

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

TENTH PARLIAMENT – FOURTH SESSION - 2010

**REPORT OF THE
DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND
NATIONAL SECURITY ON ITS FACT FINDING VISIT TO JOMO
KENYATTA INTERNATIONAL AIRPORT, NAIROBI, MOI
INTERNATIONAL AIRPORT, MOMBASA, KILINDINI SEAPORT AND
MALINDI AIRPORT OVER ALLEGED SECURITY LAPSES AT THE
ENTRY POINTS; OCTOBER 27-29, 2010**

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI

DECEMBER, 2010

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PREFACE

Mr. Speaker, Sir,

The Departmental Committee on Administration and National Security is constituted under Standing Order 198 of the Kenya National Assembly and mandated to, inter-alia, "*investigate and inquire into all matters ... as they may deem necessary and as may be referred to it by the House...*"

On Thursday October 14 2010, the Deputy Speaker directed that the matter of alleged security lapses in procedures applying to certain foreigners at the ports be referred to the Committee on Administration and National Security for further investigation. The matter came to the floor of the House through an Ordinary Question no. 384 by the Hon. Shakeel Shabbir, MP (Kisumu East).

The Member sought to know from the Minister of State for Immigration and Registration of Persons whether;

- a) The standard immigration requirements for all persons travelling into Kenya apply to soldiers of the British and American armies;
- b) Kenya Army undergo similar immigration processes in the United States of America and the United Kingdom;
- c) Failure to subject the foreign officers to the standard immigration procedures has threatened national security;

From the Minister's responses and the ensuing supplementary questions raised by other Members, the Deputy Speaker directed the Committee on Administration and National Security to investigate the matter and file a report back to the House in two weeks time.

In this regard, the Committee undertook a fact finding mission to the entry points for foreigners into the country. The Committee consequently visited Jomo Kenyatta International Airport in Nairobi on 27th October, 2010; Moi International Airport and the Port of Kilindini in Mombasa on 28th October, 2010; and Malindi Airport on 29th October, 2010.

Mr. Speaker, Sir,

The Committee held meetings with the Immigration officials at the Jomo Kenyatta International Airport, Nairobi; the Moi International Airport, Mombasa; the Malindi Airport and the Kilindini harbour, Mombasa.

The Committee heard from the immigration officers the standard procedures used in vetting foreigners as they made entry into the country. It emerged from the proceedings with the immigration officials that there was apparent laxity exercised at the entry points while vetting the foreigners. It was also apparent that the Agreements signed between Kenya and countries whose forces were to be deployed into the country were lopsided. The MoU's were not favourable to Kenyan forces on similar peace keeping missions.

Mr. Speaker,

Based on the findings, observations and conclusions, the Committee came up with numerous recommendations that the Members urge the House to adopt. The submissions by the immigration officials provided the Committee with facts from which they drew the conclusions and recommendations contained in this report.

Mr. Speaker, Sir,

The following are the Members of the Committee:

The Hon. Fred Kapondi Chesebe, MP (Chairman)
The Hon. Peter Kiilu, MP (Vice Chairman)
The Hon. Cyprian Omollo, MP
The Hon. Danson Mungatana, MP
The Hon. Raphael Letimalo, MP
The Hon. Pollyins Ochieng', MP
The Hon. Mohammed Hussein Ali, MP
The Hon. Maison Leshoomo, MP
The Hon. Nkoidila ole Lankas, MP
* The Hon. Clement Kung'u Waibara, MP

*(The Member whose name is marked with an asterix * has never participated in any Committee deliberations and so he is not part of the observations, findings, conclusions and recommendations in this report).*

(iii)

Mr. Speaker, Sir,

The following are the Members of the Committee who undertook the fact finding tour to JKIA, Moi International Airport, Kilindini Seaport and Malindi Airport:

The Hon. Fred Kapondi, MP (Chairman)

The Hon. Cyprian Omollo, MP

The Hon. Peter Kiilu, MP

The Hon. Mohammed Hussein Ali, MP

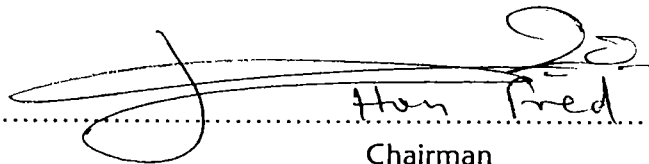
Mr. Speaker,

The Committee takes this opportunity to thank the National Assembly and to extend its gratitude to the Speaker and Clerk for the logistical support which enabled the Members to conduct the fact finding mission successfully. The Committee is also grateful to the Ministry of State for Immigration and Registration of Persons for facilitating the various meetings with the Ministry's personnel on the ground.

Mr. Speaker, Sir,

On behalf of the Committee, and pursuant to Standing Order 181 (3), it is my pleasant duty to present to the House the Report of the Committee on Administration and National Security on its visit to Jomo Kenyatta International Airport, Nairobi, Moi International Airport, Mombasa, Kilindini Seaport, Mombasa, and Malindi Airport, for deliberation and adoption.

