

**PARLIAMENT OF KENYA**



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**THE NATIONAL ASSEMBLY**

**ELEVENTH PARLIAMENT**

**FIFTH SESSION - 2017**

**THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL  
AFFAIRS**

**REPORT ON THE ELECTION LAWS (AMENDMENT) BILL, 2017**

**DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS,**

**NAIROBI**

**APRIL, 2017**



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## **CHAIR'S FOREWORD**

The Election laws (Amendment) Bill, 2017 was read for the first time on 14<sup>th</sup> March, 2017. Pursuant to the provisions of Standing Order 127 (1) the Speaker referred the Bill to the Departmental Committee on Justice and Legal Affairs for consideration.

The Bill dated 3<sup>rd</sup> March, 2017 was published in Kenya Gazette Supplement No.22 (National Assembly Bills No.10)

The Constitution of Kenya under Article 118 and Standing Order 127 require the Committee to facilitate public participation and take into account the views and recommendations of the public when the committee makes its report to the House.

The Clerk of the National Assembly notified the public for participation vide an advert in the Daily Nation and the Standard Newspapers of March 22<sup>nd</sup> 2017.

The Hon.Chief Justice wrote a letter to the Committee through the Speaker and proposed some amendments to the Bill. The Committee approved the Bill with amendments as proposed by the Judiciary.

On behalf of the Committee, I wish to thank the offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. Furthermore, the committee appreciates the input by the Judiciary made through their written proposals.

Finally, it is my pleasure and duty to present to the House the Report of the Committee on the Elections Laws (Amendment) Bill, 2017.

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



## MEMBERS OF THE COMMITTEE

<b>Chairperson</b>	Hon. Samuel Chepkong’ a, M.P.
<b>Vice Chairperson</b>	Hon. Priscilla Nyokabi, M.P.
	Hon. Njoroge Baiya, M.P.
	Hon. Muriithi Waiganjo, M.P.
	Hon. Ndirangu Waihenya, M.P.
	Hon. Florence Kajuju, M.P.
	Hon. Kang’ataIrungu, 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.

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## COMMITTEE SECRETARIAT

First Clerk Assistant	Mr. Abenayo Wasike
Principal Legal Counsel	Mr. Dennis Abisai
Legal Counsel	Mr. Ronald Walala
Third Clerk Assistant	Mr. Ahmed Salim
Third Clerk Assistant	Ms. Mary Lemerelle
Researcher	Ms. Clare Jerotich

## **1.0 BACKGROUND**

The principal object of the Bill is to amend the Elections Act, No.25 of 2011 to provide for elections petitions appeals generally, including setting timelines for filing and determination of appeals and introducing a new requirement that only one appeal may be allowed in an election petition.

The Bill proposes a new section 39A to be inserted in the Political Parties Act No.11 of 2011 in order to provide for appointment of additional *ad hoc* members of the Political Parties Disputes Tribunal to enable the Tribunal to effectively and expeditiously deal with the many disputes which may arise during the party primaries and nomination of candidates for 2017 general elections. The quorum of the Tribunal is deliberately retained at three members as it currently obtains to enable the Tribunal sit in panels each of which shall have the power to make valid decisions.

The Bill also proposes to amend the National Council for Law Reporting Act, No.11 of 1994 to clarify that the Council is established to operate and be administered under the judicial arm of government.

**Clause 2** of the Bill proposes to insert a new sub-section (4A) in section 75 of the Elections Act, No. 24 of 2011 providing that election petitions appeals filed in the High Court under the section shall be final and no further appeals shall be allowed.

**Clause 3** of the Bill proposes to insert new sub-sections (5A) and (5B) in section 76 of the Elections Act, No. 24 of 2011 providing, respectively, that-

- (a) a petition concerning the allocation of party list seats pursuant to Article 90 of the Constitution shall lie to the High Court but on matters of law only;
- (b) an appeal from a decision of the High Court under sub-section (5A) shall lie to the Court of Appeal on points of law only and the decision of the Court of Appeal shall be final.

**Clause 4** of the Bill seeks to amend section 85A of the Elections Act, No 24 of 2011, to provide that appeals to the Court of Appeal under that section shall be final.

