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THE NATIONAL ASSEMBLY PAPERS LAID	DATE: 03 JUL 2019	TABLED BY:	CLERICAL THE TABLE:
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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION, 2019

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS

REPORT ON THE ANTI-CORRUPTION AND ECONOMIC CRIMES

(AMENDMENT) BILL, 2019

(NATIONAL ASSEMBLY BILLS No. 6)

DIRECTORATE OF COMMITTEE SERVICES

THE NATIONAL ASSEMBLY

PARLIAMENT BUILDINGS

NAIROBI

JULY, 2019

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 03 JUL 2019	DAY: Wednesday
TABLED BY:	Hon. William Chepkemo (Chairperson) Halima Ahmed

Table of Contents

CHAIRPERSON’S FOREWORD..... 4

PART 1 5

1. PREFACE 5

1.1.Mandate of theCommittee 5

1.2.Committee Membership 6

1.3.Committee Secretariat 7

PART 2 8

2. INTRODUCTION AND BACKGROUND..... 8

2.1.Memorandum of objects and reasons of the Bill..... 8

PART 3 9

3. PUBLIC PARTICIPATION IN THE REVIEW OF THE BILLS..... 9

PART 4 10

**4. CLAUSE BY CLAUSE CONSIDERATION OF THE BILL AND
RECOMMENDATIONS 10**

LIST OF ANNEXURES

- Annexure 1:** Minutes of Committee sittings on consideration of the Bill and adoption of report.
- Annexure 2:** Signed list of Members who attended the sitting that considered and adopted the report on the Bill.
- Annexure 3:** Copy of newspaper advertisement inviting the public to present written submissions on the Bill.
- Annexure 4** Submissions from stakeholders

CHAIRPERSON'S FOREWORD

The Anti-Corruption and Economic Crimes (Amendment) Bill, 2019 was published in the Kenya Gazette on 1st March, 2019 (*National Assembly Bills No. 6*). The Bill underwent First Reading on 20th March, 2019 and was immediately committed to the Departmental Committee on Justice and Legal Affairs for review and report to the House pursuant to the provisions of Standing Order 127(1).

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127 (3) the Committee through advertisement in the local daily newspapers of 29th March, 2019 invited the public to make representations on the Bill. The Committee received written submissions from the Multi-sectoral Initiative Against Corruption which has been taken into account while considering the Bill.

The Committee held one (1) sitting on 15th June, 2019 during which it considered the Bill and unanimously adopted its report rejecting the proposed amendment in entirety.

May I take this opportunity to-

- (i) Thank Committee Members for their devotion and commitment to duty which made consideration of the Bill successful;
- (ii) Express gratitude to the Offices of Speaker and Clerk of the National Assembly for always providing leadership and guidance;
- (iii) Appreciate the Committee secretariat for exemplary performance in providing technical and logistical support.

indeed, their roles were critical to the Committee in the consideration of the Bill.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House a report of the Committee on the Anti-Corruption and Economic Crimes (Amendment) Bill, 2019.

HON. WILLIAM CHEPTUMO, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS

PART 1

1. PREFACE

1.1. Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-

- (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 their implementation;
- (c) study and review all legislation referred to it;
- (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
- (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)
- (g) examine treaties, agreements and conventions;
- (h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- (i) consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and
- (j) Examine any questions raised by Members on a matter within its mandate.

2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-

- (a) Constitutional affairs;
- (b) The administration of law and Justice

- (c) The Judiciary;
- (d) Public prosecutions;
- (e) Elections;
- (f) Ethics, integrity and anti-corruption; and
- (g) Human rights.

