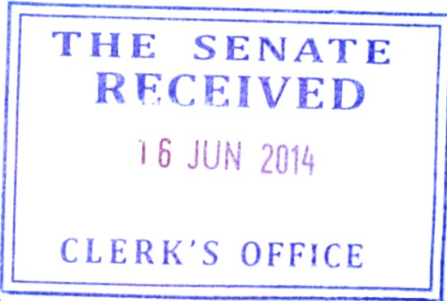


REPUBLIC OF KENYA

PAPER LAID  
BY SEN. WAKO  
19.06.2014



PARLIAMENT



THE SENATE



ELEVENTH PARLIAMENT



THE STANDING COMMITTEE

ON

LEGAL AFFAIRS AND HUMAN RIGHTS

A REPORT ON PUBLIC HEARINGS HELD ON 9<sup>TH</sup> & 10<sup>TH</sup> APRIL, 2014 ON:-

1. The Political Parties (Amendment) Bill, 2014
2. The County Government Amendment Bill, 2014
3. The County Government (Amendment) (No.2) Bill, 2014
4. The Statute Law Miscellaneous (Amendments) Bill, 2014

Clerk's Chambers,  
First Floor,  
K.I.C.C Buildings,  
**NAIROBI.**

APRIL, 2014

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## **ABBREVIATIONS**

CIC	Commission for Implementation of the Constitution
CMD	Centre for Multi Party Democracy
IEBC	Independent Electoral and Boundaries Commission
IED	Institute for Education in Democracy

## **PREFACE**

### **Establishment of the Committee**

The Standing Committee on Legal Affairs and Human Rights is established pursuant to the Senate Standing Order 208 and mandated to consider all matters related to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics and integrity; and implementation of the provisions of the Constitution on human rights.

### **Membership of the Committee**

The Committee is comprised of the following members:-

1. Sen. Amos Wako - Chairperson
2. Sen. Stephen Sang' - Vice Chairperson
3. Sen. Kembi Gitura
4. Sen. Kiraitu Murungi
5. Sen. Fatuma Dullo
6. Sen. Kipchumba Murkomen
7. Sen. Hassan Omar Hassan
8. Sen. Mutula Kilonzo Junior
9. Sen. Judith Sijeny

### **Acknowledgement**

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the conduct of the public hearings. The Committee also thanks members of the public who made submissions, both orally and in writing.

**Mr. Speaker Sir,**

It is my pleasant duty, pursuant to Standing Order 203, to present a Report of the Standing Committee on Legal Affairs and Human Rights on public hearings held on 9<sup>th</sup> and 10<sup>th</sup> April, 2014, on the Political Parties (Amendment) Bill, 2014; The County Government Amendment Bill, 2014; The County Government (Amendment) (No.2) Bill, 2014; and The Statute Law Miscellaneous (Amendments) Bill, 2014 for consideration by the House.

Signed.....

Date.....16<sup>th</sup> JUNE 2014.

**SEN. AMOS WAKO, EGH, MP**

**CHAIRPERSON.**

## **EXECUTIVE SUMMARY**

The following Bills were read a First Time in the Senate on the dates indicated below:-

- (i) The Political Parties (Amendment) Bill, 2014 (Sen. Dr. Boni Khalwale) on 12/3/2014
- (ii) The County Governments (Amendment) Bill, 2014 (Sen. Dr. Boni Khalwale) on 12/3/2014
- (iii) The County Governments (Amendment) (No.2) Bill, 2014 (Sen. Martha Wangari) on 12/3/2014
- (iv) The Statute Law Miscellaneous (Amendments) Bill, 2014 (Sen. Amos Wako) on 18/3/2014

Following the First Reading of the above listed Bills, they stood committed to the Committee on Legal Affairs and Human Rights for facilitation of public participation. Subsequently, the Committee, Pursuant to Article 118 of the Constitution and Standing Order 130 (4), invited submissions from members of the public on the above Bills via an advertisement on the Daily Nation Newspaper. The Committee received both oral and written submissions on the Bills during its meeting with the members of public held on 9<sup>th</sup> and 10<sup>th</sup> April, 2014 at Kenya International Conference Centre, Nairobi.

The Committee observed that the members of the public did not generally approve of the Political Parties (Amendment) Bill, 2014 and the County Government (Amendment) Bill, 2014 and made proposals for further amendments thereof.

However, members of the public generally approved of the County Government (Amendment) (No. 2) Bill, 2014 with only one comment on the Statute Miscellaneous Amendment Bill, 2014 on The Pyrethrum Act, 2013.

## CHAPTER ONE

## INTRODUCTION

The following Bills stood committed to the Committee on Legal Affairs and Human Rights for facilitation of public participation pursuant to Standing Order 130. They seek to amend various Acts as listed herein below:-

### 1.1 THE POLITICAL PARTIES (AMENDMENT) BILL, 2014

The Political Parties (Amendment) Bill, 2014 seeks to amend **Section 25 of the Political Parties Act, 2011** which Section provides as follows:-

#### ***Distribution of the Fund***

**25.** (1) *The Fund shall be distributed as follows-*

*(a) ninety five per cent of the Fund proportionately by reference to the total number of votes secured by each political party in the preceding general election; and*

*(b) five percent for the administration expenses of the Fund.*

(2) *Notwithstanding subsection (1), a political party shall not be entitled to receive funding from the Fund if-*

*(a) the party does not secure at least five per cent of the total number of votes at the preceding general elections; or*

*(b) more than two-thirds of its registered office bearers are of the same gender.*

(3) *For purposes of subsection (1) (a) and (2) (a), the total number of votes secured by a political party shall be computed by adding the total number of votes obtained in the preceding general election by a political party in the election for the President, members of Parliament, county governors and members of county assemblies.*

## **1.2 THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2014**

The County Governments (Amendment) Bill, 2014 Bill seeks to amend the County Governments Act –No. 17 of 2012 to insert in the Act a schedule setting out the seat or physical location of each of the county governments.

## **1.3 THE COUNTY GOVERNMENTS (AMENDMENT) (NO.2) BILL, 2014**

The County Governments (Amendment) (No.2) Bill, 2014 Bill seeks to amend Section 7 of the County Governments Act, 2012 to ensure that County Assemblies respect the gender rule as espoused under Article 27(8) and Article 177 of the Constitution.

**Section 7 of the County Governments Act, 2012** which the Bill seeks to amend provides as follows:-

### ***Membership of the county assembly***

*7. (1) In addition to the members who are elected under Article 177 (a), or nominated under Article 177 (b) of the Constitution, a county assembly shall comprise—*

*(a) six nominated members as contemplated in Article 177 (c) of the Constitution; and*

*(b) the speaker, who is an ex officio member elected in accordance with Article 178 of the Constitution.*

*(2) The political party nominating persons under subsection (1) shall ensure that—*

*(a) community and cultural diversity of the county is reflected in the county assembly; and*

*(b) there is adequate representation to protect minorities within the county in accordance with Article 197 of the Constitution.*

*(3) The number of members nominated under subsection 1(a) shall be reviewed to accord with the number of Wards determined by the Independent Electoral and Boundaries Commission under section 27(3)(a).*

#### **1.4 THE STATUTE LAW MISCELLANEOUS (AMENDMENTS) BILL, 2014**

The Statute Law Miscellaneous (Amendments) Bill, 2014 seeks to amend various Acts of Parliament, among them The Pyrethrum Act, 2013 (Act No. 22 of 2013). The Bill seeks to amend Section 6 of the Act in order to provide for the appointment of some members of the Board by the Council of County Governors and to ensure that the composition of the Board reflects national values and principles and that recruitment is competitively done.

**Section 6 of the Pyrethrum Act, 2013** which the Bill seeks to amend provides as follows:-

*6. The Board of Management of the Authority*

- (1) There is established a board to be known as the Board of Management of the Authority which shall administer and manage the affairs of the Authority.*
- (2) The Board shall consist of—*
  - (a) a Chairperson nominated by the Cabinet Secretary and appointed by the President;*
  - (b) the Principal Secretary in the Ministry for the time being matters relating to agriculture or his representative;*
  - (c) the Principal Secretary in the Ministry for the time being responsible for finance or his representative;*
  - (d) the Principal Secretary for the time being responsible for*

*industrialization;*

*(c) five persons appointed by the Cabinet Secretary, of whom—*

*(i) two shall represent the interests of pyrethrum growers;*

*(ii) one shall represent the interests of formulators;*

*(iii) one shall represent the interests of pyrethrum processors;  
and*

*(iv) one shall possess knowledge and experience qualities which,  
in the Cabinet Secretary's opinion, shall benefit the Authority;  
and*

*(f) the Chief Executive Officer of the*

*Authority appointed under section 7*

*(3) A person shall not be appointed a member of the Board under subsection (2)(a) and (e) unless that person holds at least a diploma from an institution recognised in Kenya.*

*(5) The Schedule shall apply in respect of the conduct and regulation of the business and affairs of the Board.*

The Committee during its meeting held on 9<sup>th</sup> April, 2014, received submissions on the Political Parties (Amendment) Bill, 2014; The county Government (Amendment) Bill, 2014; The county Government (Amendment)(No.2); and The Statute Miscellaneous (Amendment) Bill, 2014. Submissions were received from the following institutions:-

- (i) Commission on Implementation of the Constitution
- (ii) Independent Electoral & Boundaries Commission
- (iii) Office of the Registrar of Political Parties
- (iv) Centre for Multiparty Democracy (CMD)

## **2.1 THE POLITICAL PARTIES (AMENDMENT) BILL, 2014**

### **2.1.1. Submissions of the Office of the Registrar of Political Parties**

The Office of the Registrar of Political Parties expressed support for the Political Parties (Amendment) Bill, 2014 based on the following rationale:-

- I. The amendment shall ensure that more political parties are funded by the State and prevent the influence of party policies by individuals and donors who support the party.
- II. It shall promote the doctrine of equality of the vote as provided in the Constitution as the performance of every political party in every single election in both Assemblies shall be taken into account.
- III. It shall address the challenge of distribution of the political parties fund to political parties in a coalition.

The Registrar proposed further amendments to the Bill as follows:-

- a) The inclusion of the number of gubernatorial seats a party wins in a single election as a factor to be considered in the distribution of the funds.

- b) The performance of a political party in a presidential vote to be considered in the distribution of the fund.

