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REPUBLIC OF KENYA



NATIONAL ASSEMBLY

NINTH PARLIAMENT - SECOND SESSION



**DEPARTMENTAL COMMITTEE ON ADMINISTRATION OF
JUSTICE AND LEGAL AFFAIRS**

REPORT ON

THE ANTI-CORRUPTION AND ECONOMIC CRIMES BILL, 2003



**PARLIAMENT BUILDINGS
NAIROBI**

APRIL, 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 Anti-Corruption and Economic Crimes 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 Anti-Corruption and Economic Crimes 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 one sitting 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, 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 MUIITE, M.P.
CHAIRMAN - DEPARTMENTAL COMMITTEE ON
ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS

DATE: 5/4/2011

PROPOSED AMENDMENTS BY THE COMMITTEE

- Title of Bill - The Minister to insert the commencement date.
- Clause 2 - (1) Adopted with further amendments by inserting a definition of corrupt conduct before the definition of the word **“investigator”**.
- “Corrupt conduct”** means:-
- Conduct constituting corruption or economic crimes that takes place after this Act comes into operation.
- (2) The Minister should clarify the minister referred to in page 314 of the Bill. Currently the Permanent Secretary in-charge of good governance is in the Office of the President.
- (3) Definition of **“Unexplained assets”** was adopted provided that the burden of proof must remain with the Commission and not the accused person.
- Clause 5 - (1) Adopted with amendments. Insert the word **“Deputy Director”** after the word **“Director”** whenever the word **“Director”** appears in all clauses of the Bill.
- (2) Insert clause 5A before clause 6(1) and lift the contents of section 5 of the first schedule.
- Clause 6(1)&(2) - Delete the word **“Director”** and replace therewith the words **“Advisory Board”**.

- Clause 7 - (1) Delete the word **“parliament”** at the end of the clause and replace therewith the words **“National Assembly”**.
- (2) Insert clause 7A below Clause 7 and lift the contents of section 9 of the first schedule.
- Clause 13 - Adopted with amendments. Add xiii for Association of Kenya Insurers on sub-clause (2)(a).
- Clause 15 - Delete the word **“parliament”** and replace therewith the words **“National Assembly”**.
- Clause 22 - Provide a proviso to read **“provided that the decisions and reasons are forwarded to the Attorney General”**.
- Clause 28 - Adopted with amendments. Provide a proviso after 28(1)(b) to read:-
- “provided that the *ex-parte* orders will expire after 15 days”**.
- Delete sub-clause 3 and re-number accordingly.
- Clause 29 - Adopted with amendments as follows:-
- (1) Re-number the first paragraph as 29(1).
- (2) Create a sub-clause 2 to read:-
- “A person arrested under sub-clause 1 above will have access to his/her lawyer and/or a member of his immediate family”**.
- Clause 43 - Adopted with amendments that the

provision of this clause be harmonized with provisions of the Penal Code.

- Clause 44(1) - Insert the word "**knowingly**" between the words "**who**" and "**deals**" appearing in the first line.
- Delete clause 44(3).
- Clause 52 - Delete sub-clause (1) and re-number the other sub-clauses accordingly.
- Clause 53 - Adopted with amendment.
- Add the following words at the end of sub-clause 2.
"knowing or having reason to believe that the property was corruptly acquired".
- Delete sub-clause (7).
- Clause 59 - Adopted with further amendments in sub-clause (3) by adding the following words at the end "**and shall be re-instated thereof without any loss of benefit**".
- First Schedule - Adopted with amendments that the word "**Director**" be preceded by the word "**Deputy Director**" whenever it appears.

MINUTES OF THE NINTH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS HELD IN THE MAIN CONFERENCE HALL, FIRST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS ON MONDAY, APRIL 07, 2003 AT 2.30 P.M.

PRESENT:

The Hon. Paul Kibugi Muite, M.P. - **Chairman**
The Hon. Moses Cheboi, M.P.
The Hon. Gideon Ndambuki, M.P.
The Hon. David Were, M.P.
The Hon. Mirugi Kariuki, M.P.
The Hon. Jim Choge, M.P.
The Hon. Cecily Mbarire, M.P.
The Hon. Peter O. Owidi, M.P.

