

REPUBLIC OF KENYA



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Recommended for  
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Eg 26/04/21

PARLIAMENT  
THE SENATE  
TWELFTH PARLIAMENT  
FIFTH SESSION

REPORT OF THE STANDING COMMITTEE ON FINANCE AND BUDGET

Approved  
30/4/2021

ON  
THE SALARIES AND REMUNERATION COMMISSION (AMENDMENT) BILL  
(SENATE BILLS NO. 31 OF 2020)

CLERK CHAMBERS  
THE SENATE  
PARLIAMENT OF KENYA  
NAIROBI

APRIL 2021



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## PREFACE

### Mandate and Functions of the Committee

Article 124 of the Constitution of Kenya, provides for the establishment of Committees by either House of Parliament. Committees are central to the workings, roles and functions of Parliament as set out in Article 94 and more specifically in Article 96 of the Constitution as regards the Senate.

Parliamentary committees consider policy issues, scrutinize the workings and expenditure of the national and county governments and examine proposals for legislation. The roles of committees are twofold, investigative process and deliberative process. The end results of these processes are reports to the House in plenary on inquiry of certain issues under the mandate of a particular committee.

The Standing Committee on Finance and Budget is established pursuant to section 8 of the Public Finance Management Act, 2012 and standing order 212(3) of the Senate Standing Order and is mandated –

- a) *To investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to examine –*
  - i) *the Budget Policy Statement presented to the Senate;*
  - ii) *report on the Budget allocated to Constitutional Commissions and independent offices;*
  - iii) *the Division of Revenue Bill, County Allocation of Revenue Bill, and cash disbursement schedule for county governments.*
  - iv) *To consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance and monetary policies and public debt, planning and development policy and*
- b) *To pursuant to Article 228 (6) of the Constitution, to examine the report of the Controller of Budget on the implementation of the budgets of county governments.*



### **Membership of the Committee**

The Standing Committee on Finance and Budget was constituted by the House on Thursday, 14<sup>th</sup> December, 2017 during the First Session of the Twelfth Parliament. The Committee was later reconstituted on Wednesday, 24<sup>th</sup> June, 2020, during the Fourth Session of the Twelfth (12<sup>th</sup>) Parliament. The Committee as currently constituted, comprises the following Members-

- |  |                    |
|--|--------------------|
| 1. Sen. Charles Kibiru, MP               | - Chairperson      |
| 2. Sen. (Dr.) Ochillo Ayacko, MP,        | - Vice Chairperson |
| 3. Sen. Wetang'ula Moses Masika, EGH, MP | - Member           |
| 4. Sen. Kimani Wamatangi, MP             | - Member           |
| 5. Sen. Mutula Kilonzo Junior, CBS, MP   | - Member           |
| 6. Sen. Aaron Cheruiyot, MP              | - Member           |
| 7. Sen. Rose Nyamunga, MP                | - Member           |
| 8. Sen. CPA Farhiya Haji, MP             | - Member           |
| 9. Sen. Milicent Omanga, MP              | - Member           |





## **EXECUTIVE SUMMARY**

The Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No. 31 of 2020) was sponsored by the Senate Standing Committee on Finance and Budget. The bill was published on 4<sup>th</sup> December, 2020. The bill was read a First Time on 4<sup>th</sup> March, 2021. Following the First Reading, the Bill, stood committed to the Standing Committee on Finance and Budget pursuant to standing order 140(1) of the Senate Standing Orders.

Subsequently, the Committee considered the Bill and resolved to subject it to public hearings pursuant to Article 118 of the Constitution and Standing Order 140 (5). The Committee invited submissions from members of the public on the Bills via advertisements on the newspapers. The Committee also invited the Council of Governors, the Salaries and Remuneration Commission and the National Treasury.

The Committee received written submissions on the Bills from members of public and public institutions. Consequently, all the views raised by the stakeholders were considered and amendments are proposed in this report.

The Committee recommends that the House approves the Bill with the amendments attached.



## **ACKNOWLEDGEMENT**

The Committee is grateful to the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the conduct of its meetings and the public participation. The Committee acknowledges submission of views on the Bill by the National Treasury, the Kenya National Commission on Human Rights (KNCHR), the African Women Studies Centre (AWSC)- the University of Nairobi, the Salaries and Remuneration Commission and Mr. John Gachoki- a member of public.

Appreciations to the Members of the Committee for their patience, sacrifice and commitment to public service, which enabled the Committee complete the assigned task within the stipulated time.

It is now my pleasant duty and privilege, on behalf of the Standing Committee on Finance and Budget, to present to the Senate, this Report of the Committee on the Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No. 31 of 2020).

**SIGNATURE:**

  
\_\_\_\_\_

**SEN. CHARLES KIBIRU, MP.**

**(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)**

**DATE: 26<sup>th</sup> April, 2021**



## CHAPTER ONE

### 1.0 Highlights of the Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No. 31 of 2020)

The bill sponsored by Sen. Charles Kibiru, Chairperson, Senate Standing Committee on Finance and Budget on behalf of the Committee, was read a First Time on 4<sup>th</sup> March, 2021. Thereafter, it was committed to the Standing Committee on Finance and Budget for consideration and subsequent tabling of a report.