1.2. Committee Membership

3. The Committee was constituted on Thursday, 14th December, 2017 and comprises the following Honourable Members-

No.	NAME	CONSTITU- ENCY	PARTY
1.	Hon. William Cheptumo, M.P. – <i>Chairperson</i>	Baringo North	Jubilee
2.	Hon. Alice MuthoniWahome, M.P. – <i>Vice Chairperson</i>	Kandara	Jubilee
3.	Hon. John OlagoAluoch, M.P.	Kisumu West	Ford-Kenya
4.	Hon. RoselindaSoipanTuya, M.P.	Narok County	Jubilee
5.	Hon. Charles Gimose, M.P.	Hamisi	Ford Kenya
6.	Hon. William KamotiMwamkale, M.P.	Rabai	ODM
7.	Hon. Peter Opondo Kaluma, M.P.	Homa Bay Town	ODM
8.	Hon. Ben OroriMomanyi, M.P.	Borabu	Wiper Democratic Movement
9.	Hon. Johana Ng’eno, M.P.	Emurua Dikirr	KANU
10.	Hon. George GitongaMurugara, M.P.	Tharaka	Democratic Party
11.	Hon. Anthony GithiakaKiai, M.P.	Mukurueni	Jubilee
12.	Hon. Gladys Boss Shollei, CBS, M.P.	UasinGishu County	Jubilee
13.	Hon. Beatrice Adagala, M.P.	Vihiga County	Amani National Congress
14.	Hon. Jennifer Shamalla, M.P.	Special Interests	Jubilee
15.	Hon. John MuneneWambugu, M.P.	Kirinyaga	Jubilee
16.	Hon. Japheth Mutai, M.P.	Bureti	Jubilee
17.	Hon. Adan Haji Yussuf, M.P.	Mandera West	Economic Freedom Party

18.	Hon. John Kiarie Waweru, M.P.	Dagoretti South	Jubilee
19.	Hon. Zuleikha Hassan, M.P.	Kwale County	ODM

1.3. **Committee Secretariat**

4. The Committee's secretariat comprises the following officers-

Mr. George Gazemba	-	Principal Clerk Assistant II
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Halima Hussein	-	Clerk Assistant III
Ms. Fiona Musili	-	Research Officer III
Mr. Omar Abdirahim	-	Fiscal Analyst III
Mr. Joseph Okongo	-	Media Liaison Officer
Mr. Hakeem Kimiti	-	Audio Officer
Ms. RoselyneNdegi	-	Serjeant-at-Arms

5. Minutes of Committee sittings on the consideration of the Bill and adoption of report are annexed to this report as *annexure 1*

PART 2

2. INTRODUCTION AND BACKGROUND

2.1. Memorandum of objects and reasons of the Bill

6. The principal object of the Bill is to amend the Anti-Corruption and Economic Crimes Act No. 3 of 2003 to prescribe a minimum penalty to act as deterrence mechanism for persons who engage in corrupt conduct as defined by the Act. As it is presently, a person convicted of an offence under the Act is liable to fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both.
7. There has been a surge in in corruption cases in the country and one way of dealing with corruption is enhancing the consequences of engaging in such activities. Unless dealt with, corruption will hamper economic development of the country due to stolen or misappropriated public funds.
8. The Bill does not affect the functions of county governments as set out in the Fourth Schedule of the Constitution and therefore is not a Bill concerning county governments. Further, the enactment of the Bill will not occasion additional expenditure of public funds.

PART 3

3. PUBLIC PARTICIPATION IN THE REVIEW OF THE BILLS

9. 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”

10. 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”

11. In line with the Constitution and Standing Orders, the Departmental Committee on Justice and Legal Affairs, in the local daily newspapers of 29th March, 2019 attached as *annexure 3* of the report invited the public to make representations on the Bill. The Committee received written submissions from the Multi-sectoral Initiative Against Corruption attached as *annexure 4*.

