

Approved for tabling.

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By Hon. S. Cheboi, MP,
Chair, DC-JLA
Thurs. March 17, 2016 (pm)

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THE NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT
FOURTH SESSION

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON THE ELECTION LAWS (AMENDMENT) (NO.3) BILL, 2015

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 Election Laws (Amendment) (No.3) Bill, 2015.

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 Election Laws (Amendment) (No.3) Bill, 2015 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), Kenya National Commission on Human Rights, Kenya Law Reform Commission and Centre for Multy Party Democracy.

The Bill was read a first time on 10th 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 Committee resolved to incorporate provisions from two Election Laws (Amendment), Bills of 2015 sponsored by Hon. Aden Duale, MP. This led to the merger of the three Election laws amendment Bills.

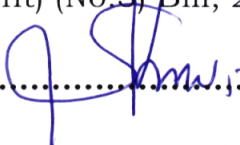
The Clerk of the National Assembly notified the Public for participation vide an advert in the print media pursuant to article 118 of the Constitution and Standing Order 127(3).

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

1.5 Acknowledgement

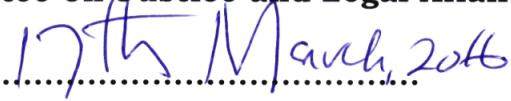
The Committee wishes to thank the Offices of the Speaker and Clerk of the National Assembly for providing guidance and technical support without which its work would not have been possible. The Chairperson expresses gratitude to Committee Members for their devotion and commitment to duty which made the 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 Election Laws (Amendment) (No.3) 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 Elections Act, 2011 and the Independent Electoral and Boundaries Commission Act, 2011 in order to address the concerns that resulted following the general election held on 4th March 2013, which was the first under the new constitutional dispensation. The elections laid the foundation for the transformation of Kenya's electoral politics.

2.1 Memorandum of Objects and Reasons of the Bill

The Bill is dated 17th November 2015 and was published on 27th November 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-

Central to the conduct of the elections are the constitutional role and responsibility of the Independent Electoral and Boundaries Commission (IEBC), and the Judiciary. However the delivery of the 2013 elections, like many aspects of public administration and management involved interplay of several agencies, both State and non-state actors. It is these aspects that this Bill seeks to redress.

Clause 2 seeks to amend section of the Elections Act, 2011 by rectifying the definition of the term "returning officer" to include all related processes.

Clause 3 proposes to amend section 5 of the Elections Act, 2011 to provide for the period during when the continuous registration of voters may be temporarily stopped during a referendum and removes entitlement for persons who have applied for national identification cards to register as voters before the issuance of actual identification documents.

Clause 4 seeks to amend section 6 of the Elections Act, 2011 by increasing, the period within which the Commission must open the register for inspection from

sixty to ninety days before the date of a general election. It also increases from fourteen to thirty the number of days before a general election during which the Commission must publish a notice and transmit copies of the register to all registration officers.

Clause 5 seeks to amend section 13 of the Elections Act, 2011 by making it a requirement for political parties to nominate their candidates for general elections at least ninety days before the election. This section also requires a political party to hear and determine any disputes arising from the political party nominations within forty days.

Clause 6 seeks to amend section 16 of the Elections Act, 2011 to clarify that a vacancy in the office of a Member of Parliament shall be deemed to occur on the date of issuance of a notice to the Commission which shall not be later than twenty-one days from the date of the actual occurrence of the vacancy.

Clause 7 seeks to amend section 22 of the Elections Act, 2011 to, require that a person seeking nomination for an election should possess, as minimum qualifications, a degree in the case of Parliamentary elections The Election Laws (Amendment) (No 3) Bill, 2015 2541 and a diploma in the case of county assembly elections. This clause also contains a proviso to the effect that after the 2017 general elections, a member of a county assembly shall be required to possess a degree from a university recognised in Kenya.

Clause 8 amends sections 27 of the Elections Act, 2011 to require that political parties submit to the Commission party nomination rules six months before an election. This section further requires that an amendment of those rules should have effect ninety days after notification to the Registrar. The clause further empowers the Commission to issue political parties with compliance certificates.

Clause 9 amends section 28 of the Elections Act, 2011 to require that a political party that nominates a person for an election shall submit to the

Commission a party membership list of the party at least sixty days before the date of the general elections and forty-five days before a by-election. This Clause further requires the Commission to publish a composite list of all persons nominated under party lists.

Clause 10 proposes to amend section 30 of the Elections Act, 2011 to allow registered referendum committees to appoint one agent at each polling station.

Clause 11 amends section 32 of the Elections Act, 2011 to require that where there is a vacancy in the office of the Governor, an independent candidate shall submit to the Commission the symbol that the person intends to use during an election at least seven days before nomination.