1. The principal object of the Bill is to amend sections 7 and 9 of the Salaries and Remuneration Commission Act, No. 10 of 2011, to-
  - (a) provide for notification, in the *Gazette*, of the expiry of term for Commissioners of the Salaries and Remuneration Commission; and
  - (b) provide for timelines for the filling of vacancies in the Commission, upon the expiry of term for Commissioners.
2. Clause 2 of the Bill proposes to amend Section 7 (2) of the Act to require that nominating bodies undertake their respective selection exercises within twenty-one days of publication of an advertisement for a vacancy in the Commission.
3. Clause 3 of the Bill proposes to amend Section 9 of the Act to list “*expiry of the term of the office holder under Article 250(6)(a) of the Constitution*” as a ground upon which a vacancy in the Commission occurs. This will therefore mean that under section 10 of the Act, the President will be required to give notice of the vacancy in the Gazette within fourteen days.
4. The Salaries and Remuneration Commission is established under Article 230 of the Constitution. The Commission is mandated to-
  - (a) set and regularly review the remuneration and benefits of all state officers; and
  - (b) advise the national and county governments on the remuneration and benefits of all public officers.
5. The composition of the Salaries and Remuneration Commission (SRC) ensures that each sector affected by the decisions of the Commission nominates members to



serve on it. In this regard, Article 230 (2) provides that the Commission is to comprise the following-

- (a) *a chairperson;*
- (b) *one person nominated by each the following bodies from among persons who are not members or employees of those bodies—*
  - (i) *the Parliamentary Service Commission;*
  - (ii) *the Public Service Commission;*
  - (iii) *the Judicial Service Commission;*
  - (iv) *the Teachers Service Commission;*
  - (v) *the National Police Service Commission;*
  - (vi) *the Defence Council; and*
  - (vii) *the Senate, on behalf of the county governments;*
- (c) *one person each nominated by—*
  - (i) *an umbrella body representing trade unions;*
  - (ii) *an umbrella body representing employers; and*
  - (iii) *joint forum of professional bodies as provided by legislation;*
- (d) *one person each nominated by—*
  - (i) *the Cabinet Secretary responsible for finance; and*
  - (ii) *the Attorney-General; and*
- (e) *one person who has experience in the management of human resources in the public service, nominated by the Cabinet Secretary responsible for public service.*





6. The procedure for nomination of a Member of the Salaries and Remuneration Commission is set out in the Salaries and Remuneration Act. In this regard, Section 6 of the Act provides as follows-

*(1) Every nominating body under Article 230(2)(b) and (c) of the Constitution shall nominate its representative to the Commission in a competitive and transparent manner in accordance with section 7.*

*(2) A person shall not be qualified for nomination under Article 230 (2)(d) or (e) of the Constitution unless such person holds the qualifications specified in section 7.*

7. Section 7(1) of the Salaries and Remuneration Act provides that “*within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the Commission relating to the members under Article 230(2)(b) and (c) of the Constitution, the relevant nominating body shall, by advertisement in at least two local daily newspapers of national circulation, invite applications from persons who qualify for nomination under the Constitution and this Act for nomination as a member of the Commission*”.

8. Section 7(2) of the Act further provides that “*the relevant nominating body shall consider the applications received under subsection (1) to determine their compliance with the provisions of the Constitution and this Act, interview the applicants and forward the names of two persons so qualified, who shall be of opposite gender, to the Cabinet Secretary for onward transmission to the President*”.

9. Sections 9 and 10 of the Salaries and Remuneration Commission Act provide for vacancy in the membership of the Commission as follows-

*9. vacancy in the office of chairperson and member*

*(1) The office of the chairperson or a member of the Commission shall become vacant if the holder—*



- (a) *dies;*
- (b) *by notice in writing addressed to the President resigns from office;*
- (c) *is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.*

(2) *The President shall notify every resignation, vacancy or termination in the Gazette within fourteen days.*

#### *10. Filling of vacancy*

(1) *Where a vacancy occurs in the membership of the Commission under section 9, the appointment procedure provided for under the Constitution and this Act, shall apply.*

(2) *A member appointed under subsection (1) shall serve for a term of six years but shall not be eligible for reappointment.*

#### **Situational Analysis**

10. Under section 9 of the Act, “expiry of term for commissioners” was not listed as a ground for vacancy in the office of commissioner or chairperson. As such, there was no specific requirement for notification of vacancy resulting from expiry of term, in the *Gazette*, within fourteen days as is provided for vacancies arising from the circumstances contemplated under section 9(1).
11. While section 7 requires that the selection process commences within fourteen days of the occurrence of a vacancy, the Act did not provide a mechanism for notification of the vacancy to the nominating bodies when the term of Commissioners expires.
12. Without a single notice to all nominating bodies, each body took note of the vacancy (at its own time) and then commenced the nomination process. A notification of vacancy in the *Gazette* was therefore necessary to prompt the simultaneous nomination processes by all bodies required to nominate Commissioners to the Salaries and Remuneration Commission.



13. In addition, the Salaries and Remuneration Act did not provide for timelines for the process of selection of the Commissioners. That was indeed evidenced by the selection process that followed the expiry of term for the immediate former Commission on 15<sup>th</sup> December, 2017. The various nominating bodies commenced the selection process at different times and by 12<sup>th</sup> June, 2018, the selection of all nominees under Article 230 of the Constitution, had not been completed. Additionally, all the nominees would be required to be approved by the National Assembly under Article 250 of the Constitution. A delay in the selection process therefore delayed the entire appointment process.
14. The Bill therefore sought to provide for timely appointment of Commissioners following the expiry of term of the preceding Commission so as to ensure that matters relating to salaries and remuneration of State and public officers were not unduly delayed due to the absence of commissioners.