**2.1.2. Submissions of the Commission on Implementation of the Constitution (C.I.C.)**

The views of the Commission on Implementation of the Constitution were fundamentally different from the submissions made by the Office of the Registrar of Political Parties. Members of the Commission did not support the Political Parties (Amendment) Bill, 2014 which in their opinion would go against the gains made as far as the Constitution is concerned. They opined that aspects under Section 25 of the Political Parties Act favorable to remain as they were. Their disapproval was based on the following rationale:-

- I. Article 91 (1) (a) provides that every political party shall have a national character as prescribed by an Act of Parliament and (c) promote and uphold national unity. The proposed amendment in Section 25 (a) that “a party that wins at least one single member Constituency seat in Parliamentor in a county assembly” cannot be said to reflect national character and would go against letter & spirit of the constitution.
- II. The proposed amendment under Section 25 (b) is unnecessary and seems only to protect seemingly disadvantaged parties that seek to support presidential candidate. A party should not be penalized for fielding a presidential candidate.

The Commission proposed the following amendment to the Political Parties Act:-

- a) That a provision be made in the Political Parties Act to act as a legal basis requiring coalition instruments to include a provision for the distribution of funds amongst the member parties.

### **2.1.3. Submissions by Centre for Multi Party Democracy Kenya (CMD)**

The Centre for Multi Party Democracy supported the amendment in Section 2(b) of The Political Parties(Amendment) Bill, 2014 deleting the word ‘president’ in sub section (3) on the basis that the President is a unifying factor and should not be assigned to any political party.

They, however, did not support the other aspects of the Political Parties (Amendment) Bill, 2014 which in their opinion was inadequate and discriminatory. They proposed the following amendments;-

- I. Section 25(1) (a) be deleted and substituted with the (i) 25% of funds shall be distributed equally among political parties that secure the seats stated in section 25 (2) (a); and (ii) 70% of funds shall be distributed proportionately in accordance to votes secured by each political party that secure the seats stated in section 25 (2) (a) .
  
- II. Section 25 (2) (a) by deleting the words “at least 5% of the total number of votes” and substituting thereof “at least one single member constituency seat in Parliament or in a county assembly, or one county governor seat based on the rationale that the political parties fund should be distributed to all political parties that have either a legislative or an executive mandate.

They proposed further amendments to the Political Parties Act, 2011 as follows:-

- The Office of the Registrar of Political parties be given a right to determine the distribution of the fund to political parties as they are the custodians of data for the political parties.
- Provision to be made for the recognition of Coalitions in the Political Parties Act, 2011.

- Performance of a political party in a presidential vote to be considered for the distribution of the political parties fund. Political parties who don't register any growth should be given a grace period of a maximum of five (5) years for growth after undergoing training.
- A provision be made for independent candidates from the Political Parties Fund based on their numbers. If the allocation remains unused then it can be returned back to the Fund.

## **2.2 THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2014**

### **2.2.1. Submissions by Independent Electoral and Boundaries Commission (I.E.B.C.)**

The I.E.B.C supported the County Governments (Amendment) Bill, 2014 on the basis that it would put to rest the conflicts that there were after the General Elections of 2013 as to headquarters of County Assemblies as were witnessed in Kirinyaga, Meru Counties and others.

It was emphasized that the Commission's role in swearing-in was only transitional and that there was need to consider a final solution for the future.

### **2.2.2 Submissions by the Commission on Implementation of the Constitution (C.I.C.)**

The Commission on Implementation of the Constitution did not support the The County Governments (Amendment) Bill, 2014 based on the following rationale:-

- I. The memorandum of objects and reasons did not attempt to give a rationale to justify the proposed amendment. There was need for the memorandum to sufficiently explain the reason for the proposed amendment.

- II. There was need to reconsider the use of the word 'physical location' as in the proposed amendment in Section 6A of the County Government Act Amendment Bill 2014.
- III. The proposed Amendment would usurp the powers of county governments as enshrined in Articles 174 and 175 of the Constitution on Objects & Principles of devolved government. It would further curtail their freedom of choice and undermine the distinct constitutional character of the county government as per Article 185 of the Constitution on the county assemblies' legislative power
- IV. The Urban Areas & Cities Act 20 also deals with the process to determine urban areas. It is putting the cart before the horse.

The Commission proposed the below amendment:-

- a) That the Senate could establish a general basis or principles for determination of locations for county governments but leave the details to counties assemblies to legislate on.

### **2.3.1 COUNTY GOVERNMENT (AMENDMENT) (NO.2) BILL, 2014**

#### **2.3.1 Submissions of the Commission on Implementation of the Constitution (C.I.C.)**

The general view of CIC was that the County Government (Amendment) (No.2) Bill, 2014 was not necessary; even though they had no constitutional issues with the proposed amendment.

However the Commission expressly supported section 7 A (2) of the County Government (Amendment) (No.2) Bill, 2014.

### **2.3.2. Submissions by Independent Electoral and Boundaries Commission (I.E.B.C.)**

The Independent Electoral and Boundaries Commission supported the County Government (Amendment) (No.2) Bill, 2014 based on the rationale that the gender rule would be resolved as Section 7 of the County Government Act would be aligned with Articles 38 & 177 of the Constitution to provide for elected members.

The Commission proposed that it be given more time for allocations of party lists. As such, there was need for reconsideration of statutory timelines to ensure that at the first sitting the Membership of the Assembly is fully and duly constituted.

### **2.3.3. Submissions by the Registrar of Political Parties**

The Office of the Registrar of Political Parties supported the County Government (Amendment) (No.2) Bill, 2014 on the basis that it was consistent with Articles 10 and 177 of the Constitution.

### **2.4. THE STATUTE LAW MISCELLANEOUS (AMENDMENTS) BILL, 2014**

The Independent Electoral and Boundaries Commission and the Office of the Registrar of Political Parties had no comments on the Amendment Bill. The Commission on Implementation of the Constitution, however, requested the Committee's indulgence to submit their written views by 16<sup>th</sup> April, 2014.

The Committee on Legal Affairs and Human Rights met the general public on the 10<sup>th</sup> April 2014 at the K.I.C.C in Nairobi. The Committee invited submissions from members of the public by way of advertisement in the Daily Nation Newspaper. The Committee received both oral and written submissions from members of the public.

**3.1.4 THE POLITICAL PARTIES (AMENDMENT) BILL, 2014****3.1.1 Submissions from the Institute for Education in Democracy**

Members of the Institute for Education in Democracy did not support The Political Parties (Amendment) Bill, 2014 based on the following rationale:-

- I. The Memorandum of Objects and Reasons did not adequately justify the amendment of Section 25 of the Political Parties Act.
- II. The object of the amendment undermines and violates the constitutional provision and requirement under Article 91 thereof that every political party should have a national character. A political party that wins at least one elective constituency seat cannot be regarded as having a national character as required by the Constitution.
- III. The proposal to exclude the presidential vote count as a factor in the determination of the distribution of the political parties fund is invidious and discriminatory and acts to the detriment of political parties that field a presidential candidate in an election.

The Institute for Education in Democracy proposed that section 25 of the Political Parties Act should remain as it is and the amendment withdrawn.

**3.1.2 Submissions by Dr. Charles Bwa'ayeni- Secretary for Publicly & Economic Affairs, New Ford Kenya.**

Dr. Bwa'ayeni did not support The Political Parties (Amendment) Bill, 2014 on the basis that the Section 25 of the Political Parties Act was more favorable than the proposed amendments.

He, however, proposed the following amendments to the Political Parties Act:-

- a) Section 25 (1) (a) of the Political Parties Act be deleted and substituted with:-
  - (i) Fifty five per cent of the fund be distributed proportionately to each party that participated in the preceding general election, and
  - (ii) Forty per cent of the fund to be distributed by reference to the total number of votes secured by each party in the preceding general election
- b) Section 25 (2) (a) be deleted and substituted with the words “the party that does not secure at least 2 Members of Parliament or 25 Members of County Assemblies.”
- c) Section 25 (3) be deleted entirely on the basis that there was no means of establishing that whoever voted for a president, Members of Parliament, county governors and members of county Assemblies belonged to a particular political party.
- d) The inclusion of a provision to serve as a legal basis for Coalitions which presently are not expressly recognized in the Political Parties Act.
- e) The use of the word “brief case” parties to be avoided on the basis that if all parties qualify for registration as such, there would be no basis for their classification as “brief case” parties for purposes of funding.

### **3.1.3. Submissions by Mr. Dancun Nyumba, Pioneers for Change**

Mr. Dancun Nyumba did not support The Political Parties (Amendment) Bill, 2014 on the basis that:-

- I. The amendment contravenes Article 4 of the Constitution which provides that Kenya is a multi -party democratic State.
  
- II. The distribution of funds in Section 25(1) (a) based on the number of votes secured by each political party in the preceding general election is discriminatory and punitive. Political Parties are not election machines and it is not mandatory that a political party participates in an election.

### **3.1.4. Submissions by Ms. Nyambura Njaramba, Devolution Forum**

Ms Nyambura opposed The Political Parties (Amendment) Bill, 2014 on the basis that the threshold of “at least one single member constituency seat in Parliament or in a county assembly” as proposed in Section 2 (a) of the Amendment Bill is too low and beats the purpose and importance of political competition, while rewarding proliferation of briefcase parties.

She proposed an amendment of “at least 5% of elected seats in the Senate, National Assembly or County Assembly” so that parties who chose to operate at county levels are also given a chance to obtain funding under the law.

### **3.1.5. Submissions by Mr. Kengere, Chairman, Kenya Social Congress**

Mr. Kengere opposed The Political Parties (Amendment) Bill, 2014 on the basis that the threshold of “at least one single member constituency seat in Parliament or in a county assembly” was too high.

He proposed that political parties be given an opportunity for growth based on the funding to the parties.

### **3.2 COUNTY GOVERNMENT (AMENDMENT) BILL, 2014**

#### **3.2.1. Submissions by Ms. Nyambura Njaramba, The Devolution Forum**

Ms. Nyambura supported The County Government (Amendment) Bill, 2014 but cautioned that the Senate should allow for the input of county residents and concurrence of county governments to avoid conflict.

### **3.3 COUNTY GOVERNMENT (AMENDMENT) (NO.2) BILL, 2014**

#### **3.3.1 Submissions by Mr. Ricky Kyalo, Machakos County**

Mr. Kyalo expressed his support for the County Government (Amendment) (No.2) Bill, 2014.

