

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

PARLIAMENT
OF KENYA
LIBRARY

TWELFTH PARLIAMENT- THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL
SECURITY

REPORT ON THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2018
(SENATE BILL NO. 13 OF 2018)

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 19 FEB 2020	DAY: WEDNESDAY (AM)
TABLED BY:	HON. PETER KALUMA FOR DC- ADMINISTRATION AND NATIONAL SECURITY
CLERK-AT THE-TABLE:	

DIRECTORATE COMMITTEESERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

FEBRUARY, 2020

Approved
9/2/20
AKWA

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Chairpersons Foreword

The Bill was read for the first time on Wednesday 24th April, 2019 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127 (1), it is on this basis that the Committee makes this Report. The Committee on Thursday 2nd May, 2019 put an advert on local daily newspapers inviting for comments from the public on the Bill.

I take this opportunity to thank all Members of the Committee for their input in the consideration of the County Governments (Amendment) Bill, 2018 (Senate Bill No. 13 of 2018). The Committee also takes this opportunity to thank the Offices of the Speaker and of the Clerk of the National Assembly for the logistical support accorded to it during the exercise. The Committee also appreciates the role played by the media following its coverage of the proceedings, thus enhancing accountability and transparency

Pursuant to provisions of Standing Order 199 (6), and on behalf of the Departmental Committee on Administration and National Security, it is my pleasant privilege and honour to present to this House the Report of the Committee on the County Governments (Amendment) Bill (Senate No. 13 of 2018).

Hon. Paul Koinange, M.P. Chairperson

1.0 PREFACE

The Departmental Committee on Administration and National Security was constituted on 14th December 2017 pursuant to provisions of Standing Orders 216(1).

1. The Committee executes its mandate in accordance with the provisions of Standing Order 216 (5), from which it draws its mandate to, inter alia;
 - a) investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments; and
 - b) study and review all legislation referred to it;
 - c) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204.

Honourable Speaker,

2. In executing its mandate, the Committee oversees the following Ministries and Departments:
 - i) The Ministry of Interior & Coordination of National Government
 - a) State Department of Interior
 - b) State Department of Border Control, Immigration and Registration of Persons.
 - c) State Department of Correctional Services
 - ii) The National Police Service Commission
 - iii) The Independent Policing Oversight Authority
 - iv) The Public Service Commission

3. According to Schedule II of the Standing Orders, the Committee is mandated to

Consider the following subjects:

- i) National Security;
- ii) Police Services;
- iii) Home Affairs;
- iv) Public Administration;
- v) Public Service,
- vi) Prisons;
- vii) Immigration

2.0 COMMITTEE MEMBERS

Chairperson

Hon. Paul Karuga Koinange, MP
MP for Kiambaa Constituency

Jubilee Party

Vice-Chairperson

Hon. John Waluke, MP
M.P for Sirisia Constituency

Jubilee Party

Hon. Wamunyinyi, Athanas Misiko
Wafula, MP
MP for Kanduyi Constituency
Ford Kenya Party

Hon. Kaluma, George Peter Joseph, MP
MP for Homa Bay Town Constituency
ODM Party

Hon. (Dr.) Makali Mulu, MP
MP for Kitui Central Constituency
Wiper Party

Hon. Theuri George, MP
MP for Embakasi West Constituency
Jubilee Party

Hon. Joshua Aduma Owuor, MP
Mp for Nyakach Constituency
ODM Party

Hon. Capt. (Rtd) Didmus Wekesa
Barasa Mutua, MP
MP for Kimilili Constituency
Jubilee Party

Hon. Col. (Rtd) Geoffrey Muturi,
King'ang'i, MP
MP for Mbeere South Constituency
Jubilee Party

Hon. Arbelles, Marselino Malimo, MP
MP for Laisamis Constituency
Jubilee Party

Hon. (Dr.) Tecla Chebet Tum, MP
MP for Nandi County
Jubilee Party

Hon. Josphat Kabinga Wachira
Wathayu, MP
MP for Mwea Constituency
Jubilee Party

Hon. Nimrod Mbithuka Mbai, MP
Mp for Kitui East Constituency
Jubilee Party

Hon. Martin Ngunjiri Wambugu, MP
Mp for Nyeri Town Constituency
Jubilee Party

Hon. Abdi Omar Shurie, MP
MP for Balambala Constituency
Jubilee Party

Hon. Halima Muccheke Yussuf, MP
Nominated Member
Jubilee Party

Hon. Edward Oku Kaunya, MP
MP for Teso North Constituency
ANC Party

Hon. Peter Francis Masara, MP
MP for Suna West Constituency
Independent Party

Hon. Ahmed Kolosh Mohamed, MP
MP for Wajir West Constituency
Jubilee Party

2.1 Committee Secretariat

The Committee is facilitated by the following Secretariat:-

**Mr George Gazemba, ACarb, CPM
Principal Clerk Assistant
Lead Clerk**

**Mr. Joshua Ondari
Clerk Assistant**

**Mr. Donald Manyala
Research Officer**

**Ms. Brigitta Mati
Legal Counsel**

**Mr. Yaqub Ahmed
Media Officer**

**Mr. Edison Odhiambo
Fiscal Analyst**

**Mr. Ian Otieno
Audio Officer**

2.2 ADOPTION OF THE COMMITTEE REPORT

We, the undersigned Members of the Departmental Committee on Administration and National Security have, pursuant to Standing Order 199, adopted this report and appended our signatures to affirm our approval and confirm its accuracy and authenticity. (*See Attached Annexes*)

1. Hon. Paul Koinange, MP
2. Hon. John Waluke, MP (Vice-Chairperson)
3. Hon. Athanas Wamunyinyi, MP
4. Hon. George Theuri, MP
5. Hon. Peter George Kaluma, MP
6. Hon. Makali Mulu, MP
7. Hon. Didmus Wekesa Barasa Mutua, MP
8. Hon. Geoffrey Kingagi Muturi, MP
9. Hon. Marselino Malimo Arbelle, MP
10. Hon. Tecla Chebet Tum, MP
11. Hon. Josphat Kabinga Wachira, MP
12. Hon. Nimrod Mbithuka Mbai, MP
13. Hon. Martin Deric Ngunjiri Wambugu, MP
14. Hon. Abdi Omar Shurie, MP
15. Hon. Yussuf Mucheke Halima, MP
16. Hon. Peter Masara, MP
17. Hon. Ahmed Kolosh Mohammed, MP
18. Hon. Aduma Owuor, MP
19. Hon. Edward Oku Kaunya, MP

3.0 BACKGROUND

Article 109 of the Constitution states that “Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the President.

The County Governments (Amendment) Bill (Senate No. 13 of 2018) was read for the first time on Wednesday 24th April, 2019 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127 (1) and report to the House.

The Bill seeks to amend the County Governments Act to provide for additional qualifications of the chairperson of a County Public Service Board.

4.0 SITTINGS.

The Committee considered the County Governments (Amendment) Bill (Senate No. 13 of 2018) in its sittings held on Friday 16th August, 2019 and adopted its report on Tuesday, October 22, 2019.

5.0 SUMMARY OF THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2018, SENATE BILL NO. 13 OF 2018

The County Governments (Amendment) Bill, 2018, Senate Bill No. 13 of 2018, was published in the Kenya Gazette No. 46 of 30th April, 2018, and was passed by the Senate, with amendments, on 26th March, 2019. The Bill seeks to amend the County Governments Act to provide for additional qualifications for the chairperson of a county public service board.

Clause 1 of the Bill provides for the short title of the Bill as the County Governments (Amendment) Act, 2018.

Clause 2 of the Bill provides for amendment of Section 58 of the County Government Act.