Signed.....


Hon. Fred Kapondi, MP

Chairman

Departmental Committee on Administration and National Security

Date.....01/12/2010.....

(iv)

Report of the Administration and National Security Committee on its fact finding mission to JKIA, Moi International Airport, Kilindini & Malindi Airport, over alleged security lapses. October 27-29, 2010

1.0 Meeting with immigration officials at the Jomo Kenyatta International Airport (JKIA), Nairobi

During the presentation by the Immigration officials at JKIA, the Committee was informed that;

Each government department is allocated duties. The immigration department is wholly charged with the responsibility of handling entry/exit of persons as well as security around the airport.

The Committee was further informed that standard immigration procedures for visiting forces from foreign countries are subjected to vetting by immigration officials at the point of entry. The visitors must have the following documents;

- i) Valid passport/travel document
- ii) Valid Kenyan visa for those who require them
- iii) Proof of funding for accommodation and subsistence during period of stay
- iv) Ability to return to country of origin after expiration of period of stay.

The Committee was also informed that Kenya had signed agreements which gave broad concessions to countries whose troops were to be deployed to assist in training programmes of Kenyan troops.

The Members further heard that the operationalization of the Agreements was based on requirement that the military personnel must identify themselves through national passports and valid military ID cards. The visiting military personnel are usually cleared by officials from the Ministry of Defence.

The Committee was also told that it was expected that the agreements were drawn on the mutual understanding that Kenyan soldiers would equally receive similar treatment in the countries they would be deployed. This was not the case.

1.1 Concerns raised by the Committee Members

The Committee Members sought to know;

- i) Whether Kenyan soldiers received similar preferential treatment as their counterparts while on foreign missions.

- ii) If the visiting military personnel were usually finger-printed at the point of entry into Kenya.
- iii) If indeed it was true that immigration officials at entry points were consistently frustrated by the foreign soldiers who usually disregard the vetting regulations; and if any of the junior immigration official at the entry points had complained of any mistreatment or frustration by the visiting soldiers.
- iv) Whether it was also true that some of the soldiers do not have proper identification papers hence they use the exemption clause to frustrate immigration officials.
- v) Why the queues at the airport are demarcated in such a way that they portray segregation and whether tourists and other whites receive preferential treatment and are fast tracked to the chagrin of Kenyans who stay in the queues for long hours as their documents are thoroughly vetted.
- vi) Whether the Pisces WAN (Wireless Access Network) system has been put in place and if it is operational.

1.2 Responses by Immigration Officials

The Immigration officials informed the Committee Members that;

The Agreements did not favour Kenyan forces on foreign missions. The military personnel undergo screening before gaining entry into the host country. This was due to the fact that the agreements did not give such concessions to the Kenyan forces.

The visiting military personnel were exempted from finger-printing process. All they needed to have in their possession are valid travel documents as spelt out in the Agreements to be allowed into the country.

The Committee further heard that there were no reports that junior immigration officials at JKIA were frustrated by the visiting military personnel. Indeed there was a daily occurrence book for recording such incidents but so far no complaints had been reported.

Members were informed that no visiting military personnel could be allowed into the country without the proper travel documents. If such cases are

detected, they are usually referred to the diplomatic missions where they are sorted out. The Immigration department had occasionally received forged documents especially from Iranians who use stolen European passports. However, the officers are well trained and can detect the fraudulent documents.

Passengers are handled on the basis of first come first served. However, there are designated counters for passengers holding different passports of various nationalities who have to use certain designated counters for ease of document verification. Kenyan nationals have their own designated counters for the same reasons.

The Committee was further informed that Pisces WAN System had been installed and areas such as Namanga, Busia, Lunga Lunga, Mombasa, Nairobi etc were all interconnected and sharing of information had been simplified and efficiency improved.

2.0 Meeting with immigration & security officials at Moi International Airport, Mombasa

Members were informed that the objective of the Department of Immigration is border management through regulation of entry and exit of persons taking into account security and socio-economic interests of the citizens.

The border policies and procedures at Moi airport include:

- I. facilitating entry into Kenya of travellers who meet entry requirements;
- II. identifying and managing risks that may arise from travellers who do not meet entry requirements.

Visa regulations require that all foreigners wishing to enter Kenya must have valid visa as a precondition for grant of visitors pass, unless they are exempt (under the Kenya Visa Regulations). However, certain foreign nationals must have visas prior to travelling to Kenya.

As regards foreign military personnel, the Committee was told that the Civil Aviation Act Cap 394, The Kenya Civil Aviation (Security) Regulations, 2008, Legal Notice No. 89; exempt;

- I. State aircraft; or

II. Military or Police aviation operations in Kenya from the requirements of the Civil Aviation Security Regulations;

While the Kenya Visa Regulations exempt certain serving members of the military from immigration formalities, for example, serving military members of United Kingdom.

In addition, the government had entered into bilateral agreements through the Ministry of Foreign Affairs which state that;

- I. Serving military members of the USA are exempt from immigration formalities.

