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THE NATIONAL ASSEMBLY

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON CONSIDERATION OF THE COUNTY GOVERNMENTS
(AMENDMENT) BILL, 2014 (SENATE BILL NO. 2 OF 2014)

CLERK'S CHAMBERS
DECEMBER, 2014

Speaker ✓

Kindly approve in
view of the imminent
second reading
discussion today.

Shw:

Chair, J.L.A.

12/02/15

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1.0 PREFACE

On behalf of the Departmental Committee on Justice and Legal Affairs, it is my pleasure and duty to present to the House, the Report on the County Governments (Amendment) (No. 2) Bill, 2014 (Senate).

1.1 Committee Membership

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

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. Kangongo Bowen, M.P.
13. Hon. Sammy Koech, M.P.
14. Hon. Moses Cheboi, M.P.
15. Hon. Paul Bii, M.P.
16. Hon. Charles Gimose, M.P.
17. Hon. Johanna Ng'eno, M.P.
18. Hon. Boniface Otsiula, M.P.
19. Hon. David Ouma, M.P.
20. Hon. Neto Agostinho, M.P.
21. Hon. Kaluma Peter, M.P.
22. Hon. Fatuma Ibrahim Ali, M.P.
23. Hon. Ben Momanyi Orari, M.P.
24. Hon. T. J. Kajwang', M.P.
25. Hon. (Bishop) Mutua Mutemi, M.P.
26. Hon. Olago Aluoch, M.P.
27. Hon. Christine Oduor Ombaka, M.P.
28. Hon. Munuve G. Mati, M.P.
29. Hon. Mwamkale William Kamoti, M.P.

1.2 Mandate of the Committee

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of Standing Order No. 216(5) which defines 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 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.

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

- Constitutional Affairs
- The administration of law and Justice
- The Judiciary
- Public Prosecutions
- Elections
- Ethics, Integrity and anti-corruption and
- Human Rights.

1.3 Departments under the committee

- a) Office of the Attorney General and Department of Justice
- b) Ethics and Anti-Corruption Commission (EACC)
- c) Independent Electoral and Boundaries Commission (IEBC)
- d) Commission for the Implementation of the Constitution (CIC)

- e) Kenya National Commission on Human Rights (KNCHR)
- f) Office of the Director of Public Prosecutions (ODPP)
- g) Registrar of Political Parties
- h) Witness Protection Agency (WPA)
- i) Commission On Administrative Justice (COAJ)
- j) The Judiciary

1.4 Committal of the Bill to the House

The Bill was committed to the National Assembly in accordance with Article 110 of the Constitution after which it was committed to the Departmental Committee on Justice and Legal Affairs for the Committee's recommendations.

Article 110 (4) provides that:

"When any Bill concerning county government has been passed by one House of Parliament, the Speaker of that House shall refer it to the Speaker of the other House".

1.5 Committee Meetings

The Committee held a sitting on 27th November 2014 and deliberated on the provisions of the County Governments (Amendment) (No. 2) Bill, 2014 and made its recommendation.

1.6 Acknowledgement

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to present and commend this report on the County Governments (Amendment) (No. 2) Bill, 2014 to the House for adoption.

SIGNED

Hon. Samuel Chepkong'a

(Chairperson)

Dated this..... day of December 2014

2.0 COMMITTEE DELIBERATIONS ON THE BILL

The Committee considered the County Governments (Amendment) (No. 2) Bill, 2014 as passed by the Senate, and below is a summary of the amendment:-

The Bill proposes amendments to the County Governments Bill, 2012 in the current section 7 (1) and the inclusion of a new section 7A.

The current Provision reads:

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 in accordance with Article 178 of the Constitution.

After the proposed amendment the Provision will read:

7. (1) In addition to the members who are elected under Article 177(a), and those who are 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 in accordance with Article 178 of the Constitution.

3.0 COMMITTEE OBSERVATIONS

The Committee observed that the amendment seeks to provide clarity on the members that comprise a county assembly. The use of the word "or" in the current provision does not create the cumulative effect envisaged under Article 177 (1) of the Constitution which reads—

177. (1) A county assembly consists of—

- (a) members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year;
- (b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;
- (c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and
- (d) the Speaker, who is an *ex officio* member.

The proposed insertion of a new section 7A seeks to ensure that county assemblies are fully constituted before their first sittings. It qualifies this requirement by excluding—

- (a) instances where the nomination of Special Seat members and those representing marginalized groups are being contested in Court; and
- (b) the death of a Special Seat member or a member representing marginalized groups on or before the date of the first sitting of the assembly.

The Committee is of the view that the proposed amendments do not raise any conflict with the provisions of the Constitution, constitutional and legislative principles, or the existing provisions of the County Governments Act, 2012.

