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*By Hon. Nelson  
Gachui (Vice  
Chair of Finance  
Planning & Trade  
on Tuesday  
25/11/2014)*

REPUBLIC OF KENYA

KENYA NATIONAL ASSEMBLY

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ELEVENTH PARLIAMENT – SECOND SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

REPORT ON

THE CONSIDERATION OF THE COUNTY GOVERNMENTS (AMENDMENT)  
BILL, 2014

PARLIAMENT BUILDINGS  
NAIROBI

NOVEMBER, 2014

## **PREFACE**

### **Mr. Speaker, Sir**

The Committee on Finance, planning & Trade is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to, inter alia; **‘to study and review all legislations referred to it’.**

### **Mr. Speaker, Sir**

The Committee on Finance, Planning & Trade was constituted by the House on Thursday 16<sup>th</sup> May, 2013 comprising of the following members:

1. The Hon. Benjamin Langat, MP (**Chairman**)
2. The Hon. Nelson Gaichuhie, MP (**vice Chairman**)
3. The Hon. Jones M Mlolwa, MP
4. The Hon. Anyanga, Andrew Toboso, MP
5. The Hon. Timothy M .E. Bosire, MP
6. The Hon. Ahmed Shakeel Shabbir Ahmed, MP
7. The Hon. Joash Olum, MP
8. The Hon. Dr. Oburu Oginga, MP
9. The Hon. Patrick Makau King’ola, MP
10. The Hon. Abdullswamad Sheriff, MP
11. The Hon. Sumra Irshadali, MP
12. The Hon. Ogendo Rose Nyamunga, MP
13. The Hon. Iringo Cyprian Kubai, MP
14. The Hon. Dennis Waweru, MP
15. The Hon. Tiras N. Ngahu, MP
16. The Hon. Sakaja Johnson, MP
17. The Hon. Jimmy Nuru Angwenyi, MP
18. The Hon. Ronald Tonui, MP
19. The Hon. Mary Emase, MP
20. The Hon. Joseph Limo, MP
21. The Hon. Lati Lelelit, MP
22. The Hon. Kirwa Stephen Bitok, MP
23. The Hon. Sammy Mwaita, MP
24. The Hon. Daniel E. Nanok, MP
25. The Hon. Eng. Shadrack Manga, MP
26. The Hon. Abdul Rahim Dawood, MP
27. The Hon. Sakwa John Bunyasi, MP
28. The Hon. Alfred W. Sambu, MP
29. The Hon. Sammy Koech, MP

**Mr. Speaker, Sir,**

On 26<sup>th</sup> August 2014, the County Government (Amendment) Bill, 2014 was read a first time and thereafter committed to the Departmental Committee on Finance, Planning and Trade for Consideration Pursuant to 118 of the Constitution and Standing Order 126. On 20<sup>th</sup> September, 2014, the Committee put adverts on the Local Dailies (the Standard and the Daily Nation newspapers) calling for views from the general public on the Bill. However, the Committee did not receive any memorandum on the same.

**Mr. Speaker, Sir,**

The main object of the Bill is to amend the County Governments (Amendment) Act in section 33 by providing that any person may petition either Houses of Parliament on grounds specified in Article 181(2) for removal of a Governor from office. Currently, the principal Act provides that it is only the Members of a County Assembly who may initiate the process of removing a Governor from office by a motion supported by at least a third of all Members of that particular County Assembly. The impeachment motion will have to be passed by at least two thirds of all the Members for it to be forwarded to the Senate for consideration.

**Mr. Speaker, Sir,**

Under the current legislative framework, the National Assembly has no role in the impeachment process of the Governors. That mandate has been given to the County Assemblies and the Senate under the principal Act (County Government Act, 2012).

**Mr. Speaker, Sir,**

Reading through section 33 of the County Government, Act, 2012, nothing precludes a member of the public from petitioning the County Assembly through a Member of the County Assembly for removal of the Governor. Therefore introduction of such provisions are unnecessary.

