

PARLIAMENT
OF KENYA
LIBRARY



KENYA NATIONAL ASSEMBLY

MAY 2011

LIBRARY
MAIN BUILDING

KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – FOURTH SESSION (2010)

REPORT OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS ON THE APPOINTMENT OF DIRECTOR AND TWO ASSISTANT
DIRECTORS TO THE KENYA ANTI-CORRUPTION COMMISSION

Clerks Chambers,
Parliament Buildings,
NAIROBI.

June, 2010



TABLE OF CONTENTS

PREFACE----- 1

INTRODUCTION -----3

MANDATE OF THE COMMITTEE----- 5

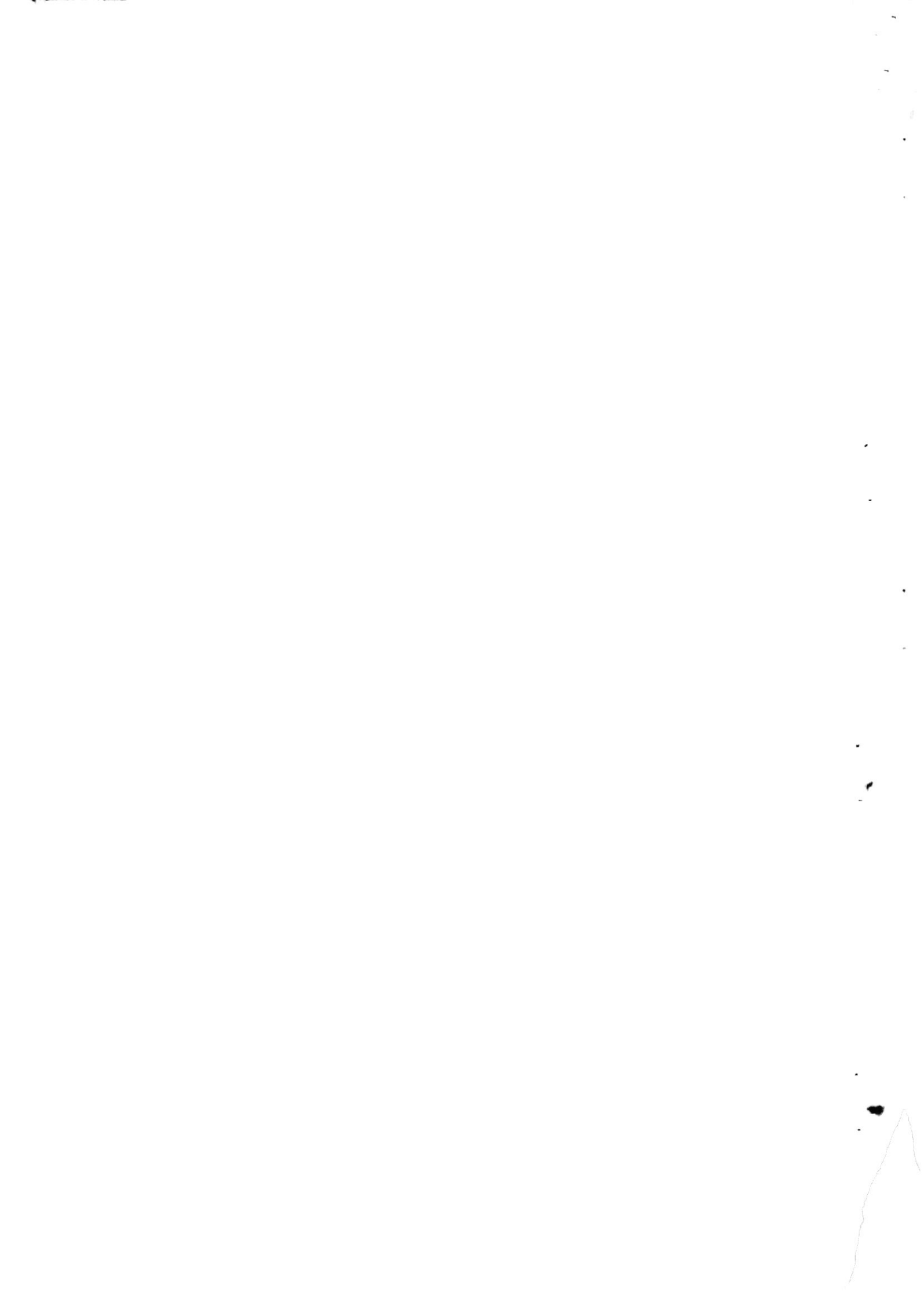
COMMITTEE DELIBERATIONS AND OBSERVATIONS ----- 6