## CHAPTER TWO

### 2.0 SUBMISSION BY STAKEHOLDERS

#### 2.1 Submission by the Kenya National Commission on Human Rights

15. The Commission welcomed the move to amend the principal Act and agreed with the object of the Bill that sought to provide for notification of the expiry of term for Commissioners in the Gazette and to provide for timelines for the filling of vacancies in the Commission upon the expiry of term for Commissioners. A careful look at Principal Act pointed to a lacuna that warranted an amendment and therefore the proposed amendment to Sections 7 and 9 of the Salaries and Remuneration Commission Act, 2011 were timely and in order.
16. A further analysis of appointment timelines for other Constitutional Commissions however indicated that in a majority of them, the selection panels were required to undertake the selection process within specific timelines specified in the constitutive Acts of the Commissions. For instance, the selection panel for the National Gender and Equality Commission (NGEC), the Teachers Service Commission (TSC), the Kenya National Commission on Human Rights (KNCHR) have seven (7) days each within which to consider applications for membership of the respective Commissions. On the other hand, the selection panel of members of the National Land Commission has 21 days within which to consider applications received.
17. The KNCHR observed that majority of the selection panels have seven (7) days to consider applications received while such timelines do not exceed 21 days save for the case of the election panel of members of the National Land Commission. Further, there were selection panels that lacked statutory timelines within which to consider applications received.
18. The KNCHR therefore proposed that the timeline proposed under Clause 2 of the Bill be reduced from 28 days to 7 days. That was to align the timeline to what was already provided for in majority of selection panels of various Commissions. That would promote good governance.





No.	Clause and Title	Proposed Recommendation	Justification
1.	2- Amendment of section 7 of No.10 of 2011.	Section 7 of the Salaries and Remuneration Commission Act is amended in subsection (2) by inserting the words “within twenty-eight days of publication of an advertisement under subsection (1),” immediately after the words “The relevant body shall” KNCHR proposed that the timeline be reduced from 28 days to 7 days	To align the timeline to be in tandem with what was already provided for by majority of selection panels of various other Commissions. That would also ensure that the selection process was conducted expeditiously.
	3- Amendment of section 9 of No.10 of 2011.	Section 9 of the Salaries and Remuneration Commission Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (b)– (ba) ceases to hold office by virtue of expiry of the term of the office holder under Article 250 (6) (a) of the Constitution; or The Commission proposes that the amendment be made by inserting the new paragraph immediately after paragraph (c) and not (b) – so that it becomes the new Section 9 (1) (d) of the Act.	It was important to have a complete distinction of when there was a vacancy occasioned by member of the Commission resigning under Section 9 (1) (b) of the Act and when one’s term expired under Article 250 (6) (a) of the Constitution as proposed in the amendment. Having a separate new paragraph inserted after Section 9 (1) (c) of the Act as proposed would enhance that distinction and provide statutory clarity

## 2.2 Submission by the Salaries and Remuneration Commission

Salaries and Remuneration Commission submitted as follows:

19. They were in support of the proposed amendment in Clause 3 of the Bill inserting the words “*within twenty-eight days of publication of an advertisement under subsection (1)* immediately after the words “the relevant body shall” to section 7 of the SRC Act, in so far as it seeks to provide a timeframe within which nominating bodies should nominate persons to represent them in SRC.



20. They were of the considered view that Clause 3 of the bill, which sought to amend section 9 of the SRC Act to include vacation of office by the Chairperson or member on expiry of the term, that provides that

*(ba) ceases to hold office by virtue of expiry of the term of the office holder under Article 250 (6)(a) of the Constitution; merely restates the tenure of chairperson and members of SRC as provided by the Constitution and therefore inconsequential.*

### **2.3 Submission by the National Treasury**

21. The Cabinet Secretary, National Treasury and Planning submitted that they concurred with the proposed amendments to sections 7 and 9.

### **2.4 Submission by the African Women Studies Centre (AWSC) - The University of Nairobi**

22. The African Women Studies Centre (AWSC) - University of Nairobi, reviewed the Salaries and Remuneration Commission (Amendment Bill), 2021 from a gender perspective and gave the following recommendations:

<b>Provision</b>	<b>Comment</b>	<b>Recommendation</b>
amends Section 7 subsection (2) of the Salaries and Remuneration Commission Act by inserting the words "within twenty-eight days of publication of an advertisement under subsection (I)," immediately after the words "The relevant body shall"	The principal object of the Bill is to amend sections 7 and 9 of the Salaries and Remuneration Act, No. 10 of 2011, to provide for notification of the expiry of term for Commissioners in the Gazette and to provide for timelines for the filling of vacancies in the Commission upon the expiry of term for Commissioners. That provision was good as it ensured adherence to constitutionalism.	The clause should specifically state: "nominating body" In adhering to constitutional timelines and in filling vacant positions, the nominating body should consider the path towards gender equality and two-thirds gender rule.



	<p>Under section 9 of the Salaries and Remuneration Commission Act, the "expiry of term for commissioners" was not listed as one of the grounds for vacancy in the office of commissioner or chairperson. As such, there was no express requirement for notification of a vacancy, resulting from expiry of term, in the Gazette within fourteen days, as was provided for vacancies arising from the circumstances contemplated under section 9 (I). A notification of vacancy in the Gazette was necessary to prompt the simultaneous nomination processes by all bodies required to nominate Commissioners to the Salaries and Remuneration Commission..</p>	<p>AWSC Supported this amendment. In adhering to constitutional timelines and in filling vacant positions, the nominating body should consider the path towards gender equality and two thirds gender rule.</p>
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### 2.3 Submission by Mr. John Gachoki

23. Mr. Gachoki, a Kenya Citizen submitted that his expectation was that parliamentarians were included and limited by the bill. He opined that it was not about how much any one earned any more but who was above who in terms of emoluments and power, thus competition for resources. According to him it was high time the country limited herself to available resources. The bill was not addressing that, at least not effectively, thus not helping the country's wage bill problems.