The European Union Status of Forces Agreement (SOFA) provides the legal status of units and personnel deployed within the framework of the European Union led naval forces into the territory of the Republic of Kenya. The agreement with effect from 3rd December, 2008 grants European Union naval forces privileges and immunities generally given by host state to foreign troops stationed on its territory, particularly exemption from Visa and Customs regulations.

- II. Serving EU naval personnel are exempt from visa and immigration formalities.

Members were told that the airport had on 1st October, 2010 received some 112 Danish officers who were checked in and their photos taken. However they were exempted from visa charges. Others included Germans, Spanish and Danish who are part of the EU Naval forces meant to combat piracy. They ideally present a manifest beforehand.

Members sought to know whether officers of all ranks are subjected to the checks and if any cases of imposters trying to impersonate military officers had occurred; and further, if there had been complaints of preferential treatment and discrimination at the airport.

The Committee was informed that all military personnel go through the same procedures, regardless of their rank and that no cases of imposters had been reported.

The Committee expressed concern that some officers at the airport may be demoralized when foreign military officers just walk past and flash their cards without going through the checks. They also felt that Kenyans and East Africans

should have equal treatment and be cleared faster, as compared to the preferential treatment given to tourists and foreigners.

The officers reaffirmed to the Committee that Kenyans received equal service to foreigners and there was no preferential treatment.

3.0 Meeting with immigration and security officials at Kilindini Sea Port, Mombasa

The Committee was taken through the Border policies and procedures at the Kilindini sea port which were to:

- I. Facilitate entry and exit of seamen and passengers;
- II. Deny entry into the country of undesirable persons.

The Visa policy requirements were that, all crew members of vessels visiting Kenya must have valid and genuine travel documents (Passport and Seamen's books) in order to be allowed into the country.

The procedure of clearing foreign military personnel was guided by the circular from the Ministry of Foreign Affairs dated 5th December, 2008 on European Union Status of Forces Agreement (SOFA), providing the legal status of units and personnel deployed within the framework of the European Union-lead naval forces in the territory of the Republic of Kenya. The immigration officials and other port security officials do not board military vessels. The agreement granted certain privileges and immunities, in particular;

1. Exemption from visa regulation;
2. Freedom of movement within the territory of the Republic of Kenya strictly limited to the necessities of the operation;
3. Exemption from any requirement to produce inventories or any other customs documentation, as well as from any inspection;
4. Immunity from penal jurisdiction.

In regard to that agreement, the soldiers are not subject to standard immigration requirements. So far, they had not experienced a case that is a threat to national security.

When the soldiers are signing-off and signing-on, they are usually cleared as the need arises. These soldiers are allowed to go out of the vessels by the use of military identity cards.

Members sought to know the role played by the agents from private shipping

companies when dealing with the naval ships and why that role was not given to Kenya Navy officers to act as their agents. They further sought to know whether there were protocol/liaison officers from the Kenya military who came to receive the foreign officers.

The Committee heard that Kenya was bound by the agreements and that the foreign navies had well in advance engaged agents to facilitate their visit by providing various needs and services such as supplies, vehicles, etc.

The immigration officers were not allowed to board naval ships to inspect who was on board. However in the event that the soldiers wanted to sign off they would disembark from the ship and go to the immigration office.

Members sought to know what would happen if the foreign officers were to behave unruly or commit any crimes on Kenyan territory; and whether there had been any incidences of officers bypassing the immigration desk without following due process.

The Committee was informed that in the unlikely event of breach of the peace, the foreign officer would be arrested and due process followed by contacting the Ministry of Foreign Affairs, then respective embassy and the Department of Defence. The Committee was informed of one incident where some officers bypassed the Kilindini immigration desk and proceeded to Moi International Airport but were sent back to be cleared at Kilindini.

Members sought clarity on whether the exemptions applied only to specific signatories to the MoUs or to all foreign military; and the specific role played by the military liaison officers.

The Committee was informed that all military vessels and its officers were exempted from the normal procedures, and it was up to the Kenyan Liaison Officer to check and confirm that all the persons on the ship are military officers as well as other details provided and indeed confirm that it is a naval vessel.

Members were concerned with the relations of the foreigners and the agents and expressed the need for Government to Government protocol arrangements exclusive of civilian interference.

The Committee sought to know the challenges of the Kenyan Officers when dealing with foreign military personnel and were informed that it was almost impossible for the visitors to disclose names and manifests to the hosts, thus it is hard to know who was on board and who disembarked the ship while it's docked. Usually they are just told the number of people on board, while

other details were concealed. This created a challenge in instances where disembarked officers happen to get lost within the town. If there would be full disclosure, proper security arrangements could be made and instances of missing persons minimized.

Members were told that before a military ship docks at the port, the Kenya Ports Authority would usually hold a security meeting after the details had been forwarded to them with a list of all the personnel on board, upon docking they (KPA) would make arrangements with local security personnel to provide security for the ship and patrol the surrounding area.

