

Paper tabled on
Wed, 24/8/2011 by Chairman

C100 (Abdikadir)

2:30 PM

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KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT

FOURTH SESSION (2011)

**THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT
COMMITTEE**

REPORT

**ON THE COMMISSION ON ADMINISTRATIVE JUSTICE BILL,
2011 AND THE POWER OF MERCY BILL, 2011.**

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

AUGUST, 2011

Mr. Speaker Sir,

The Constitutional Implementation Oversight Committee is a select committee established under Section 4 of the Sixth Schedule of the Constitution with a mandate of overseeing the implementation of the Constitution and which among other things:-

- (a) *shall receive regular reports from the Commission on the Implementation of the Constitution on the implementation of this Constitution including reports concerning—*
- (i) *the preparation of the legislation required by this Constitution and any challenges in that regard;*
 - (ii) *the process of establishing the new commissions;*
 - (iii) *the process of establishing the infrastructure necessary for the proper operation of each county including progress on locating offices and assemblies and establishment and transfers of staff;*
 - (iv) *the devolution of powers and functions to the counties under the legislation contemplated in section 15 of this Schedule; and*
 - (v) *any impediments to the process of implementing this Constitution;*
- (b) *coordinate with the Attorney-General, the Commission on the Implementation of the Constitution and relevant parliamentary committees to ensure the timely introduction and passage of the legislation required by this Constitution; and*
- (c) *take appropriate action on the reports including addressing any problems in the implementation of this Constitution.*

COMMITTEE MEMBERSHIP

The Committee as constituted by the House on 5th October, 2010 comprise the following members:-

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|--|-------------------------|
| 1. The Hon. Hussein Mohammed Abdikadir, M.P. | Chairperson |
| 2. The Hon. Millie Odhiambo, M.P. | Vice-Chairperson |
| 3. The Hon. Beth Mugo, EGH, M.P. | |
| 4. The Hon. Chirau Ali Mwakwere, EGH, M.P. | |
| 5. The Hon. Martha Wangari Karua, EGH, M.P. | |
| 6. The Hon. (Prof.) Phillip Kaloki, M.P. | |
| 7. The Hon. (Dr.) Kilemi Mwiria, M.P. | |
| 8. The Hon. Charles Kilonzo, M.P. | |
| 9. The Hon. Ekwere Ethuro, M.P. | |
| 10. The Hon. Cecily Mbarire, M.P. | |

11. The Hon. (Dr.) Eseli Simiyu, M.P.
12. The Hon. Moriasi Ombui, M.P.
13. The Hon. Amina Abdalla, M.P.
14. The Hon. David M. Ngugi, M.P.
15. The Hon. Ababu Namwamba, M.P.
16. The Hon. Danson Mwazo, M.P.
17. The Hon. Sophia Abdi, M.P.
18. The Hon. (Dr.) Joyce Laboso, M.P.
19. The Hon. Joseph Kasaine Nkaiserry, M.P.
20. The Hon. Charles Onyancha, M.P.
21. The Hon. Alfred Khang'ati, M.P.
22. The Hon. John Mbadi, M.P.
23. The Hon. Elizabeth Ongoro, M.P.
24. The Hon. Rev. Julius Murgor, M.P.
25. The Hon. Lucas K. Chepkitony, M.P.
26. The Hon. Benedict Fondo Gunda, M.P.
27. The Hon. Rachel Shebesh, M.P.

Mr. Speaker Sir,

The Commission on Administrative Justice Bill, 2011 was read a First Time on 20th July, 2011 while the Power of Mercy Bill, 2011 was read a First Time on 23rd August, 2011 and referred to the relevant Committee in accordance with the Standing Orders. However, the bills are yet to be debated at the Second Reading stage.

Mr. Speaker Sir,

The Committee dissolved itself into three (3) sub-committees in order to effectively scrutinize the bills. The sub-committees then reported to the Committee where the proposals on amendments were adopted.

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 the execution of its mandate.

Mr. Speaker Sir,

It is my pleasant duty and privilege, on behalf of Constitutional Implementation Oversight Committee, to present and commend this report on the proposed amendments to the Commission on Administrative Justice Bill, 2011 and the Power of Mercy Bill, 2011 to the House in accordance with Standing Order 111.

