



PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT – THIRD SESSION

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON
THE SMALL CLAIMS COURT BILL, 2015

Clerks Chambers,
National Assembly,
Parliament Buildings,
Nairobi.

September, 2015

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A REPORT OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE SMALL CLAIMS COURT 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 Small Claims Court 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 currently 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 Small Claims Court Bill, 2015

The Small Claims Court Bill, 2015 was read for the first time on 19th August, 2015 and immediately committed to the Departmental Committee on Justice and Legal Affairs for scrutiny pursuant to Standing Order 127 (1) which provides 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 25th August, 2015 as evidenced by appendix 3 to make give their views on the Bill in form of memoranda. There was however no response from the public.

1.5 Sittings of the Committee and adoption of report

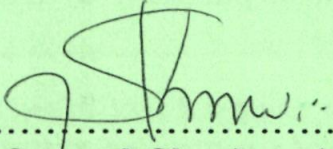
The Committee discussed the Bill on 23rd September, 2015 at the Swahili Beach Hotel in Diani, Kwale County. The Committee considered and adopted its report on 6th October, 2015 at a sitting held in the Boardroom on 2nd floor, Continental House, Parliament Buildings. The adoption of the report was proposed by Hon. Benson Mutura and seconded by Hon. Johanna Ng’eno 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 commends Members of the Committee for their devotion and commitment to duty which made the scrutiny of this Bill a success. The Committee further wishes to thank the Offices of the Speaker and Clerk of the National Assembly for providing guidance and technical support without which its work would not have been a reality.

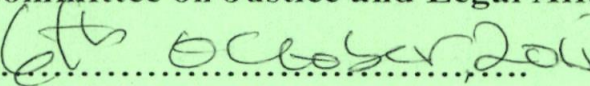
Hon. Speaker Sir,

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

(i) Memorandum of objects and reasons of the Bill

The Bill is dated 5th August, 2015 and is sponsored by Hon. Aden Duale, the House Majority Party Leader.

The principal objective of the Bill is to give effect to Articles 48 and 169 (1) of the Constitution of Kenya. In furtherance of the said objective, the Bill proposes to establish a Small Claims Court which shall resolve disputes informally, inexpensively and expeditiously in accordance with the principals of law and natural justice. The monetary jurisdiction of the proposed Small Claims Courts has been limited to one hundred thousand shillings. However, the Chief Justice may review the prescribed limit by notice in the Kenya Gazette.

Part I of the Bill provides for preliminary provisions including the title of the Act, the interpretation clause and the guiding principles of the proposed law. Part II of the Bill deals with the establishment and administration of the Court as a subordinate Court. Part III provides for the jurisdiction of the Court, Part IV the procedure, Part V on execution of a court decree and Part VI deals with miscellaneous amendments.

The Bill delegates power to the Chief Justice and does not limit fundamental rights and freedoms. The Bill does not affect the functions of County Governments and is therefore not a Bill concerning Counties for the purpose of Standing Orders.

The enactment of the Bill will occasion additional expenditure of public funds which are expected to be provided through the annual estimates.

3.0. PUBLIC PARTICIPATION IN THE CONSIDERATION OF THE BILL

Article 118 (1) (b) of the Constitution of Kenya states as follows:-

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”

Standing Order 127(3) provides as follows:-

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

Pursuant to the foregoing, the Committee invited the public through the Daily Nation and Standard newspapers of 25th August, 2015 to make representations on the Bill by way of memoranda. The newspaper advertisement is annexed hereto as appendix 3. There was however no response.

4.0. CONSIDERATION OF THE BILL AND PROPOSED AMENDMENTS

The Committee during a retreat held on 22nd September, 2015 at Swahili Beach Hotel in Diani, Kwale County discussed the Bill and proposed the following amendments:

CLAUSE 5

THAT, clause 5 of the Bill be amended in subclause (2) (b) by deleting the word “five” appearing immediately after the words “at least” and substituting therefor the word “three”.

Rationale: To reduce the period required as a qualification for appointment as an Adjudicator from five years’ practice as an Advocate of the High Court to three years of practice.

CLAUSE 8

THAT, clause 8 of the Bill be amended—

- (a) in paragraph (a) by deleting the word “and” appearing immediately after the word “experience” and substituting therefor the word “or”;
- (b) by deleting paragraph (b) and substituting therefor the following paragraph—

“(b) has trained as a paralegal at the Kenya School of Law”

Rationale: to allow persons who are trained paralegals to qualify for appointment as Registrars of the Small Claims Court.

CLAUSE 12

THAT, clause 12 of the Bill be amended—

- (a) in subclause (1) (a) by inserting the word “or” immediately after the word “goods”;
- (b) in subclause (1) (b) by deleting the word “of” appearing immediately after the word “delivery” and substituting therefor the word “or”;
- (c) in subclause (3) by deleting the word “one” appearing immediately after the words “limited to” and substituting therefor the word “two”;

Rationale: (i) To correct grammatical errors in the text of the clause and (ii) To increase the pecuniary jurisdiction of the Court from Kshs. 100,000 to Kshs. 200, 000.

