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KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – FOURTH SESSION (2010)

REPORT OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS ON THE INSURANCE (MOTOR VEHICLE, THIRD PARTY
RISKS), (AMENDMENT) BILL, 2010

Clerks Chambers,
Parliament Buildings,
NAIROBI.

November, 2010

PREFACE

Mr. Speaker Sir,

The Departmental Committee on Justice and Legal Affairs derives its mandate from the provisions of Standing order 198(3) which states that the function of the Committee shall be:

- a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments;
- b) to study the programme and policy objectives on Ministries and departments and the effectiveness of the implementation;
- c) to study and review all legislation referred to it;
- d) to study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) to investigate and enquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister; and
- f) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

According to Schedule II of the Standing Orders, the Committee is mandated to consider:-

- a) Constitutional Affairs.
- b) The administration of law and order (Judiciary, police and prisons department, community service orders).
- c) Public prosecutions.
- d) Elections.
- e) Integrity and
- f) Anti-corruption and human rights.

The Committee oversees the following Ministries/Departments;

- a) Ministry of Justice, National Cohesion and Constitutional Affairs
- b) State Law Office

- c) The Judiciary
- d) Kenya Anti-Corruption Commission
- e) Interim Independent Electoral Commission
- f) Interim Independent Boundaries Commission

Committee Membership

The Committee comprises of the following members:-

Hon. Ababu Namwamba, M.P.	Chairperson
Hon. Njoroge Baiya, M.P.	Vice-Chairperson
Hon. Abdikadir Mohammed, M.P	
Hon. Millie Odhiambo-Mabona, M.P	
Hon. Mutava Musyimi, M.P	
Hon. Olago Aluoch, M.P.	
Hon. Isaac K.Ruto, E.G.H, M.P.	
Hon. George Omari Nyamweya, M.B.S, M.P.	
Hon. Amina Abdalla, M.P.	
Hon. Sophia Noor Abdi, M.P.	
Hon. (Prof) Philip Kaloki, M.P.	

Committee Meetings

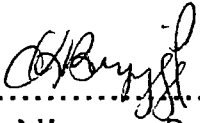
The Committee held two meetings to consider the Insurance (Motor Vehicle Third Party Risks) (Amendment) Bill, 2010 and received and considered written memorandum from the Law Society of Kenya.

Acknowledgements

The Committee wishes to thank the offices of the Speaker and the Clerk of the National Assembly for the support extended to it in execution of its mandate.

Mr. Speaker, Sir,

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs to present and commend this report to the House for adoption.

Signed..... 

Hon. Njoroge Baiya, MP
Vice -Chairperson

Date: 4/11/2010

BACKGROUND

1. The Insurance (Motor Vehicle Third Party Risks)(Amendment) Bill,2010 seeks to amend the Insurance (Motor Vehicle Third Party Risk)Act,(Chapter 405 of the Laws of Kenya) to introduce a schedule of structured payments of compensation under the Act similar to the one under the Work Injury Benefits Act. The Structured Compensation Liability Schedule payable in respect of death or of bodily injury to any person caused by or arising out of the use of a vehicle on the road as a percentage of the maximum compensation prescribed under section 5(b) of the Act.
2. The Bill also seeks to provide a maximum compensation in respect of death or fix compensation for each human body part based on individual income levels, nature and extent of injury sustained, lower insurance premiums and reduce court expenses for insurance companies.
3. The Bill proposes to amend sections 3 and 10 of the Insurance Act and insert a structured compensation Liability Schedule immediately after section 18 of the Act.
4. The Insurance (Motor Vehicle Third Party Risks)(Amendment) Bill,2010 was committed to the Finance, Planning and Trade Committee upon its first reading on 29th June,2010.
5. On Tuesday, September 28, 2010, the Speaker referred the Bill to the Committee on Justice and Legal Affairs upon a request by a member of the Committee.
6. Personal injuries litigation is one of the most common points of contact which the general public has with the legal system and is integral to the public's perception of that system. It also affects society in general in relation to issues such as the system for the organisation of labour, social security and the measures taken to prevent accidents. Thus, it can be beneficial to compare the approaches taken in different jurisdictions to attaining the common goal of restoring the victim to the position s/he would have been,had the event not occurred.Thus, a comparative assessment of the approaches taken to several personal

injuries-related issues demonstrates that none of the current approaches serve all the aims of accident compensation systems. Instead legislatures (and courts) must decide on which aims they wish to focus on as no single approach will serve all aims and trade-offs will always have to be made.