## CHAPTER THREE

### 3.0 OBSERVATIONS AND RECOMMENDATIONS

#### Observations

- a) Section 9 of the Salaries and Remuneration Act, 2011 does not list “expiry of term for Commissioners” as a ground for vacancy in the office of commissioner or chairperson. As such, there was no specific requirement for notification of vacancy resulting from expiry of term, in the *Gazette*, within fourteen days as is provided for vacancies arising from the circumstances contemplated under section 9(1).
- b) In absence of the above (a) provision, each nominating body takes note of the vacancies that arise and commence nomination process at their own time. It was therefore necessary to amend the Salaries and Remuneration Act, 2011 to provide for notification of vacancy in the *Gazette* to prompt a concurrent nomination processes by all bodies required to nominate Commissioners to the Salaries and Remuneration Commission.
- c) The Act does not provide for timelines for the process of selection of the Commissioners. Thus, the various nominating bodies undertake the process at different times and take there is no stipulated timeline within which the exercise may be concluded. That would result in overall delay of the appointment of the Commissioners. It was therefore necessary to amend the SRC Act 2011 to ensure there was timely appointment of Commissioners, upon the expiry of term of the existing Commissioners.

#### Recommendations

The Committee recommends that the Salaries and Remuneration (Amendment) Bill (Senate Bills No. 31 of 2020), be approved with amendments as follows-

#### CLAUSE 2

**THAT** clause 2 of the Bill be amended by deleting the words “twenty-eight” appearing immediately after the word “within” and substituting therefor the word “fourteen”.





## APPENDICES

- (a) Proposed Committee Stage Amendments
- (b) Minutes of the Committee Sitings
- (c) Submissions from stakeholders



21<sup>st</sup> April, 2021

**The Clerk of the Senate  
Parliament Buildings  
NAIROBI**

**RE: COMMITTEE STAGE AMENDMENTS TO THE SALARIES AND  
REMUNERATION COMMISSION (AMENDMENT) BILL, SENATE BILLS  
NO. 31 OF 2020**

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NOTICE is given that Sen. Charles Kibiru, Chairperson, Standing Committee on Finance and Budget intends to move the following amendment to the Salaries and Remuneration (Amendment) Bill, Senate Bills No. 31 of 2020, at the Committee Stage-

**CLAUSE 2**

THAT clause 2 of the Bill be amended by deleting the word “twenty-eight” appearing immediately after the word “within” and substituting therefor the word “fourteen”.

Dated ...22<sup>nd</sup> April, 2021.....



Charles Kibiru,  
Chairperson,  
*Standing Committee on Finance and Budget.*



**MINUTES OF THE 210<sup>TH</sup> MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON TUESDAY, 20<sup>TH</sup> APRIL, 2021 AT 9:00 AM VIA ZOOM ONLINE PLATFORM.**

**PRESENT**

- |  |                     |
|--|---------------------|
| 1. Sen. Charles Kibiru, MP               | - Chairperson       |
| 2. Sen. (Dr.) Ochillo Ayacko, MP         | - Vice- Chairperson |
| 3. Sen. Wetang'ula Moses Masika, EGH, MP | - Member            |
| 4. Sen. CPA Farhiya Haji, MP             | - Member            |
| 5. Sen. Mutula Kilonzo Junior, CBS, MP   | - Member            |
| 6. Sen. Rose Nyamunga, MP                | - Member            |
| 7. Sen. Millicent Omanga, MP             | - Member            |

**ABSENT WITH APOLOGY**

- |                              |          |
|------------------------------|----------|
| 8. Sen. Aaron Cheruiyot, MP  | - Member |
| 9. Sen. Kimani Wamatangi, MP | - Member |

**SECRETARIAT**

- |                            |                    |
|----------------------------|--------------------|
| 1. Mr. Christopher Gitonga | - Clerk Assistant  |
| 2. Ms. Lucy Radoli         | - Legal Counsel    |
| 3. Mr. Sharon Rotino       | - Research Officer |
| 4. Mr. Ian Otieno          | - Audio Officer    |

**MIN. NO. 1095/04/2021:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 9.12 am and thereafter followed a word of prayer. The Chairperson welcomed the Members to the meeting.

**MIN. NO. 1096/04/2021:**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after it was proposed by Sen. CPA Farhiya Haji, MP and seconded by Sen. Wetang'ula Moses Masika, EGH, MP.

**MIN. NO. 1097/04/2021: CONFIRMATION OF MINUTES OF MINUTES**

- The minutes of the 199<sup>th</sup> meeting held on Wednesday, 17<sup>th</sup> March, 2021 at 9:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. CPA Farhiya Haji, MP and seconded by Sen. Wetang'ula Moses Masika, EGH, MP.
- The minutes of the 200<sup>th</sup> meeting held on Wednesday, 23<sup>rd</sup> March, 2021 at 9:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Rose Nyamunga, MP and seconded by Sen. Wetang'ula Moses Masika, EGH, MP.