SIGNED.....

HON. HUSSEIN MOHAMMED ABDIKADIR, M.P
CHAIRPERSON

DATE:24/08/2011.....

PROPOSED AMENDMENTS TO THE COMMISSION ON ADMINISTRATIVE JUSTICE BILL, 2011

CLAUSE 2

THAT, clause 2 be amended in the definition of the term “Cabinet Secretary” by deleting the word “justice” and substituting therefor the words “public service”.

CLAUSE 3

THAT, clause 3 be amended by deleting subclause (2) and substituting therefor the following new subclause—

“(2) The Commission shall be the successor to the Public Complaints Standing Committee existing immediately before the coming into force of this Act”.

CLAUSE 4

THAT, clause 4 be amended by deleting the words “as a successor Commission shall, pursuant to Article 59 (5) (c) of the Constitution” and substituting therefor the word “shall”.

CLAUSE 5

THAT, clause 5 be amended by deleting the word “successor”.

CLAUSE 8

THAT, clause 8 be amended by—

(a) inserting the word “the” immediately before the word “Commission”;

(b) deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) report to the National Assembly bi-annually on the complaints investigated under paragraphs (a) and (b), and the remedial action taken thereon;”

(c) inserting the following new paragraph immediately after paragraph (k)—

“(ka) work with the Kenya National Commission on Human Rights to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration”.

CLAUSE 9

THAT, clause 9 be amended by deleting the word “four” and substituting therefor the word “two”.

CLAUSE 10

THAT, clause 10 be amended—

(a) in subclause (1), by deleting the words “human rights and administrative justice” appearing in paragraph (a), and substituting therefor the words “human rights, law, conflict resolution, arbitration or administrative justice”;

(b) in subclause (2) (b), by—

(i) inserting the words “or finance” immediately after the word “economics” appearing in subparagraph (iii);

(ii) inserting the following new subparagraph immediately after subparagraph (v)—

“(vi) conflict resolution”;

(iii) renumbering subparagraphs (vi) and (vii) as subparagraphs (vii) and (viii), respectively.

CLAUSE 11

THAT, clause 11 be amended—

(a) in subclause (2) by deleting paragraph (f).

(b) in subclause (5), by deleting the word “eight” appearing immediately after the words “chairperson and” and substituting therefor the word “five”;

(c) in subclause (6), by deleting the word “four” and substituting therefor the word “two”.

CLAUSE 38

THAT, clause 38 be deleted and replaced with the following new clause—

Hearings of Commission. **38.** The hearings of the Commission during an inquiry shall be open to the public, except where the Commission otherwise decides.

CLAUSE 42

THAT, clause 42 be amended by deleting subclause (4) and substituting therefor the following new subclause—

“(4) If there is failure or refusal to implement the recommendations of the Commission within the specified time, the Commission may prepare and submit to the National Assembly a report detailing the failure or refusal to implement its recommendations and the National Assembly shall take appropriate action.”

CLAUSE 56

THAT, clause 56 be amended by inserting the words “relating to maladministration” immediately after the word “complaints”.

CLAUSE 57

THAT, clause be amended by deleting the words “Kenya National Human Rights and Equality Commission” and substituting therefor the words “Public Complaints Standing Committee”.

CLAUSE 58

THAT, clause 58 be amended—

(a) in paragraph (c), by deleting the words “Kenya National Human Rights and Equality Commission” and substituting therefor the words “Public Complaints Standing Committee”;

(b) in paragraph (d), by deleting the words “Kenya National Human Rights and Equality Commission” and substituting therefor the words “Public Complaints Standing Committee”.

(c) by inserting the following new paragraph immediately after paragraph (d)—

“(e) all assets and liabilities which immediately before the commencement of this Act were vested in, or enforced against, the Public Complaints Standing Committee shall, by virtue of this paragraph, vest in the Commission.

NEW CLAUSE

THAT, the following new clause be inserted immediately after clause 54—

Review of
mandate.

54A. 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.

