



*Paper Laid
By Hon. S. Chepkong'o
Chairperson of the D.C on Justice
and Legal Affairs on
Thursday, 23.04.2015
(Morning) Mmw*

**PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT
THIRD SESSION (2015)**



**THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS
REPORT
ON THE FAIR ADMINISTRATIVE ACTION BILL, 2015**

**CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI.**

APRIL, 2015

1. **PREFACE**

Hon Speaker,

On behalf of the Departmental Committee on Justice and Legal Affairs, and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the report of the Committee on the Fair Administrative Action Bill, 2015.

The Committee derives its mandate from Standing Order No. 216(5) which provides as follows:-

- a) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- b) *To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
- c) *To study and review all legislation referred to it;*
- d) *To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;*
- e) *To investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister; and*
- f) *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.*

The Second Schedule of the Standing Orders on Departmental Committees further states the subjects which the Committee is supposed to deal with while discharging its mandate. The subjects are as follows:-

- (a) Constitutional affairs;
- (b) The administration of law and Justice, including the Judiciary, public prosecutions, elections, ethics, integrity and anti-corruption; and
- (c) Human rights.

1.1. Committee Membership

The Committee was constituted on Thursday, 16th May, 2013 and comprises the following:-

- 1. Hon. Samuel Chepkong'a, M.P. – Chairperson
- 2. Hon. Priscilla Nyokabi, M.P. – Vice Chairperson
- 3. Hon. Njoroge Baiya, M.P.
- 4. Hon. Muriithi Waiganjo, M.P.
- 5. Hon. Ndirangu Waihenya, M.P.
- 6. Hon. Florence Kajuju, M.P.
- 7. Hon. Kang'ata Irungu, M.P.
- 8. Hon. Benson Mutura, M.P.
- 9. Hon. John Njoroge Chege, M.P.
- 10. Hon. William Cheptumo, M.P.
- 11. Hon. Mohamed Abdi Haji, M.P.
- 12. Hon. Kangongo Bowen, M.P.
- 13. Hon. Sammy Koech, M.P.
- 14. Hon. Moses Cheboi, M.P.
- 15. Hon. Paul Bii, M.P.
- 16. Hon. Charles Gimose, M.P.
- 17. Hon. Johanna Ng'eno, MP.
- 18. Hon. Boniface Otsiula, M.P.
- 19. Hon. David Ouma, M.P.
- 20. Hon. Neto Agostinho, M.P.
- 21. Hon. Kaluma Peter, M.P.
- 22. Hon. Fatuma Ibrahim Ali, M.P.
- 23. Hon. Ben Momanyi Orari, M.P.
- 24. Hon. Tom J. Kajwang', M.P.
- 25. Hon. (Bishop) Mutua Mutemi, M.P.
- 26. Hon. Olago Aluoch, M.P.
- 27. Hon. (Dr) Christine Oduor Ombaka, M.P.
- 28. Hon. Munuve G. Mati, M.P.
- 29. Hon. Mwamkale William Kamoti, M.P.

1.3. First Reading of the Fair Administrative Action Bill

The Fair Administrative Action Bill was read for the first time on 18th March, 2015 and immediately committed to the Departmental Committee on Justice and Legal Affairs for scrutiny in line with Standing Order 127 (1) which states as follows:-

“A Bill having been read a First Time shall stand committed to the relevant Departmental Committee without question being put to it”

1.4. Public participation in the consideration of the Bill

Standing Order 127(3) states as follows:-

“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”

Pursuant to this Standing Order, the Committee invited the public through the Daily Nation and Standard newspapers of 20th March, 2015 to make their representations on the Bills. Only the Commission on Administrative Justice (CAJ) submitted a memorandum on the Bill which has been taken into account while making amendments to the Bill.

1.5. Sittings of the Committee and adoption of the report

The Committee held two (2) sittings in the course of considering the Bill. The first sitting was held on 22nd April, 2015 when the Committee discussed and agreed on amendments to the Bill. The second sitting was held on 23rd April, 2015 when the Committee adopted its report.

The report was adopted unanimously.

1.6. Acknowledgement

The Chairperson wishes to commend Committee Members for their devotion and commitment to duty which made the consideration of this Bill a reality. The Committee further wishes to thank the Offices of the Speaker and Clerk of the National Assembly which provided overall guidance and technical support without which its work would not have been possible.

Hon. Speaker Sir,

On behalf of the Committee, I now wish to table this report in the House.

SIGNED.....

**Hon. Samuel Chepkong'a, MP
(Vice Chairperson)**

Departmental Committee on Justice and Legal Affairs

DATE.....*22nd April, 2015*.....

CLAUSE 2

THAT, clause 2 of the Bill be amended—

- (a) by deleting the definition of “administrative action” and replacing with a new definition as follows—

““administrative action” includes the powers functions and duties exercised by authorities or quasi-judicial tribunals or any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates”;

- (b) by deleting the definition of “administrator”;
- (c) in the definition of “decision” by deleting the words “of an administrative nature” appearing immediately after the words “decision of”;
- (d) by deleting the definition of “disciplined forces”;
- (e) in the definition of “empowering provision” by deleting the word “was” appearing immediately after the word “action” and substituting therefor the words “is taken or”;
- (f) by deleting the definition of “tribunal” and replacing with a new definition as follows—

““tribunal” means a tribunal established under any written law.”;

CLAUSE 3

THAT, clause 3 of the Bill be amended—

- (a) in subclause (1) by inserting the words “or any person whose action, omission or decision affects the legal rights or interests of any person to whom such action, omission or decision relates” immediately after the word “law”;
- (b) by deleting subclause (2);

CLAUSE 4

THAT, the bill be amended by deleting clause 4 and replacing with a new clause 4 as follows—

Repeal of Section 8 administrative action that is expeditious, and 9 of efficient, lawful, reasonable and Cap. 26 procedurally fair. repealed

(2) A person has the right to be given written reasons for any action that is likely to adversely affect his or her fundamental freedoms.