**Mr. Speaker, Sir,**

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. Finally, I wish to express my appreciation to the Honourable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

**Mr. Speaker, Sir,**

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Finance, Planning & Trade, to table its report in the House on the consideration of the



County Government (Amendment) Bill, 2014 for consideration Pursuant to Standing Order 127

Signed  Date 12<sup>th</sup> Nov. 2014  
(HON. BENJAMIN LANGAT, MP)

**CHAIRPERSON,  
DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE**

# CONSIDERATION OF THE COUNTY GOVERNMENT (AMENDMENT) BILL, 2014

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## 1.0 INTRODUCTION

The drafters of the Bill outline the following reasons for the enactment of the Bill:

- i. Giving effect to Articles 95(5) (a) of the Constitution which empowers the National Assembly to review the conduct in office of state officers and Article 96(1) of the Constitution that empowers the Senate to protect the interests of the Counties and their governments
- ii. Providing that any member of the Public can petition either House of Parliament to impeach the Governor in instances of violation of the provisions of Article 181(1) of the Constitution.
- iii. Prescribing a process of impeachment of the County Governor especially when the matter reaches either House of Parliament.
- iv. Protecting the gubernatorial office holders from politically instigated removal from office.

## 2.0 COMMITTEE ANALYSIS AND OBSERVATIONS

Pursuant to Article 118 and Standing Order 127, the Committee placed an advert on the local Dailies (the Standard and the Daily Nation) on 20<sup>th</sup> September, 2014 calling for memoranda from the Public on the Bill. However, the Committee did not receive any memoranda on the Bill. Having analyzed the Bill, the Committee noted the following:

1. Article 181 of the Constitution provides for the grounds upon which a Governor may be removed from office and the contemplated legislation is the County Governments Act, 2012.
2. Nothing in section 33 of the County Governments Act, 2012 precludes a member of the public from petitioning the county assembly through a member of the county assembly for the removal of a Governor. Section 33 may be amended to specifically state that a member of public may petition the county assembly through a member of the county assembly for the removal of a Governor.
3. The Petition to Parliament (Procedure) Act, 2012 gives effect to Article 119 of the Constitution on the right to petition Parliament. This means there is already an existing law dealing with the manner in which a person may petition Parliament.
4. Article 96 of the Constitution provides for the role of the Senate which is to *inter alia* represent the counties and serve to protect the interest of the counties and their governments. Therefore the bill as drafted does not consider the special responsibility vested in the Senate in so far as impeachment of the Governor is concerned. Having the petition of such nature processed in the National Assembly may be interpreted as unconstitutional.
5. The County Governments Act provides that the process for removal of the county governor shall commence at the county level in which the Governor is responsible for. Therefore to introduce a provision that any person in Kenya can present a

petition against the Governor may be prejudicial to the Governors. The right to petition should be restricted to the residents of a given county to avoid politically motivated petitions instigated by people from different counties.

6. Providing that a petition by a member of public shall be initiated at either House not only deprives the county assembly of their right to exercise oversight over the county governor as provided for under Article 185, but also contravenes the principles of decentralization of services provided under Article 174 (h) of the Constitution.

### **3.0 COMMITTEE RECOMMENDATIONS**

Having analyzed the Bill and made the above observations above, the Committee recommends that the Bill should not be read a second time. It therefore proposes the following amendments to the Bill:

#### **CLAUSE 2**

**THAT**, clause 2 be deleted

#### **CLAUSE 1**

**THAT**, clause 1 be deleted

#### **LONG TITLE**

**THAT**, the Long title be deleted

#### **TITLE**

**THAT**, the title be deleted.

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**MINUTES OF THE 58<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON TUESDAY 28<sup>TH</sup> OCTOBER, 2014 IN THE COMMITTEE ROOM 4<sup>TH</sup> FLOOR CONTINENTAL HOUSE PARLIAMENT BUILDINGS, AT 10.00AM**

