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2nd Nov 2011 by
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TENTH PARLIAMENT

FOURTH SESSION (2011)

THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT
COMMITTEE

REPORT

ON THE NOMINATIONS OF CHAIRPERSON AND MEMBERS OF
THE COMMISSION ON ADMINISTRATIVE JUSTICE

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

NOVEMBER, 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 comprises the following members:-

- 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,

On the 18th October, 2011 you informed the House that by a letter to the Clerk of the National Assembly dated 11th October, 2011, the Permanent Secretary, Secretary to the Cabinet and Head of the Public Service informed that after consultations between his Excellency the President and the Right Honorable Prime Minister, his Excellency the President had nominated the following persons for approval by the National Assembly pursuant to Section 11 (7) and (10) of the Commission on Administrative Justice Act, for the positions indicated here below:-

- i). Mr. Paul Otiende Amolo, EBS, for the position of Chairperson
- ii). Dr. Regina Gathoni Mwatha, EBS, for the position of Member, and;
- iii). Ms. Saadia Abdikadir Mohamed for the position of Member.

You then directed that the names and Curriculum Vitae of the nominees be referred to the Constitutional Implementation Oversight Committee (CIOC) for consideration prior to approval by the House and that the Committee table its report on the nominees on or before Wednesday, 2nd November, 2011.

As directed, the Committee held a meeting with the nominees on Tuesday 1st November, 2011 whereby the nominees made submissions on why they should be appointed to serve in the Commission on Administrative Justice. The Committee deliberated on the suitability of the nominees to serve in the Commission and recommends that pursuant to Section 11 (7) and (10) of the Commission on

Administrative Justice Act, 2011 the House approves the appointment of Mr. Paul Otiende Amolo, for the position of chairperson, Dr. Regina Gathoni Mwatha, for the position of member, and; Ms. Saadia Abdikadir Mohamed for the position of member.

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. The Committee also appreciates the media for coverage of its proceedings during the vetting process and the Secretariat for the timely preparation of this report.

Mr. Speaker Sir,

It is my pleasant duty and privilege, on behalf of the Constitutional Implementation Oversight Committee, to present and commend this report on the approval of the nominees to serve in the Commission on Administrative Justice, to the House for adoption pursuant to the Communication from the Chair made on Tuesday, 18th October, 2011 and in accordance with Section 11 (7) and (10) of the Commission on Administrative Justice Act.

SIGNED:.....


HON. ABDIKADIR HUSSEIN MOHAMMED, M. P.
CHAIRPERSON

DATE:.....

02/11/2011

BACKGROUND

1. Article 59 of the Constitution establishes the Kenya National Human Rights and Equality Commission. Article 59 (4) empowers Parliament to '...enact legislation to give full effect to this part, and any such legislation may restructure the Commission into two or more separate commissions'.
2. In August 2011, Parliament, pursuant to Article 59 (4) of the Constitution, enacted three legislations that restructured the Kenya National Human Rights and Equality Commission into three separate commissions namely:-
 - i). The Commission on Administrative Justice;
 - ii). The National Gender and Equality Commission; and
 - iii). The Kenya National Commission on Human Rights.
3. The Commission on Administrative Justice is established in Section 3 of *the Commission on Administrative Justice, Act, 2011* as a successor to the Public Complaints Standing Committee (PCSC) and pursuant to Article 59(5) (c) of the Constitution, it is a Commission within the meaning of Chapter Fifteen of the Constitution.
4. The functions of the Commission on Administrative Justice as set out in Section 8 of *the Commission on Administrative Justice, Act, 2011* shall be to:-
 - (a) *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;*
 - (b) *investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector;*
 - (c) *report to the National Assembly bi-annually on the complaints investigated under paragraphs (a) and (b), and the remedial action taken thereon;*
 - (d) *inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehavior, inefficiency or ineptitude within the public service;*
 - (e) *facilitate the setting up of, and build complaints handling capacity in, the sectors of public service, public offices and state organs;*
 - (f) *work with different public institutions to promote alternative dispute resolution methods in the resolution of complaints relating to public administration;*
 - (g) *recommend compensation or other appropriate remedies against persons or bodies to which this Act applies;*

