



# **KENYA NATIONAL ASSEMBLY**

**NINTH PARLIAMENT – SIXTH SESSION (2007)**

---

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

---

**REPORT ON  
THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)  
BILL, 2007**

Clerk's Chambers,  
Parliament Buildings,  
**NAIROBI.**

July, 2007

## PREFACE

**Mr. Speaker Sir,**

The Departmental Committee on Administration of Justice and Legal Affairs is established under Standing Order No. 151; its mandate pursuant to Standing Order 151(4) is:-

- 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 the Ministries and departments and the effectiveness for implementation;*
- c) *to study and know all legislation after First Reading, subject to the exceptions under Standing Order 101A (4);*
- d) *to study, assess and analyze the relative success of Ministries and departments as measured by the results obtained as compared with its stated objectives;*
- e) *to investigate and inquire into all matters relating to all 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.*

The Committee comprises:

- (i) The Hon. Paul K. Muite, MP – Chairman
- (ii) The Hon. Kenneth Marende, MP
- (iii) The Hon. Jim Choge, MP
- (iv) The Hon. Amina Abdalla, MP
- (v) The Hon. Gideon Ndambuki, MP
- (vi) The Hon. Moses Cheboi, MP
- (vii) The Hon. Macharia Mukiri, MP
- (viii) The Hon. Bifwoli Wakoli, MP
- (ix) The Hon. Omingo Magara, MP
- (x) The Hon. Zaddock Syong’o, MP
- (xi) The Hon. Njoki Ndung’u, MP

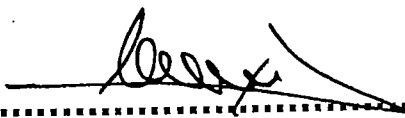
**Mr. Speaker, Sir,** On 3<sup>rd</sup> July, 2007, the Statute Law (Miscellaneous Amendments) Bill, 2007 was referred to this Committee after its First Reading. This Report contains the deliberations of the Committee on the proposed amendments to the Bill and the rationale behind the proposed amendments.

**Mr. Speaker, Sir,** in compiling this report, the Committee took into consideration submissions and memorandum from the Judicial Service Commission, the Law Society of Kenya, the National Association of Kenya Auctioneers, the Kenya National Commission on Human Rights and the United Civil Society Coalition for AIDS, TB, and Malaria.

**Mr. Speaker, Sir,** Statute Law (Miscellaneous Amendments) Bills are meant to carry amendments that cannot warrant the introduction of a substantive bill on the subject. However, of late, it is being used to sneak in substantive amendments to the floor of the House. For instance, this Bill introduces serious and substantive amendments to the Anti-Corruption and Economic Crimes Act and the Public Officer Ethics Act. These amendments should have been brought to the floor of the House through an amendment bill to the specific Acts. However, the Committee has studied the amendments and concluded that many of them are unconstitutional.

**Mr. Speaker, Sir,** it is apparent that the powers which the Kenya Anti-Corruption Commission (KACC) is seeking through these amendments cannot be done without amending certain sections of the constitution and entrenching the institution of KACC in the constitution. It is the Committee's recommendation that a proposal be made to amend the Constitution before any changes to the said Acts of Parliament, as proposed, can be made.

**Mr. Speaker, Sir,** finally it is now my pleasant duty and privilege, on behalf of the Departmental Committee on Administration of Justice and Legal Affairs, to introduce this report to the House, so that it may enrich the debate on the Bill.

**SIGNED:**  .....

**Hon. Paul Muite, MP**  
**Chairman, Departmental Committee on Administration of Justice**  
**and Legal Affairs**

**DATE:** 12th July, 2007 .....



# PROPOSED AMENDMENTS TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2007

---

## Page 1320: The National Assembly and Presidential Elections Act (Cap.7)

In the third column of the item relating to the National Assembly and Presidential Elections Act (Cap. 7), Section 20 (1), delete the proposed amendment and substitute therefor the following –

Add a new subparagraph (iv) to the proviso as follows –

“(iv) Where after due diligence it is not possible to effect service under paragraphs (a) and (b), the presentation may be effected by its publication in the Gazette and in one English and one Kiswahili local daily newspapers with the highest national circulation in each case.”

