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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION

DEPARTMENTAL COMMITTEE ON LABOUR

REPORT ON THE CONSIDERATION OF THE PUBLIC SERVICE (VALUES AND PRINCIPLES)
(AMENDMENT) BILL, 2022 (NATIONAL ASSEMBLY BILL NO. 46 of 2022)

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| THE NATIONAL ASSEMBLY PAPERS LAID | | CLERK-AT THE-TABLE: |
| DATE: 26 APR 2023 | DATE: 26 APR 2023 | BY: |
| TABLED BY: | Hon. Karemba Muchangi, MP CHAIRPERSON, LABOUR COMMITTEE | THE NATIONAL ASSEMBLY PAPERS LAID |
| CLERK-AT THE-TABLE: | CHRISTINE MDIRITH | |

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CHAIRPERSON'S FOREWORD

The Public Service (Values and Principles)(Amendment) Bill, 2022 (National Assembly Bill No. 46) was read a first time on Thursday 16th February 2023 and was subsequently committed to the Departmental Committee on Labour for consideration and advertising for public participation pursuant to Standing Order 127. The Bill seeks to amend the Public Service (Values and Principles) Act, 2015 (No. 1 of 2015).

The Clerk of the National Assembly facilitated the placement of adverts in the print media on 23rd February, 2023 seeking for comments from the public on the Bill pursuant to Article 118 of the Constitution. The Committee received written memoranda from nine (9) stakeholders.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee, Committee Secretariat and all those who responded to the National Assembly's advert inviting the public to present their views on the Bill.

On behalf of the Committee and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the report of the Committee on its consideration of the Public Service (Values and Principles)(Amendment) Bill, (National Assembly Bill No. 46)

HON. ERIC MUCHANGI KAREMBA, M.P.
CHAIRPERSON, THE DEPARTMENTAL COMMITTEE ON LABOUR

PART I

1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Labour was constituted on 27th October, 2022 and is established under provisions of S.O 216. Standing Order No. 216(5) grants the Committee amongst other functions to:

- 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 the implementation;
- (ba) on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
- c) study and review all legislation referred to it;
- d) 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) investigate and inquire 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);
- (fa) examine treaties, agreements and conventions;
- g) make reports and recommendations to the House as often as possible, including recommendation of propose legislation;
- h) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) examine any questions raised by Members on a matter within its mandate.

Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to Labour, human capital and remuneration, trade union relations and public service.

1.2 Oversight

In line with the assigned subject matter, and in executing this mandate, the Committee oversees the following Ministries, Departments and Agencies (MDAs):

- 1) The State Department for Public Service and its Autonomous and Semi-Autonomous Government Agencies which include;
 - a) Huduma Kenya
 - b) Kenya School of Government; and
 - c) Institute of Human Resource Management
- 2) The State Department for Labour and Skills Development and its Autonomous and Semi-Autonomous Government Agencies which include;
 - a) National Industrial Training Authority (NITA);
 - b) National Productivity and Competitiveness Centre (NPCC);
 - c) Kenya National Labour Board and the Wages Council;
 - d) National Employment Authority (NEA);

2.0 CONSIDERATION OF PUBLIC SERVICE (VALUES AND PRINCIPLES) (AMENDMENT) (NATIONAL ASSEMBLY BILL NO. 46), 2022

2.1 Background Information

1. The Public Service (Values and Principles) (Amendment) (NA No. 46) 2022 seeks to amend the Public Service (Values and Principles) Act, No. 1A of 2015.

2.2 Summary of the Bill

2. The Bill seeks to amend the Public Service (Values and Principles) Act, No. 1A of 2015 to require all state organs and state corporations to submit annual reports on details of the human resource in constitutional commissions, independent offices and County public service boards and County Assembly service boards. The Reports should contain details outlining the total number of employees and highlighting their gender, age, county of birth and county of residence.
3. The justification is that it will facilitate the public service values and principles that require the public service to reflect Kenya's diverse communities and afford adequate and equal opportunities for appointment of women and men, members of all ethnic groups and persons with disabilities pursuant to Article 232 of the Constitution. By receiving annual reports, legislatures can discharge the oversight role bestowed upon them as they will be able to analyze and query non-compliant state organs.