**6.0 CONSIDERATION OF THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2018,
SENATE BILL NO. 13 OF 2018**

The committee considered the County Governments (Amendment) Bill, 2018, Senate Bill No. 13 of 2018 in a sitting held on Friday 16th August, 2019. Pursuant to Article 118 (1) (b) and standing order 127 (3) the committee invited the public to submit their comments on the Bill.

Clause 1 of the Bill provides for the short title of the Bill as the County Governments (Amendment) Act, 2018.

Clause 2 of the Bill provides for amendment of Section 58 of the County Government Act. Section 58 states:

- Composition of the County Public Service Board.
- 58. (1)**The County Public Service Board shall comprise—
- (a) a chairperson nominated and appointed by the county governor with the approval of the county assembly;
 - (b) not less than three but not more than five other members nominated and appointed by the county governor, with the approval of the county assembly; and
 - (c) a certified public secretary of good professional standing nominated and appointed by the governor, with the approval of the county assembly, who shall be the secretary to the board.
- (2)The appointment of the members of the Board shall be through a competitive process.
- (3)A person shall be qualified to be appointed as a member under subsection (1) if that person—
- (a) satisfies the provisions of Chapter Six of the Constitution;
 - (b) is not a state or public officer;
 - (c) in the case of chairperson or vice-chairperson, possesses a minimum qualification of a bachelor's degree from a recognised university and working experience of not less than ten years; and

(d) in the case of any other members—

(i) possesses a minimum of a bachelor's degree from a recognised university and working experience of not less than five years; and

(ii) is a professional, demonstrates absence of breach of the relevant professional code of conduct.

(4) A member of the Board shall—

(a) hold office for a non-renewable term of six years; and

(b) may serve on a part-time basis.

(5) The members of the Board may only be removed from office—

(a) on grounds set out for the removal of members of a constitutional commission under Article 251(1) of the Constitution; and

(b) by a vote of not less than seventy five percent of all the members of the county assembly.

(6) The board shall elect a vice-chairperson from amongst its members.

(7) The chairperson and vice-chairperson shall be of opposite gender.

1. The proposal is to amend section 58 of the Act in the following manner—

(a) In subsection (1) by deleting paragraph (c) and substituting therefor the following new paragraph-

(c) the secretary to the board who shall be nominated and appointed by the governor with the approval of the county assembly

Implication: *to remove the qualification of a secretary to the Board as one who is a certified public secretary of good professional standing.*

(b) Inserting new sub-sections immediately after subsection (1) which state—

(1A) The Secretary to the board shall be an ex-officio member of the Board and shall have no right to vote at any meeting of the Board.

(1B) In nominating or appointing a person as a member of the Board, the Governor shall-

- (a) observe the principles of gender equity, ethnic and other diversities of the people of Kenya, and shall provide equal opportunity for persons with disabilities; and
- (b) take into account the national values and principles set out in Articles 10, 27 and 232 of the Constitution

Implication: *to provide certainty on the role of Secretary to the Board as one who has no right to vote at any meeting of the Board. Obligate the Governor to observe constitutional principles in nominating or appointing persons as members of the Board.*

(c) By deleting paragraph (c) and substituting the following new paragraph—

- (c) in the case of the chairperson-
 - (i) possesses a minimum of a bachelors degree from a university recognised in Kenya;
 - (ii) is registered as a human resource management professional of good standing under the Human Resource Management Professionals Act; and
 - (iii) has at least ten years working experience in a managerial position either in the public or private sector.

Implication: *Creates additional stipulations and requirements for one to be eligible to serve as a chairperson such as “be registered as a human resource management official and have at least ten years working experience in a managerial position.*

As a consequence the amendment will relegate the qualifications of vice-chairperson to be the same as those of other members of the Board

7.0 PUBLIC PARTICIPATION

Pursuant to Article 118 of the Constitution and Standing Order 127 (3) the committee invited memoranda from the public vide a notice in the local dailies.

One of the most important features of the Country constitutional framework is the requirement of public participation in governance and other administrative activities. Specifically, the provisions of the following Articles are pertinent.

- i) Article 10 recognizes public participation as one of the national values;
- ii) Article 27 provides for equal treatment of all persons, while affirmative action in governance is provided for in Articles 54 and 56 of the Constitution;
- iii) Article 35 provides for the right of access to information held by the State or another person which is necessary for the exercise of any right or fundamental freedom;
- iv) Article 118 requires Parliament to conduct its business in an open manner and to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. It also prohibits Parliament from denying the public and media access into its sittings unless there are any justifiable reasons.

The Constitution obligates the State and all State organs to ensure adequate public consultation on all public policies, legislation or any decision that is likely to impact on the people of Kenya. Failure to factor in the mandatory requirement of public participation exposes the legislative instrument or policy framework to constitutional challenges of legitimacy, hence making it actionable for unconstitutionality in a court of law.

Effective public consultation is based on principles of openness, transparency, integrity and mutual respect. The open process facilitates acceptability amongst the key stakeholders, subsequently facilitating efficient and effective implementation of the legislative instrument.

The committee put an advert on the Bill on the local dailies inviting for comments from the public.

8.0 CLAUSE BY CLAUSE CONSIDERATION OF THE BILL

Clause 1- short title

Clause 1 relates to the short title of the Bill.

Committee observations and recommendation on clause 1

The Committee observed that there were no stakeholder comments received on this provision.

The Committee recommends that the Clause be agreed to as it appears in the Bill.

Clause 2—Amendment of Section 58 of the County Government Act

Clause 2 proposes to amend section 58 of the County Government which provides for the composition of the county public service board. The amendment seeks to amend the qualifications of a secretary to the Board and that of a chairperson. The proposed amendment seeks to task governors to uphold gender, persons with disability, ethnicity principles.

Committee observations and recommendation on clause 2

The Committee observed that—

1. amendments relating to Secretary to the Board—
 - a) In all government institutions, a secretary to a Board does not need to have qualifications of a certified public secretary. This qualification should be provided for as an added advantage where there is advertisement of that position; and
 - b) There is need to provide for qualifications of the Secretary of the Board in order to curb endorsements of persons who are not qualified by a governor;
2. amendments relating to New clause 1B—
 - a) the principles of gender equity, ethnic and other diversities of the people of Kenya and representation of persons with disabilities should be deleted as they are a mere repetition of Articles 10, 27 and 232 of the Constitution;
 - b) there is need to qualify paragraph (b) to provide that the governor should take into account the national values and principles as set out in the Articles of the Constitution to the extent practicable. The amendment should cater for instances where such

preferred persons do not apply or the governor cannot meet that threshold in appointing the same.

3. Amendments relating to subsection 3 paragraph (c)—
 - a) there is need to include qualifications of a vice-chairperson with that of a chairperson. A vice-chairperson is to carry out the same duties as the chairperson in the absence of the same;
 - b) delete the proposed paragraph (ii) and align qualifications to the qualifications provided for a chairperson and a vice chairperson of the Public Service Commission provided for under the Public Service Commission Act No. 10 of 2017 (Section 8);
 - c) the proposed paragraph (ii) inordinately caps and fixes the position to only human resource management professionals as persons qualified to hold the position of chairperson;

Proposed amendment to Clause 2

THAT, Clause 2 of the Bill be amended in the proposed amendment to section 58 of the County Governments Act, 2018—

- a) in subsection (1)—
 - i) by deleting the proposed paragraph (c) and substituting therefor the following new paragraph—

“(c) the secretary to the board who holds a degree from a university recognized in Kenya nominated and appointed by the governor, with the approval of the County Assembly.”

Justification

To provide for qualifications of a secretary to the Board. This curbs blanket recommendations of persons who are not qualified for the position.

