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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE CONSIDERATION OF THE WAQF BILL *(NATIONAL ASSEMBLY BILLS NO.73 OF 2019)*

CLERK'S CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER, 2021

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CHAIRPERSON'S FOREWORD

The Waqf Bill, 2019underwent the First Reading on 6th November, 2019 and was immediately committed to the Departmental Committee on Justice and Legal Affairs for consideration and report to the House pursuant to the provisions of Standing Order 127(1) of the National Assembly Standing Orders.

The Bill seeks to to provide for the establishment of the *Waqf* Commission, the administration of *waqf* property, to repeal the Wakf Commissioners Act (Cap. 109 of the Laws of Kenya) and for connected purposes.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 127 (3) the Committee through an advertisement in the local daily newspapers of 11th November, 2019 invited the public to make representations on the Bill and received views fromthe Jamia Mosque Committee and the Waqf Commission of Kenya.

May I take this opportunity to commend the Committee Members for their devotion and commitment to duty which made the consideration of the Bill successful. May I also express gratitude to the Offices of Speaker and Clerk of the National Assembly for providing direction and the Committee secretariat for providing technical and logistical support.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House the report of the Committee on the Waqf Bill (National Assembly Bills No.73 of 2019.

Hon. Muturi Kigano, M.P.
Chairperson, Departmental Committee on Justice and Legal Affairs

CHAPTER ONE

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-

   (a) 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) study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
   (c) study and review all legislation referred to it;
   (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
   (e) investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
   (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)
   (g) examine treaties, agreements and conventions;
   (h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
   (i) consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and
   (j) Examine any questions raised by Members on a matter within its mandate.

2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-

   (a) Constitutional affairs;
   (b) The administration of law and Justice
   (c) The Judiciary;
   (d) Public prosecutions;
   (e) Elections;
   (f) Ethics, integrity and anti-corruption; and
   (g) Human rights.

1.2 Committee Membership

3. The Committee was constituted on Thursday, 14th December, 2017.The current membership is as follows-

Chairperson
Hon. Clement Muturi Kigano, M.P.
Kangema Constituency
Jubilee Party

Vice Chairperson
Hon. T.J Kajwang, M.P.
Ruaraka Constituency
ODM - Party

Hon. John OlagoAluoch, M.P.
Kisumu West Constituency
FORD-Kenya

Hon. George Peter Kaluma, M.P.
Homa Bay Town Constituency
ODM-Party

Hon. RoselindaSoipanTuya, M.P.
Narok County
Jubilee Party

Hon.Junet Sheikh Mohammed, M.P
Suna East Constituency
ODM-Party

Hon. Emmanuel Wangwe, M.P
Navakholo Constituency
Jubilee-Party

Hon.W.KamotiMwamkale, M.P.
Rabai Constituency
ODM-Party

Hon.JosephineNaisulaLesuuda, M.P.
Samburu West Constituency
KANU-Party

Hon. Zuleikha Hassan, M.P.
Kwale County
ODM-Party

Hon. Jennifer Shamalla, M.P.
Nominated MP
Jubilee Party

Hon.RobertGichimuGithinji, M.P
Gichugu Constituency
Jubilee-Party

Hon.AnthonyOluoch M.P.
Mathare Constituency
ODM-Party

Hon. John Munene Wambugu, M.P.
Kirinyaga Central
Jubilee –Party

Hon. George GitongaMurugara, M.P.
Tharaka Constituency
Democratic Party (DP)

Hon. Anthony GithiakaKiai, M.P.
Mukurueni Constituency
Jubilee-Party

Hon. John Kiarie Waweru, M.P.
Dagoretti South Constituency
Jubilee-Party

Hon. Japheth Mutai, M.P.
Bureti Constituency
Jubilee-Party

Hon. Adan Haji Yussuf, M.P.

Mandera West Constituency

Economic Freedom Party

1.3 Committee Secretariat

4. The Committee secretariat is as follows-

Mr. AbenayoWasike
Principal Clerk Assistant
Lead Clerk

Mr. Denis Abisai
Deputy Director-Legal Services

Ms. Halima Hussein
Clerk Assistant II

Ms. Emma Essendi
Legal Counsel I

Dr. Donald Manyala
Research Officer

Mr. Omar Abdirahim
Fiscal Analyst III

Ms. RoselyneNdegi
Serjeant-at-Arms I

Mr. Joseph Okongo
Media Liaison Officer

5. Minutes of sittings of the Committee on the consideration of the Bill. **(Annexure 1)**

CHAPTER TWO

2.0 BACKGROUND ON THE WAQF BILL (NA BILL NO.73) 2019

2.1 Memorandum of Objects and Reasons

6. The principal object of this Bill is to provide for the establishment of the *Waqf* Commission, the administration of *waqf* property, to repeal the Wakf Commissioners Act (Cap. 109 of the Laws of Kenya) and for connected purposes.

