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KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT - FOURTH SESSION (2010)

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REPORT OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS

ON NOMINEES TO THE POLITICAL PARTIES DISPUTES TRIBUNAL

Clerks Chambers,
Parliament Buildings,
NAIROBI.

November, 2010

PREFACE

Mr. Speaker Sir,

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of Standing order 198(3) which defines function of the Committee as being:

- 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 ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister; and
- f) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Schedule II of the Standing Orders, the Committee is mandated to consider:-

- a) Constitutional Affairs
- b) The administration of law and order (Judiciary, police, prisons department, and community service orders)
- c) Public prosecutions
- d) Elections
- e) Integrity
- f) Anti-corruption and human rights.

The Committee oversees the following Ministries/Departments:

- a) Ministry of Justice, National Cohesion and Constitutional Affairs
- b) State Law Office
- c) The Judiciary
- d) Kenya Anti-Corruption Commission
- e) Interim Independent Electoral Commission
- f) Interim Independent Boundaries Commission

The Committee also has the mandate to oversee all matters relating to political parties.

COMMITTEE MEMBERSHIP

The Committee comprises of the following members:

- | | |
|---|--------------------|
| Hon. Ababu Namwamba, M.P | - Chairperson |
| Hon. Njoroge Baiya, M.P | - Vice-Chairperson |
| Hon. Abdikadir Mohammed, M.P | |
| Hon. Millie Odhiambo-Mabona, M.P | |
| Hon. Mutava Musyimi, M.P | |
| Hon. George Omari Nyamweya, M.B.S., M.P | |
| Hon. Amina Abdalla, M.P | |
| Hon. Olago Aluoch, M.P | |
| Hon. Isaac K. Ruto, E.G.H., M.P | |
| Hon. Sophia Noor Abdi, M.P | |
| Hon. Eugene Wamalwa, M.P | |

NOMINEES TO THE POLITICAL PARTIES DISPUTES TRIBUNAL

The Political Parties Act (No. 10 of 2007) establishes the Political Parties Disputes Tribunal consisting of a Chairman and two members. The three nominees are appointed upon approval by the House.

Committee Sitzings

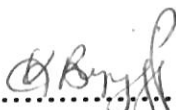
The Committee held three sittings to consider the members nominated by the Chief Justice to constitute the political parties disputes tribunal. At a meeting held on April 22nd, 2010, the three nominees, Mr. Peter Simani, Mr. Chacha Odera and Rev. Jesse Mutura appeared before the Committee and were vetted in accordance with the criteria established by the parent statute and customs of the committee.

Acknowledgements

The Committee wishes 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.

Mr. Speaker, Sir,

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to present and commend this report to the House for adoption pursuant to Standing Order 181.

Signed.....
Hon. Njoroge Baiya, MP
Vice-Chairperson

Date:4/11/2010.....

BACKGROUND

1. Section 5(1), (2) of the Political Parties Act No. 10 of 2007, establishes the Political Parties Disputes Tribunal and outlines the membership in the following terms:

5(1) There is established a Tribunal to be known as the Political Parties Disputes Tribunal

(2) The Tribunal shall consist of the following members appointed by the Chief Justice, subject to approval by Parliament-

a) A chairman who shall be a person qualified to be appointed a judge of the High Court;

b) Two other members of high moral standing and integrity, one of whom shall be an advocate of the High Court of five years standing.

2. By a letter dated 18th August, 2009, the Chief Justice, acting pursuant to section 5(2) of the Political Parties Act (No. 10 of 2007) appointed three persons to the Political Parties Disputes Tribunal, subject to approval by Parliament. The three were Mr. Sankale ole Kantai as Chairperson and Mr. Chacha Odera and Rev. Jessie Mutura as members of the Tribunal.
3. On Tuesday 1st September, 2009, the Minister for Justice, National Cohesion and Constitutional Affairs tabled in the House the three nominees for approval, subsequent to which the list was referred to this Committee.
4. Following the appointment of Mr. Sankale ole Kantai by the as a Judge of the Interim Independent Constitutional Disputes Resolution Court, he withdrew his candidature for the Political Parties Disputes tribunal vide his letter Ref. No. SOK/PPDT/2009 dated 21st October, 2009.
5. Vide a letter received by the National Assembly on 22nd December, 2009, the Chief Justice subsequently appointed Mr. Peter Ldhituachi Simani to replace Mr. Sankale ole Kantai as nominee for Chairman of the Political Parties Disputes tribunal.