### **Rationale**

There has been controversy over the requirement that a petition must be served personally on the respondent. What happens when it is impractical to effect personal service like in the case of a sitting President? In the AG's proposed amendment, the requirement for personal service is deleted altogether. It is suggested that this is to over do things. It is for this reason that the committee is suggesting the further amendment to require first and foremost personal service but where a petitioner demonstrates inability to effect personal service, service through the Kenya Gazette and two Daily Papers with National circulation is permitted. This strikes a fair balance between a petitioner and a respondent.

## **Page 1320      The Judicature Act (Cap.8)**

In the third column of the item relating to the Judicature Act (Cap. 8) –

(i) in respect of section 7(1), delete the word “seventy” and substitute therefor the words “seventy-five”;

(ii) in respect of section 7(2), delete the word “fourteen” and substitute therefor the word “fifteen”.

(iii) add a new sub-paragraph (3) as follows –

“s.7 (3) provided that pursuant to Section 61 (2) and 64 (3) of the Constitution, the Judicial Service Commission shall advertise for the vacancies in the Gazette, conduct or cause to be conducted interviews and base their advice to the President on professional merit, gender equity, regional and ethnic balance.”



## **Rationale**

It is suggested that the number be fixed at 75 instead of 70; for the High Court Judges and 15 instead of 14 for the Court of Appeal Judges. These numbers are still low compared to the ratio of judges to the population in other jurisdictions and the case-load statistics.

The proposal to advertise vacancies is aimed at making the exercise transparent and appointment based on professional merit.

## **Page 1320**      **The Advocates Act (Cap.16)**

In the third column of the item relating to the Advocates Act (Cap. 16), delete all the words in the proposed paragraph (d) and substitute the following words:

“(d) an officer in a public corporation or local authority:

Provided that the officers referred to in this section shall not be entitled to charge professional fees for so acting.”

Immediately after section 10 insert the following sections-

s.22(1)(b) Insert the following paragraph immediately after paragraph (b)

“(c) by producing a written approval signed by Society’s Chairman that states that there is no objection to the grant of the Certificate.”

s.25(3) Delete and substitute therefor the following new subsection –

“(3) The Council of the Society shall make representations or submit a recommendation to the Registrar with respect to any application made under this section, and any such representations or recommendations shall be taken into account by the Registrar and shall also be absolutely privileged.”

s.81 Insert the following subsection (3) immediately after subsection (2)-

“(3)No rule made under this section shall require an advocate who is a member of the National Assembly or the Speaker and who holds a practising certificate to undergo continuing legal education during his tenure as such member or as the Speaker.”

### **Rationale**

It is proposed that the exemption be extended to all Advocates employed by corporations and companies. There is no logic in confining the exemption to only State employed Advocates.

Since Council of the Law Society of Kenya has the mandate over all matters relating to Advocates who hold practising certificates, it is only fair that the Registrar's administrative power to issue Certificates is subjected to the Council's no objection approval.

It is proposed to exempt lawyer Members of Parliament and the Speaker from the requirement of attending seminars as a condition to renewing practising certificates since the legal work which such members and the Speaker are involved in on daily basis satisfies the requirement of such seminars by far.

### **Page 1322      The Law Society of Kenya Act (Cap. 18)**

In the third column of the item relating to the Law society of Kenya Act (Cap 18), the following amendment is proposed-

s.19(A) Delete the proposed amendment.

### **Rationale**

The Council should hold its general meetings in Nairobi.

### **Page 1324      The Limitation of Actions Act (Cap.22)**

In the third column of the item relating to the Limitation of Actions Act (Cap.22), delete the words-

"Renumber the existing provision as subsection (1) and insert a new subsection as follows-

(2) Subsection (1) (k) shall apply retroactively".

### **Rationale**

The law should not apply retroactively

### **Page 1325      The Penal Code (Cap.63)**

In the third column of the items relating to the Penal Code (Cap.63), the following amendments are proposed -

- s.77 (1) Delete the proposed amendments
- s.99 Delete the proposed amendments
- s.100 Delete the proposed amendments
- s.101 Delete the proposed amendments
- s.102 Delete the proposed amendments
- s.102 (A) Delete the proposed amendments
- s. 182 Delete the proposed amendments

### **Rationale**

It is proposed to delete the above sections as the current provisions (punishment) have not been fully utilized. Enhancement of penalties is not the answer. At a time when we should be working to abolish repressive laws, it is wrong to instead expand their scope. Furthermore the intention of crime is not suggested in S.182 (Principle of *Mens Rea*).