**Clause 5** of the Bill seeks to amend section 96 of the Elections Act, No 24 of 2011, to empower the Rules Committee to make rules generally to regulate the practice and procedure in the Resident Magistrate's Courts, in addition to the High Court.

**Clause 6** of the Bill seeks to amend section 39 of the Political Parties Act, No. 11 of 2011 in order to increase the minimum years an advocate should have practiced before qualifying to be a member of the Tribunal from five to ten years.

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**Clause 7** of the Bill seeks to insert a new section 39A in the Political Parties Act, No. 11 of 2011 to provide for the appointment of not more than twenty five *ad hoc* additional members of the Political Parties Disputes Tribunal by the Judicial Service Commission.

**Clause 8** of the Bill seeks to amend section 40(2) of the Political Parties Act, No. 11 of 2011 to empower the Political Parties Disputes Tribunal to determine disputes emanating from party primaries.

**Clause 9** of the Bill seeks to amend section 41(2) of the Political Parties Act, No. 11 of 2011 to provide that an appeal from the decision of the Tribunal shall lie to the High Court and the decision of the High Court shall be final.

**Clause 10** of the Bill seeks to amend section 2 of the National Council for Law Reporting Act, No. 11 of 1994 to clarify that the National Council for Law Reporting is established to operate and be administered under the judicial arm of government.



## **2.0 CONSIDERATION OF THE ELECTIONS LAWS (AMENDMENT) BILL, 2017**

### **Committee Sitzings**

The Committee considered the Election Laws (Amendment) Bill, 2017 in its sitting held on Thursday, 30<sup>th</sup> March, 2017. The Committee received written submissions from the Judiciary and recommended amendments to clauses 2 and 6 of the Bill.

### **Public Participation**

The Clerk of the National Assembly notified the Public for participation vide an advert in the print media pursuant to Article 118 of the Constitution and Standing Order 127(3). Through the Daily Nation and Standard newspapers of 22<sup>nd</sup> March 2017 the committee invited the public to make representations on the Bill. The Committee only received a memorandum from the Judiciary in support of the Bill.

The Committee noted that the Bill was straightforward and it sufficiently meets its objectives. The Committee proposed amendments in line with the views of the Judiciary, vide the Hon. Chief Justice letter to the Hon. Speaker, dated 14<sup>th</sup> March 2017. Having considered all the clauses, the Committee approved the Bill with amendments.

### 3.0 PROPOSED AMENDMENTS

The Committee proposed amendments as follows;

#### CLAUSE 2

**THAT**, the Bill be amended by deleting Clause 2 and substituting therefor the following new Clause—

Amendment of section 75 of No. 24 of 2011. **2.** Section 75 of the Elections Act, No. 24 of 2011 is amended—

- (a) in subsection (2) by deleting the phrase “subsection (1)” appearing immediately after the word “under” and substituting therefor the phrase “subsections (1) and (1A)”;
- (b) by inserting the following new subsection immediately after subsection (4)—  
“(4A) An appeal under this section shall be final.”.

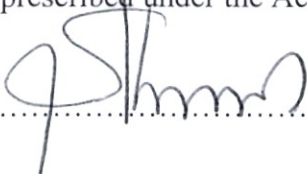
**JUSTIFICATION:** To correct the impression that there is no time limit within which a Resident Magistrates’ Court should hear and determine a petition relating to a Member of a County Assembly (MCA).

The effect of the amendment is that a question as to the validity of the election of an MCA will be heard and determined within six (6) months of the date a petition is lodged. The amendment came from the Judiciary

#### CLAUSE 6

**THAT**, Clause 6 of the Bill be amended by deleting the words “five years” and substituting therefor the words “seven years”.

**JUSTIFICATION:** Clause 6 of the Bill refers to a period of experience that is different from the one currently prescribed under the Act. The purpose of the amendment is to correct this error.

Signed .....  ..... Date. 4/04/017 .....