The Committee was taken on a tour of the port and the following key Port facilities were visited:-

- Container Terminal
- Scanner Area
- Berth Number 3

4.0 Meeting with immigration and security officials at Malindi Airport

The Committee was told that the Government had entered into MoUs exempting foreign military officials from being searched. However, traffic of these individuals was limited as Malindi was not an international airport. The officers who passed through the airport therefore must have been cleared at the respective points of entry. Only a few foreign military personnel passed through Malindi. Such military personnel included the American Marines on their way to Lamu and British Paratroopers who frequented the airport. Most of the soldiers had copies of letters from Foreign Affairs, though the immigration department at Malindi did not have those letters. The letters exempts the said soldiers from filling forms and entry/exit cards. However, their luggage is screened by the airport security.

The Committee sought to know whether;

1. The foreigners were accompanied by Kenyan Military officials.
2. Whether the boundary of the airport is well secured.
3. What challenges are experienced by officers at Malindi airport in their duties?

The Committee Members were informed that:

1. The foreign soldiers were usually accompanied by a Kenyan Military Liaison Officer.

2. That the Malindi Airport was experiencing the widespread problem of almost all airports in the country which is encroachment by squatters onto the airport land.
3. They have a challenge of mixing of domestic and international passengers which may be resolved by the building of a new terminal that would ensure the passengers don't mix.

5.0 Meeting with the Acting Minister for Foreign Affairs, the Minister of State for Immigration and Registration of Persons and the Acting Permanent Secretary of Ministry of Foreign Affairs

5.1 Brief by the acting Minister for Foreign Affairs

In his brief, the acting Minister informed the Committee that, since independence, the Government of Kenya has had bilateral cooperation with the governments of the USA and UK in the field of military training and military assistance to Kenya.

This cooperation has been undertaken within the framework of Technical Agreements and Memoranda of Understanding (MoUs) signed between the Kenyan Department of Defence and its counterpart Departments. The arrangements had been renewed from time to time and still exist. He stated that the Ministry of Foreign Affairs is generally the Ministry charged with the coordination of all stages in the negotiation, conclusion and review of international agreements and treaties. That position however, has a few exceptions.

He further said that in certain cases, other Departments or Ministries of the Government of Kenya had concluded Technical Agreements and MoUs with Departments of foreign Governments within their respective area of responsibility without the Ministry of Foreign Affairs playing a key role. That practice prevailed even in other countries.

The existing Technical Agreements/MoUs of a military and security nature is a case in point. The Ministry of State for Defence has been the key Department in Kenya's case for the negotiation and signing of these MoUs/Agreements, including their renewal. They however retained the original Agreements in their custody.

Generally, the Attorney-General, Ministry of Foreign Affairs and Ministry of State for Immigration and Registration of Persons participated in negotiations for such Agreements and MoUs. The discussions are guided by the Department of Defence based on the practice amongst military forces.

The Minister also told the Committee that, in relation to the issue of immigration, the MoUs require that the British visiting forces must “produce a valid service identity card or passport, and may be exempted from visas” while the United States Armed Forces were obliged to abide by Kenyan immigration requirements. It was the understanding of the Ministry that these arrangements were reciprocal.

The details relating to implementation of those provisions was a matter for the Ministry of State for Defence and the Ministry of State for Immigration to consider. Similarly, the particulars relating to the treatment of Kenya troops in these countries was a matter the Ministry of State for Defence could shed light on.

The Committee was further informed that a letter signed between the then Minister for Foreign Affairs and the Secretary General for the Common Foreign and Security Policy of the European Union (EU) was done unilaterally by the Minister in his official capacity and without consultation with other Departments. The letter was a provisional agreement allowing naval forces from the EU into the territory of the Republic of Kenya to train personnel in fighting and combating piracy. The circular gave sweeping concessions to the EU led naval forces but the same freedoms were not extended to the Kenyan troops on foreign assignments.

The Committee took issue as to why the Agreements appeared to be lopsided and whether it was in the interest of Kenyans and enquired on when the MoUs would cease to be in force.

They were informed that the military cooperation Agreements were entered into by the Minister of State for Defence and his counterparts in other cooperating countries. Further, the Agreements had a time frame within which they would lapse. Furthermore, the Agreements were as a result of an exchange of letters between the parties.

Members were concerned that the MoUs could be abused by people with criminal intent to threaten the security of the country if they were not enforced to the letter with proper verification of the identities of those crossing border points. Members were also concerned that copies of the agreements that allow immigration officials to verify the identities of the foreign military persons had not been supplied to the entry/exit points as observed by the Committee in its fact finding visits.

5.2 Brief by the Minister of State for Immigration and Registration of Persons

The Minister informed the Committee that he had been briefed that when the foreign officers come into the country; they produce badges or military identification. However, immigration officials had no way of confirming the identity of that military officer as they don't have a database on their bio data. They therefore merely watched and assumed that the military liaison officer had confirmed those foreign officers as genuine. In that regard, the immigration officials have a limited role in the process.

