

PARLIAMENT OF KENYA



NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION- 2016

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON THE CONSIDERATION OF THE ELECTION LAWS (AMENDMENT)
BILL, 2016 (NATIONAL ASSEMBLY BILL NO. 37)

CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

AUGUST, 2016

Paper Laid
By Hon. Samuel Chepkoya Mb
Chairperson, JAC on
1st Sept. 2016



CHAIR'S FOREWORD

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honor to present to this House the Report of the Committee on its consideration of the Election Laws (Amendment) Bill, 2016.

The Bill was read for the first time on 30th August 2016 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127 (1); it is on the basis of this that the Committee makes this Report.

The Committee wishes to register its appreciation to the Offices of the Speaker and the Clerk of the National Assembly for the support accorded to the Committee and the staff, in the execution of its mandate. Let me take this opportunity to thank all Members for their patience, endurance and dedication to committee business, despite their other commitments and tight schedules, which enabled the Committee to complete this Report.

Hon. Samuel Chepkong'a M.P

COMMITTEE MANDATE

The Departmental Committee on Justice and Legal Affairs is established under the National Assembly Standing Orders No. 216 (1). The functions and mandate of the Committee are also contained under the National Assembly Standing Orders, No. 216(5) as:-

1. Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
2. Study the program and policy objectives of the Ministries and departments and the effectiveness of the implementation;
3. Study and review all legislation referred to it;
4. Study, access and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;
5. 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;
6. Vet and report on all appointments where the constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and
7. Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The subject matter of the Departmental Committee on Justice and Legal Affairs are stated in the Second Schedule of the National Assembly Standing Orders as follows:

- (a) Constitutional affairs;
- (b) The administration of law and Justice, including the Judiciary, public prosecutions, elections, ethics, integrity and anti-corruption; and
- (c) Human rights.

MEMBERS OF THE COMMITTEE

Chairperson	Hon. Samuel Chepkong’ a, M.P.
Vice Chairperson	Hon. Priscilla Nyokabi, M.P.
Members	Hon. Njoroge Baiya, M.P. Hon. Muriithi Waiganjo, M.P. Hon. Ndirangu Waihenya, M.P. Hon. Florence Kajuju, M.P. Hon. Kang’ata Irungu, M.P. Hon. Benson Mutura, M.P. Hon. John Njoroge Chege, M.P. Hon. William Cheptumo, M.P. Hon. Mohamed Abdi Haji, M.P. Hon. Bitok Kirwa, M.P. Hon. Sammy Koech, M.P. Hon. Moses Cheboi, M.P. Hon. Paul Bii, M.P. Hon. Charles Gimose, M.P. Hon. Johana Ng’eno, M.P. Hon. Boniface Otsiula, M.P. Hon. David Ouma Ochieng, M.P. Hon. Neto Agostinho, M.P. Hon. Kaluma Peter, M.P. Hon. Fatuma Ibrahim Ali, M.P. Hon. Ben Momanyi Orori, M.P. Hon. T. J. Kajwang’, M.P. Hon. (Bishop)Mutua Mutemi, M.P. Hon. Olago Aluoch, M.P. Hon. Christine Oduor Ombaka, M.P. Hon. Benjamin Andayi, M.P. Hon. Kamoti William Mwamkale, M.P

SECRETARIAT

First Clerk Assistant	Mr. Abenayo Wasike
Third Clerk Assistant	Mr. Ahmed Salim
Third Clerk Assistant	Ms. Mary Luka
Legal Counsel	Mr. Denis Abisai
Legal Counsel	Ms. Mugure Gituto
Research Officer	Ms. Clare Jerotich

SITTINGS

The Committee considered the Election Laws (Amendment) Bill, 2016 in its Sitting held on Wednesday, 31st August, 2016 and adopted its report on the same day.

