



PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
(AMENDMENT) BILL, 2016

Clerks Chambers,
National Assembly,
Parliament Buildings,
Nairobi

July, 2016



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PROPER L.A.D
By the chair
JLA
on Tuesday 19.7.16
[Signature]

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A REPORT OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2016

1. PREFACE

On behalf of the Departmental Committee on Justice and Legal Affairs, and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House a report of the Committee on the Independent Electoral and Boundaries Commission (Amendment) Bill, 2016. The Committee derives its mandate from Standing Order No. 216(5) which provides as follows:-

- 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.*

The Second Schedule of the Standing Orders on Departmental Committees further states the subjects which the Committee is supposed to deal with while discharging its mandate. The subjects are as follows:-

- (a) Constitutional affairs;
- (b) The administration of law and Justice, including the Judiciary, public prosecutions, elections, ethics, integrity and anti-corruption; and
- (c) Human rights.

1.1. Committee Membership

The Committee was constituted on Thursday, 16th May, 2013 and comprises the following:-

- | | | |
|----------------------------------|---|------------------|
| 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. Sammy Koech, M.P. | | |
| 13. Hon. Moses Cheboi, M.P. | | |
| 14. Hon. Paul Bii, M.P. | | |
| 15. Hon. Charles Gimose, M.P. | | |
| 16. Hon. Johanna Ng'eno, MP. | | |
| 17. Hon. Boniface Otsiula, M.P. | | |
| 18. Hon. Bitok Kirwa, M.P. | | |

1.3. Origin of the Bill

The Independent Electoral and Boundaries Commission (Amendment) Bill, 2016 is dated 2nd June, 2016 and is a National Assembly Bill No. 16 of 2016. The Bill was sponsored by the Departmental Committee on Justice and Legal Affairs and upon being read for the first time it was referred to relevant Departmental Committee for scrutiny in line with Standing Order 127 (1) which states as follows:-

“A Bill having been read a First Time shall stand committed to the relevant Departmental Committee without question being put to it”

1.4 Public participation on the consideration of the Bill

Standing Order 127(3) states as follows:-

“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”

The Committee advertised for the public to submit their views through the local dailies on 13th June 2016 and the Committee considered the submissions received.

1.5 Sittings of the Committee and adoption of report

The Committee considered the Bill on 14th July, 2016 in 4th Floor, Continental House, Parliament Buildings. The Committee considered and adopted its report on the Bill on 19th July, 2016 at the same venue. The adoption of the report was proposed by Hon. Florence Kajujand seconded by Hon. Ndirangu Waihenya. There was no dissenting voice to the adoption of the report. Minutes of the Committee's sitting adopting the report are annexed hereto as appendix 1. A list of Members who attended the sitting is also annexed hereto as appendix 2.

1.6. Acknowledgement

The Chairperson wishes to commend Committee Members for their devotion and commitment to duty which made the consideration of this Bill a reality. The Committee further wishes to thank the Offices of the Speaker and Clerk of the National Assembly for providing guidance and technical support without which its work would not have been possible.

Hon. Speaker Sir,

On behalf of the Committee, I now wish to table this report in the House.

SIGNED.....

Hon. Samuel Chepkonga, MP

(Chairperson)

Departmental Committee on Justice and Legal Affairs

DATE.....

2.0. BACKGROUND

The Bill proposes to amend the Independent Electoral and Boundaries Commission Act, (No. 9 of 2011), in order to reorganize the procedure for appointment of chairperson and members of the Commission. The Bill establishes a selection panel which is representative and acceptable to the public.

The Bill does not affect the functions of County Governments as set out in the Fourth Schedule to the Constitution. This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

3.0. MEMORANDUM OF OBJECTS AND REASONS

The Bill was published on 2nd June 2016 and is sponsored by the Chairperson, Departmental Committee on Justice and Legal Affairs. The structure of the Bill is as follows:

Clause 1 is the short title.

Clause 2 seeks to amend section 5 by reducing the membership of the Commission from eight members to four members.

Clause 3 proposes to appoint the members of the Commission on part-time basis as opposed to appointment as full-time commissioners.

Clause 4 proposes to establish vetting criteria for all officers who have served in the commission for more than two years to ensure that they are fit and proper to continue holding office.

Clause 5 proposes to establish a Selection Panel appointed by the President comprising of two persons nominated by the largest party or coalition of parties in the National Assembly, two persons nominated by the second largest party or coalition of parties in the National Assembly and three persons nominated by the Public Service Commission.

