

Approved for tabling

J. Bant
SNA
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PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION (2020)

**DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND
NATIONAL SECURITY**

REPORT ON:

**THE NARCOTICS, DRUGS & PSYCHOTROPIC SUBSTANCES
(CONTROL) (AMENDMENT) BILL, 2020**

**Directorate of Departmental Committees
The National Assembly
Parliament Buildings
NAIROBI**

DECEMBER, 2020


 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 01 DEC 2020	DAY: TUESDAY
TABLED BY:	CHAIR, DC-Administration & National Security Hon. Paul Koinange MP
CLERK-AT-THE-TABLE:	Miriam Mado

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CHAIRPERSON'S FOREWORD

The Narcotics, Drugs & Psychotropic Substances (Control) (Amendment) Bill, 2020 (National Assembly Bills No. 27 of 2020) underwent First Reading on 8th October, 2020. Thereafter, the Bill was committed to the Departmental Committee on Administration and National Security for review and report to the House pursuant to the provisions of Standing Order 216(5)(c).

The principal object of the Bill is to enhance penalties related to the offences in possession and trafficking in narcotics and psychotropic substances, and provide for an obligation to disclose information that may aid to prevent commission of offences arising under the Act and may secure the arrest of perpetrators of the crime.

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127(3) of the National Assembly Standing Orders, the Committee through local daily newspapers of 19th October, 2020 published an advertisement inviting the public to submit memoranda on the Bill.

The report contains *inter-alia* analysis of public views on the Bill, public participation process, observations and recommendations. The analysis of the Bill contains stakeholder submissions which the Committee found relevant and useful in review of the Bill.

May I take this opportunity to thank and commend Committee Members for devotion and commitment to duty, the Speaker and Clerk of the National Assembly for providing leadership and direction and finally the Committee secretariat for exemplary performance in the provision of technical and logistical support. Indeed, their efforts were critical in the consideration of the Bill and production of this report.

It is my pleasure to report that the Departmental Committee on Administration and National Security has considered the Narcotics, Drugs & Psychotropic Substances (Control) (Amendment) Bill, 2020 (National Assembly Bills No. 27 of 2020) has the honour to report back to the House with the recommendation that the Bill is **approved with amendments**.

HON. PAUL KOINANGE, M.P.
CHAIRPERSON

1.0 PREFACE

1.1. Mandate of the Committee

1. The Departmental Committee on Administration and National Security derives its mandate from the provisions of Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-

- (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;*
 - (b) *study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
 - (c) *study and review all legislation referred to it;*
 - (d) *study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - (e) *investigate and enquire 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;*
 - (f) *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)*
 - (g) *examine treaties, agreements and conventions;*
 - (h) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - (i) *consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and*
 - (j) *examine any questions raised by Members on a matter within its mandate.*
2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-
- (i) National security;
 - (ii) Police services;
 - (iii) Home affairs;
 - (iv) Public administration;
 - (v) Public service;
 - (vi) Prisons;
 - (vii) Immigration;
 - (viii) Management of natural disasters; and
 - (ix) Community service orders.

1.2. Committee Membership

3. The Committee was constituted on Thursday, 14th December, 2017 and comprises the following Honourable Members-

Chairperson

Hon. Paul Karuga Koinange, MP
Kiambaa Constituency

Jubilee Party

Vice-Chairperson

Hon. Fatuma Gedi, MP
Wajir County

PDR Party

Hon. Peter Kaluma, MP
Homa Bay Town

ODM Party

Hon. Dr. Makali Mulu, MP
Kitui Central Constituency

Wiper Party

Hon. Joshua Aduma Owuor, MP
Kitui Central Constituency

Wiper Party

Hon. Rozaah Abuyu, MP
Kisumu County

ODM Party

Hon. Jeremiah Lomurukai, MP
Loima Constituency

ODM Party

Hon. Mishra Swarup, MP
Kesses Constituency

Jubilee Party

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

Jubilee Party

Hon. Arbelle, Marselino Malimo, MP
Laisamis Constituency

Jubilee Party

Hon. Peter Masara, MP
Suna West Constituency

Independent Party

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

Jubilee Party

Hon. Josphat Kabinga, MP
Mwea Constituency

Jubilee Party

Hon. Nimrod Mbai, MP
Kitui East Constituency

Jubilee Party

Hon. Ngunjiri Wambugu, MP
Nyeri Town Constituency

Jubilee Party

Hon. Abdi Shurie Omar, MP
Balambala Constituency

Jubilee Party

Hon. Halima Mucheke, MP
Nominated Member

Jubilee Party

Hon. Oku Kaunya, MP
Teso North Constituency

ANC Party

Hon. William Chepkut, MP
Ainabkoi Constituency

Independent Party

1.3. Committee Secretariat

4. The Committee's secretariat comprises by the following officers –

Mr. George Gazemba
Principal Clerk Assistant

Mr. Joshua Ondari
Clerk Assistant

Ms. Brigitta Mati
Legal Counsel

Mr. James Muguna
Researcher Officer

Mr. Edison Odhiambo
Fiscal Analyst

Mr. Yaqub Ahmed
Media Relations Officer

**2.0 THE NARCOTICS, DRUGS & PSYCHOTROPIC SUBSTANCES (CONTROL)
(AMENDMENT) BILL, 2020 (NATIONAL ASSEMBLY BILLS No. 27 OF 2020)**

2.1 Memorandum of Objects and Reasons of the Bill

5. The principal object of the Bill is to-
 - a) Enhance penalties related to the offences in possession and trafficking in narcotics and psychotropic substances;
 - b) Define precursors and chemicals substances which may be used in manufacture of narcotics;
 - c) Define who law enforcement officers are in respect to the Act;
 - d) Prescribe offences for a law enforcement officer who aids or abets or is an accessory to any offence under the Act;
 - e) Provide for the offences arising out of conspiracy;
 - f) Provide for power to intercept communication and the admissibility of intercepted communication; and
 - g) Provide for an obligation to disclose information that may aid to prevent commission of offences arising under the Act and may secure the arrest of perpetrators of the crime.
6. The Bill delegates legislative powers to the Cabinet Secretary. The Cabinet Secretary for the time being responsible for internal security is given powers to make Regulations under clause 5 of the Bill. In particular, the Cabinet Secretary may make Regulations—
 - a) for imposing requirements as to the documentation of transactions involving substances referred to in the fourth schedule;
 - b) adding or deleting substances in the fourth schedule as is deemed necessary;
 - c) on keeping of records and furnishing of information on substances as listed; and
 - d) on any other matter that may be required to be prescribed.
7. The Bill does not limit fundamental rights and freedoms neither does it delegate legislative power. The Bill does not directly affect functions and powers of county governments as set out in the Fourth Schedule to the Constitution. The enactment of the Bill shall not occasion additional expenditure of public funds.

3.0 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

3.1 Legal provisions on public participation

8. Article 118 (1) (b) of the Constitution of Kenya provides as follows-

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

9. Standing Order 127(3) provides 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”

3.2 Methodology used by the Committee in public participation

10. The Bill was read a First time on 8th October, 2020 and immediately committed to the Departmental Committee on Administration and National Security for review. The review process was to entail public participation through appropriate mechanisms including inviting submission of memoranda, holding public hearings and consulting relevant stakeholders pursuant to the provisions of Article 118 (1) (b) of the Constitution of Kenya and Standing Order 127(3) of the National Assembly Standing Orders.

11. Pursuant to the said provisions of the Constitution and Standing Orders, the Committee in the local daily newspapers of Monday, 19th October, 2020 invited the public to make representations on the Bill by way of written memoranda as per annexure of the report. The public indeed submitted written memoranda.

12. The public hearing was conducted at Hilton Garden Inn Hotel in Machakos County on 15th – 17th November, 2020 and the following State Department/Agencies made their presentations on the Bill-

- a) State Department for Interior & Citizen Service;
- b) Directorate of Criminal Investigation; and
- c) National Intelligence Service.

4.0 SUBMISSIONS FROM STAKEHOLDERS

13. State Department for Interior & Citizen Service

The State Department for Interior and Citizen Service submitted as follows-

The proposed clause 3 should have provided for alternative forms of punishment other than incarceration such as rehabilitation or probation for first time offenders.

The recommendation –

- (a) a provision for a rehabilitation clause; and
- (b) in subsection 3(2) (a) of the Act, a provision for a lesser punishment or subject the offender to a fine and rehabilitation.

14. The Directorate of Criminal Investigation (DCI)

The Directorate of Criminal Investigation submitted as follows-

Clause (b)(i) and 3(b) (ii) of the Bill were not clear and would definitely pose a challenge when drafting charges.