7. The issue of what means an award is paid may appear to be a purely administrative matter but in fact it can determine the effectiveness of the award to a large degree in cases where the injured person is permanently incapacitated. It also determines the principles and approach taken to calculating the award. This issue arises only in relation to future economic losses as opposed to past losses or damages for pain and suffering.
8. Besides the lump sum awards is the annuity system which is adopted in theory (though not rigidly in practice) by a number of European systems such as the French, the German and the Italian.¹

Committee Deliberations and Observations

9. At its sitting held on October 7,2010,the committee considered the Insurance (Motor Vehicle Third Party Risks)(Amendment) Bill,2010 and observed that:-
 - i. The Bill proposes a scheme that entails a fixed compensation for each body part and is pegged to individual income levels and the nature and extent of an injury.
 - ii. Settlement under the scheme may depend on the goodwill of the insurers and this is further subject to a maximum compensational amount limit of Ksh.three million.
 - iii. The scheme is designed in a manner as to deny victims legal representation as a matter of right. The scheme as proposed does not leave room for litigants to choose either to go for the scheme or alternatively to file a suit in a court of law. Victims ought to have the right to choose the manner in which they wish to pursue their right. This can be either by scheme or

¹ The no-fault compensation scheme in New Zealand and other no-fault compensation schemes (e.g. in Australia) also allow for periodic and adjustable payments.

litigation. These options have always been considered. A good example is the Work Injury Benefits Act which has provided for these options.

- iv. The common law practice involves paying the plaintiff his damages in a once-off lump sum. This means the assessment of losses, both past and future, must be carried out at the date of the trial. This can prove unsatisfactory as it offers the plaintiff no recourse if his condition deteriorates after the trial or if something unforeseen at the time of trial occurs which drastically alters his position. The lump sum is calculated by the use of two figures – the **multiplier** and the **multiplicand**.²
- v. The **multiplicand** is the annual sum that represents the plaintiff's loss or earnings or expenses at the time of trial. This figure is then multiplied by the multiplier to calculate the total award. The multiplier must reflect not only the number of years for which the loss will last but also the elements of uncertainty contained in that prediction and the fact that the plaintiff will receive immediately a lump sum which he is expected to invest. Thus, inevitably the calculation will be '**rough and ready**'.
- vi. This amendment tends to lose the main objective of the Insurance Act which was to regulate the Insurance business. The amendment allows insurance companies to take control of how much liability they wish to compensate victims. One of the principles of Insurance is that victims are indemnified against loss. The proposed maximum amount may not be sufficiently enough to cover some occurrences.
- vii. Under the proposed amendments, compensation in the cases of death as a result of an accident is uniform for all categories of victims. The scheme is also known as "*No faulty plan*". Unlike

² See an article by Margaret Devaney- L.L.B., L.L.M., Law Reform Commission of Ireland- **A Comparative Assessment of Personal Injuries Compensation Schemes: Lessons for Tort Reform?**

the current system where the driver who causes an accident pays for the injuries sustained for the driver who did not cause the accident, in the proposed scheme, even the driver who caused the accident is expected to benefit.

England Experience

10. In light of the problems with both lump sum awards and annuity payments, attempts have been made to find a 'third way' between the lump sum and the annuity payment. In England, for example, three measures have been introduced which signal a move away from the pure lump sum payment system.

- i. Under *s. 32 of the Supreme Court Act 1981*, the court has the power to order an interim payment of damages if liability is admitted and the defendant is a public authority or is covered by insurance or has other sufficient resources. Practice has shown this procedure to be of limited use to plaintiffs however.
- ii. The second measure was introduced by *s. 6 of the Administration of Justice Act 1982* and it allows the court to make a provisional award in cases where the medical prognosis is particularly uncertain and where there is a chance, that some serious disease or serious deterioration in the plaintiff's condition will accrue at a later date. The typical case where this power could be used is epilepsy which may manifest itself several years after a head injury. However, the courts have interpreted this power quite restrictively. Two of the primary limiting factors are that the feared event must be specified by the claimant's lawyers in the original action in considerable detail (which is obviously quite difficult) and that the right to return to court and have the award adjusted arises only once. Due to these restrictions the provisional damages provision has not been used frequently to date.
- iii. These reforms did not solve the problems associated with lump sum awards and so the structured settlement was introduced in 1996. Under *s. 2 of the Damages Act 1996*, as originally enacted, the parties had to agree to enter into a 'structured settlement' but the *Courts Act 2003* gives the court power, independently of the parties' consent, to order

a structured settlement. Awarding a structured settlement means that the injured person receives a guaranteed income or pension derived from an annuity bought by the insurer and held for the benefit of the injured person. The income payments can be varied or 'structured' over a period of time. The structured settlement offers two primary advantages to the plaintiff – the income generated can be guaranteed against erosion by inflation and it is paid free of tax into the plaintiff's hands. If the plaintiff received a lump sum award s/he would not have to pay tax on the award itself but (usually) would have to pay tax on income from investment of that sum. Therefore, the structured settlement is fiscally attractive for plaintiffs and also for defendant insurers as they can write off the payments made to the plaintiff and reduce their tax liability.

However, the disadvantage of the structured settlement for the plaintiff is that s/he has no access to the capital which has been used for the purchase of the annuity and does not, therefore, have lump sums available to deal with major emergencies.³

11. In the US it has also been argued that certain structured settlement provisions result in a pro-plaintiff bias to damage awards and that the complexity of the statutes result in differing assessments of expected damage awards that discourage pre-trial settlements and lengthen post-verdict negotiations.⁴

12. The Committee observed that the proposed Bill would limit compensation to victims, restrict law suits and also limit the litigants' and courts' discretion.