CLAUSE 13

THAT, clause 13 of the Bill be amended—

- (a) in subclause (1) by deleting paragraph (b) and substituting therefor the following paragraph—

“(b) the claim before the other Court has been withdrawn.”

- (b) by inserting the following subclause immediately after subclause (2)—

“(3) subject to section 12 (3), a higher Court may transfer a claim to the Small Claims Court.”

Rationale: (i) to remove a superfluous word (“abandoned”) from the text of the section; and (ii) to enable a higher Court to transfer a claim that falls within the pecuniary jurisdiction of the Small Claims Court to the Small Claims Court,

CLAUSE 15

THAT, clause 15 of the Bill be amended—

- (a) by deleting subclause (2);
- (b) by deleting subclause (3);
- (c) in subclause (4) by deleting the expression “,(2) and (3)” appearing immediately after the expression “(1)”.

Rationale: To remove provisions that unnecessarily exclude bodies corporate and unincorporated bodies from instituting suits in the Small Claims Court.

CLAUSE 18

THAT, clause 18 of the Bill be amended in subclause (2) by inserting the word "*mechanism*" immediately after the word "*resolution*".

Rationale: To insert a missing word.

CLAUSE 21

THAT, clause 21 of the Bill be amended by deleting subclause (3);

Rationale: To remove a provision allowing for parties to use interpreters of their choice. Such a liberty would lead to absurdity where the interpreter of a party's choosing decided to interpret proceedings in a manner that does not reflect the true picture of the proceedings.

CLAUSE 23

THAT, clause 23 of the Bill be amended in subclause (2) by deleting the word "*the*" appearing immediately after the words "*prejudice to*".

Rationale: To insert a missing word.

CLAUSE 26

THAT, clause 26 of the Bill be amended—

- (a) in subclause (3) by deleting the word "*had*" appearing immediately after the words "*on the claim*" and substituting therefor the word "*has*";
- (b) in subclause (5) by deleting the expression ", (3) or (4)" appearing immediately after the expression "(1), (2)" and substituting therefor the expression "*or (3)*".

Rationale: To correct errors of grammar ("use of past tense instead of present tense") and to correct references to subclauses within the clause.

CLAUSE 27

THAT, clause 27 of the Bill be amended in subclause (3) by deleting the expression "(1)" appearing immediately after the word "*subsection*" and substituting therefor the expression "(2)".

Rationale: to substitute the correct reference.

CLAUSE 28

THAT, clause 28 of the Bill be amended in subclause (2) by deleting the word "*had*" appearing immediately after the words "*on the claim*" and substituting therefor the word "*has*".

Rationale: To correct errors of grammar ("use of past tense instead of present tense").

CLAUSE 32

THAT, clause 32 of the Bill be amended—

- (a) in subclause (1) by deleting the words "*by the strict*" appearing immediately after the word "*bound*" and substituting therefor the words "*wholly by the*";
- (b) by deleting subclause (8).

Rationale: (i) To allow the Court discretion to employ various rules of evidence on a case by case basis; and (ii) to require that the Court maintain records of its proceeding in the event an appeal is preferred by either of the parties.

CLAUSE 33

THAT, clause 33 of the Bill be amended in subclause (4) by inserting the word "*be*" immediately after the words "*shall not*".

Rationale: To insert a missing word.

CLAUSE 37

THAT, clause 37 of the Bill be amended—

- (a) by deleting subclause (2);
- (b) in subclause (5) by deleting the expression "*46 (3)*" appearing immediately after the words "*under section*" and substituting therefor the expression "*40*".

Rationale: To substitute the correct reference.

CLAUSE 38

THAT, clause 38 of the Bill be amended by deleting the word "*matter*" appearing immediately after the words "*High Court on*" and substituting therefor the word "*matters*".

Rationale: To correct errors of grammar ("use of singular instead of plural")

CLAUSE 39

THAT, clause 39 of the Bill be amended by inserting the following paragraph immediately after paragraph (a)—

"(aA) order the attachment of the salary of the judgment debtor; or"

Rationale: To allow the Court the discretion to attach the salary of a judgment debtor for the purposes of satisfying a judgment.

CLAUSE 40

THAT, clause 40 of the Bill be amended by inserting the words "*or any other of his or her assets*" immediately after the words "*immovable property*".

Rationale: To allow the Court the discretion to attach in execution, any other assets of a judgment debtor for the purposes of satisfying a judgment.

CLAUSE 41

THAT, clause 41 of the Bill be amended—

(a) in subclause (1)—

- (i) in the prefatory statement by deleting the word "*its*" appearing immediately after the words "*party or on*" and substituting therefor the words "*his or her*";
- (ii) by inserting the following paragraph immediately after paragraph (d)—

"(e) new facts previously not before the Court have been discovered by either of the parties."