7. Clause 1 provides for the short title of the Bill.

8. Clause 2 provides for the interpretation of key words and terms used in the Bill.

9. Clause 3 provides for the application of the Bill to the making and administration of awaqf in Kenya.

10. Clause 4 provides for the validity of a waqf that is made in accordance with the provisions of the Bill.

11. **Part II (clauses 5 – 12)** of the Bill provides for matters relating to the establishment of the *Waqf* Commission, and composition, appointment, functions and remuneration of the members of the Commission. It also provides for the appointment of the Director-General and officers and staff of the Commission.

12. Clause 5 provides for the establishment of the Commission as a body corporate.

13. Clause 6 provides for the composition of the Commission.

14. Clause 7 provides for the establishment of a selection panel for the appointment of members of the Commission.

15. Clause 8 provides for the functions of the Commission.

16. Clause 9 provides for the election of the chairperson of the Commission and the quorum required for meetings of the Commission.

17. Clause 10 provides for the remuneration of the members of the Commission.

18. Clause 11 provides for the appointment, qualifications and functions of the Director-General.

19. Clause 12 provides for the appointment of officers and staff of the Commission.

20. **Part III (clauses 13 – 24)** of the Bill deals with the management of *awqaf.*

21. Clause 13 provides for the registration of *awqaf* with the Commission.

22. Clause 14 provides for the administration of *awqaf* registered by the Commission.

23. Clause 15 provides for inquiries into the administration by boards of trustees of *awqaf* registered by the Commission and the manner in which those inquiries shall be determined.
24. Clause 16 of the Bill provides for the requirement that trustees of *awqaf* shall surrender documents when required to do so by the Commission.

25. Clause 17 provides for the manner of dealing with any agreements made in respect of *waqf* properties.

26. Clause 18 provides that titles to *waqf* property shall not pass to any other person through adverse possession or the law of prescription.

27. Clause 19 provides for the requirement that *waqf* property shall be administered in accordance with the intentions of the waqif.
28. Clause 20 of the Bill provides for the manner by which *waqf* property may be disposed of by the Commission.

29. Clause 21 provides the manner by which the Commissioner shall deal with the unclaimed property of deceased Muslims.

30. Clause 22 limits the proportion of the property related to a *waqf* that may be used by the Commission for the purposes of the *waqf.*

31. Clause 23 provides for the establishment of a maintenance and reserve account by the Commission for the purposes of a *waqf.*

32. Clause 24 provides for the establishment of a surplus account in respect of a *waqf* into which surplus funds relating to a *waqf* may be paid.

33. **Part IV (clauses 25 to 27)** of the Bill provides for the financial provisions.

34. Clause 25 provides that the accounts of the Commission shall be audited in accordance with the Public Audit Act, 2015.

35. Clause 26 provides that the Commission may open and maintain *sharia*-compliant bank accounts for the purposes of the Commission.

36. Clause 27 provides for the preparation and submission of the annual report of the Commission.
37. **Part V (clauses 28 – 31)** of the Bill provides for miscellaneous matters.
38. Clause 28 provides for the charging of fees, by the Commission in respect of different kinds of *awaqf* registered by the Commission.

39. Clause 29 provides for the power of the Attorney-General to make rules under the Bill.

40. Clause 30 provides for repeal of the Wakf Commissioners Act (Cap. 109) and savings in respect of certain matters related to the Wakf Commissioners Act.

41. Clause 31 provides for transitional matters including appointments that were made under the Wakf Commissioners Act, any proceedings initiated under the former Act, and the staff or officers appointed under the former Act.

42. The Bill does not limit fundamental rights or freedoms but it delegates legislative power to make subsidiary legislation to the Attorney-General.

43. The Bill does not affect the functions and powers of county governments set out in the Fourth Schedule to the Constitution.

44. The enactment of the Bill may occasion additional expenditure of public funds.

CHAPTER THREE

3.0 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

45. The Committee undertook public participation on the Bill in compliance with the provision of Article 118 (1) (b) of the Constitution as read together with Standing Order 127 (3). Advertisements inviting the public to make any submission regarding the Bill were put in local daily newspapers of Monday 11th November, 2019.

46. The Committee received written submissions on the Bill from the Jamia Mosque Committee, the Public Trustee and the Waqf Commission of Kenya as indicated in the matrixes below.

