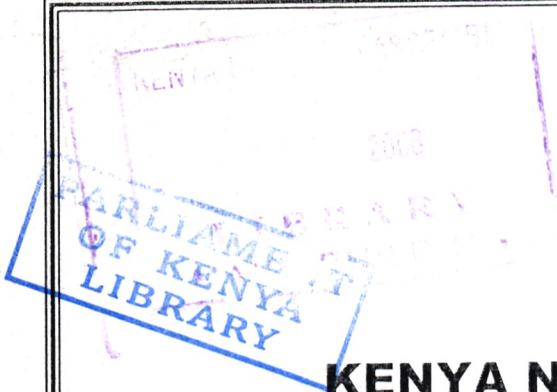


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KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT - SECOND SESSION (2008)

THE DEPARTMENTAL COMMITTEE

ON

ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS

REPORT ON

**THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION
BILL, 2008**

Clerks Chambers,
Parliament Buildings,
NAIROBI.

JULY 2008

PREFACE

Mr. Speaker Sir,

The Departmental Committee on Administration of Justice and Legal Affairs is established under Standing Order No.151; its mandate pursuant to Standing Order 151(4) is:-

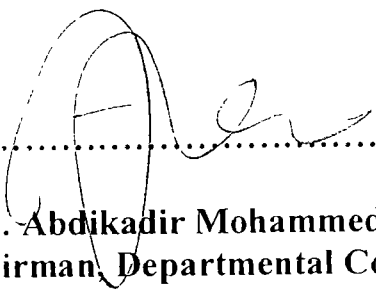
- a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b) to study the programme and policy objectives of the Ministries and departments and the effectiveness for implementation;
- c) to study and know all legislation after First Reading, subject to the exceptions under Standing Order 101A (4);
- d) to study, assess and analyze the relative success of Ministries and departments as measured by the results obtained as compared with its stated objective;
- e) to investigate and inquire into all matter relating to all assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister and;
- f) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee comprises:

1. Hon. Abdikadir Mohammed, M.P - Chairman
2. Hon. George Nyamweya, M.P.
3. Hon. Amina Abdalla, M.P.
4. Hon. Olago Aluoch, M.P.
5. Hon. Millie Odhiambo, M.P.
6. Hon. Ruto Kiprono, M.P.
7. Hon. Alfred Sambu, M.P.
8. Hon. Wamalwa Eugene, M.P.
9. Hon. Mutava Musyimi, M.P
- 10.Hon. Ababu Namwamba, M.P.
- 11.Hon. Peter Baiya, M.P.

Mr. Speaker Sir, on 10th June 2007, The Truth, Justice and Reconciliation Bill, 2008 was referred to this Committee after its First Reading. This Report contains the proposed amendments to the Bill, which resulted from the deliberations of the Committee. In arriving at the proposed amendments the Committee took into consideration submissions from the Law Society of Kenya, the representatives of the European Union and the Kenya Human Rights Commission.

Mr. Speaker Sir, it is now my pleasant duty and privilege, on behalf of the Departmental Committee on Administration of Justice and Legal Affairs, to present and commend this report to the House.

Signed: 

Hon. Abdikadir Mohammed, M.P
Chairman, Departmental Committee on Administration of
Justice and Legal Affairs

Date:

THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION BILL, 2008

Proposed amendments

The committee on administration of justice and legal affairs recommends to the National Assembly-

1. That the Bill be amended by inserting the following new Preamble immediately before the long title-

Preamble

Desirous that our nation achieves its full potential in social, economic and political development;

Concerned that since independence there has occurred in Kenya gross violation of human right, abuse of power and misuse of public office;

Concerned that some of the transgressions against our country and its people can not be properly addressed by our judicial institutions due to procedural and other hindrances and conscious, however ,that we must as a nation address the past in order to prepare for the future by building a democratic society based on the rule of law;

Aware that the process of achieving lasting peace and harmonious co-existence among Kenyans would best be served by enabling Kenyans discard such matters in a free and reconciliatory forum;

Deeply concerned that the culmination of the polarization of our country and the feeling of resentment among Kenyans was the tragic post election violence that followed the announcement of the 2007 Presidential election results;

Desirous to give the people of Kenya a fresh start where justice is accorded to the victims of injustice and past transgressions adequately addressed.

2. That the Bill be amended by deleting the word “commission” appearing in the title

thereto.

3. That clause 1 of the Bill be amended by adding the words” which shall not be later than 30 days after the date of the assent to the bill by the president” immediately after the word “appoint”

4. That clause 2 of the bill be amended in the definition of “gross violation of human rights violations” by inserting a new paragraph(g) immediately after paragraph(f)as follows;

(g) crimes against humanity

5. That clause 5 of the Bill be amended by moving subsections(d),(e),(f),(g),(h),(i),(j)and (o) to subsection 6.

6. That clause 6 of the Bill be amended by

(i) Combining the contents of section 5(c) and section 6(a) to have a new section6(a) read as follows:

6(a) Investigate violations and abuses of gross human rights relating to abductions, disappearances, detentions, torture, sexual violations, murder and extra-judicial killings, ill-treatment and expropriation of property suffered by any person between 12th December, 1963 and 28th February, 2008.