SECOND SCHEDULE

THAT, the Second Schedule be amended in paragraph 2 (4) by inserting the words “directly or indirectly” immediately after the words “trade with the Commission”.

LONG TITLE

THAT, the long title be deleted and replaced with the following new long title—

“AN ACT of Parliament to restructure the Kenya National Human Rights and Equality Commission and to establish the Commission on Administrative Justice pursuant to Article 59 (4) of the Constitution; to provide for the membership, powers and functions of the Commission on Administrative Justice, and for connected purposes”

TITLE

THAT, the title be amended by deleting the word “of” appearing immediately after the word “Administrative”.

PROPOSED AMENDMENTS TO THE POWER OF MERCY BILL, 2011

CLAUSE 2

THAT, clause 2 be amended by—

(a) deleting the definition of the term “Commissioner”;

(b) deleting the definition of the term “felony” and substituting therefor the following new definition—

“felony” has the meaning assigned to in the Penal Code;

(c) deleting the definition of the term “pardon officer” and substituting therefor the following new definition—

“pardon officer” means a person appointed as such under section 17;

(d) deleting the definition of the term “Principal Secretary”.

CLAUSE 8

THAT, clause 8 be amended—

(a) in subclause (2), by—

(i) deleting paragraphs (b), (c) and (d) and substituting therefor the following new paragraphs—

“(b) the Principal Secretary in the Ministry for the time being responsible for matters relating to justice or his or her representative appointed in writing;

“(c) the Principal Secretary in the Ministry for the time being responsible for correctional services or his or her representative appointed in writing;

“(d) the Commissioner of Prisons or his or her representative appointed in writing;

(ii) deleting paragraph (g) and substituting therefor the following new paragraph—

“(g) a representative of the commission for the time being responsible for matters relating to administrative justice;

(b) by deleting subclause (3).

CLAUSE 9

THAT, clause 9 be amended in subclause (2) by—

(a) deleting paragraph (e);

(b) deleting the words “at least fourteen” appearing in paragraph (f) and substituting therefor the word “ten”.

CLAUSE 11

THAT, clause 11 be amended by inserting the words “and secretary of the Committee” immediately after the word “members”.

CLAUSE 15

THAT, clause 15 be amended in subclause (2), by deleting paragraph (a) and substituting the following new paragraph—

“(a) may, subject to this Act, determine its procedure;

CLAUSE 16

THAT, clause 16 be amended by deleting subclause (2) and substituting therefor the following new subclause—

“(2) There shall be a secretary to the Committee who shall be a public officer nominated by the Public Service Commission through a competitive process and appointed by the President.”

CLAUSE 20

THAT, clause 20 be amended by deleting subclause (1) and substituting therefor the following new subclause—

“(1) An application for the exercise of the power of mercy shall be by a petition in the prescribed form”;

CLAUSE 21

THAT, clause 21 be amended in subclause (2), by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) any other matter that the Committee may consider necessary”;

CLAUSE 22

THAT, clause 22 be amended in subclause (1) by inserting the words “where applicable” immediately after the word “victim” in paragraph (l).

CLAUSE 34

THAT, clause 34 be amended in subclause (1) by deleting the word “appeal”.

FIRST SCHEDULE

THAT, the First Schedule be amended by inserting the word “secretary” immediately after the word “chairperson” wherever it appears.

SECOND SCHEDULE

THAT, the Second Schedule be amended—

(a) in paragraph 1(a) by deleting the word “have” and substituting therefor the word “hold”;

(b) in paragraph 2, by deleting the words “half of the total members” and substituting therefor the words “five members”.

THIRD SCHEDULE

THAT, the Third Schedule be amended—

(a) by deleting paragraph (1) and substituting therefor the following new paragraphs—

“1. Particulars of the petitioner.

“1A. Particulars of the convicted criminal offender the subject of the petition, if different from the petitioner.”

(b) in paragraph 2, by deleting the word “seriousness” and substituting therefor the word “particulars”;

(c) in paragraph 5, by inserting the words “and at the time of making the petition” immediately after the word “offence”;

(d) in paragraph 12, by inserting the words “on the advice of the Committee” immediately after the word “Secretary”.

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