- (h) provide advisory opinions or proposals on improvement of public administration, including review of legislation, codes of conduct, processes and procedures;*
- (i) publish period reports on the status of administrative justice in Kenya;*
- (j) promote public awareness of policies and administrative procedures on matters relating to administrative justice;*
- (k) take appropriate steps in conjunction with other State organs and Commissions responsible for the protection and promotion of human rights to facilitate promotion and protection of the fundamental rights and freedoms of the individual in public administration;*
- (l) 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; and*
- (m) perform such other functions as may be prescribed by the Constitution and any other written law.*

5. Section 9 of *the Commission on Administrative Justice Act, 2011*, provides that the Commission on Administrative Justice shall consist of a chairperson and two other members appointed in accordance with the Constitution and the provisions of the Act.

6. Section 10 (1) of *the Commission on Administrative Justice Act, 2011* sets out the qualifications for appointment as chairperson of the Commission as a person who:-

- (a) has knowledge and at least fifteen years experience in matters relating to human rights, law, conflict resolution, arbitration or administrative justice;*
- (b) holds a degree from a university recognized in Kenya; and*
- (c) meets the requirements of Chapter Six of the Constitution.*

7. Section 10 (2) of *the Commission on Administrative Justice Act, 2011* sets out the qualifications for appointment as a member of the Commission as a person who:-

- (a) holds a degree from a university recognized in Kenya;*
- (b) has knowledge and at least ten years' experience in matters relating to any of the following fields-*
 - (i) law;*
 - (ii) public administration;*
 - (iii) economics or finance;*
 - (iv) gender and social development;*
 - (v) human rights;*
 - (vi) conflict resolution;*
 - (vi) management; or*
 - (vii) social sciences;*

(c) has had a distinguished career in their respective fields; and
(d) meets the requirements of Chapter Six of the Constitution.

8. Section 11 of the *Commission on Administrative Justice Act, 2011* states the procedure and timelines for appointment of chairperson and members of the commission beginning with the formation of the selection panel comprising of one person from each of the following bodies:-
 - (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.
9. A report from the selection Panel indicate that an advertisement for the position of the Chairperson and Members was published in the *Nation* and *Standard* newspapers of 13th September, 2011 and the shortlisting was done on 30th September, 2011. Eight (8) applicants were shortlisted for the position of Chairperson and ten (10) applicants for the positions of Member. The names of the shortlisted candidates were subsequently published in the *Nation* and *Standards* newspapers editions of 1st and 2nd October, 2011 and in the *Gazette*.
10. Interviews of candidates for the position of Chairperson were conducted on 3rd October, 2011 while those for the position of Member were conducted on 4th and 5th October, 2011. However one candidate for the position of chairperson did not show up for the interviews. The panel then forwarded the score sheet to H.E the President and the Right Honourable Prime Minister for nomination.
11. In a letter dated 11th October, 2011 from the office of the Permanent Secretary, Secretary to the Cabinet and Head of Public Service indicated that H.E the President in consultation with the Right Honourable Prime Minister had nominated Mr. Paul Otiende Amolo who scored the highest among those interviewed, for the position of chairperson; Dr. Regina Gathoni Mwatha who scored the highest among those interviewed, for position of member; and Ms. Saadia Abdikadir Mohamed who scored fourth highest among those interviewed but nominated on account of regional balancing for the position of member.
12. Section 11 (7) of the *Commission on Administrative Justice Act, 2011* provides that the National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the nominees, consider all the nominations received and approve or reject any nomination.

13. On 18th October, 2011, the Speaker, in a Communication from the Chair, directed that the names of the nominees and their Curriculum Vitae be referred to the Constitutional Implementation Oversight Committee for consideration prior to approval by the House and report on or before Wednesday 2nd November, 2011.