Members felt that the country may have been exposed to serious security breaches and that provisions of the Immigration Act Cap. 172 of the laws of Kenya had not been adhered to. In that regard they felt that the agreements should allow immigration Officials to verify the identification and authenticity of the same officers who should produce both military and passport documents at the entry/exit points. This was notably in tandem with the agreements which only exempted them from visa requirements.

The Committee sought to know whether the MoUs had timelines and whether the Immigration Ministry was represented in the negotiations. They were informed that the MoUs can be renewed after 5 years and lapse after 10 years after which a new one has to be renegotiated. However, the Committee was concerned that the Ministry of Immigration was not involved in negotiating the MoUs which was a clear oversight and exclusion as they were tasked to implement an undertaking they played no part in formulating.

6.0 Committee's observations and findings

- i) The Members observed that the letter between the then Minister of Foreign Affairs and the Secretary General/High Representative for the

Common Foreign and Security Policy of the European Union dated 5th December, 2008, had not been circulated in some entry points such as Malindi Airport. This put into question the operations of the immigration officials who worked without the guidelines contained in the circular which ostensibly were to be followed while clearing foreign forces.

- ii) The said circular signed between the Minister for Foreign Affairs and EU's High Representative/ Secretary General, was done without consultation with the Ministry of Foreign Affairs officials or the Ministry of State for Immigration. The circular had exposed the country to serious security lapses for the time it has been in force.
- iii) The immigration officers did not have the various MoUs and Agreements signed between the Kenya Government and the other friendly Governments. One such Agreement, namely "Status of Forces Agreement between the Government of the Republic of Kenya and the United States of America" signed on 26th June 1980, was not available at the ports of entry for use by Immigration officials. The Committee considered this as a serious omission.
- iv) It was evident that immigration officials played an insignificant role in the clearing of the foreign soldiers. The Committee was told that the immigration officers did not board ships that docked at the seaports and were only allowed to clear the soldiers once they disembarked.
- v) There is little contact and consultation between the immigration, port and the Department of Defence officials in the handling of the foreign military personnel at the ports of entry.
- vi) There is also dis-connect between the Kenya military officials and the immigration officers where the former are not present at all times to provide a link between the visitors and the host country. Too much leeway and responsibility is accorded to the civilian agents.
- vii) It also emerged that immigration officers were not part of the security committee that facilitates the naval ships while they are in Kenyan waters.

7.0 Recommendations

Based on the observations and findings of the Committee during the fact finding visit, the Committee recommends that:

1. The Ministry of Foreign Affairs consults widely before entering into binding agreements so as to ensure that decisions are all encompassing and do not jeopardize national security. The Ministry should further take into consideration the capacity constraints of officers in other Ministries and departments who are expected to play key roles in enforcing the Agreements and MoUs.
2. There is need to review the Agreements and Memoranda of Understanding signed between Kenya on one hand and European Union Countries and the USA on the other. The MoUs should be carefully negotiated so that they accord the signatories equal status.
3. There is need to address the serious security lapses at our ports of entry where some foreign military personnel do not undergo thorough screening by immigration officials. These security lapses can easily be taken advantage of by criminals especially pirates who may pose as visiting military personnel.
4. The Ministry of State for Immigration and Registration of Persons ought to empower and improve the morale of its officers who work at the entry points. The officials apparently are demoralized when dealing with foreign military personnel who are difficult to handle and sometimes humiliate the officers as they go through the vetting process at the entry points.
5. The Agreements and MoUs should be made available at the entry points for use by immigration officials and other vetting officers instead of keeping them at the Ministry's headquarters. It emerged that that the Agreements such as the "Status of Forces Agreement between the Government of the Republic of Kenya and the United States of America" signed on 26th June 1980, was not available at the ports of entry for use by Immigration and other officials. Only the circular signed by the Hon. Moses Wetangula, the then Minister for Foreign Affairs, was available at the entry points.

MINUTES OF THE 49TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON THURSDAY 18TH NOVEMBER, 2010 IN THE COMMITTEE ROOM, 4TH FLOOR, COMMITTEE ROOM, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

The Hon. Fred Kapondi Chesebe, MP – (Chairperson)
The Hon. Peter Kiilu, MP – (Vice - Chairperson)
The Hon. Cyprian Omollo, MP
The Hon. Maison Leshoomo, MP
The Hon. Pollyins Ochieng', MP
The Hon. Raphael Letimalo, MP
The Hon. Mohammed Hussein Ali, MP

ABSENT

The Hon. Danson Mungatana, MP
The Hon. Nkoidila Ole Lankas, MP

IN ATTENDANCE - **KENYA NATIONAL ASSEMBLY**

Mr. Daniel Mutunga - Second Clerk Assistant
Mr. Ahmad Kadhi - Third Clerk Assistant

IN ATTENDANCE - **MINISTRY OF FOREIGN AFFAIRS**

Hon. (Prof.) George Saitoti, EGH, MP - Ag. Minister
Amb. P.S. Wamoto - Ag. Permanent Secretary
Mr. James Kihwaga - Head, Legal Division
Ms. Catherine Nyakoe - Legal Officer

