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Chairperson, DC-JHA
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(PM)

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON

THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 3) BILL, 2015

Clerks Chambers,
National Assembly,
Parliament Buildings,
Nairobi

July, 2015

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A REPORT OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 3) BILL, 2015

1. PREFACE

Hon Speaker,

On behalf of the Departmental Committee on Justice and Legal Affairs, and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House a report of the Committee on the Constitution of Kenya (Amendment) (No. 3) Bill, 2015.

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

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

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

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

1.1. Committee Membership

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

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

1.3. First Reading of the Constitution of Kenya (Amendment) (No.3) Bill, 2015

The Constitution of Kenya (Amendment) Bill, 2015 was read for the first time on 30th April, 2015 and immediately committed to the Departmental Committee on Justice and Legal Affairs for scrutiny in line with Standing Order 127 (1) which states as follows:-

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

1.4. Public participation in the consideration of the Bill

Standing Order 127(3) states as follows:-

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

Pursuant to this Standing Order, the Committee invited the public through the Daily Nation and Standard newspapers of 9th May, 2015 (see annex 3) to make representations on the Bill. The Committee received a joint memorandum from the Kenya National Commission on Human Rights (KNHCR), National Women’s Steering Committee and the Women’s Empowerment Link. The Committee also heard oral submissions from the National Gender and Equality Commission (NGEC) and the Kenya Women Parliamentarians Association (KEWOPA) during a retreat to consider the Bill on 15th and 16th July, 2015 at the Whitesands Hotel in Mombasa. Their representations have been taken into account while considering the Bill.

1.5. Sittings of the Committee and adoption of report

The Committee held a retreat on 15th July, 2015 at Whitesands Hotel in Mombasa where it considered memoranda received from the public. The Committee considered and adopted its report on 21st July, 2015 at 10.00 a.m. at sitting held in the Boardroom on 5th floor, Continental House, Parliament Buildings. The adoption of the report was proposed by Hon. Benson Mutura and seconded by Hon. George Kaluma. There was no dissenting voice to the adoption of the report. Minutes of the Committee’s sitting adopting the report are annexed hereto as appendix 1. A list of Members who attended the sitting is also annexed hereto as appendix 2.

1.6. Acknowledgement

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

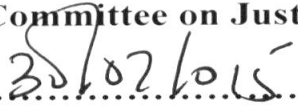
Hon. Speaker Sir,

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

SIGNED.....  **.....**

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

Departmental Committee on Justice and Legal Affairs

DATE.....  **.....**

2.0. BACKGROUND

In the year 2012, the Attorney General of the Republic of Kenya sought an advisory opinion of the Supreme Court as to whether the two-third gender rule principle was to be realized by the first general election under the new constitution i.e. March, 2013 or progressively over a longer period of time. The Court on 11th December, 2012 held that Article 81(b) was to be progressively realized and gave Parliament up to 27th August, 2015 to enact legislation on implementation of the two-third rule in the 2017 general elections.

After the Supreme Court ruling was delivered, the Attorney General constituted a Technical Working Group to develop and advise on a formula for realization of the two-thirds gender principle in line with the Supreme Court Ruling. The Technical Working Group comprised:-

- (i) The Hon. Attorney General;
- (ii) Ministry of Devolution and Planning- (Directorate on Gender);
- (iii) National Gender and Equality Commission (NGEC) (Convener & Secretariat);
- (iv) Commission on the Implementation of the Constitution;
- (v) Independent Electoral and Boundaries Commission- (IEBC);
- (vi) Office of the Registrar of Political Parties (RPP);
- (vii) Parliament (Committee on the Implementation of the Constitution)
- (viii) Parliament (Departmental Committee on Justice and Legal Affairs of the National Assembly);
- (ix) Kenya Women's Parliamentary Association (KEWOPA);
- (x) Federation of Women Lawyers (FIDA Kenya);
- (xi) The Commission on the Administration of Justice (CAJ)

This Bill is dated 28th April, 2015 and is sponsored by the Departmental Committee on Justice and Legal Affairs based on one of the proposals by the Technical Working Group. The Bill seeks to amend Article 81 of the Constitution of Kenya to ensure compliance with the Supreme Court ruling. The proposed amendment is to be effected through Parliamentary initiative and does not require referendum since it does not relate to matters specified under Article 225 (1) of the constitution.