### **Page 1331**      **The Housing Act (Cap.117)**

In the third column of the item relating to the Housing Act (Cap.117), delete the expression "twenty-one days' notice" and substitute therefor the expression "**ninety days' notice**"

### **Rationale**

The proposed amendment is aimed at giving sufficient notice to local authorities as most of them have liquidity problems.

### **Page 1336**      **The Traffic Act (Cap.403)**

Delete Section 37 of the Act and insert the following:-

- 37 (1) Driving and Provisional licences shall be in the form of computerized smart card made of plastic material that contains a microprocessor-based chip.
- (2) The said driving and provisional licences shall contain two sides: the front and rear sides; with the front containing the photograph, name, age, date of birth, sex, signature, licence number, of the licence holder, class of the vehicle to be driven/restricted, and on the rear side it shall contain the date of issue per class, date of expiry per class, conditions and any other information, if any, signature of issuing authority and issuing authority's reference number.
- (3) The micro-processor based chip shall contain features for micro printing, image hosting, ultra-violet printing (logo, national coat of arms), hologram, both side lamination (polyester patch lamination hologram)
- (4) The micro-chip shall also contain finger print marks, the photograph, signature, licence number, class of the vehicle to be driven/restricted, date of issue per class, date of expiry per class, conditions or other information, if any, on the rear side, signature of issuing authority and issuing authority's reference numbers on the front.

### **Rationale**

The current form of the driving licence as per the Traffic Act, Chapter 403 of the Laws of Kenya Rev. 1993 is provided for in section 37(1) and (2) of the said Act. The section provides for the driving and provisional



licences to carry the photograph of a licence holder with an official stamp of the Registrar of motor vehicles. Other particulars required to be on the driving and provisional licences are to be found in the prescribed form provided for in form number VIII of the 2<sup>nd</sup> schedule to the said Act. These particulars include surname, other names, date of birth, certificate of competence number, signature and authority of issuer as well as date of issue of the licence.

These provisions have been in force in Kenya since colonial times. A driving licence is issued in paper form, usually engrossed with a hard cover paper material to keep it from being mutilated easily. However, it has a number of disadvantages in today's hectic life in the age of globalization and the rise of international crime and terrorism. Some of the disadvantages include:-

- Susceptibility to forgery
- Loss of government revenue as a result of forgery and unofficial issuance
- Weak accountability by issuers because of difficulty in identification of issuer's particulars by other law enforcement agents
- Improperly authorized licence holders may cause accidents and endanger public safety
- Difficulty in maintaining an accurate record of a licence holder's movement and driving record (e.g. accident, convictions, etc)

The proposed amendments address these shortcomings and have the following advantages:-

- Forgery of driving and provisional licences would be curbed.
- The government would be able to collect more revenue as a result of effectively controlling unofficial issuance of such licences.
- There will be transparency as issuers of driving licences would be accountable as a result of a centrally electronically verifiable registry.
- Public safety will be protected by ensuring that those who get the licences are genuinely qualified personnel.
- Electronic licences would guarantee an accurate record of a licence holder's movements and driving record (e.g. accidents, convictions etc) which would be kept in a central database which is easily accessible.
- There will be an excellent statistical management tool allowing reporting on the driving population in the country.
- The government will be able to make better management decisions on traffic safety, road administration, personnel and projections in terms of budgets.

- (i) s.3 Delete the words "two million" at the end of the section and substitute therefor the words "four million".
- (ii) s.18(2) Delete the words "one hundred thousand" at the end of the section, and substitute therefor the words "two hundred thousand".
- (iii) s.33 Delete the words "fifty thousand" at the end of the section, and substitute therefor the words "one hundred thousand".

**Rationale.**

Given the ever rising cost of living and inflation, the more realistic figures are (i) four million (ii) two hundred thousand; and (iii) one hundred thousand shillings respectively.

