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THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – THIRD SESSION, 2019

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON SESSIONAL PAPER NO.2 OF 2018 ON THE NATIONAL
ETHICS AND ANTI-CORRUPTION POLICY

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS


 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	26 JUNE 2019 DAY: wed
TABLED BY:	Hon. William Chapo
CLERK-AT-THE-TABLE:	Chair Person M. Moko

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- Annexure 2:** Signed list of Members who attended the sitting that considered and adopted the report.

CHAIRPERSON'S FOREWORD

Sessional Paper No. 2 of 2018 on the National Ethics and Anti-Corruption Policy from the Office of the Attorney- General and the Department of Justice was laid on the Table of the House by the Leader of the Majority Party on 22nd November 2018 and thereafter committed to the Departmental Committee on Justice and Legal Affairs for consideration and report to the House.

The Policy was developed as a result of the second state of the nation address in Parliament in 2015. In his speech, His. Excellency the President Uhuru M. Kenyatta denounced corruption and directed the Office of the Attorney-General and Department of Justice to initiate review of the legislative and policy framework for fighting corruption to ensure success in the fight against the vice.

The National Ethics and Anti-Corruption Policy intend to provide a comprehensive framework for the design and development of an effective legal and institutional framework for fighting corruption and promoting ethics and integrity in Kenya.

The Committee considered the Policy at its sittings of 14th March, 2019 and 14th May, 2019. The Attorney-General of the Republic of Kenya and the Chief Executive Officer of the Ethics and Anti-Corruption Commission appeared before the Committee on 16th April, 2019 and made submissions in support of approval of the Policy by the House. The Committee considered and unanimously adopted its report at its sitting of 15th June, 2019.

May I take this opportunity to express gratitude to Committee Members for their resilience and devotion to duty which made the consideration of the Policy successful. May I also appreciate the Offices of the Speaker and Clerk of National Assembly for always providing guidance and direction to Committees in the discharge of their mandate. Finally, I commend the secretariat for exemplary performance in providing technical and logistical support to the Committee.

On behalf of the Departmental Committee on Justice and Legal Affairs Committee and pursuant to the provisions of Standing Order 199(6) it's my pleasant duty and privilege to table in the House as report of the Committee on the Sessional Paper No. 2 of 2018 on the National Ethics and Anti-Corruption Policy.

HON. WILLIAM CHEPTUMO, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS

PART 1

1.0 PREFACE

1.1 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 and comprises the following Honourable Members-

NO.	NAME	CONSTITUENCY	PARTY
1	Hon. William Cheptumo, M.P. - <i>Chairperson</i>	Baringo North	Jubilee
2	Hon. Alice Muthoni Wahome, M.P. - <i>Vice Chairperson</i>	Kandara	Jubilee
3	Hon. John Olago Aluoch, M.P.	Kisumu West	Ford Kenya
4	Hon. Roselinda Soipan Tuya, M.P.	Narok County	Jubilee
5	Hon. Charles Gimose, M.P.	Hamisi	Ford Kenya
6	Hon. Johana Ng'eno, M.P.	Emurua Dikirr	KANU
7	Hon. William Kamoti Mwamkale, M.P.	Rabai	ODM
8	Hon. Ben Orori Momanyi, M.P.	Borabu	Wiper
9	Hon. Peter Opondo Kaluma, M.P.	Homa Bay Town	Wiper
10	Hon. Jennifer Shamalla, M.P.	Nominated	Jubilee
11	Hon. Beatrice Adagala, M.P.	Vihiga County	Amani National Congress
12	Hon. Gladys Boss Shollei, CBS, M.P.	Uasin Gishu County	Jubilee
13	Hon. John Munene Wambugu, M.P.	Kirinyaga	Jubilee
14	Hon. George Gitonga Murugara, M.P.	Tharaka	Democratic Party
15	Hon. Anthony Githiaka Kiai, M.P.	Mukurueni	Jubilee
16	Hon. John Kiarie Waweru,	Dagoretti South	Jubilee

	M.P.		
17	Hon. Japheth Mutai, M.P.	Bureti	Jubilee
18	Hon. Adan Haji Yussuf, M.P.	Mandera South	Economic Freedom Party
19	Hon. Zuleikha Hassan, M.P.	Kwale County	ODM

1.3 Committee Secretariat

The following officers service the Committee's secretariat:-

Mr. George Gazemba	-	Principal Clerk Assistant II
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Halima Hussein	-	Clerk Assistant III
Ms. Fiona Musili	-	Research Officer III
Mr. Omar Abdirahim	-	Fiscal Analyst III
Mr. Joseph Okongo	-	Media Liaison Officer
Mr. Hakeem Kimiti	-	Audio Officer
Ms. Roselyne Ndegi	-	Serjeant-at-Arms

4. Minutes of sittings of the Committee in respect of the consideration of Sessional Paper No.2 of 2018 on the National Ethics and Anti-Corruption Policy are attached to this report annexure 1.