Clause 3 (b) (i) provides; where a person is in possession of 1-5 grams....

Clause 3 (b) (ii) provides; where a person is in possession of 1 gram or less...

The two clauses lack clarity in terms of a clear distinction of the narcotic weight that one was found in possession of.

For instance if a suspect was found in possession of 1 gram of a narcotic drug, it would be confusing whether to charge the suspect with S.3(b) (i) or S.3 (b) (ii) of the Bill.

The recommendation –

In view of the foregoing they recommended that clause 3 (b) (ii) be amended to read, **'where a person is in possession of less than 1 gram.'**

15. The National Intelligence Service (NIS)

The National Intelligence Service Submitted as follows-

SECTION	JUSTIFICATION	PROPOSED CHANGE(S)
2	Insert new definition of Clandestine laboratory	"Clandestine laboratory" means: (i) purchase or procurement of chemicals, supplies, equipment, or laboratory location for the illegal manufacture of specified controlled substances; (ii) transportation or arranging for the transportation of chemicals, supplies, or equipment for the illegal manufacture of controlled substances; (iii) setting up of equipment or supplies in preparation for the illegal manufacture of specified controlled substances; (iv) activity of compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing of a substance,

		<p>including a controlled substance precursor, or the packaging, repackaging, labelling, or relabelling of a container holding a substance that is a product of any of these activities, when the substance is to be used for the illegal manufacture of specified controlled substances;</p> <p>(v) illegal manufacture of specified controlled substances; or</p> <p>(vi) distribution, diversion or disposal of chemicals, equipment, supplies, or products used in or produced by the illegal manufacture of specified controlled substances.</p>
2	Insert new definition of " market value "	" <i>market value</i> " means value of narcotic drug, psychotropic substance, prohibited plant, precursor or chemicals.
2	Insert new definition on who a public officer is. This will cater for other officers other than law enforcement officer.	" <i>public officer</i> " means an officer, employee or member of a public body, including one that is unpaid, part-time or temporary;
3(b) (i) & (ii)	There is need to simplify the categories of the grams. This will enable the implementers to fully comprehend. Sub-section (b) shall only have one category and will govern possession.	<p>(b) in respect of a narcotic drug or psychotropic substance, other than cannabis –</p> <p>(i) <i>Where the person is in possession of less than 1 gram, to a fine of not less than one million or imprisonment for not less than five years, or to both such fine and imprisonment;</i></p>
3	Section 3(2)(a) of the Principal Act should be amended to read:	"(a) in respect of cannabis, where the person satisfies court that the cannabis was intended solely for his own consumption, to imprisonment of not more than five years or a fine of not more than hundred thousand shillings."
4	There is need to simplify the categories for purposes of clarifying the categories in terms of trafficking. Section 4 (a) should thus be amended.	<p>(i) <i>Where the person is in possession of between 1 - 100 grams, to a fine of not less than thirty million shillings or imprisonment for thirty years, or to both such fine and imprisonment;</i></p> <p>(ii) <i>Where the person is in possession of more than 100 gram, to a fine of not less than fifty million or three times the market value whichever is greater or imprisonment for life or to both such fine and imprisonment;</i></p>
5A	To introduce a new section to	5A. (1) Every owner, occupier or concerned

	<p>provide for landlords and owners of building to conduct due diligence on their tenants and occupiers of their premises to avoid setting up of clandestine laboratories.</p>	<p>in the management of any premises, shall keep a register in his premises and shall enter or cause to be entered in the register the name and address of every tenant and occupier who occupies the premises and such other particulars as may be prescribed.</p> <p>(2) Every owner, occupier or concerned in the management of any premises, shall enter or cause to be entered regularly in a book kept for the purpose all such particulars (other than particulars prescribed in respect of the register required by subsection (1) to be kept) as may be prescribed.</p> <p>(3) Any person who fails to comply with this section, or who makes or causes or permits to be made in any register or book required by this section to be kept any entry which he knows or has reason to believe to be false, shall be guilty of an offence and liable to a fine of not less than one million shillings or a term of imprisonment of not less than two years or both such fine and imprisonment.</p>
<p>5(1)(c)(ii) & (d)</p>	<p>It is proposed that section dealing with laboratory should be stand alone. Therefore, section 5(1)(c)(ii) & (d) should be deleted from section 5 of the Bill. The Bill should thus seek introduce Section 5A of the Principal Act</p>	<p>5B. Subject to this Act, any person who –</p> <ol style="list-style-type: none"> (1) Who operates a clandestine laboratory; (2) Being the owner, occupier or concerned in the management of any premises, permits the premises to be used for the purpose of operating a clandestine laboratory; <p>shall be guilty of an offence and liable to a fine of not less than twenty million shillings or a term of imprisonment of not less than ten years or both such fine and imprisonment.</p> <p>(3) It shall be a defence if the person is an owner or concerned with the management of any premises, complies with the provisions of section 5A.</p>
<p>17A</p>	<p>Section 17A of the Bill should include public officers. This will cater for officers who work at various entry and exit points of the Country and other officers who assist in trafficking of</p>	<p>17A. A law enforcement officer or a public officer who aids or abets any offence under this Act including through concealing the commission of any offence or colluding with any person suspected of committing an offence under this Act, commits an offence and shall be liable upon conviction to a fine</p>

	narcotics.	of not less than twenty million shillings and imprisonment for a term of not less than twenty years.
17B	There should be a new section in the Bill to provide for law enforcement who abuse their powers provided under the Act.	“17.B Abuse of office Any person who, being employed as a law enforcement officer or a public officer, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another, commits an offence and shall be liable upon conviction to a fine of not less than three hundred thousand shillings or imprisonment for a term of not less than five years or both.”
58	The 2010 Constitution grants prosecutorial powers in criminal matters to the Director of Public Prosecutions (DPP)	Section 58(ii) of the principal Act is amended by deleting the words <i>“Attorney General”</i> and substituting therefore with <i>“Director of Public Prosecution.”</i>
59	Delete the word shall in the new sub-section (3) so as not to limit the powers of the DPP.	“(3). The Director of Public Prosecutions, may request for information, evidence and particulars, where any person, including a foreign government, state or organization of entity alleges or has information that any person in Kenya has committed an offence under this Act, and shall upon receiving such information, evidence and particulars act in accordance with the law.”
80A	The word “Chief Magistrate” should be deleted Section 80A. (1) of the Bill .	“80. A (1) Subject to sub-section (2), a police officer above the rank of Chief Inspector of Police may, for the purpose of obtaining evidence of the commission of an offence under this Act, apply ex parte, to the High Court for an interception order.”
80B	Insert a new sub-section (c) under (1) to provide for concealing or failure to disclose information.	“(c) Conceals or fails to disclose information that is relevant in investigation, prosecution of another person for an offence committed under this Act, commits an offence.”
67(1)	The section deals with the role of analysts. The section does not specifically provide for a specific minister.	Section 67 of the principal Act is amended to include sub-section 3 – <i>The Cabinet Secretary in sub-section 1 means the Cabinet Secretary for time being responsible for Interior.</i>
81(b)	Section 81(b) of the principal Act provides for that <i>“conspires with any other person to commit; or”</i>	In view of the new elaborate section in the Bill that seeks to introduce section 4B , the current section 81(b) should thus be deleted.
85A.	Introduce a new section to bar those convicted under the	85A. Disqualification if convicted of an offence under this Act

	Act from being appointed or elected into a public office.	A person who is convicted of an offence under this Act shall be disqualified from being elected or appointed as a public officer for thirty years after the conviction.
86	The section does not clarify which specific Cabinet Secretary/Minister. Add a new sub-section under section 86.	86(3) <i>The Cabinet Secretary in this section means the Cabinet Secretary for time being responsible for Interior.</i>
First Schedule	The current Act does not capture tramadol in the 1 st schedule.	<i>"First Schedule is amended to include tramadol."</i>
Second Schedule	The current Act does not capture ketamine in the 2 nd schedule.	<i>"Second Schedule is amended to include ketamine."</i>
Fourth Schedule	The Schedule in the Bill should cover the entire list as listed in the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.	<i>"All the precursor and chemicals listed in the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 under the Annex and as may be updated shall form part of the Fourth Schedule to the Act."</i>

5.0 OBSERVATIONS

16. Upon considering the Bill clause by clause, the Committee observed the following-

- a) There was need for the provision of a new definition of Clandestine laboratory;
- b) There was need for the provision of a new definition of "**market value**";
- c) Insertion new definition on who a public officer is, this would cater for other officers other than law enforcement officer;
- d) There was need to simplify the categories of the grams. This would enable the implementers to fully comprehend. Sub-section (b) shall only have one category and will govern possession;
- e) There was need for a new section to provide for landlords and owners of building to conduct due diligence on their tenants and occupiers of their premises to avoid setting up of clandestine laboratories; and
- f) There was need to insert a new sub-section (c) under (1) to provide for concealing or failure to disclose information.