### **3.4. THE STATUTE LAW MISCELLANEOUS (AMENDMENTS) BILL, 2014**

#### **3.4.1. Submissions by Ms. Nyambura Njaramba, Devolution Forum on The Pyrethrum Act No. 22 of 2013**

Ms. Nyambura opposed The Statute Law Miscellaneous (Amendments) Bill, 2014 on the Pyrethrum Act, No. 22 of 2013 on the basis that the procedure for enabling the Council of Governors to appoint some members of the Board of Management of Pyrethrum Regulatory Authority is not provided for under the Intergovernmental Relations Act, The State Corporations Act or any other law.

She proposed that Intergovernmental Relations Act and other relevant laws be amended as well to specify the procedure for the exercise of the power of nomination and appointment by the Council of Governors, as per the values and principles enshrined in the Constitution.

**4.1 THE POLITICAL PARTIES (AMENDMENT) BILL, 2014**

- i. The submissions of a majority of the members were not in support of the Political Parties (Amendment) Bill, 2014 and were of the opinion that the Political Parties Act, 2011 was a better law. They cited the following reasons:-
  - a) The proposed amendment in Section 25 (a) that “*a party that wins at least one single member Constituency seat in Parliament or in a county assembly*” is in violation of Article 91 (1) (a) on the national character and unity of political parties.
  - b) The proposed amendment under Section 2 (b) of the Bill is unnecessary and seems only to protect seemingly disadvantaged parties that seek to support a presidential candidate.
  - c) The distribution of the fund based on the number of votes secured by each political party in the preceding general election is discriminatory and punitive.
  - d) The threshold of “*at least one single member constituency seat in Parliament or in a county assembly*” as proposed in Section 2 (a) of the Amendment Bill is too low and beats the purpose and importance of political competition, while rewarding proliferation of briefcase parties.
- ii. There were those participants who proposed further amendments on the Bill as follows:-
  - a) The number of gubernatorial seats a party wins in a single election and the performance of a political party in a presidential vote to be considered in the distribution of the political parties fund.

- b) That a provision be made in the Political Parties Act, 2011 to act as a legal basis for Coalitions and further require coalition instruments to include a provision for the distribution of funds amongst the member parties.
- c) That out of the 95% of the funds to be distributed, 25% to be distributed equally among political parties while 70% of funds to be distributed proportionately between political parties with at least one single member constituency seat in Parliament or in a county assembly.
- d) Section 25 (2) (a) be deleted and substituted with the words *“the party that does not secure at least 2 Members of Parliament or 25Members of County Assemblies.”*
- e) Section 25 (3) be deleted entirely on the basis that there would be no means of establishing that whoever voted for a president, Members of Parliament, county governors and members of county Assemblies belonged to a particular political party.
- f) That the Office of the Registrar of Political parties be given a right to determine the distribution of the fund to political parties as they are the custodians of data for the political parties.
- g) Political parties that don't register any growth should be given a grace period of a maximum of 5years for growth after undergoing training before they are de registered.
- h) A provision should be made for independent candidates from the political parties fund based on their numbers. If the allocation remains unused then such allocations can be returned back to the fund.

- i) The use of the word “brief case” parties to be avoided on the basis that if all parties qualify for registration as such, there would be no basis for their classification as “brief case” parties for purposes of funding.
- iii. Some participants were of the view that caution must be exercised when determining the threshold for funding to avoid the possibility of a single party meeting the threshold of 5% which would breach Article 4 (2) of the Constitution on multi -partyism.

#### **4.2 THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2014**

- i. The submissions of a majority of the members were not in support of the County Governments (Amendment) Bill, 2014 for the following reasons:-
  - a) The Memorandum of Objects and Reasons did not attempt to sufficiently explain the reason for the proposed amendment.
  - b) There was need to reconsider the use of the word ‘physical location’ as in the proposed amendment in Section 6A.
  - c) The proposed Amendment would usurp the powers of county governments as enshrined in Articles 174 and 175 of the Constitution on Objects & Principles of devolved government and curtail their legislative power under Article 185 of the constitution.
  - d) The Urban Areas & cities Act also deals with the process to determine urban areas.
- ii. Those who did not support the County Governments (Amendment) Bill, 2014 proposed further amendments on the Bill as follows:-
  - a) That the Senate establishes a general basis or principles for determination of locations for county governments but leave the details to counties assemblies to legislate on.
  - b)

#### **4.3 COUNTY GOVERNMENT (AMENDMENT) (NO.2) BILL, 2014**

- i. The submissions of a majority of the members and the public were in support of the County Governments (Amendment) (No.2) Bill, 2014 as it was consistent with Articles 10 and 177 of the Constitution.
- ii. Others were of the view that the proposed Bill was not necessary even though they had no constitutional issues with it per se.

#### **4.4 THE STATUTE LAW MISCELLANEOUS (AMENDMENTS) BILL, 2014**

- i. Most participants during the public hearing did not comment on the Statute Law Miscellaneous (Amendments) Bill, 2014.
- ii. The Amendment to the Pyrethrum Act, No. 22 of 2013 was opposed on the basis that the procedure for enabling the Council of Governors to make appointments to the Board of Management of Pyrethrum Regulatory Authority was not provided for under the Intergovernmental Relations Act, The State Corporations Act or any other law.

It was proposed that an amendment could be done to the Intergovernmental Relations Act and all other relevant laws to provide for the procedure for appointments.

The Committee on Legal Affairs and Human Rights made the following recommendations which were based on the summary of findings of the public hearings contained in Chapter four.

**5.1 THE POLITICAL PARTIES (AMENDMENT) BILL, 2014**

- a) The number of gubernatorial seats a party wins in a single election and the performance of a political party in a presidential vote to be considered in the distribution of the political parties fund.
- b) A provision be made in the Political Parties Act, 2011 to act as a legal basis for the formation of Coalitions and further, to require coalition instruments to include a provision for the distribution of funds amongst the member parties.
- c) That out of the 95% of the funds to be distributed, 25% to be distributed equally among political parties while 70% of funds to be distributed proportionately between political parties with at least one single member constituency seat in Parliament or in a county assembly.
- d) Section 25 (2) (a) be deleted and substituted with the words *“the party that does not secure at least 2 Members of Parliament or 25Members of County Assemblies.”*
- e) Section 25 (3) be deleted entirely on the basis that there would be no means of establishing that whoever voted for a president, Members of Parliament, county governors and members of county Assemblies belonged to a particular political party.
- f) That the Office of the Registrar of Political parties be given a right to determine the distribution of the fund to political parties as they are the custodians of data for the political parties.

- g) Political parties that don't register any growth should be given a grace period of a maximum of 5years for growth after undergoing training before they are de registered.
  - h) A provision should be made for independent candidates from the political parties fund based on their numbers. If the allocation remains unused then such allocations could be returned back to the fund.
  - i) The use of the word "brief case" parties to be avoided on the basis that if all parties qualify for registration as such, there would be no basis for their classification as "brief case" parties for purposes of funding.
- iv. Caution must be exercised when determining the threshold for funding to avoid the possibility of a single party meeting the threshold of 5% which would breach Article 4 (2) of the Constitution on multi -partyism.

## **5.2 THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2014**

That the Senate establishes a general framework for determination of locations of county governments but leave the details to counties assemblies to legislate on.

## **5.3 COUNTY GOVERNMENT (AMENDMENT) (NO.2) BILL, 2014**

The Bill be approved with no further amendments.

## **5.4 THE STATUTE LAW MISCELLANEOUS (AMENDMENTS) BILL, 2014**

The Intergovernmental Relations Act, 2012, The State Corporations Act and any other relevant laws be amended to provide for the procedure for appointments to the Boards before the Pyrethrum Act, No. 22 of 2013 is amended.

## APPENDICES

### COMMITTEE WORK PLAN

<b>DATES</b>	<b>ACTIVITY</b>
9 <sup>th</sup> April, 2014	Meeting with Chairpersons of:-  (i) Commission on Implementation of the Constitution;  (ii) Independent Electoral & Boundaries Commission;  (iii) Centre for Multi-Party Democracy; and  (iv) Registrar of Political Parties.
10 <sup>th</sup> April, 2014	Meeting with the general public

The Political Parties (Amendment) Bill, 2014;

The County Government (Amendment) Bill, 2014;

The County Government (Amendment) (No.2) Bill, 2014; and

The Statute Law Miscellaneous (Amendments) Bill, 2014.

Attendance lists

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 15 (Bills No. 3)*



REPUBLIC OF KENYA

***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2014**

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**NAIROBI, 28th February, 2014**

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**THE POLITICAL PARTIES (AMENDMENT)  
BILL, 2014**

**A Bill for**

**AN ACT of Parliament to amend the Political  
Parties Act, 2011**

**ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the Political Parties (Amendment) Act, 2014. Short title.

2. Section 25 of the Political Parties Act, 2011 is amended— Amendment of  
section 25 of No.  
11 of 2011.

- (a) in sub-section (2) by deleting the words “at least five per cent of the total number of votes” appearing in paragraph (a) and substituting therefore the words “at least one single member constituency seat in Parliament or in a county assembly”;
- (b) in sub-section (3) by deleting the words “the President” appearing immediately after the words “election for”.

**MEMORANDUM OF OBJECTS AND REASONS****Statement of the Objects and Reasons for the Bill**

The object of this Bill is to amend section 25 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.

This amendment will protect all political parties as envisaged in Article 10 of the Constitution which provides that our national values and principles of governance include democracy and the rule of law.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

**Statement on how the Bill concerns county governments**

The Bill concerns county governments in terms of Article 110(1)(b) of the Constitution in that the provision of funds to political parties affects the election of members of a county assembly or a county executive.

**Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution.**

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 18th September, 2013.

BONI KHALWALE,  
*Senator.*

*Section 25 of the Political Parties Act, No. 11 of 2011  
which it is proposed to amend—*

25. (1) The Fund shall be distributed as follows—
- (a) ninety five per cent of the Fund proportionately by reference to the total number of votes secured by each political party in the preceding general election; and
  - (b) five percent for the administration expenses of the Fund.
- (2) Notwithstanding subsection (1), a political party shall not be entitled to receive funding from the Fund if—
- (a) the party does not secure at least five per cent of the total number of votes at the preceding general elections; or
  - (b) more than two-thirds of its registered office bearers are of the same gender.
- (3) For purposes of subsection (1) (a) and (2) (a), the total number of votes secured by a political party shall be computed by adding the total number of votes obtained in the preceding general election by a political party in the election for the President, members of Parliament, county governors and members of county assemblies.

Distribution of the Fund.