 Minority Report (Hon. George Nyamweya,MP) ----- 7

CONCLUSION-----7

RECOMMENDATIONS -----8

ANNEX 1-MINUTES OF THE COMMITTEE----- 9



PREFACE

Mr. Speaker Sir,

The Departmental Committee on Justice and Legal Affairs derives its mandate from the provisions of Standing order 198(3) which states that the function of the Committee shall be:

- 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 on Ministries and departments and the effectiveness of the 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 as 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 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.

According to Schedule II of the Standing Orders, the Committee is mandated to consider:-

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

Committee Membership

The Committee comprises of the following members:-

Hon. Abdikadir Mohammed, M.P	Chairperson
Hon. Millie Odhiambo-Mabona, M.P	Vice-Chairperson
Hon. George Nyamweya, M.P.	
Hon. Mutava Musyimi, M.P	
Hon. Ababu Namwamba, M.P.	
Hon. Njoroge Baiya, M.P.	
Hon. Olago Aluoch, M.P.	
Hon. Isaac K.Ruto, M.P.	
Hon. Amina Abdalla, M.P.	
Hon. Sophia Noor Abdi, M.P.	
Hon. (Prof) Philip Kaloki, M.P.	

Committee Meetings

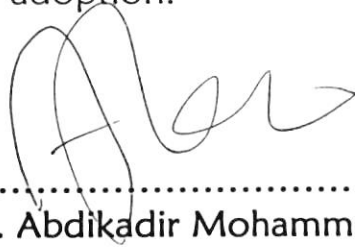
The Committee held five meetings to consider the nominees to the position of Director and two Assistant Directors to the Kenya Anti-Corruption Commission (KACC). The Kenya Anti-corruption Advisory Board made oral representations before the Committee in an effort to clarify issues. In addition, the Committee examined additional information submitted before it including a questionnaire completed by the nominees. The minutes of these meetings are appended to this report. The Report was adopted at a Committee meeting held on April 28, 2010 and attended by a majority of the members.

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 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.



Signed.....

Hon. Abdikadir Mohammed, MP
Chairperson

Date: 17/6/2010

INTRODUCTION

1. The Kenya Anti-corruption Commission is a body corporate established under Section 6(1) of the Anti-Corruption and Economic Crimes Act (No 3 of 203).Part III of the Act deals with the Powers and Functions of the Commission.
2. The provisions of Section 8 (1) & (2) regarding the positions of Director and Assistant Directors as follows:-

8.(1) The Commission shall have a Director who shall be the chief executive officer of the Commission and who shall be responsible for its direction and management.

(2)The Commission shall have up to four Assistant Directors to assist the Director.

3. The position of Director and the two Assistant Directors fell vacant following resignation of the three persons after a resolution by Parliament nullifying their appointment since the appointments were inconsistent with the laid down procedure.
4. The Kenya Anti-Corruption Advisory Board exercised its mandate in accordance with the provisions of Section 2(1) of the First Schedule of the Act which provides:-

2.(1) If the office of the Director or of Assistant Director becomes vacant, the Advisory Board shall, within three months recommend a person to be appointed to fill the vacancy.

5. Pursuant to the provisions of Paragraph 1 of the First Schedule of the Anti-corruption and Economics Crimes Act, the Kenya Anti-Corruption Advisory Board advertised for the positions in the Standard and Nation Newspapers on Friday, 2nd October, 2009 and Wednesday 7th October, 2009 respectively. Prospective candidates were given up to 22nd October, 2009.
6. The interviews for the Director were conducted on Monday, 23rd November 2009 while those for the Assistant Director, Education,Research,Policy and Preventive Services and Assistant

Director –Legal Services were conducted on Tuesday, 24th November, 2009 and Wednesday 25th November,2009 respectively.

7. In conducting the interviews, the Board examined the candidates against the following areas:-

- Academic and professional qualifications.
- Knowledge and relevant experience in the technical area.
- Knowledge of personnel and financial matters.
- Knowledge, attitude on ethics, honesty, integrity, independence and courage.
- Knowledge of operations i.e. structure, policies etc.
- General knowledge.
- Leadership potential and organizational ability.
- Negative factors not in support of the candidate.

