



PARLIAMENT OF KENYA

KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT  
SECOND SESSION

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THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS  
REPORT ON THE MARRIAGE BILL, 2013  
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Clerk's Chambers,  
Parliament Buildings,  
NAIROBI.

FEBRUARY, 2014

Paper laid by the  
Chair, DC-Justice &  
Legal Affairs on  
12/2/2014 (afternoon)



## **1.0 PREFACE**

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order No. 199, it is my pleasure and duty to present to the House, the Committee's Report on the Marriage Bill 2013.

## **1.1 COMMITTEE MEMBERSHIP**

The Committee on Justice and Legal Affairs was constituted by the House on Thursday 16<sup>th</sup> May, 2013 comprising of the following members:

1. The Hon. Samuel Chepkong'a, M.P. –Chairperson
2. The Hon. Priscilla Nyokabi, M.P. –Vice Chairperson
3. The Hon. Njoroge Baiya, M.P.
4. The Hon. Muriithi Waiganjo, M.P.
5. The Hon. Ndirangu Waihenya, M.P.
6. The Hon. Florence Kajuju, M.P.
7. The Hon. Kang'ata Irungu, M.P.
8. The Hon. Benson Mutura, M.P.
9. The Hon. John Njoroge Chege, M.P.
10. The Hon. William Cheptumo, M.P.
11. The Hon. Mohamed Abdi Haji, M.P.
12. The Hon. Kangongo Bowen, M.P.
13. The Hon. Sammy Koech, M.P.
14. The Hon. Moses Cheboi, M.P.
15. The Hon. Paul Bii, M.P.
16. The Hon. Charles Gimose, M.P.
17. The Hon. Johanna Ng'eno, M.P.
18. The Hon. Boniface Otsiula, M.P.
19. The Hon. David Ouma Ochieng, M.P.
20. The Hon. Neto Agostinho, M.P.
21. The Hon. Kaluma Peter, M.P.
22. The Hon. Fatuma Ibrahim Ali, M.P.
23. The Hon. Ben Momanyi Orari, M.P.
24. The Hon. T. J. Kajwang', M.P.
25. The Hon. (Bishop)Mutua Mutemi, M.P.
26. The Hon. Olago Aluoch, M.P.
27. The Hon. Christine Oduor Ombaka, M.P.
28. The Hon. Munuve G. Mati, M.P.
29. The Hon. Mwamkale William Kamoti, M.P.

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of standing order 216 (5) which outline functions of the Committee as being:

- 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 the 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 inquire 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 Cabinet Secretary;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments); and
- g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to consider:-


- a) Constitutional Affairs
- b) The administration of Law and Justice
- c) The Judiciary
- d) Public prosecutions
- e) Elections
- f) Ethics, Integrity and anti-corruption and
- g) Human rights

### **1.3 Committee Meetings**

The Committee held a number of sittings during which the Marriage Bill, 2013 was considered in accordance with the standing orders of the National Assembly. The Committee also received Memoranda from various stakeholders.

The Marriage Bill, 2013 was read a first time on 16th July 2013 and stood committed to the Committee. The National Assembly adjourned and went on recess soon thereafter and thus the Committee did not proceed and report as expected. This Report contains deliberations of the Committee on the Bill and has proposed some amendments.

Finally it is now my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to introduce this report to the House, so that it may enrich debate on the Bill.

SIGNED..........

**Hon. Samuel Chepkong'a, MP**

**(Chairperson)**

**Committee on Justice and Legal Affairs**

DATE..........

## **PROPOSED AMENDMENTS TO THE MARRIAGE BILL, 2013**

### **PART 1 – PRELIMINARY**

#### **SECTION 2**

**THAT** the Bill be amended in subsection (2) by deleting the word “Director” and inserting the word “Registrar”.

### **PART II- GENERAL PROVISIONS**

#### **SECTION 8**

**THAT** the Bill be amended in subsections (4) (5) and (6) by deleting the words “Director” and inserting the words “Registrar”.

#### **SECTION 11**

THAT the Bill be amended by deleting the word ‘disorder or mental disability’ appearing in subsection (2) (c) and replace with ‘mental condition’

#### **SECTION 12**

THAT the Bill be amended by deleting subsection (d) and (f)

#### **SECTION 14**

THAT the Bill be amended by deleting the word the words ‘one year’ and inserting the words ‘six months’ appearing in subsection (1)

#### **SECTION 17**

THAT the Bill is amended by inserting a new section 17A to read as follows:  
“Under Part III, a marriage officer means a licensed Church Minister appointed by the Director under Section 51”.