3.1 STAKEHOLDERS SUBMISSIONS

3.1.1 The Jamia Mosque Committee Submissions

47. The Jamia Mosque Committee through its Deputy Secretary General, Mr. Hussein Abdinassir, in written submissions dated 12th August, 2021 supported the Bill and appreciated the efforts by the Executive and Legislature in taking steps to repeal the Wakf Commissioners Act, 1951 (Chapter 109 Laws of Kenya) and subsequent introduction of the Waqf Bill 2019 to replace it.

48. The Jamia Mosque Committee submitted that the Bill is as a result of the recommendations of the Waqf Task Force that was formed to look into the 1951 Wakf Commissioners Act and the proposed recommendationsare based on international best practices regarding the management and utilization ofWakf properties in line with lslamic Law and are meant to align the Act with the Constitution ofKenya 2010.

49. The Jamia Mosque Committee further submitted that the concerns raised by Muslim faithful and rightly captured by the taskforce weremainly as follows-

    (i) The current Act only caters for waqfs within the former Coast province and hence a need for its expansion to apply to cover the whole country.

    (ii) Some of the waqf properties have long term leases of 99 years paying a paltry of KShs. 150/- per annum while others at K.Shs. 1,000/- perannum in the Kenya of today. Hencethere is need for a review of the leases to reflect the current market realities.

    (iii)There has been concerns and allegations of conflict of interest with some Commissioners or their family friends being beneficiaries of the waqfproperties with very lenient terms and who have sub-let the properties ata much higher rent than what they are paying to the Commission.

(iv) The system of appointment of Commissioners has not been open orinclusive.

(v) There is also an important need for appointment of professionals from different backgrounds to be able to steer the Commission forward.

(vi) Record keeping has been poor creating room for possible fraud.

(vi) Overall misadministration and poor management of Waqf Property.

50. The Jamia Mosque Committee registered their support for the Bill and proposed improvements to the Bill as per the matrix below;

Stakeholder	Clause	Provision in the Bill	Stakeholder Proposal	Rationale	Committee observations	Committee Recommendations
nia osque	6 (b) and (c)	Composition of the Commission.	Deletion of clause 6 (b) and (c)	So as to remove the conflict of interest that may arise from beneficiaries and trustees of the waqf being part of the Commissioners.	The issue of whether including the representatives of trustees and beneficiaries as members of the Commission creates a conflict of interest has to be determined in consultation with persons with experience in the management of waqf property.	Amend the Bill ar include the propos amendment.
	6(e)		Substitute the words 'six persons' for the words 'four persons'and add to the criteria list to include the following professions: -finance and investment; -architecture; and -administration.	So that the Commission is ran by persons with expertise that will enable the waqf to be utilized in the best way leveraging on good practice.	The issue of additional professionals to be considered for appointment as Commissioners is reasonable and will enable	Amend the Bill ar include the propos amendment.

					the waqf to be utilized in the best way leveraging on good practice.	
	Clause 7 (2) (a) and (b)	Selection panel.	The new clause to read "A person having a conflict of interest (in person or immediate family member as a beneficiary or a lessee of a waqf)) shalt not be appointed as a member of the selection panel."	To remove instances of conflict of interest.	The proposal is reasonable and justifiable	Amend the Bill ar include the propos amendment.
	Clause 7 (6)		Increase the term of office of the commissioners from 3 years to 5 years.	To give proper continuity, three years is short to bring good impact.	The proposal is reasonable and justifiable	Amend the Bill ar include the propos amendment.
	Clause 8(h)	Functions of the Commission	Addition to Section 8(h) and renumber the current 8(h) to 8 (i) .The new section 8 (h) should read "coordination, licensing, supervision, regulation of services relating to Hajjand representing Kenya in matters relating to Hajj"	There has been challenges in provision of hajj services in the country with rogue agents mishandling, overcharging and mismanaging Kenyan pilgrims. This provision is borrowed from Zanzibar where the Waqf Commission regulates by law Hajj services.	The Committee observed that section 4(1) of the Wakf and Trust Commission Act, No. 2 of 2007, indeed empowered the Zanzibar Wakf and Trust Commission to co-ordinate *Hajj* activities	Amend the Bill ar include the propos amendment.

					in relation to pilgrims from Zanzibar and to regulate individuals, firms or associations providing travel and other services to pilgrims. The proposal is thus reasonable and justifiable.	
	Clause 11(2)(d)	The Director-General.	Add the words "a reputable private institution" after the words "a public institution"	To make the position competitive and attractive to qualified private sector persons.	The proposal opens up the pool of experience from where the D-G may be appointed is justifiable.	Amend the Bill ar include the propos amendment.
	Clause 11 (4)		Addition of a new clause 11 (4) To read "the Chief Executive Officer shall also be the Secretary to the Commission"	To align the Commission to other commissions.	The proposal is justifiableas it fills a lacuna in the Bill as to whether the D-G is the Secretary to the Commission	Amend the Bill ar include the propos amendment.
	Clause 27	Annual Report.	Add a new clause after clause 27 to read "Any matter ar dispute relating ta waqf shall be referred to the Kadhis Court in the first instance".	This provides for a dispute resolution mechanism on waqf disputes.	The Bill as published has no provision on dispute resolution mechanisms in the issues of waqf property. The proposal	Amend the Bill ar include the propos amendment.

					may be considered.	

