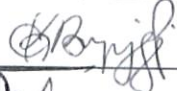
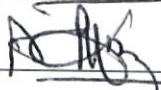




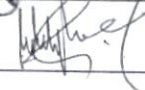
MEMBERS ATTENDANCE

Date: 24th August, 2015

Venue: COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING

Agenda: CONSIDERATION OF REPORT ON POLITICAL PARTIES (AMENDMENT) BILL, 2014
AND STATUTES LAW (MISCELLANEOUS AMENDMENTS) BILL, 2014

	NAMES	SIGNATURE
1.	Hon. Samuel Chepkonga (Chairperson)	
2.	Hon. Priscila Nyokabi (Vice Chairperson)	
3.	Hon. Agostinho Neto	
4.	Hon. Ben Momanyi Orori	
5.	Hon. Benson Mutura	
6.	Hon. Boniface Otsiula	
7.	Hon. Charles Gimose	
8.	Hon. Christine Ombaka (Dr.)	
9.	Hon. David Ochieng'	
10.	Hon. Fatuma Ibrahim	
11.	Hon. Florence Kajuju	
12.	Hon. Irungu Kang'ata	
13.	Hon. James Bett	
14.	Hon. Johanna Ngeno	

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

George Gazemba

For: The Clerk of the National Assembly