The Committee is also of the view that this proposed amendment is one among other steps that may be required to enhance democracy in the running of the County Governments and therefore the amendment is a step in the right direction.

4.0 RECOMMENDATION

The Departmental Committee on Justice and Legal Affairs concurs with the Senate on this amendment and recommends to the House the adoption of this report on the County Governments (Amendment) (No. 2) Bill, 2014.

Thank You.



HON. SAMUEL CHEPKONGA, M.P.,

Chairperson, Departmental Committee on Justice and Legal Affairs

**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS MEETING HELD ON THURSDAY 27TH NOVEMBER, 2014, AT 10.00
A.M IN COMMITTEE ROOM 2ND FLOOR, CONTINENTAL HOUSE**

PRESENT

1. Hon. Samuel Chepkong'a, MP – **Chairperson**
2. Hon. Priscilla Nyokabi, MP – **Vice Chairperson**
3. Hon. Moses Cheboi, MP
4. Hon. Paul Bii, MP
5. Hon. Mutua Mutemi (Bishop), MP
6. Hon. Benson Mutura, MP
7. Hon. Charles Gimose, MP
8. Hon. Muriithi Waiganjo, MP
9. Hon. Kaluma Peter, MP
10. Hon. Munuve Mati John, MP
11. Hon. Florence Kajuju, MP
12. Hon. Neto Agostinho, MP
13. Hon. Olago Aluoch, MP
14. Hon. William Mwamkale, M.P
15. Hon. Ben Momanyi Orori, MP
16. Hon. Njoroge Baiya, MP
17. Hon. Kangongo Bowen, MP
18. Hon. Boniface Otsiula, MP
19. Hon. Mohamed Abdi Haji, MP

APOLOGIES

20. Hon. Sammy Koech, MP
21. Hon. Dr. Christine Ombaka, MP
22. Hon. Kang'ata Irungu, M
23. Hon. William Cheptumo, MP
24. Hon. David Ouma Ochieng, MP
25. Hon. T.J. Kajwang', MP
26. Hon. Fatuma Ibrahim Ali, MP
27. Hon. Johanna Ngeno, MP
28. Hon. Ndirangu Waihenya, MP
29. Hon. John Njoroge Chege, MP

IN ATTENDANCE

- Mary L. Lemerelle - Committee Clerk III
- Ahmed S. Abdalla - Committee Clerk III
- Ronald M. Walala - Legal Counsel

MIN.NOV.JLA/2014

PRELIMINARIES

The meeting was called to order at 10.15 AM after a word of prayer by Hon. Vice Chair.

MIN.NOV.JLA/2014

COUNTY GOVERNMENT AMMENDMENT BILL 2014

The Vice Chair took members through the Bill as to what the amendments sought to achieve and came up with the following observations;

1. The Bill proposes amendments to the County Governments Bill, 2012 in the current section 7 (1) and the inclusion of a new section 7A.

2. The amendment seeks to provide clarity on the members that comprise a county assembly. The use of the word "or" in the current provision does not create the cumulative effect envisaged under Article 177 (1) of the Constitution which reads—

(a) members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year;

(b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;

(c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and

(d) the Speaker, who is an *ex officio* member.

MIN.NOV.JLA/2014

COMMITTEE FINDINGS

The proposed insertion of a new section 7A seeks to ensure that county assemblies are fully constituted before their first sittings. It qualifies this requirement by excluding—

(a) instances where the nomination of Special Seat members and those representing marginalized groups are being contested in Court; and

(b) the death of a Special Seat member or a member representing marginalized groups on or before the date of the first sitting of the assembly.

MIN.NOV.JLA/2014

COMMITTEE COMMENTS

➤ The Committee was of the view of that there is need to set guidelines for marginalized groups and to those whom affirmative action is to be applied

- Political parties to provide their lists of nomination and forward to IEBC (political parties to file nomination procedure to IEBC)
- The amendments do not raise any conflict with the provisions of the Constitution, constitutional and legislative principles, or the existing provisions of the County Governments Act, 2012, and therefore, the Committee agreed to the bill.

MI N.NOV.JLA/2014 ADJOURNMENT

There being no other business meeting was adjourned at 12.45 pm.

Signed.....

Chairperson

Date.....

