

Approved for tabling.

2016/JUL/13



~~Bat JASA~~
17/03/16

Paper Laid
By Hon. S. Chepkong'o, MP
Chair, DC-JHA
Churs, March 17, 2016 (pro)
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THE NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT
FOURTH SESSION

**THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS**
**REPORT ON THE POLITICAL PARTIES (AMENDMENT) BILL,
2016**

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

MARCH, 2016

1.0 PREFACE

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order No. 199, it is my pleasure and duty to present to the House, the Committee's Report on the Political Parties (Amendment), Bill 2016.

1.1 COMMITTEE MEMBERSHIP

The Committee on Justice and Legal Affairs was constituted by the House on Thursday 16th May, 2013 comprising of the following members:

1. Hon. Samuel Chepkong'a, M.P. –Chairperson
2. Hon. Priscilla Nyokabi, M.P. –Vice Chairperson
3. Hon. Njoroge Baiya, M.P.
4. Hon. Muriithi Waiganjo, M.P.
5. Hon. Ndirangu Waihenya, M.P.
6. Hon. Florence Kajuju, M.P.
7. Hon. Kang'ata Irungu, M.P.
8. Hon. Benson Mutura, M.P.
9. Hon. John Njoroge Chege, M.P.
10. Hon. William Cheptumo, M.P.
11. Hon. Mohamed Abdi Haji, M.P.
12. Hon. Sammy Koech, M.P.
13. The Hon. Moses Cheboi, M.P.
14. Hon. Paul Bii, M.P.
15. Hon. Charles Gimose, M.P.
16. Hon. Johanna Ng'eno, M.P.
17. Hon. Boniface Otsiula, M.P.
18. Hon. David Ouma Ochieng, M.P.
19. Hon. Neto Agostinho, M.P.
20. Hon. Kaluma Peter, M.P.
21. Hon. Fatuma Ibrahim Ali, M.P.

22. Hon. Ben Momanyi Orari, M.P.
23. Hon. T. J. Kajwang', M.P.
24. Hon. (Bishop)Mutua Mutemi, M.P.
25. Hon. Olago Aluoch, M.P.
26. Hon. Christine Oduor Ombaka, M.P.
27. Hon. Mwamkale William Kamoti, M.P.
28. Hon. James Bett,MP

1.2 Mandate of the Committee

Departmental Committee on Justice and Legal Affairs derives its from provisions of standing order 216 (5) which outline functions of 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 the 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 inquire 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 Cabinet Secretary;
- f. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments); and
- g. To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

1.3 Departments under the Committee

In accordance with Second Schedule of the Standing Orders, the Committee has oversight on the following;

- a) Office of the Attorney General and Department of Justice
- b) The Ethics and Anti-Corruption Commission
- c) The Judiciary
- d) Office of the Director of Public Prosecutions
- e) Independent Electoral and Boundaries Commission
- f) Kenya National Commission on Human Rights
- g) Registrar of Political Parties
- h) Witness Protection Unit
- i) Commission on Administrative Justice
- j) The Judicial Service Commission

1.4 Committee Meetings

The Committee held one (1) sitting during which the Political Parties (Amendment) Bill, 2016 was considered in accordance with the standing orders of the National Assembly. The Committee also received Memoranda from the National Gender and Equality Commission (NGEG).

The Bill was read a first time on 16th February 2016 and stood committed to the Committee for consideration as provided for in Standing Order 127(1). The Committee held one sitting and consulted with the IEBC prior to compilation of this report.

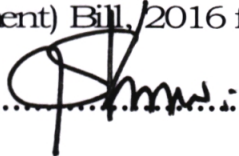
The Clerk of the National Assembly notified the Public for participation vide an advert in the print media on 26th February, 2016 pursuant to article 118 of the Constitution and Standing Order 127(3).

This Report contains deliberations of the Committee on the Bill and has proposed some amendments.

1.5 Acknowledgement

The Committee wishes to thank the Offices of the Speaker and Clerk of the National Assembly for providing guidance and technical support without which its work would not have been possible. The Chairperson expresses gratitude to Committee Members for their devotion and commitment to duty which made the consideration of this Bill a reality.


Finally it is now my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to table Report on the Political Parties (Amendment) Bill, 2016 for consideration and Passage.

