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Paper tabled
by vice-chair
Justice & Legal
Affairs Committee
on 14/12/11 at 2:30pm
[Signature]

KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT
FOURTH SESSION (2011)

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE NOMINATIONS OF THE CHAIRPERSON AND MEMBERS OF THE
ETHICS AND ANTI-CORRUPTION COMMISSION

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

DECEMBER, 2011

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;
- e) To investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister; and
- f) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

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

Mr. Speaker Sir,

On 1st December, 2011 you informed the House that H.E the President had after consultation with the Right Hon. Prime Minister nominated the following persons to be considered for appointment as chairperson and members of the Ethics and Anti-Corruption Commission by the National Assembly pursuant to the provisions of section 6(6) of the Ethics and Anti-corruption Commission Act No. 22 of 2011.

1. Mr. Mumo Matemu - Chairperson
2. Prof. Jane Kerubo Onsongo - Member
3. Ms. Irene Cheptoo Keino - Member

You then directed that the names and Curriculum Vitae (CVs) of the nominees be referred to the Departmental Committee of Justice and Legal Affairs for consideration prior to approval by the House and directed that the JLA to

deliberate on the nominees and table its report on or before Thursday December 8th, 2011.

The Committee held a meeting with each of the three nominees on Wednesday 14th December, 2011 starting at 9.30a.m. The Nominees made submissions on why they should be appointed to serve in the Ethics and Anti-Corruption Commission.

Mr. Speaker Sir,

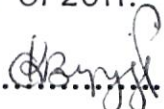
The Committee deliberated on the issues raised in the memoranda together with the submissions made by the nominees and now recommends that pursuant to the provisions of paragraphs 6(6) Ethics and Anti-Corruption Commission Act, No.22 of 2011, the House rejects the appointment of Mr. Mumo Matemu as Chairperson of the Ethics and Anti-Corruption Commission, Prof. Jane Kerubo Onsongo and Ms. Irene Cheptoo Keino.

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. The Committee also appreciates the media for live coverage of its proceedings during the vetting process. Further, the Committee thanks members of the public who made submissions to the Committee.

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 on the nominations to the Ethics and Anti-Corruption Commission, to the House for adoption in accordance with the provisions of section 6(7) of the Ethics and Anti-Corruption Commission Act No. 22 of 2011.

SIGNED.....

Hon.Njoroge Baiya, M.P

VICE-CHAIRPERSON

DATE:14/12/2011.....

BACKGROUND

1. The Ethics and Anti-Corruption Commission is established under Article 79 of the Constitution and the Ethics and Anti-Corruption Commission Act No 22 of 2011.
2. Article 79 of the Constitution provides that:-

Parliament shall enact legislation to establish an independent ethics and anti-corruption commission, which shall be and have the status and powers of a commission under chapter fifteen, for purposes of ensuring compliance with and enforcement of, the provisions of this Chapter.

3. Section 3 of the Ethics and Anti-Corruption Commission Act No. 22 of 2011 provides for the establishment and membership of the Commission. Section 4 provides inter alia that the Commission shall consist of a chairperson and two other members appointed in accordance with the provisions of this Act.
4. The Commission shall replace the **Kenya Anti-Corruption Commission (KACC)** which was established by Section 6 of the Anti-Corruption and Economic Crimes Act,2003
5. Following the enactment of the Ethics and Anti-Corruption Commission Act,NO.22 Of 2011 ,the President constituted a selection panel which held its inaugural meeting on September 12th,2011.The following persons were appointed to the selection panel:-

- | | | | |
|--------|----------------------------|---|-------------|
| i). | Mrs.Rose Mambo | - | Chairperson |
| ii). | Mr. Levi Obonyo | - | Member |
| iii). | Rev. Dr.Samuel Kobia | - | Member |
| iv). | Mrs. Sheila N.Kiambati | - | Member |
| v). | Mr.Caroli Omondi,CBS | - | Member |
| vi). | Mr.Tache Bonsa Gollo | - | Member |
| vii). | Mr.Charles Kanjama | - | Member |
| viii). | Mrs.Florence Simbiri Jaoko | - | Member |
| ix). | Mr.John K.Tuta | - | Member |