#### **SECTION 18**

THAT the Bill be amended by deleting all the words thereof and inserting the following new section:

“18. A marriage under this Part may be celebrated in a public place of worship or any other place as may be permitted by the Church”.

#### **SECTION 19**

THAT the Bill be amended in subsection (1) by deleting the words “the Director and” after the words “they shall give to”.

## **SECTION 20**

THAT the Bill be amended by deleting paragraph (a).

## **SECTION 21**

THAT the Bill be amended by Deleting sections 21, 22, 23, 24, 25, and 26 and inserting the following new section 21:

21(1) A person who knows of an impediment to an intended marriage may give a written notice of objection to the person in charge of a public place of worship where notice of intended marriage has been posted in accordance with section 20.

(2) A notice of objection shall include the name of the person giving the notice of the objection and that person's relationship with either of the intended parties and shall state the reasons for objection to the intended marriage.

(3) A person who has given notice of objection may withdraw the objection in writing at any time.

## **SECTION 22**

THAT the Bill be amended by inserting a new section 22 to read as follows:

22(1) The Church Minister shall hear an objection forthwith under Clause 21 and if he or she considers the objection requires further hearing, he shall adjourn the marriage ceremony until such time as the objections will be determined in accordance with the church regulations.

(2) The Church Minister shall determine an objection within a reasonable period but in any case not more than seven days after the hearing under subsection (1).

(3) ) The Church Minister who takes the parties through the determination of the objection shall prepare and submit a report of the process of determination of the objection in the prescribed form to the parties and the Director within seven days.

(4) Any party dissatisfied with the decision of the Church Minister may appeal to the court within fourteen days of the decision by the Church Minister".

## **SECTION 32**

**THAT** the Bill be amended in subsection (1) by deleting the word "Director" and inserting the word "Registrar."

## PART VI – HINDU MARRIAGE

### SECTION 46

**THAT** the Bill be amended in subsections (1) and (2) by deleting the words “Director” and inserting the words “Registrar”.

## PART VIII

### SECTION 49

**THAT** the Bill be amended in subsections (1) and (2) by deleting the words “Director” and inserting the words “Registrar”.

### SECTION 29

**THAT** the Bill be amended in subsection (a) by inserting the words “and is consistent with the requirement of this part” immediately after the word ‘country’

## PART IV - CIVIL MARRIAGE

### SECTION 30

**THAT** the Bill be amended by deleting the word “Director” and inserting the word “Registrar.”

### SECTION 32

**THAT** the Bill be amended in subsection (1) and (2) by deleting the word “Director” and inserting the word “Registrar”.

### SECTION 33 ◦

**THAT** the Bill be amended in subsection (2) by deleting the word “Director” and inserting the word “Registrar”.

### SECTION 34

**THAT** the Bill be amended in paragraph 1 by deleting the words “Director” and inserting the words “Registrar”

### SECTION 35

**THAT** the Bill be amended in subsection (1) by deleting the word “Director” and inserting the word “Registrar”

### **SECTION 36**

**THAT** the Bill be amended by deleting the word “Director” and inserting the word “Registrar”.

### **SECTION 37**

**THAT** the Bill be amended in subsection (a) by inserting the words “and is consistent with Kenyan Law” immediately at the end of paragraph 37.

**THAT** the Bill be amended in subsection (d) by deleting the word “Director” and inserting the word “Registrar”.

### **SECTION 40**

**THAT** the Bill be amended in subsection (2) by deleting the word “Director” and inserting the word “Registrar”.

### **SECTION 41**

**THAT** the Bill be amended in subsection (1) and (2) by deleting the words “Director” and inserting the words “Registrar”

**THAT** the Bill be amended by deleting subsection (4) and (5)

## **PART V- MARRIAGE UNDER CUSTOMARY LAW**

### **SECTION 42**

**THAT** the Bill be amended by deleting subsection (3)

### **SECTION 43**

**THAT** the Bill be amended by deleting the words “Director” and inserting the words “Registrar”

### **SECTION 44**

**THAT** the Bill be amended by deleting subsection (4)

## **PART VI – HINDU MARRIAGE**

### **SECTION 46**

**THAT** the Bill be amended in subsection (1) and (2) by deleting the word “Director” and inserting the word “Registrar”

## **PART VI I- MARRIAGE UNDER ISLAMIC LAW**

### **SECTION 48**

**THAT** the Bill be amended in subsection 2 by deleting the word “Director” and inserting the word “Registrar”.

## **PART VIII**

**THAT PART VIII** be amended by deleting the word “Director” and inserting the words “Registrar” to read:-

### **“APPOINTMENT OF REGISTRAR OF MARRIAGES AND MARRIAGE OFFICERS”**

#### **SECTION 49**

**THAT** the Bill be amended in subsection (1) and (3) by deleting the words “Director” and inserting the words “Registrar”.