PART 2

2.0 COMMITTEE CONSIDERATION OF SESSIONAL PAPER NO.2 OF 2018 ON THE NATIONAL ETHICS AND ANTI-CORRUPTION POLICY

2.1 Background Information

5. The Constitution of Kenya, 2010 entrenches national values and principles of governance, sets up anti-corruption institutions, and fosters ethical leadership and integrity in the country. The Constitution paved way for the enactment of the Ethics and Anti-Corruption Commission Act (No.22 of 2011) which establishes the Ethics and Anti-Corruption Commission (EACC) pursuant to the provisions of Article 79, and the enactment of the Leadership and Integrity (No. 19 of 2012) to implement Chapter six of the Constitution on Leadership and Integrity. The Constitution also enhanced the principle of separation of powers in government to ensure transparency, accountability, rule of law and good governance.
6. The formulation of the National Ethics and Anti-Corruption Policy is in line with the obligations that Kenya is under as a State party to various regional and international instruments for promoting good governance and combating corruption, including- the United Nations Convention against Corruption (UNCAC), the African Union Convention against Corruption (AUCPCC) and the African Peer Review Mechanism (APRM). Specifically, Article 5(1) of the United Nations Convention against Corruption (UNCAC) states that, *“Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.* Additionally, Article 5 of the African Union Convention on Preventing and Combating Corruption requires State parties to put in place various legislative and other measures to ensure a sustainable fight against corruption.
7. The Constitutional basis for the fight against corruption comprises- Article 10 (National Values and Principles of Governance), Chapter Six (Leadership and Integrity), Article 232 (Values and Principles of Public service), Article 79 (Legislation to establish the ethics and anti-corruption commission) and Article 80 (establishing procedures and mechanisms for the effective administration of Chapter Six on leadership and integrity).
8. There are already several statutory legal instruments for fighting corruption. The principal laws in the fight against corruption, include-

- (i) The Anti-Corruption and Economic Crimes Act, No. 3 of 2003
- (ii) The Public Officer Ethics Act, No. 4 of 2003
- (iii) The Ethics and Anti-Corruption Commission Act, No. 22 of 2011
- (iv) The Leadership and Integrity Act, No. 19 of 2012
- (v) Bribery Act, 2016

9. Other Laws that complement the fight against corruption include-

- (i) Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009
- (ii) Commission on Administration of Justice Act, No. 23 of 2011
- (iii) The Public Procurement and Disposal Act, No. 3 of 2005
- (iv) The Witness Protection Act, No. 16 of 2006
- (v) The National Police Service Act, No. 11A of 2011
- (vi) The Elections Act, No. 24 of 2011
- (vii) Election Offences Act, 2016
- (viii) The Public Finance Management Act, No. 18 of 2012
- (ix) The Political Parties Act, No. 11 of 2011
- (x) The Mutual Legal Assistance Act, No. 36 of 2011
- (xi) The County Governments Act, No. 17 of 2012
- (xii) Public Appointments (Parliamentary Approval) Act, No. 33 of 2011
- (xiii) Prevention of Organized crimes Act, No. 6 of 2010
- (xiv) Access to Information Act, No 31 of 2016
- (xv) The Penal Code (Cap. 63)
- (xvi) The Public Audit Act, No. 12 of 2003

10. Regulations made to aid the implementation of the legal framework include: the Public Officer Ethics (Management, Verification and access to Financial Declarations) regulations (legal Notice No. 179 of 2011) and the Anti-Corruption and Economic Crimes (Amnesty and Restitution) Regulations, 2011 (Legal Notice No.44 of 2011) among others.

2.2 Scope of the policy

11. The National Ethics and Anti-Corruption Policy outlines a comprehensive policy, legal and institutional framework for combating and preventing corruption and promoting ethics and integrity. It defines and clearly sets out strategies and actions for implementation in the fight against corruption in the long-term. The overall objective of the Policy is to “reduce levels and prevalence of corruption and

unethical practices in Kenya by providing a comprehensive, coordinated and integrated framework for the fight against corruption and promotion of ethics”.

2.3 Rationale for developing of the policy

12. The development of the Policy was informed by the need for a systematic ethics, integrity and anti-corruption policy that responds to the complex and dynamic nature of corruption which is complicated by globalization, technological advancement and prevailing trends in trans- national crime.
13. This policy seeks to ensure that the existing legal framework for preventing and fighting against corruption which include- laws, regulations, codified policies, Executive Orders and institutional arrangements, is streamlined and harmonized to enhance efficiency in the fight against corruption.
14. The implementation of the National Ethics and Anti- Corruption Policy is expected to provide “an effective coordinated and enforceable anti-corruption policy in keeping with the country’s national goals as well as Kenya’s obligations under various anti-corruption instruments to which it is a State Party”.
15. The specific objectives of the policy are-
 - (i) To enhance coordination and synergy of all stakeholders in the fight against corruption;
 - (ii) To generate sufficient and sustained political support for the fight against corruption;
 - (iii) To strengthen the legal and institutional framework for anti-corruption, ethics and integrity;
 - (iv) To enhance public participation and engagement in the war against corruption;
 - (v) To intensify efforts towards the fight against corruption in the devolved system of government; and
 - (vi) To establish an effective monitoring and evaluation framework for anti-corruption initiatives.
16. The overall objective of the policy under the implementation framework is to create a common anti-corruption program including a common planning and

implementation platform to enhance efficiency and effectiveness by institutions with the anti-corruption mandate.

17. The implementation of the policy is expected to result in the following outcomes-

- (a) A coordinated and integrated approach to the fight against corruption involving all stakeholders;
- (b) Enhanced political support in the fight against corruption
- (c) Strengthened legal and institutional framework for anti-corruption, ethics and integrity;
- (d) Enhanced public participation and engagement in the war against corruption;
- (e) Structured implementation of various regional and international anti-corruption instruments;
- (f) Reduced levels and prevalence of corruption and unethical practices in Kenya; and
- (g) Intensified and targeted efforts to fight corruption in the devolved system of government.