51. The Wakf Commission of Kenya, through its chief executive officer, Dr. Ibrahim Bulushi, made written submissions to the Committee and expressed that they supported the Bill. They proposed amendments to the Bill as per the matrix below.

3.1.2 The Waqf Commission of Kenya submissions

Stakeholder	Clause	Provision in the Bill	Stakeholder proposals	Rationale	Committee Observations	Committee Recommendations
Waqf Commission of Kenya	**5(2)(c)**	Establishment of the Waqf Commission	Delete the word "borrow" and substitute therefor the word "mobilize"	To allow the Commission to mobilize funds instead of borrowing	The concern is already provided for in Clause 5(2)(b) of the Bill	Proposed amendment dropped
	6	Composition of the Commission	The Commission should include women and youth in its composition	To comply with the constitutional requirements	The concern already provided for in clause 7(5) of the Bill	Proposed amendment dropped
	7(2)	Selection Panel	Insert the words"knowledgeable in "Sharia law" after the words "Islamic leaders	It should be clear that the Islamic leaders should be knowledgeable in Sharia law	The proposal is justifiable and may be considered	Amend the Bill and include the proposed amendment.
			Insert the following new paragraph- (c) no state or public officer	State or Public officers may have a conflict of interest with the waqf property	The proposal is justifiable and may be considered	Amend the Bill and include the proposed amendment.

			shall be appointed as a member of the selection panel			
	9	Chairperson and quorum	Insert the following new sub-clause immediately after sub-clause (4)- (4A) The members of the Commission shall serve on a part-time basis.	To clarify the nature of the Commissioners' job.	The proposal is reasonable and justifiable and may be considered	Amend the Bill and include the proposed amendment.
		New	Insert the following new sub-clause immediately after sub-clause (5)- (5A) The expenses and liabilities of the selection panel shall ne borne by the Government.	The selection panel is appointed by the President in consultation with key Islamic leaders and the Government should bear its expenses.	The proposal is reasonable and justifiable and may be considered. If the proposal is accepted, the provision has to be redrafted to clarify which exact agency of the Governmen t shall bear	Amend the Bill and include the proposed amendment.

					the costs of the Selection Panel	
	23	Maintenance and reserve account	Delete the proviso which provides as follows- "Provided that the amount used to maintain the waqf shall not exceed thirty per cent of the value of the waqf property"	It is not justifiable to limit the amount used to maintain a waqf	The Committee has to ascertain why the limitation was included in the Bill before acceding to the proposal to delete the proviso.	Amend the Bill and include the proposed amendment.
	New	Exemption from taxation	Insert the following new section immediately after section 27- 27A.Despite the provisions of any other written law, the income of the Commission shall not be subjected to income tax or any other tax or penalty.	The Commission is established to perform charitable and religious functions and thus its income should not be subjected to taxation.Theemployees of the Commission, will, however, continue to pay their taxes just like all other Kenyans do.	The Committee has to ascertain whether the Commission is currently paying tax on its income and the impact of the exemption on projected Government revenue	Amend the Bill and include the proposed amendment.

3.1.2 Submissions by the Public Trustee

The Public Trustee appeared before the Committee on 30th September, 2021 and submitted that their Office supported the Bill since the current Wakf Commissioners Act, Chapter 109, was enacted in 1951 and an overhaul of the Act was long overdue.

The Public Trustee further informed the Committee that in 2007, President Kibaki appointed a Special Committee and one of its terms of reference was to address grievances raised by members of the Muslim Community. The Committee identified the running of the awqaf and the Waqf Commission as one of the issues that required to be addressed as a matter of priority. The Committee recommended the review of the Waqf Commissioners Act 1951.

In response to this, the then Attorney General Prof. Githu Muigai appointed a Taskforce on 17th November 2015 to interrogate the Act, undertake a comprehensive review and develop legislative proposals. The Taskforce held public engagement meetings all over the country to obtain views from the public.

