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REPUBLIC OF KENYA

Laid on 12/3/2003

NATIONAL ASSEMBLY

NINTH PARLIAMENT - SECOND SESSION

DEPARTMENTAL COMMITTEE ON ADMINISTRATION OF
JUSTICE AND LEGAL AFFAIRS

REPORT ON

THE PUBLIC OFFICER ETHICS BILL, 2003

PARLIAMENT BUILDINGS
NAIROBI

MARCH 2003

INTRODUCTION

Mr. Speaker Sir, the Departmental Committee on Administration of Justice and Legal Affairs is established under Standing Order No. 151. This Committee is charged with the mandate of constitutional affairs and the administration of law and justice amongst many others.

On 27th February, 2003 the Minister for Justice and Constitutional Affairs referred the Public Officer Ethics Bill, 2003 on its First Reading to this Committee.

On behalf of the Members of the Departmental Committee on Administration of Justice and Legal Affairs, I feel honoured to present to the House the Report on the Public Officer Ethics Bill, 2003. May I, therefore, Mr. Speaker Sir, thank the Members of the Committee for their cooperation, dedication and support in compiling this Report. I feel indebted to their valuable contribution and commitment to their constitutional obligation to make Parliament discharge its mandate efficiently and effectively.

The following are the Members of the Committee:-

The Hon. Paul Kibugi Muite, M.P. **(Chairman)**

The Hon. David Were, M.P.

The Hon. E.W. Kibunguchy, M.P.

The Hon. Cecily Mbarire, M.P.

The Hon. Mirugi Kariuki, M.P.

The Hon. Peter O. Owidi, M.P.

The Hon. Kenneth Marende, M.P.

The Hon. Jim Choge, M.P.

The Hon. Amina Abdalla, M.P.

The Hon. Moses Cheboi, M.P.

The Hon. Gideon Ndambuki, M.P.

Mr. Speaker Sir, this Report contains the Committee's proposed amendments. The Committee held three sittings to deliberate on the Bill. The minutes of the deliberations of the Committee on the Bill are attached to this Report for ease of reference.

Finally, Mr. Speaker Sir, I would like to commend the experts who appeared before the Committee to exchange views with us despite the short notice. I cannot also forget, Mr. Speaker Sir, to thank the Clerks and the officers of the House who went beyond the call of duty to ensure that this Report was ready on time.

SIGNED:

HON. PAUL KIBUGI MUIE, M.P.
CHAIRMAN - DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS

DATE:

PROPOSED AMENDMENTS BY THE COMMITTEE

- Clause 2
- Insert sub-clause “a” to refer to the President
 - Re-number the sub-clauses accordingly.
 - Define the word “**minister**”.
- Clause 3(5)
- The Members suggested that either the Parliamentary Service Commission constitutes a Committee for Ethics or empower one of the existing committees such as the Committee on Administration of Justice and Legal Affairs to take care of issues of ethics for Members of Parliament.
- Clause 3(6)
- The Committee recommended that the Councillors’ Code of Conduct be regulated under the Local Government Authority Act (Cap. 265) while the Electoral Commission be left to regulate its members of staff.

- PART II - Add letter “s” to the word “code” to read
“codes”
- Clause 9(2) - (a) Insert the word “fundamental” between
the words “the” and “rights” appearing
on the second line .
- (b) Delete all the words “under Part V of”
appearing between the words “person” and
“the” on the third line and insert the words
“as enshrined in” in place thereof.

Clause 12 - The Minister to clarify his position on
what is prohibited or not prohibited regarding
harambees.

Clause 13 - Provide for a proviso after sub-section 13(2)(b)

The proviso to read as follows:-

**“provided that this section shall
not apply to persons discharging
professional duties or to purely
commercial transactions”**

Clause 27 - Provide for a sub-clause (3) to indicate

that **“once a public officer has declared his income, assets and liabilities any queries shall be raised within a period of six months”**.

- Clause 29 - Delete all the words and sub-clauses in Clause 29 and insert the following words in place thereof:-

“there shall be a register to be kept by the Commission on all public officers upon declaring their income, assets and liabilities which will be open for inspection”.

- Clause 31 - Delete the words **“one year”** appearing in the last line of the clause and insert the words **“six months”** in place thereof.

- PART IV - Add letter **“s”** to the word **“code”** to read **“codes”**

- Clause 34 - Insert a new sub-clause (5) to read as follows:-

“the investigation by the respective

Commission or body to which an investigation has been referred shall remain confidential in accordance with section 36 of this Act”.