Conclusion

³ Basil S. Markesinis, Michael Coester, Guido Alpa & Augustus Ullstein, *Compensation for Personal Injury in English, German & Italian Law: A Comparative Outline* (Cambridge, 2005) at pp. 179-181.

⁴ Lawrence M. Spizman & Elizabeth Dunne Schmitt, 'Unintended Consequences of Tort Reform: Rent Seeking in New York State's Structured Settlements Statutes' 13 *Journal of Forensic Economics* 29

13. The Committee finds that in introducing the proposals, the Finance Minister did not take inflationary factors into consideration thereby requiring Parliament to continuously review the figures to cater for that.
14. The Committee further finds that the proposals deny accident victims rights to make a choice between the scheme and litigation.
15. The Committee also finds that some of the proposals undervalue certain degrees of disablement.
16. The Committee was not satisfied that the proposed amendment would meet its objective of reducing premiums. On the contrary there is a greater likelihood of an increase in premiums.

Recommendation

17. The Committee recommends that, the Minister for Finance withdraws the Insurance (Motor Vehicle Third Party Risks), (Amendment) Bill, 2010 to allow for further consultations with all stakeholders.

-----end-----

MINUTES OF THE 40 TH SITTING OF THE DEPARTMENTAL COMMITTEE H – ON JUSTICE AND LEGAL AFFAIRS HELD ON MONDAY, OCTOBER 11, 2010 IN THE COMMITTEE ROOM, 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00AM.

PRESENT

Hon. Millie Odhiambo-Mabona, M.P. - Chairing
Hon. Abdikadir Mohamed, M.P.
Hon. Isaac Ruto, E.G.H., M.P.
Hon. Amina Abdalla, M.P
Hon. Mutava Musyimi, M.P.
Hon. Nyamweya George, M.B.S, M.P
Hon. Sophia Abdir Noor, M.P

ABSENT WITH APOLOGY

Hon. Ababu Namwamba, M.P.
Hon. Baiya Njoroge, M.P.
Hon. Olago Aluoch, M.P.

ABSENT

Hon. (Prof) Philip Kaloki, M.P

IN ATTENDANCE

Mrs. Lucy Wanjohi
Mr. Abenayo Wasike
Miss Annete Bosibori

NATIONAL ASSEMBLY

Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

MIN NO. 153/2010

ADOPTION OF THE REPORT ON THE INSURANCE (MOTOR VEHICLE THIRD PARTY RISKS) (AMENDMENT) BILL, 2010

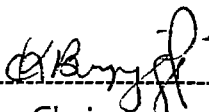
The Committee adopted the Report on the Insurance (Motor Vehicle Third Party Risks) (Amendment) Bill, 2010, for tabling in the House on Tuesday, October 12, 2010.

MIN NO. 154/2010

ADJOURNMENT

And there being no other business the Chairman adjourned the meeting at thirty minutes past eleven O'clock.

SIGNED



Vice- Chairperson

DATE

PAPER LA 10

By the Chairperson of the
Departmental Committee on
Justice & Legal Affairs
on Tuesday 16.12.20



KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT - FOURTH SESSION (2010)

REPORT OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS

ON THE APPROVAL OF NOMINEES TO THE JUDICIAL SERVICE
COMMISSION

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

December, 2010

PREFACE

Mr. Speaker Sir,

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of Standing order 198(3) which defines functions of the Committee as being:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
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- f) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Schedule II of the Standing Orders, the Committee is mandated to consider:-

- a) Constitutional Affairs
- b) The administration of law and order (Judiciary, police, prisons department, and community service orders)
- c) Public prosecutions

- d) Elections
- e) Integrity
- f) Anti-corruption and human rights.

The Committee oversees the following Ministries/Departments:

- a) Ministry of Justice, National Cohesion and Constitutional Affairs
- b) State Law Office
- c) The Judiciary
- d) Kenya Anti-Corruption Commission
- e) Interim Independent Electoral Commission
- f) Interim Independent Boundaries Commission

The Committee also has oversight mandate over all matters relating to political parties.

COMMITTEE MEMBERSHIP

The Committee comprises of the following members:

- | | |
|---|--------------------|
| Hon. Ababu Namwamba, M.P | - Chairperson |
| Hon. Njoroge Baiya, M.P | - Vice-Chairperson |
| Hon. Abdikadir Mohammed, M.P | |
| Hon. Millie Odhiambo-Mabona, M.P | |
| Hon. Mutava Musyimi, M.P | |
| Hon. George Omari Nyamweya, M.B.S., M.P | |
| Hon. Amina Abdalla, M.P | |
| Hon. Olago Aluoch, M.P | |
| Hon. Isaac K. Ruto, E.G.H., M.P | |
| Hon. Sophia Noor Abdi, M.P | |
| Hon. Eugene Wamalwa, M.P | |

Appointment of Members of the Judicial Service Commission

The Judicial Service Commission is established under Article 171 of the Constitution. Article 20(1) of the Sixth Schedule to the Constitution further provides that:-

“The Judicial Service Commission shall be appointed within sixty days after the effective date and the Commission shall be deemed to be properly constituted under this Constitution despite the fact that there may be a vacancy in its membership because any of the bodies nominating or electing members have not done so”.

