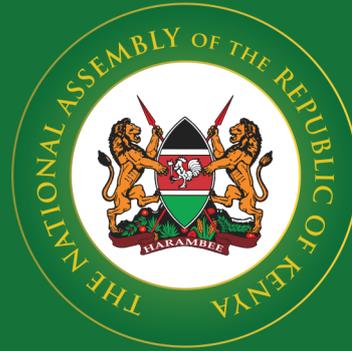


FACTSHEET

02



PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

The Legislative Process

2nd Edition

Factsheet No. 2

THE LEGISLATIVE PROCESS

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The Clerk of the National Assembly
Parliament Buildings
Parliament Road
P.O. Box 41842-00100
Nairobi, Kenya

Tel: +254 20 221291, 2848000
Email: nationalassembly@parliament.go.ke
www.parliament.go.ke

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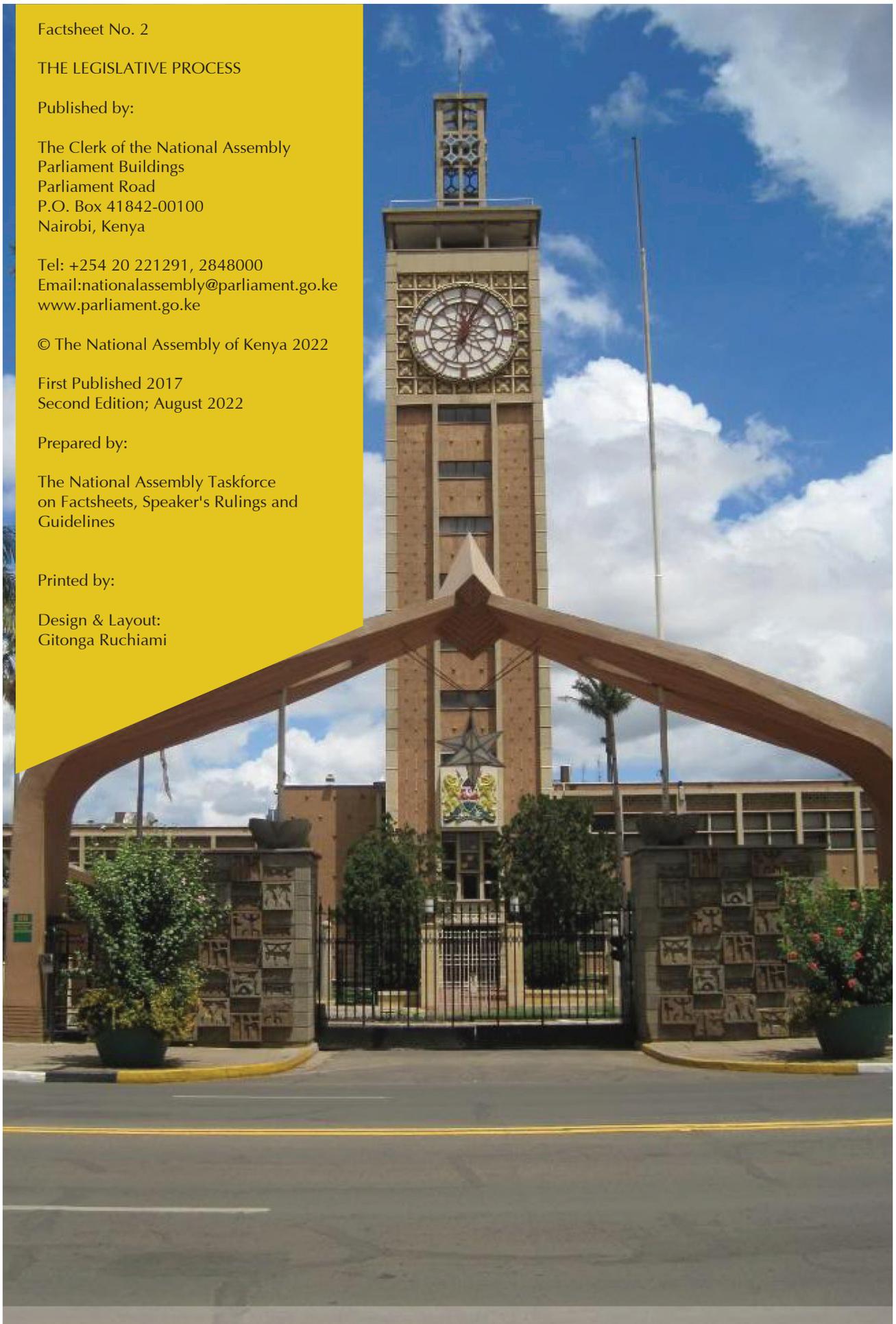
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Purpose and Acknowledgement