- Insert a new sub-clause (6) to read as follows:-

“any person who contravenes sub-clause (5) of this section shall be guilty of an offence and will be liable, on conviction, to a fine not less than two million shillings or to imprisonment of one year or to both”.

- Clause 35(1)(a) -
- (i) Delete the word **“it”** at the end of the first line and all the words in the second line and insert **“as may be prescribed by the regulations”** in place thereof.

- Insert the following new sub-section:-

1(a)(ii) The Minister shall prescribe in the regulations the disciplinary action in respect of each category of public officers.

Clause 40 - Delete

FIRST SCHEDULE - Insert paragraph **(5)** after paragraph **(4)** to cater for the Electoral Commission which will cover the Chairman, Vice-Chairman and Commissioners.

- Re-number the paragraphs accordingly.
- Insert paragraph (13) to cater for the staff of the National Security Intelligence Service.

MINUTES OF THE FIRST SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS HELD IN THE MAIN CONFERENCE HALL, COUNTY HALL, PARLIAMENT BUILDINGS ON THURSDAY, MARCH 06, 2003 AT 4.00P.M.

PRESENT:

The Hon. Paul Kibugi Muite, M.P. **(Chairman)**
The Hon. David Were, M.P.
The Hon. Mirugi Kariuki, M.P.
The Hon. Cecily Mbarire, M.P.
The Hon. Peter O. Owidi, M.P.
The Hon. Kenneth Marende, M.P.
The Hon. Jim Choge, M.P.
The Hon. Amina Abdalla, M.P.
The Hon. Gideon Ndambuki, M.P.
The Hon. Moses Cheboi, M.P.

ABSENT WITH APOLOGY:

The Hon. E.W. Kibunguchy, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. Samuel W. Ndindiri - Clerk, National Assembly
Mr. David K. Ziah - Clerk Assistant I

MINUTE NO. 01/2003:

REMARKS BY THE CLERK OF THE NATIONAL ASSEMBLY

The Clerk made a brief explanation on the origin of the Departmental Committees, their functions as stipulated in Standing Orders 151(4) and their importance in assisting the Government Ministries and Departments in formulating Bills.

MINUTE NO. 02/2003:

ELECTION OF THE CHAIRMAN

The Clerk called for proposal for the position of chairman of the Committee. The Hon. Paul Kibugi Muite, M.P. was proposed in absentia by the Hon. Cecily Mbarire, M.P. and seconded by the Hon. Peter O. Owidi, M.P. the Hon. Kenneth Marende was proposed by the Hon. Jim Choge, M.P. and seconded by the Hon. Moses Cheboi, M.P.

The Hon. Kenneth Marende voluntarily stepped down for the Hon. Paul Muite. There being no other contestants, the Hon. Paul Kibugi Muite was declared the Chairman of the Committee.

In the absence of the Hon. Paul Muite, M.P. the Hon. Kenneth Marende, M.P. took the Chair.

MINUTE NO.03/2003: **DELIBERATIONS ON THE ANTI-CORRUPTION AND ECONOMIC CRIMES BILL, 2003**

The Committee agreed to postpone the deliberations of the Bill upto the following week.

The Clerk urged the Committee to take the deliberations on the two Bills, the Anti-Corruption and Economic Crimes Bill and the Public Officer Ethics Bill (Bill No. 3) with urgency since the House will not proceed with debate on the Bills until the Committee tables its reports.

The Committee concurred with the sentiments of the Clerk and agreed to deliberate on the Bills as soon as possible.

The secretariat was asked to provide enough copies of Public Officer Ethics Bill together with the Report on the Anti-Corruption Control Bill, 2002 prepared by the Departmental Committee on Administration of Justice and Legal Affairs during the Eighth Parliament.

MINUTE NO.04/2003: **ANY OTHER BUSINESS**

Members wanted to know who determined the number of sittings of the Committee and if there were any allowances to be paid.

The Clerk explained that the number of sittings would be determined by the workload before the Committee. The Committee is expected to come up with a programme for the current Session.

On the issue of allowances the Clerk explained that sitting and traveling allowances were payable to Members if a sitting is held during recess and when the House is not sitting. He said currently the sitting allowance was Kshs. 3000/= but will be Kshs. 5,000/= following the adoption of the Cockar Tribunal Report and after the amendment of the

National Assembly Remuneration (Amendment) Act, 1994 to give legal effect to some of the proposals in the said Report..