Pursuant to these constitutional directions, the National Assembly proceeded to facilitate the approval of nominees to the Commission from the respective nominating bodies, namely the Association of Magistrates and Judges, the Law Society of Kenya, the Court of Appeal, the Public Service Commission and Office of the President, by conducting vetting in accordance with the laid down procedures.

Committee Sitings

The Committee held seven meetings and interviewed the five nominees elected by the Law Society of Kenya, Court of Appeal, the Public Service Commission and two nominees nominated by the President in consultation with the Prime Minister to represent the Public.

The Committee undertook the vetting process as required in the Constitution and approved the three nominees for appointment to the Judicial Service Commission.

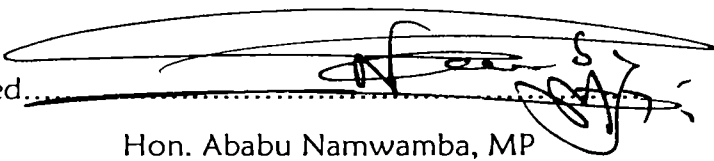
Acknowledgements

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

Mr. Speaker, Sir,

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to present and commend this report to the House for adoption pursuant to Standing Order 181.

Thank you

Signed.....

Hon. Ababu Namwamba, MP
Chairperson

Date:.....16/12/2020.....

Background

The Judicial Service Commission (JSC) is established under Article 171 of the Constitution. Article 171(2) provides that the JSC shall consist of:-

- a) The Chief Justice who shall be the chairperson of the Commission;
- b) One Supreme Court Judge elected by Judges of the Supreme Court;
- c) One Court of Appeal Judge elected by Judges of the Court of Appeal;
- d) One High Court Judge and one Magistrate, one a woman and one a man, elected by members of the Association of Judges and Magistrates;
- e) The Attorney-General;
- f) Two advocates, one a woman and one a man, each of who has at least fifteen years experience, elected by members of the statutory body responsible for the professional regulation of advocates;
- g) One person nominated by the Public Service Commission;
- h) One woman and one man to represent the public, not being lawyers, appointed by the President with the approval of the National Assembly;

The Chief Registrar of the Judiciary shall be the Secretary to the Commission.

The Committee vetted all nominees to the JSC in exercise of its general oversight mandate, and constitutional confirmation mandate of parliament under Article 250 of the Constitution.

Having earlier recommended the appointment of the two representatives of the Association of Judges and Magistrates, who were approved by the Honorable House, the Committee held further vetting sessions on diverse dates to consider candidates selected by the Law Society of Kenya, the Court of Appeal, the Public Service Commission and the President. This report is on that process.

Committee Vetting Proceedings

Law Society of Kenya (LSK)

1. Pursuant to Article 171(2)(f) of the Constitution and Article 20(1) of the Sixth Schedule to the Constitution, the Law Society of Kenya, through the Independent Electoral Commission (IIEC) conducted elections to elect two(2) representatives to the Judicial Service Commission.
2. The LSK subsequently forwarded to the National Assembly names of Mr. Ahmednasir Abdullahi and Mrs. Florence Muoti Mwangangi as the elected representatives of the society to the National Assembly for approval.
3. The Committee held one meeting on 26th October, 2010 to consider the two nominees. In conducting the vetting process, the Committee examined the candidates against the following criteria, inter alia:-
 - (1) Education
 - (2) Honours and Awards
 - (3) Employment record
 - (4) Professional Associations
 - (5) Published writings
 - (6) Public office, political activities and affiliations
 - (7) Statement of net worth
 - (8) Potential conflict of interest
 - (9) Pro-Bono/Charity work
 - (10) Moral Probity and Ethics
4. It should be noted that Mr. Ahmednasir challenged the jurisdictional mandate of the National Assembly to vet his appointment to the JSC, on the argument that since he had been elected by a membership organization, he was not subject to

vetting or confirmation as the act of election had already confirmed him as a member of the JSC. He raised this objection at the Committee meeting held on October 26th, 2010. While the LSK as an institution never stated its position on this matter, including at the same meeting which was attended by the Society's chairperson and secretary, public sentiments attributed to the chairperson, Mr. Akide seemed to support Mr. Ahmednasir's position.

5. The Committee considered Mr. Ahmednasir's objection, and disagreed with him on his interpretation of the Constitution. The Committee then gave the nominee and the LSK the option of withdrawing from the confirmation process. Mr. Ahmednasir decided of his own volition, with the agreement of the LSK, to subject himself to the vetting process. Mrs. Mwangangi, the other LSK nominee, did not raise any objection to her being vetted.
6. to The Committee made the following observations on the nominee, respectively:-

Mrs. Florence Mwangangi

An advocate of the High Court of Kenya, Mrs. Mwangangi has been in private legal practice since 1992. A holder of a Bachelor's Degree in Law (LLB) from the University of Nairobi, she has also attended educational seminars in diverse areas. The committee found that the nominee meets the basic requirements of academic and professional competence, and apparent political non-partisanship.