The Bill does not limit fundamental rights and freedoms neither shall it occasion additional expenditure of public funds.

3.0. PUBLIC PARTICIPATION IN THE CONSIDERATION OF THE BILL

Standing Order 127(3) provides as follows:-

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

Pursuant to this Standing Order, the Committee invited the public through the Daily Nation and Standard newspapers of 9th May, 2015 to make representations on the Bill. The newspaper advertisement is annexed hereto as appendix 3. The Committee received joint representations from the Kenya National Commission on Human Rights (KNHCR), National Women’s Steering Committee and the Women’s Empowerment Link. The Committee also heard oral submissions from the National Gender and Equality Commission (NGEC) and the Kenya Women Parliamentarians Association (KEWOPA) during while considering the Bill on 15th and 16th July, 2015 at the Whitesands Hotel in Mombasa. Their representations have been taken into account while considering the Bill.

4.0. CONSIDERATION OF THE BILL

The Committee on 15th and 16th July, 2015 retreated at the Whitesands Hotel in Mombasa and considered the Bill. Memoranda from the Kenya National Commission on Human Rights (KNHCR), National Women’s Steering Committee and the Women’s Empowerment Link were considered. During the retreat, the Committee also heard oral submissions from the National Gender and Equality Commission (NGEC) and the Kenya Women Parliamentarians Association (KEWOPA).

THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 3) BILL, 2015				
CLAUSE IN THE BILL	STAKEHOLDER	STAKEHOLDER COMMENT	PROPOSED AMENDMENT	
Clause 2	-KNCHR -Joint memorandum -National Women’s Steering Committee -Women’s Empowerment Link	Joint memorandum: The two thirds gender rule cannot be realized progressively; it claws back on existing gains and further throws realization of gender parity into an indefinite timeline, therefore effectively limiting the rights and	The two thirds gender rule is a political right which is subject to immediate realization	

		<p>freedoms in the Constitution that are anchored on the principle of equality and freedom from discrimination. It is a violation of the principles of equality and the affirmative action towards equality as encapsulated in Article 27 of the Constitution.</p> <p>Women's Empowerment Link: The constitutional amendment is in violation of the principles of equality and action under article 27</p> <p>KNCHR: The requirements of article 81 (b) are not to be progressively realized</p> <p>National Women's Steering Committee: Article 81 (b) provides for a minimal gender threshold. When the Bill inserts the word 'progressive' it would signify that there is no</p>	<p>KNCHR: Lift Article 177 (1) (b) and (c) of the Constitution and import it in Article 97 and 98 of the Constitution for representation in the National Assembly and Senate respectively as a formula to realize the two thirds gender rule</p> <p>National Women's Steering Committee: As proposed by the Technical Working Group, lift Article 177 (1) (b) and (c) of the Constitution with necessary modifications into Article 97 and 98 of the Constitution as the framework</p>
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		<p>mandatory obligation resting on the State to take measures to realize it.</p> <p>Provisions in article 81 are in mandatory terms. Article 81(c) of fair administration would never be deemed to be realized progressively.</p>	<p>on implementation of the two thirds gender principle for the National Assembly and Senate</p>
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The National Gender and Equality Commission (NGEC) and the Kenya Women Parliamentarians Association (KEWOPA) urged the Committee to withdraw the Bill, 2015. They argued that the effect of the Bill if enacted would indefinitely suspend the realization of the two-third gender principle which was not right.

They proposed that in implementing the provisions of Article 81(b) of the Constitution, the formula set out in Article 177(b) of the Constitution (on the composition of members of the county assembly) should apply with regard to election of Members of the National Assembly and Senators as provided in Articles 97 and 98 of the Constitution respectively. Further, they proposed that Parliament be mandated to review the progress of the implementation after twenty years.

4. RECOMMENDATIONS

The Committee observed that all the proposed amendments were outside the confines of the Bill and did not admit any of them. Consequently, the Committee recommends that the House passes the Bill in its published form.