Proposed amendment to s.16 of No. 1A of 2015

4. The Proposed amendments are:-
 - i. In sub-clause (3) by inserting the following paragraph immediately after paragraph (d)-
"(da) details on the human resource establishment within the Service Commission outlining the total number of employees and highlighting their gender, age, county of birth, county of residence, ethnicity and whether they are persons living with disabilities."
 - ii. by inserting the following new subsection immediately after subsection (3)-
(4) An authorized officer who fails to prepare a report under subsection (1) may be subjected to disciplinary action in accordance with the laid out procedures

2.3 Public Participation in the Review of the Bill

5. Article 118 (1) (b) of the Constitution of Kenya provides as follows: -
"Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees"

Standing Order 127(3) provides as follows-

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

6. In line with the Constitution and Standing Orders, the National Assembly in the local daily newspapers of 23rd February, 2023 invited the public to make representations on the proposed amendments in the Bill as per annexure 2 of the report. The Committee received written submissions on the proposed amendments to the Public Service (Values and Principles) Act, No. 1A of 2015.
7. The following Stakeholders were requested to submit their views to the Committee:

1.4 Committee Secretariat

The Committee has the following technical staff, representing the Office of the Clerk:

Ms. Rose M. Wanjohi
Senior Clerk Assistant /Head of Secretariat

Mr. Samuel Wanjiru
Clerk Assistant III

Ms. Christine Odhiambo
Senior Legal Counsel

Mr. Fredrick Muthengi
Chief Fiscal Analyst

Ms. Wambui Nyachae
Research Officer III

Mr. Timothy C. Tsungulah
Research Officer III

Ms. Rehema Koech
Audio Officer III

Ms. Zainab Wario
Serjeant-At-Arms II

Mr. Alex Amwata
Hansard Officer III

Mr. Alan Gituko
Serjeant-At-Arms III

1.3 Committee Composition

1. The Departmental Committee on Labour was constituted by the House on 27th October 2022 and comprises of the following Members:

Chairperson

Hon. Eric Muchangi Karemba, MP
Runyenjes Constituency
UDA Party

Vice-Chairperson

Hon. Fabian Kyule Muli, MP
Kangundo Constituency
GDDP

Members

Hon. James Onyango K'Oyoo, MP
Muhoroni Constituency
ODM Party

Hon. Ernest Ogesi Kivai Kagesi, MP
Vihiga Constituency
ANC Party

Hon. Richard Kiti Chonga, MP
Kilifi South Constituency
ODM Party

Hon. Joseph Samal Lomwa, MP
Isiolo North Constituency
Jubilee Party

Hon. George Aladwa Omwera,
Makadara Constituency
ODM Party

MP Hon. Catherine Wambiliaga, MP
Bungoma County
FORD-K

Hon. Amina Dika Abdullahi, MP
Tana River Constituency
KANU

Hon. Dorice Aburi Donya, MP
Kisii County
WDM-K

Hon. Patrick Simiyu Barasa, MP
Cherangany Constituency
DAP-K Party

Hon. Mangale Munga Chiforomodo, MP
Lunga Lunga Constituency
UDM Party

Hon. Peter Irungu Kihungi, MP
Kangema Constituency
UDA Party

Hon. Leah Sopiato Sankaire, MP
Kajiado County
UDA Party

Hon. Lilian Chebet Siyoi, MP
Trans Nzoia County
UDA Party

- e) Migrant Workers Welfare Fund
- f) Department of Labour Migration Management;
- 3) Public Service Commission;
- 4) Salaries and Remuneration Commission;

- i. Office of the Attorney General
 - ii. The Public Service Commission
 - iii. The Kenya Law Reform Commission
 - iv. The Law Society of Kenya
 - v. The Katiba Institute
 - vi. The Office of the Data Commissioner
 - vii. The Salaries and Remuneration Commission
 - viii. The Kenya National Human Rights and Equality Commission
 - ix. The National Lands Commission
 - x. The Independent Electoral and Boundaries Commission
 - xi. The Judicial Service Commission
 - xii. Commission on Revenue Allocation
 - xiii. The Teachers Service Commission
 - xiv. The National Police Service Commission
 - xv. The Office of Auditor General
 - xvi. Controller of Budget
8. The following stakeholders submitted their memoranda to the Committee:-
- i. The Public Service Commission
 - ii. The Kenya Law Reform Commission
 - iii. The Law Society of Kenya
 - iv. The Office of the Data Commissioner
 - v. The Teachers Service Commission
 - vi. Commission on Revenue Allocation
 - vii. The National Police Commission
 - viii. The Salaries and Remuneration Commission
 - ix. The Office of the Attorney General

