

REPUBLIC OF KENYA



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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 06 AUG 2024	DAY: TUESDAY
TABLED BY:	HON. GITHIGA MURUGIARA (CHAIRPERSON)
CLERK-AT THE TABLE:	IMZOPU MWALE

REPORT ON:

THE CONSIDERATION OF THE ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL, 2024
(NATIONAL ASSEMBLY BILL NO. 11 OF 2024)



CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

AUGUST 2024

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List of Abbreviations and Acronyms

EACC	-	Ethics and Anti-Corruption Commission
FORD	-	Forum for the Restoration of Democracy
KLRC	-	Kenya Law Reform Commission
LSK	-	Law Society of Kenya
MCCP	-	Maendeleo Chap Chap Party
NADCO	-	National Dialogue Committee
ODPP	-	Office of the Director of Public Prosecutions
ODM	-	Orange Democratic Movement
UDA	-	United Democratic Alliance
WDM	-	Wiper Democratic Movement

Annexures

- Annexure 1: Adoption Schedule
- Annexure 2: Adoption Minutes
- Annexure 3: Ethics and Anti-Corruption Commission (Amendment) Bill, 2024
- Annexure 4: Advertisement inviting the public to submit memoranda on the Bill
- Annexure 5: Letter from the Clerk of the National Assembly inviting stakeholders to attend the public participation forums
- Annexure 6: Memoranda by Stakeholders

Chairperson's Foreword

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Ethics and Anti-Corruption Commission (Amendment) Bill (*National Assembly Bill No. 11 of 2024*) which was published on 4th March 2024.

The Bill seeks to give effect to some of the recommendations and views of the public as submitted to the National Dialogue Committee (NADCO) on the Issues of Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices. The Bill aims to amend the EACC Act (Cap 7H) to prescribe the qualifications for appointment of a Chairperson of the Commission. Under the amendment, the Chairperson of the Commission is proposed to be a person qualified for appointment as a judge of the High Court.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on Friday 5th July 2024 inviting the public to submit memoranda by way of written statements on the Bill. In addition, the Committee vide letter Ref. No. NA/DDC/JLAC/2024/065 dated Wednesday 19th July 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on Wednesday 31st July 2024. The memoranda were to be received on or before Friday 26th July 2024 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received seven (7) memoranda. The EACC, ODPP, LSK, KLRC, County Governance Watch, Levine K. Njau and Antony Mulili gave their views on the Bill which the Committee considered in the preparation of this report.

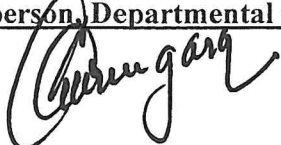
While considering the Bill, the Committee observed that the Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the NADCO which was established to facilitate dialogue and consensus building and thereafter recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya as framed by NADCO. One of the recommendations by NADCO was to enhance the capacity of the Commission to fight corruption.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank the EACC, ODPP, LSK, KLRC, County Governance Watch, Levine K. Njau and Antony Mulili for submitting memoranda on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its Consideration of the Ethics and Anti-Corruption Commission (Amendment) Bill (*National Assembly Bill No. 11 of 2024*).

It is my pleasure to report that the Committee has considered the Ethics and Anti-Corruption Commission (Amendment) Bill (*National Assembly Bill No. 11 of 2024*) and have the honour to report back to the National Assembly with the recommendation that **the House approves the Bill** with amendments.

Hon. Murugara George Gitonga, MP
Chairperson, Departmental Committee on Justice and Legal Affairs



CHAPTER ONE

1 Preface

1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
 - i. *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;*
 - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - iii. *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv. *To study and review all legislation referred to it;*
 - v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vii. *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 (Committee on Appointments);*
 - viii. *To examine treaties, agreements and conventions;*
 - ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
 - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider: -
 - a) The Judiciary;
 - b) Tribunals;
 - c) Access to Justice;
 - d) Public prosecutions;
 - e) Ethics, Integrity and Anti-corruption;
 - f) Correctional services;
 - g) Community service orders and witness protection;
 - h) Constitutional Affairs;
 - i) Sovereign immunity;
 - j) Elections including referenda;
 - k) Human rights;
 - l) Political parties; and
 - m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.

3. In executing its mandate, the Committee oversees the following Ministries, Departments and Agencies:
- a) State Department of Correctional Services;
 - b) State Law Office and Department of Justice;
 - c) The Judiciary;
 - d) Judicial Service Commission;
 - e) Office of the Director of Public Prosecutions;
 - f) Ethics and Anti-Corruption Commission;
 - g) Independent Electoral and Boundaries Commission;
 - h) Commission on Administrative Justice;
 - i) Office of the Registrar of Political Parties;
 - j) Witness Protection Agency;
 - k) Kenya National Commission on Human Rights;
 - l) Kenya Law Reform Commission; and
 - m) Council of Legal Education.