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 13 (Bills No. 1)*



REPUBLIC OF KENYA

***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2014**

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**NAIROBI, 28th February, 2014**

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**THIRD SCHEDULE**

(s. 6A)

**PHYSICAL LOCATION OF COUNTY GOVERNMENTS**

	<b>County</b>	<b>Physical Location</b>
1.	Mombasa	Mombasa City
2.	Kwale	Kwale Urban Area
3.	Kilifi	Kilifi Urban Area
4.	Tana River	Hola Urban Area
5.	Lamu	Lamu Urban Area
6.	Taita Taveta	Wundanyi Urban Area
7.	Garissa	Garissa Urban Area
8.	Wajir	Wajir Urban Area
9.	Mandera	Mandera Urban Area
10.	Marsabit	Marsabit Urban Area
11.	Isiolo	Isiolo Urban Area
12.	Meru	Meru Urban Area
13.	Tharaka-Nithi	Kathwana Urban Area
14.	Embu	Embu Urban Area
15.	Kitui	Kitui Urban Area
16.	Machakos	Machakos Urban Area
17.	Makueni	Makueni Urban Area
18.	Nyandarua	Oi Kalou Urban Area
19.	Nyeri	Nyeri Urban Area
20.	Kirinyaga	Kerugoya Urban Area
21.	Murang'a	Murang'a Urban Area
22.	Kiambu	Kiambu Urban Area
23.	Turkana	Lodwar Urban Area
24.	West Pokot	Kapenguria Urban Area
25.	Samburu	Maralal Urban Area
26.	Trans Nzoia	Kitale Urban Area
27.	Uasin Gishu	Eldoret Urban Area
28.	Elgeyo/Marakwet	Iten Urban Area
29.	Nandi	Kapsabet Urban Area
30.	Baringo	Kabarnet Urban Area
31.	Laikipia	Nanyuki Urban Area
32.	Nakuru	Nakuru Urban Area
33.	Narok	Narok Urban Area
34.	Kajiado	Kajiado Urban Area
35.	Kericho	Kericho Urban Area
36.	Bomet	Bomet Urban Area
37.	Kakamega	Kakamega Urban Area
38.	Vihiga	Vihiga Urban Area

**THE COUNTY GOVERNMENTS (AMENDMENT)  
BILL, 2014**

**A Bill for**

**AN ACT of Parliament to amend the County  
Governments Act.**

**ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the County Governments (Amendment) Act, 2014.

Short title

2. The County Governments Act, 2012, hereinafter referred to as the “principal Act”, is amended in section 2 by inserting the following new definition in the proper alphabetical sequence—

Amendment of  
No. 17 of 2012

“city” has the meaning assigned to it under the Urban Areas and Cities Act, 2011;

No. 13 of 2011

3. The principal Act is amended by inserting the following new section immediately after section 6—

Amendment of  
principal Act

Location of  
county  
governments

6A. Each of the county governments shall be located in the respective physical location set out in the Third Schedule.

4. The principal Act is amended by inserting the following new Schedule immediately after the Second Schedule—

Amendment of the  
principal Act

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	<b>County</b>	<b>Physical Location</b>
39.	Bungoma	Bungoma Urban Area
40.	Busia	Busia Urban Area
41.	Siaya	Siaya Urban Area
42.	Kisumu	Kisumu City
43.	Homa Bay	Homa Bay Urban Area
44.	Migori	Migori Urban Area
45.	Kisii	Kisii Urban Area
46.	Nyamira	Nyamira Urban Area
47.	Nairobi	Nairobi City

**MEMORANDUM OF OBJECTS AND REASONS****Statement of the Objects and Reasons for the Bill**

The principal object of this Bill is to amend the County Governments Act, No. 17 of 2012 so as to insert in the Act a Schedule setting out the seat or physical location of each of the county governments. The proposed new Third Schedule will give certainty to residents of counties and other stakeholders on the physical location of the county governments and on where they may seek services offered by the county governments.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

- This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

**Statement on how the Bill concerns county governments**

The Bill concerns county governments in terms of Article 110 (a) of the Constitution in that the seat or physical location of a county government affects the execution of the functions and powers of the county government.

**Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution.**

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 11th February, 2014

BONI KHALWALE,  
*Senator.*

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 14 (Bills No. 2)*



REPUBLIC OF KENYA

***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2014**

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**NAIROBI, 28th February, 2014**

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Bill for Introduction into the Senate—

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For the 2008 paper, please refer to the 2008 paper for details.

**THE COUNTY GOVERNMENTS (AMENDMENT)  
BILL, 2014**

**A Bill for**

**AN ACT of Parliament to amend the County  
Governments Act, 2012**

**ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the County Governments (Amendment) Act, 2014 and shall come into operation on such day as the Cabinet Secretary may, by notice in the Gazette, appoint which date shall not exceed ninety days from the date of publication.

Short title and commencement.

2. The County Governments Act, 2012, in this Act referred to as the "principal Act", is amended in section 7(1) by deleting the word "or" immediately after the words "Article 177(a)" and substituting therefor the words "and those who are".

Amendment of Section 7 of No. 17 of 2012

3. The principal Act is amended by inserting the following new section immediately after section 7-

Amendment of No. 17 of 2012

County  
Assemblies to  
be duly  
constituted at  
first sitting

**7A.** (1) A county assembly shall not be fully and duly constituted for the first sitting after a general election unless all the members provided for under paragraphs (b) and (c) of Article 177(1) of the Constitution have been duly nominated and their names published in the Gazette.

(2) Sub-section (1) shall not apply where the nomination of a member of a county assembly under paragraphs (b) and (c) of Article 177(1) of the Constitution is the subject of a court order stopping or otherwise pending the nomination of, the member.

**MEMORANDUM OF OBJECTS AND REASONS****Statement of the Objects and Reasons for the Bill**

The principal object of this Bill is to ensure that County Assemblies respect the gender rule as espoused under Article 27(8) and Article 177 of the Constitution. The Constitution envisages a situation whereby a County Assembly should not have more than two thirds of its membership being of the same gender. Under the proposed new provisions, the nominated members of a County Assembly under Article 177 (b) and (c) of the Constitution shall be duly nominated and their names published in the Gazette before the first sitting of a County Assembly.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

**Statement on how the Bill concerns county governments**

The Bill concerns county governments in terms of Article 110(a) of the Constitution in that the composition and membership of a county assembly affects the execution of the functions and powers of the county governments.

**Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution.**

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 20th August, 2013.

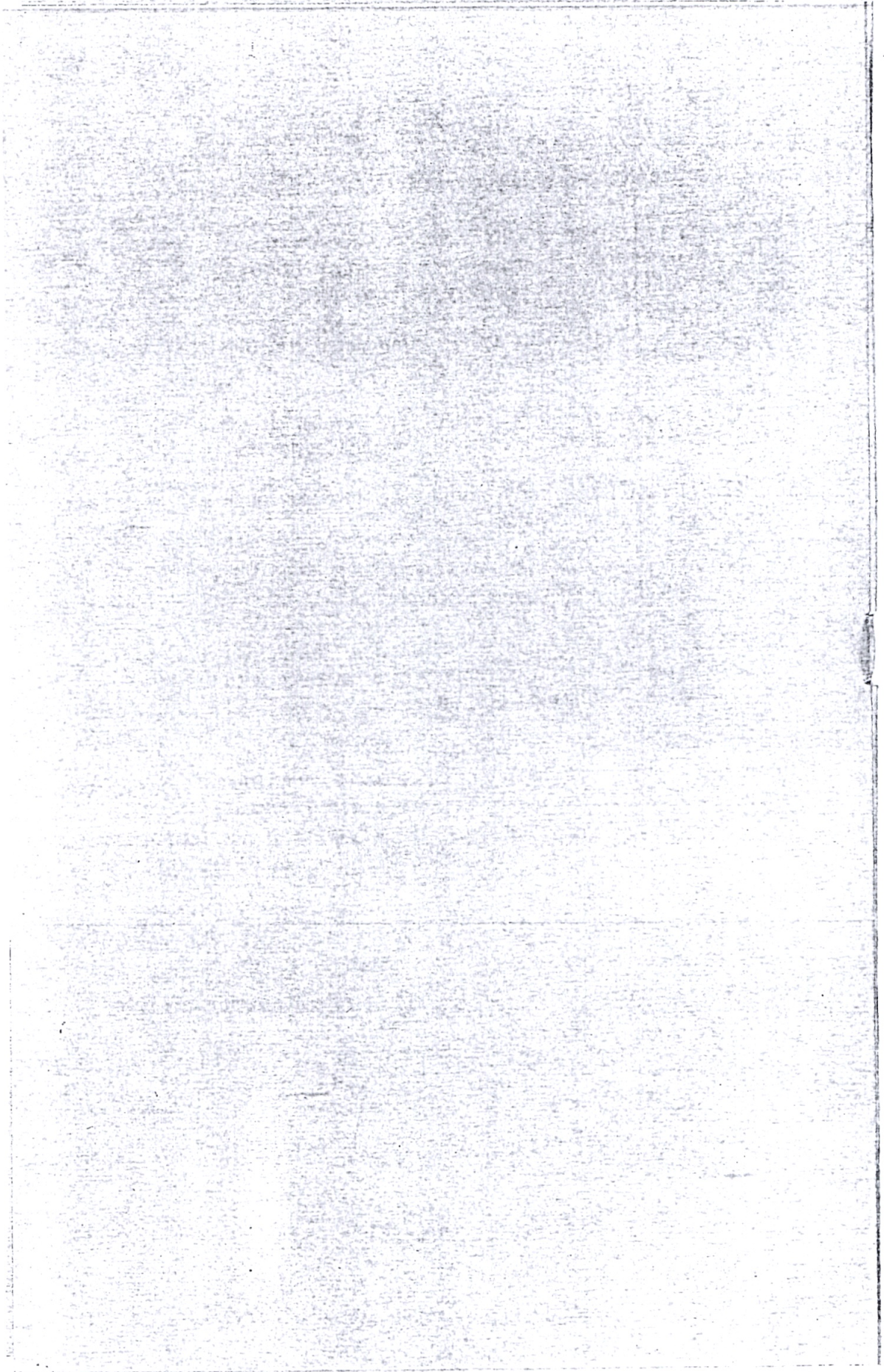
MARTHA WANGARI,  
*Senator.*

*Section 7 of the County Governments Act which it is proposed to amend—*

7. (1) In addition to the members who are elected under Article 177(a), or nominated under Article 177(b) of the Constitution, a county assembly shall comprise—

Membership of  
the county  
assembly

- (a) six nominated members as contemplated in Article 177(c) of the Constitution; and
  - (b) the speaker, who is an ex officio member elected in accordance with Article 178 of the Constitution.
- (2) The political party nominating persons under subsection (1) shall ensure that—
- (a) community and cultural diversity of the county is reflected in the county assembly; and
  - (b) there is adequate representation to protect minorities within the county in accordance with Article 197 of the Constitution.
- (3) The number of members nominated under subsection (1) (a) shall be reviewed to accord with the number of Wards determined by the Independent Electoral and Boundaries Commission under section 27(3) (a).