PART 4

4. CLAUSE BY CLAUSE CONSIDERATION OF THE BILL AND RECOMMENDATIONS

12. *Clause 2 of the Bill proposes to amend section 48(1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003, by deleting paragraph (a) and substituting therefor the following new paragraph—*

- (a) a fine not less than one million shillings, or to imprisonment for a term not less than ten years, or to both;*

Stakeholders Submissions

Submissions by the Multi-sectoral Initiative Against Corruption

13. Through a letter dated 4th April 2019, the Multi-sectoral Initiative Against Corruption submitted as follows-

- (a) The Initiative principally agrees with the proposed amendments to the extent that it considers them deterrent;
- (b) The Initiative wished to associate itself with the proposed amendment that introduces a minimum fine and jail term for persons convicted of economic crime. The Initiative was of the view that the current provisions in the Anti-Corruption and Economic Crimes Act allow for the accused persons who may have been found guilty of having benefited in corruption to a tune of over Kshs. 100,000,000 (one hundred million) would be liable for the same punishment as those found guilty of having committed economic crimes to a tune of Kshs. 10,000,000 (ten million) as there were no minimum penalties;
- (c) That the minimum fine be capped at Kshs. 1,000,000 (one million) with the quantum being dependent with the amount one is found guilty of having corruptly acquired;
- (d) It is only with punitive measures and by making corruption so expensive so as to deter those with the intention to commit an economic crime;
- (e) That a further amendment be made to section 55 of the Act (Forfeiture of unexplained assets) to include an express

provision for the mandate of the Ethics and Anti-Corruption Commission (EACC) to conduct a lifestyle audit on public, state officers and private sector individuals seeking engagements with state agencies such as consultancy services;

- (f) That another provision should be included to expressly provide for the digital publication of wealth declaration forms (filled) and requiring that civil servants declare their assets before assuming office.
- (g) That an amendment be introduced to set guidelines as to the bail and bond terms that may guide the judicial officers' exercise of discretion while remaining within the constitutional requirement for the right to bail.

Committee Observations

13. The Committee observed as follows-

- (i) The current section 48 (1) (a) of the Anti-Corruption and Economic Crimes Act, 2003, provides that a person convicted of an offence under Part V of the Act (Offences) is liable to punishment by a fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or to both;
- (ii) The proposed amendment to section 48 (1) (a) of Act seeks to convert the current maximum penalties of a fine not exceeding one million shillings and imprisonment for a term not exceeding ten years into minimum penalties for any offence committed in breach of the provisions of the Act.
- (iii) The sponsor of the Bill in the memorandum of objects and reasons justified the amendment on the ground that it was important to prescribe a minimum penalty to act as a deterrence mechanism for persons who engage in corrupt conduct as defined in the Act.
- (iv) The Multi-sectoral Initiative Against Corruption had supported the proposed amendment on the same ground that punitive measures will make corruption expensive and thus act as a deterrent to those who intend to commit economic crimes;
- (v) The imposition of minimum penalties may be deemed as a violation of the rights of an accused person to a fair trial on the ground that the provisions takes away the discretion of the presiding judicial officer to impose the appropriate punishment depending on the circumstances of the each case.

(vi) The right to a fair trial is set out in Article 50(2) of the Constitution. Article 25(c) of the Constitution further stipulates that the right to a fair trial shall not be limited. The other fundamental rights and freedoms that are not amenable to limitation are-

- (a) Freedom from torture and cruel, inhuman or degrading treatment or punishment;
- (b) Freedom from slavery or servitude;
- (c) The right to an order of *habeas corpus*.

(vii) The Supreme Court of Kenya in December 2017 declared that the mandatory death sentence for murder provided for under section 204 of the Penal Code was unconstitutional. (**Francis Karioko Muruatetu & Another vs. Republic (Petition No. 15 of 2015)**). In the same judgment, the Supreme Court stated that-

“47. Indeed the right to fair trial is not just a fundamental right. It is one of the inalienable rights enshrined in Article 10 of the Universal Declaration of Human Rights, and in the same vein Article 25(c) of the Constitution elevates it to a nonderogable right which cannot be limited or taken away from a litigant. The right to fair trial is one of the cornerstones of a just and democratic society, without which the Rule of Law and public faith in the justice system would inevitably collapse.

