

SPECIAL ISSUE

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SENATE BILLS, 2019

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**THE COMMISSION ON ADMINISTRATIVE
JUSTICE (AMENDMENT) BILL, 2019**

A Bill for

**AN ACT of Parliament to amend the Commission on
Administrative Justice Act; and for connected
purposes**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Commission on Administrative Justice (Amendment) Act, 2019. Short title.

2. The Commission on Administrative Justice Act, hereinafter referred to as the “principal Act”, is amended by deleting section 6 and substituting therefor the following new section— Amendment of
section 6 of No. 23
of 2011.

6. (1) The Headquarters of the Commission shall be in Nairobi City County.

(2) The Commission shall establish a branch in every county in Kenya.

3. Section 11 of the principal Act is amended— Amendment of
section 11 of No. 23
of 2011.

Procedure for
appointment of
chairperson and
members

- (a) in subsection (1) by inserting the words “or whenever a vacancy arises” immediately after the words “commencement of this Act”;
- (b) in subsection (2) by deleting paragraph (b);
- (c) in subsection (6) by deleting the words “in consultation with the Prime Minister” appearing immediately after the words “Act, the President”
- (d) in subsection (11) by deleting the words “in consultation with the Prime Minister” appearing immediately after the words “subsection (10), the President”
- (e) by deleting subsection (14);
- (f) in subsection (15) by deleting the words “in consultation with the Prime Minister” appearing immediately after the words “section, the President”

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| 4. The principal Act is amended by deleting section 55. | Repeal of section 55 of No. 23 of 2011. |
| 5. The Kenya National Commission on Human Rights Act is amended by deleting section 55. | Repeal of section 55 of No. 14 of 2011. |

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Commission on Administrative Justice Act, No. 23 of 2011 to provide for the decentralization of the office of the Commission on Administrative Justice.

The Bill, in amending the Commission on Administrative Justice Act seeks to ensure that the Commission establishes satellite offices in all counties to bring its services closer to the people. Under the Bill, all the counties shall have a branch of the office of the Commission on Administrative Justice which shall ensure that the members of the counties have easy access to the offices to report their grievances.

The Bill also seeks to repeal the sunset clause on the possible merger of the Commission on Administrative Justice and the Kenya National Commission on Human Rights as there is still need for a body that performs the functions of an ombudsman in the public sector. Further, it is observed that the Commission on Administrative Justice has been conferred the powers to administer the Access to Information Act and the Fair Administrative Action Act. The Commission on Administrative Justice is therefore necessary as a stand-alone Commission.

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

The Bill does not delegate legislative powers nor does it limit the fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill is expected to ensure that members of the county are able to report maladministration practices in the public service with ease as well as facilitate their easy interaction with the Commission.

The function of the Commission to investigate any conduct in state affairs, or any act or omission in public administration by any State organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any

impropriety or prejudice is a function that affects the functions and powers of county governments as specified under Part 2 of the Fourth Schedule of the Constitution.

The Bill is therefore is a Bill concerning county governments in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 29th March, 2019.

PETRONILA W. LOKORIO,
Senator.

Section 6 of No. 23 of 2011 which it is shown to amend—

Headquarters

6. The headquarters of the Commission shall be in the capital city, but the Commission may establish branches at any place in Kenya.

Section 11 of No. 23 of 2011 which it is shown to amend-

Procedure for appointment of chairperson and members

11. (1) The President shall, within fourteen days of the commencement of this Act convene a selection panel for the purpose of selecting suitable candidates for appointment as the chairperson or member of the Commission.

(2) The selection panel convened under subsection (1) shall consist of one person from each of the following bodies representatively—

- (a) Office of the President;
- (b) Office of the Prime Minister;
- (c) Ministry responsible for matters relating to justice;
- (d) Public Service Commission;
- (e) the Association of Professional Societies in East Africa; and
- (f) the National Council for Persons with Disabilities.

(3) The selection panel shall, subject to this section, determine its own procedure and the Ministry responsible for Public Service shall provide it with such facilities and other support as it may require for the discharge of its functions.

(4) The selection panel shall, within seven days of its convening, invite applications from qualified persons and publish the names and qualifications of all applicants in the *Gazette* and two daily newspapers of national circulation.

(5) The selection panel shall, within seven days of receipt of applications under subsection (4), consider the applications, interview and shortlist at least three persons qualified for appointment as chairperson and five persons qualified for appointment as members of the Commission, and shall forward the names of the selected candidates to the President for nomination.

(6) Until after the first general election after the commencement of this Act, the President in consultation with the Prime Minister shall, within seven days of receipt of the names forwarded under subsection (5), nominate one person for appointment as chairperson and two persons for

appointment as members of the Commission, and shall forward the names of the persons nominated to the National Assembly.

(7) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the nominees under subsection (6), consider all the nominations received and approve or reject any nomination.

(8) Where the National Assembly approves the nominees, the Speaker shall, forward the names of the approved persons to the President for appointment.

(9) The President shall, within seven days of the receipt of the approved nominees from the National Assembly, by notice in the *Gazette*, appoint the chairperson and members approved by the National Assembly.

(10) Where the National Assembly rejects any nomination, the Speaker shall, within three days, communicate the decision of the National Assembly to the President to submit fresh nominations.

(11) Where a nominee is rejected by Parliament under subsection (10), the President in consultation with the Prime Minister shall, within seven days, submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under subsection (5).

(12) If Parliament rejects all or any subsequent nominee submitted by the President for approval under subsection (11), the provisions of subsections (5) and (6) shall apply.

(13) In shortlisting, nominating or appointing persons as chairperson and members of the Commission, the selection panel the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender, shall observe the principle of gender equity, regional and ethnic

balance and shall have due regard to the principle of equal opportunities for persons with disabilities.

(14) After the first elections after the commencement of this Act, the member of the selection panel specified under subsection (2)(b) shall be replaced by a representative of the Public Service Commission.

(15) Despite the foregoing provisions of this section, the President, in consultation with the Prime Minister may, by notice in the *Gazette*, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

Section 55 of No. 23 of 2011 which it is shown to amend—

Review of mandate

55. Parliament shall, upon expiry of five years from the date of commencement of this Act, and pursuant to Article 59(4) of the Constitution, review the mandate of the Commission with a view to amalgamating the Commission with the commission responsible for human rights.

Section 55 of No. 14 of 2011 which it is shown to amend—

Review of mandate

55. Parliament shall, upon expiry of five years from the date of commencement of this Act, and pursuant to Article 59(4) of the Constitution, review the mandate of the Commission with a view to amalgamating the Commission with the commission responsible for administrative justice.