2.4 Strategies and challenges in implementing the policy

18. The key strategies necessary for enhancing the fight against corruption in Kenya, as noted in the Policy, include-

- (i) Prevention of corruption through the process of detecting, examining and identifying corruption loopholes and minimizing them;
- (ii) Public education, training and awareness creation which is recognized as a critical strategy in fighting corruption and promoting ethics and integrity in society;
- (iii) Criminalization of all forms of conduct which constitute corruption, effective and fair enforcement of anti-corruption laws and competent exercise of jurisdiction by law enforcement agencies;
- (iv) Prosecution of corruption and economic crimes through enforcing the relevant laws;
- (v) Asset recovery which will make corruption unattractive by depriving those who engage in economic crime of the assets acquired corruptly;
- (vi) International cooperation which encompasses varied assistance in prevention, investigation and prosecution of offenders, specific forms of mutual legal assistance in gathering and transferring evidence for use in court, freeing seizure and confiscation of proceeds of corruption; and

(vii) Leadership and integrity in line with the provisions of Chapter six of the Constitution of Kenya which is predicated upon the assumption that State officers have to be beyond reproach in their conduct of public affairs.

19. There have been some challenges that have been experienced in the fight against corruption. These include-

- (a) Poor observance and enforcement of anti-corruption laws and codes of conduct and ethics;
- (b) Inherent weaknesses, gaps, deficiencies and ambiguities in the legal framework for fighting corruption in Kenya;
- (c) The legal framework is not evolving as fast as the emerging and evolving corruption practices;
- (d) Conflicting provisions of the law leading to overlaps of institutional mandates and functions;
- (e) Kenya's anti-corruption laws do not criminalize some offences prescribed by international instruments that Kenya is party to;
- (f) Lack of domestication of some international anti-corruption instruments whose provisions are at variance with the Laws of Kenya; and
- (g) The legal framework does not adequately cover institutional cooperation on the fight against corruption.

2.5 Monitoring and evaluation of the implementation of the policy

20. The Policy notes that the government shall strengthen the mechanism for monitoring and evaluation of the policy through the following measures-

- (i) undertaking research, collecting and analyse information;
- (ii) implementing the National Anti- Corruption Policy through five (5) year strategic plans aligned with the Medium Term Expenditure Framework (MTEF);
- (iii) setting up a multi-stakeholder coordination framework for ethics and anti-corruption interventions across all levels; and
- (iv) establishing a comprehensive monitoring and evaluation framework that works across sector at the national and county levels beginning with a database of organizations implementing anti-corruption measures.

21. Policy monitoring will include detailed information on the broad policy and/ or specific policy instruments. Detailed reporting for operational purposes to the

Executive and Parliament will be at most bi-annual basis and will contain major milestones.

22. Policy implementation reviews will be carried out at National, County and Institutional levels every two to three years to account for social, legal, economic, and political dynamics while ad hoc reviews on fundamental changes in the legal, policy and institutional framework will also be undertaken periodically.

PART 3

3.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.1 Committee Observations

23. Upon consideration of Sessional Paper No.2 of 2018 on National Ethics and Anti-Corruption Policy, the Committee made the following observations-

- (i) Presently there are several laws that govern the fight against corruption however challenges still persist in their implementation;
- (ii) The existing challenges in the anti-corruption sector have been occasioned by, among others, the lack of policy to guide the development of the legal framework in fighting corruption in Kenya; and
- (iii) The current fight against corruption has been hampered by a lack of coordination of all agencies involved in the fight against corruption
- (iv)


3.2 Committee Recommendations

24. The Committee recommends as follows-

- (i) The House approves cabinet's implementation of Sessional Paper No. 2 of 2018 on the National Ethics and Anti-Corruption Policy;**
- (ii) Following the adoption of this Policy, all proposed legislation on matters related to anti-corruption should be guided by the provisions of the National Ethics and Anti-Corruption Policy;**
- (iii) There is need relevant authorities to strengthen capacity of all agencies involved in the fight against corruption to facilitate the fast-tracking of investigation, prosecution and adjudication of corruption, economic crime cases and incidents of violation of ethics in the conduct of public affairs;**
- (iv) The communication strategy in the anti-corruption campaign must be accompanied by other necessary conditions including increasing public**

participation, building trust in institutions and enhancing access to information; and

- (v) All agencies involved in the fight against corruption should develop mechanisms to improve coordination of anti-corruption processes and actions.

SIGNED..........DATE.....*26.06.19*.....

HON. WILLIAM CHEPTUMO, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS

ANNEXURE 1

(Minutes of Committee sittings on the consideration of Sessional Paper No. 2 of 2018 on the National Ethics and Anti-Corruption Policy)

MINUTES OF THE ONE HUNDRED AND FORTY-NINE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON FRIDAY, 15TH JUNE, 2019 AT 10.00 A.M. IN OMO ROOM, CROWNE PLAZA HOTEL

PRESENT-

- | | | |
|---|---|-------------------------|
| 1. Hon. William Cheptumo, M.P. | - | Chairperson |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P. | | |
| 4. Hon. Peter Opondo Kaluma, M.P. | | |
| 5. Hon. William K. Mwamkale, M.P. | | |
| 6. Hon. Ben Momanyi, M.P. | | |
| 7. Hon. Charles Gimose, M.P. | | |
| 8. Hon. George G. Murugara, M.P. | | |
| 9. Hon. Jennifer Shamalla, M.P. | | |
| 10. Hon. Beatrice Adagala, M.P. | | |
| 11. Hon. Anthony G. Kiai, M.P. | | |
| 12. Hon. Gladys Boss Shollei, CBS, M.P. | | |
| 13. Hon. John Kiarie Waweru, M.P. | | |
| 14. Hon. Adan Haji Yussuf, M.P. | | |
| 15. Hon. John M. Wambugu, M.P. | | |

ABSENT WITH APOLOGIES-

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Japheth Mutai, M.P.
3. Hon. Johana Ng'eno, M.P.
4. Hon. Zuleikha Hassan, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Mr. Denis Abisai | - | Principal Legal Counsel I |
| 3. Ms. Halima Hussein | - | Third Clerk Assistant |
| 4. Ms. Fiona Musili | - | Research Officer III |
| 5. Ms. Roselyn Njuki | - | Serjeant-at-Arms |
| 6. Mr. Kimiti James | - | Audio Officer |
| 7. Mr. Simon Maina | - | Support staff |

MIN No. 588/2019:-

PRELIMINARIES

The meeting commenced at 10.00 a.m. with a word of prayer by Hon Peter Kaluma.