The Public Trustee proposed the following amendments to the Bill as captured in the matrix below-

Stakeholder	Clause	Provision in the Bill	Stakeholder proposals	Rationale	Committee Observations	Committee Recommendations
Public Trustee	6	**6.** The Commission shall consist of the Attorney-General and eight members who shall be appointed by the President, on the recommendation of the selection panel appointed under section 7, as follows—	The Public Trustee proposes that the role of appointing the Waqf commissioners should be taken up by the Attorney General instead of the President as proposed in the Bill.	The Waqf Commission is not a constitutional Commissiona nd the appointing authority should be the Attorney General. The Public Trustee further submitted that	Section 6(1) of the 1951 Act provides for the Governor to appoint 5 Commissioners on the recommendation of the Provincial Commissioner, Coast Province. The Governor's position is comparable to that of the President today.	Amend the Bill and include the proposed amendment.

				the Attorney-General is the recipient of the annual performance report and the annual statement of account submitted by the Commission under Clause 27 and the Attorney-General should thus be the appointing authority.		
	6		The Public Trustee further proposes that the place of the Attorney-General as a member of the Commission be taken by the Public Trustee.	The Office of the Public Trustee having been established in 1925 has immense wealth of knowledge on trust matters and will bring in the necessary expertise in the	If the Committee accepts the proposal that the Attorney-General appoints the Commissioners in lieu of the President, it will be necessary to provide for the allocation of the	Amend the Bill and include the proposed amendment.

				management of trusts. In addition, the holder of the office of the Public Trustee being an advocate of the High Court of Kenya will provide legal advice to the Commission.	Attorney-General's slot in the Commission in order to retain the membership of the Commission at nine.	
	7.	7(1) The President shall, within fourteen days after the occurrence of a vacancy in theCommission, appoint a selection panel for the purpose of nominating suitable candidates for appointment as a member of the Commission under section 6 (a), (b), (c), (d) or (e).	The Public Trustee proposes that the role of appointing the Selection Panel to recommend persons for appointment as Commissioners be taken up by the Attorney General instead of the President as proposed in the Bill.	The Waqf Commission is not a constitutional Commissiona nd the appointing authority for the Selection Panel should be the Attorney General.	It is desirable that the authority to appoint the Commissioners has confidence in the Selection Panel that is recommending the persons for appointment. The person appointing the Commissioners should also appoint the Selection Panel.	Amend the Bill and include the proposed amendment.
	8	Functions of the Commission	The Public Trustee proposes that the functions of the Commission should include a	There is need for capacity building for trustees managing *awqaf*and creation of awareness on	Proposal will lead enhanced efficiency in the management of waqf property and may be	Amend the Bill and include the proposed amendment.

			function on creation of awareness and capacity building among trustees on the management of *awqaf.* To introduce two new sub-clauses between (g) and (h), providing, as follows- (ga) "establish such structures as may be necessary for training of trustees with skills for efficient and effective management of all *Waqf* not under direct management of the Commission (j) formulate, implement and oversee programmes to raise awareness on *Waqf* matters"	the mandate of the Commission and services available to enhance uptake and compliance with legal requirements thus fostering the rule of law.	accepted.	

	15	15(1) Where it appears to the Commission, in respect of any *waqf*, that— (a)there is no properly constituted body of trustees; or (b)a trustee is acting in an improper or unauthorised manner, the Commission may hold an inquiry into the matter—	Inquiry by the Commission should include an initiative by thebeneficiaries or any person who has a sufficient interest in the *waqf*. In Clause 15(b)(ii), to insert after the word beneficiaries "or on the motion of the beneficiaries or any person who has a sufficient interest in the *waqf*" In Clause 15(3) after the words trustees of *waqf*, to insert the words "or beneficiaries or any person who has a sufficient interest in a *waqf*" and in the same sub-	To provide for situations where the trustees may collude among themselves not to raise issues of misappropriation of funds to protect themselves against legal consequences.	Proposal will lead enhanced efficiency in the management of waqf property and may be accepted.	Amend the Bill and include the proposed amendment.

			clause substitute the word 'trustees' appearing between the words "the" and "shall" with the words "the mover of the motion"			
	16	16(1) The Commission may, at any time, call upon a trustee of a *waqf* to produce any books or documents in his or her possession or control, including books of accounts, relating to the *waqf* in order to satisfy itself regarding the management of the *waqf*. (2)A trustee who fails to comply when called upon to do so under subsection (1) commits an offence and shall be liable,on conviction, to	The fine for failure to produce documents by trustees should be increased to Kenya Shillings Two Million (Kshs. 2,000,000/=)	The penalty of Kshs 20,000/= provided in the Bill is not deterrent enough. For it to be sufficiently deterrent in view of the current economic dynamics, there is need to enhance it to that level. It is worth noting that the *Waqf* Commissioners Act of 1951 put the penalty at Kenya Shillings Two Thousand	Proposal enhance for trustees for deterrence purposes is reasonable and may be accepted by the Committee.	Amend the Bill and include the proposed amendment.