6.0 RECOMMENDATIONS

17. Upon considering the Bill clause by clause, the Committee recommends as following-
Insert new definition of Clandestine laboratory

18. **"Clandestine laboratory" means:**

- i) purchase or procurement of chemicals, supplies, equipment, or laboratory location for the illegal manufacture of specified controlled substances;
- ii) transportation or arranging for the transportation of chemicals, supplies, or equipment for the illegal manufacture of controlled substances;
- iii) setting up of equipment or supplies in preparation for the illegal manufacture of specified controlled substances;
- iv) activity of compounding, synthesizing, concentrating, purification, separating, extracting, or other physical or chemical processing of a substance, including a controlled substance precursor, or the packaging, repackaging, labelling, or relabelling of a container holding a substance that is a product of any of these activities, when the substance is to be used for the illegal manufacture of specified controlled substances;
- v) illegal manufacture of specified controlled substances; or
- vi) distribution, diversion or disposal of chemicals, equipment, supplies, or products used in or produced by the illegal manufacture of specified controlled substances.

19. **Insert new definition of "market value"**

"market value" means value of narcotic drug, psychotropic substance, prohibited plant, precursor or chemicals.

Rationale: To provide for definition of terms that will be used in the proposed new law.

20. **Insert new definition on who a public officer is**

"public officer" means an officer, employee or member of a public body, including one that is unpaid, part-time or temporary;

Rationale: This would cater for other officers other than law enforcement officer.

21. **Clause 3(b) (i) & (ii) be amended as**

(b) in respect of a narcotic drug or psychotropic substance, other than cannabis –

(i) where a person is in possession of less than one gram, to a fine of not less than five million shillings, or to imprisonment to a term of not less than five years, or to both such fine and imprisonment.

Rationale: There was needed to simplify the categories of the grams. This would enable the implementers to fully comprehend. Sub-section (b) shall only have one category and will govern possession.

21. **Section 3(2)(a) of the Principal Act should be amended to read:**

"(a) in respect of cannabis, where the person satisfies court that the cannabis was intended solely for his own consumption, to imprisonment of not more than five years or a fine of not more than one hundred thousand shillings."

Rationale: to provide for punishment that best reflects the practice in court.

22. Clause 4 (a) should thus be amended to read as follows-

- i) Where the person is in possession of between 1 - 100 grams, to a fine of not less than thirty million shillings or imprisonment for thirty years, or to both such fine and imprisonment;
- ii) Where the person is in possession of more than 100 gram, to a fine of not less than fifty million or three times the market value whichever is greater and imprisonment for a term of fifty years.

Rationale: There was need to simplify the categories for purposes of clarifying the categories in terms of trafficking.

23. Insertion of new Clause 5A

Clause 5A

- (1) Every owner, occupier or person concerned with the management of any premises, shall keep a register in his premises and shall enter or cause to be entered in the register the name and address of every tenant and occupier who occupies the premises and such other particulars as may be prescribed.
- (2) Every owner, occupier or person concerned with the management of any premises, shall enter or cause to be entered regularly in a book kept for the purpose all such particulars (other than particulars prescribed in respect of the register required by subsection (1) to be kept) as may be prescribed.
- (3) Any person who fails to comply with this section, or who makes or causes or permits to be made in any register or book required by this section to be kept any entry which he knows or has reason to believe to be false, shall be guilty of an offence and liable to a fine of not less than one million shillings or a term of imprisonment of not less than two years or both such fine and imprisonment.

Rationale: the new section to provide for landlords and owners of building to conduct due diligence on their tenants and occupiers of their premises to avoid setting up of clandestine laboratories.

24. Clause 5(1)(c)(ii) & (d) be amended as follows-

Insertion of clause 5B. Subject to this Act, any person who –

- (1) Who operates a clandestine laboratory;
- (2) Being the owner, occupier or concerned in the management of any premises, permits the premises to be used for the purpose of operating a clandestine laboratory; shall be guilty of an offence and liable to a fine of not less than twenty million shillings or a term of imprisonment of not less than twenty years or both such fine and imprisonment.
- (3) It shall be a defence if the person is an owner or concerned with the management of any premises, complies with the provisions of section 5A.

Rationale: the proposed that clause dealing with laboratory should be stand alone. Therefore, section 5(1)(c)(ii) & (d) should be deleted from section 5 of the Bill. The Bill should thus seek introduce Section 5A of the Principal Act.

25. Clause 17A should be amended to read-

Clause 17A. A law enforcement officer or a public officer who aids or abets any offence under this Act including through concealing the commission of any offence or colluding with any person suspected of committing an offence under this Act, commits an offence and shall

be liable upon conviction to a fine of not less than twenty million shillings and imprisonment for a term of not less than twenty years.

Rationale: this was to include public officers. This would cater for officers who work at various entry and exit points of the Country and other officers who assist in trafficking of narcotics.

26. Insertion of new clause 17B

“17.B Abuse of office

Any person who, being employed as a law enforcement officer or a public officer, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another, commits an offence and shall be liable upon conviction to a fine of not less than three hundred thousand shillings or imprisonment for a term of not less than five years or both.”

Rationale: To provide for law enforcement who abuse their powers provided under the Act.

27. **Clause 58(ii)** of the principal Act is amended by deleting the words “Attorney General” and substituting therefore with “Director of Public Prosecution.”

Rationale: The 2010 Constitution grants prosecutorial powers in criminal matters to the Director of Public Prosecutions (DPP).

28. **Clause 59 (3) is amended to read as follows-**

“(3). The Director of Public Prosecutions, may request for information, evidence and particulars, where any person, including a foreign government, state or organization of entity alleges or has information that any person in Kenya has committed an offence under this Act, and shall upon receiving such information, evidence and particulars act in accordance with the law.

Rationale: Deletion of the word shall in the new sub-section (3) so as not to limit the powers of the DPP.

29. **Clause 80 A(1) is amended to read as follows-**

“80. A (1) Subject to sub-section (2), a police officer above the rank of Chief Inspector of Police may, for the purpose of obtaining evidence of the commission of an offence under this Act, apply ex parte, to the High Court for an interception order.”

Rationale: The word “Chief Magistrate” should be deleted Section 80A. (1) of the Bill .

30. **Clause 80B**

Clause 80B (2)

Insert the words "knowingly conceals or fails to disclose information under subsection (1)" immediately after the words "A person who".

Rationale: Insertion a new sub-section (c) under (1) to provide for concealing or failure to disclose information.

31. **Section 67(1)**

Section 67 of the principal Act is amended to include sub-section 3 –

The Cabinet Secretary in sub-section 1 means the Cabinet Secretary for time being responsible for Interior.

Rationale: The section deals with the role of analysts. The section did not specifically provide for a specific minister.

32. Section 81(b) of the principal Act be amended as follows-

In view of the new elaborate section in the Bill that seeks to introduce **section 4B**, the current section 81(b) should thus be deleted.

Rationale: Section 81(b) of the principal Act provides for that "conspires with any other person to commit; or"

33. Insertion of new clause 85A.

85A. Disqualification if convicted of an offence under this Act

A person who is convicted of an offence under this Act shall be disqualified from being elected or appointed as a public officer for thirty years after the conviction.

Rationale: Introduce a new section to bar those convicted under the Act from being appointed or elected into a public office.

34. A new sub-section under section 86.

86(3) The Cabinet Secretary in this section means the Cabinet Secretary for time being responsible for Interior.

Rationale: The section does not clarify which specific Cabinet Secretary/Minister.

35. First Schedule

"First Schedule is amended to include tramadol."

Rationale: The current Act does not capture tramadol in the 1st schedule.

36. Second Schedule

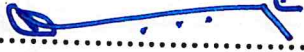
"Second Schedule is amended to include ketamine."

Rationale: The current Act does not capture ketamine in the 2nd schedule.

37. Fourth Schedule

The Cabinet Secretary shall through a gazette notice, list all the precursors and chemicals as listed in the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

Rationale: The Schedule in the Bill should cover the entire list as listed in the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

SIGNED..........this ^{1st} day of ^{December} 2020

HON. PAUL KOINANGE, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND
NATIONAL SECURITY

The bill... responsibility for...
...with the... The...
...the...

Section 217 of the principal Act be amended as follows-

In view of the new... section 217...
...section 217...
...section 217...
...person in...

Insertion of new clause 22A

22A. Disqualification...
A person who is...
...or appointed...
...for...
...of...