Clause 6 seeks to empower the Selection Panel to nominate and forward to the President nine persons qualified to be appointed as members of the Commission and eliminates the provision relating to the first Selection Panel of the first Commission.

Clause 7 proposes that the responsible Departmental Committee shall consider the nominees received and recommend to the National Assembly one person for approval for appointment as Chairperson and four persons for approval for appointment as members of the Commission.

4.0. PUBLIC PARTICIPATION IN THE CONSIDERATION OF THE BILL

Standing Order 127(3) provides as follows:-

“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”

The Committee invited the public through the print media on 13th June 2016 to submit their views by way of representations or memoranda on the Bill. The Mau Mau Governing Council of Kenya submitted their views to the Committee. The Committee held consultations with the Centre for multiparty Democracy (CMD). The CMD recommended that the selection panel should be broad based to include other groups such as the civil society and other stakeholders.

5.0. CONSIDERATION OF THE BILL BY THE COMMITTEE AND PROPOSED AMENDMENTS

The Bill proposes to amend the Independent Electoral and Boundaries Commission Act, (No. 9 of 2011), in order to reorganize the procedure for appointment of chairperson and members of the Commission. The Bill establishes a selection panel which is representative and acceptable to the Kenyans.

6.0.RECOMMENDATION

The Committee proposes the Bill be passed with the following amendments:

THAT, Clause 4 of the Bill be amended by---

- (a) deleting the word “three” appearing immediately after the phrase “subsection (1A)” in the proposed subparagraph (1) (c) and substituting therefor the word “four”;
- (b) inserting the following subparagraph immediately after the proposed subparagraph (1) (c)---
 - “(d) three persons nominated by the Inter-Religious Council of Kenya.”
- (c) deleting the word “three” appearing immediately after the word “shortlist” in the proposed subparagraph (1A)(c) and substituting therefor the word “four”;
- (d) inserting the following subparagraph immediately after the proposed subparagraph (3)(b)---

“(ba) three persons nominated in accordance with subparagraph (1)(d)”

(e) deleting the word “three” appearing in the proposed subparagraph (3)(c) and substituting therefor the word “four”.

Rationale: Members were of the view that religious leaders are mostly viewed as fair arbiters and therefore their inclusion is a more acceptable arrangement.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

MINUTES OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 14TH JULY, 2016 AT 10.00 A.M. IN 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

PRESENT

Hon. Samuel Chepkonga, M.P. - Chairperson
Hon. Benson Mutura, M.P.
Hon. Boniface Otsiula, M.P.
Hon. Florence Kajuju, M.P.
Hon. Kang'ata Irungu, M.P.
Hon. Johanna Ngeno, M.P.
Hon. John Njoroge Chege, M.P.
Hon. Mohamed Abdi Haji, M.P.
Hon. Moses Cheboi, M.P.
Hon. Njoroge Baiya, M.P.
Hon. Sammy Koech, M.P.
Hon. Ndirangu Waihenya, M.P.

APOLOGIES

Hon. Priscilla Nyokabi, M.P. - Vice Chairperson
Hon. Charles Gimose, M.P.
Hon. John M. Waiganjo, M.P.
Hon. Paul K. Bii, M.P.
Hon. William Cheptumo, M.P.
Hon. Bitok Kirwa, M.P.

SECRETARIAT

Mr. Abenayo Wasike - Clerk Assistant I
Ms. Mary L. Lemerelle - Clerk Assistant III
Mr. Ahmed Salim - Clerk Assistant III
Mr. Salem Lorot - Legal Counsel
Mr. Stanley Lagat - Sergeant at arm

MIN No.JLA. /2016

PRELIMINARIES

The Chairperson called the meeting to order at 10.30 a.m. with a word of prayer from Hon. Njoroge Baiya, M.P.

The Committee considered the Independent Electoral and Boundaries Commission (Amendment) Bill, 2016 which was published on 2nd June, 2016 and was committed to the Committee after being read for the first time.

The Committee proposed the following amendment to Clause 4 of the Bill:

THAT, Clause 4 of the Bill be amended in the proposed paragraph 1 of the First Schedule to the Independent Electoral and Boundaries Commission Act, 2011 by—

- (a) deleting the word "three" appearing immediately after the phrase "subsection (1A)" in the proposed subparagraph (1) (c) and substituting therefor the word "four";
- (b) inserting the following subparagraph immediately after the proposed subparagraph (1) (c)—

"(d) three persons nominated by the Inter-Religious Council of Kenya."
- (c) deleting the word "three" appearing immediately after the word "shortlist" in the proposed subparagraph (1A)(e) and substituting therefor the word "four";
- (d) inserting the following subparagraph immediately after the proposed subparagraph (3)(b)—

"(ba) three persons nominated in accordance with subparagraph (1)(d)"
- (e) deleting the word "three" appearing in the proposed subparagraph (3)(c) and substituting therefor the word "four".