This Factsheet is part of the Kenya National Assembly Factsheets Series that has been developed to enhance public understanding and awareness, and to build knowledge on the work of the Assembly, and its operations. It is intended to serve as a guide for ready reference by Members of Parliament, staff and the public. The information contained here is not exhaustive and readers are advised to refer to the original sources for further information.

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FACTSHEET NO. 2

The Legislative Process



President Uhuru Kenyatta signs into law the Military Veterans Bill, 2022

The Legislative Process

Introduction

The basic function of a legislature is to make laws, amend them or repeal them. The law making or legislative process may be defined as the process by which legislative proposal brought before Parliament is translated into the law. Further, the legislative process is a sequence of steps required for laws to move or transform through the system, from ideas to formal legislation.

What is a Bill?

A Bill is a proposed law for introduction in a House of Parliament. Bills seek to introduce a new legislation, to amend an existing legislation or to repeal existing law(s).

Origination of Bills

Bills may originate from –

- (a) the Executive (introduced to the House through a member of the House, Leader of the Majority Party or Leader of the Minority Party through a Committee of the House, mostly the Chairperson);
- (b) individual Member(s) of the National Assembly; (introduced to the House through the Member sponsoring the Bill). Co-sponsoring of Bills is an additional alternative.
- (c) A Committee of the House (introduced to the House through the Chairperson or a member designated by the Committee);
- (d) A parliamentary political party may also initiate/ sponsor a Bill

(e) A member of public may petition Parliament pursuant to Article 119 of the Constitution and the Standing Orders to legislate on a matter (introduced to the House by way of a Petition conveyed by the Speaker, Member and committed to the relevant Departmental Committee for action).

(f) Alternatively, members of the public can forward legislative proposals to Members of Parliament.

Introducing Bills

A Member wishing to introduce a Bill/legislative proposal shall submit to the Clerk of the National Assembly a draft proposal or policy document bearing proposals to introduce a Bill. Such proposals may be driven by stakeholders, interest groups, citizen initiatives, urgent public interest or party manifestos.

A member of the public may petition Parliament to legislate or to amend an existing legislation. In this case, the Report of the relevant Committee will guide the House on how to proceed with the proposed legislation, and the Bill is published thereafter.

Procedure for processing Bills by Members' initiative

1. Pre-publication scrutiny



a) A Member wishing to introduce a Bill needs to first present to the Speaker a legislative proposal in accordance with Standing Order 114 and shall ensure that, the following requirements are met:

- (i) A letter presenting the legislative proposal to the Speaker;
- (ii) A draft copy of the legislative proposal, if any;
- (iii) A memorandum of objectives and reasons for which the legislative proposal is made;
- (iv) A statement on whether the proposal is a 'Money Bill' or not; and
- (v) A statement on limitation of fundamental rights and freedoms, if any.

b) The Speaker will subject the legislative proposal to a review to ascertain whether it conforms with the provisions of the Constitution, statutes and the Standing Orders. The scrutiny includes establishing that the Bill is drafted in the prescribed legal language.

c) Where the Speaker is of the opinion that a legislative proposal is not a draft money Bill in terms of Article 114 of the Constitution, the Speaker will direct that the proposal be referred to the relevant Departmental Committee for prepublication scrutiny in case of a legislative proposal not sponsored by a Committee or direct that the proposal be published into a Bill in the case of a legislative proposal sponsored by a Committee.