MIN No. 589/2019:

**CONSIDERATION AND ADOPTION OF THE
REPORT ON INSTRUMENT FOR
RATIFICATION (ACCESSION) OF THE
AGREEMENT FOR THE ESTABLISHMENT
OF THE INTERNATIONAL ANTI-
CORRUPTION ACADEMY AS AN
INTERNATIONAL ORGANIZATION**

The Committee considered and adopted its report on the Instrument for Ratification (Accession) of the Agreement for the establishment of the International Anti-Corruption Academy as an International Organization.

The adoption was proposed by Hon. Peter Kaluma and seconded by Hon. Jennifer Shamalla.

MIN No. 590/2019:

**CONSIDERATION AND ADOPTION OF THE
REPORT ON THE NATIONAL ETHICS AND
ANTI-CORRUPTION POLICY, 2019**

The Committee considered and adopted its report on the National Ethics and Anti-Corruption Policy, 2019.

The adoption was proposed by Hon. Jennifer Shamalla and seconded by Hon. Adan Haji.

MIN No. 591/2019:

**CONSIDERATION AND ADOPTION OF THE
ON THE PETITION BY MR. JULIUS
KIPKOECH BORES TO AMEND THE
CONSTITUTION OF KENYA TO ALTER
THE SYSTEM OF REPRESENTATION**

Having considered its report on the petition by Mr. Julius Kipkoech Bores to amend the Constitution of Kenya to alter the system of representation.

The Committee adopted its reports with the following recommendations;

- (i) That the petitioner's prayers to amend Articles 93, 94 and 95 of the Constitution of Kenya be rejected
- (ii) That the National Assembly to consolidate and harmonize all the constitutional amendment proposals and process them as a single Bill to save on time, public resources and avoid duplication of efforts.

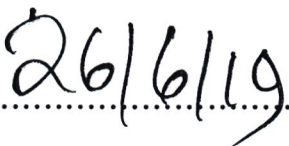
The adoption was proposed by Hon. Beatrice Adagala and seconded by Hon. John Munene.

MIN No. 593/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at One o'clock.

Signed.....
Chairperson

Date.....

**MINUTES OF THE ONE HUNDRED AND TWENTY-FOURTH SITTING
OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS HELD ON TUESDAY, 16TH APRIL, 2019 AT 2.30 P.M. IN
COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDING**

PRESENT-

- | | | |
|---------------------------------|---|--------------------|
| 1. Hon. William Cheptumo, M.P. | - | Chairperson |
| 2. Hon. John Olago Aluoch, M.P. | | |
| 3. Hon. Beatrice Adagala, M.P. | | |
| 4. Hon. Anthony G. Kiai, M.P. | | |
| 5. Hon. Japheth Mutai, M.P. | | |

ABSENT WITH APOLOGIES-

- | | | |
|---|---|-------------------------|
| 1. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 2. Hon. William K. Mwamkale, M.P. | | |
| 3. Hon. George G. Murugara, M.P. | | |
| 4. Hon. Jennifer Shamalla, M.P. | | |
| 5. Hon. John M. Wambugu, M.P. | | |
| 6. Hon. Peter Opondo Kaluma, M.P. | | |
| 7. Hon. Roselinda Soipan Tuya, M.P. | | |
| 8. Hon. Ben Momanyi, M.P. | | |
| 9. Hon. Charles Gimose, M.P. | | |
| 10. Hon. Gladys Boss Shollei, CBS, M.P. | | |
| 11. Hon. Johana Ng'eno, M.P. | | |
| 12. Hon. Zuleikha Hassan, M.P. | | |
| 13. Hon. John Kiarie Waweru, M.P. | | |
| 14. Hon. Adan Haji Yussuf, M.P. | | |

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Mr. Denis Abisai | - | Principal Legal Counsel I |
| 3. Mr. Joseph Okongo | - | Media Officer |
| 4. Mr. Joseph Kariuki | - | Serjeant-at-Arms |
| 5. Mr. Simon Maina | - | Support staff |

OFFICE OF THE ATTORNEY-GENERAL AND DEPARTMENT OF JUSTICE

- | | | |
|-----------------------------|---|--|
| 1. Hon. Paul Kihara Kariuki | - | Attorney-General |
| 2. Maryann Njau Kimani | - | Secretary, Justice and Constitutional Affairs |
| 3. David Gathii | - | Ag Director, National Anti-Corruption Steering Committee |
| 4. Caroline Nyagah | - | State Counsel |
| 5. Musa Machooka | - | Adviser to the Attorney-General |

ETHICS AND ANTI-CORRUPTION COMMISSION (EACC)

- | | | |
|-----------------------|---|-----------------------------------|
| 1. Twalib Mbarak | - | Secretary/Chief Executive Officer |
| 2. Dr. Purity Gitonga | - | Director |
| 3. David Too | - | Director |
| 4. Stephen Karuga | - | Legal Officer |

MIN No. 492/2019:-

PRELIMINARIES

The meeting commenced at 2.30 p.m. instead of 2.00 p.m. with a word of prayer by the chairperson. He on behalf of the Committee apologized to the Attorney-General for starting the meeting late knowing him for being very strict in time management. The Attorney-General on the other hand thanked the Committee for agreeing to meet him at 2.00 p.m. instead of 10.00 a.m. during which he was attending a cabinet meeting.