- ii) by deleting the proposed subsection 1B and substituting therefor the following new subsection—

“1B. In nominating or appointing a person as a member of the Board, the Governor shall take into account the national values and principles set out in Articles 10, 27 and 232 of the Constitution.”

Justification

The principles of gender equity, ethnic and other diversities, providing equal opportunity to persons with disabilities are principles also espoused under the national values and principles set out in Articles 10, 27 and 232 of the constitution. Therefore there is no need to repeat the same.

iii) by deleting the proposed paragraph (b) and substituting therefor the following new paragraph—

a) subsection (3) by deleting paragraph (c) and substituting therefor the following new paragraph—

(c)in case of chairperson or vice chairperson—

(i) is a citizen of Kenya;

(ii) holds a degree from a university recognized in Kenya;

(iii)has at least five years' experience in a managerial position either in the public or private sector; and

(iv) meets the requirements of leadership and integrity in Chapter Six of the Constitution.

Justification

To enable young persons to apply and qualify for the position of chairperson and vice chairperson. To open up the position to various professions as opposed to only human resource management professionals.

8.1 COMMITTEE AMMENDMENTS

Having considered all the clauses, the committee therefore proposed the following amendments with justification as agreed upon in its meeting held on 16th August, 2019 and as adopted on Tuesday, 22nd October, 2019.

By deleting Clause 2 (c)(vi) and substituting the following new paragraph—

(v) has at least ten years working experience in a managerial position.

Rationale: *this will allow other people without Human Resource Managerial qualification to apply for the position.*

9.0 COMMITTEE GENERAL OBSERVATIONS

- a) **The Bill** removes the qualification of a secretary to the Board as one who is a certified public secretary of good professional standing.
- b) **Clause 2** provides certainty on the role of Secretary to the Board as one who has no right to vote at any meeting of the Board. Obligate the Governor to observe constitutional principles in nominating or appointing persons as members of the Board.
- c) The Bill creates additional stipulations and requirements for one to be eligible to serve as a chairperson such as “be registered as a human resource management official and have at least ten years working experience in a managerial position. As a consequence the amendment will relegate the qualifications of vice-chairperson to be the same as those of other members of the Board.

10.0 COMMITTEE RECOMMENDATIONS

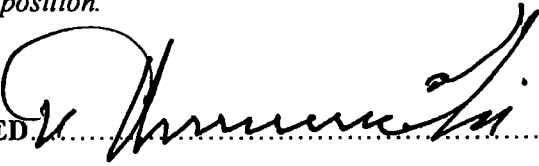
The Committee having considered the County Governments (Amendment) Bill, 2018, Senate Bill No. 13 of 2018 will be proposing amendments in Clause 2 (c)(vi).

Clause 2 (c)(vi)

By deleting Clause 2 (c)(vi) and substituting the following new paragraph—

(vi) has at least ten years working experience in a managerial position.

Rationale: *this will allow other people without Human Resource Managerial qualification to apply for the position.*

SIGNED 

HON. (HON. PAUL KOINANGE, MP)
(CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

DATE *14/1/2020*

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

ATTENDANCE SCHEDULE

DATE: 29th October, 2019

TIME: 11.00 a.m.


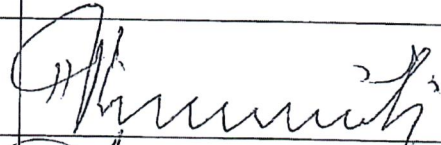
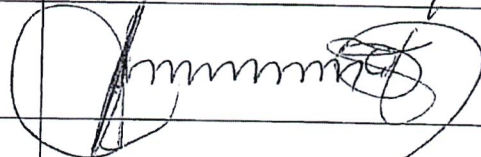

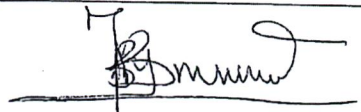
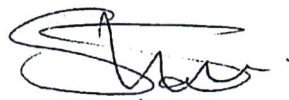

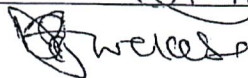
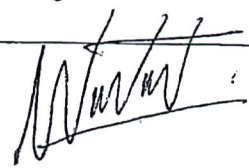
VENUE: Boardroom on 11th Floor, Protection House




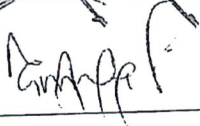
AGENDA: Adoption of the following reports on bills:

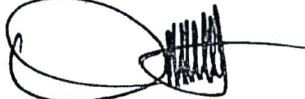
a. The Public Service (Values & Principles) (Amendment) Bill, 2019


b. The National Disaster Management Authority Bill, 2019

c. The County Government (Amendment) Bill, 2018

NO.	NAME	SIGNATURE
1.	Hon. Paul Koinange, MP - Chairperson	
2.	Hon. John Waluke, MP - Vice Chairperson	
3.	Hon. Wafula Wamunyinyi, MP	
4.	Hon. George Peter Kaluma, MP	
5.	Hon. Dr. Makali Mulu, MP	
6.	Hon. George Theuri, MP	
7.	Hon. Aduma Owuor, MP	
8.	Hon. Didmus Wekesa Barasa Mutua, MP	
9.	Hon. Geoffrey Kingagi Muturi, MP	

10.	Hon. Marselino Malimo Arbelle, MP	
11.	Hon. Dr. Tecla Chebet Tum, MP	
12.	Hon. Josphat Kabinga Wachira, MP	
13.	Hon. Nimrod Mbithuka Mbai, MP	
14.	Hon. Ngunjiri Wambugu, MP	
15.	Hon. Abdi Omar Shurie, MP	
16.	Hon. Halima Muccheke, MP	
17.	Hon. Peter Masara, MP	
18.	Hon. Oku Kaunya, MP	
19.	Hon. Ahmed Kolosh Mohamed, MP	

Signed..........Date.....29/10/19.....
George Gazemba, ACI Arb, CPM,
Principal Clerk Assistant,
Departmental Committee on Administration and National Security.

Signed..........Date.....21/11/19.....
Florence Atenyo-Abonyo,
Director, Committee Services.

MINUTES OF THE FIFTIETH (50) SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON TUESDAY, 29TH OCTOBER, 2019 AT 10.00 A.M. IN THE BOARDROOM ON 11TH FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS

PRESENT

1. Hon. Paul Koinange, MP - *Chairperson*
2. Hon. John Walake, MP - *Vice – Chairperson*
3. Hon. Wafula Wamunyinyi, MP
4. Hon. Peter George Kaluma, MP
5. Hon. Dr. Makali Mulu, MP
6. Hon. George Theuri, MP
7. Hon. Aduma Owuor, MP
8. Hon. Peter Masara, MP
9. Hon. Oku Kaurya, MP
10. Hon. Ahmed Kolosh Mohamed, MP
11. Hon. Dr. Tecla Chebet Tum, MP
12. Hon. Didmus Wekesa Barasa Mutua, MP
13. Hon. Geoffrey Kingagi Muturi, MP

ABSENT

1. Hon. Abdi Omar Shurie, MP
2. Hon. Ngunjiri Wambugu, MP
3. Hon. Josphat Kabinga Wachira, MP
4. Hon. Halima Mucheke, MP
5. Hon. Marselino Malimo Arbelle, MP
6. Hon. Nimrod Mbituka Mbai, MP

IN ATTENDANCE

COMMITTEE SECRETARIAT-

1. Mr. George Gazemba - Principal Clerk Assistant II
2. Mr. Joshua Ondari - Clerk Assistant
3. Mr. Donald Manyala - Research Assistant
4. Mr. Josphat Bundotich - Senior Serjeant-At-Arms
5. Mr. Ian Otieno - Audio Officer
6. Mr. James Oloo - Support Staff

MIN No.175 /2019:-

PRELIMINARIES

The chairperson officially welcomed Members to the meeting at 10.30 a.m. after prayers were said.