COMMITTEE DELIBERATIONS AND OBSERVATIONS

1. In conducting the vetting process, the Committee examined the candidates against the following criteria, amongst others:

- (i) Education
- (ii) Employment record
- (iii) Professional affiliations
- (iv) Published writings
- (v) Potential conflict of interest
- (vi) Knowledge of the relevant Statute
- (vii) Overall suitability for the position

2. At a meeting held on April 22nd, 2010, the Committee orally interviewed the three nominees.

3. At the conclusion of the vetting exercise, the Committee made the following observations:

a) On the Nominees

Mr. Peter Ldhituachi Simani: The nominee for Chairman is academically and professionally qualified for the position. He is an attorney of repute with considerable experience and proven service to justice and the rule of law. His moral standing has not been called into question, nor can he be said to hold any known partisan political persuasions.

Mr. Chacha Odera: Nominated as a member of the tribunal, the Committee found Mr. Odera similarly qualified on the basic evaluation grounds of academic qualification, professional competence, moral probity and apparent political non-partisanship. He is also an attorney of repute with considerable experience and proven service to justice and the rule of law.

Rev. Jesse Mutura: Though not an attorney, the Committee found this nominee for membership of the tribunal to possess other unique attributes. Rev. Mutura's background as a religious leader serving ordinary Kenyans would make her a balancing influence on the tribunal. She possesses the requisite capacity, competence, moral probity and political balance.

b) On Broad Representation

The Committee noted that the law limits membership of the tribunal to only three persons, and observed that though the constitution encourages aspiration to the ideal of reflecting the face of Kenya in public institutions, this should not be misconstrued to mean that what has come to be known as ethnic/regional balancing will be a mandatory consideration all the time everywhere, even for institutions of limited membership like the tribunal. Further, this consideration must not be used to discriminate against qualified candidates. The Committee concluded that for good reasons, future consideration could be given to expanding the tribunal membership as circumstances may deem necessary.

RECOMMENDATIONS

Subsequent to the foregoing, the Committee recommends:

1. **THAT**, pursuant to Section 5(2)(a),(b) of the Political Parties Act (No. 10 of 2007), this House approves the following three persons for appointment by H.E the President to the Political Parties Disputes tribunal:-
 - a) **Mr. Peter Ldhituachi Simani - Chairperson**
 - b) **Mr. Chacha Odera - Member**
 - c) **Rev. Jesse Mutura - Member**

2. **THAT**, this House urges the Attorney-General to consider proposing, in future and as circumstances may deem necessary, appropriate amendments to the Political Parties Act (No. 10 of 2007) and related Statues to provide for expansion of the membership of the tribunal to no more than five.

NB: FOR THE INFORMATION OF THE HOUSE

1. The Committee wishes to inform the House that it had attempted to vary the nomination process outlined hereinabove.
2. In response to concerns of some members that both Mr. Peter Ldhituachi Simani and Mr. Chacha Odera traced their roots to “one half” of the county and seemed to be of similar “philosophical persuasion”; and further because Rev. Jesse Mutura was not an attorney and did not possess postgraduate qualifications, it was at some stage resolved that the Chief Justice be requested to provide two new nominees to replace Mr. Chacha Odera and Rev. Jesse Mutura. This was done.
3. However, following further deliberations within the Committee that found the initial concerns unmeritorious; and with the subsequent guidance of the House’s Legal Counsel that indicated that the said earlier resolution was unprocedural, the Committee at its meeting held on 16th September, 2010 rescinded its earlier decision and resolved to table a report based on the list tabled in the House on 1st September, 2010. This resolution of the Committee was unanimous.