IMPORTANT: The Committee noted that the issue of a litigating advocate sitting on the JSC while remaining in active legal practice would raise definite serious conflict of interest. There was real potential of intimidation and undue influence

should such a member appear before a judicial officer that is the JSC's employee. Mrs. Mwangangi remains in active legal practice.

Mr. Ahmednasir Abdullahi

An advocate of the High Court of Kenya since 1991, he holds a Master of Laws (LLM) Degree from Cornell University and has previously taught law at the University of Nairobi besides chairing the pioneer Kenya Anti-Corruption Advisory Board, from which he resigned. On the evaluation grounds of academic and professional competence, and apparent political non-partisanship, the committee found the nominee qualified.

DISCLOSURE

Several issues have emerged regarding this nominee that the Committee wishes to bring to the attention of the House:

1. The issue of an active litigating advocate serving on the JSC applies to Mr. Ahmednasir in similar manner as it does to Mrs. Mwangangi.
2. The Committee received two formal complaints against Mr. Ahmednasir that touch on his integrity and moral probity.
 - a) The Committee received a letter from the National Bank of Kenya accusing Mr. Ahmednasir of violation of professional confidentiality rules relating to obtaining documents from the Bank in suspicious circumstances. The committee considered this matter at length, and even invited the nominee back for further clarification after receiving oral presentations from the Bank's legal department. In doing this, the committee inquired into whether this matter raised a question of integrity in terms of Chapter Six of the Constitution that speaks to the subject of leadership and integrity.

b) The Committee subsequently received an affidavit also raising questions on the integrity of Mr. Ahmednasir sworn by Ms. Emily Wangari Kamau of the State Law Office, which affidavit was based on a letter authored by Mr. Dan Ameyo in his then capacity as Postmaster General of the Kenya Postal Corporation. The affidavit alleged that the nominee had attempted to extort Kshs 63 million from the Corporation in inflated legal fees. The Committee recalled the nominee as well as Ms. Kamau and Mr. Dan Ameyo to a meeting held on November 24, 2010. The Committee interrogated the three persons on the allegations made. Again the Committee inquired into whether this matter contravened Chapter 6 of the Constitution.

Even as it considered these allegations, the Committee was unanimous that Mr. Ahmednasir would add value to the JSC because of his passion and strong views. But the Committee also noted that while a conclusive determination could not be made in the limited time available, the matter could not be ignored and should be brought to the attention of the House and the public.

Court of Appeal

The Registrar of the High Court forwarded the name of Justice Omolo Riaga R.S. as the Court's representative vide their letter dated October 22nd, 2010.

Justice Omolo Riaga R.S: The nominee is a long-serving judicial officer, a Court of Appeal Judge who has been a member of the Judicial Service Commission since 2003. The Committee considered this nominee at a meeting held on October 27th, 2010 and found the nominee qualified on the required grounds of academic and professional competence, moral probity and political non-partisanship. He was competent to represent the Court of Appeal at the Judicial Service Commission.

Public Service Commission

The Public Service Commission nominated Mr. Titus Gatere vide its letter dated October 27th, 2010 to represent it on the Judicial Service Commission. The Committee considered this nominee at a meeting held on November 24th, 2010.

Mr. Titus J.K. Gatere: He has been the Chairman of the Public Service Commission since 2005 and has been representing the Commission in the Judicial Service Commission since then. The Committee found Mr. Gatere duly qualified on the basic evaluation grounds of academic qualification, professional competence, moral probity and apparent political non-partisanship.

Office of the President

The office of the President presented the names of Bishop Antony Muheria and Prof Christine Kevin Abungu Mango vide their letter dated 16th November, 2010.

a) Bishop Antony Muheria

The nominee is a holder of a Bachelor of Science (Civil Engineering) from the University of Nairobi, and is the Bishop of the Catholic Diocese of Kitui. The committee found this nominee qualified on the required grounds of academic and professional competence, moral probity and political non-partisanship.

b) Prof.Christine Kevin Abungu Mango

A holder of PhD in Entomology the nominee has vast experience in addition to being a former member of Parliament. The Committee found the nominee duly

qualified on the evaluation grounds of academic qualification, professional competence, moral probity and apparent political non-partisanship.

Committee Vetting Proceedings

1. Pursuant to Article 250(of the Constitution, the Committee recommends as follows:
 - i) **Justice Omolo Riaga R.S:** Be approved as representative of the Court of Appeal
 - ii) **Mrs. Catherine Muoti Mwangangi:** Be approved, on condition that she is precluded from litigation while serving on the JSC.
 - iii) **Mr. Titus J,K Gatere:** Be confirmed representative of the Public Service Commission
 - iv) **Bishop Antony Muheria:** Be Confirmed to represent the public.
 - v) **Prof. Christine Kevin Abungu Mango:** Be Confirmed to represent the public.
 - vi) **Mr. Ahmednasir Abdullahi:** Approved by four members, with four dissenting. Recommended to be confirmed, also be on condition that he is precluded from litigation while serving on the JSC.
2. That, this House urges the Attorney-General to propose legislation to provide for vetting of all appointments to senior positions by the National Assembly.