Section 22 under section 22

22. The...
...responsible for...
...The...

Section 23

...of...
...of...

Section 24

...of...
...of...

Section 25

...of...
...of...
...of...
...of...

...of...
...of...

NATIONAL SECURITY
CHIEF MINISTER
HOV. SAUL KORNBERG, M.P.

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY



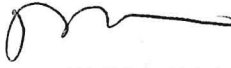
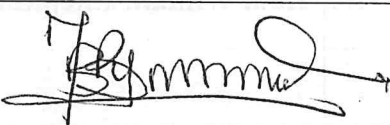
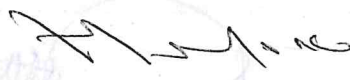
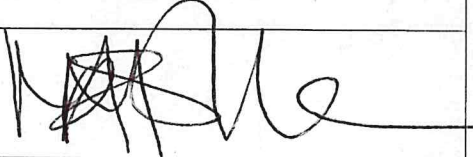
ATTENDANCE SCHEDULE

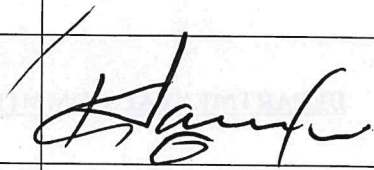

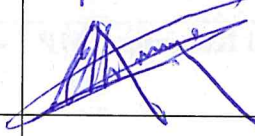
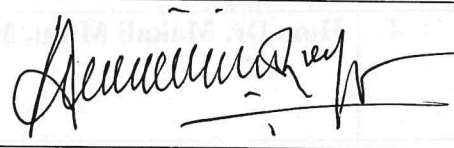
DATE: Monday, 30th November, 2020


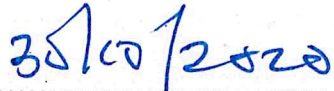
TIME: 2.30 p.m.

VENUE: Committee Room on 5th Floor, Continental House

AGENDA: Adoption of the Report on the Narcotics, Drugs and Psychotropic Substances (Control) (Amendment) Bill, 2020

NO.	NAME	SIGNATURE
1.	Hon. Paul Koinange, MP - Chairperson	
2.	Hon. Fatuma Gedi, CBS, MP - Vice Chairperson	
3.	Hon. George Peter Kaluma, MP	
4.	Hon. Dr. Makali Mulu, MP	
5.	Hon. Aduma Owuor, MP	
6.	Hon. Dr. Tecla Chebet Tum, MP	
7.	Hon. Halima Mucheke, MP	
8.	Hon. Marselino Malimo Arbelle, MP	
9.	Hon. Josphat Kabinga Wachira, MP	

10.	Hon. Nimrod Mbithuka Mbai, MP	
11.	Hon. Ngunjiri Wambugu, MP	
12.	Hon. Abdi Omar Shurie, MP	
13.	Hon. Col (Rtd) Geoffrey Kingangi, MP	
14.	Hon. Peter Masara, MP	
15.	Hon. Oku Kaunya, MP	
16.	Hon. Rozaah Buyu, MP	
17.	Hon. Jeremiah Lomurukai, MP	
18.	Hon. William Chepkut, MP	
19.	Hon. Swarup Mishra, MP	

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

Signed.....Date.....
Peter Chemweno,
Deputy Director/ In-Charge, Directorate of Departmental Committee Services

MINUTES OF THE 68TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON MONDAY, 16TH NOVEMBER, 2020 AT 10.00 A.M. AT HILTON GARDEN INN HOTEL, MACHAKOS COUNTY

PRESENT-

1. Hon. Paul Koinange, MP - *Chairperson*
2. Hon. Fatuma Gedi Ali, CBS, MP - *Vice-Chairperson*
3. Hon. Dr. Makali Mulu, MP
4. Hon. Peter George Kaluma, MP
5. Hon. Peter Masara, MP
6. Hon. Marselino Malimo Arbelle, MP
7. Hon. Ngunjiri Wambugu, MP
8. Hon. Josphat Kabinga Wachira, MP
9. Hon. Abdi Omar Shurie, MP
10. Hon. Jeremiah Ekamais Lomurukai, MP
11. Hon. William Kamuren Chirchir Chepkut, MP

ABSENT WITH APOLOGIES

1. Hon. Aduma Owuor, MP
2. Hon. Dr. Tecla Chebet Tum, MP
3. Hon. Halima Mucheke, MP
4. Hon. Col (Rtd) Geoffrey King'ang'i, MP
5. Hon. Swarup Mishra, MP
6. Hon. Nimrod Mbithuka Mbai, MP
7. Hon. Rozaah Buyu, MP
8. Hon. Oku Kaunya, MP

IN ATTENDANCE-

NATIONAL ASSEMBLY

COMMITTEE SECRETARIAT-

1. Mr. George Gazemba - Principal Clerk Assistant
2. Mr. Joshua Ondari - Clerk Assistant

- | | | | |
|----|----------------------|---|-------------------------|
| 3. | Ms. Brigitta Mati | - | Legal Counsel |
| 4. | Mr. Rodgers Kilungya | - | Audio Recording Officer |
| 5. | Ms. Eva Kaare | - | Serjeant-At-Arms |
| 6. | Mr. James Oloo | - | Serjeant-At-Arms |

MINISTRY OF INTERIOR & COORDINATION OF NATIONAL GOVERNMENT

1. Mr. Michael Ngare - Legal Officer, Directorate of Criminal Investigation
2. Ms. Prisca Wambui - Senior State Counsel

MIN No. 273/2020:-

PRELIMINARIES AND COMMUNICATION FROM THE CHAIRPERSON

The Chairperson officially welcomed Members to the meeting at 10.20 am with a word of prayer followed by round of introductions.

MIN No. 274/2020:-

MEETING WITH STAKEHOLDERS TO DELIBERATE ON THE NARCOTICS, DRUGS & PSYCHOTROPICS SUBSTANCES (CONTROL) (AMENDMENT) BILL, 2020

MEETING WITH THE DIRECTORATE OF CRIMINAL INVESTIGATIONS

Mr. Michael Ngare, Legal Officer, Directorate of Criminal Investigation, appeared before the Committee and submitted as follows-

Areas of concern

Clause (b)(i) and 3(b) (ii) of the Bill are not clear and would definitely pose a challenge when drafting charges.

Clause 3 (b) (i) provides; where a person is in possession of 1-5 grams.....

Clause 3 (b) (ii) provides; where a person is in possession of 1 gram or less...

The two clauses lack clarity in terms in terms of a clear distinction of the narcotic weight that one was found in possession of.

For instance if a suspect was found in possession of 1 gram of a narcotic drug, it would be confusing whether to charge the suspect with S.3(b) (i) or S.3 (b) (ii) of the Bill.

In view of the foregoing they recommended that clause 3 (b) (ii) be amended to read, '*where a person is in possession of less than 1 gram.*'

MINISTRY OF INTERIOR & COORDINATION OF NATIONAL GOVERNMENT

Ms. Prisca Wambui, Senior Legal Officer, Directorate of Criminal Investigation, appeared before the Committee and submitted as follows-

The proposed clause 3 should provide for alternative forms of punishment other than incarceration such as rehabilitation or probation for first time offenders.

The recommendation –

- (a) provide for a rehabilitation clause; and
- (b) in subsection 3(2) (a) of the Act, to provide for a lesser punishment or subject the offender to a fine and rehabilitation.

MIN No. 275/2020:-

ADJOURNMENT

There being no other business to transact, the Chairperson adjourned the meeting at 1.00 pm. The Committee was reconvening again at 2.00 pm.

Signed.....
Chairperson

Date.....*1st December 2020*

In the event that a report was found in possession of 1 gram of a narcotic drug, it would be necessary to charge the suspect with 2.3(a) (1) or 2.3 (b) (1) of the Act. In view of the foregoing, the Commission has recommended that clause 3 (b) (1) be amended to read: "where a person is in possession of less than 1 gram."

MINISTRY OF INTERIOR & COORDINATION OF NATIONAL GOVERNMENT

The Hon. Minister, Senior Legal Officer, Department of Criminal Investigation, appeared before the Committee and submitted as follows: The purpose of clause 3 should be to provide for the arrest of persons who are in possession of less than 1 gram of a narcotic drug at the time of the offence.

The Commission has recommended that clause 3 (b) (1) be amended to read: "where a person is in possession of less than 1 gram." The Commission has also recommended that clause 3 (b) (2) be amended to read: "where a person is in possession of less than 1 gram."

ADJOURNMENT

The Commission has recommended that clause 3 (b) (1) be amended to read: "where a person is in possession of less than 1 gram." The Commission has also recommended that clause 3 (b) (2) be amended to read: "where a person is in possession of less than 1 gram."