1.3 Committee Membership

4. The Committee was constituted by the House on 27th October 2022 and comprises the following Members:

Chairperson

Hon. Murugara George Gitonga, MP
Tharaka Constituency
UDA Party

Vice-Chairperson

Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency
MCCP Party

Members

Hon. Maalim Farah, MP
Dadaab Constituency
WDM-Kenya

Hon. Muriu Wakili Edward, MP
Gatanga Constituency
UDA Party

Hon. Francis Kajwang' Tom Joseph, MP
Ruaraka Constituency
ODM Party

Hon. Maina Jane Njeri, MP
Kirinyaga (CWR)
UDA Party

Hon. Junet Mohamed, CBS, MP
Suna East Constituency
ODM Party

Hon. Gichohi Kaguchia John Philip, MP
Mukurweini Constituency
UDA Party

Hon. (Dr.) Otiende Amollo, SC, MP
Rarieda Constituency
ODM Party

Hon. Mogaka Stephen M, MP
West Mugirango Constituency
Jubilee Party

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency
UDA Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency
UDA Party

Hon. Siyad Amina Udgoon, MP
Garissa Township (CWR)
Jubilee Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

1.4 Committee Secretariat

5. The Committee is well-resourced and facilitated by the following staff:

Mr. Ahmed Salim Abdalla
Clerk Assistant I / Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Mr. Abdikafar Abdi
Clerk Assistant III

Ms. Jael Ayiego
Clerk Assistant III

Mr. Isaac Nabiswa
Legal Counsel II

Mr. Omar Abdirahim
Fiscal Analyst II

Ms. Vivienne Ogega
Research Officer III

Mr. John Nduaci
Serjeant-At-Arms

Mr. Peter Mutethia
Audio Officer III

Ms. Mary Kamande
Public Communications Officer III

Mr. Calvin Karung'o
Media Relations Officer III

Mr. Silas Opanga
Hansard Reporter III

CHAPTER TWO

2 Overview of the Ethics and Anti-Corruption Commission (Amendment) Bill (*National Assembly Bill No. 11 of 2024*)

2.1 Background

6. The Bill is co-sponsored by the Leader of the Majority Party and the Leader of the Minority Party. The Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the **National Dialogue Committee (NADCO)** on the Issues of *Electoral Justice and Related Matters; Outstanding Constitutional Matters; Fidelity to Political Parties/Coalitions and the law on multiparty democracy; Entrenchment of the National Government Constituencies Development Fund; the Senate Oversight Fund and the National Government Affirmative Action Fund and Establishment and Entrenchment of State Offices.*
7. The Bill was published on 4th March 2024 and read a First Time in the House on 25th June 2024. It was thereafter committed to the Committee in line with the provision of Standing Order 127 (3).

2.2 Summary of Legal Provisions

8. The Bill seeks to amend the Ethics and Anti-Corruption Commission Act, Cap. 7H to amend the qualifications for appointment of a Chairperson of the Commission. Under the amendment, the Chairperson of the Commission is proposed to be a person qualified for appointment as a Judge of the High Court.
9. In particular, —
 - (a) **Clause 1 of the Bill** provides for the short title of the Act;
 - (b) **Clause 2 of the Bill** provides for an amendment to section 5(1) of the Act on the qualifications for appointment of the chairperson of the Commission to be a person who is qualified to be a Judge of the High Court of Kenya; and
 - (c) **Clause 3 of the Bill** provides for a saving provision where the change in qualifications for appointment shall not apply to the chairperson appointed before the commencement of the Act.

CHAPTER THREE

3 Public Participation and Stakeholder Engagement on the Bill

3.1 Legal Framework on Public Participation

10. Article 118 (1)(b) of the Constitution provides that:

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”

11. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

“(3) The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism including-

- (a) inviting submission of memoranda;*
- (b) holding public hearings;*
- (c) consulting relevant stakeholders in a sector; and*
- (d) consulting experts on technical subjects.*

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”

3.2 Memoranda Received on the Bill

12. Pursuant to the aforementioned provisions of the law, the Committee placed an advertisement in the print media on Friday, 5th July, 2024 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee vide letter Ref. No. NA/DDC/JLAC/2024/065 dated Wednesday, 19th July 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on Friday, 31st July 2024.