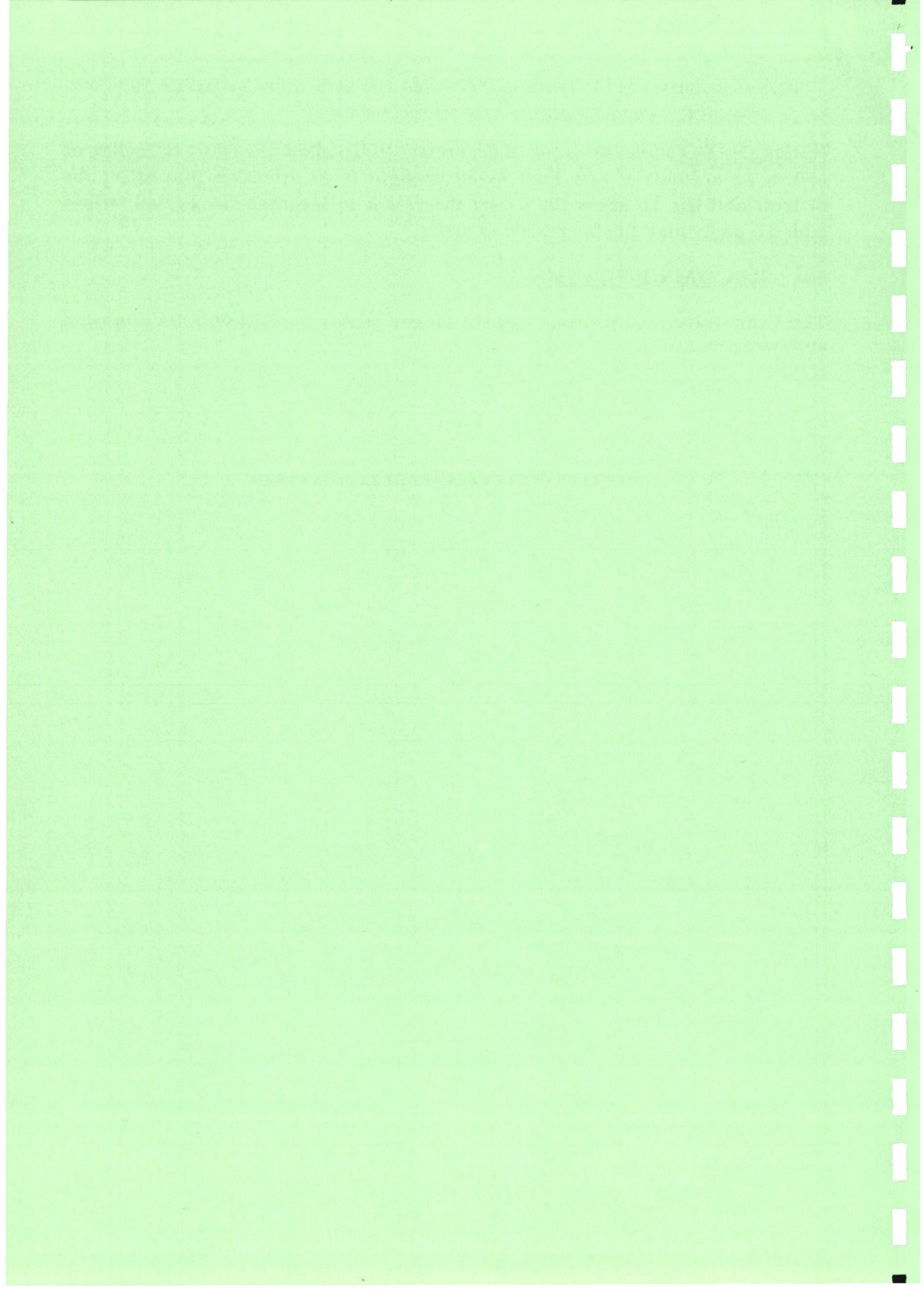
(b) in subclause (2) by inserting the words "*or such other period as the Court may allow*" immediately after the word "reviewed".

Rationale: To correct an error of grammar; (ii) To allow the court to review its orders on account of new facts being brought to its attention that affect the orders; and (ii) To allow the Court discretion to lengthen the period within which a party may file for review of order.

5.0. RECOMMENDATIONS

The Committee recommends that the House passes the Bill with its proposed amendments.