**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS MEETING HELD ON TUESDAY 9TH DECEMBER, 2014, AT 10.00 A.M
IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING**

PRESENT

1. Hon. Samuel Chepkong'a, MP
 2. Hon. Priscilla Nyokabi, MP
 3. Hon. Munuve Mati John, MP
 4. Hon. Paul Bii, MP
 5. Hon. Johanna Ngeno, MP
 6. Hon. Mutua Mutemi (Bishop), MP
 7. Hon. Olago Aluoch, MP
 8. Hon. John Njoroge Chege, MP
 9. Hon. Dr. Christine Ombaka, MP
 10. Hon. Kangongo Bowen, MP
 11. Hon. Ben Momanyi Orori, MP
 12. Hon. Boniface Otsiula, MP
 13. Hon. Njoroge Baiya, MP
 14. Hon. Mohamed Abdi Haji, MP
 15. Hon. Ndirangu Waihenya, MP
- Chairperson
– Vice Chairperson

APOLOGIES

16. Hon. Benson Mutura, MP
17. Hon. Charles Gimose, MP
18. Hon. Muriithi Waiganjo, MP
19. Hon. Kaluma Peter, MP
20. Hon. Florence Kajuju, MP
21. Hon. Neto Agostinho, MP
22. Hon. William Mwamkale, M.P
23. Hon. Sammy Koech, MP
24. Hon. Moses Cheboi, MP
25. Hon. Kang'ata Irungu, M
26. Hon. William Cheptumo, MP
27. Hon. David Ouma Ochieng, MP
28. Hon. T.J. Kajwang', MP
29. Hon. Fatuma Ibrahim Ali, MP

IN ATTENDANCE

- Ahmed S. Abdalla - Committee Clerk III
- Ronald M. Walala - Legal Counsel

MIN.NOV.JLA/2014**PRELIMINARIES**

The meeting was called to order at 10.10 a.m. after a word of prayer by the Hon. Chairman. The Chairman informed Members that the Committee will first adopt the report on the County Government (Amendment) Bill, 2014 (Senate Bill No. 2 of 2014), then meet the Attorney General at 10:30 a.m.

MIN.NOV.JLA/2014**ADOPTION OF THE REPORT ON THE COUNTY
GOVERNMENT AMENDMENT BILL, 2014 (SENATE BILL
NO. 2 OF 2014)**

The Chairperson requested Members to keenly go through the report before adoption. Members approved the contents of the report as a true record of the deliberations.

Hon. Kangogo Bowen proposed the adoption of the report and he was seconded by Hon. John Munuve. The report was unanimously adopted by the Committee.

MIN.NOV.JLA/2014**MEETING WITH THE ATTORNEY GENERAL**

The Attorney General, Hon. Prof. Githu Muigai, joined the Committee at around 10:35 a.m., and he was accompanied by the following officials:

- | | | |
|-----|-----------------------|----------------------------------------------------|
| (1) | Ms. Bernice Gachegu | - Registrar General |
| (2) | Ms. Linda Murila | - Deputy Chief Parliamentary Counsel, AG's Chamber |
| (3) | Mr. Mbage Ng'ang'a | - Chairman, KLRC |
| (4) | Ms. Jane Joram | - Registrar, Companies |
| (5) | Mr. Joash Dache | - Secretary, KLRC |
| (6) | Mr. Mark Gakuru | - Receiver, Office of the Official Receiver |
| (7) | Ms. Wanjiku Wakogi | - Advisor, AG's Chamber |
| (8) | Mr. Abdillahi Hussein | - Advisor, AG's Chamber |

The Hon. Attorney General reported that they agreed with the Committee on the urgency of enacting the two legislations and he thanked the Committee on Justice and Legal Affairs for its patience as the meeting with the Committee had earlier been rescheduled thrice.

Discussions

The discussions focused on the reservations of the Committee on the Companies Bill, 2014 and the Insolvency Bill, 2014. The issues range from the drafting style to the substance of the Bills.

It was agreed that a technical team of six people be formed to look into the issues raised by the Committee and report to the Committee on 13th January 2015.

The technical team will comprise of the following six members:

1. Ms. Bernice Gachegu

2. Ms. Linda Murila
3. Ms. Jane Joram
4. Mr. Joash Dache
5. Mr. Mark Gakuru
6. Mr. Ronald Walala

MIN.NOV.JLA/2014 **ANY OTHER BUSINESS**

The following three issues were raised:

1. Members wanted to know if it was possible to set up a Victims' Fund, and the same be anchored in law, where victims of certain calamities including organized attacks can be assisted or compensated through the kitty.
2. In consideration was also the idea as to whether a fund can be set aside for ex-gratia settlement for those who were aggrieved by the State in one way or the other and who are still struggling to have the State compensate them.
3. The enactment of a referendum law was also a subject that Members raised with the Attorney General and sought to know if there was any initiative on the Attorney General's Chamber to draft such legislation.

The Attorney General requested the Committee to consider setting a day in the next term of Parliament where a meeting can be held to discuss in detail the issues raised and the way forward for each of them so that a clear plan can be made on each of the issue. The Committee was agreeable to the idea and therefore the Departmental Committee on Justice and Legal Affairs will on January 2015, schedule a day for the meeting, details of which will be communicated to the Attorney General.

MI N.NOV.JLA/2014 **ADJOURNMENT**

There being no other business, the meeting was adjourned at 12.30 pm.

Signed.....

Chairperson

Date.....