SIGNED..........

Hon. Samuel Chepkong'a, MP

(Chairperson)

Committee on Justice and Legal Affairs

DATE..........

2.0 BACKGROUND

The principal object of the Bill is to amend the Political Parties Act No. 11 of 2011 in order to reorganize the manner in which political parties are managed and remove the existing ambiguities in the Act. The Bill seeks to among other things include a requirement that political parties shall promote the values of inclusiveness, democracy and participation of the people. The Bill further seeks to ensure that applicants for registration of a political party uphold the constitutional threshold of the two-thirds gender rule.

2.1 Memorandum of Objects and Reasons of the Bill

The Bill is dated 5th February 2015 and is sponsored Hon. Samuel Chepkong'a, MP, Chairperson Departmental Committee on Justice and Legal Affairs. The structure of this Bill is as follows-

Clause 1 is the short title.

Clause 2 seeks to amend section 2 of the principal Act by inserting the definition of the terms "ethnic minorities", "marginalised community", "special interest groups" and "youth".

Clause 3 proposes to amend section 3 of the principal Act to include a requirement that political parties promote the values of inclusiveness, democracy and participation of the people.

Clause 4 seeks to amend section 5 of the principal Act to harmonize the timeframes and the provisions relating to provisional registration of a political party.

Clause 5 seeks to amend section 6 of the principal Act by making it a requirement that applicants for registration of a political party meet the constitutional threshold of the two-thirds gender rule.

Clause 6 amends section 7 of the principal Act by harmonizing the use of the phrase special interest groups. This clause also introduces the requirement that a political party provides a disaggregated data of its membership based on each of the components of the special interest groups.

Clause 7 seeks to amend section 9 of the principal Act by ensuring that all party organs, at all levels adhere to the gender principle set out under Article 27 of the Constitution.

Clause 8 proposes to amend section 11 of the principal Act by setting out different procedures by which political parties can merge.

Clause 9 proposes to amend section 14 of the principal Act by setting out a clearer mechanism by which political parties may deem their members to have resigned. This clause also increases from three to seven the number of days during which a political party is required to notify the Registrar of such resignation.

Clause 10 proposes to amend section 15 of the principal Act by clarifying the marginal note to make reference to the content of the section and by prohibiting the full registration of provisionally registered political parties that participate in elections contrary to the Act.

Clause 11 amends section 16 of the principal Act by introducing the loss of status as a political party if a political party fails to offer a candidate for election in two consecutive general elections.

Clause 12 proposes to amend section 18 of the principal Act by clarifying the marginal note to make reference to the content of the section.

Clause 13 seeks to amend section 19 of the principal Act by mandating political parties to hold meetings as per their constitutions and requiring them to comply with the law relating to public meetings.

Clause 14 seeks to amend section 20 of the principal Act by providing for a clearer procedure for the change or amendment of particulars of a political party.

Clause 15 proposes to amend section 21 of the principal Act to require that a political party must have in its membership special interest groups in accordance with Article 27 and 100 of the Constitution. This clause also proposes that political parties should maintain the standards as at registration, during the entire duration of their existence.

Clause 16 seeks to amend section 25 of the principal Act to require that a political party shall not receive funding if it does not have in its governing body representation of special interest groups.

Clause 17 proposes to amend section 34A of the principal Act by providing for the recruitment of the Registrar and Assistant Registrars by the Public Service Commission.

Clause 18 seeks to amend Section 39 of the principal Act to expand the membership of the Political Parties Disputes Tribunal from five (5) to seven (7). This clause aims to have two benches at the same time in order to mitigate against cases of backlogs and cure capacity issues that could emanate therefrom.

Clause 19 seeks to amend section 40 of the principal Act by adding disputes arising out of party primaries in order to address the challenge of concurrent jurisdiction with other bodies handling electoral disputes.

Clause 20 seeks to amend section 41 of the principal Act by adding that the Chief Justice may, in consultation with the Tribunal, prescribe regulations for determination of disputes. This will facilitate the Tribunal in developing its own rules for use. The Political Parties (Amendment) Bill, 2016 19

Clause 21 seeks to amend section 45 of the principal Act to harmonize the language.