- c) The minutes of the 201<sup>st</sup> meeting held on Friday, 26<sup>th</sup> March, 2021 at 9:30 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Millicent Omanga, MP and seconded by Sen. (Dr.) Ochillo Ayacko, MP.
- d) The minutes of the 202<sup>nd</sup> meeting held on Friday, 26<sup>th</sup> March, 2021 at 2:20 pm were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Rose Nyamunga, MP and seconded by Sen. (Dr.) Ochillo Ayacko, MP.
- e) The minutes of the 203<sup>rd</sup> meeting held on Saturday, 27<sup>th</sup> March, 2021 at 8:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. (Dr.) Ochillo Ayacko, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.
- f) The minutes of the 204<sup>th</sup> meeting held on Saturday, 27<sup>th</sup> March, 2021 at 11:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Millicent Omanga, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

## **MIN. NO. 1098/04/2021: MATTERS ARISING FROM PREVIOUS MINUTES**

### **199<sup>th</sup> Sitting**

#### **Ex. Min. No. 1045/03/2021 – The statement on the financial position of Spire Bank Ltd**

The Committee considered the response from the Spire Bank Ltd and found it not adequately addressing the issues raised in the statement. The committee resolved to invite the Bank Management together with the Governor, Central Bank of Kenya for a meeting on Wednesday, 28<sup>th</sup> April, 2021.

### **200<sup>th</sup> Sitting**

#### **Ex. Min. No. 1051/03/2021 – The statement on the quality of new generation currency notes**

The Committee noted that the Governor, CBK had been invited for a meeting to clarify on some issues which had been raised from the response submitted regarding the statement on quality of new generation currency notes. However, the Governor requested for the meeting to be rescheduled to a later date.

The Committee considered the matter and resolved to invite the Governor for another meeting scheduled for 28<sup>th</sup> April, 2021.

**MIN. NO. 1099/04/2021 CONSIDERATION OF THE STAKEHOLDERS' SUBMISSIONS ON THE SALARIES AND REMUNERATION COMMISSION (AMENDMENT) BILL (SENATE BILLS NO. 31 OF 2020)**

- a) The Committee considered the stakeholders' submissions and noted most of them were in agreement with the amendment bill. The only clause not agreed to was clause 2.
- b) After consideration of the views raised on clause 2 of the Bill, the Committee resolved to propose an amendment that the clause be amended to reduce the days of processing the applications from 28 days to 14 days.

**MIN. NO. 1100/04/2021 ANY OTHER BUSINESS**

A concern was raised over the commitment availed by the National Treasury on the review of the taxation policy. Secretariat was tasked to follow up the matter and report in subsequent meetings.

**MIN. NO. 1101/04/2021 ADJOURNMENT**

The time being 10.15 am the Chairperson adjourned the meeting until 21<sup>st</sup> April, 2021 at 9.00 am.

**SIGNATURE:** \_\_\_\_\_



**(CHAIRPERSON: SEN. CHARLES KIBIRU, MP.)**

**DATE: 21<sup>st</sup> April, 2021**





**MINUTES OF THE 211<sup>TH</sup> MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON WEDNESDAY, 21<sup>ST</sup> APRIL, 2021 AT 9:00 AM VIA ZOOM ONLINE PLATFORM.**

**PRESENT**

- |  |                     |
|--|---------------------|
| 1. Sen. Charles Kibiru, MP               | - Chairperson       |
| 2. Sen. (Dr.) Ochillo Ayacko, MP         | - Vice- Chairperson |
| 3. Sen. Wetang'ula Moses Masika, EGH, MP | - Member            |
| 4. Sen. Mutula Kilonzo Junior, CBS, MP   | - Member            |
| 5. Sen. Rose Nyamunga, MP                | - Member            |
| 6. Sen. Millicent Omanga, MP             | - Member            |

**ABSENT WITH APOLOGY**

- |                              |          |
|------------------------------|----------|
| 7. Sen. Aaron Cheruiyot, MP  | - Member |
| 8. Sen. CPA Farhiya Haji, MP | - Member |
| 9. Sen. Kimani Wamatangi, MP | - Member |

**SECRETARIAT**

- |                            |                    |
|----------------------------|--------------------|
| 1. Mr. Christopher Gitonga | - Clerk Assistant  |
| 2. Ms. Lucy Radoli         | - Legal Counsel    |
| 3. Ms. Sharon Rotino       | - Research Officer |
| 4. Mr. Ian Otieno          | - Audio Officer    |

**MIN. NO. 1102/04/2021: PRELIMINARIES**

The Chairperson called the meeting to order at 9.14 am and thereafter followed a word of prayer. The Chairperson welcomed the Members to the meeting.

**MIN. NO. 1103/04/2021: ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after it was proposed by Sen. Millicent Omanga, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

**MIN. NO. 1104/04/2021: CONFIRMATION OF MINUTES OF MINUTES**

- a) The minutes of the 209<sup>th</sup> meeting held on Monday, 12<sup>th</sup> April, 2021 at 9:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Millicent Omanga, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.
- b) The minutes of the 210<sup>th</sup> meeting held on Tuesday, 20<sup>th</sup> April, 2021 at 11:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. Millicent Omanga, MP.

**MIN. NO. 1105/04/2021: CONSIDERATION AND ADOPTION OF THE REPORT  
ON THE SALARIES AND REMUNERATION COMMISSION  
(AMENDMENT) BILL (SENATE BILLS NO. 31 OF 2020)**

The Committee considered the report and recommended that the Salaries and remuneration commission (Amendment) Bill (Senate Bills No. 31 of 2020) be approved with amendments that 'clause 2 be amended be deleting expression *28 days* and substituting therefor with *14 days*.

The report was unanimously adopted after it was proposed by Sen. Millicent Omanga, MP and seconded by Sen. Rose Nyamunga, MP.

**MIN. NO. 1106/04/2021 CONSIDERATION AND ADOPTION OF THE REPORT  
ON THE COUNTY GOVERNMENTS' BUDGET  
IMPLEMENTATION REVIEW REPORT FOR THE  
FINANCIAL YEAR 2019/2020**

The Committee considered its report on the County Governments' Budget Implementation Review Report for the Financial Year 2019/20 and proposed recommendations on various issues which would improve on implementation of county budgets as well as enhance county public finance management.