53. If a Judge does not have discretion to take into account mitigating circumstances it is possible to overlook some personal history and the circumstances of the offender which may make the sentence wholly disproportionate to the accused's criminal culpability. Further, imposing the death penalty on all individuals convicted of murder, despite the fact that the crime of murder can be committed with varying degrees of gravity and culpability fails to reflect the exceptional nature of the death penalty as a form of punishment. Consequently, failure to individualise the circumstances of an offence or offender may result in the undesirable effect of 'over-punishing' the convict.”


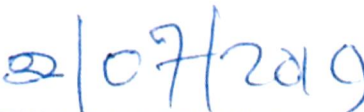
Committee Recommendation

14. The Committee recommends that the House rejects the Bill.

Justification for Recommendation

15. The Committee's justification for the recommendation are as follows-

- (i) The Committee is of the view that the imposition of minimum penalties is a violation of the rights of an accused person to a fair trial on the ground that the provision takes away the discretion of the presiding judicial officer to impose the appropriate punishment depending on the circumstances of the each case.
- (ii) The Committee was also guided by the declaration of the Supreme Court of Kenya in **Francis Karioko Muruatetu & Another vs. Republic (Petition No. 15 of 2015)** that the mandatory death sentence for murder provided for under section 204 of the Penal Code was unconstitutional.

SIGNED..........DATE.....

HON. WILLIAM CHEPTUMO, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS

ANNEXURE 1

**(Minutes of Committee sittings on consideration of the
Bill and adoption of report)**

MINUTES OF THE 150TH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON FRIDAY, 15TH JUNE, 2019 AT 2.00 P.M. IN OMO ROOM, CROWNE PLAZA HOTEL

PRESENT-

- | | | |
|---|---|-------------------------|
| 1. Hon. William Cheptumo, M.P. | - | Chairperson |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P. | | |
| 4. Hon. Peter Opondo Kaluma, M.P. | | |
| 5. Hon. William K. Mwamkale, M.P. | | |
| 6. Hon. Ben Momanyi, M.P. | | |
| 7. Hon. Charles Gimose, M.P. | | |
| 8. Hon. George G. Murugara, M.P. | | |
| 9. Hon. Jennifer Shamalla, M.P. | | |
| 10. Hon. Beatrice Adagala, M.P. | | |
| 11. Hon. Anthony G. Kiai, M.P. | | |
| 12. Hon. Gladys Boss Shollei, CBS, M.P. | | |
| 13. Hon. John Kiarie Waweru, M.P. | | |
| 14. Hon. Adan Haji Yussuf, M.P. | | |
| 15. Hon. John M. Wambugu, M.P. | | |

ABSENT WITH APOLOGIES-

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Japheth Mutai, M.P.
3. Hon. Johana Ng'eno, M.P.
4. Hon. Zuleikha Hassan, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Mr. Denis Abisai | - | Principal Legal Counsel I |
| 3. Ms. Halima Hussein | - | Third Clerk Assistant |
| 4. Ms. Fiona Musili | - | Research Officer III |
| 5. Ms. Roselyn Njuki | - | Serjeant-at-Arms |
| 6. Mr. Kimiti James | - | Audio Officer |
| 7. Mr. Simon Maina | - | Support staff |

MIN No. 594/2019:-

PRELIMINARIES

The meeting commenced at 2pm. with a word of prayer by Hon William Kamoti.

MIN No. 595/2019:-

CONSIDERATION OF THE ANT-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL, 2019

Having considered the Anti-Corruption and Economic Crimes (Amendment) Bill, 2019 the Committee rejected the proposed amendments to Section 48 (1) of the Ant- Corruption and Economic Crimes Act No.3 of 2003 and recommended that the National Assembly to develop legislations to strength the Asset Recovery Unit to address the gaps.

The Committee further considered and unanimously adopted its report on the Bill rejecting it in entirety.

