



KENYA NATIONAL ASSEMBLY

PARLIAMENT
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TENTH PARLIAMENT

FOURTH SESSION (2012)

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS
REPORT ON THE PRESIDENTIAL MEMORANDUM ON THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL, 2012

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

*Papers laid by
Hon. Mulhe & Ombao
on Thursday, June 28, 2012*

[Signature]
JUNE, 2012

PREFACE

Mr. Speaker Sir,

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of Standing Order No. 198(3) 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 Schedule II of the Standing Orders, the Committee is mandated to consider:-

- a) Constitutional Affairs
- b) The administration of law and order (Judiciary, Police, Prisons Department, and Community Service Orders)
- c) Public Prosecutions
- d) Elections
- e) Integrity
- f) Anti-Corruption and Human Rights.

The Committee oversees the following Ministries/Departments:

- a) Ministry of Justice, National Cohesion and Constitutional Affairs
- b) State Law Office
- c) Ethics and Anti-Corruption Commission (EACC)
- d) Independent Electoral and Boundaries Commission (IEBC)
- e) Commission on Implementation of the Constitution (CIC)
- f) Kenya National Commission on Human Rights (KNCHR)
- g) Office of the Director of Public Prosecutions (DPP)
- h) Registrar of Political Parties
- i) Witness Protection Agency (WPA)
- j) Commission on Administrative Justice (CAJ)

COMMITTEE MEMBERSHIP

The Committee comprises of the following members:

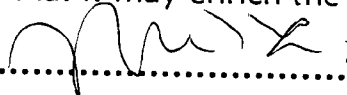
- Hon. Ababu Namwamba, M.P. - Chairperson
- Hon. Njoroge Baiya, M.P. - Vice-Chairperson
- Hon. Abdikadir Mohammed, M.P.
- Hon. Millie Odhiambo-Mabona, M.P.
- Hon. Mutava Musyimi, M.P.
- Hon. George Omari Nyamweya, MBS, M.P.
- Hon. Amina Abdalla, M.P.
- Hon. Olago Aluoch, M.P.
- Hon. Isaac K. Ruto, EGH, M.P.
- Hon. Sophia Abdi Noor, M.P.
- Hon. Yusuf Hassan, M.P.

Mr. Speaker Sir, the Statute Law Miscellaneous Amendments Bill, 2012 was read a first time on 10th May, 2012 and stood committed to the Committee. Debate on the Bill ensued but was halted after sometime necessitating a ruling from the Chair on 30th May, 2012. The Committee deliberated on the Bill, in its entirety and subsequently tabled a report on the same on 19th June 2012.

Mr. Speaker Sir, the Statute Law (Miscellaneous Amendments) Bill, 2012 was passed by the National Assembly on 21st June 2012, and was presented to the President for assent in accordance with the provisions of the Constitution on 25th June, 2012. The President while exercising powers given to him by Article 46 (4) of the former Constitution declined to assent to the Bill. He submitted a memorandum to the Speaker of the National Assembly indicating two clauses that he wanted reconsidered by the National Assembly. The two sections of the law referred to were Section 51 of the Political Parties Act, 2011, (No. 11 of 2011) and Section 22 of the Elections Act, 2011 (No. 24 of 2011).

Mr. Speaker Sir, after receiving the President's memorandum, you referred it to the Departmental Committee on Justice and Legal Affairs on Wednesday, 27th June 2012, with instructions that the Committee reports to the House prior to the consideration of the Memorandum on Thursday 28th June 2012 at 2.30pm. The Committee considered the memorandum on Thursday, 28th June 2012, and noted that the President is within his constitutional mandate to decline to assent to proposals made by Parliament. Since the two proposals contained in the memorandum did not emanate from the Committee, it was resolved that the House should deliberate on the same and make a determination.

Mr. Speaker, Sir, 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 the debate on the Bill.

SIGNED:.....:.....

Hon. Millie Odhiambo-Mabona, MP

Ag. Chairperson, Departmental Committee on Justice and Legal Affairs

DATE:.....28/06/2012.....

CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON REFUSAL TO ASSENT TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2012

INTRODUCTION

At a meeting held on Thursday 28th June 2012 at 10.00am, the Committee considered the President's memorandum and observed that it touches on two statutes, *inter alia*, the Political Parties Act, 2011 and the Elections Act, 2011.