8. The Advisory Board recommended and forwarded the following persons for the position of Director and two Assistant Directors;

- a) Dr.P.L.O.Lumumba - Director
- b) Mr.Pravin Bowry - Assistant Director –Legal Services
- c) Prof.Jane K.Onsongo - Assistant Director,
Education,Research,Policy & Preventive Services

9. The KACC Advisory Board submitted its report together with CVs of the three nominees to the National Assembly through the Minister for Justice, National Cohesion and Constitutional Affairs on November 26, 2009.

MANDATE OF THE COMMITTEE

10.The Committee derives its mandate from the provisions of Section 8 (3) & (4) of the Anti-Corruption and Economic Crimes Act (Act No.3 of 2003) which provides that:

(3) The Director and Assistant Directors shall be persons recommended by the Advisory Board and approved by the National Assembly for appointment to their respective positions.

(4) On the approval of a person by the National Assembly under subsection (3), the President shall appoint the person concerned to the office in respect of which the approval was given.

Committee's Deliberations and Observations

11. At its meeting held on December 9, 2009, the Committee considered the report from the Advisory Board and noted that debate on the matter was restrictive since only one nominee was recommended for each position. Consequently the Board was requested to furnish the Committee with a report detailing the factors that influenced them in selecting the nominees to facilitate further debate on this matter.
12. At a meeting held on February 23, 2010, the Committee considered a vetting manual developed by the Departmental Committee on the Administration of Justice and Legal Affairs of the 9th Parliament. In accordance with recommendations made in the Vetting manual the Committee requested for an explanatory memoranda from the Advisory Board stating factors which made the three candidates suitable for appointment. The Committee further requested for background information from the Law Society of Kenya, the Advocates Complaints Commission (for the advocates) and the National Security Intelligence Service for all the nominees.
13. The Committee considered and made appropriate amendments to a model vetting questionnaire obtained from the Senate in the Congress. The Committee directed that the modified questionnaire be forwarded to the nominees for completion and return.
14. At its meeting held on April 28, 2010, the Committee examined all the evidence gathered in respect of the three nominees including a report from the National Security Intelligence Service. On the same day a consultative meeting was held with the Kenya Anti-Corruption Advisory Board to clarify matters of procedure on the selection of the nominees to the position of Director and two Assistant Directors.
15. The Board confirmed that each of the three candidates were the best in their respective categories. The Board further confirmed that Dr.P.L.O.Lumumba was neither an official nor a member of any political party and was therefore suitable for appointment to the

position of Director of the Commission. Similarly the Board had considered the case of Mr.Pravin Bowry in light of his activities as a defence lawyer in major financial scandals and was satisfied that this would not hinder his work as Assistant Director-Legal services.

16.The Committee was satisfied that the three candidates had the requisite academic and professional qualification for the positions under consideration.

Minority Report -(Hon. George Nyamweya, M.P)

17.During a committee meeting held on April 28, 2010, the Hon. George Nyamweya,MP recorded dissenting views as follows:-

- a. Dr.P.L.O Lumumba - The candidate is not suitable for appointment as Director since he is involved in politics having vied for a parliamentary seat in 2007.In addition the candidate may not be honest since at the Bomas conference, he failed to present the member's minority views at the plenary despite having promised the member that he would do so.
- b. Mr.Pravin Bowry – The candidate is not suitable for appointment as Assistant Director-Legal services since there is bound to be conflict of interest considering that he has conducted and handled key cases in major financial scandals like the Goldenberg. It would be difficult for the candidate to draw a distinction between his clients and his job.

Conclusion

18.The Committee finds that in nominating the three candidates for the position of Director and two Assistant Directors, the Advisory Board followed the procedure as outlined in the Law.

19.The Committee further finds that the Law as enacted is restrictive and does not allow proper participation of the Committee in the appointment process.

Recommendations

20. The Committee recommends -

- (i) That, pursuant to Section 8(3) of the Anti-Corruption and Economics Crimes Act (Act No.3 of 2003), this House approves the following three persons for appointment by H.E the President to the respective positions :-
 - a) Dr. Patrice .L.O.Lumumba: - Director
 - b) Mr. Pravin Bowry : - Assistant Director (Legal Services)
 - c) Prof. Jane K. Onsongo : - Assistant Director(Education, Research, Policy & Preventive Services
- (ii) That, this House urges the Attorney-General to propose appropriate amendments to the Anti-Corruption and Economics Crimes Act (Act No.3 of 2003)and any other relevant statute to provide for vetting of appointments to senior positions by the National Assembly.