In the third column of the item relating to the Auctioneers Act, 1996 (No. 5 of 1996), delete the proposed amendment.

**Rationale.**

In order to enforce discipline, all auctioneers should belong to the one registered body. A plethora of registered bodies of auctioneers is not in the public interest.

Insert the following amendments –

- s.6(2)(d) (i) Delete the words "twenty-four" and substitute therefore the words "sixteen".
- s.6(2)(d) (ii) Delete the words "sixteen" and substitute therefore the words "twenty-four".

**Rationale.**

The proposed amendments seek to recognize the effect of development monies at the constituency level by increasing monies from the Kenya Roads Board Fund from sixteen percent to twenty-four percent in all constituencies in the country and reducing monies to the District Roads Boards from twenty-four percent to sixteen percent.

**Page 1346 The Industrial Property Act, 2001(No.3 of 2001)**

- s.58(2) In the third column of the item relating to the Industrial Property Act, 2001(No.3 of 2001) s.58(2), delete the proposed amendment.
- s.80(1A) In the third column of the item relating to the Industrial Property Act, 2001(No.3 of 2001) s.80(1A), delete the proposed amendment.
- s.80(1B) In the third column of the item relating to the Industrial Property Act, 2001(No.3 of 2001) s.80(1B), delete the proposed amendment.
- s.80(1C) In the third column of the item relating to the Industrial Property Act, 2001(No.3 of 2001) s.80(1C), delete the proposed amendment.

**Rationale**

The proposed amendment to s.58(2) will limit all commercial activities in a product to activities 'by the owner of the patent or with his express consent.' Section 58(2) currently provides for an aggressive international approach so that Kenyans can have access to the best prices available for a product anywhere in the world. Furthermore, the same amendment was rejected in 2002 by Parliament as unprocedural and against the interests of Kenyans.

Section 80(1A), (1B) and (1C) currently allow the government to act immediately without consultation or the consent of the patent holder. The amendment proposes to completely delete Section 80(1A), (1B) and (1C) resulting to significant and unnecessary delays in issuing a Government Use license because of consultation and negotiation requirements.

**Page 1349 The Kenya National Commission on Human Rights Act, 2002 (No.9 of 2002)**

In the third column of the item relating to the Kenya National Commission on Human Rights Act, 2002 (No.9 of 2002), delete the proposed amendment.

**Rationale.**

The proposed re-definition of "Minister" will have an effect of vesting administration and control of the KNCHR on the Ministry of Justice and Constitutional Affairs and thus erode its independence.



In the third column of the item relating to the Anti-Corruption and Economic Crimes Act, 2003 (No.3 of 2003), the following amendments are proposed-

- i) s.4 (5) Delete the proposed amendment.
- ii) S.7 Insert a new subparagraph (4) immediately after subparagraph (3) as follows-  
**(4) Provided that the Commission's powers conferred under this Act shall relate to offences which took place after the commencement of this Act.**
- iii) s.7A Delete the proposed amendment.
- iv) s.12A Delete the proposed amendment.
- v) s.16(2) Delete the proposed amendment.
- vi) s.23 Delete the proposed amendment.
- vii) Immediately after reference to section 25, insert reference to sections 26, 27 and 28 as follows-
  - s.26 Delete
  - s.27 Delete
  - s.28 Delete
- viii) s.47B Delete the proposed amendment.
- ix) s.55(9) Delete the proposed amendment.
- x) s.56A Delete the proposed amendment.
- xi) s.56B Delete the proposed amendment.
- xii) s.61A Delete the proposed amendment.
- xiii) **First Schedule** Insert the following new proviso immediately after subparagraph 2(1)-

**'Provided that if the President refuses or fails to appoint the person concerned to the office in respect of which the approval was given within fourteen days of that approval, the appointment shall be deemed to have been made upon expiration of that period'.**

- xiv) **First Schedule subparagraph 3(3)** Delete the proposed amendment.
- xv) **Second Schedule subparagraph 2(3)** Delete the proposed amendment.
- xvi) **Fourth Schedule** Delete the proposed amendments.