MIN No.176 /2019:-

CONFIRMATION OF MINUTES

1. Minutes of the 42nd sitting held on Friday, 27th September, 2019 were confirmed as a true record of the deliberations having been proposed and seconded by the Hon. Peter Kaluma, MP and the Hon. Peter Masara, MP respectively.
2. Minutes of the 43rd sitting held on Friday, 27th September, 2019 were confirmed as a true record of the deliberations having been proposed and seconded by the Hon. John Waluke – Vice-Chairperson, MP and the Hon. Oku Kaunya, MP respectively.
3. Minutes of the 44th sitting held on Tuesday, 15th October, 2019 were confirmed as a true record of the deliberations having been proposed and seconded by the Hon. Peter Kaluma, MP and the Hon. Wafula Wamunyinyi, MP respectively.
4. Minutes of the 45th sitting held on Thursday, 17th October, 2019 were confirmed as a true record of the deliberations having been proposed and seconded by the Hon. Peter Kaluma, MP and the Hon. Peter Masara, MP respectively.
5. Minutes of the 46th sitting held on Saturday, 19th October, 2019 were confirmed as a true record of the deliberations having been proposed and seconded by the Hon. Oku Kaunya, MP and the Hon. John Waluke – Vice-Chairperson, MP respectively.
6. Minutes of the 47th sitting held on Tuesday, 22nd October, 2019 were confirmed as a true record of the deliberations having been proposed and seconded by the Hon. Dr. Tecla Tum, MP and the Hon. Peter Kaluma, MP respectively.

MIN No. 177/2019:-

ADOPTION OF THE REPORTS ON BILLS

Report on the County Governments (Amendment) Bill (Senate Bill No. 13 of 2018)

The report was unanimously adopted by the Committee after having been proposed and seconded by the Hon. Peter Masara, MP and the Hon. Peter Kaluma, MP respectively.

Report on the National Disaster Management Authority Bill, 2019

The report was unanimously adopted by the Committee after having been proposed and seconded by the Hon. John Waluke, MP –Vice-Chairperson and the Hon. Wafula Wamunyinyi, MP respectively.

Report on the Public Service (Values & Principles) (Amendment) Bill, 2019

The report was unanimously adopted by the Committee after having been proposed and seconded by the Hon. Oku Kaunya and the Hon. Peter Kaluma, MP respectively.

MIN No.178 /2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at noon until a date and time to be communicated to Members.

Signed.....
Chairperson

Date.....5th Dec 2019

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THE INSTITUTION OF ENGINEERS OF KENYA
(Engineering A Sustainable World)

SEMINAR INVITATION

VENUE: SAROVA WOODLANDS HOTEL, NAKURU
DATES: TUESDAY 21ST MAY TO FRIDAY 24TH MAY, 2019
SEMINAR CHARGES ARE KES 50,000/=

PLEASE NOTE THAT THE CHARGES WILL COVER THE SEMINAR MATERIAL AND EXPENSES, TEAS AND LUNCHES

Participants are advised to pay the fees in full before the said date in order to qualify for registration. Cash payment MUST be made at any Standard Chartered Bank into IEK account No. 0102024134900 held at Kenyatta Avenue Branch and payment slip emailed to the secretariat for registration. Payment by Company cheques may be made directly to the secretariat. Personal payments may be made through M-pesa Paybill no. 976295 and account your name e.g AN other

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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - THIRD SESSION

- In the matters of consideration by the National Assembly:-
1. The Public Order (Amendment) Bill (National Assembly Bill No. 14 of 2019)
2. The County Governments (Amendment) Bill (Senate Bill No. 13 of 2018)

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Public Order (Amendment) Bill (National Assembly Bill No. 14 of 2019) seeks to amend the Public Order Act to make provision for organizers of public meetings or public procession leading to loss of property, life or earnings to take responsibility for the loss and compensate the affected persons.

The County Governments (Amendment) Bill (Senate Bill No. 13 of 2018) seeks to amend the County Government Act to provide for additional qualifications of the chairperson of a County Public Service Board.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the Departmental Committee on Administration and National Security for consideration and thereafter report to the House.

Pursuant to Article 118 (1)(b) of the Constitution and Standing Order 127, the Committee invites interested members of the public to submit any representations they may have on the said Bills. The Submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Wednesday 8th May, 2019 at 500 pm.

MICHAEL SJALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY



NATIONAL OPEN TENDER

National Hospital Insurance Fund (NHIF) invites interested and competent bidders from reputable firms to tender for the following items:

S/N	TENDER NO.	DESCRIPTION	ELIGIBILITY	CLOSING/ OPENING DATES
1	NHIF/060/2018-2019	Re-Tender Proposed Construction and Associated Infrastructure works for Modern ICT Equipment Room	Open	15TH MAY 2019
2	NHIF/074/2018-2019	Service Maintenance and Repair of Telephone Equipment	Open	15TH MAY 2019
3	NHIF/075/2018-2019	Design, Implementation and Commissioning of Enhanced Customer Experience Web/Mobile Portal	Open	15TH MAY 2019

Tender will be accessed from the NHIF Website- www.nhif.or.ke and from the National Treasury IRMIS website <http://suppliers.treasury.go.ke> free of charge. Tenderers who download the tender documents and intend to submit a bid are required to submit their contacts details to tenders@nhif.or.ke for reading. Bidders/Tenderers are advised to be checking our website on daily basis for any additional information, clarifications and/or addendum.

Completed tender documents in plain sealed envelopes and properly indicating the tender number as above should be addressed to:

The Chief Executive Officer,
National Hospital Insurance Fund,
P.O. Box 30443,
NAIROBI

and be placed in the tender box provided at NHIF Building, 7th floor Reception so as to reach him on or before 15th May 2019 at 10.00 a.m. The tenders will be opened immediately thereafter at the NHIF Auditorium 2nd floor, NHIF Building, in the presence of bidders or their representatives who wish to be present.

AG. CHIEF EXECUTIVE OFFICER
NATIONAL HOSPITAL INSURANCE FUND



2019 Number 2111

info@nhif.or.ke

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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- THIRD SESSION



THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

REPORT ON THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 27 OF 2019)

THE NATIONAL ASSEMBLY	
DATE: 18 FEB 2020 WEDNESDAY	
TABLED BY:	HON. PETER KALUMA FOR DC-ADMIN & NATIONAL SECURITY
CLEARANCE BY:	

DIRECTORATE COMMITTEESERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

FEBRUARY, 2020

Approved
19/2/20
DS AM
[Signature]

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Adoption list

Minutes

Request for the Submission of Memoranda

Memoranda

Chairpersons Foreword

The Bill was read for the first time on Thursday, 2nd May, 2019 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127 (1), it is on this basis that the Committee makes this Report. The Committee on Thursday 9th May, 2019 put an advert on local daily newspapers inviting for comments from the public on the Bill.

I take this opportunity to thank all Members of the Committee for their input in the consideration of the Public Service Commission (Amendment) Bill, 2019. The Committee also takes this opportunity to thank the Offices of the Speaker and of the Clerk of the National Assembly for the logistical support accorded to it during the exercise. The Committee also appreciates the role played by the media following its coverage of the proceedings, thus enhancing accountability and transparency

Pursuant to provisions of Standing Order 199 (6), and on behalf of the Departmental Committee on Administration and National Security, it is my pleasant privilege and honour to present to this House the Report of the Committee on the Public Service Commission (Amendment) Bill, 2019.

Hon. Paul Koinange, M.P. Chairperson

1.0 PREFACE

The Departmental Committee on Administration and National Security was constituted on 14th December 2017 pursuant to provisions of Standing Orders 216(1).