6. On 26th September, 2011, the Selection Panel advertised in the *Daily Nation* and in *The Standard* Newspapers one (1) vacancy for the position of chairperson and two(2) vacancies for the position of Member of the Commission.
7. Twenty one (21) applications were received for the position of Chairperson and one hundred and sixty four (164) applications for the position of member. However due to insufficient number of qualified female applicants for the position of Chairperson, the Selection panel decided to re-advertise the said position.
8. The names of all the applicants for the position of member and the shortlisted candidates were published in the print media on 18th October, 2011 and oral interviews conducted on 1st and 2nd November at the Public Service Commission.
9. Re-advertisement for the position of Chairperson was done on 24th October, 2011 in the *Daily Nation* and *The Standard* Newspapers. Upon closure of the re-advertisement on 1st November, 2011, the Selection Panel had received a total of seventy nine(79) applications. The Selection Panel shortlisted nine(9) candidates and the names plus those names of all the applicants for the position of Chairperson were published in the print media on 4th November, 2011. Interviews were conducted on 8th and 9th November, 2011. The Selection Panel, pursuant to section 6(5)(e),(f) and (g) of the Act forwarded to the President the following names for the Chairperson and members as follows:
 - a) Chairpeson
 - i). Mr. Erick O. Omogeni
 - ii). Mr. Mumo Matemu, MBS
 - iii). Dr. Sarah M. Kilemi
 - b) Members
 - i). Prof. Jane Kerubo Onsongo
 - ii). Mr. Ochillo Polycarp J. Omolo
 - iii). Mr. Robert Francis Shaw
 - iv). Ms. Irene Cheptoo Keino
10. A letter from the Office of the Permanent Secretary, Secretary to the Cabinet and Head of Public Service dated 24th November, 2011, to the Clerk of the National Assembly indicated that His Excellency the President has, in consultation with the Prime Minister, nominated Mr.Mumo Matemu as Chairperson while Prof.Jane Kerubo Onsongo and Ms.Irene Cheptoo Keino as members of the Ethics and Anti-Corruption Commission.

11. On 1st December, 2011, the Speaker in a communication to the House referred the names of the three nominees to the Departmental Committee on Justice and Legal Affairs for vetting and directed the Committee to submit its recommendations on the nominees to the House on Thursday, 7th December, 2011.

CONSIDERATION OF THE NOMINEES BY THE COMMITTEE

12. The nominees were nominated to serve in the Ethics and Anti-Corruption Commission pursuant to Articles 79 and 250 of the Constitution and Sections 6,7 and 8 of the Ethics and Anti-Corruption Act,2011.

At a meeting held on December 14,2011, the Committee examined the Candidates against the criteria set out in the Schedule to the *Public Appointments (Parliamentary Approval)Act, No.33 of 2011* (Criteria for vetting/approval of nominees for appointment to public office by Parliament). That criterion requires nominees to disclose information on their personal and professional life including their political affiliations, tax compliance and potential conflict of interests and other things.

13. Their qualifications for appointment to the office are set out in Section 5 of the Ethics and Anti-Corruption Act(EACC),No.22 of 2011. The Chairperson of the EACC shall be a person who meets the requirement of Chapter Six of the Constitution; holds a degree from a university recognised in Kenya; has knowledge and experience of not less than fifteen years in any office of the following fields:- ethics and governance; law; public administration; leadership; economics; social studies; audit; accounting; fraud investigation; public relations and media or religious studies or philosophy and has had a distinguished career in their respective fields.

14. The member of the EACC shall be a person who meets the requirement of Chapter Six of the Constitution, must be a citizen of Kenya ; must hold a degree from a recognized University; have proven relevant experience in any of the following: ethics and governance, law, public administration, leadership, economics, social studies, audit, accounting, fraud investigation, public relations and media or religious studies or philosophy and has had distinguished career in their respective field.