(ii) by adding a new sub-clause 6(u) to read as follows:

6(u) Consider the reports of other relevant Commissions of enquiry and make recommendations of the implementation thereof

(iii) by importing subsections (d),(e),(f),(g),(h),(i),(j),&(o) from section 5

7. That clause 7 of the Bill be amended by-

(a) deleting paragraph (j) appearing in sub clause(1);

(b) by inserting the following new sub clause immediately after clause (5)-

(6) The police shall, on request being made by the Commission provide the Commission with such service and assistance as may be required by the Commission.

9. That clause 9 of the Bill be amended –

(a) in sub clause 1-

(i) by deleting the words “and the Kenya National Union of Teachers” appearing in paragraph(d);

(ii) by deleting the word “and the Federation of Kenya Employers” appearing in paragraph (g);

by deleting sub clause 2 and substituting therefor the following new sub clause

(2)-

(2) The function of the selection panel shall be to –

(i) nominate persons to be appointed as commissioners under section 10(1)(a);

(ii) Perform the functions with respect to the removal of Commissioner or chair person as set out in section 17(3).

10. That clause 10 of the Bill be amended-

(a) in sub clause (1)

(i) by deleting the word “seven” and substituting therefore the word
“nine”

(ii) by deleting the word four appearing in paragraph (b) and substituting
the word “six”

(b) in sub -clause (2) by inserting the expression “appointed
under subsection (1)(b) immediately after the word
“commissioners”

(c) by inserting the following new clause (2) immediately after
clause (2)-

(2A) The commissioners to be appointed under paragraph
(a) shall be recommended by the African panel of eminent
African personalities, and thereafter be nominated by
parliament, who will then forward the names to the President
for appointment.

(d) in sub clause (5) by

(i) deleting paragraph (a);

(ii) deleting paragraph (c) and substituting therefore the

Following new paragraph-

(c) has not been in anyway involved, implicated, linked or associated with human
rights violation of any kind or in any matter that is to be investigated under this
Act.

11. That clause 11 of the Bill be amended –

(a) in sub clause (1) by deleting the word “appointed by the President from amongst the commissioners” and substituting therefor the words “elected by the commissioners from among themselves”;

(b) in sub clause (3) by deleting paragraph (c).

12. That clause 12 be amended by deleting the expression “under section 7”.

13. That clause 13 be amended by deleting sub clause (2).

14. That clause 15 of the Bill be amended (a) in sub clause (2) by inserting the following words immediately after the word “fund” at the end of the sub clause “and shall not be reviewed to the disadvantages of any commissioner during his term of office”

15. That clause 16 of the Bill be amended by deleting paragraphs (e) and (f).

16. That clause 17 be deleted and replaced with the following-

(1) Without prejudice to section 16, the chairperson or a commissioner may be removed from office by the President-

(a) for misbehavior or misconduct; or

(b) if the chairperson or commissioner is convicted of an offence involving moral turpitude but not sentenced to a term of imprisonment; or

(c) if the chairperson or commissioner is unable to discharge the functions of his office by reason of physical or mental infirmity; or

(d) if the chairperson or commissioner is absent from three consecutive meetings of the Commission without good cause

but shall not be removed except in accordance with this section.

(2) Where the removal the question of the removal from office of the chairperson or a commissioner arises under subsection (1)-

(a) the Chief Justice shall, by notice in the gazette appoint a Tribunal which shall consist of a chairperson and two other members selected by the Chief Justice from among persons who hold or have held office as judges of the High Court;

(b) the Tribunal shall inquire into the matter and report on the facts to the Chief Justice and recommend whether the chairperson or the commissioner ought to be removed from office and the Chief Justice shall communicate the recommendations of the Tribunal to the President.

(3) Where the question of removing the chairperson or a commissioner has been referred to a Tribunal under subsection (2), the President may suspend the chairperson or the commissioner from the Commission and the suspension may at any time be revoked by the President and shall in any case cease to have effect if the Tribunal recommends to the President that the chairperson or the commissioner, as the case may be, should not be removed.

17. That clause 18 of the Bill be amended -

(a) by deleting sub clause (2).

18. That clause 20 of the Bill be amended -

(a) by inserting the following new sub clauses immediately after sub clause (2)-

(2A) Where for any reason the commission is unable to finalize its work within the period of two years in accordance with subsection 1 it shall, at least three months before the expiry of the two years period, submit a progress report to the National Assembly together with a request for extension of the period beyond two years

(2B) The National Assembly may, if satisfied as to the reasons why an extension of the life of the commission is necessary, extend the duration for the Commission to continue its work but shall not in any case extend such duration for more than six months.