COMMITTEE DELIBERATIONS AND OBSERVATIONS

14. At a meeting held on Tuesday 1st November 2011, the Committee orally interviewed all the three nominees.

15. In conducting the vetting process, the Committee examined the candidates against the criteria set out in the Second Schedule of the *Commission for the Implementation of Constitution Act, 2010* (Criteria for vetting/approval of nominees for appointment to public office by the National Assembly). That criteria requires the nominees to disclose information on their personal and professional life including their political affiliations, tax compliance and potential conflict of interests.

16. At the conclusion of the vetting exercise, the Committee made the following observations on the nominees:-

Nomination of Mr. Paul Otiende Amollo as Chairperson of the Commission on Administrative Justice

17. The Hon. Elizabeth Ongoro, MP and a member of the Committee disclosed a potential conflict of interest by pointing out that the nominee is her brother. She consequently withdrew from vetting the nominee and sat in as an observer.

18. The Committee having considered the curriculum vitae of Mr. Paul Otiende Amollo made the following observations on his nomination as Chairperson of the Commission on Administrative Justice:-

- i). Mr. Paul Otiende Amollo is a Kenyan citizen born on 1st February 1971. He is an advocate of the High Court, Commissioner of oaths, Certified Public Secretary and Notary Public.
- ii). He holds a Masters Degree in law (LLM) and Bachelor of Law degree (LLB), from the University of Nairobi, Diploma in Law from Kenya School of Law. He is also a member of the International Commission of Jurists (Kenya Chapter) and a member of the International Bar Association (IBA).

- iii). He is a Practicing Advocate for fifteen years standing and managing partner in the firm of Rachier and Amollo Advocates.
- iv). He has chaired and served in professional bodies and Human Rights Boards including the Law Society of Kenya, The International Commission of Jurists-Kenya, The East Africa Law Society, Action AID-Kenya and Kituo cha Sheria.
- v). He served as a Member of the Committee of Experts (COE) who wrote the Constitution of Kenya 2010.
- vi). He has worked as a lecturer in law, Kenya School of Professional Studies, Nairobi for two years and has several publications to his name.
- vii). He has worked as a Judge to the African Court on Human Rights (2008- 2010) and Ex-chancellor to the Bishop, Diocese of Mount Kenya South, and Church of the Province of Kenya.
- viii). He has been awarded several honours including the Order of the Burning Spear of the Republic of Kenya.
- ix). He has drafted various legislations in Kenya and has undertaken various pioneering litigation, nationally and internationally.
- x). He has complied with tax obligations and has never been dismissed from office for contravention of the provisions of Article 75 of the Constitution.

The nominee disclosed to the Committee that he is involved in a civil litigation with the former Kenya Anti-Corruption Commission (KACC) involving some allowances he was paid as a joint-secretary of task force established in 2000 by the National Aids Control Council (NACC) to develop the law on HIV/Aids. However, the Committee noted that the matter had come up during the vetting of Ms. Catherine Mumma (a joint-secretary) as a commissioner to the Commission of the Implementation of the Constitution. The Committee further noted that the nominee had been aware from the onset that they were to be paid a daily allowance while serving as a joint-secretary, and the misunderstanding between the two agencies (KACC and NACC) is a matter that arose later and which the officers, including Mr. Amollo, were not party to.

The committee found the nominee qualified.