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**Present**

1. Hon. Nelson Gaichuhie, MP - Vice-Chairperson
2. Hon. Dr. Oburu Oginga, MP
3. Hon. Shakeel Shabbir Ahmed, MP
4. Hon. Sammy Mwaita, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Iringo Cyprian Kubai, MP
7. Hon. Joseph Limo, MP
8. Hon. Timothy Bosire, MP
9. Hon. Jones Mlolwa, MP
10. Hon. Lati Lelelit, MP
11. Hon. Ogendo Rose Nyamunga, MP
12. Hon. Patrick Makau King'ola, MP
13. Hon. Kirwa Stephen Bitok, MP
14. Hon. Anyanga Andrew Toboso, MP
15. Hon. Mary Emase, MP
16. Hon. Daniel Epuyo Nanok, MP
17. Hon. Joash Olum, MP
18. Hon. Eng. Shadrack Manga, MP

**Apologies**

1. Hon. Benjamin Langat, MP - Chairperson
2. Hon. Jimmy Nuru Angwenyi, MP
3. Hon. Tiras Ngahu, MP
4. Hon. Sammy Koech, MP
5. Hon. Ronald Tonui, MP
6. Hon. Dennis Waweru, MP
7. Hon. Sakaja Johnson, MP
8. Hon. Sumra Irshadali, MP
9. Hon. Alfred Sambu, MP
10. Hon. Abdullswamad Shariff, MP
11. Hon. Sakwa John Bunyasi, MP

**IN ATTENDANCE**

1. Mr. Martin Masinde - Deputy Director, Parliamentary Budget Office
2. Ms. Catherine Gatia - Fiscal Analyst
3. Ms. Charles Atamba - Research Officer

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| 4. Mr. Evans Oanda      | - | First Clerk Assistant |
| 5. Ms. Esther Nginyo    | - | Third Clerk Assistant |
| 6. Mr. Nicodemus Maluki |   | Third Clerk Assistant |
| 7. Mr. Fredrick Otieno  |   | Third Clerk Assistant |

**MIN.NO. DCF/275/2014 PRELIMINARIES**

The Vice Chairperson called the meeting to order at 10:30 am followed by a word of prayer.

**MIN.NO. DCF/276/2014 CONFIRMATION OF MINUTES**

The minutes of the previous meetings were confirmed as follows:

1. Minutes of the 37<sup>th</sup> sitting held on 10<sup>th</sup> June, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Iringo Cyprian Kubai, MP and seconded by the Hon. Patrick Makau King'ola, MP
2. Minutes of the 38<sup>th</sup> sitting held on 12<sup>th</sup> June, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Abdul Rahim Dawood ,MP and seconded by the Hon. Eng. Shadrack Manga, MP
3. Minutes of the 39<sup>th</sup> sitting held on 17<sup>th</sup> June, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Daniel Epuyo Nanok, MP and seconded by the Hon. Abdul Rahim Dawood ,MP
4. Minutes of the 40<sup>th</sup> sitting held on 24<sup>th</sup> June, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Timothy Bosire, MP and seconded by the Hon. Eng. Shadrack Manga, MP
5. Minutes of the 41<sup>st</sup> sitting held on 26<sup>th</sup> June, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Patrick Makau King'ola, MP and seconded by the Hon. Kirwa Stephen Bitok, MP
6. Minutes of the 42<sup>nd</sup> sitting held on 17<sup>th</sup> July , 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Iringo Cyprian Kubai, MP and seconded by the Hon. Mary Emase, MP
7. Minutes of the 43<sup>rd</sup> sitting held on 22<sup>nd</sup> July , 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Iringo Cyprian Kubai, MP and seconded by the Hon. Daniel Epuyo Nanok, MP
8. Minutes of the 44<sup>th</sup> sitting held on 23<sup>rd</sup> July , 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Ogendo Rose Nyamunga, MP and seconded by the Hon. Patrick Makau King'ola, MP
9. Minutes of the 45<sup>th</sup> sitting held on 24<sup>th</sup> July , 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Timothy Bosire, MP and seconded by the Hon. Kirwa Stephen Bitok, MP
10. Minutes of the 46<sup>th</sup> sitting held on 5<sup>th</sup> August , 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Abdul Rahim Dawood , MP and seconded by the Hon. Ogendo Rose Nyamunga, MP