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MINUTES OF THE 24TH SITTING OF THE DEPARTMENTAL COMMITTEE H – ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, APRIL 22, 2010 IN COMMITTEE ROOM, 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

Hon. Abdikadir Mohamed, M.P. - Chairperson
Hon. Nyamweya George, M.P.
Hon. Amina Abdalla, M.P.
Hon. Olago Aluoch, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Isaac Ruto, M.P.

ATTENDANCE BY NON-COMMITTEE MEMBER

Hon. (Dr.) Bonny Khalwale, M.P.

ABSENT WITH APOLOGY

Hon. Millie Odhiambo-Mabona, M.P.
Hon. Baiya Njoroge, M.P.
Hon. Ababu Namwamba, M.P.
Hon. Sophia Abdir Noor, M.P.

ABSENT

Hon. (Prof) Philip Kaloki, M.P.

IN ATTENDANCE

Mr. Julius Ariwomoi
Mr. Abenayo Wasike

NATIONAL ASSEMBLY

Second Clerk Assistant
Third Clerk Assistant

MIN.NO. 88/2010

OPENING PRAYER.

The meeting started with a word of prayer.

MIN.NO.89/2010 - MEETING WITH THE KACC ADVISORY BOARD

The meeting was post phoned to Wednesday, April 28, 2010.

MIN.NO.90/2010 - INTERVIEWS OF NOMINEES TO THE POLITICAL PARTIES DISPUTES TRIBUNAL

The following three nominees were interviewed:

1. Mr. Peter Simani
2. Mr. Chacha Odera
3. Rev. Jesse Mutura

The Committee interviewed the three candidates on their knowledge on the provisions of the Political Parties Act, academic qualifications and experience and their suitability for the position.

The Committee was satisfied with Mr. Simani's credentials and approved his nomination as the Chairman of the Political Parties Disputes Tribunal.

The Committee observed that Rev. Mutura was not qualified for appointment as a member of the Tribunal.

It was further observed that Mr.Chacha Odera was qualified for appointment as a member of the Tribunal. However his nomination was not approved since there was need for geographical balancing to reflect the face of Kenya which can broadly be divided into Western, Eastern and Central. This was informed by the fact that both Mr. Chacha Odera and Mr. Peter Simani hailed from the Western part of the Country. The Committee resolved that the Chief Justice be requested to nominate replacements to Chacha Odera and Rev. Jesse Mutura and that the replacement for Rev. Jesse should possess a postgraduate qualification.

MIN.NO.91/2010 - TRUTH, JUSTICE & RECONCILIATION COMMISSION

The Committee deliberated on this matter at length and resolved to disband the Commission albeit honorably. It was further resolved that the Legal Counsel (Parliament) should give an opinion on the mechanism of disbanding the Commission and the way-forward.

The Committee resolved that the T.J.R.C matters should not be tied to any electoral programmes.

MIN.NO.92/2010

- ANY OTHER BUSINESS

Committee Workshop

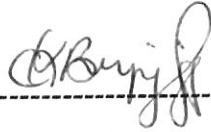
It was resolved that a workshop on Agenda Items be organized

MIN.NO.93/2010

- ADJOURNMENT

And there being no other business the Chairperson adjourned the meeting at one O'clock.

SIGNED



Vice-chairperson

DATE

4/11/2010

MINUTES OF THE 35TH SITTING OF THE DEPARTMENTAL COMMITTEE H – ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY, SEPTEMBER 8, 2010 IN THE SMALL DINING HALL, PARLIAMENT BUILDINGS AT 9.00AM.

PRESENT

Hon. Abdikadir Mohamed, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. Ababu Namwamba, M.P.
Hon. Baiya Njoroge, M.P.
Hon. Amina Abdalla, M.P.
Hon. Nyamweya George, M.B.S, M.P

Chairperson
Vice-Chairperson

ABSENT WITH APOLOGY

Hon. Mutava Musyimi, M.P.
Hon. Olago Aluoch, M.P.
Hon. Isaac Ruto, E.G.H., M.P.
Hon. Sophia Abdir Noor, M.P

ABSENT

Hon. (Prof) Philip Kaloki, M.P

IN ATTENDANCE

Mrs. Lucy Wanjohi
Mr. Abenayo Wasike

NATIONAL ASSEMBLY

Clerk Assistant
Third Clerk Assistant

MIN NO. 129/2010

INTRODUCTORY REMARKS

The meeting started with a word of prayer after which the Chair welcomed Members to the meeting.