3. That legislation be considered to address the question of conflict of interest for advocates to serve on the JSC.

-----end-----

MINUTES OF THE 63ND SITTING OF THE DEPARTMENTAL COMMITTEE H –
ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY DECEMBER 16,2010
IN THE MAIN CONFERENCE,COUNTY HALL,PARLIAMENT BUILDINGS AT
11.00AM

PRESENT

Hon. Ababu Namwamba, M.P. - Chairperson
Hon. Njoroge Baiya, M.P. - Vice-Chairperson
Hon. Abdikadir Mohamed, M.P.
Hon. Amina Abdalla, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. Olago Aluoch, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Eugene Wamalwa, M.P.
Hon. George Omari Nyamweya, M.B.S, M.P.

ABSENT WITH APOLOGY

Hon. Isaac Ruto, E.G.H., M.P.
Hon. Sophia Abdi Noor, M.P

IN ATTENDANCE

Mrs. Lucy Wanjohi

NATIONAL ASSEMBLY

Second Clerk Assistant

MIN NO. 218/2010

REPORT OF THE JUDICIAL SERVICE COMMISSION

The Committee considered the Report on the judicial Service Commission forwarding the following nominees to the House for approval namely:-

- i) Justice Omolo Riaga R.S – Court of Appeal
- ii) Mr. Ahmednasir Abdullahi –Law Society of Kenya
- iii) Mrs. Catherine Muoti Mwangangi - Law Society of Kenya
- iv) Mr.Titus J,K Gatere – Public Service Commission
- v) Bishop Antony Muheria - Office of the President

vi) Prof.Christine Kevin Abungu Mango - Office of the President

After deliberations on the six nominees, the committee adopted the Report but three members gave their dissenting views as follows:

Minority Report

- a) Hon. George Omari Nyamweya, M.P
- b) Hon.Mutava Musyimi,M.P;and
- c) Hon.Olago Aluoch,M.P

The three members declined to recommend Mr.Ahmednasir Abdullahi for appointment as a Commissioner to the Judicial Service Commission since his integrity had been put to question on two instances brought before the Committee. Consequently they did not consider him suitable for nomination to the Judicial Service Commission.

It was agreed that the dissenting views would be incorporated in the Report.

MIN.NO. 219/2010

ADJOURNMENT

And there being no other business the Chairperson adjourned the sitting at thirty minutes past twelve o'clock.

SIGNED	----- HON.ABABU NAMWAMBA,M.P ----- Chairperson DECEMBER 16,2010
DATE	-----

MINUTES OF THE 47TH SITTING OF THE DEPARTMENTAL COMMITTEE H – ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY OCTOBER 28,2010 IN THE COMMITTEE ROOM,5TH FLOOR,CONTINENTAL HOUSE,PARLIAMENT BUILDINGS AT 11.00A.M

PRESENT

Hon. Ababu Namwamba, M.P. - Chairperson
Hon. Baiya Njoroge, M.P. - Vice-Chairperson
Hon. Millie Odhiambo-Mabona, M.P.
Hon. Olago Aluoch, M.P
Hon. Amina Abdalla, M.P
Hon. Mutava Musyimi, M.P.
Hon. Sophia Abdir Noor, M.P
Hon. Isaac Ruto, E.G.H., M.P.

ABSENT WITH APOLOGY

Hon. Abdikadir Mohamed, M.P
Hon. Nyamweya Omari George, M.B.S, M.P

IN ATTENDANCE

Mrs. Lucy Wanjohi
George Otieno
Mr.Abenayo Wasike

NATIONAL ASSEMBLY

Clerk Assistant
Clerk Assistant
Third Clerk Assistant

MIN NO. 177/2010 - INTRODUCTORY REMARKS

The Chairman informed the Members that it had become necessary to meet Mr.Ahmednasir,the nominee by the Law Society of Kenya, due to integrity issues raised by the National Bank of Kenya.

MIN.NO.178/2010 - MEETING WITH THE NATIONAL BANK

Mr.L.G.Kamweti, the Company secretary, National Bank gave a brief on the issues that he considers that touches on the integrity issues of Mr.Ahmednasir Abdullahi which involved confidential correspondence unlawfully obtained under unclear circumstances.Mr.Kamweti stated that efforts to have Mr.Abdullahi explain the source of the letter were futile. The Bank has therefore referred the matter to the Advocates Disciplinary Committee.

MIN.NO.179/2010 MEETING WITH MR,AHMEDNASIR ABDULLAHI

Mr. Abdullahi stated that he had had a long relationship with the Bank but they had since parted ways. He stated that the two parties went to court for taxation of fees and payment paid to the advocates. He confirmed that the letter by M/s Ochieng, Onyango, Kibet and Ohaga had been given to him by the Company Secretary.

The Committee considered the matter and did not consider it material to change its position. The Committee therefore recommended the nominee for appointment to the judicial Service Commission to represent the Law Society of Kenya.