-----end-----

MINUTES OF THE 1ST SITTING OF THE DEPARTMENTAL COMMITTEE–
ON JUSTICE AND LEGAL AFFAIRS TO CONSIDER THE APPOINTMENTS
OF DIRECTOR AND ASSISTANT DIRECTORS TO THE KACC HELD ON
WEDNESDAY DECEMBER 9TH, 2009 IN COMMITTEE ROOM, 2ND
FLOOR, CONTINENTAL HOUSE ,PARLIAMENT BUILDINGS AT 10.00
AM.

PRESENT

Hon. Abdikadir Mohamed, M.P.	-	Chairperson
Hon. Millie Odhiambo-Mabona, M.P.	-	Vice-Chairperson
Hon. Nyamweya George, M.P		
Hon. Isaac Ruto, M.P.		
Hon. Olago Aluoch, M.P.		
Hon. Mutava Musyimi, M.P.		

ABSENT WITH APOLOGY

Hon. Amina Abdalla, M.P
Hon. Ababu Namwamba, M.P.
Hon. Baiya Njoroge, M.P.
Hon. Sophia Abdir Noor, M.P

ABSENT

Hon. (Prof) Philip Kaloki, M.P

IN ATTENDANCE

Mrs. Lucy Wanjohi
Mr. Julius Ariwomoi
Ms. Eunice Gichangi
Mr. Willis Otieno

NATIONAL ASSEMBLY

Second Clerk Assistant
Second Clerk Assistant
Legal Counsel
Parliamentary Intern

NIN.NO. 01/2009 - OPENING PRAYER.

The meeting started with a word of prayer.

MIN.NO 02/2009 - ADOPTION OF THE REPORT OF PROPOSED
LIST OF POLITICAL PARTIES' TRIBUNAL.

After deliberations on this matter the committee resolved:-

- To write to the Law Society of Kenya and the Advocates Disciplinary Committee to provide information on the nominees.
- That the committee would invite the nominees to appear before it for further vetting.
- That the nominees would furnish the Committee with their Curriculum Vitae
- That the Committee would conduct thorough vetting before it approving the nominees.

MIN.NO.03/2009 - CONSIDERATION OF THE PROPOSED LIST OF DIRECTOR AND ASSISTANT DIRECTORS OF KACC.

The Committee noted that the KACC Advisory Board had forwarded a single name for each of the three positions thereby limiting discussions on this matter.

After due discussions the Committee resolved:-

- That since only one nominee was recommended for each position thereby limiting debate, the Board furnishes the Committee with a report detailing the factors that informed the Board in identifying the nominees to facilitate further action on this matter.
- A report on the nominees be obtained from the Law Society of Kenya
- A report on the nominees be obtained from the Advocates Complaints Commission.

MIN.NO.04/2009 - CONSIDERATION OF THE MUTUAL LEGAL ASSISTANCE BILL 2009.

In view of the fact that this matter had taken long to be concluded, it was resolved that the Attorney General presents a report on the Bill by date of the next meeting. The Report should detail the objectives of the Bill and other pertinent matters relating to reciprocity between the participating nations.

MIN.NO.05/2009 - CONSIDERATION OF THE AUDIT REPORT OF GOVERNANCE REFORMS UNDER AGENDA IV.

The Committee requested for an Executive Summary of the Report and deferred discussions to the next meeting.

MIN.NO.06/2009 - ANY OTHER BUSINESS

AGENDA 4 REFORMS

- It was resolved that the Chairmen of the various constitutional reform bodies be invited to a joint meeting.
- It was further resolved that a letter be done to the Minister for Justice National Cohesion and Constitutional Affairs requesting for an update of the work of the Truth ,Justice and Reconciliation Commission and the National Cohesion and Integration Commission.

MIN.NO.07/2009 - ADJOURNMENT

And there being no other business the Chairman adjourned the meeting ended at 1.00pm until 19th January 2009 at 10.00 a.m.