It was also resolved that the action plan matrix should be attached to report for ease of tracking the action and timelines.

The report was unanimously adopted after it was proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Sen. (Dr.) Ochillo Ayacko, MP.

**MIN. NO. 1107/04/2021 ADJOURNMENT**

There been no other business the Chairperson adjourned the meeting at 10.22 am.

**SIGNATURE:**

  
\_\_\_\_\_

**(CHAIRPERSON: SEN. CHARLES KIBIRU, MP.)**

**DATE: 26<sup>th</sup> April, 2021**

440

② C-Asstt - Finance & Budget  
Kindly Deal  
31/03/21



① DCOM/DLS  
Please deal  
Deputy Clerk, Senate  
Date 31/03/21

REPUBLIC OF KENYA

THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921  
Finance - Nairobi  
FAX NO. 310833  
Telephone: 2252299

THE NATIONAL TREASURY  
P O BOX 30007 - 00100  
NAIROBI

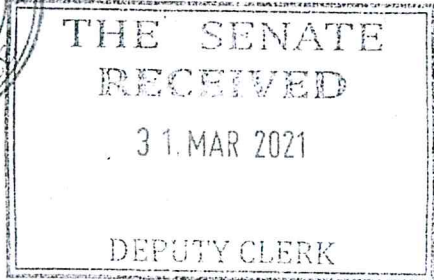
When Replying Please Quote

Ref No: IGFR/SC/FB/01 (56)



25<sup>th</sup> March 2021

J. M. Nyegenye, CBS  
Clerk of the Senate  
NAIROBI



Dear Nyegenye,

**RE: REQUEST FOR SUBMISSION ON THE SALARIES AND REMUNERATION COMMISSION (AMENDMENT) BILL (SENATE BILLS NO. 31 OF 2020)**

Reference is made to your letter Ref. SEN/DCS/SCF&B/2021/008 dated 12<sup>th</sup> March, 2021 on the above subject matter. The letter was requesting for comments on The Salaries and Remuneration Commission (Amendment) Bill, 2020 which was seeking to amend the Salaries and Remuneration Act. We have reviewed and concurred with the proposed amendments to Section 7 and 9.

However, we have noted that there is a mention of the word 'Prime Minister' in Section 7(4) and 7(10) on the Bill, a position which does not exist in our current Constitution.

The purpose of this letter is to formally submit the views of the National Treasury and Planning on the proposed amendments as requested.

Yours Sincerely,

HON. (AMB.) UKUR YATANI, EGH

CABINET SECRETARY/NATIONAL TREASURY AND PLANNING







## THE UNIVERSITY OF NAIROBI

THE AFRICAN WOMEN STUDIES CENTRE (AWSC) - THE UNIVERSITY OF NAIROBI

### RECOMMENDATIONS ON

THE SALARIES AND REMUNERATION COMMISSION (AMENDMENT BILL) 2000

PUBLIC PARTICIPATION & SUBMISSION OF MEMORANDATO

STANDING COMMITTEE ON FINANCE AND BUDGET

DATE: MARCH 31<sup>st</sup>, 2021

The African Women Studies Centre (AWSC) - University of Nairobi, has reviewed the Salaries and Remuneration Commission (Amendment Bill), 2021 from a gender perspective and have the following recommendations:

Provision	Comment	Recommendation
<p>The Bill seeks to amend Section 7 of the Salaries and Remuneration Commission Act and is amended in subsection (2) by inserting the words "within twenty-eight days of publication of an advertisement under subsection (1)," immediately after the words "The relevant body shall".</p>	<p><i>The principal object of this Bill is to amend sections 7 and 9 of the Salaries and Remuneration Act, No. 10 of 2011, to provide for notification of the expiry of term for Commissioners in the Gazette and to provide for timelines for the filling of vacancies in the Commission upon the expiry of term for Commissioners. This provision is good as it ensures adherence to constitutionalism.</i></p>	<p>The clause should specifically state: "nominating body" In adhering to constitutional timelines and in filling vacant positions, the nominating body should consider the path towards gender equality and two-thirds gender rule.</p>

<p><i>The Bill seeks to amend Section 9 of the Salaries and Remuneration Commission Act in subsection (1) by inserting the following new paragraph immediately after paragraph (b)- (ba) ceases to hold office by virtue of expiry of the term of the office holder under Article 250 (6) (a) of the Constitution; or</i></p>	<p>Under section 9 of the Salaries and Remuneration Commission Act, the "expiry of term for commissioners" is not listed as one of the grounds for vacancy in the office of commissioner or chairperson. As such, there is no express requirement for notification of a vacancy, resulting from expiry of term, in the Gazette within fourteen days, as is provided for vacancies arising from the circumstances contemplated under section 9 (1). A notification of vacancy in the Gazette is necessary to prompt the simultaneous nomination processes by all bodies required to nominate Commissioners to the Salaries and Remuneration Commission. This provision is good and should be supported as it ensures compliance with the constitution.</p>	<p>Support.</p> <p>In adhering to constitutional timelines and in filling vacant positions, the nominating body should consider the path towards gender equality and two-thirds gender rule.</p>
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As illustrated in the above analysis, AWSC supports these amendments as they are geared towards ensuring compliance with the Constitution. In upholding constitutionalism, the nominating bodies should also ensure two-thirds gender principle and should ensure gender equality in filling vacant positions.