1. The Committee executes its mandate in accordance with the provisions of Standing Order 216 (5), from which it draws its mandate to, inter alia;
 - a) investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments; and
 - b) study and review all legislation referred to it;
 - c) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204.

Honourable Speaker,

2. In executing its mandate, the Committee oversees the following Ministries and Departments:
 - i) The Ministry of Interior & Coordination of National Government
 - a) State Department of Interior
 - b) State Department of Border Control, Immigration and Registration of Persons.
 - c) State Department of Correctional Services
 - ii) The National Police Service Commission
 - iii) The Independent Policing Oversight Authority
 - iv) The Public Service Commission

3. According to Schedule II of the Standing Orders, the Committee is mandated to

Consider the following subjects:

- i) National Security;
- ii) Police Services;
- iii) Home Affairs;
- iv) Public Administration;
- v) Public Service,
- vi) Prisons;
- vii) Immigration

2.0 COMMITTEE MEMBERS

Chairperson

Hon. Paul Karuga Koinange, MP
County MP for Kiambaa Constituency

Jubilee Party

Vice-Chairperson

Hon. John Waluke, MP
M.P for Sirisia Constituency

Jubilee Party

Jubilee Party

Hon. Wamunyinyi, Athanas Misiko
Wafula, MP for Kanduyi Constituency

Ford Kenya Party

Hon. Josphat Kabinga Wachira
Wathayu, MP

MP for Mwea Constituency

Jubilee Party

Hon. Kaluma, George Peter Joseph, MP
MP for Homa Bay Town Constituency

ODM Party

Hon. Nimrod Mbithuka Mbai, MP
MP for Kitui East Constituency

Jubilee Party

Hon. (Dr.) Makali Mulu, MP
MP for Kitui Central Constituency

Wiper Party

Hon. Martin Ngunjiri Wambugu, MP
MP for Nyeri Town Constituency

Jubilee Party

Hon. Theuri George, MP
MP for Embakasi West Constituency

Jubilee Party

Hon. Abdi Omar Shurie, MP
MP for Balambala Constituency

Jubilee Party

Hon. Joshua Aduma Owuor, MP
MP for Nyakach Constituency

ODM Party

Hon. Halima Mucheke Yussuf, MP
Nominated Member

Jubilee Party

Hon. Capt. (Rtd) Didmus Wekesa
Barasa Mutua, MP
MP for Kimilili Constituency

Jubilee Party

Hon. Edward Oku Kaunya, MP
MP for Teso North Constituency

ANC Party

Hon. Col. (Rtd) Geoffrey Muturi,
King'ang'i, MP
MP for Mbeere South Constituency

Jubilee Party

Hon. Peter Francis Masara, MP
MP for Suna West Constituency

Independent Party

Hon. Arbelle, Marselino Malimo, MP
MP for Laisamis Constituency

Jubilee Party

Hon. Ahmed Kolosh Mohamed, MP
MP for Wajir West Constituency

Jubilee Party

Hon. (Dr.) Tecla Chebet Tum, MP
MP for Nandi County

2.1 Committee Secretariat

The Committee is facilitated by the following Secretariat:-

Mr George Gazemba, ACarb, CPM
Principal Clerk Assistant
Lead Clerk

Mr. Joshua Ondari
Clerk Assistant

Mr. Donald Manyala
Research Officer

Ms. Brigitta Mati
Legal Counsel

Mr. Yaqub Ahmed
Media Officer

Mr. Edison Odhiambo
Fiscal Analyst

Mr. Ian Otieno
Audio Officer

2.2 ADOPTION OF THE COMMITTEE REPORT

We, the undersigned Members of the Departmental Committee on Administration and National Security have, pursuant to Standing Order 199, adopted this report and appended our signatures to affirm our approval and confirm its accuracy and authenticity. (*See Attached Annexes*)

1. Hon. Paul Koinange, MP
2. Hon. John Waluke, MP (Vice-Chairperson)
3. Hon. Athanas Wamunyinyi, MP
4. Hon. George Theuri, MP
5. Hon. Peter George Kaluma, MP
6. Hon. Makali Mulu, MP
7. Hon. Didmus Wekesa Barasa Mutua, MP
8. Hon. Geoffrey Kingagi Muturi, MP
9. Hon. Marselino Malimo Arbelle, MP
10. Hon. Tecla Chebet Tum, MP
11. Hon. Josphat Kabinga Wachira, MP
12. Hon. Nimrod Mbithuka Mbai, MP
13. Hon. Martin Deric Ngunjiri Wambugu, MP
14. Hon. Abdi Omar Shurie, MP
15. Hon. Yussuf Muccheke Halima, MP
16. Hon. Peter Masara, MP
17. Hon. Ahmed Kolosh Mohammed, MP
18. Hon. Aduma Owuor, MP
19. Hon. Edward Oku Kaunya, MP

3.0 BACKGROUND

Article 109 of the Constitution states that “Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the President.

The Public Service Commission (Amendment) Bill, 2019 was read for the first time on Thursday 2nd May, 2019 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127 (1) and report to the House.

The principal objective of the bill was to amend Public Service Act of 2017 to prescribe the mandatory retirement age of sixty years in the act. It also seeks to address the issue of an officer acting in a position for more than six months.

4.0 SITTINGS

The Committee considered the Public Service (Values and Principles) (Amendments) Bill, 2019 in its sittings held on Friday 16th August, 2019 and adopted its report on Tuesday 8th October, 2019.

5.0 SUMMARY OF THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL, 2019

The proposal seeks to amend the Public Service Commission Act No. 10 of 2017.

Clause 1 is the short title of the Bill

Clause 2 seeks to include a new sub section (3A) in section 34 of the Act.

Clause 3 seeks to amend Section 80 of the Act —

Clause 4 of the Bill provides for transition clause where a person is appointed under a contractual framework.

6.0 CONSIDERATION OF PUBLIC SERVICE COMMISSION (AMENDMENT) BILL, 2019

Analysis of the Bill

The proposal seeks to amend the Public Service Commission Act No. 10 of 2017.

Clause 1 is the short title of the Bill

Clause 2 seeks to include a new sub section (3A) in section 34 of the Act.

“(3A) upon the expiry of six months an officer appointed under subsection (3) shall not be entitled to any acting allowance”

The clause does not state whether the officer ceases to act and if that is the case what happens to the acting position. Further, where one continues to act in a position without drawing an allowance it becomes punitive to an officer;

The clause is punitive to an officer whereas the filing of a vacancy is usually discretion of the management of an organization.

Observation on Clause 2:

The proposal does not cater for a situation where an officer is in acting in a capacity occasioned by the temporary absence of a substantive office holder such as by study leave, secondment, leave of absence or such other leave as may be determined by the Commission.

Clause 3 seeks to amend Section 80 of the Act —

- (i) Delete the words “as may be prescribed by regulation” and substituting the words “sixty years”

Implication:

The retirement age currently is prescribed through a circular issued by the Public Service Commission; the amendment seeks to place the same in a statute.

Observation

Several factors are considered when determining the age of retirement; demographic factors such as at life expectancy of retirees, population growth rates and how the society is aging. If the number of years retirees are expected to live in retirement is short, then there is a tendency to have a low retirement age. If retirees are expected to live longer then the retirement age too is to have a high retirement age. In the case of an aging society where the old aged cohort is growing at a faster rate than the population growth rate the tendency generally adjust the retirement age upward to reflect the trend.

From the above it has been the practice to determine the retirement age through regulation which is easy to amend as opposed to a statute.

6.0 PUBLIC PARTICIPATION

Pursuant to Article 118 of the Constitution and Standing Order 127 (3) the committee invited memoranda from the public vide a notice in the local dailies.