Hon.Abdikadir Mohammed, M.P

SIGNED

Chairperson

June 17, 2010

DATE

MINUTES OF THE 2ND SITTING OF THE DEPARTMENTAL COMMITTEE OF JUSTICE AND LEGAL AFFAIRS TO CONSIDER THE APPOINTMENTS OF DIRECTOR AND ASSISTANT DIRECTORS TO THE KACC HELD ON WEDNESDAY FEBRUARY 17, 2010 IN COMMITTEE ROOM 4TH FLOOR, CONTINENTAL HOUSE AT 10.00 AM

PRESENT

Hon. Mohammed Abdikadir, M.P.	-	Chairperson
Hon. Millie Odhiambo, M.P.	-	Vice Chairperson
Hon. Ababu Namwamba, M.P.		
Hon. Olago Oluoch, M.P.		
Hon. Sophia Noor, M.P.		
Hon. George Nyamweya, M.P.		
Hon. Isaac Ruto, M.P.		
Hon. Njoroge Baiya, M.P.		
Hon. Amina Abdalla, M.P.		

ABSENT WITH APOLOGIES

Hon. Mutava Musyimi, M.P.

ABSENT

Hon. Phillip Kaloki, M.P.

IN ATTENDANCE

Mrs. Lucy Wanjohi
Mr. Abenayo Wasike
Mr. Peter Kitheka

NATIONAL ASSEMBLY

Second Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

MIN.NO. 08/2010

- PRAYER

The meeting was opened with a word of prayer.

MIN.NO. 09/2010

- CONFIRMATION OF MINUTES

Confirmation of minutes of previous meetings was deferred to a later date.

MIN.NO. 10/2010

CONSIDERATION OF REPORT BY KACC ON
THE PROPOSED LIST OF DIRECTOR AND
TWO ASSISTANT DIRECTORS

The Committee noted with concern that the report by KACC Advisory Board only outlined the mandate of the Board and did not give any details on the criteria used in selecting the nominees. This was in spite of the fact that the Committee had written requesting for that information.

After due discussions it was resolved that:-

- A report on any complaints lodged with the Advocates Complaints Commission for the two advocates.
- A vetting manual developed by the Justice Committee of the 9th Parliament be availed to members
- A vetting form used by the Congress be availed to the members

The Committee observed that while its role was to vet nominees to public offices, there were no standards to guide in the vetting hence the need to develop some.

It was resolved that the Committee would consider the vetting procedure at its next meeting.

MIN.NO. 11/2010

CONSIDERATION OF THE PROPOSED NOMINEES
TO THE POLITICAL PARTIES DISPUTES TRIBUNAL

It was reported that the Chief Justice had written nominating **Mr. Peter Ldhituachi Simani** as Chairman of the Tribunal in place of **Sankale Ole Kantai** who had been appointed to the Constitutional Court.

The Committee deliberated on this matter and resolved to interview the three nominees before making recommendations to the House.

Consequently it was resolved that the three nominees:-

- a) **Mr. Peter Ldhituachi Simani**
- b) **Mr. Chacha Odera and;**
- c) **Rev. Jese Mutura**

be invited to appear before the Committee on Friday, February 26,2010 starting at 10.00am.

MIN.NO. 12/2010

ANY OTHER BUSINESS

Foreign Study Visit

It was noted that the Committee had not undertaken any study visit in the current financial year and it was imperative that a comparative visit be organized soon.

MIN.NO. 13/2010

ADJOURNMENT

And there being no other business the Chairman adjourned the meeting at twelve O'clock until Tuesday, February 23, 2010 at 9.30am.

SIGNED Hon.Abdikadir Mohammed,M.P

 Chairperson

DATE June 17,2010

MINUTES OF THE 3RD SITTING OF THE DEPARTMENTAL COMMITTEE–
ON JUSTICE AND LEGAL AFFAIRS TO CONSIDER THE APPOINTMENTS
OF DIRECTOR AND ASSISTANT DIRECTORS TO THE KACC HELD ON
TUESDAY, FEBRUARY 23, 2010 IN COMMITTEE ROOM, 5TH FLOOR,
CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

Hon. Abdikadir Mohamed, M.P. - Chairperson
Hon. Millie Odhiambo-Mabona, M.P. - Vice-Chairperson
Hon. Ababu Namwamba, M.P.
Hon. Nyamweya George, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Baiya Njoroge, M.P.
Hon. Olago Aluoch, M.P.

ABSENT WITH APOLOGY

Hon. Isaac Ruto, M.P.
Hon. Amina Abdalla, M.P.
Hon. Sophia Abdir Noor, M.P.

