



LEGISLATIVE DRAFTING

LINDA ALUVALE

LINDAALUVALE@KSL.AC.KE

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 a legislative proposal brought before Parliament is translated into the law. Further, the legislative process comprises of 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

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- (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.

• 3. **Introduction of Bills**

- A legislative proposal must have a sponsor in order to be introduced in the House. A Member or a Committee of the National Assembly wishing to introduce a Bill in the House has to submit the legislative proposal to the Speaker for approval. The legislative proposal is accompanied by a memorandum of objects and reasons. The memorandum contains a statement of—
 - a) objects and reasons of the Bill;
 - b) delegation of legislative powers and limitation of fundamental rights and freedoms, if any;
 - c) whether the Bill concerns county governments; and
 - d) financial implications and if the expenditure of public moneys will be involved should the Bill be enacted, an estimate, where possible, of such expenditure.

- The memorandum should generally indicate the objectives of the Bill. Upon receiving instructions from a Member or a Committee, the Speaker refers the legislative proposal to the Clerk, who employs the diverse legislative expertise of his office to formally engage the proposer and draft the proposal in the standard form of a Bill in terms of format and style and submit comments to the Speaker on-
 - (a) whether the legislative proposal affects or does not affect county governments;
 - (b) whether the legislative proposal is a draft money Bill; and,
 - (c) whether the legislative proposal is in accord with the Constitution, the law and is order as to.

STAGES OF A BILL

- Upon publication, a Bill follows the following process-
- A. **First Reading**
- The Bill is introduced in the House for the first time by way of reading the Title of the Bill by the Clerk. No debate or vote arises at this stage. Upon being read a first time, the Bill stands committed to the relevant Departmental Committee for consideration. The Committee facilitates public participation on the Bill through appropriate mechanisms which may include-
 - (i) inviting submission of memoranda;
 - (ii) holding public hearings;
 - (iii) consulting relevant stakeholders; and
 - (iv) consulting experts on technical subjects.
- The Committee takes into consideration the views and recommendations of the public while considering the Bill and while preparing its report to the House. The Committee proceeds to scrutinize the Bill by calling in the sponsor of the Bill, inviting various stakeholders and later compiles a report to the House with any specific proposed amendments which are later considered in the Committee of the Whole House.

- **B. Second Reading**

- This is the debate stage, wherein the House, seated in plenary debates the merits and any demerits of the Bill. The debate follows the moving of the Bill by the sponsor and its seconding by any Member.
- Debate mostly focuses on all aspects of the Bill, including its principles, objects and how its enactment into law is likely to affect the general citizenry.
- This is the stage where we are likely to see the principle of separation of powers being abused → in Kenya we have seen examples of situations where the Executive do not want this Bill to be passed, and so members of Parliament are suspiciously summoned and told not to pass the Bill, e.g. Bills that are not politically friendly are not passed.
- At the end of debate, the Speaker allows the proposer to respond to any issues raised by the House and then puts the question, that is, causes the House to vote, to determine whether the Bill moves to the next stage.

- **C. Committee Stage**

- Committee of the Whole House refers to a phase where the entire membership of the House is seated in form of a Committee to consider a Bill on clause by clause basis. At this stage, the House resolves itself into a Committee, which is comprised of the whole membership of the Assembly.
- Any proposed amendments to the Bill are considered and a vote taken on each. Consideration normally commences with Clause 3 (or Clause 2 if it does not provide for definition of terms) and terminates with the consideration and vote on any schedules, and ultimately Clause 1 which provides for the Bill's Title and commencement. The Committee of the whole House approves clauses and any schedules of the Bill with or without amendments. At the conclusion, the Committee, through the Chairperson, immediately submits a report to the House seeking the approval of the House.

- The guiding principle is that the Committee should make such amendments in the Bill as may seem likely to render it more acceptable, practical or efficient without having to severely deviate from its primary principles and objectives.

- **D. Report Stage**

- Upon resumption of the House to plenary, the report is made to the House which, following a procedural Motion, votes on it. At this stage, any Member may, with reasons, also move the House to resolve itself into a Committee again to reconsider any specified clauses of the Bill. This is known as re-committal.

- **E. 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.

- **F. President's Assent**

- Once a Bill has been passed by the House, the Speaker presents it to the President for assent in a form known as the Vellum. The President may, within fourteen days
 - (a) assent to the Bill; or
 - (b) refer the Bill back to the House with a memorandum outlining his reservations.

- **G. Gazettement Stage**

- Presidential assent does not complete the legislative process. An Act must be published for it to acquire the force of law

- **G. Referral of a Bill back to Parliament**

- If the President refers a Bill back to the House, the House re-considers the Bill confining itself to the clauses to which the President has expressed reservations including any recommendations that the President may have made on the clauses and-
 - a.) the House may either amend the Bill in light of the President's reservation or pass the Bill a Second time without amendments. If the House passes the Bill fully accommodating the President's reservations, the Speaker presents the Bill to the President for assent.
 - b.) the House may pass the Bill a second time and notwithstanding the President's reservations insist on its initial text, or pass the Bill a second time with amendments that do not fully accommodate the President's reservations. This requires a two-third majority of the House. Thereafter, Speaker presents the Bill again to the President for assent.

• **7. Consideration of Bills concerning county governments**

- After Third Reading in the National Assembly, a Bill concerning county governments is referred to the Senate for consideration and passage. The Senate processes the Bill following the same process of considering ordinary Bills, beginning with First Reading through to the Third Reading. The Senate may either reject the Bill or pass it with amendments.
- (a) If the Senate passes a Bill concerning county governments originating in the National Assembly without amendments, the Senate, by way of a Message refers the Bill back to the National Assembly. Thereafter, Speaker presents the Bill to the President for assent.
- (b) If the Senate passes a Bill concerning county governments originating in the National Assembly with amendments, the Senate, by way of a Message refers the amendments to the National Assembly for consideration.

- If the National Assembly accepts the amendments made by the Senate, Speaker presents the Bill to the President for assent. However, if the National Assembly declines any of the amendments made by the Senate, the Bill is referred to a Mediation Committee.
- (c) If the Senate rejects a Bill concerning county governments originating in the National Assembly, the Bill is referred to a Mediation Committee.
- **8. Mediation Committees**
- A Mediation Committee comprises of Members drawn from each House and is required to formulate a version of the Bill agreeable to both Houses, within 30 days. If both Houses approve the version of the Bill proposed by the Mediation Committee, the Speaker of the National Assembly presents the Bill to the President for assent. However, if the Mediation Committee fails to agree on a version of the Bill within thirty days, or if a version proposed by the Committee is rejected by either House, the Bill is considered to have been lost.



QUESTIONS???