IN ATTENDANCE - **MINISTRY OF STATE FOR IMMIGRATION AND REGISTRATION OF PERSONS**

Hon. Otieno Kajwang', EGH, MP - Minister of State for Immigration & Registration of Persons
Mr. Joseph P. Munyoki - Senior Assistant Director
Mr. Ongeru Nicholas - Legal Officer
Ms. Alice K. Odipo - Chief Immigration Officer
Mr. John. A.O. Orindi - Senior Assistant Secretary/PA to Minister
Ms. Martha Ikiara - Principal Immigration Officer

PRELIMINARY

The Chairman called the meeting to order. Prayers were said. The Chairman welcomed the two Ministers and their teams to the meeting. He informed them that the House had directed that the matter on security lapses at the entry points be investigated by the Committee. The matter had come before the House where it was reported that foreign military personnel were flouting immigration regulations which was frustrating immigration officials at the entry points. The Chairman told the team that one glaring finding was that a letter signed by the then Minister for Foreign Affairs to the European Union High Representative had given sweeping concessions to visiting foreign military forces. The same exemptions had not been extended to Kenyan soldiers on similar missions abroad. He requested the team to give an account of the scenario.

MIN. NO. 169/2010: MEETING WITH THE AG. MINISTER FOR FOREIGN AFFAIRS AND THE MINISTER OF STATE FOR IMMIGRATION AND REGISTRATION OF PERSONS

In his brief, the Ag. Minister for Foreign Affairs informed the Committee that;

Since independence, the Government of Kenya has had bilateral cooperation with the Governments of the USA and UK in the field of military training and military assistance to Kenya.

This cooperation has been undertaken within the framework of Technical Agreements and Memoranda of Understanding signed between the Kenyan Department of Defence and its counterpart departments. The arrangements had been renewed from time to time and still exist. He stated that the Ministry of Foreign Affairs is generally the Ministry charged with the coordination of all stages in the negotiation, conclusion and review of international agreements and treaties. That position however, has a few exceptions.

He further said that in certain cases, other departments or Ministries of the Government of Kenya had concluded Technical Agreements and MoUs with departments of foreign Governments within their respective area of responsibility without the Ministry of Foreign Affairs playing a key role. That practice prevailed even in other countries.

The existing Technical Agreements/MoUs of a military and security nature is a case in point. The Ministry of State for Defence has been the key department in Kenya's case for the negotiation and signing of these MoUs/Agreements, including their renewal. They however retained the original agreements in their custody.

Generally, the Attorney-General, Ministry of Foreign Affairs and Ministry of State for Immigration and Registration of Persons participated in negotiations for such Agreements and

MoUS. The discussions are guided by the Department of Defence based on the practice amongst military forces.

The Minister also told the Committee that, in relation to the issue of immigration, the MoUs require that the British visiting forces must “produce a valid service identity card or passport, and may be exempted from visas” while the United States Armed Forces were obliged to abide by Kenyan immigration requirements. It was the understanding of the Ministry that these arrangements were reciprocal.

The details relating to implementation of those provisions was a matter for the Ministry of State for Defence and the Ministry of State for Immigration to consider. Similarly, the particulars relating to the treatment of Kenya troops in these countries was a matter the Ministry of State for Defence could shed light on.

The Committee was further informed that a letter signed between the then Minister for Foreign Affairs and the Secretary General for the Common Foreign and Security Policy of the European Union was done unilaterally by the Minister in his official capacity and without consultation with other Departments. The letter was a provisional agreement allowing naval forces from the EU into the territory of the Republic of Kenya to train personnel in fighting and combating piracy. The circular gave sweeping concessions to the EU led naval forces but the same freedoms were not extended to the Kenyan troops on foreign assignments.

The Committee took issue as to why the Agreements appeared to be lopsided and whether it was in the interest of Kenyans and enquired on when the MoUs would cease to be in force.

The Committee Members were informed that the military cooperation agreements were entered into by the Minister of State for Defence and his counterparts in other cooperating countries. Further, the agreements had a time frame within which they would lapse. Furthermore, the agreements were as a result of an exchange of letters between the parties.

Members were concerned that the MoUs could be abused by people with criminal intent to threaten the security of the country if they were not enforced to the letter with proper verification of the identities of those crossing border points. Members were also concerned that copies of the agreements that allow immigration officials to verify the identities of the foreign military persons had not been supplied to the entry/exit points as observed by the Committee in its fact finding visits.

The Minister of State for Immigration and Registration of Persons, on his part, informed the Committee that;

The Minister informed the Committee that he had been briefed that when the foreign officers came into the country; they produced badges or military identification. However immigration

officials had no way of confirming the identity of that military officer as they don't have a database on their bio data. Therefore they merely watched and assumed that the military liaison officer had confirmed those foreign officers as genuine. In that regard the immigration officials have a limited role in the process.