Nomination of Mr. Mumo Matemu as Chairperson of the Ethics and Anti-Corruption Commission

15. The Committee having considered the curriculum vitae of **Mr. Mumo Matemu**, and having heard his submissions during the interview, made the following observations on his nomination:-

- i). That Mr. Mumo Matemu, is a Kenyan citizen born in 1954. He is a Lawyer and an advocate of the High Court of Kenya for the over twenty five (25) years.
- ii). He holds a Bachelors' Degree in Law (LLB) from the University of Nairobi, Post Graduate Diploma from Kenya School of Law.
- iii). He is a Certified Public Secretary.
- iv). He is currently the Chairman of the Taskforce on Citizenship and related provisions of the Constitution. He has also served as a Commissioner – Support Services, he served as Commissioner, Customs & Excise Department at the Kenya Revenue Authority. He served in the Agricultural Finance Corporation as Legal Officer, Senior Legal Officer and Chief Legal Officer. He served in the Judiciary as District Magistrate II (Professional) and Resident Magistrate.
- v). He is a member of the Law Society of Kenya, Institute of Certified Public Secretaries of Kenya and International Bar Association.
- vi). He has published several writings including: Report of the Taskforce on Citizenship and related provisions of the Constitution to the Minister of State for Immigration and Registration of persons, Report /presentation to the annual meeting of Ambassadors held in 2011 at the Leisure Lodge on developments in the law on citizenship, presentation to the International Bar Association in Madrid, Spain on developments in trade law in East Africa, development of the enforcement strategy paper for Kenya Revenue Authority in 2008.
- vii). He received the Presidential award and honour of the Order of the Moran of Burning Spear in December 2010.
- viii). He has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry;

- ix). He is not a member of any political party and does not expect any conflict of interest to arise;
- x). He has never been charged in a court of law for any offence;

Nomination of Prof Jane Kerubo Onsongo as a member of the Ethics and Anti-Corruption Commission.

16. The Committee having considered the curriculum vitae of **Prof Jane Kerubo Onsongo**, and having heard her submissions during the interview, made the following observations on her nomination:-

- i). That she is a Kenyan Citizen born on 11th November 1967. She holds a PhD in Higher and Further Education, Masters of Arts in Education, leadership and management of Higher Education, Master of Education in Educational Communication and Technology and a Bachelor of Education (Arts), History and CRE. She is currently a lecturer at the Catholic University of Eastern Africa. She was an Assistant Director, Preventive Services, Kenya Anti-Corruption Commission, and she has worked at the Teachers Service Commission.
- ii). She is not a member of any political party and does not expect any conflict of interest to arise.
- iii). She has fully complied with her tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry;
- iv). She has never been charged in a court of law for any offence.

Nomination of Ms. Irene Cheptoo Keino as a member of the Ethics and Anti-Corruption Commission

17. The Committee having considered the curriculum vitae of Ms. Irene Cheptoo Keino made the following observations on her nomination:-

- i). That Irene Cheptoo Keino was born on 16th February 1964 and holds an Executive Masters in Business Administration from Jomo Kenyatta University of Agriculture and Technology, a Masters in Urban and Regional

Planning and a Bachelor of Arts in Geography and Sociology. She works as an Estates Manager with the National Cereals and Produce Board. She was the Vice-Chair, Advisory Board of the Kenya Anti-Corruption Commission. A member of the Selection panel for the recruitment of the Independent Electoral and Boundaries Commission, a Board Member of the Physical Planning Registration Board and a council member of the Architectural Association of Kenya.

- ii). She is a Member of the Architectural Association of Kenya, Physical Planning Registration Board, Royal Town Planning Institute and International Society of City and Regional Planners.
- i). She has fully complied with her tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry;
- iii). She is not a member of any political party and does not expect any conflict of interest to arise;
- iv). She has never been charged in a court of law for any offence.