Nomination of Dr. Regina Gathoni Mwatha as a Member of the Commission on Administrative Justice

19. The Committee having considered the curriculum vitae of Dr. Regina Gathoni Mwatha made the following observations on her nomination as a member of the Commission on Administrative Justice:-

- i). Dr. Regina Gathoni Mwatha, is a Kenyan citizen born on 7th April, 1963 and she holds a PhD in Sociology, a Masters of Arts in sociology and Bachelor of Arts from the University of Nairobi.
- ii). She has over fifteen years experience on Gender and Development. She has served in the private ,public and International Organizations in various capacities namely; Kenyatta University both as a lecturer ,researcher and an administrator, Gender Specialist and as President of the organization of social scientist in eastern and Southern Africa (OSSREA)
- iii). She worked as a chairperson of the Commission on National Gender and Development Commission and also as Vice Chairperson Kenya National Human Rights and Equality Commission.
- iv). She has also served as a co-coordinator of the Gender Academic link between Department of Sociology and the Centre for African Studies University of Edinburgh, Scotland.
- v). She is a member of the Council of the International Rural Sociological Association and member of Kenya Institute of Management (KIM) among others.
- vi). She has championed gender mainstreaming in Kenya and led a spirited campaign to separate commissions under Article 59 of the Constitution.
- vii). She has several publications in her name among them 'Gender Mainstreaming in Africa; Country experiences from Eastern and Southern Africa.
- viii). She has fully complied with her tax obligations and has never been dismissed from office for contravention of the provisions of Article 75 of the Constitution.
- ix). She has never been charged in a court of law.
- x). The committee found the nominee qualified.

Nomination of Ms. Saadia Abdikadir Mohamed as a Member of Commission for Administrative Justice

20. The Committee having considered the curriculum vitae of Ms. Saadia Abdikadir Mohamed made the following observations on her nomination as a member of the Commission for Administrative Justice:-

- i). Ms. Saadia Abdikadir Mohamed is a Kenyan citizen born on 4th May, 1969 and holds a Master of Science Degree in Poverty Reduction and Development Management from Birmingham University (UK) and Bachelor of Arts Degree from Egerton University.
- ii). She currently works as a National Community Development Coordinator with the Arid Lands Resource Management Project (ALRMP) based in

Nairobi which covers twenty eight (28) arid and semi arid districts (ASAL) in the nomadic Pastoralists /agro-pastoralists inhabited areas.

- iii). She has also served as a National Community Development Officer /Gender Focal Point-ALRMP where she has promoted community participation in Drought Management, Community Driven Development and Marketing and Infrastructure Components.
- iv). She was involved in the formulation of the draft policy for the Sustainable Development of the Arid and Semi Arid Lands (ASALs) of Kenya.
- v). She has fully complied with her tax obligations and has never been dismissed from office for contravention of the provisions of Article 75 of the Constitution.
- vi). She has never been charged in a court of law.
- vii). The committee found the nominee qualified.

RECOMMENDATIONS OF THE COMMITTEE

- 21. The Committee noted that several appointments to constitutional commissions/offices have been done and resolved to do an audit to cross-check conformity of these appointments with Article 250 (4) of the Constitution that require appointments to commissions and independent offices to 'take into account the national values referred to in Article 10, and the principle that the composition of the commissions and offices, taken as a whole, shall reflect the regional and ethnic diversity of the people of Kenya'.
- 22. Following the above deliberations, the Committee unanimously recommends that pursuant to Section 11 (7) of the *Commission on Administrative Justice Act, 2011* the nomination of :-
 - i). Mr. Paul Otiende Amollo be approved for appointment as Chairperson of the Commission on Administrative Justice;
 - ii). Dr. Regina Gathoni Mwatha be approved for appointment as a Member of the Commission on Administrative Justice; and
 - iii). Ms. Saadia Abdikadir Mohamed be approved for appointment as a Member of the Commission on Administrative Justice

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Recommendations

o The new Constitution has the potential to address some of these problems:

o For appointments requiring parliamentary approval, the submission of names to Parliament is accompanied by a memorandum stating how these new appointments have affected the ethnic composition in the civil service.

o The relevant legislation should require that once every quarter, the Head of Civil Service should make a report on ethnic composition in the civil service (or whenever a wave of employment occurs, this report should be made).

o Addressing inequalities in the civil service requires strong political will and commitment. It requires making hard decisions. Above everything else, addressing inequalities is a matter of recognition that the nation of Kenya is far more important than any single community. It is about commitment to national cohesion and unity.