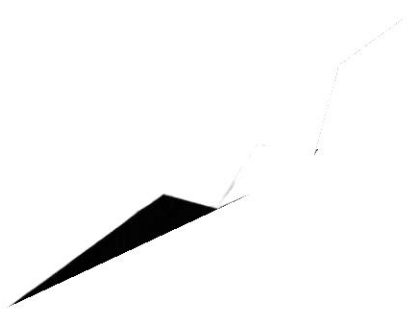
(3) In any case which adversely affects or is likely to adversely affect the right or fundamental freedom of any person the decision-making authority shall for the purposes of subsection (1), give a person affected by the decision—

- (a) prior and adequate notice of the nature and purpose of the proposed administrative action;
- (b) a reasonable opportunity to make representations and be heard in that regard;
- (c) adequate notice of any right of review or internal appeal, where applicable;
- (d) a statement of reasons pursuant to section 6;
- (e) a statement of the right to legal representation, where applicable;
- (f) a statement of the right to cross-examine or ask questions to persons giving adverse evidence, where applicable; and
- (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

(4) In order to give effect to the right to fair administrative action, the decision-making authority shall accord the person referred to in subsection (1) an opportunity to—

- (a) appear in person, whether alone or in the company of an expert of their

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choice;

- (b) prepare and state his or her case in answer to any matter in question
- (c) cross-examine or ask questions to persons giving adverse oral evidence; and
- (d) postpone or adjourn the proceedings where necessary to ensure a fair hearing.

(5) Nothing in this section limits the rights of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings

(6) Where a decision-making authority is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the decision-making authority may act in accordance with that different procedure.”

CLAUSE 5

THAT, clause 5 of the Bill be amended in subclause (2) by—

- (a) deleting the words “decision of the administrator” appearing immediately after the words “challenge the” in paragraph (a) and substituting therefor the words “administrative action or decision”;
- (b) deleting the words “administrator’s decision” appearing immediately after the words “reviews of the” in paragraph (b) and substituting therefor the words “administrative action or decision”;

CLAUSE 6

THAT, clause 6 of the Bill be amended in subclause (1) by deleting the words “may, pursuant to Article 35 of the Constitution, or any written law relating to freedom of information, require the administrator to supply him or her” appearing immediately after the word “action” and substituting therefor the words “has a right to be supplied”;

CLAUSE 7

THAT, the Bill be amended by deleting clause 7;

CLAUSE 8

THAT, clause 8 of the Bill be amended—

- (a) in subclause (1) by deleting the words “in the exercise of the Court’s supervisory jurisdiction under Article 165 (7) of the Constitution” appearing immediately after the words “Court in”;
- (b) in subclause (2) by deleting the words “a decision of an administrator” appearing immediately after the words “aggrieved by a” and substituting therefor the words “an administrative action or decision”;
- (c) in subclause (3)—
 - (i) by deleting the word “administrator” appearing in paragraph (a) and substituting therefor the word “person”;
 - (ii) by inserting a new subparagraph immediately after subparagraph (iv) of paragraph (a) as follows—

“(v) denied the person to whom the administrative action relates reasonable opportunity to state his or her case or be heard.”
 - (iii) by deleting the words “or took into account irrelevant considerations to the prejudice of the applicant’s rights” appearing immediately after the word “considerations” in paragraph (g);
 - (iv) by inserting new paragraphs immediately after paragraph (m) as follows—
 - “(n) the administrative action is unreasonable;
 - (o) the administrative action is not proportionate to the interests or rights affected;
 - (p) the administrative action violates the legitimate expectations of the person to whom it relates;
 - (q) the administrative action is unfair; or
 - (r) the administrative action is taken or made in abuse of power.”

CLAUSE 9

THAT, clause 9 of the Bill be amended—

- (a) in subclause (1) by deleting the words “pursuant to section 8” appearing immediately after the word “review”;
- (b) in subclause (2) by deleting the words “or tribunal” appearing immediately after the word “Court”;
- (c) by deleting subclause (3);
- (d) by inserting new subclauses immediately after subclause (3) as follows—

“(4) where the relief sought is a quashing order in respect of any judgment, order, conviction, or other proceeding, the date when the ground of the application first arose shall be taken to be the date of judgment, order, conviction or proceeding.

(5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.”

CLAUSE 10

THAT, clause 10 of the Bill be amended by—

- (a) deleting subclause (1) and replacing with a new subclause (1) as follows—

“(1) An application for judicial review shall be made by notice of motion to the High Court and shall be heard and determined without undue regard to procedural technicalities.”;

- (b) deleting subclause (3);

CLAUSE 11

THAT, clause 11 of the Bill be amended—

- (a) in subclause (1)—

- (i) by deleting the words “pursuant to 8(1)” appearing immediately after the word “review”;

- (ii) by deleting the words "excess of its jurisdiction or from engaging in an activity beyond the scope of its powers" appearing immediately after the words "acting in" in paragraph (c) and substituting therefor the words "a particular manner";
- (b) in subclause (2) by inserting the words "and other monetary compensation" immediately after the word "costs" appearing in paragraph (d);

CLAUSE 12

THAT, the Bill be amended by deleting clause 12;

CLAUSE 13

THAT, the Bill be amended by deleting clause 13;

NEW CLAUSE

THAT, the Bill be amended by inserting a new clause immediately after clause 14 as follows—

Repeal of **15.** Section 8 and 9 of the Law Reform
Section 8 Act, Cap. 26 are hereby repealed
and 9 of
Cap. 26