One of the most important features of the Country constitutional framework is the requirement of public participation in governance and other administrative activities. Specifically, the provisions of the following Articles are pertinent.

- i) Article 10 recognizes public participation as one of the national values;
- ii) Article 27 provides for equal treatment of all persons, while affirmative action in governance is provided for in Articles 54 and 56 of the Constitution;
- iii) Article 35 provides for the right of access to information held by the State or another person which is necessary for the exercise of any right or fundamental freedom;
- iv) Article 118 requires Parliament to conduct its business in an open manner and to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. It also prohibits Parliament from denying the public and media access into its sittings unless there are any justifiable reasons.

The Constitution obligates the State and all State organs to ensure adequate public consultation on all public policies, legislation or any decision that is likely to impact on the people of Kenya. Failure to factor in the mandatory requirement of public participation exposes the legislative instrument or policy framework to constitutional challenges of legitimacy, hence making it actionable for unconstitutionality in a court of law.

Effective public consultation is based on principles of openness, transparency, integrity and mutual respect. The open process facilitates acceptability amongst the key stakeholders, subsequently facilitating efficient and effective implementation of the legislative instrument.

The committee put an advert on the Bill on the local dailies inviting for comments from the public.

6.1 MEETING WITH HON. BENJAMIN GATHIRU MWANGI, MP

On Thursday 13th June, 2019, the Hon. Benjamin Gathiru Mwangi, MP appeared before the Committee and informed the Committee as follows:- That,

- a) The principal objective of the bill was to amend Public Service Act of 2017 to prescribe the mandatory retirement age of sixty years in the act;
- b) Further, the bill provided for the penal act for a period of more than six months;
- c) The bill provided for mandatory retirement at the age of sixty without any exception;

- d) The bill seeks to increase job vacancies available to Kenyan citizens below the age of sixty years; and
- e) The bill also seeks to address the issue of an officer acting in a position for more than six months.

7.0 CLAUSE BY CLAUSE CONSIDERATION OF THE BILL

CLAUSE 1- SHORT TITLE

Clause 1 relates to the short title.

The Committee observed that there were no stakeholder comments received on this provision and recommends that the Clause be agreed to, as it appears in the Bill.

CLAUSE 2- AMENDMENT OF SECTION 34 OF NO.10 OF 2017

Clause 2 of the Bill seeks to insert a new subsection to section 34 of the Act. The new subsection 3 (A) states—

“(3A) upon the expiry of six months, an officer appointed under subsection (3) shall not be entitled to any acting allowance.”

The Committee observed that there were no stakeholder comments received on this provision. The Committee further observed that—

- (a) The proposed clause is punitive in nature because it punishes an officer who has been appointed under subsection (3). The proposal does not take into account officers acting in a temporary capacity such as study leave, secondment, leave of absence or such other leave as the Commission may approve;
- (b) The clause does not state whether the officer ceases to act and if that is the case what happens to the acting position;
- (c) The proposed clause does not substantively address the issue of one in an acting capacity as a temporary measure for an appointing authority to recruit and substantively fill the position. The clause should be amended to buttress subsection (3) as it already provides that an officer may be appointed in an acting capacity for a period of at least thirty days but not exceeding a period of six months. Therefore, the committee recommended for a new subsection (3A) that will mandate an appointing authority to fill a vacant position within six months.

The Committee recommends that the Bill be amended as follows—

That clause 2 of the Bill be amended by deleting the proposed new subsection (3A) and substitute with the following new clause (3A) —

“(3A) An appointing authority who fails to fill a vacant position under subsection (3) within six months, commits an offence and is on conviction liable to imprisonment for a term of not less than three months.”

Justification

(To mandate an appointing authority to fill a vacant position within the stipulated timelines as provided in the Act.)

CLAUSE 3- AMENDMENT OF SECTION 80 OF NO.10 OF 2017

Clause 3 of the Bill seeks to amend section 80 of the Public Service Commission in order to provide for the age of retirement in statute. The proposal also seeks to lock out retired employees from re-entering the service on account of possessing rare knowledge, skills and competencies or a retired officer is willing to be engaged on contract or the officer's performance is not impaired by age.

The Committee observed that there were no stakeholder comments received on this provision. The Committee further observed that—

- (a) the proposed amendment is timely as it will increase job vacancies available for the youth. This will also task the Public Service Commission and other appointing authorities to come up with succession plans for jobs that require rare technical skills;
- (b) the executive has a tendency of extending the tenure of persons on account of possession of rare knowledge or skills;
- (c) with regard to Constitutional commissions, many retirees who are over seventy years are recycled into the said commissions. Members felt that such positions can be filled by able persons who are less than sixty years who have the requisite knowledge;
- (d) the provisions proposed will unplug the heavy wage bill the country is currently facing

The Committee recommends that the Bill be amended as follows—

Amend section 2 of the Act by deleting the definition of “public officer” and substitute therefor the following new definition—

“public officer” means any person other than a state officer who holds a public office or any person, other than a State Officer, who holds a public office save for state officers who hold elective positions.

Justification

(To provide that a public officer is one who includes a person who holds a constitutional office and as such an appointing authority cannot appoint a person over the statutory limit. This amendment seeks to extend the retirement age to persons holding state offices.)

Further amendment to clause 3 by deleting the proposed paragraph (i) and substitute therefor the following new paragraph—

“(i) in subsection (1) by deleting the words “as may be prescribed in the regulations” and substituting therefor the words “of fifty five years and for persons with disabilities the mandatory age of sixty years”

Justification

(To amend the mandatory age from sixty years to fifty five years and to provide for a retirement age for persons with disabilities. This is in line with the Members proposal to increase job vacancies available to the public especially the Kenyan youth.)

In section 80 by inserting the following paragraph immediately after paragraph (a)-

“(aa) a person who appoints a retired public officer in a state of public office shall commit an offence and shall on conviction, be liable to imprisonment for a term not less than three months.”

Justification

(To provide for punitive measure for any appointing authority who appoints a state officer or a public officer who has attained the mandatory age of retirement.)

CLAUSE 4- AMENDMENT OF NO.10 OF 2017

Clause 4 of the Bill provides for a saving and transition provision. The transition provision is to cater for persons who are over sixty years and are currently serving in the service or any other public authority.

The Committee observed that there were no stakeholder comments received on this provision. The Committee further observed that the provision is essential as there are persons serving in the public service who are above fifty five years and sixty years for persons with disabilities.

8.0 COMMITTEE RECOMMENDATION

The Committee recommends that the Bill be amended and agreed to as proposed.

SIGNED 
HON. PAUL KOINANGE, MP CHAIRPERSON

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

DATE 18/11/2020

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

ATTENDANCE SCHEDULE


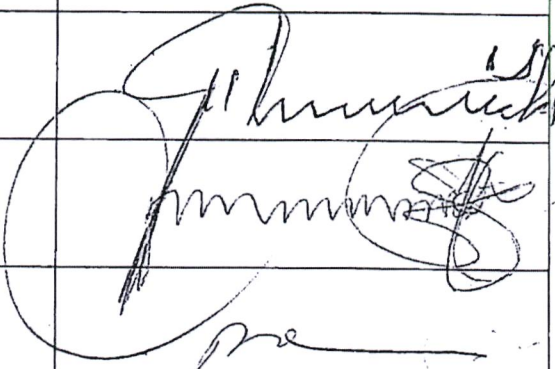
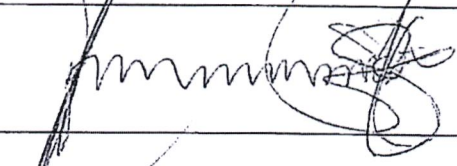

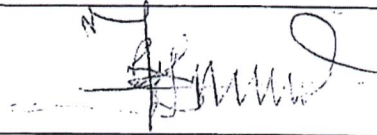
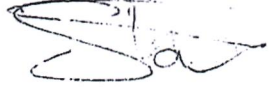
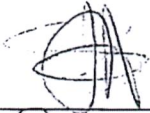
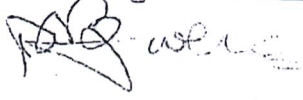
DATE: 22nd October, 2019



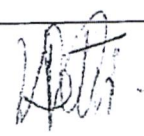
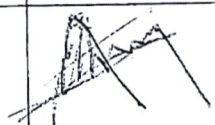
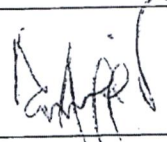
TIME: 11.30 a.m.