**Submitted by:**

**Name:** Prof Wanjiku M. Kabira  
 Director  
 African Women Studies Centre (AWSC)

**Signature:** *Wanjiku M. Kabira*      **Date:** March 31<sup>st</sup>, 2021



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**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**

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**ADVISORY ON THE SALARIES AND REMUNERATION COMMISSION (AMENDMENT) BILL, 2020**

**TO**

**THE SENATE COMMITTEE ON FINANCE AND BUDGET THROUGH  
THE CLERK OF THE SENATE**

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**SUBMISSION DATE: 31 MARCH 2021**

Kenya National Commission on Human Rights (KNCHR)  
CVS Plaza 1st Floor, Kasuku Lane, Off Lenana Road,  
P.O. Box: 74359-00200 Nairobi, Kenya  
Landline: +254-020-3969000  
Mobile: 0733 78 00 00 /0726 610 159  
Whats App: 0798 849 871  
General Enquiries: [haki@knchr.org](mailto:haki@knchr.org)  
Complaints: [complaint@knchr.org](mailto:complaint@knchr.org)  
SMS: 22359  
Twitter: @hakiKNCHR

## A. INTRODUCTION

1. The Kenya National Commission on Human Rights (KNCHR), is an independent National Human Rights Institution established under Article 59 of the Constitution of the Constitution of Kenya, 2010 and operationalized under the Kenya National Commission on Human Rights Act 2011.<sup>1</sup> It is the successor to the Kenya National Commission on Human Rights established in 2003 under the Kenya National Commission on Human Rights Act 2002.<sup>2</sup> KNCHR has a broad mandate to promote a culture of respect for human rights in Kenya. The operations of the National Human Rights Commission are guided by the United Nations Paris Principles on the establishment and functioning of Independent National Human Rights Institutions commonly referred to as the Paris Principles.
2. The KNCHR under Article 249 of the Constitution is mandated to secure observance of all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to ensure they uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the constitution. One of the strategies pursued by the Commission to secure observance of all state organs of democratic values and principles is through the review of bills, new laws and subsequent issuance of advisories. It is in this regard, that the National Commission issues this advisory on the Salaries and Remuneration Commission (Amendment) Bill, 2020 (Senate Bills No. 31).

## B. BACKGROUND

3. The principal object of the Salaries and Remuneration Commission (Amendment) Bill, 2020 is to amend sections 7 and 9 of the Salaries and Remuneration Act, No. 10 of 2011, to provide for notification of the expiry of term for Commissioners in the Gazette and to

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<sup>1</sup> Act No 14 of 2011 available at <http://www.kenyalaw.org/lex/actview.xql?actid=No.%2014%20of%202011>

<sup>2</sup> Act No 9 of 2002 (repealed). The History of the institution however dates further back in 1996 when the then His Excellency President Moi set up a Standing Committee on Human Rights (SCHR) vide a gazette notice of June 1996.



provide for timelines for the filling of vacancies in the Commission upon the expiry of the term for Commissioners.

4. Section 7 of the Salaries and Remuneration Commission Act is proposed to be amended in subsection (2) by inserting the words “within twenty-eight days of publication of an advertisement under subsection (1),” immediately after the words “The relevant body shall”. While Section 9 of the Act is proposed to be amended in subsection (1) by inserting the following new paragraph immediately after paragraph (b)–

*(ba) ceases to hold office by virtue of expiry of the term of the office holder under Article 250 (6) (a) of the Constitution; or*

5. KNCHR notes that the Salaries and Remuneration Commission (the Commission) is a Constitutional Commission within the meaning Chapter 15 of the Constitution and that the Commission has been operationalized through the Salaries and Remuneration Commission Act, 2011. The broad mandate of the Commission is provided under Article 230 (4) as to set and regularly review the remuneration and benefits of all State officers and to advise the national and county governments on the remuneration and benefits of all other public officers. Specific functions have been assigned to the Commission under Section 11 of the Salaries and Remuneration Commission Act, 2011.
6. KNCHR appreciates the Commission for the work around public sector wage bill control measures through measures such as harmonising the salaries of all public servants and laying strong foundation to manage a bloated wage bill, thus freeing funds for development projects. KNCHR further acknowledges that taming the growing public wage bill requires sustained concerted efforts of all public sector players.

### **C. GENERAL COMMENTS ON PROPOSED BILL**

7. The Commission welcomes the move to amend the principal Act and indeed agrees with the object of the Bill seeking to provide for notification of the expiry of term for Commissioners in the Gazette and to provide for timelines for the filling of vacancies in the Commission upon the expiry of term for Commissioners. A careful look at Principal Act points to a lacuna that warrants an amendment and therefore the proposed amendment to Sections 7 and 9 of the Salaries and Remuneration Commission Act, 2011 are timely and in order.
  
8. A further analysis (see annexure) of appointment timelines for other Constitutional Commissions however indicates that in a majority of them, the selection panels are required to undertake the selection process within specific timelines specified in the constitutive Acts of the Commissions. For instance, the selection panel for the National Gender and Equality Commission (NGEC), the Teachers Service Commission (TSC), the Kenya National Commission on Human Rights (KNCHR) has seven (7) days each within which to consider applications for membership of the respective Commissions. On the other hand, the selection panel of members of the National Land Commission has 21 days within which to consider applications received.
  
9. The KNCHR observes that majority of the selection panels have seven (7) days consider applications received while such timelines do not exceed 21 days save for only for the case of the selection panel of members of the National Land Commission. Further, there are selection panels that lack statutory timelines within which to consider applications received (as shown in the annexure).