19. That clause 25 of the Bill be amended-

- (a) in subclause (4) by deleting paragraph (c) and the proviso thereof;
- (b) by inserting the following new sub clauses immediately after sub clause (4)-

(4A) a person who disobeys any direction of the commission under subsection (4) commits an offence and is liable on conviction to imprisonment to a term of not more than two years or a fine of not more than two hundred thousand shillings or both.

(4B) The Commission may give such directions in respect of the record of proceedings as may be necessary to protect the identity of any witness before it

20. That Clause 26 of the Bill be amended by deleting the word "part" in subsection (4) and substituting thereof the word "Act"

21. That clause 27 of the Bill be amended by deleting the words "may establish special units" and substituting therefore the words "put in place special arrangements".

22. That clause 28 of the Bill be amended by deleting subclause (1) and substituting

therefor the following new sub clauses –

(1) Subject to subsection (2), any person whose conduct is the subject of inquiry under this Act or who is in any way implicated or concerned in any matter under inquiry, shall be entitled to be represented by an advocate in the proceedings of the inquiry or any part thereof, and any other persons who desires to be so represented may, by leave of the Commission, be so represented.

(1A) Any person whose conduct is the subject of inquiry under this Act or who is implicated or concerned in any matter under inquiry under this Act and who is summoned to appear before the Commission in person.

23. That clause 32 of the Bill be amended by deleting the words “ a member of the commission or” appearing immediately after the words “done by” and by deleting the words “render the member “ appearing between the words “Commission” and office in the second last line thereof.

24. That the Bill be amended by deleting clause 34 and substituting therefor the following new clause-

34(1) A person may make an application for consideration of amnesty to the Commission for any act or omission which constitutes a matter to be investigated under this Act.

(2) The Commission may in accordance with this Part, and subject to subsection(3), recommend the grant of conditional amnesty to any person liable to any penalty under any law in Kenya or any international treaty to which Kenya is a party.

(3) Notwithstanding subsection (1) no amnesty may be recommended by the Commission in respect of gross violation of human rights.

(4) Where the criminal penalty attaches in respect of a matter on which an amnesty has

been requested under this Act the Commission shall not recommend amnesty in respect thereof-

(a) Until the Commission has considered any reasonable objection from the victim.

(b) In respect of economic crimes, the applicant has not made restitution.

25. That Clause 36 of the Bill be amended in sub clause (3) by deleting paragraph (a) thereof and substituting therefor the following new paragraph-

(a) inform the applicant that the application does not qualify for amnesty.

26. That Clause 38 of the Bill be amended in sub clause (3) by-

(a) deleting the words ' is an act of gross human rights violation' and substituting therefor the words 'qualifies for the grant of amnesty'

(b) deleting all the words appearing after the word 'pursued' in paragraph(f)

(c) That the Bill be amended by inserting the following new clause immediately after clause 38-

38A. Where the Commission is of the view that a recommendation for amnesty should be made with respect to an application, the Commission shall submit that recommendation to the Attorney General with respect to the institution of, or continuance with, prosecution of the case being subject of the amnesty application

27. That clause 43 of the Bill be amended in sub clause 4 by deleting the word "consult with the permanent secretary to the treasury and".

28. That Part VI of the Bill be amended by deleting the title thereto and substituting therefor the following new title-

PART VI-REPORT OF THE COMMISSION.

29. That clause 47 of the Bill be amended in sub clause 2-

(a) by deleting paragraph (c) –

(b) by inserting a new paragraph (g) immediately after paragraph (f) as follows-

(g) make recommendation on the mechanism and framework for the implementation of its recommendation and an institutional arrangement in that connection

30. That Clause 48 of the Bill be amended

(a) by deleting the words “establish an implementation committee” appearing immediately after the word “Commission” and substituting therefor the words “operationalise the implementation mechanism or arrangement in accordance with the recommendations of the Commission under section 47(2)(f)”;

(b) by deleting sub clause (2);

31. That Clause 49 of the Bill be amended by inserting the following Part title immediately after Clause 49-

PART VII-MISCELLANEOUS

32. That Clause 50 of the Bill be amended by inserting the following new clauses immediately after clause 50-

50A. The provisions of the Official Secrets Act shall not apply to any matter that is the subject of inquiry of the Commission under this Act.

33. That Clause 51 of the Bill be amended by deleting the words “the disciplinary procedures” appearing in paragraph (b) and substituting therefore the words “a code of conduct”.

34. That the First Schedule to the Bill be amended

(a) by deleting the title thereto and substituting therefore the following new title-

FIRST SCHEDULE-PROCEDURE FOR APPOINTING COMMISSIONERS

(b) in paragraph 3 by inserting the word “fifteen” between the words “assembly” and “suitably” in subparagraph (b);

(c) in paragraph 5 by deleting the word ”six” and substituting thereof the word ”nine”

35. That the Bill be amended in the Third Schedule by deleting the word “four” and substituting thereof the word “six”.