**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 19 (Bills No. 6)*



REPUBLIC OF KENYA

***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2014**

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**NAIROBI, 3rd March, 2014**

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**CONTENT**

Bill for Introduction into the Senate—

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**THE STATUTE LAW (MISCELLANEOUS  
AMENDMENTS), 2014**

**A Bill for**

**AN ACT of Parliament to make minor  
amendments to statute law**

**ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the Statute Law (Miscellaneous Amendments) Act, 2014. Short title

2. The several written laws specified in the first column of the Schedule are amended, in the provisions specified in the second column thereof, in the manner respectively specified in the third column. Amendment of written laws.

**SCHEDULE (S. 2)**

*Written law    Provision    Amendment*

The Cancer Prevention and Control Act, No. 15 of 2012	Section 5	Delete and replace with the following new section –  <b>Functions of the Institute</b>
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5. The functions of the Institute shall be to-

- (a) liaise with the national and county governments and other relevant bodies and institutions on all matters relating to the care and treatment of persons with cancer;
- (b) advise the county governments on matters relating to the treatment and care of persons with cancer and on the relative priorities to be given to the implementation of specific measures;

- (c) encourage the establishment of hospitals, vocational treatment and care centres and other institutions for the welfare and treatment of persons with cancer in all counties of the Republic;
- (d) encourage the provision of diagnosis, treatment rehabilitation and other medical care to persons with cancer;
- (e) coordinate services provided in Kenya for the welfare and treatment of persons with cancer and implement programmes for vocational guidance and counseling;
- (f) collect, analyze and disseminate all data useful in the prevention, diagnosis and treatment of cancer;
- (g) collaborate with international institutions for the purpose of collecting for the register and cataloging, storing and disseminating the results of cancer research undertaken in any country for the use of any person involved in cancer research in any country;
- (h) establish and support the large scale production or distribution of specialized biological materials and other therapeutic substances for research and set standards of safety and care for persons using such materials;
- (i) ensure that accurate figures of persons with cancer are obtained in the country for purposes of planning;
- (j) provide access to available information and technical assistance to all institutions, associations and organizations concerned with the

- welfare and treatment of persons with cancer, including those controlled and managed by the Government;
- (k) encourage the care of persons with cancer within their communities and social environment;
- (l) establish and support measures that seek to eradicate conditions that cause and aggravate the spread of cancer;
- (m) recommend measures to prevent discrimination against persons with cancer;
- (n) generally carry out measures for public information on the rights of persons with cancer and the provisions of this Act; and
- (o) encourage and participate in the provision of training on cancer prevention and control.

Section  
6(2)

Insert the following new paragraph immediately after paragraph (e)-

(ee) three persons nominated by the Council of County Governors to represent county governments.

The National Section  
Transport 4(1)  
and Safety  
Authority  
Act, No. 33  
of 2012.

(a) Insert the words "subject to the distribution of functions between the national government and the county governments under the Fourth Schedule to the Constitution" at the commencement of the sub-section.

(b) Insert the following new paragraph immediately after paragraph (a)-

(aa) advise and make recommendations to the county governments on all matters relating to county transport

under item 5 of Part 2 of the Fourth Schedule to the Constitution.

- Section 6(1)
- (a) Delete paragraph (f) and substitute therefor the following new paragraph- (f) three persons appointed by the Council of County Governors.
  - (b) Delete the word “two” appearing in paragraph (g) and substitute therefor the word “three”

New Insert the following new section immediately after section 53-

**Act not to affect functions of county governments**

**53A.** No provision in this Act shall prevent a county government from undertaking its functions as provided for in the Fourth Schedule to the Constitution.

The National Authority for the Campaign Against Alcohol and Drug Abuse Act, No. 14 of 2012

Section 5

- (a) Delete the opening paragraph and substitute therefor the following new opening paragraph-

**Functions of the Authority**

**5.** Subject to the distribution of functions between the national government and the county governments under the Fourth Schedule to the Constitution, the Authority shall, in collaboration with the county governments-

- (b) Insert the words “and the Council of County Governors” immediately after the words “Houses of Parliament” appearing in paragraph (j);
- (c) Insert the words “and the Council of County Governors” at the end of paragraph (l).

- Section 6(1)
- (a) Insert the word “and the Senate” immediately after the words “the National Assembly” appearing in paragraph (a).
  - (b) Insert the following new paragraph immediately after paragraph (f)-
    - (ff) the Principal Secretary for the time being responsible for devolution;
  - (c) Insert the following new paragraph immediately after paragraph (h)
    - (hh) three persons nominated by the Council of County Governors established under section 19 of the Intergovernmental Relations Act, all of whom shall be holders of at least a degree from a university recognized in Kenya and at least one of the persons shall be a woman;
- The Sports Act, No. 25 of 2013
- Section 4
- (a) Insert the words “in liaison with the national and the county governments” immediately after the words “Sports Kenya shall be”.
  - (b) Insert the following new paragraph immediately after paragraph (b)-
    - (bb) manage and maintain sports facilities in the counties whenever requested to do so by the concerned county government.
- Section 5
- Insert the words “in liaison with the national and the county governments” immediately after the words “Sports Kenya shall have the power”.
- Insert the following new paragraph immediately after paragraph (i)-
- (ii) three persons nominated by the Council

- Section 6(1) of County Governors.  
Section 10 Repeal  
Section 18(2) Repeal
- Section 23 Repeal
- Section 34 Insert the words “in liaison with the national and the county governments” immediately after the words “Academy shall be”.
- Section 67(1) Insert the words “or the responsible county executive committee member, as the case maybe,” immediately after the words “the Cabinet Secretary”.
- Section 68(1) Insert the words “and the responsible county executive committee member, in respect of the institution’s activities in the county,” immediately after the words “the Cabinet Secretary”.
- New Insert the following new section immediately after section 74-

**Act not to affect functions of counties**

75. No provision in this Act shall prevent a county government from undertaking its functions as provided for in the Fourth Schedule to the Constitution.

The Pyrethrum Act, No. 22 of 2013

Section 6(2)

- (a) Delete the words “Cabinet Secretary” appearing in the opening line of paragraph (e) and substitute therefor the words “the Council of County Governors”.
- (b) Delete the words “Cabinet Secretary” appearing in sub-paragraph (iv) of paragraph (e) and substitute therefor the words “the Council of County Governors”.

Section 6(4) Insert the following new sub-sections immediately after sub-section 4-

(5) In nominating and appointing members under this section the nominating persons and bodies shall uphold the principle of one-third gender representation.

(6) Appointments to the Board shall take into account the national values referred to in Article 10 of the Constitution and the principle that the composition of the Board taken as a whole shall reflect the regional and ethnic diversity of the people of Kenya.

The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, No. 56 of 2012

Section 4 Delete and substitute therefor the following new section-

**Rights-based response to internal displacement.**

4. The national and the county governments and any other organization, body or individual when responding to a situation of internal displacement and the needs of internally displaced persons under this Act, shall take into account the rights and freedoms of the internally displaced persons as set out in the Bill of Rights of the Constitution.

Section 5 Delete and substitute therefor the following new section-

5. (1) Subject to the Constitution, the national and the county governments and any other organization, body or individual shall guard against factors and prevent and avoid conditions that are conducive to or have the potential to result in the displacement of persons.

(2) The national and the county governments and any other organization, body or individual shall prevent internal displacement

in situations of armed conflict, generalized violence, human rights violations, natural or human-made disasters and development projects.

(3) The national and the county governments shall raise public awareness, undertake sensitization, training and education on the causes, impact and consequences of internal displacement and means of prevention as provided for in sections 17, 18, 19 and 20.

(4) The national and the county governments shall establish a prevention mechanism charged with monitoring the area inhabited by persons at risk of displacement, periodically reporting on the situation in such designated areas and issuing early warnings to the Cabinet Secretary and the Chair of the Committee for further action to prevent internal displacement.

Section 7 Delete and substitute with the following new section-

**Preparedness and mitigation.**

7. Subject to the Constitution, the national and the county governments shall put into place measures and structures to prepare for emergencies and disasters and the ensuing internal displacement and mitigate its consequences.

Section 8 Delete and substitute with the following new section-

**Measures for assistance and protection**

8. (1) The national and the county governments shall put into place measures for the assistance and protection of internally displaced persons with particular regard to displaced communities with a special dependency on and attachment to their lands

and the protection of the needs of women, children, persons with disabilities, the elderly and other persons with special needs.

(2) Assistance and protection of communities in rural and urban areas where displaced persons find refuge shall be addressed based on their needs.

(3) In formulating programmes for assistance and protection under this section, the national and the county governments shall ensure that consultation is made with the internally displaced persons.

Section 9 Delete and substitute with the following new section-

**Durable solutions.**

9. (1) The national and the county governments shall create the conditions necessary for and provide internally displaced persons with a durable and sustainable solution in safety and dignity and shall respect and ensure respect for the rights of internally displaced persons to make an informed and voluntary decision on whether to return, locally integrate or resettle elsewhere in the country.

(2) Without limiting the generality of the subsection (1), the following conditions for durable solutions shall apply-

- (a) long-term safety and security;
- (b) full restoration and enjoyment of the freedom of movement;
- (c) enjoyment of an adequate standard of living without discrimination;
- (d) access to employment and livelihoods;

- (e) access to effective mechanisms that restore housing, land and property;
- (f) access to documentation;
- (g) family reunification and the establishment of the fate and whereabouts of missing relatives;
- (h) equal participation in public affairs; and
- (i) access to justice without discrimination.

(3) The procedure for resettlement of internally displaced persons and the standards applicable to such resettlement shall be as prescribed.

(4) In formulating durable solutions under this section, the national and the county governments shall ensure that consultation is made with internally displaced persons.