#### **SECTION 50**

**THAT** the Bill be amended in subsection (1) by deleting the word “Director” and inserting the word “Registrar”.

**THAT** the Bill be amended in subsection (2) by deleting the word “Director” and inserting the word “Registrar”.

#### **SECTION 51**

**THAT** the Bill be amended in subsection (1),(2),(3) and (5) by deleting the words “Director” and inserting the words “Registrar”.

**THAT** the Bill be amended in subsection (2) by deleting the word “The Director Register’s a marriage” and inserting the words “Registration of marriage”

## **PART IX-REGISTRATION OF MARRIAGES**

### **SECTION 52**

**THAT** the Bill be amended in subsection (1) by deleting the word “Director” and inserting the words “Registrar”

### **SECTION 53**

**THAT** the Bill be amended in subsection (1) by deleting the word “Director” and inserting the words “Registrar”

**THAT** the Bill be amended in subsection (2) by deleting the word “Director and the Director” and inserting the words “Registrar who”

**THAT** the Bill be amended in subsection (3) by deleting the word “Director” and inserting the word “Registrar”

### **SECTION 54**

**THAT** the Bill be amended in subsection (1) by deleting the words “Director” and inserting the words “Registrar”.

**THAT** the Bill be amended in subsection (2) by deleting the words “Director” and inserting the words “Registrar”

### **SECTION 55**

**THAT** the Bill be amended in subsection (1) by deleting the words “Director” and inserting the words “Registrar”

### **SECTION 56**

**THAT** the Bill be amended in subsection (1) by inserting the word “Mukhi” immediately after the words “Sheikh” and by deleting the word “Director” and inserting the word “Registrar”.

**THAT** the Bill be amended in subsection (2) by deleting the word “Director” and inserting the words “Registrar”

### **SECTION 58**

**THAT** the Bill be amended in subsection (1) and (2) by deleting the words “Director” and inserting the words “Registrar”.

### **SECTION 59**

**THAT** the Bill be amended in subsection (1) by deleting the words ‘or any other written law’

### **SECTION 60**

**THAT** the Bill be amended by deleting the words “Director and inserting the words ‘Registrar’

### **SECTION 61**

**THAT** the Bill be amended in subsection (1) by deleting the words “Director” and inserting the words “Registrar”

**THAT** the Bill be amended in subsection (2) by deleting the Words “Director” and inserting the “words “Registrar”

### **SECTION 62**

**THAT** the Bill be amended in subsection (1) by deleting the word “Director” and inserting the word “Registrar”

**THAT** the Bill be amended in subsection (2) by deleting the words “Director” and inserting the words “Registrar”

### **SECTION 63**

**THAT** subsection (1) of the Bill be amended by deleting the words “Director” and inserting the words “Registrar”

**THAT** subsection (2) of the Bill be amended by deleting the words “Director” and inserting the words “Registrar”

**THAT** subsection (3) of the Bill be amended by deleting the words “Director” and inserting the words “Registrar”

## **SECTION 72**

**THAT** the Bill be amended by inserting the words “Mukhi” immediately after the words “Imam”.

**THAT** the Bill be amended by deleting the words “authorized person” and inserting the words “or body”

**THAT** the Bill be amended by deleting the words ‘Director’ and inserting the words ‘Registrar’

## **SECTION 73**

**THAT** the Bill be amended in sub-clause (1)(a) by inserting the words “within a reasonable period” immediately after the words “celebration”

## **SECTION 82**

**THAT** subsections (2) and (3) be amended by deleting the words ‘due’ immediately after the words “accrued”

## **SECTION 83**

**THAT** subsection (3) be amended by deleting the words “gift” immediately after the word ‘sale’.

## **PART XIII-OFFENCES AND PENALTIES**

## **SECTION 86**

**THAT** subsection (1) be amended by deleting the words “five years” and inserting the words “two years” immediately after the words “exceeding”.

**THAT** subsection (1) be amended by deleting the words ‘one million shillings’ and inserting the words ‘two million’ immediately before the words ‘shillings’

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**SECTION 89**

**THAT** section (89) be amended by deleting the words ‘that the other party was suffering from any mental disorders’ and inserting the word “of”

**SECTION 96**

**THAT** subsection (1) and (2) be amended by deleting the words “Director” and inserting the words “Registrar”

**THAT** subsection (3) be amended by deleting the words “the marriage” immediately before the word “within”