MIN NO. 130/2010

STATUS OF NOMINEES TO THE POLITICAL PARTIES TRIBUNAL

The Chair reminded the Committee that this matter had been discussed at the earlier meeting of 22nd April, 2010. During the meeting, the Committee vetted the three nominees namely:

4. Mr. Peter Simani
5. Mr. Chacha Odera
6. Rev. Jesse Muturi

At the said meeting the Committee had approved the name of Mr. Peter Simani for Chairman of the Tribunal as proposed by the Chief Justice and rejected the name of

Mr.Chacha Odera stating that this candidate represented the same region as Mr. Simani while the Rev. Jessie Muturi did not have the academic qualifications to hold the post.

The Committee had also made a decision to request the Chief Justice to provide two new names that should reflect the geographical face of the country.

Consequently the Chief Justice submitted the following two names to replace the earlier ones.

- (i) Ms Winifred Nzilani Muteti
- (ii) Mr. John Njuguna Burugu

It was later noted that the Committee erred procedurally and legally in writing to the Chief Justice requesting for the replacement of the two names.

After due discussion the Committee deferred the matter to a later date where more members would attend in order for the Committee to determine:-

- (i) whether to reopen the matter, and
- (ii) whether it acted beyond its mandate.

MIN NO. 131/2010

**COMMISSION FOR THE IMPLIMENTATION OF
THE CONSTITUTION BILL,2010**

The Committee did an overview of the above mentioned Bill and observed that:

- The Bill lacked a mechanism of engagement with Parliament to ensure oversight over the commission.
- The Bill had not set any criteria for interviewing the applicants.

The Committee recommended that:

- the Commission should have a roadmap outlining the various stages of the implementation timetable similar to the Constitution of Kenya Review Act,2008
- Stakeholders be requested to submit memoranda on the Bill for consideration in the next Committee meeting.
- The possibility of including a parliamentary legal counsel in the commission secretariat.

MIN NO. 132/2010

**STATUS OF PRPOSED STUDY VISITS(CANADA &
(U.S.A)**

It was reported that Canada had confirmed meetings starting from September 27, 2010. while U.S.A had not confirmed the proposed dates. It was agreed that the U.S.A visit be pursued. It was further agreed that the Committee would be represented to the two countries as follows:

CANADA

Hon. Amina Abdalla, MP – Leader of delegation
Hon. Isaac Ruto, MP
Hon. Njoroge Baiya, MP
Hon. George Nyamweya, MP

U.S.A

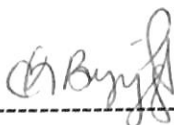
Hon. Abdikadir Mohammed, MP – Leader of delegation
Hon. Millie Odhiambo-Mabona,MP
Hon. Mutava Musyimi, MP
Hon. Ababu Namwamba, MP

MIN NO. 133/2010

ADJOURNMENT

And there being no other business the Chairman adjourned the meeting at twenty minutes past twelve O'clock until Thursday September 16, 2010 at 10.00am.

SIGNED



Vice- Chairperson

DATE

4/11/2010

MINUTES OF THE 36TH SITTING OF THE DEPARTMENTAL COMMITTEE H – ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, SEPTEMBER 16, 2010 IN COMMITTEE ROOM, 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00AM.

PRESENT

Hon. Millie Odhiambo-Mabona, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Ababu Namwamba, M.P.
Hon. Baiya Njoroge, M.P.
Hon. Isaac Ruto, E.G.H., M.P.
Hon. Amina Abdalla, M.P.
Hon. Nyamweya George, M.B.S, M.P

Chairing

ABSENT WITH APOLOGY

Hon. Abdikadir Mohamed, M.P.
Hon. Olago Aluoch, M.P.
Hon. Sophia Abdir Noor, M.P

ABSENT

Hon. (Prof) Philip Kaloki, M.P

IN ATTENDANCE

Mr. Abenayo Wasike
Miss Annete Bosibori
Miss Rosemary Wangechi

NATIONAL ASSEMBLY

Third Clerk Assistant
Parliamentary Intern
Parliamentary Intern

MIN NO. 134/2010

PRAYERS

The meeting started with a word of prayer.