## Rationale

- i) The proposed amendment to s.4(5) conflicts with Sec.77(5) and Sec.84 (3) of the constitution. The proposal seeks to oust the jurisdiction of courts granted by the constitution, i.e, the right of stay applies to all matters and this should not be an exception.
- ii) The proposed amendment to insert a new s.7A conflicts with Sec.26 of the constitution in addition to increasing areas of conflict between the DPP and KACC.
- iii) The proposed amendment to insert a new s.12A seeks to take away the powers of the Attorney General and the Commissioner of Police (constitutional office holders) through an Act of Parliament.
- iv) The proposed amendment to s.16(2) seeks to interfere with the independence of the Kenya Anti-corruption Advisory Board and should be deleted.
- v) The proposed amendment to s.23(4) seeks to confer police powers to a non-constitutional institution.
- vi) The proposed amendment to s.55(9) seeks to have the law applied retroactively. It is a principle in law not to apply penalties retroactively.
- vii) The proposed amendment to insert a new s.56A seeks to have KACC appoint receivers without applying to the High Court. This seeks to remove the 'sieving' power of the High Court which is unconstitutional. KACC cannot purport to have powers to appoint receivers. Further, s.56 (10) (b) seeks to reverse the burden of proof and places it on the 'suspect', not even an accused. This infringes the principles of legality.
- viii) The proposed amendment to insert a new s.56B seeks to empower KACC to institute civil proceedings without investigating. On what basis will KACC be instituting civil proceedings?
- ix) KACC is a legal entity which can sue or be sued. The proposed amendment to insert a new s.61A conflicts with this position. The costs must remain a discretion of courts.
- x) The proposed amendment to the First and Second Schedules should be deleted so that the process of re-appointment/replacement whenever there is a vacancy can be done in good time.
- xi) The Kenya Anti-Corruption and Economic Crimes Act intended the role of the President in appointing / gazetting someone who parliament has vetted / approved to be purely ceremonial and formal. The proposed proviso makes it clear that if the President fails to perform that role within 14 days, Parliament's nominee will automatically assume office.
- xii) A suspect in criminal investigations and/or trial has constitutional rights and safeguards to secure protection of the law and a fair trial. These constitutional rights and safeguards include:-
  - a) The right to silence
  - b) The right not to self-incriminate
  - c) The right of presumption of innocence.

Indeed, the judges rules which govern the asking of questions of a suspect require a police officer to caution a suspect who the police officer has decided to charge that the suspect is not obliged to say anything but that if he elects to say anything, the same shall be taken down in writing and may be used in evidence against him/her. To the extent that sections 26, 27 and 28 reverse these constitutional rights and safeguards including the right to privacy of properties (section 70 of the constitution) and oblige a suspect to provide evidence, investigate oneself where the Director believes that the suspect has committed criminal offenses, the sections are clearly unconstitutional. It is proposed that the sections be deleted.

**Page 1362      The Public Officer Ethics Act, 2003 (No.4 of 2003)**

In the third column of the item relating to the Public Officer Ethics Act, 2003 (No.4 of 2003), the following amendments are proposed-

- s.30            Delete the proposed amendment
- s. 30A        Delete the proposed amendment
- s.30B        Delete the proposed amendment
- s.35 (1)     Delete the proposed amendment
- s.35 (2)     Delete the proposed amendment
- s.35 (3)     Delete the proposed amendment
- s.35 (6)     Delete the proposed amendment

**Rationale.**

The right to one's privacy should be respected. Thus an application to access one's declaration needs to be done through the court process. This standard is used to access one's medical records among others.

The responsible Commission for a public officer should be the one to initiate investigations. To allow KACC to initiate investigations (s.35) may bring confusion to the process as two bodies may be investigating the same case at the same time.

**Page 1366      The Sexual Offences Act (No.3 of 2006)**

In the third column of the item relating to the Sexual Offences Act (No.3 of 2006), the following amendment is proposed-

- s.11 Renumber the existing sub-section (6) as a new Section 11A.**

**Rationale.**

The proposed amendment is aimed at separating an offence of indecent act with an adult from that of an indecent act with a child.