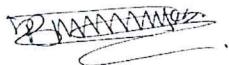
10. The KNCHR therefore proposes that the timeline proposed under Clause 2 of the Bill be reduced from 28 days to 7 days. This is to align the timeline to what is already provided for in majority of selection panels of various Commissions as highlighted in the annexure to this submission. This would promote good governance.

**Part D** below presents amendments to specific clauses of the Bill.

#### D. SPECIFIC COMMENTS ON THE BILL

No.	Clause and Title	Proposed Recommendation	Justification
1.	2- Amendment of section 7 of No.10 of 2011.	<p>Section 7 of the Salaries and Remuneration Commission Act is amended in subsection (2) by inserting the words "within twenty-eight days of publication of an advertisement under subsection (1)," immediately after the words "The relevant body shall"</p> <p>KNCHR proposes that the timeline be reduced from 28 days to 7 days</p>	<p>To align the timeline to be in tandem with what is already provided for majority of selection panels of various other Commissions as highlighted in the annexure.</p> <p>This will also ensure that the selection process is conducted expeditiously.</p>
2.	3- Amendment of section 9 of No.10 of 2011.	<p>Section 9 of the Salaries and Remuneration Commission Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (b)– (ba) ceases to hold office by virtue of expiry of the term of the office holder under Article 250 (6) (a) of the Constitution; or</p> <p>The Commission proposes that the amendment be made by inserting the new paragraph immediately after paragraph (c) and not (b) – so that it becomes the new Section 9 (1) (d) of the Act.</p>	<p>It is important to have a complete distinction of when there is a vacancy occasioned by member of the Commission resigning under Section 9 (1) (b) of the Act and when one's term expires under Article 250 (6) (a) of the Constitution as proposed in the amendment.</p> <p>Having a separate new paragraph inserted after Section 9 (1) (c) of the Act as proposed will enhance this distinction and provide statutory clarity.</p>

Yours Sincerely,



**Dr. Bernard Mogesa, PhD, CPM**  
**Secretary to The Commission/Chief Executive Officer**

**ANNEXURE** -Analysis of duration of timelines for selection panels for Constitutional Commissions<sup>3</sup>

No.	Institutions	No. of Commission members	Period within which a selection panel is convened/when a vacancy occurs (Days)	Period within which the selection panel invites applications (Days)	Period within which the selection panel considers applications (Days)	Period within which the President nominates the Chair & Commissioners and submit names to the National Assembly (Days)	Period within which the National Assembly shall consider the nominations (Days)	Period within which the President appoints the Chair & Commissioners approved by the National Assembly (Days)	Tenure (Years)
1.	National Gender and Equality Commission (NGEC)	5	14	7	7	7	21	7	6
2.	Salaries and Remuneration Commission (SRC)	13 (Art 230 (2))	- Article 230(2)(b) and (c)	14	-	7	14	7	6
3.	National Police Service Commission (NPSC)	9	14	7	-	14	21	7	6
4.	Teachers Service Commission (TSC)	9	14	7	7	7	21	7	6

<sup>3</sup> See the Constitutive Acts of the various Commissions

5.	Kenya National Commission on Human Rights (KNCHR)	5	14	7	7	7	21	7	6
6.	Commission on Administrative Justice (CAJ)	3	14	7	7	7	21	7	6
7.	National Land Commission	9	14	7	21	14	21	7	6
8.	Independent Electoral and Boundaries Commission	7	6 months before lapse of term	7	-	7	28  (Section 8 (1) of the Public Appointments (Parliamentary Approval) Act, 2011)	7	6
9.	Public Service Commission	9	6 months before lapse of term	14	-	-	14	7	6



Salaries & Remuneration  
Commission  
Rewarding productivity



Ref. No. SRC/TS/PASC/3/35/3 Vol. II (23)

18<sup>th</sup> March, 2021

**J. M. Nyengenyé, CBS**  
Clerk of the Senate  
Parliament Buildings  
NAIROBI

25 MAR 2021

DCOM (1)  
Please deal  
Deputy Clerk, Senate  
Date 25/03/2021

Dear *Mr. Nyengenyé,*

**SALARIES AND REMUNERATION COMMISSION (AMENDMENT) BILL (SENATE BILLS NO. 31 OF 2020)**

Reference is made to the letter Ref. SEN/DCS/SCF&B/2021/009 dated 12<sup>th</sup> March 2019 by the Senate requesting for views from the Salaries and Remuneration Commission (SRC) on the captioned Bill, which proposes amendments to the Salaries and Remuneration Commission Act, 2011 (SRC Act).

Here below are SRC's views on the proposed amendments:

1. SRC supports the amendment proposed in Clause 2 of the Bill inserting the words "*within twenty-eight days of publication of an advertisement under subsection (1),*" immediately after the words "The relevant body shall" to section 7 of the SRC Act, in so far as it seeks to provide a timeframe within which nominating bodies should nominate persons to represent them in SRC.
2. SRC is of the considered view that clause 3 of the Bill, which seeks to amend section 9 of the SRC Act to include vacation of office by the Chairperson or Member on expiry of the term. The proposal to insert a new paragraph, which provides that:

*(ba) ceases to hold office by virtue of expiry of the term of the office holder under Article 250 (6) (a) of the Constitution;* merely restates the tenure of Chairperson and Members of SRC as provided by the Constitution and therefore inconsequential.

The Commission appreciates the opportunity to give its views on the proposed amendments to the SRC Act and has no objection to the amendments.

Yours

  
**Mrs. Anne R. Gitau, MBS**  
**COMMISSION SECRETARY/CEO**

(2) C.A - Fax Budget  
Kindly deal  
25/03/21