ABSENT

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

IN ATTENDANCE

NATIONAL ASSEMBLY

Mrs. Lucy Wanjohi - Second Clerk Assistant
Mr. Abenayo Wasike - Third Clerk Assistant

MIN.NO. 14/2010 - OPENING PRAYER.

The meeting started with a word of prayer.

MIN.NO.15/2010 - CONSIDERATION OF VETTING PROCEDURE

The Committee scrutinized a document developed by the Justice Committee of the 9th Parliament titled “Manual for Vetting and/or Approving Appointees to Public Office” and a questionnaire used for vetting by the Senate in the Congress and resolved that in all instances

where Parliament has to approve appointments the following broad areas be considered:-

- When forwarding a name, the appointing body should also forward an explanatory memorandum stating factors which in the nominating authority's' view make the person suitable for the appointment.
- A copy of the curriculum vitae for each candidate shall accompany the name and it should be indicated the vacancy for which the candidate is nominated.
- Written references shall accompany the name
- The Committee shall conduct a background check on the candidates from the relevant professional bodies and the National Security Intelligence Service
- Consent of the applicant to make inquiries if necessary

The Committee adopted the Questionnaire with a few amendments and approved the same for forwarding to all the nominees for completion and return to the Committee.

The Committee further resolved that:-

1. Explanatory Memorandum be obtained from:-

- The Kenya Anti-corruption Commission on the Director and Assistant Directors to the Commission
- The Chief Justice on the nominees to the Political Parties Disputes Tribunal

2. That background information be obtained from:

- The National Security Intelligence Service on the six nominees to the Kenya Anti-Corruption Commission and the Political Parties Disputes Tribunal
- The Law Society of Kenya and the Advocates Complaints Commission

MIN.NO.16/2009

-

ANY OTHER BUSINESS

a) Truth Justice and Reconciliation Commission

The Committee noted with concern the challenges the commission was facing in its bid to sensitize members on their mandate. The Commission Chairperson had faced rejection in the Coast Region and many groups were calling for his resignation. It was observed that public confidence was imperative in fulfillment of the Commissions' mandate.

Consequently it was resolved that the Minister for Justice, National Cohesion and Constitutional Affairs and the Commission be invited to a committee meeting to be held on Friday ,February 26,2010 at 10.00am to discuss this matter further.

b) Kenya Anti-Corruption Advisory Board

The Committee noted the two names forwarded for consideration by the Committee and agreed that further information on the matter be obtained.

MIN.NO.17/2009 - ADJOURNMENT

And there being no other business the Chairman adjourned the meeting ended at 12.30pm until Friday, February 26, 2010 at 10.00am.

Hon.Abdikadir Mohammed,M.P

SIGNED

Chairperson

June 17,2010

DATE

MINUTES OF THE 4TH SITTING OF THE DEPARTMENTAL COMMITTEE –
ON JUSTICE AND LEGAL AFFAIRS TO CONSIDER THE APPOINTMENTS
OF DIRECTOR AND ASSISTANT DIRECTORS TO THE KACC HELD ON
TUESDAY , MARCH 9, 2010 IN THE SMALL DINING HALL, PARLIAMENT
BUILDINGS AT 10.00 AM.

PRESENT

Hon. Abdikadir Mohamed, M.P. - Chairperson
Hon. Ababu Namwamba, M.P.
Hon. Nyamweya George, M.P
Hon. Baiya Njoroge, M.P.

ABSENT WITH APOLOGY

Hon. Millie Odhiambo-Mabona, M.P. - Vice-Chairperson
Hon. Mutava Musyimi, M.P.
Hon. Sophia Abdir Noor, M.P
Hon. Isaac Ruto, M.P.
Hon. Amina Abdalla, M.P
Hon. Olago Aluoch, M.P.

ABSENT

Hon. (Prof) Philip Kaloki, M.P

IN ATTENDANCE

Mrs. Lucy Wanjohi
Mr. Abenayo Wasike
Mr. Daniel Chania
Mr. Peter Kitheka

NATIONAL ASSEMBLY

Second Clerk Assistant
Third Clerk Assistant
Third Clerk Assistant
Parliamentary Intern

MIN.NO. 18/2010 - OPENING PRAYER.

The meeting started with a word of prayer.