13. To this end, the Committee received seven (7) memoranda from the EACC, ODPP, LSK, KLRC, County Governance Watch, Levine K. Njau and Antony Mulili. The memoranda are annexed to this report as *Annexure 6*.

14. The Committee received memoranda from the EACC opposing the Bill on the following grounds—

- (a) the Commission has a fully established Directorate of Legal Services with some of its officers’ holding qualifications of a Judge of a superior court. The function of the Directorate includes reviewing evidence in the course of investigations to ascertain that it meets the legal threshold.
- (b) restricting the role to the legal profession may limit diversity in the leadership of the Commission which could result in a lack of diverse competencies and expertise;
- (c) candidates from non-legal background may bring in fresh ideas and diverse skill sets; and
- (d) legal professionals may possess strong legal expertise but may lack skills and experience in leadership other areas relevant to anti-corruption work, such as investigation techniques, financial analysis, corruption prevention and advocacy.

15. **ODPP** submitted that the proposed amendment will ensure competence and familiarity with legal matters. It is prudent that the Chairperson appreciates the workings of the Kenya Legal System which can only be realized by someone who has undergone the Kenya Legal Education System. They noted that the proposal raises the perceived quality of the decisions made by the EACC thereby adding to the legitimacy of the decisions thereof.
16. **LSK** submitted that the Law Society of Kenya had no objection to the Ethic and Anti-Corruption Commission (Amendment) Bill as published.
17. **KLRC** proposed amending clause 2 of the Bill to provide that the qualifications for appointment of the chairperson of the Commission to be a person who qualifies to be appointed as a judge of the High Court. The Committee however noted that the effect of the proposed amendment by KLRC was same as the published text.
18. **The County Governance Watch** submitted memorandum in support of the proposed amendment stating that, if implemented, it would significantly enhance the effectiveness and credibility of the Ethic and Anti-Corruption Commission.
19. **Levine K Njau** via levinenjau@gmail.com was of the opinion that while the proposed amendments present a significant opportunity to strengthen Kenya's fight against corruption, the Bill ought to have addressed strengthen oversight mechanisms, develop a comprehensive implementation plan, enhance public engagement and clarify legal provisions and incorporate the recommended changes.
20. **Anthony Mulili** via mulilianthony@gmail.com was of the opinion that while the Chairperson of the Commission is proposed to be a person qualified for appointment as a judge of the High Court, the Commission be granted power to prosecute.

CHAPTER FOUR

4 Determination on whether or not to amend the Bill

21. Upon reviewing the Bill and the submissions received, the Committee made the following observations:


- (1) The Bill seeks to give effect to some of the recommendations and views of the public that were submitted to the National Dialogue Committee (NADCO) which was established to facilitate dialogue and consensus building, and thereafter recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya framed by NADCO. One of the recommendations on the issue was the proposed amendments to the EACC Act (Cap. 7H) as provided in the Bill;
- (2) Despite the fact that the Bill is a politically negotiated document, pursuant to the mandate of the Committee and the requirements of Article 118 of the Constitution and Standing Order 127(3), the Committee is at liberty to propose necessary amendments to the Bill in its report to the House. This is informed by the Communication from the Chair (No. 006 of 2024) which directed the respective committees to ensure strict adherence to the due process in the enactment of legislation; and
- (3) The Bill is a timely and suitable amendment as the need for the Chairperson of the EACC to have a background in law provides the much needed and essential knowledge and understanding of the intricate legal frameworks in dealing with corruption and economic crimes.

22. In light of the foregoing, the Committee resolved to recommend to the House to approve the Bill.


CHAPTER FIVE

5 Committee Recommendations

23. The Committee, having considered the Ethics and Anti-Corruption Commission (Amendment) Bill (*National Assembly No. 11 of 2024*) recommends that **the House approves the Bill** with the amendments contained in the SCHEDULE OF AMENDMENTS forming CHAPTER SIX of this report.

SIGNED.......... DATE.....*6.8.2024*.....

HON. GEORGE GITONGA MURUGARA, CBS, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

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DATE:	<i>06 AUG 2024</i>
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CLERK-AT-THE-TABLE:	<i>INDRU MWALLI</i>

CHAPTER SIX

6 Schedule of Amendments

24. In view of the observations made, the Committee proposed the following amendment to the Bill:

CLAUSE 3

THAT Clause 3 of the Bill be deleted.

Rationale: There is need to ensure that, after the commencement of the Act, the Commission benefits immediately from a Chairperson, who is a person qualified to be a judge of the High Court.