VENUE: Main Chamber

AGENDA: Adoption of the following reports on Bills:-

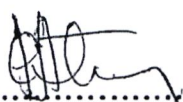
- a. The County Governments (Amendment) Bill, 2018 (Senate Bill No. 13 of 2018)
- b. The Narcotic Drugs & Psychotropic Substances (Control) (Amendment) Bill (No. 7 of 2019)
- c. The National Disaster Management Authority Bill (National Assembly Bill No. 10 of 2019)
- d. The Public Service Commission (Amendment) Bill (National Assembly Bill No. 27 of 2019)
- e. The Public Service (Values & Principles) (Amendment) Bill (National Assembly Bill No. 17 of 2019)

NO.	NAME	SIGNATURE
1.	Hon. Paul Koinange, MP - Chairperson	
2.	Hon. John Waluke, MP - Vice Chairperson	
3.	Hon. Wafula Wamunyinyi, MP	
4.	Hon. George Peter Kaluma, MP	
5.	Hon. Dr. Makali Mulu, MP	
6.	Hon. George Theuri, MP	
7.	Hon. Aduma Owuor, MP	
8.	Hon. Didmus Wekesa Barasa Mutua, MP	

		✓
10.	Hon. Marselino Malimo Arbelle, MP	✓
11.	Hon. Dr. Tecla Chebet Tum, MP	
12.	Hon. Josphat Kabinga Wachira, MP	✓
13.	Hon. Nimrod Mbithuka Mbai, MP	✓
14.	Hon. Ngunjiri Wambugu, MP	✓
15.	Hon. Abdi Omar Shurie, MP	
16.	Hon. Halima Mucheke, MP	✓
17.	Hon. Peter Masara, MP	
18.	Hon. Oku Kaunya, MP	
19.	Hon. Ahmed Kolosh Mohamed, MP	

Signed..........Date..... 22/10/19

George Gazemba, ACI Arb, CPM,
Principal Clerk Assistant,
Departmental Committee on Administration and National Security.

Signed..........Date..... 21/10/19

**MINUTES OF THE FORTY-SEVENTH SITTING OF THE
DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND
NATIONAL SECURITY HELD ON TUESDAY, 22ND OCTOBER, 2019 AT
11.30 A.M. IN THE MAIN CHAMBER, MAIN PARLIAMENT BUILDING**

PRESENT-

1. Hon. John Waluke, MP *Vice – Chairperson (chairing)*
2. Hon. Wafula Wamunyinyi, MP
3. Hon. Peter George Kaluma, MP
4. Hon. Dr. Makali Mulu, MP
5. Hon. George Theuri, MP
6. Hon. Aduma Owuor, MP
7. Hon. Abdi Omar Shurie, MP
8. Hon. Peter Masara, MP
9. Hon. Oku Kaunya, MP
10. Hon. Ahmed Kolosh Mohamed, MP
11. Hon. Dr. Tecla Chebet Tum, MP
12. Hon. Didmus Wekesa Barasa Mutua, MP

ABSENT-

1. Hon. Paul Koinange, MP *Chairperson*
2. Hon. Geoffrey Kingagi Muturi, MP
3. Hon. Ngunjiri Wambugu, MP
4. Hon. Josphat Kabinga Wachira, MP
5. Hon. Halima Mucheke, MP
6. Hon. Marselino Malimo Arbelle, MP
7. Hon. Nimrod Mbithuka Mbai, MP

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

1. Mr. Joshua Ondari - Clerk Assistant
2. Ms. Brigitta Mati - Legal Counsel
3. Mr. Ian Otieno - Audio Officer
4. Ms. Naserian Kare - Serjeant-at-Arms Officer
5. Mr. James Oloo - Support Staff

MIN No. 164/2019:-

PRELIMINARIES

The chairperson officially welcomed Members to the meeting at 11.50 a.m. after prayers were said.

MIN No. 165/2019:-

**MEETING WITH THE CABINET
SECRETARY, MINISTRY OF INTERIOR
AND CO-ORDINATION OF NATIONAL
GOVERNMENT TO RESPOND QUESTIONS**

During the meeting, the Committee was informed that the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government had requested to appear in person on Thursday, 24th October, 2019 to respond to questions as on Tuesday, 22nd October, 2019 he would be chairing a Cabinet meeting on project implementation.

MIN No.166 /2019:-

**CONSIDERATION OF DRAFT REPORTS ON
BILLS**

**REPORT ON THE PUBLIC SERVICE COMMISSION (AMENDMENT)
BILL, 2019**

The Committee considered its report on the Bill and agreed as follows-

CLAUSE 1- SHORT TITLE

The Committee observed that there were no stakeholder comments received on this provision and recommends that the Clause agreed to, as it appears in the Bill.

CLAUSE 2- AMENDMENT OF SECTION 34 OF NO.10 OF 2017

Clause 2 of the Bill seeks to insert a new subsection to section 34 of the Act. The new subsection 3 (A) states—

“(3A) upon the expiry of six months, an officer appointed under subsection (3) shall not be entitled to any acting allowance.”

The Committee observed that there were no stakeholder comments received on this provision. The Committee further observed as follows—

- (a) The proposed clause is punitive in nature because it punishes an officer who has been appointed under subsection (3). The proposal does not take into account officers acting in a temporary capacity such as study leave, secondment, leave of absence or such other leave as the Commission may approve;
- (b) The clause does not state whether the officer ceases to act and if that is the case what happens to the acting position;
- (c) The proposed clause does not substantively address the issue of one in an acting capacity as a temporary measure for an appointing authority to recruit and substantively fill the position. The clause should be amended to buttress subsection (3) as it already provides that an officer may be appointed in an acting capacity for a period of at least thirty days but not exceeding a period of six months. Therefore, the committee recommended for a new subsection (3A) that will mandate an appointing authority to fill a vacant position within six months.

The Committee recommends that the Bill be amended as follows—

That clause 2 of the Bill be amended by deleting the proposed new subsection (3A) and substitute with the following new clause (3A) —

“(3A) An appointing authority who fails to fill a vacant position under subsection (3) within six months, commits an offence and is on conviction liable to imprisonment for a term of not less than three months.”

Justification

To mandate an appointing authority to fill a vacant position within the stipulated timelines as provided in the Act

CLAUSE 3- AMENDMENT OF SECTION 80 OF ACT No.10 OF 2017

The Committee observed that there were no stakeholder comments received on this provision. The Committee further observed as follows—

- (a) the proposed amendment is timely as it will increase job vacancies available for the youth. This will also task the Public Service Commission and other appointing authorities to come up with succession plans for jobs that require rare technical skills;
- (b) the executive has a tendency of extending the tenure of persons on account of possession of rare knowledge or skills;

- (c) with regard to Constitutional commissions, many retirees who are over seventy years are recycled into the said commissions. Members felt that such positions can be filled by able persons who are less than sixty years who have the requisite knowledge;
- (d) the provisions proposed will unclog the heavy wage bill the country is currently facing

The Committee recommends that the Bill be amended as follows—

Amend section 2 of the Act by deleting the definition of “*public officer*” and substitute therefor the following new definition—

“public officer” means any person other than a state officer who holds a public office or any person, other than a State Officer, who holds a public office save for state officers who hold elective positions’

Justification

To provide that a public officer is one who includes a person who holds a constitutional office and as such an appointing authority cannot appoint a person over the statutory limit. This amendment seeks to extend the retirement age to persons holding state offices.