XX







Library

PAPERS LAID No 156	
Speaker N. A.	Clerk Assts
DISpeaker	C. H Editor
Clerk N A	Reporters
D/Clerk	Librarian
P. C. A	Press

# KENYA NATIONAL ASSEMBLY

**NINTH PARLIAMENT – SIXTH SESSION (2007)**

-----

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

-----

**REPORT ON  
  
DELIBERATIONS ON THE NOMINATION OF  
COMMISSIONERS TO THE KENYA NATIONAL  
COMMISSION ON HUMAN RIGHTS**

Clerk's Chambers,  
Parliament Buildings,  
**NAIROBI.**

June, 2007

## **PREFACE**

**Mr. Speaker Sir,**

The Departmental Committee on Administration of Justice and Legal Affairs is established under Standing Order No. 151; its mandate pursuant to Standing Order 151(4) is:-

- 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 the Ministries and departments and the effectiveness for implementation;*
- c) to study and know all legislation after First Reading, subject to the exceptions under Standing Order 101A (4);*
- d) to study, assess and analyze the relative success of Ministries and departments as measured by the results obtained as compared with its stated objectives;*
- e) to investigate and inquire into all matters relating to all 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.*

The Committee comprises:

- (i) Hon. Paul K. Muite, MP – Chairman
- (ii) Hon. Kenneth Marende, MP
- (iii) Hon. Jim Choge, MP
- (iv) Hon. Amina Abdalla, MP
- (v) Hon. Gideon Ndambuki, MP
- (vi) Hon. Moses Cheboi, MP
- (vii) Hon. Macharia Mukiri, MP
- (viii) Hon. Bifwoli Wakoli, MP
- (ix) Hon. Omingo Magara, MP
- (x) Hon. Zaddock Syong'o, MP
- (xi) Hon. Njoki Ndung'u, MP



## **Background**

**Mr. Speaker Sir**, the Kenya National Commission on Human Rights Act, 2002 came into force in March 2003. Nine Commissioners to the Kenya National Commission on Human Rights were appointed to office on 29<sup>th</sup> July 2003 as per the provisions of the Act.

The Commission currently comprises the following nine members:-

- |                                  |                         |
|----------------------------------|-------------------------|
| i. Mr. Maina Kiai                | <b>Chairperson</b>      |
| ii. Ms. Fatuma Ibrahim           | <b>Vice Chairperson</b> |
| iii. Mr. Tirop Kitur             |                         |
| iv. Mr. Lawrence Murugu Mute     |                         |
| v. Mr. Godana Doyo               |                         |
| vi. Ms. Wambui Kimathi           |                         |
| vii. Mr. Hassan Omar Hassan      |                         |
| viii. Ms. Winfred Osimbo Lichuma |                         |
| ix. Ms. Florence Simbiri Jaoko   |                         |

**Mr. Speaker Sir**, Section 9 of the Act states that:-

- 9. Unless the appointment of the chairperson or a commissioner is earlier terminated under this Act, a person appointed as the chairperson or as a commissioner shall hold office for a term of five years from the date of appointment and shall be eligible for re-appointment for one further term of a period not exceeding five years:**

**Provided that in the case of the initial commissioners, the Commission shall, at its first meeting, elect –**

- a) four commissioners whose terms of office shall expire at the end of three years; and**
- b) four other commissioners whose terms of office shall expire at the end of four years**

**from the date of appointment.**

**Mr. Speaker Sir**, this provision provides that commissioners must retire on rotational basis to ensure continuity of the work of the Commission.

The first term of the four Commissioners who balloted for the four year term, expires on 29<sup>th</sup> July, 2007. The four Commissioners are:-

- i. Ms. Fatuma Ibrahim
- ii. Mr. Tirop Kitur
- iii. Mr. Lawrence Murugu Mute
- iv. Mr. Godana Doyo

### **Mandate of the Committee**

**Mr. Speaker Sir**, pursuant to the provisions of Section 6 of the Kenya National Commission on Human Rights Act, 2002, the National Assembly advertised the vacancies on 4<sup>th</sup> April 2007 and caused the Departmental Committee on Administration of Justice and Legal Affairs to consider applications for the positions of commissioners to the Kenya National Commission on Human Rights.

A total of 158 applications were received by the Committee. The Committee then established a Sub-Committee consisting of the Hon. Amina Abdalla, Hon. Njoki Ndung'u, and Hon. Zaddock Syong'o. The mandate of the Sub-Committee was to scrutinize the applications and shortlist those who met the minimum qualifications as per the provisions of the Kenya National Commission on Human Rights Act, 2002.