d) A draft money Bill is a legislative proposal whose implementation will incur commitment of public funds.

e) Where the Speaker determines that a legislative proposal is a draft money Bill in terms of Article 114 of the Constitution, the legislative proposal is referred to the Budget and Appropriations Committee. The Committee, after taking the views of the Cabinet Secretary responsible for Finance, will recommend whether the Bill should be published or not.

f) The Budget and Appropriations Committee shall consider only the money-Bill or financial aspects of the proposal and submit a report to the Speaker within twenty one (21) days of receipt of the proposal. The report shall contain—

- (a) the views of the Cabinet Secretary responsible for finance, if any;
- (b) a detailed examination of the manner in which the legislative proposal affects the current and future budgets and may include implications on tax measures;
- (c) a recommendation on whether or not the proposal should be proceeded with;
- (d) any other appropriate recommendation relating to money-Bill aspects of the proposal.

g) When the Speaker receives the recommendations of the Budget and Appropriations Committee, he shall direct that -

- (a) the proposal be subjected to prepublication scrutiny before the relevant Departmental Committee in case of a legislative proposal not sponsored by a Committee, or
- (b) the proposal be published into a Bill, in the case of a legislative proposal sponsored by a committee, or
- (c) the legislative proposal be not proceeded with.

h) The Departmental Committee to which a legislative proposal is referred to for prepublication scrutiny shall consider the proposal and submit a report to the Speaker within twenty one (21) days and advising whether or not the proposal should be proceeded with, or any other appropriate recommendation. Thereafter, the Speaker shall direct either that the legislative proposal be not proceeded with or that it be published into a Bill.

i) If the legislative proposal meets the stipulated threshold and does not fall within the definition of “Money Bill” in terms of Article 114(3) of Constitution it is referred to the relevant Departmental committee for pre-publication scrutiny.

During pre-publication scrutiny -

(i) The Clerk to National Assembly writes to the Kenya Law Reform Commission, the Attorney General, the ministry/state departments or other agency that will be charged with the implementation of the Act for their comments with a view to improve on the legislative proposal.

(ii) Comments, once received by the Clerk from the aforementioned agencies, are forwarded to the relevant Departmental Committee for consideration. The Committee addresses the issue of the constitutionality of the proposal and policy framework underpinning the proposal, if any.

(iii) The Committee hands in a report to the Speaker within the prescribed period with recommendations calling for the publication of the Bill, proposing amendments to the legislative proposal and recommending whether to publish or not to publish the proposal. The Committee is expected to give reasons for either of its recommendations.

2. Publication of Bills



a) Publication of Bills includes assignment of a number to the Bill, and the actual printing of the Bill by the Government Printer.

b) Before approving publication of a legislative proposal into a Bill, the Speaker takes into account the recommendations of the relevant committee that undertook pre-publication scrutiny. In case of “Money Bills” the Speaker must satisfy that the relevant Departmental committee and/or Budget and Appropriations Committee has taken into consideration the opinion of the Cabinet Secretary responsible for finance.

c) Once approved by the Speaker, the legislative proposal is published in the Kenya Gazette.

d) Bills originating from the National Assembly are printed in green colour, whilst those originating from the Senate are printed in blue colour.

3. Publication period for Bills

a) The publication period of a Bill is the minimum time prescribed by the Standing Orders for a Bill that has been published to be due for introduction in the House for First Reading. In other words, this is the period between the date a Bill is published in the Kenya Gazette and when it is due for First Reading. At the end of the publication period, the Bill is deemed to have matured for First Reading.

b) The publication period for Bills is fourteen days. However, the publication period for the Consolidated Fund Bill, Division of Revenue, County Allocation of Revenue, Appropriation Bill Supplementary Appropriation Bill, or Equalization Fund Appropriation Bill is seven days.

c) The House may, by way of a resolution, reduce the publication period by such number of days as deemed fit.



4. Stages of a Bill

Bills in the House go through a number of stages, namely:

First Reading

A Bill is introduced in the House for the first time by way of reading of the title of the Bill by the Clerk. The First Reading is, by practice in most countries, a purely formal undertaking to introduce the Bill to the legislature.