Further amendment to clause 3 by deleting the proposed paragraph (i) and substitute therefor the following new paragraph—

“(i) in subsection (1) by deleting the words “as may be prescribed in the regulations” and substituting therefor the words “of fifty five years and for persons with disabilities the mandatory age of sixty years”

Justification

To amend the mandatory age from sixty years to fifty five years and to provide for a retirement age for persons with disabilities. This is in line with the Members proposal to increase job vacancies available to the public especially the Kenyan youth.

In section 80 by inserting the following paragraph immediately after paragraph (a)-

“(aa) a person who appoints a retired public officer in a state of public office shall commit an offence and shall on conviction, be liable to imprisonment for a term not less than three months.”

Justification

To provide for punitive measure for any appointing authority who appoints a state officer or a public officer who has attained the mandatory age of retirement.

CLAUSE 4- AMENDMENT OF ACT No. 10 OF 2017

The Committee observed that there were no stakeholder comments received on this provision. The Committee further observed that the provision is essential as there are persons serving in the public service who are above fifty-five years and sixty years for persons with disabilities.

RECOMMENDATION

The Committee recommends that the Bill be amended and agreed to as proposed. The report was unanimously adopted by the Committee after having been proposed and seconded by the Hon. Peter Masara, MP and the Hon. Peter Kaluma, MP respectively.

Consideration and adoption of the following draft reports was deferred to the next sitting:

- a) Report on the County Governments (Amendment) Bill (Senate Bill No. 13 of 2018)
- b) Report on the National Disaster Management Authority Bill, 2019
- c) Report on the Public Service (Values & Principles) (Amendment) Bill, 2019

The Committee was informed that Hon. Mohamed Ali, MP (Nyali Constituency) had withdrawn his Bill on the Narcotic Drugs and Psychotropic Substances Control (Amendment) Bill, 2019.

MIN No. 167/2019:-

ANY OTHER BUSINESS

The Vice-Chairperson informed the Committee as follows-

- (i) The Committee was scheduled to hold public hearings on Refugees Bill, 2019 in Nakuru County on Wednesday 23rd October, 2019 and Garissa County on Thursday, 24th October, 2019. He requested Members to confirm availability to facilitate planning.
- (ii) The Committee had been invited by Inter-Parliamentary Union for a the African Regional Parliamentary Conference, Comprehensive Responses to

Refugee situations – Effective Parliamentary Approaches which was scheduled to take place in Midrand, South Africa, from 11th to 13th October, 2019. The Committee nominated the following Members to attend:

1. Hon. Didmus Barasa, MP – Leader of Delegation
2. Hon. Dr. Makali Mulu, MP
3. Hon. George Theuri, MP
4. Hon. Peter Masara, MP
5. Hon. Wambugu Ngunjiri, MP
6. Hon. Halima Mucheke, MP

MIN No. 168/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at ten minutes past noon until a date and time to be communicated to Members.

Signed.....
Chairperson

Date..... 29 Oct 2019 .

REPUBLIC OF KENYA



**THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - THIRD SESSION**

In the matters of consideration by the National Assembly:-

1. The Public Service (Values and Principles) (Amendment) Bill (National Assembly Bill No. 17 of 2019)
2. The Public Service Commission (Amendment) Bill (National Assembly Bill No. 27 of 2019)

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Public Service (Values and Principles) (Amendment) Bill (National Assembly Bill No. 17 of 2019) seeks to amend the Public Service (Values and Principles) Act to require all state organs in the National and County Governments and State Corporations to submit annual reports on details of the human resource in Constitutional Commissions, Independent Offices, County Public Service Boards and County Assembly Service Boards.

The Public Service Commission (Amendment) Bill (National Assembly Bill No. 27 of 2019) seeks to amend the Public Service Act 2017 to prescribe the mandatory retirement age of sixty years in the Act. The Public Service Act, 2017 provides that the mandatory age is to be prescribed in the regulations.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the Departmental Committee on Administration and National Security for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127, the Committee invites interested members of the public to submit any representations they may have on the said Bills. The Submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Wednesday, 15th May, 2019 at 5.00 pm.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



**THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - THIRD SESSION**

In the matters of consideration by the National Assembly:-

1. The Labour Relations (Amendment) Bill (National Assembly) Bill, 2019
2. The National Drought Management Authority (Amendment) Bill (National Assembly) Bill, 2019

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Labour Relations (Amendment) Bill (National Assembly) Bill, 2019 seeks to amend the Labour Relations Act, 2007 in order to set out the requirements that must be met by a trade union prior to calling and holding a strike in any essential services sector.

The National Drought Management Authority (Amendment) Bill (National Assembly) Bill, 2019 seeks to amend the National Drought Management Act, 2016 by amending the sections providing for the establishment of the coordinating committees and establishment of the management of the National Drought Emergencies Fund in the Act in order to enable the enactment of the National Drought Emergency Fund, Regulations under the Public Finance Management Act, 2012.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the Departmental Committee on Labour and Social Welfare for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127, the Committee invites interested members of the public to submit any representations they may have on the said Bills. The Submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Wednesday, 15th May, 2019 at 5.00 pm.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



**THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - THIRD SESSION**

In the matters of consideration by the National Assembly:-

1. The National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No. 5 of 2019)
2. The Kenya Food and Drugs Authority Bill (National Assembly Bill No. 31 of 2019)

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No. 5 of 2019) seeks to amend the National Hospital Insurance Fund Act (Cap 255) to provide an opportunity for persons who have relied from employment to continue standard contribution to the Board, equivalent to the contribution the person was paying immediately before retirement.

The Kenya Food and Drugs Authority Bill (National Assembly Bill No. 31 of 2019) seeks to establish the Kenya Food and Drugs Authority to provide for the regulation and management of food, drugs and chemical substances; to provide for the regulation of medical devices and other health technologies; to give effect to the principles and objects of devolved government in food safety regulation and for connected purposes.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the Departmental Committee on Health for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127, the Committee invites interested members of the public to submit any representations they may have on the said Bills. The Submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Wednesday, 15th May, 2019 at 5.00 pm.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



**THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - THIRD SESSION**

In the matters of consideration by the National Assembly:-

1. The Public Finance Management (Amendment) Bill (National Assembly) Bill, 2019
2. The Sectional Properties Bill (National Assembly) Bill, 2019

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Public Finance Management (Amendment) Bill, 2019 seeks to provide that a public entity may only deposit funds and invest surplus funds in government owned banks or a bank owned by the public through cooperative societies. The Bill further defines a government owned bank as bank in which the government owned or holds at least twenty percent of the Bank's share capital. The Bill also prohibits the practice of banks paying compensation to agents for procuring the deposit of funds from public bodies.

The Sectional Properties Bill, 2019 seeks to provide for the division of buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as tenants in common and to provide for the use and management of the units and common property.

The Public Finance Management (Amendment) Bill, 2019 and the Sectional Properties Bill, 2019 have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the Departmental Committee on Finance & National Planning and Departmental Committee on Lands respectively, for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127, the respective Committees invite interested members of the public to submit any representations they may have on the said Bills. The Submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Wednesday, 15th May, 2019 at 5.00 pm.

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CLERK OF THE NATIONAL ASSEMBLY