### **Report of the Sub-Committee**

**Mr. Speaker Sir**, the Sub-Committee held two sittings during which it short-listed 12 applicants from a total of 158 applications. The Committee met and adopted the list of the 12 applicants who had been short-listed for interviews on 31<sup>st</sup> May 2007. The Committee was also unanimous in the criteria and a system of scores which was established by the Sub-Committee, to be used during the interviews, where ten (10) points were to be awarded for each of the following topics:

- i. Academic qualifications and scope of experience relevant to the field of Human rights.
- ii. Knowledge of instruments relating to international and domestic Human Rights laws.
- iii. Trainers on human rights.
- iv. Work with marginalized groups such as the physically challenged, pastoralists and distressed persons for example, battered women, torture victims and abused children.
- v. Advocacy in Human Rights issues.

**Mr. Speaker Sir**, on behalf of the Members of the Departmental Committee on Administration of Justice and Legal Affairs, I wish to present to the House the Report of the Committee and the names of the six qualified persons for further consideration and adoption by the House.

**SIGNED:**  .....

**Hon. Paul Muite, MP**  
**Chairman, Departmental Committee on Administration of**  
**Justice and Legal Affairs**

**DATE:** *15th June 2007* .....

## REPORT ON THE NOMINATION OF COMMISSIONERS TO THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

---

The Committee once again went through the criteria for awarding points to the interviewees. A maximum average of 50 points per interviewee was set.

In conducting the interviews each Committee Member was handed a sheet of paper with five columns based on the criteria which had been agreed on. The columns are:-

- i. Academic qualifications and scope of experience;
- ii. Advocacy in Human Rights issues; training of trainers on human rights;
- iii. Working with marginalized groups such as the physically challenged, pastoralists and distressed persons for example, battered women, torture victims and abused children; and
- iv. Knowledge of instruments relating to international and domestic human rights laws.

Each Member separately and without consultation was required to award points to each interviewee with respect to the criteria. Immediately after the interviewee left, the secretariat withdrew the score sheets and provided fresh ones for the next candidate. The scores were then averaged and the interviewees ranked as follows:-

No.	Name	Region/Category
1.	Ms. Fatuma Adan Dullo	Eastern
2.	Dr. Ekuru Aukot	Rift Valley
3.	Dr. S.K. Tororei	Disability
4.	Mr. Timothy W Wanyonyi	Disability
5.	Mr. Lawrence Mute	Disability
6.	Dr. Mohamud Said	Eastern
7.	Ms. Fatuma Ibrahim Ali	North Eastern
8.	Mr. Bashir Sheikh Ali	North Eastern/ senior citizen
9.	Mr. Tirop Kitur	Rift Valley
10.	Mr. Olad Ibrahim Farah	North Eastern



11.	Ms. Naisiae Tobiko Paloshe	Rift Valley
12.	Mr. Eliud Mate Muriithi	Eastern

While deliberating on these nominations, the Committee was strictly guided by the provisions of the Act particularly Section 6(8) which provides that:-

**“In nominating or appointing persons as Commissioners, the National Assembly and the President shall have regard to:-**

- a) Kenya’s ethnic, geographical, cultural, political, social and economic diversity; and**
- b) the principle of gender equity.**

Section 11(6) of the Act, also provides that:-

**“Where a vacancy occurs in the office of a commissioner, the National Assembly shall nominate a sufficient number of persons to fill the vacancies arising and two additional persons and the President shall, within a period of six months, appoint the required number of commissioners to fill the vacancies out of the total number of nominees.”**

### **Recommendation**

The Committee recommends to the House, that in conformity with Section 6(8) of the Act, the following four nominees be considered for onward transmission to H.E the President to fill in the four vacancies.

- i) Ms. Fatuma Adan Dullo Eastern
- ii) Dr. Ekuru Aukot Rift Valley
- iii) Dr. S.K. Tororei Disability
- iv) Ms. Fatuma Ibrahim Ali North Eastern

Pursuant to Section 11(6) of the Act, the Committee also recommends the following two nominees to the House for consideration and onward transmission to H.E the President.