COMMITTEE RECOMMENDATIONS

The Committee having considered the Election Laws (Amendment) Bill, 2016, it recommends that the National Assembly:

1. **Approves** the proposed amendments by the Committee to the Election Laws (Amendment) Bill, 2016 in **Clauses 2, 3, 4, 6, 9, 10, 12, 13, 14, 16, 18** and the **First Schedule** to the Bill.

ADOPTION OF THE REPORT

We the Members of the Departmental Committee on Justice & Legal Affairs have, pursuant to Standing Order 199, adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached list (Appendix II).

1.0 INTRODUCTION

The Election Laws (Amendment) Bill, 2016 was read for the first time on 30th August 2016 and subsequently committed to the Departmental Committee on Justice and Legal Affairs for consideration pursuant to the provisions of Standing Order 127 (1), and report to the House.

2.0 CONSIDERATION OF THE ELECTION LAWS (AMENDMENT) BILL, 2016

The Committee considered the Election Laws (Amendment) Bill, 2016 in its Sitting held on Wednesday, 31st August, 2016. The Committee noted and appreciated the fact that the Bill was a product of stakeholder engagement and public participation which was conducted by the Joint Parliamentary Select Committee on matters regarding the Independent Electoral & Boundaries Commission (IEBC). The Committee's decision to make amendments was based on the needs, constitutional requirements and in the best interest of the country. Having considered all the clauses, the Committee proposed the following amendments:

CLAUSE 2

THAT clause 2 of the Bill be amended in the definition of the term "biometric" by inserting the words "capture of any of the following" immediately after the word "means."

CLAUSE 3

THAT the Bill be amended by deleting clause 3 and substituting thereof the following new clause in subsection (1) —

- (a) deleting the proviso to paragraph (a);
- (b) inserting the following new paragraph immediately after paragraph (a)—

"(ba) in the case of a referendum, between the date of the publication of the question and the date of the referendum";

- (c) deleting subsection (3A); and
- (d) deleting subsection (3B).

CLAUSE 4

THAT clause 4 of the Bill be amended in sub clause (2) by deleting the expression “of” and substituting therefor the expression “by”.

CLAUSE 6

THAT clause 6 of the Bill be amended —

(i) in sub clause (5) by deleting the words “the National Assembly and the Senate” and substituting therefor the term “Parliament.”

(ii) by inserting the following new clause immediately after clause (5) —

“(5A) Parliament shall adopt the report submitted under subsection (5) within twenty one days.”

(iii) by deleting sub clause (6) and substituting therefor the following new sub clause.

“(6) The Commission shall implement the recommendations of the adopted audit report within a period of thirty days and submit its implementation report to Parliament.”

CLAUSE 9

THAT the Bill be amended by deleting clause 9 and substituting therefor the following new section —

“9. The Election Act, 2011 is amended by deleting Section 28 and substituting therefor the following new section—

“28. (1) A political party that nominates a person for an election under this Act shall submit to the Commission a membership list of the party—

(a) in the case of a general election, at least ninety days before the date of the election; and

(b) in the case of a by-election, at least forty-five days before the date of the by-election.”

CLAUSE 10

THAT clause 10 of the Bill be amended—

(i) in sub-clause (2) by inserting the expression “(4)’ appearing immediately after the words “Article 88.”

(ii) in the proposed new sub section (2D) by deleting the word “selected” and substituting therefor the word “nominated.”

(iii) by inserting the following new sub section immediately after the proposed new sub section (2D) —

“(2E) without prejudice to section (2D) a political party may elect to rely on the Register of Voters in conducting the nominations.

(2F) Where the Commission receives multiple requests under subsection 2, the Commission shall conduct and supervise the nomination of candidates for presidential, parliamentary or county elections for all the requesting political parties—

(a) on the same day;

(b) in the same polling centres; and

(c) in different polling streams for each participating political party.”

(iv) by inserting the following new sub section immediately after sub section (2E) —

“(2F) Parliament shall appropriate monies for the effective implementation of this section.”