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APPENDIX 1

MINUTES OF THE FIFTY THIRD SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 21ST JULY, 2015 AT 10 A.M. IN THE BOARDROOM ON 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

PRESENT:-

Hon. Samuel Chepkong'a, MP	-	Chairperson
Hon. Priscilla Nyokabi, MP	-	Vice Chairperson
Hon. Benson Mutura, MP		
Hon. Fatuma Ibrahim Ali, MP		
Hon. Johanna Ngeno, MP		
Hon. Olago Aluoch, MP		
Hon. Mutua Mutemi (Bishop), MP		
Hon. Tom.J. Kajwang', MP		
Hon. John Njoroge Chege, MP		
Hon. Ben Momanyi Orori, MP		
Hon. Moses Cheboi, MP		
Hon. Muriithi Waiganjo, MP		
Hon. Dr. Christine Ombaka, MP		
Hon. Kaluma Peter, MP		
Hon. Paul Bii, MP		

ABSENT:-

Hon. Florence Kajuju, MP
Hon. Kang'ata Irungu, MP
Hon. William Cheptumo, MP
Hon. Sammy Koech, MP
Hon. William Mwamkale, M.P
Hon. Charles Gimose, MP
Hon. Njoroge Baiya, MP
Hon. David Ouma Ochieng, MP
Hon. Boniface Otsiula, MP
Hon. James Bett, MP
Hon. Mohamed Abdi Haji, MP
Hon. Munuve Mati John, MP
Hon. Ndirangu Waihenya, MP
Hon. Neto Agostinho, MP

IN ATTENDANCE:-

SECRETARIAT:-

Mr. George Gazemba	-	Senior Clerk Assistant
Ms. Mary L. Lemerelle	-	Clerk Assistant III
Mr. Ahmed Salim	-	Clerk Assistant III
Mr. Ronald Walala	-	Legal Counsel II
Mr. Salem Lorot	-	Legal Counsel II

MIN NO. JLA/206/2015:- - **PRELIMINARIES**

The Chairperson called the meeting to order at 10.30 a.m. Prayer was said by Hon. Paul Bii, MP

MIN NO. JLA/207/2015:- **CONSIDERATION AND ADOPTION OF REPORTS ON BILLS**

(i) **Consideration and adoption of report on the Constitution of Kenya (Amendment) (No. 2) Bill, 2015**

The Committee considered and adopted its report on the Constitution of Kenya (Amendment) (No. 2) Bill, 2015. The adoption of the report was proposed by Hon. Tom J. Kajwang' and seconded by Hon. Paul Bii. There was no dissenting voice to the adoption of the report.

(ii) **Consideration and adoption of report on the Two-Third Gender Rule Laws (Amendment) Bill, 2015**

The Committee deferred the adoption of the report to give room for further consultations and taking a position on proposed amendment on the establishment of the Special Affirmation Action Election Fund.

Though the Committee supported the establishment of the Fund, it observed a lot of grey areas on its operationalization which needed to be addressed.

(iii) **Consideration and adoption of report on the Constitution of Kenya (Amendment) (No. 3) Bill, 2015**

The Committee considered and adopted its report on the Constitution of Kenya (Amendment) (No. 3) Bill, 2015. The adoption of the report was proposed by Hon. Benson Mutura and seconded by Hon. George Kaluma. There was no dissenting voice to the adoption of the report.

(iv) **Consideration and adoption of report on the Political Parties (Amendment) Bill, 2015**

The Committee considered and adopted its report on the Political Parties (Amendment) Bill, 2015. The adoption of the report was proposed by Hon Benson Mutura and

seconded by George Kaluma. There was no dissenting voice to the adoption of the report.

MIN NO. JLA/208/2015:- ANY OTHER BUSINESS

Courtesy call on the Chief Justice of the Republic of Kenya

The Committee resolved to pay Dr. Willy Mutunga, Chief Justice of the Republic of Kenya a courtesy call on 22nd July, 2015 at 10.00 a.m. at his Offices at the Supreme Court Building, Nairobi. The Committee had earlier scheduled to pay him the courtesy call on 21st July, 2015 but he wrote requesting for 22nd July, 2015.

MIN NO. JLA/209/2015:- - ADJOURNMENT

There being no other business to transact, the sitting adjourned at forty five minutes past noon.