MIN. NO. 180/2010

MEETING WITH THE TRUTH JUSTICE &
RECONCILIATION COMMISSION

The committee had invited the Commission to inform them of its decision which was that unless the commission sorted out its integrity and credibility issues within 72 hours, the Committee would proceed and introduce appropriate Legislation that would disband the Commission but spare the secretariat.

MIN. NO. 181/2010

ADJOURNMENT

And there being no other business the Chairperson adjourned the sitting at twenty minutes past eleven.

HON. ABABU NAMWAMBA, M.P

SIGNED

Chairperson

DECEMBER 16, 2010

DATE

MINUTES OF THE 46TH SITTING OF THE DEPARTMENTAL COMMITTEE H – ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY OCTOBER 27,2010 IN THE COMMITTEE ROOM,5TH FLOOR,CONTINENTAL HOUSE,PARLIAMENT BUILDINGS AT 11.00A.M

PRESENT

Hon. Ababu Namwamba, M.P. - Chairperson
Hon. Baiya Njoroge, M.P. - Vice-Chairperson
Hon. Abdikadir Mohamed, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. Olago Aluoch, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Nyamweya George, M.B.S, M.P.
Hon. Sophia Abdir Noor, M.P

NON.MEMBER

Hon. Mohammed Affey,M.P

ABSENT WITH APOLOGY

Hon. Isaac Ruto, E.G.H., M.P.
Hon. Amina Abdalla, M.P

IN ATTENDANCE

Mrs. Lucy Wanjohi
George Otieno
Mr.Abenayo Wasike

NATIONAL ASSEMBLY

Clerk Assistant
Clerk Assistant
Third Clerk Assistant

MIN NO. 173/2010 - INTRODUCTORY REMARKS

The Chairman welcomed Judge Omolo to the meeting and informed him that the process of regenerating governance with the Judiciary which was quite significant after which he invited the Judge to give a brief background about himself.

MIN.NO.174/2010 - APPROVAL OF COURT OF APPEAL REPRESENTATIVE

Justice Omolo Riaga,R.S ,the representative of the Court of Appeal to the Judicial Service Commission informed the Committee that he was a presiding Judge of the Court of appeal and has been a member of the Judicial Service Commission since 2003.He confirmed that he was elected by nine(9) out of ten(10) judges to represent them in the Commission. He has contributed to the jurisprudence and his views about rights of women have been incorporated in the Constitution.

N.B. Justice Omollo was allowed to leave the room.

The Committee recommended the Judge for appointment to the Judicial service Commission. He had the mandate of the Judges of the Court of Appeal to represent them in the Judicial Service Commission. His past experience would assist the Commission in the transition period.

MIN.NO.175/2010 REPORT ON THE NOMINEES TO THE POLITICAL PARTIES
DISPUTES TRIBUNAL

The Committee considered and adopted the report on the Political Parties Disputes Tribunal.

It was resolved that the Report be prepared for tabling by the Vice-Chairperson on Tuesday, November 2, 2010 since the Chairperson will be out of the Country .

MIN NO. 176/2010 ADJOURNMENT

And there being no other business the Chairperson adjourned the sitting at twenty minutes past eleven.

SIGNED HON ABABU NAMWAMBA, M.P.

 Chairperson
 DECEMBER 16, 2010

DATE -----

MINUTES OF THE 45TH SITTING OF THE DEPARTMENTAL COMMITTEE H –
ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, OCTOBER 26 2010 IN
COMMITTEE ROMM, 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT
BUILDINGS AT 10.00A.M

PRESENT

Hon. Ababu Namwamba, M.P.	- Chairperson
Hon. Baiya Njoroge, M.P.	- Vice-Chairperson
Hon. Abdikadir Mohamed, M.P	
Hon. Millie Odhiambo-Mabona, M.P.	
Hon. Olago Aluoch, M.P	
Hon. Amina Abdalla, M.P	
Hon. Mutava Musyimi, M.P.	
Hon. Nyamweya George, M.B.S, M.P	
Hon. Isaac Ruto, E.G.H., M.P.	
Hon. Sophia Abdi Noor, M.P	

IN ATTENDANCE
NATIONAL ASSEMBLY

Mrs. Lucy Wanjohi	Clerk Assistant
George Otieno	Third Clerk Assistant
Mr.Abenayo Wasike	Third Clerk Assistant
Miss.Jackline Kamathi	Parliamentary Intern
Miss. Linda Kiriinya	Parliamentary Intern

TRUTH JUSTICE & RECONCILIATION COMMISSION

Amb.Bethwel Kiplagat	Chairman
Patricia Nyaundi	C.E.O

LAW SOCIETY OF KENYA

Mr.Kenneth Akide	Chairman
Apollo Mboya	C.E.O
Florence Mwangangi	Member
Ahmednasir	Member

MIN.NO.167

INTRODUCTORY REMARKS

The Chair welcomed the members present and after introducing them, he invited Chairman of the Commission to introduce the Commissioners present.