MINUTE NO.06/2003: ADJOURNMENT

And the time being ten minutes past Five O'clock, the Ag. Chairman (Mr. Marende) adjourned the sitting until Monday 10, 2003 at 2.30 p.m.

CONFIRMED
(CHAIRMAN)

DATE

MINUTES OF THE SECOND SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS HELD IN THE MAIN CONFERENCE HALL, COUNTY HALL, PARLIAMENT BUILDINGS ON MONDAY, MARCH 10, 2003 AT 2.30 P.M.

PRESENT:

The Hon. Paul Kibugi Muite, M.P. **(Chairman)**
The Hon. David Were, M.P.
The Hon. Mirugi Kariuki, M.P.
The Hon. Cecily Mbarire, M.P.
The Hon. Peter O. Owidi, M.P.
The Hon. Kenneth Marende, M.P.
The Hon. Jim Choge, M.P.
The Hon. Amina Abdalla, M.P.
The Hon. Moses Cheboi, M.P.
The Hon. E.W. Kibunguchy, M.P.

ABSENT WITH APOLOGY:

The Hon. Gideon Ndambuki, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. Peter O. Omolo	-	Deputy Clerk
Mr. David K. Ziah	-	Clerk Assistant I

MINUTE NO. 07/2003:

REMARKS BY THE CHAIRMAN

The Chairman briefed the Committee on a meeting he held with the Director of State University of New York (SUNY) who said that the organization had offered to work with the Committee in terms of offering expert advice on the key reform Bills such as the Public Officer Ethics Bill, 2003. It had been agreed that the Committee dispose of it before the Anti-Corruption and Economic Crimes Bill, 2003. The Committee was informed that the Anti-Corruption and Economic Crimes Bill 2003 would be deliberated on Monday, March, 17, 2003.

The Committee deliberated on the Bill clause by clause and agreed as follows:-

PROPOSED AMENDMENTS

- Clause 2 - Insert sub-clause **“a”** to refer to the President
- Re-number the sub-clauses accordingly.
- Define the word **“minister”**.
- Clause 3(5) - The Members suggested that either the Parliamentary Service Commission constitutes a Committee for Ethics or empower one of the existing committees such as the Committee on Administration of Justice and Legal Affairs to take care of issues of ethics for Members of Parliament.
- Clause 3(6) - The Committee recommended that the Councillors' Code of Conduct be regulated under the Local Government Authority Act (Cap. 265) while the Electoral Commission be left to regulate its members of staff.
- PART II - Add letter **“s”** to the word **“code”** to read **“codes”**
- Clause 9(2) - (a) Insert the word **“fundamental”** between the words **“the”** and **“rights”** appearing on the second line .
- (b) Delete all the words **“under Part V of”** appearing between the words

“person” and **“the”** on the third line and insert the words **“as enshrined in”** in place thereof.

- Clause 12 - The Minister to clarify his position on what is prohibited or not prohibited regarding *harambees*.
- Clause 13 - Provide for a proviso after sub-section 13(2)(b)
- The proviso to read as follows:-
- “provided that this section shall not apply to persons discharging professional duties or to purely commercial transactions”**
- Clause 27 - Provide for a sub-clause (3) to indicate that **“once a public officer has declared his income, assets and liabilities any queries shall be raised within a period of six months”**.
- Clause 29 - Delete all the words and sub-clauses in Clause 29 and insert the following words in place thereof:-
- “there shall be a register to be kept by the Commission on all public officers upon declaring their income, assets and liabilities which will be open for inspection”**.
- Clause 31 - Delete the words **“one year”** appearing in the last line of the clause and insert the words **“six months”** in place thereof.
- PART IV - Add letter **“s”** to the word **“code”** to read **“codes”**
- Clause 34 - Insert a new sub-clause (5) to read as follows:-
- “the investigation by the respective Commission or body to which an investigation has been referred shall**

remain confidential in accordance with section 36 of this Act”.

- Insert a new sub-clause (6) to read as follows:-

“any person who contravenes sub-clause (5) of this section shall be guilty of an offence and will be liable, on conviction, to a fine not less than two million shillings or to imprisonment of one year or to both”.

- Clause 35(1)(a) - (i) Delete the word **“it”** at the end of the first line and all the words in the second line and insert **“as may be prescribed by the regulations”** in place thereof.

- Insert the following new sub-section:-

1(a)(ii) The Minister shall prescribe in the regulations the disciplinary action in respect of each category of public officers.