.....
Chairperson

Date: 1st December 2020

MINUTES OF THE 69TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON MONDAY, 16TH NOVEMBER, 2020 AT 2.00 P.M. AT HILTON GARDEN INN HOTEL, MACHAKOS COUNTY

PRESENT-

1. Hon. Paul Koinange, MP - *Chairperson*
2. Hon. Fatuma Gedi Ali, CBS, MP - *Vice-Chairperson*
3. Hon. Dr. Makali Mulu, MP
4. Hon. Peter George Kaluma, MP
5. Hon. Peter Masara, MP
6. Hon. Marselino Malimo Arbelle, MP
7. Hon. Ngunjiri Wambugu, MP
8. Hon. Josphat Kabinga Wachira, MP
9. Hon. Abdi Omar Shurie, MP
10. Hon. Jeremiah Ekamais Lomurukai, MP
11. Hon. William Kamuren Chirchir Chepkut, MP

ABSENT WITH APOLOGIES

1. Hon. Aduma Owuor, MP
2. Hon. Dr. Tecla Chebet Tum, MP
3. Hon. Halima Mucheke, MP
4. Hon. Col (Rtd) Geoffrey King'ang'i, MP
5. Hon. Swarup Mishra, MP
6. Hon. Nimrod Mbithuka Mbai, MP
7. Hon. Rozaah Buyu, MP
8. Hon. Oku Kaunya, MP

IN ATTENDANCE-

NATIONAL ASSEMBLY

COMMITTEE SECRETARIAT-

1. Mr. George Gazemba - Principal Clerk Assistant
2. Mr. Joshua Ondari - Clerk Assistant

- | | | | |
|----|----------------------|---|-------------------------|
| 3. | Ms. Brigitta Mati | - | Legal Counsel |
| 4. | Mr. Rodgers Kilungya | - | Audio Recording Officer |
| 5. | Ms. Eva Kaare | - | Serjeant-At-Arms |
| 6. | Mr. James Oloo | - | Serjeant-At-Arms |

NATIONAL INTELLIGENCE SERVICE

- | | | | |
|----|-------------------|---|-------------------------|
| 1. | Mr. Dancun Ondimu | - | Principal Legal Officer |
| 2. | Ms. Diana Mwangi | | |
| 3. | Ms. Peris Boit | | |
| 4. | Mr. Enoch Mugabe | | |

MIN No. 276/2020:-

PRELIMINARIES AND COMMUNICATION FROM THE CHAIRPERSON

The Chairperson officially welcomed Members to the meeting at 2.20 pm with a word of prayer followed by round of introductions.

MIN No. 277/2020:-

MEETING WITH STAKEHOLDERS TO DELIBERATE ON THE NARCOTICS, DRUGS & PSYCHOTROPICS SUBSTANCES (CONTROL) (AMENDMENT) BILL, 2020

MEETING WITH NATIONAL INTELLIGENCE SERVICE

Mr. Dancun Ondimu, Principal Legal Officer, National Intelligence Service, appeared before the Committee and submitted as follows-

SECTION	JUSTIFICATION	PROPOSED CHANGE(S)
2	Insert new definition of Clandestine laboratory	"Clandestine laboratory" means: (i) purchase or procurement of chemicals, supplies, equipment, or laboratory location for the illegal manufacture of specified controlled substances; (ii) transportation or arranging for the transportation of chemicals,

		<p>supplies, or equipment for the illegal manufacture of controlled substances;</p> <p>(iii) setting up of equipment or supplies in preparation for the illegal manufacture of specified controlled substances;</p> <p>(iv) activity of compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing of a substance, including a controlled substance precursor, or the packaging, repackaging, labelling, or relabelling of a container holding a substance that is a product of any of these activities, when the substance is to be used for the illegal manufacture of specified controlled substances;</p> <p>(v) illegal manufacture of specified controlled substances; or</p> <p>(vi) distribution, diversion or disposal of chemicals, equipment, supplies, or products used in or produced by the illegal manufacture of specified controlled substances.</p>
2	Insert new definition of " market value "	" <i>market value</i> " means value of narcotic drug, psychotropic substance, prohibited plant, precursor or chemicals.
2	Insert new definition on who a public officer is. This will cater for other officers other than law enforcement officer.	" <i>public officer</i> " means an officer, employee or member of a public body, including one that is unpaid, part-time or temporary;
3(b) (i) &	There is need to simplify	(b) in respect of a narcotic drug or

(ii)	the categories of the grams. This will enable the implementers to fully comprehend. Sub-section (b) shall only have one category and will govern possession.	psychotropic substance, other than cannabis – (i) <i>Where the person is in possession of less than 1 gram, to a fine of not less than one million or imprisonment for not less than five years, or to both such fine and imprisonment;</i>
3	Section 3(2)(a) of the Principal Act should be amended to read:	“(a) in respect of cannabis, where the person satisfies court that the cannabis was intended solely for his own consumption, to imprisonment of not more than five years or a fine of not more than hundred thousand shillings.”
4	There is need to simplify the categories for purposes of clarifying the categories in terms of trafficking. Section 4 (a) should thus be amended.	(i) <i>Where the person is in possession of between 1 - 100 grams, to a fine of not less than thirty million shillings or imprisonment for thirty years, or to both such fine and imprisonment;</i> (ii) <i>Where the person is in possession of more than 100 gram, to a fine of not less than fifty million or three times the market value whichever is greater or imprisonment for life or to both such fine and imprisonment;</i>
5A	To introduce a new section to provide for landlords and owners of building to conduct due diligence on their tenants and occupiers of their premises to avoid setting up of clandestine laboratories.	5A. (1) Every owner, occupier or concerned in the management of any premises, shall keep a register in his premises and shall enter or cause to be entered in the register the name and address of every tenant and occupier who occupies the premises and such other particulars as may be prescribed. (2) Every owner, occupier or concerned in the management of any

		<p>premises, shall enter or cause to be entered regularly in a book kept for the purpose all such particulars (other than particulars prescribed in respect of the register required by subsection (1) to be kept) as may be prescribed.</p> <p>(3) Any person who fails to comply with this section, or who makes or causes or permits to be made in any register or book required by this section to be kept any entry which he knows or has reason to believe to be false, shall be guilty of an offence and liable to a fine of not less than one million shillings or a term of imprisonment of not less than two years or both such fine and imprisonment.</p>
<p>5(1)(c)(ii) & (d)</p>	<p>It is proposed that section dealing with laboratory should be stand alone. Therefore, section 5(1)(c)(ii) & (d) should be deleted from section 5 of the Bill. The Bill should thus seek introduce Section 5A of the Principal Act</p>	<p>5B. Subject to this Act, any person who –</p> <ol style="list-style-type: none"> (1) Who operates a clandestine laboratory; (2) Being the owner, occupier or concerned in the management of any premises, permits the premises to be used for the purpose of operating a clandestine laboratory; <p>shall be guilty of an offence and liable to a fine of not less than twenty million shillings or a term of imprisonment of not less than ten years or both such fine and imprisonment.</p> <p>(3) It shall be a defence if the person is an owner or concerned with the management of any premises, complies with the provisions of</p>

		section 5A.
17A	Section 17A of the Bill should include public officers. This will cater for officers who work at various entry and exit points of the Country and other officers who assist in trafficking of narcotics.	17A. A law enforcement officer or a public officer who aids or abets any offence under this Act including through concealing the commission of any offence or colluding with any person suspected of committing an offence under this Act, commits an offence and shall be liable upon conviction to a fine of not less than twenty million shillings and imprisonment for a term of not less than twenty years.
17B	There should be a new section in the Bill to provide for law enforcement who abuse their powers provided under the Act.	“17.B Abuse of office Any person who, being employed as a law enforcement officer or a public officer, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another, commits an offence and shall be liable upon conviction to a fine of not less than three hundred thousand shillings or imprisonment for a term of not less than five years or both.”
58	The 2010 Constitution grants prosecutorial powers in criminal matters to the Director of Public Prosecutions (DPP)	Section 58(ii) of the principal Act is amended by deleting the words “ <i>Attorney General</i> ” and substituting therefore with “ <i>Director of Public Prosecution.</i> ”
59	Delete the word shall in the new sub-section (3) so as not to limit the powers of the DPP.	“(3). The Director of Public Prosecutions, may request for information, evidence and particulars, where any person, including a foreign government, state or organization of entity alleges or has information that any person in Kenya has committed an offence under this Act, and shall upon receiving such information,