- i) Mr. Lawrence Mute Disability/Eastern
- ii) Mr. Bashir Sheikh Ali North Eastern/senior citizen.

**XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

**MINUTES OF THE ONE HUNDRED AND SEVENTY NINTH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION OF JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY 31<sup>ST</sup> MAY 2007 IN THE COMMITTEE ROOM 5<sup>TH</sup> FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 9:00AM.**

---

**PRESENT**

Hon. Paul Muite, MP                      **Chairman**  
Hon. Amina Abdalla, MP  
Hon. Bifwoli Wakoli, MP  
Hon. Gideon Ndambuki, MP  
Hon. Zaddock Syong'o, MP  
Hon. Njoki Ndung'u, MP  
Hon. Omingo Magara, MP  
Hon. Jim Choge, MP  
Hon. Macharia Mukiri, MP  
Hon. Moses Cheboi, MP

**ABSENT WITH APOLOGY**

Hon. Kenneth Marende, MP

**IN-ATTENDANCE**

**KENYA NATIONAL ASSEMBLY**

Mr. Zakayo Mogere                      - Clerk Assistant  
Mr. Timothy Muli                        - Parliamentary Intern

**MINUTE NO.109/2007**

**INTERVIEWS FOR THE POSITIONS OF COMMISSIONER TO THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)**

The Committee went through the criteria for awarding points to the interviewees. The committee resolved that ten (10) points would be awarded for each of the following topics:-

- i) academic qualifications and scope of experience;
- ii) advocacy in Human Rights issues;
- iii) training of trainers on human rights;
- iv) working with marginalized groups such as the physically challenged, pastoralists and distressed persons for example, battered women, torture victims and abused children;
- v) knowledge of instruments relating to international and domestic human rights laws.

The maximum average point of 50 points per interviewee was set.

The Committee further resolved that each of the Committee Member write their score for each candidate after which the secretariat would withdraw the score sheets and provide fresh ones for the next candidate.

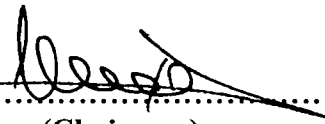
After adding the points for each of the 12 candidates, the Committee ranked the applicants as follows:

No.	Name	Region/Category	Average Score (Max.50)
1.	Ms. Fatuma Adan Dullo	Eastern	<b>42.56</b>
2.	Dr. Ekuru Aukot	Rift Valley	<b>41.39</b>
3.	Dr. S.K. Tororei	Disability	<b>40.75</b>
4.	Mr. Timothy W Wanyonyi	Disability	<b>35.81</b>
5.	Mr. Lawrence Mute	Disability	<b>35.75</b>
6.	Dr. Mohamud Said	Eastern	<b>35.67</b>
7.	Ms. Fatuma Ibrahim Ali	North Eastern	<b>34.67</b>
8.	Mr. Bashir Sheikh Ali	North Eastern/senior citizen	<b>34.13</b>
9.	Mr. Tirop Kitur	Rift Valley	<b>33.17</b>
10.	Mr. Olad Ibrahim Farah	North Eastern	<b>31.57</b>
11.	Ms. Naisiae Tobiko Paloshe	Rift Valley	<b>29.39</b>
12.	Mr. Eliud Mate Muriithi	Eastern	<b>24.11</b>

The Committee resolved to select one best applicant from each of the four categories (Eastern Province, Rift Valley Province, North Eastern Province and people with disabilities) and two from special category to make a total of six. The Committee further resolved that the following nominees be submitted to the House for consideration in line with Section 11 (6) of the Act.

No.	Name	Region/Category
1.	Ms. Fatuma Adan Dullo	Eastern
2.	Dr. Ekuru Aukot	Rift Valley
3.	Dr. S.K. Tororei	Disability
4.	Ms. Fatuma Ibrahim Ali	North Eastern
5.	Mr. Lawrence Mute	Disability
6.	Mr. Bashir Sheikh Ali	North Eastern/senior citizen

There being no other business, the Chairman adjourned the meeting at fifty minutes past two o'clock.

Signed: .....  
(Chairman)

Date: ..15<sup>th</sup> June 2007