**Hon. Samuel Chepkong’a, M.P**  
(Chairperson)

**Departmental Committee on Justice and Legal Affairs**

**MINUTES OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS  
HELD ON THURSDAY, 30<sup>TH</sup> MARCH, 2017 AT 10.00 A.M. IN COMMITTEE ROOM 4<sup>TH</sup>  
FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS**

**PRESENT**

Hon. Samuel Chepkonga, M.P. - Chairperson  
Hon. Priscilla Nyokabi, M.P. - Vice Chairperson  
Hon. Benson Mutura, M.P.  
Hon. Charles Gimose, M.P.  
Hon. David Ochieng, M.P.  
Hon. Florence Kajuju, M.P.  
Hon. John M. Waiganjo, M.P.  
Hon. Olago Aluoch, M.P.  
Hon. William Kamoti Mwamkale, M.P.  
Hon. Moses Cheboi, M.P.  
Hon. Njoroge Baiya, M.P.  
Hon. (Bishop) Robert Mutemi, M.P.  
Hon. Tom J. Kajwang', M.P.

**APOLOGY**

Hon. Dr. Christine Ombaka, M.P.  
Hon. John Njoroge Chege, M.P.  
Hon. Ndirangu Waihenya, M.P.  
Hon. Boniface Otsiula, M.P.  
Hon. Sammy Koech, M.P.

**ABSENT**

Hon. Peter Kaluma, M.P.  
Hon. Johanna Ngeno, M.P.  
Hon. Paul K. Bii, M.P.  
Hon. Neto Agostinho, M.P.  
Hon. William Cheptumo, M.P.  
Hon. Kang'ata Irungu, M.P.  
Hon. Mohamed Abdi Haji, M.P.  
Hon. Fatuma Ibrahim, M.P.  
Hon. Ben Momanyi, M.P.  
Hon. Bitok Kirwa, M.P.

### **IN ATTENDANCE**

Mr. Halakhe Waqo	-	CEO EACC
Mr. Michael Mubea	-	D/CEO EACC
Mr. Abdi Mohamed	-	Director Investigations
Mr. David K. Too	-	Director Legal Services
Ms. Jennifer Kimani	-	Director Finance & Planning
Mr. Jonam N. Kinama	-	D/Director Administration
Mr. Robert Kanyi	-	D/Director Supply Chain Management
Mr. David N. Kaboro	-	SLO
Mr. Jared Aduwo	-	MRO

### **SECRETARIAT**

Mr. Abenayo Wasike	-	Clerk Assistant 1
Mr. Ahmed Salim	-	Clerk Assistant III
Ms. Mary L. Lemerelle	-	Clerk Assistant III
Mr. Walala	-	Budget Officer
Mr. James Kariuki	-	Sergeant-at-arms

### **MIN No. JLA.59 /2017:-**

### **PRELIMINARIES**

The Chairperson called the meeting to order at 10.25 a.m. and commenced with a word of prayer. The agenda of the meeting was;

- a) Consultations on acquisition of permanent premises for EACC.
- b) The Election Laws (Amendment) Bill, 2017
- c) The Office of the Attorney (Amendment) Bill, 2017

Introductions and welcoming remarks were made for members of the Ethics and Anti-Corruption Commission.

### **MIN No. JLA.60 /2017:-**

### **PRESENTATION OF THE ON PROGRESS REPORT ON ACQUISITION OF PERMANENT PREMISES FOR THE ETHICS AND ANTI-CORRUPTION COMMISSION**

Members were briefed on procurement proceedings for acquisition of Flamingo Towers. It was noted that only one bid was received from Citiscap Valuers & Estate Agents Ltd in respect of Flamingo Towers.

Valuations for the premises from different parties were as follows;



Government Valuer (Ministry) – **Ksh. 2,400,000,000.00.**

A private valuation by the bidder – **Ksh. 3,100,000,000.00.**

The Commission reported that it was advised by the Procurement Regulatory Authority (PPRA) on valuation results as critical in relation to the bid price, and hence the procuring entity should take into account the results in making a decision. The Commission further observed that the negotiated and agreed price at 2,688,000,000.00 was exclusive of VAT. Hence, when VAT was considered, the resultant purchase price would translate to **Ksh. 3,118,080,000.00**

The meeting noted that the Commission terminated the tender process considering the variations in the bid price, the negotiated price and the government valuation price; as well as the advice given by the PPRA on the matter. The Commission also analyzed the applicable law on the guiding principles of public procurement and asset disposal.

It was brought to the attention of the Committee that the Commission issued a notice of termination of the tender to the bidder Citiscape Valuers & Estate Agents Ltd on 14<sup>th</sup> March 2017. The Cabinet Secretary for the National Treasury as well as the Director of Public Prosecutions were notified of the termination.