The adoption was proposed by Hon. John Munene and seconded by Hon. Peter Kaluma.

MIN No. 596/2019:-

CONSIDERATION AND ADOPTION OF THE REPORT ON THE LEGISLATIVE PROPOSAL TO AMEND ARTICLES 107,108,117 AND 151 OF THE CONSTITUTION BY HON JOSHUA KUTUNY

The Committee considered and adopted its report on the legislative proposal to amend of the Constitution by Hon. Joshua Kutuny with the following recommendations; THAT

- (i) The legislative proposal should not be proceeded with for publication.
- (ii) The National Assembly to consolidate all the constitutional amendment proposals into a single Bill for processing to save on time, public resources and avoid duplication of efforts.

The adoption of the report was proposed by Hon. Beatrice Adagala and seconded by Hon. William Kamoti.

MIN No. 597/2019:-

CONSIDERATION AND ADOPTION OF THE
REPORT ON THE LEGISLATIVE PROPOSAL
TO AMEND VARIOUS ARTICLES OF THE
CONSTITUTION BY HON WILLIAM KAMKET

The Committee considered and adopted its report on the legislative proposal to amend the Constitution by Hon. William Kamket with the following recommendations; THAT

- (iii) The legislative proposal should not be proceeded with for publication.
- (iv) The National Assembly to consolidate all the constitutional amendment proposals into a single Bill for processing to save on time, public resources and avoid duplication of efforts.

MIN No. 598/2019:-

CONSIDERATION AND ADOPTION OF THE
REPORT ON THE LEGISLATIVE PROPOSAL
TO AMEND ARTICLE 97 OF THE
CONSTITUTION BY HON GIDEON KETER

The Committee considered and adopted its report on the legislative proposal to amend Article 97 of the Constitution by Hon. Gideon Keter with the following recommendations; THAT

- (v) The legislative proposal should not be proceeded with for publication.
- (vi) The National Assembly to consolidate all the constitutional amendment proposals into a single Bill for processing to save on time, public resources and avoid duplication of efforts.

MIN No. 599/2019:-

CONSIDERATION AND ADOPTION OF THE
REPORT ON THE LEGISLATIVE PROPOSAL
TO AMEND ARTICLE 115 OF THE
CONSTITUTION BY HON ANTHONY OLUOCH

The Committee considered and adopted its report on the legislative proposal to amend Article 97 of the Constitution by Hon. Anthony Oluoch with the following recommendations; THAT

- (vii) The legislative proposal should not be proceeded with for publication.
- (viii) The National Assembly to consolidate all the constitutional amendment proposals into a single Bill for processing to save on time, public resources and avoid duplication of efforts.

MIN No. 600/2019:-

CONSIDERATION AND ADOPTION OF THE
REPORT ON THE LEGISLATIVE PROPOSAL
TO AMEND VARIOUS ARTICLES OF THE
CONSTITUTION BY HON JULIUS BORES

The Committee considered and adopted its report on the legislative proposal to amend Article 97 of the Constitution by Hon. Julius Bores with the following recommendations; THAT

- (ix) The legislative proposal should not be proceeded with for publication.
- (x) The National Assembly to consolidate all the constitutional amendment proposals into a single Bill for processing to save on time, public resources and avoid duplication of efforts.

MIN No. 601/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at Six o'clock.

Signed.....

Chairperson

Date.....