		evidence and particulars act in accordance with the law.”
80A	The word “Chief Magistrate” should be deleted Section 80A. (1) of the Bill .	“80. A (1) Subject to sub-section (2), a police officer above the rank of Chief Inspector of Police may, for the purpose of obtaining evidence of the commission of an offence under this Act, apply ex parte, to the High Court for an interception order.”
80B	Insert a new sub-section (c) under (1) to provide for concealing or failure to disclose information.	“(c) Conceals or fails to disclose information that is relevant in investigation, prosecution of another person for an offence committed under this Act, commits an offence.”
67(1)	The section deals with the role of analysts. The section does not specifically provide for a specific minister.	Section 67 of the principal Act is amended to include sub-section 3 – <i>The Cabinet Secretary in sub-section 1 means the Cabinet Secretary for time being responsible for Interior.</i>
81(b)	Section 81(b) of the principal Act provides for that “ <i>conspires with any other person to commit; or</i> ”	In view of the new elaborate section in the Bill that seeks to introduce section 4B , the current section 81(b) should thus be deleted.
85A.	Introduce a new section to bar those convicted under the Act from being appointed or elected into a public office.	85A. Disqualification if convicted of an offence under this Act A person who is convicted of an offence under this Act shall be disqualified from being elected or appointed as a public officer for thirty years after the conviction.
86	The section does not clarify which specific Cabinet Secretary/Minister. Add a new sub-section under section 86.	86(3) <i>The Cabinet Secretary in this section means the Cabinet Secretary for time being responsible for Interior.</i>
First Schedule	The current Act does not capture tramadol in the	“ <i>First Schedule is amended to include tramadol.</i> ”

	1 st schedule.	
Second Schedule	The current Act does not capture ketamine in the 2 nd schedule.	<i>“Second Schedule is amended to include ketamine.”</i>
Fourth Schedule	The Schedule in the Bill should cover the entire list as listed in the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.	<i>“All the precursor and chemicals listed in the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 under the Annex and as may be updated shall form part of the Fourth Schedule to the Act.”</i>

MIN No. 278/2020:-

ADJOURNMENT

There being no other business to transact, the Chairperson adjourned the meeting at 4.00 pm until Tuesday, 17th November, 2020 at 10.00 am.

Signed.....

Chairperson

Date.....**1st December 2020**

MINUTES OF THE 70TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON TUESDAY, 17TH NOVEMBER, 2020 AT 10.00 A.M. AT HILTON GARDEN INN HOTEL, MACHAKOS COUNTY

PRESENT-

1. Hon. Paul Koinange, MP - *Chairperson*
2. Hon. Fatuma Gedi Ali, CBS, MP - *Vice-Chairperson*
3. Hon. Dr. Makali Mulu, MP
4. Hon. Peter George Kaluma, MP
5. Hon. Peter Masara, MP
6. Hon. Marselino Malimo Arbelle, MP
7. Hon. Ngunjiri Wambugu, MP
8. Hon. Josphat Kabinga Wachira, MP
9. Hon. Abdi Omar Shurie, MP
10. Hon. Jeremiah Ekamais Lomurukai, MP
11. Hon. William Kamuren Chirchir Chepkut, MP

ABSENT WITH APOLOGIES

1. Hon. Aduma Owuor, MP
2. Hon. Dr. Tecla Chebet Tum, MP
3. Hon. Halima Mucheke, MP
4. Hon. Col (Rtd) Geoffrey King'ang'i, MP
5. Hon. Swarup Mishra, MP
6. Hon. Nimrod Mbithuka Mbai, MP
7. Hon. Rozaah Buyu, MP
8. Hon. Oku Kaunya, MP

IN ATTENDANCE-

NATIONAL ASSEMBLY

COMMITTEE SECRETARIAT-

1. Mr. George Gazemba - Principal Clerk Assistant
2. Mr. Joshua Ondari - Clerk Assistant

- | | | | |
|----|----------------------|---|-------------------------|
| 3. | Ms. Brigitta Mati | - | Legal Counsel |
| 4. | Mr. Rodgers Kilungya | - | Audio Recording Officer |
| 5. | Ms. Eva Kaare | - | Serjeant-At-Arms |
| 6. | Mr. James Oloo | - | Serjeant-At-Arms |

NATIONAL INTELLIGENCE SERVICE

Mr. Dancun Ondimu - Principal Legal Officer

MIN No. 279/2020:-

**PRELIMINARIES AND COMMUNICATION
FROM THE CHAIRPERSON**

The Chairperson officially welcomed Members to the meeting at 10.30 Am with a word of prayer.

MIN No. 280/2020:-

**CONSIDERATION OF THE NARCOTICS, DRUGS
& PSYCHOTROPICS SUBSTANCES (CONTROL)
(AMENDMENT) BILL, 2020**

The Committee considered the Bill and agreed as follows:-

SECTION	JUSTIFICATION	PROPOSED CHANGE(S)
2	Insert new definition of Clandestine laboratory	"Clandestine laboratory" means: (i) purchase or procurement of chemicals, supplies, equipment, or laboratory location for the illegal manufacture of specified controlled substances; (ii) transportation or arranging for the transportation of chemicals, supplies, or equipment for the illegal manufacture of controlled substances; (iii) setting up of equipment or supplies in preparation for the illegal manufacture of specified controlled substances; (iv) activity of compounding, synthesising, concentrating,

		<p>purification, separating, extracting, or other physical or chemical processing of a substance, including a controlled substance precursor, or the packaging, repackaging, labelling, or relabelling of a container holding a substance that is a product of any of these activities, when the substance is to be used for the illegal manufacture of specified controlled substances;</p> <p>(v) illegal manufacture of specified controlled substances; or</p> <p>(vi) distribution, diversion or disposal of chemicals, equipment, supplies, or products used in or produced by the illegal manufacture of specified controlled substances.</p>
2	Insert new definition of " market value "	" <i>market value</i> " means value of narcotic drug, psychotropic substance, prohibited plant, precursor or chemicals.
2	Insert new definition on who a public officer is. This will cater for other officers other than law enforcement officer.	" <i>public officer</i> " means an officer, employee or member of a public body, including one that is unpaid, part-time or temporary;
3(b) (i) & (ii)	There is need to simplify the categories of the grams. This will enable the implementers to fully comprehend. Sub-section (b) shall only have one category and will govern possession.	<p>(b) in respect of a narcotic drug or psychotropic substance, other than cannabis –</p> <p>(i) <i>where a person is in possession of less than one gram , to a fine of not less than five million shillings, or to imprisonment to a term of not less than five years, or to both such fine and imprisonment</i></p>
3	Section 3(2)(a) of the	"(a) in respect of cannabis, where the

	Principal Act should be amended to read:	person satisfies court that the cannabis was intended solely for his own consumption, to imprisonment of not more than five years or a fine of not more than one hundred thousand shillings.”
4	There is need to simplify the categories for purposes of clarifying the categories in terms of trafficking. Section 4 (a) should thus be amended.	(i) <i>Where the person is in possession of between 1 - 100 grams, to a fine of not less than thirty million shillings or imprisonment for thirty years, or to both such fine and imprisonment;</i> (ii) <i>Where the person is in possession of more than 100 gram, to a fine of not less than fifty million or three times the market value whichever is greater and imprisonment for a term of fifty years.</i>
5A	To introduce a new section to provide for landlords and owners of building to conduct due diligence on their tenants and occupiers of their premises to avoid setting up of clandestine laboratories.	5A. (1) Every owner, occupier or person concerned with the management of any premises, shall keep a register in his premises and shall enter or cause to be entered in the register the name and address of every tenant and occupier who occupies the premises and such other particulars as may be prescribed. (2) Every owner, occupier or person concerned with the management of any premises, shall enter or cause to be entered regularly in a book kept for the purpose all such particulars (other than particulars prescribed in respect of the register required by subsection (1) to be kept) as may be prescribed. (3) Any person who fails to comply

		with this section, or who makes or causes or permits to be made in any register or book required by this section to be kept any entry which he knows or has reason to believe to be false, shall be guilty of an offence and liable to a fine of not less than one million shillings or a term of imprisonment of not less than two years or both such fine and imprisonment.
5(1)(c)(ii) & (d)	It is proposed that section dealing with laboratory should be stand alone. Therefore, section 5(1)(c)(ii) & (d) should be deleted from section 5 of the Bill. The Bill should thus seek introduce Section 5A of the Principal Act	5B. Subject to this Act, any person who – (1) Who operates a clandestine laboratory; (2) Being the owner, occupier or concerned in the management of any premises, permits the premises to be used for the purpose of operating a clandestine laboratory; shall be guilty of an offence and liable to a fine of not less than twenty million shillings or a term of imprisonment of not less than ten years or both such fine and imprisonment. (3) It shall be a defence if the person is an owner or concerned with the management of any premises, complies with the provisions of section 5A.
17A	Section 17A of the Bill should include public officers. This will cater for officers who work at various entry and exit points of the Country and other officers who	17A. A law enforcement officer or a public officer who aids or abets any offence under this Act including through concealing the commission of any offence or colluding with any person suspected of committing an offence under this Act, commits an