Clause 22 seeks to amend the First Schedule to the principal Act to include adherence to the code of conduct by political parties on grounds of inclusion of special interest groups.

Clause 23 seeks to amend the Second Schedule to the principal Act to ensure that political parties include in their constitutions aspects such as inclusion of all special interest groups and setting out dispute resolutions mechanisms as per Article 47 and 50 of the Constitution.

Clause 24 seeks to amend the Third Schedule to the principal Act to include a procedure by which parties to a coalition can amend the coalition agreement.

Clause 25 seeks to amend the Fourth Schedule by removing the Selection Committee

Clause 26 seeks to delete the Fifth Schedule of the Principal Act by removing the Selection Committee

Clause 27 amends the Sixth Schedule to the principal Act to harmonize the specific provisions of the Schedule to the Act and to clarify the procedure of recruitment by the Public Service Commission.

Clause 28 deletes the Seventh Schedule to the principal Act This Bill does not contain provisions limiting the fundamental rights and freedoms. This Bill does not affect the functions of county governments as set out in the Fourth Schedule of the Constitution and is therefore not a Bill concerning counties. The enactment of this Bill shall occasion additional expenditure of public funds.

2.2 Public Participation in consideration of the Bill

The Committee invited the Public through the print media on 26th February, 2016 to submit representations on the Bill by way of Memoranda. The National Gender and Equality Commission (NGEC). representations were considered and provided valuable contribution to the Bill.

3.0 PROPOSED AMENDMENTS TO THE POLITICAL PARTIES

(AMENDMENT), BILL, 2016

CLAUSE 2-

THAT Clause 2 of the Bill be amended by inserting the following new definition in proper alphabetical sequence-

“party primary” means the process through which a political party elects or selects its candidates for a forthcoming general election or for a forthcoming by-election;

Justification: This amendment seeks to define the term “party primary” since the Political Parties Disputes Tribunal has been mandated to determine disputes arising from party primaries (clause 19)

CLAUSE 15

THAT Clause 15 of the Bill be amended in paragraph (a) by inserting the following new sub-paragraph immediately paragraph (i)-

(j) has contravened the provisions of Article 81(b) of the Constitution;

Justification: The amendment was in clause 2 of the Election Laws (Amendment) Bill, 2015. The amendment seeks to provide that failure to comply with the two-thirds gender requirements for elective public offices set out in Article 81 of the Constitution shall constitute an additional ground for deregistration of a political party under section 21 of the Political Parties Act, 2011

CLAUSE 16

THAT Clause 16 of the Bill be amended by inserting the following new paragraph immediately before paragraph (a)-

(aa) by deleting sub-section (1) and substituting therefor the following new sub-section-

- (1) The Fund shall be distributed as follows-
 - (a) eighty percent of the Fund proportionately by reference to the total number of votes secured by each political party in the preceding general election;
 - (b) fifteen percent of the Fund proportionately by reference to the proportion of women elected within each party in Parliament; and
 - (c) five per cent for the administration expenses of the Fund

Justification: The amendment was in clause 3 of the Election Laws (Amendment) Bill, 2015. The amendment seeks to provide a new formula for distribution of funds from the Political Parties Fund established under section 25 of the Political Parties Act, 2011.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause 16A immediately after clause 16-

Insertion of new section 26A in No. 11 of 2011	<p>16A. The principal Act is amended by inserting the following new section immediately after section 26-</p> <table border="1" data-bbox="399 1243 1388 1859"> <tr> <td data-bbox="406 1243 734 1859"> The Special Elections Fund </td> <td data-bbox="734 1243 1380 1859"> <p>26A.(1) There is established a Fund to be known as the Special Election Fund which shall be administered by the Registrar.</p> <p>(2) The sources of the Fund shall consist of-</p> <ol style="list-style-type: none"> (a) such moneys as may be provided by Parliament for that purpose; (b) contributions and donations to the Fund from any other lawful source; <p>(3) Moneys from the Fund shall be used to support women candidates in an election carried out under this Act.</p> </td> </tr> </table>	The Special Elections Fund	<p>26A.(1) There is established a Fund to be known as the Special Election Fund which shall be administered by the Registrar.</p> <p>(2) The sources of the Fund shall consist of-</p> <ol style="list-style-type: none"> (a) such moneys as may be provided by Parliament for that purpose; (b) contributions and donations to the Fund from any other lawful source; <p>(3) Moneys from the Fund shall be used to support women candidates in an election carried out under this Act.</p>
The Special Elections Fund	<p>26A.(1) There is established a Fund to be known as the Special Election Fund which shall be administered by the Registrar.</p> <p>(2) The sources of the Fund shall consist of-</p> <ol style="list-style-type: none"> (a) such moneys as may be provided by Parliament for that purpose; (b) contributions and donations to the Fund from any other lawful source; <p>(3) Moneys from the Fund shall be used to support women candidates in an election carried out under this Act.</p>		