- Clause 40 - Delete

- FIRST SCHEDULE - Insert paragraph **(5)** after paragraph **(4)** to cater for the Electoral Commission which will cover the Chairman, Vice-Chairman and Commissioners.

- Re-number the paragraphs accordingly.

- Insert paragraph (13) to cater for the staff of the National Security Intelligence Service.

MINUTE NO.09/2003: ANY OTHER BUSINESS

Programme of Work for the Committee

The Hon. Amina Abdalla, M.P. and the Hon. Moses Cheboi, M.P. were requested to discuss with the Secretariat and come up with a programme of work for the Committee.

MINUTES OF THE THIRD SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS HELD IN THE MAIN CONFERENCE HALL, COUNTY HALL, PARLIAMENT BUILDINGS ON MONDAY, MARCH 11, 2003 AT 9.30 A.M.

PRESENT:

The Hon. Paul Kibugi Muite, M.P. **(Chairman)**
The Hon. David Were, M.P.
The Hon. Mirugi Kariuki, M.P.
The Hon. Peter O. Owidi, M.P.
The Hon. Kenneth Marende, M.P.
The Hon. Jim Choge, M.P.
The Hon. Amina Abdalla, M.P.
The Hon. Moses Cheboi, M.P.

ABSENT WITH APOLOGY:

The Hon. Gideon Ndambuki, M.P.
The Hon. Cecily Mbarire, M.P.
The Hon. E.W. Kibunguchy, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. David K. Ziah - Clerk Assistant I

CENTRE FOR GOVERNANCE AND DEMOCRACY

Mr. Gichara Kibara - Executive Director

STATE UNIVERSITY OF NEW YORK (SUNY)/IDG (KENYA)

Dr. Jesse Biddle - Director

MINUTE NO. 12/2003:

REMARKS BY THE CHAIRMAN

The Committee was informed that the urgency to deliberate on the Public Officer Ethics Bill, 2003 was no longer there because Parliament would be debating the Constitution of Kenya (Amendment) Bill, 2003 instead.

The Committee agreed that Mr. Kibara should give a brief to the Members on the Anti-Corruption and Economic Crimes Bill, 2003 and the Public Officer Ethics Bill, 2003.

MINUTE NO. 13/2003:

**PRESENTATION BY THE DIRECTOR OF
THE CENTRE FOR GOVERNANCE AND
DEMOCRACY**

Mr. Kibara briefed the Committee on the history of the establishment of the Anti-Corruption Authority. He pointed out the weaknesses of the two Bills as follows:-

Anti-Corruption and Economic Crimes Bills, 2003

- (i) The Attorney General's powers to take over proceedings and terminate them have remained intact and this could conflict with the prosecution powers given to the Kenya Anti-Corruption Commission.
- (ii) The Anti-Corruption Commission is said to be independent yet the Advisory Body is supposed to give it general direction and advice.
- (iii) The proposal by the Bill that during the transition period the Advisory Board which was in place before the repeal of the Prevention of Corruption Act, Cap.65 remain in office until a new Board is constituted under the Act and the head of the Anti-Corruption Squad remain in office till the new Director and his assistants are appointed is unconstitutional. This is because the office of the Director of KACC is a Constitutional Office. It is unconstitutional for an acting Director under a Statute to act in his place.
- (iv) The role of other stakeholders such as the Anti-Corruption Authority, professionals and private bodies would have their roles stipulated in the Act.

MINUTE NO.13/2003:

OBSERVATIONS BY THE COMMITTEE

The Committee made the following observations on the presentation:-

- (i) That, after the enactment of the Bills, a grace period should be provided where those accused of corruption

may return the money so as to be exempted from criminal prosecution.

- (ii) That, the Committee had dealt with the issue of confidentiality by deleting clause 29 of the Public Officer Ethics Bill, 2003.
- (iii) That, the private sector be partially included in the definition because there is also corruption in the private companies.

MINUTE NO.14/2003:

DATE OF THE NEXT MEETING

The Committee scheduled to sit during a seminar to be held on Monday, March 17, 2003. The seminar is sponsored by the State University of New York (SUNY) to deliberate on the Anti-Corruption and Economic Crimes Bill, 2003.

MINUTE NO.15/2003:

ADJOURNMENT

And the time being thirty minutes past Eleven O'clock, the Chairman adjourned the sitting until Monday, March 17, 2003.

CONFIRMED
(CHAIRMAN)

DATE