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APPENDIX 1

APPENDIX I

**MINUTES OF THE SIXTY THIRD SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 6TH OCTOBER, 2015 AT
10.00 A.M. IN THE BOARDROOM ON 2ND FLOOR, CONTINENTAL HOUSE,
PARLIAMENT BUILDINGS**

PRESENT:-

Hon. Samuel Chepkonga, M.P. - **Chairperson**
Hon. Benson Mutura, M.P.
Hon. Boniface Otsiula, M.P.
Hon. John M. Waiganjo, M.P.
Hon. Moses Cheboi, M.P.
Hon. Paul K. Bii, M.P.
Hon. (Bishop) Robert Mutemi, M.P.
Hon. Sammy Koech, M.P.
Hon. Tom J. Kajwang', M.P.
Hon. Johanna Ngeno, M.P.
Hon. James Bett, M.P.
Hon. Ben Momanyi, M.P.
Hon. David Ochieng, M.P.
Hon. Fatuma Ibrahim, M.P.
Hon. Florence Kajuju, M.P.
Hon. Kang'ata Irungu, M.P.
Hon. John Njoroge Chege, M.P.
Hon. John Olago Aluoch, M.P.

ABSENT:-

Hon. Priscilla Nyokabi, M.P. - **Vice Chairperson**
Hon. Charles Gimose, M.P.
Hon. Dr. Christine Ombaka, M.P.
Hon. Munuve Mati John, M.P.
Hon. Mohamed Abdi Haji, M.P.
Hon. Njoroge Baiya, M.P.
Hon. Peter Kaluma, M.P.
Hon. Ndirangu Waihenya, M.P.
Hon. Kamoti Mwamkale William, M.P.
Hon. William Cheptumo, M.P.
Hon. Neto Agostinho, M.P.

IN ATTENDANCE:-

SECRETARIAT

Mr. George Gazemba - Senior Clerk Assistant

Ahmed Salim
Ms. Mary L. Lemerelle

- Clerk Assistant III
- Clerk Assistant III

MIN No. 208/2015:-

PRELIMINARIES

The Chairperson called the meeting to order at five minutes past ten in the morning with a word of prayer from Hon. (Bishop) Robert Mutemi.

MIN No. 209/2015:-

CONSIDERATION AND ADOPTION OF REPORTS ON BILLS

(i) **Consideration and adoption of report on the Court of Appeal Organization and Administration Bill, 2015**

The Committee considered and adopted its report on the Court of Appeal Organization and Administration Bill, 2015. The adoption of the report was proposed by Hon. Boniface Otsiula and seconded by Hon. John Waiganjo. There was no dissenting voice to the adoption of the report.

(ii) **Consideration and adoption of report on the High Court Organization and Administration Bill, 2015**

The Committee considered and adopted its report on the High Court Organization and Administration Bill, 2015. The adoption of the report was proposed by Hon. John Waiganjo and seconded by Hon. Paul K. Bii. There was no dissenting voice to the adoption of the report.

(iii) **Consideration and adoption of report on the Small Claims Court Bill, 2015**

The Committee considered and adopted its report on the Small Claims Court Bill, 2015. The adoption of the report was proposed by Hon. Benson Mutura and seconded by Hon. Johanna Ng'eno. There was no dissenting voice to the adoption of the report.

(iv) **Consideration and adoption of report on the Magistrates' Courts Bill, 2015**

The Committee considered and adopted its report on the Magistrates' Courts Bill, 2015. The adoption of the report was proposed by Hon. Boniface Otsiula and seconded by Hon. Benson Mutura. There was no dissenting voice to the adoption of the report.

MIN No. 210/2015:-

PRE-PUBLICATION SCRUTINY OF THE INTERNATIONAL CRIMES (REPEAL) BILL, 2015

Hon. Boniface Otsiula, a member of the Committee made submissions supporting the publication of the Bill. He stated that the two Houses (National Assembly and Senate) had previously passed motions supporting Kenya's withdrawal from the International Criminal Court and that his Bill's purpose was to effect the two Houses' decisions.

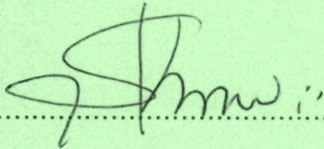
The Committee was persuaded by his argument and recommended that the Legislative Proposal be published.

MIN No. 211/2015:-

ADJOURNMENT

There being no other business to transact, the chair adjourned the sitting and thirty minutes past eleven in the morning till Thursday, 8th October, 2015 at ten in the morning.