MIN NO. 135/2010

CONSIDERATION OF THE BILL ON THE COMMISSION FOR THE IMPLIMENTATION OF THE CONSTITUTION BILL, 2010

The Committee deferred consideration of this Bill to allow stakeholders submit their memoranda.

MIN NO. 136/2010

ANY OTHER BUSINESS

1.

POLITICAL PARTIES TRIBUNAL

- The Committee discussed this matter and resolved to re-open it since the original list had been tabled in the House and it was only prudent that the Committee files a report on the original list.

It was resolved that the Committee tables a report on the original list recommending the three candidates to the House because:-

- (i) The Committee had erred procedurally in writing to the Chief Justice requesting for names.
- (ii) It is not possible to reflect the face of Kenya in tribunal whose membership is only three (3) members.

2. STUDY VISIT TO TANZANIA

The Committee was informed that the Kenya High Commissioner to Tanzania had invited the Committee to Tanzania whose general elections will be held on October 31, 2010. According to the High Commissioner the institutions overseeing the process i.e. the Registrar of Political Parties, the PCCB and the Electoral Commission were working professionally and impartially in discharging their mandate thereby enhancing transparency and confidence in the electoral process.

The Committee accepted the invitation and agreed that the whole committee undertakes the visit. The Secretariat was asked to initiate preparations.

3. MINISTER FOR JUSTICE, NATIONAL COHESION & CONSTITUTIONAL AFFAIRS

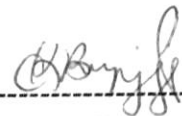
It was agreed that the Minister be invited to a Committee meeting on Thursday, September 23, 2010 to discuss the issues relating to: - Implementation of the Constitution among other issues. The Secretariat was instructed to formulate issues relating to the Interim Independent Boundaries Review Commission, Kenya national Commission on Human Rights and the issue on the introduction of Bills to the House.

MIN NO. 137/2010

ADJOURNMENT

And there being no other business the Chairman adjourned the meeting at forty five minutes past twelve O'clock until Thursday September 23, 2010 at 10.00am.

SIGNED



Vice-Chairperson

DATE

4/11/2010

MINUTES OF THE 46TH SITTING OF THE DEPARTMENTAL COMMITTEE H – ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY OCTOBER 27,2010 IN THE COMMITTEE ROOM,5TH FLOOR,CONTINENTAL HOUSE,PARLIAMENT BUILDINGS AT 11.00A.M

PRESENT

Hon. Ababu Namwamba, M.P. - Chairperson
Hon. Baiya Njoroge, M.P. - Vice-Chairperson
Hon. Abdikadir Mohamed, M.P.
Hon. Millie Odhiambo-Mabona, M.P.
Hon. Olago Aluoch, M.P.
Hon. Amina Abdalla, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Nyamweya George, M.B.S, M.P
Hon. Sophia Abdir Noor, M.P

ABSENT WITH APOLOGY

Hon. Isaac Ruto, E.G.H., M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Mrs. Lucy Wanjohi
George Otieno
Mr.Abenayo Wasike

Clerk Assistant
Clerk Assistant
Third Clerk Assistant

MIN NO. 171/2010

REPORT ON THE NOMINEES TO THE POLITICAL PARTIES DISPUTES TRIBUNAL

The Committee considered and adopted the report on the Political Parties Disputes Tribunal.

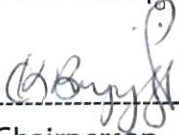
It was resolved that the Report be prepared for tabling by the Vice-Chairperson on Tuesday, November 2,2010 since the Chairperson will be out of the Country .

MIN NO. 172/2010

ADJOURNMENT

And there being no other business the Chairperson adjourned the sitting at twenty minutes past eleven.

SIGNED



Vice- Chairperson

DATE

4/11/2010