Upon being read the first time, the Bill stands committed to the relevant select committee for consideration. No debate arises and no vote is taken at this stage. The select committee proceeds to scrutinize the Bill by calling in the sponsor of the Bill, inviting various stakeholders, technocrats and external experts pursuant to Article 118 of the Constitution and later submits a report to the House that may contain proposed amendments to the Bill.

Second Reading

At this stage, a Bill is deliberated upon by the House extensively and the main debate is on the principles and objects of the Bill. At the commencement of this stage, the member in charge of the Bill, also known as the sponsor of the Bill, moves a motion for Second Reading, which takes the following form:

That, theBill be now read a Second Time.

It is worth noting that no amendment may be moved to this Motion other than an amendment to leave out the word “now”. Such an amendment, if approved by the House, defers the Second Reading of the Bill to a future date.

Moving a Bill involves informing the House on the contents of the Bill and its importance, including the anticipated benefits that the Bill shall have on society.

At the end of debate on the Second Reading of the Bill, a vote is taken by the House, and if the Motion is passed, the Bill proceeds to the Committee Stage but if it is defeated, the Bill is lost.

If the Bill is passed at the conclusion of this stage, any Member wishing to introduce amendments may submit their proposals to the Clerk at least twenty four hours before the commencement of the sitting at which the part of the Bill is to be considered in Committee. This is to afford sufficient time for processing and approval by the Speaker for consideration of the amendments in the Committee of the Whole House

Committee Stage



Committee of the Whole House refers to an arrangement in which the Plenary converts itself into a Committee that is comprised of the whole membership (Members) of the Assembly. Hence the Committee is the Committee of the Whole House that is constituted to consider the Bill in detail clause-by-clause which includes the title, preamble and schedules contained in the Bill.

The Committee is chaired by the Deputy Speaker or any member of the Chairpersons' Panel (previously known as the Speaker's Panel). The Member presiding over the Committee of the Whole House is referred to as the Chairperson as opposed to being referred to as the Speaker in Plenary). The Chairpersons' Panel is composed of four Members who assist the Speaker and the Deputy Speaker in presiding in the House. (Additional details on this procedure can be found in Factsheet Number 3 on 'Procedure in Committee of the Whole House).

Where amendments are proposed to any part of the Bill, the Committee considers the amendment and takes a vote on each of them. If the amendment is passed, it becomes part of the Bill. At the conclusion of consideration of the Bill at the Committee of the Whole House stage, the Sponsor of the Bill moves a Motion seeking that the Chairperson reports the consideration of the Bill to the House. In the event that the Committee is unable to conclude consideration of the Bill, the Sponsor moves a Motion that the Committee reports to House the progress made thus far on the Bill.

Reporting Stage

At this stage, the Committee of the whole House resolves to return to the House and the Chairperson of the Committee of the Whole House reports to the House the Committee's consideration of the Bill or Report on progress made thus far. Thereafter, a Motion for Agreement with the Report of the Committee of the whole House is moved, seconded and question proposed and put. A Motion for Agreement is one that seeks approval of the House with the form in which the Committee of the whole House has considered the Bill.

A Member who wishes to have any part of the Bill reconsidered in the Committee of the whole House may move a Motion to amend the Motion for Agreement seeking re-committal of the specific part(s) of the Bill.

The Member may move that the Motion be amended by inserting the words “subject to re-committal of Clause(s)/Schedule/Title (as the case may be) of the Bill.” If the Motion is agreed to, the House resolves back into a Committee of whole House immediately or on a different day to be determined by the House Business Committee. During re-committal the Committee shall confine itself to the specific part(s) that have been recommitted.

Third Reading

The final stage of the passage of a Bill through the House is the Third Reading. No further substantive amendments are taken up at this stage, though drafting amendments and re-numbering of clauses may be accepted. Generally, there is very little debate during the third reading, and a final vote is taken.

If the Bill does not concern county governments, the Speaker refers it to the President for assent. If the Bill concerns county governments, it is referred to the Senate for concurrence.