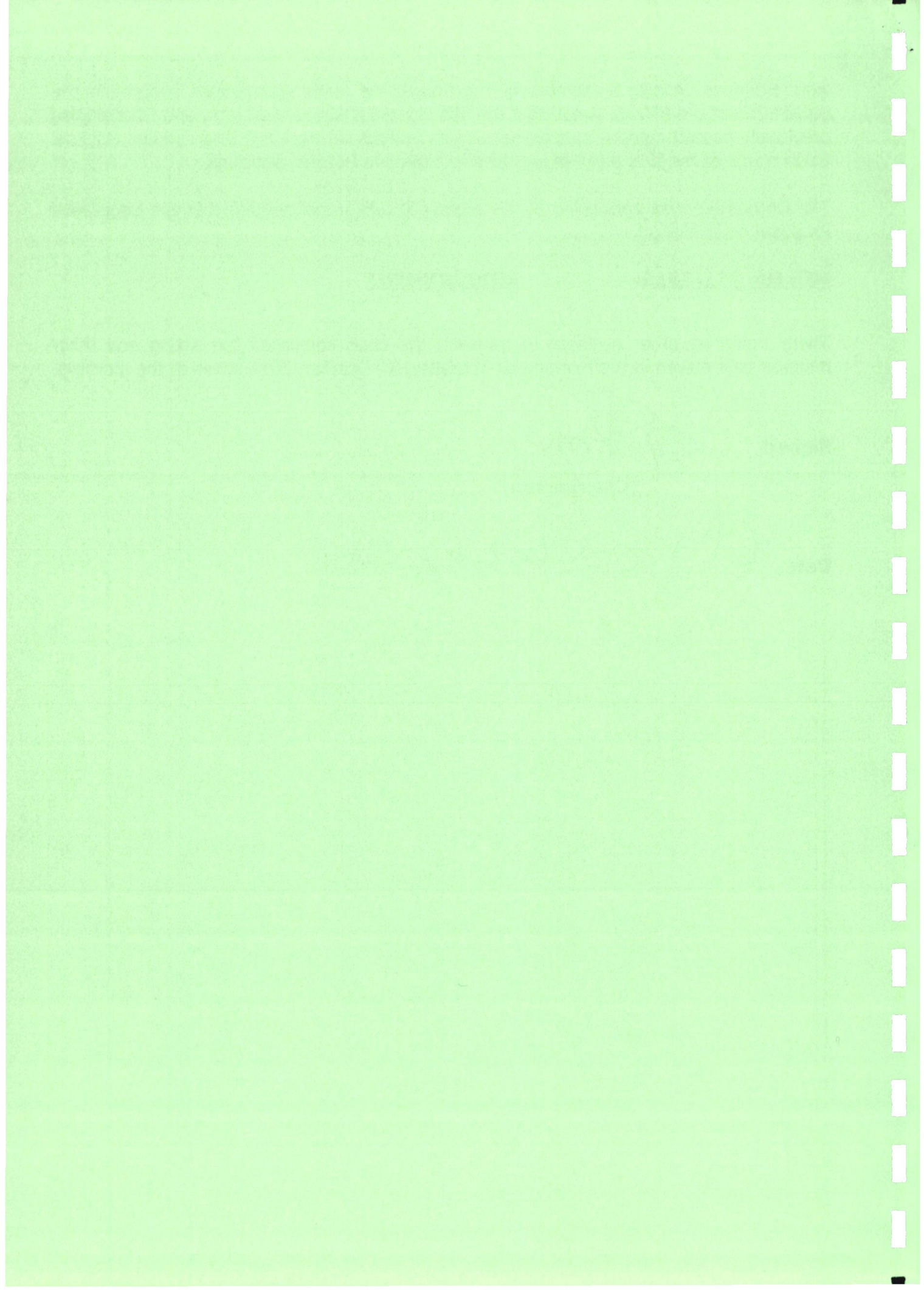
Signed.....



(Chairperson)

Date.....