ANNEXURE 2

(Signed list of Members who attended the sitting that considered and adopted the report on the Bill)

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

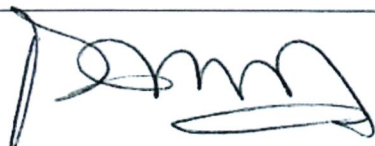
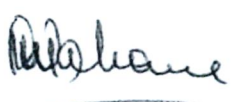
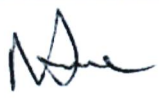




**DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS**


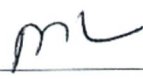

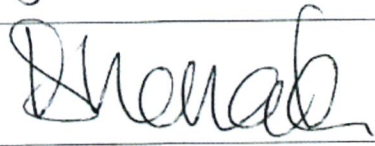


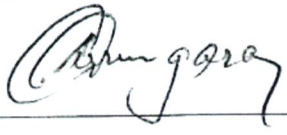
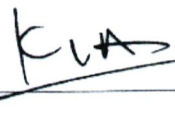
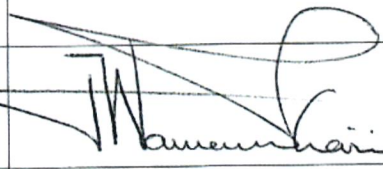
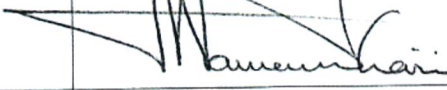


MEMBERS' MEETING ATTENDANCE REGISTER

DATE..... 15/06/2019 TIME..... 2PM

VENUE..... ONO ROOM, CROWNE PLAZA HOTEL

AGENDA..... Adoption of the Reports on Legislative Proposals & Reports on
Institute of Directors & Anti- Corruption & Economic
Comms Bill, 2019

No.	NAME OF MEMBER	SIGNATURE
1.	Hon. William Cheptumo, M.P. – <i>Chairperson</i>	
2.	Hon. Alice Muthoni Wahome, M.P. – <i>Vice Chairperson</i>	
3.	Hon. John Olago Aluoch, M.P.	
4.	Hon. Roselinda Soipan Tuyu, M.P.	
5.	Hon. Charles Gimose, M.P.	
6.	Hon. Johana Ng'eno Kipyegon, M.P.	
7.	Hon. William Kamoti Mwamkale, M.P.	

8.	Hon. Ben Orori Momanyi, M.P.	
9.	Hon. Peter Opondo Kaluma, M.P.	
10.	Hon. Beatrice Adagala, M.P.	
11.	Hon. Jennifer Shamalla, M.P.	
12.	Hon. Gladys Boss Shollei, CBS, M.P.	
13.	Hon. John Munene Wambugu, M.P.	
14.	Hon. George Gitonga Murugara, M.P.	
15.	Hon. Anthony Githiaka Kiai, M.P.	
16.	Hon. Japheth Mutai, M.P.	
17.	Hon. John Kiarie Waweru, M.P.	
18.	Hon. Adan Haji Yussuf, M.P.	
19.	Hon. Zuleikha Hassan, M.P.	

for: 

George Gazemba, ACI Arb, CPM
For: CLERK OF THE NATIONAL ASSEMBLY

ANNEXURE 3

(Copy of newspaper advertisement inviting the public to present written submissions on the Bill)

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1.667
2.111
3.631
23%
53%
2017
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1.915
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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - THIRD SESSION

In the Matter of the consideration by the National Assembly:-
The proposed Public Private Partnership (PPP) agreement between
Kenya Airways and the Kenya Airports Authority

SUBMISSION OF MEMORANDA

Article 118 (1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees" and Article 201 (a) of the Constitution provides that, "there shall be openness and accountability, including public participation in financial matters".

The Departmental Committee on Transport, Public Works and Housing is established pursuant to Standing Order 216 of the National Assembly and is mandated to, *inter alia*, "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".

The Committee intends to conduct an inquiry into the issues of policy, human resource and legal compliance, as well as the general issues of concern to the public as contemplated under Article 95 of the Constitution, in relation to the Kenya Airways (KQ) Privately Initiated Investment Proposal (PIIP) to the Kenya Airports Authority (KAA). The Committee is in receipt of the Proposal from Kenya Airways PLC and the proposal seeks to introduce a Public Private Partnership for the operations, management and development of Jomo Kenyatta International Airport.