		a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year.		(Kshs, 2,000/=).		
	17	Agreements relating to *Waaf* Property	Sale of *Waqf* property should be made after obtaining court's approval to guarantee impartiality. The Public Trustee proposes amendment of clause 17(1) by deleting the word 'sell' appearing after the words purporting to and introducing a new Sub-clause to read	The consent to the sale of immovable w*aqf* property should not be left to the Commission in view of the possibility that the Commission could be interested in pursuing sales to build its surplus account.	Proposal contradicts both Clauses 17 and 20 of the Bill which provide for the Commissioners to allow the sale of waqf property, under specified circumstances.	Amend the Bill and include the proposed amendment.

			as follows; 17(2) Any person intending to sell immovable *Waqf* propertymay make an application to the Court and the Court may grant an order or consent to the sale or disposal of the property.			
	21	Unclaimed property of deceased Muslims	The Public Trustee proposes the deletion of the entire clause 21.	A *Waqf* is an endowment of property or cash by a *Waaqif*in his or her life time. The deceased Muslim did not donate his or her property for charitable purposes during his or her lifetime. In addition,	Clause 21 of the Bill is largely a re-enactment of the current section 18 of the 1951 Wakf Commissioner s Act but the Public Trustee has raided valid concerns for consideration by the Committee.	Amend the Bill and include the proposed amendment.

				unclaimed estates of deceased persons should be administered under the applicable national laws which have prescribed the procedure of handling unclaimed estates.		

New Clause

52. The Public Trustee proposed the introduction of a new clause after **Clause 27** which will allow beneficiaries to inspect accounts and *waqf* properties to read as follows;

    27A. Any beneficiary of a *waqf* may inspect and take copies of any deeds or documents relating to the *waqf* but not the correspondence kept by the trustees or the Commission, on payment of such fees and subject to such conditions as may be prescribed.

Justification

53. There is need for greater accountability and transparency and involvement of beneficiaries in running *awqaf*.

Committee observation

54. The proposal by the Public Trustee for the beneficiaries to be allowed to inspect certain deeds or documents relating to the waqf property enhances transparency in the management of the waqf property and amy be accepted by the Committee.

Committee recommendation

The Bill be amended to include the proposed new clause.

New Clause

55. The Public Trustee proposes introduction of a new **Clause 30** on Dispute Resolution to read as follows;

30.(1) In the event of a dispute, parties may, before resorting to court, pursue alternative dispute resolution mechanisms.

(2) Where there is a dispute involving the;

(a) Commission,
(b) beneficiaries,
(c) trustees or
(d) any other interested party,

such disputes shall be reported in writing to the *Waqf* Commission by the aggrieved party or parties.

(2) The Commission shall, upon receiving notice that a dispute exists, refer such disputes for determination to an arbitrator or arbitrators appointed by the respective parties to such a dispute: provided that the number of arbitrators so appointed shall not in relation to any one dispute exceed three.

(3) In the event that the respective parties to the disputes cannot agree on an arbitrator or arbitrators, the Chairman of the Chartered Institute of Arbitrators, Kenya Section shall appoint an arbitrator or arbitrators from among registered arbitrators who are advocates who profess the Islamic faith and of not less than ten years standing.

(4) The arbitrator or arbitrators shall determine the dispute so referred to him or them in accordance with the Arbitration Act Cap 49 Laws of Kenya.

(5) A party aggrieved by the decision of the arbitrator or arbitrators may appeal to the High Court for determination of the dispute.

Committee observation

This proposed new clause on dispute resolution contradicts the proposal by the Jamia Mosque Committee that any disputes under the Act be referred to the Kadhis's Courts in the first instance.

Committee recommendation

Proposed amendment dropped.

CHAPTER FOUR

4.0 CONSIDERATION OF THE BILL BY THE COMMITTEE

56. The Committee considered the Bill Clause by Clause and proposed amendments as follows:

CLAUSE 2

THAT the Bill be amended by inserting the following new definition in the proper alphabetical sequence —

"*Hajj*" means the pilgrimage to Makka made at least once in a lifetime by an able bodied Muslim who can afford it;"

CLAUSE 6

THAT clause 6 of the Bill be amended –

(a) in the opening paragraph —

(i) by deleting the word "Attorney-General" and substituting therefor the words "Public Trustee";

(ii) by deleting the word "President" and substituting therefor the word "Attorney-General";

(b) by deleting paragraph (b);

(c) by deleting paragraph (c);

(d) in paragraph (e)-

(i) by deleting the word "four" and substituting therefor the word "six";

(ii) by inserting the following new sub-paragraphs immediately after sub-paragraph (iv)-

"(v) finance and investment;

(vi) architecture;

(vii) administration".