6th October, 2015



APPENDIX 2

APPENDIX 2



KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

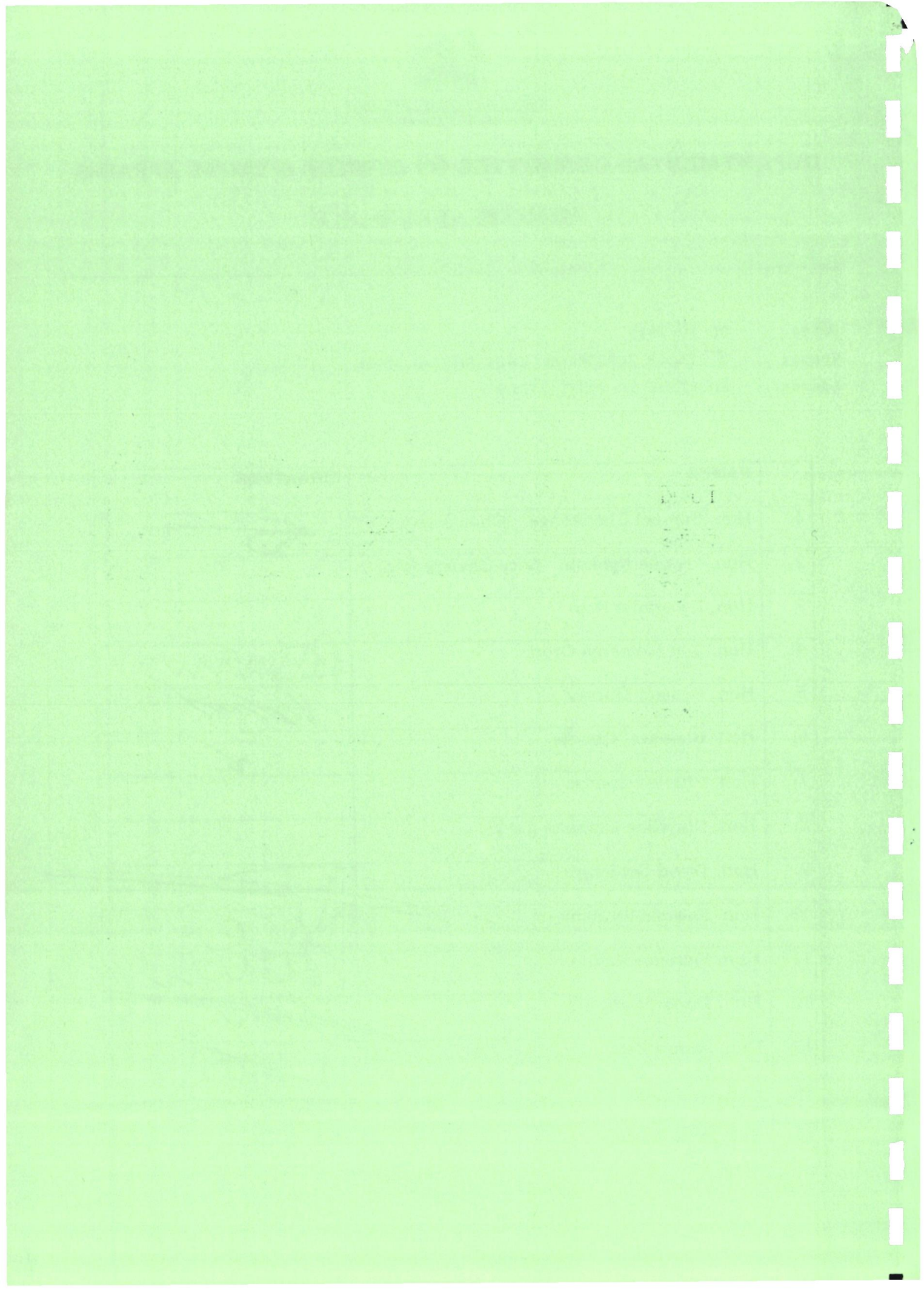
MEMBERS ATTENDANCE

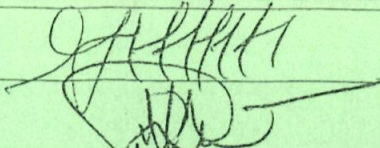
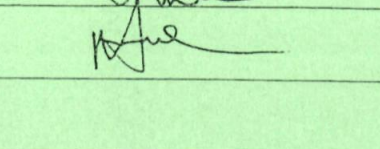
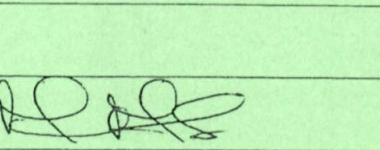
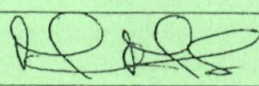
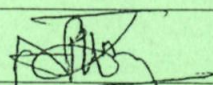