Section  
11(1)

Insert the words “in consultation with the relevant county governments” immediately after the words “Government shall”

The National Section 5  
Honours Act,  
No. 11 of  
2013

- (a) Delete the word “elected” appearing in paragraph (d) and substitute therefor the word “nominated”;
- (b) Delete the word “elected” appearing in paragraph (f) and substitute therefor the word “nominated”;

## MEMORANDUM OF OBJECTS AND REASONS

### Statement of the objects and reasons of the Bill

The Bill is in keeping with the practice of tabling one Bill consisting of various amendments to various Acts which do not warrant individual Bills. The principal purpose of the Bill is to correct the apparent unconstitutionality arising from the enactment of the various Acts without taking into regard the roles and functions of the county governments as set out in the Fourth Schedule to the Constitution of Kenya, 2010.

The Statutes to be amended are —

#### 1. **The Cancer Prevention and Control Act, No. 15 of 2012**

At present, the Act does not give due regard to the different functions of the county governments in relation to health services as specified in paragraph 2 of Part 2 of the Fourth Schedule to the Constitution. Some of the functions allocated to the National Cancer Institute fall within the functions of county governments. The amendments seek to rectify this anomaly. The Bill therefore seeks to amend section 5 of the Act in order to stipulate the role of county governments in promoting health care in relation to the prevention and control of cancer.

#### 2. **The National Transport and Safety Authority Act, No. 33 of 2012.**

The Bill seeks to amend the Act in order to ensure that the National Transport and Safety Authority set up under the Act deals with national transport issues in accordance with the distribution of functions between the national government and the county governments under the Fourth Schedule of the Constitution.

#### 3. **The National Authority for the Campaign Against Alcohol and Drug Abuse Act, No. 14 of 2012**

The Bill seeks to amend the Act so as to;

- (a) recognize the functions of the county governments in relation to county health services, control of drugs and liquor licensing;
- (b) require the Authority to respect the distribution of powers and functions between the national government and the county governments;

- (c) protect the interests of the counties by providing for the nomination of three members of the Board by the Council of County Governors.

#### **4. The Sports Act, No. 25 of 2013**

At present, the Act does not take into account the functions of the county governments in relation to sports as specified in the Fourth Schedule to the Constitution. The Bill therefore seeks to amend the Act in order to stipulate the role of the county governments in relation to sports and sports facilities as provided for in paragraph 4(h), Part 2 of the Fourth Schedule to the Constitution.

#### **5. The Pyrethrum Act, No. 22 of 2013**

At present, the Act does not recognize or provide for the role of the county governments in the appointment of the members of the Board of Management of the Pyrethrum Regulatory Authority established under the Act. The Bill thus seeks to amend section 6 of the Act in order to provide for the appointment of some of the members of the Board by the Council of County Governors. The amendments also seeks to ensure that that the composition of the Board reflects national values and principles including the not-more-than two thirds gender principle. The amendment also seeks to ensure that the chief executive officer and directors to the Board are competitively recruited.

#### **6. The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, No. 56 of 2012**

At present, the Act does not clearly specify the role of the county governments in relation to disaster management as specified in paragraph 12 of Part 2 of the Fourth Schedule to the Constitution. The Bill therefore seeks to amend the Act in order to stipulate the role of county governments in disaster management which covers internally displaced persons.

#### **7. The National Honours Act, No 11 of 2013.**

The Bill seeks to amend section 5 of the Act in order to provide that the two governors and a chairperson of a County Public Service Board shall be nominated by the Council of County Governors (rather than being elected as is in present Act) as members of the National and County Governments Honours Advisory Committee.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

**Statement on how the Bill concerns county governments**

The Bill concerns county governments in terms of Article 110(a) of the Constitution as it contains provisions affecting the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

**Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution.**

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 10th February, 2014.

S. A. WAKO,  
*Chairperson,*  
*Standing Committee on Legal Affairs and Human Rights.*

*Section 5 of Act No. 15 of 2012 which it is proposed to amend—*

5. The functions of the Institute shall be to—

Functions of the  
Institute

- (a) advise the Cabinet Secretary on matters relating to the treatment and care of persons with cancer and to advise on the relative priorities to be given to the implementation of specific measures;
- (b) encourage and secure the establishment of hospitals, vocational treatment and care centres and other institutions for the welfare and treatment of persons with cancer in all counties of the Republic;
- (c) encourage and secure provision of diagnostic, treatment, rehabilitation and other medical care to persons with cancer in those institutions;
- (d) co-ordinate services provided in Kenya for the welfare and treatment of persons with cancer and to implement programmes for vocational guidance and counselling;
- (e) collect, analyze and disseminate all data useful in the prevention, diagnosis and treatment of cancer;
- (f) collaborate with international institutions for the purpose of collecting for the Register and cataloging, storing and disseminating the results of cancer research undertaken in any country for the use of many person involved in cancer research in any country;
- (g) establish and support the large scale production or distribution of specialized biological materials and other therapeutic substances for research and set standards of safety and care for persons using such materials;
- (h) ensure that accurate figures of persons with cancer are obtained in the country for purposes of planning;

- (i) provide access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and treatment of persons with cancer, including those controlled and managed by the Government;
- (j) encourage and secure the care of persons with cancer within their communities and social environment;
- (k) establish and support measures that seek to eradicate conditions that cause and aggravate the spread of cancer.
- (l) recommend measures to prevent discrimination against persons with cancer;
- (m) generally to carry out measures for public information on the rights of persons with cancer and the provisions of this Act; and
- (n) encourage and participate in the provision of training on cancer prevention and control.

*Section 6 of Act No. 15 of 2012 which it is proposed to amend—*

6. (1) The Institute shall be administered by a board to be known as the Board of Trustees of the Institute. Board of Tru.

(2) The Board shall consist of the following persons appointed by the Cabinet Secretary—

- (a) the Chairperson;
- (b) the Principal Secretary for the time being responsible for matters relating to health or his designated alternate not being below the level of Deputy Secretary;
- (c) the Principal Secretary for the time being responsible for matters relating to finance or his designate alternate not being below the level of

Deputy Secretary;

- (d) one person nominated by the registered cancer associations in such manner as may be prescribed;
- (e) the Secretary of the National Council for Science and Technology or his designated alternate not being below the level of Deputy Secretary;
- (f) one person nominated by the Media Owners Association in such manner as may be prescribed;
- (g) one prominent philanthropist or industrialist of good standing;
- (h) one person nominated by the universities teaching medicine in such manner as may be prescribed;
- (i) one person nominated by institutions conducting medical research in such manner as may be prescribed;
- (j) the Attorney-General or his representative who shall be an *ex-officio* member; and
- (k) the Chief Executive Officer who shall be an *ex-officio* member and Secretary to the Board.

(3) No person shall be appointed under subsection (2)(a) unless such person is a registered medical practitioner and is a recognized medical specialist of not less than ten years experience in leadership at national institutional level.

(4) Subject to this Act, all acts and things done in the name of, or on behalf of, the Institute, by the Board or with the authority of the Board shall be deemed to have been done by the Institute.

(5) No person shall be appointed as a member of the Board unless such person meets the requirements of Chapter Six of the Constitution.

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Section 4 of Act No. 33 of 2012 which it is proposed to amend—

3. (1) The functions of the Authority shall be to— Functions of the Authority

- (a) advise and make recommendations to the Cabinet
- (b) Secretary on matters relating to road transport and safety;
- (c) implement policies relating to road transport and safety;
- (d) plan, manage and regulate the road transport system in accordance with the provisions of this Act;
- (e) ensure the provision of safe, reliable and efficient road transport services; and
- (f) administer the Act of Parliament set out in the First Schedule and any other written law.

(2) In the performance of its functions under subsection (1), the Authority shall—

- (a) register and license motor vehicles;
- (b) conduct motor vehicle inspections and certification;
- (c) regulate public service vehicles;
- (d) advise the Government on national policy with regard to road transport system;
- (e) develop and implement road safety strategies;
- (f) facilitate the education of the members of the public on road safety;
- (g) conduct research and audits on road safety;

- (h) compile inspection reports relating to traffic accidents;
- (i) establish systems and procedures for, and oversee the training, testing and licensing of drivers;
- (j) formulate and review the curriculum of driving schools;
- (k) co-ordinate the activities' of persons and organisations dealing in matters relating to road safety; and
- (l) perform such other functions as may be conferred on it by the Cabinet Secretary or by any other written law.

*Section 6 of Act No. 33 of 2012 which it is proposed to amend—*

6. (1) The management of the Authority shall vest in a Board which shall consist of-

Board of the  
Authority

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary in the Ministry responsible for matters relating to transport;
- (c) the Principal Secretary in the Ministry responsible for matters relating to finance;
- (d) the Attorney-General;
- (e) the Inspector-General of the National Police Service;
- (f) four persons appointed by the Cabinet Secretary;
- (g) two persons appointed by the Cabinet Secretary to represent groups with special interests in the transportation industry; and
- (h) a Director-General appointed under section 15.

(2) The appointment of the chairperson and members of the Board under section 6(f) and (g) shall be by notice in the Gazette.

(3) In appointing persons as members of the Board, the Cabinet Secretary shall have regard to the principle of gender equity and regional balance.

(4) The members referred to under subsection (1)(b), (c), (d) and (e) may in writing, designate an officer to represent them in the Board.

*Section 5 of Act No. 14 of 2012 which it is proposed to amend-*

5. The functions of the Authority shall be to-

Functions of the  
Authority

- (a) carry out public education on alcohol and drug abuse directly and in collaboration with other public or private bodies and institutions;
- (b) coordinate and facilitate public participation in the control of alcohol and drug abuse;
- (c) coordinate and facilitate inter-agency collaboration and liaison among lead agencies responsible for alcohol and drug-demand reduction;
- (d) in collaboration with other lead agencies, facilitate and promote the monitoring and surveillance of national and international emerging trends and patterns in the production, manufacture, sale, consumption, trafficking and promotion of alcohol and drugs prone to abuse;
- (e) in collaboration with other lead agencies, provide and facilitate the development and operation of rehabilitation facilities, programmes and standards for persons suffering from substance use disorders;
- (f) subject to any other written law, license and regulate operations of rehabilitation facilities for persons suffering from substance use disorders;

- (g) coordinate and facilitate, in collaboration with other lead agencies and non-State actors, the formulation of national policies, laws and plans of action on control of alcohol and drug abuse and facilitate their implementation, enforcement, continuous review, monitoring and evaluation;
- (h) develop and maintain proactive co-operation with regional and, international institutions in areas relevant to achieving the Authority's objectives;
- (i) in collaboration with other public and private agencies, facilitate, conduct, promote and coordinate research and dissemination of findings on data on alcohol and drug abuse and serve as the repository of such data;
- (j) in collaboration with other lead agencies, prepare, publish and submit an alcohol and drug abuse control status report bi-annually to both Houses of Parliament through the Cabinet Secretary;
- (k) assist and support County governments in developing and implementing policies, laws and plans of action on control of drug abuse; and

carry out such other roles necessary for the implementation of the objects and purpose of this Act and perform such other functions as may, from time to time, be assigned by the Cabinet Secretary.