Pursuant to the provisions of the said articles of the Constitution, the Committee invites members of the public to submit any views they may have on the said proposal. The views, representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk, First Floor, Main Parliament Building, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Thursday, 4th April, 2019 at 5:00 pm.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - THIRD SESSION

In the matters of consideration by the National Assembly:-
1. The Livestock and Livestock Products Marketing Board Bill, 2019
2. The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No.9 of 2019)

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "The Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Livestock and Livestock Products Marketing Board Bill, 2019 seeks to streamline the marketing of livestock and livestock products in Kenya. The streamlining of the industry is to be achieved through the establishment of the Livestock and Livestock Products Marketing Promotion Board which is to be the main body dealing with the marketing of livestock and livestock products in the country. It is expected that this will result in an efficient livestock products marketing industry in Kenya.

The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 9 of 2019) seeks to amend the Higher Education Loans Board Act, 1995 to provide for the award of bursaries and scholarships to all eligible students from marginalized areas. The amendment is guided by the fact that education is most appreciated in these areas and parents are unwilling to invest in it. Other parents find funding higher education unaffordable despite knowing its value. The Bill will therefore act as a motivating factor for more students to pursue higher education through provision of bursaries to ease for part of their college fees.

The Livestock & Livestock Products Marketing Board Bill, 2019 and the Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 9 of 2019) have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the Departmental Committee on Agriculture & Livestock and Departmental Committee on Education & Research respectively for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the respective Committees invites interested members of the Public to submit any representations they may have on the said Bills. The Bills can be accessed from the parliamentary website at www.parliament.go.ke. The representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Thursday, 4th April, 2019 at 5:00 pm.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - THIRD SESSION

In the Matters of consideration by the National Assembly:-
1. Ratification of the Agreement for the Setting up of a Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region
2. Ratification of the Regional Agreement on the Co-ordination of Operations at Sea in the Western Indian Ocean

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, Section 8 of the Treaty Making and Ratification Act, 2012 provides for the consideration and Ratification of Treaties by Parliament and subsection(3) states that, "the relevant Parliamentary Committee shall, during its consideration of the Treaty, ensure Public Participation in the ratification process in accordance with laid down parliamentary procedures".

The National Assembly is in receipt of the above mentioned Agreements for approval for ratification by the Government of the Republic of Kenya. The Agreements seek to establish a framework for regional cooperation amongst State Parties to enhance maritime safety and security in accordance with the national sovereignty, territorial integrity and non-interference in the internal affairs of States in accordance with international law. The Agreements further seek to establish a Regional Maritime Information Fusion Centre to facilitate the sharing of maritime information and a Joint Operational Co-ordination Centre to co-ordinate joint interventions in the maritime zones of State Parties and the high seas.

The above mentioned Agreements have been committed to the Departmental Committee on Defence and Foreign Relations pursuant to Standing Order 216(5)(a) for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) of the Constitution and section 8 of the Treaty Making and Ratification Act, 2012, the Committee invites members of the public to submit any representations they may have on the said Agreements. The Agreements can be accessed from the parliamentary website at www.parliament.go.ke. The representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, First Floor, Main Parliament Building, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Thursday 4th April, 2019 at 5:00 pm.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - THIRD SESSION

In the matters of consideration by the National Assembly:-
1. The Anti-Corruption and Economics Crimes (Amendment) Bill, 2019
2. The Institute of Directors of Kenya Bill, 2019

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "The Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Anti-Corruption and Economics Crimes (Amendment) Bill, 2019 seeks to amend the Anti-Corruption and Economics Crimes Act No. 3 of 2003 in order to prescribe a minimum penalty to act as deterrence mechanisms for persons who engage in corrupt conduct as defined in the Act.