### **Way forward by the Ethics and Anti-Corruption Commission**

**The Commission recommended as follows;**

**i. Identification and Procurement of Alternative Premises**

The commission is in the process of identifying alternative premises that can be earmarked for acquisition within the current Financial Year. Such a process would require approximately **Sixty (60) days**, with the following indicative timelines-

- a. 14 days for bidders to prepare their bids
- b. 30 days for evaluation and due diligence
- c. 14 days from notification to the contract signing.

**ii. Severance from Joint Acquisition with ODPP**

The intended joint occupation with the Office of the ODPP portends challenges and complicates the acquisition process, on the following grounds;-

- a. The space required to accommodate the two offices is higher, and this limits the available options in the market;
- b. The price for premises suitable for EACC alone would be lower, and this can be settled in a shorter time frame.

**iii. Surrender of Karen Plot**

The Commission is willing to surrender the Karen plot, in exchange for the monies that the Parliamentary Service Commission has offered to forfeit for allocation to EACC towards acquisition of its headquarters.

**Observations/Recommendations by the Committee**

The Committee recommended that;

- i. The Commission should consider the process of compulsory acquisition of premises and value for money –not to purchase above its allocation of 2.68B
- ii. The Committee (Justice & Legal Affairs) would pursue the Kshs 1Billion from the Parliamentary Service Commission
- iii. The Commission was also advised to hand over the 5ha land to the Parliamentary Service Commission

The Commission however informed the meeting that compulsory acquisition would translate to more money for an extra space.

**MIN No. JLA.61/2017:-**

**CONSIDERATION OF THE ELECTION LAWS  
(AMENDMENT) BILL,2017**

The meeting was informed that the Election Laws (Amendment) Bill, 2017 sought to amend the following Acts;

Elections Act No.25 of 2011 to provide for elections petitions appeals generally, including setting timelines for filing and determination of appeals and introducing a new requirement that only one appeal may be allowed in an election petition.

That the Bill proposes a new section 39A to be inserted in the Political Parties Act, No.11 of 2011 in order to provide for appointment of ad hoc members of the Political Parties Dispute Tribunal to effectively and expeditiously deal with the many disputes which may arise during party primaries and nomination of candidates for the 2017 General Elections.

That the Bill also proposes to amend the National Council for Law Reporting Act, No.11 of 1994 to clarify that the Council is established to operate and be administered under the judicial arm of Government.

**Committee Recommendations**

The Committee approved the Bill with the following amendments as proposed by the Judiciary;  
**CLAUSE 2**

**THAT**, the Bill be amended by deleting Clause 2 and substituting therefor the following new Clause—

Amendment of section 75 of No. 24 of 2011.

**2.** Section 75 of the Elections Act, No. 24 of 2011 is amended—

- (a) in subsection (2) by deleting the phrase “subsection (1)” appearing immediately after the word “under” and



substituting therefor the phrase “subsections (1) and (1A)”;

(b) by inserting the following new subsection immediately after subsection (4)—

“(4A) An appeal under this section shall be final.”.

**JUSTIFICATION:** To correct the impression that there is no time limit within which a Resident Magistrates’ Court should hear and determine a petition relating to a Member of a County Assembly (MCA).

The effect of the amendment is that a question as to the validity of the election of an MCA will be heard and determined within six (6) months of the date a petition is lodged. The amendment came from the Judiciary

**CLAUSE 6**

**THAT,** Clause 6 of the Bill be amended by deleting the words “five years” and substituting therefor the words “seven years”.

**JUSTIFICATION:** Clause 6 of the Bill refers to a period of experience that is different from the one currently prescribed under the Act. The purpose of the amendment is to correct this error.

The approval was proposed by Hon Njoroge Baiya and seconded by Hon. Charles Gimose.

**MIN.NO.JLA.63/2017 OFFICE OF THE ATTORNEY GENERAL (AMENDMENT BILL, 2017**

Members resolved to review the Bill in the next sitting.

**MIN No. JLA.62/2017:-**

**ADJOURNMENT**

There being no other business to transact, the sitting adjourned at forty minutes past Twelve O’clock.

Signed.....  


(Chairperson)

Date..... 4/04/017