*Section 6 of Act No. 14 of 2012 which it is proposed to amend—*

6. (1) The management of the Authority shall vest in a Board which shall consist of-

Board of the  
Authority

- (a) a chairperson appointed by the President with the approval of the National Assembly, who shall be a person with experience in public affairs either in judicial service, public service or the private or voluntary sector;

- (b) the Principal Secretary in the Ministry for the time being responsible for national security;
- (c) the Principal Secretary in the Ministry for time being responsible for finance;
- (d) the Principal Secretary in the Ministry for the time being responsible for public health;
- (e) the Principal Secretary in the Ministry for the time being responsible for education;
- (f) the Principal Secretary in the Ministry for the time being responsible for children and youth affairs;
- (g) the head of the anti-narcotic police unit or the agency for the time being responsible for enforcement of narcotic drug laws;
- (h) three persons appointed by the Cabinet Secretary from among healthcare providers, researchers, policy and legal practitioners, media and communication professionals, educationists, security, safety and environmental experts, provided that no more than one person shall be appointed from one category;
- (i) two persons nominated by the joint forum of religious organizations referred to in subsection (3) and appointed by the Cabinet Secretary;
- (j) one person nominated by the Medical Practitioners and Dentists Board and appointed by the Cabinet Secretary;
- (k) one person nominated by a most representative organization working with the youth and appointed by the Cabinet Secretary; and; the chief executive officer

**(2) A person shall not be appointed under subsection (1)(a), (h), (i), (j) and (k) unless such person-**

- (a) is of impeccable character and high moral standing in relation to drugs and chemical substances of abuse;
- (b) has the capacity to inspire and achieve the objectives of the Authority.

**(3) The joint forum of religious organizations referred to in subsection (1) shall consist of representatives of—**

- (a) the Supreme Council of Kenya Muslims;
- (b) the Kenya Episcopal Conference;
- (c) the National Council of Churches of Kenya;
- (d) the Evangelical Alliance of Kenya; and
- (e) the Hindu Council of Kenya.

**(4) The functions of the Board shall be to—**

- (a) ensure proper and efficient exercise of the powers and performance of the functions of the Authority;
- (b) advise the management of the Authority generally on the exercise of the powers and the performance of the functions of the Authority;
- (c) approve the estimates of the revenue and expenditure of the Authority; and
- (d) perform such other functions as are provided for under this Act or any other written law.

*Section 4 of Act No. 25 of 2013 which it is proposed to amend—*

4. The functions of Sports Kenya shall be to-

Functions of  
Sports Kenya

- (a) promote, co-ordinate and implement grassroots, national and international sports programs for

Kenyans, in liaison with the relevant sports organizations and facilitate the active participation of Kenyans in regional, continental and international sports, including in sports administration;

- (b) manage and maintain the sports facilities specified in the First Schedule and any other facilities which the Cabinet Secretary may, by notice in the Gazette, declare to be sports facilities for the purposes of this Act;
- (c) establish, manage, develop and maintain the sports facilities, including convention centers, indoor sporting and recreational facilities for the purposes of this Act;
- (d) adopt, develop, plan, set stadia standards and licence and regularly inspect stadia for sporting and recreational use;
- (e) establish and maintain a sports museum;
- (f) participate in the promotion of sports tourism;
- (g) provide the necessary amenities or facilities for persons using the services or facilities provided by Sports Kenya;
- (h) operate sports facilities on public grounds in such manner as it deems necessary;
- (i) collaborate with county governments, learning institutions and other stakeholders concerned with sports and recreation, in the search, identification and development of sporting talent, provision of sports equipment, facilities and technical training,
- (j) identify and recommend talents in sports to national sports organizations;
- (k) inculcate the sense of patriotism and national pride through sports and recreation, create

awareness on matters of national interest through sporting events, create awareness on the benefits of regular participation in sports for healthy living and provide advisory and counselling services to athletes;

- (l) determine the national colours to be used in national and international competitions, in consultation with the relevant national sports organizations;
- (m) facilitate the preparation and participation of Kenyan teams in various international events and the hosting of similar events in the country and recommend members of steering committees for international sports competitions, in consultation with the relevant national sports organizations;
- (n) recommend to the relevant authorities issuance of work permits and visas to foreign athletes and technical sports personnel, in consultation with the relevant national sports organizations;
- (o) approve, at the request of the respective national sports organization, the clearance of foreign sports technical personnel before engagement by national sports organizations and other sporting bodies;
- (p) organize and co-ordinate training, conduct research, maintain a resource centre and provide and engage consultancy services for sports development programmes, in consultation with the respective national sports organizations;
- (q) with the approval of the Cabinet Secretary, prescribe charges or fees in respect of —
  - (i) access to, or use of, any of the resources or facilities of Sports Kenya;
  - (ii) the provision of programs, services, information or advice by Sports Kenya; and
  - (iii) the admission of persons to events and activities organized by Sports Kenya;

- (r) recommend, in liaison with the relevant sports organisations, tax exemption for sportspersons; and
- (s) perform such other functions related to the implementation of this Act may be directed by the Cabinet Secretary.

*Section 5 of Act No. 25 of 2013 which it is proposed to amend—*

5. Sports Kenya shall have the power to—

Powers of Sports  
Kenya

- (a) erect buildings and structures and carry out works necessary or desirable for the purposes of Sports Kenya;
- (b) appoint agents and attorney;
- (c) engage persons to perform services for Sports Kenya;
- (d) obtain commercial sponsorship for Sports Kenya and participate in marketing arrangements involving endorsement by Sports Kenya of products and services associated with sports;
- (e) provide, whether by sale or otherwise, any article or thing bearing a mark, symbol or writing that is associated with Sports Kenya;
- (f) regulate the provision of services and use of the facilities of Sports Kenya;
- (g) act as an agent for any person engaged, whether within Kenya or elsewhere, in the performance of services, or the provision of facilities, of a kind similar or complementary to those performed or provided by Sports Kenya;
- (h) undertake the construction or execution of any works on land vested in Sports Kenya; and
- (i) make Regulations, with the approval of the Cabinet Secretary—

- (i) relating to the use, safety or maintenance of the stadia falling within its responsibility;
- (ii) relating to the erection of structures on, near, over or under the stadia falling within its responsibility;
- (iii) for the drainage of streets, lands, compounds and buildings adjacent to the stadia;
- (iv) for the inspection of the level, width and construction of stadia and play grounds; and
- (v) for the removal, demolition or alteration of any projection, structure or thing obstructing a stadia or likely to cause damage or inconvenience to sports facility users.

*Section 6 of Act No. 25 of 2013 which it is proposed to amend—*

(1) The management of Sports Kenya shall vest in a Board, which shall consist of—

Board of Sports  
Kenya

- (a) a non-executive chairperson, who shall be a person who holds a degree from a university recognized in Kenya and is knowledgeable in sports, finance or commerce, appointed by the President;
- (b) the Principal Secretary in the Ministry for the time being responsible for sports;
- (c) the Principal Secretary in the Ministry for the time being responsible for finance;
- (d) the Attorney-General;
- (e) the Principal Secretary in the Ministry responsible for education;
- (f) the Chief Executive Officer of the Academy of Sports;
- (g) the Chief Executive Officer of the National Sports Fund;
- (h) the secretary to the Sports Disputes Tribunal;

- (i) four persons appointed by the Cabinet Secretary on nomination by—
  - (i) the sports organizations recognized as the national co-ordinating bodies for the promotion and development of high performance Olympic, Paralympic and Deaflympics sports in Kenya; and
  - (ii) the national multi-sport sports organization that is responsible for the adherence to all the codes for sports and recreational bodies.
  
- (j) the Director-General of Sports Kenya, who shall be the Secretary.

(2) In appointing or nominating persons to be members of the Board under this section, the appointing or nominating authority shall have regard to the principle of gender equity and affirmative action.

(3) The Chairperson and members of the Board appointed under subsection (1)(i) shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(4) The appointment of the Chairperson and members of the Board appointed under subsection (1)(i) shall be by notice in the Gazette.

*Section 10 of Act No. 25 of 2013 which it is proposed to repeal—*

10 (1) The Board may, in writing, delegate to the Chairperson, a member of the Board, an officer of Sports Kenya or to a Committee of the Board established in accordance with the Third Schedule, any of the powers, duties or functions of Sports Kenya under this Act.

Delegation of powers of the Board

(2) The powers, duties and functions delegated under subsection (1) shall be exercised in accordance with the terms and conditions specified in the instrument of delegation and subject to such directions or guidelines as the Board may, from time to time issue, in writing.

(3) A person aggrieved by the decision of a person exercising powers delegated under this section may appeal to the Board.

*Section 18(2) of Act No. 25 of 2013 which it is proposed to repeal—*

(2) The Board of Trustees may, from time to time, delegate any of its functions to a committee, trustee or an employee, but the exercise of such powers shall, to the extent required by the Board of Trustees, be reported within the specified time to a meeting of the Board of Trustees.

*Section 23 of Act No. 25 of 2013 which it is proposed to repeal—*

23. The Board of Trustees may, by resolution either generally or the Board of Trustees in any particular case, delegate to any committee of the Board of Trustees or to any officer, member of staff or agent of the Board of Trustees, the exercise of any of the powers or the performance of any of the functions or duties of the Board of under this Act.

Delegation by  
Board of Trustees

*Section 34 of Act No. 25 of 2013 which it is proposed to amend—*

34. The functions of the Academy shall be to —

Functions of the  
Academy

- (a) establish and manage sports training academies;
- (b) organize, administer and co-ordinate sports courses for technical and sports administration personnel;
- (c) promote research and development of talent in sports, in collaboration with institutions of higher learning, national sports organizations and other stakeholders;
- (d) collect, collate, store and disseminate tangible and intangible historical sports material to the public, sports organizations, researchers and institutions of learning;
- (e) receive and analyze data on training requirements from sports organizations;

- (f) link with other institutions and organizations for regular updates on the current sports trends; and
- (g) perform any other function that may directly or indirectly contribute to the attainment of the foregoing.