RECOMMENDATIONS OF THE COMMITTEE

18. The Committee deliberated on the nominees to the Ethics and Anti-Corruption Commission and noted that :-
 - The nominees lacked the passion, initiative and the drive to lead the fight against Corruption in this country.
 - The nominees did not demonstrate sufficient interest in the fight against corruption.
 - All the nominees had excellent careers with excellent academic qualifications but lacked the passion to lead the Anti-Corruption Commission which qualifications could be relevant at other levels.
19. Following the above deliberations, the Committee recommends that pursuant to the provisions of section 10 of the Ethics and Anti-Corruption Commission Act,

No.22 of 2011, the House rejects the nominations of the following persons for appointment to serve in the Ethics and Anti-Corruption Commission in the stated capacities:-

1. Mr. Mumo Matemu - Chairperson
2. Prof. Jane Kerubo Onsongo - Member
3. Ms. Irene Cheptoo Keino - Member

20. The Committee recommends that the Executive submits fresh names for consideration and approval to the Ethics and Anti-Corruption Commission, based on experience and passion for the fight against corruptions.

21. The Committee further observed that the Executive failed to include details on the criteria used to bypass the best candidates. The Committee therefore recommends that future nominations should be accompanied by reports outlining the standards used.

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MINUTES OF THE 71ST SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY, DECEMBER 14, 2011 IN COMMITTEE ROOM. NO. 7, PARLIAMENT BUILDINGS AT 9.00 A.M.

PRESENT

Hon. Njoroge Baiya (Chairing)
Hon. Olago Aluoch, M.P.
Hon. Eugene Wamalwa, M.P.
Hon. George Omari Nyamweya, MBS, M.P.
Hon. Abdikadir Mohammed, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. Sophia Abdi Noor, M.P.
Hon. Mutava Musyimi, M.P.

ABSENT WITH APOLOGY

Hon. Ababu Namwamba, M.P.
Hon. Isaac Ruto, EGH, M.P.
Hon. Amina Abdalla, M.P.

IN ATTENDANCE

Mrs. Consolata Munga
Mrs. Lucy Wanjohi
Ms. Wanjiru Ndindiri

KENYA NATIONAL ASSEMBLY

Deputy Director/Committees
Second Clerk Assistant
Third Clerk Assistant

MIN.NO.244/2011

VETTING OF NOMINEES TO THE ETHICS & ANTI-CORRUPTION COMMISSION

The Committee was guided in the vetting process by the questionnaire provided in the Schedule of the Public Appointments (Parliamentary Approval) Act. The following were the main areas covered during the deliberations, among others:

1. The nominee's educational background and personal details
2. Participation in any pro-bono/charity works
3. The nominee's prior professional/Employment History
4. Honours and Awards
5. Sources of income/statement of Net worth/tax compliance status
6. Public office, political activities and affiliations
7. Potential conflicts of interest

MR. MUMO MATEMU, MBS

The nominee informed the Committee of his extensive legal background, especially his experience as the Commissioner of Support Services at the Kenya Revenue Authority, and most recently as the Chair of the Taskforce on Citizenship and Related Provisions of the Constitution.

PROF. JANE K. ONSONGO

The nominee highlighted her long career as an educationist, primarily as a university academic, researcher and scholar. The Committee also heard that she previously served on the now defunct Kenya Anti-Corruption Commission for one year as the immediate former Assistant Director, Preventive Services.

The Committee considered and determined that her skill-set did not match the job to which she had been nominated.

MS. IRENE C. KEINO

The nominee informed the Committee of her relevant experience for this post, which included working in the Government and related organisations for the past 17 years, most recently serving on the Selection Panel for the nominees to the Independent Electoral and Boundaries Commission.

The Committee considered and determined that her skill-set did not match the job to which she had been nominated.

MIN. NO. 245/2011

APPROVAL AND ADOPTION OF THE REPORT

The Committee considered, made observations and adopted the report unanimously rejecting the nominees. The Committee recommended that fresh names be submitted for consideration and possible approval to the Ethics and Anti-Corruption Commission, based on their suitability and past experience.

MIN.NO 246/2011

ADJOURNMENT

And there being no other business the Chair adjourned the sitting at ten minutes to one o'clock until a date to be determined.

Signed:
(Chairperson)

Date: 14/12/2011