NB: The Bill is lost if it is rejected at either Second Reading, Committee of the whole House or at Third Reading.

4.1 Laws that require consideration by both Houses of Parliament

According to Article 109(4) of the Constitution, any Bill that concerns county governments may originate in either House and requires consideration by both Houses.

Before the introduction of a Bill that would require passage in both Houses, the Speakers of both Houses of Parliament consult and determine whether that Bill concerns county governments.

Bills that concern county governments include:

- (a) a Bill containing provisions affecting the functions and powers of the county governments set out in the Fourth Schedule;
- (b) a Bill relating to the election of members of a county assembly or a county executive; and
- (c) a Bill referred to in Chapter Twelve affecting the finances of county governments.

By good practice, Bills relating to the functioning of both Houses may require consideration and concurrence by both House



4.2 Referral of Bills to the Senate

Once the National Assembly passes a Bill concerning county governments the Speaker refers it to the Senate for concurrence by way of a Message to the Senate together with the Bill in the form passed by the National Assembly.

4.3 Consideration of Bills originating from the Senate

Whenever the National Assembly receives a Message from the Senate seeking its consideration, the Speaker conveys the Message to the House.

The Bill is read a first time and referred to the relevant Committee.

The House then processes the Bill in the same manner as Bills originating in the National Assembly.

In considering a Bill received from the Senate, the National Assembly may:

- (a) reject the Bill at Second Reading;
- (b) consider and pass the Bill with amendments;
- (c) consider and pass the Bill without amendments and in the form passed by the Senate; or
- (d) reject the Bill at Third Reading.

After considering and making a decision on the Bill, the Speaker conveys the said decision to the Senate by way of a Message, indicating the decision of the National Assembly on that Bill.

4.4 Committal of Bills to Mediation Committee

A Bill is committed to a Mediation Committee if –

- (a) the National Assembly rejects a Bill received from the Senate at Second or Third Reading; or
- (b) the National Assembly rejects Senate's amendments to a Bill originating from the National Assembly.
- (c) the Senate rejects the National Assembly's amendments to a Bill originating from the Senate.

4.5 Appointment and composition of a Mediation Committee

Whenever a Bill stands committed to a mediation committee, the Speakers of both Houses appoint equal number of Members to a mediation committee to consider that Bill and communicate the decision to the other House.

The Quorum of a mediation committee is a third of its total membership, and should be an equal number of Members from both Houses.

The chairperson and vice chairperson of the mediation committee are appointed by the majority of the Members present at the first meeting thereof, provided the two are not members of the same House.

By practice, however, the chairperson of the mediation committee is ordinarily a Member of the House that originated the Bill.

4.6 Operation and mandate of the Mediation Committee

The mandate of a mediation committee is to attempt to develop a version of the Bill that both Houses will agree on and pass.

In most cases, mediation committees on Bills are restricted to consideration of the contested Clause(s) of the Bill under consideration.

The mediation committee has thirty (30) days to develop the mediated version of the Bill. The thirty days start counting from the day the committee holds its first sitting.

In the event that the mediation committee fails to agree on a version of the Bill within thirty (30) days, the Bill is defeated.

Upon development of an agreed version of the Bill, the Mediation Committee tables in both Houses a Report on its consideration of the Bill and the mediated version of the Bill thereof for consideration by both Houses.

If both Houses approve the Report of the mediation committee and the mediated version of the Bill, the Bill is deemed to have been passed.

The Speaker of the National Assembly then proceeds to refer the Bill to the President for assent within seven (7) days following the passage of the mediated version.

In the event that either House rejects the version proposed by the Mediation Committee, the Bill is defeated.

President's Assent



Once a Bill has been passed by the House, the Speaker, upon certification of the passed Bill, presents it for assent by the President. The president may within fourteen days after receiving the Bill –

- (a) assent to the Bill, in which case it becomes law (i.e. becomes an Act of Parliament) and comes into effect within fourteen days or on the date or period specified in the Act; or
- (b) refer the Bill back to the House with a memorandum outlining reasons for the referral.