Justification: The amendment was in clause 4 of the Election Laws (Amendment) Bill, 2015. The amendment seeks to establish the Special Elections Fund in the Political Parties Act, 2011 to support women candidates in elections carried out under the Act.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause 16B immediately after clause 16-

Amendment of section 29 of No. 11 of 2011	16B. Section 29 of the principal Act is amended in sub-section(1) by inserting the words “including details of the amount allocated and expended to promote representation of special interest groups in Parliament” immediately after the word “party” appearing in paragraph (b).
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Justification: The amendment was in clause 8 of the Election Laws (Amendment) Bill, 2015. The amendment seeks to amend section 29 of the Political Parties Act, 2011, to require political parties to set out the details of the amounts of moneys allocated to promote representation of special interest groups in Parliament

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause 21A immediately after clause 21-

Amendment of section 49 of No. 11 of 2011	<p>21A. Section 49 of the principal Act is amended in sub-section(2) by inserting the following new paragraphs immediately after paragraph (g)-</p> <p>(h) prescribing procedures for nomination of candidates for a party at the National Delegates Conference for the National Assembly and the Senate that ensures representation of special interest groups;</p> <p>(i) prescribing procedures for the consolidation of a party list that ensures that special interest groups are represented; and</p>
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(j) prescribing procedures for the distribution of the fifteen per cent allocation of the Fund to ensure adequate distribution to special interest groups elected to Parliament by each political party in the preceding general election.
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Justification: The amendments were in clause 10 of the Election Laws (Amendment) Bill, 2015. The amendments seek to amend section 49 of the Political Parties Act, 2011, to require the Registrar of Political Parties to make regulations prescribing procedures that would ensure representation of special interest groups and distribution of the fifteen per cent allocation to special interest groups elected to Parliament.

MINUTES OF THE ELEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON FRIDAY, 11TH MARCH, 2016 AT 10.00 A.M. IN WINDSOR HOTEL

PRESENT

Hon. Priscilla Nyokabi, M.P. - Vice Chairperson
Hon. John Njoroge Chege, M.P.
Hon. Mohamed Abdi Haji, M.P.
Hon. Tom J. Kajwang', M.P.
Hon. Ndirangu Waihenya, M.P.
Hon. Paul K. Bii, M.P.
Hon. John M. Waiganjo, M.P.
Hon. Benson Mutura, M.P.
Hon. David Ochieng, M.P.
Hon. Moses Cheboi, M.P.
Hon. Kamoti Mwamkale William, M.P.
Hon. Sammy Koech, M.P.
Hon. Boniface Otsiula, M.P.
Hon. Johanna Ngeno, M.P.
Hon. Kang'ata Irungu, M.P.
Hon. Peter Kaluma, M.P.
Hon. Charles Gimose, M.P.
Hon. Neto Agostinho, M.P.

ABSENT WITH APOLOGIES

Hon. Samuel Chepkonga, M.P. - Chairperson
Hon. Olago Aluoch, M.P.
Hon. Njoroge Baiya, M.P.
Hon. James Bett, M.P.

ABSENT:-

Hon. Fatuma Ibrahim, M.P.
Hon. Ben Momanyi, M.P.
Hon. William Cheptumo, M.P.
Hon. Dr. Christine Ombaka, M.P.
Hon. Florence Kajuju, M.P.