3.0 Submissions from Stakeholders

3.1 Hon. Abdul Rahim Dawood, MP, Sponsor of the Bill

9. Hon. Dawood, MP submitted that the term “authorized officer” as mentioned in the Bill refers to the definition as contained in the Public Service Commission Act, 2017. However, there may be need to amend the definition as the other commissions and independent offices may not prescribe to the same definition nor have a definition of an authorized officer for the purpose of the proposed Bill.
10. He informed the committee that the inclusion of the two parameters, county of birth and county of residence in the report, would prevent persons being disadvantaged during job searches. Where you were born and what ethnicity you belong to may not collate to where you are residing or where you may eventually be employed, especially for public servants.
11. On the issue of data privacy, the Member advised that the advice of the data commissioner should be sought to confirm what data requested in parameters proposed in the bill could be deemed privilege/sensitive. He is willing to have any of the reporting parameters proposed in the bill that is classified as privilege or private be deleted from the Bill. He conceded that the Public Service Commission Act 2017 in section 55 provides for a review of qualifications of public servants.
12. He conceded that he had not been aware that there was a difference in the naming of “persons living with disabilities” and “persons with disabilities”. The constitution in Article 54 identifies “persons with disabilities”.

3.2 The Public Service Commission

13. The Commission agrees with the introduction of parameters for measurement of inclusivity in terms of gender, ethnicity, disability, status and age.
14. However, the Commission noted that there is no justification for the inclusion of county of birth and county of residence as there is no requirement for this parameter under the Constitution.
15. The Commission raised concerns on the inclusion of academic qualifications given the provision for a review of the same in sect 55 of the PSC Act. The Commission stated that the report presents total numbers of each of the parameters listed and not to each individual persons. This would make the exercise unrealistic and cumbersome given the time constraints and purpose of the report.
16. The Commission also noted that as a commission it has no issue with the definition of “authorized officer” since it’s as contained in the Public Service Commission Act. However, the other independent offices and commissions may wish to expand or further define the term “authorized officer” as it pertains to them.
17. The Commission did not make a presentation of the term “persons living with disabilities”.

Committee Observation

18. **The Committee agreed that the inclusion of parameter of “county of birth and county of residence” may be discriminatory and offend Article 27(4) of the Constitution and therefore should be deleted from the Bill.**

3.3 The Kenya Law Reform Commission

19. The Commission noted that the term “authorized officer” which is used in the new subsection (4) and in other sections of the Act is not defined in the Public Service (Values and Principles) Act, 2015.
20. The justification for having a definition is for clarity purposes.

Committee Observation

21. **The Committee agreed that the term “authorized officer” should be defined in the Bill to include other commissions and independent offices in addition to what it is defined as in the Public Service Commission Act.**

3.4 The Law Society of Kenya

22. They presented that the word “living” be deleted from the Bill and it remains “persons with disabilities” as provided in Article 54 of the Constitution. It is offensive to refer to disabled persons as persons living with disabilities.
23. They agreed with the inclusion of academic and professional qualifications since it gives effect to the goal of merit based recruitment as provided in Article 232(1) of the Constitution.
24. The Law Society of Kenya noted that the enactment and implementation of the Bill may conflict with the Data Protection Act since the annual reports are considered public documents, in particular in conflict with Article 31 of the Constitution which guarantees the right to privacy. Further they noted that section 25 of the Data Protection Act mandates the data controller to ensure that personal data is collected for explicit, specified and legitimate purposes and not processed in a manner incompatible with those purposes; and further that such personal data is adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed. The collection and recording of employee data will therefore be regulated by the provisions of the Data Protection Act, which allows for the collection of personal information.

Committee’s Observation

25. **The Committee agreed to the deletion of the word” living” so that it reads “persons with disabilities”.**

The following institutions made written submissions to the Committee

3.5 National Police Service Commission

26. The National Police Service Commission submitted THAT

- i. On the definition of the term “authorized officer”, the National Police Service Commission has no definition in the National Police Service Act, 2011 but has a definition in their Human Resource Manual.