MIN.NO.19/2010 - INTRODUCTORY REMARKS

The Chairman stated that the Agenda of the day which included:-

- Consideration of nominees to the Kenya Anti-Corruption Commission
- Interviews & consideration of nominees to the Political Parties Disputes Tribunal and the
- Truth Justice and Reconciliation Commission required participation by a majority of the members of the Committee. Consequently, it was resolved that the meeting be adjourned to a later date when a majority of the members should be in attendance.

Nevertheless the Committee noted with concern that in spite of the Committee having written twice to KACC Advisory Board requesting for specific details on the nominees, the responses did not address the issues raised.

After due discussions, the Committee resolved to invite the KACC Advisory Board for a meeting on Thursday, March 18, 2010 to clarify issues on the nominees.

In the meantime, the secretariat was asked to prepare documents on KACC and the Political Parties and distribute to all members of the Committee before the next meeting.

MIN.NO.20/2010 - ADJOURNMENT

And there being no other business the Chairman adjourned the meeting at twelve O'clock until Thursday, March 18, 2010 at 9.00am.

SIGNED Hon.Abdikadir Mohammed, M.P

Chairperson

DATE June 17, 2010

MINUTES OF THE 5TH SITTING OF THE DEPARTMENTAL COMMITTEE –
ON JUSTICE AND LEGAL AFFAIRS TO CONSIDER THE APPOINTMENTS
OF DIRECTOR AND ASSISTANT DIRECTORS TO THE KACC HELD ON
WEDNESDAY, APRIL 28, 2010 IN COMMITTEE ROOM 4TH FLOOR
CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

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

ABSENT WITH APOLOGY

Hon. Millie Odhiambo-Mabona, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Baiya Njoroge, 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

Second Clerk Assistant
Third Clerk Assistant

MIN.NO. 21/2010

OPENING PRAYER.

The meeting started with a word of prayer.

MIN.NO.22/2010

MEETING WITH THE KENYA ANTI-
CORRUPTION ADVISORY BOARD

The Chairman welcomed members of the Kenya Anti-Corruption Advisory Board to the meeting and thanked them for attending the meeting. He explained that the main objective of the meeting was to clarify issues on the

selection of nominees to the position of Director and Assistant Directors. It was observed that whereas the law was clear on the respective roles of the Advisory Board and Parliament, it was imperative that Parliament satisfies itself that the recruitment process was fair and transparent.

The Chairman of the Advisory Board informed the Committee that prior to conducting the interviews the Board obtained references from the respective professional bodies i.e. from the Disciplinary Committee of the Law Society of Kenya and the Advocates Complaints Commission who cleared the two advocates of any professional offences while it relied on written references for the non-lawyer. He informed the committee that the interview process was as follows:-

Director

The Board received a total of sixty three (63) applications and shortlisted eight candidates. The interviews were conducted on Monday, 23rd November 2009 where all the eight (8) shortlisted candidates attended. The Board maintained a quorum of eleven (11) members throughout the exercise. After the interviews and deliberation on all the eight candidates, the Board recommended P.L.O Lumumba to the position of Director. The Board deliberated on the candidature of Dr Lumumba in view of the fact that he had participated in the 2007 elections but noted that the Anti-Corruption and Economics Crimes Act barred staff from engaging in Politics only after appointment. P.L.O Lumumba was recommended for the position of Director after the Board was satisfied that he was the best from the eight candidates and he was no longer an official or a member of any political party.

Assistant Director – Preventive Services

A total of ninety eight (98) applications were received out of which three (3) were received after the deadline. Ninety five (95) applications were considered out of which eight (8) were shortlisted for interviews and interviews conducted on Tuesday November 24th, 2009. The Board maintained a quorum and a total of eleven members were present throughout the process. Prof. Onsongo was picked due to her knowledge in Public Administration. She has held the position of Director, Department of Research, Catholic University of East Africa. The Board was further

persuaded by the need to maintain gender parity within the top management of the Commission.

Assistant Director – Legal Services

The Board received forty five (45) applicants out of which three (3) were disqualified since they were received after the deadline. Out of the forty two (42) applicants, eight (8) were shortlisted. Interviews for the shortlisted candidates were conducted on Wednesday, November 25th, 2009. During the interviews, quorum of the Board was maintained with a total of twelve (12) members present. The Board was keen to recruit an experienced lawyer able to take on experienced lawyers. In recommending Mr. Bowry for the position of Assistant Director, Legal Services, the Board was persuaded by his knowledge of Constitutional matters and his long (38 years) experience. The Board was alive to the fact that Mr. Bowry was representing persons in corruption cases but concluded that there would be no conflict of interest but that this would be an asset to the Commission.