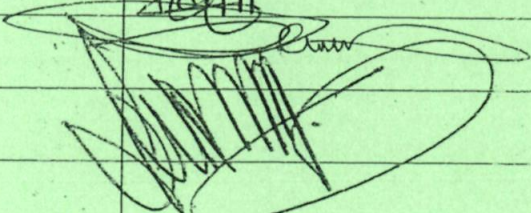
Date: 06.10.2015

Venue: 2ND FLOOR BOARDROOM, CONTINENTAL HOUSE

Agenda: ADOPTION OF COURT BILLS

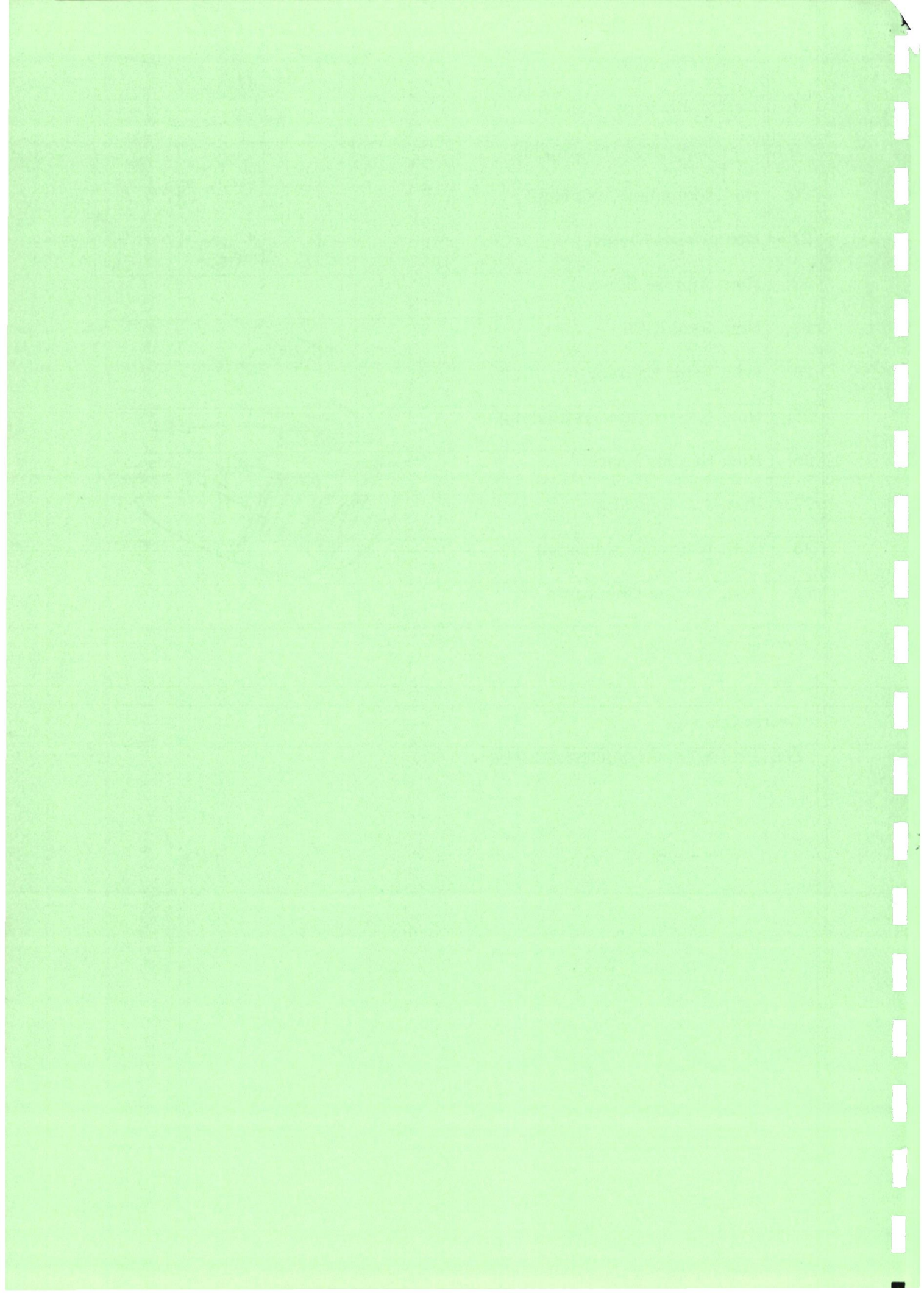
	NAMES	SIGNATURE
1.	Hon. Samuel Chepkonga (Chairperson)	
2.	Hon. Evisula Nyokabi (Vice Chairperson)	
3.	Hon. Agostinho Neto	
4.	Hon. Ben Momanyi Orori	
5.	Hon. Benson Mutura	
6.	Hon. Boniface Otsiula	
7.	Hon. Charles Gimose	
8.	Hon. Christine Ombaka (Dr.)	
9.	Hon. David Ochieng'	
10.	Hon. Fatuma Ibrahim	
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 Gazamba

For: The Clerk of the National Assembly



Petroleum transport regulations.

Petroleum products facilities standards.

Persons wishing to attend the workshop are requested to confirm attendance by sending their names and, where applicable, licence numbers on or before August 27, 2015 by email with the Subject: **NANYUKI WORKSHOP** to the email addresses listed below.

Petroleum: jacinta.juma@erc.go.ke

Electricity: kiprotich.bii@erc.go.ke

Renewable Energy: lee.okombe@erc.go.ke

A few slots will be availed for persons who have applied for licensing but have not yet been licensed by the Commission.

NO FEES WILL BE CHARGED FOR ATTENDING THE WORKSHOP

CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT - THIRD SESSION

**In the Matters of consideration by the National Assembly -
The High Court Organization and Administration Bill, 2015;
The Court of Appeal (Organization & Administration) Bill, 2015
and The Small Claims Court Bill, 2015**

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "*Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees*". Standing Order 127(3) 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*".

The High Court Organization and Administration Bill, 2015; the Court of Appeal (Organization and Administration) Bill, 2015 and the Small Claims Court Bill, 2015 have undergone First Reading pursuant to Standing Order 127 and are now committed to the Departmental Committee on Justice and Legal Affairs for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the Public to submit any representations they may have on the said Bills. 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 Monday 31st August, 2015 at 5:00 pm.