The NPSC proposed an amendment to define “authorized officer” to mean *“the Commission Secretary or officer appointed and exercising the powers, performing similar duties and functions for or on behalf of the Commission for purposes of preparing the Statutory Annual reports to Parliament and the President”*

- ii. Section 26(3)(i) of the NPSC mirrors the proposed section 3(da) of the proposed Bill as it provides that
S.26 (3) Annual Report- “the Annual report shall contain, in respect of the year to which it relates-
(i) the gender, county, regional and ethnic diversity of the service”
- iii. Deletion of proposed introduction of sub-clause 3(da) on the parameter of county of residence.

The justification is that the NPSC has members who serve duties at National Level and operationalized countrywide. The force is dynamic due to the nature and exigencies of work and county of residence may not be a good indicator in its annual report.

NPSC further proposed that the reporting on the categories outlined in the proposed amendments be in a summary version as reporting subheadings for over 100,000 staff in a dynamic work environment may not be practicable within the timelines every year.

- iv. On proposed amendment (4) in the Bill, the NPSC proposes that the disciplinary action should be specific and proposes an amendment to insert *“of the Service Commission”* immediately after procedures.

The justification is that the authorized officers have a right to fair hearing and Fair administrative action. In addition, different services have different disciplinary procedures.

3.6 The Salaries and Remuneration Commission

27. The Salaries and Remuneration concurs with the proposed amendments

3.7 The Office of the Data Commission

28. Section 2 of the amendment of section 10 of No. 1A of 2015 seeks to collate and process among other employee details, **employee ethnicity**, which as part of the data to be collected, is deemed **“sensitive personal data “under Section 2 of the Data Protection Act (DPA)**. The DPA provides that where personal data is to be processed, a Data Protection Impact Assessment (DPIA) MUST precede the processing of such employee data, to identify and mitigate any potential risks. The data processing is to adhere to the principles set out under section 25 of the DPA. The employee of whom the data is being sought should be informed why the data is required, purpose, any third parties who may receive the data, protection of their data including security and integrity and whether their compliance is voluntary or mandatory.

29. The Office of the Data Commission recommends addition of a proviso” (da) *details on the Human resource establishment, within the service commissioning outlining the total number of employees and highlighting their*

gender, age, county of birth, county of residence, ethnicity, whether they are persons with disabilities, their academic qualifications and their professional qualifications, provided that the information in question is processed in accordance with the Data Protection Act, No. 24 of 2019.”

3.8 Commission of Revenue Allocation

30. The Commission of Revenue Allocation submitted that

- i. “Authorized Officer”- amend the proposed definition under section 2 to mean “*the head of the secretariat or person charged with the day to day administration and management of the affairs of a government entity*”.

Justification

The phrase is currently not defined

- ii. **Clause 16 Reports**- insert new sub clause 93) to section 16 immediately after paragraph (d)- (da) immediately after persons living with disabilities..” *religion, employment terms i.e. permanent or contractual and level of education* “.

Justification

The criteria to be part of the report content. It will align with the constitutional provisions on inclusivity e.g. Article 27 and to foster diversity.

- iii. **Clause 2(b)** - recommend that it specifies where the “*laid out procedures*” lie e.g. the specific law or if the same are as per the administrative policies of the institutions they serve.

Justification

To offer clarity to the provision and make it implementable.

3.9 Office of the Attorney General

31. The Office of the Attorney General submitted that it had no objections to the proposed amendments to the Public Service (Values and Principles) Act. However, they presented that as contained in the memorandum objects and reasons for the Bill, instead of the amendment to facilitate equal opportunities among other things, the objective should be aimed at facilitating equity rather than equality.

4.0 COMMITTEE OBSERVATIONS

The Committee while considering the Bill made the following key observations;

1. The term “persons living with disabilities” is offensive and has a negative connotation and should be amended in the bill and be defined as is contained in the Constitution;
2. To include the county of residence and that of birth is not provided for in the constitution, it may be deemed discriminatory offending article 27 (4) and will make the reporting exercise cumbersome since the totals of each parameter is what is required;
3. The matter of what data is private or privileged as has been proposed to be contained in the report as per the parameters should be determined as per the Data Protection Act, 2019 since the report is a public document;
4. The term “authorized officer” should be defined in a way that brings on board the other commissions and independent offices;
5. Where the “laid out procedures” lie should be specified e.g. the specific law or if the same are as per the administrative policies of the institutions they serve;
6. The authorized officers have a right to fair hearing and fair administrative action. Further different services have different disciplinary procedures;
7. The inclusion of county service boards and the provision for the reporting to include the governor and county assembly means the bill requires concurrence from the Senate.