CLAUSE 7

THAT clause 7 of the Bill be amended —

(a) in subclause (1) by deleting the word "President" and substituting therefor the word "Attorney-General";

(b) in subclause (2) –

(i) by deleting the word "President" and substituting therefor the word "Attorney-General" appearing in the opening paragraph;

(ii) by inserting the words "knowledgeable in sharia law" immediately after the word "leaders" appearing in the opening paragraph;

(iii) by inserting the following new paragraphs immediately after paragraph (a)-

"(ab) a person having a conflict of interest whether directly in person or indirectly as a family member or a beneficiary or lessee of a waqf shall not be appointed as a member of the selection panel;

(ac) no state officer or public officer shall be appointed as a member of the selection panel".

(c) in subclause (3) (d) by deleting the word "President" and substituting therefor the word "Attorney-General";

(d) in subclause (4) by deleting the word "President" and substituting therefor the word "Attorney-General";

(e) by inserting the following new sub-clause immediately after sub-clause (5)-

"(5A) The expenses and liabilities of the selection panel shall be borne by the Government";

(f) in sub-clause (6) by deleting the word "three" wherever it appears and substituting therefor the word "five"; and

(g) in subclause (7) (c) by deleting the word "President" and substituting therefor the word "Attorney-General".

CLAUSE 8

THAT clause 8 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (g) –

"(ga) develop and facilitate adequate continuous training programmes to enhance the standard and effectiveness of trustees;

(gb) formulate, implement and oversee programmes to raise awareness on *Waqf* matters;

(gc) co-ordinate, license, supervise and regulate services relating to *Hajj* in Kenya;

(gd) represent Kenya in matters relating to *Hajj*";

CLAUSE 9

THAT clause 9 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4)-

"(4A)The members of the Commission shall serve on a part-time basis".

CLAUSE 11

THAT Clause 11 of the Bill be amended-

(a) in sub-clause (2)(d) by inserting the words "or a reputable private institution" at the end of the paragraph;

(b) by inserting the following new sub-clause immediately after sub-clause (3)-

"(4) The Director-General shall be the Secretary to the Commission".

CLAUSE 15

THAT Clause 15 of the Bill be amended —

(a) in subclause (1) (b) (ii) by inserting the words "or a beneficiary or any person who has an interest in the *waqf*" immediately after the word "trustees";

(b) in subclause (3) by inserting the words "a beneficiary or any person who has an interest in the *waqf*" immediately after the words "trustees of a *waqf*".

CLAUSE 16

THAT Clause 16 of the Bill be amended in subclause (2) by deleting the words "twenty thousand" and substituting therefor the words "two million".

CLAUSE 17

THAT Clause 17 of the Bill be amended —

(a) in subclause (1) by deleting the word "sell";

(b) by inserting the following new subclause immediately after subclause (1) –

"(1A) A person who intends to sell immovable *Waqf* property shall make an application to the Environment and Land Court and the Environment and Land Court may allow the application or issue any other order it deems appropriate".

(c) in subclause (2) by deleting the words "subsection (1)" and substituting therefor the words "this section".

CLAUSE 21

THAT Clause 21 of the Bill be deleted.

CLAUSE 23

THAT Clause 23 of the Bill be amended by deleting the proviso.

NEW CLAUSES

THAT the Bill be amended by inserting the following new Clauses immediately after Clause 27 -

Right to access information.

27A. (1) A beneficiary of a *waqf* shall, at all reasonable times, be entitled to information about the *waqf* including the inspection of accounts and shall upon payment of the prescribed fees be supplied with copies of any deeds or documents thereof.

(2) The information under subsection (1) does not include correspondence and any other confidential information.

Disputes resolution.

27B. Any matter or dispute relating to a waqf shall in the first instance be referred to a Kadhi's court.

Exemption from taxation or penalties

27C. Despite the provisions of any other written law, the income of the Commission shall not be subjected to income tax or any other tax or penalty.

CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATION

The Committee having facilitated public participation and considered the Waqf Bill (NA No.73), 2019 recommends to the House to pass the Waqf Bill (NA No.73), 2019 subject to inclusion of the amendments proposed in Chapter four of this Report.

Signed.....**Date**.....

Hon. Muturi Kigano, M.P.

Chairperson, Departmental Committee on Justice and Legal Affairs

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 12 OCT 2021 DAY:
TABLED BY:
CLERK-AT THE-TABLE:

Annex 1

Minutes

MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY 7TH OCTOBER 2021 AT 11:00 AM. IN COMMITTEE ROOM 9, PARLIAMENT BUILDINGS

PRESENT-

1. Hon.Muturi Kigano, M.P - **Chairperson**
2. Hon. Tom Kajwang, M.P -**Vice-Chairperson**
3. Hon. Mwamkale Kamoti, M.P
4. Hon. Zuleikha Hassan, M.P.
5. Hon. Jennifer Shamalla, M.P.
6. Hon. Adan Haji Yussuf, M.P
7. Hon. George Gitonga Murugara, M.P
8. Hon. Japheth Mutai, M.P
9. Hon. Peter Opondo Kaluma, M.P
10. Hon. Anthony Githiaka Kiai, M.P
11. Hon. John Munene Wambugu, M.P.
12. Hon.Robert Gichimu Githinji, M.P.