Members noted that inclusion of religious leaders is a more acceptable arrangement as the religious leaders are mostly viewed as fair arbiters.

The proposed amendments were unanimously approved by the Members present.

CONSIDERATION OF THE PETITION BY MR. BARASA KUNDU NYUKURI FOR THE REMOVAL OF MEMBERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

The Committee noted that the petitioner had heavily relied on the Auditor General's Special Investigation Report on the Procurement of Electronic Voting Devices for 2013 General Election, of 6th June 2014 to back up the allegations contained in the petition.

The Committee further noted that the said report of the Auditor General has been a subject of a court case, in the High Court of Kenya at Nairobi, Constitutional and Human Rights Division, where the petition number 356 of 2014 was filed. The Petitioner was Ahmed Issack Hassan and the Respondent was the Auditor General.

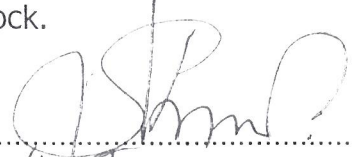
In the said petition No. 356 of 2014, a decree was issued on 3rd July 2015, where the Court ordered that:

1. A declaration is issued that the Petitioner (Ahmed Issack Hassan) was not heard by the Respondent (Auditor General) contrary to the principle of *audi alteram partem*.
2. A declaration is issued that the Respondent (Auditor General) was thereby in violation of the Constitution in particular Articles 25(c), and 50 of the Constitution.
3. An order is issued directing the Respondent (Auditor General) to delete the information in the second row of page 28 in the Special Investigation Report on the Procurement of Electronic Voting Devices for 2013 General Election of 6th June 2014 that adversely mentions the Petitioner (Ahmed Issack Hassan) and any other information in the said report that adversely mentions the Petitioner.

— The Committee therefore resolved that as a result of the said Court orders, the report of the Auditor General which appeared to be a major support document in the petition for removal of the Members of the IEBC can no longer be used in this regard as all information that adversely mentioned Mr. Ahmed Issack Hassan was ordered to be deleted by the Court. The Committee also noted that the Petition to remove the Commissioners was presented as one petition and not different petitions for individual Members of the Commission.

The Committee, therefore, unanimously resolved to dismiss the Petition. The resolution was proposed by Hon. Boniface Otsiula and seconded by Hon. Benson Mutura.

There being no other business to transact, the sitting adjourned at twenty minutes past twelve o'clock.

Signed 
(Chairperson)

Date 19th July, 2016



KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

MEMBERS ATTENDANCE



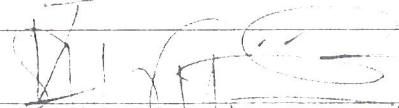
DATE: 19TH JULY, 2016


VENUE: COUNTY HALL MINI CHAMBERS

AGENDA: ADOPTION OF THE REPORT ON THE REMOVAL OF IEBC COMMISSIONERS

TIME: 10.00 A.M.

	NAMES	SIGNATURE
1.	Hon. Samuel Chepkonga, M.P (Chairperson)	
2.	Hon. Priscila Nyokabi, M.P (Vice Chairperson)	
3.	Hon. Benson Mutura, M.P	
4.	Hon. Boniface Otsiula, M.P	
5.	Hon. Charles Gimose, M.P	
6.	Hon. Florence Kajuju, M.P	
7.	Hon. Irungu Kang'ata, M.P	
8.	Hon. Johanna Ngeno, M.P	
9.	Hon. John M. Waiganjo, M.P	
10.	Hon. John Njoroge, M.P	
11.	Hon. Mohamed Abdi Haji, M.P	
12.	Hon. Moses Cheboi, M.P	
13.	Hon. Njoroge Baiya, M.P	
14.	Hon. Paul K.Bii, M.P	
15.	Hon. Sammy Koech, M.P	

16.	Hon. Waihenya Ndirangu, M.P	
17.	Hon. William Cheptumo, M.P	
18.	Hon. Bitok Kirwa, M.P	


A.M. Wasike

For: The Clerk of the National Assembly