Signed: 

(Chairperson, Departmental Committee on Justice & Legal Affairs)

Date: 

APPENDIX 2



DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

MEMBERS ATTENDANCE





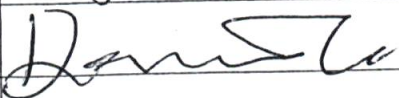


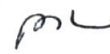
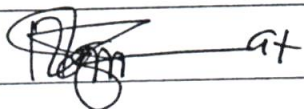

DATE: 21ST JULY 2015

VENUE: CONTINENTAL HOUSE, 5TH FLOOR BOARDROOM

AGENDA: ADOPTION OF REPORTS ON CONSTITUTION OF KENYA (AMENDMENT)

(NO.3) BILL, 2015, TWO THIRD GENDER LAWS (AMENDMENT) BILL, 2015, & POLITICAL PARTIES OF KENYA (AMENDMENT) BILL, 2015

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

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

George Gazemba

For: The Clerk of the National Assembly

APPENDIX 3

REPUBLIC OF KENYA



**KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT**

**In the Matter of consideration by the National Assembly of the
Constitution of Kenya (Amendment) (No. 3) Bill, 2015**

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

SUBMISSION OF MEMORANDA

The Constitution of Kenya (Amendment) (No. 3) Bill, 2015 has undergone First Reading as provided by the Standing Orders of the House. The Bill having been read for the First time, stood committed to the Departmental Committee on Justice and Legal Affairs for consideration and report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites the Public to submit representations on the Bill. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before **Friday, May 15th, 2015 at 5:00pm.**

**JUSTIN BUNDI
CLERK OF THE NATIONAL ASSEMBLY**

REPUBLIC OF KENYA



**KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT**

**In the Matter of consideration by the National Assembly of the
Vetting of Judges and Magistrates (Amendment) Bill 2015**

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

SUBMISSION OF MEMORANDA

The Vetting of judges and Magistrates (Amendment) Bill, 2015 has undergone First Reading as provided by the Standing Orders of the House. The Bill having been read for the first time, stood committed to the Departmental Committee on Justice and Legal Affairs for consideration and report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites the Public to submit representations on the Bill. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before **Friday, May 15th, 2015 at 5:00pm.**

**JUSTIN BUNDI
CLERK OF THE NATIONAL ASSEMBLY**

REPUBLIC OF KENYA



**ELEVENTH PARLIAMENT
THE SENATE**

STANDING COMMITTEE ON INFORMATION AND TECHNOLOGY

In the Matter of Consideration of
The Office of the County Printer Bill, (Senate Bill No. 42 of 2014)
Article 118 of the Constitution and standing order 130 of the Senate Standing Orders.

PUBLIC HEARING/RECEIPT OF MEMORANDA

Following the introduction of the above listed Bill to the Senate, the Bill was Committed to the Standing Committee on Information and Technology for Consideration pursuant to standing order 130 of the Senate Standing Orders.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 130 (4) of the Senate Standing Orders, the Standing Committee on Information and Technology now invites interested members of the public and organizations to submit any representations that they may have on the above Bill.

The representations may be made orally or by submission of written memoranda in the following manner:-

1. Public Hearings shall be held on **Wednesday 20th May, 2015 from 10:30a.m. to 12:30 p.m. at Shimba Hills Hall, KICC, Nairobi;** or
2. Written Memoranda may be forwarded to the **Clerk of the Senate, P.O. Box 41842-00100, Nairobi;** hand-delivered to the Office of the **Clerk, First Floor, Main Parliament Building, Nairobi** or emailed to cSenate@Parliament.go.ke, to be received on or before **Wednesday 20th May, 2015 at 5.00 p.m.**

A copy of the Bill can be downloaded from the Parliament of Kenya website, www.parliament.go.ke/senate

**M. NYEGENYE, CBS,
CLERK OF THE SENATE.**

REPUBLIC OF KENYA



**KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT**

**In the Matter of consideration by the National Assembly of the
Two-Third Gender Rule Laws (Amendment) Bill, 2015**

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

SUBMISSION OF MEMORANDA

The Two-Third Gender Rule Laws (Amendment) Bill, 2015 has undergone First Reading as provided by the Standing Orders of the House. The Bill having been read for the First time, stood committed to the Departmental Committee on Justice and Legal Affairs for consideration and report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites the Public to submit representations on the Bill. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before **Wednesday, May 20th, 2015 at 5:00pm.**

**JUSTIN BUNDI
CLERK OF THE NATIONAL ASSEMBLY**

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