*Section 67 of Act No. 25 of 2013 which it is proposed to amend—*

67. (1) A performance agreement shall be made between the Cabinet Secretary and the respective sports institutions concerning the management by the institutions of the sports programmes and stadia facilities for which the institutions are responsible, and shall include all the activities that are necessary to develop and maintain such stadia and programmes in a satisfactory state.

Performance Agreement

(2) The performance agreement shall describe the key outputs that a sports institution shall achieve in any financial year, and such outputs shall be defined in terms of performance indicators and targets.

(3) The Cabinet Secretary may request for an independent report from the technical department responsible for sports on the implementation of the performance agreement.

*Section 68 of No. 25 of 2013 which it is proposed to amend—*

68. (1) Every sports institution shall, within a period of four months after the end of each financial year, submit to the Cabinet Secretary an annual report dealing generally with the activities and operations of the sports institution;

Annual Report.

(2) An annual report submitted under subsection (1) shall include-

- (a) information with regard to the progress and policies of the sports institution;
- (b) a copy of the audited accounts of the sports institution in respect of that year together with the report of the Auditor-General;

- (c) report submitted in relation to that financial year by the Auditor-General;
- (d) an overview of the operations of the sports institution;
- (e) an assessment of the degree to which performance targets have been achieved;
- (f) an assessment of the adequacy of sports projects and programme funding;
- (g) a report on the condition and status of the stadia and sports programmes and the degree of change in such condition and status since the last report, the projected optimal level of the facilities and programmes and the extent of financing required to meet that level;
- (h) a review of the technical adequacy and proven cost efficiency of sports management operations;
- (i) a report on progress achieved concerning coordination between the sports institutions and county governments and national sports organizations, including any challenges encountered and proposals for the future;
- (j) generally a report on the degree to which the objectives of this Act have been realized and the levels of compliance with the provisions of this Act; and
- (k) such other information as the Cabinet Secretary may request, in writing.

*Section 6 of Act No. 22 of 2013 which it is proposed to amend—*

6. (1) There is established a board to be known as the Board of Management of the Authority which shall administer and manage the affairs of the Authority.

Board of  
Management of  
the Authority

(2) The Board shall consist of—

- (a) a Chairperson nominated by the Cabinet Secretary and appointed by the President;
- (b) the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture or his representative;
- (c) the Principal Secretary in the Ministry for the time being responsible for finance or his representative;
- (d) the Principal Secretary for the time being responsible for industrialization;
- (e) five persons appointed by the Cabinet Secretary, of whom—
  - (i) two shall represent the interests of pyrethrum growers;
  - (ii) one shall represent the interests of formulators;
  - (iii) one shall represent the interests of pyrethrum processors; and
  - (iv) one shall possess knowledge and experience qualities which, in the Cabinet Secretary's opinion, shall benefit the Authority; and
- (f) the Chief Executive Officer of the Authority appointed under section 7.

(3) A person shall not be appointed a member of the Board under subsection (2)(a) and (e) unless that person holds at least a diploma from an institution recognised in Kenya.

(4) The Schedule shall apply in respect of the conduct and regulation of the business and affairs of the Board.

*Section 4 of Act No. 56 of 2012 which it is proposed to amend—*

4. The Government and any other organization, body or individual when responding to a situation of internal displacement and the needs of internally displaced persons under this Act, shall take into account their rights and freedoms as set out in the Bill of Rights of the Constitution.

Rights based  
response to  
internal  
displacement

*Section 5 of Act No. 56 of 2012 which it is proposed to amend—*

5. (1) Subject to the Constitution, the Government and any other organization, body or individual shall guard against factors and prevent and avoid conditions that are conducive to or have the potential to result in the displacement of persons.

Prevention of  
displacement

(2) The Government and any other organization, body or individual shall prevent internal displacement in situations of armed conflict, generalized violence, human rights violations, natural or human-made disasters and development projects.

(3) The Government shall raise public awareness, undertake sensitization, training and education on the causes, impact and consequences of internal displacement and means of prevention as provided for in sections 17 – 20 of this Act.

(4) The Government shall establish a prevention mechanism charged with monitoring areas inhabited by persons at risk of displacement, periodical reporting on the situation in such designated areas and early warning issued to the Cabinet Secretary and the Chair of the Committee for further action to prevent internal displacement.

*Section 7 of Act No. 56 of 2012 which it is proposed to amend—*

7. Subject to the Constitution, the Government shall put into place measures and structures to prepare for emergency disaster and ensuing internal displacement and mitigate its consequences.

Preparedness and  
mitigation

*Section 8 of Act No. 56 of 2012 which it is proposed to amend—*

8. (1) The Government shall put into place measures for assistance and protection needs of internally displaced persons with particular regard to displaced communities with a special dependency on and attachment to their lands and the protection needs of women, children, persons with disabilities, the elderly and other persons with special needs.

Preparedness and mitigation

(2) Assistance and protection needs of communities in rural and urban areas where displaced persons find refuge shall equally be addressed based on their needs.

(3) In formulating programmes for assistance and protection under this section, the Government shall ensure that consultation is made with the internally displaced persons.

*Section 9 of Act No. 56 of 2012 which it is proposed to amend—*

9. (1) The Government shall create the conditions for and provide internally displaced persons with a durable and sustainable solution in safety and dignity and shall respect and ensure respect for the right of internally displaced persons to make an informed and voluntary decision on whether to return, locally integrate or resettle elsewhere in the country.

Durable solutions

(2) Without limiting the generality of the subsection (1), the following conditions for durable solutions shall apply:

- (a) long-term safety and security;
- (b) full restoration and enjoyment of the freedom of movement;
- (c) enjoyment of an adequate standard of living without discrimination;
- (d) access to employment and livelihoods;
- (e) access to effective mechanisms that restore housing, land and property;

- (f) access to documentation;
- (g) family reunification and the establishment of the fate and whereabouts of missing relatives;
- (h) equal participation in public affairs; and
- (i) access to justice without discrimination.

(3) The procedure for resettlement of internally displaced persons and the standards applicable to such resettlement shall be as prescribed.

(4) In formulating the durable solutions under this section, the Government shall ensure that consultation is made with internally displaced persons.

*Section 11 of Act No. 56 of 2012 which it is proposed to amend—*

11. (1) The national Government shall bear ultimate responsibility for the administrative implementation of this Act.

Responsibilities  
of Government

(2) For the purposes of any provision of the Protocol and the Guiding Principles that confers or imposes a power, duty or function on a State, that power, duty or function may be exercised or carried out on behalf of the Government of Kenya by the Cabinet Secretary, if this Act makes no other provision in that regard.

(3) County Governments shall bear responsibility for the administrative implementation of the provisions of this Act in accordance with their functions and powers accorded by Article 186 and the Fourth Schedule of the Constitution.

(4) Without prejudice to the generality of the foregoing, the Government shall, in accordance with Article 3 (3) of the Protocol and Principles 2(1) and 28 (1) of the Guiding Principles, bear the primary duty and responsibility for—

- (a) preventing and protecting from internal displacement, preparing for it and mitigating its

consequences;

- (b) protecting and assisting internally displaced persons throughout the Republic; and
- (c) creating conditions conducive to and providing durable and sustainable solutions for internally displaced persons.

(5) In particular, the Government shall bear the primary duty and responsibility to—

- (a) designate, where necessary, official areas for the settlement of internally displaced persons in the Republic;
- (b) facilitate the administration of settlement areas for internally displaced persons;
- (c) ensure adequate provision of basic social and health services in areas inhabited by internally displaced persons;
- (d) ensure, where necessary, the maintenance of public order, public security, and public health in areas inhabited by internally displaced persons;
- (e) safeguard and maintain the civilian and humanitarian character of settlements; and
- (f) ensure adequate provision of the social economic rights specified in Article 43 of the Constitution.

(6) In particular, the Government shall and in accordance with Article 3 (6-8) and (10) of the Protocol and Principles 24-27 of the Guiding Principles—

- (a) request international assistance if the capacity of the Government to provide such protection and assistance is insufficient, inadequate or lacking;
- (b) ensure rapid and unimpeded access of humanitarian personnel to all internally displaced

- persons;
- (c) ensure that humanitarian assistance is not diverted; and
  - (d) ensure the protection of humanitarian personnel, transports and goods.

(7) The Government, through the Cabinet Secretary may delegate to the Committee the exercise of any of the responsibilities under subsections (4), (5) and (6).

*Section 5 of Act No. 11 of 2013 which it is proposed to amend—*

5. There is established a National and County Governments Honours Advisory Committee which shall comprise —

The National and  
County  
Governments  
Honours  
Advisory  
Committee

- (a) the Deputy President who shall be the chairperson;
- (b) the Cabinet Secretary responsible for national heritage;
- (c) the Cabinet Secretary responsible for public service;
- (d) two Governors elected by the Council of County Governors;
- (e) the chairperson of the Public Service Commission; and
- (f) a chairperson of a County Public Service Board elected by the Council of County Governors.

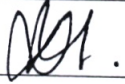


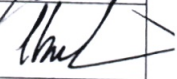


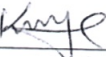
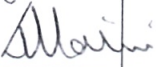

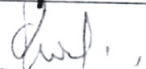
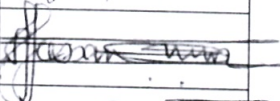
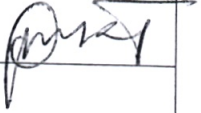
**THE SENATE**

**COMMITTEE ON LEGAL AFFAIRS AND HUMAN RIGHTS**

**(MEETING WITH THE CHAIRPERSONS C.I.C, C.M.D, I.E.B.C AND REGISTRAR OF POLITICAL PARTIES)**

**WEDNESDAY 9<sup>TH</sup> APRIL, 2014**

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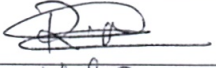

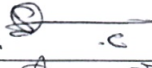


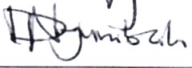


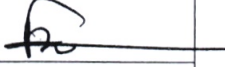


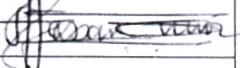
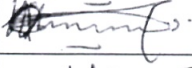


**THE SENATE**

**COMMITTEE ON LEGAL AFFAIRS AND HUMAN RIGHTS**

**PUBLIC HEARING**

**THURSDAY 10<sup>TH</sup> APRIL, 2014**

**SHIMBA HALL, K.I.C.C**

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