



Paper land on 23/10/2014
Hon. Chepkoigoi

THE CONSTITUTION OF KENYA

REFUSAL TO ASSENT TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2014

MEMORANDUM

By His Excellency the Honourable Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces.

Submitted to the Speaker of the National Assembly.

WHEREAS a Bill entitled "A Bill for An Act of Parliament to make minor amendments to statute law", the short title of which is "The Statute Law (Miscellaneous Amendments) Bill, 2014," was passed by the National Assembly on the 13th August, 2014;

AND WHEREAS the Statute Law (Miscellaneous Amendments) Bill, 2014, was presented to me for assent in accordance with the provisions of the Constitution, on the 14th September, 2014;

NOW THEREFORE, in exercise of the powers conferred on me by Article 115(1) (b) of the Constitution, I refuse to assent to

the Statute Law (Miscellaneous Amendments) Bill, 2014, for the reasons set out hereunder.

PROPOSED AMENDMENTS TO THE INTERPRETATION AND GENERAL PROVISIONS ACT (CAP. 2)

SECTION 3:

The Bill initially proposed the following definition to replace the definition of the expression “the Minister” for the purposes of the administration of written laws:

“the Cabinet Secretary” means the Cabinet Secretary for the time being responsible for the matter in question, or the President where executive authority for the matter in question is retained by him, or the Attorney-General where executive authority for the matter in question has been conferred on him.

The position in the proposed definition has always been the law and the amendment was only intended to harmonise it with the Constitution by replacing the reference to “Minister” with the expression “Cabinet Secretary”. The definition was however amended to remove reference therein to the President and the Attorney-General. This means that unless Parliament specifically assigns the administration of an Act or the performance of an

executive function thereunder to these offices, it will no longer be possible to construe Acts of Parliament as conferring any such powers. If enacted, the provision will have far-reaching consequences on the performance of executive functions by the offices. The office of the Attorney-General and Department of Justice in particular will be most affected by the change. This is because the office routinely administers numerous laws in the legal sector, including the laws relating to-

- (a) companies, partnerships and insolvency;
- (b) copyright;
- (c) marriage;
- (d) legal education;
- (e) the Kenya Law Reform Commission;
- (f) the National Council for Law Reporting;
- (g) the National Crime Research Centre,
- (h) the constitutional commissions on the implementation of the Constitution, human rights, ethics and integrity, etc.

RECOMMENDATION:

In view of the foregoing, I recommend that the proposed definition of the expression “the Cabinet Secretary” be deleted and replaced with the following -

“the Cabinet Secretary” means the Cabinet Secretary for the time being responsible for the matter in question, or the President where executive authority is retained by him:

Provided that for the purposes of the administration of laws relating to the legal sector, the expression shall, subject to any assignment under Article 132(3)(c) of the Constitution, include the Attorney-General.

PROPOSED AMENDMENTS TO THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT, 2003

SECTION 62(1):

The Bill proposes to amend section 62(1) of the Anti-Corruption and Economic Crimes Act, 2003, by deleting the existing provision and substituting therefor the following new subsection—

- (1) A public officer or state officer with executive responsibility who is charged with corruption or economic crime shall be suspended, at half pay, with effect from the date of the charge until the conclusion of the case:

**Provided that the case shall be determined
within twenty-four months.**

This amendment can be construed to be discriminatory against public or state officers with executive responsibility in that it excludes other public offices which have similar responsibilities.

RECOMMENDATION:

In view of the foregoing, I recommend that the proposed subsection 62(1) be amended by deleting the words “with executive responsibility”.

SUBSECTION (1A):

The Bill further proposes to amend section 62 of the Anti-Corruption and Economic Crimes Act, 2003, by inserting the following new subsection immediately after subsection (1)–

(1A) A state officer or public officer with executive responsibility who has been adversely mentioned in a report prepared by a committee of a House of Parliament and adopted by the relevant House shall be suspended until investigations are complete.

This amendment can similarly be construed to be discriminatory towards state and public officers with executive responsibility. In addition, the House committee report is normally presented

after the investigations are complete and any public or state officer adversely mentioned therein is subject to the provisions of subsection (1). This therefore renders the subsection unnecessary.

RECOMMENDATION:

For the foregoing reasons, I recommend that the proposed subsection 62 (1A) be deleted.

PROPOSED AMENDMENT TO THE ETHICS AND ANTI-CORRUPTION COMMISSION ACT, 2011

SECTION 17:

The Bill proposes to amend section 17 of the Ethics and Anti-Corruption Act, 2011, by inserting the following new subsection—

(3) Where the Commission, after giving the Secretary the opportunity to be heard in accordance with subsection (2), is satisfied that the Secretary warrants removal from office, the Commission shall submit a petition to the National Assembly setting out the alleged facts constituting the grounds for the intended removal.

The Ethics and Anti-Corruption Commission is a Commission to which the provisions of Chapter Fifteen of the Constitution applies. Under Article 250(12), the Commissions are empowered to appoint their Secretaries through a competitive process. This means that as the appointing authorities, the Commissions can remove their Secretaries without involving the National Assembly. The proposed involvement of the National Assembly in the removal of the Secretary in this case is therefore contrary to the provisions of Article 250(2) of the Constitution.

RECOMMENDATION:

In view of the above, I recommend that the proposed subsection 17(3) be deleted.

SUBSECTION (4):

The Bill further proposes to amend section 17 by inserting the following new subsection immediately after subsection (3)–

(4) The National Assembly shall consider the petition and the Secretary shall stand removed from office if the Assembly is satisfied by resolution that the Secretary has breached any of the grounds set out in subsection (1).

For the reasons stated in relation to subsection 17(3), this provision is similarly inconsistent with Article 250 (2) of the Constitution.

RECOMMENDATION:

In view of the foregoing, I recommend that the proposed subsection 17(4) be deleted.

PROPOSED AMENDMENT TO THE LEGAL EDUCATION ACT, 2012

SECTION 2(1):

The Bill proposes to amend the definition of “legal education provider” in section 2(1) of the Legal Education Act, 2012 by inserting the words “**except those granted a charter under section 19 of the Universities Act, 2012**” immediately after the word “degree” to read –

“legal education provider” means a post-secondary school institution that is licensed to offer legal education or training for the award of a certificate, diploma or degree, **except those granted a charter under section 19 of the Universities Act, 2012.**

The Universities Act, 2012 imposes a requirement for each university, including pre-existing universities, to apply for and obtain a Charter from the Commission for University Education. This amendment can therefore be construed to exclude all universities from the definition which was never intended.

RECOMMENDATION:

In view of the above, I recommend that the definition of the expression "legal education provider" be amended by deleting the word "except" and replacing it with the word "including".

Dated the 19th September, 2014.



UHURU KENYATTA,
President.