In conducting the interviews, the Board tested the following areas:-

- Academic and professional qualifications
- Knowledge and relevant experience in the technical area
- Knowledge of personnel and financial matters
- Knowledge and attitude on ethics, honesty, integrity, independence and courage
- Knowledge of operations i.e. structure, policies etc
- General knowledge
- Leadership potential and organizational ability
- Negative factors not in support of the candidate

The Committee observed that:-

- In picking the nominees to the three positions, the Board followed the procedure as laid down in the Law,
- The requisite quorum was maintained during the interviews
- The nomination process was transparent and competitive
- The nominees were the best in their respective positions.
- The role of the Committee was restricted to approving with minimal room for any meaningful debate

- In future the Board should give a detailed report detailing at least the shortlisted candidates, the criteria used in selecting the candidates etc.

The Committee recommends that:-

1. The three vacant positions be filled as follows:-
 - a) Dr P.L.O Lumumba – Director
 - b) Mr.Pravin Bowry – Assistant Director – Legal Services
 - c) Prof.Jane Kerubo Onsongo – Assistant Director, Education,Research,Policy & Preventive Services
2. The Attorney General be requested to introduce amendments to the Anti-Corruption and Economics Crimes Act to allow the National Assembly vet appointments to Senior public offices.

Reservations-(Hon. George Nyamweya, M.P)

Hon. George Nyamweya, M.P recoded dissent as follows:-

1. Dr.PL.O Lumumba - The candidate is not suitable for appointment as Director since he is involved in politics having vied for a parliamentary seat in 2007.In addition the candidate may not be honest since at the Bomas conference, he failed to present the member's minority views at the plenary despite having promised the member that he would do so.
2. Mr.Pravin Bowry – The candidate is not suitable for appointment as Assistant Director-Legal services since there is bound to be conflict of interest considering that he has conducted and handled key cases in major financial scandals like the Goldenberg. It would be difficult for the candidate to draw a distinction between his clients and his job.

MIN.NO.23/2010 - ADOPTION OF THE REPORT

The Committee adopted the report with the following recommendations:

1. That in conformity with the provisions of Section 8(3) of the Anti-Corruption and Economic Crimes Act, the following three nominees be considered and approved for onward transmission to H.E the President to fill the three vacant positions:-

- a) Dr P.L.O Lumumba – Director
- b) Mr. Pravin Bowry – Assistant Director – Legal Services
- c) Prof. Jane Kerubo Onsongo - Assistant Director,
Education, Research, Policy & Preventive Services

2. That, the Attorney-General introduces appropriate proposals to amend the Anti-Corruption and Economics Crimes Act (Act No.3 of 2003) and any other relevant statute to provide for vetting of appointments to senior position in the Republic by the National Assembly.

MIN.NO.24/2010 - TRUTH, JUSTICE & RECONCILIATION
COMMISSION

The Chairman stated that the Committee had resolved to disband the Truth Justice and Reconciliation Commission and had requested the Legal Department to advise the Committee on the best method to disband including the financial implications. The Principal Legal Counsel gave an outline of the three possible ways of disbanding the Commission which included:

- a) Disband in accordance with the Act
- b) Disband
- c) Repeal and re-enact.

While stating that the disbanding option is extreme and rare, the Parliamentary Legal Counsel requested for time to reflect on the matter and report back to the Committee at a later date.

It was resolved that the Committee invites the Minister for Justice, National Cohesion and Constitutional Affairs to brief members on his role in the resolution of the TJRC quagmire.

It was further resolved that the Principal Legal Counsel briefs the Committee within two weeks.

MIN.NO.25/2010 - ANY OTHER BUSINESS

a) **Foreign Study Visit**

It was agreed that the Committee should be represented by at least six (6) persons to the U.S.A Congress to study the Presidential Process and Vetting and to Canada for the concept of Devolution. The secretariat was instructed to commence preparations of the study visit.

b) **Committee Retreat**

It was agreed that a Committee retreat be organized to meet institutions on Agenda 4 and also meet with the KACC Advisory Board. The secretariat was asked to facilitate.

MIN.NO.26/2010 - ADJOURNMENT

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

Hon.Abdikadir Mohammed, M.P

SIGNED

Chairperson

June 17, 2010

DATE