Members felt that the country may have been exposed to serious security breaches and that provisions of the Immigration Act Cap 172 had not been adhered to. In that regard they felt that the agreements should allow immigration Officials to verify the identification and authenticity of the same officers who should produce both military and passport documents at the entry/exit points. This was notably in tandem with the agreements which only exempted them from visa requirements.

The Committee sought to know whether the MoUs had timelines and whether the Immigration Ministry was represented in the negotiations. They were informed that the MoUs can be renewed after 5 years and lapse after 10 years after which a new one has to be renegotiated. However the Committee was concerned that the Ministry of Immigration was not involved in negotiating the MoUs which was a clear oversight and exclusion as they were tasked to implement an undertaking they played no part in formulating.

MIN. NO. 170/2010 : ADJOURNEMENT

There was no other business before the Committee, the meeting was adjourned at thirty minutes past twelve o'clock, to Wednesday 24th November, 2010 at 10 am. The meeting would be held to consider and adopt Committee reports on visits to Lari, Koibatek, Dagoretti, Nyakach and Kisauni; JKIA, Moi International Airport, Kilindini seaport and Malindi Airport.



Signed: Hon Fred Kapondi, MP Date 01/12/2010
Chairman

MINUTES OF THE 50TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON THURSDAY 25TH NOVEMBER, 2010 HELD IN THE RESTAURANT, 7TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

The Hon. Fred Kapondi, MP – (CHAIRPERSON)
The Hon. Cyprian Omollo, MP
The Hon. Maison Leshoomo, MP
The Hon. Danson Mungatana, MP
The Hon. Pollyins Ochieng', MP
The Hon. Mohammed Hussein Ali, MP

ABSENT WITH APOLOGIES

The Hon. Peter Kiilu, MP – (VICE - CHAIRPERSON)

ABSENT

The Hon. Nkoidila Ole Lankas, MP
The Hon. Raphael Letimalo, MP

IN ATTENDANCE

- **KENYA NATIONAL ASSEMBLY**

Mr. Daniel Mutunga - Second Clerk Assistant
Mr. Ahmad Kadhi - Third Clerk Assistant

PRELIMINARY

The Chairman called the meeting to order. After prayers, the Chairman read through the agenda of the day which was then adopted. The Chair thanked the Members for their commitment towards meetings of the Committee and encouraged them to keep up the good work.

MIN. NO. 171/2010: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Minutes of the 46th Sitting of the Committee were proposed and seconded by the Hon. Pollyins Ochieng', MP and the Hon. Fred Kapondi, MP, respectively and thereafter confirmed as true proceedings of that Sitting.

Minutes of the 47th Sitting were proposed by the Hon. Pollyins Ochieng', MP and seconded by the Hon. Fred Kapondi, MP and signed by the Chairman.

Minutes of the 48th Sitting of the Committee were proposed by Hon. Cyprian Omollo, MP and seconded the Hon. Fred Kapondi, MP, and were confirmed as true proceedings of that meeting.

Minutes of the 49th Sitting of the Committee were proposed and seconded by the Hon. Polliyns Ochieng', MP and the Hon. Cyprian Omollo, MP, respectively and thereafter confirmed as true proceedings of that meeting.

MIN. NO. 172/2010: MATTERS ARISING

Under **MIN 157/2010 REVIEW OF THE COMMITTEE WORKPLAN**, members felt that they will as a matter of urgency need to undertake a series of study tours that will appraise and enrich the Committee on issues of Police Reforms. This was particularly important as was observed in deliberations and Members contributions, of the previous weeks retreat on police reforms hosted by the Police Reforms Task Force headed by Titus Naikuni.

On that note Members felt it of utmost cognisance that countries which have had successful reform agenda be visited so that members may have informed judgement during the scrutiny of the four proposed bills at the Committee stage.

There was need to similarly visit a country whose police chief is a civilian. This would help the Committee guide the country through legislation on which methodology would be suitable for Kenya to adopt as pertains to reform and restore public confidence in the proposed office of the Inspector General of Police. The countries earmarked for the study tours include but are not limited to **South Korea, Canada, South Africa, Nigeria, and Botswana.**

Another weighty matter on the Committee Foreign Visits was to study the Administration Structures in the United Kingdom and France. Members appreciated that there had been much speculation and confusion on the future of the Provincial Administration of Kenya. This situation needed speedy and conclusive redress. For that reason the Committee felt that it will be proactive and seek best practices while considering amending those structures to see which hybrid may best suit our scenario. Further members acknowledged the proactive role that will be played by Parliamentary Committees in exercise of oversight over the Executive. For that purpose the Committee will require extensive learning opportunities and visits to observe practices that have worked elsewhere such that they may be a step ahead of those whom they are supposed to discharge the mandate of oversight.

The Chairman undertook to follow up the above with the Liaison Committee as a matter of urgency considering the Constitutional timelines and deadlines that these reforms have to be undertaken.