MIN No. 493/2019:-

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Confirmation of Minutes of the previous sitting was deferred to the next sitting.

MIN No. 494/2019:-

CONSIDERATION OF THE NATIONAL ANTI-CORRUPTION POLICY, 2018

The first agenda item was consideration of the National Anti-Corruption Policy of October, 2018 which the Office of the Attorney-General and Department of Justice

had submitted to the House for approval for operationalization by the Government of Kenya.

The **Hon. Paul Kihara Kariuki**, Attorney-General of the Republic of Kenya accompanied by **Mr. Twalib Mbarak**, Chief Executive Officer/Secretary, Ethics and Anti-Corruption Commission submitted as follows in support of approval of the Policy by the National Assembly-

- (i) The Policy was developed as a result of the second state of the nation address in Parliament in 2015. In his speech, His Excellency the President Uhuru M. Kenyatta denounced corruption and directed the Office of the Attorney-General and Department of Justice to initiate review of the legislative and policy framework for fighting corruption to ensure success in the fight against the vice.
- (ii) The development of the Policy started with the establishment of a Task Force on the Review of the Legal Policy and Institutional Framework for Fighting Corruption in Kenya on 30th March, 2015. The Task Force's mandate was to review, policies, legislation and administrative procedures on corruption.
- (iii) The Policy is anchored on the political pillar of the Kenya Vision 2030 which identifies national values and ethics as one of the cornerstones of the country's overall development through a value based system. The development of the policy is also informed by historical developments in the fight against corruption since the time of the Kenya Anti-Corruption Authority (KACA). The war on corruption had all along not been successful with numerous legal and administrative challenges. The lack of coherent strategy has been cited as one of the biggest setbacks to the effectiveness of the fight against corruption.
- (iv) In 2009, Kenya was assessed on the implementation of the United Nations Convention against Corruption (UNCAC) and the ensuing report pointed out on the lack of comprehensive National Anti-Corruption Policy as a major gap in the Kenya's policy, legal and institutional framework for combating corruption.
- (v) The policy development is through collaborative and public participatory process. The policy aims at providing a comprehensive framework for the design and development of an effective legal and institutional framework

for fighting corruption and promoting ethics and integrity in Kenya and also to ensure effective monitoring and evaluation of the efficacy of anti-corruption measures. He undertook to provide a document confirming that there was adequate public participation in the development of the Policy.

- (vi) The policy aims at strengthening legal and institutional framework for the fight against corruption with a view to building synergies among institutions, harnessing the collective goodwill of the people of Kenya and reassigning roles and resources that are available to ensure victory in the war against corruption.
- (vii) It was prudent to have in place the National Anti-Corruption Policy before enacting legislation to operationalize it. A lot of anti-corruption legislation has gaps which have been identified as a result of the Policy development and the situation would be addressed.
- (viii) Corruption was becoming more and more entrenched because of political statements made in public places whereas the fight against corruption should be everybody's effort.
- (ix) The Government of Kenya had signed bilateral agreements with Britain and Switzerland on asset recovery to the effect that recovered assets would be applied to specific projects as identified by the Government of Kenya and the country from which the assets are recovered. There was however need to develop comprehensive legal framework in Kenya to effect bilateral agreements on corruption as there was none.
- (x) The matter of extradition of former Energy Minister Hon. Chris Okemo and former Managing Director of Kenya Power and Lighting Company, Mr. Samuel Gichuru to the United States of America to face trial over corruption was pending in the Supreme Court. The main issue for the Court's determination was who between the Ethics and Anti-Corruption Commission and the Directorate of Criminal Investigations had jurisdiction over the matter.

The Committee observed as follows-

- (i) Pursuant to the provisions of the National Police Service Act and the Anti-Corruption and Economic Crimes Act, both the Directorate of Criminal Investigations and the Ethics and Anti-Corruption Commission were

mandated to investigate corruption and economic crimes and take appropriate action.

- (ii) It was not right for the Directorate of Criminal Investigation and the Ethics and Anti-Corruption Commission to refer disputes on jurisdiction to courts. Instead, the two agencies should resolve such disputes amicably.
- (iii) It was wrong for EACC to comment on matters under investigation in the media as this would prejudice investigations. The Commission CEO informed the Committee that the Commission would henceforth oblige with the observation.

MIN No. 495/2019:- **CONSIDERATION OF AN INSTRUMENT FOR RATIFICATION (ACCESSION) OF THE AGREEMENT FOR THE ESTABLISHMENT OF THE INTERNATIONAL ANTI-CORRUPTION ACADEMY AS AN INTERNATIONAL ORGANIZATION**

The second agenda item was consideration of an instrument on Ratification (Accession) of the agreement for the Establishment of the International Anti-Corruption Academy as an International Organization which the Office of the Attorney-General and Department of Justice had submitted to the House for approval for ratification by the Government of Kenya.