SECRETARIAT

Mr. Abenayo Wasike - Clerk Assistant I
Ms. Mary L. Lemerelle - Clerk Assistant III
Mr. Abisai Dennis - Legal Counsel
Mr. Kariuki Moses - SAA

IN ATTENDANCE

Mr. Moses Kipkogei

- IEBC

MIN No.JLA 24/2016:-

PRELIMINARIES

The Chairperson called the meeting to order at 11.25 a.m. with a word of prayer from Hon. David Ochieng, M.P.

The Chairperson stated that the Committee has five amendment Bills and three on the constitution.

Members were informed that the Committee had received memoranda from Kenya National Commission on Human Rights, National Gender and Equality Commission and the Centre for Multiparty Democracy.

MIN No.JLA 25 /2016: ELECTION LAWS (AMENDMENT)(NO.3) **BILL,2015**

The Chair informed Members that the Bill was published after following consultations with the Independent and Electoral Boundaries Commission. Mr.Kemboi, the representative from Independent Electoral and Boundaries Commission took the Committee through the bill clause by clause.

Comments by the Committee

Clause 14; on the resignation of public officers who intend to contest an election

The Committee agreed to reduce the period from one year to 8 months;

Rationale; one year is too long

Clause 28: the Committee resolved that the Commission should publish a summary of the report (annual report)

Clause 32: editorial; 8(2) to (3) be deleted

Rationale 8(2) refers to 8(3)

Section 39 of the Elections Act, 2011 is amended by inserting the new sub-section immediately after sub-section (3)

(4) The final results declared by the Commission under this section shall reflect the true and correct results of the election as declared by the presiding officers in their respective polling stations.

MIN No.JLA 26 /2016:-

POLITICAL PARTIES (AMENDMENT) BILL, 2016

The bill addresses two main issues;

- Funding of political parties
- Transition; progressive application of two third gender laws

Clause 8: Some members were concerned of what would happen to members who don't want to merge into an already registered political party.

It was agreed that the Independent Electoral and Boundaries Commission to deal with nomination on special party lists.

MIN No.JLA 27/2016:- ELECTION LAWS (AMENDMENT) (NO.2) BILL, 2015
(NO.53)

The bill gives effect to Article 100 of the constitution.

It was noted that Clause 2-5: have been carried to the Political Parties (Amendment) Bill, 2015.

It was agreed that the provisions relating to Political Parties be left to Political Parties (Amendment) Bill,2015 and those provisions relating to elections be carried to Election Laws (No.3) Bill.,2015

The Committee resolved to introduce clause 16 (a) amendments to have 90 days

It was agreed that clause 14 be carried to Election (Amendment) (No.3) Bill, 2015

MIN No. JLA 28/2016:-

TWO THIRD GENDER LAWS (AMENDMENT)
BILL, 2015

It was noted that clause 4 to 18 was covered in the Election Laws (Amendment) (No.3) Bill

It was proposed that clause 19 and 20 be introduced in the Election Laws (Amendment) (No.3) Bill

Clause 21 was dropped while clause 22 was carried

It was agreed that clause23 be left to the county government; the legal counsel to find a place to fit the provision; find out who does the mapping of special election groups.

MIN No.JLA 29/2016:- ELECTION LAWS (AMENDMENT) BILL, 2015 (NO.42)

It was proposed that;

Clause 3 and 4 to be carried to Political Parties (Amendment) Bill, 2015

Clause 5 and 7 be introduced to Political Parties (Amendment) Bill, 2015

Clause 8 and 9 to wait for constitutional amendments

Clause 10 (b) and (c) to also wait for constitutional amendments

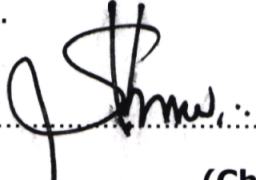
MIN No.JLA.30/2016 RESOLUTION OF THE COMMITTEE

Members resolved as follows;

- The amendment Bills under consideration be merged into two Bills namely the Elections laws (Amendment) (No.3), 2015 Bill and the Political Parties (Amendment) Bill,2016
- The Committee will seek consensus on Constitutional (Amendment) Bills
- The Committee will explore re-introduction of the Hon. David Ochieng Bill.

MIN No.JLA 31/2016:- ADJOURNMENT

There being no other business to transact, the sitting adjourned at fifteen minutes past three O'clock.

Signed..........

(Chairperson)

Date..........