	assist in trafficking of narcotics.	offence and shall be liable upon conviction to a fine of not less than twenty million shillings and imprisonment for a term of not less than twenty years.
17B	There should be a new section in the Bill to provide for law enforcement who abuse their powers provided under the Act.	<p>“17.B Abuse of office</p> <p>Any person who, being employed as a law enforcement officer or a public officer, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another, commits an offence and shall be liable upon conviction to a fine of not less than three hundred thousand shillings or imprisonment for a term of not less than five years or both.”</p>
58	The 2010 Constitution grants prosecutorial powers in criminal matters to the Director of Public Prosecutions (DPP)	Section 58(ii) of the principal Act is amended by deleting the words “ <i>Attorney General</i> ” and substituting therefore with “ <i>Director of Public Prosecution.</i> ”
59	Delete the word shall in the new sub-section (3) so as not to limit the powers of the DPP.	“(3). The Director of Public Prosecutions, may request for information, evidence and particulars, where any person, including a foreign government, state or organization of entity alleges or has information that any person in Kenya has committed an offence under this Act, and shall upon receiving such information, evidence and particulars act in accordance with the law.”
80A	The word “Chief Magistrate” should be deleted Section 80A. (1) of the Bill .	“80. A (1) Subject to sub-section (2), a police officer above the rank of Chief Inspector of Police may, for the purpose of obtaining evidence of the commission of an offence under this Act, apply ex parte, to the High Court

		for an interception order.”
80B	Insert a new sub-section (c) under (1) to provide for concealing or failure to disclose information.	“(c) Conceals or fails to disclose information that is relevant in investigation, prosecution of another person for an offence committed under this Act, commits an offence.”
67(1)	The section deals with the role of analysts. The section does not specifically provide for a specific minister.	Section 67 of the principal Act is amended to include sub-section 3 – <i>The Cabinet Secretary in sub-section 1 means the Cabinet Secretary for time being responsible for Interior.</i>
81(b)	Section 81(b) of the principal Act provides for that “ <i>conspires with any other person to commit; or</i> ”	In view of the new elaborate section in the Bill that seeks to introduce section 4B , the current section 81(b) should thus be deleted.
85A.	Introduce a new section to bar those convicted under the Act from being appointed or elected into a public office.	85A. Disqualification if convicted of an offence under this Act A person who is convicted of an offence under this Act shall be disqualified from being elected or appointed as a public officer for thirty years after the conviction.
86	The section does not clarify which specific Cabinet Secretary/Minister. Add a new sub-section under section 86.	86(3) <i>The Cabinet Secretary in this section means the Cabinet Secretary for time being responsible for Interior.</i>
First Schedule	The current Act does not capture tramadol in the 1 st schedule.	“ <i>First Schedule is amended to include tramadol.</i> ”
Second Schedule	The current Act does not capture ketamine in the 2 nd schedule.	“ <i>Second Schedule is amended to include ketamine.</i> ”
Fourth Schedule	The Schedule in the Bill should cover the entire list as listed in the UN Convention Against	<i>The Cabinet Secretary shall through a gazette notice, list all the precursors and chemicals as listed in the UN Convention Against Illicit</i>

MINUTES OF THE 74TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON MONDAY, 30TH NOVEMBER, 2020 AT 2.30 P.M. IN THE COMMITTEE ROOM ON 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

PRESENT-

1. Hon. Paul Koinange, MP - **Chairperson**
2. Hon. Fatuma Gedi Ali, CBS, MP - **Vice-Chairperson**
3. Hon. Dr. Makali Mulu, MP
4. Hon. Peter George Kaluma, MP
5. Hon. Dr. Tecla Chebet Tum, MP
6. Hon. Peter Masara, MP
7. Hon. Oku Kaunya, MP
8. Hon. Ngunjiri Wambugu, MP
9. Hon. Marselino Malimo Arbelle, MP
10. Hon. William Chepkut, MP

ABSENT WITH APOLOGIES

1. Hon. Aduma Owuor, MP
2. Hon. Col (Rtd) Geoffrey King'ang'i, MP
3. Hon. Halima Mucheke, MP
4. Hon. Josphat Kabinga Wachira, MP
5. Hon. Swarup Mishra, MP
6. Hon. Nimrod Mbithuka Mbai, MP
7. Hon. Rozaah Buyu, MP
8. Hon. Jeremiah Ekamais Lomurukai, MP
9. Hon. Abdi Omar Shurie, MP

IN ATTENDANCE-

NATIONAL ASSEMBLY

COMMITTEE SECRETARIAT-

1. Mr. George Gazemba - Principal Clerk Assistant

- | | | | |
|----|----------------------|---|-------------------------|
| 2. | Mr. Joshua Ondari | - | Clerk Assistant |
| 3. | Ms. Brigitta Mati | - | Legal Counsel |
| 4. | Mr. James Muguna | - | Research Officer |
| 5. | Ms. Eva Kaare | - | Serjeant-At-Arms |
| 6. | Mr. Rodgers Kilungya | - | Audio Recording Officer |
| 7. | Mr. James Oloo | - | Serjeant-at-Arms |

MIN No. 297/2020:-

**PRELIMINARIES AND COMMUNICATION
FROM THE CHAIRPERSON**

The Chairperson called the meeting to order at 3.00 pm with a word of prayer.

MIN No. 298/2020:-

CONFIRMATION OF MINUTES

Minutes of the 73rd sitting held on Wednesday, 25th November 2020 at 10.00 a.m. were confirmed as true record of proceedings and signed by the Chairperson. The confirmation was proposed and seconded by Hon. Oku Kaunya, MP and Hon. Peter Masara, MP respectively.

There were no matters arising from the Minutes.

MIN No. 299/2020:-

**MEETING WITH CABINET SECRETARY,
MINISTRY INTERIOR & CO-ORDINATION
OF NATIONAL GOVERNMENT TO
DELIBERATE ON CONGESTION IN
PRISONS & POLICE STATIONS**

The Cabinet Secretary for Interior and Co-ordination of National Government was to appear before the Committee to deliberate on congestion in police cells and prisons. This followed the Prison's Department's refusal to admit remandees and convicts into their facilities until they are tested for Corona Virus Disease (COVID) and turned negative.

The Chairperson informed the Committee that he had been in touch with the Cabinet Secretary for Interior and Co-ordination of National Government who requested for postponement of the meeting because he was engaged with co-ordination of collection of signatures for the Building Bridges Initiative (BBI) countrywide. The Cabinet Secretary had also requested for postponement of another meeting with the Committee scheduled for Wednesday, 2nd December, 2020 to Thursday, 4th December, 2020 on account of the same reason.

The Committee resolved to meet the Cabinet Secretary on Thursday, 4th December, 2020 at 10.00 to discuss the agenda for the two (2) days meetings.

MIN No. 300/2020:-

**ADOPTION OF THE REPORT ON THE
NARCOTICS, DRUGS & PSYCHOTROPIC
SUBSTANCES (CONTROL) (AMENDMENT)
BILL, 2020**

The report was unanimously adopted by Members present after being proposed by Hon. Dr. Makali Mulu, MP and seconded by Hon. Peter Kaluma, MP.

MIN No. 301/2020:-

ANY OTHER BUSINESS

1. Shooting incident in Malaba Town, Busia County

Hon. Oku Kaunya reported that chaos has rocked Malaba Town since Friday following the killing of a 20-year-old student by police enforcing Covid-19 regulations because he did not wear a face mask. The matter was reported to the Independent Policing Oversight Authority (IPOA) which was investigating the incident. Action on the officer involved in the shooting would be taken based on IPOA's recommendations after concluding investigations.

2. Insecurity in Marsabit County

Hon. Marselimo Arbelle, MP informed the Committee that there was ongoing fighting between the Gabra and Borana Communities in Marsabit County. He requested the Committee to move with speed and conclude its report on the Petition by Hon. Dido Rasso, MP on the insecurity in Marsabit County. The recommendations in the report would help in addressing the insecurity challenges experienced in the said County.