5.0 COMMITTEE RECOMMENDATIONS

Having considered the Bill and the views by different stakeholders, the Committee recommends-

1. THAT, the Bill be amended by inserting the following definition in section 2 of the Act:
“authorized officer” means any officer appointed within the public service or service Commission to perform its delegated functions within the public service or service Commission;

Justification

The amendment seeks to provide the definition of the term “authorized officer” which is contained in the Bill and is also used in other sections of the Act but is not defined in the Public Service (Values and Principles) Act, 2015.

2. THAT, the Bill be amended by inserting the following definition in section 2 of the Act:
“public office” has the meaning assigned in Article 260 of the Constitution.

Justification

The amendment seeks to ensure that a public office is defined as contained in the Constitution, and further to ensure that every public office shall be mandated to prepare a report on the status of the promotion of the values and principles of public service.

3. THAT, clause 2 of the Bill be amended in the proposed new paragraph (da) by deleting the word “living”.

Justification

The deletion of the word ‘living’ is necessary so as to use the term “persons with disabilities” as provided in Article 54 of the Constitution.

4. THAT, clause 2 of the Bill be amended in the proposed new paragraph (da) by deleting the words “county of birth, county of residence”.

Justification

The deletion of the parameters of county of birth and county of residence is necessary as these two parameters are not provided for in the Constitution as parameters for achieving fair competition, merit and fair representation within the public service.

5. THAT, clause 2 of the Bill be amended in the proposed new subsection (4) by inserting the words “of the respective service Commission or public office” immediately after the words “in accordance with the laid out procedures”.

Justification

The amendment seeks to eliminate the possibility of ambiguity and provide with clarity that the disciplinary action to be taken against any authorized officer who fails to prepare the report shall be the disciplinary procedures applicable to the office of the specific authorized officer.

6. THAT, the Bill be amended by inserting an amendment to section 16(1) of the Bill as follows:
“Section 16 of the principal Act is amended in subsection (1) by inserting the words “and each public office” immediately after the words “each service Commission”

Justification

The amendment seeks to ensure that each public office within the meaning of the Constitution shall be obligated to prepare a report on the status of the promotion of the values and principles of public service. This is in keeping with the provisions of Article 232(2) of the Constitution which provides that the values

and principles of public service shall apply to public service in all State organs in both levels of government and all State corporations.

SIGNED.......... DATE.....25/04/2023.....

HON. ERIC MUCHANGI KAREMBA, M.P.
CHAIRPERSON, THE DEPARTMENTAL COMMITTEE ON LABOUR



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
 THIRTEENTH PARLIAMENT

DEPARTMENTAL COMMITTEE ON LABOUR

REPORT ADOPTION LIST

We, the members of the Departmental Committee on Labour, have pursuant to Standing Orders 199 and adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity.

Date: 18/04/2023

| | NAMES | SIGNATURE |
|-----|---|-----------|
| 1. | Hon. Karemba Eric Muchangi Njiru, MP-Chair person | |
| 2. | Hon. Muli Fabian Kyule, MP- Vice Chairperson | |
| 3. | Hon. K'Oyoo James Onyango, M.P. | |
| 4. | Hon. Kagesi Kivai Ernest Ogesi, M.P. | |
| 5. | Hon. Kiti Richard Ken Chonga, M.P. | |
| 6. | Hon. Lomwa Joseph Samal, M.P. | |
| 7. | Hon. Omwera George Aladwa, M. P. | |
| 8. | Hon. Wambilianga Catherine Nanjala, MP | |
| 9. | Hon. Abdullahi Amina Dika, M.P. | |
| 10. | Hon. Aburi Donya Dorice, M.P. | |
| 11. | Hon. Barasa Patrick Simiyu , M.P. | |
| 12. | Hon. Chiforomodo Mangale Munga, M.P. | |
| 13. | Hon. Kihungi Peter Irungu, M. P. | |
| 14. | Hon. Sankaire Leah Sopiato, M.P. | |
| 15. | Hon. Siyoi Lillian Chebet, M.P. | |