Hon. Paul Kihara Kariuki, Attorney-General of the Republic of Kenya accompanied by **Mr. Twalib Mbarak**, Chief Executive Officer/Secretary, Ethics and Anti-Corruption Commission submitted as follows in support of approval of the instrument by the National Assembly-

- (i) The subject matter of the instrument was the establishment of the International Anti-Corruption Academy (IACA) as an International Organization to facilitate the provision of anti-corruption training programmes to member states and other interested parties. This would give the Academy necessary immunities, privileges and recognition among state parties and other international organizations;
- (ii) The purpose of the Academy as per Article 11(1) of the agreement is to provide effective and efficient prevention and combating of corruption by

- (a) Providing anti-corruption education and professional training;
 - (b) Undertaking and facilitating research into all aspects of corruption;
 - (c) Providing all other relevant forms of technical assistance;
 - (d) Fostering international cooperation and networking in the fight against corruption.
- (iii) The ratification of the instrument will not offend any provision or principle to the Constitution of Kenya. It in fact promotes Article 10 on National Values and Principles of Good Governance and Chapter 6 on Leadership and Integrity. In effect, the agreement will facilitate the actualization of integrity provisions provided for under the constitution and various anti-corruption ethics and integrity laws and policies;
- (iv) The ratification of the agreement will not adversely affect Kenya's national interests as it is in line with the provisions and aspirations of the constitution of Kenya and Vision 2030.
- (v) Under Article X (1) (a) of the agreement, contributions to the party in terms annual and other subscriptions would be optional. However for the country to reap maximum benefits out of its membership, Kenya would prefer to make financial contribution. There may however be indirect costs relating to participation in IACA Assembly of Parties and training of public officers. Should Kenya wish to participate, it is expected that the expenditure will be budgeted for in the annual budget.
- (vi) Under Article XII (1) of the agreement, parties are required to keep each other informed and consult on matters of interest concerning their cooperation either at meetings of the Assembly or whenever necessary. Consultation and exchange of information shall be done in accordance with the party's applicable rules concerning disclosure of information and subject to arrangements which parties may determine for the purposes of safeguarding confidentiality, restricted character and security information exchanged. Those arrangements remain binding on a parties even after termination of the agreement or withdrawal of a party from the treaty.
- (vii) Kenya's membership to IACA will not attract any form of liability as Article XV of the agreement provides that parties to an agreement shall not be responsible either individually or collectively for debts, liabilities or

other obligations of the Academy;

- (viii) The ratification of the agreement will not contravene any policy or law or necessitate the amendment of existing policies or laws.
- (ix) Under the current Presidential Circular on the Organization of the Government of the Republic of Kenya (Executive Order No. 1 of May, 2016), the State Law Office and Department of Justice has status, powers and functions of a ministry and has been assigned ministerial responsibility over anti-corruption strategies, integrity and ethics. The Attorney-General therefore will oversee the implementation of the agreement in accordance with Article 132(5) of the Constitution of Kenya and in liaison with the Registrar of Treaties Act, 2012. Where necessary, consultations will be held with the Ministry of Foreign Affairs and other key stakeholders such as parliament.
- (x) The State Department of Justice through its Department of Justice will create necessary awareness on benefits of the treaty as required under section 15(3) of the Act and facilitate the necessary reporting through the Attorney-General and Cabinet Secretary for Foreign Affairs as provided for under Section 16 of the Act.
- (xi) The ratification of the instrument has no implication on matters relating to counties. The agreement is about corruption and criminal law which under Part 1 of the 4th Schedule to the Constitution of Kenya falls within the jurisdiction of the national government. In addition, ratification of the agreement is a foreign affairs policy issue which falls under the jurisdiction of the national government;
- (xii) In line with the Government of Kenya's agenda of fighting corruption and promoting good governance and ethical leadership at both the national and county government levels, the State Law Office and Department of Justice will endeavour to create awareness about IACA training programmes and opportunities at the county level through the Council of Governors;
- (xiii) The Cabinet approved Kenya's ratification of accession to the agreement for the establishment of the International Anti-Corruption Academy as an International Organization on 6th April, 2017. During the meeting, the Cabinet directed the Attorney-General to facilitate the submission of

memoranda to Parliament for approval. The Cabinet also approved the appointment of the Ambassador of the Republic of Kenya to Austria to represent Kenya as a member of the Assembly of Parties in accordance with the provision of Article V(2) of the agreement;

- (xiv) Kenya became signatory to the conference on 2nd September, 2010 when the Minister for Justice, National Cohesion and Constitutional Affairs signed the agreement during the IACA's High Level Founders Conference held in Vienna, Austria. As at 16th March, 2016, the agreement had 67 parties and 53 signatories;
- (xv) Stakeholders' views on ratification of the treaty were obtained and none raised objection. Among the stakeholders who gave views were the Ministry of Justice, National Cohesion and Constitutional Affairs, the Ethics and Anti-Corruption Commission, Office of the Director of Public Prosecutions, the State Law Office, Judiciary and the Ministry of Foreign Affairs;
- (xvi) The agreement does not have any express provisions on reservations. However in practice, parties do enter reservation to the agreement in accordance with the provisions of Article 20(3) of the Vienna Convention on the Law of Treaties. For instance, Israel and China have made reservations to the provisions of Article XIX of the agreement with regards to settlement of disputes. There is no justification for Kenya to make such reservation to the agreement;
- (xvii) The Government of Kenya through the Ministry of Education had established the National Anti-Corruption Academy for training employees of organizations dealing with ethics and integrity. The establishment of the institution was necessitated by the fact that previously, there was no such institution in the country and employees had to be trained out the country which was costly. The Academy was partnering with the International Academy and had plans to expand to the counties. The Academy would also be generating revenue.

During the meeting:-

- (i) The Office of the Attorney-General and Department of Justice submitted

that it was prepared to host the Committee for a two day retreat in May, 2019 to discuss legislation to be enacted as a result of the policy;

- (ii) The Committee instructed the Attorney-General to provide additional information on the public participation in the ratification of the instrument most importantly; names of stakeholders who took part and legislative interventions required as a result of the policy approval.