11. Minutes of the 47<sup>th</sup> sitting held on 7<sup>th</sup> August , 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Ogendo Rose Nyamunga, MP and seconded by the Hon. Eng. Shadrack Manga, MP
12. Minutes of the 48<sup>th</sup> sitting held on 12<sup>th</sup> August , 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Oburu Oginga, MP and seconded by the Hon. Ogendo Rose Nyamunga
13. Minutes of the 49<sup>th</sup> sitting held on 14<sup>th</sup> August , 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Mary Emase, and seconded by the Hon. Iringo Cyprian Kubai
14. Minutes of the 50<sup>th</sup> sitting held on 14<sup>th</sup> August , 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Timothy Bosire, MP and seconded by the Hon. Iringo Cyprian Kubai,MP
15. Minutes of the 51<sup>st</sup> sitting held on 19<sup>th</sup> August , 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Oburu Oginga, MP and seconded by the Hon. Lati Lelelit, MP
16. Minutes of the 52<sup>nd</sup> sitting held on 21<sup>st</sup> August, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Lati Lelelit, MP and seconded by the Hon. Timothy Bosire, MP.
17. Minutes of the 53<sup>rd</sup> sitting held on 26<sup>th</sup> August, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Iringo Cyprian Kubai, MP and seconded by the Hon. Joash Olum, MP
18. Minutes of the 54<sup>th</sup> sitting held on 14<sup>th</sup> October, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Eng. Shadrack Manga, MP and seconded by the Hon. Dr. Oburu Oginga, MP
19. Minutes of the 55<sup>th</sup> sitting held on 16<sup>th</sup> October, 2014 were confirmed as a true record of the proceedings after being proposed by the Hon. Iringo Cyprian Kubai, MP and seconded by the Hon. Eng. Shadrack Manga, MP with amendments.

#### **MIN.NO. DCF/277/2014: MATTERS ARISING**

1. In the 42<sup>nd</sup> sitting, the Hon. Patrick Makau, MP submitted that he had been erroneously recorded absent with apologies instead of present. The secretariat was requested to look countercheck and report back to the Committee.
2. Under Min.DCF/241/2014 regarding the processing of the Finance Bill, the Committee resolved to introduce amendments to the future finance Bills that will protect and revive the collapsing industries

**MIN.NO. DCF/277/2014: CONSIDERATION OF THE COUNTY GOVERNMENT (AMENDMENT) BILL, 2014**

The Parliamentary Budget Office appeared before the Committee and outlined the objects of the Bill as contained in the memorandum of objects. The office highlighted key provisions of the Bill submitting that the Bill aims to enjoin the National Assembly as one of the House that will consider the impeachment petition against governors. It further informed the Committee that if the bill was to be passed in the current form, any person from any county will be eligible to petition parliament against any governor.

**MIN.NO. DCF/278/2014: COMMITTEE OBSERVATIONS/RESOLUTIONS**

- i. The process of impeachment of the governors is a preserve of the County Assemblies and the Senate as provided in Article 96 of the Constitution and Section the County Government Act, 2012. Therefore it will be unconstitutional for the National Assembly to perform a role that is constitutionally given to other government entities. This is clearly against the principles of devolution outlined in Articles 174
- ii. The only role the Kenya National Assembly should play in so far as impeachment process is concerned is to enact a law that will give guidelines to be followed by the Members of the County Assemblies and the Senate during the impeachment process.
- iii. Reading Section 33 of the County Government Act, nothing precludes any individual within a given county from petitioning the County Assembly to impeach a governor.

Due to the foregoing, the Committee resolved to oppose the Bill during the Second reading. The Secretariat was asked to prepare a report for tabling by the Chairman recommending that the Bill should not be read a second time.

**MIN.NO. DCF/279/2014: ADJOURNMENT**

The Vice Chairperson adjourned the meeting at 12.00 p.m.

Signed.....

**Chairperson**

Date.....