Clause 12 amends section 34 of the Elections Act, 2011 to require that in the case of a person nominated pursuant to Article 177(1) (c) of the Constitution, the party list shall include a certification in the manner prescribed by the Commission. This clause further requires the Commission to verify the list and issue a certificate of compliance. The Commission is to prescribe regulations on the standards to be complied with in developing party lists.

Clause 13 amends the Elections Act, 2011 by inserting a new section 38A to require that the number of voters per polling station in a general election shall not exceed seven hundred.

Clause 14 seeks to amend section 43 of the Elections Act, 2011 clarify the a public officer intending to stand for election must resign one year before general elections or within seven days of the declaration of a vacancy in a by-election.

Clause 15 amends section 46 of the Elections Act, 2011 to require that a petition for recall should be accompanied by, among other particulars, thumb prints. 2542 The Election Laws (Amendment) (No 3) Bill, 2015

Clause 19 amends section 74 of the Elections Act, 2011 to remove typographical errors.

Clause 20 amends section 76 of the Elections Act, 2011 to require that a petition questioning the validity of an election shall be filed within twenty eight days after the date of declaration (rather than . of the results of the election.

Clause 21 seeks to amend section 85A of the Elections Act, 2011 to provide that an appeal to the Court of Appeal against the determination of an election petition shall operate as an automatic stay of the certificate issued by an election Court.

Clause 22 seeks to amend section 86 of the Elections Act, 2011 to require an election court to notify the relevant Speaker of Parliament of its determination of the validity of any question raised with regard to an election.

Clause 23 seeks to delete section 87 of the Elections Act, 2011 to require an election court to send to the Director of Public Prosecution and the Commission a report in writing indicating whether an election offence is likely to have occurred in connection with the election. Based on the result of the investigations, the DPP is to then initiate prosecution or close the matter.

Clause 24 amends section 91 of the Elections Act, 2011 to make it a requirement that where no petition for the referendum result is filed within the time specified, the declared (not gazetted) result shall have effect.

Clause 25 amends the Second Schedule of the Act to clarify that the Electoral code of conduct is applicable to both general and by-elections.

Clause 27 amends the Third Schedule of the Act to correct typographical omissions.

Clauses 29 to 32 seek to make amendments to the Independent Electoral and Boundaries Commission Act to—

- (a) delete spent sections;
- (b) provide for the procedure and criteria for the delimitation of electoral boundaries;
- (c) provide for the involvement of the public in delimitation boundaries
- (d) provide for the resolution of disputes arising from & limitation of boundaries; and
- (e) remove obsolete provisions of the Act. The Election Laws (Amendment) (No.3) Bill, 2015 2543

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms.

This Bill delegates legislative powers to the Independent Electoral and Boundaries Commission to prescribe regulations on the standards to be complied with in developing party lists. It does not limit any fundamental rights or freedoms.

Statement that the Bill concerns county governments

The Bill is a Bill concerning County governments. It contains provisions affecting the election of members of a county assembly.

The Bill is a money Bill within the meaning of Article 114 of the Constitution.

2.2 Public Participation in consideration of the Bill

The Committee invited the Public through the print media on to submit representations on the Bill by way of Memoranda. The National Gender and Equality Commission (NGEC).Kenya Kenya National Commission for Human Rights, Centre for Multy Party Democracy and the Kenya Law Reform Commission representations were considered and provided valuable contribution to the Bill.

**3.0 PROPOSED AMENDMENTS TO THE ELECTION LAWS (AMENDMENT)
(No.3), BILL, 2016**

CLAUSE 13

(NEW CLAUSE)

THAT the Bill be amended by inserting the following new clause 13B immediately after the proposed new clause 13A-

Amendment of section 39 of No. 24 of 2011

13B. Section 39 of the principal Act is amended by inserting the following new subsection immediately after subsection (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 the respective polling stations.

Justification: The amendment seeks to amend section 39 of the Elections Act, 2011, to insert an additional sub-section that requires the Independent Electoral and Boundaries Commission to ensure that the final election results it declares reflect the true and correct results declared by the presiding officers in the respective polling stations.

CLAUSE 19

(NEW CLAUSE)

THAT the Bill be amended by inserting the following new clause 19A immediately after clause 19-

Insertion of new section 57A in No. 24 of 2011

19A. The principal Act is amended by inserting the following new section immediately after section 57-

Offence of importation of voters

57A.(1) A person who directly or indirectly in person or by any other person on his behalf gives, lends or agrees to give or lend, or offers, promises or promises to procure or to endeavour to procure any money or

valuable consideration to or for any person or to or for any person on behalf of another person in order to induce or influence any person to register as a voter in a particular electoral area commits the offence of importation of voters.

(2) A person who commits an offence under subsection (1) is liable on conviction, to a fine not exceeding one million shillings and to imprisonment for a term not exceeding six years, or to both.

Justification: The amendment seeks to insert a new section in the Elections Act, 2011 that creates the offence of importation of voters and provides for its punishment.

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.....