



REPUBLIC OF KENYA
TWELFTH PARLIAMENT – FIFTH SESSION
THE NATIONAL ASSEMBLY
VOTES AND PROCEEDINGS
SPECIAL SITTING
WEDNESDAY, SEPTEMBER 01, 2021

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Honourable Speaker

4. **MESSAGES**

The Speaker conveyed the following Message –

On Referral of the Refugees Bill, 2019 by H.E. the President pursuant to Article 115 of the Constitution

“Honourable Members, You may recall that the National Assembly passed the **Refugee Bill (National Assembly Bill No. 62 of 2019)**. The Bill was sponsored by the Leader of the Majority Party. Following its passage, I did present the Bill for Assent to H.E. the President in accordance with the provisions of the Constitution and our Standing Orders. However, in exercise of the powers conferred under Article 115(1) (b) of the Constitution, H.E. the President, by way of a Memorandum dated 11th August, 2021, has referred the Bill back to the National Assembly for reconsideration.

Honourable Members, in his Memorandum, H.E. the President has expressed reservations on following clauses of the Bill-

- 1) **Clause 2 of the Bill**, which defines the term, “transit centre”. H.E. the President recommends that the definition of “transit centre” be amended to also include a prison, immigration detention centre, police station, remand home or any other similar place that may be designated as a transit centre.

Amongst the reasons for his reservations, H.E. the President notes that the effect of the omission of the proposed definition is in conflict with section 4 and 12(3)(g) of the Persons Deprived of Liberty Act of 2014 which provides that detention facilities may be used as holding centres for refugees and asylum seekers where there is need for humanitarian assistance.

- 2) **Clause 8 of the Bill**, which provides for the establishment and functions of the Commissioner for Refugee Affairs. H.E. the President observes that the proposal does not provide for the empowerment of the Commissioner for Refugee Affairs to promote, in as far as possible and where applicable, the procurement or purchase of local products and services in support of refugee intervention and support programmes. This leaves room for

importation of goods that would otherwise be locally available therefore failing to benefit the local economy.

- 3) **Clause 18 of the Bill**, which proposes that the Commissioner for Refugee Affairs may revoke the status of a refugee at any time after recognition as a refugee if the refugee has committed a war crime or a crime against humanity. In his reservations, H. E. the President observes that the clause when read together with clause 17 of the Bill causes confusion as the revocation of refugee status is materially the same as the cancellation of refugee status.
- 4) **Clause 28 of the Bill**, which provides for Rights of and obligations of Refugees, does not take into account the Government's policy in which refugees from Partner States of the East African Community can benefit from an alternative immigration status which may allow them to obtain work permits.
The new policy is intended to facilitate the full implementation of the 2010 East African Community Common Market Protocol and substantially reduce the refugee population in Kenya while simultaneously operating as a durable and more practical solution to the protracted refugee situations.
- 5) **Clause 31 of the Bill**, which provides for the requirement for refugees to reside in designated areas, authorizes the Commissioner for Refugee Affairs to require any refugee in one designated area to move to another designated area. H.E the President observes that the clause fails to make any reference to refugees who may be residing outside designated areas and does not make any provisions regarding the Commissioner's control over them.

Honourable Members, having made his reservations which are explained in more detail in his Memorandum to the House, H.E. the President now requests the National Assembly to reconsider the Bill in accordance with the provisions of Article 115(2) (a) of the Constitution.

Honourable Members, Standing Order 154(2) of the National Assembly Standing Orders requires the House to consider the President's Reservations **within twenty one (21) days** of the date when the House next meets upon receipt of the Memorandum. In this regard, H.E the President's Reservations, as contained in his Memorandum, now stand committed to the Departmental Committee on Administration and National Security for consideration. The Committee should table its report soonest to allow the House to consider the President's Reservations within the set timelines.

Honourable Members, may I at this early stage, remind the House of the *Speaker's Communication* of July 28, 2015 concerning the consideration of the President's reservations to a Bill and amendments thereto. I particularly draw your attention to my guidance, that the voting threshold for the passage of amendments proposed by a Committee or an individual Member that have the effect of **fully accommodating** the President's reservations is **a simple majority** as contemplated under Article 122(1) of the Constitution as read together with Article 115(2)(a).

On the other hand, an amendment that **does not fully accommodate** the President's reservations, or indeed one that has the effect of a total override of the President's reservations, including negating his proposed text, would require a **two-thirds voting** threshold to be passed in keeping with the provisions of Article 115(4) of the Constitution.