MIN No. 496/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at thirty-five minutes past four in the afternoon until, 23rd April, 2019 at 10.00 a.m. at venue to be advised.



Signed.....

Chairperson

Date..... 25/06/19.....

MINUTES OF THE ONE HUNDRED AND ELEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 14TH MARCH, 2019 AT 10.30 A.M. IN THE BOARDROOM ON 4TH FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS

PRESENT:-

1. Hon. William Cheptumo, M.P. - Chairperson
2. Hon. John Olago Aluoch, M.P.
3. Hon. William K. Mwamkale, M.P.
4. Hon. Charles Gimose, M.P.
5. Hon. Adan Haji Yussuf, M.P.
6. Hon. Anthony G. Kiai, M.P.

ABSENT WITH APOLOGIES:-

1. Hon. Alice Muthoni Wahome, M.P. - Vice Chairperson
2. Hon. Ben Momanyi, M.P.
3. Hon. Roselinda Soipan Tuya, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. Zuleikha Hassan, M.P.
6. Hon. Jennifer Shamalla, M.P.
7. Hon. John M. Wambugu, M.P.
8. Hon. John Kiarie Waweru, M.P.
9. Hon. Gladys Boss Shollei, CBS, M.P.
10. Hon. Japheth Mutai, M.P.
11. Hon. George G. Murugara, M.P.
12. Hon. Peter Kaluma, M.P.
13. Hon. Beatrice Adagala, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

1. Mr. George Gazemba - Principal Clerk Assistant II
2. Mr. Denis Abisai - Principal Legal Counsel I
3. Ms. Halima Hussein - Third Clerk Assistant
4. Ms. Roselyn Ndegi - Serjeant-at-Arms
5. Mr. Hakeem Kimiti - Audio Officer

MIN No. 433/2019:-

PRELIMINARIES

The meeting commenced at 10.30 a.m. with a word of prayer by Hon Anthony Kiai.

MIN No. 434/2019:-

CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Under the agenda item, the following minutes were confirmed-

- (i) Minutes of the One Hundred and Eighth Sitting held on Tuesday, 5th March, 2019 at 10:45 a.m. in Commonwealth Parliamentary Association (CPA) Room, Main Parliament Buildings were confirmed as true record of proceedings and signed by the Chairperson. The confirmation was proposed by Hon. John Olago Aluoch and seconded by Anthony Kiai.
- (ii) Minutes of the One Hundred and Ninth Sitting held on Thursday, 5th March, 2019 at 10:30 a.m. in the Boardroom on Second Floor, Continental House, Parliament Buildings were confirmed as true record of proceedings and signed by Hon. Adan Yussuf Haji. The confirmation was proposed by Hon William Cheptumo and seconded by Hon John Olago Aluoch.

MIN No. 435/2019:-

MATTERS ARISING FROM THE MINUTES

There were no matter arising from the confirmed minutes.

MIN No. 436/2019:-

CONSIDERATION OF THE NATIONAL ETHICS AND ANTI-CORRUPTION POLICY

The Research Officer took the Committee through a brief on the National Ethics and Anti-Corruption Policy as follows-

- (i) The policy outlines a comprehensive legal and institutional framework for combating and preventing corruption and promoting ethics and integrity;

- (ii) The policy defines and sets out strategies and actions for implementation in the fight against corruption in the long-term. The overall objective of the policy is to reduce levels and prevalence of corruption and unethical practices in Kenya by providing a comprehensive, coordinated and integrated framework for the fight against corruption and promotion of ethics;
- (iii) The policy seeks to ensure that the existing legal framework for preventing and fighting against corruption which include laws, regulations, codified policies, Executive Orders and institutional arrangements is streamlined and harmonized to enhance efficiency in the fight against corruption;
- (iv) The implementation of the Policy will provide an effective coordinated and enforceable anti-corruption policy in keeping with the country's national goals as well as Kenya's obligations under various anti-corruption instruments to which it is a State Party.

Arising from the policy, the Committee made the following observations-

- (i) There were several laws that govern the fight against corruption in the country and this had led to challenges in their implementation;
- (ii) The existing challenges in anti-corruption fight had been occasioned by among others, lack of a policy to guide the development of the legal framework;
- (iii) The current fight against corruption had been hampered by lack of coordination among agencies responsible and a policy guideline in this respect was long overdue;
- (iv) There was need to strengthen the capacity of all agencies involved in the fight against corruption to facilitate the expediting of investigation, prosecution and adjudication of corruption, economic crime cases and incidents of violation of ethics in the conduct of public affairs;

- (v) The communication strategy in the anti-corruption campaign must be accompanied by other necessary conditions including increasing public participation, building trust in institutions and enhancing access to information; and
- (vi) All agencies involved in the fight against corruption should come up with a proper mechanism to improve coordination of anti-corruption efforts.

MIN No. 437/2019:- **CONSIDERATION OF THE DRAFT REPORT ON THE OFFICE OF THE COUNTY ATTORNEY BILL (SENATE BILL No. 3 OF 2018)**

The Committee considered its draft report on the Office of the County Attorney Bill (Senate Bill No. 3 of 2018). Owing to lack of requisite quorum to adopt a report, the adoption of the report was deferred to the week of 17th to 25th March, 2019 in Mombasa where the Committee would be retreating to discuss draft Bills with the Independent Electoral and Boundaries Commission (IEBC) and the Ministry of Devolution.