The provisions of the two statutes are:

a) THE POLITICAL PARTIES ACT, 2011 (No. 11 of 2011)

Section 51

The Bill proposes to amend section 51 of the Political Parties Act, 2011 to introduce a new subsection (1A) as follows –

(1A) Until after the first general elections held after the commencement of this Act, nothing provided in subsections (4), (5), or (7) of section 14 shall be construed as requiring a person to vacate his or her seat as a Member of Parliament or aof a local authority, or as disqualifying any person from eligibility to contest an election under this Act.

b) THE ELECTIONS ACT, 2011 (No. 24 OF 2011)

The Bill proposes to amend Section 22(2) of the Elections Act to require that candidates for election as a Member of Parliament should be required to hold a degree from a University recognized in Kenya, in the same way as the President, Deputy President, County Governor or Deputy County Governor.

OBSERVATIONS

The Committee observed that:

1. The President is within his constitutional mandate to decline to assent to proposals made by Parliament.
2. Parliament, being an independent arm of the Government, is mandated to legislate and cannot be impeded in executing its role by any other arm of Government.

3. The two sections indicated in the memorandum were proposals made on the floor of the House and did not emanate from the Committee.

RECOMMENDATION

In view of the foregoing observations, the Committee resolved that the House should deliberate on the memorandum, and make the final determination.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX END XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

COMMITTEE MINUTES

MINUTES OF THE 95TH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, JUNE 28TH, 2012 IN COMMITTEE ROOM NO. 9, PARLIAMENT BUILDINGS AT 10.00 A.M.
PRESENT

Hon. Millie Odhiambo-Mabona, M.P. - Ag Chairperson

Hon. Isaac Ruto, EGH, M.P.

Hon. Abdikadir Mohammed, M.P.

Hon. Mutava Musyimi, M.P.

Hon. Sophia Abdi Noor, M.P.

Hon. Yusuf Hassan, M.P.

ABSENT WITH APOLOGY

Hon. Ababu Namwamba, M.P.

Hon. Njoroge Baiya, M.P.

Hon. Amina Abdalla, M.P.

Hon. Olago Aluoch, M.P.

Hon. George Omari Nyamweya, MBS, M.P.

IN ATTENDANCE

Mrs. Consolata Munga

Mrs. Lucy Wanjohi

Ms. Wanjiru Ndindiri

KENYA NATIONAL ASSEMBLY

Deputy Director, Committees

Second Clerk Assistant

Third Clerk Assistant

MIN.NO. 342/2012 **PRELIMINARIES**

The meeting was opened with a word of prayer. The Acting Chairperson invited Members to consider the President's memorandum on the Statute Law (Miscellaneous Amendments) Bill, 2012.

MIN.NO. 343/2012 **CONSIDERATION OF THE MEMORANDUM ON THE
STATUTE LAW (MISCELLANEOUS AMENDMENTS)
BILL, 2012**

The Committee considered the President's memorandum on the Statute Law (Miscellaneous Amendments) Bill, 2012, and made the following observations:

1. The President is within his constitutional mandate to refuse to assent to proposals made by Parliament, and he need not give reasons thereof.
2. Parliament, being an independent arm of the Government, is mandated to legislate and cannot be impeded in executing its role.
3. The two sections indicated in the memorandum were proposals made on the floor of the House and did not emanate from the Committee.

After deliberations, the Committee declined to consider the memorandum, and requested the House to deliberate on the same, and make the final determination.


The Committee further resolved that in accordance with Standing Order No. 181, and in the absence of the Chairperson and Vice-Chairperson, Hon. Millie Odhiambo-Mabona, MP would sign the report and table it on behalf of the Committee.

MIN. NO. 344/2012 **ANY OTHER BUSINESS**

- 1) The Committee was informed that the Law Society of Kenya had raised concerns through a memorandum and petition to the President on some of the provisions of the Statute Law (Miscellaneous Amendments) Bill, 2012.
- 2) The Kenya School of Law Bill, 2012 and the Legal Education Bill, 2012

The Committee resolved to have a stakeholders' meeting on the two bills as soon as possible.

There being no other business the Chair adjourned the sitting at forty five minutes past ten o'clock.

Signed: 

Hon. Millie Odhiambo-Mabona, MP

(Ag. Chairperson)

Date: 