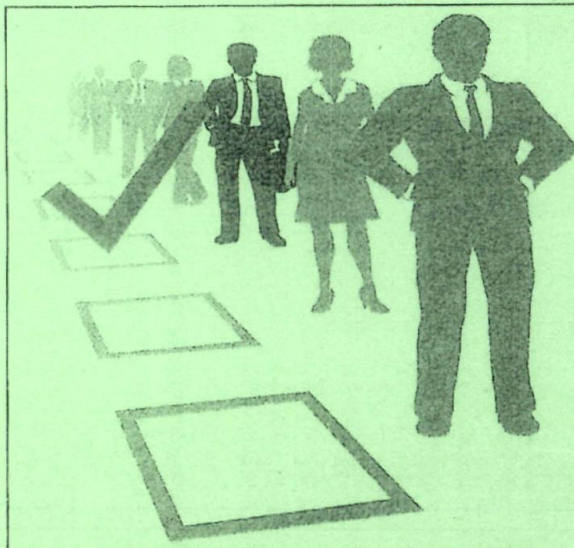
**JUSTIN N. BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY**

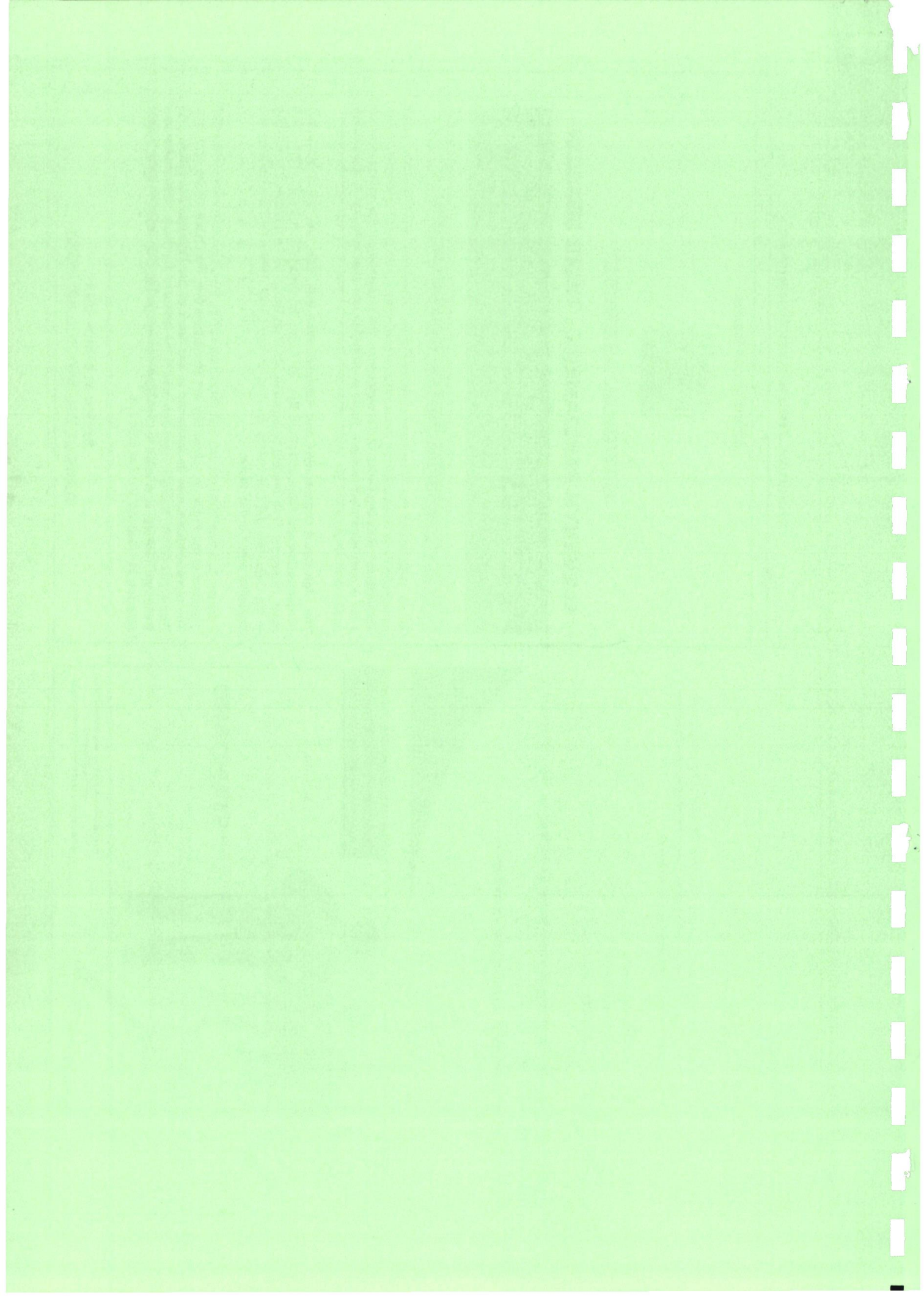
Looking for the right person for the job ...?

...Advertise in

THE **STANDARD**

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or Email us at:
advertising@standardmedia.co.ke





APPENDIX 3