MIN NO. 168/2010

MEETING WITH THE TRUTH JUSTICE AND RECONCILIATION COMMISSION

The Chairman thanked the Committee for the meeting after which, he gave a brief of the activities the Commission had thanked the Committee for according it an opportunity to appear before allowing the Chief Executive Officer to expound on the activities of the Commission.

The following were the highlights of the presentation:

1. Work plan

The Commission has collected 6,000 statements up to 11th October, 2010 with the highest number being collected from the Rift Valley and the lowest from the Coast province. They target to collect at least 30,000 statements. However the statements are being taken without civic education. The Commission has prepared a work plan up to November 2011. The Commission is encouraging community dialogue as the country works towards reconciliation and healing and has developed policies that will help in the process of reconciliation.

2. Financial Constraints

The Commission was allocated Kshs 190,000,000.00 out a budget of Kshs 1,196,639,515. This amount could only sustain the Commission for the next one month. The Commission has not been able to attract donors due to credibility crisis currently facing it.

3. Organizational Structure

The Commission has a workforce of 73 staff members with 58% male against 42% female and 413 statement takers. The Commission has also established four regional offices.

Committees' observations

The Committee commended the Commission for the work done but reiterated that it must address the credibility and integrity issues facing it to enable it proceed with its mandate. The Committee Chair thanked the Commissioners for attending the meeting and informed them that the Committee would discuss this matter and communicate its decision to the Commission due course.

N.B-The Commission was excused from the meeting.

Way-Forward

The Committee observed that until the issue of credibility and integrity of the Chairman was resolved, the Commission cannot function and would therefore not fulfill its mandate which was due to expire by November 2011.

The Committee resolved to hold a meeting with the Commission on Friday, October 29, 2010 where the Commission will be requested to sort out its internal wrangling failing which the Committee will take action towards disbanding and reconstituting the Commission through a statute that will set clear timelines. The secretariat will not be affected by the disbandment.

MIN NO. 170/2010

REVIEW OF NOMINEES TO THE POLITICAL PARTIES TRIBUNAL

The Committee observed that this matter had been discussed and concluded at a meeting held on September 16, 2010 where the Committee rescinded its decision and resolved to table the names brought to the House by the Minister for Justice, National Cohesion and Constitutional Affairs vide a letter dated 1st September, 2009. It was resolved that a report be prepared for tabling at the earliest time possible.

MIN NO. 171/2010

APPROVAL OF THE LAW SOCIETY OF KENYA NOMINEES TO THE JUDICIAL SERVICE COMMISSION

The Chairperson welcomed the Chairman of the Law Society of Kenya, Mr. Ken Akide and other representatives of the Society to the meeting. He stated that the Committee was undertaking the vetting of nominees to the Judicial Service Commission pursuant to provisions of the Constitution, elections by the respective bodies notwithstanding. He stated that the Committee had developed a criteria to guide in the vetting process.

The Committee then proceeded to vet the nominees as follows:

N.B: Hon Abdikadir Mohamed, M.P declared an interest in this matter and exempted himself from the vetting process.

Florence Muoti Mwangangi

The following were the highlights:

- The nominee received the most votes in an election process overseen by the Independent Electoral Commission.
- She has been an advocate of the High Court since 1990 and a counsel member for two terms.
- Her first priority at the Judicial Service Commission would be to address the issue of case backlog.
- She is a member of the Public Complaints Commission
- She has only been convicted of a traffic offence
- She would want the judges to be vetted in batches
-

Ahmednasir Abdullahi

Mr. Ahmednasir questioned the capacity/mandate of the Committee in the vetting process especially in view of the fact that he had received overwhelming mandate from the membership of the Law Society of Kenya. He stated that the vetting process was unconstitutional and the Committee did not have mandate to undertake the process. In response the Chair on behalf of the Committee stated that the Committee had constitutional mandate to undertake the process on behalf of the House but informed Mr. Ahmednasir that he had a choice not to go through the process. Mr. Ahmednasir agreed to go through the vetting process.

The following were the highlights:

- He received the highest number of votes in an election conducted by the Independent Electoral Commission.
- He has been an advocate of the High Court since 1991
- He is a past Chair of the Law Society of Kenya (2003-4)
- He was a Commissioner Kenya Law Review Commission (2003-6)
- A past Chairman, Kenya Anti-corruption Advisory Board
- He is a Director, First Community Bank
- A publisher and Editor-in-Chief, Nairobi Law Monthly
- He would have all the judges resign and go through vetting before appointment
- He was once arrestee in the precincts of the Central Police when he went to take brief from a client. The case was later dropped.

Committees' Observations

The Judicial Service Commission would play a pivotal role in reforming the Judiciary hence the need to appoint exceptional commissioners.

The Committee recommended the two nominees for appointment to the Judicial service Commission since Mrs. Florence Mwangangi represents gender in the Commission while the passion for reforms in the Judiciary exhibited by Mr.Ahmednasir would benefit the Judicial service Commission.

MIN.NO.172/2010

ADJOURNMENT

And there being no other business the Chairperson adjourned the sitting at fifteen minutes past two.

HON.ABABU NAMWAMBA,M.P

SIGNED

Chairperson

DECEMBER 16,2010

DATE