(v) by inserting the following new section immediately after section 31—

“31A. Each political party shall ensure that not more than two-thirds of the persons contesting are of the same gender.”

CLAUSE 12

THAT clause 12 of the Bill be amended by—

(i) renumbering the existing provision as sub clause (1);

(ii) inserting the following new sub clause immediately after sub clause (1)

“(2) The party list referred to subsection (1) shall be signed by the national chairperson, the secretary general and the organising secretary of the political party .”

CLAUSE 13

THAT clause 13 of the Bill be amended in the proposed new clause 38A by deleting the word “five hundred” and substituting therefor the word “seven hundred.”

CLAUSE 14

THAT clause 14 of the Bill be amended—

(i) in paragraph (ii) by deleting the words “county women representative to the National Assembly” appearing immediately before the words “Senator and” and substituting therefor the words “county member of the National Assembly” ;

(ii) in paragraph (iii) by deleting the words “county women representative to the National Assembly” appearing immediately before the words “Senator and” and substituting therefor the words “county member of the National Assembly” ; and

(iii) in sub clause (1B) by deleting the words “county women representative to the National Assembly” appearing immediately before the words “Senator and” and substituting therefor the words “county member of the National Assembly”.

CLAUSE 16

THAT the Bill be amended by deleting clause 16 and substituting therefor the following new clause 16A. —

16. Section 43 of the Elections Act, 2011 is amended—

(a) by deleting subsections (1), (2), (3) and (4);

(b) by deleting subsection (5) and substituting therefor the following new sub section —

“(5) A public officer who intends to contest an election under this Act shall resign or otherwise exit from public office—

(a) in the case of a general election, at least eight months before the date of the general election; or

- (b) in the case of a by-election, within seven days of the declaration of a vacancy.”
- (c) by inserting the following new subsection immediately after subsection (5)

“(5A) A person who fails to comply with the provisions of sub section (5) is disqualified from participating in the election.”

- (c) in sub section (6) by deleting paragraph (b)

CLAUSE 18

THAT clause 18 of the Bill be amended —

- (i) in sub clause (1) of the proposed new section 55 B by deleting paragraph (a) and substituting therefor the following—

“(a) there is outright and widespread violence, disorder and the breakdown of law and order that makes it impossible to conduct the election; ”

- (ii) by deleting paragraph (c)

- (iii) in sub clause (2) by deleting the words ”the earliest practicable time” appearing immediately before the words “shall be held at” and substituting therefor the words “within thirty days or any such other date as the court may direct.”

FIRST SCHEDULE

THAT paragraph (1) of the First Schedule is amended in subparagraph 2(a) by inserting the words “in consultation with the leader of the majority party and the leader of the minority party of the National Assembly” immediately after the words “Parliamentary Service Commission.”

NEW CLAUSE

THAT the Independent Electoral and Boundaries Commission Act, 2011 by inserting the following new clause immediately after section 37—

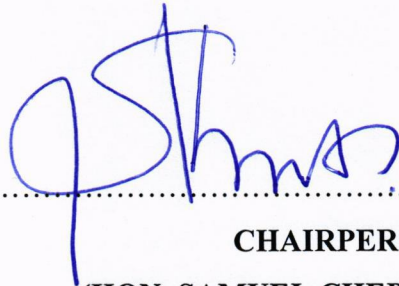
Transition. 37A. The chairperson and members of the Commission holding office immediately before the commencement of this Act shall be paid negotiated dues to facilitate a dignified transition.

3.0 COMMITTEE RECOMMENDATIONS

Having considered the the Election Laws (Amendment) Bill, 2016, the Committee recommends that the National Assembly:

2. **Approves** the proposed amendments by the Committee to the Election Laws (Amendment) Bill, 2016 in **Clauses 2, 3, 4, 6, 9, 10, 12, 13, 14, 16, 18** and the **First Schedule** to the Bill.