Arising from insecurity incidences witnessed in the country, the Committee observed as follows-

- a) The situation was contributed to by certain police officers who had overstayed their posting in one area beyond the minimum period of three (3) years;

- b) There was need for police officers to be taken through a refresher course so that they can be reminded on their duties and expectations;
- c) They was need for the National Police Service Commission to provide police officers social-psycho support during the COVID 19 pandemic; and
- d) Members of the public need to be sensitized on reporting of professional misconduct by police officers to IPOA as it would ensure proper investigations and action taken on any police officer involved.

3. Pending Bills


The Committee tasked the Chairperson to take necessary action to ensure its Bills pending before the House as well as legislative proposals are fast-tracked for enactment. These included-

- (i) The Refugees Bill, 2019
- (ii) The National Governments Co-ordination (Amendment) Bill, 2020
- (iii) The Prevention of Terrorism Bill, 2020
- (iv) The Kenya Coast Guard Service Bill, 2020

MIN No. 302/2020:-

ADJOURNMENT

There being no other business to transact, the Chairperson adjourned the meeting at 4.00 pm until Tuesday, 1st December, 2020 at 10.00 am.

Signed.....

Chairperson

Date.....
1st December 2020

SUBMISSION FROM NATIONAL INTELLIGENCE SERVICE

SECTION	JUSTIFICATION	PROPOSED CHANGE(S)
2	Insert new definition of Clandestine laboratory	<p><i>"Clandestine laboratory"</i> means:</p> <ul style="list-style-type: none"> (i) purchase or procurement of chemicals, supplies, equipment, or laboratory location for the illegal manufacture of specified controlled substances; (ii) transportation or arranging for the transportation of chemicals, supplies, or equipment for the illegal manufacture of controlled substances; (iii) setting up of equipment or supplies in preparation for the illegal manufacture of specified controlled substances; (iv) activity of compounding, synthesising, concentrating, purification, separating, extracting, or other physical or chemical processing of a substance, including a controlled substance precursor, or the packaging, repackaging, labelling, or relabelling of a container holding a substance that is a product of any of these activities, when the substance is to be used for the illegal manufacture of specified controlled substances; (v) illegal manufacture of specified controlled substances; or (vi) distribution, diversion or disposal of chemicals, equipment, supplies, or products used in or produced by the illegal manufacture of specified controlled substances.
2	Insert new definition of <i>"market value"</i>	<p><i>"market value"</i> means value of narcotic drug, psychotropic substance, prohibited plant, precursor or</p>

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		chemicals.
2	Insert new definition on who a public officer is. This will cater for other officers other than law enforcement officer.	<i>"public officer"</i> means an officer, employee or member of a public body, including one that is unpaid, part-time or temporary;
3(b) (i) & (ii)	There is need to simplify the categories of the grams. This will enable the implementers to fully comprehend. Sub-section (b) shall only have one category and will govern possession.	(b) in respect of a narcotic drug or psychotropic substance, other than cannabis – (i) <i>where a person is in possession of less than one gram , to a fine of not less than five million shillings, or to imprisonment to a term of not less than five years, or to both such fine and imprisonment</i>
3	Section 3(2)(a) of the Principal Act should be amended to read:	<i>"(a) in respect of cannabis, where the person satisfies court that the cannabis was intended solely for his own consumption, to imprisonment of not more than five years or a fine of not more than one hundred thousand shillings."</i>
4	There is need to simplify the categories for purposes of clarifying the categories in terms of trafficking. Section 4 (a) should thus be amended.	(i) <i>Where the person is in possession of between 1 - 100 grams, to a fine of not less than thirty million shillings or imprisonment for thirty years, or to both such fine and imprisonment;</i> (ii) <i>Where the person is in possession of more than 100 gram, to a fine of not less than fifty million or three times the market value whichever is greater and imprisonment for a term of fifty years.</i>
5A	To introduce a new section to provide for landlords and owners of building to conduct due diligence on their tenants and occupiers of their premises to avoid setting up of clandestine laboratories.	5A. (1) Every owner, occupier or person concerned with the management of any premises, shall keep a register in his premises and shall enter or cause to be entered in the register the name and address of every tenant and occupier who occupies the premises and such other particulars as may be prescribed.

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		<p>(2) Every owner, occupier or person concerned with the management of any premises, shall enter or cause to be entered regularly in a book kept for the purpose all such particulars (other than particulars prescribed in respect of the register required by subsection (1) to be kept) as may be prescribed.</p> <p>(3) Any person who fails to comply with this section, or who makes or causes or permits to be made in any register or book required by this section to be kept any entry which he knows or has reason to believe to be false, shall be guilty of an offence and liable to a fine of not less than one million shillings or a term of imprisonment of not less than two years or both such fine and imprisonment.</p>
<p>5(1)(c)(ii) & (d)</p>	<p>It is proposed that section dealing with laboratory should be stand alone. Therefore, section 5(1)(c)(ii) & (d) should be deleted from section 5 of the Bill.</p> <p>The Bill should thus seek introduce Section 5A of the Principal Act</p>	<p>5B. Subject to this Act, any person who –</p> <ol style="list-style-type: none"> (1) Who operates a clandestine laboratory; (2) Being the owner, occupier or concerned in the management of any premises, permits the premises to be used for the purpose of operating a clandestine laboratory; <p>shall be guilty of an offence and liable to a fine of not less than twenty million shillings or a term of imprisonment of not less than ten years or both such fine and imprisonment.</p> <p>(3) It shall be a defence if the person is an owner or concerned with the management</p>

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		of any premises, complies with the provisions of section 5A.
17A	Section 17A of the Bill should include public officers. This will cater for officers who work at various entry and exit points of the Country and other officers who assist in trafficking of narcotics.	17A. A law enforcement officer or a public officer who aids or abets any offence under this Act including through concealing the commission of any offence or colluding with any person suspected of committing an offence under this Act, commits an offence and shall be liable upon conviction to a fine of not less than twenty million shillings and imprisonment for a term of not less than twenty years.
17B	There should be a new section in the Bill to provide for law enforcement who abuse their powers provided under the Act.	“17.B Abuse of office Any person who, being employed as a law enforcement officer or a public officer, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another, commits an offence and shall be liable upon conviction to a fine of not less than three hundred thousand shillings or imprisonment for a term of not less than five years or both.”
58	The 2010 Constitution grants prosecutorial powers in criminal matters to the Director of Public Prosecutions (DPP)	Section 58(ii) of the principal Act is amended by deleting the words <i>“Attorney General”</i> and substituting therefore with <i>“Director of Public Prosecution.”</i>
59	Delete the word shall in the new sub-section (3) so as not to limit the powers of the DPP.	“(3). The Director of Public Prosecutions, may request for information, evidence and particulars, where any person, including a foreign government, state or organization of entity alleges or has information that any person in Kenya has committed an offence under this Act, and shall upon receiving such information, evidence

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		and particulars act in accordance with the law.”
80A	The word “Chief Magistrate” should be deleted Section 80A. (1) of the Bill .	“80. A (1) Subject to sub-section (2), a police officer above the rank of Chief Inspector of Police may, for the purpose of obtaining evidence of the commission of an offence under this Act, apply ex parte, to the High Court for an interception order.”
80B	Insert a new sub-section (c) under (1) to provide for concealing or failure to disclose information.	“(c) Conceals or fails to disclose information that is relevant in investigation, prosecution of another person for an offence committed under this Act, commits an offence.”
67(1)	The section deals with the role of analysts. The section does not specifically provide for a specific minister.	Section 67 of the principal Act is amended to include sub-section 3 – <i>The Cabinet Secretary in sub-section 1 means the Cabinet Secretary for time being responsible for Interior.</i>
81(b)	Section 81(b) of the principal Act provides for that “conspires with any other person to commit; or”	In view of the new elaborate section in the Bill that seeks to introduce section 4B , the current section 81(b) should thus be deleted.
85A.	Introduce a new section to bar those convicted under the Act from being appointed or elected into a public office.	85A. Disqualification if convicted of an offence under this Act A person who is convicted of an offence under this Act shall be disqualified from being elected or appointed as a public officer for thirty years after the conviction.
86	The section does not clarify which specific Cabinet Secretary/Minister. Add a new sub-section under section 86.	86(3) <i>The Cabinet Secretary in this section means the Cabinet Secretary for time being responsible for Interior.</i>
First Schedule	The current Act does not capture tramadol in the 1 st schedule.	“ <i>First Schedule is amended to include tramadol.</i> ”
Second	The current Act does not	“ <i>Second Schedule is amended to include</i>

SUBMISSION FROM NATIONAL INTELLIGENCE SERVICE

Schedule	capture ketamine in the 2 nd schedule.	ketamine."
Fourth Schedule	The Schedule in the Bill should cover the entire list as listed in the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.	<i>The Cabinet Secretary shall through a gazette notice, list all the precursors and chemicals as listed in the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.</i>