Referral of a Bill back to the National Assembly

If the President refers a Bill back to the National Assembly, the Speaker conveys this referral to the House by way of a Message, and refers the President's Memorandum containing the recommended amendments to the relevant select committee for consideration.

The committee considers the recommended amendments and submits a report to the House on them. The House re-considers the Bill whilst confining itself to the clauses to which the President has expressed reservations, and either:

- a.) passes the Bill fully accommodating the President's reservation, following which the Speaker re-submits the Bill to the President for assent, or
- b.) passes the Bill a second time without amendments, or;
- c.) passes the Bill with amendments that do not accommodate the President's reservations.

In order for the National Assembly to override the President's reservations, the House vetoes the proposed amendments by a vote supported by at least 233 Members, which constitutes two-thirds of the National Assembly membership.. Thereafter, the Speaker re-submits the Bill for assent within seven days and the President is required to assent to it within seven days.

5. Concurrence in the Bicameral System

5.0 Why are some laws considered by both Houses of Parliament?

The advent of devolution under the Constitution of Kenya 2010 created a bicameral legislature composed of the National Assembly and the Senate as well as a two-tier system of government composed of the national government and county governments.

The Constitution distinguishes the functions of the National Assembly and the Senate in Articles 95 and 96 and likewise specifies the roles of the national and county governments in Parts I and II of the Fifth Schedule to the Constitution.

Accordingly, any proposed law introduced in one House of Parliament but which affects functions assigned to a level of government under the purview of the other House requires consideration by the second Chamber.

The principle behind referral of Bills passed by the originating Chamber to the other Chamber is to establish concurrence on how the law would affect the functions within the purview of respective Houses.

Summary of The Law Making Process

1 FIRST READING

The Bill is introduced in the House for the first time, The Clerk reads the Title of the Bill. No debates or vote arise at this stage. The Bill is then committed to the relevant Departmental Committee for consideration and further scrutiny, which then facilitates public participation by way of inviting relevant stakeholders. This is done through;

- Inviting submission of memoranda;
- Holding public hearings;
- Consultation with relevant stakeholders and other technical experts.

2 SECOND READING

This is the debate stage of a Bill. The sponsor of the Bill moves it on the floor of the House. This marks the beginning of the debates where the legislators discuss the merits and demerits of the Bill.

Consequently, a Bill originating from the National Assembly and not seconded will be deemed defeated. When the Bill has been debated conclusively, the Speaker authorizes the proposer to respond to any issues arising from related debates. This therefore, determines whether the Bill moves to the next stage.

4 REPORT STAGE

This stage marks the point where the report is presented to the House, through a procedural motion where the legislators take a vote. Subsequently any Member wishing to have the Bill recommitted may do so.

3 COMMITTEE STAGE

This Stage comprises of the whole membership of the House and is presided over by the Deputy Speaker or any other member of the Speakers/ Chairpersons Panel .It involves the scrutiny of the Bill and is done clause by clause , thus any proposed amendments done on the clauses of the Bill would be considered and a vote taken on each one of them. Consequently all clauses and their schedules without amendments will be approved as they are. A report on the same is then submitted to the House through the Chairperson seeking the approval of the House

5 THIRD READING

This marks the final stage of a Bill in the National Assembly as a final vote is taken on this stage. Thereafter no further substantive amendments are considered.

6 PRESIDENTIAL ASSENT

Once a Bill is passed by the House, the Speaker of the National Assembly shall present it to the President for Assent if it is a Bill not concerning counties. The President is therefore expected to act on the Bill within seven or fourteen days as the case may be. Whereas the President may assent to the Bill he/she may refer it to the House expressing reservations. The House will review the Bill confining itself to the particular clause(s) where reservations were expressed, and thereafter relevant amendments may be considered. The President's reservations may be overturned by a two-third majority.



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PO Box 41842 - 00100,
Nairobi, Kenya.

Email: nationalassembly@parliament.go.ke
Tel: (254-2) 222 12 91 or 284 80 00
Fax: (254-2) 224 36 94
Website: www.parliament.go.ke