The Institute of Directors of Kenya Bill, 2019 seeks to establish the Institute of Directors of Kenya and provides for the registration and regulation of their conduct.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the Departmental Committee on Justice and Legal Affairs for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee invites members of the Public to submit representations they may have on the said Bills. The Bills may be accessed on the Parliamentary website - www.parliament.go.ke. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Thursday, 4th April, 2019 at 5:00 pm.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

ANNEXURE 4

(Submission from stakeholders)

96



Multisectoral Initiative
AGAINST CORRUPTION

Multi-Sectoral Initiative Against Corruption

P.O BOX 3556-00100

NAIROBI

Email: info@msiac.org

Twitter: @msiac

04.04.2019

The National Assembly
Clerk of ~~Senate~~ Secretary,

Parliamentary Service Commission

P.O BOX 41842-00100

NAIROBI

① Dlent
8/4/19

② CAZEMBA
pb dept
FA
09/4/19



③ Guesen
As note
FA
09/4/19

Dear Sir/Madam,

REF: MEMORANDUM FOR THE AMENDMENT OF SECTION 48 OF ACT NO. 3 OF 2003, THE ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL, 2019.

The*MSIAC enters this memorandum developed with regard to the above Bill.

The MSIAC is a non-state initiative that consists multi-sectoral players and partners including the state agencies and development partners. The Initiative was formed primarily to review the country's corruption index, factors driving corruption and engage multi-sectoral players in developing strategies to combat and ultimately eradicate corruption.

MSIAC has so far championed for the Movement Against Corruption, held sector Conferences that culminated in the National Anti-Corruption Conference graced by H.E. President Uhuru Kenyatta. The Initiative has now embarked on the second phase of implementing the sector and committee strategies. As one of the strategies include reviewing and proposing necessary amendments to the existing laws, regulations and policy framework.

On the proposed amendment Bill, we wish to propose the following issues for consideration;

PRINCIPALLY AGREE WITH THE BILLS

The Initiative principally agrees with the proposed amendments to the extent that it considers deterrence as the intendment, objects and purposes of the amendment.

1. ON THE MINIMUM PENALTY UNDER SECTION 48 PART 1

We wish to associate ourselves with the proposed amendment that introduces a minimum fine and jail term for persons convicted of economic crime. It is our contention that the provision as is in the Act (before the amendment) allows for the accused persons who may have been found guilty of having benefited in corruption to a tune of over Kshs. 100,000,000 would be no different from those found guilty of having committed economic crimes to a tune of Kshs. 10,000,000 in so far as maximum or minimum fines would warrant.

It therefore is our position that the minimum fine be capped at Kshs. 1,000,000 with the quantum being dependent with the amount one is found guilty of. It is only with punitive measures and by making corruption so expensive so as to deter those with the intention to commit an economic crime.

It is our submission that Section 48 (1) (b) remains as is.

2. ON SECTION 48 PART 2

It is our humble view that this part proscribes for the determination of the fine arising from Part 1 (b) of Section 48.

It is, however, our contention that the same be properly anchored in the Act so as not to be used as a tool of abuse of discretion by judicial officers.

3. A PROPOSED FURTHER AMENDMENT TO SECTION 55 OF THE ACT

The Initiative wishes to propose a further amendment to Section 55 of the Act to include an express provision for the mandate of the Ethics and Anti-Corruption Commission (EACC) to conduct a lifestyle audit on public, state officers and Private sector individuals seeking engagements with state agencies such as consultancy services.

Another provision should be included to expressly provide for the digital publicizing of wealth declaration forms (filled) and requiring that civil servants declare their assets before assuming office.

4. INCLUSION OF A MINIMUM BAIL AND/ OR BOND TERMS

We propose an amendment to introduce guidelines as to the bail and bond terms that may guide the judicial officers' exercise of discretion while remaining within the constitutional requirement for the right to bail.

It is our humble prayer that the proposed amendments be considered and that the Act be safeguarded from those who may wish to propose amendments that may circumvent the Rule of Law and or water down the existing provisions.

Those are our humble submissions.

Sincerely,



Arch. Lee Karuri

Co-Chair, Multi-Sectoral Initiative Against Corruption