SIGNED



CHAIRPERSON
(HON. SAMUEL CHEPKONG'A, M.P)

DATE.....

1st September, 2016

**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS HELD ON WEDNESDAY, 31ST AUGUST, 2016 AT 10.30 A.M.
IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDING**

PRESENT

Hon. Samuel Chepkonga, M.P. - Chairperson
Hon. Priscilla Nyokabi, M.P. - Vice Chairperson
Hon. Neto Agostinho, M.P.
Hon. Ben Momanyi, M.P.
Hon. Bitok Kirwa, M.P.
Hon. Charles Gimose, M.P.
Hon. Dr. Christine Ombaka, M.P.
Hon. David Ochieng, M.P.
Hon. Fatuma Ibrahim, M.P.
Hon. Florence Kajuju, M.P.
Hon. Johana Ngeno, M.P.
Hon. John Njoroge Chege, M.P.
Hon. John M. Waiganjo, M.P.
Hon. Olago Aluoch, M.P.
Hon. Kamoti Mwamkale William, M.P.
Hon. Mohamed Abdi Haji, M.P.
Hon. Njoroge Baiya, M.P.
Hon. Paul K. Bii, M.P.
Hon. Peter Kaluma, M.P.
Hon. (Bishop) Robert Mutemi, M.P.
Hon. Tom J. Kajwang', M.P.

ABSENT

Hon. Kang'ata Irungu, M.P.
Hon. Benson Mutura, M.P.
Hon. Ndirangu Waihenya, M.P.
Hon. Moses Cheboi, M.P.
Hon. Sammy Koech, M.P.
Hon. Boniface Otsiula, M.P.
Hon. William Cheptumo, M.P.

SECRETARIAT

Mr. Abenayo Wasike	-	Clerk Assistant I
Mr. Ahmed Salim	-	Clerk Assistant III
Mr. Denis Abisai	-	Legal Counsel
Ms. Mugure Gituto	-	Legal Counsel II

MIN No.JLA. /2016:-

PRELIMINARIES

The Chairperson called the meeting to order at 10.50 a.m. with a word of prayer from Hon. Fatuma Ibrahim, M.P. The Chairperson introduced the agenda of the meeting; as consideration of the Election Laws (Amendment) Bill, 2016 and the Election Offences Bill, 2016.

MIN No.JLA. /2016:-

CONSIDERATION OF THE ELECTION LAWS (AMENDMENT) BILL, 2016

The Committee considered the Bill and the following amendments were proposed:

Amendments to the Election Laws (Amendment) Bill, 2016 in Clauses 2, 3, 4, 6, 9, 10, 12, 13, 14, 16, 18 and the First Schedule to the Bill.

MIN No.JLA. /2016:-

CONSIDERATION OF THE ELECTION OFFENCES BILL, 2016

The Committee considered the Election Offences Bill, 2016 and no amendments were proposed. It was the considered view of the Committee, having gone through the Bill clause by clause, that no amendments were necessary. The Committee endorsed the Bill in its form.

MIN No.JLA. /2016:-

ADOPTION OF THE REPORT ON ELECTION LAWS (AMENDMENT) BILL, 2016

The Report on the Election Laws (Amendment) Bill, 2016 was adopted by the Committee. Adoption was proposed by Hon. Bitok Kirwa and seconded by Hon. Fatuma Ibrahim.

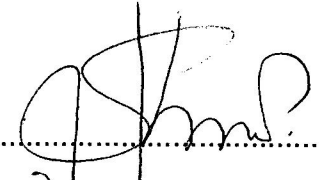
The Report on the Election Offences Bill, 2016 was adopted by the Committee. Adoption was proposed by Hon. Njoroge Baiya and seconded by Hon. Priscila Nyokabi.

MIN No.JLA. /2016:-

ADJOURNMENT

The meeting was adjourned at five minutes past five o'clock.

Signed.....



(Chairperson)

Date.....

15th September, 2016

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