MIN No. 438/2019: **CONSIDERATION OF DRAFT REPORT ON THE LAW OF CONTRACT (AMENDMENT) BILL, 2019**

The Committee considered its draft report on the Law of Contract (Amendment) Bill, 2019 and resolved to recommend the following amendment-

- (i) The word “security” appearing in the proposed new subsection (1A) be deleted and be substituted with the word “assets”;
- (ii) Inserting the following proposed new subsection immediately after the proposed new subsection (1A)-

(1B) for the avoidance of doubt, subsection (1A) shall not apply to any transaction or contract entered into before it came into force.

Owing to lack of requisite quorum to adopt a report, the adoption of the report was deferred to the week of 17th to 25th March, 2019 in Mombasa where the Committee would be retreating to discuss draft Bills with the Independent Electoral and Boundaries Commission (IEBC) and the Ministry of Devolution.

MIN No. 439/2019- **CONSIDERATION OF DRAFT REPORT ON**
THE LEGISLATIVE PROPOSAL ON PUBLIC
PARTICIPATION BY HON. CHRIS WAMALWA

The Committee considered its draft report on legislative proposal on Public Participation by Hon. Chris Wamalwa. Owing to lack of requisite quorum to adopt a report, the adoption of the report was deferred to the week of 17th to 25th March, 2019 in Mombasa where the Committee would be retreating to discuss draft Bills with the Independent Electoral and Boundaries Commission (IEBC) and the Ministry of Devolution.

MIN No. 440/2019 **ADJOURNMENT**

There being no other business to transact, the meeting was adjourned at ten minutes to noon.

Signed.....
Chairperson

Date.....26.06.19.....

ANNEXURE 2

**(Signed list of Members who attended the sitting that
adopted the Report)**

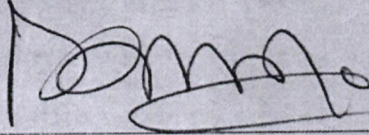
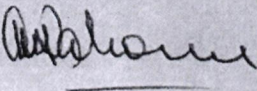
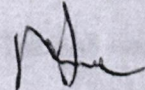

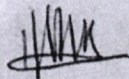

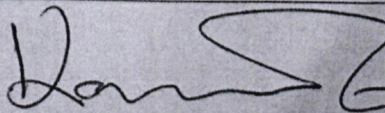
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THE NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS

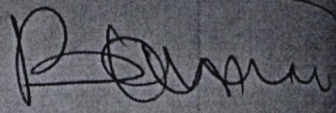
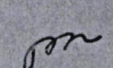
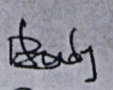
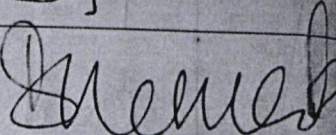
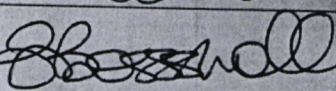
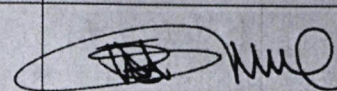
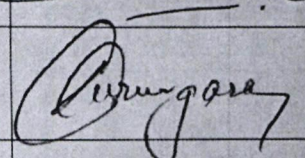
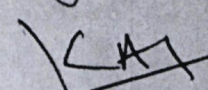
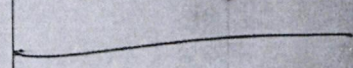
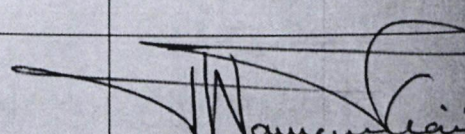
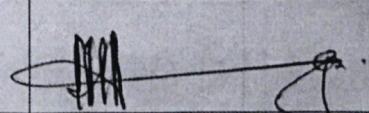
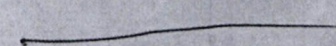
MEMBERS' MEETING ATTENDANCE REGISTER

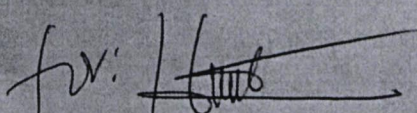
DATE..... 15/06/2019..... TIME... 10 AM.....

VENUE..... ONTO ROOM, CROWNE PLAZA HOTEL.....

AGENDA..... Adoption of the Reports on: Petition by Burs, The National Ethics & Anti-corruption Policy, 2019 & Instrument for Ratification

No.	NAME OF MEMBER	SIGNATURE
1.	Hon. William Cheptumo, M.P. - <i>Chairperson</i>	
2.	Hon. Alice Muthoni Wahome, M.P. - <i>Vice Chairperson</i>	
3.	Hon. John Olago Aluoch, M.P.	
4.	Hon. Roselinda Soipan Tuya, M.P.	
5.	Hon. Charles Gimose, M.P.	
6.	Hon. Johana Ng'eno Kipyegon, M.P.	
7.	Hon. William Kamoti Mwamkale, M.P.	

8.	Hon. Ben Orori Momanyi, M.P.	
9.	Hon. Peter Opondo Kaluma, M.P.	
10.	Hon. Beatrice Adagala, M.P.	
11.	Hon. Jennifer Shamalla, M.P.	
12.	Hon. Gladys Boss Shollei, CBS, M.P.	
13.	Hon. John Munene Wambugu, M.P.	
14.	Hon. George Gitonga Murugara, M.P.	
15.	Hon. Anthony Githiaka Kiai, M.P.	
16.	Hon. Japheth Mutai, M.P.	
17.	Hon. John Kiarie Waweru, M.P.	
18.	Hon. Adan Haji Yussuf, M.P.	
19.	Hon. Zuleikha Hassan, M.P.	

for: 
George Gazemba, ACI Arb, CPM
For: CLERK OF THE NATIONAL ASSEMBLY