ABSENT:

The Hon. Kenneth Marende, M.P.
The Hon. Amina Abdalla, M.P.
The Hon. E.W. Kibunguchy, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

Mr. David K. Ziah - Clerk Assistant I

MINUTE NO. 32/2003:

DELIBERATIONS ON THE ANTI-CORRUPTION AND ECONOMIC CRIMES BILL, 2003

Title of Bill - The Minister to insert the commencement date.
Clause 1 - Adopted.
Clause 2 - (1) Adopted with further amendments

by inserting a definition of corrupt conduct before the definition of the word **“investigator”**.

“Corrupt conduct” means:-

Conduct constituting corruption or economic crimes that takes place after this Act comes into operation.

- (2) The Minister should clarify the minister referred to in page 314 of the Bill. Currently the Permanent Secretary in-charge of good governance is in the Office of the President.
- (3) Definition of **“Unexplained assets”** was adopted provided that the burden of proof must remain with the Commission and not the accused person.

Clause 3 - Adopted.

Clause 4 - Adopted.

- Clause 5
- (1) Adopted with amendments. Insert the word **“Deputy Director”** after the word **“Director”** whenever the word **“Director”** appears in all clauses of the Bill.
 - (2) Insert clause 5A before clause 6(1) and lift the contents of section 5 of the first schedule.

Clause 6(1)&(2) - Delete the word **“Director”** and replace therewith the words **“Advisory Board”**.

Clause 6(3) - Adopted.

- Clause 7
- (1) Delete the word **“parliament”** at the end of the clause and replace therewith the words **“National Assembly”**.
 - (2) Insert clause 7A below Clause 7 and

lift the contents of section 9 of the first schedule.

- Clause 8,9,10 & 11- Adopted without amendments.
- Clause 12 - Adopted.
- Clause 13 - Adopted with amendments. Add xiii for Association of Kenya Insurers on sub-clause (2)(a) .
- Clause 14 - Adopted.
- Clause 15 - Delete the word **“parliament”** and replace therewith the words **“National Assembly”**.
- Clause 16 - Adopted.
- Clause 17,18,19,
20 & 21 - Adopted without amendments.
- Clause 22 - Provide a proviso to read **“provided that the decisions and reasons are forwarded to the Attorney General”**.
- Clause 23,24, 25
26 & 27 - Adopted.
- Clause 28 - Adopted with amendments. Provide a proviso after 28(1)(b) to read:-
“provided that the *ex-parte* orders will expire after 15 days”.
- Delete sub-clause 3 and re-number accordingly.
- Clause 29 - Adopted with amendments as follows:-
- (1) Re-number the first paragraph as 29(1).

- (2) Create a sub-clause 2 to read:-

“A person arrested under sub-clause (1) above will have access to his/her lawyer and/or a member of his/her immediate family”.

Clause 30 - Adopted.

Clauses 32 to 42 - Adopted without amendments.

Clause 43 - Adopted with amendments that the provision of this clause be harmonized with provisions of the Penal Code.

Clause 44(1) - Insert the word **“knowingly”** between the words **“who”** and **“deals”** appearing in the first line.

- Delete clause 44(3).

Clauses 45 to 51 - Adopted without amendment.

Clause 52 - Delete sub-clause (1) and re-number the other sub-clauses accordingly.

Clause 53 - Adopted with amendment.

Add the following words at the end of sub-clause 2.

“knowing or having reason to believe that the property was corruptly acquired”.

- Delete sub-clause (7).

Clauses 54 to 58 - Adopted without amendments.

Clause 59 - Adopted with further amendments in sub-clause (3) by adding the following words at the end **“and shall be re-instated thereof without any loss of benefit”.**

- Clauses 60 to 72 - Adopted without amendments.
- First Schedule - Adopted with amendments that the word "**Director**" be preceded by the word "**Deputy Director**" whenever it appears.
- Second Schedule - Adopted.

MINUTE NO.33/2003: **DATE OF THE NEXT MEETING**

The Committee scheduled a sitting on Monday, April 14, 2003 at 2.30 p.m.

MINUTE NO.34/2003: **ADJOURNMENT**

And the time being Six O'clock, the Ag. Chairman adjourned the sitting till Monday, April 14, 2003 at 2.30 p.m.

CONFIRMED
(CHAIRMAN)

DATE