ABSENT WITH APOLOGIES-

1. Hon.Emmanuel Wangwe, M.P
2. Hon. Junet Sheikh Nuh Mohammed, M.P.
3. Hon. Josephine Naisula Lesuuda,M.P
4. Hon. Roselinda Soipan Tuya, M.P
5. Hon. John Kiarie Waweru, M.P.
6. Hon. Anthony Oluoch, M.P - Virtual
7. Hon. John Olago Aluoch, M.P -Virtual

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

1. Mr. Abenayo Wasike - Principal Clerk Assistant
2. Mr.Dennis Abisai - Deputy Director, Legal Services
3. Ms. Emma Essendi - Legal Counsel
4. Mr.Boniface Kataa - Intern

MIN NO.JLAC/01/2021: - **PRELIMINARIES**

The meeting commenced at 11:30 a.m with a word of prayer from the Chairperson and thereafter Members considered reports on Petition to amend the advocates Act and Waqf Bill, 2019 as per the agenda.

MIN NO.JLAC/02/2021: - ADOPTION OF REPORT ON WAQF BILL, BILL 2019

The Committee adoption of the report was proposed by Hon.Adan Haji and seconded by Hon.Kamoti Mwamkale. The Committee recommended that;

The Committee having facilitated public participation and considered the Waqf Bill (NA No.73), 2019 recommends to the House to pass the Waqf Bill (NA No.73), 2019 subject to inclusion of the amendments proposed in Chapter four of this Report.

MIN NO.JLAC/03/2021: - ADOPTION OF REPORT ON THE PETITION TO AMEND THE ADVOCATES ACT

The Committee adoption of the report was proposed by Hon.Jeniffer Shamalla and seconded by Hon.Japheth Mutai.

The Committee recommended that;

In response to the prayers by the petitioners, the Committee finds that the petition is merited and that there is need for Parliament to amend the Advocates Act, Chapter 16, Laws of Kenya, for the purposes of addressing the gaps in the law setting out the qualifications for admission to practice as an advocate in Kenya in accordance with the East African Community Treaty and the Protocol on the Establishment of the East African Community Common Market on the Harmonization and Mutual Recognition of Academic and Professional Qualifications ("the Protocol").

MIN NO./03/2021:- **ANY OTHER BUSINESS**

Members approved the advert on vetting of nominees to the EACC. The nominees will be vetted on 19/10/2021

MIN NO./04/2021:- **ADJOURNMENT**

The meeting was adjourned at 12:45 pm.

Signed.....**Date**12/10/21

Hon.Clement Muturi Kigano
Chairperson

Annex 2
Adoption List

KENYA NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ATTENDANCE REGISTER FOR MEMBERS

DATE...7/10/21.....

VENUE...Room 9.....

AGENDA...ADOPTION OF REPORT ~~TO~~ ON THE AMEND WAQF BILL, 2019.....

NO.	NAME	SIGNATURE
1.	Hon. Clement Muturi Kigano, M.P. - **Chairperson**	
2.	Hon.T.J Kajwang –**Vice Chairperson**	
3.	Hon.Emmanuel Wangwe	
4.	Hon. Junet Sheikh Nuh Mohamed, M.P	
5.	Hon. John Olago Aluoch, MP.	~~ZOOM~~
6.	Hon. Roselinda Soipan Tuya, MP.	
7.	Hon. Peter Opondo Kaluma, MP.	
8.	Hon. Mwamkale Kamoti, MP.	
9.	Hon. Zuleikha Hassan, MP.	

10.	Hon. Josephine Naisula Lesuuda, M.P.	
11.	Hon. George Gitonga Murugara, MP.	
12.	Hon. Adan Haji Yussuf, MP.	
13.	Hon. Japheth Kiplangat Mutai, MP.	
14.	Hon. Anthony Githiaka Kiai, MP.	K LAM
15.	Hon. Jennifer Shamalla, MP.	
16.	Hon. John Kiarie Waweru, MP.	
17.	Hon. John Munene Wambugu, MP.	
18.	Hon. Anthony Oluoch, M.P.	ZOOM
19.	Hon. Robert Gichimu Githinji, M.P	

COMMITTEE CLERK .....

DIRECTOR DEPARTMENTAL COMMITTEES .....