Under **MIN 161/2010: MEETING WITH THE KNCHR ON ILLEGAL RENDITIONS TO UGANDA OF KENYAN TERROR SUSPECTS**, Members recalled that the human rights officials had indicated that they would visit those Kenyans detained as suspects in Uganda and would inform the Committee on their status. The Committee also resolved to follow up the issue to ensure that proper procedures are followed by the government when handling any suspects and to uphold the Human Rights of all people.

MIN. NO. 173/2010: MEETING TO CONSIDER AND ADOPT THE REPORTS ON THE FACT FINDING VISITS TO LARI, KOIBATEK, DAGORETTI, KISAUNI AND NYAKACH ; AND JKIA, MOI INT'L AIRPORT, KILINDINI SEAPORT AND MALINDI AIRPORT

Members read through the reports and resolved to submit their input in writing. The reports were thus adopted pending the submission of those changes if any.

MIN. NO. 174/2010: ANY OTHER BUSINESS

The Chairman brought to the attention of the Committee that the Ministry for East African Community had written to the Parliamentary Committees inviting at least one Member from each Committee to attend the EAC Protocol on Good Governance and the Bill of Rights from 9 – 11 December 2010 in Nairobi.

The Committee resolved to have the Hon. Pollyins Ochieng', MP to attend together with another Member to be confirmed later.

MIN. NO. 175/2010: ADJOURNMENT

The Committee adjourned its sitting to Tuesday November 30th 2010 at 10 am.

Signed:



Chairman.....

Hon Fred Kapondi, MP Date 01/12/2010.....

MINUTES OF THE 51ST SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON TUESDAY 30TH NOVEMBER, 2010 AT THE RESOURCE CENTRE, 1ST FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

The Hon. Fred Kapondi Chesebe, MP – (CHAIRPERSON)
The Hon. Peter Killu, MP – (VICE - CHAIRPERSON)
The Hon. Danson Mungatana, MP
The Hon. Maison Leshoomo, MP
The Hon. Polliyns Ochieng', MP

ABSENT WITH APOLOGIES

The Hon. Cyprian Omollo, MP
The Hon. Mohammed Hussein Ali, MP

ABSENT

The Hon. Nkoidila Ole Lankas, MP
The Hon. Raphael Letimalo, MP

IN ATTENDANCE - **KENYA NATIONAL ASSEMBLY**

Mr. Daniel Mutunga - Second Clerk Assistant
Mr. Ahmad Kadhi - Third Clerk Assistant

PRELIMINARY

The meeting was called to order. The sitting was started with a word of prayer and agenda of the day read and adopted.

MIN. NO. 176/2010: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Minutes of the 50th Sitting of the Committee were proposed and seconded by the Hon. Polliyns Ochieng', MP and the Hon. Fred Kapondi, MP, respectively and thereafter confirmed as true proceedings of that Sitting.

MIN. NO.177/2010: CONSIDERATION OF THE COMMITTEE'S REPORT ON THE FACT FINDING MISSION TO LARI, KOIBATEK, DAGORETTI, KISAUNI AND NYAKACH

Members were of the view that since the matter of the killing of the seven taxi drivers in Dagoretti was before the court therefore it would be sub judice to do an inquiry into the case. However, the Committee recommended that the judicial process should be expedited and the case concluded as a matter of urgency and in the interest of the nation.

MIN. NO.178/2010: CONSIDERATION OF THE COMMITTEE'S REPORT ON THE FACT FINDING VISIT TO JOMO KENYATTA, MOI & MALINDI AIRPORTS AND KILINDINI SEAPORTPORT

It was pointed out that the word "imposters" in recommendation number 2 be deleted and replaced by the word "pirates".

The Committee also made another recommendation to the effect that in order to empower the Immigration officials, copies of Agreements and MoUs should be availed at the immigration entry points. instead of keeping them at the Ministry headquarters. That would enable them discharge their mandate with full confidence and high morale.

MIN. NO. 179/2010: PROPOSED VISIT TO WAJIR

The Committee was informed that all preparations had been made for the said joint fact finding visit to Wajir. However the Committee on Defence and Foreign Relations wanted an indefinite postponement, notwithstanding the urgency with which the area MP had wished the investigation to be concluded.

For that reason, the Committee resolved to postpone the visit after consideration of the already congested work plan in place and the short time with which it has to accomplish numerous tasks.

MIN. NO. 180/2010: ANY OTHER BUSINESS


The Committee Chair informed Members of the request for a meeting by the Usalama Civil Society Group over the proposed Police Reforms. The Committee resolved to meet the Group on Tuesday 7th December 2010.

The Committee deliberated on the matter to investigate the alleged killing of residents in Hola, Tana River district by Administration Police as had been referred to it by the House. Therefore it was resolved that the Committee undertakes a two day visit from Wednesday 8th December and return on Thursday 9th December.

MIN. NO. 181/2010: ADJOURNMENT

The Meeting was adjourned at forty five minutes after eleven o'clock. The next meeting would be held on Tuesday December 7th 2010 at 10 am.

Signed:



Chairman.....Hon Fred Kapondi, MP Date.....01/12/2010.....