Honourable Members, I wish to further remind the House and the Committee that only **Clauses (2), (8), (18), (28) and (31) of the Bill** will be considered. I therefore direct the Clerk to circulate the Memorandum of H.E. the President to all Members so that they familiarize themselves with its contents. **I thank you!**"

5. PAPERS LAID

The following Papers were laid on the Table of the House –

- (a) The 2020/2021 Annual Report to Parliament under Article 153 of the Constitution from the Ministry of East African Community and Regional Development;
- (b) Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30th June, 2018 and the certificates therein –
 - (i) Kiirua Technical Training Institute, and
 - (ii) National Water Harvesting and Storage Authority;
- (c) Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30th June, 2019 and the certificates therein –
 - (i) Kenya Maritime Authority;
 - (ii) Communications Authority of Kenya – Universal Service Fund;
 - (iii) National Council for Population and Development;
 - (iv) South Nyanza Sugar Company Limited;
 - (v) Kenya Industrial Research and Development Institute;
 - (vi) Kenya School of Government;
 - (vii) Agriculture and Food Authority;
 - (viii) Sports Kenya;
 - (ix) Chuka University;
 - (x) Kenyatta International Convention Centre (KICC);
 - (xi) National Water Harvesting and Storage Authority;
 - (xii) Rural Electrification and Renewable Energy Corporation;
 - (xiii) Kenya Water Towers Agency;
 - (xiv) Kenya Bureau of Standards;
 - (xv) New Partnership for Africa's Development;
 - (xvi) Kenya Leather Development Council; and
 - (xvii) Export Processing Zone Authority.

(The Leader of the Majority Party)

6. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT AS MEMBERS OF THE TEACHERS SERVICE COMMISSION

Motion made and question proposed –

THAT, taking into consideration the findings of the Departmental Committee on Education and Research in its Report on the Vetting of Nominees for appointment to the Teachers Service Commission, *laid on the Table of the House on Wednesday, September 01, 2021*, and pursuant to the provisions of Article 250(2)(b) of the Constitution, section 8(8) of the Teachers Service Commission Act, 2012 and sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act, 2011, this House **approves** the appointment of the following persons as Members of the **Teachers Service Commission** –

- | | | | |
|--------------|-----------------------------------|----------|--------------------|
| (i) | Dr. Nicodemus Ojuma Anyang | - | Member; |
| (ii) | Ms. Christine K. Kahindi | - | Member; |
| (iii) | Ms. Sharon Jelagat Kisire | - | Member; |
| (iv) | Ms. Annceta G. Wafukho | - | Member; and |
| (v) | Mr. Salesa Adano Abudo | - | Member. |

(The Chairperson, Departmental Committee on Education & Research)

Debate arising;

Rising in her place on a Point of Order pursuant to Standing Order 95, the Member for Wajir County (Hon. Fatuma Gedi) claimed to move, *‘THAT the Mover be now called upon to reply’*;

And the Speaker acceding to the claim,

Question put and agreed to;

Thereupon the mover replied;

Question put and agreed to.

Resolved accordingly.

7. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT AS MEMBERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

Motion made and question proposed –

THAT, taking into consideration the findings of the Departmental Committee on Justice and Legal Affairs in its Report on the Approval Hearing for Appointment of *Ms. Juliana Whonge Cherera, Mr. Francis Mathenge Wanderi, Ms. Irene Cherop Masit and Mr. Justus Abonyo Nyang’aya* as Members of the Independent Electoral and Boundaries Commission, *laid on the Table of the House on Wednesday, September 01, 2021*, and pursuant to the provisions of Article 250(2)(b) of the Constitution, section 7A of the Independent Electoral and Boundaries Commission Act, 2011 and section 8 (1) of the Public Appointments (Parliamentary Approval Act, 2011, this House **approves** the appointment of the following persons as Members of the Independent Electoral and Boundaries Commission –

- (i) **Ms. Juliana Whonge Cherera** - **Member;**
- (ii) **Mr. Francis Mathenge Wanderi** - **Member;**
- (iii) **Ms. Irene Cherop Masit** - **Member; and**
- (iv) **Mr. Justus Abonyo Nyang’aya** - **Member.**

(The Chairperson, Departmental Committee on Justice & Legal Affairs)

Debate arising;

Rising in his place on a Point of Order pursuant to Standing Order 95, the Minority Party Whip (Hon. Junet Nuh) claimed to move, *‘THAT the Mover be now called upon to reply’*;

And the Speaker acceding to the claim,

Question put and agreed to;

Thereupon the mover replied;

Question put and agreed to.

Resolved accordingly.

And the time being one minute past five O’clock, the Speaker adjourned the House without Question put pursuant to the Standing Orders.

8. HOUSE ROSE - at one minute past five O’clock

MEMORANDUM

The Speaker will take the Chair on
Tuesday, September 21, 2021 at 2.30 p.m.